AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 27 MARCH 2024

Ashleigh Sherry
Manager Business System and Administration

Agenda for a Meeting of the Development Determination Panel to be held on Wednesday 27 March 2024 via teleconference Commencing at 10:00 AM

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3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1 DA2023/1549 - 24 WYATT AVENUE BELROSE - CONSTRUCTION OF A DWELLING HOUSE INCLUDING CABANA

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 20 variation to the housing density and front building setback standards.

RECOMMENDATION

That Council as the consent authority, vary the Built Form Controls housing density and front building setback standards pursuant to clause 20 of WLEP 2000 as the applicants application 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.

THAT Council as the consent authority **approves** Development Consent to DA2023/1549 for construction of a dwelling house including cabana on land at Lot 2568 DP 752038, 24 Wyatt Avenue BELROSE, subject to the conditions set out in the Assessment.

REPORTING MANAGER	
TRIM FILE REF	2024/188572
ATTACHMENTS	⇩1 Assessment Report ⇩2 Site Plan and Elevations

northern beaches council

DEVELOPMENT ASSESSMENT REPORT

Planner:	Anaiis Sarkissian
Address/Property Description:	Lot 2568 DP 752038 24 Wyatt Avenue BELROSE Construction of a dwelling house including cabana
Development Application No:	DA2023/1549
Application Lodged:	02/11/2023
Applicant:	McDonald Jones Homes
Owner:	D Bloom
Locality:	Warringah LEP 2000 - C8 Belrose North
Category:	2
Land and Environment Court Action:	No
Notified:	09/11/2023 to 23/11/2023
Advertised	Not Advertised
SUMMARY	
Submissions:	1
Submission Issues:	Insufficient information Demolition Tree removal Landscaping Form and function of proposed cabana Setback non-compliance Use of existing rear structure Protection of biodiversity and wildlife corridors
Assessment Issues:	Nil
Recommendation:	APPROVAL
Attachments:	DA Plans
Estimated Cost of Works:	$1,383,275.00

EXECUTIVE SUMMARY

This development application seeks consent for the construction of a single storey dwelling house and a cabana.

The application is referred to the Development Determination Panel (DDP) due to the proposal resulting in a 93.1% variation to the housing density standard and a 39% variation to the minimum front building setback standard under the *Warringah Local Environmental Plan 2000* (WLEP 2000).

One (1) submission was received in relation to this application during the notification period. Concerns raised in the submission predominantly related to tree removal and landscaping, the form and function of the proposed cabana, non-compliance with setbacks and the protection of biodiversity and wildlife corridors.

The site is subject to a housing density control of 1 dwelling per 20 hectares of site area. The site has an area of 1.38 hectares and contains an existing dwelling house. The 93.1% variation arises from the replacement of the existing dwelling house with a new dwelling house on a similar building footprint and having a similar design, bulk and scale.

The development results in a 39% variation to the minimum front building setback, which arises from the construction of the new cabana to the east of the dwelling house. The new cabana is sited in a similar location to the existing detached double garage, which is currently setback 15.7m from the front boundary. The proposed cabana sits 12.2m from the front boundary, which is 7.8m less than the minimum 20m setback.

Being a WLEP 2000 application, the application does not need to address the requirements of Clause 4.6 prescribed by the *Standard Instrument - Principal Local Environmental Plan*. In this instance, the requirements of Clause 20 set out under WLEP 2000 have been considered, which provide that *consent may be granted to proposed development even if the development does not comply with one or more development standards, provided the resulting development is consistent with the general principles of the development control, the desired future character of the locality and any relevant State environmental planning policy*.

The proposal is considered to maintain the present character of the Belrose North locality as the natural landscape, including landforms and vegetation, will be protected and enhanced with new planting, which is not currently provided on the site.

Other issues identified during the assessment relate to biodiversity and landscaping. Concern was initially raised by Council's Biodiversity officer in relation to native tree removal within the Biodiversity Values Map area; however, the submitted amended plans now allow for retention of these trees. Council's Biodiversity officer is supportive of the proposal, subject to recommended conditions.

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

LOCALITY PLAN



Subject Site: Lot 2568 DP 752038, 24 Wyatt Avenue BELROSE NSW 2085

Public Exhibition: The subject application has been publicly exhibited in accordance with the EPA Regulation 2021, Warringah Local Environment Plan 2000 and Warringah Development Control Plan 2000 (adopted 26 November 2019). As a result, the application was notified to adjoining land owners and occupiers for a period of 14 calendar days, commencing on 9 November 2023 and being finalised on 23 November 2023.

SITE DESCRIPTION

The subject site consists of one (1) allotment located on the northern side of Wyatt Avenue.

The site is regular in shape with a frontage of 84.49m along Wyatt Avenue and a depth of 222.89m along the eastern boundary and 208.63m along the western boundary. The site has a surveyed area of 1.380 hectares.

The site is located within the C8 Belrose North locality and accommodates a single storey dwelling house with attached double garage, detached double garage and workshop, tennis court, swimming pool and pool cabana.

The topography of the site is varied, with the intensity of the slopes changing across the site. Steeper slopes are found towards the rear of the site and around the southern third of the site. The site generally slopes from the southern end of the site down towards the north over approximately 30 metres.

The site contains lawn areas, shrubs and trees. Portions of the site are identified on the Biodiversity Values Map, indicating areas of native vegetation.

Adjoining and surrounding development is characterised by a mix of large lot residential and more traditional smaller lot residential dwelling houses. The site is also surrounded by large expanses of National Park. Adjoining the site to the south on the opposite side of Wyatt Avenue is a large electricity substation.

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:

DA1980/0064
Development Application for the erection of a tennis court.
Approved on 14 November 1980.

DA1982/0270
Development Application for the erection of a swimming pool.
Approved on 30 August 1982.

DA1984/0056
Development Application for the erection of a tennis house and use of the existing garage.
Approved on 15 March 1984.

DA1984/0056
Modification of DA1984/0056 granted for the erection of a tennis house and use of the existing garage.
Approved on 2 April 1984.

DA1986/0421
Development Application for the rebuilding of a dwelling house.
Approved on 24 September 1986.

DA1990/0198
Development Application for the erection of a swimming pool cabana.
Approved on 2 July 1990.

DA2010/2031
Development Application for the construction of a machinery shed and front and rear boundary fencing.
Approved on 1 March 2011.

MOD2011/0230
Modification of DA2010/2031 granted for the construction of a machinery shed and front and rear boundary fencing.
Approved on 13 January 2012.

CC2012/0082
Construction Certificate for the construction of a machinery shed and front and rear boundary fencing.
Approved 22 February 2012.

PROPOSED DEVELOPMENT

The proposal is for the construction of a dwelling house and tennis cabana.

AMENDMENTS TO THE SUBJECT APPLICATION

The application was amended on 13 February 2024 to shift the location of the proposed cabana west, eliminating the need for native tree removal. Internal design amendments were also made to the proposed cabana structure such that is no longer considered to be a self-contained secondary dwelling. Demolition of the existing dwelling house, pool cabana and detached double garage/workshop is proposed as part of a separate development application (DA2024/0129) that was lodged with Council on 20 February 2024.

STATUTORY CONTROLS

a) Environmental Planning and Assessment Act 1979 (EPA Act 1979); and
b) Environmental Planning and Assessment Regulations 2021.

PUBLIC EXHIBITION

The subject application has been publicly exhibited in accordance with the Environmental Planning and Assessment Regulation 2021, Warringah Local Environment Plan 2000 and the Northern Beaches Community Participation Plan. As a result, the application was notified to adjoining landowners and occupiers for a period of 14 calendar days commencing on 9 November 2023 and being finalised on 23 November 2023.

As a result of the public exhibition process, one submission has been received from:

Name:	Address:
Withheld	BELROSE NSW 2085

The submission raised several issues concerning the following items:

- Insufficient information
- Demolition
- Tree removal
- Landscaping
- Form and function of proposed cabana
- Setback non-compliance
- Use of existing rear structure
- Protection/enhancement of biodiversity and wildlife corridors

The submission raised concern that there is insufficient information in the application to undertake a proper assessment of the proposed development. It was requested that the assessment of the application only be undertaken once the development application for the demolition of existing structures be submitted to Council and exhibited.

A development application (DA2024/0129) for the demolition of the existing dwelling, detached double garage and pool cabana was lodged with Council on 20 February 2024 and has been reviewed and assessed in conjunction with the subject application. A condition has been included within this consent to ensure that construction cannot commence until the approval for demolition has been received.

Concern was raised over the need for tree removal if the proposed buildings are to be located in the same footprint as those existing on the site.

The original proposed design was reviewed by Council's Biodiversity Officer, who raised concern over the removal of native trees and suggested that design amendments could be made to avoid native tree removal within the Department of Planning, Housing and Infrastructure's Biodiversity Values Map. An amended application was submitted to Council on 13 February 2024 that shifted the location of the proposed cabana west, eliminating the need for native tree removal.

Concern was also raised in relation to the intention to retain the existing building during construction for storage purposes and how this is to work given the new building is on the same footprint as the existing development.

The demolition works are proposed to be undertaken in stages. Stage 1 involves the demolition of the existing dwelling house and the detached double garage/workshop. Stage 2 involves the demolition of the existing pool cabana once construction of the new cabana is completed and prior to the issue of any Occupation Certificate.

The submission raised concerns that the proposal does not meet the C8 Belrose North locality requirements under WLEP 2000, namely the following:

> ***"50% of the site to be native bushland***
>
> ***The front setback to be 20 metres with densely planted native vegetation***

The side and rear setbacks to be 20 metres and densely planted with native vegetation"

It is important to note that the objector's claim that the proposal does not meet any of the abovementioned C8 locality requirements is not entirely accurate. In relation to bushland setting, the WLEP 2000 requires that "a minimum of 50 per cent of the site area is to be kept as natural bushland or landscaped with local species". The development works involve the removal of three buildings from the site and replacement with two buildings. Additionally, the site contains 84.8% landscaped areas and no native tree removal is proposed. As such, it is considered that the proposal satisfies the LEP requirement in relation to bushland setting. It is acknowledged that the front setback does not comply with the minimum standard of 20 metres, however the variation has been assessed against the general principles of the development control and the desired future character of the Belrose North locality, and is considered acceptable. The required side and rear setbacks are 10m, not 20m, and the proposal complies with both the western and eastern side setbacks, as well as the northern rear setback. The proposal is also subject to a setback of 20m from a National Park boundary, and the proposal is setback at least approximately 195m from the Garrigal National Park boundary to the north of the site.

Concern has been raised over the use of the proposed cabana, as it appears to be a separate dwelling with the inclusion of a kitchen, bathroom, dining and bedroom.

A preliminary built form assessment of the original application concluded that the proposed cabana was of a form and function that was representative of a self-contained, secondary dwelling. The original 'cabana' design featured an oversized single garage, kitchen, dining and lounge area, bathroom and alfresco area. It did not however include a bedroom, as claimed by the objector. Following a meeting with the owner and applicant, it was clarified that the intention of the proposed outbuilding is for a tennis cabana/studio. The amended design shows an area for farm machinery storage, a wet bar, bathroom, games room and alfresco area. Therefore, the proposed structure is no longer considered to be self-contained. A condition has been included in this consent confirming that no approval is granted for the use of the cabana structure as a secondary dwelling.

It was proposed that the applicant does not address the existing granny flat at the rear of the dwelling, and that if this structure were to remain, then the site would contain three dwellings.

The "granny flat at the rear of the existing dwelling" is not a granny flat and therefore not a secondary dwelling. The structure received approval in 1990 as a 'pool cabana' and is believed to be used as a cabana/studio. This structure is to be demolished once the construction of the new cabana is complete. As such, there will only be one dwelling on the site at all times.

It was also proposed that the application does not address biodiversity and wildlife corridors, particularly how vegetation will be protected and enhanced.

In relation to biodiversity and wildlife corridors and the protection of vegetation, Council's Biodiversity and Landscape Officers have reviewed the amended application and are supportive of the proposal, subject to compliance with relevant conditions of

consent. It is noted that “the minimum front building setback area is to be densely landscaped using locally occurring species of canopy trees and shrubs and be free of any structures, carparking or site facilities other than driveways, letterboxes and fences". In order to minimise the risk of bush fire attack and provide protection for emergency personnel and residents, a 'densely' landscaped front setback may not be achievable. However, the submitted Landscape Plan does not provide any new planting in the front setback. A condition has been included in this development consent requiring an amended Landscape Plan to be submitted prior to the issue of a Construction Certificate, which provides new tree, shrub and groundcover planting in the front setback to help satisfy WLEP 2000 and be in accordance with the bushfire requirements.

REFERRALS

Internal Referrals

Internal Referral Body	***Comments***
Landscape Officer	***Original Comments (15/11/23)*** *The proposal is not supported with regard to landscape issues.* *The application is assessed by Landscape Referral against Warringah Local Environmental Plan 2000 deferred land clauses 12 (3)(b); 13; 52; 56; 58; 63 and 66, and the Locality Statement C8 Belrose North.* *It is noted Council's Bushland and Biodiversity team have requested further information and as such Landscape Referral can continue their assessment upon receipt of this information and Bushland and Biodiversity's comment.* ***Additional Comments (26/02/24)*** *The amended plans are noted.* *The two prescribed trees originally proposed to be removed will now be retained. Although the Arboricultural Impact Assessment has not been updated, the machine storage/games room and associated earthworks are now located more than 5 metres from the existing trees. Encroachment into the tree protection zone of tree 1 will occur and as such a Project Arborist must be engaged to supervise works. Furthermore, a Tree Protection Plan shall also be prepared outlining protection measures for tree 1.* *A new dwelling is proposed and although it will be of a similar footprint and bulk and scale the*

Internal Referral Body	*Comments*
	relevant requirements of WLEP2000 apply. WLEP2000 states "The minimum front building setback area is to be densely landscaped using locally occurring species of canopy trees and shrubs and be free of any structures, carparking or site facilities other than driveways, letterboxes and fences". Landscape Referral acknowledges the bushfire requirements and that a 'densely' landscaped front setback may not be achievable, however the submitted Landscape Plan does not provide any new planting in the front setback. An amended Landscape Plan shall be submitted prior to issuing a Construction Certificate which provides new tree, shrub and groundcover planting in the front setback to help satisfy WLEP2000 and be in accordance with the bushfire requirements.
NECC (Bushland and Biodiversity)	***Original Comments (08/11/23)*** *Council's Biodiversity referrals team have assessed the Development Application for compliance against the following applicable biodiversity related provisions:* • *Biodiversity Conservation Act 2016* • *Biodiversity Conservation Regulation 2017* • *Warringah DCP cl. E2 Prescribed Vegetation* • *Warringah DCP cl. E6 Retaining Unique Environmental Features* *Portions of the site are identified on the Department of Planning and Environment's Biodiversity Values Map (BV Map). Under the NSW Biodiversity Conservation Act 2016 (BC Act), any removal of native vegetation from within mapped areas will trigger the Biodiversity Offsets Scheme (BOS) and the requirement for a Biodiversity Development Assessment Report (BDAR) to be prepared by an Accredited Assessor.* *The Arboricultural Impact Assessment (Michael Shaw, October 2023) assessed 9 trees within proximity to the proposed development and concluded that Trees 1 and 3 (Eucalyptus punctata), Tree 2 (Archontophoenix alexandrae) and Tree 5 (group of 9 x Camellia sp.) will require removal.* *From desktop assessment of aerial imagery (NearMaps [21 October 2023]), it appears that the canopy of Trees 1 and 3 which are both*

Internal Referral Body	*Comments*
	locally native, are located within the BV Map. As such, the applicant is required to engage an Ecologist who is Accredited in application of the Biodiversity Assessment Method to prepare a BDAR. Alternatively, should the applicant wish to seek further information about the BV Map or request a review of the mapping within their property, they can do so following the below link: https://www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity-offsets-scheme/about-the-biodiversity-offsets-scheme/when-does-bos-apply/biodiversity-values-map/biodiversity-values-map-review *Alternatively, amendments to the design in order to avoid native tree removal within the BV Map could be considered.* *Upon receipt of additional information, Council's Biodiversity referrals team will recommence assessment of the application.* ***Additional Comments (26/02/24)*** *It is noted that amended plans (McDonald Jones, 13/02/2024) have been submitted which now allow retention of the two native trees located within the BV Map. As such the BOS is not triggered and a BDAR is not required to be submitted with the application. No impacts to the Biodiversity Values Mapped area within the site.* *It is noted that Council's Landscape Referrals team have identified that an amended Arboricultural Impact Assessment has not been submitted, and that a Project Arborist will be required to be on site to supervise works.* *No objections in relation to biodiversity, subject to conditions.*
NECC (Development Engineering)	*The proposed development is in Region 2. On-site detention is not required. Vehicle crossing construction is not proposed. I have no objections to the proposed development.*
NECC (Riparian Lands and Creeks)	*Supported* *This application was assessed in consideration of:* • *Supplied plans and reports;* • *Northern Beaches Water Management for Development Policy; and* • *Relevant LEP and DCP clauses.* *On assessment, the proposal is located just*

Internal Referral Body	*Comments*
	outside land mapped as waterways and riparian lands but sediment and erosion controls are still important to prevent migration of sediment from site.

External Referrals

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (EP&A Act)

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 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, 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. Clause 29 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. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested on 7 December 2023 in relation to the proposed land use and the removal of native vegetation. Clause 61 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. Clauses 62 and/or 64 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. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact**

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

The proposal has been considered against the relevant matters for consideration under Section 4.15 of the EP&A Act 1979. 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 any conditions contained within the Recommendation.

FIRE ZONE

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 Local Consultancy Services Pty Ltd, dated 2 June 2023) stating that the proposed dwelling and cabana are at potential risk warranting BAL-19 and BAL-29 construction standards, respectively. 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.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)

State Environmental Planning Policies (SEPPs)

State Environmental Planning Policy (Resilience and Hazards) 2021

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.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (See Certificate No. 1412668M dated 11 September 2023. All required BASIX commitments have been noted on the application plans. Furthermore, a condition of consent has been imposed requiring compliance with the requirements of the applicable BASIX certificate.

State Environmental Planning Policy (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.

Local Environment Plans (LEPs)

Warringah Local Environment Plan 2000 (WLEP 2000)

Desired Future Character (DFC)

The subject site is located in the C8 Belrose North locality under Warringah Local Environmental Plan 2000.

The Desired Future Character (DFC) Statement for this locality is as follows:

> *The present character of the Belrose North locality will remain unchanged except in circumstances specifically addressed as follows.*
>
> *The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be grouped in areas that will result in the minimum amount of disturbance of vegetation and landforms and buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.*

Development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses.

A dense bushland buffer will be retained or established along Forest Way. Fencing is not to detract from the landscaped vista of the streetscape.

Development in the locality will not create siltation or pollution of Middle Harbour.

The proposed development is defined as "housing" under the WLEP 2000 dictionary. Housing is identified as Category 2 development in this locality.

Clause 12(3)(b) of WLEP 2000 requires the consent authority to be satisfied that the proposed development is consistent with the Locality's DFC statement.

Accordingly, an assessment of consistency of the proposed development against the locality's DFC is provided hereunder:

Requirement:
The present character of the Belrose North locality will remain unchanged except in circumstances specifically addressed as follows.

Comment:
The proposed new dwelling and cabana will be sited in a similar location to the existing house and garage. Additionally, the proposed development is not considered to increase the bulk and scale of the existing development, rather it will decrease with the demolition of the existing pool cabana without replacement. As such, the proposal will not result in any change to the present character of the Belrose North locality.

Requirement:
The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be grouped in areas that will result in the minimum amount of disturbance of vegetation and landforms and buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.

Comment:
The proposal does not propose the removal of any trees or vegetation on site as the proposed development will be sited in a similar position to that existing. As such, the proposal will result in the minimum amount of disturbance to vegetation.

Requirement:
Development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses.

Comment:
The proposed development is for a detached dwelling house, thereby conforming with the required housing density standards and low intensity, low impact uses.

Requirement:
A dense bushland buffer will be retained or established along Forest Way. Fencing is not to detract from the landscaped vista of the streetscape.

Comment:
The subject site is not located along Forest Way and therefore this requirement is not applicable to the proposed development.

Requirement:
Development in the locality will not create siltation or pollution of Middle Harbour.

Comment:
The proposed development will not create siltation or pollution of Middle Harbour. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to recommended conditions.

As detailed above the proposed development is considered to be consistent with the Locality's DFC statement.

Built Form Controls (Development Standards)

The following table outlines compliance with the Built form Control of the above locality statement:

Built Form Compliance Table			
Built Form Standard	**Required**	**Proposed Development**	**Compliance**
Housing density	1 dwelling / 20ha of site area	1 dwelling / 1.38ha	No – 93.1% variation
Building height	8.5m	6.4m (house) 5.2m (cabana)	Yes
Wall height	7.2m	3.3m	Yes
Front building setback	20m	20.9m (house) 12.2m (cabana)	No (cabana) – 39% variation
Rear and side building setback	10m	10m (west side) 17.3m (east side) 168.7m (north rear)	Yes
Bushland setting	50% of site area to be kept as natural bushland or landscaped with local species	11,696.7m^2 (84.8%)	Yes
National Park setback	20m from National Park boundaries	Approx. 195m	Yes

The proposed development is considered to satisfy the Locality's Built Form Controls. Accordingly, no further assessment will be provided in this regard.

Built Form Non-Compliances

Housing Density
The site is subject to a housing density control of 1 dwelling per 20 hectares of site area. The site has an area of 1.38 hectares and therefore the proposed dwelling presents a variation of 93.1%. It is noted that the site contains an existing dwelling

which is to be demolished and replaced with the proposed new dwelling on a similar building footprint and having a similar design, bulk and scale. Therefore, there is no proposed increase to the number of dwellings on the site, and the proposal results in the same housing density as that existing on the site. Additionally, the housing density of 1 dwelling per 1.38 hectares is not inconsistent with other sites along the northern side of Wyatt Avenue. Strict compliance with the housing density standard is unreasonable in this circumstance as the site area is less than 20 hectares and the proposal seeks to replace an existing dwelling, not add to the number of dwellings on the site. As such, the proposed variation to the housing density standard is considered acceptable in this circumstance.

Front Building Setback
The site is subject to a minimum front building setback control of 20m. The proposed cabana to the east of the dwelling house sits 12.2m from the front boundary, presenting a 39% variation. The new cabana is sited in a similar location to the existing detached double garage, which is currently setback 15.7m from the front boundary. It is important to note that the original proposal had the cabana structure located 13.4m from the front boundary; however, amended plans submitted on 13 February 2024 shifted the cabana to the west to avoid the need for native tree removal.

In considering a variation to the above standards, the requirements of Clause 20 set out under WLEP 2000 have been considered, which provide that *consent may be granted to proposed development even if the development does not comply with one or more development standards, provided the resulting development is consistent with the general principles of the development control, the desired future character of the locality and any relevant State Environmental Planning Policy*.

The proposal is considered to maintain the present character of the Belrose North locality as the natural landscape, including landforms and vegetation, will be protected and enhanced with new planting, which is not currently provided on the site. The proposed dwelling house and cabana are sited in similar locations to the existing dwelling house and detached garage, with a similar building footprint, design, bulk and scale. As such, the proposal results in the minimum amount of disturbance of vegetation and landforms, and the buildings will blend with the colours and textures of the natural landscape. Furthermore, the proposed development is detached style housing, conforming with low intensity, low impact uses. Therefore, the proposal is considered acceptable in this instance.

General Principles of Development Control

The following General Principles of Development Control as contained in Part 4 of Warringah Local Environmental Plan 2000 are applicable to the proposed development:

General Principles	Comments	Complies
CL38 Glare & reflection	The proposed development does not result in overspill or glare from artificial illumination, or sun reflection. As such, the proposal does not unreasonably diminish the amenity of the locality.	YES, subject to recommended conditions
CL39 Local retail centres	N/A	N/A

General Principles	Comments	Complies
CL40 Housing for older people or people with disabilities	N/A	N/A
CL41 Brothels	N/A	N/A
CL42 Construction Sites	Appropriate conditions of consent have been recommended to reduce the impact of the construction site on the surrounding amenity, pedestrian or road safety, or the natural environment. These recommended conditions shall ensure materials are handled and stored safely, waste and pollutants are minimised, and pedestrian access and vehicle movements around the site are safe.	YES, subject to recommended conditions
CL43 Noise	The proposal does not result in noise emissions that would unreasonably diminish the amenity of the area and is unlikely to result in noise intrusion that would be unreasonable to the occupants.	YES
CL44 Pollutants	The use of the proposed dwelling house and cabana is unlikely to result in the emission of atmospheric, liquid or other pollutants which would unreasonably diminish the amenity of adjacent properties, the locality or waterways.	YES
CL45 Hazardous uses	N/A	N/A
CL46 Radiation emission levels	N/A	N/A
CL47 Flood affected land	The development is not proposed on land that is flood affected and therefore this clause does not apply to the application.	N/A
CL48 Potentially Contaminated Land	Council records indicate that the subject site has been used for residential purposes for a significant period, with no prior land uses. In this regard, it is considered that the site poses no risk of contamination.	YES
CL49 Remediation of Contaminated Land	N/A	N/A
CL49A Acid sulfate soils	The subject land is not identified on the Acid Sulfate Soils Hazard Map.	N/A
CL50 Safety & Security	The proposal maintains the safety and security of the locality.	YES
CL51 Front Fences and Walls	N/A	N/A
CL52 Development near parks, bushland reserves and other public open spaces	The site adjoins bushland to the north of the site. The proposed dwelling and cabana are sited to the southern portion of the site and provide an open outlook to the public open space. The proposal provides a visual transition by maintaining the existing vegetation link with the landscaping on the site and proposing no additional fencing. The views to and from Garrigal National Park beyond the bushland will not change significantly and the dwelling and cabana will continue to complement the landscape character and public enjoyment of that land.	YES
CL53 Signs	N/A	N/A
CL54 Provision and Location of Utility Services	The proposal will maintain the existing utility services, including water supply, gas, telecommunications and electricity and the satisfactory management of sewage and drainage.	YES

General Principles	Comments	Complies
CL55 Site consolidation in "medium density areas"	N/A	N/A
CL56 Retaining Distinctive Environmental Features on Site	The development is designed to retain and complement the existing rock outcrops and remnant bushland within the site. The proposal is sited predominantly over the existing dwelling house and double garage, which is existing cleared land. The proposal does not include major excavation. The proposal as amended eliminates the need for native tree removal.	YES
CL57 Development on Sloping Land	Due to the topography of the site, minor excavation and fill will be required for the construction of a level building platform. However, the buildings have been sited in predominantly the same footprint as the existing dwelling house and garage, where the land is not as steep-sloping as the centre and rear of the site.	YES
CL58 Protection of Existing Flora	The subject site has significant native ground species and remnant bushland species within the rear of the property. The proposal (as amended) is sited and designed on predominantly existing building footprint, minimising the impact on the remnant indigenous flora, including canopy trees and understorey vegetation, and on remnant native ground cover species within the rear of the property. The proposal (as amended) retains these existing flora species within the rear of the property.	YES
CL59 Koala Habitat Protection	Council's Biodiversity Officer has reviewed the application and confirmed that the proposal is likely to have low or no impact on koala habitat.	YES
CL60 Watercourses & Aquatic Habitats	The proposal is not sited near any natural watercourses or aquatic habitat.	YES
CL61 Views	The proposed dwelling house has a building height of 6.4m and the cabana 5.2m, which is well below the maximum building height of 8.5m. Additionally the proposed buildings have a similar form, bulk and scale as the existing buildings and are located on predominantly the same building footprint.	YES
CL62 Access to sunlight	The proposal provides sunlight access to at least 50% of the principal private open spaces of the adjoining dwellings for no less than 2 hours between 9am and 3pm on 22 June. Furthermore, the proposal does not further reduce sunlight to surrounding properties. The shadow diagrams submitted with the application demonstrate that the shadows cast by the proposed buildings do not extend past the site boundaries.	YES
CL63 Landscaped Open Space	The proposal provides adequate provision of landscaped open space. The degree of landscaping on the site is similar to that existing.	YES
CL63A Rear Building Setback	The proposal complies with the rear building setback control and maintains a sense of openness in the rear yard, preserves the amenity of adjacent land, maintains the visual continuity of buildings and landscape elements, and maintains privacy between dwellings.	YES

General Principles	Comments	Complies
CL64 Private open space	The proposal provides a 70m^2 alfresco area extending from the living room and therefore complies with the minimum standard of 60m^2.	YES
CL65 Privacy	The proposal does not cause unreasonable overlooking of habitable rooms and principal private open spaces of other dwellings. The windows of the proposed dwelling house are located far greater than 9m away from the windows of other dwellings.	YES
CL66 Building bulk	The proposed buildings have a visual bulk and an architectural scale that is consistent with structures on adjoining and nearby land and do not visually dominate the street or surrounding spaces. The proposed buildings are similar in form and scale as the existing buildings on the site.	YES
CL67 Roofs	The proposal provides a roof that complements the local skyline and does not exceed the maximum building height standard.	YES
CL68 Conservation of Energy and Water	The buildings have been orientated to the north and have solar panels on the roof to make the best use of daylight and solar energy. Windows are located along all four elevations to the make the best use of natural ventilation.	YES
CL69 Accessibility – premises available to the public	N/A	N/A
CL70 Site facilities	Site facilities including garbage and recycling bin enclosures, mailboxes and clothes drying facilities can be easily and adequately provided on the site for convenient use with minimal visual impact from public places.	YES
CL71 Parking facilities (visual impact)	The proposed garage integrates well with the house design and has been sited and designed so as not to dominate the street frontage or other public spaces. The proposed garage attached to the dwelling house is located in a similar position to that existing.	YES
CL72 Traffic access & safety	The proposal provides separate vehicle and pedestrian access to minimise traffic hazards.	YES
CL73 On-site Loading and Unloading	N/A	N/A
CL74 Provision of Carparking	Detached dwellings are to provide a minimum of 2 car parking spaces per dwelling. The proposal makes provision for three (3) car parking spaces located within the garage attached to the dwelling house.	YES
CL75 Design of Carparking Areas	The proposed garage satisfies the minimum carparking dimensions for individual dwellings.	YES
CL76 Management of Stormwater	The proposed buildings will be connected to existing stormwater pipes located within the site and the stormwater runoff will drain via gravity downstream towards the rear of the site and discharge directly into the operational dam. The stormwater runoff is unlikely to have a significant impact on any receiving stormwater infrastructure or watercourse. Council's Development Engineer has reviewed the application and confirmed that on-site stormwater detention is not required for this	YES, subject to recommended conditions

General Principles	Comments	Complies
	proposal. A condition has been recommended within this consent to ensure that the existing approved system can accommodate the additional flows from the new development.	
CL77 Landfill	Landfill associated with the construction will be minor and is unlikely to have an adverse impact upon the visual and natural environment or adjoining and surrounding properties.	YES
CL78 Erosion & Sedimentation	The proposed development has been sited and designed so as to minimise the potential for soil erosion. Construction areas will be provided with sedimentation controls through geofabric fencing and/or stacked hay bales. A stabilised access pad will be provided at the point of entry to the site to eliminate soil leaving the construction zone.	YES, subject to recommended conditions
CL79 Heritage control	The site is not located in the vicinity of any heritage items.	N/A
CL80 Notice to Metropolitan Aboriginal Land Council	The Aboriginal Heritage Office has reviewed the proposal and confirms that there are no Aboriginal sites confirmed in the development area. Therefore, the Metropolitan Aboriginal Land Council is not required to be notified.	N/A
CL82 Development in the vicinity of heritage items	The site is not located in the vicinity of any heritage items.	N/A
CL83 Development of known or potential archaeological sites	The Aboriginal Heritage Office has reviewed the proposal and raised no objections to the proposed development, subject to recommended conditions.	YES, subject to recommended conditions

SCHEDULES

Schedule	Applicable	Compliant
Schedule 1 Exempt development	NO	N/A
Schedule 2 Other development not requiring consent	NO	N/A
Schedule 3 Conditions of complying development certificates	NO	N/A
Schedule 4 Prohibited Signs	NO	N/A
Schedule 5 State policies	YES – Koala Habitat Protection	YES
Schedule 6 Preservation of bushland	YES	YES
Schedule 7 Matters for consideration in a subdivision of land	NO	N/A
Schedule 8 Site analysis	YES	YES
Schedule 9 Notification requirements for remediation work	NO	N/A
Schedule 10 Traffic generating development	NO	N/A

Schedule	Applicable	Compliant
Schedule 11 Koala feed tree species and plans of management	NO	N/A
Schedule 12 Requirements for complying development	NO	N/A
Schedule 13 Development guidelines for Collaroy/Narrabeen Beach	NO	N/A
Schedule 14 Guiding principles for development near Middle Harbour	NO	N/A
Schedule 15 Statement of environmental effects	NO	N/A
Schedule 16 Principles and standards for housing for older people or people with disabilities	NO	N/A
Schedule 17 Car parking provision	YES	YES

CONCLUSION

The proposal has been considered against the relevant matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979* (*EP&A Act 1979*). 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 any conditions contained within the Recommendation.

The site has been inspected and the application assessed having regard to the provisions of Section 4.15 of the *EP&A Act 1979*, the provisions of relevant Environmental Planning Instruments, including Warringah Local Environment Plan 2000 and the relevant codes and policies of Council.

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

As a direct result of the application and the consideration of the matters detailed within this report, it considered that Council as the consent authority grant approval to the Development Application for the reasons detailed within the 'Recommendation' section of this report.

PLANNING CONCLUSION

This proposal, for the construction of a single storey dwelling house and a cabana, has been referred to the Development Determination Panel (DDP) due to a 93.1% variation to the housing density standard and a 39% variation to the minimum front building setback under the *Warringah Local Environmental Plan 2000* (WLEP 2000).

One (1) submission was received in relation to this application. Concerns raised in the objection predominantly relate to tree removal and landscaping, the form and function

of the proposed cabana, non-compliance with setbacks and the protection of biodiversity and wildlife corridors. It is considered that the proposed development is of an acceptable form and design and that the issues raised within the submission do not warrant refusal of the application.

The proposal seeks to replace the existing dwelling house and detached garage on site with a new dwelling house and cabana in a similar location. The subject site has an area of 1.38 hectares, and as such, the proposal presents a technical non-compliance with the housing density standard of 1 dwelling per 20 hectares of site area. However, as there is no proposed increase to the number of dwellings on the site, due to the proposal essentially replacing the existing dwelling and present residential use of the site. Therefore, a variation to this control in this instance is considered reasonable, particularly given the proposed housing density is not inconsistent with other properties along the northern side of Wyatt Avenue. Notwithstanding this, strict adherence to the control would sterilise the redevelopment of the subject site.

The proposed cabana is sited in a similar location to the existing garage, albeit closer towards the front boundary with a 12.2m setback. The proposed cabana cannot be shifted north due to the location of the existing tennis court. The location of the proposed cabana is considered acceptable given it has been designed and sited to minimise clearing of undisturbed vegetation.

Overall, the proposed development is a high-quality design that results in a reduced density on the site with less built form. The proposal is sited in largely the same location as the existing structures and therefore minimises disturbance to the natural environment and on adjoining and nearby properties. The proposal is considered to maintain the present character of the Belrose North locality and 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 Council as the consent authority grant Development Consent to DA2023/1549 for a new dwelling and cabana on land at 24 Wyatt Avenue BELROSE, subject to the conditions printed below:

northern beaches council

CONDITIONS OF APPROVAL

Application Number:	DA2023/1549

Land to be developed (Address):	Lot 2568 DP 752038, 24 Wyatt Avenue BELROSE NSW 2085

Proposed Development:	Construction of a dwelling house including cabana

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**
3	17	Locality Plan	McDonald Jones Homes	13 February 2024
5	17	Site Plan	McDonald Jones Homes	13 February 2024
7	17	Ground Floor Plan	McDonald Jones Homes	13 February 2024
8	17	Studio Floor Plan	McDonald Jones Homes	13 February 2024
9	17	Roof Plan	McDonald Jones Homes	13 February 2024
11	17	Elevations	McDonald Jones Homes	13 February 2024
12	17	Elevations / Section	McDonald Jones Homes	13 February 2024
13	17	Studio Elevations / Section	McDonald Jones Homes	13 February 2024

Approved Reports and Documentation			
Document Title	**Version Number**	**Prepared By**	**Date of Document**
10 - Window & Door Schedules	17	McDonald Jones Homes	13 February 2024
14 - Kitchen Details	17	McDonald Jones Homes	13 February 2024
15 - Butler's Pantry Details	17	McDonald Jones Homes	13 February 2024
16 - Bathroom Details	17	McDonald Jones Homes	13 February 2024
17 - Ensuite Details	17	McDonald Jones Homes	13 February 2024
18 - Ensuite 2 Details	17	McDonald Jones Homes	13 February 2024
19 - Ensuite 3 Details	17	McDonald Jones Homes	13 February 2024
20 - Ensuite 4 Details	17	McDonald Jones Homes	13 February 2024
21 - Powder Room Details	17	McDonald Jones Homes	13 February 2024
22 - Laundry Details	17	McDonald Jones Homes	13 February 2024
23 - Wet Bar Details (Studio)	17	McDonald Jones Homes	13 February 2024
24 - Bathroom Details (Studio)	17	McDonald Jones Homes	13 February 2024
25 - Floor Coverings	17	McDonald Jones Homes	13 February 2024
26 - Floor Coverings (Studio)	17	McDonald Jones Homes	13 February 2024
27 - Slab Plan	17	McDonald Jones Homes	13 February 2024

28 - Slab Plan (Studio)	17	McDonald Jones Homes	13 February 2024
29 - Drainage Plan	17	McDonald Jones Homes	13 February 2024
30 - Drainage Plan (Studio)	17	McDonald Jones Homes	13 February 2024
LP-25109 - DA Landscape Plan (1/2)	B	McDonald Jones Homes	13 February 2024
LP-25109 - DA Landscape Plan (2/2)	B	McDonald Jones Homes	13 February 2024
BASIX Certificate	1412668M	Energy Advance	11 September 2023
Energy Efficiency Report	606935_v2.0	Energy Advance	11 September 2023
Bushfire Report	2590	Local Consultancy Services Pty Ltd	2 June 2023
Arboricultural Impact Assessment	-	Michael Shaw Consulting Arborist	17 October 2023
Site Investigation Report	23/1590	STS Geotechnics Pty Ltd	5 June 2023
Waste Management and Minimisation Plan	-	McDonald Jones Homes	24 July 2023
Site Stormwater Management Layout	C	ALW Design	9 February 2024

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	6 December 2023
Aboriginal Heritage Office	Aboriginal Heritage Office Referral Response	9 November 2023

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

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

3. **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

4. **Policy Controls**
Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of $13,832.75 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 $1,383,275.00.

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

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

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

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

5. **Security Bond**

A bond (determined from cost of works) of $10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any

damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

6. **Amended Landscape Plan**
a) amended Landscape Plan(s) shall be issued to the Certifier prior to the issue of a Construction Certificate to include the following details:
i) appropriate tree, shrub and groundcover planting shall be included in the front setback to help satisfy the requirements outlined in WLEP2000,
ii) all proposed planting shall be located in response to the bushfire requirements,
iii) all new tree planting shall be selected from Northern Beaches Council's Native Planting Guide - Frenchs Forest Ward, and the tree species selected shall be capable of attaining a height of 6 metres or greater at maturity.

b) certification shall be submitted to the Certifier that these amendments have been documented.

Reason: Landscape amenity.

7. **Tree Protection Plan**
a) a Tree Protection Plan shall be submitted to the Certifier for approval prior to the issue of a Construction Certificate, demonstrating tree protection measures in accordance with AS 4970-2009 Protection of trees on development sites, to protect the following trees:
i) tree 1 - *Eucalyptus punctata*.

b) the Tree Protection Plan shall be prepared by an Arborist with minimum AQF Level 5 in arboriculture, incorporating the following:
i) location of all trees identified for retention, including extent of canopy,
ii) access routes throughout the site for construction activity,
iii) location of tree protection fencing / barriers,
iv) root protection in the form of mulching or boards proposed within the tree protection zone,
v) trunk and branch protection within the tree protection zone,
vi) location of stockpile areas and materials storage,
vii) other general tree protection measures.

Reason: Tree protection.

8. **No Clearing of Vegetation**
Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Construction Certificate.

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

Reason: To protect native vegetation.

9. **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.

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 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.

13. **Demolition of Existing Dwelling and Structures**
Prior to the issue of any Construction Certificate, separate approval is to be obtained for the demolition of the existing dwelling, swimming pool cabana and double garage / workshop.

The demolition works are to be completed in accordance with that approval, before a Construction Certificate is issued.

Reason: To ensure the orderly development of land.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

14. **Project Arborist**
a) a Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged prior to any commencement of works on site to provide tree protection measures in accordance with AS 4970-2009 Protection of trees on development sites, and any recommendations of an approved Tree Protection Plan.

b) the Project Arborist shall be in attendance and supervise all works in the tree protection zone of trees to be retained.

c) All tree protection measures specified must:
i) be in place before work commences on the site, and
ii) be maintained in good condition during the construction period, and
iii) remain in place for the duration of the construction works.

d) the Project Arborist shall provide certification to the Certifier that all tree protection measures under AS 4970-2009 have been satisfied, and the recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

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

Reason: Tree protection.

DURING BUILDING WORK

15. **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.

16. **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.

17. **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.

18. **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.

19. **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.

20. **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 McDonald Jones 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.

21. **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.

22. **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

23. **Landscape Completion**
a) landscape works are to be implemented in accordance with the approved amended Landscape Plan(s), 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 amended Landscape Plan(s) unless otherwise imposed by any conditions,
iii) all tree planting shall be a minimum pre-ordered planting size of 75 litres or as otherwise scheduled if greater in size; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth generally, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,
iv) mass planting shall be installed at minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at 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,
v) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces,
vi) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone,
vii) where the property is certified Bush Fire Prone Land, any new planting may be managed in accordance with Planning for Bushfire Protection 2019.

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

Reason: Environmental amenity.

24. **Condition of Retained Vegetation**
a) prior to the issue of an Occupation Certificate, a report prepared by an Arborist/Project

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

Reason: Tree and vegetation protection.

25. **Protection of Habitat Features**
All natural landscape features, including any rock outcrops, native vegetation and/or watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

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

Reason: To protect wildlife habitat.

26. **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.

27. **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.

28. **Removal of All Temporary Structures/Material and Construction Rubbish**
Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

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

Reason: To ensure bushland management.

29. **House / Building Number**
House/building number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings.

30. **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.

31. **Swimming Pool Requirements (existing pool modified by works)**

The existing onsite Swimming Pool / Spa fencing enclosure shall be upgraded to comply with:
(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 warning sign stating **'YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL'** has been installed.
(c) All signage shall be located in a prominent position within the pool area.

Swimming pools and spas must be registered with the Division of Local Government.

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

Reason: To protect human life.

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

32. **Landscape Maintenance**
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 amended 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.

33. **No Approval for Secondary Dwelling**
No approval is granted or implied under this Development Consent for the use of the studio / cabana for the purpose of a secondary dwelling or separate occupancy. Built-in cooking facilities are not permitted to be installed, other than those shown in the designated wet bar area.

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

REFER TO SHEET 1 (COVER SHEET) FOR ALL BUILDING INFORMATION REGARDING:
- SUSTAINABILITY REQUIREMENTS
- SITE CLASSIFICATION
- GENERAL BUILDING INFORMATION

STORMWATER LAYOUT IS DIAGRAMMATIC ONLY AND NO REPRESENTATION IS MADE AS TO THE AS-BUILT LOCATION OF STORMWATER ASSETS (INCLUDING SURFACE INLET PITS) OR THE TYPE OF SYSTEM USED (CHARGED OR GRAVITY FED). ALL STORMWATER DESIGN IS SUBJECT TO CONTRACTORS RECOMMENDATIONS AND/OR ANY CONSTRUCTION CONSTRAINTS OR CHANGES AT THE DISCRETION OF THE BUILDER. THE STORMWATER SYSTEM IS NOT SUITABLE FOR ANY OTHER USE. ALL SURFACE WATER DRAINAGE MUST BE MANAGED BY OWNER INCLUDING INSTALLATION OF ADDITIONAL DISCHARGE LINES AND INLETS AS REQUIRED. THE BUILDER PROVIDES CAPACITY FOR DISPOSAL OF ROOF COLLECTED STORMWATER ONLY AND TAKES NO RESPONSIBILITY FOR OVERFLOW OR DAMAGE TO PROPERTY IF OWNER ADDS ADDITIONAL DISCHARGE LOADS TO EXISTING STANDARD PROVISIONS.

DRIVEWAY AND RETAINING WALLS BY OWNER UNLESS NOTED OTHERWISE IN THE SCOPE OF WORK AND/OR COLOUR SELECTIONS DOCUMENTATION.

PROPOSED TREES BY OWNER AFTER HANDOVER UNLESS NOTED OTHERWISE IN THE TENDER DOCUMENTATION.

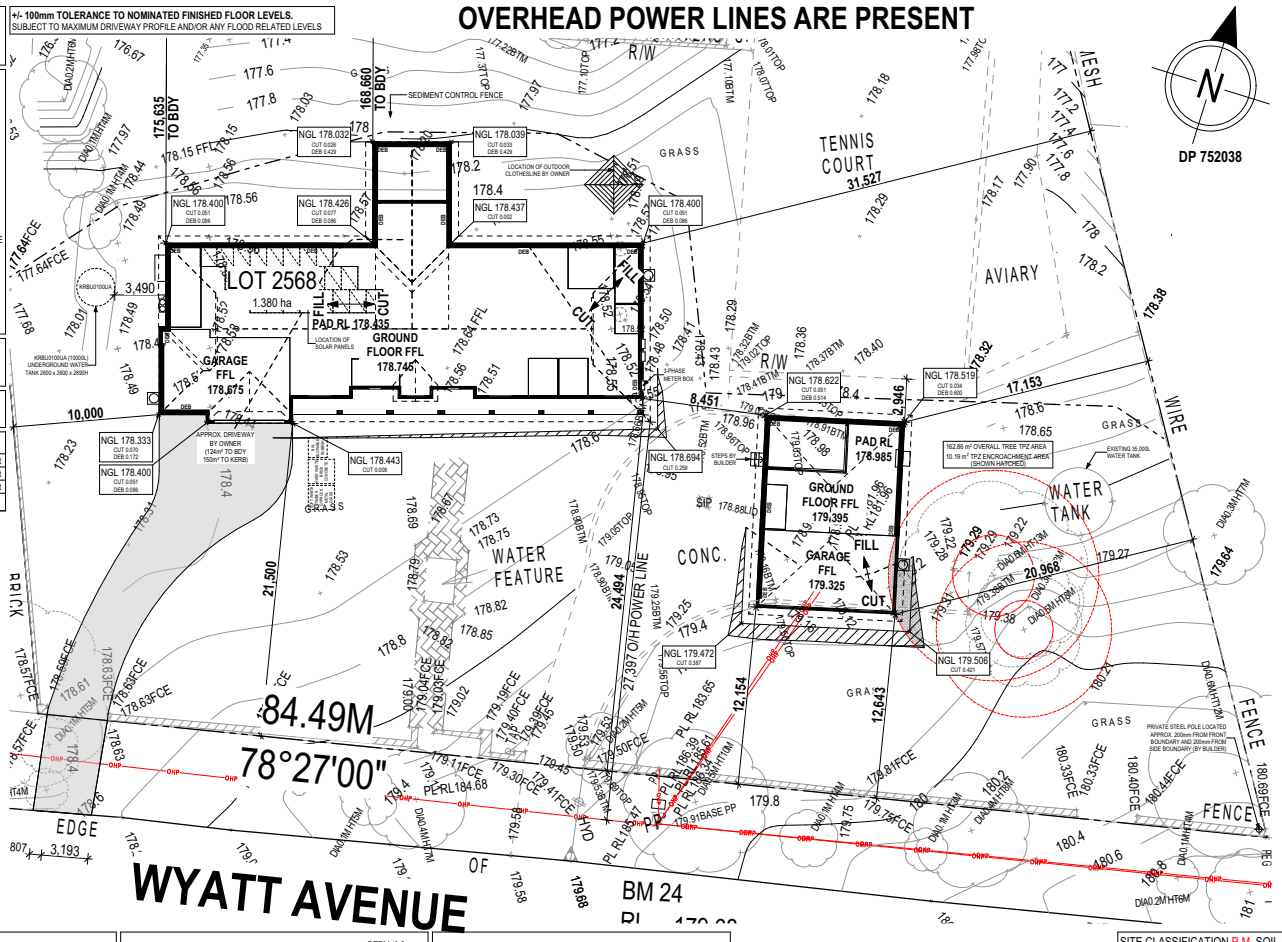
APPROX. CUT/FILL

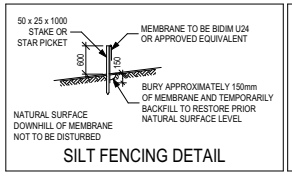
CUT	30.15m³	67.84t
FILL	32.61m³	73.37t
DIFFERENCE	2.46m³	5.54t

EVEN CUT & FILL

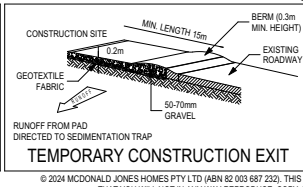
+/- 100mm TOLERANCE TO NOMINATED FINISHED FLOOR LEVELS.
SUBJECT TO MAXIMUM DRIVEWAY PROFILE AND/OR ANY FLOOD RELATED LEVELS

OVERHEAD POWER LINES ARE PRESENT

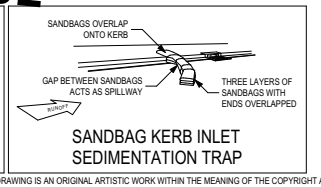




SILT FENCING DETAIL



TEMPORARY CONSTRUCTION EXIT



SANDBAG KERB INLET SEDIMENTATION TRAP

EXISTING TREE TO BE REMOVED BY OWNER

EXISTING TREE TO REMAIN

SITE CLASSIFICATION P-M. SOIL SURFACE MOVEMENT CHARACTERISTICS EQUIVALENT TO M CLASS AS PER STS GEOTECHNICS PTY LTD REPORT NO. 23/1590.
NO EVIDENCE OF FILL ON SITE.
WEATHERED ROCK @ APPROX. 450mm BELOW THE NATURAL GROUND LEVEL.

BAL-29 BUSHFIRE REQUIREMENTS
SEE SHEET 1 (COVER SHEET) FOR DETAILS

DEMOLITION SHOWN DASHED

- OWNERS ARE FULLY RESPONSIBLE FOR ENSURING THEY HAVE REMOVED ALL EXISTING STRUCTURES AND UTILITY SERVICES FROM THE PROPOSED CONSTRUCTION SITE I.E.:
- EXISTING HOUSE, CARPORT, SHED, PAVING, PATHS, GARDEN BEDS, DRIVEWAYS, SWIMMING POOL OR UNDERGROUND TANKS AND ALL BELOW GROUND FOOTING STRUCTURES.
- REMOVAL OF ANY TREES, STUMPS, BARK OR EXCESSIVE GROWTH WHICH MAY IMPACT ON CONSTRUCTION SITE ACCESS.
- ALL BUILDING MATERIALS OR WASTE ON SITE IS TO BE FULLY REMOVED.
- ANY DEPRESSIONS TO NATURAL GROUND LEVEL ARE TO BE ADEQUATELY FILLED.
- ANY EXCESS FILL WHICH MAY IMPACT ON CONSTRUCTION SITE ACCESS TO BE REMOVED.
- GAS METER AND ASSOCIATED PIPE WORK TO BE REMOVED BACK TO SITE BOUNDARY.
- ELECTRICAL METER AND ASSOCIATED SERVICES TO BE REMOVED TO AGREED SAFE DISTANCE (BOUNDARY/POLE).
- WATER METER AND ASSOCIATED PIPE WORK TO BE REMOVED BACK TO SITE BOUNDARY.
- TELEPHONE & DATA CABLES TO BE REMOVED BACK TO SITE BOUNDARY.
- EXISTING SITE SEWER & STORM WATER CONNECTIONS TO BE REMOVED AND CAPPED OFF TO PREVENT INCIDENCE OF BUILDING MATERIALS ENTERING THOSE SYSTEMS AND LEAVING YOUR SITE.
- ASBESTOS: A SITE CLEARANCE CERTIFICATE IS REQUIRED TO BE SUPPLIED TO US BY THE OWNER PRIOR TO US COMMENCING WORK ON YOUR SITE. YOUR DEMOLITION COMPANY SHOULD BE ABLE ARRANGE THIS FOR YOU.
PLEASE NOTE:
RELEVANT DOCUMENTED REPORT EVIDENCE & PICTURES FROM PARTIES CARRYING OUT THESE SERVICES WILL BE REQUIRED TO ENSURE THE ABOVE ASPECTS HAVE BEEN COMPLETED EFFECTIVELY TO MEET BOTH OUR LEGAL & CONTRACT REQUIREMENTS.

EXISTING STRUCTURE TO BE DEMOLISHED AND REMOVED BY OWNER.

AFTER DEMOLITION OF EXISTING HOUSE IS COMPLETE AN ADDITIONAL SOIL TEST MAY BE REQUIRED TO CONFIRM THE SOIL CONDITIONS AS DIRECTED BY ENGINEER. IF REQUIRED ADDITIONAL COSTS WILL BE PROVIDED BY WAY OF POST CONTRACT VARIATION.

OWNER SHALL INSTALL AND MAINTAIN AN ALL-WEATHER ACCESS ROAD TO & WITHIN THE PROPERTY BOUNDARIES AND UP TO THE BUILDING SITE, SUITABLE FOR ARTICULATED VEHICLES FOR CONSTRUCTION PURPOSES TO THE SATISFACTION OF THE BUILDER.

THE OWNER IS TO NOMINATE THE PROPOSED LOCATION OF THE HOME USING FOUR PEGS TO IDENTIFY APPROXIMATE LOCATION AND ORIENTATION PRIOR TO THE SURVEYOR ATTENDING SITE.

THE EXISTING DWELLING IS TO REMAIN ON SITE. OWNER WISHES TO RETAIN THIS STRUCTURE FOR STORAGE PURPOSES. THIS IS NOT A DUAL OCCUPANCY. THIS WILL BE SUBJECT TO LOCAL AUTHORITY APPROVAL. THE OWNER IS TO PROVIDE A STATUTORY DECLARATION UNDERTAKING WITH COUNCIL THAT THE EXISTING DWELLING WILL ONLY BE USED AS STORAGE. THE OWNER IS ALSO RESPONSIBLE FOR ANY FEES OR BONDS APPLICABLE.

THE EXISTING POOL IS TO REMAIN ON SITE. THE OWNER IS TO PROVIDE AN 1800MM HIGH SAFETY FENCE, ENCLOSING THE POOL, A MINIMUM OF 3000MM FROM THE GUTTER LINE OF THE PROPOSED HOUSE TO THE SATISFACTION OF THE BUILDER PRIOR TO COMMENCEMENT. THE BUILDER TAKES NO RESPONSIBILITY FOR DAMAGE THAT MAY OCCUR TO THE POOL AND SURROUNDS DURING CONSTRUCTION AND HAS MADE NO ALLOWANCE FOR ANY REPAIRS THAT MAY BE REQUIRED.

SEWER MAIN LOCATION NOT AVAILABLE AT TIME OF PLAN DRAWING. LOCATION SUBJECT TO RECEIPT OF RELEVANT DOCUMENTATION.

SUBJECT TO NCC 2022 (1 MAY 2023)
WATERPROOFING & PLUMBING

PRELIM. CONSTRUCTION DRAWING
DATE: 17/10/2023
DRAFTING OFFICE: SYDNEY

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mcdonald jones
FIND YOURSELF AT HOME

SPECIFICATION:	COUNTRY LIVING
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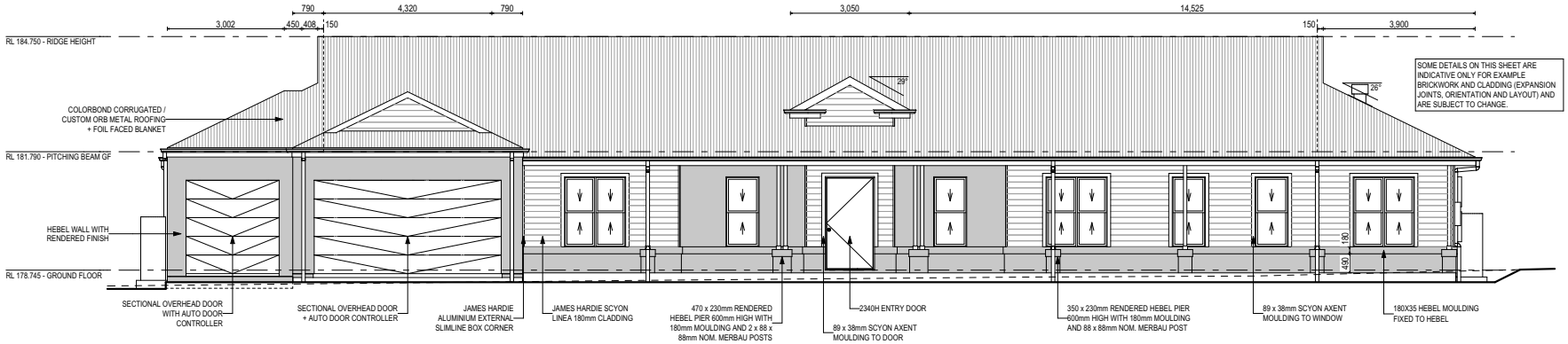
	REVISION	DRAWN
13	ARBORIST COORDINATION	LFL 20.10.2023
14	SLAB AND DRAINAGE CHECK	JVA 2023.10.23
15	PCV 012 ADDED- NCC	JVA 2023.10.31
16	AMENDED AS PER PCV13	LFL 09/02/2024
17	AMENDED AS PER PCV14 - HYDRAULICS	LFL 13/02/2024

CLIENT:	MS DOROTHY FRANCESS BLOOM
ADDRESS:	24 WYATT AVE, BELROSE NSW 2085
LOT / SECTION / DP:	2568 / - / 752038
COUNCIL:	TO BE ADVISED
HOUSE DESIGN:	BRONTE EXEC GRANDE MANOR ONE
FACADE DESIGN:	COUNTY PAVILION FACADE
SHEET TITLE:	SITE PLAN
SHEET No.:	5 / 31
HOUSE CODE:	H-BROCLAS11421
FACADE CODE:	F-BROCYPA01
SCALES:	1:300

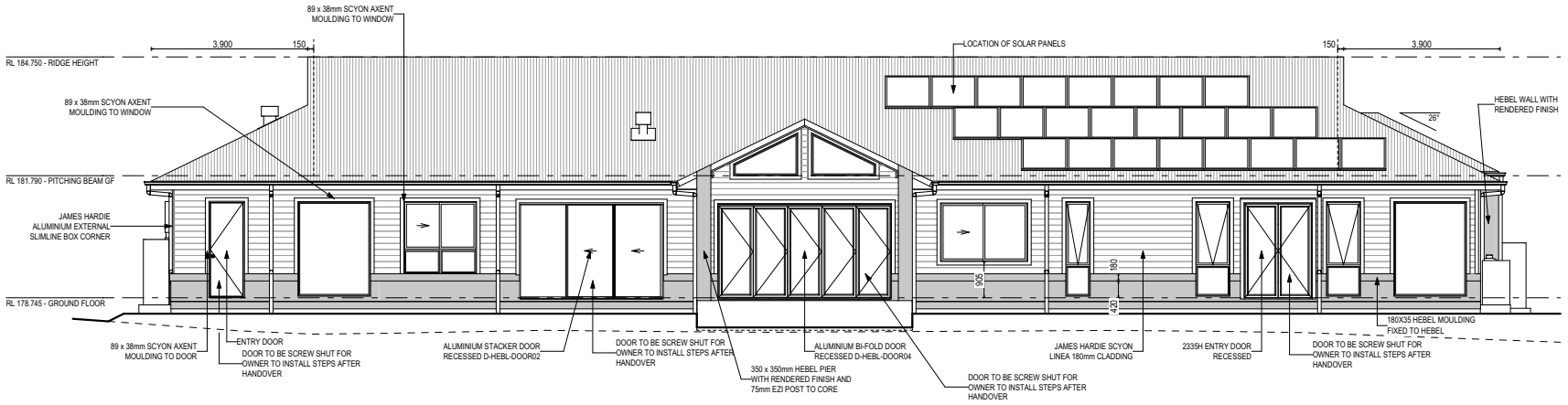
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Template Version: 24.026



FRONT ELEVATION (SOUTH - BAL 29)
SCALE: 1:100



REAR ELEVATION (NORTH - BAL 29)
SCALE: 1:100

PROVIDE FLATBACK GUTTER UPGRADE

BAL-29 BUSHFIRE REQUIREMENTS
SEE SHEET 1 (COVER SHEET) FOR DETAILS

HEBEL ARTICULATION JOINT LOCATION TO MANUFACTURERS SPECIFICATIONS

REFER TO SHEET 1 (COVER SHEET) FOR ALL BUILDING INFORMATION REGARDING:
- SUSTAINABILITY REQUIREMENTS
- SITE CLASSIFICATION
- GENERAL BUILDING INFORMATION

SH = SNAP HEADER SILL

GLASS TYPE LEGEND
CLEAR OBSCURE

WINDOW TYPE LEGEND
AWNING DOUBLE HUNG FIXED LOUVRE SLIDING

SUBJECT TO NCC 2022 (1 MAY 2023)
WATERPROOFING & PLUMBING

PRELIM. CONSTRUCTION DRAWING
DATE: 17/10/2023
DRAFTING OFFICE: SYDNEY

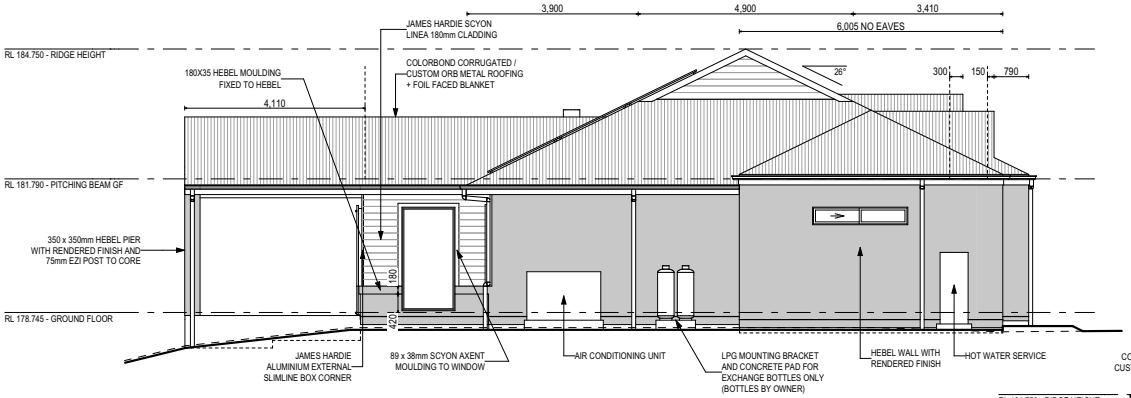
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mcdonald jones
FIND YOURSELF AT HOME

SPECIFICATION: COUNTRY LIVING	REVISION	DRAWN	CLIENT: MS DOROTHY FRANCESS BLOOM		HOUSE DESIGN: BRONTE EXEC GRANDE MANOR ONE		HOUSE CODE: H-BROCLAS11421
COPYRIGHT: © 2024	13 ARBORIST COORDINATION	LFL 20.10.2023	ADDRESS: 24 WYATT AVE, BELROSE NSW 2085		FACADE DESIGN: COUNTY PAVILION FACADE		FACADE CODE: F-BROCYPA01
	14 SLAB AND DRAINAGE CHECK	JVA 2023.10.23					
	15 PCV 012 ADDED- NCC	JVA 2023.10.31					
	16 AMENDED AS PER PCV13	LFL 09/02/2024	LOT / SECTION / DP: 2568 / - / 752038	COUNCIL: TO BE ADVISED	SHEET TITLE: ELEVATIONS	SHEET No.: 11 / 31	SCALES: 1:100
	17 AMENDED AS PER PCV14 - HYDRAULICS	LFL 13/02/2024					606935

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LEFT ELEVATION (WEST - BAL 29)
SCALE: 1:100

BAL-29 BUSHFIRE REQUIREMENTS
SEE SHEET 1 (COVER SHEET) FOR DETAILS

HEBEL ARTICULATION JOINT LOCATION TO MANUFACTURERS SPECIFICATIONS

PROVIDE FLATBACK GUTTER UPGRADE

REFER TO SHEET 1 (COVER SHEET) FOR ALL BUILDING INFORMATION REGARDING:
- SUSTAINABILITY REQUIREMENTS
- SITE CLASSIFICATION
- GENERAL BUILDING INFORMATION

SOME DETAILS ON THIS SHEET ARE INDICATIVE ONLY FOR EXAMPLE BRICKWORK AND CLADDING (EXPANSION JOINTS, ORIENTATION AND LAYOUT) AND ARE SUBJECT TO CHANGE.

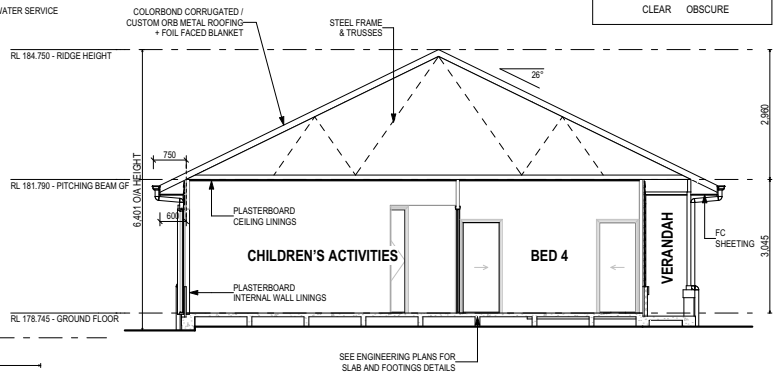
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WINDOW TYPE LEGEND

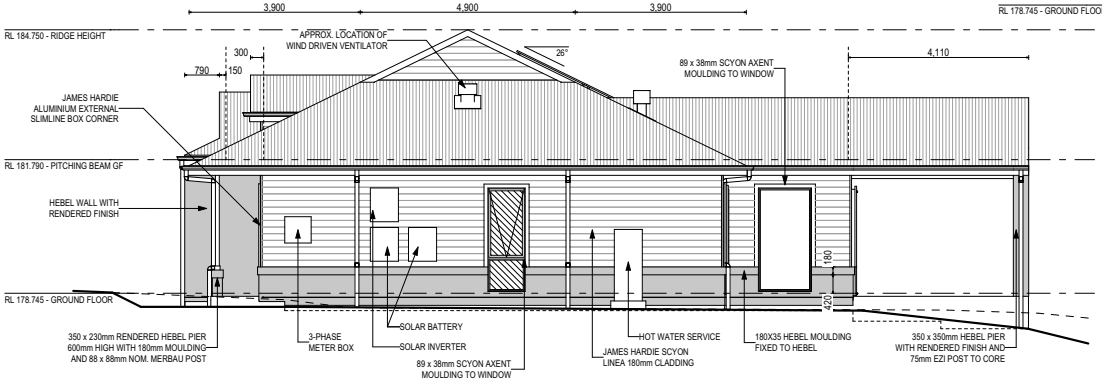
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GLASS TYPE LEGEND

CLEAR | OBSCURE



SECTION A-A
SCALE: 1:100



RIGHT ELEVATION (EAST - BAL 29)
SCALE: 1:100

SUBJECT TO NCC 2022 (1 MAY 2023)
WATERPROOFING & PLUMBING

PRELIM. CONSTRUCTION DRAWING

DATE: 17/10/2023
DRAFTING OFFICE: SYDNEY

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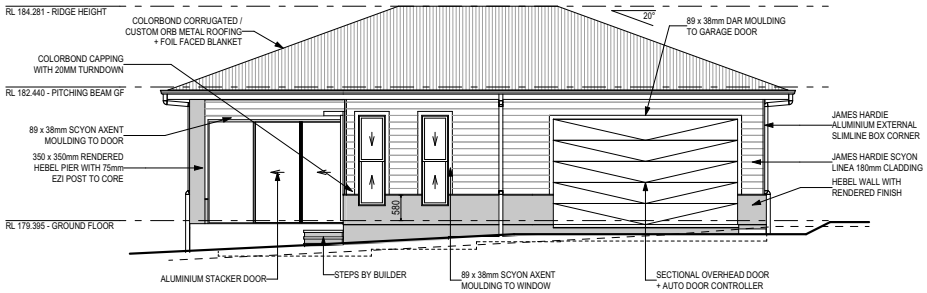
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SPECIFICATION: COUNTRY LIVING		REVISION	DRAWN	CLIENT: MS DOROTHY FRANCESS BLOOM		HOUSE DESIGN: BRONTE EXEC GRANDE MANOR ONE	HOUSE CODE: H-BROCLAS11421
COPYRIGHT: © 2024	13	ARBORIST COORDINATION	LFL 20.10.2023	ADDRESS: 24 WYATT AVE, BELROSE NSW 2085		FACADE DESIGN: COUNTY PAVILION FACADE	FACADE CODE: F-BROCYPA01
	14	SLAB AND DRAINAGE CHECK	JVA 2023.10.23				
	15	PCV 012 ADDED- NCC	JVA 2023.10.31				
	16	AMENDED AS PER PCV13	LFL 09/02/2024	LOT / SECTION / DP: 2568 / - / 752038	COUNCIL: TO BE ADVISED	SHEET TITLE: ELEVATIONS / SECTION	SHEET No.: 12 / 31
	17	AMENDED AS PER PCV14 - HYDRAULICS	LFL 13/02/2024				SCALES: 1:100

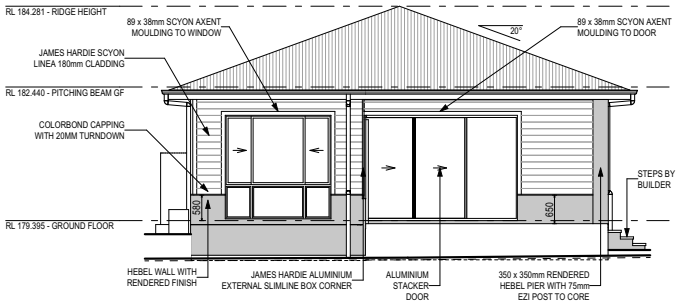
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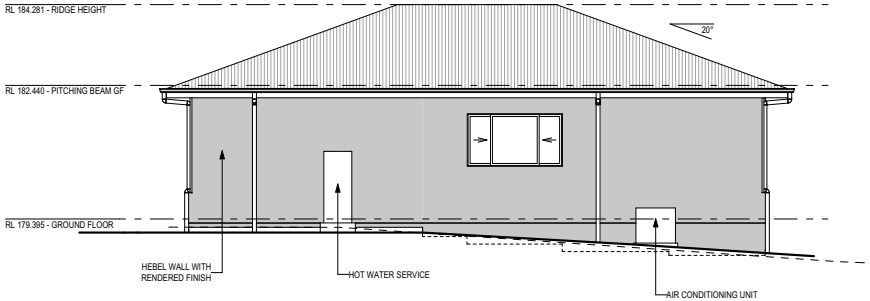
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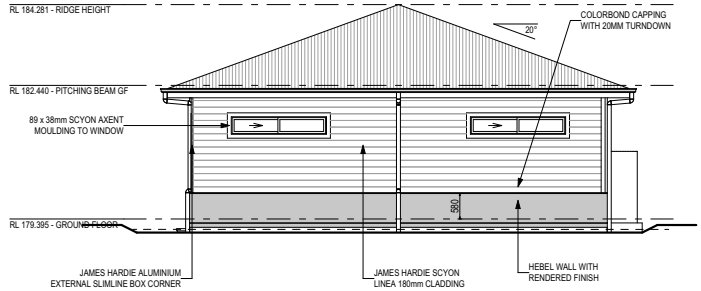
FRONT ELEVATION (WEST - BAL 29)
SCALE: 1:100



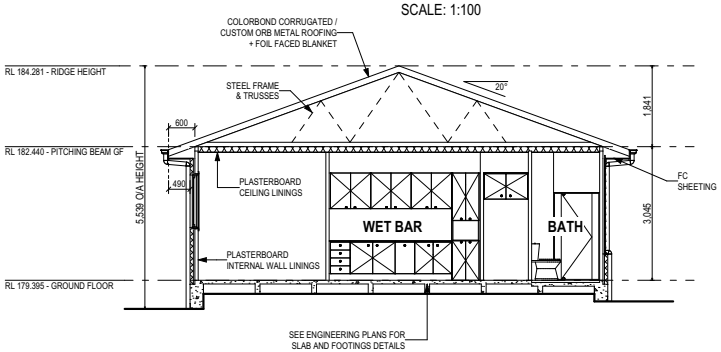
LEFT ELEVATION (NORTH - BAL 29)
SCALE: 1:100



REAR ELEVATION (EAST - BAL 29)
SCALE: 1:100



RIGHT ELEVATION (SOUTH - BAL 29)
SCALE: 1:100



A1 SECTION A-A
SCALE: 1:100

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REFER TO SHEET 1 (COVER SHEET) FOR ALL BUILDING INFORMATION REGARDING:
- SUSTAINABILITY REQUIREMENTS
- SITE CLASSIFICATION
- GENERAL BUILDING INFORMATION

BAL-29 BUSHFIRE REQUIREMENTS
SEE SHEET 1 (COVER SHEET) FOR DETAILS

HEBEL ARTICULATION JOINT LOCATION TO MANUFACTURERS SPECIFICATIONS

GLASS TYPE LEGEND
CLEAR OBSCURE

WINDOW TYPE LEGEND
AWNING DOUBLE HUNG FIXED LOUVRE SLIDING

SH - SNAP HEADER SH 1

~~SUBJECT TO NCC 2022~~
(1 MAY 2023)
WATERPROOFING & PLUMBING

PRELIM. CONSTRUCTION DRAWING
DATE: 17/10/2023
DRAFTING OFFICE: SYDNEY

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	17	AMENDED AS PER PCV14 - HYDRAULICS	LFL 13/02/2024					

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ITEM 3.2 DA2023/1206 - 6 NET ROAD AVALON BEACH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING SECONDARY DWELLING

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

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.

1.
THAT Council as the consent authority **approves** Development Consent to DA2023/1206 for alterations and additions to a dwelling house including secondary dwelling on land at Lot 8 DP 232257, 6 Net Road AVALON BEACH, subject to the conditions set out in the Assessment Report.

REPORTING MANAGER	
TRIM FILE REF	2024/188492
ATTACHMENTS	⇩1 Assessment Report ⇩2 Site Plan and Elevations ⇩3 Clause 4.6

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/1206

Responsible Officer:	Brittany Harrison
Land to be developed (Address):	Lot 8 DP 232257, 6 Net Road AVALON BEACH NSW 2107
Proposed Development:	Alterations and additions to a dwelling house including secondary dwelling
Zoning:	R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Daniel Rex Charlton Mussett Melissa Ostel Mussett
Applicant:	Andy Lehman Design

Application Lodged:	29/08/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New second occupancy
Notified:	05/09/2023 to 19/09/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 17.65%
Recommendation:	Approval

Estimated Cost of Works:	$ 655,000.00

EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) as the proposal results in a variation of more than 10.0% to Clause 4.3 Height of Buildings of the *Pittwater Local Environmental Plan 2014* (PLEP 2014).

The maximum permitted building height under the PLEP 2014 is 8.5 metres. The proposed building height is 10.0 metres resulting in a variation of 17.65%. In support of the variation is a detailed written

Clause 4.6 variation request where compliance with the development standard is considered unreasonable in the circumstances of this case. The variation arises from the proposed roof replacement and is limited to the extension of the eaves to the north, which will be located above an existing inground swimming pool. The swimming pool is to be removed and replaced with soil fill and lawn as part of this application.

The proposal includes several variations to the built form controls under the Pittwater 21 Development Control Plan (P21DCP), these being; C1.11 Secondary Dwellings and Rural Worker's Dwellings, D1.8 Front building line, D1.9 Side and rear building line and D1.14 Landscaped Area - Environmentally Sensitive Land. The proposal in regard to these variations do not result in unacceptable environment and/or amenity impacts, with the development achieving the relevant objectives.

The proposed development was notified in accordance with the Northern Beaches Community Participation Plan (CPP) for fourteen (14) days. No submissions were received.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that, on balance the proposal (as amended) is a suitable and an acceptable development for the subject site for the reasons outlined in this report.

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

PROPOSED DEVELOPMENT IN DETAIL

This application seeks development consent for the alterations and additions to an existing dwelling house including a secondary dwelling.

Specifically, the works comprise of the following:

- Lower Ground Floor extension and reconfiguration including new internal stairwell;
- First Floor internal reconfiguration and new entry deck from Net Road;
- Existing garage/studio (lower level) and carport (upper level) to be converted into a secondary dwelling with courtyard. The vehicle crossover to this area shall be removed.
- Construction of a new lower level garage and upper floor carport with storage to be constructed to the western portion of the site with new crossover from Net Road. The below garage will now be linked to the existing Gunyah Place driveway and crossover;
- Existing swimming pool and decking to the north to be removed and replaced with vegetation and landscaped retaining walls to level rear yard;
- The existing pitched roof form will be replaced with an angled skilion roof; and
- New decking to lower level and associated landscaping works.

ASSESSMENT INTRODUCTION

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

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 5.4 Controls relating to miscellaneous permissible uses
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 - B8.1 Construction and Demolition - Excavation and Landfill
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - C1.11 Secondary Dwellings and Rural Worker's Dwellings
Pittwater 21 Development Control Plan - D1.5 Building colours and materials
Pittwater 21 Development Control Plan - D1.8 Front building line
Pittwater 21 Development Control Plan - D1.9 Side and rear building line
Pittwater 21 Development Control Plan - D1.14 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 8 DP 232257 , 6 Net Road AVALON BEACH NSW 2107
Detailed Site Description:	The subject site consists of one (1) allotment located on the northern side of Net Road. The subject site is legally identified as Lot 8 in Deposited Plan 232257, No. 6 Net Road, Avalon Beach. The site is irregular in shape with a primary frontage of 40.54m to Net Road and secondary frontage of 4.88m to Gunyah Place. The site has a surveyed area of 1030.7m². The site is located within the R2 Low Density Residential zone under the provisions of the *Pittwater Local Environmental Plan 2014* and accommodates a dwelling house, carport, swimming pool and studio. The site consist of four(4) vehicular access points, three (3) being from Net Road and one (1) from Gunyah Place. The site topography slopes downward from south to north by approximately 9.0 metres, in exception of the sloped driveway access down to Gunyah Place.

	The site consists of garden beds, limited lawn areas and various trees/shrubbery. Portions of the site are identified on the Department of Planning and Environment's Biodiversity Values Map (BV Map). A minor section to the north-western end of the site is located within the Littoral Rainforest Proximity Area. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by residential development including secondary dwellings situated within a landscaped setting.

Map:



SITE HISTORY

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

PLM2022/0238
Pre-lodgment advice (written advice only) for alterations and additions to a dwelling house including a secondary dwelling, carport, garage and swimming pool. The following advice was provided:

- Recommended that the proposed secondary dwelling parking space is deleted and that the front building line to the proposed garage/workshop and carport is increased to achieve full or greater compliance with the required front building line. As the parking structures are larger than the minimum size required under AS/NZS 2890.1:2004 - Parking Facilities, Part 1: Off Street Car Parking, there is scope to reduce the depth of these structures to achieve full or greater compliance with the required front building line.

- As per Clause C1.11 of P21DCP, only one (1) storey is allowed for a secondary dwelling that is separate from the principal dwelling, however, a variation to this control may be supported given the site constraints, including the topography of the land and the siting of the existing dwelling house, subject to demonstrated consistency with the objectives of the control.

- The provision of more than one (1) driveway may be permitted on merit where a property has a frontage of more than 30.0m to a public road and/or where the subject site has a frontage to a second public road. As the proposed secondary dwelling parking space is not supported, it is strongly recommended that the parking space and the associated driveway is deleted.

Assessment Officer Note: The proposal has responded to take into consideration the above PLM advice, with recommended amendments reflected in the proposed architectural plans. The proposal includes only two (2) vehicle access points, rather than the original four (4).

Current Application History

The development application was notified for a period of fourteen (14) days, as stated within Council's Community Participation Plan (CPP) and resulted in no submissions.

Council requested amended plans on 7 December 2023 to address concerns in regard to the following:

- **Permissibility Concern:** The kitchen to the lower floor level of the main dwelling is to be deleted, with the demolition noted on the proposed plans, if approval is sought for the detached secondary dwelling.

- **Clause 4.3 Height of Buildings:** The building height is to demonstrate compliance, or alternatively, a Clause 4.6 Variation Request must be submitted. An additional section of the secondary dwelling will also need to be provided.

- **Clause B8.1 Construction and Demolition - Excavation and Landfill:** The overall design of the rear yard should be revised, and the levelled lawn area lowered. An additional northern elevation of the rear yard and retaining walls will also need to be provided, with an approximation of the volume of fill required.

- **Clause C1.11 Secondary Dwellings and Rural Worker's Dwellings:** Detailed justification as to why the proposal cannot comply with this requirement has not been provided. It is advised that the applicant considers incorporating the existing storage area (lower level) as floor space, limiting the need for a two (2) storey secondary dwelling.

The amended plans were submitted on 18 January 2024 and addressed the concerns raised. Re-notification was not required as the amendments reduced the overall environmental impact, as stated within Council's Community Participation Plan (CPP).

Further additional information was later required by Council's Development Engineer, this included a Traffic Report, amended Stormwater Plans and driveway crossover sections. This information was provided on the 6 March 2024. Council's Development Engineer is in support of the amended information, subject to recommended conditions.

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)	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. Clause 29 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. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested, refer to 'Site History; for further detail. Clause 61 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. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21

Section 4.15 Matters for Consideration	Comments
impacts on the natural and built environment and social and economic impacts in the locality	Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
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 Bushcon Australia Pty Ltd, dated 9 May 2023) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 05/09/2023 to 19/09/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Landscape Officer	***Supported, subject to conditions.***

Internal Referral Body	Comments
	The proposal is supported with regard to landscape issues. Council's Landscape Referral section have assessed the application against the Pittwater Local Environment Plan, and the following Pittwater 21 DCP controls (but not limited to): • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • D1 Avalon Beach Locality It shall be noted Landscape Referral only assesses the works within the property boundaries, and any work in the road reserve shall be determined under the appropriate applications. Existing encroachments within the road reserve are noted and Council reserves the future right to seek removal of any unapproved encroachment for public safety or for any other public capital works. The Arboricultural Impact Assessment (AIA) identified 16 trees of which trees 1, 2, 2.1, 2.2, 3, 5, 6, 7, 9, 10, 11, 12 and 13 are located in neighbouring properties and must be retained and protected during works. The retention of the neighbouring trees is supported by the Arborist's findings. Trees 4, 8 and 14 are within the property boundaries and will be retained. Some trees will require works within their tree protection zones and as such a Project Arborist shall be engaged to supervise these works. Footing design for the suspended driveway and garage/workshop/carport, adjacent to trees 12 and 14, shall be undertaken in collaboration with the Arborist. The tree protection requirements outlined in the AIA are supported, subject to the imposed conditions. The landscape proposal is generally supported and all proposed planting shall be installed in accordance with the requirements outlined in the conditions of consent.
NECC (Bushland and Biodiversity)	***Supported, subject to conditions.*** Council's Biodiversity referrals team have assessed the Development Application for compliance against the following applicable provisions: • Biodiversity Conservation Act 2016 • Biodiversity Conservation Regulation 2017 • Planning for Bushfire Protection 2019 • State Environmental Planning Policy (Resilience and Hazards) 2021 cl. 2.8 Development on land in proximity to coastal wetlands or littoral rainforest • Pittwater LEP 2014 cl. 7.6 Biodiversity Protection • Pittwater 21 DCP cl. B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community The Development Application seeks consent for Alterations and additions to a dwelling house including secondary dwelling.

Internal Referral Body	Comments
	Portions of the site are identified on the Department of Planning and Environment's Biodiversity Values Map (BV Map). Under the NSW Biodiversity Conservation Act, any removal of native vegetation from within mapped areas will trigger the Biodiversity Offsets Scheme (BOS) and the requirement for a Biodiversity Development Assessment Report (BDAR). The Arboricultural Impact Assessment (Treeism Arboricultural Services, May 2023) submitted with the application has confirmed that all prescribed trees within the lot will be retained and protected. The Bushfire Report (Bushfire Consultancy Australia, April 2023) has confirmed that defendable space is provided on all sides of the building and that an APZ is provided and maintained for the life of the building. The Landscape Plan (Volker Klemm Landscape Design July 2023) is noted and supported. As no native vegetation is required for removal, the BOS is not triggered and a BDAR is not required to be submitted with the application. However, it should be noted that any future impact to native vegetation within the BV Map, including any future clearing for the APZ, may require a BDAR under the BC Act 2016. No objections in relation to Biodiversity, subject to these comments and conditions.
NECC (Development Engineering)	***Supported, subject to conditions.*** The applicant proposes "proposing alterations and additions to the existing dwelling as well as a new secondary dwelling". <u>Access</u> There are four 4 existing driveways which service the property. The site has dual frontage access to both Net Rd and Gunyah Pl. The proposal removes 2 driveways on Net Rd, totaling 2 proposed driveways post development. This is in accordance with Clause B6.1 of P21DCP. *Access from Gunyah Pl:* The proposed garage levels are at RL34.50 and the proposal is to use the existing driveway. The existing driveway is extremely steep, with some sections exceeding grades of 30%. Should the existing driveway be used, there does not seem to be sufficient transitions to prevent scraping. The parking facilities and driveway gradients need to be designed in accordance with AS 2890.1:2004: Parking facilities - Off-street car parking. Provide 2 longitudinal cross sections on both ends of the driveway, showing existing and proposed levels

Internal Referral Body	Comments
	commenced from the existing driveway to the end of the parking facility. The profile must show that a B85 vertical clearance model can safely access the site. *Access from Net Rd:* The proposed garage levels is RL37.85, which is approximately the same level as the boundary. There would be significant fill within the boundary to meet these levels. Details are required to be provided. There are no proposed levels or longitudinal sections for the driveway. Requesting 2 longitudinal cross sections on both ends of the driveway, showing existing and proposed levels commenced from the existing driveway to the end of the parking facility. The driveway shall maintain 900mm of clearance to the Power Pole. There should be a dish drain at the edge of the bitumen to keep runoff on the road There are retaining walls in the road reserve, up to 1.2m high. The removal of the redundant elevated driveway may create a fall hazard in the road reserve. Requesting that the geotechnical report certifies the existing retaining wall is structurally sound. Note to planner: Please refer this to Road Assets Team regarding the retaining walls in the road reserve, suitability of on street parking in the road reserve and the suitability of a dish drain for the driveway on Net Road. <u>Stormwater</u> The site has dual frontages and is located in Region 1 of the Water Management for Development Policy. Councils records indicate from February 1996, the proposal is reducing the impervious area. As such, no OSD is required. The DP plan suggests there is an easement to drain water via 2 Gunyah Place. There is an opportunity to divert water from the site to the driveway which leads to Gunyah Place as it is currently. The existing driveway on the western end of Net Road falls directly from the centerline of the road to the boundary. However, stormwater runoff follows the driveway through to Gunyah Place and does not affect the property. The proposal now leads the new driveway to a 2 storey garage. In minor and major storm events, the garage would be flooded. Requesting plans and a solution to prevent stormwater runoff from affecting the property. <u>Geotechnical</u> A geotechnical report prepared by White Geotechnical Group has been provided along with Form 1 and 1a in accordance with Appendix 5 - Geotechnical Risk Management Policy for

Internal Referral Body	Comments
	Pittwater. Geotech proposal is supported subject to conditions. As such, development engineering cannot support the application due to insufficient evidence to address B5.15 and B6 of the P21DCP. **Additional Information Provided on 6/3/2024** The submitted stormwater plans are acceptable subject to conditions. The submitted driveway sections and Traffic Report by Terraffic Pty Ltd, dated 5/3/2024 are acceptable. No objections to approval subject to conditions as recommended. Planner Note: The Development Engineer also considered any Road Reserve matters, and applied the required conditions.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

Two (2) BASIX certificates have been submitted with the application, one (1) for the principal dwelling and one (1) for the secondary dwelling.

Principal Dwelling: Certificate No. A498797 dated 28 June 2023.

Secondary Dwelling: Certificate No. 1398068S dated 28 June 2023.

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

SEPP (Housing) 2021

Part 1 – Secondary Dwellings

The application has been assessed against the requirements SEPP (Housing) 2021. This Policy provides State-wide planning controls for the provision of different type housing.

The site is located within the R2 Low Density Residential zone under the Pittwater Local Environmental Plan 2014, which is listed in the policy as a zone where secondary dwellings are permissible. Clause 52 outlines the development standards for secondary dwellings. The following table sets out the proposal's compliance with these standards.

Clause 52 – Development may be carried out with consent	
Standard	**Compliance/Comment**
(2) Development consent must not be granted for development to which this Part applies unless— a) No dwellings, other than the principal dwelling and the secondary dwelling, will be located on the land, and b) The total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area permitted for a dwelling house on the land under another environmental planning instrument, and c) The total floor area of the secondary dwelling is: i) no more than 60m², or ii) if a greater floor area is permitted for a secondary dwelling on the land under another environmental planning instrument - the greater floor area.	a) The proposed development will result in one (1) existing principal dwelling and one (1) new secondary dwelling. b) There is no floor space ratio control applicable to this site. c) The total floor area of the secondary dwelling does not exceed 60.0m², complying with Clause 5.4 (9) under the Pittwater Local Environmental Plan 2014.

Clause 53 – Non-discretionary development standards—the Act, s 4.15	
Standard	**Compliance/Comment**
a) For a detached secondary dwelling - a minimum site area of 450m².	The proposed development will be erected on a site area which is more than 450m².
b) The number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out.	The number of parking spaces will not be reduced and will provide for at least three (3) parking spaces.

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

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

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 1 Coastal Wetlands and littoral rainforest area

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

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

Comment
The proposed works have been reviewed by Council's Biodiversity Officer with recommended conditions being included. It is not considered that the works will detrimentally impact the the biophysical, hydrological or ecological integrity of the nearby littoral rainforest.

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	10.0m	17.65%	**No** *Refer to discussion under Clause 4.6*

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
5.4 Controls relating to miscellaneous permissible uses	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of Non-compliance

Development Standard	Height of Buildings
Requirement	8.5m
Proposed	10.0m
Percentage variation to requirement	17.65%

Figures:

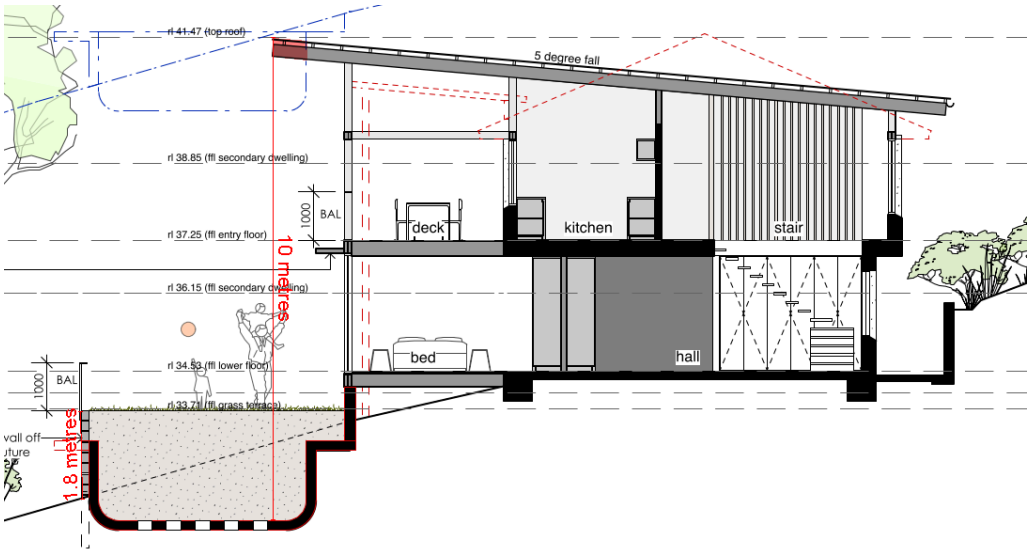


Figure 1 - Red shading indicating extent of height variation - limited to eaves of primary dwelling.

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

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

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

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

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

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

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

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

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

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

- *When extrapolating an 8.5m height plane from surveyed natural ground levels the dwelling is compliant with the 8.5m height control.*
- *The non-compliance is due to existing ground level being taken from the existing swimming pool which is proposed to be filled and converted to a grassed terrace. The ground level will therefore be modified to be increased in height. When measured from the proposed level of the grassed terrace the height to the top of the roof will be 7.76m.*
- *The works do not give rise to any unreasonable amenity impacts with regard to views, overshadowing or privacy. The works present a 2 storey built form that is consistent with the scale of development in the area and the low density residential zone.*

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 - Clause 4.3 Height of buildings

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the PLEP 2014 are:

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

a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,

Comment
The height of buildings within the area are considered to be varied as a result of the sloping topography and scattered nature of allotments. When compared to the existing building's roof ridge of the primary dwelling (which is RL41.54 - RL41.44), the proposal is considered to be consistent (Max: RL41.47 - area of non-compliance). Majority of the building is compliant with the 8.5m building standard, with the extent of non-compliance limited to an eave that happens to extend over an existing swimming pool (which is proposed to be filled). Once the pool is filled, the overall building height to this area of building will be approximately 7.76m. The dwelling will present as single storey to the street. The overall scale of the proposal is consistent with built form across the vicinity and is generally compliant with side setbacks and side building envelope controls.

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

Comment
As discussed above. A two (2) storey built form is achieved which is consistent with surrounding development.

c) to minimise any overshadowing of neighbouring properties,

Comment
The proposal exhibits compliance with the solar access requirements as stipulated within the P21DCP. Therefore, acceptable solar access will be afforded to the subject site and adjoining properties.

d) to allow for the reasonable sharing of views,

Comment
The proposal is not considered to result in unacceptable view loss to surrounding properties.

e) to encourage buildings that are designed to respond sensitively to the natural topography,

Comment
The dwelling house is considered to have been designed to respond to the topography of the site. The non-compliance arises from the eave extending over an existing swimming pool. The swimming pool area is to filled and replaced with soft landscaping and lawn area.

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

Comment

The proposal overall will not impact any heritage conservation areas and heritage items. Conditions have been recommended to protect the surrounding natural environment. The landscaping provided is non-compliant with the P21DCP numerical controls, however is an increase compared to the existing landscaped area of the site. As noted above, the proposed works are compliant with the side building envelope controls.

Zone Objectives

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

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

  Comment
  The proposed works will provide additional housing 9secondary dwelling) within a low density residential environment, contributing to 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 works are located on a site zoned R2 Low Density Residential and accommodates a dwelling house and secondary dwelling.

- ***To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.***

  Comment
  The works are located on a site zoned R2 Low Density Residential and accommodates a dwelling house and secondary dwelling.

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

It is considered on balance, that having regard to the particular circumstances noted above. This being the extent of non-compliance being limited to a roof eave located above an existing swimming pool, which results in a building height of 10.0m, 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, the extent of non-compliance being limited to a roof eave located above an existing swimming pool, resulting in a building height of 10.0m will not contribute to unacceptable amenity impact and is considered to be consistent with overall height and scale of surrounding properties. It is therefore considered appropriate that in this instance, flexibility in the application of the development standard Clause 4.3 Height of buildings 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 Height of building Development Standard associated with a single dwelling house (Class 1 building).

5.4 Controls relating to miscellaneous permissible uses

Clause 5.4 (9) Controls relating to miscellaneous permissible uses must meet the below requirements for secondary dwelling:

"If development for the purposes of a secondary dwelling is permitted under this Plan, the total floor area of the dwelling (excluding any area used for parking) must not exceed whichever of the following is the greater:

(a) 60 square metres,
(b) 25.0% of the total floor area of the principal dwelling."

The proposed secondary dwelling exhibits a total floor area of 60.0m², and is compliant with the requirements of this clause.

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

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

Comment
The site is not located in the vicinity of any watercourse, drinking water catchment. Council's Biodiversity Officer has reviewed the proposal in relation to the Littoral Rainforest which is in close proximity to the subject site, and has included recommended conditions.

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

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

(i) the proximity to and potential for adverse impacts on any heritage item, archaeological site or heritage conservation area.

Comment
The site is not a heritage item, in the vicinity of a heritage item or in a conservation area or archaeological site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of PLEP 2014, Pittwater 21 DCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

7.6 Biodiversity protection

Before determining a development application for development on land to which this clause applies, this clause requires the consent authority to consider:

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

Comment
Portions of the site are identified on the Department of Planning and Environment's Biodiversity Values Map (BV Map). Under the NSW Biodiversity Conservation Act, any removal of native vegetation from within mapped areas will trigger the Biodiversity Offsets Scheme (BOS) and the requirement for a Biodiversity Development Assessment Report (BDAR). The Arboricultural Impact Assessment (Treeism Arboricultural Services, May 2023) submitted with the application has confirmed that all prescribed trees within the lot will be retained and protected. As no native vegetation is required for removal, the BOS is not triggered and a BDAR is not required to be submitted with the application.

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval, subject to conditions. It is considered that the development will not have any adverse impact on the condition, ecological value and significance of the fauna and flora on the land; the importance of the vegetation on the land to the habitat and survival of native fauna; or the habitat elements providing connectivity on the land. The development will not unreasonably fragment, disturb, or diminish the biodiversity structure, function, or composition of the land.

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

Comment
The development has been assessed by Council's Biodiversity Team, who raised no objections to approval, subject to conditions, which include appropriate measures to avoid, minimise, or mitigate the impacts of the development.

Before granting development consent, this clause also requires the consent authority to be satisfied that:

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

Comment
The development has been assessed by Council's Biodiversity Team, who raised no objections to approval, subject to conditions. It is considered 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 Forms 1 and 1A prepared by White Geotechnical Group Pty Ltd (dated 25 May 2023). The assessment demonstrates that 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 Forms 1 and 1A prepared by White Geotechnical Group Pty Ltd (dated 25 May 2023). The assessment demonstrates that all geotechnical risks have been taken into account. The application and stormwater management 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 proposed development is supported by a geotechnical risk assessment and Forms 1 and 1A prepared by White Geotechnical Group Pty Ltd (dated 25 May 2023). As such, it is considered that the proposed development has been designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front Building Line	6.5m Southern Boundary - Primary	Entry Deck: 1.5m - 3.3m Dwelling: 4.4m Secondary Dwelling: 3.8m	76.9% 32.3% 41.5%	**No** " "

	Frontage (Net Road)	Secondary Dwelling Terrace: Nil Carport Wall: 6.5m	100.0%* -	" Yes
	3.25m North-western - Secondary Frontage (Gunyah Place)	All proposed works > 3.25m	-	Yes
Side Building Line	2.5m Northern/Eastern Boundary	Secondary Dwelling Terrace: 0.8m Secondary Dwelling: 2.5m Rear Lawn Retaining Wall: 1.2m - 8.9m* Primary Dwelling: 5.0m	68.0% - - -	**No** Yes Yes Yes
	1.0m Western Boundary	Carport/ Garage: 1.0m - 5.0m	-	Yes
Building Envelope	3.5m Western Elevation	Within Envelope	-	No
	3.5m Northern/Eastern Elevations	Within Envelope	-	Yes
Landscaped Area	60.0% (618.42m²)	49.7% (512.0m²)	10.3% (106.42m²)	**No**

*Driveways, fences and retaining walls are permitted within the side and rear setback areas as stated within Clause D1.9 Side and rear building line of the P21DCP.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.6 On-Street Parking Facilities	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
C1.1 Landscaping	Yes	Yes

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
C1.5 Visual Privacy	No	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.11 Secondary Dwellings and Rural Worker's Dwellings	No	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
D1.1 Character as viewed from a public place	Yes	Yes
D1.4 Scenic protection - General	Yes	Yes
D1.5 Building colours and materials	No	Yes
D1.8 Front building line	No	Yes
D1.9 Side and rear building line	No	Yes
D1.11 Building envelope	Yes	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	No	Yes
D1.17 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

B8.1 Construction and Demolition - Excavation and Landfill

Control B8.1 stipulates that any excavation greater than 1 metre deep, the edge of which is closer to a site boundary or structure to be retained on the site, than the overall depth of the excavation must be accompanied by a Geotechnical Report and certified forms as set out in Council's Geotechnical Risk Management Policy in relation to potential impact of excavation on land stability.

The proposal will require excavation for the new garage/carport structure to the western portion of the site, to a maximum of approximately 2.2m and is setback 1.0m from the western boundary (at minimum).

It is noted that the proposal has been appropriately accompanied by a Geotechnical Report and certified forms, with the subject site not being mapped on the Geotechnical Hazard Map under the Pittwater LEP 2014.

The proposed development is acceptable in relation to the relevant outcomes of this clause, as follows:

- ***Site disturbance is minimised.***

  Comment
  Majority of the excavation is limited to the area to accommodate for garage/carport structure. The rear yard towards the north will experience a level of fill to level the lawn area, which will replace a swimming pool and deck area.

- ***Excavation, landfill and construction not to have an adverse impact.***

  Comment
  The proposed works have been accompanied by a Geotechnical Report, with no detrimental hazards present, it is considered unlikely to result in an unreasonable impact.

- ***Excavation and landfill operations not to cause damage on the development or adjoining property.***

  Comment
  The carrying out of the development in accordance with the recommendations of the Geotechnical Report will ensure the adjoining properties are protected. A condition of consent has been included for a Dilapidation Report for No. 4 Net Road, Avalon Beach, given the close proximity to the excavation works.

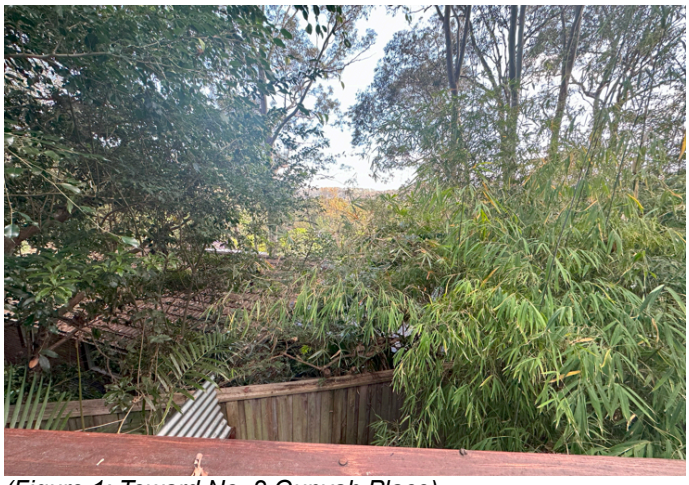
Based on the above, and the submitted Geotechnical Report, the proposal is considered to therefore meet the outcomes of the control and is supported on merit in this particular instance.

C1.5 Visual Privacy

Merit Consideration
Clause C1.5 requires that habitable rooms and outdoor living areas of dwellings optimise visual privacy through an appropriate design outcome. Private open space areas and living rooms of the proposal, and any existing adjoining dwellings are to be protected from direct overlooking within 9.0m.

The proposal includes the removal of an existing swimming pool and associated decking, which is to be replaced with additional fill to create a levelled lawn area for the residents. The levelled lawn area will be elevated to a height similar to that of the existing pool and decking area that is to be replaced. This new lawn area will include a retaining wall which will run along the north and east of the property due to the sloped topography, this wall will be a maximum of 1.8 metres at its height point.

The elevated rear lawn area will be within close proximity (less than 9.0 metres) to No. 2 Gunyah Place, No. 45 and No. 47 Queens Avenue. Due to the location of the building and topography of No. 2 Gunyah Place, it would be unlikely to directly overlook into the dwelling or open space area. *See Images below*. The existing vegetation and trees are situated to the northern corner of the subject site (between these properties), will obstruct potential downward viewing and shall aid in the protection of the privacy levels of all adjoining properties listed above). In addition, a Landscape Plan has been provided which includes further vegetation types to be planted within this area.



(Figure 1: Toward No. 2 Gunyah Place)



(Figure 2: Toward No. 45 and No. 47 Queens Avenue)



(Figure 3: Rear Vegetation)

The first floor deck is located within a similar location to the existing. It is considered that the privacy levels as a result of this deck will be maintained as existing. The secondary dwelling courtyard to the east will be screened by additional and existing landscaping, and is considered unlikely to create adverse privacy impacts to No. 43 Queens Avenue.

All additional windows to the dwellings have been placed in acceptable locations, with majority of the windows situated to the front or rear facades.

In light of the above the privacy impacts considered to be reasonable within a residential environment. No further privacy measure is deemed necessary in this regard.

It is concluded that the applicable outcomes of the control have been achieved. Therefore, the application is supported on merit.

C1.11 Secondary Dwellings and Rural Worker's Dwellings

Description of Non-compliance
Clause C1.11 Secondary Dwellings and Rural Worker's Dwellings states that where the secondary dwelling is separate from the principal dwelling, only one (1) storey will be allowed.

The proposed works include a two (2) storey secondary dwelling.

It is noted that the existing building to this area consisted of a studio/garage to the lower-ground floor and open carport to the upper floor (which aligns with Net Road). The two (2) existing crossovers in this area will be removed, and replaced with a courtyard and additional landscaped open space. It is important to note that when viewed from the street and public domain, the proposal appears as a single storey building.

Merit Consideration
With regard to the above consideration for a variation, the development is considered against the underlying objectives of the control as follows:

- ***Limitation of the visual bulk and scale of development.***

  Comment
  The secondary dwelling will present as a single storey development when viewed from Net Road. In addition, the development sits within the required side boundary envelope, and will be visually softened buy additional landscape elements. It is noted that the secondary dwelling design and materials will be consistent with the primary dwelling, providing a cohesive presentation to the public and adjoining properties.

- ***Provision of design flexibility for second storey development.***

  Comment
  It was recommended that a single storey secondary dwelling be explored, however it was advised that this would result in a reduction of landscaping and would not achieve 60.0m² of floor space, resulting in a loss of amenity. The secondary storey will not cause a significant change in streetscape, as a carport structure of similar dimensions and height is currently located in the proposed secondary dwelling position. As noted previously, as a result of the

topography of the land, the secondary dwelling will present as a single storey when viewed form Net Road, and has been designed to acceptably sit within the required envelope and side setback controls of the P21DCP. The understorey will not be easily viewed from the public domain. A second storey is considered reasonable in this instance.

- ***Restriction of the footprint of development site.***

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  Comment
  The footprint of the secondary dwelling is restricted to the footprint of the existing structure located in the same area. The first floor to the secondary dwelling allows the existing footprint to be retained.

- ***Retention of natural vegetation and facilitation planting of additional landscaping.***

  Comment
  The provided Landscape Plan demonstrates an increase in landscaped open space when compared tot he existing landscaped situation. A single storey secondary dwelling design was explores, however it was determined that such a design would limit landscaped area. The Landscape Plan retains existing trees and provides a range of vegetation types to assist in enhancing the natural vegetation and facilitation planting of additional landscaping. Refer to 'Clause D1.14 Landscape Area - Environmentally Sensitive Land' for further detail.

- ***Provision of rental accommodation.***

  Comment
  The new secondary dwelling allows the potential for rental accommodation.

Having regard to the above assessment, it is concluded that the outcomes of the clause have been achieved. Therefore, the application is supported on merit in this particular circumstance.

D1.5 Building colours and materials

Merit Consideration
Clause D1.5 Building Colours and Materials require that buildings are to utilise medium to dark colour ranges with natural and earthy tones.

The proposed development indicates that the primary materials will consist of a light - medium colour scheme.is noted that the existing primary dwelling and surrounding developments within the immediate vicinity consists of a similar lighter - medium colour scheme, which do not strictly meet the prescribed requirements of this control.

As the colour scheme is to match the existing dwelling, the lighter -medium colour scheme is considered acceptable in this instance.

A condition however is to be recommended to ensure the proposed roof maintains a medium to dark range and that any roof with a metallic steel finish is not permitted in order to minimise solar reflections to neighbouring properties.

D1.8 Front building line

Description of Non-compliance
Clause D1.8 Front Building Line prescribes a front boundary setback requirement of 6.5m for all built structures, other than driveways, fences and retaining walls.

The proposed works include the following front setbacks to the primary street frontage, this being Net Road.

- Front Entry Deck: 1.5m - 3.3m
- Primary Dwelling: 4.4m *(Existing)*
- Secondary Dwelling: 3.7m - 3.8m
- Secondary Dwelling Terrace: Nil

Where the outcomes of this control are achieved, Council may accept a minimum building setback to a secondary street of half the front building line. In this instance, Gunyah Place, all proposed works are located more than 3.25m from the secondary frontage.

Council may also accept variation to these building lines in the following circumstances:

- considering established building lines;
- degree of cut and fill;
- retention of trees and vegetation;
- where it is difficult to achieve acceptable levels for building;
- for narrow or irregular shaped blocks;
- where the topographic features of the site need to be preserved;
- where the depth of a property is less than 20 metres.

It is noted that the subject site is an irregular shaped allotment, which slopes downward from Net Road. The primary dwelling setback is existing and will not be altered. The front entry deck is also existing but will be replaced and extended toward the east, in-front of the living room windows to provide a front porch element. The secondary dwelling is in the location with similar front setbacks to that of the existing carport/garage. The secondary dwelling courtyard that fronts Net Road replaces the existing driveway and crossover. Given the sloping topography of the site and the existing under storage, landscaping to this area is impracticable. However, the plans have incorporated further landscaping within the front setback area where possible, enhancing the landscaping when compared to the existing.

Merit Consideration
In regards to a variation, the proposed development will be considered against the underlying outcomes of the control as follows:

- ***To achieve the desired future character of the Locality.***

  Comment
  The proposed works will maintain a low density residential design suitable for Avalon Beach. The removal of two (2) of the four (4) vehicle crossing to Net Road will be removed and replaced with landscaped elements to further assist in establishing the character of built form

being situated within a landscaped setting.

- ***The amenity of residential development adjoining a main road is maintained.***

  Comment
  Both Net Road and Gunyah Place are not main roads. This objective does not apply.

- ***Vegetation is retained and enhanced to visually reduce the built form.***

  Comment
  The proposal includes additional landscaping on site and within the front setback area to Net Road, enhancing the vegetation when compared to the existing situation. The additional landscaped features will aid in the visual reduction of built form. It is noted that most of the elements within the front setback area will either not been seen from the street (located on lower ground floor) or will be perceived as a single storey structure.

- ***Vehicle manoeuvring in a forward direction is facilitated.***

  Comment
  The proposal includes a garage to the lower-ground floor that will be accessed via Gunyah Place and can facilitate vehicle manoeuvring in a forward direction. The carport atop the garage is accessed via Net Road, and cannot facilitate vehicle manoeuvring in a forward direction, as this would not be achievable. Council's Development Engineer has reviewed the proposal and is in support subject to conditions.

- ***To encourage attractive street frontages and improve pedestrian amenity.***

  Comment
  The proposal will enhance the streetscape to Net Road, by providing additional landscaping and removing two (2) driveway crossovers and providing only one (1) to the new carport. The proposal also includes a replacement entry deck/walkway and porch element improving pedestrian access. The secondary dwelling can be accessed via Net Road with the addition of a front terrace. The streetscape to Gunyah Place will not not significantly altered.

- ***To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment.***

  Comment
  The development overall has been designed to respond to the topography and irregular shaped allotment. The secondary dwelling and carport can be easily perceived as being apart of the primary dwelling, and provides acceptable side setbacks and is situated within the required boundary envelope. The front setbacks although numerically non-complaint are consistent with the existing building line of the primary dwelling and the existing structures to be replaced.

Having regard to the above assessment, it is concluded that the applicable outcomes of the control have been achieved. Therefore, the application is supported on merit.

D1.9 Side and rear building line

Description of Non-compliance
Clause D1.9 Side and Rear Building line prescribes a side setback of 2.5m to one side and 1.0m to

the other. For this assessment, the 2.5m side building line is applied to the western boundary and the 1.0m side building line applied to the Northern and Eastern boundary.

The development is compliant with the above requirements, in exception of the secondary dwelling's courtyard which exhibits a setback of 0.8m to the eastern boundary.

Merit Consideration
With regard to the consideration for a variation, the proposed development is considered against the underlying outcomes of the control as follows:

- ***To achieve the desired future character of the Locality.***

  Comment
  The proposed works will maintain a low density residential design suitable for Avalon Beach. The additional landscaping throughout the site, replacing many impervious areas, enhances the landscape character.

- ***The bulk and scale of the built form is minimised.***

  Comment
  Majority of side setbacks of the built form are compliant and sit within the required side boundary envelope. The landscaping within the side setback areas and retention of trees will aid in reducing overall built form.

- ***Equitable preservation of views and vistas to and/or from public/private places.***

  Comment
  This encroachment into the side setback area is not considered to result in any unreasonable view loss from surrounding private properties or the public domain.

- ***To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.***

  Comment
  The side setback non-compliance is not considered to negatively impact on the current view sharing of the adjoining properties.

- ***To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.***

  Comment
  Solar Access is compliant with the relevant clause requirements. Refer to 'Clause C1.5 Visual Privacy' for further detail in relation to privacy.

- ***Substantial landscaping, a mature tree canopy and an attractive streetscape.***

  Comment
  The proposal includes additional landscaping on site, enhancing the vegetation when compared to the existing situation. The additional landscaped features will aid in the visual reduction of built form. Due to the inclusion of additional landscaping the existing streetscape will be enhanced.

- ***Flexibility in the siting of buildings and access.***

  Comment
  Access has been maintained at an acceptable level. The siting of the buildings have not altered the flexibility of the site.

- ***Vegetation is retained and enhanced to visually reduce the built form.***

  Comment
  As noted above.

- ***A landscaped buffer between commercial and residential zones is achieved.***

  Comment
  The subject site is located in and is surrounded immediately by either environmental protection or residential zones, this outcome does not apply.

Having regard to the above assessment, it is concluded that the outcomes of the clause have been achieved. Therefore, the application is supported on merit in this particular circumstance.

D1.14 Landscaped Area - Environmentally Sensitive Land

Description of Non-compliance
Clause D1.14 requires a site located within Area 2 of the Landscaped Area Map to provide a minimum of 60.0% landscaped open space, equating to 618.42m².

The proposal provides a landscaped area of 49.7% which equates to 512.0m², with a variation of 10.3% or 106.42m² to the requirements of the clause.

Despite the shortfall in landscaping, the proposal provides for an increase when compared to that of the existing landscaped area. This being approximately 35.6% or 367.2m².

The proposal is accompanied by a detailed landscaping plan which has been prepared by a Landscape Designer. This landscaping plan includes various forms of vegetation (i.e. ground covers, shrubbery and native trees). The level of vegetation, in conjunction with the increase in landscaping area is considered acceptable for an irregular shaped and sloped allotment, with the proposed vegetation to aid in visually softening the built form. The building will also present as a building situated within a landscaped setting, when viewed from the street and adjoining properties. The proposal is considered overall to provide an appropriate built form on the site, despite the variation in landscaped area for an R2 Low Density Residential area.

It is also acknowledged that the proposal qualifies for a variation, provided the outcomes of this control are achieved. This includes impervious areas up to 6.0% of the site area. The inclusion of teh variation would increase the landscaped calculation to 55.6% or 573.8m².

Merit Consideration
With regard to the above consideration for a variation, the development is considered against the underlying objectives of the control as follows:

- ***Achieve the desired future character of the Locality.***

Comment
The development is sited well below tree canopy height and will consist of new vegetation to complement the natural environment within the immediate vicinity. The proposal is consistent with the desired future character of the Avalon Beach Locality, in preserving the significance of the surrounding natural environment, by providing additional landscaping areas.

- ***The bulk and scale of the built form is minimised.***

  Comment
  The proposal is accompanied with a high quality Landscape Plan, prepared by a Landscape Designer. The new landscaping includes native trees, screen vegetation and ground cover plants, providing the subject site with landscaped dimension and will act to mitigate any perceivable bulk and scale. Conditions provided by Council's Landscape Officer will also contribute to the reduction in bulk and scale.

- ***A reasonable level of amenity and solar access is provided and maintained.***

  Comment
  The proposal complies with the solar access requirements stipulated within P21DCP. Refer to Clause C1.5 Visual Privacy' for further detail on privacy impacts.

- ***Vegetation is retained and enhanced to visually reduce the built form.***

  Comment
  No trees are to be removed to accommodate the works. Despite the non-compliance, the landscaping will be increased. The additional landscaping elements will aid in visually reducing built form.

- ***Conservation of natural vegetation and biodiversity.***

  Comment
  The proposal has been reviewed by Council's Biodiversity and Landscape Team who are in support, subject to conditions. The proposal will provide for an increase in landscaping, therefore increasing natural vegetation and biodiversity habitat.

- ***Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels.***

  Comment
  Stormwater runoff is not expected to result in any unacceptable impacts to soil erosion and siltation of natural drainage channels, and is supported by both Council's Landscape Officer an Development Engineer, subject to conditions.

- ***To preserve and enhance the rural and bushland character of the area.***

  Comment
  The subject site is located within, and is surrounded by environmental and residential zones, however the proposal has addressed the incorporation of acceptable levels of landscaping. Furthermore, preserving any bushland character present within the Avalon Beach area.

- ***Soft surface is maximised to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management.***

Comment
The dimensions of the proposed landscape open space area is considered reasonable to provide infiltration of water and minimise run off. Council's Development Engineer has reviewed the proposal and is in support, subject to conditions.

Having regard to the above assessment, it is concluded that the outcomes of the clause have been achieved. Therefore, the application is supported on merit in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of $6,550 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $655,000.

CONCLUSION

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

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking to justify a contravention of Clause 4.3 Height of Buildings , has adequately addressed and demonstrated that:

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

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

PLANNING CONCLUSION

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

The application is referred to the Development Determination Panel (DDP) as the proposal results in a variation of more than 10.0% to Clause 4.3 Height of Buildings of the Pit*twater Local Environmental Plan 2014* (PLEP 2014).

The proposed development was notified in accordance with the Northern Beaches Community Participation Plan (CPP) for fourteen (14) days, with no submissions received.

On balance, and considering the preceding detailed assessment of the application, including a detailed analysis of the variation to Clause 4.3 of the PLEP 2014, it is considered that the proposal, subject to recommended conditions will result in a development that is acceptable in design, and not detrimentally impact the character or amenity of the area.

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

REASONS 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 development standard pursuant to clause 4.6 of the PLEP 2014 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2023/1206 for

Alterations and additions to a dwelling house including secondary dwelling on land at Lot 8 DP 232257, 6 Net Road, AVALON BEACH, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

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

Approved Plans				
Plan Number	**Revision Number**	**Plan Title**	**Drawn By**	**Date of Plan**
DA.09	A	Proposed Site/Roof/Analysis Plan	Andy Lehman Design	6 March 2024
DA.10	A	Proposed Lower Ground Floor Plan	Andy Lehman Design	6 March 2024
DA.11	A	Proposed Entry Floor Plan	Andy Lehman Design	6 March 2024
DA.12	A	Proposed Street Elevation	Andy Lehman Design	January 2024
DA.13	A	Proposed North Elevation	Andy Lehman Design	January 2024
DA.14	A	Proposed East Elevation	Andy Lehman Design	January 2024
DA.15	A	Proposed West Elevation	Andy Lehman Design	January 2024
DA.16	A	Proposed Section AA	Andy Lehman Design	January 2024
DA.17	A	Proposed Section BB	Andy Lehman Design	January 2024
DA.18	A	Proposed Section CC	Andy Lehman Design	January 2024
DA.25	A	Proposed Section DD	Andy Lehman Design	January 2024
DA.26	A	Proposed North Elevation @ Retaining Wall	Andy Lehman Design	January 2024
DA.27	A	Driveway Plan & Section 1	Andy Lehman Design	6 March 2024
DA.28	A`	Driveway Plan & Section 2	Andy Lehman Design	6 March 2024

Approved Reports and Documentation			
Document Title	**Version Number**	**Prepared By**	**Date of Document**
BASIX Certificate (No. A498737)	-	Anthony Lehman	28 June 2023
BASIX Certificate (No. 1398068S)	-	Anthony Lehman	28 June 2023
Arboricultural Impact Assessment	-	Treeism Arboricultural Services	May 2023
Geotechnical Investigation (Ref. J4920)	-	White Geotechnical Group	25 May 2023
Bush Fire Assessment Report	-	Bushfire Consultancy Australia	9 May 2023
DA01, DA Landscape Plan, Revision A	-	Volker Klemm Landscape Design	July 2023
DA2023/1206 – 6 Net Road, Avalon Beach Proposed Residential Development *(Traffic Report)* - Ref 23049	-	Terraffic Pty Ltd	5 March 2024

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

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

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

2. **Compliance with Other Department, Authority or Service Requirements**
The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response - OH and UG Cables	13 September 2023

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

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

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

plans/specifications is required prior to the issue of the Construction Certificate);

(c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

(i) showing the name, address and telephone number of the Principal Certifier for the work, and

(ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and

(iii) stating that unauthorised entry to the work site is prohibited.

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

(d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

(i) in the case of work for which a principal contractor is required to be appointed:

A. the name and licence number of the principal contractor, and

B. the name of the insurer by which the work is insured under Part 6 of that Act,

(ii) in the case of work to be done by an owner-builder:

A. the name of the owner-builder, and

B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

(e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

(i) protect and support the adjoining premises from possible damage from the excavation, and

(ii) where necessary, underpin the adjoining premises to prevent any such damage.

(iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

(iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

4. **General Requirements**

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

Demolition and excavation works are restricted to:
- 8.00 am to 5.00 pm Monday to Friday only.

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

(b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.

(c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

(d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

(e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

(f) Prior to the release of the Construction Certificate, payment of the following is required:

i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than $250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.

(g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

(h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's

footpaths, roadways, parks or grass verges without Council Approval.

(i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

(k) Prior to the commencement of any development onsite for:

i) Building/s that are to be erected

ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place

iii) Building/s that are to be demolished

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

v) For any work/s that is to be demolished

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

(l) A “Road Opening Permit” must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

(m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

(n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

(1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools

(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

(2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

(3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a

manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

(4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

5. **Policy Controls**
Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of $6,550.00 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 $655,000.00.

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

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

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

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

6. **Security Bond**

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

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

7. **Footing Design Near Trees to be Retained**
a) footing structural layout plans for the works including the driveway and carport/garage/workshop shall be developed in co-ordination with an Arborist with AQF minimum Level 5 qualifications in arboriculture, and a qualified Structural Engineer, following a non-destructive tree root investigation (if required by the Arborist), complying with clause 3.3.4 of AS 4970-2009 Protection of trees on development sites, near existing tree(s) 12 and 14, to locate critical tree roots and recommend footing design and locations for the construction works.

b) the Arborist shall review, comment, recommend design revision as required and approve the footing layout, to ensure the locations of footings will be manageable in terms of tree protection measures.

c) the Arborist shall submit certification to the Certifier, that the locations of the footings are accepted.

d) the agreed footing structural layout plans shall be submitted to the Certifier for approval prior to the issue of a Construction Certificate.

Reason: Tree protection.

8. **No Clearing of Vegetation**
Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Construction Certificate.

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

Reason: To protect native vegetation.

9. **Stormwater Disposal**
The applicant is to submit Stormwater Engineering Plans for the new development within this development consent in accordance with AS/NZS 3500 and Council's Water Management for Development Policy and generally in accordance with concept plans by Barrenjoey Consulting Engineers, job number 230903, drawing numbers SW1, SW2, SW3, SW4, date undated, 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.

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by Whites Geotechnical Group dated 25/5/2023 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.

11. **Vehicle Crossings Application (Net Road)**

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing 3.0 metres wide in Net Road in accordance with Northern Beaches Council Standard Drawing Normal Low in accordance with Section 138 of the Roads Act 1993. The two existing redundant vehicle crossings in Net Road are to be reinstated to turf.

Note, driveways are to be in plain concrete only.

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

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

Reason: To facilitate suitable vehicular access to private property.

12. **Off Street Parking Design**

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

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

Reason: Compliance with this consent.

13. **Encroachment Application**

The applicant is to submit an Minor Encroachments/ Constructions With Road Reserve Application for approval the proposed landing and stairs in the road reserve in Net Road.

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

A letter from Council indicating this conditions has been satisfied to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Identify the responsibility of the structures on Council road reserve.

14. **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.

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

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

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

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

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

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

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

17. **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.

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

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

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

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

19. **Construction Traffic Management Plan (CTMP)**

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

The CTMP must address following:
- The proposed phases of construction works on the site, and the expected duration of each construction phase.
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken.
- Make provision for all construction materials to be stored on site, at all times.
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period.
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed.
- Where access is required across private property not in the direct ownership of the proponent, such as a private road/driveway, community title road or right of way, the CTMP is to include:
  - Evidence of the legal right and terms to use the access route or provide owners consent from the owners/strata/community association.
  - Demonstrate that direct access from a public space/road is not viable for each stage of works.
  - An assessment to be carried out of the physical constraints of the Right of Carriageway to determine the maximum size of vehicle that may access the site via the Right of Carriageway during construction.
  - Unless owner/strata/community associations consent is obtained, vehicles are not to exceed 24 tonnes or 7.5 metres in length (an assessment must be undertaken that the surface is capable of supporting up to 24 tonnes, otherwise

the weight limit should be reduced in the CTMP). If consent is obtained, a copy must be included in the CTMP.
- No construction vehicles, materials or plant are to be located or parked in the private road/driveway, community title road or right of way.
- How any disruption to other users of the private road/driveway, community title road or right of way will be minimised and all users kept informed of likely disruption where the access will be closed or blocked for any given time.
- If trees are located within or overhang the access route, a tree protection plan prepared by an Arborist with minimum AQF Level 5 in arboriculture demonstrating how any trees within the Right of Carriageway will be protected from damage by construction vehicles. Should any tree protection measures be required on private land in accordance with AS4970-2009 Protection of trees on development sites, owner's consent must be obtained.
- A Dilapidation report, including photographic surveys, of the private road/driveway/right of way must be included prior to any works commencing on the site. The report must detail the physical condition of the private road/driveway/right of way, and any other adjacent private property assets (including trees) or adjacent public property that may be adversely affected by vehicles servicing the development site to undertake works or activity during site works.
- A requirement for Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, to be submitted after the completion of works and prior to the Occupation certificate. The report must:
    - Compare the post-construction report with the pre-construction report,
    - Clearly identify any recent damage or change to the private road/driveway/right of way and whether or not it is likely to be the result of the development works,
    - Should any damage have occurred, identify remediation actions taken.
    - Be submitted to Council with the Occupation Certificate.

- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site.
- Make provision for parking onsite. All Staff and Contractors are to use any basement parking once available.
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior.
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety.
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees.
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours,

crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site.
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site.
- Specify that the public roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council.
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent.
- Proposed protection for Council and adjoining properties.
- The location and operation of any on site crane.

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

20. **Project Arborist**

a) a Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged prior to any commencement of works on site to provide tree protection measures in accordance with AS 4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

b) the Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, and in particular:
i) works and tree protection measures under section 5 Recommendations,
ii) any landscape works in the tree protection zone of trees to be retained.

c) All tree protection measures specified must:
i) be in place before work commences on the site, and
ii) be maintained in good condition during the construction period, and
iii) remain in place for the duration of the construction works.

d) the Project Arborist shall provide certification to the Certifier that all tree protection measures under AS 4970-2009 have been satisfied, and the recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

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

Reason: Tree protection.

21. **Pre-Construction Dilapidation Report**
Dilapidation reports, including photographic surveys, of the below property 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: No. 4 Net Road, Avalon Beach

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

22. **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) 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.

23. **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.

24. **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.

25. **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.

26. **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.

27. **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.

28. **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.

29. **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.

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

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

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

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

32. **Landscape Completion**
a) landscape works are to be implemented in accordance with the approved Landscape Plan(s) (drawing DA01 by Volker Klemm Landscape Design), and inclusive of the following conditions:
i) landscape works are to be contained within the legal property boundaries unless otherwise approved under Minor Encroachments or Section 138 applications,
ii) planting shall be installed as indicated on the approved Landscape Plan(s) unless otherwise imposed by any conditions,

iii) all tree planting shall be a minimum pre-ordered planting size of 75 litres or as otherwise scheduled if greater in size; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth generally, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings or more, at least 1 metre from common boundaries; and located either within garden bed or within a prepared bed within lawn,
iv) mass planting shall be installed at minimum 1 metre intervals (or less) for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,
v) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces,
vi) where the property is certified Bush Fire Prone Land, any new planting may be managed in accordance with Planning for Bushfire Protection 2019.

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

Reason: Environmental amenity.

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

Reason: Tree and vegetation protection.

34. **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.

35. **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.

36. **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.

37. **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.

38. **Certification of Off Street Parking Works**
The Applicant shall submit a certificate from a suitably qualified person certifiying that the parking facility was constructed in accordance within this development consent and the relevant provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical Controls and Section 2.6 Design of Domestic Driveways.

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

Reason: Compliance with this consent.

39. **Geotechnical Certification Prior to Occupation Certificate**
The Applicant is to submit the completed Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) to the Principal Certifier prior to issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

40. **Encroachment**

The applicant is to submit the agreement with Council to the Certifying Authority prior to the issue of the Occupation Certificate

Reason: Identify the responsibility of the structures on Council road reserve

41. **No Impacts to native vegetation within Biodiversity Values Map**
Impacts to any native vegetation within the area mapped as Biodiversity Values Map will require an application for development consent which must be accompanied by a Biodiversity Development Assessment Report prepared by an ecologist accredited in application of the NSW Biodiversity Assessment Method, unless otherwise approved under an existing development consent, Local Land Services Native Vegetation Panel permit, or Threatened Species License.

Compliance is to be confirmed in writing by the Project Ecologist and provided to the Certifier prior to issue of any Occupation Certificate.

Reason: To ensure compliance with the Biodiversity Values Map threshold of the NSW Biodiversity Offsets Scheme

42. **Demolition of kitchen facilities wihtin Rumpus**
The kitchen facilities to the "Rumpus" as noted on the approved plans within the existing lower ground floor is to be demolished.

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

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

43. **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, or other 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.

44. **Protection of Habitat Features**
All natural landscape features, including any rock outcrops, native vegetation, soil and/or watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

45. **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.

46. **No Impacts to native vegetation within Biodiversity Values Map**

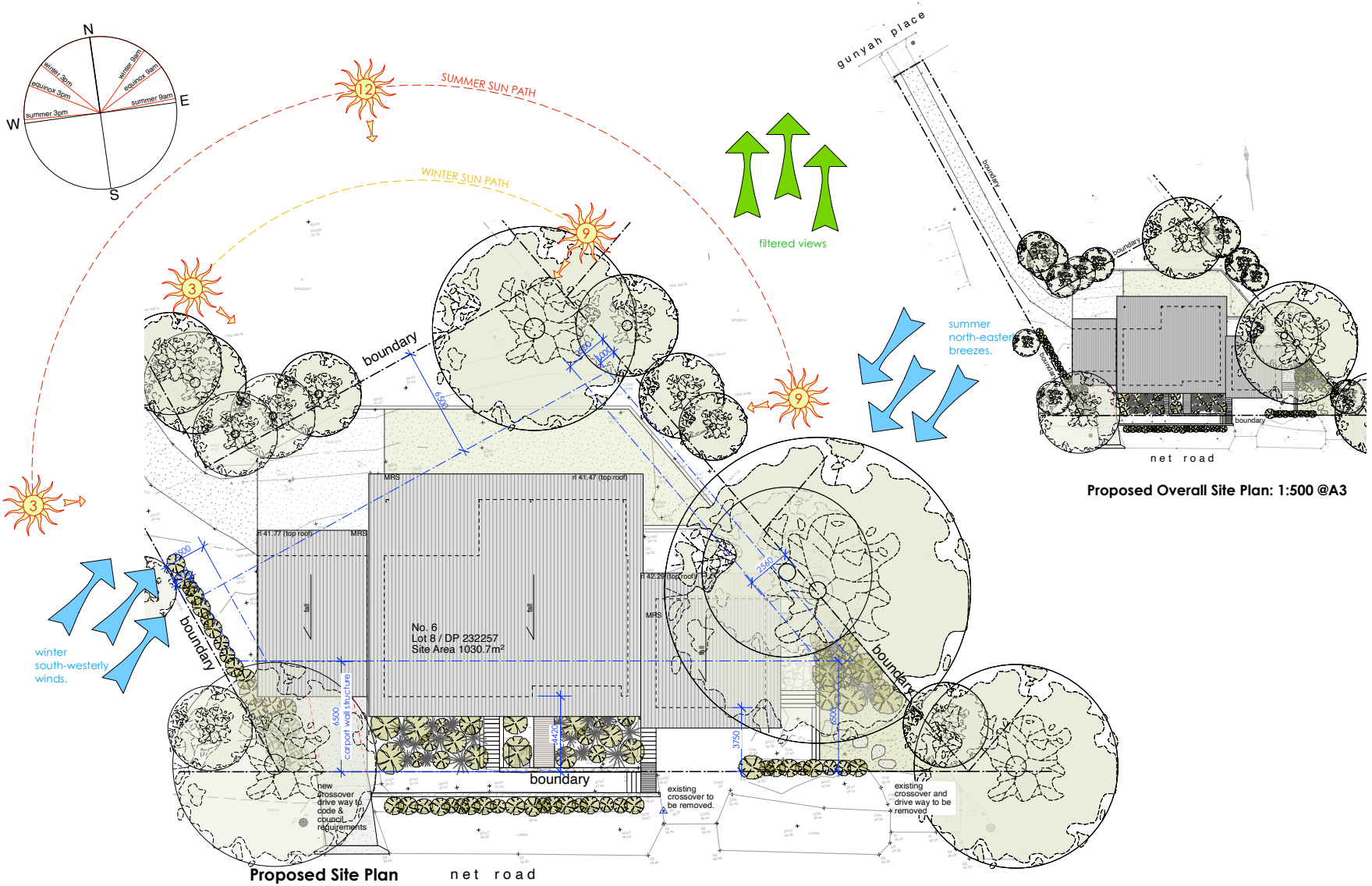
Impacts to any native vegetation within the area mapped as Biodiversity Values Map will require an application for development consent which must be accompanied by a Biodiversity Development Assessment Report prepared by an ecologist accredited in application of the NSW Biodiversity Assessment Method, unless otherwise approved under an existing development consent, Local Land Services Native Vegetation Panel permit, or Threatened Species License.

Compliance is to be confirmed in writing by the Project Ecologist and provided to the Certifier prior to issue of any Occupation Certificate.

Reason: To ensure compliance with the Biodiversity Values Map threshold of the NSW Biodiversity Offsets Scheme

47. **Proposed Lower Ground Floor Plan - No Secondary Dwelling**
The existing lower ground floor is not to be used for the purposes of a secondary dwelling or separate occupancy. Built in cooking facilities are not permitted to be installed.

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



Proposed Site Plan

Proposed Overall Site Plan: 1:500 @A3

Note:
All footings, slabs, structural beams, etc, to future engineers details.
All wall/roof connections + member sizes to NCC & future engineers details.
Rainwater from gutters to connect to stormwater system to relevant Building Codes, Council requirements.
All wastewater/sewage to connect to existing sewer system to all relevant NCC, Building Codes + Council requirements.
All materials to comply with BAL12.5 requirements.
All works to comply with all relevant NCC, Building Codes + Council requirements.

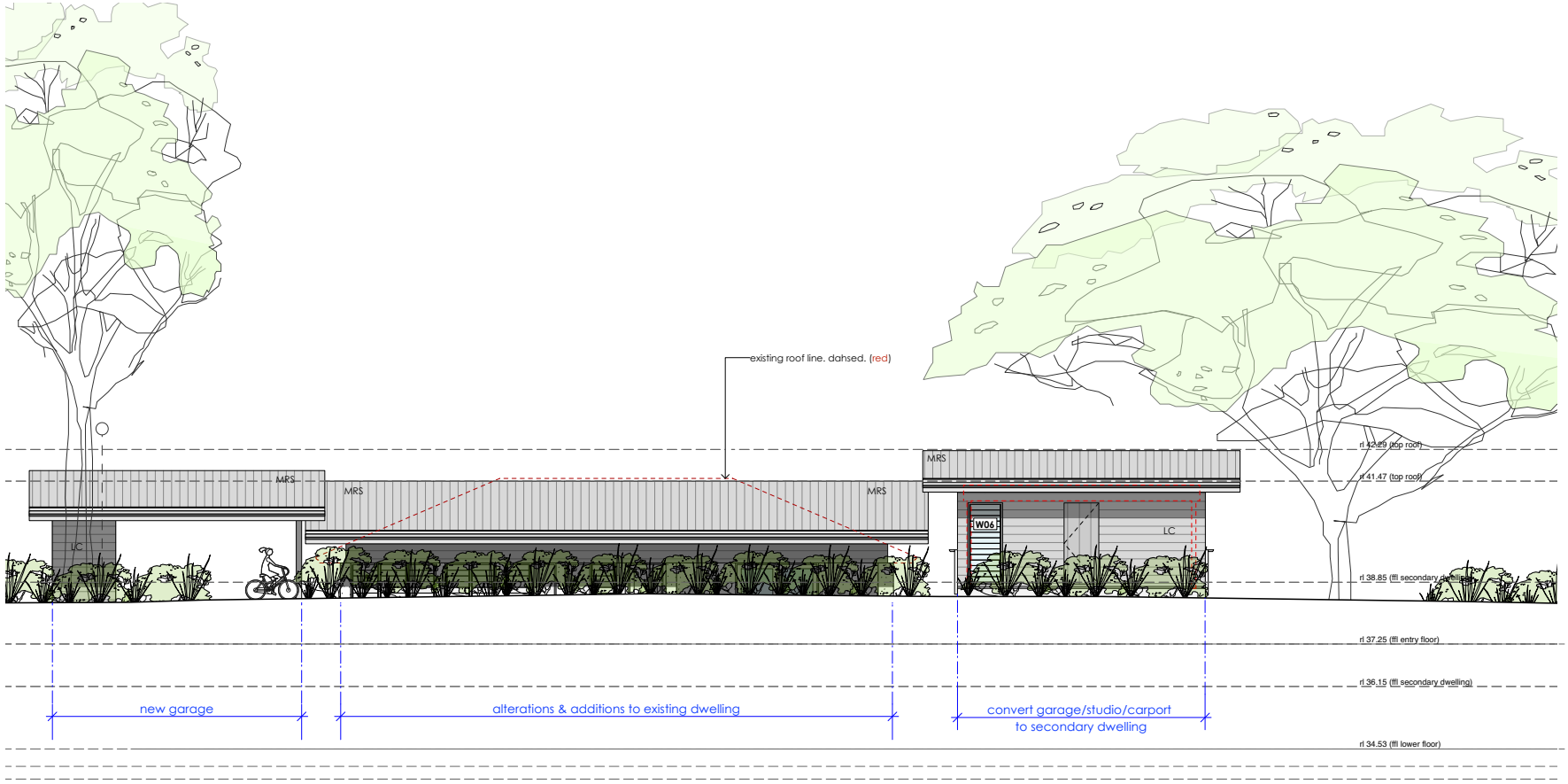
MATERIALS:

BAL	BALUSTRADE
CONC.	CONCRETE
COS	CONFIRM ON SITE
DP	DOWNPIPE
FG	FIXED GLAZING
HWD	HARDWOOD
LC	LIGHTWEIGHT CLADDING
M	MASONRY
MRS	METAL ROOF SHEETING
NGL	NATURAL GROUND LEVEL

EXISTING WALL
TO BE REMOVED
NEW WALL

Daniel & Mel Mussett
6 Net Road Avalon Beach NSW 2107 LOT 8 DP 232257, Site Area 1030.7m²

PROJECT	Alterations & Additions	ANDY LEHMAN DESIGN	DA. 09
DRAWING	**Proposed Site/Roof/Analysis Plan**	DWG. NO.	
		SCALE	1:200@A3
NOTES	Please print in A3 or A1. This drawing is copyright and is for Development Application purposes only. Do not measure off drawings.	Tel. 0414 466 665 Email: andy@andylehman.com.au **If in doubt ask.**	DATE: 6th March 2024 ISSUE: A



Proposed Street Elevation

Note:
All footings, slabs, structural beams, etc, to future engineers details.
All wall/roof connections + member sizes to NCC & future engineers details.
Rainwater from gutters to connect to stormwater system to relevant Building Codes, Council requirements.
All wastewater/sewage to connect to existing sewer system to all relevant NCC, Building Codes + Council requirements.
All materials to comply with BAL12.5 requirements.
All works to comply with all relevant NCC, Building Codes + Council requirements.

MATERIALS:
BAL BALUSTRADE
CONC. CONCRETE
COS CONFIRM ON SITE
DP DOWNPIPE
FG FIXED GLAZING
HWD HARDWOOD
LC LIGHTWEIGHT CLADDING
M MASONRY
MRS METAL ROOF SHEETING
NGL NATURAL GROUND LEVEL

EXISTING WALL
TO BE REMOVED
NEW WALL

Daniel & Mel Mussett
6 Net Road Avalon Beach NSW 2107 LOT 8 DP 232257, Site Area 1030.7m²

PROJECT: Alterations & Additions
DRAWING: **Proposed Street Elevation**
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ANDY LEHMAN DESIGN
Tel. 0414 466 665
Email: andy@andylehman.com.au

DWG. NO. DA. 12
SCALE 1:100@A3
DATE Jan 2024
ISSUE A



Proposed North Elevation

Note:
All footings, slabs, structural beams, etc, to future engineers details.
All wall/roof connections + member sizes to NCC & future engineers details.
Rainwater from gutters to connect to stormwater system to relevant Building Codes, Council requirements.
All wastewater/sewage to connect to existing sewer system to all relevant NCC, Building Codes + Council requirements.
All materials to comply with BAL12.5 requirements.
All works to comply with all relevant NCC, Building Codes + Council requirements.

MATERIALS:
BAL BALUSTRADE
CONC. CONCRETE
COS CONFIRM ON SITE
DP DOWNPIPE
FG FIXED GLAZING
HWD HARDWOOD
LC LIGHTWEIGHT CLADDING
M MASONRY
MRS METAL ROOF SHEETING
NGL NATURAL GROUND LEVEL

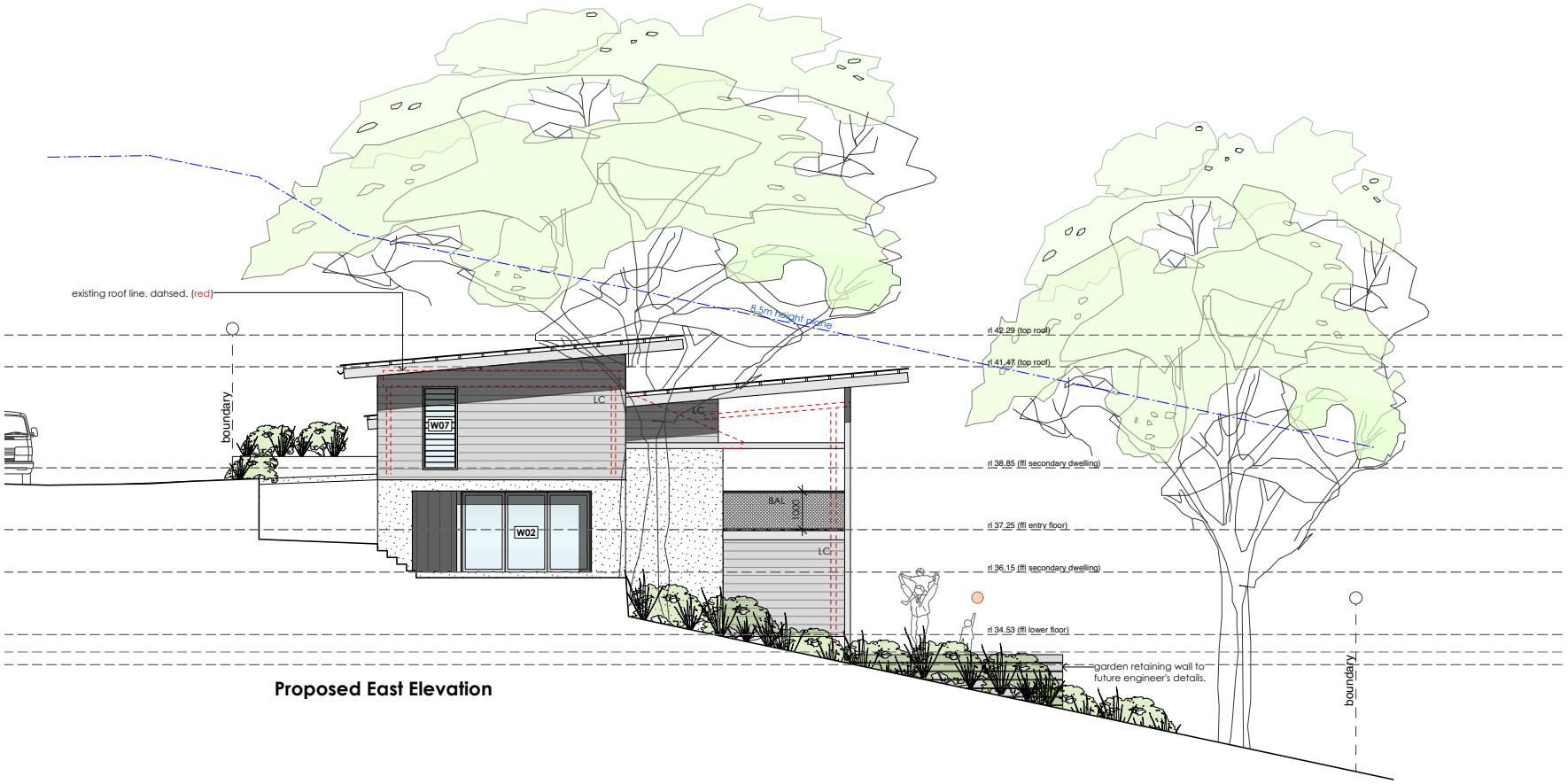
EXISTING WALL
TO BE REMOVED
NEW WALL

Daniel & Mel Mussett
6 Net Road Avalon Beach NSW 2107 LOT 8 DP 232257, Site Area 1030.7m²

PROJECT: Alterations & Additions
DRAWING: **Proposed North Elevation**
NOTES: Please print in A3 or A1. This drawing is copyright and is for Development Application purposes only. Do not measure off drawings. **If in doubt ask.**

ANDY LEHMAN DESIGN
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DWG. NO. DA. 13
SCALE 1:100@A3
DATE Jan 2024
ISSUE A



Proposed East Elevation

Note:
All footings, slabs, structural beams, etc, to future engineers details.
All wall/roof connections + member sizes to NCC & future engineers details.
Rainwater from gutters to connect to stormwater system to relevant Building Codes, Council requirements.
All wastewater/sewage to connect to existing sewer system to all relevant NCC, Building Codes + Council requirements.
All materials to comply with BAL12.5 requirements.
All works to comply with all relevant NCC, Building Codes + Council requirements.

MATERIALS:

BAL	BALUSTRADE
CONC.	CONCRETE
COS	CONFIRM ON SITE
DP	DOWNPIPE
FG	FIXED GLAZING
HWD	HARDWOOD
LC	LIGHTWEIGHT CLADDING
M	MASONRY
MRS	METAL ROOF SHEETING
NGL	NATURAL GROUND LEVEL

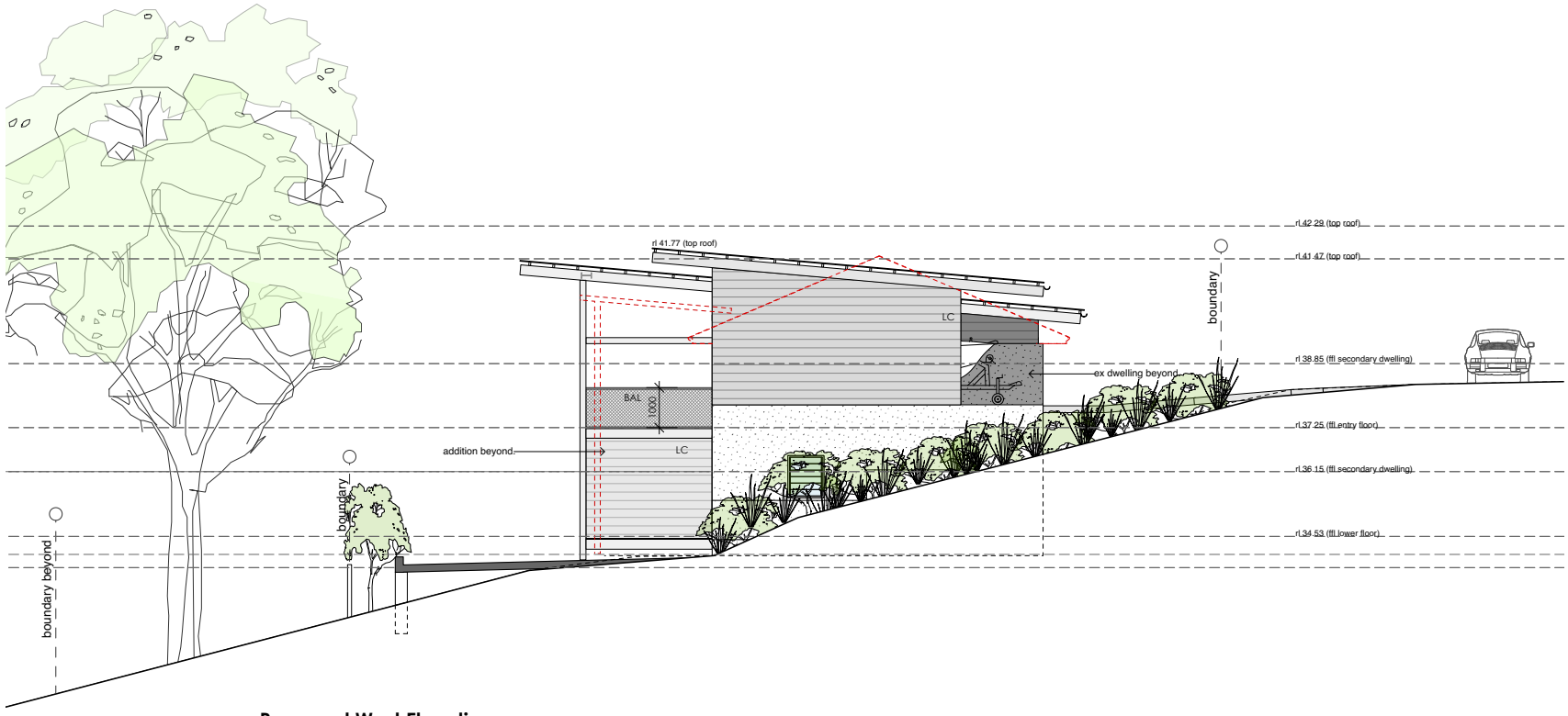
EXISTING WALL
TO BE REMOVED
NEW WALL

Daniel & Mel Mussett
6 Net Road Avalon Beach NSW 2107 LOT 8 DP 232257, Site Area 1030.7m²

PROJECT: Alterations & Additions
DRAWING: **Proposed East Elevation**
NOTES: Please print in A3 or A1. This drawing is copyright and is for Development Application purposes only. Do not measure off drawings.

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DWG. NO. DA. **14**
SCALE **1:100@A3**
DATE Jan 2024
ISSUE A



Proposed West Elevation

Note:
All footings, slabs, structural beams, etc, to future engineers details.
All wall/roof connections + member sizes to NCC & future engineers details.
Rainwater from gutters to connect to stormwater system to relevant Building Codes, Council requirements.
All wastewater/sewage to connect to existing sewer system to all relevant NCC, Building Codes + Council requirements.
All materials to comply with BAL12.5 requirements.
All works to comply with all relevant NCC, Building Codes + Council requirements.

MATERIALS:

BAL	BALUSTRADE
CONC.	CONCRETE
COS	CONFIRM ON SITE
DP	DOWNPIPE
FG	FIXED GLAZING
HWD	HARDWOOD
LC	LIGHTWEIGHT CLADDING
M	MASONRY
MRS	METAL ROOF SHEETING
NGL	NATURAL GROUND LEVEL

EXISTING WALL
TO BE REMOVED
NEW WALL

Daniel & Mel Mussett
6 Net Road Avalon Beach NSW 2107 LOT 8 DP 232257, Site Area 1030.7m²

PROJECT: Alterations & Additions
DRAWING: **Proposed West Elevation**
NOTES: Please print in A3 or A1. This drawing is copyright and is for Development Application purposes only. Do not measure off drawings.

ANDY LEHMAN DESIGN
Tel. 0414 466 665
Email: andy@andylehman.com.au
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SCALE 1:100@A3
DATE Jan 2024
ISSUE A

3BF TOWN PLANNERS

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

1.0 Introduction

This clause 4.6 variation with regard to 6 Net Road, Avalon 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 Pittwater Local Environmental Plan 2013 ("PLEP")

2.1 Clause 4.3 - Height of buildings

Pursuant to Clause 4.3 of Pittwater Local Environmental Plan 2013 (PLEP) the height of a building on the subject land is not to exceed 8.5 metres in height. The objectives of this control are as follows:

(a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,

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

(c) to minimise any overshadowing of neighbouring properties,

(d) to allow for the reasonable sharing of views,

(e) to encourage buildings that are designed to respond sensitively to the natural topography,

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

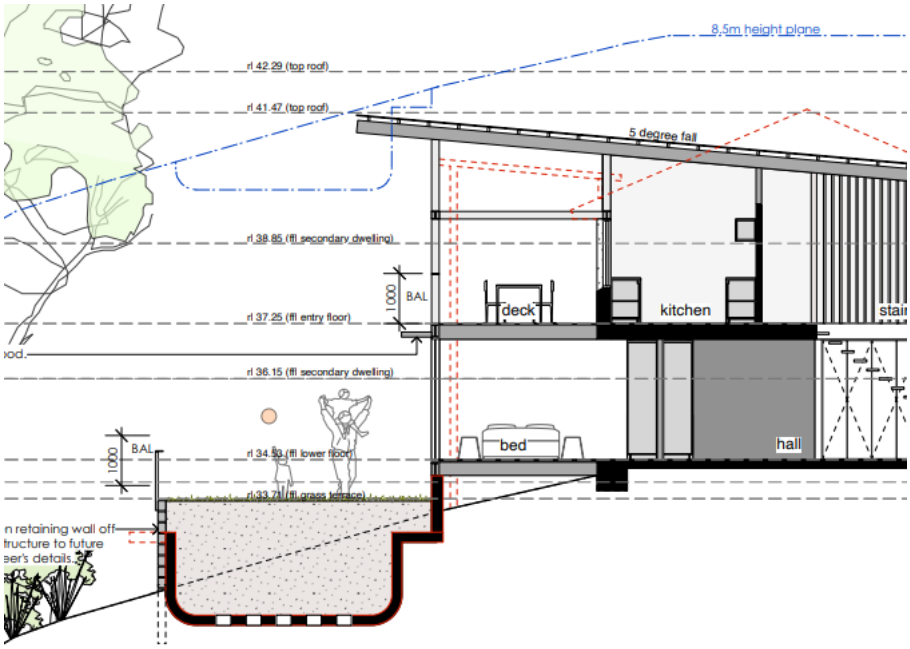
Building height is defined as follows:

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.

The proposed works in relation to the eaves of the dwelling extend above the 8.5m by 1.5m to a height of 10m. This represents a non-compliance of 17.65%. The non-compliance is considered to be a technical non-compliance due to existing ground level required to be taken from the existing excavated pool. The pool is proposed to be filled and converted to a grassed terrace. The section below details the non-compliance.



Proposed Section AA

Image 1: Section showing the eaves encroaching above the 8.5m

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of PLEP provides:

(1) The objectives of this clause are:

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

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

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

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

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

Clause 4.6(2) of PLEP 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 PLEP provides:

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

The proposed development does not comply with the height of buildings provision at 4.3 of PLEP 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 PLEP provides:

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

2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:

(a) compliance is unreasonable or unnecessary; and

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

3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.3 and the objectives for development for in the zone?

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

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

4.0 Request for variation

4.1 Is clause 4.3 of PLEP a development standard?

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

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

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

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

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

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

Consistency with objectives of the height of buildings standard

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

(a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,

Response: The dwelling will present as single storey to the street and consistent with the height and scale of development in the locality. The dwelling will sit comfortably below the 8.5m height control at the front of the dwelling where it adjoins the street.

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

Response: The works are compatible with surrounding development with regard to height and scale. The non-compliance is due to existing ground level being taken from the existing excavated pool which will be filled in. When filled the dwelling will sit below the 8.5m height limit. A 2 storey built form is achieved which is consistent with surrounding development.

(c) to minimise any overshadowing of neighbouring properties,

Response: Shadow diagrams have been provided that demonstrate compliant levels of solar access are achieved to neighbouring dwellings.

(d) to allow for the reasonable sharing of views,

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

(e) *to encourage buildings that are designed to respond sensitively to the natural topography,*

Response: The dwelling responds to the topography with the breach a result of existing modified topography with regard to the pool excavation.

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

Response: N/A

The non-compliant component of the development, as it relates to building height, demonstrates consistency with objectives of the R2 low density residential zone and the height of building standard objectives. Adopting the first option in *Wehbe* strict compliance with the height of buildings standard has been demonstrated to be is unreasonable and unnecessary.

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

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

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

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

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

Sufficient environmental planning grounds exist to justify the height of buildings variation which include:

- When extrapolating an 8.5m height plane from surveyed natural ground levels the dwelling is compliant with the 8.5m height control.

- The non-compliance is due to existing ground level being taken from the existing swimming pool which is proposed to be filled and converted to a grassed terrace. The ground level will therefore be modified to be increased in height. When measured from the proposed level of the grassed terrace the height to the top of the roof will be 7.76m.

- The works do not give rise to any unreasonable amenity impacts with regard to views, overshadowing or privacy. The works present a 2 storey built form that is consistent with the scale of development in the area and the low density residential zone.

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

- The proposal promotes the orderly and economic use and development of land (1.3(c)).

- The development represents good design (1.3(g)).

- The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (1.3(h)).

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

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

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

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

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

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

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

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

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

4.4 Secretary's concurrence

By Planning Circular dated 5 May 2020, the Secretary of the Department of Planning & Environment advised that consent authorities can assume the concurrence to clause 4.6 request except in the circumstances set out below:

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

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

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

5.0 Conclusion

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

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

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

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

Yours Sincerely



William Fleming
BS, MPLAN
Boston Blyth Fleming Pty Ltd
Director

ITEM 3.3 DA2023/1583 - 38 FRANCIS STREET FAIRLIGHT - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE

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

That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

2.
THAT Council as the consent authority **approves** Development Consent to DA2023/1583 for demolition works and construction of a dwelling house on land at Lot 18 DP 978391, 38 Francis Street FAIRLIGHT, subject to the conditions set out in the Assessment Report.

REPORTING MANAGER	
TRIM FILE REF	2024/199200
ATTACHMENTS	⇩1 Assessment Report ⇩2 Site Plan and Elevations ⇩3 Clause 4.6

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/1583

Responsible Officer:	Megan Surtees
Land to be developed (Address):	Lot 18 DP 978391, 38 Francis Street FAIRLIGHT NSW 2094
Proposed Development:	Demolition works and construction of a dwelling house
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Tanya Martha Schindler
Applicant:	Abigail Larkin Architects Pty Ltd

Application Lodged:	03/11/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	10/11/2023 to 24/11/2023
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	4.3 Height of buildings: 17.6%
Recommendation:	Approval

Estimated Cost of Works:	$ 937,800.00

EXECUTIVE SUMMARY

This development application seeks consent for demolition of the existing structures on site and construction of a dwelling house.

The application is referred to the Development Determination Panel (DDP) as the proposed maximum height exceeds a 10% variation to the requirements of Clause 4.3 of the Manly Local Environmental Plan 2013 (MLEP 2013).The height variation is supported by a written Clause 4.6 variation request for the non-compliance with height standard which arises from the site being partially excavated, creating a 17.6% variation for a section of the roof form located centrally to the subject site. The remainder of the building is under the 8.5m height.

During the notification period, 2 submissions were received. The issues identified in the submissions predominantly relate to privacy (acoustic and visual), view sharing, and impacts upon the existing retaining wall.

Matters identified within the assessment include Clause 4.6 Exceptions to development standards of the MLEP 2013, and 3.4.1 Sunlight Access and Overshadowing, 3.4.2 Privacy and Security, 3.4.3 Maintenance of Views, 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height), 4.1.4 Setbacks (front, side and rear) and Building Separation, 4.1.5 Open Space and Landscaping.

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 consent for demolition works and construction of a new two (2) and three (3) storey residential dwelling, comprising the following works:

Lower ground floor RL36.69

- Two (2) vehicle garage with bin storage area
- Storeroom
- Workshop
- Internal staircase to upper level
- Two (2) external staircases. One to the rear yard along the northern elevation, and the other from the driveway to the entryway at ground floor level along the southern elevation

Ground floor RL39.27

- Entry foyer with mud cupboard
- Laundry
- Open plan kitchen, dining and living areas
- Deck with vergola located off dining and living areas
- Study
- Bedroom 3 with en-suite and walk-in robe and access to front verandah

First floor RL42.27

- Bedroom 2
- Main bathroom
- Laundry chute
- Lounge area
- Master bedroom with walk-in robe and en-suite and access to balcony (4.4m^2 area) along the northern elevation

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
Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
Manly Development Control Plan - 3.4.2 Privacy and Security
Manly Development Control Plan - 3.4.3 Maintenance of Views
Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
Manly Development Control Plan - 4.1.5 Open Space and Landscaping

SITE DESCRIPTION

Property Description:	Lot 18 DP 978391 , 38 Francis Street FAIRLIGHT NSW 2094
Detailed Site Description:	The subject site consists of one (1) allotment located on the eastern side of Francis Street. The site is regular in shape with a frontage of 12.19m along Francis Street and a depth of 32.155m. The site has a surveyed area of 392.0m². The site is located within the R1 General Residential zone within the *Manly Local Environmental Plan 2013 (MLEP 2013)* and accommodates a one (1) and two (2) residential dwelling within a landscaped setting. The site has a westerly orientation and is located on a slope of approximately 3.53 metres (or 12.2%), falling from the rear south-eastern corner toward the front north-western corner. The site is not known to have any threatened species.

	Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by residential developments, ranging in height from one (1) to three (3) storeys within landscaped settings.

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:

- **DA265/09**. This development application sought consent for alterations and additions to a residential dwelling. This application was approved, subject to conditions, 16 November 2009.

APPLICATION HISTORY

Additional information was requested in relation to the proposed built form and concerns raised by Council's Landscape Officer. This information was detailed within a Request for Further Information (RFI) letter. The RFI was sent to the Applicant via email and the NSW Planning Portal on 16 January 2024. Amended plans and additional documentation was provided to Council, via the NSW Planning Portal, on 28 January 2024. The amendments show a reduced built form and, in accordance with Council's Community Participation Plan, re-notification is not required. Upon review of the assessment report, the Applicant was requested to provide an updated written Clause 4.6 Exception to development standard to show that compliance with the maximum building height requirement of Clause 4.3 is both unreasonable and unnecessary. This information was requested on 8 March 2024 and provided to Council on 18 March 2024. The amendments to the Clause 4.6 did not require re-notification, in accordance with Council's CPP.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, 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. Clause 29 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. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to the proposed built form and concerns raised by Council's Landscape Officer. This information was detailed within a Request for Further Information (RFI) letter. The RFI was sent to the Applicant via email and the NSW Planning Portal on 16 January 2024. Amended plans and additional documentation was provided to Council, via the NSW Planning Portal, on 28 January 2024. The amendments show a reduced built form and, in accordance with Council's Community Participation Plan, re-notification is not required. Upon review of the assessment report, the Applicant was requested to provide an updated written Clause 4.6 Exception to development standard to show that compliance with the maximum building height requirement of Clause 4.3 is both unreasonable and unnecessary. This information was requested on 8 March 2024 and provided to Council on 18 March 2024. The amendments to the Clause 4.6 did not require re-notification, in accordance with Council's CPP. Clause 61 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. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 10/11/2023 to 24/11/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Mr Woon Juen Yee	34 Francis Street FAIRLIGHT NSW 2094
Claire Elizabeth Rogers	40 Francis Street FAIRLIGHT NSW 2094

The following issues were raised in the submissions:

- Privacy (both visual and acoustic)
- View loss
- Retaining wall

The above issues are addressed as follows:

- **Privacy (both visual and acoustic)**

  The submissions raised concerns that the proposed windows and balcony along the northern elevation of the proposed development will cause unreasonable visual and acoustic privacy for the occupants of 40 Francis Street.

  Comment:

  The proposed development has been assessed against the requirements and outcomes of 3.4.2 Privacy and Security as stipulated within the Manly Development Control Plan (MDCP). This assessment, within this report, found that the proposed development results in a reasonable level of privacy between the subject site and 40 Francis Street.

  This issue does **not** warrant reason for refusal of this application.

- **View Loss**

  The submissions raised concerns that the proposed maximum ridge line would exceed that of 36 Francis Street. The submission requested the proposal be amended to reduce the maximum ridge line to align with the maximum ridge line of 36 Francis Street to preserve views currently obtained by the occupants of 34 Francis Street.

  Comment:

  Amended plans were provided to Council which reduced the overall height of the proposed dwelling. The proposed maximum ridge line now aligns with the maximum ridge line of 36 Francis Street. In this instance, there are no view loss concerns. Notwithstanding, a view sharing assessment in accordance with *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140 has been undertaken within this assessment report under section 3.4.3 Maintenance of Views.

This issue does **not** warrant reason for refusal of this application.

- **Retaining wall**

  The submissions raised concerns that, due to the state of deterioration of the subject site, the existing retaining wall along the northern boundary is in poor shape and has been impacted by existing trees. The submission raised concern that the proposed excavation works will cause further impact to the existing retaining wall. The submission requests that Council ensures appropriate supports are put in place to ensure no damage to the existing retaining wall.

  Comment:

  Based on the information Council has before it, it appears the retaining wall in question is located within the property boundaries of 40 Francis Street (as indicated on the survey provided for DA0018/2015). Notwithstanding, two (2) conditions will be recommended within this report to ensure pre and post dilapidation reports are prepared for 40 Francis Street. If there is any damage to the retaining wall in question, this is a civil matter to be addressed between the property owners of 38 Francis Street and 40 Francis Street.

  This issue does **not** warrant reason for refusal of this application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	***Supported, subject to conditions*** The proposal is supported with regard to landscape issues. Additional Information Comment 30/01/24: The amended plans are noted. The Landscape Plan shows the retention of the existing garden edging/low retaining wall which will mean excavation is not required in the tree protection zone of the neighbouring tree. No impact to the neighbouring trees or vegetation is foreseen. One locally native tree shall be installed within the property boundaries to help satisfy the Manly DCP. This native tree shall be installed in accordance with the requirements outlined in the conditions of consent. Original Comment Summary: Excavation was proposed in the rear setback within 5 metres of the neighbouring trees and as such an Arboricultural Impact Assessment was requested.
NECC (Development Engineering)	***Supported, subject to conditions*** The proposed development is in Zone 1 of Region 3. A geotechnical report has been provided. Vehicle crossing construction is proposed. I have no objections to the proposed development.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (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 (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No. 1421325S, dated 28

September 2023).

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	10.0m	17.6%	No
Floor Space Ratio	FSR: 0.6:1 (235.2m^2)	FSR: 0.51:1 (202.6m^2)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes

Clause	Compliance with Requirements
6.8 Landslide risk	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	10.0m
Percentage variation to requirement:	17.6%

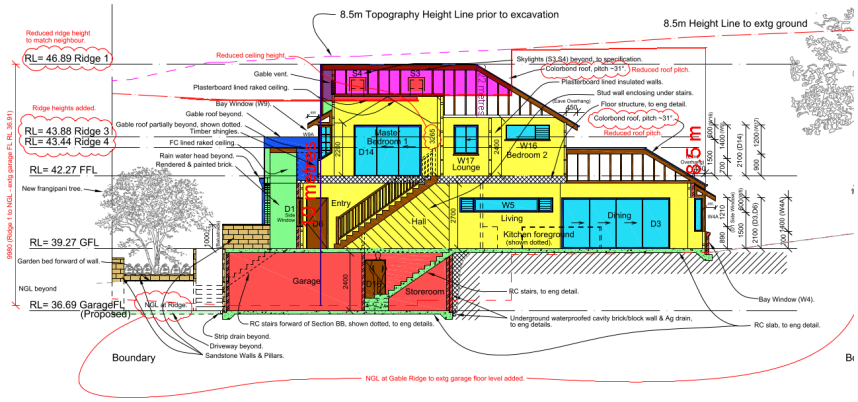


Figure 1. Proposed maximum building height breach (extent of breach indicated by pink shading).

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

excluded from the operation of this clause.

Comment:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)
The objects of this Act are as follows:
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
(c) to promote the orderly and economic use and development of land,
(d) to promote the delivery and maintenance of affordable housing,
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
(g) to promote good design and amenity of the built environment,
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
(j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicants written request argues, in part:

- *'The development proposal has been designed in accordance with the existing 'natural' ground levels across the site that have existed prior to the excavation and construction of the existing dwelling. The historically excavated driveway and garage of the existing dwelling creates an anomaly in the height plane overlaid above the site which does not reflect the true topography of the site prior to development.*
- *The technical measurement of building height for the purpose of Clause 4.3 of the LEP is from the existing ground level, being the excavated ground level beneath the driveway and garage to the highest point of the building. The proposed building exceeds the height of building development standard only in those locations where there has been historical excavation.*
- *The proposed development achieves the objectives of Clause 4.3(1) of the Manly LEP 2013 based on the following assessment:*
  - The subject site is located within the R1 – General Residential Zone and has been designed to wholly comply with the 8.5m height of buildings development standard but for the artificial topographical anomaly. The variation to the standard is the result of the historically excavated driveway and garage of the existing dwelling creating an anomaly in the height plane overlaid above the site.The development proposal has been designed with a stepped roof form with the upper ridge of the development positioned to align with the ridge height of 36 Francis Street, Fairlight facilitating a stepped built form across the streetscape as the slope falls from south to north along Francis Street.
  - Objective (b) is met by the standard itself. The objective is not an end in itself see Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61 at [49]. There is no

need to demonstrate that this objective is met because this standard achieves the objective and clause 4.6 of the allows a variation in appropriate circumstances. Regardless, the development proposal has been designed to wholly comply with the 8.5m height limit albeit the portion of the building which technically varies the standard due to the historically excavated levels on the site.

- There are no significant view corridors from the road reserve across the subject site, notwithstanding the existing subject site currently contains an existing dwelling house and the development proposal is for a new dwelling house that is consistent with the bulk and scale envisaged for the R1 - General Residential Zone.

- The development proposal has been designed to wholly comply with the height of buildings development standard with the portion of the building technically varying the standard a result of historical excavation on the site and an anomaly in the natural topography rather than additional building height. The ridge of the development has been designed to align with the ridge of 36 Francis Street at RL46.89 to ensure that side windows of 34 Francis Street which benefit from an outlook over the subject site will not be impacted by the development proposal. The additional building height does not correlate with a taller building but rather an anomaly within the existing topography on the site.

- The additional building height is the result of a historically excavated lower ground level rather than the ridge height of the development. As addressed in the shadow diagrams submitted with the development application the first floor addition has been located on the site to maximise the solar access to adjoining residences. The principle private open space of the subject site maintains sunlight for approximately 4 hours at mid-winter achieving the solar access controls. The principle living room associated with number 36 Francis Street maintains sunlight access from 11.00am – 3.00pm being 4 hours which meets solar access controls. The rear window of number 36 Francis Street will maintain sunlight for 2 hours, being a good design outcome for these east-west oriented allotments.

- *In line with the decisions in Wehbe v Pittwater Council [2007] NSWLEC 827, the proposal meets the first test as the objectives of the development standard are achieved notwithstanding the non-compliance with the standard.*

  Furthermore it is unreasonable to require compliance with the height of building development standard due to the following reasons:

  - The development proposal has been designed in accordance with the existing "natural" ground levels across the site that existed prior to the excavation and construction of the existing building. The historically excavated driveway and garage of the existing dwelling, creates an anomaly in the height plane overlaid above the site which does not reflect the topography of the site prior to its development. The technical measurement of building height for the purposes of clause 4.3 of the LEP is from the existing ground level, being the excavated ground level beneath the driveway and garage, to the highest point of the building. The proposed building height exceeds the height of buildings development standard only in those locations where there has been historical excavation. Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582.

  - The portions of the building which vary the height standard do not preclude the development proposal from achieving the objectives of the standard. The upper ridge of the development proposal presents a consistent building height with 36 Francis Street maintaining a stepped building presentation to the street as the street slopes from the south to the north. The development proposal will not set a precedent for increased densities within the locality beyond that envisaged for the R1 – General Residential Zone.

  - The public benefit of maintaining the development standard is not considered significant because the development proposal has been designed to align with the 8.5m height limit. The portions of the building which vary the development standard are specific to the site circumstances being the existing excavated lower ground level.

  - The development proposal is in the public interest because it is consistent with the objectives

of the standard and the objectives of the R1 – General Residential Zone which are addressed with the Statement of Environmental Effects submitted with the development application.

- *There are sufficient environmental planning grounds to justify contravening the development standard. Pursuant to clause 4.6(3)(b) of the LEP, there are sufficient environmental planning grounds to justify the variation to the height of buildings development standard because:*
  - The variation to the 8.5m height standard under the LEP is the result of the historically excavated driveway and garage of the existing dwelling. The historical excavation creates an anomaly in the height plane overlaid above the site and does not reflect the topography of the site prior to its development. Disregarding the anomaly, the proposal is within 8.5m above the natural topography of the site. The historical excavation is a recognised environmental planning ground. Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582.
  - There are no adverse amenity impacts arising from the breach of the height of buildings development standard (with regard to overshadowing, visual privacy, view loss). Noting the variation is a result of a historically lower excavated ground level rather than building height. The lack of adverse amenity impacts arising from a variation is a recognised environmental planning ground. Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7 at 34.
  - The development proposal has been designed consistent with the intent of the height standard being a two storey form. The development is compatible with the scale of residential development within the R1 – General Residential Zone and aligns with the character of development within the vicinity of the site fronting Francis Street. The pitch of the roof form has been designed to be compatible with the established architecture within the vicinity of the site.
- *The proposed development meets the relevant aims of the MLEP 2013 as follows:*
  - 1.2(2)(a)(i) – The development proposal has been designed to wholly comply with the 8.5m height limit. The roof form includes an upper and a lower ridge, stepping with the topography of the site. The upper ridge height of the development aligns with the ridge of 36 Francis Street ensuring the proposal presents a stepped built form. The roof pitch of the development has been designed to align with the pitch of roofs in the vicinity of the site ensuring the dwelling presents a good streetscape outcome for the site.
  - 1.2(2)(a)(iv) – The portion of the building which varies the height limit is a result of an anomaly in the natural ground line as it is overlaid over the site. The proposed development has been designed to comply with an extrapolated ground line being an appropriate design response ensuring the building is comfortably positioned on the site with regard to the existing topography and its relationship with adjoining residential buildings. The front and rear setbacks of the development proposal have been positioned on site to maximise solar access of the adjoining dwelling to the south and whilst also preserving the outlook of 34 Francis Street which overlooks the subject site.
  - 1.2(2)(b) – The development proposal accommodates an appropriate residential density on the site within a form compatible with the planning controls. The dwelling has been designed with a considered architectural approach that aligns with streetscape precedence, and proposed landscape works will ensure that the dwelling is viewed within a landscape setting.
- *The proposed development meets the relevant objects of the Environmental Planning Assessment Act 1979 as follows;*
  - 1.3(c) – The development proposal is an orderly and economic use of the site being the redevelopment of a residential dwelling to a form consistent with that envisaged by the planning controls. This Clause 4.6 request addresses an existing anomaly on the site – excavated garage being an appropriate environmental planning ground to warrant a variation to the 8.5m height standard which is otherwise wholly met by the development proposal.
  - 1.3(g) - The dwelling house has been designed to wholly comply with the 8.5m height limit albeit the component which technically varies the standard resulting from the historically excavated levels. The ridge height and roof pitch has been designed to align with that of the adjoining development and present appropriately to the public domain.
  - 1.3(h) – The variation to the height of buildings development standard is the result of the existing excavated levels creating an anomaly within the natural ground line over the site. The

variation to the height of buildings development standard will not present as additional building height however will accommodate a built form on the site that appropriately relates to the natural ground levels across the site and adjoining development.

It is considered the Applicant's written request to vary development standard Clause 4.3 Height of Buildings of the *Manly Local Environmental Plan 2013* (MLEP 2013) is acceptable given the proposed resultant built form will be commensurate with surrounding and nearby residential developments, the extent of previous excavation on the site which has altered the existing ground level. Thus establishing site constraints that make strict compliance with this requirement difficult. The site experiences a cross fall from the southern side boundary toward the northern side boundary. However, as indicated in Figure 1 above, the extent of breach is sited centrally to the proposed dwelling and only to the roof form, with the remainder of the built form sited comfortably beneath the 8.5 metre maximum height development standard.

Based on the existing excavation of the site, the maximum building height has been measured in accordance with *Merman Investments Pty Ltd Woollahra v Municipal Council [2021] NSWLEC 1582*, which is to the existing ground level. However, from an extrapolated measurement, as done within *Bettar v Council of City of Sydney [2014] NSWLEC 1070*, the proposed development would achieve compliance with the requirement prescribed within Clause 4.3. The existing excavation is a sufficient environmental planning ground to warrant contravention of this development standard.

Amended plans were received which reduced the maximum ridge height from RL47.27 to RL46.89 to align with the maximum ridge line of 36 Francis Street. The amendments reduced the built form, yet did not eliminate the height breach (as a result of the existing ground level). Notwithstanding the numerical noncompliance, the building mass of the proposed dwelling will achieve compatibility and consistency with the building bulk of adjoining properties along Francis Street. 34 Francis Street, which is also up-hill of the subject site, is a three (3) storey dwelling. In this instance, the proposed development will be commensurate with the built form of dwellings along the eastern side of Francis Street. Furthermore, the front setback distance of the first floor level is 8.7 metres, which far exceeds the required minimum 6.0 metres (or prevailing front building line). The first floor level is recessed along all elevations of the building footprint of the ground floor level. Thus creating articulation of the built form, and creating visual relief when viewed from adjoining and nearby properties.

A detailed assessment of the proposal against the outcomes of 3.4.1 Sunlight Access and Overshadowing and 3.4.3 Maintenance of Views have been undertaken within this assessment report. The assessments found that the proposed development provides a reasonable level of sunlight to 36 Francis Street, and allows for reasonable view sharing between properties, notwithstanding the extent of non-compliance to Clause 4.3 of the MLEP 2013.

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 R1 General Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

The proposed maximum building height and amended roof form will be appropriate with the topographic landscape of the subject site, commensurate with the prevailing building heights of adjoining and nearby residential developments, and achieve consistency with the desired future streetscape character of the Fairlight locality.

b) to control the bulk and scale of buildings,

Comment:

Having regard to the portion of the building that extends beyond the prescribed maximum building height (being the roof form to the first floor level), the proposal in its entirety is contextually appropriate to the subject site and commensurate with nearby and adjoining residential developments. Amended plans were provided which reduced the building footprint of the proposed first floor level, ensuring that the built form is controlled and creating articulation and modulation to the first floor level.

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

Comment:

A detailed view sharing assessment has been undertaken within this assessment and this can be found in this report under section 3.4.3 Maintenance of Views. The numerical non-

compliance to this development standard does not give rise to any unreasonable view loss from adjoining properties. The amended plans show a reduced ridge line which aligns with 36 Francis Street. Therefore, the extent of view loss from 34 Francis Street, as assessed under section 3.4.3 Maintenance of Views, is determined as minor.

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

Comment:

Detailed shadow diagrams and elevational hourly shadow diagrams accompany this application. A detailed assessment of the proposed development against the solar access requirements has been undertaken within this report under section 3.4.1 Sunlight Access and Overshadowing. The proposal is considered to provide a reasonable level of solar access to the subject site and adjoining properties.

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

Comment:

The subject site is located within the R1 General Residential zone within the MLEP 2013, which is not a recreation or environmental protection zone. Therefore, this underlying objective of Clause 4.3 is not for consideration for this assessment.

Zone objectives

The underlying objectives of the R1 General Residential zone are:

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

  Comment:
  The proposed development will continue to provide for the housing needs of the community by retaining the residential nature of the existing dwelling. As such, the proposed development will not negatively impact upon the housing needs of the community.

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

  Comment:
  The proposed development does not seek to alter the zoning of the subject site. As such, the proposed development maintains the housing variety within the residential area.

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

  Comment:
  The proposed development seeks to retain the existing land use, being a single dwelling house. However, the R1 General Residential zone allows for a variety of land uses. In this instance, the proposed development can enable other land uses that are permissible within the zone, and thus will meet the day to day needs of the residents.

Conclusion:

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

It is considered on balance, that having regard to the particular circumstances, the proposed departure from the development standard is acceptable, in this particular instance, 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 this particular development and it is therefore considered appropriate that, in this instance, flexibility in the application of the development standard Clause 4.3 Height 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 Height of building Development Standard associated with a single dwelling house (Class 1 building).

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 392.0m^2	**Requirement**	**Proposed**	**% Variation***	**Complies**
4.1.2.1 Wall Height	**Northern Elevation** 7.0m (based on gradient 1:12)	6.1m - 6.95m	N/A	Yes
	Southern Elevation 6.8m (based on gradient 1:20)	4.9m - 5.55m	N/A	Yes
4.1.2.2 Number of Storeys	2	2 and 3	N/A	No
4.1.2.3 Roof Height	Height: 2.5m	2.22m	N/A	Yes
	Pitch: maximum 35 degrees	29.5 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	**Garage Level** 4.5m, consistent	25%	Yes, see discussion

		with prevailing building line		4.1.4.1
		Ground Floor 4.6m, consistent with prevailing building line	23.3%	Yes, see discussion 4.1.4.1
		First Floor 8.7m	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	**Northern Boundary** 2.3m (based on proposed maximum wall height)	**Garage Level** 1.63m	29.1%	No
		Ground Floor 1.2m - 3.0m	47.8% max.	No
		First Floor 1.65m - 3.0m	28.2% max.	No
	Southern Boundary 1.85m (based on proposed maximum wall height)	**Garage Level** 3.65m	N/A	Yes
		Ground Floor 1.65m	10.8%	No
		First Floor 1.7m	8.1%	No
	Windows: 3m	**Northern Elevation** 1.2m - 3.0m	60%	No
		Southern Elevation 1.65m - 1.70m	45%	No
4.1.4.4 Rear Setbacks	8m	**Ground Floor** 7.45m - 8.0m	6.85% max.	No
		First Floor 13.35m	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% (215.6m^2) of site area	36.7% (144.0m^2)	33.2%	No
	Open space above ground 25% (53.9m^2) of total open space	8.7% (18.8m^2)	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% (50.4m^2) of open space	66.2% (142.8m^2)	N/A	Yes
	1 native tree	>1 native tree	N/A	Yes
4.1.5.3 Private Open Space	18.0m^2	>18.0m^2	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	5.65m, 46.3%	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 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	No	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
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

Description of non-compliance

3.4.1.1 Overshadowing Adjoining Open Space
This control requires the following:

a) *New development (including alterations and additions) must not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties from 9am to 3pm at the winter solstice (21 June) ; or*
b) *Where there is no winter sunlight available to open space of adjacent properties from 9am to 3pm, the calculations for the purposes of sunlight will relate to the equinox in March and September from 9am to 3pm.*

Shadow diagrams have been provided with this application (see figure below). With regards to adjoining open space, the proposal achieves compliance with these requirements.

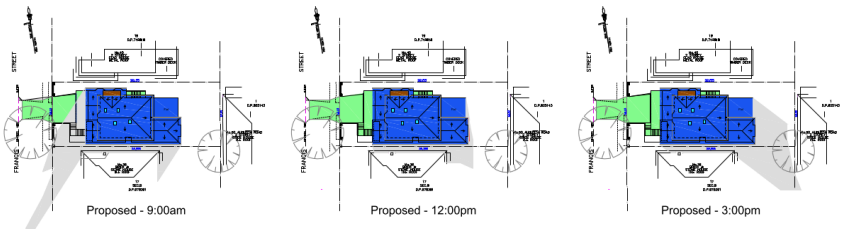


Figure 2. Proposed shadow diagrams (prepared by Abigail Larkin Architects).

3.4.1.2 Maintaining Solar Access into Living Rooms of Adjacent Properties
This control requires the following in relation to sunlight to windows or glazed doors to living rooms of adjacent properties:

a) *for adjacent buildings with an east-west orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors to living rooms for a period of at least 2 hours from 9am to 3pm on the winter solstice (21 June);*
b) *for adjacent buildings with a north-south orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors of living rooms for a period of at least 4 hours from 9am to 3pm on the winter solstice (21 June);*
c) *for all adjacent buildings (with either orientation) no reduction in solar access is permitted to any window where existing windows enjoy less than the minimum number of sunlight hours specified above.*

Elevational shadow diagrams with hourly intervals have been provided with this application (see figure below). The subject site has an east to west orientation, therefore requirement (a) applies for this assessment. A floor plan for 36 Francis Street (the property to the south, and indicated in the figure below) is not available on Council's records. Notwithstanding, an assessment of the requirements of (a) above can be undertaken below.

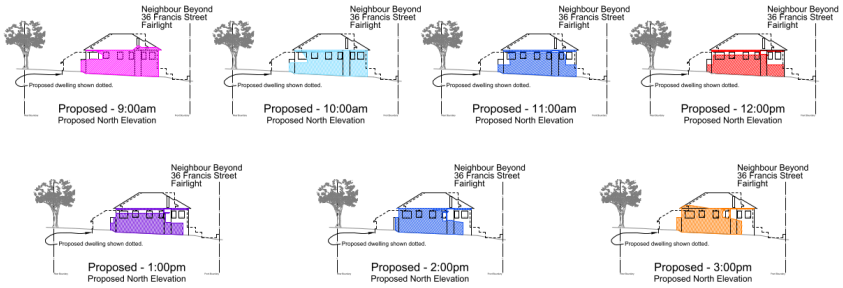


Figure 3. Proposed hourly elevational shadow diagrams to the northern elevation of 36 Francis Street, Fairlight.



Figure 4. Existing elevational shadow diagrams to the northern elevation of 36 Francis Street, Fairlight.

Merit consideration:

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

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

Comment:

The proposed development will allow for adequate levels of light and sunshine to penetrate the subject site.

Objective 2) To allow adequate sunlight to penetrate:

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

Comment:

As detailed above, and as shown in Figure 2, the proposed development achieves compliance with the requirements of 3.4.1.1 Overshadowing Adjoining Open Space for the subject site and adjoining property to the south, being 36 Francis Street.

With regards to the solar access to internal living rooms of adjoining properties, the proposed works will increase shadowing to the existing windows along the northern elevation of 36 Francis Street at all hours between 9am-3pm throughout the winter solstice, as indicated in Figure 3. However, there is no confirmation as to whether these windows service an internal living room. The proposed dwelling house proposes a rear setback distance that is generally consistent with the existing rear setback distance while maintaining a single storey element of the proposed dwelling, and is consistent with adjoining properties and this allows for a reasonable level of sunlight to be retained to the northern

elevation windows to 36 Francis Street. The submitted solar access demonstrate that the side facing windows to the northern elevation will receive in excess of 3 hours solar access. Given that 36 Francis Street is located to the south of the subject site, it is more vulnerable to overshadowing, further it is noted that the windows impacted are on a side elevation and at ground level, this maintenance of sunlight to the internal areas of 36 Francis Street is equitable. It is noted, however, that a compliant building height is unlikely to comply with the requirements of 3.4.1.2(a), as detailed above, as the first floor level will not be able to maintain the existing solar access to the windows along the northern elevation of 36 Francis Street.

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

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

Comment:

The proposed first floor level has been increasingly setback from the side boundaries to minimise the shadowing impact to the internal windows of 36 Francis Street, notwithstanding the extent of proposed overshadowing.

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

3.4.2 Privacy and Security

Description of non-compliance

3.4.2.1 Window Design and Orientation

This control requires the following:
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.

Multiple windows are proposed along the northern and southern elevations on both the ground and first floor levels, as follows:

Northern elevation
Ground floor level:
- W5 (highlight window with a sill height of 1.6 metres), sited to the living room
- W6 (bay window with a sill height of 800 millimetres), sited to the study
- W7 (bay window with a sill height of 800 millimetres), sited to bedroom 3

These windows are sited adjacent to, but not offset from, multiple windows along the southern elevation of 40 Francis Street. There is, however, an existing, and large, hedge adjacent to the northern boundary of the subject site. This hedge is located entirely within the property boundaries of the subject site. Additionally, the existing windows along the southern elevation of 40 Francis Street

are either frosted, or highlight windows, as shown in the figures below.

First floor level:
As the existing windows along the southern elevation of 40 Francis Street are frosted highlight windows, the proposed windows (W16, W17 and D14) and balcony located on the first floor level are unlikely to cause any unreasonable privacy impacts.

Consideration has been given to the existing, and proposed, hedging along the northern boundary of the subject site, and the extent of privacy this provides between properties. However, as detailed within *Super Studio v Waverley Council* [2004] NSWLEC 91 at [6], the use of landscaping for privacy mitigation does not hold much weight as there are too many variables that could impact upon the retention of such landscaping, stating that *'The effectiveness of landscaping as a privacy screen depends on continued maintenance, good climatic conditions and good luck.'* Consideration has been given to recommending a condition to ensure all landscaping (existing and proposed) along the northern boundary of the subject site be maintained in perpetuity, *Super Studio v Waverley Council* notes that *'While it is theoretically possible for a council to compel an applicant to maintain landscaping to achieve the height and density proposed in an application, in practice this rarely happens.'* In this instance, and by virtue of the existing obscured glazing to the windows along the southern elevation of 40 Francis Street, a condition requiring retention of the existing (and proposed) landscaping in perpetuity is not necessary, in this particular instance.

In this instance, the proposed windows of the ground floor and first floor levels are unlikely to cause unreasonable privacy impacts between properties.

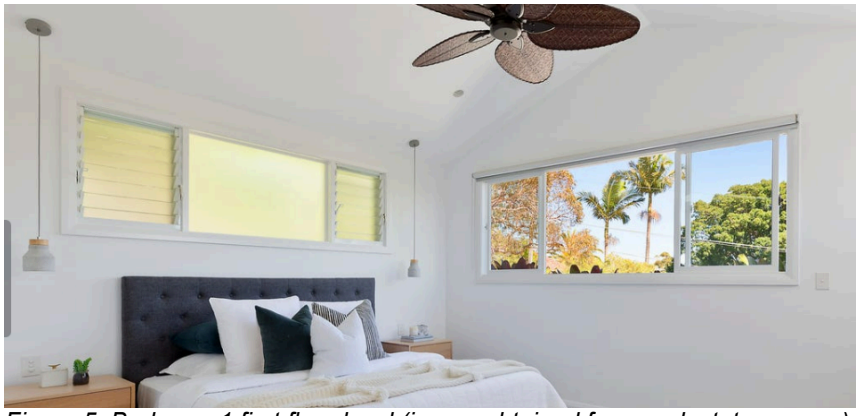

Figure 5. Bedroom 1 first floor level (image obtained from realestate.com.au).


Figure 6. Western elevation of 40 Francis Street (left) and 38 Francis Street (right).



Figure 7. Two (2) frosted highlight windows along the southern elevation of 40 Francis Street.

3.4.4.2 Balconies and Terraces

This control requires the following:
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.

The proposed balcony on the first floor level along the northern elevation is located off the master bedroom. This balcony is 1.3 metres in depth, and 3.34 metres in width (with a floor area of 4.4m^2). These dimensions do not allow for entertaining purposes and is expected to be used only by the occupants of the master bedroom. Furthermore, the balcony is sited opposite one (1) window along the southern elevation of 40 Francis Street. Council's records indicate that this window is sited to the walk-in robe of the master bedroom. For these reasons, and those reasons as detailed above, this balcony is considered to be acceptable with no unreasonable privacy impacts upon the occupants of 40 Francis Street.

Merit consideration:

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

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

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

Comment:

For the reasons as detailed above, the proposed development results in a reasonable level of privacy

between the subject site and adjoining properties.

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

Comment:

The proposed development does not compromise access to light and air, nor does it result in unreasonable view impacts from habitable rooms and private open space of the subject site and adjoining and nearby properties.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposed development will not compromise neighbourhood security or casual surveillance of the street frontage.

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

3.4.3 Maintenance of Views

Merit consideration:

A submission has been received from the owners of 34 Francis Street, Fairlight, which is located two (2) lots uphill from the subject site, as indicated in the figure below. The submission raised concern regarding view loss. The submission requested that the proposal be amended to reduce the maximum height to align with 36 Francis Street in order to maintain their views. Amended plans were provided to Council which reduced the maximum ridge line to align with 36 Francis Street, as requested. While the proposed amendments align with the request from the owners of 34 Francis Street, the submission has not been withdrawn. Therefore, a view sharing assessment has been undertaken below.



Figure 8. Location of 34 Francis Street in relation to the subject site. 34 Francis Street is indicated by the yellow star, and the subject site is indicated by the blue outline.

The development is considered against the Objectives of the Control:

Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.
Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).
Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.

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

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

Comment:
The views currently enjoyed by the occupants of 34 Francis Street are obscured district views toward the north and north-west. No water views are readily viewed from 34 Francis Street.

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:

These views are obtained from standing positions within bedrooms and a terrace located off one of the bedrooms across the front and side boundary, as indicated in the figures below.



Figure 9. Standing within bedroom 1, facing north over the side boundary. The roof form of 36 Francis Street (terracotta tiles) is easily viewed, the subject site is beyond.



Figure 10. Standing within bedroom 1, facing north-west over the side boundary. The roof form of 36 Francis Street (terracotta tiles) is easily viewed, the subject site is beyond.



Figure 11. Standing within bedroom 2, facing north, over the side boundary. The roof form of 36 Francis Street (terracotta tiles) is easily viewed, the subject site is beyond.



Figure 11. Standing within bedroom 2, facing north-west, over the font and side boundary. The roof form of 36 Francis Street (terracotta tiles) is easily viewed, the subject site is beyond.



Figure 12. Standing on the terrace located off bedroom 2, facing north, over the side boundary. The roof form of 36 Francis Street (terracotta tiles) is easily viewed, the subject site is beyond.



Figure 13. Standing on the terrace located off bedroom 2, facing north-west, over the font and side boundary. The roof form of 36 Francis Street (terracotta tiles) is easily viewed, the subject site is beyond.

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

Comment:

The front of the proposed house will likely obscure the district views toward the north. With consideration of the whole of the property, and based on the amended plans, the extent of impact is

considered to be **minor**.

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

Comment:

As the amended maximum ridge line aligns with the maximum ridge line of 36 Francis Street, a fully compliant proposal would not give rise to greater view sharing or amenity upon adjoining and nearby properties. Notwithstanding the extent of non-compliances to the proposed development, the proposal is reasonable in its context.

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

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

Description of non-compliance

4.1.2.2 Number of Storeys
This control stipulates the following requires:

a) *Buildings must not exceed 2 storeys, except on land in areas 'L' and 'N1' on the LEP Height of Building Map and notwithstanding the wall and roof height controls in this plan.*

b) *Buildings on land in areas 'L' and 'N1' on the LEP Height of Building Map Buildings must not exceed 3 storeys notwithstanding the wall and roof height controls in this plan.*

c) *Variation to the maximum number of storeys may be considered:*

   i) where specific physical site constraints warrant an exception to this requirement. In these circumstances the development must still fully comply with other numeric height controls and development standards; and ii

   ii) to allow an additional understorey where that storey satisfies the meaning of he basements in the LEP.

Merit consideration

There are no underlying objectives of this control under which to consider the merits of this variation. This control instead relies on the objectives for the Height of Buildings at clause 4.3 in the MLEP 2013. The proposal has been assessed against these objectives under clause 4.6, above in this report. In summary, the proposed development, notwithstanding the numeric non-compliance to this control and Clause 4.3 of the MLEP 2013, is considered acceptable and can be supported on its merits.

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

Description of non-compliance

4.1.4.1 Street Front Setbacks
This control requires development to be setback 6.0 metres, or the prevailing front building line, from the front boundary line.

The proposed dwelling will have the following front setback distances:

- *Garage level:* 4.5m, consistent with prevailing building line (see figure below).
- *Ground floor level:* 4.6m, consistent with prevailing building line (see figure below).
- *First floor level:* 8.7m.

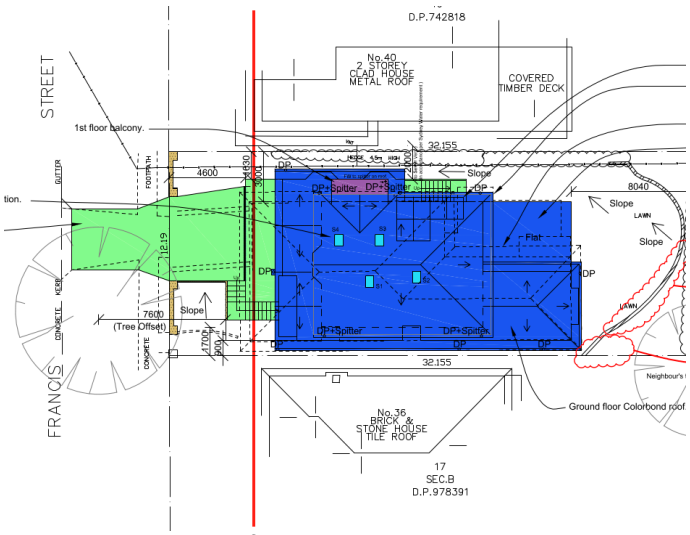


Figure 2. Established front boundary line (indicated by red line).

4.1.4.2 Side Setbacks and Secondary Street Frontages
This control requires development be setback from the side boundaries at a distance measured as one third of the proposed wall height.

The following are the *required* side setback distances:

- **Northern Boundary:** 2.3m (based on proposed maximum wall height).
- **Southern Boundary:** 1.85m (based on proposed maximum wall height).

The following are the *proposed* setback distances:

- **Northern Boundary:** 2.3m (based on proposed maximum wall height)
  - *Garage level:* 1.63m, which presents a variation of 29.1%.
  - *Ground floor level:* 1.2m - 3.0m, which presents a maximum variation of 47.8% max.
  - *First floor level:* 1.65m - 3.0m, which presents a maximum variation of 28.2% max.

- **Southern Boundary:** 1.85m (based on proposed maximum wall height)
  - *Garage level:* 3.65m.
  - *Ground floor level:* 1.65m, which presents a variation of 10.8%.
  - *First floor level:* 1.7m, which presents a variation of 8.1%.

This control also requires any additional windows to be setback 3.0 metres from the side boundaries. The proposed development includes multiple windows on all levels of the dwelling. These windows are sited within 3.0 metres from the side boundaries.

4.1.4.4 Rear Setbacks
This control requires development to be setback 8.0 metres from the rear boundary line.

The proposed development results in the following rear setback distances:

- *Ground Floor:* 7.45m - 8.0m
- *First Floor:* 13.35m

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 proposed dwelling will be sited over a similar building envelope to the existing dwelling. In this instance, and notwithstanding the non-compliant setbacks, the proposed development will maintain and enhance the existing streetscape with consideration of the desired spatial proportions of the street and the street edge. Additionally, the proposed landscape planting within the front setback area will enhance the landscape character of the street.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

Detailed assessments of the proposal against the outcomes of 3.4.1 Sunlight Access and Overshadowing, 3.4.2 Privacy and Security, and 3.4.3 Maintenance of Views have been undertaken within this assessment report. These assessments found that, notwithstanding the numeric non-compliant setback distances and maximum building height, the proposal can provide a reasonable level of solar access, privacy and view sharing between properties. The proposed development will provide articulation to the front facade that creates visual interest in the built form when viewed from nearby properties and public spaces, thus adding character to the existing streetscape. The site is not a corner allotment, notwithstanding, the vehicle manouvering of the site does not change from the existing ingress and egress to the site.

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

Comment:

Notwithstanding the proposed numeric non-compliant side setbacks on the garage and ground levels, the proposal promotes flexibility in the siting of buildings, allowing for external pedestrian maneuvering throughout the site.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposed development does not seek to remove the site's natural features. The proposal does, however, seek additional to plant additional trees and vegetation throughout the site, as indicated on the proposed Landscape Plan. In this instance, the proposal will enhance and maintain the site's natural features.

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

Comment:

The subject site is not located within bush fire prone land.

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

4.1.5 Open Space and Landscaping

Description of non-compliance

The subject site is located within the total open space area 3, which requires 55% (215.6m^2) of the total site area to be open space, with 35% (50.4m^2) of this to be dedicated as landscaped area.

The proposed development provides a total open space area of 36.7% (or 144.0m^2), which presents a variation of 33.2%. The proposal does, however, achieve compliance with the minimum requirements for landscaped area on the site, including the planting of multiple native trees, where only one (1) is required by the MDCP.

Further, this control stipulates that any open space above ground must not exceed 25% (53.9m^2) of total open space. The proposal provides 8.7% (or 18.8m^2) of open space above ground, which achieves compliance with this requirement.

Notwithstanding, the proposal has been assessed against the outcomes of this control below.

Merit consideration:

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

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

Comment:

As detailed above, the proposed development provides a compliant landscaped area. The proposed development seeks to retain the significant Lilly Pilly hedging along a portion of the northern side boundary and eastern rear boundary. The proposal seeks to plant additional Lilly Pilly's and Magnolias within the front setback area to match the existing hedging along the northern side boundary and southern side boundary within the rear setback area.

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 numerically non-compliant total open space has not impacted upon the site's ability to ensure the proposed development achieves compliance with the minimum requirement of landscaped area. In this instance, the proposal seeks to maximise soft landscaped areas throughout the site at ground level. The proposal, as detailed above, includes additional, and appropriate, tree planting throughout the site. C

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

Comment:

Shadow diagrams have been provided with this application, which indicates a numeric non-compliance to the solar access requirements as stipulated within 3.4.1 Sunlight Access and Overshadowing. As such, a detailed assessment of this non-compliance has been completed under section 3.4.1 of this assessment report. A detailed assessment of the proposed privacy impacts has been completed under section 3.4.2 Privacy and Security of this assessment report. A view sharing assessment has been completed as part of this assessment report under section 3.4.3 Maintenance of Views. This assessment found that the proposed amendments have minimised any unreasonable view sharing impacts. The extent of non-compliance to the total open space requirement does not cause unreasonable amenity impacts upon adjoining properties, the existing streetscape and the surrounding area.

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

Comment:

The proposed development achieves compliance with the minimum requirement for landscaped area. As such, the proposal can maximise water infiltration on-site through the proposed landscaped area, thus minimising stormwater runoff.

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

Comment:

The proposed landscape plan does not indicate the planting of weeds, nor will the proposal degrade private and public open spaces. Notwithstanding, a condition will be recommended to ensure that weeds are not planted on the site.

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

Comment:

As detailed above, the proposed landscape plan indicates additional planting of trees and vegetation throughout the site. As such, the proposal will maximise wildlife habitat and provide potential for wildlife corridors.

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

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 $9,378 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $937,800.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

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

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

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

PLANNING CONCLUSION

This proposal, for demolition works and construction of a dwelling house has been referred to the Development Determination Panel (DDP) as the proposed maximum height exceeds a 10% variation to the requirements of Clause 4.3 of the MLEP 2013.

Concerns raised in the objections predominantly relate to privacy (acoustic and visual), view sharing, and impacts upon the existing retaining wall. The assessment found that the proposed development results in a reasonable level of privacy (both acoustic and visual), as well as a reasonable sharing of views based upon the amended plans provided. Conditions have been recommended requiring pre- and post-dilapidation reports upon 40 Francis Street, Fairlight.

Critical assessment issues included State Environmental Planning Policy (Sustainable Buildings) 2022, Clause 4.6 Exceptions to development standards of the MLEP 2013, and 3.4.1 Sunlight Access and Overshadowing, 3.4.2 Privacy and Security, 3.4.3 Maintenance of Views, 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height), 4.1.4 Setbacks (front, side and rear) and Building Separation, 4.1.5 Open Space and Landscaping.

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

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

RECOMMENDATION

That Northern Beaches Council as the consent authority permits a contravention of clause 4.3 Height of Building 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 DA2023/1583 for Demolition works and construction of a dwelling house on land at Lot 18 DP 978391, 38 Francis Street, FAIRLIGHT, 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**
236/501/D	D	Demolition Plan	Abigail Larkin Architects Pty Ltd	28 January 2024
236/106/D	D	Landscape Plan	Abigail Larkin Architects Pty Ltd	28 January 2024
236/103/D	D	Site and Roof Plan	Abigail Larkin Architects Pty Ltd	28 January 2024
236/201/D	D	Ground Floor Plan	Abigail Larkin Architects Pty Ltd	28 January 2024
236/202/D	D	First Floor Plan	Abigail Larkin Architects Pty Ltd	28 January 2024
236/203/D	D	Garage Floor Plan	Abigail Larkin Architects Pty Ltd	28 January 2024
236/301/D	D	North Elevation (Elevation A)	Abigail Larkin Architects Pty Ltd	28 January 2024

236/302/D	D	South Elevation (Elevation B)	Abigail Larkin Architects Pty Ltd	28 January 2024
236/303/D	D	East Elevation (Elevation C)	Abigail Larkin Architects Pty Ltd	28 January 2024
236/304/D	D	West Elevation (Elevation D)	Abigail Larkin Architects Pty Ltd	28 January 2024
236/401/D	D	Section AA	Abigail Larkin Architects Pty Ltd	28 January 2024
236/402/D	D	Section BB	Abigail Larkin Architects Pty Ltd	28 January 2024

Approved Reports and Documentation			
Document Title	**Version Number**	**Prepared By**	**Date of Document**
BASIX Certificate 1421325S	N/A	Abigail Larkin Architects Pty Ltd	28 September 2023
Geotechnical Investigation & Slope Risk Assessment reference: P3045_01	1	Morrow	27 September 2023
Waste Management Plan	N/A	Not signed	Not dated
236/104/D - Erosion and Sediment Control Plan	D	Abigail Larkin Architects Pty Ltd	28 January 2024
236/105/D - Stormwater Management Plan	D	Abigail Larkin Architects Pty Ltd	28 January 2024

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. **Approved Land Use**
Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a Dwelling House, in accordance with the Dictionary of the *Manly Local Environmental Plan 2013*, as follows:

dwelling house *means a building containing only one dwelling.*

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

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

4. **Prescribed Conditions**

(a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

(b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);

(c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

(i) showing the name, address and telephone number of the Principal Certifier for the work, and

(ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and

(iii) stating that unauthorised entry to the work site is prohibited.

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

(d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

(i) in the case of work for which a principal contractor is required to be appointed:

A. the name and licence number of the principal contractor, and

B. the name of the insurer by which the work is insured under Part 6 of that Act,

(ii) in the case of work to be done by an owner-builder:

A. the name of the owner-builder, and

B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the

work relates (not being the Council) has given the Council written notice of the updated information.

(e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

(i) protect and support the adjoining premises from possible damage from the excavation, and

(ii) where necessary, underpin the adjoining premises to prevent any such damage.

(iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

(iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

5. **General Requirements**

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

Demolition and excavation works are restricted to:
- 8.00 am to 5.00 pm Monday to Friday only.

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

(b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.

(c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

(d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

(e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

(f) Prior to the release of the Construction Certificate, payment of the following is required:

i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than $250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.

iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.

(g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

(h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

(k) Prior to the commencement of any development onsite for:

i) Building/s that are to be erected

ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place

iii) Building/s that are to be demolished

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

v) For any work/s that is to be demolished

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

(l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

(m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

(n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

(1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools

(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

(2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

(3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

(4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

6. **Policy Controls**
Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of $9,378.00 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 $937,800.00.

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

8. **On-Site Stormwater Detention Details**

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:
i. On site detention is to be designed in accordance with Section 9.3.3 Onsite Stormwater Disposal for Region 3 – Southern Catchments of the Northern Beaches Council Water Management for Development Policy Version 2, 26 February 2021
ii. On site detention is to be designed in accordance with all other requirements of the Northern Beaches Council Water Management for Development Policy Version 2, 26 February 2021.
iii. The top water level and any overflow level from the system is to be a minimum of 300 mm above habitable floor levels and 150 mm above garage levels.

Detailed drainage plans, including engineering certification, are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

9. **Stormwater Disposal**

The applicant is to submit Stormwater Engineering Plans for the new development within this

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

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

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

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

11. **Vehicle Crossings Application**

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing 3.0 metres wide in accordance with Northern Beaches Council Standard Drawing A4 3330/1 N in accordance with Section 138 of the Roads Act 1993.

Note, driveways are to be in plain concrete only.

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

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

Reason: To facilitate suitable vehicular access to private property.

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

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

Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

13. **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.

14. **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.

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

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

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

16. **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.

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

18. **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: 40 Francis Street, Fairlight

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

19. **Tree and Vegetation Protection**

a) existing trees and vegetation shall be retained and protected, including:
i) all trees within the site not approved for removal, including trees and vegetation nominated for retention on the approved Plans,
ii) all trees and vegetation located on adjoining properties,
iii) all trees and vegetation within the road reserve.

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.

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. **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.

22. **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.

23. **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.

24. **Survey Certificate**
A survey certificate prepared by a Registered Surveyor at the following stages of construction:

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

(b) At ground level to ensure the finished floor levels are in accordance with the approved

levels, prior to concrete slab being poured/flooring being laid.

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

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

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

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

26. **Landscape Completion**
a) landscape works are to be implemented in accordance with the approved Landscape Plan(s) (drawing 236/106/D by Abigail Larkin Architects dated 28/01/24), 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 locally native tree shall be installed within the property boundaries and 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; to achieve at least 6 metres height at maturity; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth generally, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings and other trees or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,
iv) mass planting shall be installed at minimum 1 metre intervals (or less) for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at minimum 4 plants per metre square for groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,
v) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces.

b) prior to the issue of an Occupation Certificate, details 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.

27. **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.

28. **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.

29. **Geotechnical Certification Prior to Occupation Certificate**
A Geotechnical Engineer or Engineering Geologist is to provide written confirmation that they have inspected the site during construction or reviewed information relating to the construction and that they are satisfied that development referred to in the development consent has been constructed in accordance with the intent of the Geotechnical Report referenced in Condition 1 of this consent.

Written certification is to be provided to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

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

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

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

31. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**
The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), and Civil Engineers' certification.

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

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

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

32. **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.

33. **House / Building Number**
House/building number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings.

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

34. **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.

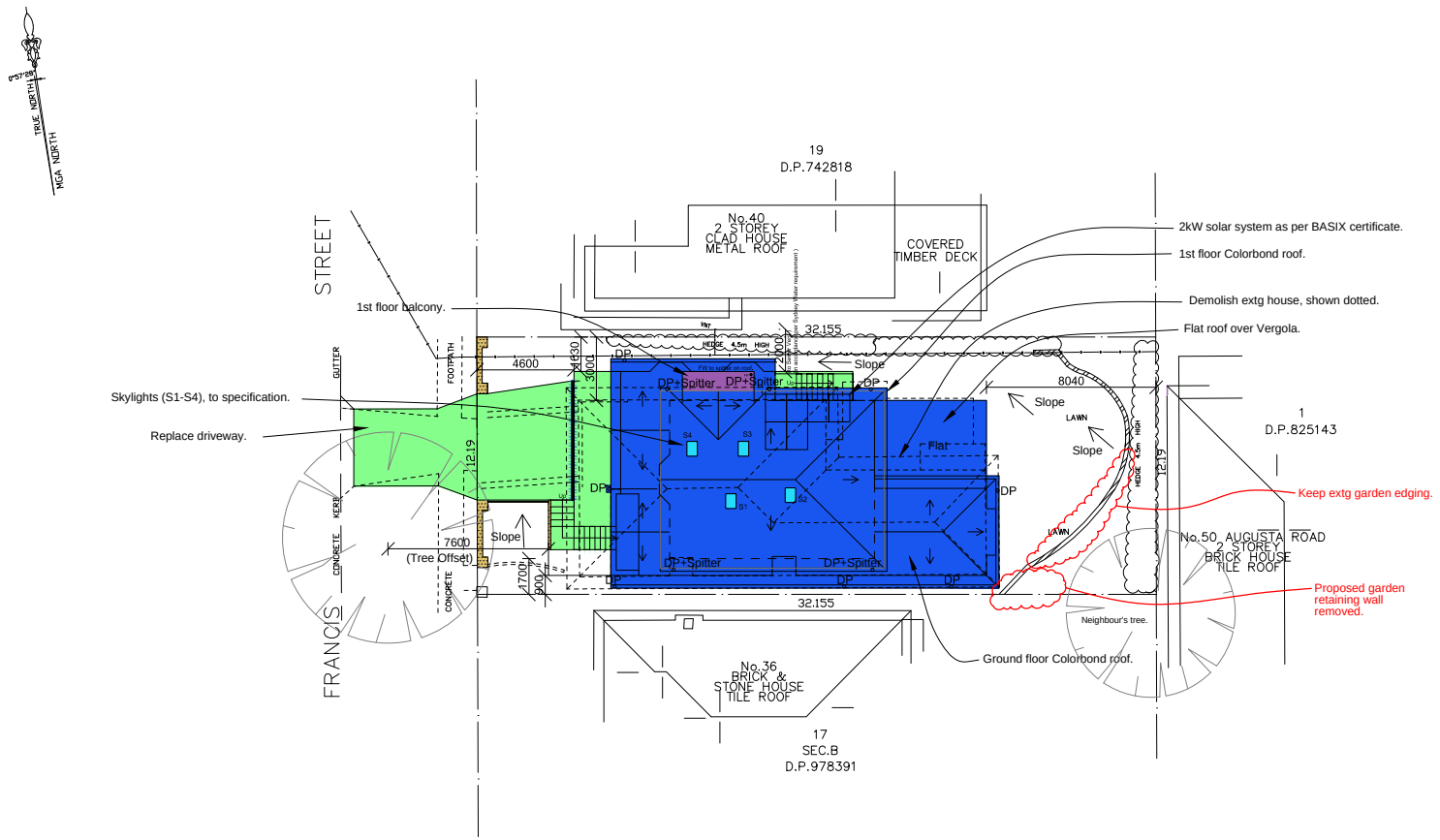
c) if any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan(s) and any conditions of consent.

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.

35. **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.



Total Site Area:	391.97m²	by calculation (392.0m² by Survey)
Existing Open Space:	292.08m²	(74.5% of site area)
Proposed Open Space:	260.90m²	(66.6% of site area)
Existing Landscaped Area:	193.00m²	(66.1% of open space)
Proposed Landscaped Area:	166.22m²	(63.7% of open space)
Existing Floor Space Ratio:	134.24m²	(34.3% of site area)
Proposed Floor Space Ratio:	182.66m²	(46.6% of site area)

Site & Roof Plan

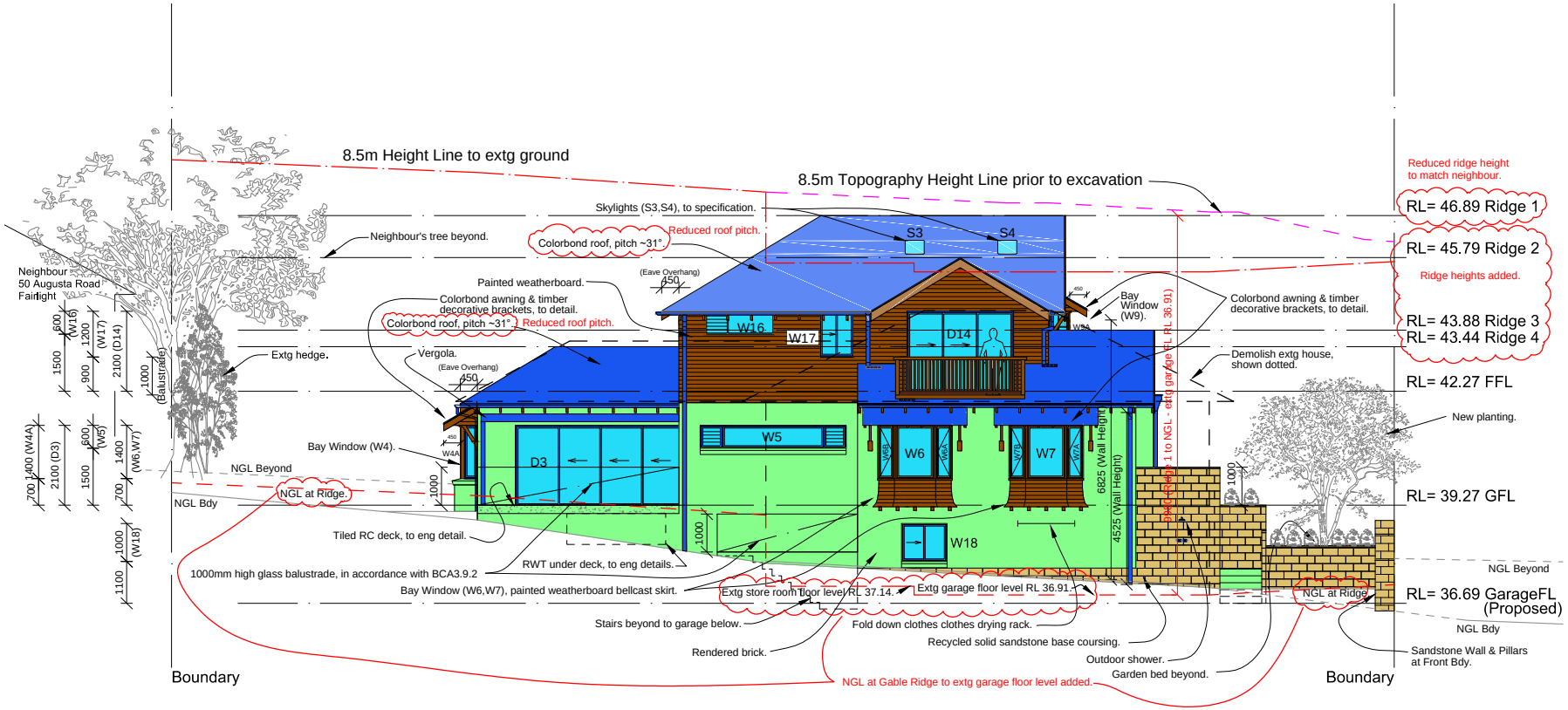
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Issue	Amendment	Date
D	DA Submission - Extra shadows, extg ground lines, height lines & dimensions	28/01/2024
C	DA Submission - Ridge height lowered	18/01/2024
B	DA Submission - North Point direction corrected	30/10/2023
A	DA Submission	28/09/2023
2	Pre-DA	31/08/2023
1	Existing Dwelling	06/03/2023

PROJECT: Alterations and Additions
38 Francis Street, Fairlight, NSW 2094
Lot 18 Sec. B, DP978391
FOR: Dr Nathan Abrahams & Ms Tanya Schindler

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DRAWING: Site and Roof Plan
SCALE: 1:200 @ A3
DRAWING No: 236/103/D



North Elevation

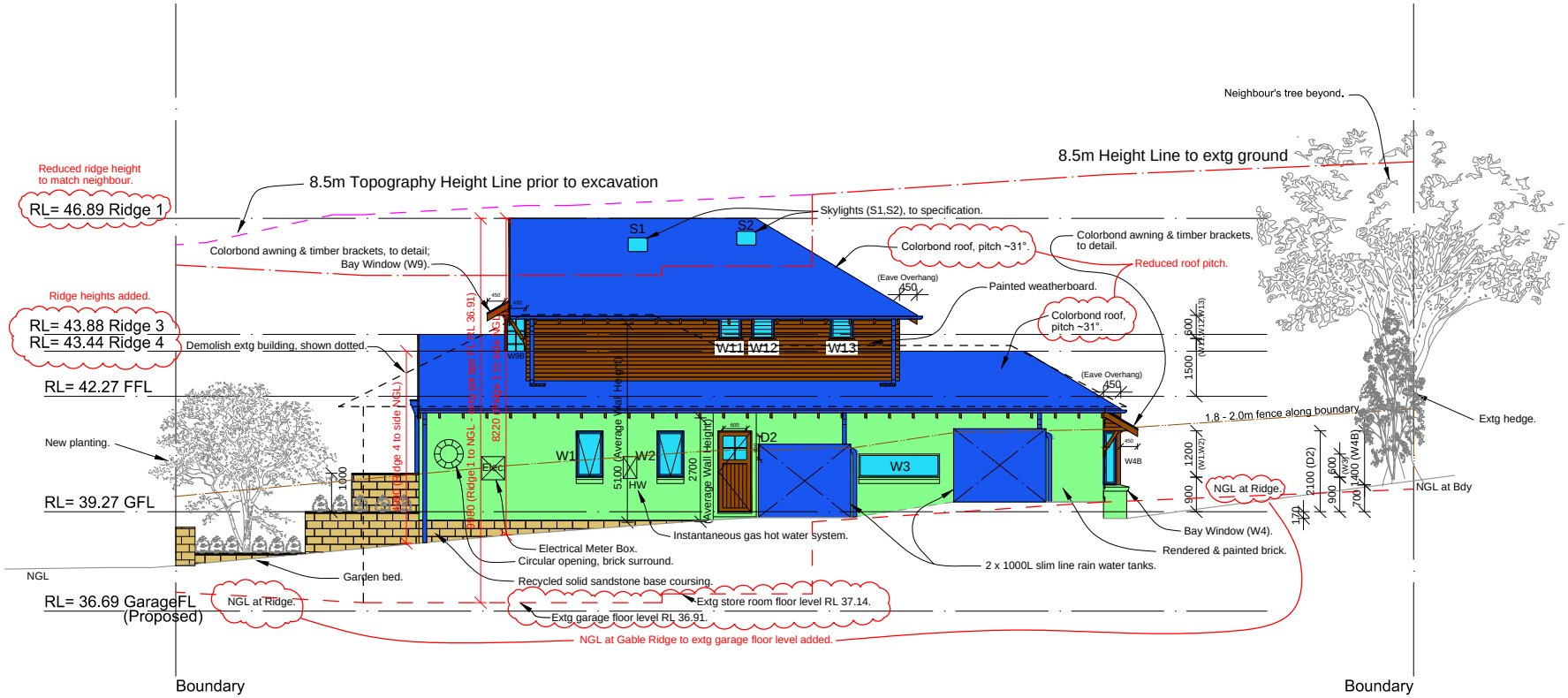
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DRAWING: North Elevation (Elevation A)
SCALE: 1:100 @ A3
DRAWING No: 236/301/D



South Elevation

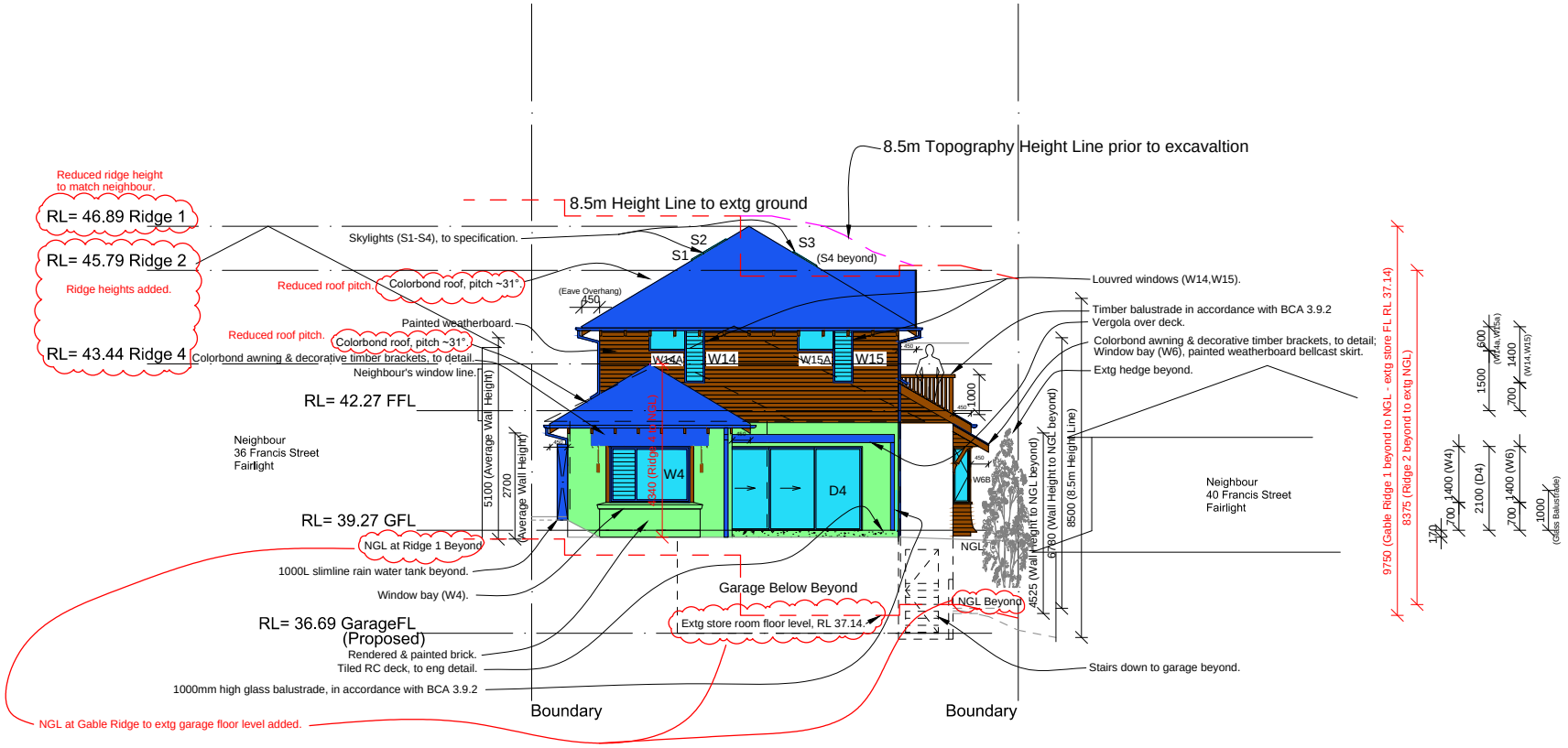
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PROJECT: Alterations and Additions
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DRAWING: South Elevation (Elevation B)
SCALE: 1:100 @ A3
DRAWING No: 236/302/D



East Elevation

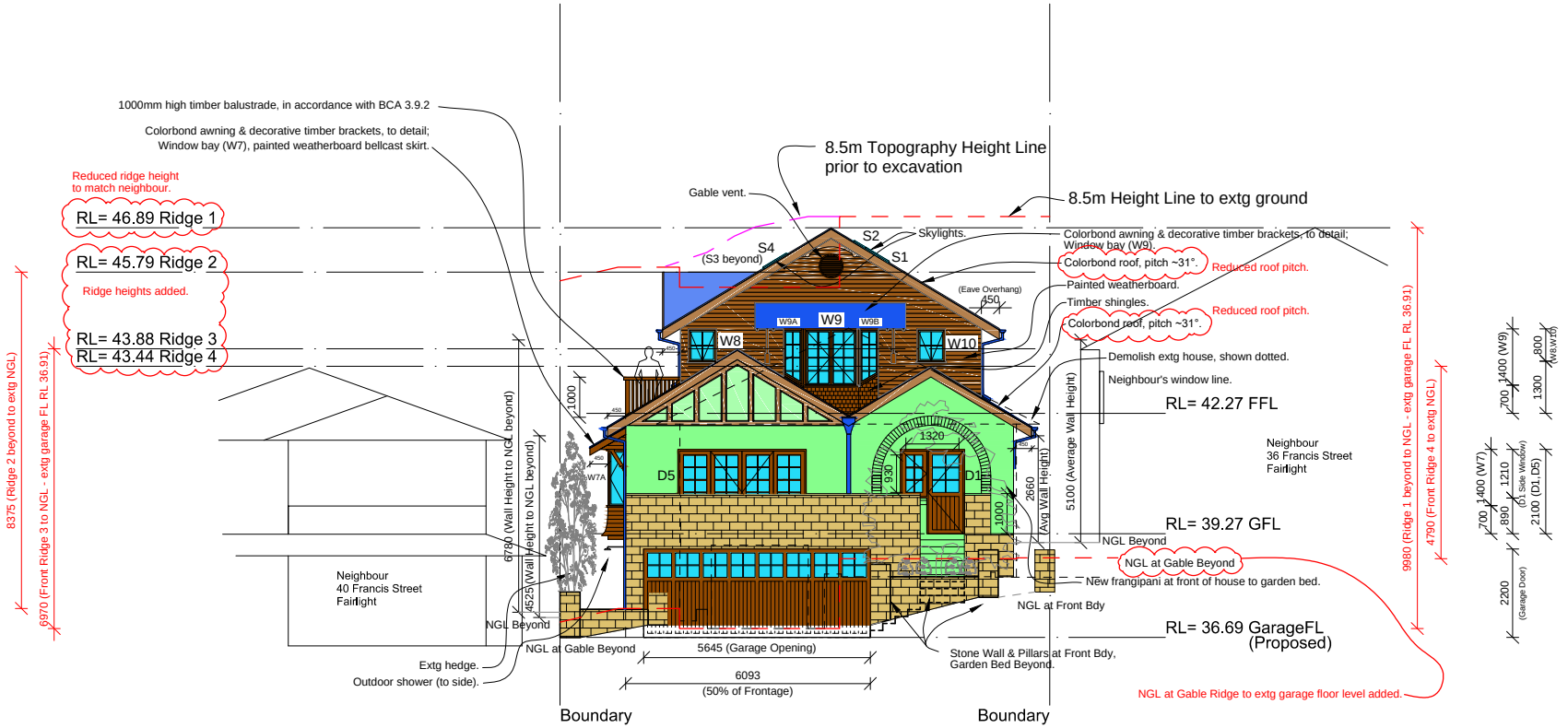
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ABN: 35 105 999 406 NSW Architect Registration No. 6909
Architects and Heritage Consultants.
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Issue	Amendment	Date
D	DA Submission - Extra shadows, extg ground lines, height lines & dimensions	28/01/2024
C	DA Submission - Ridge height lowered	18/01/2024
B	DA Submission - North Point direction corrected	30/10/2023
A	DA Submission	28/09/2023
2	Pre-DA	31/08/2023
1	Existing Dwelling	06/03/2023

PROJECT: Alterations and Additions
38 Francis Street, Fairlight, NSW 2094
Lot 18 Sec. B, DP978391
FOR: Dr Nathan Abrahams & Ms Tanya Schindler

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DRAWING: East Elevation (Elevation C)
SCALE: 1:100 @ A3
DRAWING No: 236/303/D



West Elevation

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DRAWING: West Elevation (Elevation D)
SCALE: 1:100 @ A3
DRAWING No: 236/304/D

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14 March 2024

Clause 4.6 Request to Contravene a Development Standard

Property Description: 38 Francis Street, Fairlight

Development: Dwelling House

Development Standard: Clause 4.3 Height of Buildings

Introduction

This is a clause 4.6 written request to support the development proposal for the construction of a dwelling house located at 38 Francis Street, Fairlight.

This Clause 4.6 request seeks to justify the contravention to the 8.5m Building Height Development Standard contained in Clause 4.3 – Height of Buildings of the Manly Local Environmental Plan 2013.

The development proposal has been designed in accordance with the existing 'natural' ground levels across the site that have existed prior to the excavation and construction of the existing dwelling. The historically excavated driveway and garage of the existing dwelling creates an anomaly in the height plane overlaid above the site which does not reflect the true topography of the site prior to development.

The technical measurement of building height for the purpose of Clause 4.3 of the LEP is from the existing ground level, being the excavated ground level beneath the driveway and garage to the highest point of the building. The proposed building exceeds the height of building development standard only in those locations where there has been historical excavation. The maximum height of buildings is 9.98m which presents a variation of 1.48m and 17.4% to the 8.5 height limit. As shown in the following diagram the highest point of the development is at R46.89 measured from the existing excavated ground level at RL36.91.

The extent of the variation to the Height of Buildings Development Standard is shown in Section AA and Section BB as extracted below.

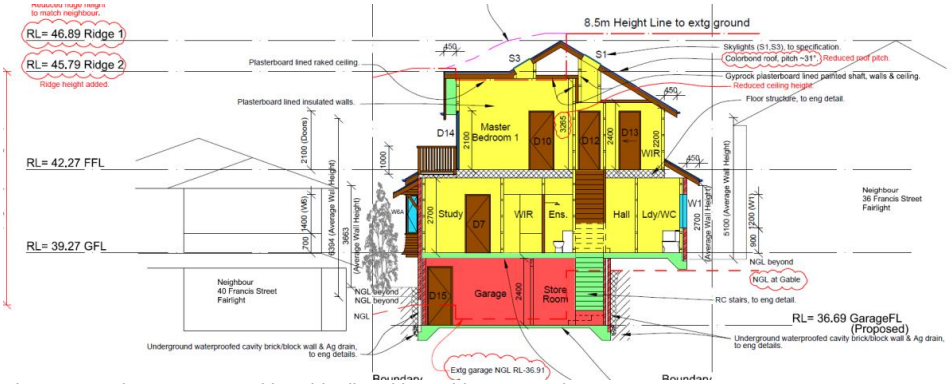


Figure 1 Section AA prepared by Abigail Larkin Architect Pty Ltd.



Figure 2 Section BB prepared by Abigail Larkin Architect Pty Ltd.

The fundamental role of clause 4.6 in any local environmental plan is reflected in the recent decision of Commissioner Clay in *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112. In particular, Commissioner Clay notes at [73] of his decision that:

> *"First, it should be noted cl 4.6 of WLEP is as much a part of WLEP as the clauses with development standards. Planning is not other than orderly simply because there is reliance on cl 4.6 for an appropriate planning outcome."*

The objectives of clause 4.6 facilitate the flexible application of development standards to particular development in order to achieve an improved environmental planning outcome. This request has been prepared having regard to the Department of Planning and Environment's Guidelines to Varying Development Standards (November 2023) and various relevant decisions in the Land and Environment Court and Court of Appeal of NSW.

The request to contravene the height of buildings development standard has been prepared in accordance with the principles applied in the relevant case law including:

1. *Winten Property Group Limited v North Sydney Council* (2001) 130 LGERA 79;
2. *Wehbe v Pittwater Council* (2007) 156 LGERA 446;

3. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009*;*
4. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118*;*
5. *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; *and*
6. *RebelMH Neutral Bay Pty Limited v North Sydney Council (2019) NSWCA 130*
7. *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7
8. *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582*

This Clause 4.6 variation request is set out in accordance with the relevant principles established by the Court including:

1. Is the proposed development consistent with the objectives of the development standard which is not met?

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

3. Are there sufficient environmental planning grounds to justify contravening the development standard and therefore the Applicant's written request to vary the development standard is well founded? (cl 4.6(3)(b))

The public interest test has been removed from Clause 4.6. Consistency with the objectives of the land use zone are a consideration under section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act and has been addressed within the Statement of Environmental Effects submitted with the development application.

Matters required to be demonstrated under clause 4.6(3) of the LEP

Compliance with the development standard is unreasonable or unnecessary in this particular case

Pursuant to clause 4.6(3)(a), of the LEP the variation to the height of buildings development standard is acceptable in the circumstances of the case and compliance with the development standard is considered unnecessary because the proposed dwelling house development achieves the objectives of the Height of Buildings Standard, notwithstanding the numerical variation to the standard.

- **Objectives of the Height of Buildings Development Standard**

The objectives of the standard are at clause 4.3(1) of the LEP as follows:

(1) The objectives of this clause are as follows—
(a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,
(b) to control the bulk and scale of buildings,
(c) to minimise disruption to the following—
(i) views to nearby residential development from public spaces (including the harbour and foreshores),
(ii) views from nearby residential development to public spaces (including the harbour and foreshores),
(iii) views between public spaces (including the harbour and foreshores),
(d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,
(e) to ensure the height and bulk of any proposed building or structure in a recreation or conservation zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

The proposed development achieves the objectives of Clause 4.3(1) of the Manly LEP 2013 based on the following assessment:

Objective (a): The subject site is located within the R1 – General Residential Zone and has been designed to wholly comply with the 8.5m height of buildings development standard but for the artificial topographical anomaly. The variation to the standard is the result of the historically excavated driveway and garage of the existing dwelling creating an anomaly in the height plane overlaid above the site.

The development proposal has been designed with a stepped roof form with the upper ridge of the development positioned to align with the ridge height of 36 Francis Street, Fairlight facilitating a stepped built form across the streetscape as the slope falls from south to north along Francis Street.

Objective (b): Objective (b) is met by the standard itself. The objective is not an end in itself see *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61 at [49]. There is no need to demonstrate that this objective is met because this standard achieves the objective and clause 4.6 of the allows a variation in appropriate circumstances. Regardless, the development proposal has been designed to wholly

comply with the 8.5m height limit albeit the portion of the building which technically varies the standard due to the historically excavated levels on the site.

Objective (c)(i): There are no significant view corridors from the road reserve across the subject site, notwithstanding the existing subject site currently contains an existing dwelling house and the development proposal is for a new dwelling house that is consistent with the bulk and scale envisaged for the R1 - General Residential Zone.

Objective (c)(ii): The development proposal has been designed to wholly comply with the height of buildings development standard with the portion of the building technically varying the standard a result of historical excavation on the site and an anomaly in the natural topography rather than additional building height.

The ridge of the development has been designed to align with the ridge of 36 Francis Street at RL46.89 to ensure that side windows of 34 Francis Street which benefit from an outlook over the subject site will not be impacted by the development proposal. The additional building height does not correlate with a taller building but rather an anomaly within the existing topography on the site.

Objective (c)(iii): Not applicable.

Objective (d): The additional building height is the result of a historically excavated lower ground level rather than the ridge height of the development. As addressed in the shadow diagrams submitted with the development application the first floor addition has been located on the site to maximise the solar access to adjoining residences. The principle private open space of the subject site maintains sunlight for approximately 4 hours at mid-winter achieving the solar access controls. The principle living room associated with number 36 Francis Street maintains sunlight access from 11.00am – 3.00pm being 4 hours which meets solar access controls. The rear window of number 36 Francis Street will maintain sunlight for 2 hours, being a good design outcome for these east-west oriented allotments.

Objective (e): Not applicable.

In line with the decisions in *Wehbe v Pittwater Council* [2007] NSWLEC 827, the proposal meets the first test as the objectives of the development standard are achieved notwithstanding the non-compliance with the standard.

Furthermore it is unreasonable to require compliance with the height of building development standard due to the following reasons:

- The development proposal has been designed in accordance with the existing “natural” ground levels across the site that existed prior to the excavation and construction of the existing building. The historically excavated driveway and garage of the existing dwelling, creates an anomaly in the height plane overlaid above the site which does not reflect the topography of the site prior to its development. The technical measurement of building height for the purposes of clause 4.3 of the LEP is from the existing ground level, being the excavated ground level beneath the driveway and garage, to the highest point of the building. The proposed building height exceeds the height of buildings development standard only in those locations where there has been

historical excavation. *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582*

- The portions of the building which vary the height standard do not preclude the development proposal from achieving the objectives of the standard. The upper ridge of the development proposal presents a consistent building height with 36 Francis Street maintaining a stepped building presentation to the street as the street slopes from the south to the north. The development proposal will not set a precedent for increased densities within the locality beyond that envisaged for the R1 – General Residential Zone.

- The public benefit of maintaining the development standard is not considered significant because the development proposal has been designed to align with the 8.5m height limit. The portions of the building which vary the development standard are specific to the site circumstances being the existing excavated lower ground level.

- The development proposal is in the public interest because it is consistent with the objectives of the standard and the objectives of the R1 – General Residential Zone which are addressed with the Statement of Environmental Effects submitted with the development application.

<u>There are sufficient environmental planning grounds to justify contravening the development standard</u>

Pearson C held in *Four2Five vs Ashfield Council* [2015] NSWLEC 1009 that to satisfy clause 4.6(3)(b), a clause 4.6 variation must identify environmental planning grounds that are particular to the circumstances of the proposed development on the particular site. That decision was upheld on appeal by Pain J ([2015] NSWLEC 90) and the Court of Appeal ([2015] NSWCA 248).

Preston CJ noted in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, that in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6, the aspect of the development that contravenes the development standard should be the focus (as opposed to the development as a whole) of any analysis.

Pursuant to clause 4.6(3)(b) of the LEP, there are sufficient environmental planning grounds to justify the variation to the height of buildings development standard because:

- The variation to the 8.5m height standard under the LEP is the result of the historically excavated driveway and garage of the existing dwelling. The historical excavation creates an anomaly in the height plane overlaid above the site and does not reflect the topography of the site prior to its development. Disregarding the anomaly, the proposal is within 8.5m above the natural topography of the site. The historical excavation is a recognised environmental planning ground. *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582*

- There are no adverse amenity impacts arising from the breach of the height of buildings development standard (with regard to overshadowing, visual privacy, view loss). Noting the variation is a result of a historically lower excavated ground

level rather than building height. The lack of adverse amenity impacts arising from a variation is a recognised environmental planning ground. *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7 at 34.*

- The development proposal has been designed consistent with the intent of the height standard being a two storey form. The development is compatible with the scale of residential development within the R1 – General Residential Zone and aligns with the character of development within the vicinity of the site fronting Francis Street. The pitch of the roof form has been designed to be compatible with the established architecture within the vicinity of the site.

- The proposed development meets the relevant aims of the MLEP 2013 as follows:

    - 1.2(2)(a)(i) – The development proposal has been designed to wholly comply with the 8.5m height limit. The roof form includes an upper and a lower ridge, stepping with the topography of the site. The upper ridge height of the development aligns with the ridge of 36 Francis Street ensuring the proposal presents a stepped built form. The roof pitch of the development has been designed to align with the pitch of roofs in the vicinity of the site ensuring the dwelling presents a good streetscape outcome for the site.

    - 1.2(2)(a)(iv) – The portion of the building which varies the height limit is a result of an anomaly in the natural ground line as it is overlaid over the site. The proposed development has been designed to comply with an extrapolated ground line being an appropriate design response ensuring the building is comfortably positioned on the site with regard to the existing topography and its relationship with adjoining residential buildings.

      The front and rear setbacks of the development proposal have been positioned on site to maximise solar access of the adjoining dwelling to the south and whilst also preserving the outlook of 34 Francis Street which overlooks the subject site.

    - 1.2(2)(b) – The development proposal accommodates an appropriate residential density on the site within a form compatible with the planning controls. The dwelling has been designed with a considered architectural approach that aligns with streetscape precedence, and proposed landscape works will ensure that the dwelling is viewed within a landscape setting.

The proposed development meets the relevant objects of the Environmental Planning Assessment Act 1979 as follows;

- 1.3(c) – The development proposal is an orderly and economic use of the site being the redevelopment of a residential dwelling to a form consistent with that envisaged by the planning controls. This Clause 4.6 request addresses an existing anomaly on the site – excavated garage being an appropriate environmental planning ground to warrant a variation to the 8.5m height standard which is otherwise wholly met by the development proposal.

- 1.3(g) - The dwelling house has been designed to wholly comply with the 8.5m height limit albeit the component which technically varies the standard resulting from the historically excavated levels. The ridge height and roof pitch has been designed to align with that of the adjoining development and present appropriately to the public domain.

- 1.3(h) – The variation to the height of buildings development standard is the result of the existing excavated levels creating an anomaly within the natural ground line over the site. The variation to the height of buildings development standard will not present as additional building height however will accommodate a built form on the site that appropriately relates to the natural ground levels across the site and adjoining development.

Conclusion

The development proposal has a variation to the height of building development standard contained within Clause 4.3 of the Manly LEP 2013. Notwithstanding the variation the proposal has been designed with a built form that is consistent with the intent of the height standard and is suitable for the subject site.

The development proposal has been designed in accordance with the existing 'natural' ground levels across the site that existed prior to the excavation and construction of the existing building. This is an appropriate design response allowing a good transition between the adjoining development and a good relationship with the natural topography of the site. The historically excavated driveway and garage from the existing dwelling presents an anomaly in the height plane overlaid above the site which does not reflect the true topography of the site prior to development.

The technical measuring of building height for the purposes of Clause 4.3 of the LEP is from the existing ground level being the excavated ground level beneath the drive way and garage to the highest point of the building. The proposed dwelling height exceeds the height of buildings development standard only in those locations where there has been historical excavation.

Consistency with the objectives of the land use zone are a consideration under section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act, demonstrating the development is in the public interest and has been addressed within the Statement of Environmental Effects. Notwithstanding, the variation to the height of buildings development standard facilitates a good planning outcome for the site that is consistent with the desired future character for the R1 – General Residential Zone.

The application to vary the height of buildings development standard is well founded and as addressed is the result of the historically excavated levels on the subject site. The proposed building meets the objectives of the height development standard notwithstanding the numerical variation. The proposal achieves a good design outcome for the site that does not result in loss of views from adjoining development, unreasonable building bulk to the public domain, and a good visual outcome from the site that aligns with the established height of adjoining residential properties. The proposed building is a desirable outcome in terms of built form for the site and the locality and will contribute to an uplift in housing stock within the Northern Beaches Local Government Area.

In accordance with the environmental planning grounds addressed in this Clause 4.6 Request the proposed building height can be supported.

Chapman Planning Pty Ltd
Member PIA

ITEM 3.4 DA2023/1595 - 14 DELECTA AVENUE CLAREVILLE - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE

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 DA2023/1595 for alterations and additions to a dwelling house on land at Lot 17 DP 13291, 14 Delecta Avenue CLAREVILLE, subject to the conditions set out in the Assessment Report.

REPORTING MANAGER	
TRIM FILE REF	2024/189905
ATTACHMENTS	⇩1 Assessment Report ⇩2 Site Plan and Elevations

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/1595

Responsible Officer:	Mark Milton
Land to be developed (Address):	Lot 17 DP 13291, 14 Delecta Avenue CLAREVILLE 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:	Robert John Wearn Jane Elizabeth Wearn
Applicant:	James de Soyres & Associates Pty Ltd

Application Lodged:	09/11/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	20/11/2023 to 04/12/2023
Advertised:	Not Advertised
Submissions Received:	6
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	$ 2,698,333.00

EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) as it has six (6) objections.

Concerns raised in the objections predominantly relate to view loss, bulk and scale and compatibility with the existing residential character of the Locality. These issues are discussed and assessed in this report and should not carry determining weight.

Critical assessment issues included; side building line, building envelope and view sharing. These

have also been discussed and assessed in this report and are deemed satisfactory on merit, and are supported.

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

PROPOSED DEVELOPMENT IN DETAIL

This proposal involves the following works:

- Demolition of existing roof and construction of a new roof (the roof ridge is increasing 340mm in height, making the building 8m tall at its highest point)
- Construction of replacement external walls
- Partial demolition of existing round floor and construction of new rooms and external access stairs
- Reconstruction of first floor balcony with attached external staircase and opening roof structure
- Extension of ground floor living rooms and ground floor verandah
- Demolition of existing open fireplaces and chimneys
- Replacement of existing doors and windows
- Internal room reconfiguration
- Installation of a dumb-waiter goods lift
- Landscaping works
- Realignment of existing driveway

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 21 Development Control Plan - C1.3 View Sharing

Pittwater 21 Development Control Plan - D1.9 Side and rear building line
Pittwater 21 Development Control Plan - D1.11 Building envelope
Pittwater 21 Development Control Plan - D1.14 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 17 DP 13291 , 14 Delecta Avenue CLAREVILLE NSW 2107
Detailed Site Description:	The subject site consists of one (1) allotment located on the northern side of Delecta Avenue Clareville. The site is irregular in shape with a frontage of 15.24m along Delecta Avenue and a depth of 58.7m. The site has a surveyed area of 739.7m². The site is located within the C4 *Environmental Living* zone and accommodates a dwelling house. The rear of the property adjoins Taylors Point Reserve and beyond that Clareville Beach. The subject site is burdened at the rear by the Foreshore Building Line, which takes precedence over a rear building line. The site falls approximately 2.3m from front to rear. The site contains hedging and lawn at the front, with more lawn and some shrubs at the rear. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by single and multi-storey residential dwellings.

Map:



SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site.

The land has been used for residential purposes for an extended period of time.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	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	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent.

Section 4.15 Matters for Consideration	Comments
Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	These matters have been addressed via a condition of consent. Clause 29 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. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case. Clause 61 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. Clauses 62 and/or 64 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. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

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 20/11/2023 to 04/12/2023 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 process council is in receipt of 6 submission/s from:

Name:	Address:
Virginia Stubbs Mr John Stubbs	2 Milga Road AVALON BEACH NSW 2107
Mrs Carolyn Dianna Chung	7 Delecta Avenue CLAREVILLE NSW 2107
Ms Nicole Jessica Glenane	114 Hudson Parade CLAREVILLE NSW 2107
Mr Adam Richard Johnson	5 Delecta Avenue CLAREVILLE NSW 2107
Donald Chick & Dawn Chick	112 Hudson Parade CLAREVILLE NSW 2107
Mr Bruce Peter Mackay Mrs Judith Ada Mackay	PO Box 289 AVALON BEACH NSW 2107

The following issues were raised in the submissions:

- *Bulk and scale of the proposal*
- *View loss*
- *Bulk and scale of the proposed roof*
- *Compatibility with the existing residential character*
- *A transition away from low-density and scale development as promoted for the C4 Environmental Living zone*
- *Building envelope non-compliances on both side elevations*

The above issues are addressed as follows:

- **Bulk and scale of the proposal**

  The submissions raised concerns that the bulk and scale of the proposal is excessive.

  Comment:

  The works are primarily sited over existing built form, maintaining the existing building footprint. The proposal is compliant with building height and the whole dwelling is not considered to be

excessive with regard to bulk and scale.

- **View loss**

  The submissions raised concerns regarding potential view loss to surrounding properties.

  Comment:

  Any view loss generated by this development is considered minor and not unreasonable. For further explanation, see section C1.3 *View Sharing* of this report.

- **Bulk and scale of the proposed roof**

  The submissions raised concerns that the roof is excessive in bulk and scale.

  Comment:

  The roof is compliant with the height control of 8.5m under PLEP 2014. Additionally, the proposed colour is expected to be sympathetic to the surrounding landscape and is conditioned as such in this report.

- **Compatibility with the existing residential character**

  The submissions raised concerns that the dwelling does not reflect the local residential character.

  Comment:

  The dwelling will remain a low-density residential use. Furthermore, the proposal is sited primarily over existing built form and its visual bulk will present in a manner that conforms with the existing residential character of the Avalon Beach Locality.

- **A transition away from low-density and scale development as promoted for the C4 *Environmental Living* zone**

  The submissions raised concerns regarding the proposal and its compatibility with the C4 *Environmental Living* zone.

  Comment:

  The objectives of the zone are:

  - *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*

    Comment:
    The dwelling is primarily sited over existing built form, minimising its environmental impact. Additionally, the proposal reaches a maximum height of 8.0m, being below the 8.5m maximum under the planning control, thereby minimising impacts on neighbouring views.

  - *To ensure that residential development does not have an adverse effect on those values.*

Comment:
Minimal environmental impact is anticipated as a result of this proposal.

• *To provide for residential development of a low density and scale integrated with the landform and landscape.*

Comment:
The dwelling retains its low density residential nature. It is considered to suitably integrate with its context.

• *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

Comment:
The proposal is sited over existing built form and minimal environmental impact is anticipated. Vegetation will be minimally altered and wildlife corridors are not expected to be impacted.

- **Building envelope non-compliances on both side elevations**

The submissions raised concerns regarding building envelope non-compliances.

Comment:

These non-compliances are acceptable on their merit in this instance. Refer to section D1.11 *Building Envelope* for a detailed assessment.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Acid Sulfate)	**SUPPORTED** This application is seeking consent for additions and alterations to an existing dwelling. The property is within Class 3 Acid Sulfate Soils. A Preliminary Acid Sulfate Soils plan has been prepared by White Geotechnical dated 20 September 2023. Excavation to a maximum depth of ~1.2m. The report found: No Acid Sulfate Soils were identified in the test holes. The pHF levels tested in all Auger Holes did not fall lower than 4.3. This is above a PH of 4 that is an indicator of acid sulfate soils. No Potential Acid Sulfate Soils were identified in the test holes, therefore Environmental Health recommends approval.
NECC (Bushland and Biodiversity)	**SUPPORTED WITH CONDITIONS** The proposal seeks approval for alterations and additions to a dwelling house.

Internal Referral Body	Comments
	The comments in this referral relate to the following applicable controls and provisions: • SEPP (Resilience and Hazards) 2021 - Development within the coastal environment • Pittwater LEP - Clause 7.6 Biodiversity Protection • Pittwater DCP - Clause B4.7 Pittwater Spotted Gum Forest Endangered Ecological Community. The proposal would take place on a site that has been heavily disturbed and is unlikely to impact upon native flora and fauna. 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. Conditions are recommended to improve the ecological value of the site.
NECC (Coast and Catchments)	**SUPPORTED WITH CONDITIONS** 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. **Coastal Management Act 2016** The subject site has been identified as being within the coastal zone and therefore *Coastal Management Act 2016* is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the *Coastal Management Act 2016.* **State Environmental Planning Policy (Resilience & Hazards) 2021** The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA. Comment:

Internal Referral Body	Comments
	On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by James de Soyres & Associates Pty. Ltd. UNDATED and also as assessed in the submitted Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 30 October 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. **Pittwater LEP 2014 and Pittwater 21 DCP** **Estuarine Risk Management** The subject property has also been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site. In accordance with the Pittwater Estuary Mapping of Sea Level Rise Impacts Study (2015), a base estuary planning level of 2.71m AHD has been adopted by Council for the year 2050 i.e. if the design life of proposed development is 30 years or less. If the design life is higher, it is advisable to consider a base estuarine planning level (EPL) of RL 3.21m AHD. However, through the submitted Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 30 October 2023, The EPL has been estimated as 2.4m AHD considering the design life of 60 years. On internal assessment and as assessed in the submitted Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 30 October 2023, the ground floor level for the proposed additions and alterations is above the applicable EPL of 2.40m AHD for the site. The proposed development is therefore, subject to conditions, able to satisfy the relevant estuarine risk management requirements of P21 DCP. **Development on Foreshore Area**

Internal Referral Body	Comments
	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. 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.
NECC (Development Engineering)	**SUPPORTED WITH CONDITIONS** The proposed development is in Region 1. On-site detention is not required. Vehicle crossing construction is not proposed. A geotechnical report has been provided. I have no objections to the proposed development.
NECC (Flooding)	**SUPPORTED WITH CONDITIONS** The proposal if for alterations and additions to the existing dwelling. This includes changing an open garage to a closed garage, the extension of ground floor living areas and the addition of an external stairwell and entrance foyer. The property is within the Medium Flood Risk Planning Precinct. It has the following flood characteristics: • 1% AEP Level of 2.67m AHD. • Floor Planning Level (FPL) of 3.17 m AHD. • Probable Maximum Flood (PMF) Level of 4.51m AHD. Subject to conditions, the proposal generally complies with Section B3.11 and B3.12 of the Pittwater 21 DCP 2021 and Clause 5.21(2)(a-e) of the Pittwater LEP 2014, with consideration of Clause 5.21(3)(a-d) of the Pittwater LEP 2014.
NECC (Riparian Lands and Creeks)	**SUPPORTED WITH CONDITIONS** This application was assessed in consideration of: - Supplied plans and reports; - Coastal Management Act 2016; - State Environmental Planning Policy (Resilience and Hazards) 2021;

Internal Referral Body	Comments
	- Relevant LEP and DCP clauses; and - Northern Beaches Council Water management for development policy. **Riparian** The proposed development sits on the foreshore of the Pittwater Estuary which supports large pastures of seagrass critical to maintaining water clarity and aquatic biodiversity. Therefore the development must not significantly impact on the biophysical, hydrological or ecological integrity of the waterway or the quantity and quality of surface and ground water flows that they receive. **Sediment Management** Sediment and erosion controls must be installed prior to works and maintained until all work is complete and groundcover re-established. **Water quality Management - Sediment pit** As per the Water Management for Development policy, the applicant must install a filtration device that removes organic matter and coarse sediments from stormwater prior to discharge from the land. All stormwater treatment measures must make provision for convenient and safe regular inspection, periodic cleaning, and maintenance.
Parks, reserves, beaches, foreshore	**SUPPORTED WITHOUT CONDITIONS** The development site adjoins Taylors Point Reserve that is located downslope of the property. All development works must ensure that surface sediment runoff and/or erosion is controlled, managed and contained within the site boundaries and prevented from travelling across the boundary and into the Reserve. No physical encroachments over the site boundaries are permitted, and structures and built elements are not permitted beyond the site boundaries. Public access to the reserve is not impacted by the proposed development and the development is not detrimental to the landscape character of the adjoining Reserve, and as such Parks, Reserves and Foreshores raise no concerns with the development proposal.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	**SUPPORTED WITH CONDITIONS** The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	**SUPPORTED WITH CONDITIONS** Reference is made to the proposed development at the above area and Aboriginal heritage. There are known Aboriginal sites in the area. No sites are recorded in the current development area, however, the area of the proposed development is identified as having high potential for unrecorded Aboriginal sites. 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. However, according to the Due Diligence Code of Practice, any land within 200m of water is considered to have Aboriginal heritage sensitivity and the potential to contain Aboriginal sites. During construction all workers and contractors should be made aware of their obligations to avoid harm to Aboriginal sites and areas of Aboriginal sensitivity. Under the *National Parks and Wildlife Act 1974* (NPW Act) all Aboriginal objects are protected. Should anything thought to be Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office be contacted. In line with our normal advice for sandy areas, the Aboriginal Heritage Office recommends that the development conditions should provide for stop work provisions (unexpected discovery protocol) in the unlikely event that human remains are uncovered. Should human remains be uncovered, works must cease and the NSW Police must 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 (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No. A505552, dated 27 September 2023). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 3 Coastal environment area
2.10 Development on land within the coastal environment area

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

Comment:
The proposed development is not expected to cause adverse impact to the coastal environment area.

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

Comment:
Council is satisfied that the proposed development is appropriately designed and sited to ensure adverse impact to the items referred to in subsection (1) is avoided.

Division 4 Coastal use area
2.11 Development on land within the coastal use area

1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
   a) has considered whether the proposed development is likely to cause an adverse impact on the following:
      i) existing, safe access to and along the foreshore, beach, headland or rock
      ii) platform for members of the public, including persons with a disability,
      iii) overshadowing, wind funnelling and the loss of views from public places to
      iv) foreshores,
      v) the visual amenity and scenic qualities of the coast, including coastal headlands,
      Aboriginal cultural heritage, practices and places,
      cultural and built environment heritage, and

b) is satisfied that:
   i) the development is designed, sited and will be managed to avoid an
   ii) adverse impact referred to in paragraph (a), or
   iii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
   if that impact cannot be minimised—the development will be managed to mitigate that impact, and

c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:
Council is satisfied the proposed development is appropriately designed and sited in a manner that avoids adverse impact to the coastal use area.

Division 5 General
2.12 Development in coastal zone generally—development not to increase risk of coastal hazards

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

Comment:
Council is satisfied the proposed development will not cause an increased risk of coastal hazards on the site or surrounding land.

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

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

Comment:
All relevant provisions of applicable certified coastal management programs have been considered as part of the assessment of the application.

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

Chapter 4 – Remediation of Land

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

Pittwater Local Environmental Plan 2014

Is the development permissible?	Yes

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	8.5m	8.0m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
5.7 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
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	13.7m	N/A	Yes
Foreshore building line*	Behind FBL	Behind FBL	N/A	Yes
Side building line	1.0m (East)	0.9m	N/A	**No**
	2.5m (West)	0.6m (Chimney)	76%	No (As existing)
	2.5m (West)	0.8m (Rest of dwelling)	68%	**No**
Building envelope	3.5m (East elevation)	Outside envelope	N/A	**No**
	3.5m (West elevation)	Outside envelope	N/A	**No**
Landscaped area	60% (443.8sqm)	41.7 % (308.2sqm)	30.6%	**No**

*The Foreshore Building Line takes precedence over the Rear Building Line, as specified in Clause D1.9 of PDCP.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	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
B6.6 On-Street Parking Facilities	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
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D1.1 Character as viewed from a public place	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D1.5 Building colours and materials	Yes	Yes
D1.8 Front building line	Yes	Yes
D1.9 Side and rear building line	No	Yes
D1.11 Building envelope	No	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	No	Yes
D1.15 Fences - General	Yes	Yes
D1.17 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D1.20 Scenic Protection Category One Areas	Yes	Yes
D15.11 Waterfront lighting	Yes	Yes
D15.12 Development seaward of mean high water mark	Yes	Yes

Detailed Assessment

C1.3 View Sharing

Six (6) submissions from five (5) neighbouring properties have been received, raising concerns of potential view loss as a result of the development.

As such, site inspections were able to be arranged and undertaken on two of these properties on 13 February 2024 to determine the extent of the view impacts and other concerns raised.

Height poles were considered, and after attendance at the affected properties, they were deemed unnecessary for this particular application. The information provided was considered appropriate and comprehensive for the purposes of a view loss assessment.

Photos of the subject site taken from the affected areas of the objecting sites are presented below. All photos were taken at 1x magnification.

Affected Site #1 - 5 Delecta Ave



5 Delecta Ave Image 1. Photo of the subject site and view from the eastern edge of the facing balcony



5 Delecta Ave Image 2. Photo of the subject site and view from the western edge of the facing balcony.

Affected Site #2 - 7 Delecta Ave (May also be known as 116 Hudson Pde)



7 Delecta Ave Image 1. Photo of the subject site and view from the first floor balcony.



7 Delecta Ave Image 2. Photo of the subject site and view from the first floor kitchen.



7 Delecta Image 3. Photo of the subject site and view from the first floor living room.

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:

The rear of the subject site adjoins Clareville Beach and the inlet of saltwater known as Pittwater, with the other (north) side of the inlet being Morning Bay and Ku-Ring-Gai Chase National Park, which present as mostly bushland when viewed from Clareville Beach. The sites, like the subject site, along the northern side of Delecta Avenue adjoining Clareville Beach are on relatively flat ground adjoining the beach. The properties on the southern side of Delecta Avenue, including those immediately across the road from the subject site, are on sites that increase in steepness from 6 or 7m to approximately 14m above sea level towards their respective rears (south). As such, properties on the southern side of Delecta Avenue have considerable water views, and beyond that, land views over those properties on the northern side of Delecta Avenue, including the subject site.

5 Delecta Avenue

The first floor balcony features northern views towards the inlet and bushland north of Pittwater over and through the northern side of Delecta Avenue. The water views to the north of the subject site are heavily obscured by native trees between the subject site and Clareville Beach. Additionally, there is a tree on the western neighbouring site that partially obstructs the view of the subject site and a telegraph pole. Water and land views further to the east are obstructed by the eastern neighbour.

Regarding the proposal, from the balcony there will be a minor change in water views with parts of the roof rising slightly. The slight water view over the west side of the roof when standing at the eastern side of the balcony will be slightly enhanced with the redesigned roof. Additionally, the transition from a light-coloured roof to a dark-coloured roof is anticipated to result in built form that is less visually prominent and better conforms with the surrounding canopy trees.

7 Delecta Avenue

Views of Pittwater and the bushland on the northern side are visible from the first floor living room, balcony and kitchen of the property at 7 Delecta Avenue. The view over the subject site is comparable to that of 5 Delecta Avenue in that slight water views are obtained to the west of the subject site, and that the majority of the water view over the subject site is obstructed by native vegetation on Clareville Beach. The redesigned roof will mostly affect the view of these trees, albeit to a minor extent. Overall, the water view is only very minorly obstructed as a result of the proposal.

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:

5 Delecta Ave

The majority of the impacted views occur from the first floor balcony. These are obtained from both standing and sitting positions. The proposal will overall have a negligible view impact to this site, with water views to the west of the subject dwelling slightly enhanced due to the roof redesign.

7 Delecta Ave

The majority of the impacted views occur from the first floor living room, kitchen and balcony. These are obtained from both standing and sitting positions. There are shade sails immediately in front of the kitchen window which somewhat obstructs the views towards and over the subject site. Balcony and living rooms will be minorly affected, with the trees behind the subject site the most affected view. Overall, the overwhelming majority of views from this site will be retained.

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:

5 Delecta Ave

The resident of the property stated that the majority of the impacted views are obtained from the first floor balcony. The proposal has a minor to negligible impact on views for the property from the first floor balcony. The visual impact is softened by a tree that obstructs views of the subject dwelling and a telegraph pole, particularly from the western side of the balcony. The visual impact is also slightly offset by a gain in views to the west of the subject dwelling when the redesign of the roof is considered. Overall, the existing view is almost completely retained.

7 Delecta Ave

The resident of the property stated that the majority of the impacted views occur from the first floor living room, kitchen and balcony. This property is closer to the subject site than 5 Delecta Avenue is, and as such the visual impact as a result of the proposal is more prominent. However, the impact is also considered minor to negligible. Most of the slight water view over the property shall be retained, with the additional height of the proposed roof towards the rear of the subject dwelling impacting the view of the trees behind it.

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 proposal is non-compliant with side boundary lines, building envelope and landscaped open space. Despite these non-compliances, the view to the western side of the subject site from 5 Delecta Avenue is slightly enhanced by the redesign of the roof. The dwelling maintains its existing character

and visual bulk, with the majority of the view impact generated by the proposed roof. Importantly, the dwelling is comfortably compliant with building height, and the whole proposal is considered reasonable for its context. Any view loss generated by the proposal is considered minor to negligible and there will be no unreasonable impact on views as a result of the proposal.

- *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 roof will minorly diminish the view of the native vegetation behind the property, which itself obstructs a greater portion of the northern water views. View loss generated as a result of the proposed roof is not considered unreasonable. There is a slight enhancement in views to the west of the proposal dwelling given the roof redesign.

- *Canopy trees take priority over views.*

  Comment:

  No trees are proposed for removal.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is **supported**, in this particular circumstance.

D1.9 Side and rear building line

Description of Non-compliance

Clause D1.9 *Side and Rear Building Line* prescribes a side setback of 2.5m to one side and 1.0m to the other. Additionally, the site is subject to the Foreshore Building Line, which takes precedence over the rear building line. The proposal is situated outside of, and is therefore compliant with the Foreshore Building Line.

Non-compliances with regards to Clause D1.9 are as follows:

The eastern side setback is increased from an existing 0.78m to a proposed 0.86m. Adopting the 1.0m side setback control for this eastern side, the non-compliance extends for a length of 1.1m.
The western side setback has an existing non-compliant chimney at 0.64m from the western side boundary when the 2.5m side setback control is adopted for this side. The remainder of the dwelling has an existing non-compliance maintained at 0.88m. The proposed first floor works are to be set back 0.9m from the side boundary. The proposal is non-compliant with the western side setback for the whole length of the dwelling.

Merit Consideration

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

- ***To achieve the desired future character of the Locality.***

  Comment:
  The locality will maintain its informal relaxed casual seaside environment. The residential development is low-density and appropriately integrates with its setting facing Clareville Beach.

- ***The bulk and scale of the built form is minimised.***

  Comment:
  The eastern side boundary is benefitted by a public pathway between the subject site and the eastern neighbour, creating additional separation between the two sites. This partly softens the impact of the eastern side boundary encroachment. Furthermore, the proposal is only minorly non-compliant with the 1m eastern side setback control. The western elevation maintains an existing setback, and as the shadow diagrams show, will result in a minorly decreased shadow on the western neighbour, partly due to the compliant building height.

- ***Equitable preservation of views and vistas to and/or from public/private places.***

  Comment:
  The encroachment into the side setback areas is not considered to result in any unacceptable view loss from surrounding private properties or the public domain.

- ***To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.***

  Comment:
  The proposed works are not anticipated to unreasonably impact views to, from and through the subject site. As the development is mostly on existing built form, the setbacks are mostly maintained and the building height remains compliant, any view change is expected to be minor and reasonable in nature.

- ***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 overall will provide acceptable levels of privacy, amenity and solar access in relation to the subject site and adjoining properties. The eastern neighbour is somewhat spatially separated from the subject site and the dwelling siting. On the western elevation, the proposed windows are situated away from the western neighbour, and any privacy, amenity or solar access impact is anticipated to be to a reasonable degree.

- ***Substantial landscaping, a mature tree canopy and an attractive streetscape***

  Comment:

Council's Bushland & Biodiversity Officer is supportive of the proposal, subject to conditions included in this assessment to improve the ecological value of the site.

- ***Flexibility in the siting of buildings and access***

  Comment:
  The proposal and access are appropriately sited.

- ***Vegetation is retained and enhanced to visually reduce the built form.***

  Comment:
  The subject site features is heavily disturbed with minimal ecological value. As such, conditions have been imposed in this assessment to enhance native vegetation on site, which in turn will soften the visual appearance of the built form.

- ***A landscaped buffer between commercial and residential zones is achieved.***

  Comment:
  This outcome does not apply.

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.

D1.11 Building envelope

Description of Non-compliance

Clause D1.11 *Building Envelope* of P21DCP requires buildings to be sited within an envelope with planes projecting at 45 degrees from a height of 3.5 metres at the side boundaries towards the maximum building height. This proposal has boundary envelope non-compliances on both east and west elevations, as images 1 and 2 below demonstrate.

The proposed west elevation building envelope non-compliance is for a length of 24.3m, from minimum 0.2m in height towards the front of the dwelling rising to 1.6m in height towards the rear.

The proposed east elevation building envelope non-compliance is for a length of 16.5m, from a minimum height of nil to a maximum height of 1.4m towards the front of the dwelling.

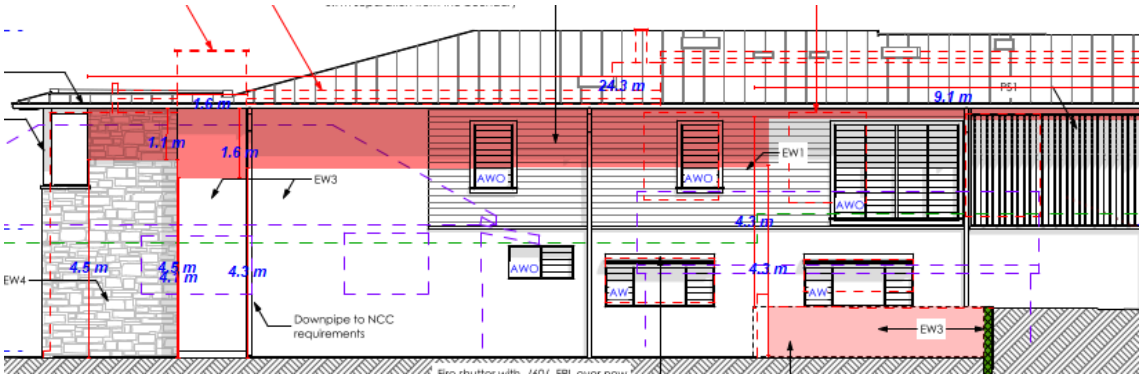


Image 1. West Elevation building envelope proposed non-compliances.

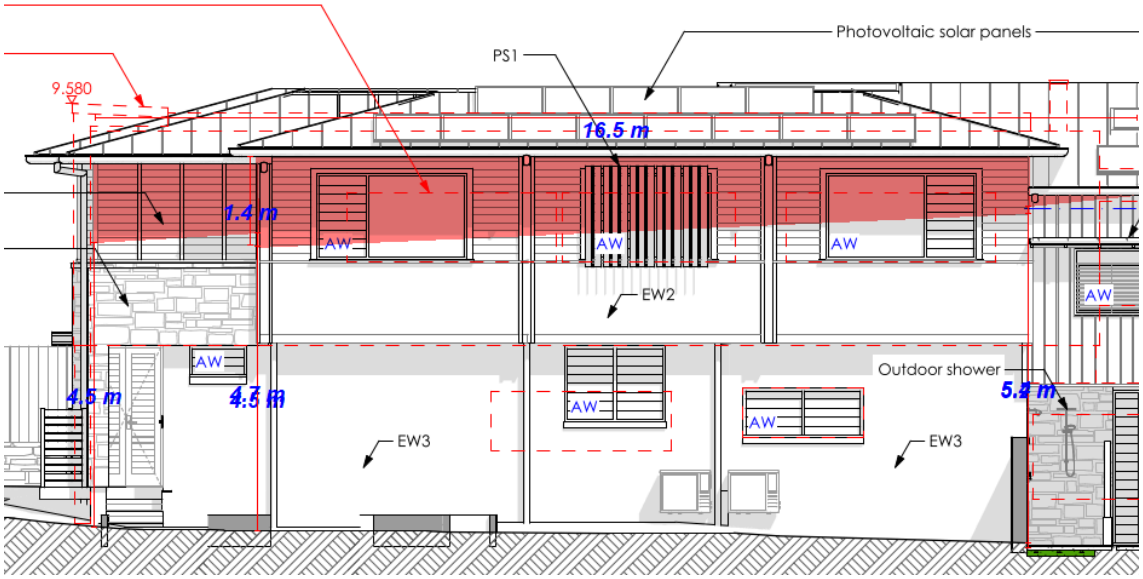


Image 2. East Elevation building envelope proposed non-compliances.

It is acknowledged that there are considerable proposed boundary envelope non-compliances on both east and west elevations that stretch for most of the length of the dwelling. However, the proposed boundary envelope non-compliances is similar in scale to what is currently observed on the existing dwelling.
The existing west elevation envelope non-compliance is for a length of 27.5m, from 1.3m in height towards the front of the dwelling rising to 2.8m in height towards the rear, with the height of the breach exacerbated by the chimney.
The existing east elevation envelope non-compliance is for a length of 16m, from maximum 1.8m in height towards the front of the dwelling decreasing to 1.1m in height towards the middle of the dwelling's length.

Images 3 and 4, shown below, visualize the existing building envelope non-compliances.

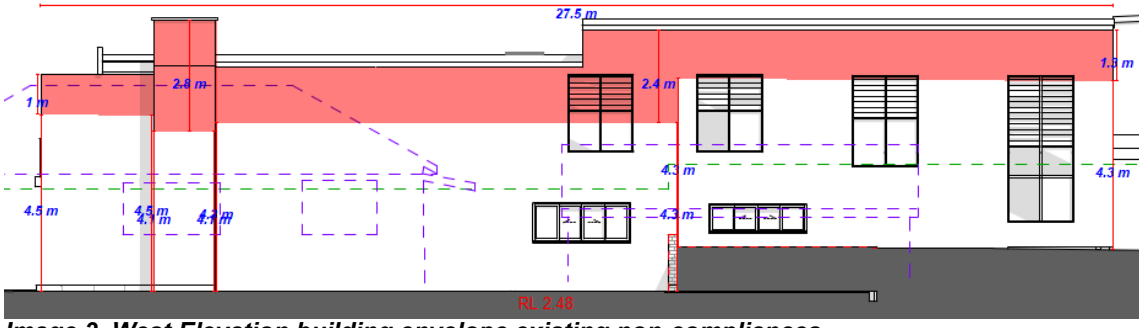


Image 3. West Elevation building envelope existing non-compliances.

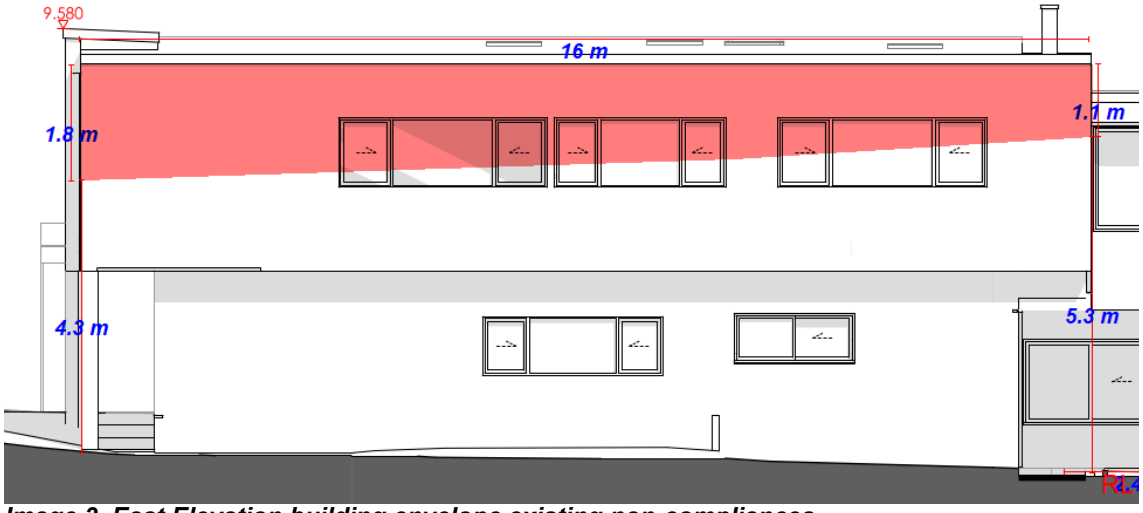


Image 3. East Elevation building envelope existing non-compliances.

The east elevation proposal shows a similar scale building envelope non-compliance to that which currently exists. The west elevation building envelope non-compliance proposal is notably smaller than the existing non-compliance.

One further consideration of note is the access way adjoining the eastern boundary of the property. This access way, used to access Clareville Beach and Taylors Point Reserve from Delecta Ave, provides a 3.7m buffer between the subject site and the eastern neighbour, softening the extent adverse impacts of the non-compliance on the eastern neighbour.

Merit Consideration

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

- *To achieve the desired future character of the Locality.*

Comment:

The dwelling remains a low-density character at a maximum of two storeys. The dwelling is appropriately sited to integrate with the surrounding landscape, most notably opening to Clareville Beach behind. The dwelling is below the surrounding tree canopy. Building colours are also sympathetic with the surrounding environment.

- *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:

There are several native trees to the north of the property which extend far above the dwelling. The design of the dwelling is considered to be a positive outcome to the existing streetscape.

- *To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.*

Comment:

The proposal is primarily sited within the footprint of the existing dwelling. The spatial changes of the proposal as observed from neighbouring properties are largely centered within the redesigned roof, however these are considered to have minimal effect on the surrounding natural environment. As discussed within this report, the existing natural environment to the north (trees and Pittwater to the north) will be only minimally obstructed when viewed from certain properties that have a view corridor over the subject dwelling. Overall, the proposal provides an appropriate response and relationship to the spatial characteristics of the existing natural environment.

- *The bulk and scale of the built form is minimised.*

Comment:

The proposal is primarily sited over existing built form and is compliant with building height. As discussed in this report any view loss as a result of the proposal is not considered unreasonable. The access way adjoining the eastern boundary of the subject site softens the impact of the eastern building envelope non-compliance on the eastern neighbour as the two sites are separated by 3.7m. Overall, the proposed changes are not considered to contribute to excessive bulk or scale, and therefore bulk and scale of the built form is minimised.

- *Equitable preservation of views and vistas to and/or from public/private places.*

Comment:

The proposal will not have an unreasonable impact on views. View loss is discussed in further depth in section C1.3 *View Sharing* of this report.

- *To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.*

Comment:

No unreasonable impacts on privacy, amenity and solar access are expected to be generated

by this proposal affecting either the subject site or neighbouring properties. The proposal is sited and designed to ensure an appropriate level of privacy, amenity and solar access for the development site and adjoining sites.

- *Vegetation is retained and enhanced to visually reduce the built form.*

  Comment:

  The site in its current state is heavily disturbed with little native vegetation. Council's Bushland and Biodiversity specialist has reviewed the proposal and is supportive, subject to conditions included in this report. The addition of a canopy tree at the front of site will help soften the visual bulk of the proposal when viewed from the streetscape and surrounding development, particularly to the south.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is **supported**, in this particular circumstance.

D1.14 Landscaped Area - Environmentally Sensitive Land

Description of Non-compliance

Part D1.14 *Landscaped Area - Environmentally Sensitive Land* of PDCP requires a minimum 60% (443.8sqm) of the site area as landscaped area. The proposal has a total of 41.7% (308.2sqm) landscaped area, presenting a variation of 30.6% (135.6sqm). The existing landscaped area is a total of 42% (310.5sqm), and the proposal reduces this by 2.3sqm.

A clause within Part D1.14 allows for up to 6% of the total site area to be provided as impervious landscape treatments providing these areas are for outdoor recreational purposes only. The total then is increased to 47.7% (352.8sqm). The variation is **20.5%** (91sqm), still presenting a non-compliance with the control.

Merit Consideration

With regard to the request for 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 development maintains consistency with the desired future character notwithstanding the landscape variation. The site maintains its integration with the Reserve and Clareville Beach at the rear with substantial lawn and other vegetation. The frontage is to maintain its existing landscaped setting with hedge planting, presenting a vegetated appearance when viewed from the streetscape.

- *The bulk and scale of the built form is minimised.*

  Comment:

  The proposal is not considered to be excessive by virtue of bulk and scale. Only a minor decrease in landscaped area is proposed and the proposal is appropriate given its surrounding context.

- *A reasonable level of amenity and solar access is provided and maintained.*

  Comment:

  The development, as amended, is not found to unreasonably impact the amenity or solar access of adjoining properties.

- *Vegetation is retained and enhanced to visually reduce the built form.*

  Comment:

  The addition of a canopy tree at the front of site will further assist in softening the visual bulk of the dwelling, and Council's Bushland and Biodiversity specialist is supportive of the proposal, subject to included conditions.

- *Conservation of natural vegetation and biodiversity.*

  Comment:

  As above.

- *Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels.*

  Comment:

  The proposal has been reviewed by Council's Development Engineers who raise no objections to the proposed stormwater solution. Conditions have been imposed on the consent which will ensure stormwater is appropriately managed.

- *To preserve and enhance the rural and bushland character of the area.*

  Comment:

  Minimal change is proposed to the existing vegetation on site, with the addition of a canopy tree at the front of site presenting a positive outcome. The building is not excessive in scale and is to be constructed of materials that generally match the natural environment, including the native canopy vegetation behind the dwelling. Overall, the proposal is considered to slightly enhance the bushland character of the area.

- *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 has been reviewed by Council's Development Engineers who raise no objections to the proposed stormwater solution, subject to conditions which are included in this consent.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P 21 DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is **supported**, in this particular circumstance.

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 $26,983 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $2,698,333.

CONCLUSION

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

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

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

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

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

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

PLANNING CONCLUSION

This proposal involves alterations and additions to a dwelling house and has been referred to the Development Determination Panel (DDP) due to having six (6) objecting submissions.

The concerns raised in the objections, which raise view sharing, bulk and scale and compatibility with the existing residential character of the Avalon Beach Locality as primary issues, have been addressed within this report and the proposal is demonstrated to result in a development considered reasonable and approvable on its merits.

The critical assessment issues are view sharing, side building line and the building envelope.

The view loss assessment revealed there will be some impact on neighbouring views towards Pittwater and Ku-Ring-Gai Chase National Park as a result of the proposal (the roof ridge is increasing 340mm in height, making the building 8m tall at its highest point), however the impact on views for the affected properties is considered negligible to minor, and in no way unreasonable.

Side building line non-compliances exist on both east and west sides of the development. These non-compliances are existing, and the proposal is to maintain and reduce the non-compliances on the west and east side boundaries. The proposal is largely sited over existing built form and allows for a reasonable level of privacy, amenity and solar access to neighbours on each side. Additionally, the eastern side boundary is bordered by a public pathway, providing further distance to the eastern neighbouring property. Summarily, the side building line non-compliances are acceptable on merit.

The proposal contains significant building envelope non-compliances apply on both eastern and western sides of the proposed first floor. It is noted that the proposal has a maximum height of 8.0m, somewhat mitigating its bulk and scale. Additionally, the proposal is primarily sited within the footprint of the existing dwelling and is considered to have minimal effect on the surrounding natural environment. The dwelling will appear visually similar in bulk and scale when viewed from neighbouring sites and public places. Section D1.11 of this report visualizes the extent of the building envelope non-compliances. The west elevation non-compliance appears reduced in scale from the existing non-compliance, whilst the east elevation non-compliance is relatively similar in scale.

The proposed non-compliances with the envelopes are accepted on merit, and this is partly attributed to the 3.7m wide access way adjoining the eastern boundary of the site. This access way provides separation between the subject site and eastern neighbour and serves to soften the impact of the east building envelope non-compliance on the eastern neighbour. Overall, the building envelope non-compliances are considered appropriate for the proposal and are not thought to unreasonably impact neighbouring amenity. Therefore, the building envelope non-compliances are acceptable on merit in this instance.

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

The proposed development is considered to satisfy the appropriate controls and objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. All processes and assessments have been satisfactorily addressed.

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2023/1595 for Alterations and additions to a dwelling house on land at Lot 17 DP 13291, 14 Delecta Avenue, CLAREVILLE, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

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

Approved Plans				
Plan Number	**Revision Number**	**Plan Title**	**Drawn By**	**Date of Plan**
DA-10	-	Ground Floor Plan	James de Soyres + Associates Architects	30 October 2023
DA-11	-	First Floor Plan	James de Soyres + Associates Architects	30 October 2023
DA-12	-	Roof Plan	James de Soyres + Associates Architects	30 October 2023
DA-13	-	Ground Floor Demolition Plan	James de Soyres + Associates Architects	30 October 2023
DA-14	-	First Floor Demolition Plan	James de Soyres + Associates Architects	30 October 2023
DA-15	-	Roof Demolition Plan	James de Soyres + Associates Architects	30 October 2023
DA-20	-	North & South Elevations and Finishes Schedule	James de Soyres + Associates Architects	30 October 2023
DA-21	-	East & West Elevations	James de Soyres + Associates Architects	30 October 2023
DA-30	-	Sections A-A and B-B	James de Soyres + Associates Architects	30 October 2023
DA-31	-	Section X-X and Y-Y	James de Soyres + Associates Architects	30 October 2023

Approved Reports and Documentation			
Document Title	**Version Number**	**Prepared By**	**Date of Document**
BASIX Certificate #A505552	-	James de Soyres + Associates Architects	27 September 2023
Estuarine Risk Management Report on 14 Delecta Avenue Clareville	-	Horton Coastal Engineering	30 October 2023
Geotechnical Investigation	-	White Geotechnical Group	20 September 2023
Waste Management Plan	-	James de Soyres + Associates Architects	25 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	11 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. **Approved Land Use**
Nothing in this consent shall authorise the use of the site beyond the definition of a *dwelling house*, in accordance with the Dictionary of the Pittwater Local Environmental Plan 2014.

Any variation to the approved land use beyond the scope of the above definition will require the submission to Council of a new development application.

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

4. **Prescribed Conditions**

(a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

(b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);

(c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

(i) showing the name, address and telephone number of the Principal Certifier for the work, and

(ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and

(iii) stating that unauthorised entry to the work site is prohibited.

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

(d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

(i) in the case of work for which a principal contractor is required to be appointed:

A. the name and licence number of the principal contractor, and

B. the name of the insurer by which the work is insured under Part 6 of that Act,

(ii) in the case of work to be done by an owner-builder:

A. the name of the owner-builder, and

B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

(e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

(i) protect and support the adjoining premises from possible damage from the excavation, and

(ii) where necessary, underpin the adjoining premises to prevent any such damage.

(iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

(iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

5. **General Requirements**

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

Demolition and excavation works are restricted to:
- 8.00 am to 5.00 pm Monday to Friday only.

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

(b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.

(c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

(d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

(e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

(f) Prior to the release of the Construction Certificate, payment of the following is required:

i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than $250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that

applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.

iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.

(g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

(h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

(k) Prior to the commencement of any development onsite for:

i) Building/s that are to be erected

ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place

iii) Building/s that are to be demolished

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

v) For any work/s that is to be demolished

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

(l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

(m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

(n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

(1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools

(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

(2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

(3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

(4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

6. **Policy Controls**
Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of $26,983.33 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of $2,698,333.00.

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

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

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

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

7. **Security Bond**

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

An inspection fee in accordance with Council adopted fees and charges (at the time of

payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

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

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

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

8. **Construction, Excavation and Associated Works Security Bond(s)**
The applicant is to lodge a bond with Council for the following:

Drainage Works
As security against any damage or failure to complete the construction of stormwater drainage works required as part of this consent a bond of $20,000.

Details confirming payment of the bond(s) are to be submitted to the Principal Certifier prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

9. **Flood effects caused by development**
There is to be no filling of the land or any other reduction of the available flood storage which results in a net loss of storage below the 1% AEP flood level of 2.67m AHD.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

10. **Building components and structural soundness**
B1 - All new development below the Flood Planning Level of 3.17m AHD shall be designed and constructed from flood compatible materials.

B2 - All new development must be designed to ensure structural integrity up to the Flood Planning Level 3.17m AHD, taking into account the forces of floodwater, debris load, wave action, buoyancy and immersion.

B3 - All new and existing electrical equipment, power points, wiring and connections must be located above the Flood Planning Level of 3.17m AHD, protected from flood water or have residual current devices installed to cut electricity supply during flood events.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-

prone property and reduce public and private losses in accordance with Council and NSW Government policy.

11. **Floor levels**
C4 - The one-off alteration below the Flood Planning Level must remain less than 30 square metres remain above the 1% AEP level.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

12. **Fencing**
New fencing shall be open to allow for the unimpeded movement of flood waters. It must be designed with a minimum of 50% open area along any straight length, from the natural ground level up to the 1% AEP flood level. Openings shall be a minimum of 75mm x 75mm.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

13. **Stormwater Disposal**
The applicant is to submit Stormwater Engineering Plans for the new development within this development consent in accordance with AS/NZS 3500 and Council's Water Management for Development Policy, prepared by an appropriately qualified and practicing Civil or Hydraulic Engineer who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) , indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to Council's stormwater infrastructure in accordance with approved Section 68 application plans.

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

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

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by White Geotechnical Group dated 20.09.2023 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

15. **Erosion and Sediment Control Plan**
An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:

- Site Boundaries and contours
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities)
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls that must include sediment fences, stabilised site access, materials and waste stockpiles locations, location of any stormwater pits on the site and how they are going to be protected.
- North point and scale.

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

Reason: To protect the receiving environment.

16. **Water Quality Management**
The applicant must install a filtration device (such as a sediment control pit or absorption trench) that captures organic matter and coarse sediments prior to discharge of stormwater from the land. All stormwater treatment measures must make provision for convenient and safe regular inspection, periodic cleaning, and maintenance.

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

Reason: Protection of the receiving environment.

17. **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.

18. **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.

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

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

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

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

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

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

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

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

21. **Stormwater Drainage Application**
The applicant is to provide a stormwater drainage application under Section 68 of the Local Government Act 1993 to Council for approval. The submission is to include Civil Engineering plans for the design of the private stormwater connection into Council stormwater infrastructure which are to be generally in accordance with the civil design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1 and Council's Standard Drawing No. S1016. The form can be found on Council's website at www.northernbeaches.nsw.gov.au > Council Forms > Stormwater Drainage Application Form.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fees and Charges. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for disposal and maintenance stormwater management and compliance with the BASIX requirements, arising from the development.

22. **Pre-Construction Stormwater Assets Dilapidation Report**
The Applicant is to submit a pre-construction / demolition Dilapidation Survey of Council's Stormwater Assets prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset, to record the existing condition of the asset prior to the commencement of works. Council's Guidelines are available at: https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/2009084729guidelineforpreparingadilapidationsurveyofcouncilstormwaterassets2

The pre-construction / demolition Dilapidation Report must be submitted to Council for approval and the Principal Certifier prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

23. **Estuarine Planning Level Requirements**
An Estuarine Planning Level (EPL) of 2.40m AHD has been recommended through the Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 30 October 2023 for the subject site and shall be applied to all development proposed below this level as follows:

1. All structural elements below 2.40m AHD shall be of flood compatible materials;
2. All electrical equipment, wiring, fuel lines or any other service pipes and connections must be located either above 2.40m AHD or waterproofed to this level; and
3. The storage of toxic or potentially polluting goods, chemicals or materials, which may be hazardous or pollute the waterway, is not permitted below 2.40m AHD.
4. All interior power supplies (including electrical fittings, outlets and switches) must be located at or above 2.40m AHD. All exterior power supplies (including electrical fittings, outlets and switches) shall be located at or above 2.40m AHD to avoid the likelihood of contact with splashing waves and spray.

Reason: To ensure vulnerable components of the development are built at the appropriate

level.

24. **Compliance with Estuarine Risk Management Report**
The development is to comply with all recommendations of the approved Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd dated 30 October 2023 and these recommendations are to be incorporated into construction plans and specifications and maintained over the life of the development.

Reason: To minimise potential hazards associated with development in an estuarine habitat.

25. **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.

26. **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.

27. **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

28. **Installation and Maintenance of Sediment and Erosion Control**
Sediment and erosion controls must be installed in accordance with Landcom’s ‘Managing Urban Stormwater: Soils and Construction’ (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after

periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

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

DURING BUILDING WORK

29. **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.

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

Reason: Public safety.

31. **Installation and Maintenance of Sediment and Erosion Controls**
Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan prior to commencement of any other works on site.

Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: To protect the receiving environment.

32. **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.

33. **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.

34. **Survey Certificate**
A survey certificate prepared by a Registered Surveyor at the following stages of construction:

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

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

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

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

36. **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, Housing and Infrastructure.

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, Housing and Infrastructure.

Reason: Aboriginal Heritage Protection.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

37. **Certification of Works as Executed**
A suitably qualified engineer and/or registered surveyor is to certify that the completed works have been constructed in accordance with this consent and the approved plans with respect to the following:

1. There has been no filling on the land other than what has been approved
2. Openings are provided in fencing where required for the free passage of flood waters

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

38. **Native Landscaping**
Any new landscaping is to incorporate a minimum 80% locally native vegetation species as a proportion of the total number of plants. Locally native species are to be consistent with the Pittwater Spotted Gum Forest Endangered Ecological Community species list.

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

Reason: To ensure compliance with the requirement to retain and protect native planting on the site.

39. **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.

40. **Post- Construction Stormwater Assets Dilapidation Report (Council stormwater assets)**
The Applicant shall submit a post-construction Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset in order to determine if the asset has been damaged by the works. Council's Guidelines are available at https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/preparingdilapidationsurveyforcouncilstormwaterassets.pdf

The post-construction / demolition dilapidation report must be submitted to Council for review and approval. Any damage to Council's stormwater infrastructure is to be rectified prior to the release of any Drainage security bonds. Council's acceptance of the Dilapidation Survey is to be submitted to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: Protection of Council's infrastructure.

41. **Certification of Council Drainage Works and Works as Executed Data in accordance with Local Government S68 Approval**
The Applicant shall submit certification by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) that the completed works have been constructed in accordance with this consent and the approved Section 68 approved plans. Works as Executed data (details overdrawn on a copy of the approved drainage plan) certified by a registered surveyor in relation to boundaries and/or relevant easements prepared in accordance with Council's 'Guideline for preparing Works as Executed data for Council Stormwater Assets' within the subject site, shall be submitted to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: To ensure compliance of drainage works with Council's specification for engineering works.

42. **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.

43. **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.

44. **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.

45. **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.

46. **Certification of Structures Located Adjacent to Council Pipeline or Council Easement**
The Applicant shall submit a suitably qualified Structural Engineer's certification that the

completed footing works have been constructed in accordance with this consent, Northern Beaches Council's Water Management for Development Policy and the approved Construction Certificate plans. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: Protection of Council's infrastructure

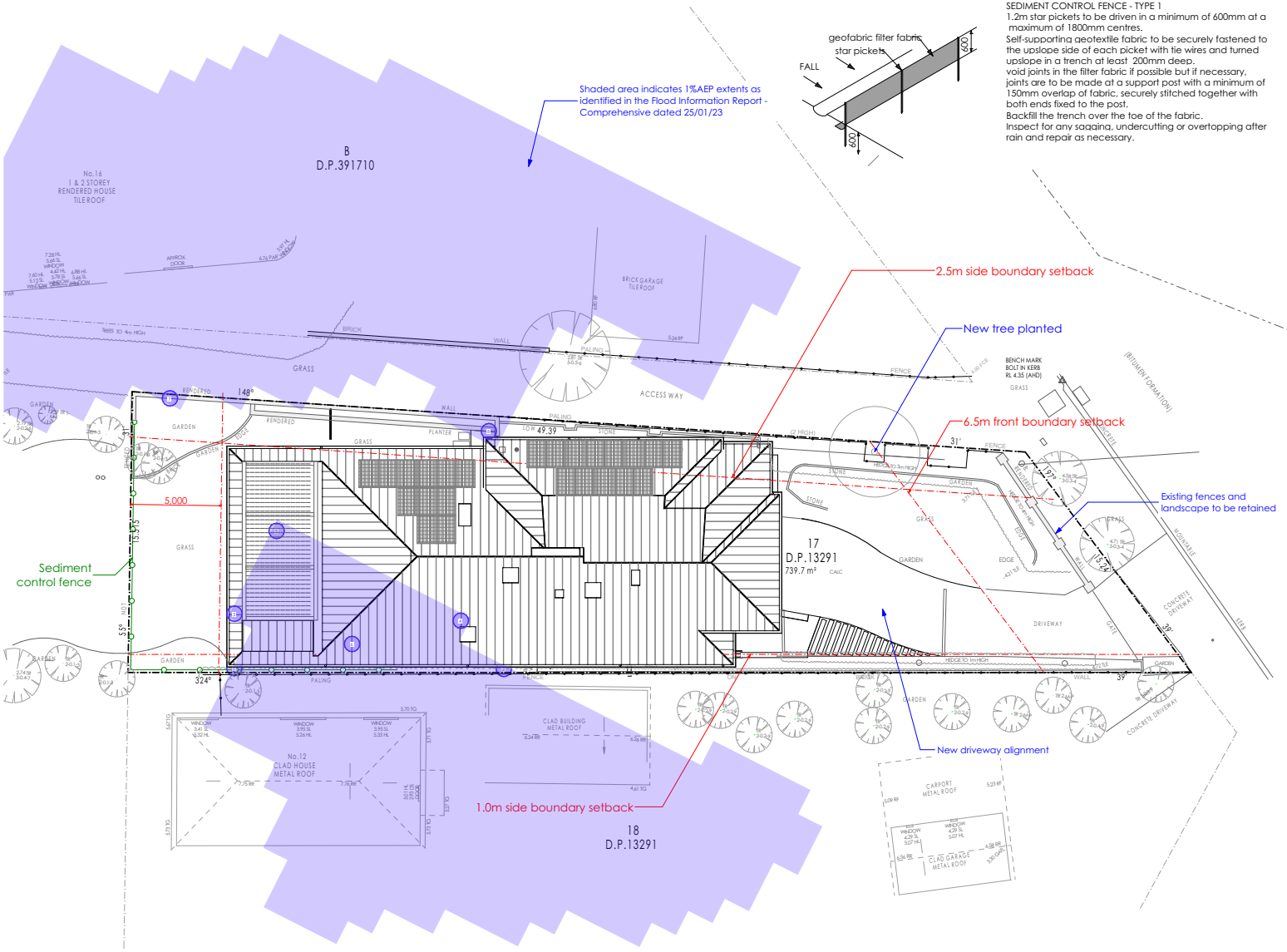
47. **Geotechnical Certification Prior to Occupation Certificate**
The Applicant is to submit the completed Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) to the Principal Certifier prior to issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

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

48. **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.



SEDIMENT CONTROL FENCE - TYPE 1
1.2m star pickets to be driven in a minimum of 600mm at a maximum of 1800mm centres.
Self-supporting geotextile fabric to be securely fastened to the upslope side of each picket with tie wires and turned upslope in a trench at least 200mm deep.
void joints in the filter fabric if possible but if necessary, joints are to be made at a support post with a minimum of 150mm overlap of fabric, securely stitched together with both ends fixed to the post.
Backfill the trench over the toe of the fabric.
Inspect for any sagging, undercutting or overtopping after rain and repair as necessary.

FOR DEVELOPMENT APPLICATION PURPOSES ONLY
NOT FOR CONSTRUCTION

Notes: Do not scale from drawings

CONSTRUCTION LEGEND
1. All construction to NCC & BASIX requirement
EXTERIOR FLOORS
EF1 - Concrete slab with tiles
EF2 - Concrete slab with cobblestone
EF3 - Timber framed deck
EXTERIOR WALLS
EW1 - Timber frame with weatherboard cladding
EW2 - Timber frame with acrylic render finish
EW3 - Masonry with acrylic render finish
EW4 - Masonry with stone cladding
EXTERIOR CEILING
EC1 - Timber frame with FC sheets
EC2 - Timber frame with FC lining board
EC3 - Concrete soffit
ROOF
R1 - Metal roof
INTERIOR FLOORS
IF1 - Concrete slab with carpet
IF2 - Concrete slab with timber floorboards
IF3 - Concrete slab with tiles
IF4 - Concrete slab with waterproofing & tiles
IF5 - Concrete slab
INTERIOR WALLS
IW1 - Timber frame with plasterboard
IW2 - Timber frame with waterproofed FC sheets & tiles
IW3 - Timber frame with lining board
IW4 - Masonry wall with plasterboard
IW5 - Masonry wall with waterproofing and tiles
IW6 - Masonry wall with stone cladding
IW7 - Masonry wall
IW8 - Masonry wall with render
INTERIOR CEILINGS
IC1 - Timber frame with plasterboard and insulation
IC2 - Timber frame with FC lining board and insulation
DOOR & WINDOWS
AW - Aluminium window with clear glass
AWO - Aluminium window with obscured glass
TD - Timber door
SL - Skylight
OTHERS
EB1 - Glass balustrade
ES1 - Concrete stairs with tiles
PS1 - Privacy screen
SC1 - Support post

Nominated Architect: Reg. No. 6769
m PO Box 657, Newport Beach, NSW 2106
t (02) 9979 1823
e contact@jdesa.com.au
w www.jdesa.com.au

James de Soyres + Associates
a r c h i t e c t s

Additions and Alterations
at 14 Delecta Avenue Clareville NSW 2107
for R and J Wearn

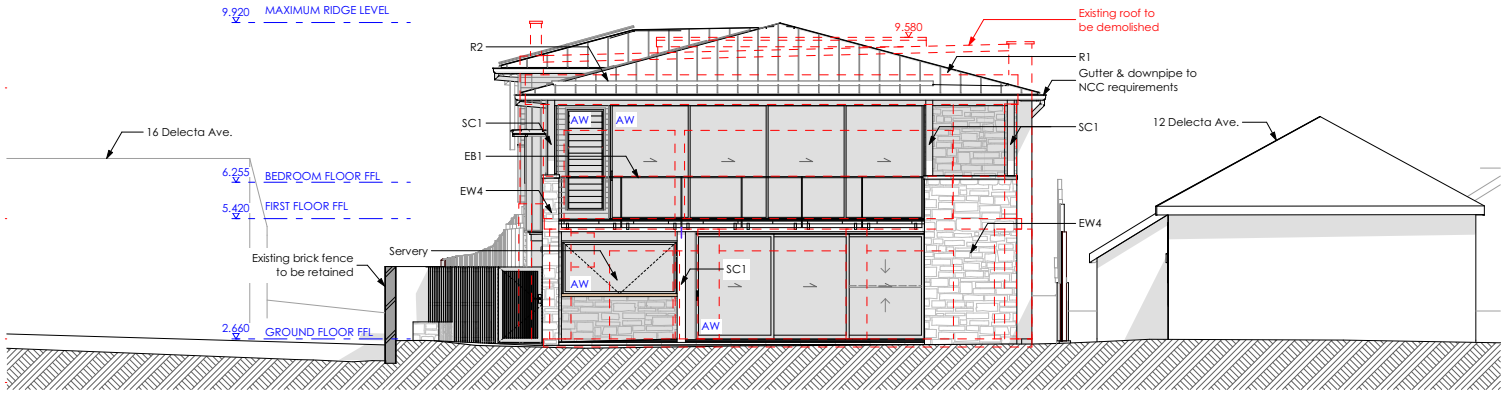
DEVELOPMENT APPLICATION

Site and Sediment Control Plan

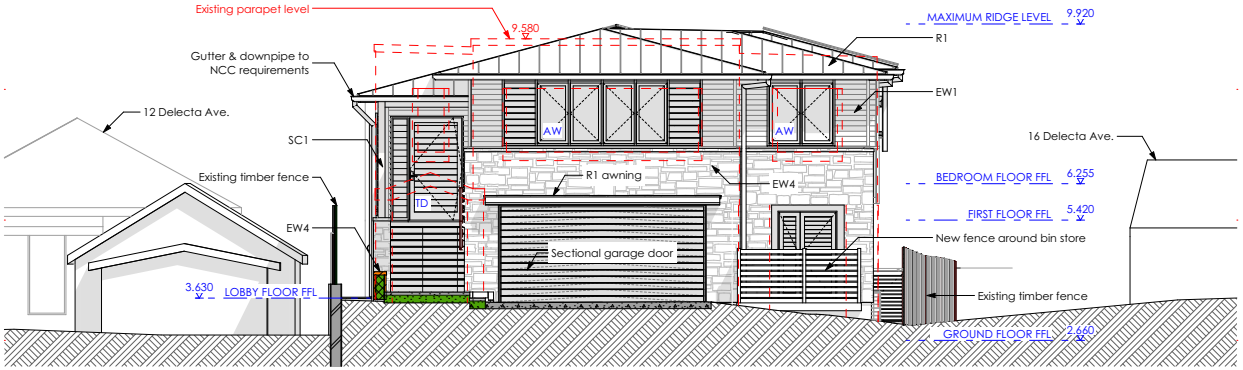
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Project No:	Drawing No: Rev:
2208	DA-01

FOR DEVELOPMENT APPLICATION PURPOSES ONLY
NOT FOR CONSTRUCTION

Notes: Do not scale from drawings



1 North Elevation



2 South Elevation



ROOF
R1
Copper

WEATHERBOARDS & FC WALLS
EW1 & EW2
Natural White



RENDER
EW3
Medium Grey



WALLS
EW4
Natural Stone

Nominated Architect: Reg. No. 6769
m PO Box 657, Newport Beach, NSW 2106
t (02) 9979 1823
e contact@jdesa.com.au
w www.jdesa.com.au

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at 14 Delecta Avenue Clareville NSW 2107
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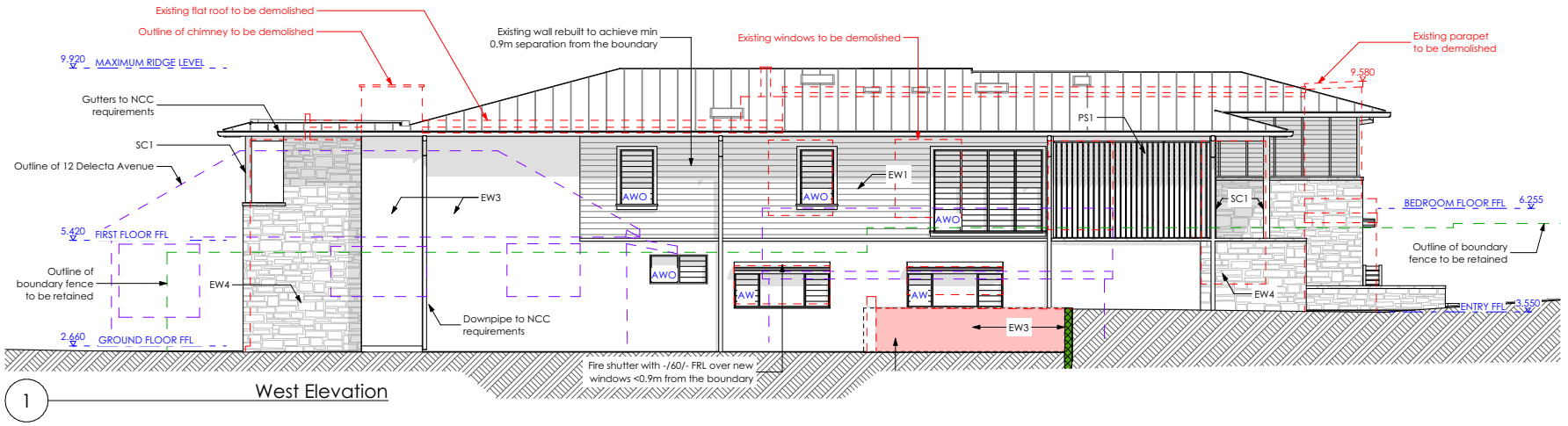
DEVELOPMENT APPLICATION

North & South Elevations and Finishes Schedule

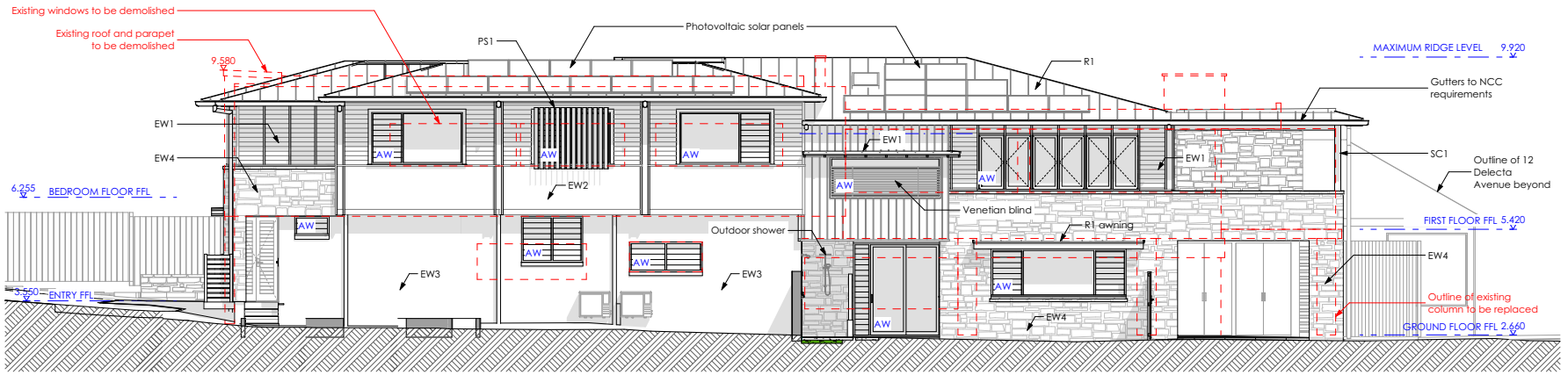
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Date of printing: 30/10/2023
Project No: 2208
Drawing No: DA-20
Rev:

FOR DEVELOPMENT APPLICATION PURPOSES ONLY
NOT FOR CONSTRUCTION

Notes: Do not scale from drawings



1 West Elevation



2 East Elevation

Nominated Architect: Reg. No. 6769
m PO Box 657, Newport Beach, NSW 2106
t (02) 9979 1823
e contact@jdesa.com.au
w www.jdesa.com.au

James de Soyres + Associates
a r c h i t e c t s

Additions and Alterations
at 14 Delecta Avenue Clareville NSW 2107
for R and J Wearn

DEVELOPMENT APPLICATION

East & West Elevations

Scale: 1:100
Date of printing: 30/10/2023
Project No: 2208
Drawing No: DA-21
Rev:

ITEM 3.5	REV2024/0002 - 88 BINBURRA AVENUE AVALON BEACH -REVIEW OF DETERMINATION OF APPLICATION DA2023/0283 FOR CONSTRUCTION OF A DWELLING HOUSE INCLUDING SWIMMING POOL

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 REV2024/0002 for review of Determination of Application DA2023/0283 for Construction of a dwelling house including swimming pool on land at Lot 33 DP 22275, 88 Binburra Avenue AVALON BEACH, subject to the conditions set out in the Assessment Report / for the reasons for refusal set out in the Assessment Report.

REPORTING MANAGER	
TRIM FILE REF	2024/189919
ATTACHMENTS	⇩1 Assessment Report ⇩2 Site Plan and Elevations

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2024/0002

Responsible Officer:	Jordan Howard
Land to be developed (Address):	Lot 33 DP 22275, 88 Binburra Avenue AVALON BEACH NSW 2107
Proposed Development:	Review of Determination of Application DA2023/0283 for Construction of a dwelling house including 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:	Mathew William Moneghittie
Applicant:	Mathew William Moneghittie

Application Lodged:	08/02/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	21/02/2024 to 06/03/2024
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	$ 1,283,569.70

EXECUTIVE SUMMARY

This Review of Determination application seeks to review the determination of DA2023/0283, which was lodged for construction of a dwelling house including swimming pool, and subsequently refused under delegated authority on 29 September 2023.

This application is referred to the Development Determination Panel (DDP), as it is a Review of Determination of an application previously determined under delegated authority, therefore, is required to be determined by the DDP.

Following a period of public exhibition, one (1) submission was received, which raised geotechnical, bushfire, environmental and visual impact related concerns. These concerns are addressed within this report and are not sufficient to warrant the refusal of the review application.

Critical assessment issues which made up the reasons for refusal of DA2023/0283 included non-compliances and inconsistencies with the following controls:

- *Clause Zone C4 Environmental Living zone objectives of the Pittwater Local Environmental Plan 2014.*
- *Clause 7.2 Earthworks of the Pittwater Local Environmental Plan 2014.*
- *Part A4.1 Avalon Beach Locality of the Pittwater 21 Development Control Plan.*
- *Clause B8.1 Construction and Demolition - Excavation and Landfill of the Pittwater 21 Development Control Plan.*
- *Clause D1.1 Character as viewed from a public place of the Pittwater 21 Development Control Plan.*
- *Clause D1.4 Scenic protection - General of the Pittwater 21 Development Control Plan.*
- *Clause D1.8 Front building line of the Pittwater 21 Development Control Plan.*
- *Clause D1.11 Building envelope of the Pittwater 21 Development Control Plan.*
- *Clause D1.17 Construction, Retaining walls, terracing and undercroft areas of the Pittwater 21 Development Control Plan.*
- *Public interest concerns as a result of cumulative non-compliances.*

This assessment finds that the applicant has made substantive amendments to the proposed development, whilst still constituting substantially the same development. This has included a significant reduction in the amount and depth of excavation proposed, achieved through the removal of a tunnel and lift element, as well as reduction in the size of the proposed garage, shifting forward of the proposed garage and alterations to the dwelling footprint. Additionally, whilst non-compliances with various P21DCP built form controls remain, these have been reduced in number and scope, and are supported on merit. The only non-compliance to increase is the front setback non-compliance, however, the trade-off is reduced excavation through the siting of the garage forward towards the street, a design amendment that is also supported on merit.

The merits of the revised design have been reviewed and the reasons for refusal of DA2023/0283 have been satisfactorily addressed.

This report concludes with a recommendation that the DDP should alter the determination from refusal to approval, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

This Review of Determination seeks a review of Development Application No. DA2023/0283 for construction of a dwelling house including swimming pool.

This application was refused under delegated authority on 29 September 2023.

Under this s8.2A Review Application, the proposal remains substantially the same as the original proposal, with the following differences:

Garage Level

- Removal of tunnel and lift shaft.
- Garage moved 1500mm toward street boundary (In effort to reduce excavation).
- Pedestrian entry structure moved 1500mm toward street boundary.
- Pedestrian path location not changed.

Entry Level

- FFL raised 200mm to reduce bulk excavation.
- Reconfiguration of OSD tank to reduce bulk excavation.
- Removal of lift.
- Stair adjustments to suit internal reconfiguration above.

Living Level

- Living Level FFL lowered 300mm, Dining FFL raised 225mm to FFL of Living Level, Sunken Lounge FFL lowered 70mm, all to reduce side boundary envelope breach.
- Front façade pulled back 800mm from front boundary to reduce side boundary envelope breach.
- Removal of lift.
- Stair adjustments to suit reconfiguration above. Internal reconfiguration to suit adjustments.
- Rear garden/fernery width reduced by 235mm to reduce bulk excavation.
- Reorientation of pool and pond to better suit adjusted dimensions of dwelling.
- Relocation of pool fence as a result, converted to SS rods, and removal of balustrade to outer planter.
- Removal of glass base to pool structure.

Bedroom Level

- Bedroom Level FFL lowered 300mm to reduce side boundary envelope breach.
- Removal of lift.
- Stair well pulled back 1510mm from front boundary to reduce side boundary envelope breach.
- Internal reconfiguration of Study Nook and Stair to Master Level (inclusion of Powder 2 under stair) to suit adjusted stair location.

Masterbed Level

- Masterbed Level FFL lowered 300mm to reduce side boundary envelope breach • Master Pavilion shifted 600mm north to reduce side boundary envelope breach.
- Pavilion width increased by 700mm to the north.
- Minor reconfiguration of Masterbed to maintain views and mitigate overlooking to southerly neighbouring 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

Environmental Planning and Assessment Act 1979 - Section 8.3 - Environmental Planning and Assessment Act 1979 - Section 8.3
Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
Pittwater 21 Development Control Plan - A4.1 Avalon Beach Locality
Pittwater 21 Development Control Plan - B8.1 Construction and Demolition - Excavation and Landfill
Pittwater 21 Development Control Plan - B8.6 Construction and Demolition - Traffic Management Plan
Pittwater 21 Development Control Plan - C1.1 Landscaping
Pittwater 21 Development Control Plan - D1.1 Character as viewed from a public place
Pittwater 21 Development Control Plan - D1.4 Scenic protection - General
Pittwater 21 Development Control Plan - D1.8 Front building line
Pittwater 21 Development Control Plan - D1.11 Building envelope
Pittwater 21 Development Control Plan - D1.14 Landscaped Area - Environmentally Sensitive Land
Pittwater 21 Development Control Plan - D1.17 Construction, Retaining walls, terracing and undercroft areas

SITE DESCRIPTION

Property Description:	Lot 33 DP 22275 , 88 Binburra Avenue AVALON BEACH NSW 2107
Detailed Site Description:	The subject site consists of one (1) allotment located on the south-eastern side of Binburra Avenue, Avalon Beach. The site is regular in shape with a surveyed area of 971.5sqm. The site is located within the C4 Environmental Living zone and is largely vacant, apart from a wooden stair structure that partly travels along the centre of the front portion of the site. The site has a significantly steep slope, that rises up from the front boundary to the rear, at a height of approximately 49m. Vegetation on the site is characterised by a largely intact native habitat, undisturbed by development. Twelve (12) trees are identified on site, with the site identified under Council's mapping as being within an area of biodiversity value, specifically as conservation, enhancement and wildlife corridor. A number of minor to large rock outcrops occur on the site, with the larger examples adjoining the rear boundary of the site. Adjoining and surrounding development is characterised by dwelling houses and public open space. Immediately to the south-west of the site is a portion of the Binburra Road reserve, approximately 6m in width, separating the subject land with the adjoining property at No. 90. To the south-east of the site is a significant area of public open space, the Bangalley Headland Reserve.

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:

- **Pre-Lodgment Meeting No. PLM2022/0140** was held with the applicant on 28 July 2022 to discuss a conceptual proposal for a dwelling, swimming pool and detached garage.

- **Development Application No. DA2023/0283** for construction of a dwelling house including swimming pool was refused on 29 September 2023 and is the subject of this Review of Determination.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:
In accordance with Section 8.3 of the Act, an applicant may request Council to review a determination of a development application, other than for a complying development, integrated development, designated development or a determination made by Council in respect to an application by the Crown. The development application does not fall into any of these categories, therefore the applicant may request a review.

In accordance with Section 8.3 (2) of the Act, the request for the review must be made and determined within 6 months after the date of determination of the development application. The application was determined on 29 September 2023 and the notice of determination was issued on the same day. The review was lodged (submitted on the Planning Portal) on 6 February 2024, was accepted by Council on 8 February 2024, and is to be considered by the Development Determination Panel (DDP) on 27 March 2024, which is within 6 months of the date of determination.

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

The amendments to the proposal are outlined in the 'Proposed Development in Detail" 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. As such, 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

DA2023/0283 was refused under delegated authority on 29 September 2023. The following is a list of the reasons for refusal and how each have been addressed in the amended scheme proposed in this review:

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 Zone C4 Environmental Living of the Pittwater Local Environmental Plan 2014.

Particulars:

- *The proposed development includes extensive excavation and site disturbance; it has an excessive building footprint which is exacerbated by a linking tunnel due to a separate dwelling and garage entry structure. The proposed development is not considered to be low-impact residential development in an area of identified special ecological and aesthetic values; and*
- *The site is of high visual prominence and the extent of residential works that do not integrate with the landform and landscape.*

Comment:
The revised proposal significantly decreases the amount of excavation by removing the tunnel and elevator linking the separate dwelling and garage entry structure. Other design alterations (including the reduction of the size of the garage, shifting forward of the garage and alterations to the dwelling footprint) have further reduced the excavation required. Additionally, amendments have decreased the visual prominence of the proposal, reflected in the reduction of building envelope breaches. As a result, the revised proposal is considered to be consistent with the zone objectives of the Zone C4 Environmental Living of the Pittwater Local Environmental Plan 2014.

2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 7.2 Earthworks of the Pittwater Local Environmental Plan 2014.

Particulars:

- *Insufficient information has been provided to demonstrate that the significant amount of excavation proposed can meet the objectives of Clause 7.2, in relation to:*
  (a) effects on the likely future use or redevelopment of the land;
  (b) the destination of the excavated material; and
  (c) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Comment:
The revised proposal significantly decreases the amount of excavation by removing the tunnel and elevator linking the separate dwelling and garage entry structure. Other design alterations (including the reduction of the size of the garage, shifting forward of the garage and alterations to

the dwelling footprint) have further reduced the excavation required. Accompanying reports, including a Geotechnical Report and Flora and Fauna Assessment, confirm that the proposal will not give rise to unacceptable geotechnical or biodiversity impacts. As a result, the revised proposal is consistent with the provisions of Clause 7.2 Earthworks of the Pittwater Local Environmental Plan 2014.

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 Part A4.1 Avalon Beach Locality of the Pittwater21 Development Control Plan.

Particulars:

- *The proposal does not meet the desired future character for the Avalon Beach locality as the proposal fails to:*
  (a) integrate with the landform and landscape;
  (b) minimise its bulk and scale; and
  (c) minimise disturbance on a site that is visually prominent.

Comment:
The revised proposal incorporates a number of design amendments which reduce the overall excavation and visual appearance of the proposal. Consideration must also be given to the significant slope of the site, and surrounding development, which is commensurate with the revised proposal. For these reasons, the revised proposal is considered to be consistent with the the provisions of Part A4.1 Avalon Beach Locality of the Pittwater 21 Development Control Plan.

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 B8.1 Construction and Demolition - Excavation and Landfill of the Pittwater 21 Development Control Plan.

Particulars:

- *Insufficient information has been provided to determine that no adverse level of site disturbance will result from the significant excavation proposed.*

Comment:
As discussed above, the revised proposal is significantly decreases the proposed amount of excavation by removing the tunnel and elevator linking the separate dwelling and garage entry structure. Other design alterations (including the reduction of the size of the garage, shifting forward of the garage and alterations to the dwelling footprint) have further reduced the excavation required. A Geotechnical Report (prepared by Crozier Geotechnical Consultants, dated 30 January 2024) has been provided and reviewed by Council's Development Engineering team, who support the proposal, subject to conditions. For these reasons, the revised proposal is considered to be consistent with the provisions of Clause B8.1 Construction and Demolition - Excavation and Landfill of the Pittwater 21 Development Control Plan.

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 D1.1 Character as viewed from a public place of the Pittwater 21 Development Control Plan.

Particulars:

- *The proposed parking structure exceeds the 50% frontage width / 7.5 metres width requirement of Part D1.1 and the non-compliance is not supported, as it contrubutes to the unacceptable streetscape impacts and visual dominance of the development.*

Comment:
Whilst the revised proposal continues to contain a parking structure which exceeds the width control, in conjunction with other amendments made within the revised proposal, this is considered acceptable on merit. This is in consideration of the constraints of the site (i.e. topography), the effort made to reduce excavation, surrounding development, and the extensive landscaping used to soften the built form. For these reasons, the revised proposal is considered to be consistent with the provisions of Clause D1.1 Character as viewed from a public place of the Pittwater 21 Development Control Plan, with non-compliance with the garage width control supported on merit.

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 D1.4 Scenic protection - General of the Pittwater 21 Development Control Plan.

Particulars:

- *The proposal would result in an entire modification of the site's existing natural features and would:*
  (a) have an adverse impact on the general scenic values of the Avalon locality when viewed from the surrounding area;
  (b) specifically impact the scenic value of the adjoining Bangalley Headland and is within an identified wildlife corridor and ecological community; and
  (c) would be contrary to the objective of making the bushland landscape the predominant feature of the Avalon locality.

Comment:
As disused throughout this report, the revised proposal reduces the overall scope and scale of the development, through changes including; lowering of the dwelling to reduce building envelope non-compliance, removal of the lift and tunnel connection between dwelling and garage to reduce excavation, and reduction of the garage size to reduce excavation. Changes had to strike a balance between reducing the amount of excavation required, whilst also lowering the dwelling and reducing its size. Further efforts to lower the dwelling would increase excavation or require a larger building footprint and more stepped levels, thereby increasing visual appearance. The balance achieved in this revised proposal is considered to ensure reduced excavation and scenic protection. For these reasons, the revised proposal is considered to be consistent with the provisions of Clause D1.4 Scenic protection - General of the Pittwater 21 Development Control Plan.

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 D1.8 Front building line of the Pittwater 21 Development Control Plan.

Particulars:

- *The proposed garage and entry structure will have an adverse visual impact on the adjoining streetscape and not provide sufficient opportunity to retain and enhance existing natural features and vegetation.*

Comment:
Due to the typography of the site, parking structures must be located close to the front boundary in order to limit excavation. The revised proposal has reduced the size of the garage to reduce excavation and moved the garage towards the street boundary. Whilst this decreases the front setback, the trade-off is reduced excavation. Furthermore, surrounding development exhibits parking structures close to the front boundary for the same reasons. For these reasons, the revised proposal is considered to be consistent with the provisions of Clause D1.8 Front building line of the Pittwater 21 Development Control Plan, with non-compliance with the front setback control supported on merit.

8. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D1.11 Building envelope of the Pittwater 21 Development Control Plan.

Particulars:

- *The upper levels of the proposed dwelling will have an adverse visual impact due to the bulk and scale of the dwelling which is incompatible with the scenically prominent area and will impact on the natural landscape features of the site and on the adjoining areas of high scenic value.*

Comment:
The revised proposal has been lowered to reduce building envelope non-compliance and visual bulk. The constraints of the site must be noted. Where dwellings are designed on sloping sites to step down with topography, some envelope breaches isolated to the top corners of levels is typical. If no breaches were tolerated, more stepping would need to be employed in dwelling design, thereby increasing building footprint, number of overall levels and visual dominance. This would not led to good amenity or landscaping outcomes. For these reasons, the revised proposal is considered to be consistent with the provisions of Clause D1.11 Building envelope of the Pittwater 21 Development Control Plan, with non-compliance with the side building envelope control supported on merit.

9. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D1.17 Construction, Retaining walls, terracing and undercroft areas of the Pittwater 21 Development Control Plan.

Particulars:

- *The height of the undercroft areas on the west (front) elevation of the proposed dwelling exceeds the 3.5 metre maximum and there are excessive use of retaining walls for the pedestrian entry, stairs and pathway. Hence, the proposed non-compliance cannot demonstrate sufficient compliance with the objectives of the control.*

Comment:
The revised proposal has modified the pond / pool / terrace feature to be lower, reducing the gap between the underside of this terrace and the proposed ground level to 3m. This limits undercroft areas to less than 3.5m. Furthermore, the area is adequality landscaped, with only the pathway between the garage and dwelling non-landscaped within this area. For these reasons, the revised proposal is considered to be consistent with the provisions of Clause D1.17 Construction, Retaining walls, terracing and undercroft areas of the Pittwater 21 Development Control Plan.

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

Particulars:

- *The proposal represents a number of non-compliances with Council development controls which cannot be reasonably justified and hence is adverse to the public interest.*

Comment:
The revised proposal contains amendments to address the reasons for refusal of DA2023/0283. Where non-compliances arise, they can be reasonably justified and are supported on merit. As such, the proposal can now be considered to be in the public interest.

This assessment finds that the applicant has made substantive amendments to the proposed development, whilst still constituting substantially the same development.

The reasons for refusal of DA2023/0283 have been satisfactorily addressed and, therefore, this report concludes with a recommendation that the DDP should alter the determination of the development application from refusal to approval of the review application, subject to conditions.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application (prepared by Bush Fire Planning Services, dated 31 January 2024). The report stated that the bushfire attack level of the site is “Flame Zone”.

The application was referred to the NSW Rural Fire Service for further assessment. The NSW RFS raised no objections to approval, subject to conditions. The recommendations of the Bush Fire Report, along with the conditions from the NSW RFS, have been included as part of the recommended conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 21/02/2024 to 06/03/2024 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 process council is in receipt of 1 submission/s from:

Name:	Address:
Mr Paul Steven Mahon	92 Binburra Avenue AVALON BEACH NSW 2107

The following issues were raised in the submissions:

- **The proposal represents an unreasonable level of geotechnical risk.**

  Comment:
  Council's Development Engineer has reviewed the revised proposal and has raised no objection related to geotechnical risk, subject to conditions. As required for development within this area of geotechnical risk, geotechnical documentation has been provided with the application which supports the proposal, prepared by suitable qualified geodetical engineers. Conditions of consent are included in the recommendations of this report pertaining to appropriate management of geotechnical risk and requiring pre-construction dilapidation reporting be undertaken at adjoining properties. Hence, this concern has been addressed and is not sufficient to warrant the refusal of the application.

- **The proposal will represent an unreasonable level of bushfire risk.**

  Comment:
  The applicant has provided a bushfire report from a suitably qualified professional. This report has been referred to the local branch of the NSW Rural Fire Service (RFS), who have advised that they have no objection to the proposed development, subject to recommended conditions. Hence, this concern has been addressed and is not sufficient to warrant the refusal of the application.

- **The proposal will have an unacceptable impact on the native vegetation community that is located on the site and on surrounding land.**

  Comment:
  The application has been referred to Council's Biodiversity Officer for comment. No objection was raised to the proposed development, subject to conditions. Hence, this concern has been addressed and is not sufficient to warrant the refusal of the application.

- **The proposed development will have an adverse visual impact when viewed from adjoining areas in the Avalon locality.**

  Comment:
  As is discussed throughout this report, the revised proposal has incorporated design changes to reduce the overall scope and scale of the proposed development and significantly reduce the amount and depth of excavation. Whilst the proposal will inevitably present visible built form, the subject site itself is zoned C4 Environmental Living, permitting low-impact residential development. As such, the vacant site may be development for residential purposes, which would necessitate some level of visual appearance. The complaint level of landscaped area and extensive landscaping is considered to soften this built form. Non-compliances with P21DCP controls are considered to be supportable on merit, as assess within this report. Therefore, the visual impact of the proposal on the surrounding Avalon locality is not considered to be unreasonable. Hence, this concern has been addressed and is not sufficient to warrant the refusal of the application.

REFERRALS

Internal Referral Body	Comments
NECC (Bushland	***Supported, subject to conditions.***

Internal Referral Body	Comments
and Biodiversity)	The amended proposal and review application have been assessed against applicable biodiversity provisions. The new design will provided below for reference. --- COMMENTS ON AMENDED PLANS (27/07/2023): No additional trees are being proposed for removal and the proposed plans have been reviewed by the Rural Fire Service and rec recommended. ORIGINAL COMMENTS 29/05/2023: The proposal seeks approval for the construction of a dwelling house including swimming pool. The comments on this referral relate to the following applicable controls and provisions: • Planning for Bushfire Protection 2019 • Pittwater 2014 LEP - Clause 7.6 Biodiversity Protection • Pittwater 21 DCP - Clause B4.2 Flora and Fauna Conservation Category 1 and Wildlife Corridor • Pittwater 21 DCP - Clause B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor The proposal has been submitted with the following documents relevant to the Biodiversity referral: • Bushfire Report (Bushfire Planning and Design, September 2022) • Flora and Fauna Assessment (GIS Environmental Consultants, March 2023) • Arboricultural Impact Assessment (Jacksons Nature Works, February 2023) • Landscape plan (Bates Landscape, February 2023) The Bushfire Report has concluded that the level of risk attributed to the site is that of BAL-FZ and has recommended that the enti site and does not need to go beyond the property boundary. The Flora and Fauna assessment has established that the vegetation present on the non-developed site belongs to the Coastal H considered as Coastal Themeda Grassland EEC due to the growth of sclerophyll shrubs. However, the report does point to a nativ might not have been distinguishable at the time of the survey. Additionally, the FFA has determined that the site could be potential vegetation community. The arboricultural Impact Assessment (AIA) has assessed the condition of a total of 12 trees, recommending the removal of a total accommodate the proposed building footprint. All of the proposed removals consist of native trees with tree 9 being the only exemp The landscape proposal has been submitted, including an appropriate range of species which are locally native in their majority. H However, it is recommended that a mix of canopy species is used to ensure biodiversity is maintained. The final plans submitted have the same footprint as those proposed during the Pre-Lodgement Meeting with slight modifications t vacant lot is somewhat unavoidable", however, conditions will be placed to ensure compliance with applicable controls.
NECC (Development Engineering)	***Supported, subject to conditions.*** **06/03/2024:** Development Application is for construction of a new dwelling with a garage on a vacant lot. **Access:** New central single driveway is proposed, vehicle crossing conditions are imposed accordingly. **Stormwater:** Proposed hardstand area is greater than 50sqm, On-site Stormwater Detention System is proposed, site stormwater which can dra **Geotech:** Site is mapped as Geotechnical hazard H1. Geotech Report by Crozier Geotechnical Consultants, Project No:2022- 251, Dated 30 No objections to proposal subject to conditions as recommended.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	***Supported, subject to conditions.*** The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Rural Fire Service - Local Branch - EP&A Act, s4.14	***Supported, subject to conditions.*** The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection. A Bush Fire Report was submitted with the application (prepared by Bush Fire Planning Services, dated 31 January 2024). The report stated that the bushfire attack level of the site is “Flame Zone”.

External Referral Body	Comments
	The application was referred to the NSW Rural Fire Service for further assessment. The NSW RFS raised no objections to approval, subject to conditions. The recommendations of the Bush Fire Report, along with the conditions from the NSW RFS, have been included as part of the recommended conditions of consent.

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 (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No. 1362619S_02, issued 31 January 2024).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Pittwater Local Environmental Plan 2014

Is the development permissible?	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 / 10m*	8.1m	-	Yes

* Where the building footprint is situated on a slope that is in excess of 16.7 degrees (or 30%).

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone C4 Environmental Living

Consideration of the proposal against the objectives of the C4 Environmental Living zone is provided below:

To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.

Comment:
In light of the revised proposal's reduction in scope, which will significantly reduce the proposed level of excavation and reduce non-compliances with the building envelope, the proposed development is considered to provided for low-impact residential development in this area of special ecological, scientific or aesthetic values.

To ensure that residential development does not have an adverse effect on those values.

Comment:
The proposed development, whilst it will modify the existing natural landscape, will not have an unreasonable adverse effect on those values, considering the land is zoned for, and permits, low impact-residential development.

To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.

Comment:
Whilst it is acknowledged that vegetation will be removed, it should be noted that the removal of vegetation on a vacant block is somewhat unavoidable, and the land is zoned for, and permits, low impact-residential development. The subject site possesses an established Category 1/2 wildlife corridor and Council's Biodiversity Officer has raised no objections to the proposal, subject to conditions. The proposal also meets the landscaped area requirements established by the P21DCP. As such, it is considered that the development, to a reasonable extent, retains and enhances riparian and foreshore vegetation and wildlife corridors.

In conclusion, the proposed development meets all of the objectives of the C4 Environmental Living zone.

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 under Clause 7.2(3):

(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, based on the geotechnical documentation provided with the application and the referral response from Council's Development Engineers.

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

Comment:
Due to the significant reduction of the amount and depth of excavation, removal of submerged tunnels, and supportive geotechnical documentation provided, the proposal is not likely to 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 (WMP) for the development. The site has no recorded history of any land uses that would present a risk in terms of the quality of the soil.

(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. Drainage can be dealt with via conditions if consent were to be granted. Conditions could be included if consent were to be granted 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. Conditions could apply if consent was granted, requiring any fill to be of a suitable quality.

(f) the likelihood of disturbing relics

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

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

Comment:
The site is not located in an area adjoining a waterway, drinking catchment or considered to be an "environmentally sensitive area" within the definition of Clause 3.3 of PLEP 2014. objective.

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

Comment:
Conditions will be applied to ensure the recommendations of geotechnical documentation are followed, and appropriate measures are applied, to avoid, minimise or mitigate 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 relevant objectives of PLEP 2014 and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation	Complies
Front building line	6.5m	1.8m (entrance steps) 3.6m - 3.9m (garage) 5.4m - 5.7m (pedestrian entrance)	72.3% Max. 44.6% Max. 16.9%	**No** **No** **No**
Rear building line	6.5m	6.5m (dwelling)	-	Yes
Side building line	South-West: 2.5m	2.5m (dwelling) 2.5m (garage / pedestrian entrance)	- -	Yes Yes
	North-East: 1.0m	1.0m (dwelling) 2.7m (garage)	- -	Yes Yes
Building envelope	South-West: 3.5m	Outside envelope (see *Figure 1*)	N/A	**No**
	North-East: 3.5m	Outside envelope (see *Figure 3*)	N/A	**No**
Landscaped area	60% (582.9sqm)	54.8% (5332.1sqm) + 6% (58.3sqm) = 60.8% (590.4sqm)*	With variation: Complies* Without variation: 8.7% (50.8sqm)	Yes*

* The proposal meets the outcomes of the control set under P21DCP Clause D1.14 Landscaped Area - Environmentally Sensitive Land, allowing for up to 6% of the site area to be included in landscaped area. This is addressed under the relevant section of this assessment report.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.2 Bushfire Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.2 Flora and Fauna Conservation Category 1 and Wildlife Corridor	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	No	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.23 Eaves	Yes	Yes
D1.1 Character as viewed from a public place	No	Yes
D1.4 Scenic protection - General	Yes	Yes
D1.5 Building colours and materials	Yes	Yes
D1.8 Front building line	No	Yes
D1.9 Side and rear building line	Yes	Yes
D1.11 Building envelope	No	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D1.16 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D1.17 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

A4.1 Avalon Beach Locality

The originally proposed development in DA2023/0283 was not considered to meet the meet the desired future character of the Avalon Beach locality due to the following elements:

- Extent of site disturbance.
- Below-ground excavation.
- Extensive use of retaining walls.
- Visual prominence caused by projecting podium elements.
- Breaches of various development controls.

This revised proposal has significantly reduced the proposed level of excavation and thereby level of site disturbance. The proposal has also been reduced in scope and scale, reducing the proposed building envelope non-compliance. Podium areas have been lowered to remove the non-compliance with undercroft area height. Whilst the proposal still maintains non-compliance with some P21DCP control, these are assessed on merit in this report as acceptable.

The cumulative impact of the revised reduction in scope and scale has resulted in a proposed development that is considered to meet the desired future character of the Avalon Beach locality.

B8.1 Construction and Demolition - Excavation and Landfill

The originally proposed development in DA2023/0283 was not considered to have sufficient information to demonstrate that site disturbance would be minimised.

Based on information from the applicant (the Waste Management Plan, dated 1 March 2023), the originally proposed development in DA2023/0283 was to involve a total of 1,090m^3 of excavation, with 50% to be reused on site. The report for DA2023/0283 estimated a higher volume of excavation based on provided plans of 1,340m^3.

Information provided with this application (the Waste Management Plan, dated 31 January 2024) indicates a total of 756m^3 of excavation, with measured estimates using the provided plans indicating this to be roughly accurate.

The following was also a concern raised in the report of DA2023/0283 :

"Geotechnical information provided with the application is not conclusive as to the specific methodology employed in relation to the excavation. Council has raised concerns with the applicant that the level of excavations may be significantly higher, particularly if "cut-and-cover" methods are employed, which would have a adverse impact on the environmental values of the subject site."

Whilst information as to the particular excavation method has not been provided within this review application, the revised proposal has entirely removed the deep tunnels that were originally proposed. The deepest extent of excavation is now only 7.5m (at the garage) rather than 18.1m (at the lift shaft). Therefore, the revised proposal would not necessitate excessive "cut-and-cover" excavation to the depths that raised previous concern, and excavation methods can be resolved at a construction stage.

Overall, the revised proposal has significantly reduced total excavation and the depth of excavation by removing specifically the tunnel and lift component that was to connect the garage and dwelling, as well as shrinking the garage size and moving it towards the street boundary. A Geotechnical Report (prepared by Crozier Geotechnical Consultants, dated 30 January 2024) has been provided and reviewed by Council's Development Engineering team, who support the proposal, subject to conditions.

The revised proposal is able to satisfy the requirements and objectives of this control.

B8.6 Construction and Demolition - Traffic Management Plan

This Clause requires the following:

"For all development where either excavated materials to be transported from the site or the importation of fill material to the site is 100m^3 or greater, a Construction Traffic Management Plan indicating truck movements, and truck routes is to be provided and approved by Council prior to the commencement of works."

As the proposal includes excavation of greater than 100m^3, a condition is included in the recommendations of this report requiring the applicant to commission the preparation of a Construction Traffic Management Plan (CTMP) by a Transport for NSW accredited person, which is to be submitted and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate.

C1.1 Landscaping

The proposal is technically non-compliant with the landscaping requirements of this control, which require at least 60% of the front setback area to be landscaped. The proposal has less than 60% of the front setback area landscaped, with 47.5% (47sqm) of the 99sqm front setback area landscaped.

Due to the steeply sloping typography, the provision of parking and access to the dwelling within the front setback restricts the ability to achieve compliance with this control. The application was previously refused due in part to excessive excavation. The revised proposal has reduced this excavation by reducing the proposed size of the garage and moving it closer to the road. This reduces the amount of excavation, but decreases the numerical front setback and landscaping in the front setback.

Surround sites have similar constraints and some exhibit similarly low levels of landscaping in front setback areas due to the need to provide parking and access. The proposed garage and access must contend with the site conditions. Furthermore, the proposal meets the overall landscaped area requirements established by P21DCP D1.14 Landscaped Area - Environmentally Sensitive Land.

Therefore, the non-compliance is supported, in this instance.

D1.1 Character as viewed from a public place

Description of Non-Compliance

A requirement of Part D1.1 states:

"Parking structures should be located behind the front building line, preferably set back further than the primary building, and be no greater in width than 50% of the lot frontage, or 7.5 metres, whichever is the lesser."

50% of the lot width is estimated at 7.7m, making the 7.5m width the minimum standard.

The detached parking and access structure at the front portion of the site is 10.1m in width, which encompass both the double garage and pedestrian access entrance, exceeding the standard. This is the same width as proposed in DA2023/0283.

Merit Consideration

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

To achieve the desired future character of the Locality.

Comment:

The proposal is consistent with the outcomes of the desired future character of the Avalon Beach Locality as discussed in this report.

To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing built and natural environment.

Comment:
Due to the typography of the site, parking structures must be located close to the front boundary in order to limit excavation. The revised proposal reduces the size of the garage to reduce excavation and has moved the garage towards the street boundary. This does decrease the front setback, however, the trade-off is reduced excavation. Furthermore, surrounding development exhibits parking structures close to the front boundary for the same reasons. Considering the constraints of the site, the effort made to reduce excavation, surrounding development and the extensive landscaping used to soften the built form, the development is considered to reinforce and sensitively relate to the spatial characteristics of the existing built and natural environment.

To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.

Comment:
The proposed parking structure, whilst closer to the front boundary, has been reduced in depth to limit the excavation proposed. The scale and density of the garage is in keeping with the height of the natural environment, considering the constraints of the site and the existing streetscape.

The visual impact of the built form is secondary to landscaping and vegetation, or in commercial areas and the like, is softened by landscaping and vegetation.

Comment:
The proposal includes a complaint level of landscaped area and extensive landscaping use to soften the built form.

High quality buildings designed and built for the natural context and any natural hazards.

Comment:
Quality is a subjective matter, however, the revised proposal has made effort to address the matters within the original refusal. The significantly reduced excavation and reduced non-compliances with built form controls demonstrate a development which is designed and built for the natural context and any natural hazards.

Buildings do not dominate the streetscape and are at 'human scale'.

Comment:
For the reasons discussed above, namely the existing streetscape and site constraints, the proposed garage structure is not considered to dominate the streetscape, considering the challenges of the subject site. The width is not considered to result in dominance of the streetscape, and ultimately access must be provided to the site for both pedestrians and vehicles, with a double garage required to meet the off-street parking requirement of two space.

To preserve and enhance district and local views which reinforce and protect the Pittwater's natural context.

Comment:
The proposed development will not unreasonably impact upon any district or local views within the Pittwater natural context. Whilst the proposal will be visible from some locations within the Avalon locality, given its elevated location, the subject site is zoned for low-impact residential use (C4 zone) and therefore it is not unreasonable for the building to be visible within a landscaped context.

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.

D1.4 Scenic protection - General

As is disused throughout this report, the revised proposal reduces the overall scope and scale of the development, through changes including:

- Lowering of the dwelling to reduce building envelope non-compliance.
- Removal of the lift and tunnel connection between dwelling and garage to reduce excavation.
- Reduction of the garage size to reduce excavation.

Changes had to strike a balance between reducing the amount of excavation required, whilst also lowering the dwelling and reducing its size. Further efforts to lower the dwelling would increase excavation or require a larger building footprint and more stepped levels. The balance achieved in this revised proposal is considered to ensure reduced excavation whilst ensuring scenic protection. The landscaped area is also complaint and the proposal includes extensive landscaping to soften the built form.

Therefore, the revised proposal is considered to meet the outcomes and controls within this Clause.

D1.8 Front building line

Description of Non-Compliance

Clause D1.8 Front Building Line prescribes a front boundary setback requirement of 6.5m for all built structures, other than driveways, fences

and retaining walls.

The revised proposal exhibits the following front setbacks:

- 1.8m (entrance steps) - 72.3% variation.
- 3.6m - 3.9m (garage) - Max. 44.6% variation.
- 5.4m - 5.7m (pedestrian entrance) - Max. 16.9% variation.

The front garage structure has been moved slightly forward from that proposed in DA2023/0283, which exhibited a garage setback between 3.8m and 6.5m from the front boundary, a maximum 42% variation.

It should be noted that the reduced setback has been made in conjunction with an overall reduction in the size of the garage, in order to reduce excavation.

Merit Consideration

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

To achieve the desired future character of the Locality.

Comment:
The proposal is consistent with the outcomes of the desired future character of the Avalon Beach Locality as discussed in this report.

The amenity of residential development adjoining a main road is maintained.

Comment:
Not applicable - the development does not adjoin a main road.

Vegetation is retained and enhanced to visually reduce the built form.

Comment:
Due to the typography of the site, parking structures must be located close to the front boundary in order to limit excavation. The revised proposal reduces the size of the garage to reduce excavation and has moved the garage towards the street boundary. This does decrease the front setback, however, the trade-off is reduced excavation. Furthermore, surrounding development exhibits parking structures close to the front boundary for the same reasons. Considering the constraints of the site, the effort made to reduce excavation, surrounding development and the extensive landscaping used to soften the built form, the level of landscaping and vegetation retained is considered appropriate to visually reduce the built form.

Vehicle manoeuvring in a forward direction is facilitated.

Comment:
Vehicle manoeuvring in a forward direction has not been demonstrated in the proposed plans. Nonetheless, Council's Development Engineer has reviewed the proposal and is supportive, subject to conditions. As Binburra Avenue is a quite, residential street, the proposed vehicular access is considered appropriate.

To encourage attractive street frontages and improve pedestrian amenity.

Comment:
As outlined throughout this report, the proposed garage is assessed as a supported, considering the design, site constraints and surrounding development. The proposal will maintain an attractive street frontage and improve pedestrian amenity.

To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment.

Comment:
Due to the typography of the site, parking structures must be located close to the front boundary in order to limit excavation. The revised proposal reduces the size of the garage to reduce excavation and has moved the garage towards the street boundary. This does decrease the front setback, however, the trade-off is reduced excavation. Furthermore, surrounding development exhibits parking structures close to the front boundary for the same reasons. Considering the constraints of the site, the effort made to reduce excavation, surrounding development and the extensive landscaping used to soften the built form, the development is considered to reinforce and sensitively relate to the spatial characteristics of the existing built and natural environment.

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

D1.11 Building envelope

Description of Non-Compliance

Under Clause D1.11 of the P21DCP, buildings are required to be sited within a building envelope which is measured from a height of 3.5m above ground level and projected 45 degrees at the side boundaries to the maximum building height.

The proposed development encroaches into the side boundary envelope along the south-west elevation as depicted in *Figure 1*, with two sperate corner breaches. The level of non-compliance has been reduced from that originally proposed in DA2023/0283, which contained three, slightly larger, separate breaches, depicted in *Figure 2*.

The proposed development encroaches into the side boundary envelope along the north-east elevation as depicted in *Figure 3* below, with one corner breach. This is roughly the same as originally proposed in DA2023/0283.

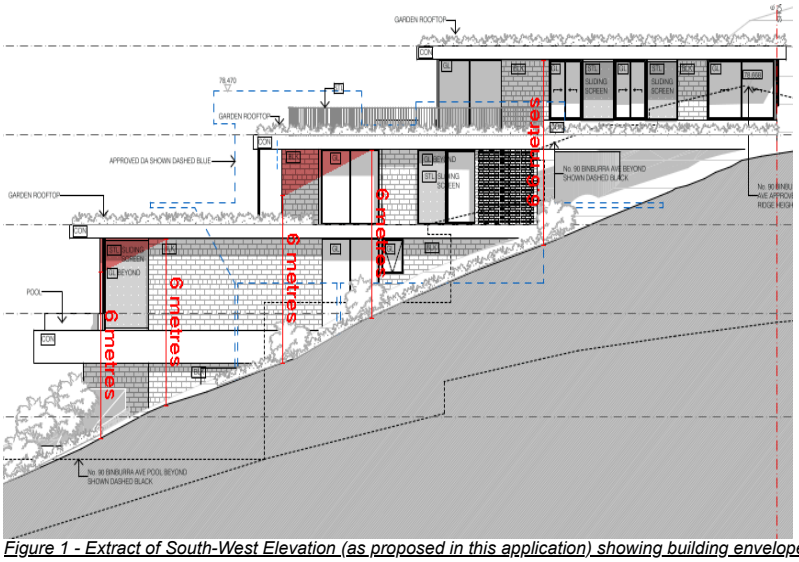


Figure 1 - Extract of South-West Elevation (as proposed in this application) showing building envelope breach in red.

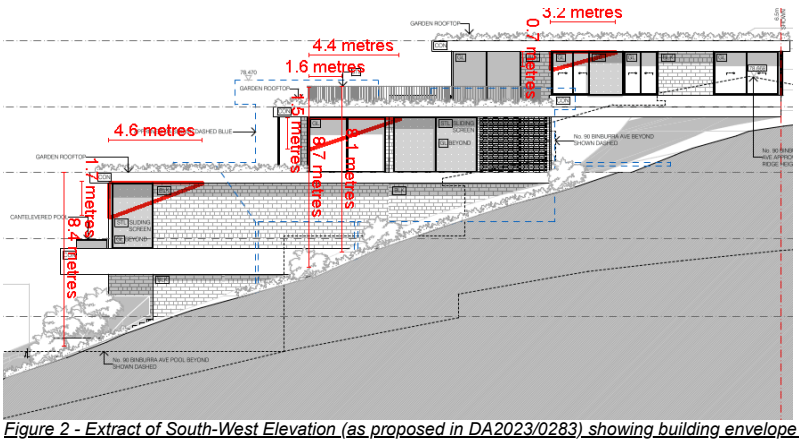


Figure 2 - Extract of South-West Elevation (as proposed in DA2023/0283) showing building envelope breach in red outline.

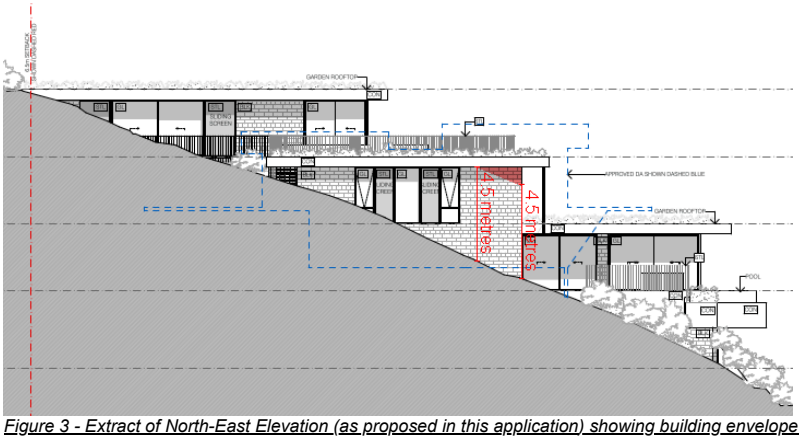


Figure 3 - Extract of North-East Elevation (as proposed in this application) showing building envelope breach in red.

Clause D1.11 also stipulates criteria to consider when undertaking a merit assessment of variations to the building envelope. Of relevance in this case, the Clause stipulates that where the building footprint is situated on a slope over 16.7 degrees (i.e; 30%), variation to this control will be considered on a merits basis. Measured on 'Long Section G' the slope under the building footprint is 18.82 degrees, or 34.09%. Therefore, the proposal meets the variation criteria and is considered on a merit basis below, noting that strict compliance is rendered difficult by this slope constraint.

Merit consideration

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

To achieve the desired future character of the Locality.

Comment:
The proposal is consistent with the outcomes of the desired future character of the Avalon Beach Locality as discussed in this report.

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 revised proposal has been lowered to reduce building envelope non-compliance and visual bulk. The constraints of the site must be noted. Where dwellings are designed on sloping sites to step down with topography, some envelope breaches isolated to the top corners of levels is typical. If no breaches were tolerated, more stepping would need to be employed in dwelling design, thereby increasing building footprint, number of overall levels and visual dominance. This would not led to good amenity or landscaping outcomes. As such, the proposal is considered to be in keeping with the height of the natural environment, considering the constraints of the site and the existing streetscape.

To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.

Comment:
Due to the typography of the site, the proposal must strike a balance between height / building envelope and excavation. The revised proposal reduces overall excavation and reduces the size and number of envelope breaches. Considering the constraints of the site, the effort made to reduce excavation, surrounding development and the extensive landscaping used to soften the built form, the development is considered to reinforce and sensitively relate to the spatial characteristics of the existing built and natural environment.

The bulk and scale of the built form is minimised.

Comment:
The revised proposal has included several changes to reduce the bulk and scale of the built form. This revised proposal has significantly reduced the proposed excavation and thereby level of site disturbance. The proposal has also been reduced in scope and scale, reducing the proposed building envelope non-compliance. Whilst the proposal still maintains non-compliance with some P21DCP control, these are assessed on merit in this report as acceptable. The cumulative impact of the revisions is a development of reasonable scale which is designed around significant site constraints. Considering these factors, and the existing character of surrounding uphill development, it is considered that the bulk and scale of the built form is minimised.

Equitable preservation of views and vistas to and/or from public/private places.

Comment:
The proposed development is not expected to impact views and vistas to and from public and private places.

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 maintains a reasonable level of privacy, amenity and solar access, with consideration to the steep sloping topography of the site.

Vegetation is retained and enhanced to visually reduce the built form.

Comment:
The subject site is zoned C4 Environmental Living, permitting low-impact residential development. The proposal, being for residential development on a vacant lot, will necessitate some level of vegetation removal. The proposal has been referred to Council's Biodiversity Officer for for comment. No objection was raised to the proposed development in regard to the impact on the native vegetation community, subject to conditions. It is considered that the adequate level of landscaped area, and extensive additional landscaping used on terraced areas, is sufficient to visually soften the built form.

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.

D1.14 Landscaped Area - Environmentally Sensitive Land

Description of non-compliance

This Clause of the Pittwater 21 DCP applies to land in the Avalon Locality within Areas 1 and 2 of the Landscaped Area Map. The subject site is within Area 1 of the Landscaped Area Map, and therefore requires a minimum of 60% (582.9sqm) of the site area to be landscaped area.

The proposal presents 54.8% (5332.1sqm) landscaped area, a variation of 8.7% (50.8sqm) to the control.

However, Clause D1.14 specifies the following variation:

For single dwellings on land zoned R2 Low Density Residential, R3 Medium 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, pathways leading up the site and areas of the living terrace and pond that are less than 1m above ground level existing meet this variation criteria, and if 6% of the site area (58.3sqm) within these areas were to be included in landscaped area, this would result in a total landscaped area of 60.8% (590.4sqm), compliant with this control.

This variation is permitted provided the outcomes of Clause D1.14 are met. As such, the proposal is assessed against the outcomes of the control below.

Merit consideration

The proposed development is considered against the underlying objectives of the control below:

Achieve the desired future character of the Locality.

Comment:
The proposal is consistent with the outcomes of the desired future character of the Avalon Beach Locality as discussed in this report.

The bulk and scale of the built form is minimised.

Comment:
The revised proposal has included several changes to reduce the bulk and scpel of the built form. This revised proposal has significant reduced the proposed excavation and thereby level of site disturbance. The proposal has also been reduced in scope and scale, reducing the propose building envelope non-compliance. Whilst the proposal still maintains non-compliance with some P21DCP control, these are assessed on merit in this report as acceptable. The cumulative impact of the revised reduction is a development of reasonable scale which is designed around significant site constraints. Considering these factors, and the character of surrounding uphill development, it is considered that the bulk and scale of the built form is minimised.

A reasonable level of amenity and solar access is provided and maintained.

Comment:
The proposal maintains a reasonable level of amenity and solar access, with consideration to the steep sloping topography of the site.

Vegetation is retained and enhanced to visually reduce the built form.

Comment:
The subject site is zoned C4 Environmental Living, permitting low-impact residential development. The proposal, being for residential development on a vacant lot, will necessitate some level of vegetation removal. The proposal has been referred to Council's Biodiversity Officer for for comment. No objection was raised to the proposed development in regard to the impact on the native vegetation community, subject to conditions. It is considered that the adequate level of landscaped area and extensive additional landscaping used on terraced areas is sufficient to visually soften the built form.

Conservation of natural vegetation and biodiversity.

Comment:

The proposal has been referred to Council's Biodiversity Officer for for comment. No objection was raised to the proposed development in regard to the impact on the native vegetation community, subject to conditions. As such, it is considered that the development will conserve natural vegetation and biodiversity whilst providing a residential use for the currently vacant site

Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels.

Comment:
Stormwater runoff will be directed downhill to existing drainage in Binburra Avenue.Council's Development Engineer has reviewed the proposal in relation to stormwater drainage and raise no objections, subject to conditions.

To preserve and enhance the rural and bushland character of the area.

Comment:
The subject site is zoned C4 Environmental Living, permitting low-impact residential development. The proposal, being for residential development on a vacant lot, will necessitate some level of vegetation removal and some level of visual appearance from built structures. It is considered that the adequate level of landscaped area and extensive additional landscaping used on terraced areas is sufficient to visually soften the built form, thereby maintaining the rural and bushland character of the area within reasonable expectation.

Soft surface is maximised to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management.

Comment:
Ample soft surface is proposed across the site to ensure sufficient opportunity is provided for infiltration of water to the water table, miniise run-off and assist with stormwater management on the site.

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. As the proposal meets the criteria for the 6% variation to be applied (as assessed above), the proposal complies with both the requirements and objectives of this Clause.

D1.17 Construction, Retaining walls, terracing and undercroft areas

A requirement of Part D1.17 states:

"Undercroft areas shall be limited to a maximum height of 3.5 metres. Adequate landscaping shall be provided to screen undercroft areas."

The originally proposed development in DA2023/0283 incorporated a pond feature within a podium projecting from the dwelling, which presented an undercroft area that was assessed as too high and inadequately landscaped. The revised proposal has modified this pond / pool / terrace feature to be lower, with a 3m gap between the underside of this terrace to the proposed ground level. This limits the undercroft area to less than 3.5m. Furthermore, the area is adequality landscaped, with only the pathway between the garage and dwelling non-landscaped within this area.

Therefore, the revised proposal is considered to meet the outcomes and controls within this Clause.

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 $12,836 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $1,283,570.

CONCLUSION

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

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

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

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

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

PLANNING CONCLUSION

This Review of Determination application, which seeks to gain an approval for an amended scheme in response to the refusal of DA2023/0283 for construction of a dwelling house including swimming pool, has been referred to the Development Determination Panel (DDP), due to it being a review application under section 8.2 of the Environmental Planning and Assessment Act 1979, requiring determination by the DDP.

Concerns raised in the one (1) submission received have been addressed within this report and are not sufficient to warrant the refusal of the application.

This assessment finds that the applicant has made substantive amendments to the proposed development, whilst still constituting substantially the same development. This has included a significant reduction in the amount and depth of excavation proposed, achieved through the removal of a tunnel and lift element, as well as reduction in the size of the proposed garage, shifting forward of the proposed garage and alterations to the dwelling footprint.

Additionally, whilst non-compliances with various P21DCP built form controls remain, these have been reduced in number and scope, and are supported on merit. The only non-compliance to increase is the front setback non-compliance, however, the trade-off is reduced excavation through the siting of the garage forward towards the street, a design amendment that is also supported on merit.

The merits of the revised design have been reviewed and the reasons for refusal of DA2023/0283 have been satisfactorily addressed.

The amended scheme accompanying this application is satisfactory on its merits and warrants the determination being changed from refusal to approval, subject to conditions.

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 Development Consent to REV2024/0002 for Review of Determination of Application DA2023/0283 for Construction of a dwelling house including swimming pool on land at Lot 33 DP 22275, 88 Binburra Avenue, AVALON BEACH, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

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

Approved Plans				
Plan Number	**Revision Number**	**Plan Title**	**Drawn By**	**Date of Plan**
DA010	4	Site Plan	Blake Letnic Architects	30 January 2024
DA100	4	Garage Level	Blake Letnic Architects	30 January 2024
DA101	4	Entry Level	Blake Letnic Architects	30 January 2024
DA102	4	Living Level	Blake Letnic Architects	30 January 2024
DA103	4	Bedroom Level	Blake Letnic Architects	30 January 2024
DA104	4	Masterbed Level	Blake Letnic Architects	30 January 2024
DA200	4	Elevation	Blake Letnic Architects	30 January 2024

DA201	4	Elevation	Blake Letnic Architects	30 January 2024
DA202	4	Elevation	Blake Letnic Architects	30 January 2024
DA300	4	Cross Sections	Blake Letnic Architects	30 January 2024
DA301	4	Cross Sections	Blake Letnic Architects	30 January 2024
DA302	4	Long Section F	Blake Letnic Architects	30 January 2024
DA303	4	Long Section G	Blake Letnic Architects	30 January 2024

Approved Reports and Documentation			
Document Title	**Version Number**	**Prepared By**	**Date of Document**
BASIX Certificate	1362619S_02	Taylor Smith Consulting	31 January 2024
NatHERS Certificate	0008442899-01	Rebekah Munro	31 January 2024
Flora and Fauna Assessment	FF240119	GIS Environmental Consultants	31 January 2024
Geotechnical Report	Issue No. 1	Crozier Geotechnical Consultants	30 January 2024
Arborist Report	-	Jacksons Nature Works	30 January 2024
Bushfire Report	-	Bush Fire Planning Services	31 January 2024
Waste Management Plan - 88 Binburra Avenue, Avalon Beach	-	-	31 January 2024
Stormwater Plans, Drawing No. D01 - D07, D10, D11	Rev. C	NB Consulting Engineers	30 January 2024
Landscape Plans, Drawing No. C101 - C116	Rev. D	Bates Landscape	30 January 2024

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	19/02/2024 (on EDMS)
NSW Rural Fire Service (RFS)	Referral - RFS - 88 Binburra Avenue Avalon Beach	1 March 2024 (on document) 01/03/2024 (on EDMS)

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

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

3. **Prescribed Conditions**

(a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

(b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);

(c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

(i) showing the name, address and telephone number of the Principal Certifier for the work, and

(ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and

(iii) stating that unauthorised entry to the work site is prohibited.

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

(d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

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

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

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

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

Reason: Legislative requirement.

4. **General Requirements**

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

Demolition and excavation works are restricted to:
- 8.00 am to 5.00 pm Monday to Friday only.

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

(b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.

(c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

(d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

(e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

(f) Prior to the release of the Construction Certificate, payment of the following is required:
i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than $250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.

(g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

(h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

(k) Prior to the commencement of any development onsite for:
i) Building/s that are to be erected

ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place

iii) Building/s that are to be demolished

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

v) For any work/s that is to be demolished

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

(l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

(m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

(n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

(1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools

(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

(2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

(3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

(4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

5. **Policy Controls**
Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of $12,835.70 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 $1,283,569.70.

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. **Landscape Plan**
A Landscape Plan is to be prepared which includes a minimum of 80% locally native species as a proportion of the total number of plants. Locally native species are to be consistent with the relevant section of the Native Planting Guide available on Council's website. The Landscape Plan is to be prepared by a suitably qualified landscape architect and provided to the Principal Certifier prior to issue of the Construction Certificate.

Reason: To maintain habitat values on the site.

9. **On-Site Stormwater Detention Details**
The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by NB Consulting Engineers, Job 2208031, Drawing Number D01 & D11, Dated 29/01/2024, Issue B and Drawing Number D02-D07 & D10, Dated 30/01/2024, Issue C. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:
i. OSD to be provided in accordance with Clause 9.0 of Council's Water Management for Development Policy
ii. All discharge control devices and pits are to be located externally to all structures and buildings so that 24-hour access to the OSD system is possible and that overflows from the system can be safely directed away.
iii. Discharge to kerb & gutter should be gravity fed.
iv. OSD system should not be placed under any habitable floor.
v. Detailed drainage plans, including engineering certification, are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

Detailed drainage plans, including engineering certification, are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by Crozier Geotechnical Consultants, Project No:2022-251, Dated 30th January 2024 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.

11. **Vehicle Crossings Application**
The Applicant is to submit an application with Council for driveway levels to construct construct one vehicle crossing with 3 metres (with 600mm wings on both sides) wide at layback and 4m at the site boundary in accordance with Northern Beaches Council's standard Normal High vehicle crossing profile and in accordance with Section 138 of the Roads Act 1993.

Note, driveways are to be in plain concrete only.

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

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

Reason: To facilitate suitable vehicular access to private property.

12. **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.

13. **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.

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

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

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

15. **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.

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

The CTMP must address following:

(a) The proposed phases of construction works on the site, and the expected duration of each construction phase.
(b) The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken.
(c) Make provision for all construction materials to be stored on site, at all times.
(d) The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period.
(e) The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed.
(f) Where access is required across private property not in the direct ownership of the proponent, such as a private road/driveway, community title road or right of way, the CTMP is to include:
    (i) Evidence of the legal right and terms to use the access route or provide owners consent from the owners/strata/community association.
    (ii) Demonstrate that direct access from a public space/road is not viable for each stage of works.
    (iii) An assessment to be carried out of the physical constraints of the Right of Carriageway to determine the maximum size of vehicle that may access the site via the Right of Carriageway during construction.
    (iv) Unless owner/strata/community associations consent is obtained, vehicles are not to exceed 24 tonnes or 7.5 metres in length (an assessment must be undertaken that the surface is capable of supporting up to 24 tonnes, otherwise the weight limit should be reduced in the CTMP). If consent is obtained, a copy must be included in the CTMP.
    (v) No construction vehicles, materials or plant are to be located or parked in the private road/driveway, community title road or right of way.
    (vi) How any disruption to other users of the private road/driveway, community title road or right of way will be minimised and all users kept informed of likely disruption where the access will be closed or blocked for any given time.

(vii) If trees are located within or overhang the access route, a tree protection plan prepared by an Arborist with minimum AQF Level 5 in arboriculture demonstrating how any trees within the Right of Carriageway will be protected from damage by construction vehicles. Should any tree protection measures be required on private land in accordance with AS4970-2009 Protection of trees on development sites, owner's consent must be obtained.

(viii) A Dilapidation report, including photographic surveys, of the private road/driveway/right of way must be included prior to any works commencing on the site. The report must detail the physical condition of the private road/driveway/right of way, and any other adjacent private property assets (including trees) or adjacent public property that may be adversely affected by vehicles servicing the development site to undertake works or activity during site works.

(ix) A requirement for Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, to be submitted after the completion of works and prior to the Occupation certificate. The report must:

(i) Compare the post-construction report with the pre-construction report,

(ii) Clearly identify any recent damage or change to the private road/driveway/right of way and whether or not it is likely to be the result of the development works,

(iii) Should any damage have occurred, identify remediation actions taken.

(iv) Be submitted to Council with the Occupation Certificate.

(g) The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site.

(h) Make provision for parking onsite. All Staff and Contractors are to use any basement parking once available.

(i) Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior.

(j) Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety.

(k) The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure.

(l) Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees.

(m) Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site.

(n) The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site.

(o) Specify that the public roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council.

(p) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent.

(q) Proposed protection for Council and adjoining properties.

(r) The location and operation of any on site crane.

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

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

Properties:
- 86 Binburra Avenue, Avalon Beach
- 90 Binburra Avenue, Avalon Beach

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

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 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.

23. **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

24. **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.

25. **Priority Weed Removal and Management**
All Priority weeds (as specified in the Northern Beaches Local Weed Management Plan) within the development footprint are to be removed using an appropriate control method.

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

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

26. **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.

27. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**
The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), and Civil Engineers' certification.

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

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

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

28. **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.

29. **House / Building Number**
House/building number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings.

30. **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 Certiifier, 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.

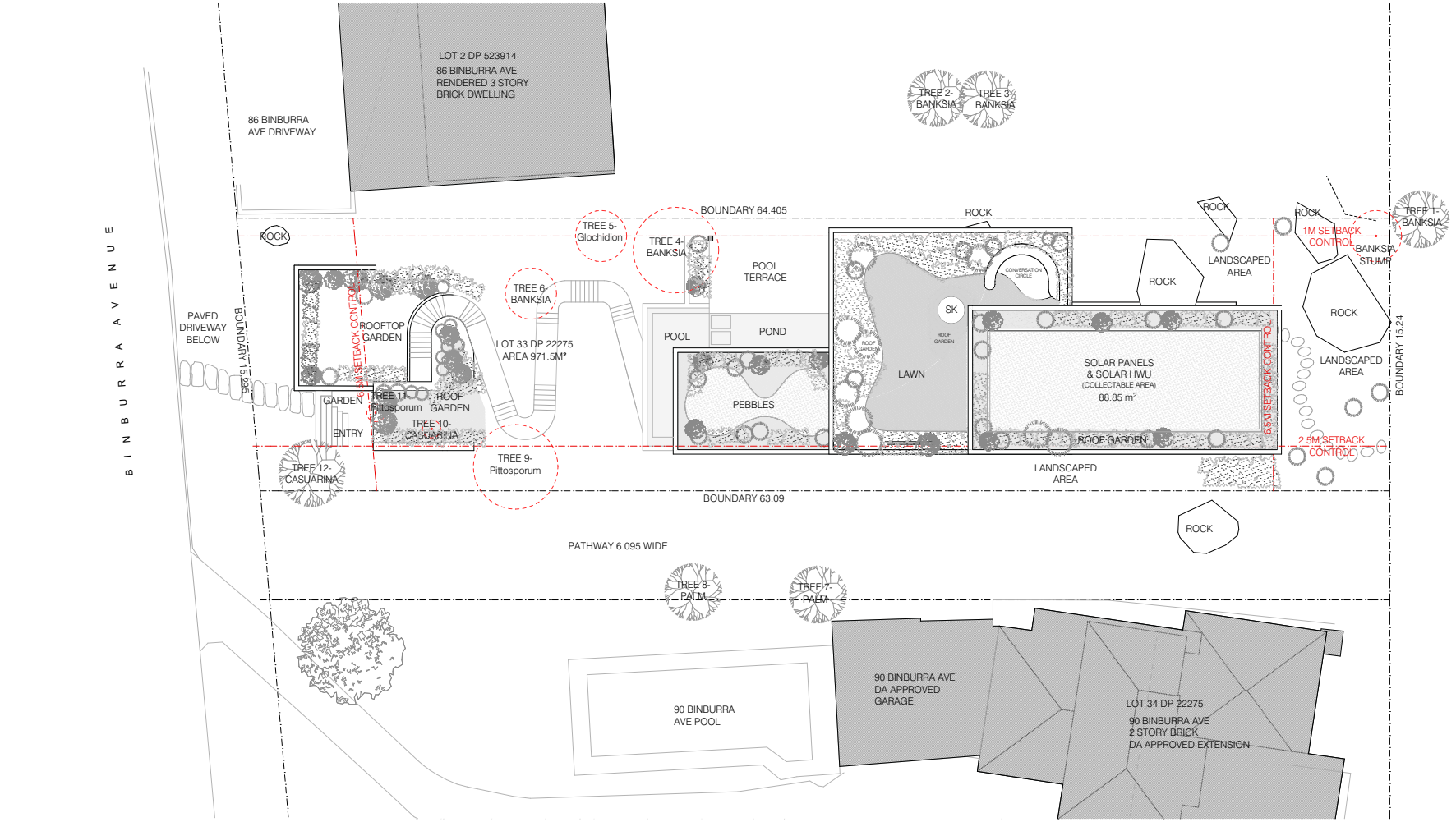
ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

31. **Geotechnical Recommendations**
Any ongoing recommendations (if any) 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.

32. **Swimming Pool/Spa Motor Noise**
The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

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



1 Site Plan 1:200

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Legend

GL	glass	ST	stone
STL	steel/aluminium	TIM	timber
CON	concrete		
BLK	blockwork/brickwork		

Revision	Date	Transmittal Set Name
1	23/02/2023	Issue for Development Application
2	21/07/2023	Issue to Council (RFI)
3	18/09/2023	Issue to Council (RFI)
4	30/01/2024	Issue for Section 8.2 Review

2114

New Dwelling
88 Binburra Ave, NORTH AVALON NSW , 2107

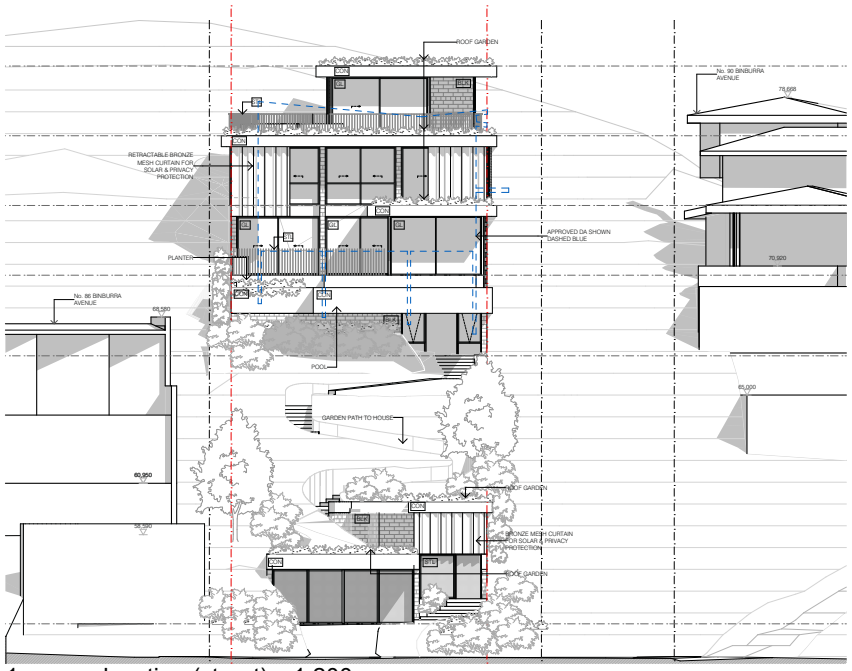
31/01/2024

Prepared for: Mat Moneghittie

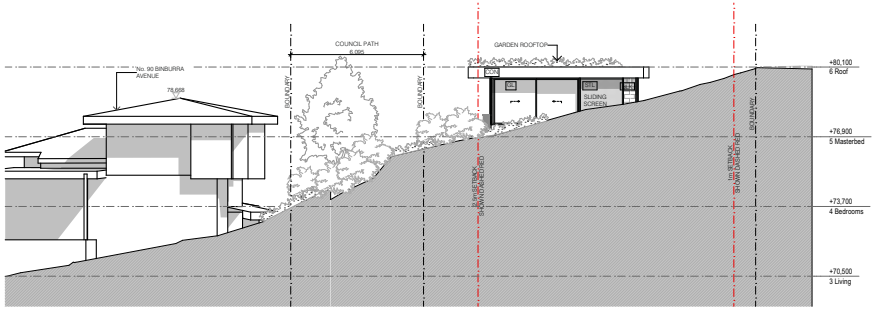
NOT FOR CONSTRUCTION

Site Plan

DA010 [4]



1 elevation (street) 1:200



2 elevation (reserve)1:200

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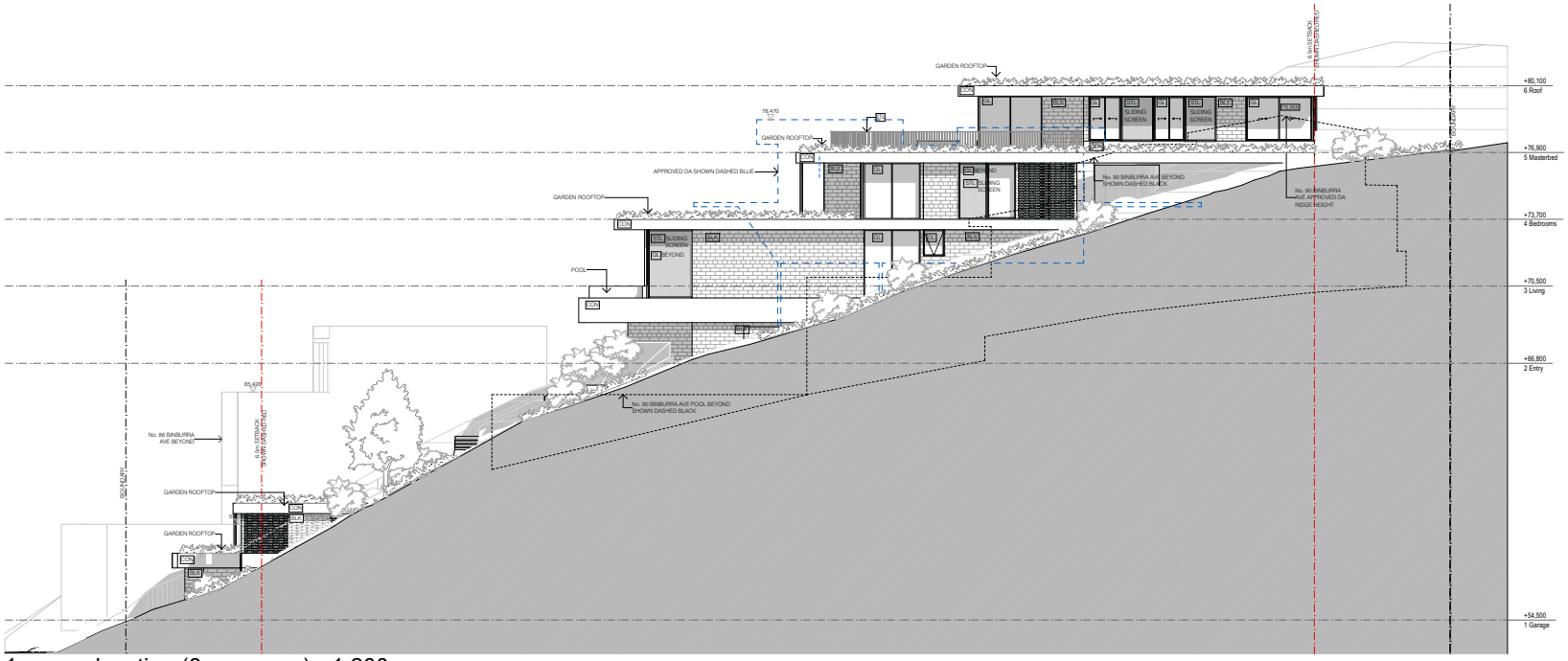
2114

New Dwelling
88 Binburra Ave, NORTH AVALON NSW , 2107
Prepared for: Mat Moneghittie

31/01/2024
SCALE 1:200@A3 or 1:100@A1
NOT FOR CONSTRUCTION

Elevation

DA200 [4]



1 elevation (6m reserve) 1:200

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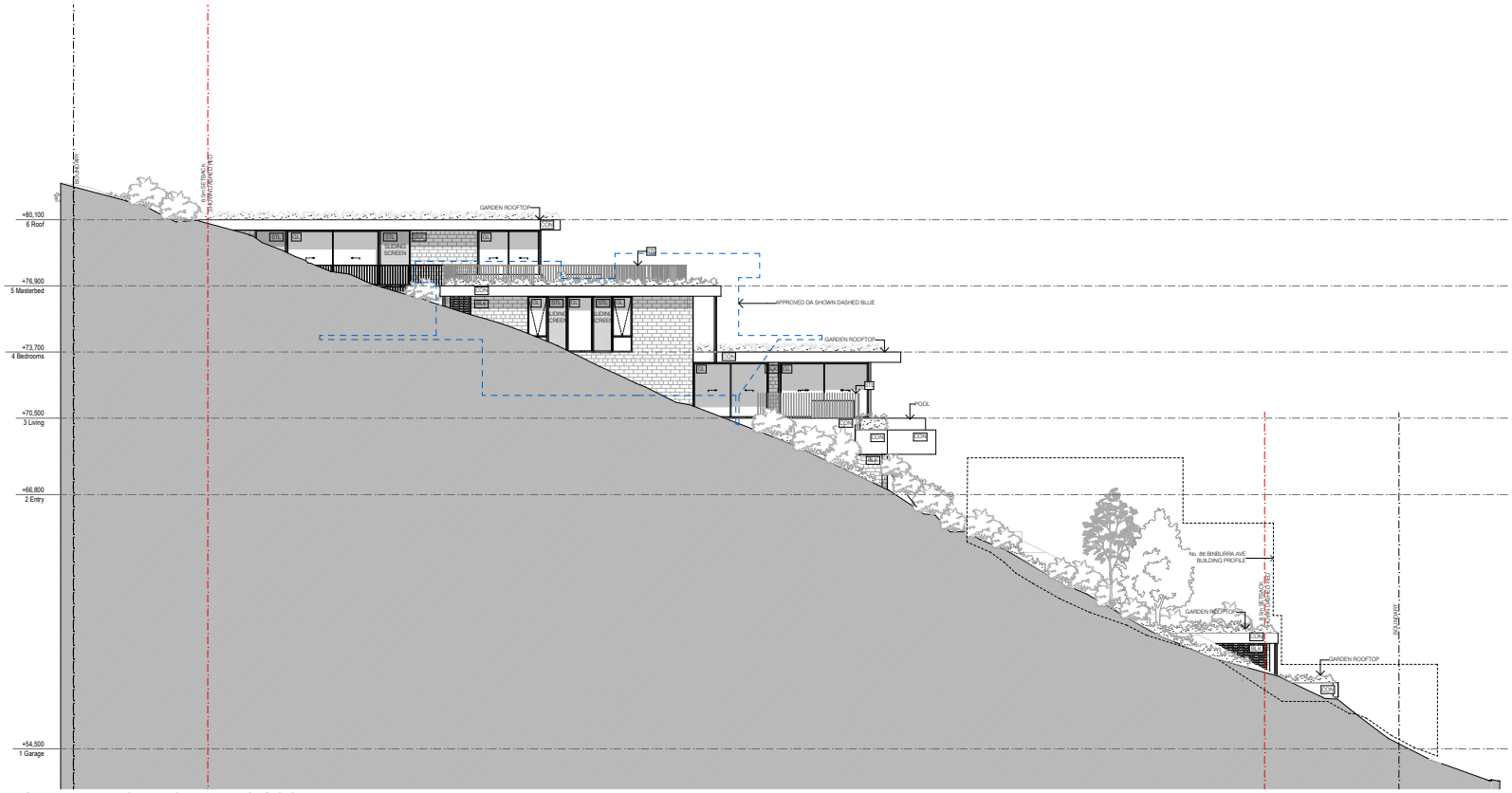
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New Dwelling
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Prepared for: Mat Moneghittie

31/01/2024
SCALE 1:200@A3 or 1:100@A1
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Elevation

DA201 [4]



1 elevation 1:200

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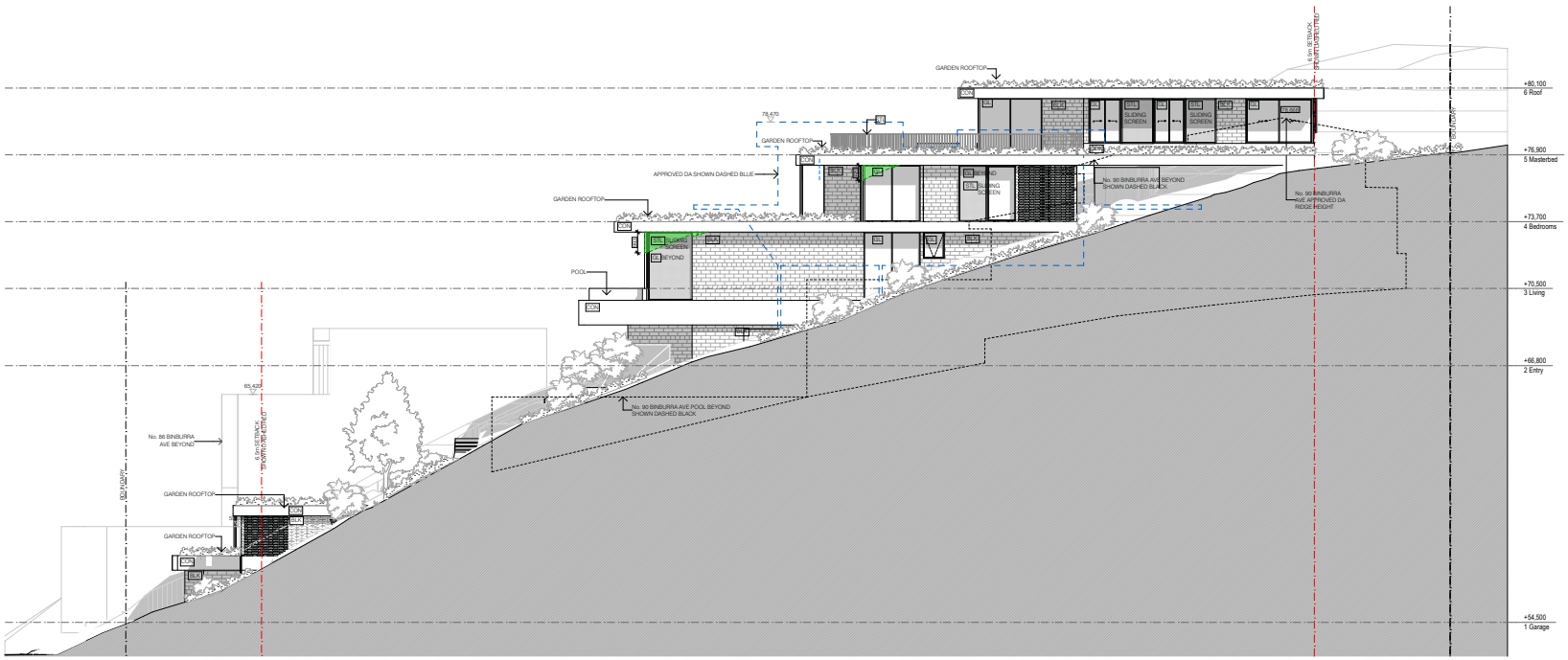
New Dwelling
88 Binburra Ave, NORTH AVALON NSW , 2107

Prepared for: Mat Moneghittie

Elevation

31/01/2024
SCALE 1:200@A3 or 1:100@A1
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DA202 [4]



1 southern elevation - side setback compliance 1:200

AREAS OF MINOR NON COMPLIANCE WITH SIDE BOUNDARY ENVELOPE

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2114

New Dwelling
88 Binburra Ave, NORTH AVALON NSW , 2107
Prepared for: Mat Moneghittie

31/01/2024

NOT FOR CONSTRUCTION

Southern Elevation - Side Boundary Envelope **DA406** **[4]**

ITEM 3.6 DA2023/1896 - 25 WILSON STREET FRESHWATER - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE

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 DA2023/1896 for demolition works and construction of a dwelling house on land at Lot 29A DP 977266, 25 Wilson Street FRESHWATER, subject to the conditions set out in the Assessment Report.

REPORTING MANAGER	
TRIM FILE REF	2024/197016
ATTACHMENTS	⇩1 Assessment Report ⇩2 Site Plan and Elevations

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/1896

Responsible Officer:	Brittany Harrison
Land to be developed (Address):	Lot 29A DP 977266, 25 Wilson Street FRESHWATER NSW 2096
Proposed Development:	Demolition works and construction of a dwelling house
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Seiichiro Okamura Takako Okamura
Applicant:	Amde Construction Pty Ltd

Application Lodged:	24/01/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	02/02/2024 to 16/02/2024
Advertised:	Not Advertised
Submissions Received:	5
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	$ 980,000.00

EXECUTIVE SUMMARY

This development application seeks consent for the demolition works and construction of a dwelling house.

The application is referred to the Development Determination Panel (DDP) as the application has received five (5) unique submissions by way of objection.

The development application upon lodgement was notified for a period of fourteen (14) days as per Council's Community Participation Plan (CPP). The concerns raised in the submissions are addressed

under the 'submissions' section of this report. The primary concerns raised were in relation to the size of the dwelling and privacy impacts on adjoining properties.

The proposal conforms to the relevant requirements and development standards under the *Warringah Local Environmental Plan 2011*. The proposed dwelling demonstrates general compliance with the built form controls under the Warringah Development Control Plan 2011, with an exception of the side boundary envelope where there is a breach, which is considered to be acceptable as for the reasons set out in this report.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that, on balance the proposal is an acceptable form of development for the subject site for the reasons outlined in this report.

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

PROPOSED DEVELOPMENT IN DETAIL

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

Specifically, the works comprise of the following:

- Demolition of an existing dwelling and associated structures;
- Construction of a two (2) storey dwelling house and attached garage; and
- Associated driveway works, stormwater and landscaping.

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
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - B5 Side Boundary Setbacks
Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - D9 Building Bulk

SITE DESCRIPTION

Property Description:	Lot 29A DP 977266 , 25 Wilson Street FRESHWATER NSW 2096
Detailed Site Description:	The subject site consists of one (1) allotment located on the northern side of Wilson Street. The subject site is legally identified as Lot 29A in Deposited Plan 977266, No. 25 Wilson Street, Freshwater. The site is rectangular in shape with a frontage of 10.06m and a depth of 45.72m. The site has a surveyed area of 462.2m². The site is located within the R2 Low Density Residential zone under the provisions of the *Warringah Local Environmental Plan 2011* and accommodates a single storey dwelling house. The site topography slopes gradually downward from the southern end toward the north by 2.02m. The site consists of a lawn area to the rear and garden to the front. Several trees were located to the rear, however, have been removed recently and were considered exempt species by height or by species type. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by dwelling houses, dual occupancies and apartment buildings on narrow width allotments.

Map:



SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site.

The land has been used for residential purposes for an extended period of time.

Current Application History

The development application was initially notified for a period of fourteen (14) days, as stated within Council's Community Participation Plan (CPP) and resulted in five (5) submissions.

Amended Plans were requested on the 17 March 2024 to demonstrate on the plans the retention and not the demolition of the south-eastern "Brick Wall". As this wall encroaches onto No. 23 Wilson Street, Freshwater owners consent would need to be provided. Amended Plans were received on 18 March 2024, which reflected the above. Re-notification was not required as the amendments reduced the overall environmental impact, as stated within Council's 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	There are no current draft environmental planning instruments.

Section 4.15 Matters for Consideration	Comments
environmental planning instrument	
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	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. Clause 29 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. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case. Clause 61 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. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan 2011 section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic

Section 4.15 Matters for Consideration	Comments
	impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 02/02/2024 to 16/02/2024 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 process council is in receipt of 5 submission/s from:

Name:	Address:
Mr Keith Howard Bridge	28 Terrigal Road TERREY HILLS NSW 2084
Catherine Nichols	6 / 23 Wilson Street FRESHWATER NSW 2096
Owen Thomas Pearl	4 Crawford Road MOUNT KURING-GAI NSW 2080
Mrs Kerry Anne Tabell	PO Box 565 FRESHWATER NSW 2096
Glen James Tabell	PO Box 1171 DEE WHY NSW 2099

Five (5) submissions were received, with the issues raised to be addressed below:

- ***The proposed building is quite high, particularly to the rear. Small sized allotment with a large home proposed will result in a 'cluttered' appearance of the streetscape.***

  Comment
  The proposed dwelling is compliant with the Building Height Standard of the *Warringah Local Environmental Plan 2011,* which is less than 8.5 metres. The minimum lot size requirement for this area is 450.0m², the subject site is 462.2m² and is not considered an undersized allotment. The landscape to impervious area is compliant with the relevant control, this being Clause D1

Landscaped Open Space and Bushland Setting of the Warringah Development Control Plan 2011 (WDCP), and will not present a cluttered appearance but one that is consistent with the area.

- ***Loss of privacy to both the western adjoining property and eastern adjoining property due to the proposed windows. Reduction in privacy in relation to the loss of vegetation/trees.***

  Comment
  Concern is raised in relation to the proposed dwelling's western windows (W19, W20, W21, W22) and the potential for direct viewing into the western adjoining properties pool area and adjacent windows. A further concern was a raised in regard to the eastern windows overlooking into the adjacent windows to the eastern adjoining property. Refer to "Clause D8 Privacy' elsewhere in this report for further discussion. Council's Landscape Officer has recommended conditions for replacement tree planting (throughout the site), and the addition of screen planting along boundaries capable of attaining at least 3.0 metres at maturity.

- ***The boundary fence is to be moved in line with the boundary survey and should be moved before construction commences.***

  Comment
  The proposal does not include the construction of a new boundary fence. Boundary fencing can usually be undertaken via the provisions of the *State Environmental Planning Policy Exempt and Complying Development 2008*. The construction and maintenance of side/rear boundary fences is to be agreed upon by all adjoining property owners of the fence. Works are to be in accordance with the *Dividing Fences Act 1991.*

- ***Remedial works necessary as dividing retaining wall is in disrepair to north-eastern end of adjoining eastern boundary line (25 & 23 Wilson Street), causing severe cracks in driveway.***

  Comment
  This application does not include works to the existing dividing retaining wall, and therefore does not form part of this assessment.. As this retaining wall is located on the common boundary owners consent from both adjoining properties would be required for any works.

- ***Stormwater/run-off concerns which may cause further damage to no. 23 Wilson concrete driveway and walls etc. The gradient combined with the surface area of the side ramp will result in a stream of run off when it is hit with water. This additional water run off will stream directly towards the shared boundary and into our property.***

  Comment
  Council's Development Engineer has reviewed the stormwater plans, and is in support subject to conditions that require the stormwater system (on-site detention) in accordance with Northern Beaches Council’s Water Management for Development Policy and the submitted plans prepared by Nastasi & Associates. This is to ensure appropriate provision for the disposal of stormwater and stormwater management arising from the development.

- ***Proposed Landscape Plan - New Planting of tree on southern boundary corner in close proximity to existing damaged Carport at 23 Wilson Street. All the existing tree plantings and original vegetation were cleared on 30th October, 2023.***

Comment
Council's Landscape Officer has reviewed the submitted Landscape Plan and is in support subject to required amendments that are listed via a recommended condition. The nominated tree planting to the rear of the property (south-eastern corner) is to be replaced with two (2) trees selected from Northern Beaches Council's Native Plant Species Guide. All tree planting is be located at least 3.0 metres from buildings and 1.5 metres from common boundaries. The Landscape Officer makes note that an Arborist Letter was submitted indicating that the vegetation which was removed were exempt species by height or by species type. The environmental value of these trees is therefore unknown and canopy offset tree planting will be required to ensure compliance with WDCP - Clause D1 Landscaped Open Space and Bushland Setting.

- ***Impact of proposed building on restricting and removing significant solar access and airflow to No. 23 Wilson Street.***

  Comment
  The proposal has been accompanied by solar access diagrams that are complaint with the WDCP - Clause D6 Access to Sunlight requirements. Airflow is considered to remain at an acceptable level for a residential environment.

- ***The buildings in the area are of two (2) storeys and fairly congested in layout. The inclusion of another two (2) storey development will result in further congestion.***

  Comment
  The proposal is a low density dwelling house of two (2) storeys which is consistent with the character of the streetscape and area. The low density design will not give arise to unacceptable congestion, and is generally compliant with built form controls.

- ***The noise generated by any building work will be objectionable for rental tenants in the area.***

  Comment
  Standard conditions have been provided that restrict building and demolition work to specific times, to ensure that works do not interfere with reasonable amenity expectations of residents and the community.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	***Supported, subject to conditions.*** Comments 29/01/2024 The application is assessed by Landscape Referral against Warringah Local Environmental Plan 2011 (WLEP) and the following Warringah Development Control Plan 2011 (WDCP) controls (but not limited to): • Control D1 Landscaped Open Space and Bushland Setting • Control E1 Preservation of Trees or Bushland Vegetation and

Internal Referral Body	Comments
	Control E2 Prescribed Vegetation The Statement of Environmental Effects identifies that the " site contains several large tree plantings towards the far rear of the site … ", however these have subsequently been removed and an arborist letter is submitted that the vegetation was exempt species by height or by species type. The environmental value of these trees is therefore unknown and canopy offset tree planting will be required to ensure compliance with WDCP - Control D1. The submitted Landscape Plan proposal is inadequate to satisfy the requirements of WDCP - Control D1, and conditions shall be included should the application be approved to ensure adequate canopy tree planting to reduce the bulk and scale and additionally ensure adequate vegetation screen planting for private open space areas.
NECC (Development Engineering)	***Supported, subject to conditions.*** Comments 15/03/2024 *Stormwater* The proposed stormwater design is generally satisfactory. The site is located within Region 2 (Central Catchment). The proposal is for the demolition of an existing dwelling and the construction of a new two storey dwelling. Stormwater/Rainwater from the subject site is to be directed to the street via an above-ground combined OSD/OSR tanks, which is satisfactory. *Site Access* The submitted driveway long-section depicts compliant driveway gradients, which is satisfactory. A new vehicular crossover is proposed.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs),

Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

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

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

SEPP (Transport and Infrastructure) 2021

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

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

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

SEPP (Resilience and Hazards) 2021

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies

Height of Buildings	8.5m	8.3m	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.3 Development near zone boundaries	Yes
6.2 Earthworks	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	< 7.2m	-	Yes
B3 Side Boundary Envelope	5.0m *Western Elevation*	Outside Envelope	12.0%	**No**
	5.0m *Eastern Elevation*	Outside Envelope	4.0%	**No**
B5 Side Boundary Setbacks	0.9m *Eastern Boundary*	Dwelling: 0.9m Side Ramp: 0.1m	- 88.9%	Yes **No**
	0.9m *Western Boundary*	Dwelling: 0.9m	-	Yes
B7 Front Boundary Setbacks	6.5m *Southern Boundary*	Dwelling 6.5m	-	Yes
B9 Rear Boundary Setbacks	6.0m *Northern Boundary*	> 6.0m	-	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40.0% (184.9m²)	40.5% (187.0m²)	-	Yes

Compliance Assessment

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

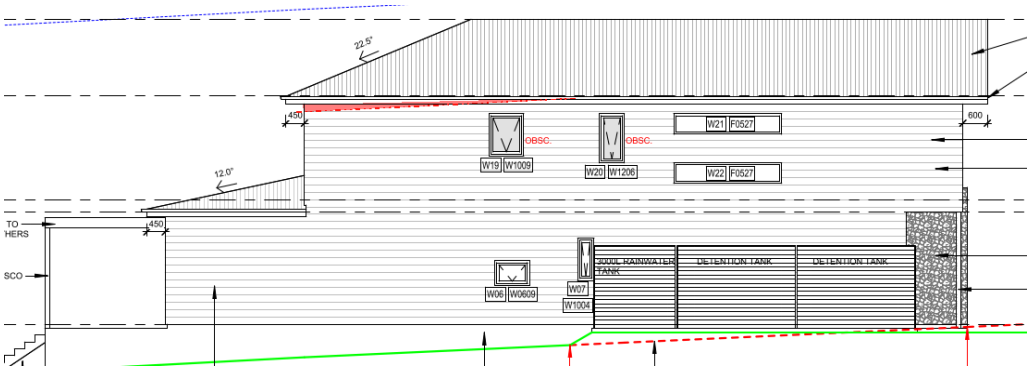
Clause	Compliance with Requirements	Consistency Aims/Objectives
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	No	Yes
D9 Building Bulk	No	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
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

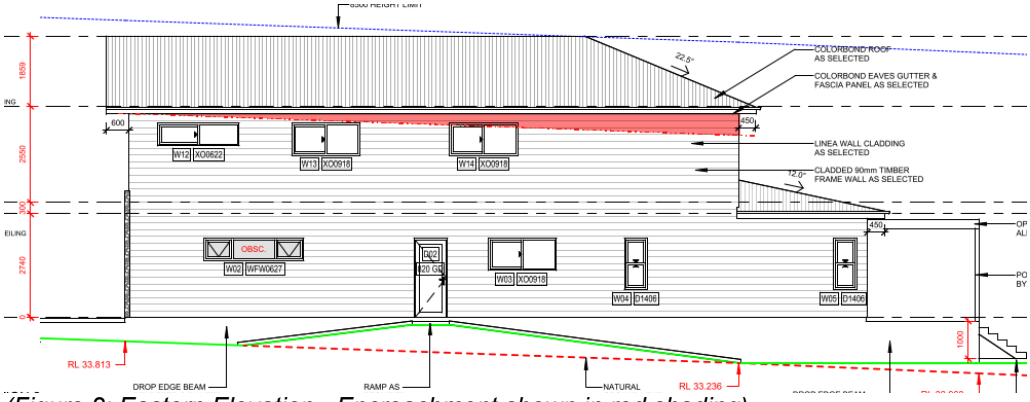
B3 Side Boundary Envelope

Description of Non-compliance
Clause B3 Side Boundary Envelope requires development to be sited within a 4.0m building envelope to ensure the bulk and scale of the built form is minimised.

The proposed development encroaches the side building envelope on the western elevation, presenting a maximum variation of 12.0% and 4.0% to the eastern elevation (see figures below).



(Figure 1: Western Elevation - Encroachment shown in red shading)



(Figure 2: Eastern Elevation - Encroachment shown in red shading)

Merit Consideration

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

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

  Comment

  The proposed design is consistent with the height of the natural environment by being situated below tree canopy level and providing a compliant Building Height Standard of under 8.5m.

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

  Comment

  The proposed dwelling house exhibit's compliance with the numerical requirements for side setbacks, which will accommodate for adequate spatial separation between adjoining properties. The proposal will provide an acceptable level of solar access and privacy within a residential environment. For further detail, privacy has been discussed elsewhere under *Clause D8 Privacy*.

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

  Comment
  The subject site has a slight gradual slope. As mentioned above the proposal exhibits a compliant building height, and also does not include any significant excavation that will disrupt the existing topography of the land.

Having regard to the above assessment, it is concluded that the outcomes of the clause have been achieved. Therefore, the application is supported on merit in this particular circumstance.

B5 Side Boundary Setbacks

Description of Non-compliance
Clause B5 Side Boundary Setbacks requires a setback of 0.9m to each side boundary to sites located within the R2 Low Density Residential zone.

The proposal includes a ramp to the eastern side of the dwelling approximately 0.1m from the eastern boundary for improved access. The remainder of the works are compliant with the numerical requirements.

The clause consists of an exception for R2 zoned areas, which stipulates that structures not more than 1.0m above ground level (existing) may encroach beyond the minimum side setback. The non-conforming element is less than 1.0m in height.

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

- ***To provide opportunities for deep soil landscape areas.***

  Comment
  The proposal provides compliant landscape open space, specifically a large lawn area to the rear and front garden. These areas are of acceptable dimensions for future opportunities for deep soil landscape.

- ***To ensure that development does not become visually dominant.***

  Comment
  The non-conforming element is close to ground level and will not contribute to visual dominance.

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

  Comment
  The non-conforming element is of minor scale and not bulky in design.

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

  Comment
  The side boundary setbacks are consistent with the surrounding dwelling houses and is compliant with the relevant solar access and privacy requirements, subject to conditions.

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

  Comment
  The proposal will not contribute to any unreasonable view loss from public and/or private properties.

Having regard to the above assessment, it is concluded that the outcomes of the clause have been achieved. Therefore, the application is supported on merit in this particular circumstance.

D8 Privacy

Merit Consideration
The proposal includes the erection of a new dwelling, with the privacy impacts to be discussed below:

Clause D8 Privacy requires that habitable rooms and outdoor living areas of dwellings optimise visual privacy through an appropriate design outcome. The windows of one dwelling are to be located so they do not provide direct or close views (i.e. from less than 9 metres away) into the windows of other dwellings.

Concern is raised by objectors in relation to the alfresco area, windows along the eastern and western elevations of the dwelling.

Western Elevation

- Ground Floor: The two (2) ground floor windows are associated with a bathroom and butlers pantry, and are both of modest size, and are not considered to cause unacceptable privacy impacts.

- First Floor: Window W19 and W20 are of obscured glazing, as noted on the architectural plans, are modest in sized and are associated with bathrooms. These rooms are not considered to be high-usage rooms, and are unlikely to result in unacceptable privacy impacts as they include a privacy protection element to the design. The light pollution from these windows would be minimal and acceptable for a residential area. Window 21 and W22 are associated with the internal stair well not a living area, and has been designed to limit downward viewing into the neighbouring property by incorporating a low window and a highlight window of a narrow style.

Eastern Elevation

- Ground Floor: Window W02 includes obscured glazing, and is of a highlight window design, associated with the garage and will not cause privacy impacts. Window W03 is associated with "BED 4" and is of a standard size. However, given the close proximity to the southern adjoining building's windows (despite the driveway in between), and that this room is located to the

ground floor with the potential to be used a s a secondary living space, a privacy protection element will be recommended as a condition. Windows W04 and W05 are associated with the open plan living area and will also contain a privacy protection element will be recommended as a condition, given the high usage of the room and numerous adjacent windows on the eastern adjoining building.

- First Floor: Window W14 is associated with an "Activity Room", due to the high usage of this area and numerous adjacent windows on the southern adjoining building, a privacy protection element will be recommended as a condition. W12 and W13 are associated with upstairs bedrooms and are of standard size. The NSW Land and Environment Court (Meriton v Sydney City Council [2004] NSWLEC 313), established a planning principle for the protection of visual privacy. Which stipulates the use of a space will determine the level of privacy achieved. It can be considered that the privacy of living areas which is most frequently used, is more objectionable than that of a bedroom where people tend to spend less time.

Privacy elements that will be conditioned include either; obscured gazing, highlight windows (floor to sill height 1.65m) and/or an external fixed privacy screen.

Alfresco

- The proposed alfresco is located with a setback of less than 1.0m from each side boundary and is raised 1.0m off natural ground level. Therefore, to ensure the protection of privacy levels, a privacy screen of 1.65m along both eastern and western edges of the alfresco area will install a privacy screen of 1.65m (minimum) in height, via a recommended condition. It is noted that the alfresco will be located more than 9.0m away from the western neighbours swimming pool. Councils Landscape Officer has also included a recommended condition for screen planting along boundaries.

In light of the above, and subject to recommended conditions, the privacy impacts are considered to be acceptable within a residential environment.

Having regard to the above assessment, it is concluded that the applicable outcomes of the control have been achieved. Therefore, the application is supported on merit.

D9 Building Bulk

Merit Consideration
Clause D9 Building Bulk stipulates that large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief.

The proposed first floor addition does not step in as the height of the dwelling increases and does not provide varying side building setbacks, therefore not meeting the requirements of this clause.

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

- ***To encourage good design and innovative architecture to improve the urban environment.***

  Comment

The design of the dwelling house and the spatial proportions of the proposed upper floor is consistent with a number of buildings located within the immediate vicinity, in particular No. 23, 27, 29, 32 and 34 Wilson Street. It is noted that the adjoining eastern building is a residential flat building of medium density. Furthermore, the proposed development complies with all applicable numerical built form controls (in exception of side boundary envelope, which is considered to be minor in nature). For these reasons, the design is considered to encourage good design and innovative architecture to improve the urban environment and to provide consistency within the area. Collectively the design is unified and the resultant bulk acceptable, despite the lack of articulation.

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

  Comment
  The development provides acceptable building separation, with the dwelling itself to be compliant with side building setback. As mentioned above, the design provides visual bulk and scale that is consistent with the overall area.

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.

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 $9,800 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $980,000.

CONCLUSION

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

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

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

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

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

PLANNING CONCLUSION

This proposal, for the demolition works and construction of a dwelling house has been referred to the Development Determination Panel (DDP) as the application has received five (5) unique submissions by way of objection.

The development application was notified for fourteen (14) days, as stated within Council's Community Participation Plan, with the objections received being addressed under the 'Submissions' section of the 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.

It is considered that the proposed development satisfies the relevant objectives and that all processes and assessments have been satisfactorily addressed. Accordingly, the application is referred to the DDP with a recommendation for **approval**, subject to recommended conditions.

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 Development Consent to DA2023/1896 for Demolition works and construction of a dwelling house on land at Lot 29A DP 977266, 25 Wilson Street, FRESHWATER, subject to the conditions printed below:

Terms and Reasons for Conditions

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

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

GENERAL CONDITIONS

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

Approved Plans				
Plan Number	**Revision Number**	**Plan Title**	**Drawn By**	**Date of Plan**
A03	Revision F	Site Plan	G.J. Gardner Homes	18 March 2024
A05	Revision F	Ground Floor Plan	G.J. Gardner Homes	18 March 2024
A06	Revision F	First Floor Plan	G.J. Gardner Homes	18 March 2024
A07	Revision F	Elevations	G.J. Gardner Homes	18 March 2024
A08	Revision F	Elevations	G.J. Gardner Homes	18 March 2024
A09	Revision F	Sections	G.J. Gardner Homes	18 March 2024
A10	Revision F	Demolition Plan	G.J. Gardner Homes	18 March 2024
A11	Revision F	Erosion, Sediment & Waste Management Plan	G.J. Gardner Homes	18 March 2024
A14	Revision F	Driveway Details	G.J. Gardner Homes	18 March 2024

Approved Reports and Documentation			
Document Title	**Version Number**	**Prepared By**	**Date of Document**
Drawing of No. 1 of 1, Proposed Landscape Plan	Revision C	Branching Out Co.	19 December 2023
BASIX Certificate (No. 1377034S)	-	Chapman Environmental Services Pty Ltd	22 November 2023
Sheet No. A17, Waste Management Plan	Revision E	G.J. Gardner Homes	7 December 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	31 January 2024

(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 $9,800.00 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 $980,000.00.

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

7. **Amended Landscape Plan**
An amended landscape plan shall be issued to the Principal Certifier prior to the issue of a Construction Certificate to include the following details:

a) The nominated tree planting to the front of the property shall be replaced with a tree capable of attaining at least 6 metres in height at maturity, selected from Northern Beaches Council's Native Plant Species Guide - Curl Curl Ward, under the Trees list and the following is suggested: either Banksia integrifolia, Callicoma serratifolia, or Tristaniopsis laurina, and the tree shall be located centrally within the proposed lawn area,
b) The nominated tree planting to the back of the property shall be replaced with two trees capable of attaining at least 6 metres in height at maturity, selected from Northern Beaches Council's Native Plant Species Guide - Curl Curl Ward, under the Trees list and the following is suggested: either Banksia integrifolia, Eucalyptus haemastoma, or Tristaniopsis laurina,
c) All tree planting shall be a minimum pre-ordered planting size of 75 litres or as otherwise scheduled if greater in size; 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,
d) Private open space areas within the property or within adjoining properties shall be screened by vegetation along boundaries with planting capable of attaining at least 3 metres at maturity, installed at minimum 1metre intervals for shrubs of a minimum 200mm 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.

Certification shall be submitted to the Principal Certifier that these amendments have been documented.

Reason: Landscape amenity.

8. **On-Site Stormwater Detention Details**
The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by Nastasi & Associates, drawing number 40932 - C1, C2 and C3, Issue A, dated 11/12/2023. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

i. OSD to be provided in accordance with Clause 9.0 of Council's Water Management for Development Policy.

ii. All discharge control devices and pits are to be located externally to all structures and buildings so that 24-hour access to the OSD system is possible and that overflows from the system can be safely directed away.

iii. Discharge to kerb & gutter should be gravity fed.

iv. OSD system should not be placed under any habitable floor.

Detailed drainage plans, including engineering certification, are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

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

9. **Vehicle Crossings Application**
The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing 3 metres wide in accordance with Northern Beaches Council Standard Drawing Normal (N) in accordance with Section 138 of the Roads Act 1993.

Note, driveways are to be in plain concrete only.

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

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

Reason: To facilitate suitable vehicular access to private property.

10. **Amendments to the approved plans**
The following amendments are to be made to the approved plans:

a) Ground Floor Windows: Windows W03, W04 and W05 on the ground floor plan as shown on the approved plans, is to increase the sill height to 1.65 metres above the Finished Floor Level or the glass pane is to consist of frosted/obscure glazing. Alternatively, a fixed external privacy screen shall be installed and consist of fixed opaque panels or angled louver style construction (with a maximum spacing of 20mm), in durable materials that complement the design of the dwelling.

b) First Floor Windows: Window W14 on the first floor plan as shown on the approved plans, is to increase the sill height to 1.65 metres above the Finished Floor Level or the glass pane is to consist of frosted/obscure glazing. Alternatively, a fixed external privacy screen shall be installed and consist of fixed opaque panels or angled louver style construction (with a maximum spacing of 20mm), in durable materials that complement the design of the dwelling.

c) Alfresco: The western and eastern ends of the alfresco area, as shown on the approved plans is to consist of a privacy screen for the full length of both western and eastern edges. The privacy screen shall be installed and consist of fixed opaque panels or angled louver style construction (with a maximum spacing of 20mm), in durable materials that complement the design of the dwelling, and be a minimum height of 1.65m.

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.

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 (Demolition):**
The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to Council prior to the commencement of demolition works.

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

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

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

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

15. **External Finishes to Roof**
The external finish to the roof shall have a 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.

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

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

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

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

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

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

17. **Works located within site boundaries**
All parts of the approved works are required to be wholly located within the boundaries of the subject property (Lot 29A DP 977266 - No. 25 Wilson Street, Freshwater) and shall not encroach onto or past any lot boundary lines.

Reason: To ensure works are located within site boundary.

18. **Waste Management Plan**
A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

Details demonstrating compliance must be provided to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

DURING BUILDING WORK

19. **Tree and Vegetation Protection**
a) Existing trees and vegetation shall be retained and protected, including:
i) all trees and vegetation located on adjoining properties,
ii) 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,
ii) the following arboricultural requirements shall be adhered to unless authorised by an Arborist with minimum AQF level 5 qualifications: existing ground levels shall be maintained within the tree protection zone of trees to be retained; removal of existing tree roots at or >25mm (Ø) diameter is not permitted; 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; and structures are to bridge tree roots at or >25mm (Ø) diameter,
iii) 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,
iv) 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,
v) 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.

Reason: Tree and vegetation protection.

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. **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.

22. **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.

23. **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.

24. **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

25. **Landscape Completion**
Landscape works are to be implemented in accordance with the approved Amended 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 Amended Landscape Plan, and any conditions of consent.

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.

26. **Positive Covenant and Restriction as to User for On-site Stormwater Detention**
The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), and Civil Engineers' certification.

The Applicant shall create on the Title a restriction on the use of land and a positive covenant in respect to the ongoing maintenance and restriction of the on-site stormwater 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 party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site stormwater detention as to user is to be submitted.

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

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

27. **Removal of All Temporary Structures/Material and Construction Rubbish**
Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

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

Reason: To ensure bushland management.

28. **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

29. **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 Amended Landscape Plan and any conditions of consent.

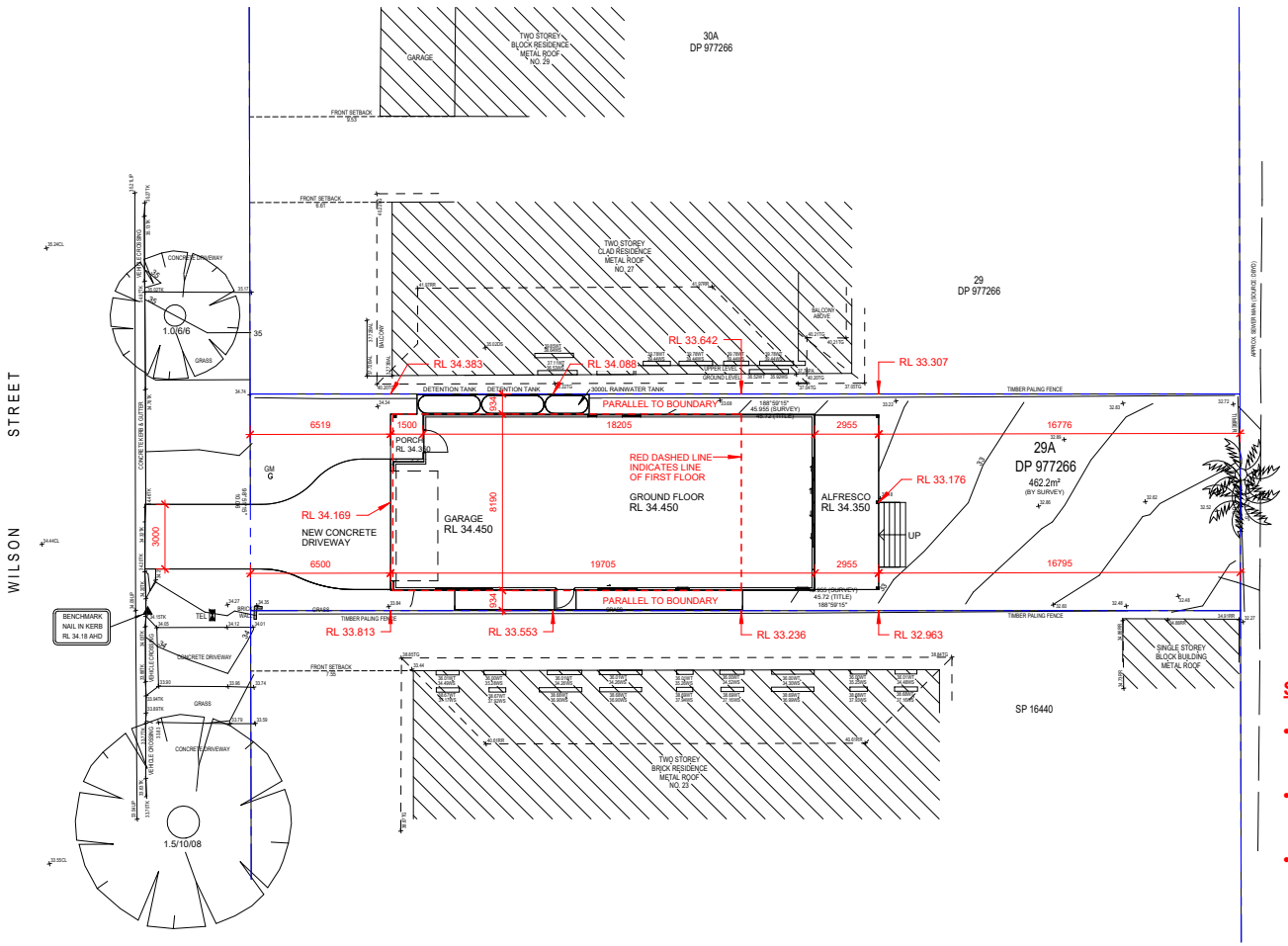
The approved landscape area shall in perpetuity remain as planting under the development consent, and shall not be replaced with any hard paved surfaces or structures.

Reason: To maintain local environmental amenity.

DIMENSIONS INCLUDE CLADDING THICKNESS

DRAWING REVISION SCHEDULE

No.	AMENDMENTS	DATE	BY
A	FIRST ISSUE	31/10/2023	DJH
B	CHANGES AS PER EMAIL 01/11/2023	02/11/2023	DJH
C	CHANGES AS PER EMAIL 13/11/2023	13/11/2023	DJH
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F	RENAMED ELEVATIONS; ADJUSTED DEMOLITION PLAN	18/03/2024	DJH



1 SITE PLAN
1 : 200

DA APPLICATION - NOT FOR CONSTRUCTION

0m 1m 2m 3m 4m 5m 10m
SCALE BAR 1:200

SETBACK NOTES:

- **FRONT SETBACK IS TO BE AT LEAST: 6.5m**
- **SIDE SETBACK IS TO BE AT LEAST: 0.9m**
- **REAR SETBACK IS TO BE AT LEAST: 6.0m**

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Builders Details

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NORWEST NSW 2153
ABN 15 078 937 238
(02) 8883 4344
kjrdrafting@kjr.net.au

CLIENT: DOUBLE STOREY DWELLING
OKAMURA

DRAWING TITLE:
SITE PLAN

PROJECT:
25 WILSON STREET
FRESHWATER NSW 2096

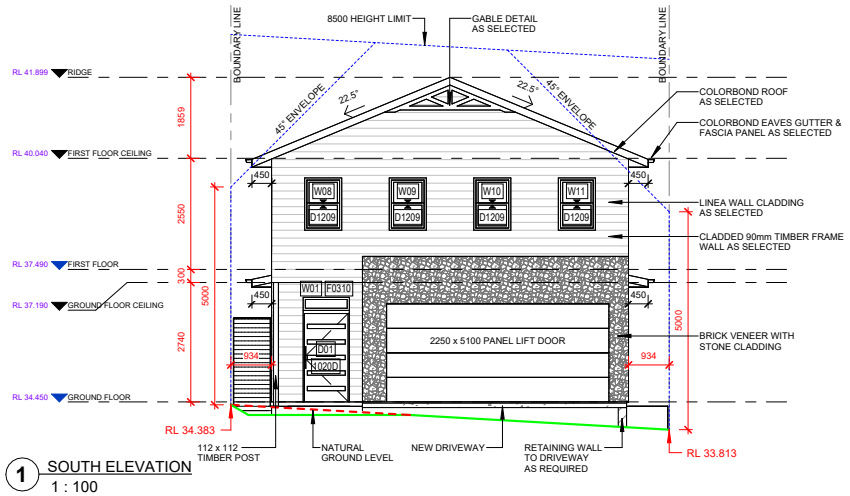
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SHEET SIZE:	SHEET No:	REVISION:
A3	A03	F
DATE:	18/03/2024	
JOB NO:	230401	APPLICATION: DA
DRAWN:	DJH	GJGN230

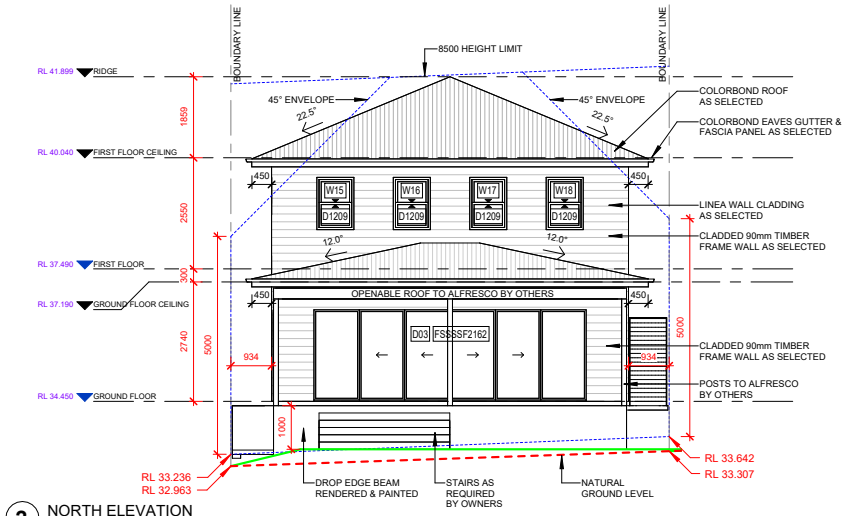
I/WE HAVE CHECKED THE PLANS AND AGREE THEY ACCURATELY DEPICT THE HOUSE FOR CONSTRUCTION. ANY VARIATIONS REQUESTED AFTER SIGNING WILL INCUR A PROCESSING FEE IN ADDITION TO THE COST OF THE VARIATION ITEM/S AND ANY FURTHER PLANS TO BE PREPARED.

OWNER SIGNED: ..... DATE: .....
OWNER SIGNED: ..... DATE: .....
BUILDER SIGNED: ..... DATE: .....

REFER TO SPECIFICATION FOR COLOUR SELECTION, FINAL LAYOUT & FINISHES OF BATHROOM AND LAUNDRY



1 SOUTH ELEVATION
1 : 100



2 NORTH ELEVATION
1 : 100

DA APPLICATION - NOT FOR CONSTRUCTION

0m 1m 2m 3m 4m 5m 10m
SCALE BAR 1:100

DRAWING REVISION SCHEDULE

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F	RENAMED ELEVATIONS; ADJUSTED DEMOLITION PLAN	18/03/2024	DJH

DOOR SCHEDULE

MARK	WIDTH	HEAD
D01	1020	2100
D02	820	2100
D03	6246	2100

Grand Total: 3

WINDOW SCHEDULE

MARK	WIDTH	HEIGHT	SILL	HEAD
W01	1060	300	2100	2400
W02	2650	600	1500	2100
W03	1810	860	1240	2100
W04	610	1370	730	2100
W05	610	1370	730	2100
W06	850	600	950	1550
W07	400	1030	1070	2100
W08	850	1200	900	2100
W09	850	1200	900	2100
W10	850	1200	900	2100
W11	850	1200	900	2100
W12	2170	600	1500	2100
W13	1810	860	1240	2100
W14	1810	860	1240	2100
W15	850	1200	900	2100
W16	850	1200	900	2100
W17	850	1200	900	2100
W18	850	1200	900	2100
W19	850	1030	1070	2100
W20	610	1200	900	2100
W21	2650	500	1600	2100
W22	2650	500	400	900

Grand Total: 22

WALL & ROOF CLADDING.

WALL AND ROOF CLADDING TO BE COMPLIANT WITH THE REQUIREMENTS OF NCC VOLUME 2 - H1D7 PARTICULARLY WITH RESPECT TO THE REFERENCING ACCEPTABLE CONSTRUCTION PRACTICE AS DETAILED IN THE NCC FOR PRODUCT MATERIALS AND INSTALLATION.
IMPORTANT NOTE:
ANY PROPOSED PRODUCT CHANGES AFTER APPROVAL OF THE CC OR CDC IS TO BE IMMEDIATELY NOTIFIED TO THE PCA FOR CONCURRENCE.

BALUSTRADES - NCC VOLUME 1 - D3D20

NO HORIZONTAL ELEMENTS TO FACILITATE CLIMBING BETWEEN 150mm TO 760mm WHERE FLOOR TO FLOOR LEVEL BELOW IS MORE THAN 4 METRES.

WINDOWS
PROVIDE 1.7m SILL HEIGHT OR CHILD SAFE LOCKS / SCREENS TO COMPLY WITH NCC VOLUME 1 - D3D29

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CLIENT: DOUBLE STOREY DWELLING
OKAMURA

DRAWING TITLE:
ELEVATIONS

PROJECT:
25 WILSON STREET
FRESHWATER NSW 2096

SCALE: 1 : 100

SHEET SIZE:	SHEET No:	REVISION:
A3	A07	F

DATE: 18/03/2024

JOB NO: 230401 | APPLICATION: DA

DRAWN: DJH | GJGN230

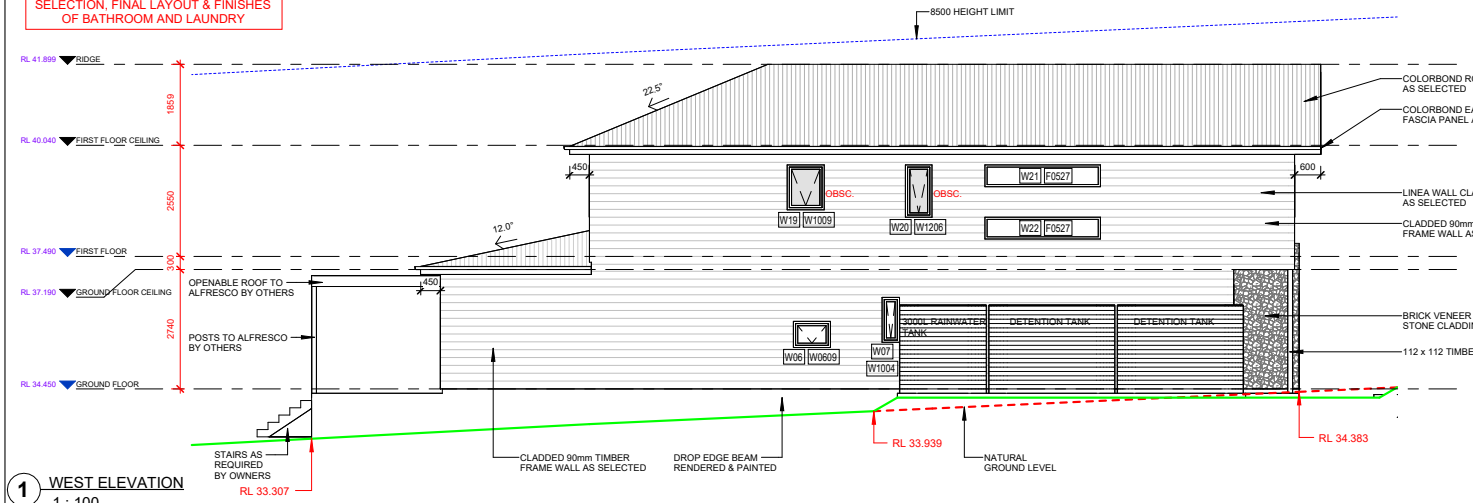
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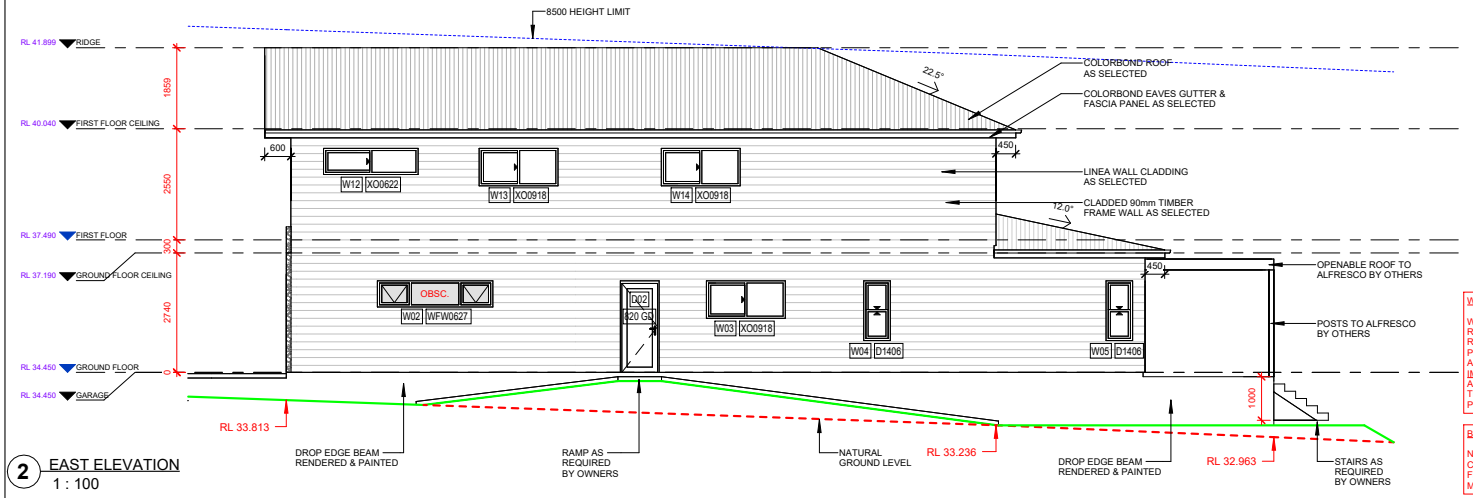
OWNER SIGNED: ..... DATE: .....

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1 WEST ELEVATION
1 : 100



2 EAST ELEVATION
1 : 100

DRAWING REVISION SCHEDULE

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DA APPLICATION - NOT FOR CONSTRUCTION

0m 1m 2m 3m 4m 5m 10m
SCALE BAR 1:100

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CLIENT: DOUBLE STOREY DWELLING
OKAMURA

DRAWING TITLE:
ELEVATIONS

PROJECT:
25 WILSON STREET
FRESHWATER NSW 2096

SCALE: 1 : 100

SHEET SIZE:	SHEET No:	REVISION:
A3	A08	F

DATE: 18/03/2024

JOB NO:	APPLICATION:
230401	DA
DRAWN: DJH	GJGN230

I/WE HAVE CHECKED THE PLANS AND AGREE THEY ACCURATELY DEPICT THE HOUSE FOR CONSTRUCTION. ANY VARIATIONS REQUESTED AFTER SIGNING WILL INCUR A PROCESSING FEE IN ADDITION TO THE COST OF THE VARIATION ITEM/S AND ANY FURTHER PLANS TO BE PREPARED.

OWNER SIGNED: ..... DATE: .....
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BUILDER SIGNED: ..... DATE: .....

ITEM 3.7 DA2023/1873 - 22 GEORGE STREET MANLY - ALTERATIONS AND ADDITIONS TO A SEMI-DETACHED DWELLING

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

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.

3.
THAT Council as the consent authority **approves** Development Consent to DA2023/1873 for alterations and additions to a semi-detached dwelling on land at Lot 91 DP 998891, 22 George Street MANLY, subject to the conditions set out in the Assessment.

REPORTING MANAGER	
TRIM FILE REF	2024/188612
ATTACHMENTS	⇩1 Assessment Report ⇩2 Site Plan and Elevations ⇩3 Clause 4.6

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/1873

Responsible Officer:	Jordan Howard
Land to be developed (Address):	Lot 91 DP 998891, 22 George Street MANLY NSW 2095
Proposed Development:	Alterations and additions to a semi-detached dwelling
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Henry Peter Willis Tracey Michelle Willis
Applicant:	Henry Peter Willis

Application Lodged:	11/01/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	17/01/2024 to 31/01/2024
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	4.4 Floor space ratio: 16.6%
Recommendation:	Approval

Estimated Cost of Works:	$ 25,653.10

EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to a semi-detached dwelling.

The application is referred to the Development Determination Panel (DDP) due to a proposed variation of greater than 10% to the floor space ratio (FSR) development standard as establish by Clause 4.4 Floor space ratio of the Manly Local Environmental Plan 2013.

Concerns raised in submissions predominantly relate to the loss of street parking as a result of the new proposed driveway crossover and off-street parking at the subject site, as well as other objections including non-compliance with off-street parking requirements, vehicle manoeuvreing, and safety

concerns. These submissions are address within this report and do not raise matters sufficient to warrant refusal of the application.

Critical assessment issues included assessment of the proposed variation to the FSR development standard, as well as the impact of the proposed car parking on the streetscape and front setback.

The 4.6 request for the non-compliance with FSR standard arises as the existing semi-detached dwelling is non-complaint with the FSR standard. The proposed development will result in a reduction in floor space by 4.5sqm, from an existing FSR of 0.91:1 (165.9sqm) to an FSR of 0.89:1 (161.4sqm). Therefore, the proposal, whilst remaining non-complaint and proposing a 16.6% variation to the FSR development standard, is reducing this level of non-compliance from existing. The reduction in floor space is therefore supported, as outlined in the section of this report on MLEP 2013 Clause 4.6 Exceptions to development standards.

The proposal is also assessed against the controls of the MDCP and is supported on merit where minor non-compliances arise.

The proposed development is not considered to have an unreasonable impact on the streetscape, considering effort has been made to retain the existing front facade where possible, whilst providing parking on the subject site. Furthermore, existing development on George Street exhibits similar (or in some cases more dominate) parking arrangements visible from the street, demonstrating that the proposed parking at the subject site is not out of character. Council's Heritage Officer has also raised no objection on heritage grounds, subject to one condition requiring the details of the proposed external materials and colour schedule.

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

PROPOSED DEVELOPMENT IN DETAIL

The Development Application seeks development consent for alterations and additions to a semi-detached dwelling. Specifically, the following is proposed:

- Existing French door set in the street façade to be relocated to the west by 1.1 metres;
- New timber framed wall with selected cladding be added to contain the relocated French door set;
- Removal of part of the front fence;
- New concrete slab on ground; and
- New concrete vehicular crossing to Council's requirements.

These proposed alterations will have the effect of creating one (1) off-street parking space, where currently the property has none.

Additional information was requested in relation to Clause 4.4 Floor space ratio & Clause 4.6 Exceptions to development standards of the MLEP 2013. Additional information and amended plans were received, which did not require re-notification, in accordance with the Northern Beaches Community Participation Plan.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental

Planning and Assessment Act 1979 and the associated Regulations. In this regard:

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)
Manly Development Control Plan - 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 91 DP 998891 , 22 George Street MANLY NSW 2095
Detailed Site Description:	The subject site consists of one (1) allotment located on the eastern of George Street. The site is irregular in shape with a frontage of 6.03m along George Street and a depth of 30.43m. The site has a surveyed area of 182.162sqm. The site is located within the R1 General Residential zone and accommodates a semi-detached dwelling. The site is relatively flat. The site contains some landscaped area and vegetation. There are no details of threatened species at the subject site. **Detailed Description of Adjoining/Surrounding Development**

	Adjoining and surrounding development is characterised by dwelling houses, semi-detached dwellings and residential flat buildings.

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. DA2023/1712 for alterations and additions to a semi-detached dwelling was an attempt at lodging this application. It was returned by Council on 22 November 2023 due to inadequate and/or insufficient information being provided to assess the proposed development.

Development Application No. 318/2016 for alterations and additions to an existing semi-detached dwelling was approved on 15 February 2017.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.

Section 4.15 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)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, 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. Clause 29 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. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to Clause 4.4 Floor space ratio & Clause 4.6 Exceptions to development standards of the MLEP 2013. Clause 61 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. Clauses 62 and/or 64 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. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.

Section 4.15 Matters for Consideration	Comments
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 17/01/2024 to 31/01/2024 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 process council is in receipt of 2 submission/s from:

Name:	Address:
John Robinson	Address Unknown
Withheld	NSW

The following issues were raised in the submissions:

- **Removal of street parking and non-compliance with the the number of parking spaces**

  The submissions raised concerns that the proposal will removal street parking in the creation of a private parking space with driveway crossover. Furthermore, the submissions raised concerns that this application may set a precedent for similar projects in the street, with the prepotential to further reduce street parking. Furthermore, the submissions raised concerns that the proposed development only proposed one (1) parking space, as opposed to the two (2) required by the MDCP.

  Comment:
  Under MDCP Clause 4.1.6 semi-detached dwellings require the provision of two (2) off-street parking spaces. The proposed development will result in one (1) off-street parking space, representing a 50% variation to the control. While numerically non-compliant, this is an improvement to the existing off-street parking arrangement, which is currently nil. The control also notes the following:

In relation to the provision of parking for dwelling houses, Council may consider the provision of only 1 space where adherence to the requirement for 2 spaces would adversely impact on the streetscape or on any heritage significance identified on the land or in the vicinity.

The location of the existing building is such that additional off-street parking is unable to be provided without significant alteration to the building and impact on the streetscape. Council's Development Engineers also support the proposal, subject to conditions. Therefore, Council is satisfied that the proposed off-street parking is acceptable and that the request for reduced off-street parking can be supported, in this instance.

It should also be noted that by providing one off-street parking space for the occupants of the subject site, parking demand has been reduced on the street by one, whilst the development effectively removes one street kerb side parking space.

Regarding concerns about 'setting a precedence', it should be noted that any hypothetical future proposal for off-street parking on future sites would be assessed against relevant planning control and on its own merit. Importantly, the existing streetscape already contains examples of similar (or in some cases more dominate) parking arrangements visible from the street. All property owners entitled to seek development consent (should they wish) to develop their land to the extent permitted under planning controls.

- **Ability of vehicles to manoeuvre and pedestrian / vehicles safety**

The submissions raised concerns relating to the ability of vehicles to manoeuvre in and out of the proposed parking space. Furthermore, the submissions raised concerns that entry and egress to the driveway could present safety concerns to pedestrians or other vehicles.

Comment:
Council's Development Engineering team have reviewed the proposal and are supportive, subject to conditions. It is not envisioned that this additional driveway crossover would create any more hazard than any other driveway connecting to this low-traffic residential street.

- **Fire safety / building engineering concerns**

The submissions raised concerns that the proposal does not include assessment of the building or fire risk, noting that the car is proposed to be parking within the building envelope.

Comment:
As conditioned, all building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA) and in accordance with all relevant Australian Standards. Further consideration will be given to construction and engineering at the Construction Certificate stage of the development.

It should be noted that it is not an uncommon feature for parking to be provided under dwellings, with Australian building classifications permitting private garages under Class 1 buildings without changing the class of the building to a higher class.

REFERRALS

<table>
<tr><th>Internal Referral Body</th><th>Comments</th></tr>
<tr><td>NECC (Development Engineering)</td><td>Supported, subject to conditions.

The proposed development is for an internal parking space and associated works. Vehicle crossing construction is proposed. I have no objections to the proposed development subject to the inclusion of the recommended engineering conditions of consent.</td></tr>
<tr><td>Road Reserve</td><td>Supported, without conditions.

Road Assets has no comments on this proposal.</td></tr>
<tr><td>Strategic and Place Planning (Heritage Officer)</td><td>Supported, subject to conditions.

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 item:

Item I155 - Houses - 17 and 19–21 George Street, Manly

Details of heritage items affected

C2 - Manly Town Centre Conservation Area
<u>Statement of Significance</u>
The buildings are a fine example of late Victorian grouping in a streetscape.
<u>Physical Description</u>
No.17: two storey rendered brick Italianate dwelling with 3 storey central tower; asymmetrical plan. Re-roofed in metal tiles. The render decoration, fenestration and massing are typical late Victorian Italiante in influence.
Nos. 19-21: two storey terrace in rendered brick with bell shaped corrugated iron roof to first floor verandah. Cast iron balustrading and render decoration typical of late Victorian terrace development.
Minor alterations and infill to both buildings.
Other relevant heritage listings
<table><tr><td>SEPP (Biodiversity and Conservation) 2021</td><td>No</td><td></td></tr><tr><td>Australian Heritage Register</td><td>No</td><td></td></tr><tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr><tr><td>National Trust of Aust (NSW) Register</td><td>No</td><td></td></tr><tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td><td></td></tr><tr><td>Other</td><td>N/A</td><td></td></tr></table></td></tr>
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Internal Referral Body	Comments
	Consideration of Application The proposal seeks consent for alterations and additions to an existing two-storey brick semi-detached dwelling house, including changes to the front facade at the ground floor and a new driveway cross-over with a hardstand parking area in the front building line. The existing building dates back to the early 1900s and retains some integrity of the original fabric including the original chimneys, fire places and the internal layout at the front portion. The proposal involves the removal of a portion of the front facade including the existing non-original french doors, which are proposed to be relocated approximately 1200mm back, to allow a carparking space at the front of the building. Given the proposed insertion of the driveway cross-over and changes to the facade are considered to not dominate the existing streetscape, the impact of the proposal upon the heritage listed properties across the road is considered manageable. Therefore, no objections are raised on heritage grounds, subject to one condition requiring the details of the proposed external materials and colour schedule. <u>Consider against the provisions of CL5.10 of MLEP.</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	11m	3.8m	-	Yes
Floor Space Ratio	FSR: 0.75:1 (136.6sqm)	FSR: 0.89:1 (161.4sqm)*	16.6% (24.8sqm)	**No***

* It is noted that whilst the proposal overall is non-complaint with the FSR development standard, the semi-detached dwelling as existing is non-complaint with the FSR standard, with the proposal seeking

reduction of floor space.

Compliance Assessment

Clause	Compliance with Requirements
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
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

The application seeks consent to vary a development standard as follows:

Development standard: Clause 4.4 Floor Space Ratio
Requirement: 0.75:1 (136.6sqm)
Proposed: 0.89:1 (161.4sqm)
Percentage of variation: 16.6% (24.8sqm)

With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is 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 MLEP 2013 (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 4.4 Floor Space Ratio 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 4.4 Floor Space Ratio is unreasonable or unnecessary in the circumstances of this application for the following reasons:

- The proposed development will result in a reduction in floor space by 4.5sqm, from an existing FSR of 0.91:1 (165.9sqm) to an FSR of 0.89:1 (161.4sqm). Therefore, the proposal, whilst remaining non-complaint with the FSR development standard, is reducing this level of non-compliance from existing.
- The house will retain its existing character and efforts have been made to retain the front facade.

It would be unreasonable or unnecessary in the circumstances of this application to require strict compliance the FSR.

(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 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, that "*the 0.75:1 floor space ratio development standard has a planning purpose in respect of the development of large sites capable of accommodating numerous dwellings and having the potential for the creation of significant environmental impact on the character or population density of residential areas of Manly. In this instance the proposed minor works will not change the physical attributes of the existing development and any there will be little change to the visual characteristics and amenity within the vicinity of the proposal or in George Street.*"

The Applicant's arguments are generally concurred with. Council is satisfied that the Applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of Clause 4.4 Floor Space Ratio 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.
- The proposal will result in a reduction of FSR, thereby reducing the existing non-compliance.
- As an undersized allotment, the proposed development meets the criteria of a Clause in the MDCP, which stipulates that in cases where subject sites are undersized, Council may considered this as a factor. Refer to the section of this report on MDCP Clause 4.1.3 Floor Space Ratio (FSR) for further details. In summary, the proposed development would be complaint with the FSR development standard if the variation stipulated by the MDCP were applied.

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 MLEP 2013.

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.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 182.162sqm	**Requirement**	**Proposed**	**% Variation***	**Complies**
4.1.1.1 Residential Density and Dwelling Size	Dwelling Size: 75sqm (2 bedroom, 2 bathroom)	161.4sqm	-	Yes
4.1.2.1 Wall Height	Requirement is based on gradient on side elevations	No change	N/A	N/A*
4.1.2.2 Number of Storeys	3	2	-	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.3m	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	1.8m (to exiting building), consistent with prevailing setback Nil (to proposed parking space)	- 100%	Yes **No**
4.1.4.2 Side Setbacks and Secondary Street	Side setback requirement is	No change - 0.9m	N/A	N/A*

Frontages	based on wall height			
4.1.4.4 Rear Setbacks	8m	2.8m	65%	**No** but existing and unchanged
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS2	Open space 50% of site area (91.1sqm)	19.8% (36sqm)	60.5%	**No** but existing and unchanged
	No more than 25% of open space above ground	0% (0sqm)	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 30% of open space (10.8sqm)	65.8% (23.7sqm) Note: site has 57sqm total of landscaped area	-	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	No change - 36sqm	-	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	45% of the 6m frontage (2.7m)	-	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	1 space	50%	**No**

* These built from controls have not been measured for the proposal, as side elevations were not submitted with the proposal. These are not considered to be required considering the scope of the proposed works. Nonetheless, the wall height and side setback are unchanged by the proposal from existing.

Compliance Assessment

Clause	**Compliance with Requirements**	**Consistency Aims/Objectives**
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.3.3 Footpath Tree Planting	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
3.10 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)	Yes	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)	No	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.4.2 Awning supported from the ground	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

Description of non-compliance

3.1.1.4 Garages, Carports and Hardstand Areas

The control requires garages, carports and hardstand areas be designed and sited in a manner that does not to dominate the street frontage. Exceptions may be considered where parking structures are a positive element of the streetscape.

The proposed development incorporates a hardstand parking space within the front setback, partially under the footprint of the existing semi-detached dwelling.

Merit consideration

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

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

frontage.

Comment:
Effort has been made to retain the existing front facade where possible, whilst providing parking on the subject site. It is noted that properties on George Street exhibit similar (or in some cases more dominate) parking arrangements visible from the street. 19 and 21 George Street both exhibit off-street parking within an undercroft-like area in front of the properties, similar in arrangement to this proposal. However, these properties provide two parking spaces per property, occupy a larger area and are connected to wider driveways. Additionally, 17 George Street has a double garage setback nil to the boundary, an example of a more dominate parking structure in the immediate vicinity of the subject site. These adjacent properties are all heritage items, demonstrating that the proposed parking at the subject site will not visually impact on these properties, given their parking arguments (which it should be noted are not original, only being added by Development Consents issues within the past 30 years). Council's Heritage Officer has reviewed the proposal and raises no objection on heritage grounds, subject to one condition requiring the details of the proposed external materials and colour schedule.

Given all of this, with the existing streetscape providing similar examples of older development with added parking spaces, the proposal is not considered to cause unreasonable visual impact upon the streetscape.

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

Comment:
As above, the proposed parking space is not considered to cause unreasonable visual impact upon the streetscape.

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

Comment:
Front fences on the street form part of the character of the streetscape. As such, the existing fence, and proposed modifications to allow for the development of a parking space, are considered acceptable in the context of the site and locality.

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

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

Wall heights have not been measured for the proposal, as side elevations were not submitted with the proposal. These are not considered to be required considering the scope of the proposed works. Nonetheless, wall heights are unchanged by the proposal from existing.

4.1.3 Floor Space Ratio (FSR)

The proposed development has a FSR of 0.89:1 (161.4sqm), which represents a variation of 16.6% (24.8sqm) to the prescribed FSR of 0.75:1 (136.6sqm).

Clause 4.1.3 Floor Space Ratio (FSR) of the MDCP includes guidance for assessing variations where allotments are undersized. The subject site is 182.162sqm, and the minimum lot size as stipulated by Clause 4.1 Minimum subdivision lot size of the MLEP 2013 is 250sqm (Area C). Therefore, the subject site is undersized.

In this instance, the Clause stipulates that a variation may be accepted based on calculation of FSR using a 250sqm lot size. If the lot were to have a 250qm lot size, the FSR of 0.75:1 would allow a Gross Floor Area (GFA) of 187.5sqm. The proposed GFA of 161.4sqm would be compliant in this case, representing a FSR of 0.65:1.

Nonetheless, the request to vary the FSR development standard is assessed within the section of this report on MLEP 2013 Clause 4.6 Exceptions to Development Standards. This stipulated variation in the MDCP is one of several reasons that the proposed development is considered to satisfy Clause 4.6 and the proposed variation is supported.

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

Description of non-compliance

Clause 4.1.4.1 Street Front Setbacks stipulates that proposed front setbacks must relate to the front building line of neighboring properties and the prevailing building lines in the immediate vicinity. The existing dwelling has an unchanged setback of 1.8m, in line with the prevailing building line. However, the parking space proposed partially under the existing building footprint will be setback nil from the front boundary, representing a 100% variation to the numerical requirements and protruding forward of the building line established by immediate neighbours.

However, it should be noted that George Street has other examples of parking arrangement with minimal setback to the street. 19 and 21 George Street both exhibit similar off-street parking within an undercroft-like area in front of the properties, with the parking spaces sticking partially out from the building setback, approximately nil to the boundary. Additionally, 17 George Street has a double garage setback nil to the boundary. These are examples of older development with added parking spaces, constricted by existing built from, that exist on the street.

Side setbacks have not been measured for the proposal, as side elevations were not submitted with the proposal (with the side setback control based on wall heights). These are not considered to be required considering the scope of the proposed works. Nonetheless, side setbacks are unchanged by the proposal from existing.

The rear setback of the existing building is 2.8m, representing a 65% non-compliance with the required 8m rear setback. However, this is an existing non-compliance and is also unchanged and unaffected by the proposal.

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 design of the proposed parking space is open, partially tucked under the existing building, and is

not considered to cause an unacceptable aesthetic impact to the streetscape (especially considering existing examples within the street of similar parking arrangements). In this regard, the existing streetscape is considered to be maintained and enhanced.

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:
Despite the numerical non-compliance to the required street frontage, an acceptable level of privacy will be maintained. The streetscape will not be detrimentally impacted by the parking space within the front setback area. No significant impacts to solar access or views have been identified. The proposal is considered to meet the above.

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

Comment:
The proposed development is considered to be appropriately sited, integrates well into the existing dwelling and streetscape, and examples of similar parking arrangements can be found on the street. Flexibility is required for alterations and additions to an existing dwelling. Flexibility is therefore warranted in the assessment of this application.

Objective 4) To enhance and maintain natural features by:

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

Comment:
The proposed works, whilst exhibiting a numerically non-compliant total open space, do not decrease the provision of landscaped area on the site, and are compliant with the landscaped area provisions of the MDCP. The proposed development does not necessitate the removal of any significant vegetation.

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

Comment:
The site is not located within land identified as bushfire prone.

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

The subject site is located within Residential Open Space Area OS2, which requires at least 50% (91.1sqm) of the site to be open space. In addition, at least 30% (10.8sqm) of the proposed open space is to be landscaped area. Additionally, no more than 25% of total open space can be provided above ground level.

The proposed development results in a numerically non-compliant total open space of 19.8% (36sqm), presenting a variation of 60.5% to the requirement.

It is noted that proposal achieves compliance with the landscaped area, with a total of 65.8% (23.7sqm) of the total open space area being landscaped. Furthermore, 57sqm total of the site is landscaped (including areas outside the total open space area), and no open space is provided above ground level.

The proposed development does not create the total open space non-compliance, with the existing front area not included as total open space due to dimensions. As such, the non-compliant total open space is an existing feature, and unchanged by the proposed development. Therefore, a detailed merit assessment is not required in this instance.

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

Under MDCP Clause 4.1.6 semi-detached dwellings require the provision of two (2) off-street parking spaces. The proposed development will result in one (1) off-street parking space, representing a 50% variation to the control. While numerically non-compliant, this is an improvement to the existing off-street parking arrangement, which is currently nil. The control also notes the following:

In relation to the provision of parking for dwelling houses, Council may consider the provision of only 1 space where adherence to the requirement for 2 spaces would adversely impact on the streetscape or on any heritage significance identified on the land or in the vicinity.

The location of the existing building is such that additional off-street parking is unable to be provided without significant alteration to the building and impact on the streetscape. Council's Development Engineers also support the proposal, subject to conditions. Therefore, Council is satisfied that the proposed off-street parking is acceptable and that the request for reduced off-street parking can be supported, in this instance.

It should also be noted that by providing one off-street parking space for the occupants of the subject site, parking demand has been reduced on the street by one, whilst the development effectively removes one street kerb side parking space.

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;
- 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 the Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify variation of the development standard contained within Clause 4.4 Floor Space Ratio 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 semi-detached dwelling, has been referred to the Development Determination Panel (DDP) due to a proposed variation of greater than 10% to the floor space ratio (FSR) development standard as establish by Clause 4.4 Floor space ratio of the Manly

Local Environmental Plan 2013.

Concerns raised in submissions predominantly relate to the loss of street parking as a result of the new proposed driveway crossover and off-street parking at the subject site, as well as other objections including non-compliance with off-street parking requirements, vehicle manoeuvreing, and safety concerns. These submissions are address within this report and do not raise matters sufficient to warrant refusal of the application.

Critical assessment issues included assessment of the proposed variation to the FSR development standard, as well as the impact of the proposed car parking on the streetscape and front setback.

The proposed variation to the FSR development standard is supported, as the proposal, whilst remaining non-complaint with the development standard, is reducing this level of non-compliance from existing. The proposal is also supported on merit where minor non-compliances with MDCP controls arise.

The proposed development is not considered to have an unreasonable impact on the streetscape, considering effort has been made to retain the existing front facade where possible, whilst providing parking on the subject site. Furthermore, existing development on George Street exhibits similar (or in some cases more dominate) parking arrangements visible from the street, demonstrating that the proposed parking at the subject site is not out of character. Council's Heritage Officer has also raised no objection on heritage grounds, subject to one condition requiring the details of the proposed external materials and colour schedule.

The proposal has therefore been recommended for approval, subject to conditions.

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 4.4 Floor Space Ratio, pursuant to Clause 4.6 of the Manly Local Environmental Plan 2013 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 DA2023/1873 for Alterations and additions to a semi-detached dwelling on land at Lot 91 DP 998891, 22 George Street, MANLY, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

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

Approved Plans				
Plan Number	**Revision Number**	**Plan Title**	**Drawn By**	**Date of Plan**
A.01	A	Site Plan & Ground Floor Plans	Suddhin Unn Architect	30 October 2023
A.02	A	Section S1 & West Elevation	Suddhin Unn Architect	16 October 2023

Approved Reports and Documentation			
Document Title	**Version Number**	**Prepared By**	**Date of Document**
Waste Management Plan - 22 George Street, Manly	-	-	-

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	16/01/2024 (on EDMS)

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

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

3. **Prescribed Conditions**
   (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
   (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);

(c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

(i) showing the name, address and telephone number of the Principal Certifier for the work, and

(ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and

(iii) stating that unauthorised entry to the work site is prohibited.

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

(d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

(i) in the case of work for which a principal contractor is required to be appointed:

A. the name and licence number of the principal contractor, and

B. the name of the insurer by which the work is insured under Part 6 of that Act,

(ii) in the case of work to be done by an owner-builder:

A. the name of the owner-builder, and

B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

(e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

(i) protect and support the adjoining premises from possible damage from the excavation, and

(ii) where necessary, underpin the adjoining premises to prevent any such damage.

(iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

(iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

4. **General Requirements**

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

Demolition and excavation works are restricted to:
- 8.00 am to 5.00 pm Monday to Friday only.

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

(b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.

(c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

(d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

(e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

(f) Prior to the release of the Construction Certificate, payment of the following is required:

i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than $250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.

iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.

(g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

(h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's

footpaths, roadways, parks or grass verges without Council Approval.

(i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

(k) Prior to the commencement of any development onsite for:

i) Building/s that are to be erected

ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place

iii) Building/s that are to be demolished

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

v) For any work/s that is to be demolished

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

(l) A “Road Opening Permit” must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

(m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

(n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

(1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools

(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

(2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

(3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a

manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

(4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

5. **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

6. **Stormwater Disposal**

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

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

7. **Vehicle Crossings Application**

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing 3.0 metres wide in accordance with Northern Beaches Council Standard Drawing A4 3330/1 N in accordance with Section 138 of the Roads Act 1993.

Note, driveways are to be in plain concrete only.

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

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

Reason: To facilitate suitable vehicular access to private property.

8. **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.

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

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

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

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

10. **External colour schedule**
Details of the proposed external materials and colours are to be submitted to Council's Heritage Advisor for approval prior to the issue of a Construction Certificate.

Reason: To ensure the proposal is compatible with the heritage item and the streetscape.

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

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

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

12. **Sydney Water "Tap In"**
The approved plans must be submitted to the Sydney Water Tap in service, prior to works

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

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

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

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

DURING BUILDING WORK

13. **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.

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:
- 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.

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

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

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

16. **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.

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

18. **Stormwater 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.

19. **Certification of Off Street Parking Works**
The Applicant shall submit a certificate from a suitably qualified person certifiying that the parking facility was constructed in accordance within this development consent and the relevant provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical Controls and Section 2.6 Design of Domestic Driveways.

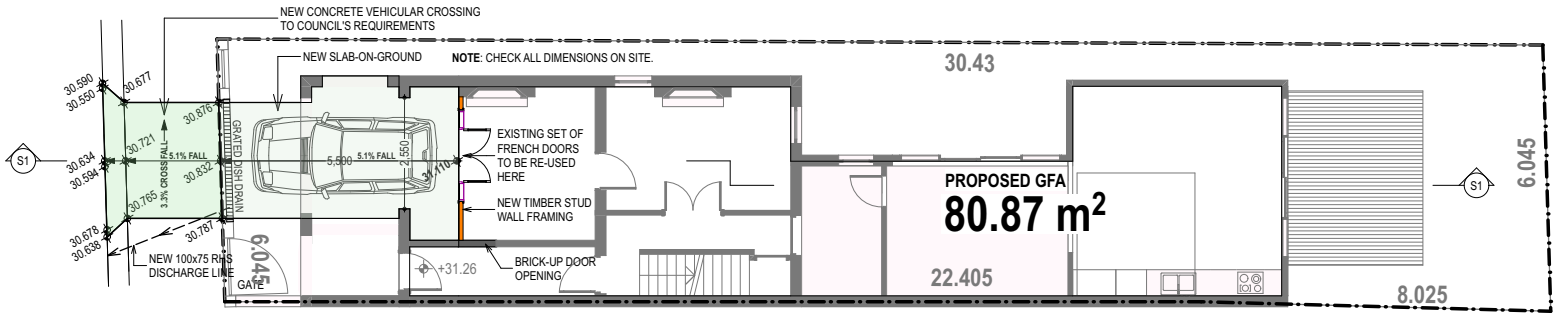
Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: Compliance with this consent.

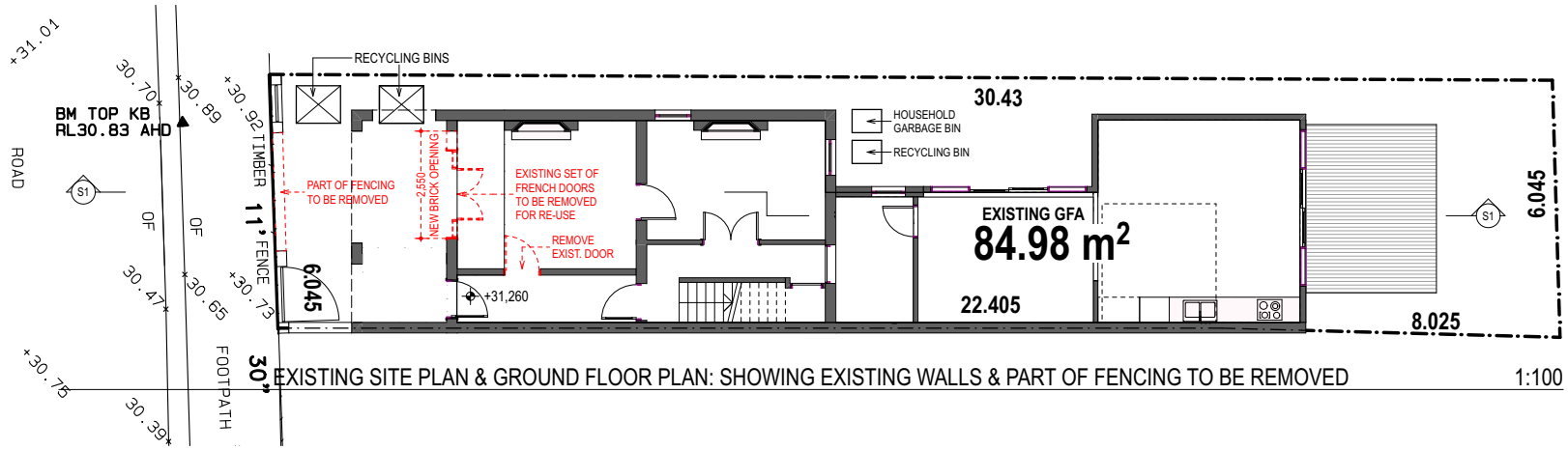
20. **House / Building Number**
House/building number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings.



GROUND FLOOR PLAN: SHOWING NEW CAR SPACE AND NEW VEHICULAR CROSSING 1:100



EXISTING SITE PLAN & GROUND FLOOR PLAN: SHOWING EXISTING WALLS & PART OF FENCING TO BE REMOVED 1:100

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ISSUE	REVISIONS	DATE
A	ORIGINAL ISSUE	30.10.23

PROJECT:
PROPOSED PARKING SPACE at
No. 22 GEORGE STREET MANLY NSW 2095

LOT 91 - DP 998891

SITE PLAN & GROUND FLOOR PLANS

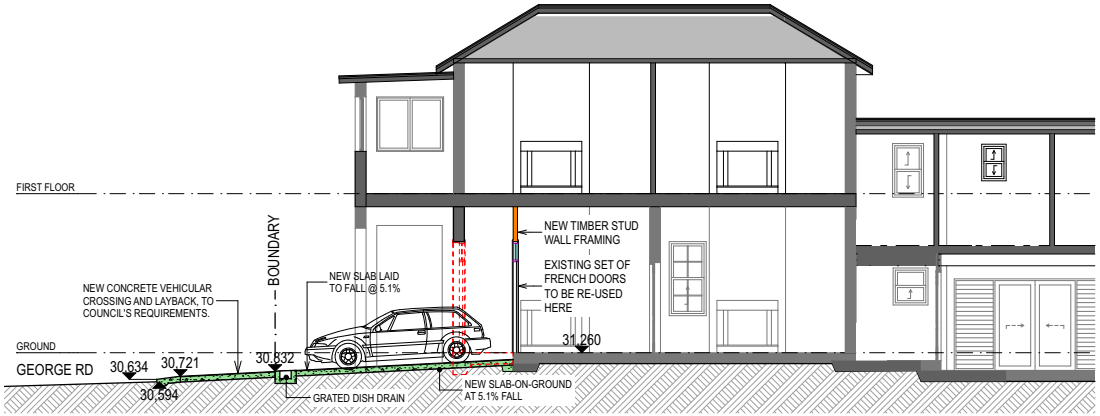
SCALE: AS SHOWN

SUDDHIN UNN, ARCHITECT
SUITE 702, 4 YOUNG ST, NEUTRAL BAY
NSW 2089

DRAWING SET ID: DA
SUBSET: FULL SET
DRAWN BY: SU
ArchiFile: GEO22 (B).pln

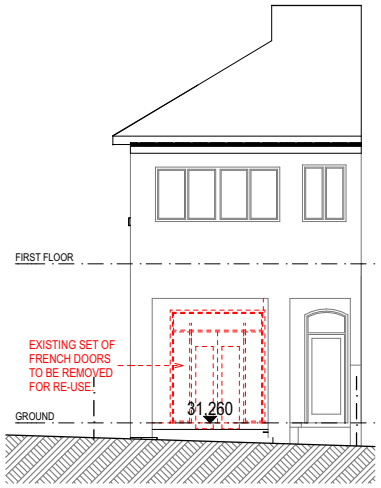
A.01

ISSUE A

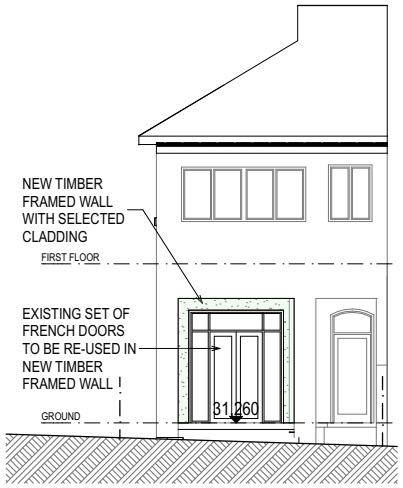


PART-LONG SECTION S1 1:100

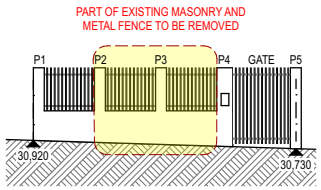




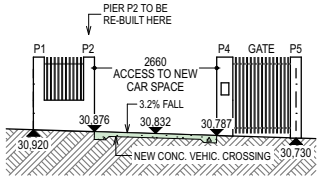
EXISTING WEST ELEVATION1:100



NEW WEST ELEVATION 1:100



EXISTING FENCE &GATE



FENCE, AS RECONFIGURED



PHOTOS OF EXISTING FRONT ELEVATION

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ISSUE	REVISIONS	DATE
A	ORIGINAL ISSUE	23.10.16

PROJECT:
ALTERATIONS & ADDITIONS at No. 22 GEORGE STREET MANLY NSW 2095

LOT 91 - DP 998891

SECTION S1 & WEST ELEVATION

SCALE: AS SHOWN

SUDDHIN UNN, ARCHITECT
SUITE 702, 4 YOUNG ST, NEUTRAL BAY
NSW 2089 TEL: 8968 1918 MOB: 0407 580 609

DRAWING SET ID: DA
SUBSET: FULL SET
DRAWN BY: C.H
ArchiFile: GEO22 (B).pln
A.02
ISSUE A

Request for Exception to Clause 4.4 – *Floor space ratio*

Proposed Alterations and Additions to Existing Residence (Proposed Parking Space) 22 George Street, Manly

4 March 2024

Jim Rannard BTP (Hons) UNSW
URBAN PLANNING CONSULTANT

85 Irrubel Road, Newport NSW 2106 Phone (02) 9979 9883 *e-mail: jimrannard@hotmail.com*

1

Request for Exception to Clause 4.4 – *Floor space ratio*

Proposed Alterations and Additions to Existing Residence (Proposed Parking Space) 22 George Street, Manly

1. Introduction

This request is made on the basis that, in the applicant's view, there is no contravention of Clause 4.4 - Floor space ratio because there is no increase in the existing building footprint or building envelope and the first floor part enclosure of a rear balcony does not increase the existing floor space ratio. If the Council is of the view that a Request for Exception to Clause 4.4 Floor space ratio is required, the following is submitted:

The submission provides justification for contravention of the 0.75:1 floor space ratio development standard which applies to the site pursuant to Clause 4.4 of Manly LEP 2013. The submission refers to the development described in the submitted drawings prepared by Suddhin Unn, Architect.

Development Application Number: DA 318/2016 for Alterations and Additions (Alterations and additions to the existing semi-detached dwelling) was granted Approval on 15/02/2017.

The Drawings numbered A 03, A 03, A 03 and DA.4 show the

The performance of the application under the relevant principal development standards contained in Part 4 of the Manly LEP 2013 is summarised in the following table:

4.	**Principal Development Standards**	**Requirement**	**Proposed**	**Complies Yes/No**	**Comment**
4.1	Minimum subdivision lot size	250 m^2	N/A	N/A	No subdivision is proposed.
4.3	**Height of buildings**	11 metres	N/A	N/A	No height increase is proposed
4.4	**Floor Space Ratio**	0.75:1	0.912:1	**Yes**	The FSR is decreased by 3.25 m^2

Clause 4.4 FLOOR SPACE RATIO CALCULATIONS			
	Existing	**Proposed**	**Permitted**
Site Area	**182.2 m^2**	**182.2 m^2**	**Area C: 250 m^2**
Gross Floor Area	**165.85 m^2**	**161.38 m^2**	**136.5 m^2**
Floor Space Ratio	**0.91:1**	**0.88:1**	**0.75:1**

Site Coverage Calculation: The Site Coverage remains the same.	
Site Area:	**182.2 m^2**
Existing Site Coverage:	**106.0 m^2**
Percentage Site Cover	**58.17%**

Total Open Space	
Site Area:	**182.2 m^2**
Existing Total Open Space:	**76.0 m^2 (41.70%)**
Proposed Total Open Space:	**71.0 m^2 (38.96%)**

The proposal will have no shadowing impacts on the adjoining properties because there is no change to the overall building envelope.

Clause 4.4 Floor space ratio & Clause 4.6 Exceptions to development standards of the Manly Local Environmental Plan 2013 (MLEP 2013) Clause 4.4 of the MLEP 2013 establishes a FSR control of 0.75:1 (136.6 m^2) for the subject site.

The Statement of Environmental Effects notes that the proposal will result in a FSR of 0.912:1 (166.2 m^2), a 21.7% (29.6 m^2) variation to the development standard. Whilst the development is proposing a minor reduction of FSR from existing, the proposal nonetheless results in a changed FSR that is non-compliant with the FSR development standard. This Clause 4.6 request to vary a development standard, pursuant to Clause 4.6 (Exceptions to development standards) of the Manly Local Environmental Plan 2013 is provided to satisfy the Council's request. Additional, plans, section and elevations are also provided.

5. Clause 4.6 – Exceptions to Development Standards

The relevant provisions of Clause 4.6 are quoted below:

(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, and*
- *(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) The consent authority must keep a record of its assessment carried out under subclause (3).

. . .

4.4 Floor space ratio

(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,
(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) . . .

Cl. 4.4(2) stipulates as follows:

4.4 Floor space ratio

(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map. **[0.75:1]**

3. Compliance with the FSR standard is unreasonable or unnecessary in the circumstances

3.1. The house, as it is proposed to be altered and added to, will maintain its existing character and its street façade or street elevation will not change except for the reinstatement of the front porch.

3.2. The total floor space ratio of the existing two-storey semidetached brick terrace dwelling on the site remains approximately the same (165.85 m^2 reducing to 161.38 m^2 and from 0.91:1 to 0.88:1).

3.3 The area of the enclosed ground floor front porch is 4.47 m^2. The gross floor area of the two-storey semidetached terrace will actually reduced by 4.47 m^2.

3.4. The proposed alterations and additions will not change the physical relationship of the existing existing two-storey semidetached brick terrace dwelling to, or the impacts on, the existing surrounding residential development.

3.5. As demonstrated in Section 7 below, the subdivision achieves the objectives of the minimum lot size standard and consequently compliance with the standard is both unreasonable and unnecessary in the circumstances of this particular case.

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

4.1. The 0.75:1 floor space ratio development standard has a planning purpose in respect of the development of large sites capable of accommodating numerous dwellings and having the potential for the creation of significant environmental impact on the character or population density of residential areas of Manly.

In this instance the proposed minor works will not change the physical attributes of the existing development and any there will be little change to the visual characteristics and amenity within the vicinity of the proposal or in George Street.

4.2. There are numerous instances of recent approvals of similar proposals.

4.3. Notwithstanding the contravention of the 0.75:1 floor space ratio development standard, the bulk, scale, siting and density of the existing development are appropriate for the site.

5. The proposed development is in the public Interest

5.1 The proposed subdivision achieves the objectives of the FSR standard since:

(a) Notwithstanding contravention of Clause 4.4 Floor space ratio, the proposal incorporates the retention of the existing house and the part enclosure of a first storey rear balcony whilst restoring the ground floor front porch by opening it to the street.

(b) The proposal will have no shadowing impacts on the adjoining properties because there is no change to the overall building envelope. There will not be a significant material impact on the amenity of the adjoining properties and no impact on views, shadowing or privacy.

5.2 The proposed alterations and additions meet the relevant Aims of the MLEP 2013 because "*a high standard of urban design that responds to the existing or desired future character of areas*" will be achieved.

6. Conclusion

Approval of the contravention of the Clause 4.4 Floor space ratio development standard standard of 0.75:1 in these particular circumstances is consistent with the objectives of Clause 4.6 as it provides appropriate degree of flexibility and achieves a better outcome for and from the development.

Jim Rannard BTP (Hons) UNSW, Environmental Planner

Certificate of Qualification as a Town and Country Planner
under *Local Government Act*, 1919, URBAN PLANNING CONSULTANT

4 March 2024

ITEM 3.8	MOD2024/0036 - 24A BEATTY STREET BALGOWLAH HEIGHTS - MODIFICATION OF DEVELOPMENT CONSENT DA2022/1941 GRANTED FOR ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE

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

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.

4.
THAT Council as the consent authority **approves** Development Consent to Mod2024/0036 for modification of Development Consent DA2022/1941 granted for alterations and additions to a dwelling house on land at Lot 42 DP 1192691, 24A Beatty Street BALGOWLAH HEIGHTS, subject to the conditions set out in the Assessment Report.

REPORTING MANAGER	
TRIM FILE REF	2024/189977
ATTACHMENTS	⇩1 Assessment Report ⇩2 Site Plan and Elevations

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2024/0036

Responsible Officer:	Jordan Davies
Land to be developed (Address):	Lot 42 DP 1192691, 24 A Beatty Street BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Modification of Development Consent DA2022/1941 granted for Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned C3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Malcolm John Maclennan Kim Allison Turner
Applicant:	Timothy Hugh West

Application Lodged:	05/02/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	14/02/2024 to 28/02/2024
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: No change from existing, 59.29% 4.4 Floor space ratio: Increase from 25.6% to 27%
Recommendation:	Approval

EXECUTIVE SUMMARY

The application seeks to modify development consent DA2022/1941 which granted consent for 'Alterations and Additions to a dwelling house' at 24A Beatty Street, Balgowlah Heights.

The modification application is referred to the Development Determination Panel (DDP) as the Gross Floor Area is increased by an additional 6m^2 and therefore results in the proposal exceeding the Floor Space Ratio development standard by 27%. The existing development was approved by the DDP with an exceedance of 25.6% of the FSR development standard and the modifications under this consent

result in an exceedance of the standard by 27% due the 6m^2 increase.

The additional floor area is located within a subterranean area of the site which already has a roof garden approved over it. The additional area includes a shower and sink adjacent to the pool. The additional FSR does not contribute to the increased bulk or height of the building or remove any opportunity for landscaping.

The proposal also involves other minor changes to the development, as detailed within the report. However, the overall built form outcome, height, setbacks and bulk of the development is consistent with the approved development (and the existing house on the site). The outcomes in relation to privacy, view sharing and solar access are maintained for the surrounding properties as a result of the changes, as discussed within the report.

No submissions were raised during the notification period.

Critical assessment issues include the FSR increase and the partial retention of an existing balcony (previously to be demolished in the DA).

There is no requirement for a Clause 4.6 variation to be submitted as part of a modification application, however, the variation is discussed in detail within the report and the increase to the FSR is supported on the basis that the visual bulk, scale and built form outcome will not change as viewed from the street, the water or the surrounding sites due to the subterranean location of the additional GFA.

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

PROPOSED DEVELOPMENT IN DETAIL

The application seeks to Modify development consent DA2022/1941 which granted consent for "Alterations and additions to a dwelling house". Specifically, the proposal consists of:

Level 1
Modify lift area and direction of access opening to the lift

Level 2
Modify layout of bath 2

Level 3
Minor re-design of kitchen and pantry
Extend bath 3 and pool plant (minor increase in GFA resulting from bathroom changes)

Level 4
Redesign master ensuite and widen W407
Reduce width of W409 in bed 5
Retain part of existing balcony and install new glass balustrade
New skylight (SL4) in primary bed walk in robe and modify W408
New skylight (SL2) in hall to bed 5

External
Relocate pergola south up against walkway
Remove planter box near driveway
Glass roof to run full length of the house extending past garage

Move opening and replace garage door

As a consequence of the above changes, condition No.1 of the development consent will be amended to reflect the modified plans.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

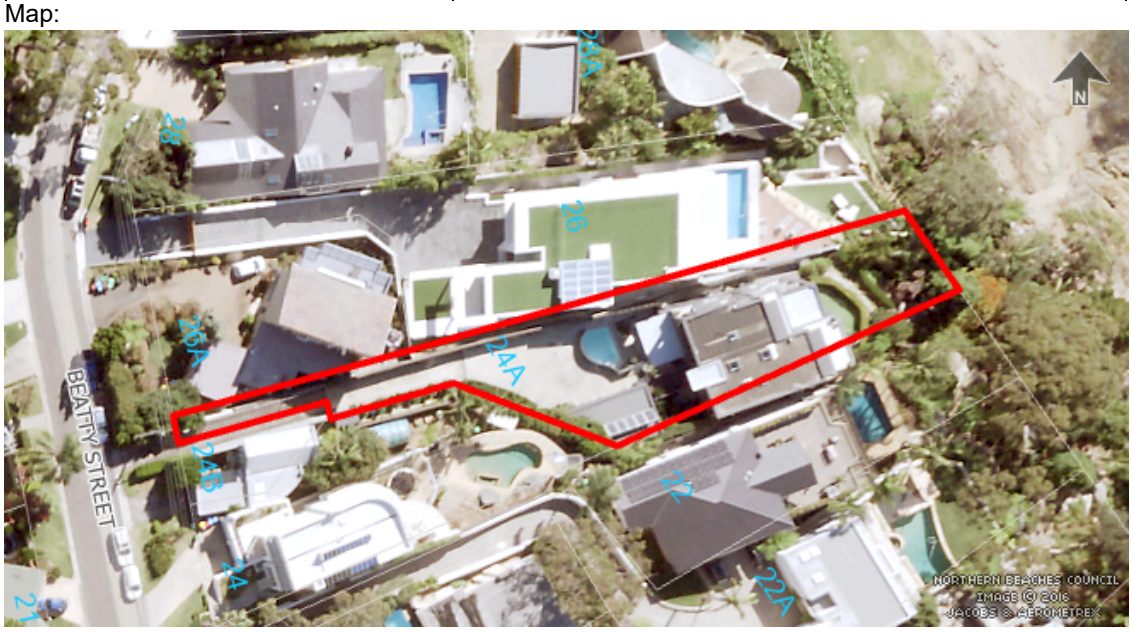
Manly Local Environmental Plan 2013 - 4.3 Height of buildings
Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
Manly Development Control Plan - 3.4.2 Privacy and Security
Manly Development Control Plan - 3.4.3 Maintenance of Views
Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
Manly Development Control Plan - 4.1.5 Open Space and Landscaping

SITE DESCRIPTION

Property Description:	Lot 42 DP 1192691 , 24 A Beatty Street BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	The subject site consists of one (1) allotment located on the eastern side of Beatty Street. The site is a battle axe alotment a frontage of 3.45m to Beatty Street, a central width of 18.4m and a depth of 92.6m. The site has a surveyed area of 1001.3m². The site is located within the C3 Environmental Management zone and accommodates a four storey

	dwelling house, garage and pool. The site has a fall of approximately 20.9m from the upper western boundary at Beatty Street down to the eastern rear boundary, with a slope of approximately 22%. The site contains low and medium height trees and plantings, there are no significant trees in the vicinity of the proposed works **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by detached 2, 3 and 4 storey dwelling houses with elevated balconies, swimming pools and garages. The dwellings are all orientated to capture the harbour views.

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:

- DA 32/2015 for Alterations and additions to a dwelling house, approved by Manly Council on 24 July 2015.
- DA2022/1941 for Alterations and additions to a dwelling house approved by the Development Determination Panel on 24/05/2023.

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 DA2022/1941, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - 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 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	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 DA2022/1941 for the following reasons: - The overall, scale, form, setbacks and visual appearance of the dwelling will remain unchanged. - The land use does not change - The parking, access and landscaping doe not change from the approved situation.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the	Development Application DA2022/1941 did not require concurrence from the relevant Minister, public authority or approval body.

Section 4.55 (2) - Other Modifications	Comments
modification of that consent, and	
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	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.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions were received in relation to this application.

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 (2) 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	Manly Development Control Plan applies to this proposal.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, 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. Clause 29 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. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 2001: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 62 and/or 64 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. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.

Section 4.15 'Matters for Consideration'	Comments
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 14/02/2024 to 28/02/2024 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
Landscape Officer	The modification plans indicate that no additional landscape features are impacted by the proposed works. It is noted that a previously approved small planter around the pool frontage is to be deleted. This is not objected to with regard to landscape issues as deletion does not affect landscaped open space calculations. Existing conditions are considered still relevant and adequate.
NECC (Bushland and Biodiversity)	The following biodiversity controls apply to the subject site: • SEPP (Resilience and Hazards) - Coastal Environment Area • Manly LEP Clause 6.5 - Terrestrial Biodiversity The proposed modification involves internal reconfiguration of the approved dwelling design and is therefore unlikely to result in additional impacts to native vegetation, wildlife or their habitats.

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

The application was determined at the time SEPP BASIX was in force and as such, is applicable to this modification application.

An amended BASIX certificate has been submitted with the application (see Certificate No. A472309_03 dated 16 January 2024).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who raised no objections.

SEPP (Resilience and Hazards) 2021

Chapter 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: Not within coastal wetlands or littoral rainforest area.

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

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

Comment: Not 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 within coastal vulnerability area.

Division 3 Coastal environment area
2.10 Development on land within the coastal environment area

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

Comment: The alterations to the dwelling is contained within the existing building footprint and the minor changes to the rear yard involve minor widening to the existing stairs and the inclusion of a lightweight watercraft storage area (already approved under the original DA) therefore, given the nature of the works Council is satisfied the proposal will not have an adverse impact on the matters listed a) to g) above.

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

Comment: Council is satisfied the development has been designed to avoid and minimise impacts.

Division 4 Coastal use area
2.11 Development on land within the coastal use area

1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
   a) has considered whether the proposed development is likely to cause an adverse impact on the following:

i) existing, safe access to and along the foreshore, beach, headland or rock
ii) platform for members of the public, including persons with a disability,
iii) overshadowing, wind funnelling and the loss of views from public places to
iv) foreshores,
v) the visual amenity and scenic qualities of the coast, including coastal headlands,
Aboriginal cultural heritage, practices and places,
cultural and built environment heritage, and

b) is satisfied that:
i) the development is designed, sited and will be managed to avoid an
ii) adverse impact referred to in paragraph (a), or
iii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
if that impact cannot be minimised—the development will be managed to mitigate that impact, and

c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment: The proposal does not impact foreshore access, does not cause unreasonable overshadowing or visual impacts, as the general form and bulk of the building remains unchanged. The proposal has been considered by the Aboriginal Heritage Office who supports the proposal. The proposal will not have adverse impacts on cultural or built heritage. Council is satisfied the proposal has been designed to avoid and minimise impacts. The proposal is consistent with the scale of the surrounding buildings and is consistent with the existing building bulk on the site.

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: Proposal does not increase coastal risks.

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 applicable to 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.

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	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	13.54m (Existing maximum is 13.54m)	13.54m - No change	59.29%	No - However no change
Floor Space Ratio	FSR: 0.4:1 (400.5m^2)	FSR: 0.502:1 (503m2) *Existing is 488m2, overall increase was 15sqm	FSR: 0.508:1 (509m^2) *Increase of 6m^2 over approved	27% *(25.6% approved)*	**No**

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
6.2 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

4.3 Height of buildings

The development, as modified, will retain the same height of the approved building.

The modified proposal includes the extension of central glass roof, however the overall height and size of the roof remains as per approved (and as per the existing height), with the changes under this modification application limited to the material used. The maximum ridge height remains at RL 32.54

as approved.

The proposal to retain a portion of an existing balcony adjacent to Bedroom 4 does not result in additional building elements over the height limit. This balcony, along with the balustrade, are existing elements that are sought to be partially retained under this modification (previously completely demolished).

4.6 Exceptions to development standards

Whilst the modification will result in a gross floor area that contravenes the maximum permitted by Clause 4.4 of the MLEP 2013 by an additional 6m^2 over the approved situation, the application does not strictly need to address the requirements of Clause 4.6.

The application has been made under Section 4.55 of the *Environmental Planning and Assessment Act 1979*, which authorises the development for which consent was granted to be modified, notwithstanding any breach of development standards. As such, no document pursuant to Section 35B of the *Environmental Planning and Assessment Regulation 2021* or Clause 4.6 is required.

The matters set out in Section 4.55(3) are addressed in the relevant sections of this report.

Notwithstanding, a merit assessment is undertaken of the increase to the GFA below.

Development standard: Clause 4.4 Gross Floor Area
Requirement: **0.4:1 FSR** (400.5m^2)
Approved: **0.502:1 FSR** (503m^2)
Proposed: **0.508:1 FSR** (509m^2 or 6m^2 increase on approved development)
Percentage of variation: **27%** (Approved at 25.6%)

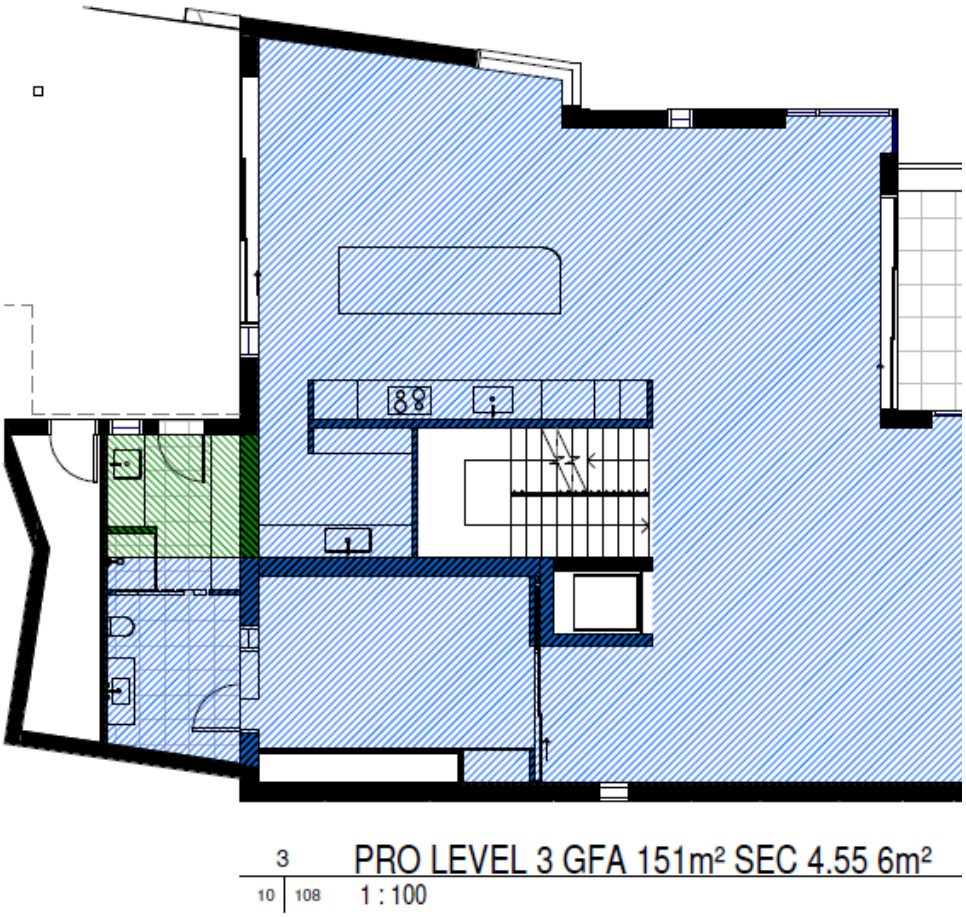


Figure 1 - Plan showing area of additional GFA created by shower/sink adjacent to pool area highlighted in green.

The additional GFA is generated by infilling of an existing excavated area within the Level 3 Floor Plan. Photo of that area below.



The below photo shows the view looking down on the courtyard. The approved plans include a roof garden over this void, with the modified plans including the additional shower/sink room within the space below.



With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is not required to be 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 MLEP 2013 (the 'Clause 4.6 Request'), as this is a modification application.

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 4.4 Floor Space Ratio 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:

As this is a modification application, there is not a strict requirement for a written request to demonstrate why *'compliance is unreasonable unnecessary'.* However, the applicant has provided the following rational within the SEE submitted with the modification:

The proposal notes a minor increase in the gross floor area from the approved 503 m² to 509 m². Bathroom on Level 3.
This additional floor space is located within the undercroft to the entry for court and not visible from the street or from any adjoining private properties.
Whilst the proposal will see a minor increase in floor space ratio from 0.502:1 to 0.508:1 or an increase in 10m², the provisions of Clause 4.6 within the Manly Local Environmental Plan 2013 do not apply to an application to modify consent.
Therefore, a formal clause 4.6 submission is not required however given the modest nature of the works with no change to the external bulk and scale of the building, the proposal is considered to be consistent with the arguments previously raised in the clause 4.6 submission accompanying the original determination. As the works will not have any discernible impact to the public's view of the site or from the neighbouring properties, the proposal is considered to be reasonable.

Council agree with the above assessment, in that this area is already approved to be covered over by a roof garden under the previous DA and as such, the additional GFA will not cause any visible bulk or will not be visible from the street or surrounding sites.

For completeness, an assessment is undertaken against the objectives of Clause 4.4 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 additions maintain the overall scale and appearance of the building and the adjoining two buildings are of a similar scale and height. The alterations are within the existing building footprint and do not alter the landscape, nor do they require additional excavation to gain the floor space.

b) to control the bulk and scale of buildings,
Comment: The overall bulk and scale of the building will remain as per the approved plans, with the infilling not generating any additional bulk.

c) to minimise disruption to the following:
(i) views to nearby residential development from public spaces (including the harbour and foreshores),
(ii) views from nearby residential development to public spaces (including the harbour and foreshores),
(iii) views between public spaces (including the harbour and foreshores),
Comment: The additional GFA will not result in view impacts and overall, view sharing is maintained via the development as approved.

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 adjoining properties will maintain solar access in accordance with the DCP. No unreasonable overshadowing of the public domain.

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 general height of the proposal maintained with the addition not conflicting with existing vegetation or topography.

(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 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.'

As advised above, a Clause 4.6 is not required for a modification. The argument made by the applicant within the SEE in regards to 'unreasonable or unnecessary' are also applicable to the environmental planning grounds.

Council agree that the change is minor and the proposal is 'substantially the same development' which is the required test for a modification application.

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 that the proposal is substantially the same development and would meet the test of Clause 4.6, should this be a fresh application.

It is considered on balance, that having regard to the particular circumstances <insert relevant development standard (short hand) and details of the particular works which are non compliant and site information (i.e. why in these particular circumstances it is acceptable)>, the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 1001.3m^2	**Requirement**	**Approved**	**Proposed**	**Complies**
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwellings	1	1	Yes
4.1.2.1 Wall Height	N: 8m (based on gradient 1 in 3)	11.2m (10.5m existing)	Unchanged	No (Unchanged)
	S: 8m (based on gradient 1 in 3)	11.2m (10.4m existing)	Unchanged	No (Unchanged)
4.1.2.2 Number of Storeys	2	4 (4 Existing)	4	No (Unchanged)
4.1.2.3 Roof Height	Parapet Height: 0.6m	0.8m (0.8 existing)	0.8m (0.8 existing)	No (Unchanged)
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Consistent with prevailing setback	Consistent with prevailing setback	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	North - 3.7m (based on wall height)	North - 1.8m	Unchanged	No (Unchanged)
	South - 3.7m (based on wall height)	South - 0.9m	Unchanged	No (Unchanged)
	Windows: 3m	0.9m minimum	Unchanged	No (Unchanged)
4.1.4.4 Rear Setbacks	8m	8.2m	8.2m	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements	Open space 60% of site area	48.2% (Existing 48.2%)	Unchanged	No (Unchanged)
Residential Open Space Area: OS4	Open space above ground 25% of total open space	15%	16%	Yes

4.1.5.2 Landscaped Area	Landscaped area 40% of open space	49%	49%	Yes
	3 native trees	3 trees	3 trees	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	>18sqm	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	2 spaces	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 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	Yes	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

The modified proposal maintains the solar access outcome of the original proposal for the adjoining property at 22 Beatty Street. The living rooms windows and private open space will continue to receive the present amount of solar access. The modifications to the level 4 balcony and retention of an existing balcony (with glass balustrade) will not have a negative impact on solar access for the adjoining property.

3.4.2 Privacy and Security

There are no changes to the windows facing the side boundaries. The changes to the windows on the western elevation face internal to the site and are setback a significant distance and downslope from the adjoining property at 24 Beatty Street. As such, the changes to the western facing windows do not give rise to privacy impacts.

The previous proposal sought to demolish the entire balcony on the eastern elevation of Level 4. However, this modification seeks to retain a portion of that existing balcony adjoining Bedroom 4, on level 4. The balcony is still reduced from the existing situation and therefore, has a lesser impact when compared to the existing situation. Retention of an existing portion of the balcony does not result in further privacy impacts when compared to the existing situation and therefore is supported.

3.4.3 Maintenance of Views

Views are discussed in the original development assessment report. The views from surrounding properties are maintained in accordance with the view sharing principles. The amendments to the plans do not result in further detrimental impacts to views or view sharing. The maximum height and extent of the roof is maintained.

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

The overall wall height does not increase via this proposal. The balcony on the southern elevation is an existing situation and as such, does not additional wall height by retaining this portion of the balcony.

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

The setbacks of the development remain unchanged and as per the original approval.

4.1.5 Open Space and Landscaping

The proposal maintains the same quantum of overall 'Open Space' and 'Landscape Area'. Compared to the existing approval, there is a 6.5m^2 increase to the 'open space above ground' which is a result of the retention of a portion of the existing balcony off Level 4. However, the proposal still complies with the maximum 25% open space above ground requirement (proposed to increase from 15% to 16%).

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;
- 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

PLANNING CONCLUSION

This proposal, to modify development consent DA2022/1941 which granted consent for 'Alterations and Additions to a dwelling house has been referred to the Development Determination Panel (DDP) due to increasing the GFA of the development by 6m^2, resulting in an overall breach of 27% (up from

approved 25.6%).

Critical assessment issues include the FSR increase and the partial retention of an existing balcony (previously to be demolished in the DA).

The additional floor area located within a subterranean area of the site which already has a roof garden approved over it. The additional area includes a shower and sink adjacent to the pool. The additional FSR does not contribute to the increased bulk or height of the building or remove any opportunity for landscaping.

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 Council as the consent authority grant approval to Modification Application No. Mod2024/0036 for Modification of Development Consent DA2022/1941 granted for Alterations and additions to a dwelling house on land at Lot 42 DP 1192691,24 A Beatty Street, BALGOWLAH HEIGHTS, subject to the conditions printed below:

Modification Summary

The development consent is modified as follows:

MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
PAN #408383 MOD2024/0036	The date of this notice of determination	Add condition 1A Modified plans and documents. Changes include: Level 1 Modify lift area and direction of access opening to the lift Level 2 Modify layout of bath 2 Level 3 Minor re-design of kitchen and pantry Extend bath 3 and pool plant (minor increase in GFA

		resulting from bathroom changes) Level 4 Redesign master ensuite and widen W407 Reduce width of W409 in bed 5 Retain part of existing balcony and install new glass balustrade New skylight (SL4) in primary bed walk in robe and modify W408 New skylight (SL2) in hall to bed 5 External Relocate pergola south up against walkway Remove planter box near driveway Glass roof to run full length of the house extending past garage Move opening and replace garage door

Modified conditions

A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting documentation, to read as follows:

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.

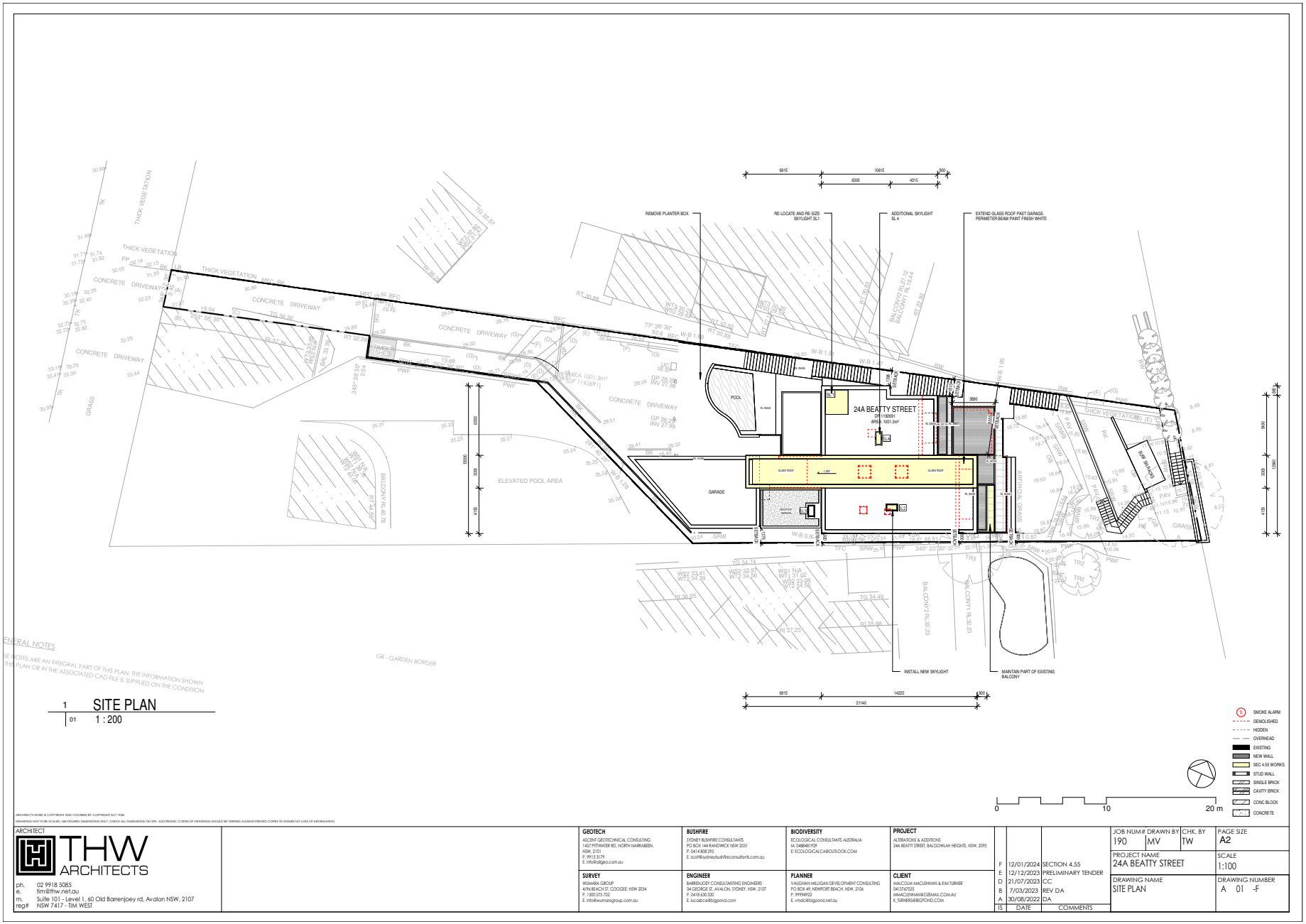
Approved Plans				
Plan Number	**Revision Number**	**Plan Title**	**Drawn By**	**Date of Plan**
A01	F	Site Plan	THW Architects	12/01/2024
A02	F	Level 1 Floor Plan	THW Architects	12/01/2024
A03	F	Level 2 Floor Plan	THW Architects	12/01/2024
A04	F	Level 3 Floor Plan	THW Architects	12/01/2024
A05	F	Level 4 Floor Plan	THW Architects	12/01/2024
A10	F	North Elevation	THW Architects	12/01/2024
A11	F	South Elevation	THW Architects	12/01/2024
A12	F	East Elevation	THW Architects	12/01/2024
A13	F	West Elevation	THW Architects	12/01/2024
A20	F	Section 1	THW Architects	12/01/2024
A21	F	Section 2	THW Architects	12/01/2024
A22	F	Section 3	THW Architects	12/01/2024
A23	F	Section 4	THW Architects	12/01/2024
A103	F	External Finishes	THW Architects	12/01/2024
SW1S4.55	S4.55	Stormwater Management Plan	Barrenjoey Consulting Engineers	01/02/2024

Approved Reports and Documentation			
Document Title	**Version Number**	**Prepared By**	**Date of Document**
AG22349.03 Geotechnical Letter	AG 22349.03	Ascent Geo	17/01/2024
Bushfire Hazard Report	2	Steve Brooks	15/01/2024
BASIX Certificate No.A472309_03	-	Tim West	16/01/2024

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

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

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



1 SITE PLAN
01 1 : 200

GENERAL NOTES
THESE NOTES ARE AN INTEGRAL PART OF THIS PLAN. THE INFORMATION SHOWN ON THIS PLAN OR IN THE ASSOCIATED CAD FILE IS SUPPLIED ON THE CONDITION

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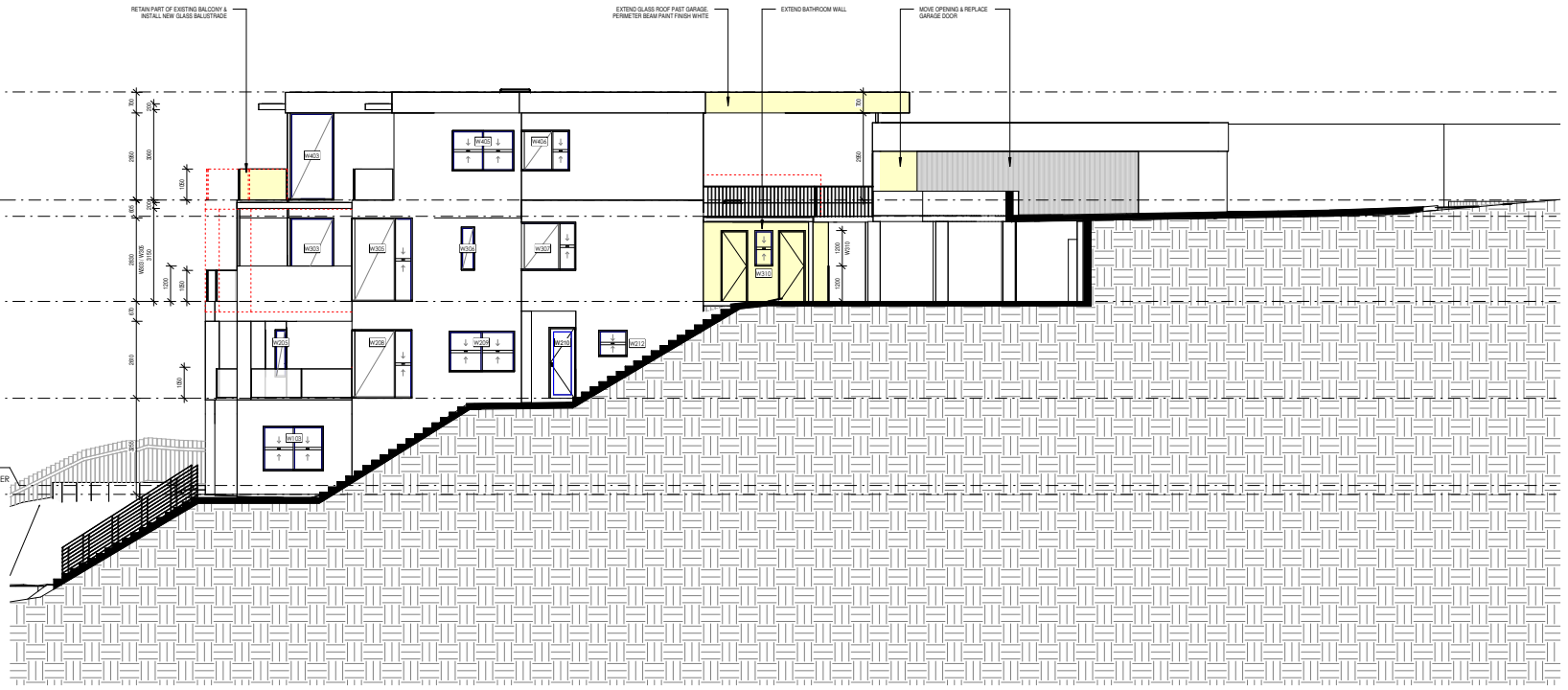
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D	21/07/2023	CC
B	7/03/2023	REV DA
A	30/08/2022	DA

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PROJECT NAME: 24A BEATTY STREET
SCALE: 1:100
DRAWING NAME: SITE PLAN
DRAWING NUMBER: A 01 -F



1 NORTH ELEVATION
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SMOKE ALARM
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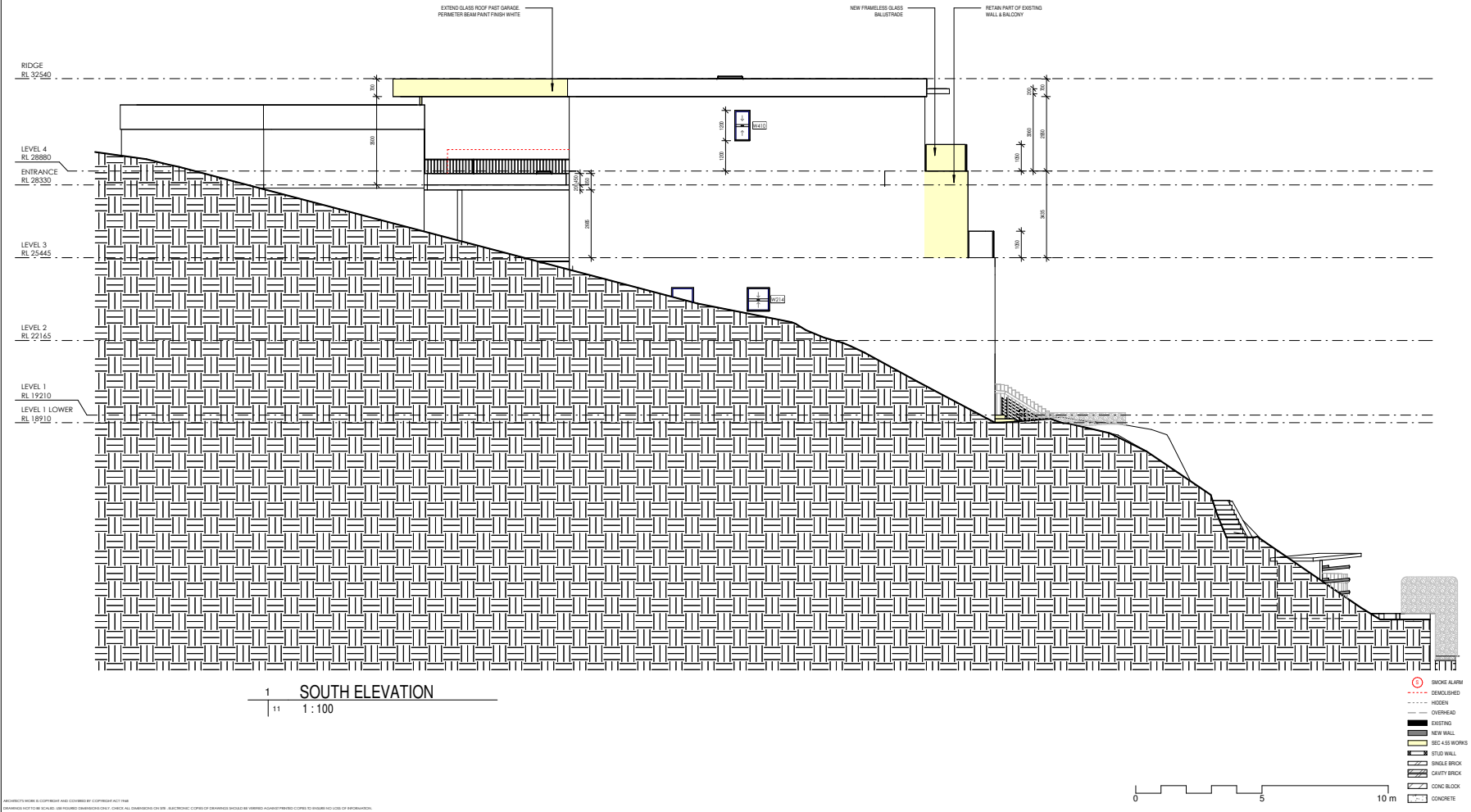
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1 SOUTH ELEVATION
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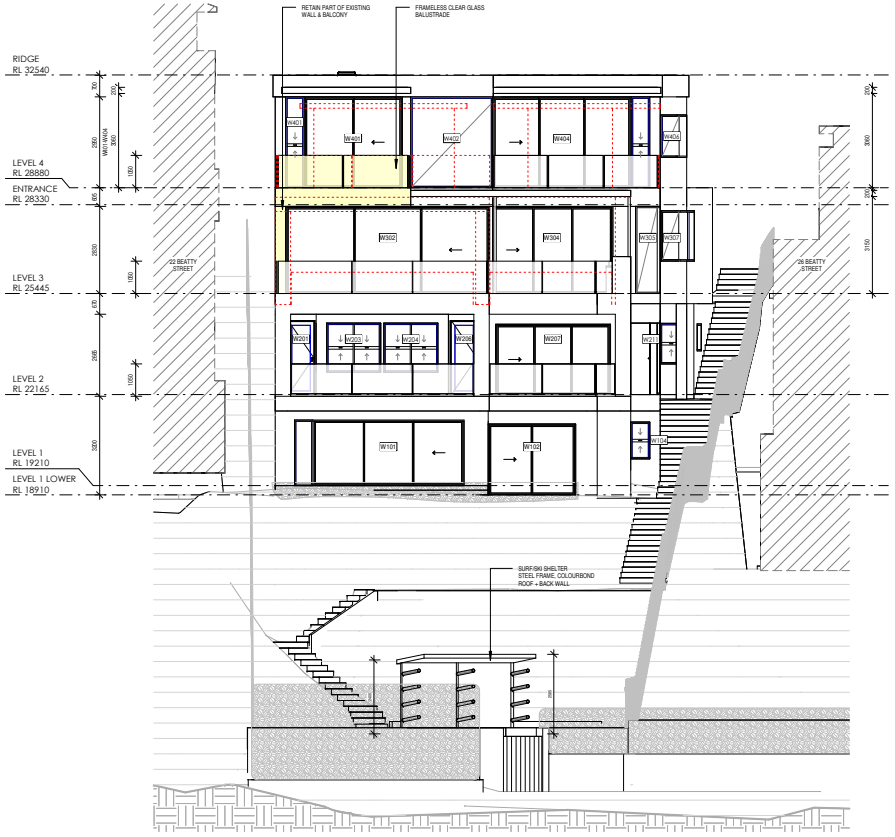
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1 EAST ELEVATION
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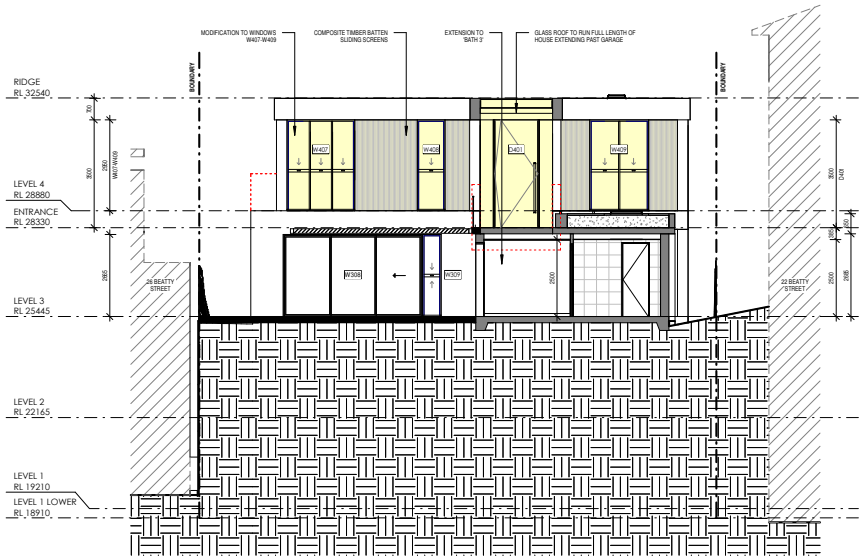
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1 WEST ELEVATION
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SMOKE ALARM
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ITEM 3.9	DA2023/1461 - 13 AMIENS ROAD CLONTARF - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A NEW GARAGE AND STUDIO

PURPOSE

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

RECOMMENDATION

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

5.
THAT Council as the consent authority **approves** Development Consent to DA2023/1461 for alterations and additions to a dwelling house including a new garage and studio on land at Lot 701 DP 1143488, 13 Amiens Road CLONTARF, subject to the conditions set out in the Assessment Report.

REPORTING MANAGER	
TRIM FILE REF	2024/190000
ATTACHMENTS	⇩1 Assessment Report ⇩2 Site Plan and Elevations ⇩3 Clause 4.6 - BHR ⇩4 Clause 4.6 - FSR

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/1461

Responsible Officer:	Nick Keeler
Land to be developed (Address):	Lot 701 DP 1143488, 13 Amiens Road CLONTARF NSW 2093
Proposed Development:	Alterations and additions to a dwelling house including a new garage and studio
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:	Alan Booth Scott Brown
Applicant:	Gillian Christine Scott Brown Alan Booth Scott Brown

Application Lodged:	13/10/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	20/10/2023 to 03/11/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 11.8% 4.4 Floor space ratio: 5.1%
Recommendation:	Approval

Estimated Cost of Works:	$ 1,835,123.00

EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to a dwelling house including a new garage and studio.

The application is referred to the Development Determination Panel (DDP) due to a breach of the height of building development standard by more than 10% and involves a Class 1 dwelling. The height of the proposed development has been measured at 9.5m which represents a variation of 11.8% to the maximum prescribed building height of 8.5m. The proposal also involves a 5.1% breach

to the floor space ratio development standard.

The Clause 4.6 request for the non-compliance with height standard arises from the site being partially excavated underneath the existing building creating a 11.8% variation of the roof structure. Based on extrapolated natural ground levels, most of the building would be within the 8.5m height limit, except for a very small area at the rear of the building which is 8.9m. The overall height of the building is reduced by 1.54m compared to the existing building. As such, it is considered that the environmental planning grounds demonstrated by the applicant are sufficient.

No submissions were received during the public exhibition of the application.

Despite being non-compliant with the prescribed building height and FSR requirements, the proposal reduces the height of the existing dwelling. Other non-compliant elements, including wall height, number of storeys, front and side setbacks and garage width are not considered to result in an unreasonable built form or amenity outcome, subject to condition.

Overall, it is considered that the proposal has been designed appropriately to remain compatible with the prevailing built form of the locality and will not cause unreasonable impact to the amenity of adjacent properties, including solar access, privacy and view sharing. The proposed additions retain the low density residential character, while being built primarily upon the existing footprint and not resulting in the removal of any significant vegetation or require significant alteration to the landform.

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

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for alterations and additions to the existing dwelling house, including internal layout reconfiguration of the dwelling and the construction of a detached double garage with studio and storage area beneath, an inclinator connecting the garage and dwelling along the southern boundary and associated landscaping and earthworks.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

SITE DESCRIPTION

Property Description:	Lot 701 DP 1143488 , 13 Amiens Road CLONTARF NSW 2093
Detailed Site Description:	The subject site consists of one (1) allotment located on the western side of Amiens Road. The site is irregular in shape with a frontage of 7.01m along Amiens Road and a depth of 67.5m. The site has a surveyed area of 967m². The site is located within the R2 Low Density Residential zone and accommodates three-storey residential dwelling, swimming pool and detached garage. The site falls approx. 21m from the street frontage towards the west. The site contains and number of trees along the southern boundary, a grassed area between the dwelling and garage and a number of gardens throughout. A large canopy tree is located in the street verge to the north of the driveway. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by low density residential dwellings with ancillary structures and outbuildings. The topography of the locality is undulating with many areas of exposed rock outcrops.

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 **DA293/2006** for Land Subdivision and Boundary Re-alignment to create four (4) lots was approved on 21/02/2007 by the former Manly Development Assessment Unit.

Application **DA2019/0666** for Demolition works and construction of a dwelling house was withdrawn by the applicant on 10/09/2019.

Application **DA2020/0189** for Demolition works and construction of a dwelling house was approved on 01/05/2020 by Council staff.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, 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. Clause 29 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. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended architectural plans. Clause 61 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. Clauses 62 and/or 64 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. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 20/10/2023 to 03/11/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Environmental Health (Solid Fuel/Oil Heater)	**General Comments** This application is seeking consent for demolition, substantial alterations & additions to the dwelling house, new garage and studio. A fireplace in proposed for the living room and also in the outdoor BBQ area. It has been confirmed by the applicant that both fireplaces will be gas. Environmental Health recommends approval with no conditions.
Landscape Officer	The proposal is supported with regard to landscape issues. Council's Landscape Referral section have considered the application against the Manly Local Environment Plan, and the following Manly DCP 2013 controls (but not limited to): • 3.3.1 Landscaping Design • 3.3.2 Preservation of Trees or Bushland Vegetation • 4.1.5 Open Space and Landscaping, including 4.1.5.2 (c) Minimum Tree Plantings The Arboricultural Impact Assessment (AIA) identified seven trees of which trees 3-7 are located within the property boundaries. Trees 1 and 2 are located outside the property boundaries and must be

Internal Referral Body	Comments
	retained and protected during works, which is supported by the Arborist's findings. Tree 4 is exempt by species and as such it can be managed or removed at the discretion of the applicant without consent. Prescribed trees 3, 5, 6 and 7 will be impacted by the proposed inclinator, and as such should the Development Application be approved their removal is required. To satisfy the MDCP and to offset the canopy loss, four locally native replacement trees must be installed within the property boundaries. A Project Arborist shall be engaged to supervise all work in the tree protection zones of trees to be retained (trees 1 and 2). Some planting is shown indicatively on the Landscape Plan and any new planting shall be installed in accordance with the requirements outlined in the conditions of consent.
NECC (Bushland and Biodiversity)	Council's Biodiversity referrals team have assessed the Development Application which seeks consent for alterations and additions to a dwelling house including a new garage and studio. As identified in the Statement of Environmental Effects (Lockrey Planning and Development Solutions Pty Ltd, September 2023), the site is located within the Foreshores and Waterways Area and as such SEPP (Resilience and Hazards) 2021 cl. 2.10 does not apply to the site. Refer to Council's Landscape referral comments for assessment of native tree removals. No objections in relation to biodiversity.
NECC (Coast and Catchments)	The application has been assessed in consideration of the *Coastal Management Act 2016*, 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. ***Coastal Management Act 2016*** The subject site has been identified as being within the coastal zone and therefore *Coastal Management Act 2016* is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the *Coastal Management Act 2016.* **State Environmental Planning Policy (Resilience & Hazards) 2021** The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence,

Internal Referral Body	Comments
	Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA. Clauses 2.10 (coastal environment area) and 2.11 (coastal use area) do not apply as the site is also located within the Sydney Harbour catchment area. Hence, only Clause 2.12 of the SEPP R & H apply for this DA. Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Lookrey Planning & Development Solutions Pty. Ltd. dated 7 September 2023, the DA satisfies requirements under clause 2.12 of the SEPP R&H. As such, it is considered that the application does/does not comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021. **Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity & Conservation) 2021** **Foreshores & Waterways Area** 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. On internal assessment, it is determined that the relevant clauses of the Part 6.3 including the clause 6.28 have been followed. **Manly LEP 2013 and Manly DCP** **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

Internal Referral Body	Comments
	Scenic Protection Area of the Manly DCP 2013 will apply to proposed development on the site. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Lookrey Planning & Development Solutions Pty. Ltd. dated 7 September 2023, the DA satisfies requirements under Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013. As such, it is considered that the application does comply with the requirements of the Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013.
NECC (Development Engineering)	The proposed development is in Zone 3 of Region 3. On-site detention is not required. A geotechnical report has been provided. Vehicle crossing construction is not proposed. I have no objections to the proposed development.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A497475_03, dated 06/10/2023). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who raised no objections.

SEPP (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).

6.7 Aquatic ecology

(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 direct, indirect or cumulative adverse impact on terrestrial, aquatic or migratory animals or vegetation,
(b) whether the development involves the clearing of riparian vegetation and, if so, whether the development will require—
(i) a controlled activity approval under the Water Management Act 2000, or
(ii) a permit under the Fisheries Management Act 1994,
(c) whether the development will minimise or avoid—
(i) the erosion of land abutting a natural waterbody, or
(ii) the sedimentation of a natural waterbody,
(d) whether the development will have an adverse impact on wetlands that are not in the coastal wetlands and littoral rainforests area,
(e) whether the development includes adequate safeguards and rehabilitation measures to protect aquatic ecology,
(f) if the development site adjoins a natural waterbody—whether additional measures are required to ensure a neutral or beneficial effect on the water quality of the waterbody.

(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 direct, indirect or cumulative adverse impact on terrestrial, aquatic or migratory animals or vegetation will be kept to the minimum necessary for the carrying out of the development,
(b) the development will not have a direct, indirect or cumulative adverse impact on aquatic reserves,
(c) if a controlled activity approval under the Water Management Act 2000 or a permit under the Fisheries Management Act 1994 is required in relation to the clearing of riparian vegetation—the approval or permit has been obtained,
(d) the erosion of land abutting a natural waterbody or the sedimentation of a natural waterbody will be minimised,
(e) the adverse impact on wetlands that are not in the coastal wetlands and littoral rainforests area will be minimised.

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.

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 proposed development will not affect existing foreshore recreation areas or public access to the waterway.

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.

6.13 Hawkesbury-Nepean conservation area sub-catchments

(2) In deciding whether to grant development consent to development in a Hawkesbury-Nepean conservation area sub-catchment, the consent authority must consider the following—

(a) whether the development will minimise human interference with the condition of the sub-catchment,
(b) whether the development will maintain and enhance the structure and floristics of native vegetation in the sub-catchment,
(c) whether the development will maintain or enhance the scenic quality of the locality,
(d) whether development has previously been carried out on the development site.

Comment:

N/A

6.14 Temporary use of land in Sydney Harbour Catchment

(3) Development consent may be granted to development on land in the Sydney Harbour Catchment for a temporary use for a maximum period of 52 days, whether or not consecutive, in a period of 12 months, even if the development would otherwise be prohibited by this Chapter.

(4) Development consent must not be granted unless the consent authority is satisfied of the following:

(a) the temporary use will not prejudice the subsequent carrying out of development on the land in accordance with this Chapter and any other applicable environmental planning instrument,
(b) the temporary use will not have an adverse impact on adjoining land or the amenity of the neighbourhood,
(c) the temporary use and location of structures related to the use will not have an adverse impact on environmental attributes or features of the land or increase the risk of natural hazards that may affect the land,
(d) at the end of the temporary use period the land will, as far as is practicable, be restored to the condition in which it was before the commencement of the use.

(5) Development consent may be granted to development for the temporary use of a dwelling as a sales office for a new release area or a new housing estate for a period exceeding the maximum period specified in subsection (3).

Comment:

Temporary use of land is not proposed.

Part 6.3 Foreshores and Waterways Area

Division 1 Preliminary

6.25 Consent authority

(1) The Minister administering the Ports and Maritime Administration Act 1995 is the consent authority for the following development—
(a) development comprising the subdivision of land owned by TfNSW in or abutting the Foreshores and Waterways Area,
(b) development carried out in the Foreshores and Waterways Area wholly below the mean high water mark,
(c) development carried out in the Foreshores and Waterways Area for one or more of the following purposes, including development carried out wholly or partly inside a local government area—
Above-water boat lifts; Advertisements; Advertising structures; Aids to navigation; Aviation facilities; Boat lifts; Charter and tourism boating facilities; Commercial port facilities; Dredging; Floating boat platforms; Flora and fauna enclosures; Houseboats; Maintenance dredging; Mooring pens; Private landing facilities; Private landing steps; Private marinas; Private swimming enclosures; Public boardwalks; Public water transport facilities; Single moorings; Skids; Slipways
(2) Despite subsection (1), the Minister administering the Environmental Planning and Assessment Act 1979 is the consent authority for the following development carried out in the Foreshores and Waterways Area—
(a) development carried out partly above and partly below the mean high water mark,

(b) development carried out below the mean high water mark for the purposes of one or more of the following—
Boat building and repair facilities; Boat launching ramps; Boat sheds; Marinas; Reclamation works; Swimming pools; Water-based restaurants and entertainment facilities; Waterfront access stairs; Water recreation structures; Wharf or boating facilities that are sea walls
(c) development carried out wholly or partly inside the zoned waterway, including development carried out below the mean high water mark, for the purposes of one or more of the following—
Car parks; Commercial premises; Recreational or club facilities; Residential accommodation; Restaurants or cafes; Retail premises; Tourist facilities
(3) Subsections (1) and (2) do not apply if another environmental planning instrument specifies a different public authority, other than the council, as the consent authority for the development.

Comment:

The proposed development is wholly above the mean high water mark, meaning Northern Beaches Council is the consent authority.

Division 3 Development in Foreshores and Waterways Area

6.28 General

(1) In deciding whether to grant development consent to development in the Foreshores and Waterways Area, the consent authority must consider the following—
(a) whether the development is consistent with the following principles—
(i) Sydney Harbour is a public resource, owned by the public, to be protected for the public good,
(ii) the public good has precedence over the private good,
(iii) the protection of the natural assets of Sydney Harbour has precedence over all other interests,
(b) whether the development will promote the equitable use of the Foreshores and Waterways Area, including use by passive recreation craft,
(c) whether the development will have an adverse impact on the Foreshores and Waterways Area, including on commercial and recreational uses of the Foreshores and Waterways Area,
(d) whether the development promotes water-dependent land uses over other land uses,
(e) whether the development will minimise risk to the development from rising sea levels or changing flood patterns as a result of climate change,
(f) whether the development will protect or reinstate natural intertidal foreshore areas, natural landforms and native vegetation,
(g) whether the development protects or enhances terrestrial and aquatic species, populations and ecological communities, including by avoiding physical damage to or shading of aquatic vegetation,
(h) whether the development will protect, maintain or rehabilitate watercourses, wetlands, riparian lands, remnant vegetation and ecological connectivity.
(2) Development consent must not be granted to development in the Foreshores and Waterways Area unless the consent authority is satisfied of the following—
(a) having regard to both current and future demand, the character and functions of a working harbour will be retained on foreshore sites,
(b) if the development site adjoins land used for industrial or commercial maritime purposes—the development will be compatible with the use of the adjoining land,
(c) if the development is for or in relation to industrial or commercial maritime purposes—public access that does not interfere with the purposes will be provided and maintained to and along the foreshore,
(d) if the development site is on the foreshore—excessive traffic congestion will be minimised in the zoned waterway and along the foreshore,
(e) the unique visual qualities of the Foreshores and Waterways Area and its islands, foreshores and tributaries will be enhanced, protected or maintained, including views and vistas to and from—

(i) the Foreshores and Waterways Area, and
(ii) public places, landmarks and heritage items.

Comment:

The proposed development is consistent with the prevailing low density residential character of the Middle Harbour foreshore and waterway area. The development will not cause adverse impact to the natural features, processes and qualities of the foreshore and waterway.

6.29 Areas of outstanding biodiversity value

(2) Development consent must not be granted to development on land to which this section applies unless the consent authority is satisfied the development will not have a significant adverse impact on the land.

Comment:

Council is satisfied that the proposed development will not have a significant adverse impact upon the foreshore and waterway area.

6.30 National parks

(1) Development consent must not be granted to development in the Foreshores and Waterways Area unless the consent authority is satisfied that the development—
(a) is not likely to affect land that is reserved under the National Parks and Wildlife Act 1974, and
(b) is consistent with the document entitled Developments adjacent to National Parks and Wildlife Service lands: Guidelines for consent and planning authorities, published by the Department in 2020.
(2) Despite any other provision of this Chapter, development on land in the Foreshores and Waterways Area is permitted without development consent if—
(a) the development site abuts land reserved under the National Parks and Wildlife Act 1974 (reserved land), and
(b) the development spans the mean high water mark and is part of other development being carried out on the reserved land, and
(c) the development is for a purpose for which development is authorised to be carried out under the National Parks and Wildlife Act 1974.

Comment:

The subject site is not located in proximity to a national park.

6.32 Rocky foreshores and significant seagrasses

(3) Development consent must not be granted to development on land to which this section applies unless the consent authority is satisfied the development—
(a) will preserve and enhance the health and integrity of seagrasses, areas containing seagrasses and ecological communities in rocky foreshore areas, and
(b) will maintain or increase the connectivity of seagrass vegetation and natural landforms, and
(c) will prevent, or will not contribute to, the fragmentation of aquatic ecology, and
(d) will not cause physical damage to aquatic ecology.

Comment:

The proposed development will not cause unreasonable impact upon the natural landforms of the

foreshore area. No impact upon seagrass is expected.

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

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

Comment:

Council is satisfied the proposed development will not cause an increased risk of coastal hazards on the site or surrounding land.

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

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

Comment:

All relevant provisions of applicable certified coastal management programs have been considered as part of the assessment of the application.

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

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.5m	11.8%	No
Floor Space Ratio:	0.4:1 (386.8m^2)	0.42:1 (406.4m^2)	5.1%	No

Compliance Assessment

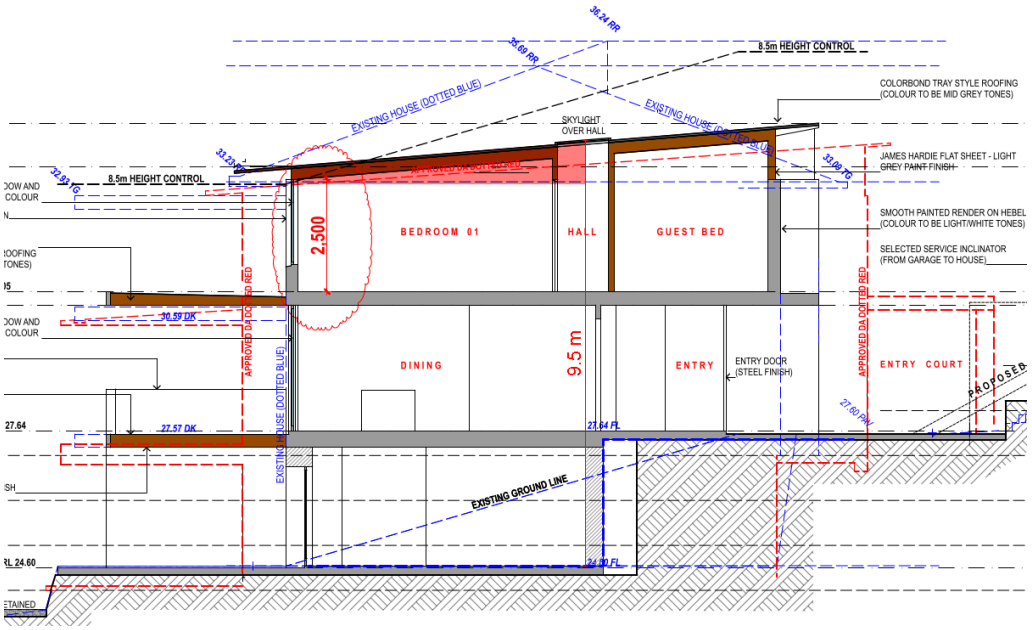
Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings (HOB) Floor space ratio (FSR)
Requirement:	HOB - 8.5m
	FSR - 0.4:1 (386.8m^2)
Proposed:	HOB - 9.5m
	FSR - 0.42:1 (406.4m^2)
Percentage variation to requirement:	HOB - 11.8%
	FSR - 5.1%



Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

Comment:

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

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

circumstances of the case, and
(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)
The objects of this Act are as follows:

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

The applicants written request argues, in part:

Height of buildings

- *... the proposal clearly improves the roof geometry of the dwelling and at the same time reduces its maximum height without resulting in any unreasonable amenity and environmental impacts to neighbours or the surrounding public domain.*
- *The SEE and supporting documentation submitted with the DA provides a holistic environmental planning assessment of the proposal and demonstrates that subject to adopting a range of reasonable mitigation measures, there are sufficient environmental planning grounds to support the development. In particular, the submitted documentation demonstrates that despite the contravention to the [building height] standard, it nonetheless enables the relatively modest and appropriate redevelopment of the site to occur, which is clearly not incompatible with the established neighbouring built form context.*
- *Existing FFL's for the dwelling remain unaltered. The benched form and the site's topography accentuates the departure at the western elevation, whereas its compliant height at the eastern elevation is only 7.12m.*
- *The dwelling's overall height is reduced by 1.94m.* [Note: Council's calculation is a 1.54m reduction in overall height based on RLs shown on survey and architectural plans.]
- *The height of the garage/studio complies with the standard.*
- *A similar building envelope / alignment is proposed as that previously approved under DA 2020/189.*
- *Despite the departure to the FSR standard, the additional GFA/FSR does not materially add to the dwelling's height, bulk and scale when compared to that existing.*
- *The altered / proposed built form is clearly not incompatible when considering the site's wider visual context as viewed from the surrounding public domain, given the scale and form of other hillside developments in the vicinity.*
- *The proposed breach of the standard results in an improved amenity outcome for the residents without contributing additional bulk, adverse environmental or amenity related impacts or relative intensification of the altered built form.*
- *The departure to the height standard has been arranged considering the site's existing built form, the previously approved DA and the neighbouring and nearby context. In this regard and as demonstrated by the DCP 2013 assessment at Table 4 and Section 4.2 of the separately submitted SEE, the non-compliant built form nonetheless preserves environmental amenity in*

relation to:
- solar access and overshadowing;
- access to natural daylight and ventilation;
- aural and visual privacy;
- views and vistas from neighbouring and nearby properties and the public domain; and
- visual impact and massing; and
- parking or traffic generation.

- *Appropriate environmental initiatives are proposed.*
- *The highly articulated façade treatment and selection of characteristic and recessive external materials and finishes reduces the dwelling's perceived height, bulk and scale when viewed from the surrounding public domain.*

Floor space ratio

- *The SEE and supporting documentation submitted with the DA provides a holistic environmental planning assessment of the proposal and demonstrates that subject to adopting a range of reasonable mitigation measures, there are sufficient environmental planning grounds to support the development. In particular, the submitted documentation demonstrates that despite the contravention to the FSR standard, it nonetheless enables the relatively modest and appropriate redevelopment of the site to occur, which is clearly not incompatible with the established neighbouring built form context.*
- *The proposed FSR is essentially the same as that already considered environmentally acceptable under the approved DA 2020/189.*
- *As two distinct and separate built forms are proposed, the GFA / FSR of the dwelling house if calculated in isolation would comply with the standard, including that GFA associated to the garage. Its built form and overall envelope is therefore anticipated by the key planning controls.*
- *The studio is the built form which triggers the departure. The studio does not have any identifiable impact on neighbouring properties, does not contribute to the visible overall bulk and scale and furthermore is not readily visible from the surrounding public domain. The envelope, design and siting of the garage / studio is the same as that previously approved under DA 2020/189.*
- *A similar building envelope / alignment is proposed as that previously approved. Despite the departure to the FSR standard, the additional GFA/FSR does not materially add to the dwelling's height, bulk and scale when compared to that existing.*
- *The altered / proposed built form is clearly not incompatible when considering the site's wider visual context as viewed from the surrounding public domain, given the scale and form of other hillside developments in the vicinity.*
- *The proposed breach of the standard results in an improved amenity outcome for the residents without contributing additional bulk, adverse environmental or amenity related impacts or relative intensification of the altered built form. This includes the provision of open plan primary living areas with direct connections to useable external private open space areas.*
- *The proposal provides for enhanced amenity to the residents through alterations and additions to the existing built form through a relatively modest increase in GFA without any unreasonable impact to neighbouring properties and the surrounding public domain. The alterations and additions to the dwelling are well scaled and reduced its overall height. The new works are contemporary in form and detail and are not visually intrusive or bulky when viewed from the surrounding public domain and are not incompatible with the established built form context at the rear of neighbouring properties.*
- *The additional FSR does not result from excessive site disturbance or excavation, rather the enlargement of the existing lower ground floor level and the enlargement of the studio below the garage. All existing FFL's (dwelling) and those approved (garage / studio) remain unaltered.*

- *The altered dwelling's overall height is less than that existing.*
- *The departure to the FSR standard has been arranged considering the site's existing built form, the previously approved DA and the neighbouring and nearby context. In this regard and as demonstrated by the DCP 2013 assessment at Table 4 and Section 4.2 of the separately submitted SEE, the non-compliant built form nonetheless preserves environmental amenity in relation to:*
  - solar access and overshadowing;
  - access to natural daylight and ventilation;
  - aural and visual privacy;
  - views and vistas from neighbouring and nearby properties and the public domain; and
  - visual impact and massing; and
  - parking or traffic generation.
- *Appropriate environmental initiatives are proposed.*
- *The highly articulated façade treatment and selection of characteristic and recessive external materials and finishes reduces the dwelling's perceived bulk and scale when viewed from the surrounding public domain.*
- *Removing the non-compliance would not significantly alter the perceived scale and density of the proposed development when viewed from the public domain or surrounding development.*

Council is satisfied that the Applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of Clauses 4.3 and 4.4 for the following reasons:

- The building height is artificially accentuated due to the existing area of excavation relative to the prevailing slope of the site and surrounds.
- The proposed development generally maintains the pattern of the neighbourhood including predominant heights and is lower than the existing building.
- The proposed floor area does not contribute to an unreasonable bulk and scale of the development and is not expected to result in adverse amenity outcomes for adjacent properties or the public domain.
- The development promotes good design and amenity of the built environment, noting that the dwelling house integrates and works with the sloping topography of the property while maintaining suitable amenity for adjoining properties.

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

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

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

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

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

(ii) the proposed development will be in the public interest because it is consistent with the objectives

of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

Comment:

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

Objectives of development standard

Height of Buildings

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

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

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

Comment:

The proposed development reduces the height of the upper roof ridge level by 1.54m compared to the existing dwelling. The roof form is consistent with that of the dwelling and other dwellings in the locality. The proposal is considered to be generally consistent with the topographic landscape, the prevailing building height and the streetscape character of the locality.

b) to control the bulk and scale of buildings,

Comment:

The height, bulk and scale of the proposed development is generally consistent with that of other dwellings in the locality.

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

Comment:

No views or vistas are expected to be unreasonably impacted as a result of the development.

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

Comment:

The proposed development will not cause unreasonable overshadowing of adjacent 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.

Comment:

Not applicable.

Floor space ratio

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

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

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

Comment:

The overall bulk and scale of the proposal is consistent with similar development in the locality. The proposal demonstrates compliance with the building height development standard. While the proposal incorporates some variations to DCP controls, it is considered the development is generally 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 proposed building density and bulk is consistent with that of other dwellings in the locality. The development will not obscure important landscape or townscape features.

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

Comment:

The visual character between the new development and existing locality landscape will not fundamentally be altered. While the garage at the street frontage is to be larger than the existing structure, existing canopy trees in the street verge will still dominate the visual character of the public domain. The dwelling will not readily be discernible from the public domain as it is positioned substantially lower than the street level.

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

Comment:

The proposal is not expected to cause unreasonable environmental impact to adjoining land and public domain. The existing view corridor from the street frontage towards Middle Harbour will be marginally impacted by the new garage structure, however a reasonable view is maintained. The

overall development is generally consistent with the existing development on site. No fundamental change to the existing environmental impact to adjoining land is expected.

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 proposal incorporates alterations and additions to an existing dwelling with detached garage and studio. It does not alter the existing low density residential use on the site.

  It is considered that the development satisfies this objective.

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

  Comment:

  The proposed development maintains the existing 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.

It is considered on balance, that having regard to the particular circumstances, the proposed departure from the development standards 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, those being the artificial accentuation of building height due to the existing area of excavation beneath the dwelling, the reduced overall height of the dwelling and compatibility of the proposal with the surrounding locality. It is therefore considered appropriate that in this instance, flexibility in the application of the Height of Buildings and Floor space ratio development standards 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 Height of building and Floor space ratio Development Standards associated with a single dwelling house (Class 1 building).

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 967m^2	**Requirement**	**Proposed**	**% Variation**	**Complies**
4.1.2.1 Wall Height	Dwelling - N: 7.9m (based on gradient 1:4.3)	8.9m	12.7%	No
	Garage - N: 8.0m (based on gradient 1:3.1)	7.3m	N/A	Yes
	Dwelling - S: 7.9m (based on gradient 1:4.3)	8.9m	12.7%	No
	Garage - S: 8.0m (based on gradient 1:3.4)	7.3m	N/A	Yes
4.1.2.2 Number of Storeys	2	3	N/A	No
4.1.2.3 Roof Height	Pitch: maximum 35 degrees	5 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	6m	Forecourt: Nil	100%	No
		Garage: 7.6m	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	Dwelling - N: 2.9m (based on wall height)	2.4m	17.2%	No
	Garage - N: 2.6m (based on wall height)	Nil	100%	No
	Dwelling - S: 2.9m (based on wall height)	1m	Existing	As existing
	Garage - S: 2.4m (based on wall height)	Nil	100%	No
	Windows: 3m	1m	66.7%	No

4.1.4.4 Rear Setbacks	8m	9.1m	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area (580.2m^2)	72.7% (703m^2)	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space (281.2m^2)	45.2% (318m^2)	N/A	Yes
4.1.5.3 Private Open Space	18m^2	>18m^2	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	5.6m (80% of frontage)	60%	No
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	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

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

Detailed Assessment

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

Description of non-compliance

4.1.2.1 Wall Height

Based on a gradient of 1:4.3, the maximum permitted wall height is 7.9m. The proposed dwelling is to have a maximum wall height of 8.9m. This represents a 12.7% variation to the control requirement.

4.1.2.2 Number of Storeys

Buildings must not exceed 2 storeys. The proposed dwelling is to partially incorporate a 3 storeys.

Variation to the maximum number of storeys may be considered:

i) where specific physical site constraints warrant an exception to this requirement. In these circumstances the development must still fully comply with other numeric height controls and development standards; and
ii) to allow an additional understorey where that storey satisfies the meaning of basements in the LEP.

In this case, the site's topography allows for the construction of an understorey without exceeding the maximum permitted building height. The 3 storey element of the proposed dwelling is therefore considered acceptable.

Merit consideration

Clause 4.1.2 relies on the objectives of Clause 4.3 Height of Buildings of the MLEP 2013, therefore the development is considered against the underlying objectives of such Clause as follows:

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

Comment:

The surrounding are contains a mix of roof forms including many examples of skillion form. The proposal also provide a skillion form to complement with this character. The proposed development also steps down the site with the topography and this reduces the presentation of bulk to provide a desirable outcome for the locality.

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

Comment:

The proposed dwelling is generally sited in a similar location to the existing dwelling. The height of the proposed dwelling is substantially less than the existing dwelling. As such, the bulk and scale of the proposed dwelling is considered to be appropriate in the context of the site and surrounds.

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

Comment:

The proposal will not have any unreasonable impact on views, and provide viewing corridors through the site as a result of reasonable setbacks and appropriate modulation.

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

Comment:

The proposal provides sufficient modulation and stepping toward the rear of the site to allow for corridors for sunlight. The proposal also complies with the numerical requirements for sunlight under Clause 3.4.1 of the Manly DCP.

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

Comment:

Not applicable.

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

4.1.3 Floor Space Ratio (FSR)

The proposed development has a floor space ratio of 0.42:1 (406.4m^2), which represents a variation of 5.1% to the prescribed 0.4:1 (386.8m^2) FSR requirement.

Refer to Clause 4.6 Exceptions to Development Standards of MLEP 2013 for a detailed assessment.

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

Description of non-compliance

4.1.4.1 Street Front setbacks

The control requires front setbacks to relate to the front building line of neighbouring properties and the prevailing building lines in the immediate vicinity of the site. Where the street front building lines of neighbouring properties are variable and there is no prevailing building line in the immediate vicinity, a minimum 6m front setback generally applies. In this instance, there is no prevailing building line in the immediate vicinity of the site.

The proposed dwelling and garage demonstrate compliance with the 6m front setback requirement, however the proposed garbage area on the northern side of the driveway is to incorporate a zero setback to the front boundary.

4.1.4.2 Side setbacks and secondary street frontages

This control requires side setbacks to be one third of the wall height.

In this instance, the side boundary setbacks for the dwelling are to be 2.9m from the northern and southern side boundaries. The side boundary setbacks for the garage are to be 2.6m from the northern boundary and 2.4m from the southern boundary.

The proposed development has a minimum setback of 2.4m to the northern side boundary, resulting in a maximum variation of 17.2%, and 1m to the southern side boundary. The south side boundary setback is existing and the proposed development does not seek to further reduce this setback. As such, the existing setback is acceptable on merit.

The proposed garage is to incorporate a zero setback to the northern and southern side boundaries.

This clause also requires windows to be setback a minimum of 3m from a side boundary, which is subsequently not achieved.

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:

While the majority of the proposed development demonstrates desired spatial proportions, the enclosed and roofed design garage forecourt and garbage areas is considered to unreasonably dominate the street frontage. The proposal incorporates a 3.8m high wall on the front boundary with minimal design benefits. To reduce the impact of this element on the public domain, a condition is recommended to require the deletion of the garbage area and relocate the bin storage to within the garage. Additionally, the roof above the garage forecourt is conditioned to be deleted and the walls along the side and front boundaries be no higher than 1.5m above the forecourt floor level.

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 development is considered to provide reasonable amenity including privacy, solar access and view sharing for the dwelling occupants and those of adjoining and surrounding properties. Subject to condition, the development is also considered to appropriately respond to the site constraints and prevailing pattern of development seen within the vicinity of the site whilst maintaining safe and adequate traffic conditions.

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

Comment:

The development generally maintains the orientation and siting of the existing dwelling and that of adjoining properties. Subject to condition, no unreasonable amenity impacts are considered likely to arise and the dwelling house will appear visually consistent and comparable with other developments within the locality.

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 demonstrates compliance with the landscaped area requirement. Conditions have been included by Council's Landscape Officer to improve the proposed landscaping treatment of the site.

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

Comment:

Not applicable.

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

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

Description of non-compliance

The control stipulates that the maximum width of any garage, carport or hardstand area must not exceed a width equal to 50% of the frontage, up to a maximum width of 6.2m. The width of the frontage is 7m, therefore the maximum permitted garage width is 3.5m.

The width of the proposed garage is 5.6m (80%), which fails to satisfy this requirement.

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 provides two off-street parking spaces, demonstrating compliance with the required parking rate.

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

Comment:

The proposed off-street parking will reduce the on-street parking demand as one additional space is provided to that of the existing site conditions.

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:

No change to the existing driveway and crossover layout is proposed. A turntable is proposed to allow for ingress and egress in a forward direction.

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:

Limited excavation is required to provide the required parking spaces.

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

Comment:

No change to existing.

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:

Due to the narrow site frontage, landscaping integration is not practical. However, existing canopy trees in the street verge and neighbouring sites will break up the built form of the garage structure.

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

Comment:

Not applicable.

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

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 $18,351 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $1,835,123.

OTHER MATTERS

Lack of information regarding inclinator

The plans indicate an inclinator between the garage and dwelling is to be constructed adjacent to the southern side boundary. However, no details on the levels of the inclinator landings or rail are provided on the plans. An accurate assessment of the height and siting of the inclinator relative to the existing ground level cannot be made.

The applicant was requested to provide amended plans to include additional details regarding the inclinator, however no amended plans have been received. As such, a condition is recommended to delete the inclinator from the plans.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

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

PLANNING CONCLUSION

This proposal, for alterations and additions to a dwelling house including a new garage and studio has been referred to the Development Determination Panel (DDP) as the proposal seeks a maximum building height variation greater than 10%.

The critical assessment issues relating to the building height and floor space ratio development standard variations and other DCP control variations are not expected to cause unreasonable built form or amenity impacts upon adjacent properties or the public domain. Therefore, the variations are considered to be acceptable.

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 standards 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 DA2023/1461 for Alterations and additions to a dwelling house including a new garage and studio on land at Lot 701 DP 1143488, 13 Amiens Road, CLONTARF, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

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

Approved Plans				
Plan Number	**Revision Number**	**Plan Title**	**Drawn By**	**Date of Plan**
DA.02	A	Proposed Site Plan	Case Ornsby Architecture	09/06/2023
DA.03	B	Existing Basement Plan / Demo	Case Ornsby Architecture	26/02/2024
DA.04	A	Existing Ground Floor Plan / Demo	Case Ornsby Architecture	09/06/2023
DA.05	A	Existing First Floor Plan / Demo	Case Ornsby Architecture	09/06/2023

DA.06	A	Existing Garage Plan / Demo	Case Ornsby Architecture	09/06/2023
DA.07	A	Existing Roof Plan / Demo	Case Ornsby Architecture	09/06/2023
DA.08	A	Proposed Ground Floor Plan	Case Ornsby Architecture	09/06/2023
DA.09	A	Proposed First Floor Plan	Case Ornsby Architecture	09/06/2023
DA.10	B	Proposed Basement / Pool Plan	Case Ornsby Architecture	26/02/2024
DA.11	B	Proposed Roof Plan (House)	Case Ornsby Architecture	26/02/2024
DA.12	A	Proposed Garage / Studio Plan	Case Ornsby Architecture	09/06/2023
DA.13	A	Proposed Roof Plan	Case Ornsby Architecture	09/06/2023
DA.14	B	Proposed House Elevation	Case Ornsby Architecture	26/02/2024
DA.15	B	Proposed House Elevation	Case Ornsby Architecture	26/02/2024
DA.16	B	Proposed House Elevation	Case Ornsby Architecture	26/02/2024
DA.17	B	Proposed House Elevation	Case Ornsby Architecture	26/02/2024
DA.18	A	Proposed Garage Elevation	Case Ornsby Architecture	09/06/2023
DA.19	A	Proposed Garage Elevation	Case Ornsby Architecture	09/06/2023
DA.20	B	Proposed Section A	Case Ornsby Architecture	26/02/2024
DA.21	B	Proposed Section B	Case Ornsby Architecture	26/02/2024
LC.01	A	Landscape Concept Plan	Case Ornsby Architecture	09/06/2023

Approved Reports and Documentation			
Document Title	**Version Number**	**Prepared By**	**Date of Document**
Arboricultural Impact Assessment	A	Complete Arborcare	04/08/2023
BASIX Certificate No. A497475_03	-	Unnamed	06/10/2023
Geotechnical Assessment (Ref: AG 23255)	-	Ascent Geo	09/02/2023
Waste Management Plan	-	Unnamed	Undated

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

approved plans prevail.

In the event of any inconsistency 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	02/11/2023

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

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

3. **Approved Land Use**

Nothing in this consent shall authorise the use of the site beyond the definition of a *dwelling house*, in accordance with the Dictionary of the Manly Local Environmental Plan 2013.

The studio beneath the detached garage may not be used for any other purpose than a detached studio, defined as follows:

detached studio means a habitable building that is used for purposes ancillary to a dwelling house such as a home office, entertainment area, art studio or guest room and—

(a) is established in conjunction with a dwelling house, and
(b) is on the same lot of land as the dwelling house, and
(c) is separate from the dwelling house, and
(d) is not used as a separate dwelling house, and
(e) does not contain any cooking facilities.

Any variation to the approved land use beyond the scope of the above definition will require the submission to Council of a new development application.

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

4. **No Approval for Secondary Dwelling**
No approval is granted or implied under this Development Consent for the use of any part of the dwelling house for the purpose of a secondary dwelling or separate occupancy. Built in

cooking facilities are not permitted to be installed, other than those shown in the designated kitchen area.

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

5. **General Requirements**

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

Demolition and excavation works are restricted to:
- 8.00 am to 5.00 pm Monday to Friday only.

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

(b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.

(c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

(d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

(e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

(f) Prior to the release of the Construction Certificate, payment of the following is required:

i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than $250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.

iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The

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

(g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

(h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

(k) Prior to the commencement of any development onsite for:

i) Building/s that are to be erected

ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place

iii) Building/s that are to be demolished

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

v) For any work/s that is to be demolished

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

(l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

(m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

(n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

(1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools

(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

(2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

(3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

(4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

6. **Policy Controls**
Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of $18,351.23 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 $1,835,123.00.

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

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

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

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

7. **Security Bond**

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

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

8. **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. **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.

10. **Amendments to the approved plans**
The following amendments are to be made to the approved plans:

a) the garbage area must be deleted and bin storage relocated to within the garage.
b) the roof above the garage forecourt area must be deleted.
c) forecourt walls/balustrades along the side and front boundaries must not exceed a height of 1.5m above the forecourt floor level.

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

Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development.

11. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**
The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

12. **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.

13. **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.

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

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

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

15. **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.

16. **No Approval of Inclinator**
The inclinator identified on the stamped plans is not approved under this development consent. Any reference to the inclinator must be deleted.

Details demonstrating compliance must be provided to the Principal Certifier prior to the issue of a construction certificate.

Reason: Lack of information regarding inclinator.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

17. **Project Arborist**
a) a Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged prior to any commencement of works on site to provide tree protection measures in accordance with AS 4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

b) the Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, and in particular:
i) all works around existing trees 1 and 2,
ii) tree protection requirements under section 9 Recommendation/Conclusions, and Appendix C.

c) All tree protection measures specified must:
i) be in place before work commences on the site, and
ii) be maintained in good condition during the construction period, and
iii) remain in place for the duration of the construction works.

d) the Project Arborist shall provide certification to the Certifier that all tree protection measures under AS 4970-2009 have been satisfied, and the recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

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

Reason: Tree protection.

18. **Tree Removal Within the Property**
a) this consent approves the removal of existing prescribed trees on the subject site as listed below:
i) tree 3 *Leptospermum* sp., trees 5, 6 and 7 - *Glochidion ferdinandi*.

b) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised development works.

DURING BUILDING WORK

19. **Protection of Rock and Sites of Significance**
a) 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.

b) should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.

Reason: Preservation of significant environmental features.

20. **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.

21. **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.

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

Reason: To protect native wildlife.

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

Reason: Public safety.

24. **Removing, Handling and Disposing of Asbestos**
Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:
- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

26. **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.

27. **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

28. **Required Tree Planting**
a) four (4) locally native tree(s) shall be planted within the property boundary to achieve at least (6) metres height at maturity, and in accordance with the following:
i) tree planting shall be a minimum pre-ordered planting size of 75 litres; selected from Northern Beaches Council's Native Plant Species Guide - Manly Ward; meet the requirements

of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth generally, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings and other trees or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,
ii) suggested species; *Allocasuarina littoralis*, *Angophora costata*, *Banksia integrifolia*, *Banksia serrata*, *Eucalyptus haemastoma*, *Melaleuca quinquenervia*, and *Syzygium paniculatum*.

b) 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.

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

Reason: To maintain environmental amenity.

29. **Landscape Completion**
a) landscape works are to be implemented in accordance with the approved Landscape Plan(s), and inclusive of the following conditions:
i) landscape works are to be contained within the legal property boundaries,
ii) any new mass planting shall be installed at minimum 1 metre intervals (or less) for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch.

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

Reason: Environmental amenity.

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

Reason: Tree and vegetation protection.

31. **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.

32. **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.

33. **Certification of Off Street Parking Works**
The Applicant shall submit a certificate from a suitably qualified person certifiying that the parking facility was constructed in accordance within this development consent and the relevant provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical Controls and Section 2.6 Design of Domestic Driveways.

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

Reason: Compliance with this consent.

34. **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.

35. **House / Building Number**
House/building number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings.

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

36. **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

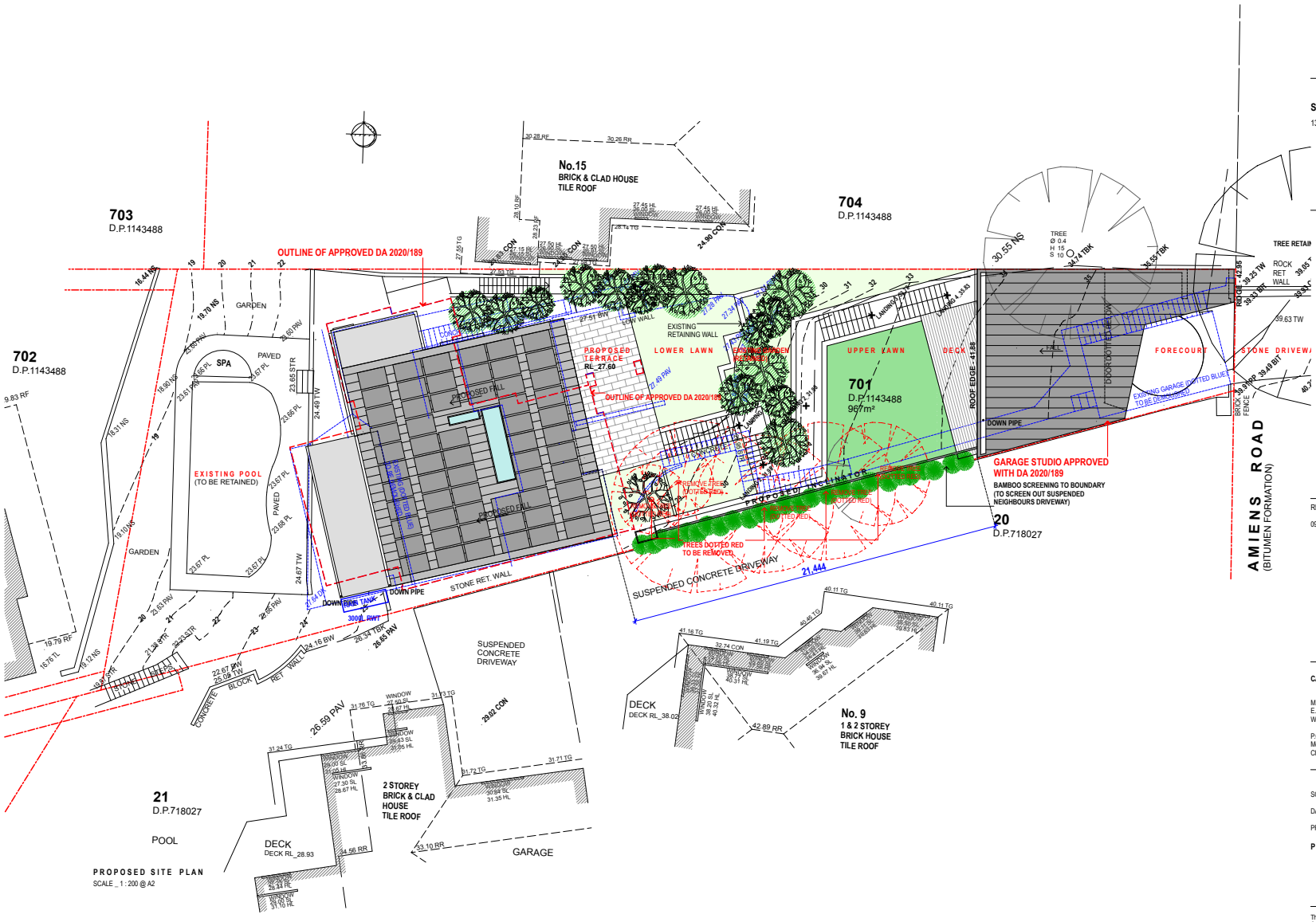
be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan(s) and any conditions of consent.

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.

37. **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.



CO/A

SCOTT - BROWN
13 AMIENS ROAD, CLONTARF, 2093

REVISIONS
09.06.23_DA SUBMISSION_A

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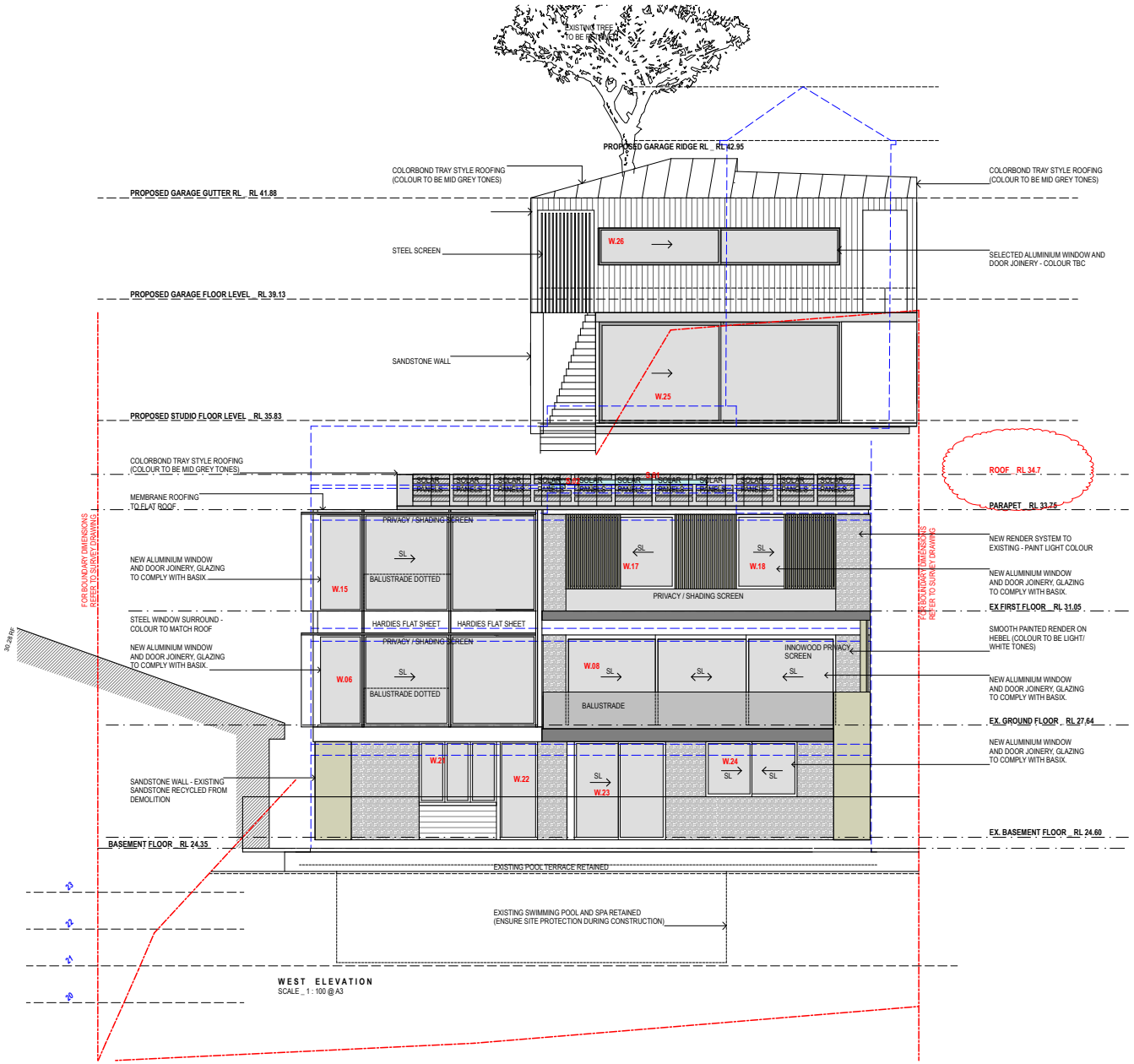
P.O.Box 36404
Merivale,
Christchurch, NZ

SCALE: 1 : 200
DATE: 20.04.23
PROJECT No: 102

PROPOSED SITE PLAN

DA.02 A

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13 AMIENS ROAD, CLONTARF, 2093

REVISIONS

09.06.23_DA SUBMISSION_A
26.02.24_DA SUBMISSION_B

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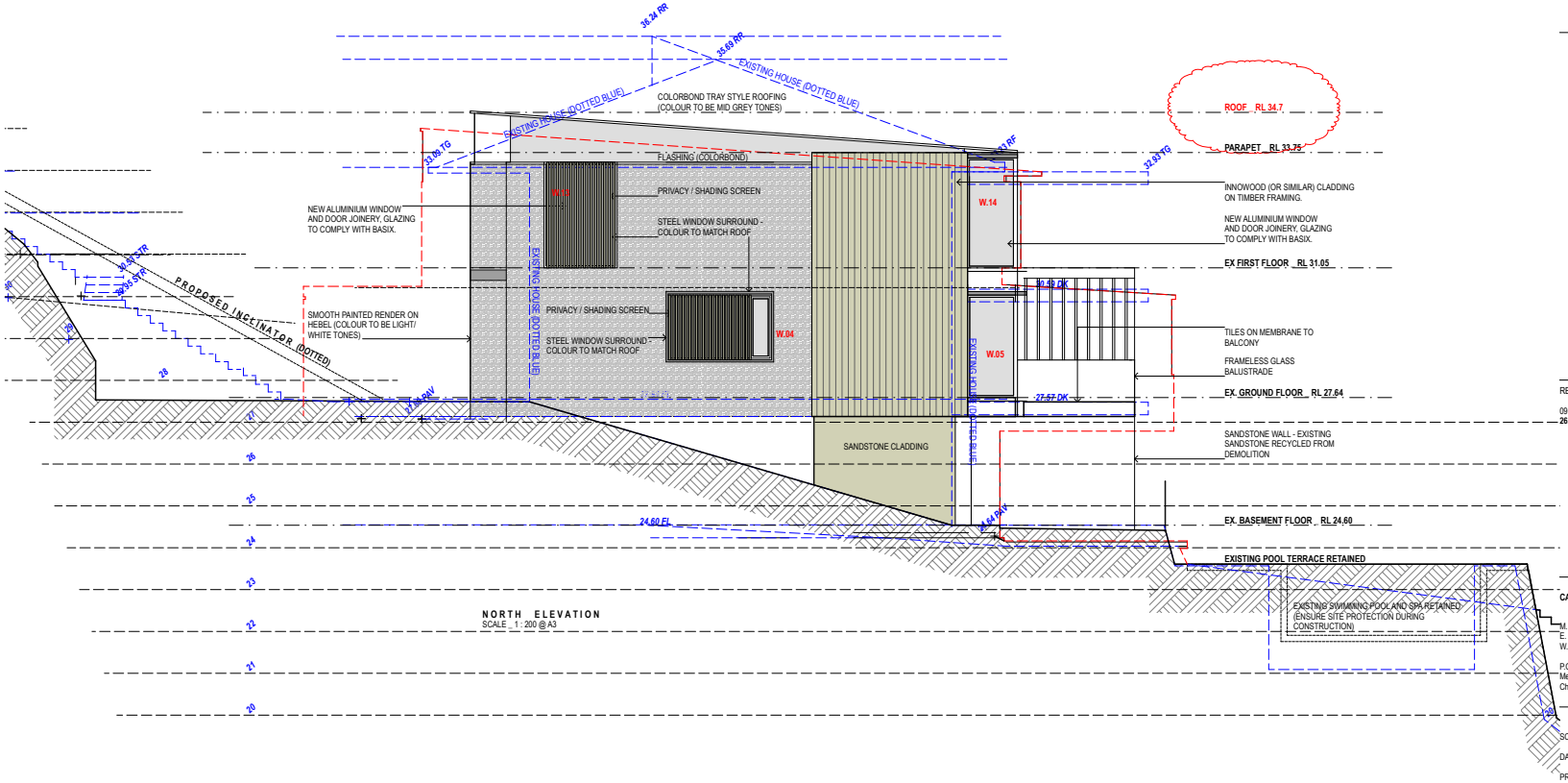
DATE: 20.04.23

PROJECT No: 102

ELEVATION

DA.14 B

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13 AMIENS ROAD, CLONTARF, 2093

REVISIONS

09.06.23_DA SUBMISSION_A
26.02.24_DA SUBMISSION_B

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SCALE: 1 : 100

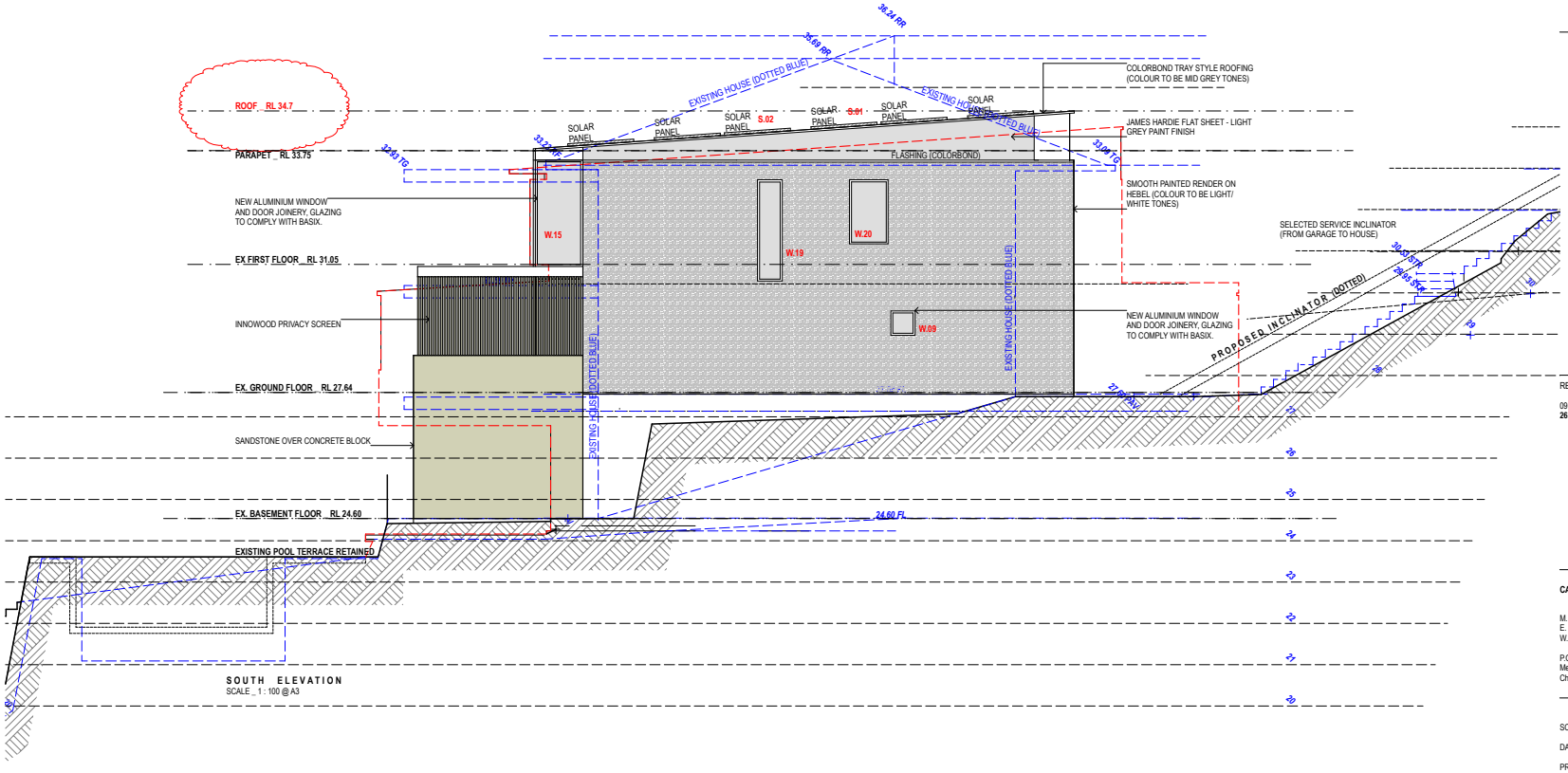
DATE: 20.04.23

PROJECT No: 102

ELEVATION

DA.15 B

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SOUTH ELEVATION
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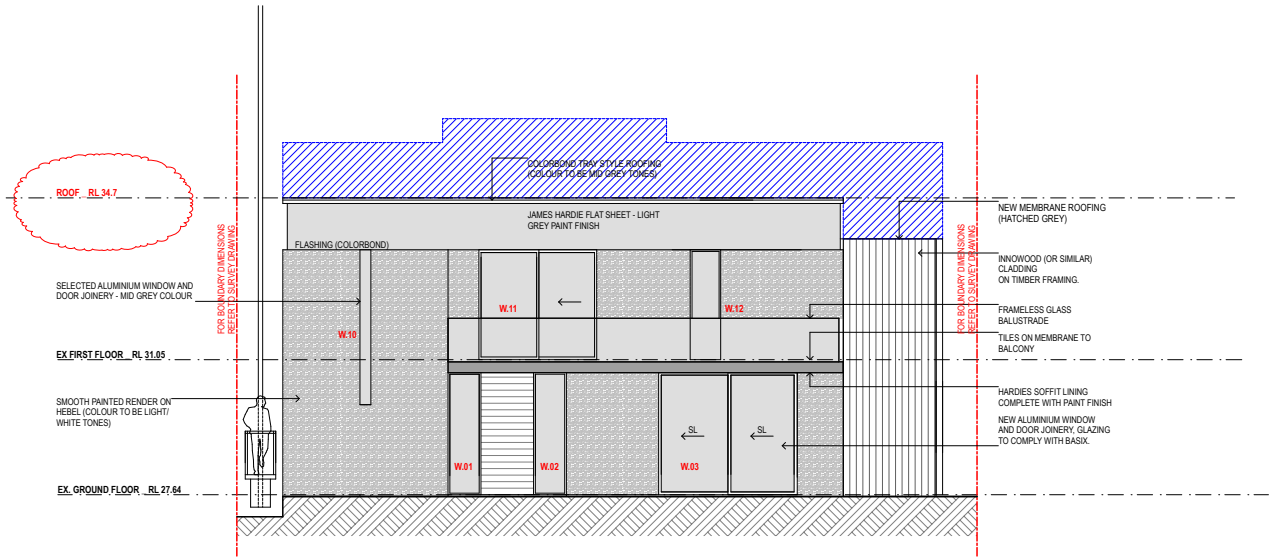
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ELEVATION

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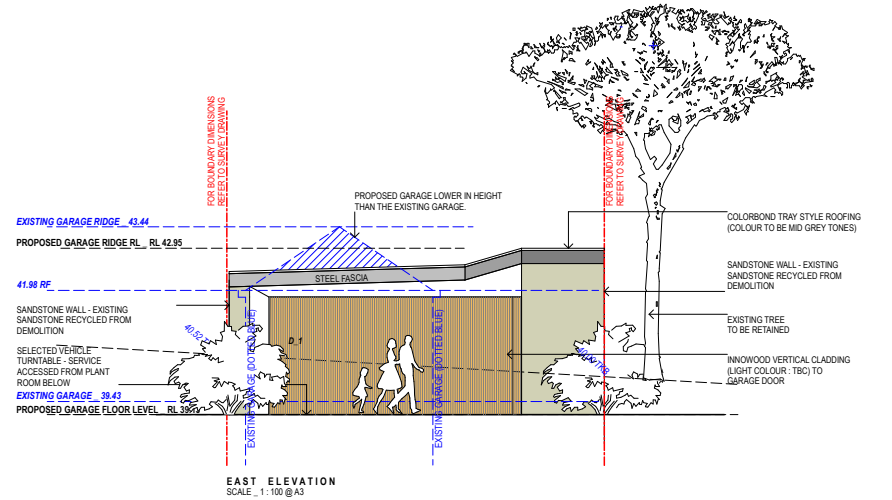
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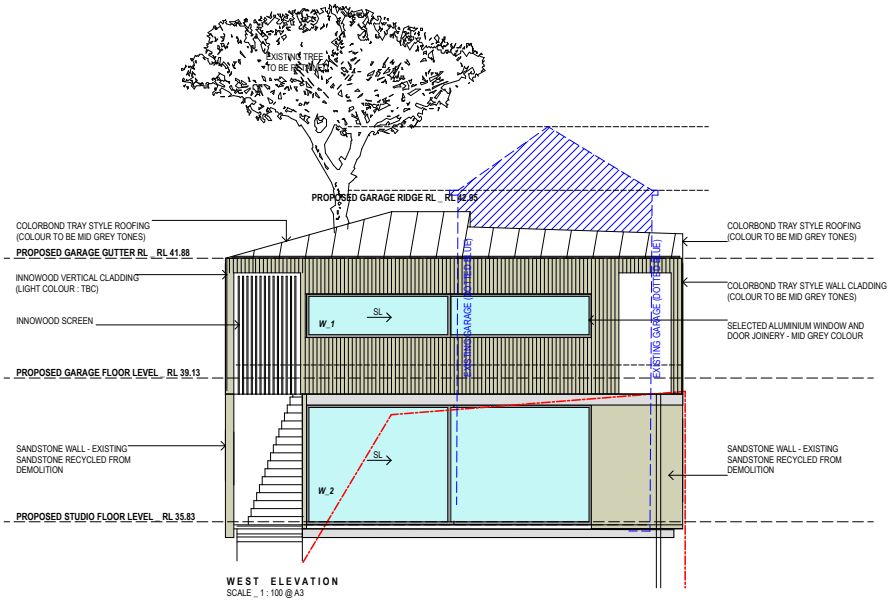
ELEVATION

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EAST ELEVATION
SCALE _ 1 : 100 @ A3



WEST ELEVATION
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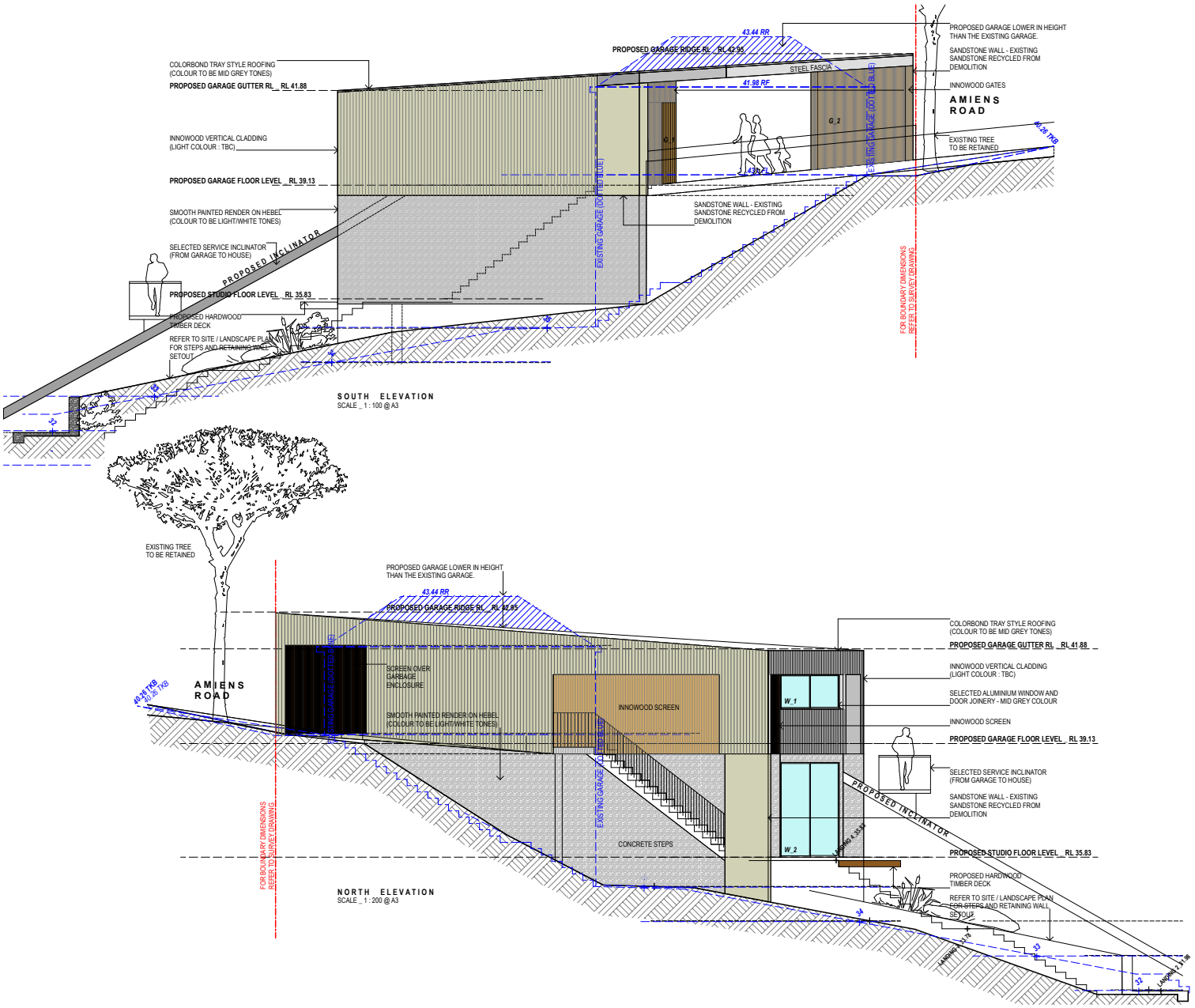
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PROJECT No: 102

GARAGE ELEVATIONS (APPROVED WITH DA 2020/189)

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PROJECT No: 102

GARAGE ELEVATIONS
(APPROVED WITH DA 2020/189)

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CLAUSE 4.6 VARIATION TO THE HEIGHT OF BUILDINGS DEVELOPMENT STANDARD

Demolition, substantial alterations & additions to the dwelling house, new garage and studio

13 Amiens Road, Clontarf

Prepared on behalf of

Alan & Gillian Scott – Brown c/- Case Ornsby Architecture

7 SEPTEMBER 2023

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1.0 INTRODUCTION

This Exception to Development Standards Submission accompanies a Development Application (**DA**) proposing demolition works, substantial alterations and additions to the existing dwelling house, a new garage and studio below, retention of the existing swimming pool and its surrounds, landscaping and other required site works at 13 Amiens Road, Clontarf (the **site**).

Calculations in this submission are based on plans and information provided by Case Ornsby Architecture. This submission should be read in conjunction with all documentation submitted with the DA.

As noted in the separate SEE, by LPDS, the existing and proposed built form departs from the Height of Buildings standard (**height standard**) at Clause 4.3 of Manly Local Environmental Plan 2013 (**LEP 2013**), triggering the requirement for the preparation of a Clause 4.6 Exception to Development Standards submission.

As required pursuant to Clause 4.6(3) of LEP 2013, this submission provides a written request to the Northern Beaches Council (the **Council**) that seeks to justify the proposal's departure from the height standard is acceptable from an environmental planning point of view and that compliance with the standard is both unreasonable and unnecessary given the circumstances of the case.

This submission (relative to format and content) takes into consideration relevant (current) NSW Land and Environment Court (**NSW LEC**) judgements.

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2.0 DESCRIPTION OF THE PLANNING INSTRUMENT, DEVELOPMENT STANDARD AND PROPOSED VARIATION

2.1 What is the name of the environmental planning instrument that applies to the land?

Manly Local Environmental Plan 2013 (**LEP 2013**).

2.2 What is the zoning of the land?

The land is zoned R2 Low Density Residential.

2.3 What are the objectives of the zone?

The objectives of the R2 Low Density Residential zone are:

- *to provide for the housing needs of the community within a low density residential environment.*
- *to enable other land uses that provide facilities or services to meet the day to day needs of residents.*

2.4 What is the development standard being varied?

Development Standards' are defined under Section 1.4 of the Environmental Planning and Assessment Act, 1979 (the **Act**) as follows:

development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of: …

(a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,

(b) the proportion or percentage of the area of a site which a building or work may occupy,

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

(d) the cubic content or floor space of a building,

(e) the intensity or density of the use of any land, building or work,

(f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,

(g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,

(h) the volume, nature and type of traffic generated by the development,

(i) road patterns,

(j) drainage,

(k) the carrying out of earthworks,

(l) the effects of development on patterns of wind, sunlight, daylight or shadows,

(m) the provision of services, facilities and amenities demanded by development,

(n) the emission of pollution and means for its prevention or control or mitigation, and

*(o) such other matters as may be prescribed. (**my emphasis**)*

The height control at Clause 4.3 of LEP 2013 is clearly a development standard as it relates to:

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

2.5 Is the development standard a performance based control? Give details.

Yes, as it contains objectives to which compliance with the standard is targeted to achieve.

2.6 Under what clause is the development standard listed in the environmental planning instrument?

The height standard is listed at Clause 4.3 of LEP 2013.

2.7 What are the objectives of the development standard?

The objectives of the height standard are stated at Clause 4.3(1) of LEP 2013 and are:

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

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

(c) to minimise disruption to the following:

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

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

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

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

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

2.8 What is the numeric value of the development standard in the environmental planning instrument?

Clause 4.3(2) of LEP 2013 establishes a maximum building height of 8.5m for the site.

2.9 What is the proposed numeric value of the development standard in the development application?

Existing and proposed height calculation diagrams by Case Ornsby Architecture are contained within the Architectural Drawings submitted separately. Due to substantial topographical variations and the existing benched levels the maximum building height varies.

As existing the dwelling house has a maximum height of 11.64m (ridge RL 36.24 as measured from ground level existing, being the basement FFL 24.60) and which departs from the standard. Through a different skillion roof design, the dwelling house has a reduced maximum height of 9.7m, which still departs from the standard.

The garage / studio has a maximum height of 7.313m and complies with the standard. Its overall envelope is the same as that originally approved under DA 2020/189.

2.10 What is the percentage variation (between the proposal and the environmental planning instrument)?

The existing percentage variation is 37% (rounded up) or 3.14m.

The proposed **reduced** percentage variation is 14.1% or 1.2m.

3.0 ASSESSMENT OF THE PROPOSED VARIATION

3.1 Is the proposed development in the public interest because it is consistent with the objectives for development in the zone and the objectives of the particular standard?

3.1.1 Objectives of the zone

As stated at Clause 2.3 of LEP 2013, the objectives of the R2 Low Density Residential zone are:

- *to provide for the housing needs of the community within a low density residential environment.*
- *to enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The site may be developed with the stated variations to the height standard. Consistency is not readily quantifiable in absolute numerical terms. The proposal despite its departure from the height standard is consistent with the stated objectives of the R2 Low Density Residential zone and is therefore considered to be a suitable and appropriate redevelopment of the site as it:

- maintains the existing dwelling house on an existing low density residential allotment of land;
- provides flexible accommodation for a family through the provision of the studio below the new double garage;
- maintains the existing subdivision pattern and therefore the existing allotment density within an established residential locality;
- there are no unreasonable amenity impacts to neighbouring and nearby properties and the surrounding public domain. The environmental amenity of the neighbours has been preserved;
- maintains and enables a built form that is not incompatible with the existing and likely future built form context;
- undertakes works which are not visually intrusive or bulky when viewed from the surrounding public domain and maintains a built form that sits comfortably within the site's locational built form context.
- is located on a site of sufficient size to appropriately accommodate the overall built form; and
- the occupants of the dwelling can work from home as/if required and utilise other land uses that provide facilities or services meeting their day to day needs. There is no identifiable impact to other local centres or non-residential precincts.

3.1.2 Objectives of the height standard

The proposal despite its departure from the height standard is nonetheless consistent with the relevant objectives and therefore provides an appropriate planning outcome for the following reasons:

Objective (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,

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

- The reduced departure to the height standard and the development generally is not inconsistent with the relevant objectives of the height standard because it does not materially alter the existing correlation

between building height and density, and the correlation is appropriate under the circumstances. Nor does it alter the buildings' compatibility with the bulk, scale, streetscape or desired future character of the locality, and that compatibility is appropriate under the circumstances given the overall lack of adverse impacts to neighbouring properties and the surrounding public domain.

- A single dwelling house plus a separate studio on an existing low density residential allotment of land is maintained. This low density built form and land use is desired by the site's and surrounding locality's R2 Low Density Residential zoning.
- The surrounding locality is characterised by multi level elevated dwellings set on typical allotments of land influenced by the locality's topographical characteristics and mature/thick vegetation. A variety of housing types and architectural styles are provided within a varied subdivision pattern that is influenced by the locality's topographical variations (falling from east to west or front to back). The integrity of individual dwellings varies considerably. There is little architectural, aesthetic, social or cultural built form significance. Dwellings are typically adjusted to the natural topography and are oriented to take advantage of their westerly views and vistas. As demonstrated by **Figure 1,** the existing and higher (as compared to that proposed) built form sits is clearly not incompatible considering its established and likely future built form context;
- As two distinct and separate built forms are maintained / proposed the GFA / FSR of the dwelling house if calculated in isolation would comply with the standard, thus providing an acceptable bulk and scale. The garage / studio (compliant relative to height) presents a traditional albeit setback double garage frontage to Amiens Road with the studio contained below the garage. It does not have any identifiable impact on neighbouring properties, does not contribute to the visible overall bulk and scale and furthermore is not readily visible from the surrounding public domain. The garage / studio is the same envelope / form previously approved under DA 2020/189.
- The dwelling's overall height, bulk and scale is less than that of the existing built form. Its overall envelope is similar to that previously approved under DA 2020/189 (see **Figure 17** in the SEE). The scale of the proposal is characterised by the desired future character for the area. The height (reduced from that existing), bulk and scale of the built form does not influence or set a precedent for future buildings along the western side of Amiens Road. This is aptly demonstrated at **Figure 1**. Additionally, the dwelling's height when viewed from Amiens Road is one which complies (7.12m).
- The building volume has been designed to be articulated, and to facilitate a contextually appropriate massing. The elevations are articulated in response to the form and size of the dwelling. The proposed design is re-interpreting established roof shapes (skillion form) and slopes, whilst integrating contemporary materials and an architectural aesthetic.
- The proposed improved roof geometry through the parapet and skillion roof design is not an inconsistent design element and improves views (including water, land and water interface) from the surrounding public domain as compared to the existing varied pitched roof form.
- The building design creates a modern facade treatment to the elevations with a variation of materials, colours, patterns and textures which assist in the delineation of zones within the building and create an aesthetically pleasing development that is consistent with desired future character.
- The visual catchment contains several buildings that will present a similar bulk and scale and which set the character. Consequently, the non-compliance with the standard does not result in a scale of building

that is out of character with the surrounding development (see **Figure 1**). The extent of the departure has been reduced from that existing.



Figure 1 – *The site (circled) and its neighbours as viewed from the opposite side of the harbour*

- The proposal conforms to and reflects the site's natural landforms. Excavation whilst proposed is not excessive and FFL's for the dwelling remain unaltered and are the same as that previously approved for the garage / studio under DA 2020/189.
- The expression of the built form is adjusted to respond to:
  - solar access and the site's orientation;
  - the site and surrounding locality's topographical characteristics;
  - the design and character of neighbouring built form;
  - maintaining the amenity of the neighbours and the surrounding public domain; and
  - internal and external amenity for the occupants.

Objective (c) - to minimise disruption to the following:

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

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

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

- Generally, a similar building alignment is proposed as existing, albeit with an overall reduced maximum height and similar envelope / alignment to that previously approved under DA 2020/189. Dwellings are adjusted to the natural topography and are typically oriented to take advantage of their panoramic westerly views and vistas of the harbour, including land and water interface. The site's only real built form neighbours are to the north and south respectively. These are typically two or three storey

dwellings with elevated external spaces that are also logically oriented to take advantage of their westerly vistas, generally with minimal interruption (see below). View context images for the neighbouring property to the site's north across a side boundary and from southern (side) elevation openings demonstrate that there is no currently no view as a result of the existing built form.

- Council's view assessment of the now approved DA 2020/189 made the following observations:

  The proposed development has the potential to impact upon existing views enjoyed by the occupants of 15 Amiens Road.

  As raised by the objector, the view that has the potential to be impacted is one of Chinamans Beach on the western foreshore of Middle Harbour. As this is a view that includes the interface between land and water, the view is considered to be highly valuable. However, there are a number of obstructions to this view which reduces its retention value.

  The view of Chinamans Beach is obtainable from the rear living area and sunroom of the dwelling at 15 Amiens Road. The view is mostly obtainable from a standing position across the side boundary. The view is generally not attainable from a seating position as the side boundary fencing and hedging completely obscures the view.



  As the view of Chinamans Beach is obtained across a side boundary, the complete retention of such a view is generally unrealistic. In the context of the development site, the rear of the site is wider than the front meaning that siting of the dwelling further towards the front is not considered to be feasible.

  When considering the full extent of view enjoyed by 15 Amiens Road, the proposed development will have a negligible impact as the existing view towards the west and northwest will not be impacted. This view corridor also contains highly valuable elements including the interface between land and water.



While the proposed development has the potential to cause an impact to part of the existing view enjoyed by 15 Amiens Road, the extent of impact is very minor. The existing view towards the west and northwest is not impacted by the proposed development. While the proposed development incorporates non-compliant side boundary setbacks, the repositioning of the building to demonstrate setback compliance will not fundamentally alter the level of view loss caused by the development. As such, it is considered the view impact caused by the proposed development is reasonable.

- It is noted the setbacks to the northern boundary are greater than that previously approved under DA 2020/189 (see **Figures 13** and **17** in the separately submitted SEE). Any additional built form adjacent to this boundary is at the front (eastern side) of the altered dwelling. The expansive undercroft north western portion of the dwelling remains free of external enclosing walls. Westerly and north westerly views from this property remain completely unaffected.
- The dwelling and its surrounds is not incompatible considering the established and likely future built form relative to height, bulk, scale and envelope including setbacks locational context (see **Figures 5**, **6** and **17** in the separately submitted SEE). The proposal exhibits a high quality architectural, urban and landscape design solution for the site and which appropriately responds to the site's constraints. Notwithstanding the departure to the height standard, the dwelling's height has been reduced from that existing and it remains highly articulated and visually interesting. The dwelling maintains a relative human scale given its locational context. Adjacent properties will continue to be provided with vistas out, over and across the site (sometimes via side boundary), particularly those to the site's north and south.
- Views from the Amiens Road carriageway (i.e. the public domain) will be improved due to the proposed dwelling's decreased height and skillion roof design. Its eastern elevation height is only 7.12m. These views are significant and include land and water interface.
- The overall bulk and scale and building envelope of the proposed built form has been reduced from that existing. It is generally consistent with that of its neighbouring and nearby properties and does not in any way preclude the appropriate redevelopment of these properties, nor impinge on existing views and vistas.

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

- As a similar building alignment and reduced overall building height is proposed, the shadows cast by the altered / new built form are not materially different nor do they affect different areas of the neighbouring properties. Generally existing levels of sunlight is retained to the neighbours and their primary living rooms and private open space areas.
- The design is consistent with the objectives of the control as it ensures the form and scale of the dwelling is not excessive and it also maintains a relative continuity of building form. By this the proposal exhibits a similar height, bulk and scale to that of adjacent properties.
- The site's open plan primary living rooms will receive more than adequate levels of direct solar access and natural ventilation which will have a positive impact on levels of residential amenity.
- The site's landscaped and private open space area receive satisfactory levels of direct solar access and thus has a positive impact in relation to residential amenity. Furthermore, the private open space areas of the neighbouring properties maintain appropriate levels of solar access and their useability and functionality is not compromised.
- Due to the existing development density, fencing, topographical and vegetative characteristics of the area, the adjacent development is already overshadowed. The proposed built form does not fully block solar access to any western elevation openings (those which provide significant outlook and amenity) or external elevated open space.
- The shadow cast by the built form is generally expected and typical of existing development in the locality, particularly given the locality's topographical characteristics.
- Primary living rooms generally remain unaffected as they are logically provided with a westerly orientation (and more than one opening) for significant outlook and amenity.
- Small areas of land (typically the battle-axe driveway) are affected and their relative useability is not materially compromised.
- Any existing or proposed overshadowing impact will not preclude an appropriate redevelopment or the redevelopment potential of any nearby property that is zoned to do so.
- The limited overshadowing of the proposal is acceptable in the circumstances of the case as it occurs for short periods of time and in the winter arc of the sun. Additional solar access would clearly be provided during the equinox, which is often the true test of the acceptability of a building envelope. Overshadowing within a relatively dense locality is inevitable due to the closeness and type of built form, fencing, associated vegetation, topographical and landscape characteristics. Separation between the site and the neighbours has been maintained.

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

- The site is within the R2 Low Density Residential zone. Therefore, this objective is of no relevance to the proposal.

3.2 Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

A development at 13 Amiens Road, Clontarf, that strictly complies with the 8.5m height standard is unreasonable or unnecessary given the following presented circumstances:

- The existing dwelling house departs from the standard.
- The alterations and additions to the dwelling reduce the dwelling's maximum height by 1.94m.
- Compliance with the standard would require demolition of the existing dwelling. Although demolition has been approved under DA 2020/189, it is economically impractical and therefore inconsistent with the objects of the Act.
- Alterations and additions are proposed to an existing three storey dwelling. A two storey garage and studio replaces an existing two storey garage and separate storage level built form. The built form is therefore relative to storeys essentially no different to that existing, although relative to overall height, the dwelling is less than that existing.
- All existing FFL's for the dwelling remain unaltered. The existing built form, its benched level and the locality's topography clearly accentuates the departure.
- The height of the garage / studio complies.
- The dwelling's roof geometry (skillion roof form) is improved when compared to that existing (multiple pitched roof areas).
- The dwelling's height at its eastern elevation (that visible from Amiens Road) is only 7.12m and therefore is less than that permitted.
- The environmental impacts of the existing higher built form are known. The altered and added to dwelling, lower than existing is unlikely to cause any further environmental impacts above those existing. The overall envelope is similar to that already deemed environmentally acceptable under DA 2020/189.
- The dwelling's overall height, bulk and scale is less than that of the existing built form. Its overall envelope is similar to that previously approved under DA 2020/189 and remains highly articulated and visually interesting.
- The altered and proposed built form exhibits architectural design excellence and an improved landscape condition, a desirable planning and built form outcome. The altered / proposed built form is clearly not incompatible when considering the site's wider visual context as viewed from the surrounding public domain, given the scale and form of other hillside developments in the vicinity.
- Following a rigorous merit based assessment, approval of a building envelope that relates to the locality's existing character but which exceeds the LEP 2013 development standard, will not set a precedent for other non-conforming applications, particularly considering the overall building envelope is not dissimilar to that previously approved under DA 2020/189.
- The site is proportioned to allow the efficient realisation and internalisation of the impacts of the altered built form without an adverse visual impact or perceived built form dominance. The departure to the height standard has been arranged considering the site's existing built form, the previously approved DA and the neighbouring and nearby context. In this regard and as demonstrated by the DCP 2013

assessment at **Table 5** and Section 4.2 of the separately submitted SEE, the reduced departure to the height standard nonetheless preserves environmental amenity in relation to:

- solar access and overshadowing;
- access to natural daylight and ventilation;
- aural and visual privacy;
- views and vistas from neighbouring and nearby properties and the public domain; and
- visual impact and massing; and
- parking or traffic generation.

- Within this context, it is clear the site can accommodate the reduced non-compliant dwelling height as proposed and the development is of an intensity and scale commensurate with the built form character and the prevailing urban conditions and capacity of the locality.
- The overall dwelling height will not preclude (and hasn't done so in the past) redevelopment of neighbouring and nearby properties.

In ***Wehbe v Pittwater Council [2007] NSWLEC 827***, Preston CJ established five potential tests for determining whether a development standard could be considered to be unreasonable or unnecessary. Those tests have been considered below.

Are the objectives of the standard are achieved notwithstanding non-compliance with the standard?

See above detailed assessment of the proposal by reference to the objectives of the height standard. That assessment demonstrates that the objectives of the standard are achieved notwithstanding the non-compliance with the standard, which has been reduced as compared to that existing.

The altered built form will not be incompatible considering the site's existing locational built form context and that desired by the current and likely future planning controls.

On this occasion (and as demonstrated at **Table 5** and Section 4.2 of the separately submitted SEE) the reduced non-compliance better achieves the objectives by allowing for an architecturally altered dwelling that enables high (improved) internal amenity for the occupants whilst reasonably maintaining the environmental amenity (solar access, visual and aural privacy, views, vistas, outlook, natural daylight and ventilation) of the neighbours. Additionally, it permits the construction of the new height compliant garage / studio entirely consistent (envelope, form, siting etc) with that previously approved under DA 2020/189.

The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is not necessary?

On this occasion LPDS does not believe that the underlying objective or purpose is not relevant to the development and therefore LPDS does not rely on this reason.

Would the underlying objective or purpose of the standard be defeated or thwarted if compliance was required?

Compliance with the stated objectives of the 8.5m height standard would be thwarted if strict compliance with the standard was required in the circumstances as the quality of the residential outcome would be compromised for no sound planning reason, would require demolition of the existing non-compliant dwelling and would be impractical considering the approval of DA 2020/189, which remains current.

The resultant built form is one that exhibits substantial merit relative to architectural design and an embellished landscape condition. It includes appropriate environmental initiatives and has a positive built form relationship with its neighbouring and nearby elevated multi level built form.

Has the development standard been virtually abandoned or destroyed by the Council's own actions in departing from the standard?

A review of Council's mot current published Clause 4.6 Variations Register (1 January to 31 March 2023), demonstrates that the height standard cannot said to be abandoned.

However, and notwithstanding the non-abandonment of the standard, there is numerous built form in the surrounding locality and throughout the Northern Beaches LGA (former Manly) that are zoned R2 Low Density Residential that depart from the current LEP 2013 height standard and others.

Is the zoning of the land unreasonable or inappropriate?

The zoning of the land is reasonable and appropriate given the site's location. The immediate locality's predominant built form character is large two and three storey dwelling houses set on relatively large allotments with established landscaped areas and varied car parking arrangements. The integrity of the locality's building stock varies and demonstrates a range of architectural scale, form, style and detail.

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

This section demonstrates that there are sufficient environmental planning grounds to justify contravening the FSR standard as required by clause 4.6(3)(b) of LEP 2013.

It is noted that in *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118, Preston CJ observed that in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard, not on the development as a whole.

Additionally, it is noted that in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, Pain J observed that it is within the discretion of the consent authority to consider whether the environmental planning grounds relied on are particular to the circumstances of the proposed development on the particular site.

Although the term 'environmental planning ground' is not defined, it is commonly accepted that the objects of the Act constitute 'environmental planning grounds'. Regarding the proposal at 13 Amiens Road, Clontarf, the particular circumstances of this case distinguish it from others and therefore there are sufficient environmental planning grounds to justify contravening the height standard being:

- As addressed earlier in this report and in the documentation prepared by Case Ornsby Architecture and other technical inputs for the DA, the proposal clearly improves the roof geometry of the dwelling and at the same time reduces its maximum height without resulting in any unreasonable amenity and environmental impacts to neighbours or the surrounding public domain.
- The SEE and supporting documentation submitted with the DA provides a holistic environmental planning assessment of the proposal and demonstrates that subject to adopting a range of reasonable mitigation measures, there are sufficient environmental planning grounds to support the development. In particular, the submitted documentation demonstrates that despite the contravention to the FSR

standard, it nonetheless enables the relatively modest and appropriate redevelopment of the site to occur, which is clearly not incompatible with the established neighbouring built form context.

- Existing FFL's for the dwelling remain unaltered. The benched form and the site's topography accentuates the departure at the western elevation, whereas its compliant height at the eastern elevation is only 7.12m.
- The dwelling's overall height is reduced by 1.94m.
- The height of the garage/studio complies with the standard.
- A similar building envelope / alignment is proposed as that previously approved under DA 2020/189.
- Despite the departure to the FSR standard, the additional GFA/FSR does not materially add to the dwelling's height, bulk and scale when compared to that existing.
- The altered / proposed built form is clearly not incompatible when considering the site's wider visual context as viewed from the surrounding public domain, given the scale and form of other hillside developments in the vicinity.
- The proposed breach of the standard results in an improved amenity outcome for the residents without contributing additional bulk, adverse environmental or amenity related impacts or relative intensification of the altered built form.
- The departure to the height standard has been arranged considering the site's existing built form, the previously approved DA and the neighbouring and nearby context. In this regard and as demonstrated by the DCP 2013 assessment at Table 4 and Section 4.2 of the separately submitted SEE, the non-compliant built form nonetheless preserves environmental amenity in relation to:
  - solar access and overshadowing;
  - access to natural daylight and ventilation;
  - aural and visual privacy;
  - views and vistas from neighbouring and nearby properties and the public domain; and
  - visual impact and massing; and
  - parking or traffic generation.
- Appropriate environmental initiatives are proposed.
- The highly articulated façade treatment and selection of characteristic and recessive external materials and finishes reduces the dwelling's perceived height, bulk and scale when viewed from the surrounding public domain.

The above environmental planning grounds relate specifically to the departure to the height standard which has been reduced, a desirable outcome. The above points warrant the exceedance, are not generic, but rather, specific to the site and circumstances of the proposal. An appropriate and equitable planning outcome results.

3.4 Whether contravention of the development standard raises any matter of significance for the State or regional Environmental Planning?

There is no identified outcome which would be prejudicial to planning matters of state or regional significance that would result as a consequence of varying the development standard as proposed by this application as the reduced departure from the height standard relates to local and contextual conditions, including existing built form and topography. The variation sought is responding to the broad brush nature of the control applied across an area that supports a variety of built forms on varying allotment sizes.

The built form's height does not set a precedent or preclude any neighbouring or nearby property from being appropriately redeveloped. It is an existing condition, which has been reduced. Further the dwelling's roof geometry is improved when compared to that existing. The retention of improved housing for a single family will assist in meeting housing and locational context demand. The site has good access to services, facilities and amenities. Amenity for the neighbours has been preserved.

Finally, LPDS is not aware of any other matters required to be taken into consideration by the Secretary before granting concurrence.

3.5 How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Act?

The relevant objects of the Act as specified in Section 1.3, are in our opinion, achieved by the proposed development in that it:

- promotes the social and economic welfare of the community;
- facilitates ESD;
- promotes the orderly and economic use and development of land;
- promotes the sustainable management of built and cultural heritage;
- promotes good design and amenity of the built environment; and
- promotes the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.

A strictly complying development would require demolition of the existing dwelling which is unquestionably economically impractical, despite a current approval for such. Considering demolition of the existing dwelling, in that sense it may be said that compliance with the standard would hinder the attainment of the objects of section 1.3 of the Act.

Compliance with the standard forgoes the opportunity to enable an altered dwelling that has a visually interesting architectural expression that reduces its maximum height by 1.94m and improves the dwelling's roof geometry without unreasonably impacting the amenity of neighbours. The proposal as a whole has planning merit without adverse impacts.

The site's redevelopment and unaltered departure from the height standard does not preclude or isolate an adjacent property(s) from being appropriately redeveloped. The development as proposed is consistent with the provisions of orderly and economic development and would not hinder the objects of the Act in Section 1.3.

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3.6 Is there public benefit in maintaining the development standard?

Generally, there is public benefit in maintaining standards. However, there is public interest in maintaining a degree of flexibility in specific circumstances. In the current case, strict compliance with the height standard is not achievable given the existing departing dwelling and would serve no purpose other than to impose numerical inflexibility and economic impracticality. The dwelling's height has been reduced, which is clearly a desirable outcome.

In the current case, strict compliance with the height standard would preclude the opportunity to provide a benchmark architectural design solution and an embellished landscape condition for the site.

It is known that Council has considered applications favourably which depart from the height standard. There are no reasons why it is not in the public interest and its refusal based on the standard's departure is not warranted. Under the presented circumstances the reduced variation to the height standard is in the public interest because it is not inconsistent with its objectives and neither is it inconsistent with the objectives for development in the R2 Low Density Residential zone. Therefore, it is argued that there is no public benefit in maintaining the adopted height of buildings planning control.

On balance the reduced variation to the height standard is an appropriate use of the provisions of Clause 4.6. Accordingly, there is in the specific circumstances of the case, no public benefit in strictly maintaining the development standard.

3.7 Is the objection well founded?

For the reasons outlined in previous sections, it is considered the objection is well founded in this instance and granting an exception to the development can be supported given the presented circumstances of the case. The development does not contravene the objects specified at Section 1.3 of the Act.

4.0 CONCLUSION

The proposed variation to the height standard is based on the reasons contained within this formal request for an exception to the standard. A development strictly complying with the numerical height standard would not significantly improve the amenity of surrounding properties or Council's desired future built form character as:

- the dwelling already departs from the standard;
- the departure to the standard has been reduced;
- the dwelling's maximum height is 1.94m less than that existing;
- the proposal satisfies and achieves the objectives of the R2 Low Density Residential zone and is consistent with Council's strategic intent;
- the proposal satisfies and achieves the objectives of the height standard;
- the altered / proposed built form is not incompatible considering its established, desired and likely future built form context;
- it clearly improves the dwelling's roof geometry, reduces its overall height and does not result in any unreasonable amenity and environmental related impacts to neighbours; and
- improved internal amenity for the occupants.

It is concluded that the objection:

- is well founded;
- demonstrates that compliance with the standard is both unnecessary and unreasonable;
- demonstrates that there are sufficient environmental planning grounds in which to support the proposal; and
- the concurrence of the Secretary is likely to be forthcoming because there is no identified outcome which would be prejudicial to planning matters of state or regional significance that would result as a consequence of varying the development standard and there are no additional matters which would indicate there is any public benefit of maintaining the development standard in the circumstances of this application.

On that basis, the consent authority can be satisfied that the proposed development is in the public interest because it is consistent with the objectives for development in the zone and the objectives of the standard. It is therefore appropriate to exercise the flexibility provided by Clause 4.6 of LEP 2013.

CLAUSE 4.6 VARIATION TO THE FSR DEVELOPMENT STANDARD

Demolition, substantial alterations & additions to the dwelling house, new garage and studio

13 Amiens Road, Clontarf

Prepared on behalf of

Alan & Gillian Scott – Brown c/- Case Ornsby Architecture

7 SEPTEMBER 2023

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1.0 INTRODUCTION

This Exception to Development Standards Submission accompanies a Development Application (DA) proposing demolition works, substantial alterations and additions to the existing dwelling house, a new garage and studio below, retention of the existing swimming pool and its surrounds, landscaping and other required site works at 13 Amiens Road, Clontarf (the **site**).

Calculations in this submission are based on plans and information provided by Case Ornsby Architecture. This submission should be read in conjunction with all documentation submitted with the DA.

As noted in the separate SEE, by LPDS, the proposal departs from the FSR standard at Clause 4.4 of Manly Local Environmental Plan 2013 (**LEP 2013**), triggering the requirement for the preparation of a Clause 4.6 Exception to Development Standards submission.

As required pursuant to Clause 4.6(3) of LEP 2013, this submission provides a written request to the Northern Beaches Council (the **Council**) that seeks to justify the proposal's departure from the FSR development standard is acceptable from an environmental planning point of view and that compliance with the standard is both unreasonable and unnecessary given the circumstances of the case.

This submission (relative to format and content) takes into consideration relevant (current) NSW Land and Environment Court (**NSW LEC**) judgements.

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2.0 DESCRIPTION OF THE PLANNING INSTRUMENT, DEVELOPMENT STANDARD AND PROPOSED VARIATION

2.1 What is the name of the environmental planning instrument that applies to the land?

Manly Local Environmental Plan 2013 (**LEP 2013**).

2.2 What is the zoning of the land?

The land is zoned R2 Low Density Residential.

2.3 What are the objectives of the zone?

The objectives of the R2 Low Density Residential zone are:

- *to provide for the housing needs of the community within a low density residential environment.*
- *to enable other land uses that provide facilities or services to meet the day to day needs of residents.*

2.4 What is the development standard being varied?

Development Standards' are defined under Section 1.4 of the Environmental Planning and Assessment Act, 1979 (the **Act**) as follows:

development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of: …

(a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,

(b) the proportion or percentage of the area of a site which a building or work may occupy,

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

(d) the cubic content or floor space of a building,

(e) the intensity or density of the use of any land, building or work,

(f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,

(g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,

(h) the volume, nature and type of traffic generated by the development,

(i) road patterns,

(j) drainage,

(k) the carrying out of earthworks,

(l) the effects of development on patterns of wind, sunlight, daylight or shadows,

(m) the provision of services, facilities and amenities demanded by development,

(n) the emission of pollution and means for its prevention or control or mitigation, and

*(o) such other matters as may be prescribed. (**my emphasis**)*

The FSR control at Clause 4.4 of LEP 2013 is clearly a development standard as it relates to:

- the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work as specified by **subclause (c)**; and
- the cubic content or floor space of a building as specified by **subclause (d)**.

2.5 Is the development standard a performance based control? Give details.

Yes, as it contains objectives to which compliance with the standard is targeted to achieve.

2.6 Under what clause is the development standard listed in the environmental planning instrument?

The FSR development standard is listed at Clause 4.4 of LEP 2013.

2.7 What are the objectives of the development standard?

The objectives of the FSR development standard are expressly stated at Clause 4.4(1) of LEP 2013 and are:

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

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

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

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

(e) to provide for the viability of Zone E1 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.

2.8 What is the numeric value of the development standard in the environmental planning instrument?

Clause 4.4(2) of LEP 2013 establishes a maximum 0.4:1 FSR. Based on a site area of 967m^2, this equates to a gross floor area (**GFA**) of 386.8m^2.

2.9 What is the proposed numeric value of the development standard in the development application?

GFA calculation diagrams by Case Ornsby Architecture are submitted separately.

The altered dwelling house and the new (rebuilt) garage / studio has an overall GFA of 426.67m^2 or an FSR of 0.44:1.

It is noted that although the overall proposal departs from the standard and as two separate built forms are proposed, the GFA / FSR of the altered dwelling house (354.07m^2 / 0.37:1) if calculated in isolation would comply with the standard. The resultant GFA of the studio (below the garage) is the built form which triggers the departure from the standard.

Additionally, it is noted the proposed FSR of 0.44:1 is the same at that previously approved under DA 2020/189.

2.10 What is the percentage variation (between the proposal and the environmental planning instrument)?

The proposed percentage variation is 10% or 39.87m^2.

3.0 ASSESSMENT OF THE PROPOSED VARIATION

3.1 Is the proposed development in the public interest because it is consistent with the objectives for development in the zone and the objectives of the particular standard?

3.1.1 Objectives of the zone

As stated at Clause 2.3 of LEP 2013, the objectives of the R2 Low Density Residential zone are:

- *to provide for the housing needs of the community within a low density residential environment.*
- *to enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The site may be developed with the stated variations to the FSR standard. Consistency is not readily quantifiable in absolute numerical terms. The proposal despite its departure from the FSR development standard is consistent with the stated objectives of the R2 Low Density Residential zone and is therefore considered to be a suitable and appropriate redevelopment of the site as it:

- maintains the existing dwelling house on an existing low density residential allotment of land;
- provides flexible accommodation for a family through the provision of the studio below the new double garage;
- maintains the existing subdivision pattern and therefore the existing allotment density within an established residential locality;
- there are no unreasonable amenity impacts to neighbouring and nearby properties and the surrounding public domain. The environmental amenity of the neighbours has been preserved;
- maintains and enables a built form that is not incompatible with the existing and likely future built form context;
- undertakes works which are not visually intrusive or bulky when viewed from the surrounding public domain and maintains a built form that sits comfortably within the site's locational built form context.
- is located on a site of sufficient size to appropriately accommodate the overall built form; and
- the occupants of the dwelling can work from home as/if required and utilise other land uses that provide facilities or services meeting their day to day needs. There is no identifiable impact to other local centres or non-residential precincts.

3.1.2 Objectives of the FSR standard

The proposal despite its departure from the FSR standard is nonetheless consistent with the relevant objectives and therefore provides an appropriate planning outcome for the following reasons:

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

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

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

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

- The FSR standard departure and the development generally is not inconsistent with the relevant objectives of the FSR standard because it does not materially alter the existing correlation between building height and density, and the correlation is appropriate under the circumstances. Nor does it alter the buildings' compatibility with the bulk, scale, streetscape or desired future character of the locality, and that compatibility is appropriate under the circumstances given the overall lack of adverse impacts to neighbouring properties and the surrounding public domain.
- A single dwelling house plus a separate studio on an existing low density residential allotment of land is maintained. This low density built form and land use is desired by the site's and surrounding locality's R2 Low Density Residential zoning.
- As two distinct and separate built forms are maintained / proposed the GFA / FSR of the dwelling house if calculated in isolation would comply with the standard, including that GFA associated to the garage. The studio is the built form which triggers the departure. The studio does not have any identifiable impact on neighbouring properties, does not contribute to the visible overall bulk and scale and furthermore is not readily visible from the surrounding public domain. The garage / studio is the same envelope / form previously approved under DA 2020/189.
- The surrounding locality is characterised by multi level elevated dwellings set on typical allotments of land influenced by the locality's topographical characteristics and mature/thick vegetation. A variety of housing types and architectural styles are provided within a varied subdivision pattern that is influenced by the locality's topographical variations (falling from east to west or front to back). The integrity of individual dwellings varies considerably. There is little architectural, aesthetic, social or cultural built form significance. Dwellings are typically adjusted to the natural topography and are oriented to take advantage of their westerly views and vistas. As demonstrated by **Figures 5** and **6** in the SEE, the altered dwelling house and its surrounds is not incompatible considering its established and likely future built form context, including that proposed and as previously approved under DA 2020/189.
- The scale of the proposal is characterised by the desired future character for the area. The height, bulk and scale of the built form does not influence or set a precedent for future buildings along the western side of Amiens Road. This is aptly demonstrated at **Figures 5** and **6** in the SEE.
- The dwelling's overall height, bulk and scale is less than that of the existing built form. Its overall envelope is similar to that previously approved under DA 2020/189 (see **Figure 17** in the SEE).
- The building volume has been designed to be articulated, and to facilitate a contextually appropriate massing. The elevations are articulated in response to the form and size of the dwelling. The proposed design is re-interpreting established roof shapes and slopes, whilst integrating contemporary materials and an architectural aesthetic;
- The proposal conforms to and reflects the site's natural landforms. Excavation whilst proposed is not excessive and FFL's for the dwelling remain unaltered and are the same as that previously approved for the garage / studio under DA 2020/189.
- Essentially, the objective of an FSR standard is to ensure that the intensity of development respects and reflects the overall built form of a locality and does not detrimentally affect the amenity of the area. The maximum FSR that a site can achieve is determined by its environmental constraints. The site is proportioned to allow the efficient realisation and internalisation of the impacts of the proposed built

form without an adverse visual impact or perceived built form dominance. The departure to the FSR standard has been arranged considering the neighbouring and nearby context and the desire to fill the missing tooth. In this regard and as demonstrated by the DCP 2013 assessment at **Table 5** and Section 4.2 of the separately submitted SEE, the proposed to be altered built form nonetheless maintains environmental amenity in relation to:

- solar access and overshadowing;
- access to natural daylight and ventilation;
- aural and visual privacy;
- views and vistas from neighbouring and nearby properties and the public domain; and
- visual impact and massing; and
- parking or traffic generation.

- The quantum of additional floor space (above the FSR standard and specifically relative to the garage / studio) is arranged on the site in a manner that does not result in adverse impacts upon neighbouring properties or the public realm by way of overshadowing, visual massing, view impacts (vistas improved from the surrounding public domain because of the built form's siting) or visual and acoustic privacy.
- As demonstrated on the Sections within the Architectural Drawings (submitted separately) and although if calculated in isolation, the dwelling would comply with the standard and it includes existing / proposed GFA within the lower ground floor level. The numerical departure from the standard is therefore inconsequential from a planning perspective as it does not perceptibly add to the overall built form's impacts. This is a common design feature/element for hillside properties, such as the site as it 'benefits' from sloping land which enables appropriate excavation to additional subterranean floorspace. These areas are generally screened from the public domain by the sandstone or similar structure retaining walls as well as established perimeter landscaping. These areas are generally not visible from the surrounding public domain and where they are visible, they form the common design element of the base, the body and the top of the dwelling.
- Existing and proposed landscaping across the site ensures there is no visual built form dominance, when viewed from the surrounding public domain (Amiens Road, Clontarf Point or the harbour). The visual character between the new development and existing locality landscape will not fundamentally be altered. While the garage at the street frontage is to be larger than the existing structure (albeit as approved under DA 2020/189), existing canopy trees in the street verge will still dominate the visual character of the public domain. The altered dwelling will not readily be discernible from the public domain as it is positioned substantially lower than the street level. The altered and proposed built form exhibits architectural design excellence and an improved landscape condition, a desirable planning and built form outcome.
- The proposed built form and landscape character is not dissimilar to other buildings in the surrounding locality. In this regard, significant landscaped areas are retained which maintain the locality's landscape and scenic quality/characteristics. Substantial areas of unrestricted deep soil landscaping are proposed promoting infiltration and absorption. The proposed landscaping does not result in the loss of any mature vegetation (worthy of retention) with vegetation retained where practical and high quality, durable and appropriate planting is proposed relative to the site's location and neighbours. The overall design and siting of the useable landscaped area provides for superior residential amenity for the occupants.;

- It provides an urban framework that supports the principles of ESD/environmental initiatives and is BASIX compliant.
- The dwelling is surrounded by substantial private gardens/landscaped areas reducing its visual impact or visual connection with the surrounding public domain.
- The dwelling's actual bulk and scale when viewed from the surrounding public domain is a built form which is generally expected given the site's prestigious waterfront hillside Clontarf Point location.

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

- Whilst this objective is not technically relevant to the proposal given the site's R2 Low Density Residential zoning, the proposal's positive impacts relative to land zoned for business purposes includes:
  - the population on the site will continue to patronage facilities within the surrounding centres and villages, a desired outcome. The proposal otherwise has no identifiable impact on the viability of local centres or villages;
  - it maintains residential housing on a residential allotment within the Northern Beaches LGA;
  - construction will provide temporary employment opportunities;
  - the promotion of the locality as a desirable place to live and work;
- The provision of housing close to public transport, employment opportunities and services, will provide good quality accommodation that is suitable for the intended occupants encouraging equal access to public amenities. The dwelling has been designed to cater for a family household. This enriches residential diversity. A well-designed and socially responsive development will always attract a socially diverse mix of people and in turn improve and enhance for a much richer community life in the area.

3.2 Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

A development at 13 Amiens Road, Clontarf, that strictly complies with the 0.4:1 FSR standard is unreasonable or unnecessary given the following presented circumstances:

- As two distinct and separate built forms are proposed, the GFA / FSR of the dwelling house if calculated in isolation would comply with the standard, including that GFA associated to the garage. Its built form and overall envelope is therefore anticipated by the key planning controls and is similar to that previously approved under DA 2020/189.
- The studio is the built form which triggers the departure. The studio does not have any identifiable impact on neighbouring properties, does not contribute to the visible overall bulk and scale and furthermore is not readily visible from the surrounding public domain. Its design and siting is the same as that previously approved under DA 2020/189.
- The dwelling's overall height, bulk and scale is less than that of the existing built form. Its overall envelope is similar to that previously approved under DA 2020/189 and remains highly articulated and visually interesting.

- The altered and proposed built form exhibits architectural design excellence and an improved landscape condition, a desirable planning and built form outcome.
- The quantum of additional floor space (above the FSR standard and the studio specifically) is arranged on the site in a manner that does not result in any unreasonable environmental or amenity impacts to neighbours or the public realm;
- A similar building envelope / alignment is proposed as that previously approved. Despite the departure to the FSR standard, the additional GFA/FSR does not materially add to the dwelling's height, bulk and scale when compared to that existing.
- The altered / propose built form is clearly not incompatible when considering the site's wider visual context as viewed from the surrounding public domain, given the scale and form of other hillside developments in the vicinity.
- The additional FSR does not result from excessive site disturbance or excavation, rather the enlargement of the existing lower ground floor level and the enlargement of the studio below the garage. All existing FFL's (dwelling) and those approved (garage / studio) remain unaltered.
- Alterations and additions are proposed to an existing three storey dwelling. A two storey garage and studio replaces an existing two storey garage and separate storage level built form. The built form is therefore relative to storeys essentially no different to that existing, although relative to overall height, the dwelling is less than that existing.
- Following a rigorous merit based assessment, approval of a building envelope that relates to the locality's existing character but which exceeds the LEP 2013 development standard, will not set a precedent for other non-conforming applications, particularly considering the overall building envelope is not dissimilar to that previously approved under DA 2020/189.
- The site is proportioned to allow the efficient realisation and internalisation of the impacts of the altered built form without an adverse visual impact or perceived built form dominance. The departure to the FSR standard has been arranged considering the site's existing built form, the previously approved DA and the neighbouring and nearby context. In this regard and as demonstrated by the DCP 2013 assessment at **Table 5** and Section 4.2 of the separately submitted SEE, the departing built form nonetheless preserves environmental amenity in relation to:
  - solar access and overshadowing;
  - access to natural daylight and ventilation;
  - aural and visual privacy;
  - views and vistas from neighbouring and nearby properties and the public domain; and
  - visual impact and massing; and
  - parking or traffic generation.
- Numerous nearby dwellings will also depart from the relevant FSR standard.
- Within this context, it is clear the site can accommodate the FSR proposed and the development is of an intensity and scale commensurate with the built form character and the prevailing urban conditions and capacity of the locality, including neighbouring and nearby properties.
- The overall FSR will not preclude (and hasn't done so in the past) redevelopment of neighbouring and nearby properties.

In ***Wehbe v Pittwater Council [2007] NSWLEC 827***, Preston CJ established five potential tests for determining whether a development standard could be considered to be unreasonable or unnecessary. Those tests have been considered below.

Are the objectives of the standard are achieved notwithstanding non-compliance with the standard?

See above detailed assessment of the proposal by reference to the objectives of the FSR standard. That assessment demonstrates that the objectives of the standard are achieved notwithstanding the non-compliance with the standard.

The altered built form will not be incompatible considering the site's existing locational built form context and that desired by the current and likely future planning controls.

On this occasion (and as demonstrated at **Table 4** and Section 4.2 of the separately submitted SEE) the non-compliance better achieves the objectives by allowing for an architecturally altered dwelling (which complies when viewed at in isolation) that enables high (improved) internal amenity for the occupants whilst reasonably maintaining the environmental amenity (solar access, visual and aural privacy, views, vistas, outlook, natural daylight and ventilation) of the neighbours. Additionally it permits the construction of the new garage / studio entirely consistent (envelope, form, siting etc) with that previously approved under DA 2020/189.

The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is not necessary?

On this occasion LPDS does not believe that the underlying objective or purpose is not relevant to the development and therefore LPDS does not rely on this reason.

Would the underlying objective or purpose of the standard be defeated or thwarted if compliance was required?

Compliance with the underlying objective of the 0.4:1 FSR standard would be thwarted if strict compliance with the standard was required in the circumstances as the quality of the residential outcome would be compromised for no sound planning reason and would be impractical considering the approval of DA 2020/189, which remains current.

The resultant built form is one that exhibits substantial merit relative to architectural design and an embellished landscape condition. It includes appropriate environmental initiatives and has a positive built form relationship with its neighbouring and nearby elevated multi level built form.

Has the development standard been virtually abandoned or destroyed by the Council's own actions in departing from the standard?

A review of Council's Clause 4.6 Variations Register (1 January to 31 March 2023 being the most recent), demonstrates that the FSR standard cannot said to be abandoned.

However, and notwithstanding the non-abandonment of the standard, there is numerous built form in the surrounding locality and throughout the Northern Beaches LGA (former Manly) that are zoned R2 Low Density Residential that depart from the current LEP 2013 FSR standard and others. The site's previously approved and still current DA 2020/189 departed from the LEP 2013 FSR standard.

Is the zoning of the land unreasonable or inappropriate?

The zoning of the land is reasonable and appropriate given the site's location. Large (including traditional and modern and contemporary) elevated multi level dwellings are found on neighbouring and nearby properties.

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

This section demonstrates that there are sufficient environmental planning grounds to justify contravening the FSR standard as required by clause 4.6(3)(b) of LEP 2013.

It is noted that in *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118, Preston CJ observed that in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard, not on the development as a whole.

Additionally, it is noted that in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, Pain J observed that it is within the discretion of the consent authority to consider whether the environmental planning grounds relied on are particular to the circumstances of the proposed development on the particular site.

Although the term 'environmental planning ground' is not defined, it is commonly accepted that the objects of the Act constitute 'environmental planning grounds'. Regarding the proposal at 13 Amiens Road, Clontarf, the particular circumstances of this case distinguish it from others and therefore there are sufficient environmental planning grounds to justify contravening the FSR standard being:

- The SEE and supporting documentation submitted with the DA provides a holistic environmental planning assessment of the proposal and demonstrates that subject to adopting a range of reasonable mitigation measures, there are sufficient environmental planning grounds to support the development. In particular, the submitted documentation demonstrates that despite the contravention to the FSR standard, it nonetheless enables the relatively modest and appropriate redevelopment of the site to occur, which is clearly not incompatible with the established neighbouring built form context.
- The proposed FSR is essentially the same as that already considered environmentally acceptable under the approved DA 2020/189.
- As two distinct and separate built forms are proposed, the GFA / FSR of the dwelling house if calculated in isolation would comply with the standard, including that GFA associated to the garage. Its built form and overall envelope is therefore anticipated by the key planning controls.
- The studio is the built form which triggers the departure. The studio does not have any identifiable impact on neighbouring properties, does not contribute to the visible overall bulk and scale and furthermore is not readily visible from the surrounding public domain. The envelope, design and siting of the garage / studio is the same as that previously approved under DA 2020/189.
- A similar building envelope / alignment is proposed as that previously approved. Despite the departure to the FSR standard, the additional GFA/FSR does not materially add to the dwelling's height, bulk and scale when compared to that existing.
- The altered / proposed built form is clearly not incompatible when considering the site's wider visual context as viewed from the surrounding public domain, given the scale and form of other hillside developments in the vicinity.

- The proposed breach of the standard results in an improved amenity outcome for the residents without contributing additional bulk, adverse environmental or amenity related impacts or relative intensification of the altered built form. This includes the provision of open plan primary living areas with direct connections to useable external private open space areas.
- The proposal provides for enhanced amenity to the residents through alterations and additions to the existing built form through a relatively modest increase in GFA without any unreasonable impact to neighbouring properties and the surrounding public domain. The alterations and additions to the dwelling are well scaled and reduced its overall height. The new works are contemporary in form and detail and are not visually intrusive or bulky when viewed from the surrounding public domain and are not incompatible with the established built form context at the rear of neighbouring properties.
- The additional FSR does not result from excessive site disturbance or excavation, rather the enlargement of the existing lower ground floor level and the enlargement of the studio below the garage. All existing FFL's (dwelling) and those approved (garage / studio) remain unaltered.
- The altered dwelling's overall height is less than that existing.
- The departure to the FSR standard has been arranged considering the site's existing built form, the previously approved DA and the neighbouring and nearby context. In this regard and as demonstrated by the DCP 2013 assessment at Table 4 and Section 4.2 of the separately submitted SEE, the non-compliant built form nonetheless preserves environmental amenity in relation to:
  - solar access and overshadowing;
  - access to natural daylight and ventilation;
  - aural and visual privacy;
  - views and vistas from neighbouring and nearby properties and the public domain; and
  - visual impact and massing; and
  - parking or traffic generation.
- Appropriate environmental initiatives are proposed.
- The highly articulated façade treatment and selection of characteristic and recessive external materials and finishes reduces the dwelling's perceived bulk and scale when viewed from the surrounding public domain.
- Removing the non-compliance would not significantly alter the perceived scale and density of the proposed development when viewed from the public domain or surrounding development.

The above environmental planning grounds relate specifically to the additional GFA attributed to the proposed development, which contributes to the contravention of the FSR standard. The above points warrant the exceedance, are not generic, but rather, specific to the site and circumstances of the proposal. An appropriate and equitable planning outcome results.

3.4 Whether contravention of the development standard raises any matter of significance for the State or regional Environmental Planning?

There is no identified outcome which would be prejudicial to planning matters of state or regional significance that would result as a consequence of varying the development standard as proposed by this

application as the departure from the FSR relates to local and contextual conditions, the site's existing and previously approved built form. The variation sought is responding to the broad brush nature of the control applied across an area that supports a variety of built forms on varying allotment sizes.

As two distinct and separate built forms are proposed, the GFA / FSR of the dwelling house if calculated in isolation would comply with the standard, including that GFA associated to the garage. Its built form and overall envelope is therefore anticipated by the key planning controls. The studio is the built form which triggers the departure and in conjunction with the garage, its overall design is the same as that previously approved under DA 2020/189. The studio does not have any identifiable impact to neighbours, does not contribute to the visible overall bulk and scale and is not readily visible from the surrounding public domain. The site's overall built form is not incompatible considering its established and likely future built form context.

Finally, LPDS is not aware of any other matters required to be taken into consideration by the Secretary before granting concurrence.

3.5 How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Act?

The relevant objects of the Act as specified in Section 1.3, are in our opinion, achieved by the proposed development in that it:

- promotes the social and economic welfare of the community;
- facilitates ESD;
- promotes the orderly and economic use and development of land;
- promotes the sustainable management of built and cultural heritage;
- promotes good design and amenity of the built environment; and
- promotes the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.

A strictly complying development would result in a poorer urban design response and one which is inconsistent with that already deemed environmentally acceptable under DA 2020/189. In that sense compliance would hinder the attainment of the objects of Section 1.3 of the Act. The site's redevelopment and subsequent departure from the FSR standard does not preclude or isolate an adjacent property(s) from being appropriately redeveloped. The development as proposed is consistent with the provisions of orderly and economic development and would not hinder the objects of the Act in Section 1.3.

3.6 Is there public benefit in maintaining the development standard?

Generally, there is public benefit in maintaining standards. However, there is public interest in maintaining a degree of flexibility in specific circumstances. In the current case, strict compliance with the FSR standard would:

- serve no purpose other than to impose numerical inflexibility;
- be inconsistent with that already deemed environmentally acceptable under DA 2020/189;
- have little regard to the dwelling and garage's GFA/FSR which if treated in isolation from the studio (as it can be given, they are two distinct and separate built forms) would comply with the FSR standard; and
- forgo the opportunity to provide a benchmark architectural design solution and an embellished landscape condition for the site.

It is known that Council has considered applications favourably which depart from the FSR standard. There are no reasons why it is not in the public interest and its refusal based on the standard's departure is not warranted, particularly given the current DA 2020/189. Under the presented circumstances the variation to the FSR standard is in the public interest because it is not inconsistent with the objectives of the FSR standard and neither is it inconsistent with the objectives for development in the R2 Low Density Residential zone. Therefore, it is argued that there is no public benefit in maintaining the adopted FSR planning control.

On balance the variation to the FSR standard is an appropriate use of the provisions of Clause 4.6. Accordingly, there is in the specific circumstances of the case, no public benefit in strictly maintaining the development standard.

3.7 Is the objection well founded?

For the reasons outlined in previous sections, it is considered the objection is well founded in this instance and granting an exception to the development can be supported given the presented circumstances of the case. The development does not contravene the objects specified at Section 1.3 of the Act.

4.0 CONCLUSION

The proposed variation to the FSR standard is based on the reasons contained within this formal request for an exception to the standard. A development strictly complying with the numerical FSR standard would not significantly improve the amenity of surrounding properties or Council's desired future built form character as:

- the proposed FSR is the same as that previously approved under DA 2020/189 and which remains current;
- the proposal satisfies and achieves the objectives of the R2 Low Density Residential zone and is consistent with Council's strategic intent;
- the proposal satisfies and achieves the objectives of the FSR standard;
- the altered / proposed built form is not incompatible considering its established, desired and likely future built form context;
- that built form which is visible from the surrounding public domain is one which would comply the standard and which is anticipated by the planning controls; and
- improved internal amenity for the occupants whilst no adverse environmental or amenity related impacts to the neighbouring properties.

It is concluded that the objection:

- is well founded;
- demonstrates that compliance with the standard is both unnecessary and unreasonable;
- demonstrates that there are sufficient environmental planning grounds in which to support the proposal; and
- the concurrence of the Secretary is likely to be forthcoming because there is no identified outcome which would be prejudicial to planning matters of state or regional significance that would result as a consequence of varying the development standard and there are no additional matters which would indicate there is any public benefit of maintaining the development standard in the circumstances of this application.

On that basis, the consent authority can be satisfied that the proposed development is in the public interest because it is consistent with the objectives for development in the zone and the objectives of the standard. It is therefore appropriate to exercise the flexibility provided by Clause 4.6 of LEP 2013.

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