

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 10 APRIL 2024

Ashleigh Sherry
Manager Business System and Administration

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

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3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

**ITEM 3.1 DA2023/1230 - 161 B AND 163 SEAFORTH CRESCENT SEAFORTH -
DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING
HOUSE INCLUDING SWIMMING POOL AND ASSOCIATED WORKS**

PURPOSE

1. To refer the attached application for determination as required under adopted delegations of the Charter.
2. To refer the attached application for determination due to directions provided by the Department of Planning & Environment in relation to applications with a clause 4.6 variation to the building height standard.

RECOMMENDATION

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

- B. THAT Council as the consent authority **approves** Development Consent to DA2023/1230 for demolition works and construction of a dwelling house including swimming pool and associated works on land at Lot 175 DP 4889 & Lot 6 DP 212783, 161 B & 163 Seaforth Crescent SEAFORTH, subject to the conditions set out in the Assessment Report.

REPORTING MANAGER	Rodney Piggott
TRIM FILE REF	2024/227365
ATTACHMENTS	↓1 Assessment Report ↓2 Site Plan and Elevations ↓3 Clause 4.6

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/1230
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Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 175 DP 4889, 163 Seaforth Crescent SEAFORTH NSW 2092 Lot 6 DP 212783, 161 B Seaforth Crescent SEAFORTH NSW 2092
Proposed Development:	Demolition works and construction of a dwelling house including swimming pool and associated works.
Zoning:	Manly LEP2013 - Land zoned C3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Anthony Victor Simon
Applicant:	Anthony Victor Simon

Application Lodged:	06/09/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	12/09/2023 to 26/09/2023
Advertised:	Not Advertised
Submissions Received:	8
Clause 4.6 Variation:	4.3 Height of buildings: 56.47%
Recommendation:	Deferred Commencement Approval

Estimated Cost of Works:	\$ 6,415,781.00
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EXECUTIVE SUMMARY

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

A previous development consent (DA0184/2016) approved boundary reconfiguration of the subject two lots, on which this application relies. DA0184/2016 has been physically commenced, but the resultant lots are yet to be registered.

The application is referred to the Development Determination Panel (DDP) due to the number of submissions (8) and the variation to the height of buildings development standard (56.47%).

Concerns raised in the objections predominantly relate to concern regarding the bulk and scale, the variation to the height of buildings development standard, non-compliance with built form controls, the visual impact of the development, impacts on the natural environment, and concern that the development is not in the public interest and will set an undesirable precedent.

Critical assessment issues included the height of building variation, development in the foreshore area, and the built form of the carport.

The 4.6 request for the non-compliance with height standard arises from existing excavation of the site, the steep topography and rocky landform, and the logical placement of the dwelling house in the place of greatest compliance with built form controls in consideration of the approved lot dimensions. The development standard variation figure would be significantly reduced if height of buildings was to be calculated from natural ground level, as opposed to existing ground level (whether disturbed or undisturbed).

This report concludes with a recommendation that the DDP grant **deferred commencement approval** (to allow for registration of the lots approved under DA0184/2016, on which this application relies) to the development application, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

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

- Dwelling house:
 - Basement: Media room, storage and plant rooms.
 - Ground: Lounge room, alfresco dining area, pool and pool deck.
 - First Floor: Kitchen, dining room, living room, balconies, courtyard, and inclinator landing.
 - Second Floor: Main bedroom and ensuite, three additional bedrooms with ensuites, laundry, lounge room, and terraces.
 - Green roof.
- External:
 - Inclinator
 - Double carport with stairs
 - Landscaping works

The proposed development relates to the two lots approved under DA0184/2016, formed by lots currently known as 161B and 163 Seaforth Crescent, Seaforth. DA0184/2016 also approved a carport and inclinator in similar locations as those proposed under this application, and rights of way over approved Lot 1 to benefit Lot 2 for the purpose of parking.

The above description of works is consistent with the amended plans submitted in response to Council's request for information, which raised concern with:

- Building height
- Building bulk in the foreshore area
- Insufficient arboricultural impact assessment

In accordance with the Northern Beaches Community Participation Plan, the amended plans did not require public notification, as they result in a lesser environmental impact than the original plans.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 1.9A Suspension of covenants, agreements and instruments
 Manly Local Environmental Plan 2013 - 4.3 Height of buildings
 Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Local Environmental Plan 2013 - 6.1 Acid sulfate soils
 Manly Local Environmental Plan 2013 - 6.2 Earthworks
 Manly Local Environmental Plan 2013 - 6.4 Stormwater management
 Manly Local Environmental Plan 2013 - 6.5 Terrestrial biodiversity
 Manly Local Environmental Plan 2013 - 6.8 Landslide risk
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Local Environmental Plan 2013 - 6.10 Limited development on foreshore area
 Manly Local Environmental Plan 2013 - 6.12 Essential services
 Manly Development Control Plan - 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 175 DP 4889 , 163 Seaforth Crescent SEAFORTH NSW 2092 Lot 6 DP 212783 , 161 B Seaforth Crescent SEAFORTH NSW 2092
Detailed Site Description:	The subject site consists of two allotments located on the north-western side of Seaforth Crescent, Seaforth.

No. 161B has no street frontage and an overall site area of 954.7m² (735.7m² excluding area used for right of way). No. 163 has a frontage of 22.39m to Seaforth Crescent, an average depth of 87.715m and an overall site area of 1,745m². No. 161B currently contains a two-storey detached dwelling with vehicular access to a carport via a right of way from Seaforth Crescent adjacent to No. 161. No. 163 is vacant, having gained approval for demolition of structures under development consent DA184/2016.

It should be noted that development consent DA184/2016 approved boundary reconfiguration to reduce the area of No. 163 (approved Lot 1) to 1,051m² and increase the area of No. 161B (approved Lot 2) to 1,648m².

The properties each have an average gradient of approximately 1:2, and contain some sandstone rock outcrops and cliffs. The site contains dense bamboo planting, and overgrown vegetation on the vacant portion of land.

Detailed Description of Adjoining/Surrounding Development

The adjacent property to the south-east, at 161 Seaforth Crescent, is developed with a detached dwelling house. The adjacent properties to the north, at 165 and 165A Seaforth Crescent, is developed with detached dwelling houses. Development in this area of Seaforth Crescent consists of a mix of one-, two-, and three-storey detached dwellings.

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:

- DA184/2016 for boundary realignment, demolition of the existing dwelling house and carport, and construction of a new garage, driveway, bin store, inclinor and boundary fence was approved by the former Development Assessment Unit on 2 November 2016. In accordance with Clause 96 of the Environmental Planning and Assessment Regulation 2021, this consent was enacted by way of demolition of the carport and dwelling house in December 2016, being within the consent period. As such, the consent remains valid at the time of writing this report.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Mainly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. TThis clause is not relevant to this application. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to building height and bulk, and arboricultural advice. The required information was received in February 2024. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures.

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 12/09/2023 to 26/09/2023 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 process council is in receipt of 8 submission/s from:

Name:	Address:
Mr Christopher Andrew Lee Bill Tulloch	165 Seaforth Crescent SEAFORTH NSW 2092
Mr Ian Robert Box	117 A Seaforth Crescent SEAFORTH NSW 2092
Mr Tancred Fredrick Rowley	94 Seaforth Crescent SEAFORTH NSW 2092
Felix Haim Lev	167 B Seaforth Crescent SEAFORTH NSW 2092
Ms Diana Emma Jefferson	161 Seaforth Crescent SEAFORTH NSW 2092
Mr Peter John Nicholson	135 A Seaforth Crescent SEAFORTH NSW 2092
Mr Anthony Ng	1100 Oxford Falls Road OXFORD FALLS NSW 2100
Mrs Rachel Merylin Lee Christopher Lee	165 A Seaforth Crescent SEAFORTH NSW 2092

The following issues were raised in the submissions:

- The proposed development breaches the maximum floor space ratio applicable to the site but is not supported by a written request to vary that development standard in accordance with Clause 4.6 of the Manly LEP.
- The proposed development relies on incorrect calculation of existing ground level and includes an excessive building height.
- The proposed development breaches the foreshore building line.
- The proposed development is inconsistent with the aims of the LEP as it results in amenity impacts (view loss, overshadowing, privacy loss, unreasonable visual impact).
- The proposed development is inconsistent with the character of the area and the foreshore scenic protection area.
- The proposed development includes an excessive wall height and number of storeys.
- The proposed development does not provide adequate building separation.
- The proposed swimming pool is excessive in height and scale.
- The proposed development requires excessive tree removal.
- The proposed development relies on excessive excavation and raises geotechnical concerns.
- The proposed development impacts upon wildlife corridors.
- The proposed development will set an undesirable precedent.
- The proposed development is not in the public interest due to the scale, intensity and impacts.
- The proposed development is not supported by adequate documentation - view impact analysis, solar access diagrams, privacy impact analysis, visual bulk analysis, geotechnical assessment, foreshore building line location.

It should be noted that the above objections relate to the development shown on original plans. Amendments have been made to the plans to address concerns raised by Council that also assist with addressing the above concerns. The above issues are addressed as follows:

Development Standards - Height of Buildings, Floor Space Ratio and Foreshore Building Line
Comment:

The proposed development includes a variation to the maximum height of buildings development standard. This variation is acceptable on merit for the reasons detailed in the section of this report relating to Clause 4.6 Exceptions to Development Standards of the Manly LEP. The assessment identifies the existing ground level in accordance with *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582*.

The proposed development is well compliant with the applicable floor space ratio development standard, as detailed in the section of this report relating to Principal Development Standards. As such, no written request to vary the standard is required.

Clause 6.10 Limited Development on Foreshore Area of the Manly LEP allows for the erection of a building in the foreshore area, if the levels, depth or other exceptional features of the site make it appropriate to do so. The proposed development is acceptable in this regard, as detailed in the section of this report relating to Clause 6.10. No written request to vary the development standard is required, as there is no variation to the provisions of the clause.

Aims of the LEP

Comment:

The proposed development is established to be consistent with Clause 1.2 Aims of Plan of the Manly LEP, as it does not result in any unreasonable impacts, as demonstrated throughout this report.

Amenity - View Loss, Privacy Loss, and Overshadowing

Comment:

The submission made on behalf of 165 Seaforth Crescent notes view loss as a concern, but does not specify from where this view loss will occur. The owner of 165 Seaforth Crescent has confirmed that view loss to this property is not anticipated. This assessment does not find that view loss is anticipated to any other property. The proposed development is consistent with the requirements of Clause 3.4.3 Maintenance of Views of the Manly DCP.

Submissions raise concern that the proposed development will result in unreasonable privacy impacts to adjoining properties. The proposed development is consistent with the requirements of Clause 3.4.2 Privacy and Security of the Manly DCP, in that it includes suitable setbacks, logical privacy screening, and well-placed planter boxes, particularly to the proposed rear terraces and deck spaces.

The submitted shadow diagrams demonstrate that the proposed development is consistent with the requirements of Clause 3.4.1 Sunlight Access and Overshadowing of the Manly DCP. The development retains compliant solar access to the private open space and living room windows of the properties to the south.

Character and Foreshore Scenic Protection Area

Comment:

Given the overall compliance with built form controls (or acceptability on merit in the case of any non-compliance), the proposed development is found to be consistent with the type of development anticipated by the controls and the zoning of the land, including with respect to the foreshore scenic protection area. More detail on this is provided in the section of this report relating to Clause 6.9 Foreshore Scenic Protection Area of the Manly LEP.

Built Form - Wall Height, Number of Storeys, Building Separation, Swimming Pool Height

Comment:

The proposed development (as amended) is compliant with the applicable built form controls, including wall height, number of storeys and setbacks, as detailed in the section of this report relating to Built Form Controls.

Natural Environment - Tree Removal and Impact on WildlifeComment:

The subject site is not classified as a wildlife corridor. The proposed development is supported by an arboricultural impact assessment regarding the tree removal, and a landscape plan, demonstrating suitable planting and provision of habitat. The proposal and supporting documentation have been reviewed by Council's Landscape Officer and Bushland & Biodiversity Officer, who are supportive of the development (including tree removal), subject to recommended conditions of consent.

Excavation and Geotechnical ConcernsComment:

The proposed development is supported by a geotechnical assessment prepared by a suitably qualified professional. The proposal and supporting documentation have been reviewed by Council's Development Engineer, who is supportive of the development, subject to recommended conditions of consent.

Public Interest / PrecedentComment:

The proposed development is established to be generally compliant, and otherwise acceptable on merit. As such, the proposed development is not found to set an undesirable precedent, and is in the public interest.

DocumentationComment:

The proposed development is supported by sufficient and satisfactory documentation for the purpose of this assessment.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<i>Supported, subject to conditions</i> <u>Additional Information Comment 28/02/24:</u> The amended reports and plans are noted. The Arboricultural Impact Assessment (AIA) states "<i>the proposed development will necessitate the removal of five trees...these include trees 30, 34, 35, 36 and 37.</i>" No concerns are raised with the removal of trees 30, 34, 35, 36, and 37, or trees 31 and 32 subject to native tree replacement. The Landscape Plan shows sufficient replacement tree planting to offset the proposed canopy loss and to satisfy the relevant controls. Landscape Referral supports the tree protection recommendations outlined in the AIA, and a Project Arborist shall be engaged to supervise any work in the tree protection zone of trees to be retained. The footing design adjacent to tree 43 shall be completed in collaboration with the Arborist. Substantial changes are shown in the amended architectural drawings and as such the Landscape Plans will need to be coordinated with the latest architectural drawings. Amended Landscape Plans shall be submitted prior to issuing a Construction Certificate. Planting in the foreshore setback area must include

Internal Referral Body	Comments
	suitable species to screen any exposed basement/pool structure below the ground floor level (RL 11.30). All on slab landscaping must meet Council's minimum soil depth requirements. <u>Original Comment Summary:</u> Old plans were referenced in the AIA and an updated report was requested. Tree 2 was requested to be retained, and further comment on the impact to neighbouring trees 43 and 44 was required.
NECC (Bushland and Biodiversity)	<i>Supported, subject to conditions</i> The proposal has been assessed against Manly LEP Clause 6.5 (Terrestrial Biodiversity). Two prescribed trees are proposed for removal, however as these are not locally native, there are no objections to their removal. The proposed replacement plantings with four native trees, including a Port Jackson Fig (<i>Ficus rubiginosa</i>), are supported.
NECC (Coast and Catchments)	<i>Supported, subject to conditions</i> The application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, State Environmental Planning Policy (Resilience & Hazards) 2021, Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity & Conservation) 2021 and Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005. It has also been assessed against requirements of the Manly LEP and DCP. Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>. State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA. Clauses 2.10 (coastal environment area) and 2.11 (coastal use area) do not apply as the site is also located within the Sydney Harbour catchment area. Hence, only Clause 2.12 of the SEPP R & H apply for this DA.

Internal Referral Body	Comments
	Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by BBF Pty. Ltd. dated August 2023, the DA satisfies requirements under clause 2.12 of the SEPP R&H. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021. Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity & Conservation) 2021 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 and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by BBF Pty. Ltd. dated August 2023, it is determined that the relevant clauses of the Part 6.3 including the clause 6.28 have been followed. Zoning of Foreshores & Waterways Area The subject site is located within/adjacent to the Zone 8 (Scenic Waters – Passive Use). On internal assessment, it is determined that the objectives and assessment criteria of the zone have been met. Manly LEP 2013 and Manly DCP Estuarine Hazard Management The subject site has been identified to be likely affected by wave action and coastal inundation according to information available to Council from the draft Estuarine Planning Level (EPL) Study for North Harbour and Middle Harbour. The risks associated with these coastal hazards should be considered and addressed for any development proposed in low lying foreshore areas (generally below 3.50m AHD).

Internal Referral Body	Comments
	The DA proposes no works on the foreshores area located below 3.5mAHD and hence, the DA is supported subject to conditions. Foreshores Scenic Protection Area Management The subject site is also shown to be as "Manly Foreshores Scenic Protection Area" on Council's Foreshores Scenic Protection Area in Manly LEP 2013. As such, Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013 will apply to proposed development on the site. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by BBF Pty. Ltd. dated August 2023, the DA satisfies requirements but it is desirable to address the potential visual impact of the proposed built form on the surrounding locality, as due to the scale and proximity to the water, the dwelling has the potential to visually dominate the site and foreshore area. Development on Foreshore Area The subject site is also shown to be as "Manly Foreshores Area" on Council's Area "within the foreshore building line Map" in Manly LEP 2013. Hence, Part 6, Clause 6.10 –Limited development on foreshore area of the Manly LEP 2013 applies for any development within the foreshore area. The DA proposes works related to the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area. These proposed works are consistent with Clause 6.10(1). On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by BBF Pty. Ltd. dated August 2023, the DA satisfies the objectives and requirements of Part 6, Clause 6.10 of the Manly LEP 2013.
NECC (Development Engineering)	<i>Supported, subject to conditions</i> The proposal relies upon the creation of lot 2 in consent DA184/2016 and as such will require a deferred commencement condition to be applied by Planning. As the lot includes the current rear parcel of 163 Seaforth Crescent, the 88b instrument for the proposed lot will need to include a new

Internal Referral Body	Comments					
	right of way and easement for services over the existing handle of 161, 161A and 161C in order to permit the access and services for the proposed dwelling. It is unclear from DA184/2016 if this has been considered and this issue will need to be resolved by the applicant prior to activation of this consent. The submitted stormwater management plan includes the drainage for the previously approved garage draining via the proposed easement for drainage which is acceptable. The method of disposal is also acceptable. Vehicles utilising the hardstand area will be able to enter and exit in a forward direction. Provided a deferred commencement condition is applied for the creation of the lot and suitable easements for access (ROW) and services are created in favour of proposed Lot 2 burdening existing lots 1, 2, 3, 4 and 5 of DP 212783, then Development Engineering support the proposal, subject to conditions as recommended.					
Parks, reserves, beaches, foreshore	Supported, subject to conditions The property adjoins Middle Harbour downslope. Manly DCP Part 5.4.1.1 outlines that the natural environment should be visually dominant, rooflines to be located below the tree canopy, and to maximise the retention of existing tree canopies. It is noted the lower portion of the dwelling fronting the harbour will be approximately 10.8 metres high. Some trees identified for removal in the Arboricultural Impact Assessment are between the dwelling and the foreshore and it is suggested that replacement tree planting be installed in similar areas to soften the built form when viewed from the harbour or vantage points across the harbour. Replacement trees shall be capable of reaching a mature height that is in scale with the proposed dwelling, should it be approved. Tree replacement locations are deferred to Council's Landscape referral team for assessment and determination.					
Strategic and Place Planning (Heritage Officer)	Supported without conditions <table><tr><th>HERITAGE COMMENTS</th></tr><tr><td>Discussion of reason for referral</td></tr><tr><td>This application has been referred as the site adjoins a heritage item, being Item I1 - Harbour foreshores, listed in Schedule 5 of Manly LEP 2013.</td></tr><tr><th>Details of heritage items affected</th></tr><tr><td>Details of the heritage item in the vicinity, as contained within the heritage inventory, are: Item I1 - Harbour foreshores <u>Statement of Significance:</u> Natural landscape type - Aesthetic. <u>Physical Description:</u></td></tr></table>	HERITAGE COMMENTS	Discussion of reason for referral	This application has been referred as the site adjoins a heritage item, being Item I1 - Harbour foreshores , listed in Schedule 5 of Manly LEP 2013.	Details of heritage items affected	Details of the heritage item in the vicinity, as contained within the heritage inventory, are: Item I1 - Harbour foreshores <u>Statement of Significance:</u> Natural landscape type - Aesthetic. <u>Physical Description:</u>
HERITAGE COMMENTS						
Discussion of reason for referral						
This application has been referred as the site adjoins a heritage item, being Item I1 - Harbour foreshores , listed in Schedule 5 of Manly LEP 2013.						
Details of heritage items affected						
Details of the heritage item in the vicinity, as contained within the heritage inventory, are: Item I1 - Harbour foreshores <u>Statement of Significance:</u> Natural landscape type - Aesthetic. <u>Physical Description:</u>						

Internal Referral Body	Comments		
	Length of foreshore including natural and built elements of the landscape. Rocky sandstone ledgers, beaches, mud flats and sandstone retaining walls and timber structures.		
	Other relevant heritage listings		
	SEPP (Biodiversity and Conservation) 2021	No	Comment if applicable
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	
	Consideration of Application		
	This application is for the demolition of the existing dwelling on 161B Seaforth Crescent and construction of a new multi-level dwelling house and swimming pool on proposed Lot 2, which adjoins Middle Harbour. Also proposed is an open carparking area close to the street frontage with pedestrian access via an already approved inclinator. No changes are proposed to the existing boatshed, jetty and ancillary waterfront structures. Plans indicate that alterations to waterfront structures will be the subject of a separate application.		
	The foreshore heritage listing generally follows the mean high water mark. In this case, the foreshore listing follows the property boundary to Middle Harbour. As this application proposes no changes to the foreshore structures or natural features/landscaping along the foreshore, it is considered that there is no adverse impact upon the heritage significance of the foreshore.		
	Therefore, no objections are raised on heritage grounds and no conditions required.		
<u>Consider against the provisions of CL5.10 of MLEP 2013:</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? N/A Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? N/A			
External Referral Body	Comments		
Ausgrid - SEPP (Transport and Infrastructure) 2021,	Supported, subject to conditions		

External Referral Body	Comments
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	<i>Supported, subject to conditions</i> Associates Archaeology and Heritage completed an Aboriginal Cultural Heritage and Archaeological Advice (Due Diligence) in January 2024. Recommendations from the report are: 1. There is considered to be an insignificant risk of harm to Aboriginal objects through the proposed work. 2. No further Aboriginal cultural heritage archaeological assessment is warranted. The Aboriginal Heritage Office agrees with the recommendations made. 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, the Department of Planning, Industry and Environment (DPIE) 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. 1373005S dated 30 June 2023). The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
------------	-----------------	----------

Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	64

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Biodiversity and Conservation) 2021

Chapter 6 – Water catchments

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

Part 6.3 Foreshores and Waterways Area

Division 1 Preliminary

6.25 Consent authority

(1) *The Minister administering the Ports and Maritime Administration Act 1995 is the consent authority for the following development—*

- development comprising the subdivision of land owned by TfNSW in or abutting the Foreshores and Waterways Area,*
- development carried out in the Foreshores and Waterways Area wholly below the mean high water mark,*
- 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 does not involve any of the above listed development types.

Division 2 Zoning of Foreshores and Waterways Area

The subject site is classified as Foreshores and Waterways Area, but its not zoned under this division.

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:

With reference to (1) above:

- The proposed development is consistent with the principles at (a).
- The proposed development will not alter the existing equitable use of the foreshore.
- The proposed development is designed and sited so as not to have an adverse impact on the Foreshores and Waterways Area.
- The proposed development does not promote water-dependent land uses over other land uses.
- The proposed development is designed sustainably in response to rising sea levels and other climate change matters.
- The proposed development will not impact upon intertidal foreshore areas, natural landforms, or native vegetation.
- The proposed development does not unreasonably impact upon terrestrial and aquatic species, populations or ecological communities, including by avoiding physical damage to or shading of aquatic vegetation.
- The proposed development will not unreasonably impact upon watercourses, wetlands, riparian lands, remnant vegetation or ecological connectivity.

With reference to (2) above:

- The proposed development is wholly on private land and will not impact upon the working capacity of the harbour.
- The subject site does not adjoin land used for commercial or industrial maritime purposes.
- The proposed development is not for commercial or industrial maritime purposes.
- The proposed development does not alter traffic in the waterway.
- The proposed development is designed in complementary consideration of the visual quality of the waterway from the Foreshores and Waterways Area and from public places, landmarks and heritage items.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

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

Comment:

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

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

Comment:

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

Division 4 Coastal use area

2.11 Development on land within the coastal use area

- 1) *Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:*
 - a) *has considered whether the proposed development is likely to cause an adverse impact on the following:*
 - i) *existing, safe access to and along the foreshore, beach, headland or rock*
 - ii) *platform for members of the public, including persons with a disability,*
 - iii) *overshadowing, wind funnelling and the loss of views from public places to foreshores,*

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

Division 5 General**2.12 Development in coastal zone generally—development not to increase risk of coastal hazards**

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

Comment:

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

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

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	Max. 8.5m	2.4m - 13.3m	Max. 56.47%	No
Special Height Provisions	Max. RL 46.78	Max. RL 22.45	-	Yes
Floor Space Ratio	0.4:1 659.2m ² *	0.33:1 547.5m ²	-	Yes

* Calculation based on approved Lot 2 (1,648m²) under DA184/2016.

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
4.3A Special height provisions	Yes
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
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

Detailed Assessment

1.9A Suspension of covenants, agreements and instruments

The proposed development involves construction of a carport that is not wholly consistent with the right of way and easement for parking approved under Development Consent DA0184/2016. Clause 1.9A of the MLEP 2013 provides that any agreement, covenant or other similar instrument that restricts the carrying out of that development (such as the approved right of way and easement) does not apply to the extent necessary to serve the purpose of enabling development on land in any zone to be carried out in accordance with a consent granted under the Act. As such, the proposed development is acceptable. A condition of consent has been applied accordingly requiring the restriction on title to reflect this development.

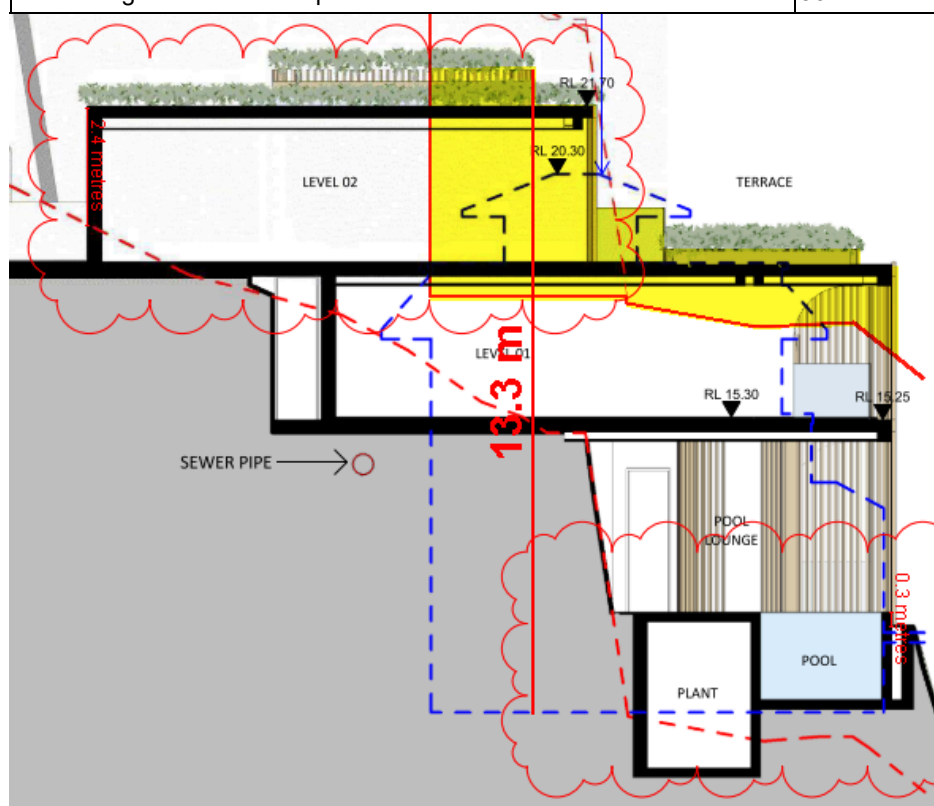
4.3 Height of buildings

The proposed height of building variation is addressed in the section of this report relating to Clause 4.6 Exceptions to Development Standards of the MLEP 2013.

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of Buildings
Requirement:	Max. 8.5m
Proposed:	5.4m to 13.3m
Percentage variation to requirement:	56.47%



Above: The extent of the height of building non-compliance, highlighted in yellow.

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

circumstances.

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

Comment:

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

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

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

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written

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

Section 1.3 of the EPA Act reads as follows:

1.3 Objects of Act (cf previous s 5)

The objects of this Act are as follows:

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

The Applicant's written request argues, in part:

"Ground 1 – Topography

The steep topography of the land and the constrained nature of the available building footprint limit the ability to provide a reasonable quantum of floor space on the site whilst complying with the building height standard.

Strict compliance with the building height standard would unreasonably limit the development potential of the land and in doing so not promote the orderly and economic use and development of land Objective 1.3(c) of the Act.

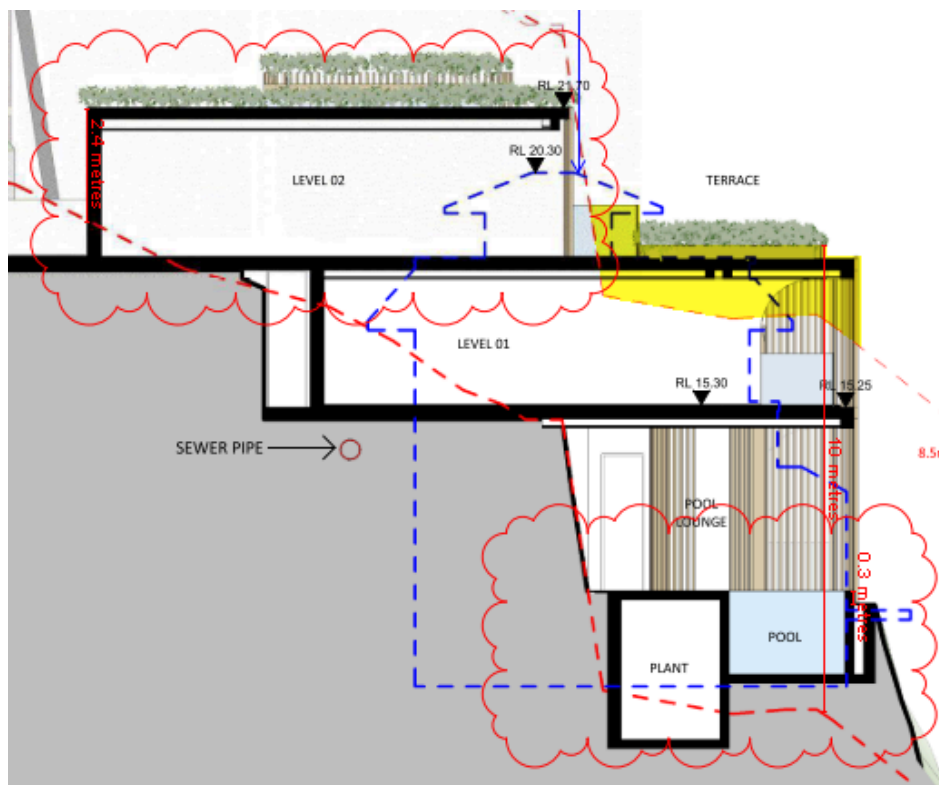
Ground 2 – Superior architectural design

The apparent size of the proposed development will be compatible with dwellings in the visual catchment of the site, which features a number of buildings of comparable bulk and scale. The building is of exceptional design quality with the variation facilitating a building height that provides for contextual built form compatibility, consistent with Objectives 1.3(c) and (g) of the Act.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments, most observers would not find the proposed development offensive, jarring or unsympathetic as seen from adjoining properties or as viewed from the waterway. The proposed development is compatible with other development in the visual catchment of the site, and the character of the wider C3 Environmental Management Zone. Overall, there are sufficient environmental planning grounds to justify contravening the development standard."

The above justification is agreed with, and supplemented with two points:

- The proposed development demonstrates a dwelling house logically located on the yet unregistered lot approved under DA0184/2016, in consideration of the applicable built form controls, and
- If the building height was calculated in accordance with *Bettar v Council of the City of Sydney [2014] NSWLEC 1070*, being from the natural ground level, rather than the existing ground level (whether disturbed or undisturbed), the maximum height would be calculated to a maximum of 10 metres (17.64%) and for a smaller portion of the development, as shown below:



Above: The extent of the height of building non-compliance above natural ground level, highlighted in yellow.

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, thereby satisfying Clauses 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 Clause 4.6 (3)(b). Council is satisfied that the Applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3).

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

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

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

is proposed to be carried out

Comment:

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

Development Standard Objectives

The underlying objectives of the standard, pursuant to Clause 4.3 Height of Buildings of the MLEP 2013 are addressed as follows:

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

Comment:

The proposed development includes a flat roof form with green roof elements so as to reduce the overall height (compared to a pitched roof). The proposed development steps with the topography, so as to follow the slope, while also providing adequate floor area in consideration of the site constraints. Additionally, the proposal includes landscaping built up to the rear (foreshore-facing) elevation of the dwelling house, so as to reduce the visual impact from the waterway.

b) to control the bulk and scale of buildings,

Comment:

The proposed dwelling house is compliant with the floor space ratio development standard and all built form controls under the Manly DCP, including setbacks and wall heights. Additionally, the proposed development includes compliant total open space and landscaped area. This demonstrates the dwelling is of a bulk and scale anticipated for the subject site by the controls, and that the footprint of the dwelling is not excessive.

c) to minimise disruption to the following:

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

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

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

Comment:

The proposed development is designed and sited so as not to result in any unreasonable view loss to or from public or private land.

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

Comment:

The proposed development is compliant with the requirements of Clauses 3.4.1 Sunlight Access and Overshadowing and 3.4.2 Privacy and Security 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:

Part of the site is zones C3 Environmental Management. The proposed development suitably responds to the topography of the land in that it steps with the slope and is compliant with the applicable built form controls. The proposed development is supported by a landscape plan that demonstrates a suitable planting outcome for the site. The proposed development is not anticipated to conflict with any surrounding properties or land uses.

Zone Objectives

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

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

Comment:

The proposed development is well designed with respect to the area's special ecological, scientific, cultural or aesthetic values, in that it is a redevelopment of the site for the purpose of a dwelling house that is generally compliant with built form controls, plus revegetation of the lot. In this way, the proposed development is of low impact.

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

Comment:

The proposed development retains the single residential use of the site, and, given its compliance with controls (or acceptability on merit) does not have an adverse impact on the site or area's values.

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

Exception to Development Standards Conclusion

The submitted written Clause 4.6 variation request is considered to be well-founded, having regard to the particular circumstances of the development and it is therefore considered appropriate that in this instance, flexibility in the application of the development standard be applied. In this context the proposal meets Section 1.3 Objects of the Act having considered the relevant provisions under Section

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:

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

6.1 Acid sulfate soils

Clause 6.1 Acid Sulfate Soils requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works. The site is located in an area identified as Acid Sulfate Soil Class 5, as indicated on Council's Acid Sulfate Soils Planning Map. The proposed works are not anticipated to result in increased risk with respect to acid sulfate soils.

6.2 Earthworks

The objectives of Clause 6.2 Earthworks require development:

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

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

(f) the likelihood of disturbing relics

Comment:

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

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

Comment:

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

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

Comment:

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

6.4 Stormwater management

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

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

Comment:

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

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

Comment:

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

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

Comment:

The proposal has been assessed by Council's Development Engineers who have raised no objections to approval, subject to conditions. In this regard, Council is satisfied that the development will

minimise any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters.

6.5 Terrestrial biodiversity

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

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

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

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

Comment:

The proposed development was referred to Council's Bushland & Biodiversity team, who are supportive of the works with reference to the above matters, subject to conditions of consent that have been included in the recommendation of this report.

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

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

Comment:

Given the above, the consent authority can be satisfied that the proposed development is designed, sited and will be managed to avoid significant adverse environmental impact.

6.8 Landslide risk

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

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

In this regard, before determining a development application for development on land to which this

clause applies, the consent authority must consider the following matters to decide whether or not the development takes into account the risk of landslide—

- (a) site layout, including access,*
- (b) the development's design and construction methods,*
- (c) the amount of cut and fill that will be required for the development,*
- (d) waste water management, stormwater and drainage across the land,*
- (e) the geotechnical constraints of the site,*
- (f) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment:

The proposed development is supported by architectural and stormwater plans, and a geotechnical report that demonstrate the above matters have been taken into account with reference to risk of landslide. The proposed development has been reviewed by Council's Development Engineer, who is supportive of the works with reference to the above matters, subject to conditions of consent that have been included in the recommendation of this report.

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

- (a) the development is designed, sited and will be managed to avoid any landslide risk or significant adverse impact on the development and the land surrounding the development, or*
- (b) if that risk or impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that risk or impact, or*
- (c) if that risk or impact cannot be minimised—the development will be managed to mitigate that risk or impact.*

Comment:

Given the above, the consent authority can be satisfied that the proposed development is designed, sited and will be managed to avoid significant adverse impact. on the subject site and surrounding land.

6.9 Foreshore scenic protection area

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

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

Comment:

The subject site does adjoins foreshore land and is proposed to be well-vegetated, as demonstrated by the supporting landscape plan. The proposed development is compliant with respect to solar access requirements. The site's location, configuration and landscaped setting assist in providing a suitable setting for the dwelling house when viewed from the foreshore and waterway. The proposed development:

- does not unreasonably impact upon the visual amenity of the foreshore and surrounds,

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

6.10 Limited development on foreshore area

Under Clause 6.10 Limited Development on Foreshore Area, development consent must not be granted for development on land in the foreshore area except for the following purposes:

- (a) the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area*
- (b) the erection of a building in the foreshore area, if the levels, depth or other exceptional features of the site make it appropriate to do so*
- (c) boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*

Comment:

The proposed development is for demolition of the existing dwelling house and construction of a new dwelling house. The proposed dwelling house has a greater footprint in the foreshore area than the existing dwelling house, but is set further landward of the mean high water mark and therefore is a lesser linear encroachment into the foreshore area. The proposed development is permissible under Clause 6.10(2)(b) above. The existing slope, topographical features of the site (rock outcrops and cliff faces), and sewer line necessitate construction of a dwelling in this proposed location and with this proposed configuration. To avoid construction in the foreshore area would unreasonably restrict development of the lot in that it would require a substantial reduction of the building footprint and greater excavation of the existing topography. The proposed dwelling location is compliant with setback controls, and is as envisaged by the previous development consent (DA184/2016) that granted approval for the lot on which this dwelling house is proposed.

Development consent must not be granted under this clause unless the consent authority is satisfied that:

- *the development will contribute to achieving the objectives for the zone in which the land is located, and*
- *the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and*
- *the development will not cause environmental harm such as:*
 - *pollution or siltation of the waterway, or*
 - *an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or*
 - *an adverse effect on drainage patterns, and*
- *the development will not cause congestion or generate conflict between people using open space areas or the waterway, and*
- *opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and*
- *any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and*
- *in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and*

- *sea level rise, coastal erosion and recession, or change of flooding patterns as a result of climate change have been considered.*

Comment:

The proposed development is consistent with the objectives of the C3 Environmental Living zone. The appearance of the proposed development is compatible with the surrounding area, as demonstrated throughout this assessment. The proposed development will not cause environmental harm in relation to pollution, siltation, surrounding uses, marine habitat, wetland areas, flora or fauna habitats or drainage patterns. The proposed development will not cause congestion or generate conflict between people using the adjacent open space or waterway. The proposed development does not impact upon public access arrangements along the foreshore. The proposed development will not result in adverse impacts to any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land. The proposed development will not have an adverse impact on the amenity or aesthetic appearance of the foreshore. The proposed development will not impact upon sea level rise, coastal erosion or recession, or change flooding patterns.

In satisfying itself about a matter mentioned in subclause (3)(e), the consent authority must give consideration to the following—

- *continuous public access to and along the foreshore through or adjacent to the proposed development,*
- *public access to link with existing or proposed open space,*
- *public access to be secured by appropriate covenants, agreements or other instruments registered on the title to land,*
- *public access to be located above mean high water mark,*
- *the reinforcing of the foreshore character and respect for existing environmental conditions.*

Comment:

The proposed development does not impact upon continuous public access to and along the foreshore. It should be noted that public access along this foreshore is subject to tidal movements and is at times inaccessible via public land. The proposed development is acceptable in relation to the foreshore character and the existing environmental conditions.

6.12 Essential services

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

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

Comment:

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

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 1,648m²	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 1,150m ²	1 dwelling on 1,648m ² site	-	Yes
	Dwelling Size: Min. 132m ²	547.5m ²	-	Yes
4.1.2.1 Wall Height (based on gradient 1:1.35)	Dwelling NE: Max. 8m	Max. 7.6m	-	Yes
	Dwelling SW: Max. 8m	Max. 7.7m	-	Yes
	Stairs: Max. 8m	7.1m	-	Yes
4.1.2.2 Number of Storeys	Max. 2 storeys	Max. 2 storeys at any point (plus basement)	-	Yes
4.1.2.3 Roof Height	Height: Max. 2.5m	Flat roof	-	Yes
	Parapet Height: Max. 600mm	No parapet	-	Yes
	Pitch: Max. 35 degrees	Flat roof	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / Min. 6m	0-9.3m to carport	100%	No
4.1.4.2 Side Setbacks (based on wall height)	Carport NE: 800mm	0m	100%	No
	Dwelling NE: Min. 2.53m	Varies, complies	-	Yes
	Carport SW: 967mm	0m	100%	No
	Dwelling SW: Min. 2.57m	Varies, complies	-	Yes
	Inclinators SW: Min. 1.36m	1.4m	-	Yes
	Windows: Min. 3m	All >3m	-	Yes
4.1.4.4 Rear Setbacks	Min. 8m	11.3m	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Total Open Space: Min. 60% of Site (988.8m ²)	62.34% (1,027.4m ²)	-	Yes
	Above Ground: Max. 25% of TOS (256.85m ²)	17.95% (184.5m ²)	-	Yes
4.1.5.2 Landscaped Area	Landscaped Area: Min. 40% of TOS (410.96m ²)	71.2% (731.6m ²)	-	Yes
	Min. 4 native trees	>4 native trees	-	Yes
4.1.5.3 Private Open Space	Min. 18m ²	>18m ²	-	Yes

4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Max. 50% of frontage, up to 6.2m	8.7m	40%	No
4.1.9 Swimming Pools, Spas and Water Features	Max. 1m above ground	Max. 0.3m	-	Yes
	Min. 1m to coping	Min. 3.5m	-	Yes
	Min. 1.5m to water	Min. 3.8m	-	Yes
Schedule 3 Parking and Access	Min. 2 spaces	2 spaces	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.7 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)	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	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.8 Development on Sloping Sites	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.9 Swimming Pools, Spas and Water Features	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

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

The proposed carport fronting Seaforth Crescent provides nil setbacks to the side boundaries, where minimums of 800 millimetres to the north-east and 967 millimetres to the south-west (based on wall height) are required. Additionally, the carport is set between 0 metres and 9.3 metres from the front boundary, where the control requires consistency with the prevailing building line, or a minimum of 6 metres where there is no prevailing building line. It should be noted that the dwelling house itself is wholly compliant with built form controls, including setbacks. The underlying objectives of the control are addressed as follows.

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

Comment:

The proposed development includes a parking structure in a similar location to that approved under DA0184/2016. The proposed structure under this application is of high quality design and will be an asset in the streetscape. The proposed development incorporates planting to the street frontage to assist with visual softening of the structure and to sufficiently respond to the spatial proportions of the street, the street edge, and the landscape character of the street.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The structure that is not compliant with setback requirements is for a carport/hardstand parking area only and not any habitable space. In this way, the non-compliant structure does not result in an unreasonable privacy outcome to the subject site or surrounding land. The proposed carport structure is low-lying without a roof and does not result in non-compliant or unreasonable overshadowing, or unreasonable view loss to adjoining land. The proposal retains suitable streetscape character and spacing of buildings with the inclusion of landscaping to soften the visual impact of the development. The carport is designed to provide safe and adequate vehicular access to the subject site.

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

Comment:

The proposal promotes flexibility in that it provides suitable development on the site without

unreasonable impacts to the site itself or surrounding land.

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, despite its non-compliance detailed above, is supported by compliant total open space and landscaped area, including ample planting of vegetation. The proposal provides significant areas of deep soil in consideration of its topographical constraints (rock faces). The proposed development does not adjoining any open space land, National Parks, or urban bushland, and does not present an unreasonable outcome to the adjoining foreshore.

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

Comment:

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

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

The proposed development includes a parking structure to the front boundary with a maximum width of 8.7 metres, where the control allows for up to 6.2 metres. The underlying objectives of the control are addressed as follows:

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

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

Comment:

The proposed development provides three car parking spaces on the site, including the two in the carport to the front of the site and an upgrade of the existing hardstand towards the centre of the site, in excess of the minimum two required by Schedule 3 Part A1 of the Manly DCP. The parking spaces fronting Seaforth Crescent are in an accessible location by the front boundary. This is sufficient in supporting the vehicular access needs of the occupants of the site. In this way, the proposed development does not result in reliance on street parking.

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

Comment:

The proposed development provides a driveway and parking structure in a similar location to that approved under DA0184/2016, to which this application relates. The structure provides for safe, efficient and convenient access on a site that is burdened by significant topographical constraints. The works are set low to the ground at the front of the site and are integrated with landscaping so as to minimise the visual impact of the structure on the view from the public domain.

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

Comment:

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

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

Comment:

The proposed development does not increase the number of driveway crossings from existing, and it should be noted that no footpath currently exists to the street frontage.

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

Comment:

The proposed driveway and parking structure are set behind landscaping that has the effect of screening the structure from public view.

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

Comment:

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

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 \$64,158 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$6,415,781.

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

The application is referred to the Development Determination Panel (DDP) due to the number of submissions (8) and the variation to the height of buildings development standard (56.47%). A previous development consent (DA0184/2016) approved boundary reconfiguration of the subject two lots, on which this application relies. DA0184/2016 has been physically commenced, but the resultant lots are yet to be registered.

Concerns raised in the objections have been resolved by way of recommended conditions of consent and detailed assessment demonstrating that the proposed development is acceptable on merit.

Critical assessment issues included the height of building variation, development in the foreshore area, and the built form of the carport.

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 deferred commencement 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

DEFERRED COMMENCEMENT APPROVAL

A. 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.

Accordingly Council as the consent authority grant a Deferred Commencement Development Consent being subject to a two (2) year time frame for Deferred Commencement Consents detailed within Clause 76 of the Environmental Planning and Assessment Regulation 2021 to DA2023/1230 for Demolition works and construction of a dwelling house including swimming pool and associated works. on land at Lot 175 DP 4889,163 Seaforth Crescent, SEAFORTH, Lot 6 DP 212783,161 B Seaforth Crescent, SEAFORTH, subject to the conditions printed below:

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

Terms and Reasons for Conditions

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

DEFERRED COMMENCEMENT CONDITIONS

1. Registration of Lots and Creation/Amendment of Easements

- The lots approved under Development Consent DA0184/2016 are to be registered with NSW Land Registry Services.
- Easements for access (ROW) and services are to be created in favour of approved Lot 2 burdening existing Lots 1, 2, 3, 4 and 5 of DP 212783.
- The Restriction on Use of Land (right of way and easement for parking marked '(B)' on plans approved under DA0184/2016) and accompanying Section 88B instrument burdening Lot 1 are to reflect the parking area shown on the plan marked A0106 Entry and Carport Plan, prepared by Koichi Takada Architects, dated 13 February 2024.

Evidence satisfying the above is to be provided to Council in order to activate the consent.

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

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

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

GENERAL CONDITIONS

2. 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
A0100	B	Basement Floor Plan	Koichi Takada Architects	13 February 2024
A0101	B	Ground Floor Plan	Koichi Takada Architects	13 February 2024
A0102	B	Level 01 Plan	Koichi Takada Architects	13 February 2024
A0103	B	Level 02 Plan	Koichi Takada Architects	13 February 2024
A0104	B	Roof Plan	Koichi Takada Architects	13 February 2024
A0106	B	Entry & Carport Plan	Koichi Takada Architects	13 February 2024
A0200	B	North & South Elevations	Koichi Takada Architects	13 February 2024
A0201	B	East & West Elevations	Koichi Takada Architects	13 February 2024
A0210	A	Carport Elevations	Koichi Takada Architects	4 March 2024
A300	C	Section A & B	Koichi Takada Architects	13 February 2024
A301	B	Section C & D	Koichi Takada Architects	13 February 2024

A310	A	Section - Inclinator	Koichi Takada Architects	4 March 2024
LP01-D0423	01/C	DA Cover Page	Landscape Design Sydney	24 July 2023
LP02-D0423	01/C	Rear Landscape Plan	Landscape Design Sydney	24 July 2023
LP03-D0423	01/C	Level 1 Landscape Plan	Landscape Design Sydney	24 July 2023
LP04-D0423	01/C	Level 2 Landscape Plan	Landscape Design Sydney	24 July 2023
LP05-D0423	01/C	Roof Landscape Plan	Landscape Design Sydney	24 July 2023
LP06-D0423	01/C	Garage Landscape Plan	Landscape Design Sydney	24 July 2023
LP07-D0423	01/C	Details	Landscape Design Sydney	24 July 2023
STORM-1/B	-	Stormwater Management Plan	Taylor Consulting	27 February 2024
STORM-2/A	-	Entry Stormwater Management Plan	Taylor Consulting	27 February 2024
STORM-3	-	Stormwater Management Details	Taylor Consulting	27 February 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Aboriginal Cultural Heritage and Archaeological Advice	-	Associates Archaeology and Heritage	January 2024
Arboricultural Impact Appraisal	A	Naturally Trees	23 February 2024
BASIX Certificate 1373005S_02	-	Efficient Living	28 February 2024
NatHERS Certificate HR-7T9WTE-02	-	Efficient Living	28 February 2024
Report on Geotechnical Site Investigation 2011-185.2	1	Crozier Geotechnical Consultants	February 2024
Waste Management	-	Applicant	28 August 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.

3. 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 - Overhead Cables	15 September 2023
	Ausgrid Referral Response - Underground Cables	

(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.

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 \$64,157.81 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$6,415,781.00.

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. **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) coordinate with the latest architectural drawings; areas to be updated include (but are not limited to) former terrace area on the Basement level, on slab planters on Level 01, on slab planters on Level 02, green roof extent on the Roof level, arrangement of the entry and carport,
- ii) ensure species selection in the foreshore setback area will screen any exposed basement/pool structures to at least RL 11.30,
- iii) all tree planting species/locations shown on drawings LP01, LP02, LP03, LP04, and LP06 by Dangar Barin Smith dated 24/07/23 remain.

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

Reason: Landscape amenity.

9. **Footing Design Near Trees to be Retained**

a) footing structural layout plans for the works including the carport structure 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 deemed necessary by the Arborist), complying with clause 3.3.4 of AS 4970-2009 Protection of trees on development sites, near existing tree 43, 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.

10. **On Slab Landscape Works**

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

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

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

11. **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.

12. **Installation of Nest Boxes**

A minimum of two nest boxes are to be installed in retained trees on the site:

- At least one box suitable for arboreal mammals
- At least one box suitable for native birds

Nest boxes must be attached in accordance with industry best practice (e.g. expandable tree sensitive methods).

Written certification of compliance is to be prepared by the Project Ecologist and submitted to the Principal Certifier prior to issue of the Construction Certificate.

Reason: To maintain wildlife habitat.

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 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 a dissipater to ensure no scouring prior to discharging into Middle Harbour.

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

15. Boundary Identification Survey

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

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

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

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

16. Estuarine Planning Level Requirements

An Estuarine Planning Level (EPL) of 3.5m AHD has been considered by Council for the subject site and shall be applied to all development proposed below this level as follows:

1. All structural elements below 3.5m 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 3.5m 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 3.5m AHD.

Reason: To ensure vulnerable components of the development are built at the appropriate level.

17. Compliance with Standards

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

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

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

18. Sydney Water "Tap In"

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

19. Project Arborist

a) 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) tree protection measures and works under sections 4 Arboricultural Method Statement, Appendix 7 Schedule of works and responsibilities, and Appendix 8 Tree management plan.

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.

20. **Tree Removal Within the Property**

a) this consent approves the removal of existing trees on the subject site as listed below:

i) tree 30 - *Acer negundo*, trees 31 and 32 - *Lophostemon confertus*, trees 34 and 35 - *Erythrina sykesii*, and trees 36 and 37 - *Jacaranda mimosifolia*.

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.

21. **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).

- 161 Seaforth Crescent, Seaforth
- 161C Seaforth Crescent, Seaforth
- 165 Seaforth Crescent, Seaforth
- 165A Seaforth Crescent, Seaforth

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.

The dilapidation reports are to be prepared by a suitably qualified person. Copies of the reports 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 reports is denied by an adjoining owner, the Applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifier must be satisfied that the requirements of this condition have been met prior to commencement of any works. If access is denied, then no dilapidation report is required.

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

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

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

22. 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

23. 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.

24. Protection of Existing Street Trees

a) all existing street trees in the vicinity of the works shall be retained during all construction stages, and the street tree(s) fronting the development site shall be protected by tree protection fencing in accordance with Section 4 of AS 4970-2009 Protection of trees on development sites. As a minimum the tree protection fencing for street tree(s) fronting the development site shall consist of standard 2.4m panel length to four sides and in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings, unless otherwise directed by an Arborist with minimum AQF Level 5 in arboriculture. All fencing shall be located to allow for unrestricted and safe pedestrian access upon the road verge.

b) all street trees within the road verge are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree(s) is prohibited. No excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of street trees.

Reason: Street tree protection.

25. Tree and Vegetation Protection

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

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

b) tree protection shall be undertaken as follows:

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

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

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

c) the Principal Certifier must ensure that:

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

Reason: Tree and vegetation protection.

26. **Condition of Trees**

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

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

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

to be implemented.

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

Reason: Protection of trees.

27. **Pre-clearance Survey**

Any habitat for native wildlife (including tree hollows) approved for removal is to be inspected for native wildlife prior to its removal. If native wildlife is found within habitat to be removed, a licensed wildlife rescue and rehabilitation organisation must be contacted for advice.

Any incidents in which native wildlife are injured or killed as a result of works are to be recorded, in addition to details of any action taken in response.

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

Reason: To protect native wildlife.

28. **Road Reserve**

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

Reason: Public safety.

29. **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.

30. **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.

31. 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.

32. Aboriginal Heritage

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

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

Reason: Aboriginal Heritage Protection.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

33. 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 Landscape Plan(s) unless otherwise imposed by any conditions,
 - iii) all tree planting shall be a minimum pre-ordered planting size of 75 litres or as otherwise scheduled if greater in size; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth generally, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and located either within garden bed or within a prepared bed within lawn,
 - iv) all native trees shall be located at least 3.0 metres from buildings or more, and at least 1.5 metres from common boundaries; trees in the northern side setback shall be located at least 2.2 metres from the building,
 - v) 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,
 - vi) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces,
 - vii) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone.

- b) prior to the issue of an Occupation Certificate, details (from a landscape architect, landscape

designer or qualified horticulturalist) shall be submitted to the Principal Certifier, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

34. **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.

35. **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.

36. **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.

37. **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 reports with the pre-construction reports,
- 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.

38. **Swimming Pool Requirements**

The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:

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

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifier, certifying compliance with Australian Standard 1926.

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system. Appropriate instructions of artificial resuscitation methods.

(d) A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.

(e) Signage showing resuscitation methods and emergency contact

(f) All signage shall be located in a prominent position within the pool area.

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

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

Reason: To protect human life.

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

39. **Landscape Maintenance**

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

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

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

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

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

Reason: To maintain local environmental amenity.

40. **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.

41. **Inclinor Noise**

The inclinor and its 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.

42. **General Foreshore Matters**

Unless in accordance with the approved works the Consent holder must ensure that:

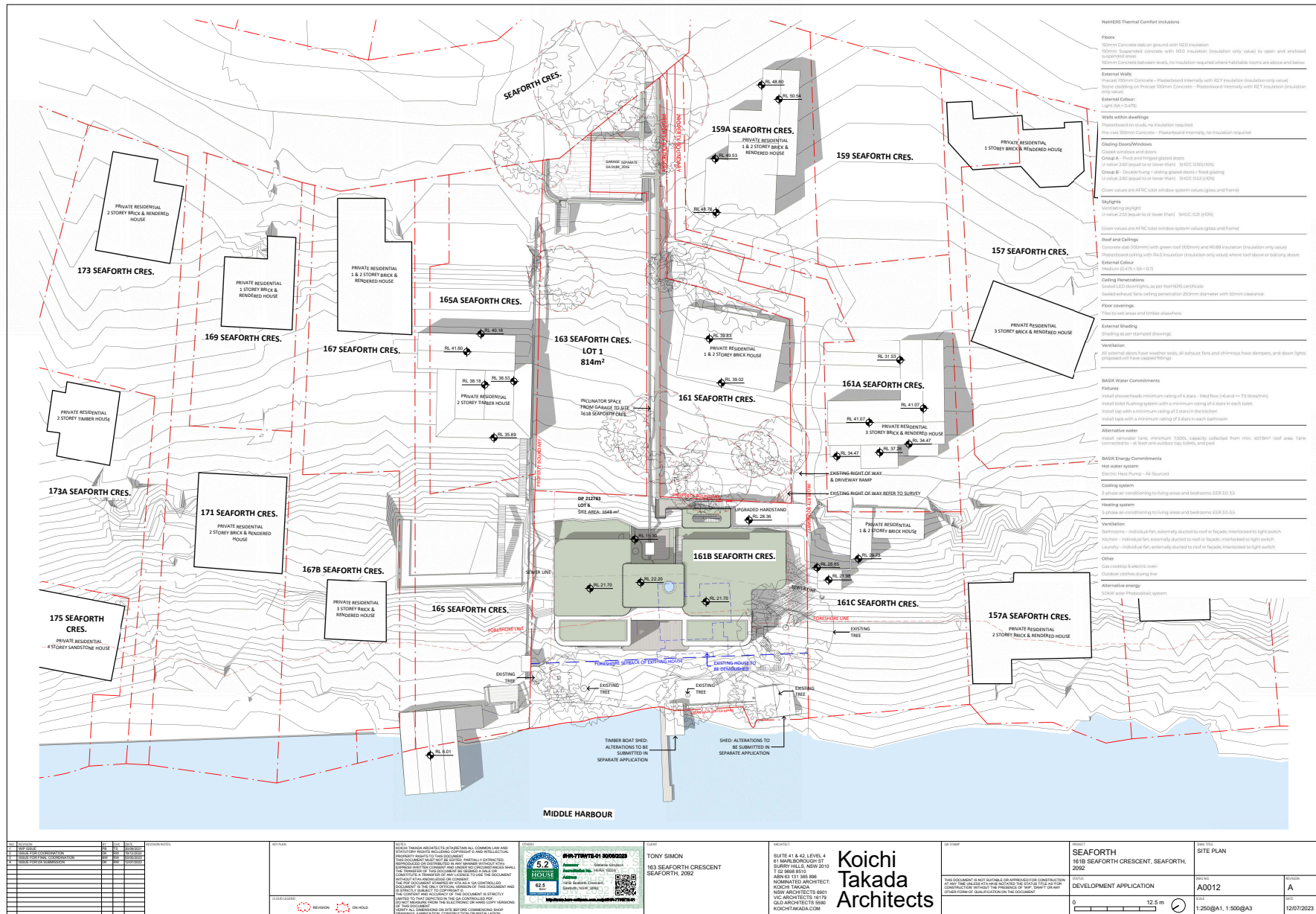
- a) no materials or cleared vegetation that may obstruct flow or cause damage to the foreshore are left within the coastal foreshore area,
- b) all drainage works must not obstruct flow of water within the coastal waters. Drain discharge points are stabilised to prevent erosion. Any excavation must not result in diversion of any foreshore bank instability or damage to native vegetation,
- c) the foreshore is graded to enable the unimpeded flow of water and retaining structures result in a stable foreshore banks,
- d) any vegetation or other material removed from the area of operations shall be disposed of lawfully. Burning of the material is not permitted,
- e) the foreshore is to function as a natural ecological system and as such, all works, including but not limited to access, roads, recreational areas, service easements and landscaping are to be located landward of the foreshore other than as provided by the consent.

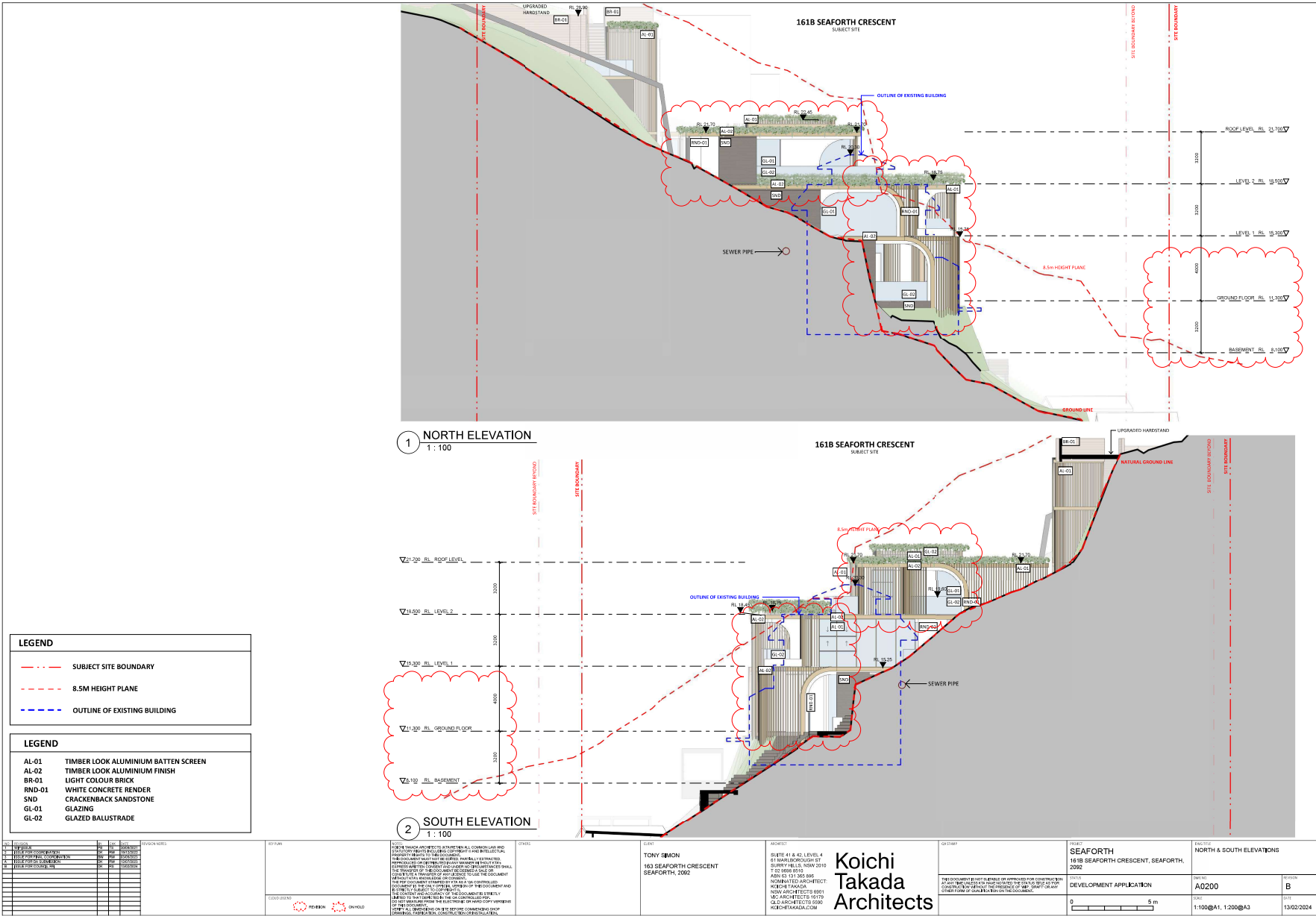
Reason: Environmental protection, monitoring and enhancement of the foreshore.

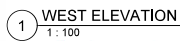
43. **No Approval for Secondary Dwelling**

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.







LEGEND	
	SUBJECT SITE BOUNDARY
	8.5M HEIGHT PLANE
	OUTLINE OF EXISTING BUILDING

LEGEND	
AL-01	TIMBER LOOK ALUMINIUM BATTEN SCREEN
AL-02	TIMBER LOOK ALUMINIUM FINISH
BR-01	LIGHT COLOUR BRICK
RND-01	WHITE CONCRETE RENDER
SND	CRACKENBACK SANDSTONE
GL-01	GLAZING
GL-02	GLAZED BALUSTRADE

[illegible]

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OTHERS

CLIENT

TONY SIMON

163 SEAFORTH CRESCENT
SEAFORTH, 2062

ARCHITECT

SUITE 41 & 42, LEVEL 4
11 MARLBOROUGH ST
SURRY HILLS, NSW 2010
T 02 9559 8510
ABN 63 131 365 899
NOMINATED ARCHITECT:
KOICHI TAKADA
NSW ARCHITECTS 6901
VIC ARCHITECTS 15179
QLD ARCHITECTS 5590
KOICHI TAKADA.COM

Koichi
Takada
Architects

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PROJECT	SEAFORTH 161B SEAFORTH CRESCENT, SEAFORTH, 2092
STATUS	DEVELOPMENT APPLICATION
Scale	0 5 m 

DWG TITLE EAST & WEST ELEVATIONS	
DWG NO. A0201	REVISION B
SCALE 1:100@A1, 1:200@A3	DATE 13/02/2024

Suite 1 No.9 Narabang Way Belrose NSW 2085 • acn 121 577 768
t (02) 9986 2535 • f (02) 99863050 • www.bbfplanners.com.au

BostonBlythFleming
Town Planners

27th February 2024

Chief Executive Officer
Northern Beaches Council
725 Pittwater Road
DEE WHY NSW 2099

Dear Sir/ Madam,

Proposed new dwelling house – 161B and 163 Seaforth Crescent, Seaforth

Updated Clause 4.6 variation request – Height of buildings

1.1 Introduction

This clause 4.6 variation request has been prepared have regard to the revision B Architectural plans, dated 13/02/24, prepared by Koichi Takada Architects.

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

1.2 Manly Local Environmental Plan 2013 (MLEP 2013)

1.2.1 Clause 4.3 – Height of Buildings

Pursuant to Clause 4.3(2) of MLEP 2013, the height of a building is not to exceed the maximum height shown for the land on the Height of Buildings Map, being 8.5m with respect to the subject site. The objectives of this control are as follows:

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

Clause 4.6 Request | Height of Buildings

- (d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,
- (e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

Building height is defined as follows:

building height (or height of building) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like

Ground level existing is defined as follows:

ground level (existing) means the existing level of a site at any point.

It has been determined that the western edges of the Level 01 and Level 02 façades and roofed terraces breach the 8.5 metre building height standard by between 300mm (7.5%) and 1.91 metres (22.4%) as depicted in the building height blanket diagram at Figure 1 below. The level 02 breach is limited to a small area of roof slab and horizontal architectural screen element. The balance of the development sits comfortably below the 8.5 metre height standard.

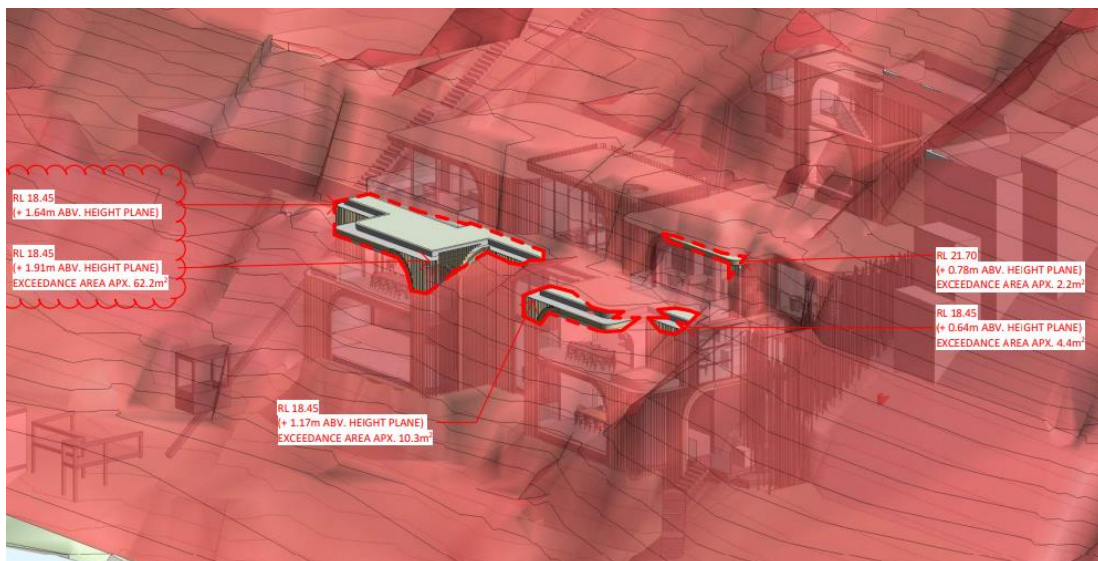


Figure 1 - Building height blanket diagram showing 8.5 metre non-compliant building height elements

1.2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of MLEP 2013 provides:

The objectives of this clause are:

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

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

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner. At [90] of *Initial Action* the Court held that:

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

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

Clause 4.6(2) of MLEP 2013 provides:

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 height of building development standard in clause 4.3 of MLEP 2013.

Clause 4.6(3) of MLEP 2013 provides:

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 development standard at clause 4.3 of MLEP 2013 which specifies a maximum height of 8.5m. However, strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

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

Clause 4.6(4) of MLEP 2013 provides:

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

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

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority.

The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]). The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest ***because*** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]).

The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Following advice received from the Department of Planning, Industry & Environment (letter dated 2 November 2021), development applications for Class 1 buildings (single dwelling houses) with a Clause 4.6 variation greater than 10% to building height within the Warringah Local Environment Plan 2011, Manly Local Environment Plan 2013 and Pittwater Local Environment Plan 2014 and floor space ratio under the Manly Local Environment Plan 2013, may be determined by Council staff under delegation in accordance with Council procedures.

Clause 4.6(5), which relates to matters that must be considered by the Secretary in deciding whether to grant concurrence is not relevant, as the Council has the authority to determine this matter. Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.3 of MLEP 2013 from the operation of clause 4.6.

1.3 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:

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].

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].

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].

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].

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.

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

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

1. Is clause 4.3 of MLEP 2013 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 of MLEP 2013 and the objectives for development for in the zone?
4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.3 of MLEP 2013?

1.4 Request for variation

1.4.1 Is clause 4.3 of MLEP 2013 a development standard?

The definition of “development standard” at clause 1.4 of the EP&A Act includes a provision of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

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

Clause 4.3 of MLEP 2013 prescribes provision that seeks to control the height of development. Accordingly, clause 4.3 of MLEP 2013 is a development standard.

1.4.2 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 approach is relevant in this instance, being 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 development standard

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

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

Comment: The non-compliance arises as a consequence of the irregular topographical characteristics of the site. The proposed new dwelling is located over 60 metres from Seaforth crescent and well below the level of the road such that it will not be readily discernible in a streetscape context. As such, the proposed height non-compliance will not result in any adverse impact upon the streetscape.

When seen from the waterway, the proposal is highly articulated, appearing as a 2 storey dwelling that steps up the slope of the land, as shown in the photomontage below.



Figure 2 - Perspective image showing the visual presentation of the proposed dwelling house as viewed from the harbour.

The height of the proposed development is entirely commensurate with that of surrounding dwelling houses, the majority of which have three storeys presenting to the waterway.

I am satisfied that the objective is achieved notwithstanding the non-compliance with the building height development standard.

(b) to control the bulk and scale of buildings

Comment: The proposed development is highly articulated and is of a scale that is consistent with that of surrounding and nearby dwellings, and that anticipated by the desired future character of the locality. The portions of the proposal that protrude above the height plane are limited to the western edges of the Level 01 and Level 02 façades and roofed terraces and not habitable floor space such that the breaching elements do not significantly contribute to the bulk and scale the building.

The proposed new dwelling is of superior architectural design and is an appropriate contextual response to the individual characteristic of the subject site and its context.

I am satisfied that the objective is achieved notwithstanding the non-compliance with the building height development standard.

(c) to minimise disruption to the following—

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

Comment: The proposed development has been sensitively designed to respond to the topography of the land and the availability of views over the existing roof form. Having inspected the site and its surrounds to determine available view lines across the property I am satisfied that the non-compliant building height breaching elements will not impact existing scenic views from any surrounding property or those available from the public domain.

View impacts have been minimised and in this regard I am of the opinion that this objective is satisfied notwithstanding the non-compliance with the building height development standard.

(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 building height breaching elements will not result in any unreasonable impacts with regard to overshadowing as depicted on the shadow diagrams.

I am satisfied that the objective is achieved notwithstanding the non-compliance with the building height development standard.

- (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 proposed development has had appropriate regard to existing vegetation and topography, with no conflict arising as a consequence of the proposed development. In particular, the building height breaching elements will not result in any conflicts with bushland and surrounding land uses.

I am satisfied that the objective is achieved notwithstanding the non-compliance with the building height development standard.

Consistency with zone objectives

The subject property is zoned C3 Environmental Management pursuant to MLEP 2013. The developments consistency with the stated objectives of the C3 zone is as follows:

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

Comment: The proposed dwelling house is of superior architectural design, that is an appropriate response to the special aesthetic values of the subject site. The proposed development will result in the enhancement of landscaping, to complement landscaping along the foreshore. The proposed height non-compliance does not detract from consistency with this objective of the zone.

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

Comment: The proposed dwelling house is permissible with consent in the zone and will not result in any adverse impacts upon the special values of the site. The proposed height non-compliance does not detract from consistency with this objective of the zone.

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

Comment: The proposed development retains the existing significant trees and rock outcrops located adjacent to the foreshore. The application also proposes a significant enhancement of landscaping across the site, with a net increase in canopy resulting from the proposal. The proposed height non-compliance does not detract from consistency with this objective of the zone.

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

Comment: The proposed development does not result in any adverse impacts on nearby foreshores, the geology of the site or surrounding bushland. The application is supported by a Geotechnical Report and Stormwater Management Plans to confirm that a suitable outcome will be achieved in this regard. The proposed height non-compliance does not detract from consistency with this objective of the zone.

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

Comment: The application does not involve works to the immediate foreshore. However, the application is supported by Stormwater Management Plans demonstrating a suitable stormwater management solution for the site. The proposed height non-compliance does not detract from consistency with this objective of the zone.

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

Comment: The building height breaching elements do not prevent the retention of existing significant trees and rock outcrops adjacent to the foreshore and will not compromise the use/development potential of surrounding land. The proposed development has been designed to step down the slope of the site and is of a scale that is commensurate with that of surrounding dwelling houses.

The height and bulk of the proposed dwelling will not have any unreasonable or adverse impacts upon surrounding dwellings or the use of the adjoining foreshore.

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

1.4.3 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]-[25] that:

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 environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”.

The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.

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

Sufficient environmental planning grounds

Ground 1 – Topography

The steep topography of the land and the constrained nature of the available building footprint limit the ability to provide a reasonable quantum of floor space on the site whilst complying with the building height standard.

Strict compliance with the building height standard would unreasonably limit the development potential of the land and in doing so not promote the orderly and economic use and development of land Objective 1.3(c) of the Act.

Ground 2 – Superior architectural design

The apparent size of the proposed development will be compatible with dwellings in the visual catchment of the site, which features a number of buildings of comparable bulk and scale. The building is of exceptional design quality with the variation facilitating a building height that provides for contextual built form compatibility, consistent with Objectives 1.3(c) and (g) of the Act.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments*, most observers would not find the proposed development offensive, jarring or unsympathetic as seen from adjoining properties or as viewed from the waterway. The proposed development is compatible with other development in the visual catchment of the site, and the character of the wider C3 Environmental Management Zone.

Overall, there are sufficient environmental planning grounds to justify contravening the development standard.

1.4.4 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 4.3 and the objectives of the C3 Environmental Management zone

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

1.4.5 Secretary's concurrence

Following advice received from the Department of Planning, Industry & Environment (letter dated 2 November 2021), development applications for Class 1 buildings (single dwelling houses) with a Clause 4.6 variation greater than 10% to building height within the Warringah Local Environment Plan 2011, Manly Local Environment Plan 2013 and Pittwater Local Environment Plan 2014 and floor space ratio under the Manly Local Environment Plan 2013, may be determined by Council staff under delegation in accordance with Council procedures.

1.5 Conclusion

Pursuant to clause 4.6(4)(a) of MLEP 2013, the consent authority can be satisfied that this 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.

Boston Blyth Fleming Pty Limited



Greg Boston

B Urb & Reg Plan (UNE) MPIA

Director

ITEM 3.2	DA2023/1043 - 21 BATTLE BOULEVARDE SEAFORTH - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE INCLUDING SWIMMING POOL
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PURPOSE

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

RECOMMENDATION

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.

THAT Council as the consent authority **approves** Development Consent to DA2023/1043 for demolition works and construction of a dwelling house including swimming pool on land at Lot 1 DP 4889, 21 Battle Boulevarde SEAFORTH, subject to the conditions set out in the Assessment Report.

REPORTING MANAGER	Rodney Piggott
TRIM FILE REF	2024/233650
ATTACHMENTS	↓1 Assessment Report ↓2 Site Plan and Elevations ↓3 Clause 4.6

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/1043
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Responsible Officer:	Dean Pattalis
Land to be developed (Address):	Lot 1 DP 4889, 21 Battle Boulevard SEAFORTH NSW 2092
Proposed Development:	Demolition works and construction of a dwelling house including swimming pool
Zoning:	Manly LEP2013 - Land zoned C3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Shan Yu
Applicant:	Ursino Architects

Application Lodged:	04/08/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	10/08/2023 to 24/08/2023
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	4.3 Height of buildings: 38.71%
Recommendation:	Approval

Estimated Cost of Works:	\$ 3,209,301.00
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EXECUTIVE SUMMARY

This development application seeks consent for the demolition of existing on-site structures and the construction of a new four (4) storey dwelling and new driveway access.

The application is referred to the Development Determination Panel (DDP) due to a variation to Clause 4.3 Height of Buildings of greater than 10%.

Critical assessment issues included a Clause 4.6 assessment, as well as impacts to amenity including privacy and view loss.

Two unique submissions were received which raised issues predominantly relating to building height, view loss, structural integrity and loss of amenity.

The 4.6 request for the non-compliance with height standard arises from the steep drop in topography at the central area of the site of which a portion of the upper floor is located above.

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 proposes the demolition of existing on-site structures and the construction of a new four (4) storey dwelling and new driveway access.

A pre-lodgement meeting (PLM2022/0108) was held on 23 June 2022 and the findings and recommendations of the meeting have been incorporated into this report.

Amended Information

Amended information has been provided during the application in response to a Request for Further Information provided by Council. The amendments included the scaling back of the projecting elements at each of the floor levels to provide greater compliance with the height of buildings development standard, as well as additional details on the proposed shadow diagrams and floor space ratio calculation plans. The amended information resulted in a reduction in environmental impact and does not require further community notification in accordance with Council's Community Participation Plan.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Local Environmental Plan 2013 - 6.10 Limited development on foreshore area
 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 - 4.1.9 Swimming Pools, Spas and Water Features
 Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

SITE DESCRIPTION

Property Description:	Lot 1 DP 4889 , 21 Battle Boulevard SEAFORTH NSW 2092
Detailed Site Description:	The subject property is legally described as Lot 1 in DP 4889, No. 21 Battle Boulevard, Seaforth. The site is zoned C3 Environmental Management. The site is generally rectangular in shape having frontage to Battle Boulevard of 21.335 metres, variable depth of between 50.9 and 53.34 metres and an irregular boundary to Middle Harbour. The site falls approximately 30 metre across its surface towards Middle Harbour with vehicular access to the site currently obtained via a narrow shared slip road which runs parallel to Battle Boulevard and separated by a retaining wall and steep embankment. The subject site is currently occupied by a 2 storey brick residence with tiled pitched roof and a carport located adjacent to the frontage of the property. Development adjoining the property comprises large residential dwellings which step down the site over a series of levels in response to topography. A number of significant trees are located on the immediately adjoining properties. Dwellings are orientated to the south to take advantage of the available views towards Middle Harbour and the spit.

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-lodgement Meeting **PLM2022/0108** was held on 23/06/2022 for Construction of a dwelling house

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)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.

Section 4.15 Matters for Consideration	Comments
Assessment Regulation 2021 (EP&A Regulation 2021)	<u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in response to a Council RFI, which provided a reduced built form resulting in greater compliance with the height standard. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental 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 10/08/2023 to 24/08/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Bill Tulloch	Po Box 440 MONA VALE NSW 1660
Mr Paul Kapetas Creative Planning Solutions Pty Ltd	28 Springvale Avenue FRENCHS FOREST NSW 2086

Two submissions were received during the community notification period and the following concerns raised:

No.19 Battle Boulevard

- Floor Space Ratio

Comment:

Concern was raised that the plans provided were misleading and actually resulted in a non-compliance with the floor space ratio development standard. In response, Council has received amended plans which has reduced the overall gross floor area by amending the calculations which had incorrectly excluded a portion of the garage floor level as well as some small ancillary internal areas. It is considered the proposed development is numerically compliant with the floor space ratio development standard.

- Building Height

Comment:

Concern was raised regarding the proposed building height which was perceived to be excessive or unreasonable, whilst also unclear given the absence of spot survey levels on the architectural plans. In response, Council has received amended plans which have reduced the projection of the floor levels towards the foreshore and stepped in the encroachments further towards the dwelling at each floor level. As a result, the overall bulk and scale of the development has been reduced, whilst the only area of non-compliance is located at the garage floor level. The survey contours levels have also been overlaid to the site plan to provide for easier interpretation of the proposed height at different points of the development. A detailed discussion addressing the merit of the height variation has been included

within this report under Clause 4.6.

- View Loss

Comment:

A detailed discussion under the principles of Tenacity Consulting vs Warringah Council [2004] has been included within this report. The view loss impact to No.19 is considered to be minimal. A condition of consent has also been included for no new vegetation plantings to possess a mature height of greater than 5m, in order to protect existing views from adjoining residential areas and the public domain.

- Wall Height

Comment:

Concern was raised regarding the proposed wall height non-compliance. In response, Council has received amended plans which ensure the wall heights of all areas of the property are fully compliant with the numerical control, with the exception of the area of non-compliance to the height of buildings development standard.

- Setbacks

Comment:

Concern was raised regarding setback non-compliances. It is advised that the most recent amended plans provided with the application are entirely numerically compliant with the setback controls of the MDCP 2013.

- Envelope

Comment:

The submission made reference to a "non-compliant envelope". It is advised there is no building envelope control under MDCP 2013.

- Landscaped Area

Comment:

Concern was raised regarding proposed landscaped area. It is advised the proposal is numerically compliant with the total open space and landscaped area requirements of MDCP 2013.

- Solar access

Comment:

Concern was raised regarding impacts to solar access. Council has received amended shadow diagrams which identify that there will be no areas of additional overshadowing to adjoining residential areas, compared to the existing arrangement.

- Visual Privacy

Comment:

Concern was raised in regards to visual privacy. An assessment of the proposed visual privacy arrangement in the context of adjoining dwellings has considered that further mitigation measures are necessary. It is considered the first floor rear balcony shall be a highly trafficable space given it adjoins an internal living/dining area. As a result, conditions of consent are recommended for privacy screening on the eastern and western elevations of the balcony. The privacy screens, as conditioned, shall not encroach the 8.5m height limit. Window W14 on the western elevation of the first floor dining is also recommended to be amended via condition to contain a minimum sill height of 1.5m to prevent overlooking.

The privacy arrangement for the remaining areas of the dwelling are considered reasonable. The proposed ground floor consists of bedrooms which are low-trafficable spaces that are not conducive to high volumes of pedestrian movement, whilst the lower ground floor is located considerably more rearward of the building line of adjoining sites that is not in proximity to any private open space or principal living areas.

- Swimming Pool

Comment:

Concern was raised regarding the proposed swimming pool being non-compliant with the built form controls and height standard. In response, Council has received amended plans which reduced the size and scale of the proposed swimming pool to now be located below the 8.5m standard. The proposed non-compliance with the minimum height required by Clause 4.1.9 MDCP 2013 has been addressed within this report and considered acceptable on merit.

- Excavation

Comment:

Concern was raised regarding the depth of excavation proposed. The proposed earthworks have been addressed within this report under Clause 4.4.5 MDCP 2013 and considered acceptable on merit. Notwithstanding, conditions of consent for pre and post construction dilapidation reporting shall be recommended.

- Stormwater Management

Comment:

Council's Development Engineer has reviewed the application in this context and provided comments raising no objection to approval, subject to recommended conditions of consent.

No 23 Battle Boulevard

- Building Height

Comment:

As discussed above, the applicant has submitted amended plans reducing the extent of non-compliance. The proposed building height variation has been assessed under Clause 4.6 within this report and considered acceptable on merit.

- Floor Space Ratio

Comment:

As discussed above, amended plans provided with the application are considered to result in an acceptable and compliant floor space ratio outcome.

- View Loss

Comment:

A detailed discussion under the principles of Tenacity Consulting vs Warringah Council [2004] has been included within this report. The view loss impact to No.23 is considered to be negligible. A condition of consent has also been included for no new vegetation plantings to possess a mature height of greater than 5m, in order to protect existing views from adjoining residential areas and the public domain.

- Rear Setback

Comment:

Concern was raised regarding the proposed development being inconsistent with the existing rear building line pattern in the locality. In response, it is considered the proposal complies with the foreshore building line prescribed by Clause 6.10 Limited development on foreshore area MLEP 2013. The proposal is also entirely compliant with the total open space requirements prescribed by MDCP 2013 which ensures there is no unreasonable overdevelopment of the site.

- Light Nuisance

Comment:

Concern was raised regarding light nuisance from headlights of vehicles using the proposed driveway and garage. In response, based on the proposed configuration and existing configuration of No.23, headlights are not considered to pose an unreasonable risk to amenity in the context of the residential locality.

- Vegetation Protection

Comment:

Concern was raised regarding impacts to existing trees. In response, Council's Landscape Officer and Bushland/Biodiversity have reviewed the application and provided comments raising no objection to approval, subject to recommended conditions of consent.

- New access driveway

Comment:

Concern was raised regarding the visual impact of the proposed access driveway. A 'view from street analysis' has been submitted with the application under drawing number A805. It is considered this diagram represents a reasonable visual arrangement for the proposed driveway in comparison to the existing on-site development. The proposed driveway is also not considered to be out of keeping with examples of similar structures on adjoining sites.

- Visual Privacy

Comment:

As discussed above, suitable conditions of consent are recommended for privacy screening as well as amended window sill heights to result in a suitable visual privacy outcome.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	Council's Landscape Referral section have considered the application against the Manly Local Environment Plan (MLEP), and the following Manly DCP 2013 (MDCP) 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 where applicable A Landscape Plan and a Arboricultural Impact Assessment are submitted and no concerns are raised by Landscape Referral, and conditions shall be imposed reflecting the recommendations of both documents.
NECC (Bushland and Biodiversity)	The proposed development has been assessed against the requirements of :- • Manly LEP 2013 cl 6.5 Terrestrial Biodiversity, and • State Environmental Planning Policy (Resilience and Hazards) 2021 cl. 2.10 Development on land within the coastal environment area. The development will have limited impact to native vegetation, with removal of one Pittosporum species. The application includes a Landscape Plan that has been conditioned for implementation by other referral bodies. Therefore, the development is designed, sited and will be managed to avoid any significant adverse environmental impact.
NECC (Coast and Catchments)	The application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, State Environmental Planning Policy (Resilience & Hazards) 2021, Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity & Conservation) 2021 and Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005. It has also been assessed against requirements of the Manly LEP and DCP. <i>Coastal Management Act 2016</i> The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed development is in line with the

Internal Referral Body	Comments
	objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>. State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA. Clauses 2.10 (coastal environment area) and 2.11 (coastal use area) do not apply as the site is also located within the Sydney Harbour catchment area. Hence, only Clause 2.12 of the SEPP R & H apply for this DA. Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by BBF Pty. Ltd. dated July 2023, the DA satisfies requirements under clause 2.12 of the SEPP R&H. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021. Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity & Conservation) 2021 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.

Internal Referral Body	Comments
	Zoning of Foreshores & Waterways Area The subject site is located within/adjacent to the Zone 6 (Scenic Waters – Active Use). On internal assessment, it is determined that the objectives and assessment criteria of the zone have been met. 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 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 BBF Pty. Ltd. dated July 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 Manly DCP 2013. Development on Foreshore Area The subject site is also shown to be as “Manly Foreshores Area” on Council’s Area “within the foreshore building line Map” in Manly LEP 2013. Hence, Part 6, Clause 6.10 –Limited development on foreshore area of the Manly LEP 2013 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 6, Clause 6.10 of the Manly LEP 2013
NECC (Development Engineering)	The proposal is for demolition works and construction of a new dwelling including a suspended driveway off Battle Boulevard. The site currently has pedestrian and vehicular access off a low level

Internal Referral Body	Comments
	shared access road and footpath. As the proposed suspended driveway will be constructed over the existing low level driveway/footpath which appears to extend beyond the subject site concurrence and comments from Council's Road Asset team is required prior to Development Engineering finalising comments. Engineering Comments 19.01.24 Council's Road Assets section has raised no objections to the proposed development. No objections from Development Engineering subject to the inclusion of the recommended engineering conditions of consent
NECC (Riparian Lands and Creeks)	Supported This application was assessed in consideration of: - Supplied plans and reports; - Coastal Management Act 2016; - State Environmental Planning Policy (Resilience and Hazards) 2021; - Relevant LEP and DCP clauses; and - Northern Beaches Council Water management for development policy. Subject to conditions
Parks, reserves, beaches, foreshore	The development site adjoins Middle Harbour waterway 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 waterway. The development is not detrimental to the landscape character of the adjoining waterway or as viewed from public areas with the lower slopes natural landscape preserved including sandstone outcrops and foreshore vegetation, and as such Parks, Reserves and Foreshores raise no concerns with the development proposal.
Road Reserve	No in principle objection to proposed elevated driveway subject to Road Reserve consent as per former Manly Council Policy subject to the structure not imposing any loads on existing retaining structures on the road reserve. Development Engineering to ensure sufficient clearance under the structure is available for access. Existing pavement on road reserve to be maintained for public access.

Internal Referral Body	Comments	
		
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS	
	Discussion of reason for referral	
	The proposal has been referred to Heritage as the subject site adjoins two heritage items	
	Item I266 – Retaining wall, Battle Boulevarde, Seaforth Item I1 – Harbour foreshores	
	Details of heritage items affected	
	Retaining wall, Battle Boulevarde	
	<u>Statement of Significance</u>	
	The Battle Boulevarde Retaining Wall is a representative example of historical infrastructure built by the Municipal Council of Manly. It provides evidence of the high quality of urban elements in the pre-modern period in this area.	
	Harbour foreshores	
	<u>Statement of Significance</u>	
	Natural landscape type - Aesthetic.	
	<u>Physical Description</u>	
	Length of foreshore including natural and built elements of the landscape. Rocky sandstone ledgers, beaches, mud flats and sandstone retaining walls and timber structures.	
	Other relevant heritage listings	
	SEPP (Biodiversity and Conservation) 2021	No
Australian Heritage Register	No	
NSW State Heritage Register	No	

Internal Referral Body	Comments		
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	
	Consideration of Application		
	The proposal seeks consent for a new dwelling, including a suspended driveway from Battle Boulevard over the existing lower accessway. The harbour foreshore listings runs along the bottom of this property. No works are proposed in the lower section of the property adjoining the harbour. Therefore Heritage considers there is no impact to this item. The heritage listed sandstone retaining wall runs in the road reserve outside this property, although there is a section outside this property that had been replaced with a painted block wall. However the stone wall is still in place in the road reserve at either end of the property where it adjoins both 21 and 25 Battle Boulevard. The proposed suspended driveway passes close to where the heritage retaining wall remains close to the boundary with number 25. While Heritage does not raises objections to this approach, it would prefer vehicle access to the dwelling to continue to be provided from the existing lower accessway. To control impacts from the construction of the new dwelling and driveway, Heritage will condition the protection of the stone retaining wall through pre and post construction heritage dilapidation reports and a temporary heritage protection plan. Note that Heritage does not in anyway approve the removal of any of the existing heritage listed stone retaining wall in the road reserve outside this site. Therefore heritage raises no objections, subject to the imposition of a number of conditions. <u>Consider against the provisions of CL5.10 of MLEP 2013:</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? 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	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.

External Referral Body	Comments
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.

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.1392951S dated 25 July 2023).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021**Chapter 4 – Remediation of Land**

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	11.79m	38.71%	No
Floor Space Ratio	FSR: 0.4:1 (414.8m ²)	0.4:1 (414.8m ²)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.3A Special height provisions	Yes
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
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes

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

Detailed Assessment**4.6 Exceptions to development standards**Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	11.79m
Percentage variation to requirement:	38.71%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

(4) *Development consent must not be granted for development that contravenes a development*

standard unless:

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,

(c) to promote the orderly and economic use and development of land,

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

The applicant's written request argues, in part:

- The ridge of the proposed development is located below the ridge of the existing dwelling which currently occupies the subject site.
- Despite the significant topographical constraints of the site, the majority of the proposed development complies with the standard and the only area of non-compliance is located above a point of the site which drops sharply in topography.
- The proposed ridge level is located below the ridge of adjoining dwellings along the southern side of Battle Boulevard.
- The building line of the non-compliant upper floor is consistent with the building line and pattern of development of the upper floors on adjoining dwellings.
- The proposed development is subject to the special height provisions standard under Clause 4.3A MLEP 2013 and wholly complies with this standard.
- The area of non-compliance is located centrally on-site and generously setback from the property boundaries.

Planner Comment

It is agreed that the proposed development shall be located below the ridge of the existing development, as evidenced on the site survey which identifies the ridge levels of the existing development.

Despite the topographical challenges, all remaining areas of the proposal retain compliance with the numerical standard with the exception of a portion of the garage floor level. It is agreed that the area of non-compliance is a result of a sharp drop in topography at the central portion of the site. It is considered the site is highly constrained topographically which substantially limits the developable area of the site. For this reason, it is considered that whole compliance with the numerical standard is unreasonable in this case given that it would be extremely difficult for on-site development to comply with the control unless the building footprint was to be restricted to only the northern-most portion of the site, which contains a more consistent and mild topography. Given that all remaining areas of the proposal comply with the standard with the exception of an area of the garage floor, it is considered that restricting the developable area of the site to this extent would be unreasonable.

It is also agreed that the proposed development is located below the ridge of adjoining dwellings located along the southern side of Battle Boulevard. According to the site survey, there are numerous developments located to the east and west of the subject property which contain greater ridge heights than the proposed ridge of RL37.07. These include the development adjoining immediately to the west at No.23 Battle Boulevard which has a ridge level of RL39.11. The proposed upper floor of the development maintains a consistent building line with the similarly non-compliant upper floors on the

adjoining site. The proposed non-compliance is therefore not considered to result in a development that is inconsistent or out of character with the existing pattern of development.

Furthermore, the site is mapped as being subject to 'Special Height Provisions' under Clause 4.3A of MLEP 2013. The clause states that 'Despite clause 4.3(2), the height of a building on a lot identified as "Special height provisions" on the Height of Buildings Map must not exceed the height of the highest point of the road adjoining the centre point of the lot boundary that adjoins the road that is the frontage to that lot'. Based on the road levels indicated on the site survey, the proposed dwelling complies numerically with the standard.

Finally, the assessment agrees that the non-compliance is located in a central position on-site that is generously setback from all property boundaries of the subject site, therefore reducing the impact upon adjoining sites.

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).

Figure 1: Building line of garage floor in relation to the building line of upper floors on adjoining sites.

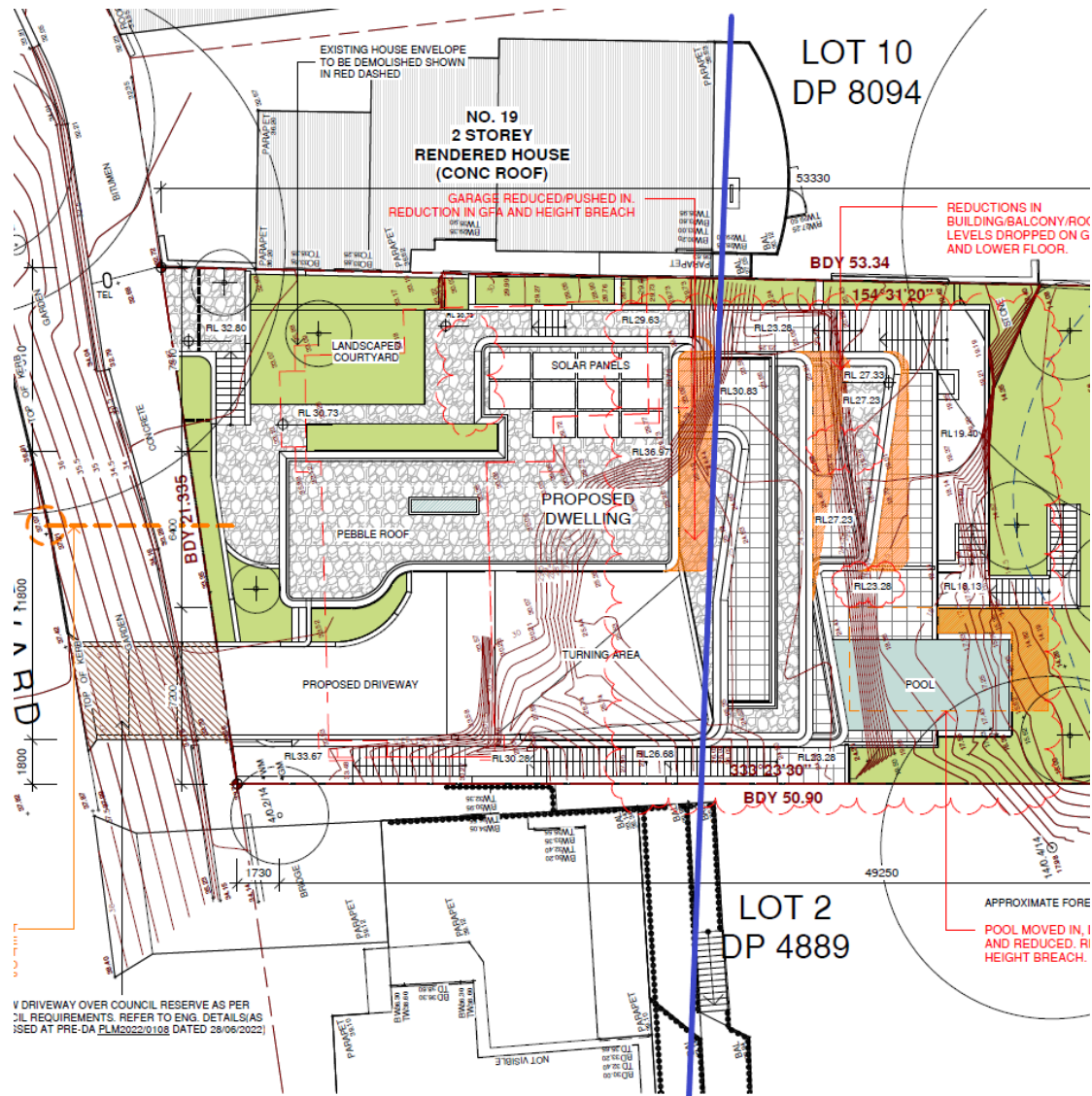
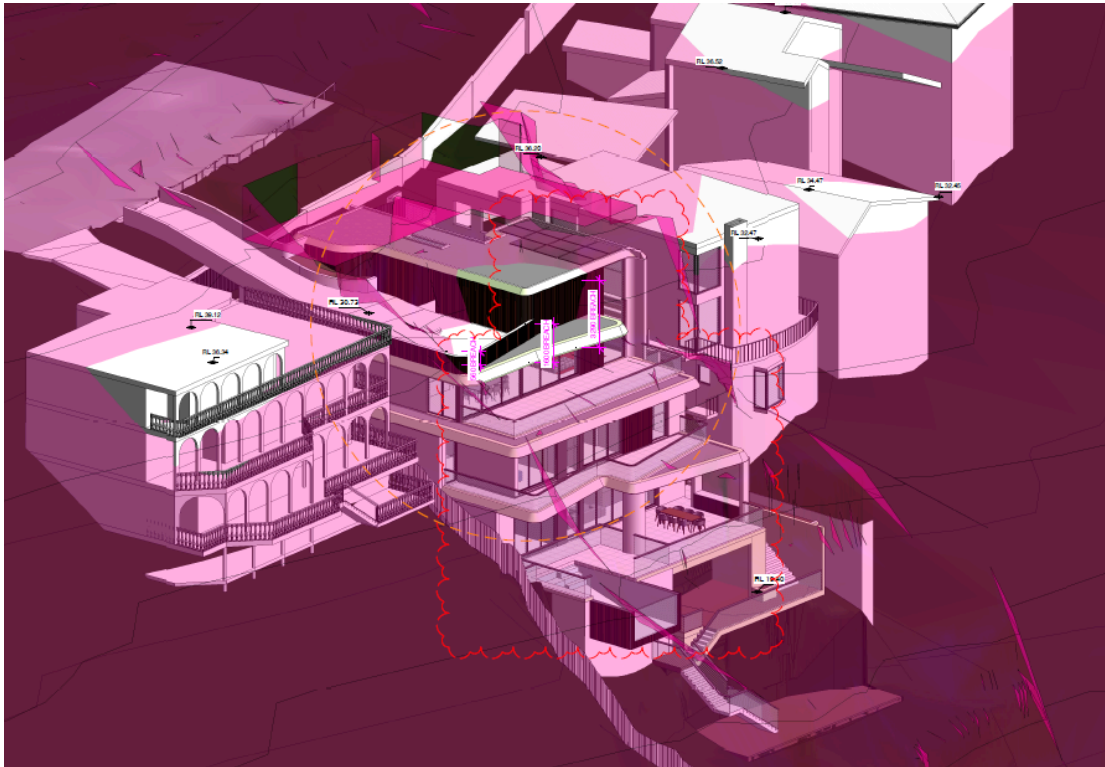


Figure 2: Height plane diagram identifying area of non-compliance in comparison to adjoining development.



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

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

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

Comment:

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

Objectives of development 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:

It is considered the proposed building height is consistent with the prevailing building height within the locality.

b) to control the bulk and scale of buildings,

Comment:

The proposed bulk and scale is considered to be reasonably minimised.

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:

Disruption to views from nearby residential and public spaces is considered to be reasonably minimised.

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:

Reasonable solar access to public and private open space is considered to be maintained.

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:

No unreasonable impacts to existing vegetation and natural features are considered to be proposed.

Zone objectives

The underlying objectives of the C3 Environmental Management zone

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

Comment:

The special environmental and aesthetic values of the zone are considered to be maintained.

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

Comment:

A suitable scale of development is considered to be proposed to protect the above values.

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

Comment:

Tree canopies and the scenic quality of the foreshore is considered to be maintained.

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

Comment:

There is not considered to be an unreasonable impact upon the natural features of the zone.

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

Comment:

The ecological characteristics of the locality are maintained.

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

Comment:

Existing vegetation and topography of surrounding sites shall not be unreasonably impacted.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the E3 Environmental Management zone.

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

Exception to Development Standards conclusion

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

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

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

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

6.10 Limited development on foreshore area

Under Clause 6.10 Limited Development on Foreshore Area, development consent must not be granted for development on land in the foreshore area except for the following purposes:

- *the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area,*
- *the erection of a building in the foreshore area, if the levels, depth or other exceptional features of the site make it appropriate to do so,*
- *boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*

Comment:

The proposed development does not encroach the foreshore building line prescribed by the provision, with the exception of a proposed external stairway providing access to the foreshore area. This encroachment is an exception to the provision and acceptable in this circumstance.

Development consent must not be granted under this clause unless the consent authority is satisfied that:

- *the development will contribute to achieving the objectives for the zone in which the land is located, and*
- *the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and*
- *the development will not cause environmental harm such as:*
 - *pollution or siltation of the waterway, or*
 - *an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or*
 - *an adverse effect on drainage patterns, and*
- *the development will not cause congestion or generate conflict between people using open space areas or the waterway, and*
- *opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and*
- *any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and*

- *in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and*
- *sea level rise, coastal erosion and recession, or change of flooding patterns as a result of climate change have been considered.*

Comment:

The proposed development is consistent with the objectives of the C3 Environmental Management zone. The appearance of the proposed development is compatible with the surrounding area. The proposed development will not cause environmental harm in relation to pollution, siltation, surrounding uses, marine habitat, wetland areas, flora or fauna habitats or drainage patterns. The proposed development will not cause congestion or generate conflict between people using the adjacent open space or waterway. The proposed development retains public access along the foreshore. The proposed development will not result in adverse impacts to any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land. The proposed development will not have an adverse impact on the amenity or aesthetic appearance of the foreshore. The proposed development will not impact upon sea level rise, coastal erosion or recession, or change flooding patterns.

In satisfying itself about a matter mentioned in subclause (3) (e), the consent authority must give consideration to the following—

- *continuous public access to and along the foreshore through or adjacent to the proposed development,*
- *public access to link with existing or proposed open space,*
- *public access to be secured by appropriate covenants, agreements or other instruments registered on the title to land,*
- *public access to be located above mean high water mark,*
- *the reinforcing of the foreshore character and respect for existing environmental conditions.*

Comment:

The proposed development will retain continuous public access to and along the foreshore. The proposed development does not impact upon any public access. The proposed development is acceptable in relation to the foreshore character and the existing environmental conditions.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 1037m²	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwellings	1	-	Yes
	Dwelling Size: 139sqm (5 bed, 6 bath)	414.8gfa	-	Yes
4.1.2.1 Wall Height	<u>East</u>			
	Second Floor: 8m (based on 1:4+)	7m (max.)	-	Yes
		5m (max.)	-	Yes
	First Floor: 8m (based on 1:4+)	7m (max.)	-	Yes
		4m (max.)	-	Yes
	Ground Floor: 8m (based on 1:4+)	4.5m (max.)	-	Yes

	Lower Ground: 8m (based on 1:4+) Lower Yard: 8m (based on 1:4+)			
	<u>West</u> Second Floor: 8m (based on 1:4+) First Floor: 8m (based on 1:4+) Ground Floor: 8m (based on 1:4+) Lower Ground: 8m (based on 1:4+) Lower Yard: 8m (based on 1:4+)	4m - 11.44m 8m (max.) 4m - 6m 3.5m (max.) 4.5m (max.)	43% - - - -	No Yes Yes Yes Yes
4.1.2.2 Number of Storeys	2	1-4	100%	No
4.1.2.3 Roof Height	Height: 2.5m	0.35m	-	Yes
	Parapet Height: 0.6m	0.35m	-	Yes
	Pitch: maximum 35 degrees	Complies	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line	Consistent with prevailing setback	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	<u>East</u> Second Floor: 2.31m First: 1.65m Ground : 2.31m Lower Ground: 1.32m Lower Yard: 1.49m	2.41m 2.41m 2.41m 2.94m 0.9m	- - - - 39.6%	Yes Yes Yes Yes No
	<u>West</u> Second Floor: 3.78m First: 2.64m Ground: 1.32m - 1.98m Lower Ground: 1.16m Lower Yard: 1.49m	8.7m 3.1m 1.8m - 3.1m 1.5m 1.5m	- - - - -	Yes Yes Yes Yes Yes
4.1.4.5 Foreshore Building Lines and Foreshore Area	Foreshore Building Line (CI 6.10 MLEP 2013)	See discussion under CI 6.10	-	See discussion
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area	61.1% (633.5m ²)	-	Yes
	Open space above ground 25% of total open space	23.4% (148.5m ²)	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space	62% (386m ²)		Yes
4.1.5.3 Private Open Space	18sqm	Complies	-	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	Complies	-	Yes

4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	8m	100%	No
	1m curtilage/1.5m water side/rear setback	Complies	-	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	No	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.6 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
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	No	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment**3.4.2 Privacy and Security**Description of Non-Compliance

It is considered the first floor rear balcony shall be a highly trafficable space given it adjoins an internal living/dining area. It is therefore considered that mitigation measures are necessary to protect the visual privacy of adjoining residential properties.

As result, conditions of consent shall be recommended for privacy screening to be erected at a height of 1.5m along the eastern and western elevations of the balcony. The privacy screens, as conditioned, shall not encroach the 8.5m height limit.

Furthermore, window W14 on the western elevation of the first floor dining room is also recommended to be amended via condition to contain a minimum sill height of 1.5m to prevent overlooking.

The privacy arrangement for the remaining areas of the dwelling are considered reasonable. The proposed ground floor consists of bedrooms which are low-trafficable spaces that are not conducive to high volumes of pedestrian movement, whilst the lower ground floor is located considerably more rearward of the building line of adjoining sites that is not in proximity to any private open space or principal living areas.

Merit consideration:

The development is considered against the objectives of the clause 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:

Subject to conditions the proposal meets this objective.

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

Comment:

The proposal is considered to balance outlook and views from habitable rooms and private open space.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal provides appropriate openings so as to encourage awareness of neighbourhood security.

3.4.3 Maintenance of Views

Merit consideration:

The development is considered against the Objectives of the Control:

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

Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths). Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.

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

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

Comment:

No.23 Battle Boulevard currently experiences whole water views of Middle Harbour towards The Spit Bridge. Some land-water interface is visible towards Mosman on the southern side of The Spit. No.19 Battle Boulevard currently experiences partial water views of Middle Harbour towards The Spit Bridge. An existing native tree currently occupies the rear boundary of No.19 which obscures the existing water views.

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

Comment:

No.23 experiences whole views in a standing position over the rear boundary which shall be unimpacted by the proposed development, given the proposal is located over the side boundary. No.19 experiences partial views in a standing position over the rear boundary on either side of the existing native tree, as well as some side boundary views towards the east and west.

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 views experienced from No.23 are obtained from the first floor living/dining room and attached balcony facing the rear (south). The existing whole views over the rear boundary will be entirely unaffected. The existing views over the eastern side boundary towards the subject site generally consist of district views only. The view loss impact is therefore qualitatively assessed as negligible.

Figure 3: Rear boundary views obtained from first floor living room/balcony of No.23 in a standing

position.



Figure 4: Views obtained from first floor living room/balcony of No.23 in a standing position over the eastern side boundary towards the subject site.



The views experienced from No.19 are obtained from the first floor living room, ground floor living room and attached balcony, as well as the lower ground floor bedroom and attached balcony. The existing water views on the eastern side of the existing native tree are entirely unaffected and retained. The existing water views on the western side of the existing native tree shall also be generally retained. The existing western side boundary views are considered to be impacted to a minimal extent by the envelope of the compliant areas of the proposed development. The view loss impact is therefore qualitatively assessed as minimal.

Figure 5: Views obtained from first floor living room of No.19 in a standing position over the rear boundary



Figure 6: Views obtained from first floor living room of No.19 in a standing position over the rear boundary



Figure 7: Views obtained from ground floor living room of No.19 in a standing position over the rear boundary



Figure 8: Views obtained from ground floor living room of No.19 in a standing position over the rear boundary



Figure 9: Views obtained from ground floor living room of No.19 in a standing position over the rear boundary



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:

The proposed area of non-compliance to the building height standard does not result in any view loss impact to any adjoining residential areas. The remaining areas of the proposed dwelling are generally compliant with all built form controls and principal development standards. Any existing district views, views of vegetation or small piece of water view over the side boundaries of No.19 or No.23, are vulnerable to being lost as they are located within the envelope of a compliant build on the subject site. As per the second principle above, side boundary views are also considered difficult to maintain.

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

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

Description of non-compliance

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

Clause 4.1.2 of the MDCP stipulates that walls are not to exceed 8 meters based on a gradient of 1:4+.

The area of non-compliance to the building height standard also results in a non-compliance to the wall height control to a maximum height of 11.44m (43% variation). All remaining areas of the proposal are entirely compliant with the control.

It is noted the proposed building height variation has been assessed under Clause 4.6 MLEP 2013 and considered acceptable in this circumstance. The wall height non-compliance is considered to be a direct correlation to the building height variation. Given the site is highly constrained topographically and not inconsistent with the pattern of adjoining development, the wall height non-compliance is considered reasonable.

The control also does not comply with clause 4.1.2.2(a) which states 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. However, the clause states that a variation may be considered where specific physical site constraints warrant an exception to 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:

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 proposal is located below the ridge of the existing building and is not considered to result an unreasonable built form.

b) to control the bulk and scale of buildings,

Comment:

Overall, the building results in a development considered to be in keeping with the desired bulk and scale envisaged by the planning controls and consistent with the surrounding and adjoining residential development within the vicinity.

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 result in an unreasonable loss of views, as established under Part 3.4.3 Manly DCP 2013 within this report

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

Comment:

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

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

Comment:

The wall height non-compliance does not create unreasonable impacts over land in recreation or environmental protection zones, that might conflict with bush land and surrounding land uses.

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.

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

Description of non-compliance

The proposal generally complies with all setback controls, with the exception of the eastern wall adjoining the eastern side access stairs on the lower ground floor and lower yard plan. The wall is setback 0.9m from the eastern side boundary, which is a variation of 39.6% from the numerical control.

As a result, a condition of consent is recommended that the wall must not exceed a height of greater than 2.7m above existing ground level at any point, in order to result in compliance with the side setback control (1/3 of wall height).

Merit consideration

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

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

Comment:

The proposal will continue to maintain an appropriate visual relationship with the surrounding built environment.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The works will not result in unreasonable additional overshadowing of adjoining properties or privacy concerns. The works are adequately screened from the street frontage and therefore, will not reduce road visibility. Overall, the proposal achieves this objective.

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

Comment:

Flexibility is afforded in this circumstance as the non-compliance shall not result in an incompatible visual presence.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposal does not result in an unreasonable landscape area outcome.

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

Comment:

The subject site is not bushfire prone.

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

4.1.9 Swimming Pools, Spas and Water Features

Description of non-compliance

The control states:

a) Swimming pools and spas must be built on or in the ground and not elevated more than 1m above natural ground level. Consideration of any exception to exceed the height above ground must demonstrate that any swimming pools and/or spa and their curtilage and/or concourse more than 1m above natural ground level:

i) would not detract from the amenity or character of the neighbourhood; and

ii) is a minimum distance from any side boundary equivalent to the height of the swimming pools and/or spa and their curtilage and/or concourse at any point above existing ground level.

The proposed rear swimming pool projects from the lower ground floor and is located a maximum of 8m above existing ground level to the top of the pool coping. It is noted that existing plans have been provided which reduced the size and scale of the swimming pool to comply with the 8.5m standard and increased the integration of the swimming pool with the built form of the proposed dwelling. Despite the non-compliance, it is considered that compliance with the 1m control is restricted by the topographical challenges of the site. The proposed pool is also a lightweight structure that is not considered to result in any unreasonable visual impacts upon the foreshore or waterway. The pool is also substantially separated away from any existing private open space or habitable areas of adjoining properties. The proposal is therefore considered acceptable in this instance.

Merit consideration

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

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

Comment:

The non-compliance does not give rise to adverse amenity impacts to neighbouring properties, specifically with regard to views, solar access and privacy. The proposed pool is suitably located so as not to adversely impact the amenity of adjoining private open space areas.

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

Comment:

The proposal is generally screened by existing and proposed vegetation, fencing and topography and does not conflict with the established streetscape character.

Objective 3) To integrate landscaping.

Comment:

Council's Landscape Officer has reviewed the application and raised no objections in this regard, subject to conditions.

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

Comment:

The site is not bushfire prone.

Conclusion

Based on the above assessment, it is concluded that the objectives of the control are achieved. Therefore, the application is supported on merit in this particular circumstance.

4.4.5 Earthworks (Excavation and Filling)

Detailed description of non-compliance

This control requires the following:

a) Excavation is generally limited to 1m below natural ground level with the exception of basement parking areas (which will be contained within the footprint of the building) and swimming pools;

Due to the steep slope of the allotment, the proposal includes excavation at the ground and lower ground floors up to a maximum of 7m below existing ground level. Notwithstanding, it is considered the areas being used for significant excavation works are located centrally on the subject site and substantially separated from all property boundaries. The earthworks also relate to only a small amount of floor area generally consisting of an internal stairway. Suitable conditions of consent are also recommended for pre and post dilapidation reporting to be conducted. The proposal is considered to be acceptable in this instance.

Merit consideration

Objective 1) To retain the existing landscape character and limit change to the topography and vegetation of the Manly Local Government Area by:

- *Limiting excavation, 'cut and fill' and other earthworks;*
- *Discouraging the alteration of the natural flow of ground and surface water;*
- *Ensuring that development not cause sedimentation to enter drainage lines (natural or otherwise) and waterways; and*
- *Limiting the height of retaining walls and encouraging the planting of native plant species to soften their impact.*

Comment:

As discussed above, the proposal is considered to satisfy the objectives of the control.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$32,093 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$3,209,301.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local 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 the demolition of existing on-site structures and the construction of a new four (4) storey dwelling and new driveway access, has been referred to the Development Determination Panel (DDP) due to a variation to Clause 4.3 Height of Buildings of greater than 10%.

The critical assessment issues relating to Clause 4.6 MLEP 2013 as well as impacts to amenity including view loss and visual privacy, have been addressed within this report and considered acceptable in the circumstances of the development.

The concerns raised in the objections have been addressed and resolved via merit discussion contained within this report as well as suitable recommended conditions of consent.

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 DA2023/1043 for Demolition works and construction of a dwelling house including swimming pool on land at Lot 1 DP 4889, 21 Battle Boulevard, SEAFORTH, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
A202	B	Site Plan 01	Ursino Architects	27 March 2024

A203	B	Site Plan 02	Ursino Architects	27 March 2024
A301	B	Garage Floor Plan	Ursino Architects	27 March 2024
A302	B	First Floor Plan	Ursino Architects	27 March 2024
A303	B	Ground Floor Plan	Ursino Architects	27 March 2024
A304	A	Lower Ground Floor Plan	Ursino Architects	18 July 2023
A305	B	Lower Yard Plan	Ursino Architects	27 March 2024
A307	B	Pool Plan	Ursino Architects	27 March 2024
A308	B	Pool Section	Ursino Architects	27 March 2024
A309	B	Driveway Plan/Section	Ursino Architects	27 March 2024
A401	B	Section AA	Ursino Architects	27 March 2024
A402	B	Section BB	Ursino Architects	27 March 2024
A403	B	Section CC	Ursino Architects	27 March 2024
A404	B	Section DD	Ursino Architects	27 March 2024
A501	B	North Elevation	Ursino Architects	27 March 2024
A502	B	South Elevation	Ursino Architects	27 March 2024
A503	B	West Elevation	Ursino Architects	27 March 2024
A504	B	East Elevation	Ursino Architects	27 March 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Arboricultural Impact Assessment	A	Hugh The Arborist	6 July 2023
Geotechnical Investigation (J4704)	-	White Geotechnical Group	17 July 2023
Waste Management Plan	-	Robert Ursino	Undated
BASIX Certificate (13929551S_02)	-	Integreco	12 March 2024
Stormwater Management (Full Set Drawings C1.00 to C6.20)	C	Cates Consulting Engineers	May 2023
Landscape Plan (L-01)	B	Ecodesign	20 July 2023

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

In the event of any inconsistency 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	10 August 2023

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

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

3. Prescribed Conditions

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

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

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

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

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

Reason: Legislative requirement.

4. **General Requirements**

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

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

- i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
 - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
 - 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 \$32,093.01 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 \$3,209,301.00.

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

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

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

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

6. Security Bond

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

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

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

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

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

7. Construction, Excavation and Associated Works Security Bond(s)

The applicant is to lodge a bond with Council for the following:

Crossing / Kerb & Gutter / Footpath Works

As security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter, any footpath works and removal of any redundant driveways required as part of this consent a bond of \$50,000.

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

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. **On-Site Stormwater Disposal Details**

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater disposal in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by Cates Consulting Engineers, drawing number 23042 C2.00, dated 11.07.2023. 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. Provision of a Level Spreader of three (3) metre minimum length.

Detailed drainage plans, including engineering certification, are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

10. **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 a minimum three (3) metre long level spreader.

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.

11. **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.

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. 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.

14. 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.

15. Amendments to the approved plans

The following amendments are to be made to the approved plans:

- A 1.5 metre privacy screen (measured from finished floor level) is to be erected along the eastern and western elevations of the first floor balcony located off the living/dining room as shown on the approved plans. The screens shall be 2 metres in length commencing from the external wall of the living/dining room. The privacy screens shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.
- Window W14 on the western elevation of the first floor dining room shall be amended to contain a minimum sill height of 1.5m above the finished floor level of the first floor.
- The eastern wall of the external staircase which runs along the eastern boundary on the lower ground floor and lower yard plan shall result in a height of no greater than 2.7m above existing ground level at any point.

- The plant schedule of the approved Landscape Plan prepared by Ecodesign shall be amended to not include any new plantings or species possessing a mature height of greater than 5m.

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.

16. Submission Roads Act Application for Civil Works in the Public Road

The Applicant is to submit an application for approval for infrastructure works on Council's roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include Civil Engineering plans for the design of elevated vehicle crossing which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plans shall be prepared by a qualified Civil/ Structural Engineer.

The design must include the following information:

1. Detailed For Construction Structural, Geotechnical and Civil design of proposed elevated vehicle crossing.
2. The vehicle crossing profile should be generally in accordance with Architectural plans by Ursino Architects, drawing no. A309 dated 18.07.2023.
3. The existing pedestrian access on Council land shall be retained.
4. Provide Structural and Geotechnical certification from a qualified Engineer.

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

An approval is to be submitted to the Principal Certifier prior to the issue of the Construction Certificate

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

17. Shoring of Council's Road Reserve (Temporary road anchors)

Should the proposal require shoring to support an adjoining property or Council land, the Applicant shall provide the adjoining properties with engineering drawings, detailing the proposed shoring works for their consideration and approval.

Written approval from Council under Section 138 of the Roads Act 1993 is required if temporary ground anchors are to be used within Council's road reserve. The Owner's approval is to be submitted to the Principal Certifier prior to the issue of the Construction Certificate.

Reason: To ensure that owners consent is obtained for ancillary works, and to ensure the protection of adjoining properties and Council land.

18. Heritage Protection Plan

A Heritage Protection Plan is to be prepared by a suitably qualified and experienced heritage

consultant and submitted to Council's Heritage Officer for approval prior to the issuing of the Construction Certificate. The Heritage Protection Plan must:

- Include a pre construction dilapidation report for the heritage stone wall;
- Include protection systems and measures to ensure heritage listed fabric is not damaged or removed and potential impacts from vibrations are minimised;
- Include protection systems and measures to ensure construction traffic and vehicles do not damage the stone walls;
- Ensure the monitoring and repair of damaged heritage fabric to Council's satisfaction: and
- Provide a protection strategy for the duration of the construction works detailing how the proposed works will ensure that heritage items are to be suitably protected and stabilised during the construction process including from any construction waste, dust, damp, water runoff, vibration or structural disturbance of damage.

Details demonstrating compliance with this condition is to be provided to the Principal Certifying Authority.

Reason: Protection of the heritage listed stone wall during construction.

19. Pre-Commencement Dilapidation Report

The applicant must prepare and submit a dilapidation report providing an accurate record of the existing condition of adjoining public property and public infrastructure (including roads, gutter, footpaths, etc) as well as a dilapidation report for all buildings, structures, driveways for the adjacent properties of 19 Battle Boulevard and 23 Battle Boulevard. A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties.

The dilapidation report must be submitted to Council for written approval and the written approval is then to be submitted to the Certifier prior to the issue of the any Construction Certificate and the commencement of any works including demolition.

Reason: Protection of Council's infrastructure during construction.

20. 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.

21. 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.

22. 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

23. Project Arborist

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged prior to any commencement of works on site to provide tree protection measures in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

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

a) section 10.2, 10.4, 10.5, 10.6, 10.7, 10.8, 10.9, 10.10, 10.11, and section 11.

All tree protection measures specified must:

- b) be in place before work commences on the site, and
- c) be maintained in good condition during the construction period, and
- d) remain in place for the duration of the construction works.

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

Note:

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

Reason: Tree protection.

24. Tree Removal Within the Road Reserve

This consent approves the removal of existing trees within the road reserve as identified in the Arboricultural Impact Assessment, or as listed below:

- a) tree 12 and tree 13,
- b) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to

removal.

Removal of the approved tree/s by the applicant, in the road reserve shall only be undertaken by a Council approved tree contractor. Details of currently approved tree contractors can be obtained from Northern Beaches Council's Trees Services business unit prior to removal.

Reason: Public liability.

25. Installation and Maintenance of Sediment and Erosion Control

Prior to commencement of works on site, sediment and erosion controls must be installed along the immediate downslope of the works area in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). The erosion controls shall be maintained in an operational condition until the development activities have been completed and the site fully stabilised. Sediment shall be removed from the sediment controls following each heavy or prolonged rainfall period. Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

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

26. Pre-Construction Dilapidation Report

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

Property / Properties:

- 19 Battle Boulevard, Seaforth
- 23 Battle Boulevard, Seaforth

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

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

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

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

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

27. 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**28. Protection of Rock and Sites of Significance**

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

Should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council (MLALC) are to be contacted.

Reason: Preservation of significant environmental features.

29. Protection of Existing Street Trees

All existing street trees in the vicinity of the works shall be retained during all construction stages, and the street tree(s) fronting the development site shall be protected by tree protection fencing in accordance with Section 4 of AS4970-2009 Protection of trees on development sites and the recommendations of the Arboricultural Impact Assessment. All fencing shall be located to allow for unrestricted and safe pedestrian access upon the road verge.

All street trees within the road verge are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree(s) is prohibited. No excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of street trees.

Reason: Street tree protection.

30. Tree and Vegetation Protection

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

- i) all trees within the site, including trees and vegetation nominated for retention on the approved Plans,
- ii) all trees and vegetation located on adjoining properties,
- iii) all trees and vegetation within the road reserve.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are

to be placed within the canopy dripline of trees and other vegetation required to be retained,
 v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
 vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
 vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,
 viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,
 ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
 x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
 xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

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

Reason: Tree and vegetation protection.

31. 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.

32. 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.

33. 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.

34. Removing, Handling and Disposing of Asbestos

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

- 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.

35. 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.

36. 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.

37. 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.

38. **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.

39. **Traffic Control During Road Works**

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

Reason: Public Safety.

40. **Site filling - Virgin Excavated Natural Material (VENM)**

Where site fill material is necessary, fill materials must:

1. Be Virgin Excavated Natural Material (VENM) only, as defined in The Protection of the Environment Operations Act 1997.
2. Be free of slag, hazardous, contaminated, putrescibles, toxic or radioactive excavated material and soil, rock or similar material. Putrescibles and non-putrescibles solid waste (including demolition material) is not permitted.

The Applicant shall provide certification by a N.A.T.A. approved laboratory to the Principal Certifier for approval prior to importation of material.

Reason: To ensure protection of the natural environment.

41. **Implementation of Heritage Protection Plan**

The approved Heritage Protection Plan is to be implemented and adhered to during all works.

Details demonstrating compliance with this condition are to be provided to the Principal Certifying Authority.

Reason: Protection of the heritage listed stone wall.

42. Protection of Heritage Stone Wall

The heritage listed stone wall is to be retained and properly protected during demolition, excavation and construction works. To avoid damage to the stone wall during excavation and construction works for the development, temporary removal and storage of stone may be approved by Council. Removed stone must be reinstalled and damaged stone must be replaced to match the existing, to the satisfaction of Council's Heritage Officer.

Details demonstrating compliance with this condition are to be provided to the Principal Certifying Authority.

Reason: Protection of the heritage listed stone wall during works.

43. 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.

44. Aboriginal Heritage

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

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

Reason: Aboriginal Heritage Protection.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

45. Landscape Completion

Landscape works are to be implemented in accordance with the approved Landscape Plan, and inclusive of the following conditions:

- a) landscape works are to be contained within the legal property boundaries,
- b) all tree planting shall be a minimum pre-ordered planting size of 75 litres; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth 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 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,
- c) tree, shrub and groundcover planting shall be installed as indicated on the approved Landscape Plan, unless otherwise imposed by conditions,
- d) 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,
- e) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone.

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

Reason: Environmental amenity.

46. 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.

47. 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.

48. 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.

49. Certification of Civil Works and Works as Executed Data in accordance with Road Act Approval

The Applicant shall submit a 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 138 and/or Construction Certificate plans. Works as Executed data 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 Assets' in an approved format shall be submitted to the Principal Certifier for approval prior to the issue of the Occupation Certificate.

Reason: To ensure compliance of works with Council's specification for engineering works.

50. 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.

51. **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.

52. **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.

53. **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.

54. **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 disposal structure 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.

55. **Certification of Off Street Parking Works**

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

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

Reason: Compliance with this consent.

56. **Post-Construction Dilapidation Report**

The applicant must bear the cost of all restoration works to Council's road, footpath and drainage assets damaged during the course of this development.

A Post Construction Dilapidation Report after the completion of all building works is to demonstrate that there is no damage to Council infrastructure prior to the refund of any security deposits.

Reason: To ensure security against possible damage to Council property.

57. **Reinstatement/Repair - Heritage Stone Wall**

Prior to the issuing of the Occupation Certificate, any stone removed or damaged from the heritage listed stone wall must have been reinstated or replaced to the satisfaction of Council's Heritage Officer. This must also include a post construction dilapidation report on the stone wall.

Details demonstrating compliance with this condition must be provided to the Principal Certifying Authority.

Reason: To ensure removed or damaged stone from the heritage listed wall is replaced or repaired prior to completion of works.

58. **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.

59. Swimming Pool Requirements

The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:

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

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifier, certifying compliance with Australian Standard 1926.

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system. Appropriate instructions of artificial resuscitation methods.

(d) A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.

(e) Signage showing resuscitation methods and emergency contact

(f) All signage shall be located in a prominent position within the pool area.

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

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

Reason: To protect human life.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES
60. Landscape Maintenance

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting. If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan and any conditions of consent.

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

Reason: To maintain local environmental amenity.

61. **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.

62. **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.

63. **General Foreshore Matters**

Unless in accordance with the approved works the Consent holder must ensure that:

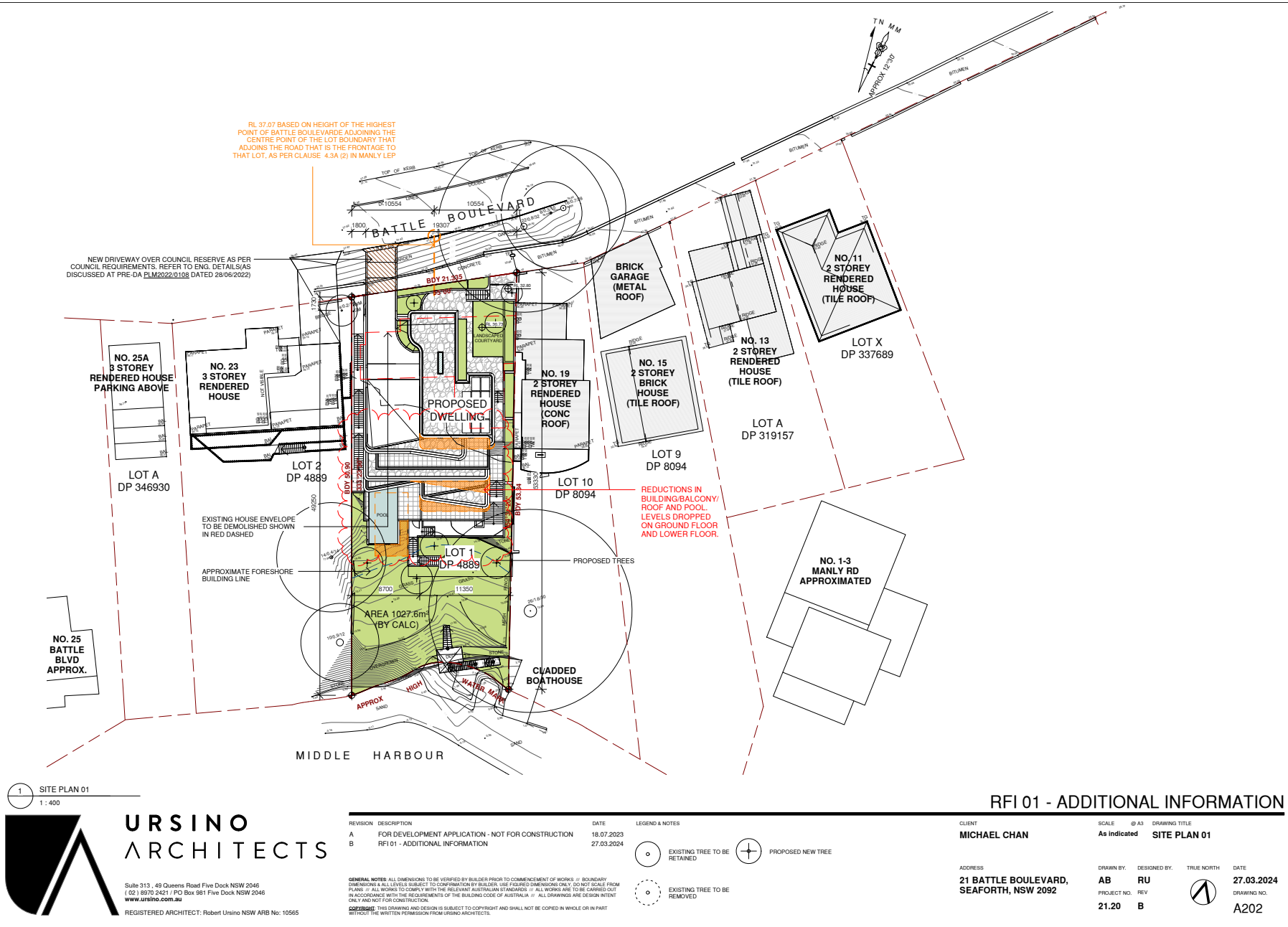
- a) no materials or cleared vegetation that may obstruct flow or cause damage to the foreshore are left within the coastal foreshore area,
- b) all drainage works must not obstruct flow of water within the coastal waters. Drain discharge points are stabilised to prevent erosion. Any excavation must not result in diversion of any foreshore bank instability or damage to native vegetation,
- c) the foreshore is graded to enable the unimpeded flow of water and retaining structures result in a stable foreshore banks,
- d) any vegetation or other material removed from the area of operations shall be disposed of lawfully. Burning of the material is not permitted,
- e) the foreshore is to function as a natural ecological system and as such, all works, including but not limited to access, roads, recreational areas, service easements and landscaping are to be located landward of the foreshore other than as provided by the consent.

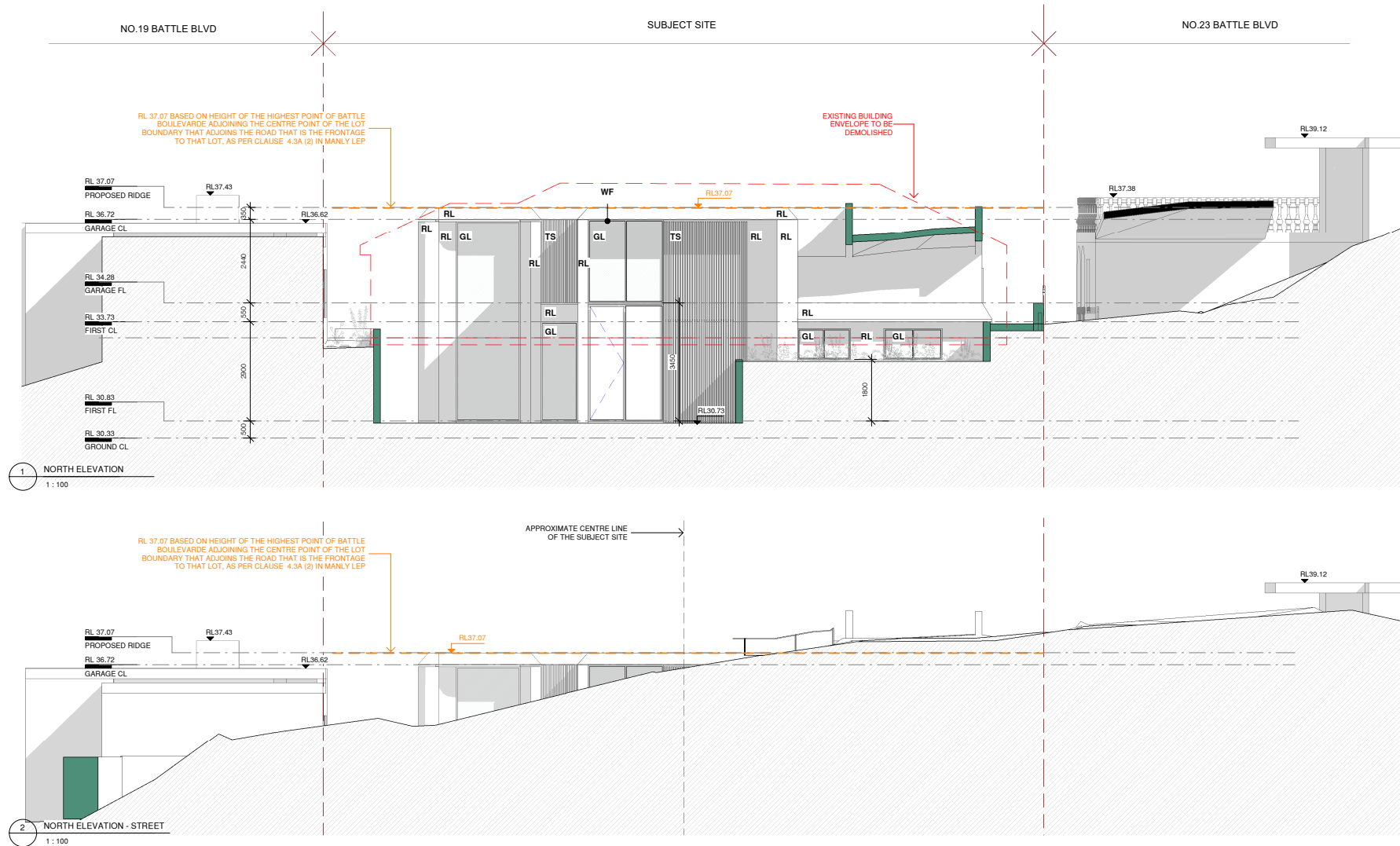
Reason: Environmental protection, monitoring and enhancement of the foreshore.

64. **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.





RFI 01 - ADDITIONAL INFORMATION



**URSINO
ARCHITECTS**

Suite 313, 49 Queens Road Five Dock NSW 2046
(02) 9970 2421 / PO Box 981 Five Dock NSW 2046
www.ursino.com.au

REGISTERED ARCHITECT: Robert Ursino NSW ARB No: 10565

REVISION	DESCRIPTION	DATE
A	FOR DEVELOPMENT APPLICATION - NOT FOR CONSTRUCTION	18.07.2023
B	RFI 01 - ADDITIONAL INFORMATION	27.03.2024

GENERAL NOTES: ALL DIMENSIONS TO BE VERIFIED BY BUILDER PRIOR TO COMMENCEMENT OF WORKS. // BOUNDARY DIMENSIONS AT ALL LEVELS SUBJECT TO CONFIRMATION BY BUILDER. USE FIGURED DIMENSIONS ONLY. DO NOT SCALE FROM PLANS. // ALL WORKS TO COMPLY WITH THE RELEVANT AUSTRALIAN STANDARDS. // ALL WORKS ARE TO BE CARRIED OUT IN ACCORDANCE WITH THE REQUIREMENTS OF THE BUILDING CODE OF AUSTRALIA. // ALL DRAWINGS ARE DESIGN INTENT ONLY AND NOT FOR CONSTRUCTION.

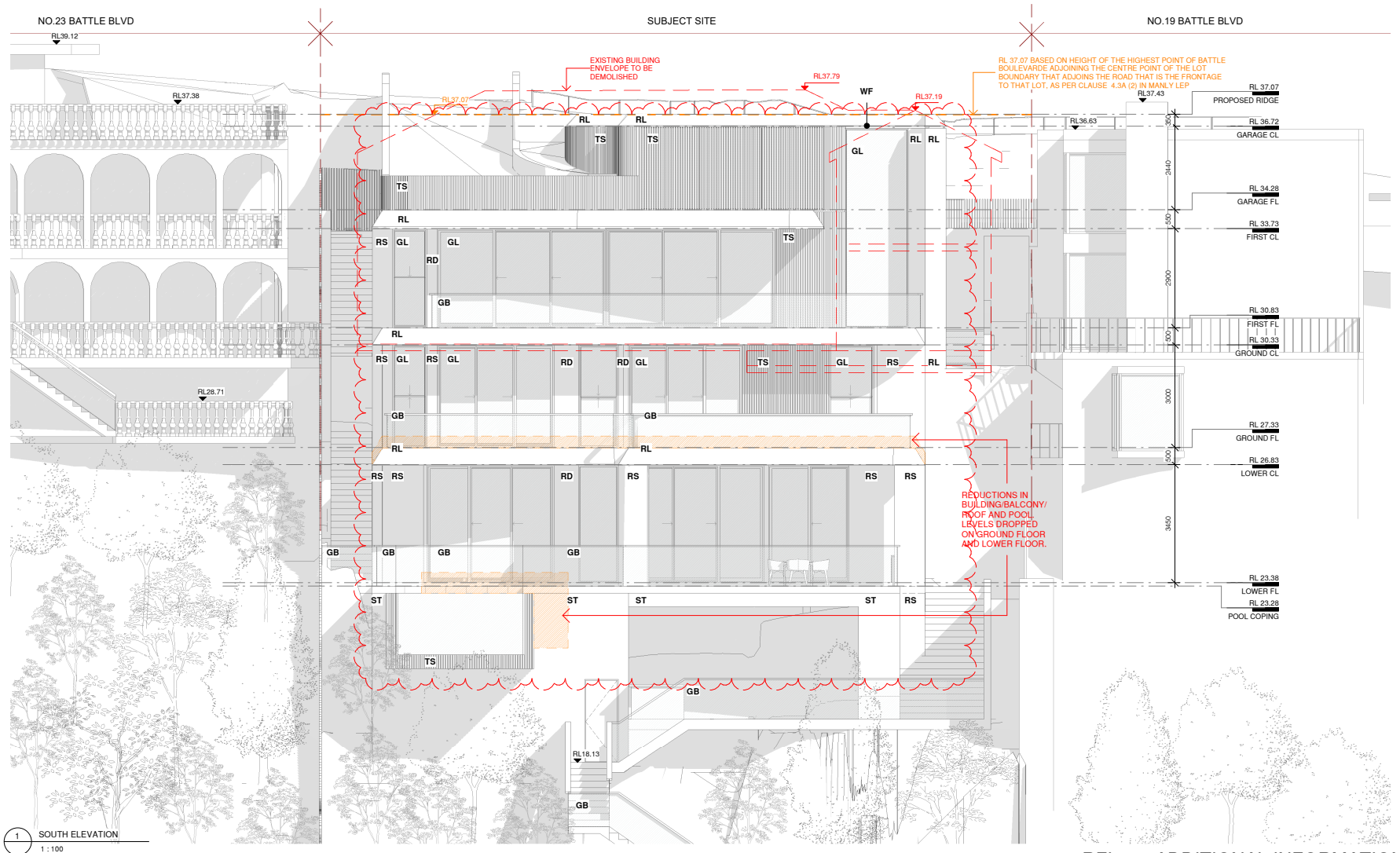
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LEGEND & NOTES
MATERIALS LEGEND (REFER TO D8901)

RL - RENDER - LIGHT	RS - RENDER - SANDSTONE
RD - RENDER - DARK	WF - WINDOW FRAMES
GL - GLASS	AL - ALUMINIUM LOUVRES
TS - TIMBER SCREEN	MS - METAL SURROUNDS
PO - PEBBLE ROOF	DR - DRIVEWAY CONCRETE
ST - STONE CLADDING	GB - GLASS BALUSTRADE

CLIENT	SCALE	@ A3	DRAWING TITLE
MICHAEL CHAN	1 : 100		NORTH ELEVATION

ADDRESS	DRAWN BY	DESIGNED BY	TRUE NORTH	DATE
21 BATTLE BOULEVARD, SEAFORTH, NSW 2092	AB	RU		27.03.2024
	PROJECT NO.	REV		DRAWING NO.
	21.20	B		A501



RFI 01 - ADDITIONAL INFORMATION



**URSINO
ARCHITECTS**

Suite 313, 49 Queens Road Five Dock NSW 2046
(02) 8970 2421 / PO Box 981 Five Dock NSW 2046
www.ursino.com.au

REGISTERED ARCHITECT: Robert Ursino NSW ARB No: 10565

REVISION	DESCRIPTION	DATE
A	FOR DEVELOPMENT APPLICATION - NOT FOR CONSTRUCTION	18.07.2023
B	RFI 01 - ADDITIONAL INFORMATION	27.03.2024

LEGEND & NOTES
MATERIALS LEGEND (REFER TO DAB01)

GENERAL NOTES: ALL DIMENSIONS TO BE VERIFIED BY BUILDER PRIOR TO COMMENCEMENT OF WORKS. // BOUNDARY DIMENSIONS AT ALL LEVELS SUBJECT TO CONFIRMATION BY BUILDER. USE FIGURED DIMENSIONS ONLY. DO NOT SCALE FROM PLANS. // ALL WORKS TO COMPLY WITH THE RELEVANT AUSTRALIAN STANDARDS. // ALL WORKS ARE TO BE CARRIED OUT IN ACCORDANCE WITH THE REQUIREMENTS OF THE BUILDING CODE OF AUSTRALIA. // ALL DRAWINGS ARE DESIGN INTENT ONLY AND NOT FOR CONSTRUCTION.

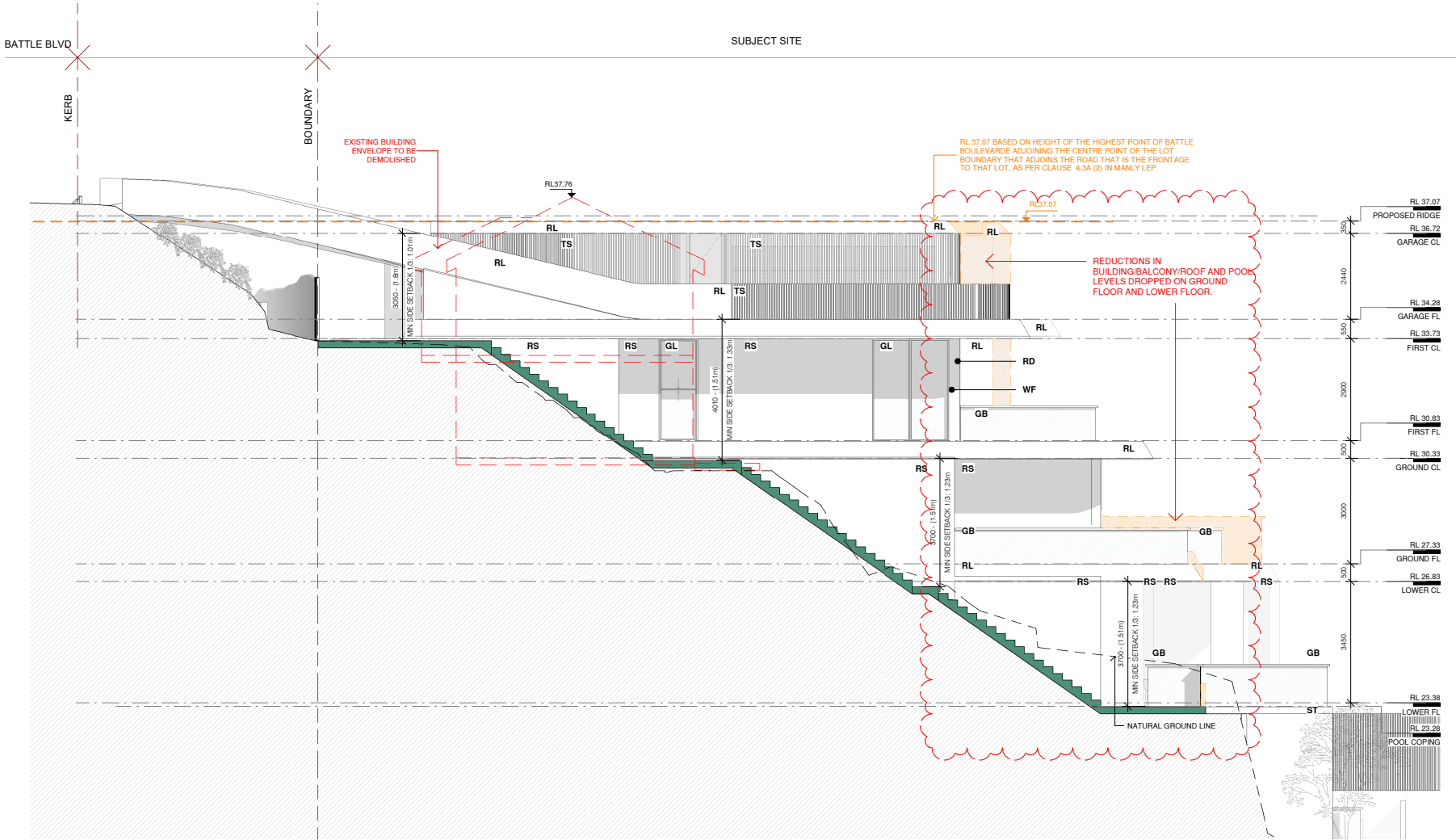
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RL - RENDER - LIGHT RD - RENDER - DARK GL - GLASS TS - TIMBER SCREEN PO - PEBBLE ROOF ST - STONE CLADDING	RS - RENDER - SANDSTONE WF - WINDOW FRAMES AL - ALUMINIUM LOUVRES MS - METAL SURROUNDS DR - DRIVEWAY CONCRETE GB - GLASS BALUSTRADE
--	--

CLIENT	SCALE	@ A3	DRAWING TITLE
MICHAEL CHAN	1 : 100		SOUTH ELEVATION

ADDRESS
**21 BATTLE BOULEVARD,
SEAFORTH, NSW 2092**

DRAWN BY:	DESIGNED BY:	TRUE NORTH	DATE
AB	RU		27.03.2024
PROJECT NO.	REV		DRAWING NO.
21.20	B		A502



1 WEST ELEVATION
1:100



**URSINO
ARCHITECTS**

Suite 313, 49 Queens Road Five Dock NSW 2046
(02) 9970 2421 / PO Box 981 Five Dock NSW 2046
www.ursino.com.au

REGISTERED ARCHITECT: Robert Ursino NSW ARB No: 10565

REVISION	DESCRIPTION	DATE
A	FOR DEVELOPMENT APPLICATION - NOT FOR CONSTRUCTION	18.07.2023
B	RFI 01 - ADDITIONAL INFORMATION	27.03.2024

LEGEND & NOTES
MATERIALS LEGEND (REFER TO DAB01)

RL - RENDER - LIGHT RD - RENDER - DARK GL - GLASS TS - TIMBER SCREEN PO - PEBBLE ROOF ST - STONE CLADDING	RS - RENDER - SANDSTONE WF - WINDOW FRAMES AL - ALUMINIUM LOUVRES MS - METAL SURROUNDS DR - DRIVEWAY CONCRETE GB - GLASS BALUSTRADE
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RFI 01 - ADDITIONAL INFORMATION

CLIENT	SCALE	DATE	DRAWING TITLE
MICHAEL CHAN	1:100		WEST ELEVATION

ADDRESS	DRAWN BY	DESIGNED BY	TRUE NORTH	DATE
21 BATTLE BOULEVARD, SEAFORTH, NSW 2092	AB	RU		27.03.2024
	PROJECT NO.	REV		DRAWING NO.
	21.20	B		A503

Suite 1 No.9 Narabang Way Belrose NSW 2085 • acn 121 577 768
t (02) 9986 2535 • f (02) 99863050 • www.bbfplanners.com.au

BostonBlythFleming
Town Planners

DA 2023/1043

Proposed new dwelling house | 21 Battle Boulevard, Seaforth

Updated clause 4.6 variation request – Height of buildings

1.1 Introduction

This updated clause 4.6 variation request has been prepared having regard to the following plans prepared by Ursino Architects:

A101	BASIX REQUIREMENTS	A	18.07.2023
A200	SITE ANALYSIS 01	A	18.07.2023
A201	SITE ANALYSIS 02	A	18.07.2023
A202	SITE PLAN 01	B	11.03.2024
A203	SITE PLAN 02	B	11.03.2024
A301	GARAGE FLOOR PLAN	B	11.03.2024
A302	FIRST FLOOR PLAN	B	11.03.2024
A303	GROUND FLOOR PLAN	B	11.03.2024
A304	LOWER GROUND FLOOR PLAN	B	11.03.2024
A305	LOWER YARD PLAN	A	18.07.2023
A307	POOL PLANS	B	11.03.2024
A308	POOL SECTIONS	B	11.03.2024
A309	DRIVEWAY PLAN & SECTION	B	11.03.2024
A401	SECTION AA	B	11.03.2024
A402	SECTION BB	B	11.03.2024
A403	SECTION CC	B	11.03.2024
A404	SECTION DD	B	11.03.2024
A501	NORTH ELEVATION	A	18.07.2023
A502	SOUTH ELEVATION	B	11.03.2024
A503	WEST ELEVATION	B	11.03.2024
A504	EAST ELEVATION	B	11.03.2024
A601	CALCULATIONS 01	B	11.03.2024
A602	CALCULATIONS 02	B	11.03.2024
A701	SHADOW DIAGRAMS - 9AM	B	11.03.2024
A702	SHADOW DIAGRAMS - 12PM	B	11.03.2024
A703	SHADOW DIAGRAMS - 3PM	B	11.03.2024
A704	3D HEIGHT PLANE - EXISTING	B	11.03.2024
A705	3D HEIGHT PLANE - INTERPOLATED	B	11.03.2024
A706	EXCAVATION / CUT AND FILL PLAN	B	11.03.2024
A801	FRONT PERSPECTIVE	B	11.03.2024
A802	REAR PERSPECTIVE	B	11.03.2024
A803	REAR PERSPECTIVE 02	B	11.03.2024
A804	VIEW ANALYSIS - FROM SPIT BRIDGE	B	11.03.2024
A805	VIEW ANALYSIS - FROM BATTLE BOULEVARD	B	11.03.2024
A901	MATERIALS & WINDOW SCHEDULES	B	11.03.2024

This clause 4.6 variation has been prepared having regard to the Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 and *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582).

1.2 Manly Local Environmental Plan 2013 (MLEP 2013)

1.2.1 Clause 4.3 – Height of Buildings

Pursuant to Clause 4.3(2) of MLEP 2013, the height of a building is not to exceed the maximum height shown for the land on the Height of Buildings Map, being 8.5m with respect to the subject site. The objectives of this control are as follows:

- (a) *to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*
- (b) *to control the bulk and scale of buildings,*
- (c) *to minimise disruption to the following—*
 - i. *views to nearby residential development from public spaces (including the harbour and foreshores),*
 - ii. *views from nearby residential development to public spaces (including the harbour and foreshores),*
 - iii. *views between public spaces (including the harbour and foreshores),*
- (d) *to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*
- (e) *to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

Building height is defined as follows:

building height (or **height of building**) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like

Ground level existing is defined as follows:

ground level (existing) means the existing level of a site at any point.

I note that Northern Beaches Council has adopted the interpretation of ground level (existing) as that established in the matter of *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582 (Merman) where at paragraphs 73 and 74 O'Neill C found:

- 73. *The existing level of the site at a point beneath the existing building is the level of the land at that point. I agree with Mr McIntyre that the ground level (existing) within the footprint of the existing building is the extant excavated ground level on the site and the proposal exceeds the height of buildings development standard in those locations where the vertical distance, measured from the excavated ground level within the footprint of the existing building, to the highest point of the proposal directly above, is greater than 10.5m. The maximum exceedance is 2.01m at the north-eastern corner of the Level 3 balcony awning.*
- 74. *The prior excavation of the site within the footprint of the existing building, which distorts the height of buildings development standard plane overlaid above the site when compared to the topography of the hill, can properly be described as an environmental planning ground within the meaning of cl 4.6(3)(b) of LEP 2014.*

An inspection of the property has revealed that ground levels across the site are disturbed in the location of the existing dwelling and a large excavation to the south of the dwelling. Applying Merman for the purpose of calculating building height, ground level (existing) has been taken to be the existing disturbed ground levels across the site.

The proposed development breaches the building height standard along its southern edge to a varying extent at each level as depicted in the height blanket diagram below.

The south-western edge of the garage breaches the height standard by a maximum of 3.29 metres representing a variation of 38%. The driveway balustrade and adjacent first floor terrace awning breach the standard by between 560mm (6.5%) and 1.6m (18.8%).



Figure 1 - Height blanket diagram showing the building height breaching elements along the southern edge of the development at each level.

1.2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of MLEP 2013 provides:

The objectives of this clause are:

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

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

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner. At [90] of *Initial Action* the Court held that:

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

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

Clause 4.6(2) of MLEP 2013 provides:

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 height of building development standard in clause 4.3 of MLEP 2013.

Clause 4.6(3) of MLEP 2013 provides:

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 development standard at clause 4.3 of MLEP 2013 which specifies a maximum height of 8.5m. However, strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

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

Clause 4.6(4) of MLEP 2013 provides:

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

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

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority.

The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]). The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]).

The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Following advice received from the Department of Planning, Industry & Environment (letter dated 2 November 2021), development applications for Class 1 buildings (single dwelling houses) with a Clause 4.6 variation greater than 10% to building height within the Warringah Local Environment Plan 2011, Manly Local Environment Plan 2013 and Pittwater Local Environment Plan 2014 and floor space ratio under the Manly Local Environment Plan 2013, may be determined by Council staff under delegation in accordance with Council procedures.

Clause 4.6(5), which relates to matters that must be considered by the Secretary in deciding whether to grant concurrence is not relevant, as the Council has the authority to determine this matter. Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.3 of MLEP 2013 from the operation of clause 4.6.

1.3 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:

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].

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].

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].

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].

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.

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

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

1. Is clause 4.3 of MLEP 2013 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 of MLEP 2013 and the objectives for development for in the zone?
- 4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
- 5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.3 of MLEP 2013?

1.4 Request for variation

1.4.1 Is clause 4.3 of MLEP 2013 a development standard?

The definition of “development standard” at clause 1.4 of the EP&A Act includes a provision of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

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

Clause 4.3 of MLEP 2013 prescribes provision that seeks to control the height of development. Accordingly, clause 4.3 of MLEP 2013 is a development standard.

1.4.2 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 approach is relevant in this instance, being 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 development standard

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

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

Comment: The building height non-compliance can be directly attributed to the topographical characteristics of the site which makes strict compliance with the height standard difficult to achieve. That said we note that the proposal is fully compliant with the special height provisions within MLEP as they relate to the height of development relative to the roadway and the maintenance of public views from the public domain. In this regard, the proposal presents to the street as a single storey form compliant with the building height standard as depicted in the photomontage below.



Figure 2 - Photomontage showing the proposed dwelling house as viewed from Battle Boulevard.

The height of the development is entirely consistent with prevailing building height established by surrounding development and development along this section of Battle Boulevard as depicted in the image over page. A majority of these dwellings have 3 and 4 storey presentations to the waterway

I am satisfied that the objective is achieved notwithstanding the non-compliance with the building height development standard.



Figure 3 - Photomontage showing the proposed dwelling house as viewed from Battle Boulevard.

(b) to control the bulk and scale of buildings

Comment: The proposed development is highly articulated and is of a scale that is consistent with that of surrounding and nearby dwellings, and that anticipated by the desired future character of the locality. The portions of the proposal that protrude above the height plane are not discernible in a streetscape context and predominantly relate to awning/roof elements which do not contribute significantly to the overall bulk and scale of the dwelling as viewed in the round.

The proposed new dwelling is of superior architectural design and is an appropriate contextual response to the individual characteristic of the subject site and its context.

I am satisfied that the objective is achieved notwithstanding the non-compliance with the building height development standard.

(c) to minimise disruption to the following—

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

Comment: The proposed development has been sensitively designed to respond to the topography of the land and the availability of views over the existing roof form. In this regard the proposal maintains public views from Battle Boulevard and private views from both immediately adjoining properties. A view sharing outcome is maintained.

I am of the opinion that this objective is satisfied notwithstanding the non-compliance with the building height development standard.

- (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 reduce the level of solar access currently afforded to the principal living and outdoor open space areas of surrounding development as depicted in the shadow diagrams within the architectural plan bundle.

I am satisfied that the objective is achieved notwithstanding the non-compliance with the building height development standard.

- (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 proposed development has had appropriate regard to existing vegetation and topography, with no conflict arising as a consequence of the proposed development. In particular, the non-compliance associated with the upper roof forms to not result in any conflicts with bushland and surrounding land uses.

I am satisfied that the objective is achieved notwithstanding the non-compliance with the building height development standard.

Consistency with zone objectives

The subject property is zoned C3 Environmental Management pursuant to MLEP 2013. The developments consistency with the stated objectives of the C3 zone is as follows:

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

Comment: The proposed dwelling house is of superior architectural design, that is an appropriate response to the special aesthetic values of the subject site. The proposed development will result in the enhancement of landscaping, to complement landscaping in the adjacent public reserve. The proposed height non-compliance does not detract from consistency with this objective of the zone.

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

Comment: The proposed dwelling house is permissible with consent in the zone and will not result in any adverse impacts upon the special values of the site. The proposed height non-compliance does not detract from consistency with this objective of the zone.

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

Comment: The proposed development requires the removal of 2 trees with such removal adequately compensated for through the implementation of the enhanced site landscape regime proposed. The proposed height non-compliance does not detract from consistency with this objective of the zone.

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

Comment: The proposed development does not result in any adverse impacts on nearby foreshores, the geology of the site or surrounding bushland. The application is supported by a Geotechnical Report and Stormwater Management Plans confirming that a suitable outcome will be achieved in this regard. The proposed height non-compliance does not detract from consistency with this objective of the zone.

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

Comment: The application does not involve works to the immediate foreshore. However, the application is supported by Stormwater Management Plans demonstrating a suitable stormwater management solution for the site. The proposed height non-compliance does not detract from consistency with this objective of the zone.

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

Comment: The proposed development has been designed to step down the slope of the site and is of a scale that is commensurate with that of surrounding dwelling houses.

The height and bulk of the proposed dwelling will not have any unreasonable or adverse impacts upon surrounding dwellings or the use of the adjacent foreshore area.

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

1.4.3 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]-[25] that:

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

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

Sufficient environmental planning grounds

Ground 1 – Existing site disturbance

The proposed height breach is significantly reduced when the previously disturbed areas of the site are taken into consideration and natural undisturbed ground levels adopted for the purpose of determining building height. The image below shows the reduction in building height breaching elements using an 8.5 m height blanket above extrapolated/assumed pre-existing natural undisturbed ground levels.

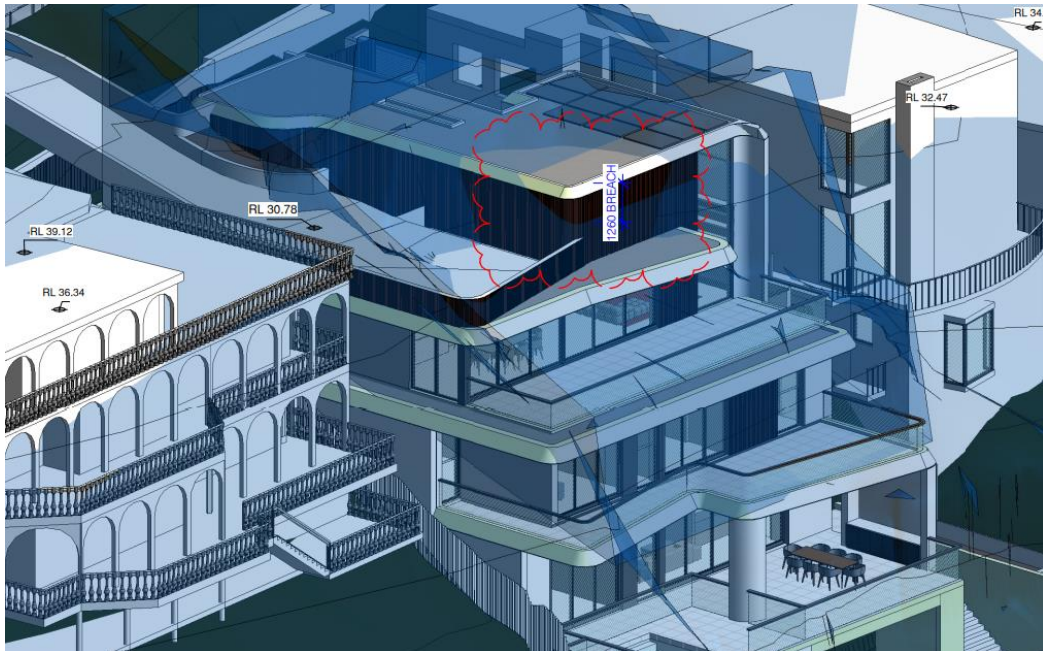


Figure 3 - 8.5 m height blanket above extrapolated/assumed pre-existing natural undisturbed ground levels.

Consistent with the findings of Commissioner O'Neill in *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582, the prior excavation within the building footprint that distorts the height of buildings development standard plane can be properly described as an environmental planning ground within the meaning of clause 4.6(3)(b) of the LEP.

Ground 2 – Superior architectural design

The apparent size of the proposed development will be compatible with dwellings in the visual catchment of the site, which features a number of buildings of significantly greater bulk and scale. The proposal is compliant with the FSR development standard and compliant with the clause 4.3A MLEP special height provision requiring the building to not exceed the height of the highest point of the road adjoining the centre point of the lot boundary such that the building height breaching elements reflect the contextually appropriate distribution of a compliant quantum of floor space and building height relative to street level on this particular site. The building is of exceptional design quality with the variation facilitating a building height that provides for contextual built form compatibility, consistent with Objectives 1.3(c) and (g) of the Act.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments*, most observers would not find the proposed development offensive, jarring or unsympathetic as seen from adjoining properties or as viewed from the waterway. The proposed development is compatible with other development in the visual catchment of the site, and the character of the wider C3 Environmental Management Zone.

Overall, there are sufficient environmental planning grounds to justify contravening the development standard.

1.4.4 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 4.3 and the objectives of the C3 Environmental Management zone

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

1.4.5 Secretary's concurrence

Following advice received from the Department of Planning, Industry & Environment (letter dated 2 November 2021), development applications for Class 1 buildings (single dwelling houses) with a Clause 4.6 variation greater than 10% to building height within the Warringah Local Environment Plan 2011, Manly Local Environment Plan 2013 and Pittwater Local Environment Plan 2014 and floor space ratio under the Manly Local Environment Plan 2013, may be determined by Council staff under delegation in accordance with Council procedures.

Conclusion

Pursuant to clause 4.6(4)(a) of MLEP 2013, the consent authority can be satisfied that this 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.

Boston Blyth Fleming Pty Limited



Greg Boston

B Urb & Reg Plan (UNE) MPIA

Director

12.3.24

ITEM 3.3 DA2023/1321 - 14 NOLAN PLACE BALGOWLAH HEIGHTS - 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.

THAT Council as the consent authority **approves** Development Consent to DA2023/1321 for alterations and additions to a dwelling house on land at Lot 25 DP 758044, 14 Nolan Place BALGOWLAH HEIGHTS, subject to the conditions set out in the Assessment Report.

REPORTING MANAGER	Rodney Piggott
TRIM FILE REF	2024/233685
ATTACHMENTS	↓1 Assessment Report ↓2 Site Plan and Elevations ↓3 Clause 4.6

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/1321
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Responsible Officer:	Jordan Howard
Land to be developed (Address):	Lot 25 DP 758044, 14 Nolan Place BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	David John Burns Tania Sossee Soghomonian
Applicant:	Landart Landscapes Pty Ltd

Application Lodged:	20/09/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	25/09/2023 to 09/10/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.4 Floor space ratio: 20.6%
Recommendation:	Approval

Estimated Cost of Works:	\$ 882,000.00
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EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) due to a proposed variation of greater than 10% to the floor space ratio (FSR) development standard as established by Clause 4.4 Floor space ratio of the Manly Local Environmental Plan 2013.

Following public exhibition of the application, Council has not received any submissions on the proposed development.

Critical assessment issues included assessment of the proposed variation to the FSR development

standard, as well as the assessment of non-compliances with Manly Development Control Plan controls relating to wall height, number of storeys and rear setback.

The 4.6 request for the non-compliance with the 0.45:1 FSR development standard arises from a 54.6sqm increase in GFA, from an existing GFA of 261.1sqm, to a proposed GFA of 315.7sqm. This takes the dwelling from an existing FSR of 0.45:1, to a proposed FSR of 0.54:1, a 20.6% variation to the control. The additional floor space is proposed at the basement and ground level, towards the rear of the dwelling. The additional floor space in the basement utilises existing undercroft areas and will have no discernable visual impact on the street or neighbouring properties. The enclosure of the balcony at ground level is within the existing building bulk, and partially shielded from view by other features of the building facade (such as the western elevation batten screen). As such, all additional floor space proposed will not contribute to any significantly discernable bulk or scale.

The proposed development is not considered to have an unreasonable impact on the streetscape or neighbouring properties. On balance, and having regard to the particular circumstances, the proposed departure from the development standard is considered to be acceptable.

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

PROPOSED DEVELOPMENT IN DETAIL

The following works are proposed:

- Ground floor expansion.
- Construction of ground floor kitchen and butler's pantry.
- Basement floor expansion.
- Construction of basement floor 'zen room' and access hallway.
- Refurbishment of rear balcony.
- Construction of stairs and adjacent privacy wall to existing pool.
- Construction of decking around existing pool.
- Construction of barbeque with servery and seating area.
- Replacement of privacy screen.
- Construction of glazing to basement and ground floors.
- Rear landscaping.

Additional information was requested in relation to the adequacy of provided information, including the omissions of existing site features from plans, Floor Space Ratio calculations, and Rear Setback, as well as in relation to issues with proposed decking and boundary walls. Additional information was received that adequately addressed these issues, and 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 - 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

SITE DESCRIPTION

Property Description:	Lot 25 DP 758044 , 14 Nolan Place BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	The subject site consists of one (1) allotment located on the northern side of Nolan Place, Balgowlah Heights. The site is regular in shape with a frontage of 15.24m along Nolan Place and a depth of 38.488m. The site has a surveyed area of 581.7sqm. The site is located within the R2 Low Density Residential zone and accommodates a dwelling house and pool. The site has a fall of approximately 3.5m from south (front) down towards the north (rear). The site contains a range of mature vegetation surrounding the dwelling and pool, at the front, sides and rear of the property. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by single and multi-storey low density residential dwellings, many of which have rear pools.

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 **10.2011.207.1** for Alterations and additions to an existing dwelling including convert the existing open space area of the basement level into a "Zen Room" was approved on 13/10/2011 by Council staff. Works proposed within this application are similar to works approved in this past application. However, it appears this past application was not activated and has since lapsed.

Application **11.2005.141.1** for Demolish and construct 3 Level dwelling with pool & landscaping was approved on 07/11/2005 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 (1) (a)(iia) – Provisions of any planning	None applicable.

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

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is 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 Bushfire Consultancy Australia, dated 8 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 25/09/2023 to 09/10/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
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 Some palms are shown to be removed in the rear setback on the plans which are exempt by species, therefore can be managed or removed at the discretion of the applicant without consent. All other trees and vegetation shown to be retained shall be protected during works. All proposed planting shall be installed in accordance with the requirements outlined in the conditions of consent.

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	As no biodiversity-specific provisions apply to the subject, there are no objections from a biodiversity perspective.
NECC (Development Engineering)	The proposed development is in Zone 1 of Region 3. A geotechnical report has been provided. Vehicle crossing construction is not proposed. I have no objections to the proposed development subject to the inclusion of the recommended engineering conditions of consent.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A508537, dated 18 September 2023).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021**Chapter 4 – Remediation of Land**

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	6.8m	-	Yes
Floor Space Ratio	FSR: 0.45:1 (261.77sqm)	FSR: 0.54:1 (315.7sqm)	20.6%	No

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
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

Detailed Assessment**4.6 Exceptions to development standards**

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.45:1 (261.77sqm)
Proposed:	0.54:1 (315.7sqm)
Percentage variation to requirement:	20.6%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

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

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

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request,

seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- The proposed additions do not significantly increase the bulk of the existing dwelling, as they are within the existing bulk and outline of the current building.
- There is no adverse visual impact as viewed from Nolan Place as there is no change to the existing streetscape, building frontage or building facade.
- The FSR should be allowed as the proposed additional floor space is hidden underneath the existing ground floor or out of plain sight.
- The proposal will impose minimal impact and improves the livability and privacy for the owners and adjoining neighbours.

The arguments provided by the applicant are generally concurred with. The proposed additional floor space primarily consist of the addition of basement storage and a zen room under the dwelling, plus some minor additional floor space from the enclosure of ground floor side balconies to add more floor space to the living / dining / kitchen area. The additional floor space in the basement utilises existing undercroft areas and will have no discernable visual impact on the street or neighbouring properties. The enclosure of the balcony at ground level is within the existing building bulk, and partially shielded from view by other features of the building facade (such as the western elevation batten screen). The ground floor additions are also to the rear of the property, away from the street frontage.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

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

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

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

Comment:

The proposed alterations and additions will not add significant discernable bulk and scale. The additional floor space in the basement utilises existing undercroft areas and will have no discernable visual impact on the street or neighbouring properties. The enclosure of the balcony at ground level is within the existing building bulk, and partially shielded from view by other features of the building facade (such as the western elevation batten screen). The ground floor additions are also to the rear of the property, away from the street frontage. Overall, it is considered that 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,

Comment:

As above, the proposed alterations and additions will not add significant discernable bulk and scale. The development does not obscure important landscape and townscape features, and building density and bulk is adequately controlled.

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

Comment:

The new development integrates with the existing character and landscape of the area, maintaining an appropriate visual relationship.

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

Comment:

The proposed development is not considered to have any unreasonable impacts on the use or enjoyment of adjoining land and the public domain.

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

Comment:

Not applicable - the subject site is not zoned for business use and the proposal is not for business use.

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:

By providing alterations and additions to an existing low density residential development, the proposal will continue to provide for the changing housing needs of the residents and 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.*

Comment:

Not applicable - the proposal is for residential use, with no other land use proposed.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the floor space ratio development standard and the R2 Low Density Residential zone.

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

Exception to Development Standards conclusion

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

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

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

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

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 581.7sqm	Requirement	Proposed	% Variation	Complies
4.1.2.1 Wall Height	N: 7.2m (based on gradient 1:9)	Ground Floor - 5.4m	-	Yes
		First Floor - 8.4m	4.2%	No (Unchanged from existing)
4.1.2.2 Number of Storeys	2	3	50%	No (Unchanged from existing)
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Consistent with prevailing setback	-	Yes

		/ 9m		
4.1.4.2 Side Setbacks and Secondary Street Frontages	East: 1.8m (based on wall height 5.4m) West: 1.8m (based on wall height 5.4m)	East: 3m West: 3.3m	- -	Yes Yes
	Windows: 3m	East: 3m West: 3.3m	- -	Yes Yes
4.1.4.4 Rear Setbacks	8m	11.4m (dwelling) 8.6m (terrace) 3.2m (proposed pool decking) 1.4m (proposed wall around fire pit)	- - 60% 82.5%	Yes Yes No No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (319.9sqm)	63.3% (368sqm)	-	Yes
	Open space above ground no more than 25% of total open space (92sqm)	7.5% (27.5sqm)	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (128.8sqm)	67.3% (247.5sqm)	-	Yes
4.1.5.3 Private Open Space	18sqm	>18sqm	-	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.5 Landscaping	Yes	Yes

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
3.9 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)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

Detailed Assessment

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

4.1.2.1 Wall Height

Description of non-compliance

The first floor has a wall height of 7.5m, presenting a 4.2% variation to the 7.2m control (based on gradient 1:9). This existing non-compliance was previously approved under Application No. 10.2005.141.1, and no further breach to height is proposed with this application. As such, no further assessment is required.

4.1.2.2 Number of Storeys

Description of non-compliance

The proposed zen room and storage area on the level below the existing ground floor constitutes a third storey. There is an existing cinema room at this basement level, meaning that the dwelling as existing has three storeys.

The control specifies a 2 storey limit for buildings, with variations considered for the following purposes:

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.

Merit Assessment

In this instance, the proposed zen room and storage room utilise existing space underneath the ground floor of the dwelling and will not increase the bulk and scale of the dwelling when viewed from neighbouring or public places. Additionally, this development application proposes no further breaches to numeric height controls, number of storeys, and development standards, beyond what was previously existing prior to this application.

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 provision of this Clause providing for variation of the FSR development standard for undersized allotments is not applicable in this case, as the subject site is compliant with the minimum lot size control.

Nonetheless, a detailed assessment of the FSR development standard variation has been undertaken within the section of this report relating to Clause 4.6 of the MLEP 2013. In summary, the applicant has adequately justified that compliance with the requirements stipulated within Clause 4.4 Floor Space Ratio Development Standard is unreasonable and unnecessary, and that there are sufficient environmental planning grounds to contravene this development standard.

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

Description of non-compliance

The proposed alterations and additions are compliant with the provisions of this Clause relating to front and side setbacks.

Clause 4.1.4.4 Rear Setbacks stipulates that the rear setback must be 8m. The existing dwelling has a rear setback of 11.4m, with the ground floor balcony off the dwelling exhibiting a 8.6m rear setback, both compliant with the control. However, the proposed pool decking, located to the north of an existing pool in the rear yard, is setback 3.2m from the rear boundary, representing a 60% variation to the control. Walls surrounding the proposed firepit in the rear yard are setback 1.4m from the rear boundary, representing a 82.5% variation to the control.

More proposed elements were originally located in the rear setback area, however, amended plans reduced the amount of decking in proximity to the rear boundary in response to issues being raised in a Request for Further Information letter.

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 streetscape is not considered to be adversely impacted. Front and side setbacks are compliant. Proposed elements in the rear setback are minor, consisting of walls around a proposed firepit and decking around an existing pool. These elements are low to the ground and will not impact the desired spatial proportions of the street, the street edge and the landscape character of the street.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposal is considered to meet the requirements of relevant clauses of the MDCP relating to amenity. The development is not considered to create unreasonable overshadowing on public or private spaces, or to unreasonably impact views from or to public or private spaces. The proposal is also considered to maintain the existing streetscape characteristic and not to detrimentally impact on traffic conditions or the privacy of surrounding dwellings.

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

Comment:

The proposed development is not expected to result in any unreasonable amenity impacts on surrounding properties and has demonstrated it meets the underlying objectives of the control. As such, flexibility is warranted in this instance, particularly considering the proposal is for alterations and additions and must be designed around the existing dwelling.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposal is compliant with the landscape area provisions of the MDCP and maintains adequate landscaping and vegetation.

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

Comment:

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 Bushfire Consultancy Australia, dated 8 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. Therefore, the proposal is considered appropriate in regards to bush fire protection.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$8,820 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$882,000.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.4 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, 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 established by Clause 4.4 Floor space ratio of the Manly Local Environmental Plan 2013.

Following public exhibition of the application, Council has not received any submissions on the proposed development.

Critical assessment issues included assessment of the proposed variation to the FSR development standard, as well as the assessment of non-compliances with Manly Development Control Plan controls relating to wall height, number of storeys and rear setback.

The proposed development is not considered to have an unreasonable impact on the streetscape or neighbouring properties. All additional floor space proposed will not contribute to any significantly discernable bulk or scale.

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

out.

Accordingly Council as the consent authority grant Development Consent to DA2023/1321 for Alterations and additions to a dwelling house on land at Lot 25 DP 758044, 14 Nolan Place, BALGOWLAH HEIGHTS, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA-005	C	Site Analysis	Landart Landscapes	14 March 2024
DA-105	C	Excavation and Fill Plan	Landart Landscapes	14 March 2024
DA-107	C	Basement Plan	Landart Landscapes	14 March 2024
DA-108	C	Ground Floor Plan	Landart Landscapes	14 March 2024
DA-109	C	First Floor Plan	Landart Landscapes	14 March 2024
DA-110	C	Roof Plan	Landart Landscapes	14 March 2024
DA-112	C	Landscape Planting Plan	Landart Landscapes	14 March 2024
DA-200	B	Sections	Landart Landscapes	14 August 2023
DA-201	C	Sections	Landart Landscapes	14 March 2024
DA-300	C	Elevations	Landart Landscapes	14 March 2024
DA-301	C	Elevations	Landart Landscapes	14 March 2024
DA-500	B	Window Schedule	Landart Landscapes	14 August 2023
DA-501	B	Materials + Finishes	Landart Landscapes	14 August 2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate	A508537	Landart Landscapes	18 September 2023
Bush Fire Assessment Report	Report No.	Bushfire Consultancy Australia	8 May 2023

	14Nol-02		
Geotechnical Assessment	Ref. AG 23131	Ascent Geotechnical Consulting	10 May 2023
Waste Management Plan - 14 Nolan Place, Balgowlah Heights	-	Thaisa Louzada	23 May 2023

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

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

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

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	22/09/2023 (on EDMS)

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

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

3. Prescribed Conditions

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

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

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

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

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

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

Reason: Legislative requirement.

4. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until

the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the following is required:
 - i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
 - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall

be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

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

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

5. **No Approval for Secondary Dwelling**

No approval is granted or implied under this Development Consent for the use of any part of the dwelling house for the purpose of a secondary dwelling or separate occupancy. Built in cooking facilities are not permitted to be installed, other than those shown in the designated kitchen area.

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

FEES / CHARGES / CONTRIBUTIONS

6. **Policy Controls**

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$8,820.00 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 \$882,000.00.

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

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

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

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

7. Security Bond

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

8. Stormwater Disposal from Low Level Property

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

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

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

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

to be submitted to the Certifier prior to the issue of the construction certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

10. **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.

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

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

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

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

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

12. **Compliance with Standards**

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

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

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

13. **Sydney Water "Tap In"**

The approved plans must be submitted to the Sydney Water Tap in service, prior to works

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

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

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

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

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

14. 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.

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 compliant to AS 4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

Reason: Tree and vegetation protection.

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. **Road Reserve**

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

Reason: Public safety.

18. **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.

19. **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.

20. **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.

21. **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.

22. **Traffic Control During Road Works**

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

Reason: Public Safety.

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. Landscape Completion

- a) landscape works are to be implemented in accordance with the approved Landscape Plan(s) (drawing DA-112 by Landart dated 14/08/23), and inclusive of the following conditions:
- i) landscape works are to be contained within the legal property boundaries,
 - ii) planting shall be installed as indicated on the approved Landscape Plan(s) unless otherwise imposed by any conditions,
 - iii) all tree planting shall be a minimum pre-ordered planting size of 75 litres; 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 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 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.

25. 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.

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

26. 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

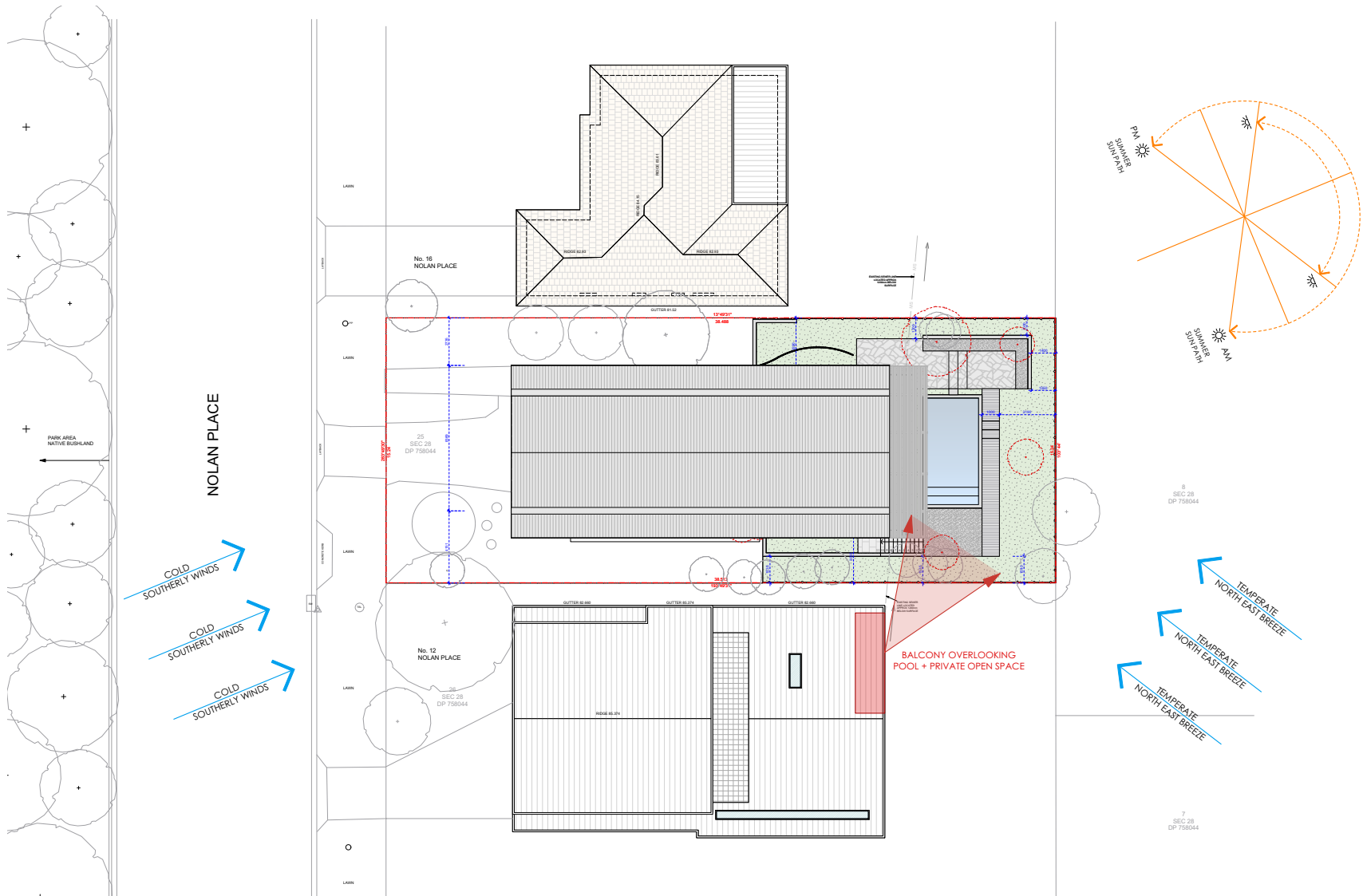
replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan(s) and any conditions of consent.

Reason: To maintain local environmental amenity.

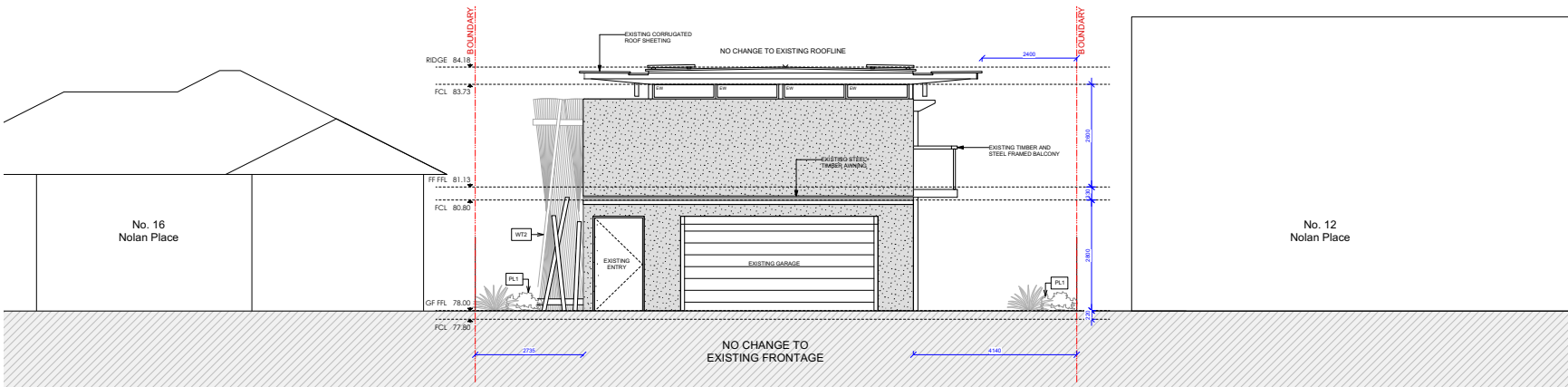
27. **Geotechnical Recommendations**

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.

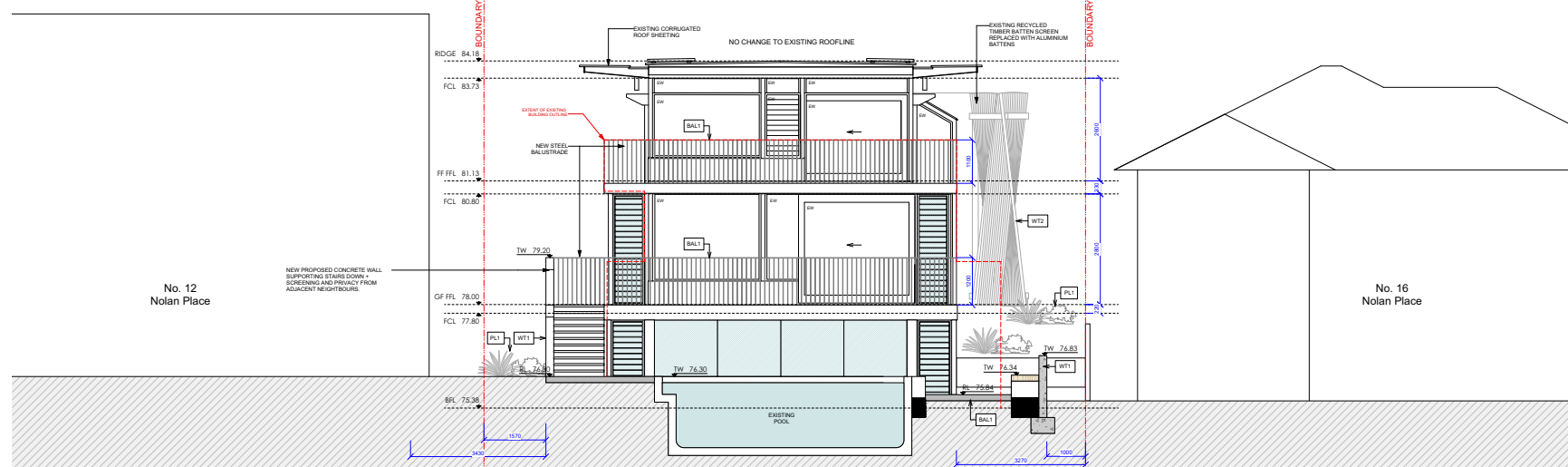
Reason: To ensure geotechnical risk is mitigated appropriately.



landart. HOME + GARDEN + BEYOND 288 Pittwater Road North Maitland 2100 www.landart.com.au T (02) 9558 0462	Client Burns + Soghomonian Address 14 Nolan Place, Balgowlah Heights Project No. 22128	General Notes 1. All work to comply with the Building Code of Australia - relevant by laws. 2. Do not scale from drawings. Refer to notes dimensions. 3. All dimensions are in millimetres unless otherwise noted. 4. Drawings show and provide as to be taken from the existing site plan and not to be taken from the drawings. 5. The contractor is to determine on site existing dimensions and conditions before construction of work. 6. All dimensions are to be taken from the drawings to the centreline. 7. All dimensions are to be taken from the drawings to the centreline. 8. All dimensions are to be taken from the drawings to the centreline. 9. All dimensions are to be taken from the drawings to the centreline. 10. These drawings have been prepared by and remain the property of Landart Architects Pty Ltd and are subject to copyright laws.	Key Plan	Issue Log C14/03/2024TLRevised as per Council Additional Information Request B14/08/2023TLRevision based on updated Survey For DA Submission A9/06/2023 Rev Date By Revision Description	Scale @ A11:100 Scale @ A31:200 0 10M Note: 1. Do not scale from drawings. 2. All dimensions are in millimetres unless otherwise noted.	Phase Development Application Sheet Title Site Analysis Sheet No. DA-005 Rev C
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1 EXISTING SOUTHERN ELEVATION
1:50



2 PROPOSED NORTHERN SECTIONAL ELEVATION
1:50

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Burns + Soghomonian
Address
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Project No.
22128

General Notes
1. All work to comply with the Building Code of Australia - relevant by laws.
2. Do not scale from drawings. Refer to notes for dimensions.
3. All dimensions are in millimetres unless otherwise noted.
4. Drawings show and provide work to be done from the existing site plan. All work to be done is to be done in accordance with the Building Code of Australia.
5. The contractor is to determine on site any variations and conditions before commencing work.
6. All dimensions are to be taken to the finished face of the work.
7. All dimensions are to be taken to the finished face of the work.
8. All dimensions are to be taken to the finished face of the work.
9. All dimensions are to be taken to the finished face of the work.
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Key Plan

Issue Log

C 14/03/2024 TL Revised as per Council Additional Information Request
B 14/08/2023 TL Revision based on updated Survey For DA Submission
A 9/06/2023 TL

Rev Date By Revision Description

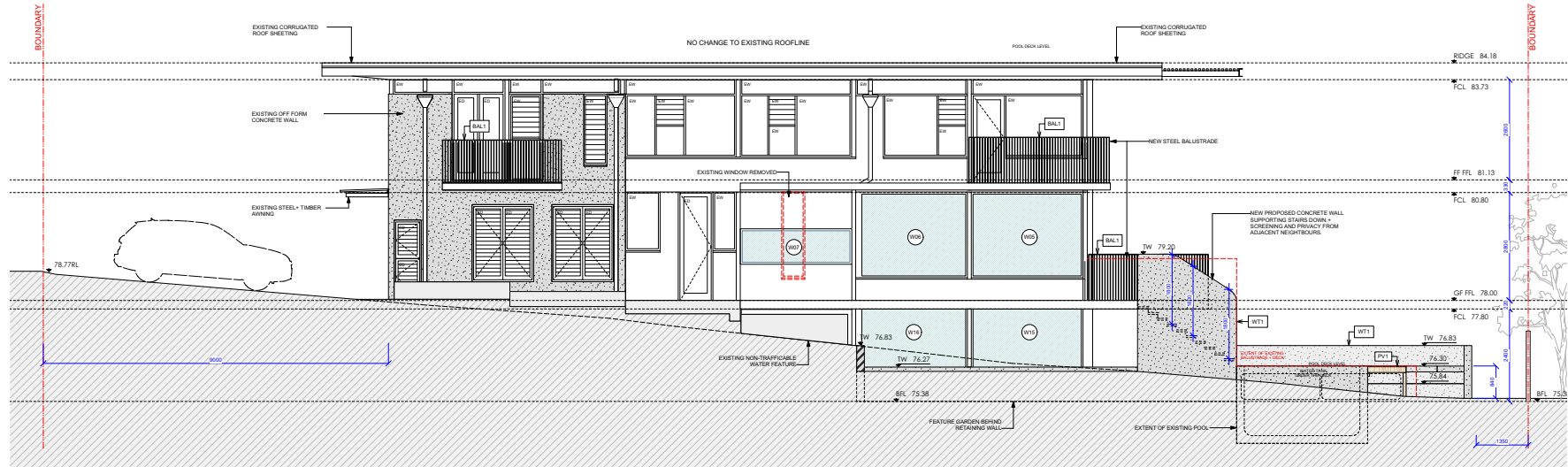
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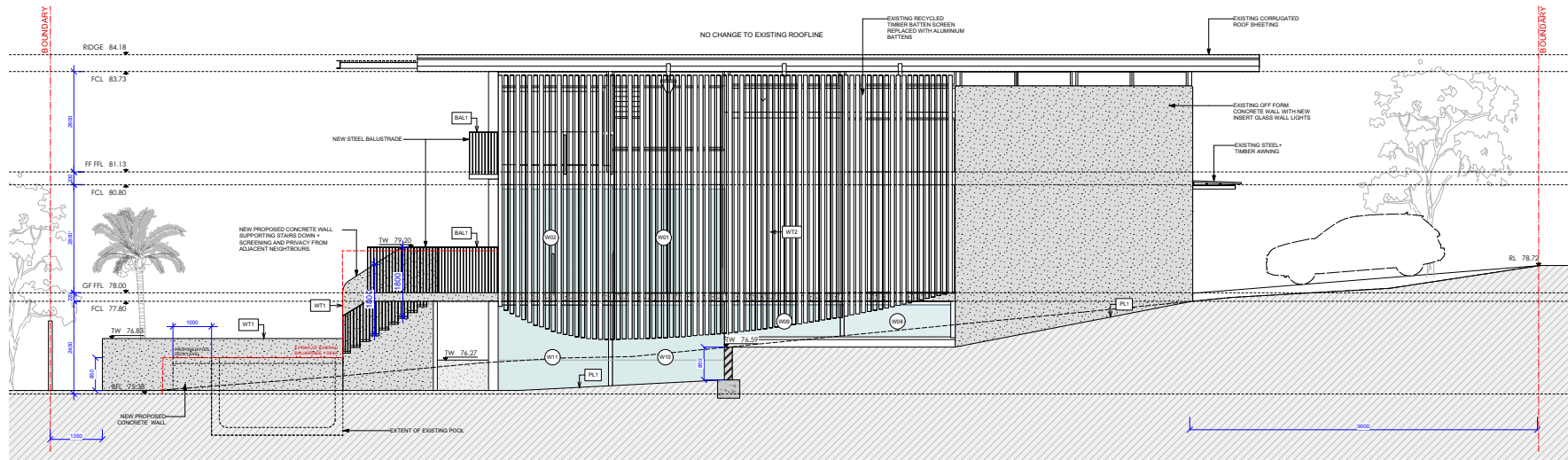
Note:
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Phase
Development Application
Sheet Title
Elevations
Sheet No.
DA-300

Rev
C



1 PROPOSED EASTERN ELEVATION
1:50



2 PROPOSED WESTERN ELEVATION
1:50

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General Notes
1. All work to comply with the Building Code of Australia - relevant by laws.
2. Do not scale from drawings. Refer to notes dimensions.
3. All dimensions are in millimetres unless otherwise noted.
4. All drawings are to be prepared to the standard of a professional architect.
5. The contractor is to determine on site existing conditions and coordinate with the relevant authorities.
6. All dimensions are to be taken to the outside of the building.
7. All dimensions are to be taken to the outside of the building.
8. All dimensions are to be taken to the outside of the building.
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Key Plan

Issue Log

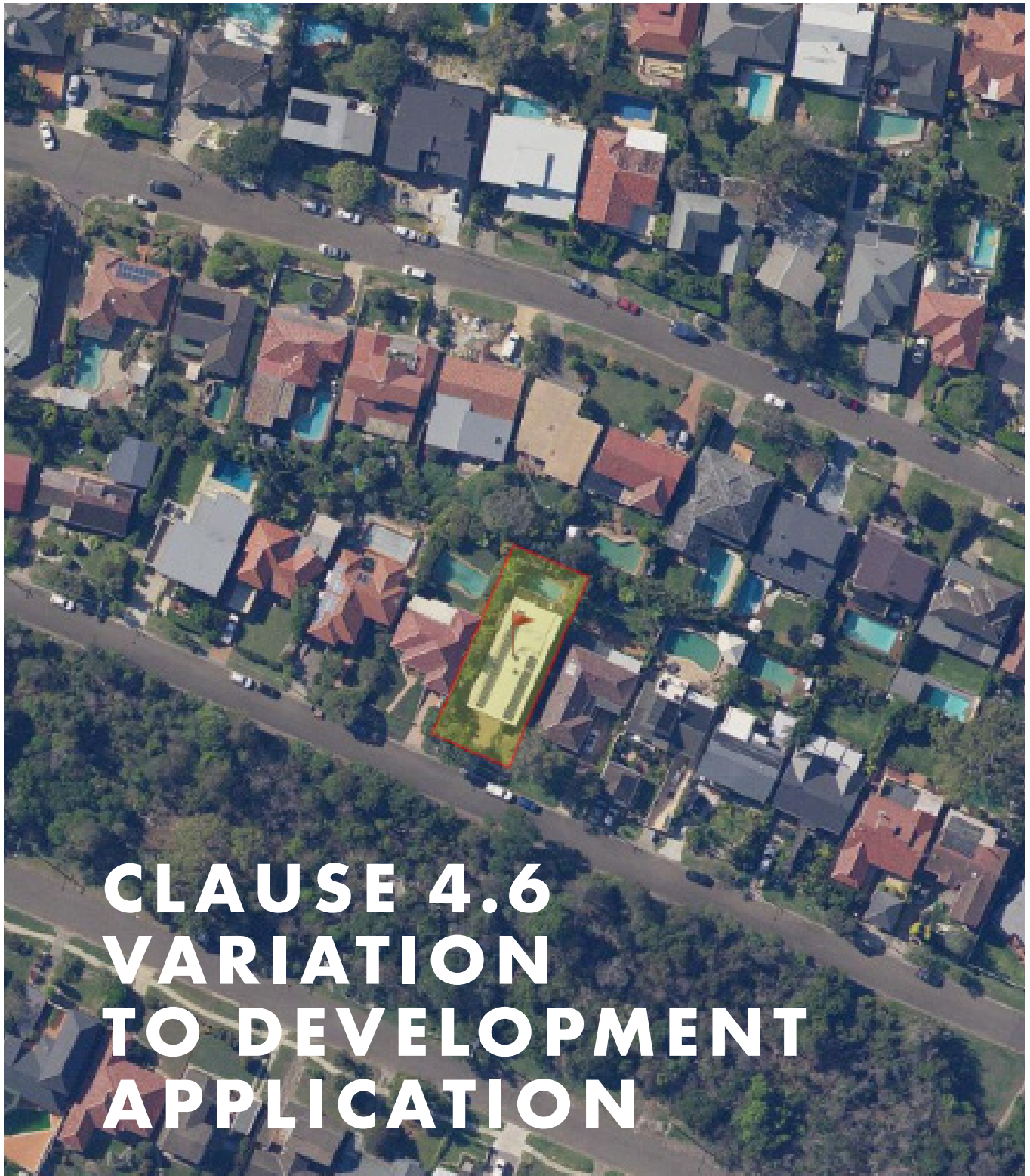
Rev	Date	By	Revision Description
C	14/03/2024	TL	Revised as per Council Additional Information Request
B	14/08/2023	TL	Revision based on updated Survey For DA Submission
A	9/06/2023	TL	For DA Submission

Scale @ A1
1:50

Scale @ A3
1:100

Note:
1. Do not scale from drawings.
2. All dimensions are in millimetres unless otherwise noted.

Phase
Development Application
Sheet Title
Elevations
Sheet No.
DA-301
Rev
C



CLAUSE 4.6 VARIATION TO DEVELOPMENT APPLICATION

BURNS + SOGHOMONIAN RESIDENCE

14 Nolan Place
Balgowlah Heights

12.3.2024

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1.0 INTRODUCTION

This report pertaining to Clause 4.6 Variation accompanies the Development Application for the proposed alterations & additions at 14 Nolan Place in Balgowlah Heights.

1.1 SITE

The residence is located on the northern side of Nolan Place in the residential neighbourhood of Balgowlah Heights.



Figure 1. Locality Map (source: Google Maps) - Site shown in red marker

1.2 LOCAL AUTHORITY

The local authority for this site is:
 Northern Beaches Council (Manly)
 Civic Centre, 725 Pittwater Road,
 Dee Why NSW 2099
 DX 9118 Dee Why
 Telephone: 9942 2111

1.3 ENVIRONMENTAL PLANNING INSTRUMENT THAT APPLIES TO THE LAND

Manly Local Environment Plan 2013

1.4 ZONING

R2 Low Density Residential

1.5 OBJECTIVES OF ZONE

- To provide for the housing needs of the community within a low-density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

2.0 CLAUSE 4.6 VARIATION TO DEVELOPMENT APPLICATION

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.

2.1 DEVELOPMENT STANDARD BEING VARIED

After reviewing Manly LEP 2013 we advised that a Clause 4.6 Exception to Development Standard is required due to:

- This development is classified as a non-complying development due to the floor area being over the floor space ratio
- The favourable option for Council is a Development Application with a Clause 4.6 Variation for the structures to be considered for approval.

2.2 CLAUSE OF THE DEVELOPMENT STANDARD LISTED IN THE ENVIRONMENTAL PLANNING INSTRUMENT

Manly LEP 2013 Part 4.4 Floor Space Ratio

2.3 OBJECTIVES OF THE DEVELOPMENT STANDARD

- to ensure the bulk and scale of development is consistent with the existing and desired streetscape character.
- to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features. to maintain an appropriate visual relationship between new development and the existing character and landscape of the area
- to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain
- 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.

2.4 NUMERIC VALUE OF THE DEVELOPMENT STANDARD IN THE ENVIRONMENTAL PLANNING INSTRUMENT

MLEP2013 FSR = 0.45:1 (264.15m²)

2.5 PROPOSED NUMERIC VALUE OF THE DEVELOPMENT STANDARD IN YOUR DEVELOPMENT APPLICATION

Proposed FSR = 0.53:1 (311m²)

2.6 PERCENTAGE VARIATION BETWEEN THE PROPOSAL AND THE ENVIRONMENTAL PLANNING INSTRUMENT

Proposed FSR variation= 17.19%

2.7 HOW IS STRICT COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THIS PARTICULAR CASE?

The variation in this case is moderate to minor, going from .45:1 to .53:1 FSR. Due to the existing topography & the sloping site the bulk & the scale of the building has predominantly remained the same and is consistent with the zoning & planning objectives. This application is in keeping with a low-density residential environment desired by Council in this area. The development has no negative consequence of significance as a result of this minor noncompliance, further it meets all of the objectives of the development standard, and therefore strict compliance with the development standard would be unreasonable and unnecessary.

In this circumstance, it is unreasonable and unnecessary to strictly comply with the floor space ratio standard given that the resulting development will be absent of any negative environmental or planning outcomes. The proposal would be indiscernible to a development that strictly complied with the numerical control. For the reasons stated above, it is argued that a variation be supported as it ultimately results in an improved planning outcome for the daily lives and wellbeing of the residents and adjoining neighbours.

Bulk and Scale: The proposed development at 14 Nolan Place involves a minor extension of the existing ground floor and the conversion of the existing basement floor (previously approved DA 207/2011) to include a newly proposed zen room and basement storage room. It is important to note that the proposed additions do not significantly increase the bulk of the existing dwelling, as they are within the existing bulk and outline of the current building. There is no adverse visual impact as viewed from Nolan Place as there is no change to the existing streetscape, building frontage or building facade. The proposed refurbishment and conversion of the basement floor is primarily located to the rear of the property and is within the existing bulk of the building, this therefore suggests that the proposed changes would not have a significant impact on the overall size and scale of the property.

- **Compliance with Adjacent Neighbors:** The argument is made that the FSR should be allowed as the proposed additional floor space is hidden underneath the existing ground floor out of plain sight and has the same FSR as the adjacent neighbors. It is mentioned that the adjacent neighbors were granted approval for an increase in their floor space ratio from 0.45:1 to 0.54:1. Since the proposed development at 14 Nolan Place aligns with the same FSR as the adjacent neighbors, it is argued that it should be granted the same approval for an increase in floor space ratio.

- **Openness** - The proposed development demonstrates a thoughtful approach to creating a better sense of openness. Through design considerations such as an increased landscaped area, hidden additional floor space, and a seamless flow between internal and open spaces, the development maximizes the visual and physical spaciousness of the property. Adequate provision of landscaped and private open space further enhances the overall sense of openness. Additionally, careful attention has been given to preserving public views, ensuring that the development correlates with the surrounding environment. Overall, the proposed development successfully achieves a better sense of openness, contributing to the visual appeal and livability of the property.
- **Public & Private Views** - The proposed development prioritises the protection of both public and private views through thoughtful design strategies. By carefully considering the placement and height of the privacy wall adjacent to the existing pool, the development avoids obstructing neighboring properties and public viewpoints. It maintains existing sightlines and ensures that the views from adjacent dwellings or public spaces remain unobstructed. The design is sensitive to the privacy and views of neighboring properties, respecting setbacks and incorporating features that preserve privacy while allowing for enjoyable views. Furthermore, the development integrates seamlessly with the surrounding environment, maintaining the visual harmony and iconic northern views. Overall, the proposed development demonstrates a commitment to preserving and enhancing the visual experiences of both the community and neighboring properties.
- **Site Access + circulation** - The proposal incorporates provisions for convenient well-planned pedestrian circulation, and a logical internal layout. Outdoor amenities and common areas are strategically positioned to encourage movement and interaction within the site. The rear decks & stairs provides improved access & circulation to the rear yard for the owners. Overall, the development creates a user-friendly environment that facilitates smooth and efficient circulation for residents and visitors, emphasising functionality and convenience. It is anticipated that the proposed development will have no detrimental impact on traffic flow as there is no change to the existing crossover or driveway.

- Landscape - The proposed development has garnered multiple local gardening awards from Council, highlighting its positive impact on the local landscape. Through meticulous landscaping, the development actively promotes the use of indigenous local flora and fauna. By incorporating native plants, the property showcases a deep appreciation for the natural environment and contributes to the preservation of local biodiversity. This approach not only enhances the visual appeal of the landscape but also fosters a sustainable ecosystem that supports the thriving of local plants and wildlife. The recognition received through these gardening awards underscores the development's commitment to creating an environmentally conscious and visually stunning landscape enhancing the livability of the property.

2.8 HOW WOULD STRICT COMPLIANCE HINDER THE ATTAINMENT OF THE OBJECTS SPECIFIED IN SECTION 5(A)(I) AND (II) OF THE ACT?

Strict compliance with the FSR would hinder the attainment of the development's objectives in multiple ways. It would limit the additional floor space that can be added to the existing building, potentially compromising the liveability and functional needs of the project and its tenants. By allowing a minor variation in the FSR, the development can align with adjacent properties that have already been approved for increased ratios, maintaining consistency with the neighborhood's character and streetscape. The proposed variation has no significant negative consequences and satisfies all the objectives of the development standard. Therefore, strict compliance would impose unnecessary restrictions and hinder the overall planning outcome without providing any substantial benefits. Allowing a minor variation in the FSR would support an improved planning outcome for the development while ensuring the preservation of its integrity and overall liveability.

2.9 IS THE DEVELOPMENT STANDARD A PERFORMANCE BASED CONTROL?

The objectives of the development standard provide the controls to allow a performance based solution. For the reasons outlined herein, it is demonstrated the proposal meets the objectives of the development standard, therefore Council should consider "compliance to the standard unreasonable in the circumstances of the development".

2.10 WOULD STRICT COMPLIANCE WITH THE STANDARD BE UNREASONABLE OR UNNECESSARY?

Yes, please refer to answer in 2.7, 2.8 and 2.9 preceding.

2.11 ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD?

Yes, Section 4.6 enables a development standard within an LEP to be varied, providing sufficient and compelling arguments based on sound planning rationale and legislation are put forward to support the variation. The following environmental planning grounds justify contravening the development standard.

- The proposal provides a more environmentally friendly dwelling.
- The proposal utilizes existing services.
- The proposal provides compliant open space and landscaping.
- The proposal provides compliant heights & setbacks.
- The proposal provides onsite parking.

The proposal provides improved housing in a low-density environment. The variation to the maximum floor space ratio requirements is, in our opinion, acceptable and there are appropriate planning grounds in support of the non-compliance.

3.0 CONCLUSION

The resulting development has been designed to enhance the existing residential building by improving the amenity for the residents while maintaining, where possible, the conditions set out by Manly Local Environment Plan 2013. The proposed works included in this report are, in our opinion, reasonable in relation to the existing built works & do not adversely impact the surrounding properties whilst justifying the environmental planning grounds for Northern Beaches Council. We consider that the proposal will impose minimal impact and improves the liveability and privacy for the owners and adjoining neighbours. We request that council support the Clause 4.6 Variation of the Development Application.

ITEM 3.4	DA2023/1469 - 955 BARRENJOEY ROAD PALM BEACH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL
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PURPOSE

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

RECOMMENDATION

THAT Council as the consent authority **refuses** Development Consent to DA2023/1469 for alterations and additions to a dwelling house including a swimming pool on land at Lot 8 DP 545616 & LIC 526953, 955 Barrenjoey Road PALM BEACH for the reasons for refusal set out in the Assessment Report.

REPORTING MANAGER	Steve Findlay
TRIM FILE REF	2024/232845
ATTACHMENTS	↓1 Assessment Report ↓2 Site Plan and Elevations

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/1469
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Responsible Officer:	Jordan Davies
Land to be developed (Address):	Lot 8 DP 545616, 955 Barrenjoey Road PALM BEACH NSW 2108 Lot LIC 526953, 955 Barrenjoey Road PALM BEACH NSW 2108
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	David Stephenson Hornery
Applicant:	Cadence & Co Pty Ltd

Application Lodged:	19/10/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	30/10/2023 to 13/11/2023
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	4.3 Height of buildings: 15%
Recommendation:	Refusal

Estimated Cost of Works:	\$ 3,205,000.00
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EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) due to breaching the 8.5m by up to 15%, which represents a maximum height of 9.8m as depicted on the architectural plans.

The applicant has put forward that the 10m building height concession pursuant to Clause 4.3(2D) of the LEP should apply to the development and as such, the proposal would not need to address the

requirements of Clause 4.6 of the LEP. Upon examination of Clause 4.3(2D), the assessment reveals that the the proposal does not meet the remaining pre-conditions to qualify for an exception of the 8.5m building height and as such, a Clause 4.6 variation request is required and the application needs to be determined by the DDP. The preconditions of Clause 4.3(2D) require that the consent authority is satisfied that the objectives of the standard are achieved and the portion of the encroachment is minor. Therefore, it is concluded that the the proposal has not satisfied these two matters and the overall building bulk on the upper levels has not been minimised in a way to reduce impacts and the extent of non-compliance.

No Clause 4.6 variation request was submitted with the application (as the applicant relies upon Clause 4.3(2D)) and as such, there is no power to approve the application, when it is decided that the application has not satisfied Clause 4.3(2D).

Notwithstanding the above issue, there are other merit issues with the proposal in relation to the extent of the building envelope breach on both the northern and southern side which is considered excessive and does not properly respond to the site topography or site constraints, including minimising impact upon views, privacy, visual bulk and scale and overshadowing of the adjoining properties. The design of Level 4 also brings into question view impacts from the public domain and the visual presentation to the street, both of these issues are not resolved to Council's satisfaction.

The application has not set out, to the satisfaction of Council, that the proposal can genuinely be categorised as 'alterations and additions'. Based on the proposed plans, it is only portions of the subfloor and portions of the lowest level to be retained, with the second, third and fourth levels rebuilt. Upon review of the planning principle as established in "Coorey v Municipality of Hunters Hill [2013] NSWLEC 1187" Council not satisfied that the proposal can be appropriately be categorised as alterations and additions.

Two submissions were received regarding the development application. The concerns raised in the objections predominantly relate to views, building height, building envelope, privacy and visual bulk and scale. These issues are addressed throughout the report. One submission also raises that there may be portions of the proposal that exceed 10m in building height. This may be the case, however, there is not sufficient information provided in the form of a detailed height blanket diagram to verify this. Notwithstanding this, the assessment concludes that the application has not satisfied the exceptions under Clause 4.3(2D).

This report concludes with a recommendation that the DDP refuse the development application for the reasons outlined within the report.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks alterations and additions to a dwelling house. Specifically, the proposal consists of the following:

- Alterations and additions to Level 1 to provide new lift and stair access with connecting hall through existing subfloor, living room, laundry, bedroom (Bed 4), bathroom and rear terrace,
- Alterations and additions to Level 2 to provide new lift and stair access, master bedroom with ensuite and WIR, study, two bedrooms with ensuites (Bed 2 and Bed 3) and rear balcony,
- Construction of Level 3 to provide open plan kitchen/living/dining, pantry, cloak/mud room, powder room, entry, lift and stair access, rear terrace and double garage,
- Construction of Level 4 to provide primary entry, powder room, study, terrace, lift and stair access,
- New Internal driveway with turntable and driveway crossing

- New swimming pool fencing, 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

Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living
 Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
 Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
 Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
 Pittwater 21 Development Control Plan - A4.12 Palm Beach Locality
 Pittwater 21 Development Control Plan - C1.3 View Sharing
 Pittwater 21 Development Control Plan - C1.4 Solar Access
 Pittwater 21 Development Control Plan - C1.5 Visual Privacy
 Pittwater 21 Development Control Plan - D12.5 Front building line
 Pittwater 21 Development Control Plan - D12.6 Side and rear building line
 Pittwater 21 Development Control Plan - D12.8 Building envelope
 Pittwater 21 Development Control Plan - D12.10 Landscaped Area - Environmentally Sensitive Land
 Pittwater 21 Development Control Plan - D12.11 Fences - General
 Pittwater 21 Development Control Plan - D12.14 Scenic Protection Category One Areas

SITE DESCRIPTION

Property Description:	Lot 8 DP 545616 , 955 Barrenjoey Road PALM BEACH NSW 2108 Lot LIC 526953 , 955 Barrenjoey Road PALM BEACH NSW 2108
Detailed Site Description:	The site is legally described as Lot 8 in Deposited Plan 545616 and is commonly referred to as 955 Barrenjoey

Road, Palm Beach. The site is irregular in shape, with a 18.555m wide frontage to Barrenjoey Road, a maximum depth of approximately 46m and a total area of 778.3m². The site is located immediately adjacent to the Pittwater Waterway, with the mean high water mark (MHW) serving as the rear property boundary.

An existing two storey dwelling is located on the site, with a double garage to the front of the dwelling, a swimming pool to the rear of the dwelling and water recreation structures that straddle the MHW and extend into the waterway. Vehicular access is gained via an existing driveway to Barrenjoey Road, with a separate staircase from the adjacent parking area providing pedestrian access to the site. Access is also available from the waterway, via the existing jetty.

The site slopes down, away from the street and towards the waterway, with a fall of approximately 19m from the upper front boundary to Barrenjoey Road and the MHW. The area is characterised by dwelling houses that step down the slope of the site. Surrounding and nearby dwelling houses are of varying age and architectural style and are oriented towards available views to the waterway and the western foreshores.

The site is identified as being prone to landslip as identified on Council's Geotechnical Hazard Map of PLEP 2014 and prone to bushfire as identified on the NSW RFS Bushfire Prone Land Map.

Surrounding Development

Surrounding development consists of two and three storey dwelling house of varying ages. To the north, is a three storey dwelling house. To the south is a single storey dwelling house. Across the road (to the east) are two and three storey dwellings sitting elevated above Barrenjoey Road.

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.

No prelodgement was held in relation to this application.

Application History

During the course of the assessment, one set of amended plans was formally submitted via the NSW planning portal.

These plans included a minor increase to the upper floor levels (L3 and L4) in response to Council's RFI.

The plans were provided to the resident objectors for comment and an updated submission was received from 959 Barrenjoey Road. The amended plans reduced the proposal and therefore did not trigger a formal renotification of the application.

The amended plans form the basis of the assessment of the application.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration	Comments
environmental planning instrument	
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	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. <u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to the extent of envelope breach, view sharing and privacy. Amended plans have been submitted and form part of the assessment of the application. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter could be addressed via a condition of consent, if consent were to be granted. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter could be addressed via a condition of consent, if consent were to be granted. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter could be addressed via a condition of consent, if consent were to be granted.
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 a dwelling house, however, the proposal breaches a number of the site specific DCP controls which mean that the design has not responded adequately to the site constraints.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant requirement(s) of the Pittwater DCP and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. 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 Matthew Willis dated 22/09/2023) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 30/10/2023 to 13/11/2023 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:
Brian Noel Manson Riggall	953 Barrenjoey Road PALM BEACH NSW 2108
Mr Matthew Simon Doyle	959 Barrenjoey Road PALM BEACH NSW 2108

The owner of 953 Barrenjoey Road requested further time to put in a submission. This was not denied, however no submission was forthcoming. It has been registered as a submission however.

The following issues were raised in the submissions:

- *Inconsistency with the C4 Environmental Living*
- *The proposal exceeds the 8.5m building height under PLEP and does not benefit from the 10m concession, including achieving 30% gradient beneath the building footprint. The proposal has a height of up to 10.6m based on the survey plans and architectural plans.*
- *View sharing and view impacts from 959 Barrenjoey Road.*
- *Privacy impacts upon 959 Barrenjoey Road due to the design and location of the proposed terrace.*
- *Visual bulk and scale as viewed from adjoining property and from the waterway. Impact upon scenic protection.*
- *Front setback non-compliance with the 10m setback to Barrenjoey Road.*
- *Significant encroachment of the side boundary envelope control.*
- *Unclear about the term and use of the existing parking on the Council road reserve.*
- *Proposal is not alterations and additions.*

The above issues are addressed as follows:

- **Inconsistency with the C4 Environmental Living**

Comment: An assessment is undertaken within the assessment report of the proposal against the C4 Environmental Living zone objectives. The assessment finds that the proposal is inconsistent with the zone objectives and this forms a reason for refusal of the application.

- **The proposal exceeds the 8.5m building height under PLEP and does not benefit from the 10m concession, including achieving 30% gradient beneath the building footprint. The proposal has a height of up to 10.6m based on the survey plans and architectural plans.**

Comment: The assessment has found that the breaching elements of the 8.5m height limit are not minor and the building is not sufficiently stepped back with the site topography to warrant benefit from the exception to the height limit under Clause 4.3(2D), this is discussed in detail within the report. The assessment recommends refusal of the application due to the exceedance of the 8.5m height limit and no Clause 4.6 variation request was submitted. In any subsequent application, the application must accurately identify the height of the building based on the survey levels and identify the gradient of the site directly below the building footprint.

The submission has raised issues with how height has been calculated and the submission raises that the height may be up to 10.6m. Notwithstanding this issue, the proposed height of

9.8m is not supported based on the present design and any future application should correct and accurately depict height from all points of the site.

- **View sharing and view impacts from 959 Barrenjoey Road.**

Comment: This has been discussed in detail later in the report and the assessment finds that view sharing is not achieved as there are non-compliant elements of the building that contribute to view impacts from 959 Barrenjoey Road. The application is recommended for refusal for this reason.

- **Privacy impacts upon 959 Barrenjoey Road due to the design and location of the proposed terrace.**

Comment: This has been discussed in detail later in the report and the assessment finds that reasonable privacy is not achieved as there are non-compliant elements of the building that contribute to privacy impacts and the proposed terrace is not designed to retain reasonable privacy for 959 Barrenjoey Road. The application is recommended for refusal for this reason.

- **Visual bulk and scale as viewed from adjoining property and from the waterway. Impact upon scenic protection.**

Comment: The non-compliances with the building envelope and height control result in a building that has a visual impact and is inconsistent with the desired future character of Palm Beach as described within the DCP. The proposal, in the current form, is not supported for this reason.

- **Front setback non-compliance with the 10m setback to Barrenjoey Road.**

Comment: An assessment of the front setback non-compliance is discussed within the assessment report and the assessment finds the objectives of the control are not met. Therefore, the application is recommended for refusal for this reason.

- **Significant encroachment of the side boundary envelope control.**

Comment: An assessment of the side boundary envelope control non-compliance is discussed within the assessment report and the assessment finds the objectives of the control are not met. Therefore, the application is recommended for refusal for this reason.

- **Unclear about the term and use of the existing parking on the Council road reserve.**

Comment: The proposal does not seek to amend or alter the use of this parking area located within the road reserve, with the exception of proposing a connecting bridge from the property boundary to the western edge of the existing parking bay. The application has been referred to TfNSW who has raised no concerns with the proposal, subject to their recommended conditions.

The applicant has provided to Council a copy of the lease agreement with TfNSW dated 2013 which permits the retention of the concrete parking bay within the road reserve. The proposed works are not considered to change this current scenario. As stated above, the application has been referred to TfNSW who has raised no concerns.

- **Proposal is not alterations and additions.**

Comment: The application has not set out, to the satisfaction of Council, that the proposal can genuinely be categorised as 'alterations and additions'. Based on the proposed plans, it is only portions of the subfloor and portions of the lowest level to be retained, with the second, third and fourth levels rebuilt. Upon review of the planning principle as established in "*Coorey v Municipality of Hunters Hill [2013] NSWLEC 1187*" Council not satisfied, based on the information at hand, that the proposal can be appropriately be categorised as alterations and additions. In particular the form and visual appearance of the building is significantly changed, the visual relationship from the street and water (public domain) is dramatically changed in relation to the overall height and bulk, the extent of non-compliances are greatly increased and the quantum of floor space is greatly increased (all relevant matters to be considered as outlined in *Coorey v Hunters Hill*). This will form a reason for refusal of the application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	Supported subject to conditions The proposal is supported with regard to landscape issues. Council's Landscape Referral is assessed against the Pittwater Local Environment Plan clause C4 zone Environmental Living, and the following Pittwater 21 DCP controls (but not limited to): • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • D12 Palm Beach Locality The site is located in the C4 Environmental Living zone, requiring development to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment, including the retention of natural landscape features and existing trees, to satisfy the landscape objectives of the C4 Environmental Living zone. The Arboricultural Impact Assessment (AIA) outlines that no trees will require removal, and that all existing trees can be retained and protected during the works. A Project Arborist shall be engaged to supervise all work in tree protection zones of trees to be retained. Concern is raised with the location of the suspended walkway, from the existing parking area to the new entry, and its proximity to existing tree 3. A minimum clearance of 250mm to the trunk of tree 3 shall be maintained by any suspended structure, and as such Amended Plans will be required prior to issuing a Construction Certificate. All proposed landscape planting shall be installed in accordance with the requirements outlined in the conditions of consent, and all on slab landscaping must meet Council's minimum soil depth requirements.
NECC (Bushland and Biodiversity)	Supported subject to conditions The proposal seeks approval for alterations and additions to a single dwelling.

Internal Referral Body	Comments
	The comments in this proposal relate to the following applicable controls and provisions: • SEPP (Resilience and Hazards 2021) - Coastal environment area • Pittwater LEP 2014 - Clause 7.6 Biodiversity Protection • Pittwater DCP 21 - Clause B4.7 Pittwater Spotted Gum Forest Endangered Ecological Community The application has been submitted with a bushfire report that has awarded the site a level of risk of BAL 12.5 and found the site to be compliant with the Asset Protection Zone requirements. No additional removal of vegetation is required, however, specific Landscaping conditions have been recommended. The report has also recommended that the site be treated as an APZ in perpetuity. No objections are raised. A landscape proposal has been put forth and although a number of the species selected are appropriate for the area, PDGP B4.7 requirements have not been met and amendments will be required to achieve an 80/20 native to exotic ratio. An arboricultural impact assessment has been submitted with the application and no significant impacts have been identified in relation to native canopy trees present on the site. However, tree protection measures have been recommended and a tree protection plan has been recommended. 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.
NECC (Coast and Catchments)	Supported without 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 <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.

Internal Referral Body	Comments
	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: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Northern Beaches Planning dated 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. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Northern Beaches Planning dated October 2023, the ground floor level for the proposed additions and alterations is above the applicable EPL for the site. The proposed development is therefore not required to satisfy the relevant estuarine risk management requirements of P21 DCP. Development on Foreshore Area 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.

Internal Referral Body	Comments
	The DA proposes fencing of the swimming pool and waterway access stairs. works. All these proposed works are consistent with Clause 7.8(2)(b). On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Northern Beaches Planning dated October 2023, the DA satisfies the objectives and requirements of the Pittwater LEP 2014.
NECC (Development Engineering)	Supported subject to conditions 31/01/2024: Development application is for alterations and additions to the existing dwelling house including provision of lift, addition of level 3 and 4, new Internal driveway with turntable and driveway crossing, fencing to swimming pool and landscaping. Access Barrenjoey Road is a State Road under the care of Transport for NSW (TfNSW). TfNSW has provided their comments (internal Ref: TRIM2023/755538) in letter TfNSW Reference: SYD23/01204, Dated 15 November 2023. These comments has been incorporated in the conditions. Stormwater Site falls to rear and stormwater discharges to Pittwaters. Geotechnical Site is mapped as geotechnical hazard H1, Geotechnical Report by JK Geotechnics, Ref: 36060PErpt Rev1, Dated 4th September 2023 with form 1 and 1A is provided. For Planner 1) Please include comments by Transport for NSW, TfNSW Reference: SYD23/01204, Dated 15 November 2023 in the development application approval.
NECC (Riparian Lands and Creeks)	Supported subject to conditions This application was assessed in consideration of: - Supplied plans and reports; - Coastal Management Act 2016; - State Environmental Planning Policy (Resilience and Hazards) 2021; - Relevant LEP and DCP clauses; and - Northern Beaches Council Water management for development

Internal Referral Body	Comments
	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. 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.
Road Reserve	Supported without conditions Whilst there is limited impact on existing road infrastructure assets, the new driveway and associated works will be addressed by the Development Engineering Team. Road Assets have been asked to comment on the existing parking bay. It is noted that the existence of a parking platform on the public road reserve. It is understood that a number of these facilities were constructed along Barrenjoey Road for sullage tankers. It is understood these structures are private structures but there appears to be no agreement for any private use, such as a lease for private parking. Former Pittwater Council appears to have tried to address the private use of the areas but appears unresolved. In the absence of any formal agreement for private use of the structure on public road reserve, it is considered that these areas should be available for public parking, notwithstanding the signage installed by property owners.

Internal Referral Body	Comments		
Strategic and Place Planning (Heritage Officer)	Supported without 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		
	'Kumale' House at 949 Barrenjoey Road		
	Details of heritage items affected		
	<u>Statement of Significance</u> Kumale, at 949 Barrenjoey Road in Palm Beach, built in 1956 to a design by well known Sydney architect Peter Muller, has historic and aesthetic significance as an excellent example of Late Twentieth-Century Organic architecture.		
	<u>Physical Description</u> The house is located on a long steep site and all that is visible from the street is the central dome that dominates the main structure. The house consists of a series of intersecting segmented circle wings and the main wing is located on the edge of a cliff that makes the house only visible from the water.		
	Other relevant heritage listings		
	SEPP (Biodiversity and Conservation) 2021	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register		
	RAIA Register of 20th Century Buildings of Significance	Yes	Kumale is on the register
Other	N/A		
Consideration of Application			
The proposal seeks consent for alterations and additions to the existing dwelling. This includes two new levels to the dwelling as well as a new garage and elevated driveway. The heritage item is located to the south of the subject site, across 953 Barrenjoey Road. Given the physical separation, as well as the open character of 953 where it adjoins the road providing a visual break between the sites, the proposal is considered to not impact upon the heritage item or its significance.			
Therefore Heritage raises no objections and requires no conditions.			

Internal Referral Body	Comments
	Consider against the provisions of CL5.10 of MLEP. Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No
External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	Supported subject to conditions The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	Supported subject to conditions Reference is made to the proposed development at the above area and Aboriginal heritage. No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development. Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.
Roads and Maritime Service - Roads Act 1993, s138 (Non-integrated)	Supported subject to conditions The application was referred to TfNSW given the frontage to the classified road. The following comments were provided: <i>"TfNSW has reviewed the submission and provides concurrence to the proposed civil works on Barrenjoey Road under section 138 of the Roads Act 1993, subject to Council Including the following</i>

External Referral Body	Comments
	<i>condition in any consent issued by Council".</i>
	The conditions will be included in any consent issued.

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. A488125 dated 30 August 2023).

If consent were to be granted, a condition would be 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.

Transport for NSW (TfNSW)

Section 2.119 - Development with frontage to classified road states:

The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—

- (a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
- (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—*
 - (i) the design of the vehicular access to the land, or*
 - (ii) the emission of smoke or dust from the development, or*
 - (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
- (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

Comment:

The application was referred to Transport for NSW who provided their conditional approval of the proposal and the access off Barrenjoey Road. If consent were to be granted, the conditions recommended by TfNSW would be included.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 1 Coastal Wetlands and littoral rainforest area

2.7 Development on certain land within coastal wetlands and littoral rainforests area

- 1) The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:
 - a) the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,
 - b) the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,
 - c) the carrying out of any of the following:
 - i) earthworks (including the depositing of material on land),
 - ii) constructing a levee,
 - iii) draining the land,
 - iv) environmental protection works,
 - d) any other development

Comment: The proposal is not located within the coastal wetlands or littoral rainforest area.

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

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

Comment: The proposal is not located within proximity to coastal wetlands or littoral rainforest area.

Division 2 Coastal Vulnerability Area

2.9 Development on land within the coastal vulnerability area

Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

- a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and
- b) the proposed development:
 - i) is not likely to alter coastal processes to the detriment of the natural environment or
 - ii) other land, and
 - iii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and
- c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.

Comment: Not in coastal vulnerability area.

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

- 1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:
 - a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
 - b) coastal environmental values and natural coastal processes,
 - c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
 - d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,

- e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
- f) Aboriginal cultural heritage, practices and places,
- g) the use of the surf zone.

Comment: Council is satisfied the development is unlikely to cause adverse impacts to the matters listed (a) to (g) given the proximity of the development to the foreshore area. The application has been referred to Council's Biodiversity and Coast and Catchments team who are satisfied with the proposal.

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

Comment: Council is satisfied the development is sited to avoid impact to the matters in paragraph 1) and construction impacts such as erosion and sediment control can be managed via conditions of consent.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

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

Comment: Council is not satisfied that the developed is designed in such a way to minimise the impact upon the visual amenity and scenic qualities of the coastline and foreshore area of the Pittwater. For

the reasons outlined within this report in relation to building bulk and height, visual impact upon the waterway has not been minimised.

Division 5 General

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

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

Comment: The proposal is no considered to increase risk of coastal hazards.

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

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

Comment: There is no coastal management program for the site.

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

Chapter 4 – Remediation of Land

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

Pittwater Local Environmental Plan 2014

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	No
zone objectives of the LEP?	No

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	8.5m	9.8m	15%	No

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.6 Exceptions to development standards	No
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone C4 Environmental Living

Under Clause 2.3(2) 'Zone objectives and land use table', Council must have regard to the zone objectives when determining a development application.

The following are the zone objectives for the C4 Environmental Living Zone:

- ***To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.***

Comment: The proposed development due to the bulk and scale of the building presenting to the street, waterway and adjoining properties is not considered to be 'low impact' and will have a visual impact upon the area which is known for its aesthetic values. The positioning of the upper levels is not compatible with the surrounding properties due to the position in relation to the adjoining properties. The positioning of the development causes impacts that are not considered to be 'low'.

- ***To ensure that residential development does not have an adverse effect on those values.***

Comment: As described above, the development has an adverse visual impact upon the adjoining properties and the site as viewed from the waterway and street due to the bulk, scale and setbacks which are inconsistent with the planning controls which guide the envisaged bulk and scale of development.

- ***To provide for residential development of a low density and scale integrated with the landform and landscape.***

Comment: The extent of building envelope breach is not considered to result in a development that is low scale and not sufficient integrated into the landscape. The upper levels are not stepped sufficiently with the site topography and this results in an upper level with excessive bulk that causes visual, privacy and view impacts.

- ***To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.***

Comment: The proposal does not result in the removal of any significant vegetation and allows for some small areas of additional landscape. However, not sufficient to mitigate the bulk and scale of the

development.

The proposal in the current form is not considered to meet the C4 Zone objectives for the above reasons.

As such, this forms a reasons for refusal of the application.

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.8m
Percentage variation to requirement:	15%

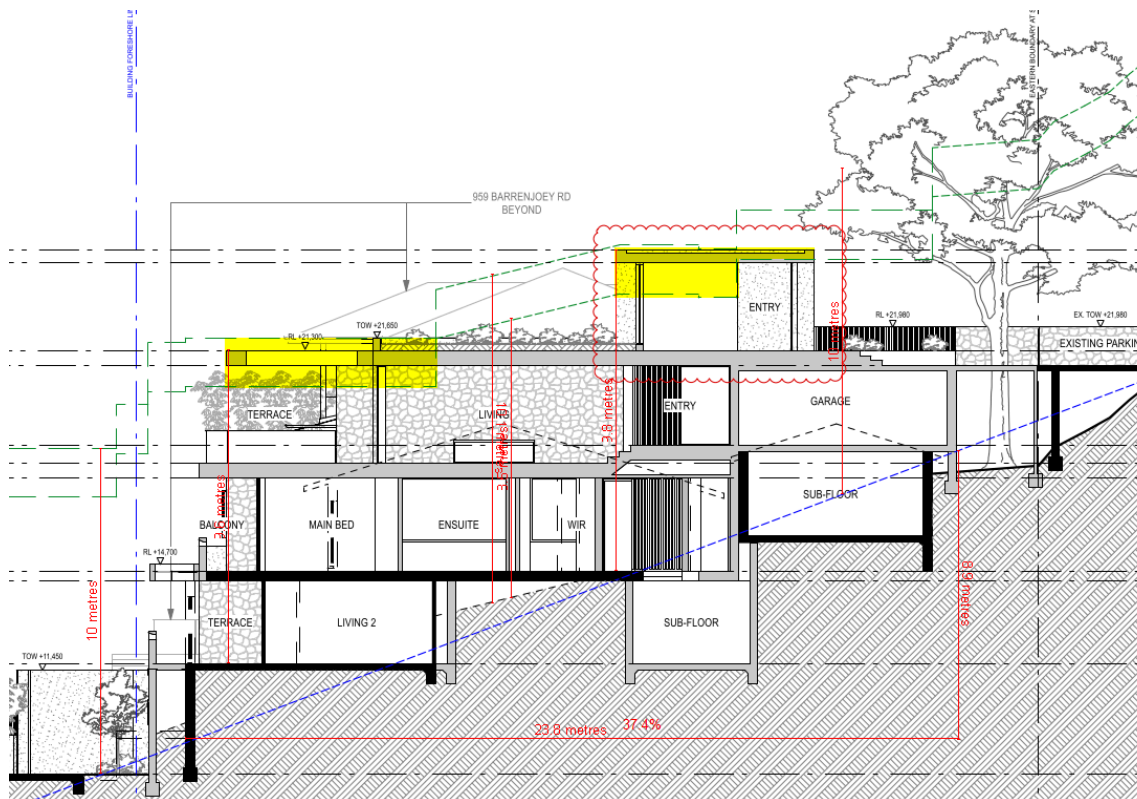


Figure 1 - Extract of areas breaching the 8.5m height limit in yellow based on the applicant's height plane through long section.

The applicant contends that the 10m building height concession pursuant to Clause 4.3(2D) of the LEP should apply to the development and as such, the proposal would not need to address the requirements of Clause 4.6 of the LEP. The applicants section appears to show the building within the 10m height plane.

However, upon review of the survey data and existing ground levels, there may be breaches of the

10m height plane. For example, the north-western corner of the proposal sits close to an existing ground level of 10.66 AHD (with the corresponding height of the pergola RL21.300 above) equaling a building height of 10.64m, see extract below in Figure 2. However, there is insufficient information to conclude that the building is up to this height.

Notwithstanding the above, the elements that are between 8.5m and 10m are not considered to be *minor* and in such a way that would qualify for the concession under Clause 4.3(2D). Council is not satisfied that the application has accurately identified the building height from all areas above the existing ground level.

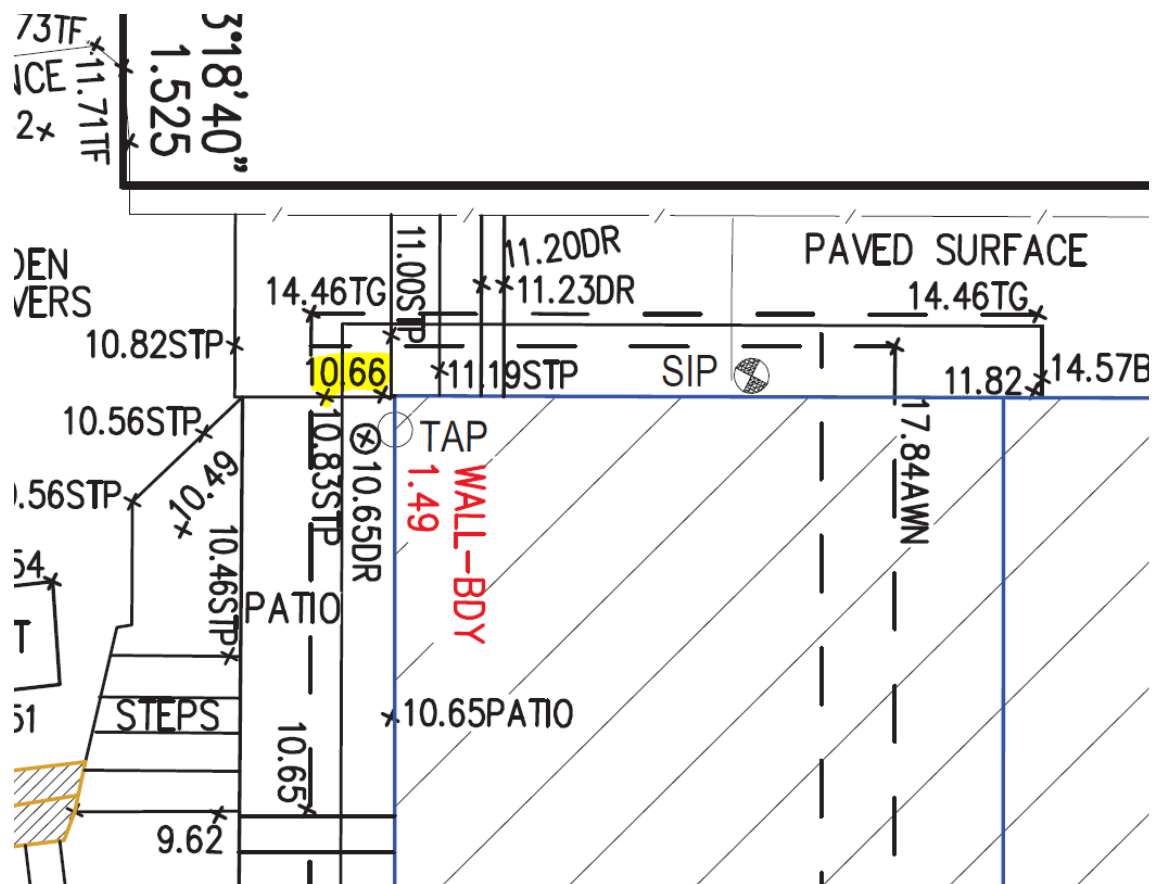


Figure 2 - Extract of survey overlay identifying existing level at north-western corner.

In order for the 10m concession to be applied under Clause 4.3(2D), the following must be met:

(2D) Despite subclause (2), development on land that has a maximum building height of 8.5 metres shown for that land on the Height of Buildings Map may exceed a height of 8.5 metres, but not be more than 10.0 metres if—

(a) the consent authority is satisfied that the portion of the building above the maximum height shown for that land on the Height of Buildings Map is minor, and

Comment: The two areas of breach are not considered to be minor. The full width and depth of the pergola, along with a portion of the living room, on Level 3 breaches the 8.5m height limit. In addition,

a large proportion of Level 4 also breaches the 8.5m height limit and is not considered to be minor. Council is not satisfied the development in the current form meets this requirement. Upon review of the survey data, there also appears there may be elements over 10m and further information should be provided in any subsequent application to confirm this.

(b) the objectives of this clause are achieved, and

Comment: An assessment of the objectives of Clause 4.3 are undertaken below:

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

Comment: The relevant parts of the Palm Beach DFC state that *"The Palm Beach locality will remain primarily a low-density residential area with dwelling houses in maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape", "Future development will maintain a building height limit below the tree canopy and minimise bulk and scale whilst ensuring that future development respects the horizontal massing of the existing built form" and "Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance"*.

The building has not been sufficiently stepped with the topography of the land. Whilst it is recognised there are adjoining and surrounding properties that are three stories (as opposed to two) the proposal has not sufficiently stepped back the upper level to follow the site topography. This has not minimised the bulk and scale of the development and therefore, has not met the DFC.

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

Comment: There are elements of the proposal that are not compatible with the height and scale of the adjoining buildings. The entry level is not compatible with the adjoining buildings and viewed from the street and adjoining sites.

(c) to minimise any overshadowing of neighbouring properties,

Comment: The adjoining property to the south is highly susceptible to overshadowing due to the orientation and level change. No information has been provided to qualify that breaching elements do not further contribute to overshadowing of the adjoining property to the south.

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

Comment: The breaching elements contribute to view impacts from the public road and adjoining private property. Given view impacts arise from non-compliant elements, this is not considered to be reasonable in terms of view sharing.

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

Comment: The building does not step back sufficiently with the slope of the land and this results in a bulk and scale that is not compatible with the surrounding properties or the DFC.

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

Comment: The building, including the breaching elements, will sit closer to the waterway (natural

environment) and therefore visual impact upon the waterway has not been minimised.

Council is not satisfied the development in the current form meets this requirement and the objectives of the standard are not met.

(c) the building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%), and

Comment: The site has a slope of 37% beneath the building footprint based on Section A (drawing DA13). The drawings must be updated in any future or amended application to address this accurately and only account for the area directly beneath the building footprint.

(d) the buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.

Comment: The building has not sufficiently stepped down the slope of the land and as such, results in a height breach that is more than minor.

Based on the above assessment of Clause 4.3(2D), Council is not satisfied that the 10m height concession under the PLEP has been met and therefore, Clause 4.6 would apply to the development in the current form.

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

standard.

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

The Applicant has not submitted a written request, as it is contented that the proposal meets the concession clause under Clause 4.3(2D). However, for the reasons described above, Council is not satisfied Clause 4.3(2D) is met.

As no written request was submitted, Council cannot be satisfied of 4.6(4)(a)(i).

In this regard, the Applicant's has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

No written request has been submitted identifying environmental planning grounds.

Therefore, it has not been adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the C4 Environmental Living zone. An assessment against these objectives is provided earlier within this report and it is found that the proposal in the current form does not achieve the zone or standard objectives.

Exception to Development Standards conclusion

The proposal is not accompanied by a Clause 4.6 variation request and as such, Clause 4.6 has not been addressed and the application is recommended for refusal based on this reason.

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 inconsistency 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 not assume the concurrence of the Secretary for variations to the Height of building Development Standard associated with a single dwelling house (Class 1 building).

7.2 Earthworks

The objective of Clause 7.2 - 'Earthworks' requires development to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

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

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

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

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

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

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

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

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

Comment: The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Should consent be granted, conditions could be included to limit impacts during excavation/construction.

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

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

(f) the likelihood of disturbing relics

Comment:

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

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

Comment: The application has been considered by Council's Coast Team and Riparian Lands and Creek Team who are satisfied the proposal will not have adverse impacts on the waterway, subject to their recommended conditions.

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

Comment: Conditions could be recommended to 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 proposed earth works will not result in an adverse impact on the heritage item that is two properties away at 949 Barrenjoey Road.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of Clause 7.2 PLEP 2014.

7.7 Geotechnical hazards

Under Clause 7.7 Geotechnical Hazards, before determining a development application for development on land to which this clause applies, the consent authority must consider the following matters to decide whether or not the development takes into account all geotechnical risks:

- (a) site layout, including access,*
- (b) the development's design and construction methods,*
- (c) the amount of cut and fill that will be required for the development,*
- (d) waste water management, stormwater and drainage across the land,*
- (e) the geotechnical constraints of the site,*
- (f) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment:

The proposed development is supported by a geotechnical risk assessment, architectural plans, an excavation plan, and stormwater management plans that demonstrate all geotechnical risks have been taken into account. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

Development consent must not be granted to development on land to which this clause applies unless:

- (a) the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and*

Comment:

The proposed development is supported by a geotechnical risk assessment and stormwater management plans that demonstrate waste water, stormwater and drainage are suitably managed on site. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

(b) the consent authority is satisfied that:

- (i) the development is designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development, or*
- (ii) if that risk or impact cannot be reasonably avoided - the development is designed, sited and will be managed to minimise that risk or impact, or*
- (iii) if that risk or impact cannot be minimised - the development will be managed to mitigate that risk or impact.*

Comment:

The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent. As such, Council can be satisfied that the proposed development has been designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development.

Pittwater 21 Development Control PlanBuilt Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	10m	L4 - 6.8m - 8.2m L3 (Garage) 2.2m - 3m L2 - 8.8m - 11m L1 - 8.3m - 11.9m	0%-82%	No No No No
Rear building line	FSBL	Within FSBL	N/A	Yes
Side building line	2.5m	South - 2m to 2.5m (1m to retractable awning)	0%-60%	No
	1m	North - 1m to 1.5m	N/A	Yes
Building envelope	3.5m	North - Breaches envelope	N/A	No
	3.5m	South - Breaches envelope	N/A	No
Landscaped area	60%	Existing: 168m ² or 21.6% Proposed: 200m ² or 25.7%	N/A	No (existing non-compliance)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	No	No
A4.12 Palm Beach Locality	No	No
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.2 Bushfire Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	No	No
C1.4 Solar Access	No	No
C1.5 Visual Privacy	No	No
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
C1.17 Swimming Pool Safety	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
D1.21 Masterplan - Careel Bay	Yes	Yes
D12.1 Character as viewed from a public place	No	No
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	No	No
D12.6 Side and rear building line	No	Yes
D12.8 Building envelope	No	No
D12.10 Landscaped Area - Environmentally Sensitive Land	No	Yes
D12.11 Fences - General	No	No
D12.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D12.14 Scenic Protection Category One Areas	No	No

Detailed Assessment

A4.12 Palm Beach Locality

Clause A1.7 requires that the consent authority consider if the development is consistent with the

Desired Future Character Statement of the Locality.

The relevant parts of the Palm Beach DFC state that *"The Palm Beach locality will remain primarily a low-density residential area with dwelling houses in maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape", "Future development will maintain a building height limit below the tree canopy and minimise bulk and scale whilst ensuring that future development respects the horizontal massing of the existing built form" and "Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance".*

The building has not been sufficiently stepped with the topography of the land. Whilst it is recognised there are adjoining and surrounding properties that are three stories (as opposed to two) the proposal has not sufficiently stepped back the upper level to follow the site topography. This has not minimised the bulk and scale of the development and therefore, has not met the DFC.

As such, the proposal does not address the DFC in a satisfactory way and the new works will result in a development that is a greater departure from the character outcome that envisaged under the DFC statement.

For this reason, the proposal is **not supported** due to the inconsistencies with the DFC.

C1.3 View Sharing

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.

Private Views (Adjoining property 959 Barrenjoey Road)

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 view to be impacted is of a water view looking south-west from 959 Barrenjoey Road. Part of the land/water interface is also impacted of the Pittwater.



Figure 1 - View existing (left) and view with proposed development (right) looking south-west from the middle level deck adjoining the living room. Montage prepared by Cadence and Co.



Figure 2 - View existing (left) and view with proposed development (right) looking south-west from the upper level deck adjoining the master bedroom. Montage prepared by Cadence and Co.

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

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

Comment to Principle 2:

The views to be impacted are obtained from the deck adjoining the master bedroom (upper level) and the deck adjoining the living area (middle level). The view is obtained over the side boundary of the site. The view is enjoyed from both a sitting and standing position.

3. Extent of impact

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

Comment to Principle 3:

In consideration of the total views available currently from 959 Barrenjoey Road and the extent of the proposed building impacting the view to the south-west, the impact of the development is considered minor. Whilst the photomontage shows that a planter box will contain sparse vegetation planting on the northern side of the L3 Terrace, in order for this planting to properly resolve privacy, it would need to act as a hedge. As such, the portion of filtered water views shown through the landscape planting are considered to be impacted from the balcony adjoining the terrace.

For completeness, Figure 3 and 4 below show the views to the west that will not be affected by the development. There are also more views looking north-west.



Figure 3 - View looking west from the upper level deck adjoining bedroom. Taken by assessing officer.



Figure 4 - View looking west from the middle level deck adjoining the living room. Taken by assessing officer.

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 portion of the development which is impacting upon the views is in breach of the building envelope and in breach of the 8.5m building height. Whilst the vast majority of water views are maintained for 959 Barrenjoey Road and the impact is considered only minor (only a small portion of views lost) the view impact is caused by non-compliant elements of the proposal and

as such, the minor impact is not acceptable. The proposal has not demonstrated sufficiently skillful design in balancing the resolution of privacy and view sharing and this is made more difficult by the size and design of the L3 Terrace which sits in close proximity to the shared boundary and the protrusion of the building closer towards the western boundary.

- *Views and vistas from roads and public places to water, headland, beach and/or bush views are to be protected, maintained and where possible, enhanced.*

Comment:

The proposal includes Level 4 which contains an entry, bathroom, lift and study area. At present, views are available over the roof of the existing building (figure 5 below) and are available when driving past the site. The design of the upper level is non-compliant with the 8.5m building height and the building envelope under the Pittwater DCP. The width of the L4 upper level causes non-compliances with the side envelope control and contribute to impacts to public view available over the site. Whilst it is recognised that there may be some of the public view impacted through the redevelopment of the site, the proposal breaches the controls which cause further impacts when compared to a compliant development. As such, the proposal is both non-compliant and not designed in a sufficiently skilful way to address this objective to for public views to be "*protected, maintained and where possible, enhanced*".

No information or montages have been provided to demonstrate the extent of impact to the available public view. Figure 6 below shows the existing view looking west from the public domain.



Figure 6 - Photo take by assessing officer looking west from public domain (road).

- *Canopy trees take priority over views.*

Comment:

The proposal does not seek to remove any canopy trees in favor of views.

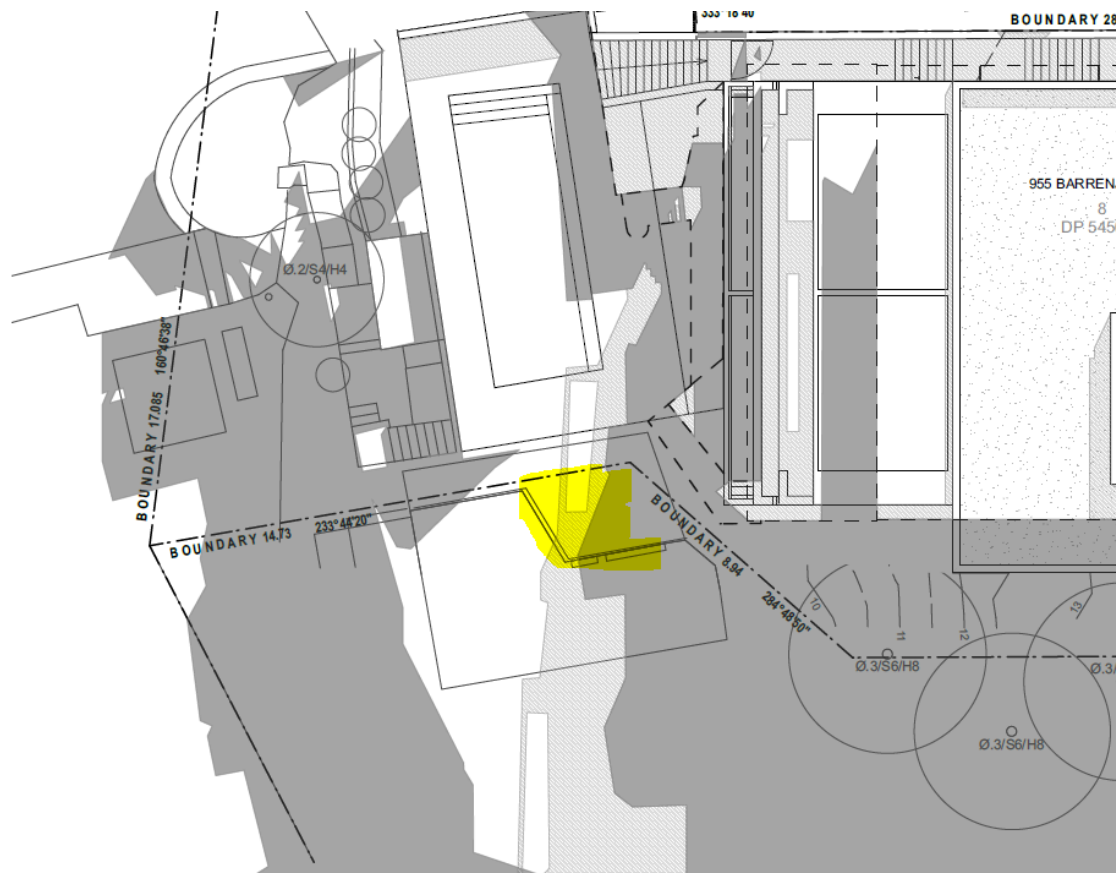
Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of PDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

C1.4 Solar Access

The application proposes to breach the building height of 8.5m and the building envelope under the DCP. Both of these controls contain objectives to minimise the impact upon the adjoining properties in terms of solar access.

The shadow diagrams provided with the application indicate that some further overshadowing of the northern elevation and associated outdoor area of the adjoining property at 953 Barrenjoey Road.

There is insufficient information submitted with the application to demonstrate that the breaching elements will not contribute to further overshadowing. On the information that has been submitted, it appears that the western extent of the proposal will result in further overshadowing of the northern elevation of 953 Barrenjoey Road. No information has been provided as to the use of the rooms/windows on the northern elevation and impact in terms of further overshadowing arising from the non-compliance. The extract below is from the 12 noon shadow diagram:



3 Site Shadows - 21st June 12pm
Scale: 1:200

Council is not satisfied the proposal will result in a reasonable outcome in terms of overshadowing for the adjoining property and as such the application is recommended for refusal for this reason.

C1.5 Visual Privacy

The DCP contains the following controls in relation to visual privacy:

Private open space areas including swimming pools and living rooms of proposed and any existing adjoining dwellings are to be protected from direct overlooking within 9 metres by building layout, landscaping, screening devices or greater spatial separation as shown in the diagram below (measured from a height of 1.7 metres above floor level).

Elevated decks and pools, verandahs and balconies should incorporate privacy screens where necessary and should be located at the front or rear of the building.

Direct views from an upper level dwelling shall be designed to prevent overlooking of more than 50% of the private open space of a lower level dwelling directly below.

Comment: The upper level terrace is located within 9m of the adjoining property and whilst it does contain a planter box with landscape screening, this should not be relied upon solely as a measure to protect privacy as landscape screening can fail. Increased spatial separation or a more compatible alignment with the adjoining properties balcony could be options minimise the privacy impact. Furthermore, the amended plans have removed the privacy screening on the southern side which does not reasonably protect the privacy of the adjoining southern property from the upper level terrace.

The proposal is not considered to meet the following objectives:

Habitable rooms and outdoor living areas of dwellings optimise visual privacy through good design. (S)
A sense of territory and safety is provided for residents. (S)

Comment: The design of Level 3 is not considered to have optimised privacy for the adjoining property and the design is non-compliant with the building envelope which results in a balcony sitting closer to the boundary than would otherwise be permitted by the planning controls. This results in a suboptimal outcome in regards to visual privacy due to the location of L3 and associated terrace.

As such, the application is recommended for refusal due to privacy not being resolved in a satisfactory way.

D12.5 Front building line

Description of non-compliance

The DCP requires a 10m setback to Barrenjoey Road. The proposal has the following setbacks:

- L4 - 6.8m-8.2m
- L3 - (Garage) - 2.2m to 3m (existing setback)
- L2 - 8.8m - 11m
- L1 - 8.3m-11.9m

Under Clause D12.5 Front building line of Pittwater 21 Development Control Plan the following variation applies:

"Where carparking is to be provided on steeply sloping sites, reduced or nil setbacks for carparking structures and spaces may be considered, however all other structures on the site must satisfy or exceed the minimum building line applicable."

It is considered the subject site, is a steeply sloping site, and as such the reduced setback for carparking structures is acceptable and the garage is not readily visible as below street level. The garage is also an existing structure.

An assessment against the outcomes of the control has been undertaken below for the remainder of the building.

Merit consideration

With regards to the consideration 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: For the reasons discussed elsewhere within this report, the proposed development is not

consistent with the desired future character of the Palm Beach Locality, particularly due to the height and envelope breach.

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

Comment: The Level 4 design impacts public views from the road and is partially within the front setback. As such, Council is not satisfied this objective has been met.

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

Comment: The proposal is capable of maintaining a good level level of amenity for the owners and occupants of this proposed development.

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

Comment: The proposal includes a Landscape Plan that details enhanced plantings on the site. However, it is not considered that landscaping within the front setback will be capable of screening non-compliant elements from the road.

Vehicle manoeuvring in a forward direction is facilitated.

Comment: The proposal includes a hard standing parking area with a vehicle turntable and driveway and as such vehicular manoeuvring in a forward direction is possible. Council's Development Engineer has reviewed the proposal and has not raised concerns surrounding the limitation to enter and exit in a forward direction.

To preserve and enhance the rural and bushland character of the locality.

Comment: The proposal increases the bulk of the building whilst doing little to increase bushland on the site. Due to the excess building bulk, the this objective is not met.

To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.

Comment: To to the height and width of Level 4, which impacts public views, the proposal does not enhance the streetscape. As viewed from the street, the roofs of houses can generally be seen and parking structures. The proposal results in a full level presenting to the street which is not consistent with the street character.

To encourage attractive street frontages and improve pedestrian amenity.

Comment: Pedestrian amenity is not impacted. See above about street frontage design.

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

Comment: See above regarding the presence of built form on the streetscape. The adjoining properties are generally downslope of the road with the roof visible. The proposed L4 is different from the predominant street character

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant outcomes 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

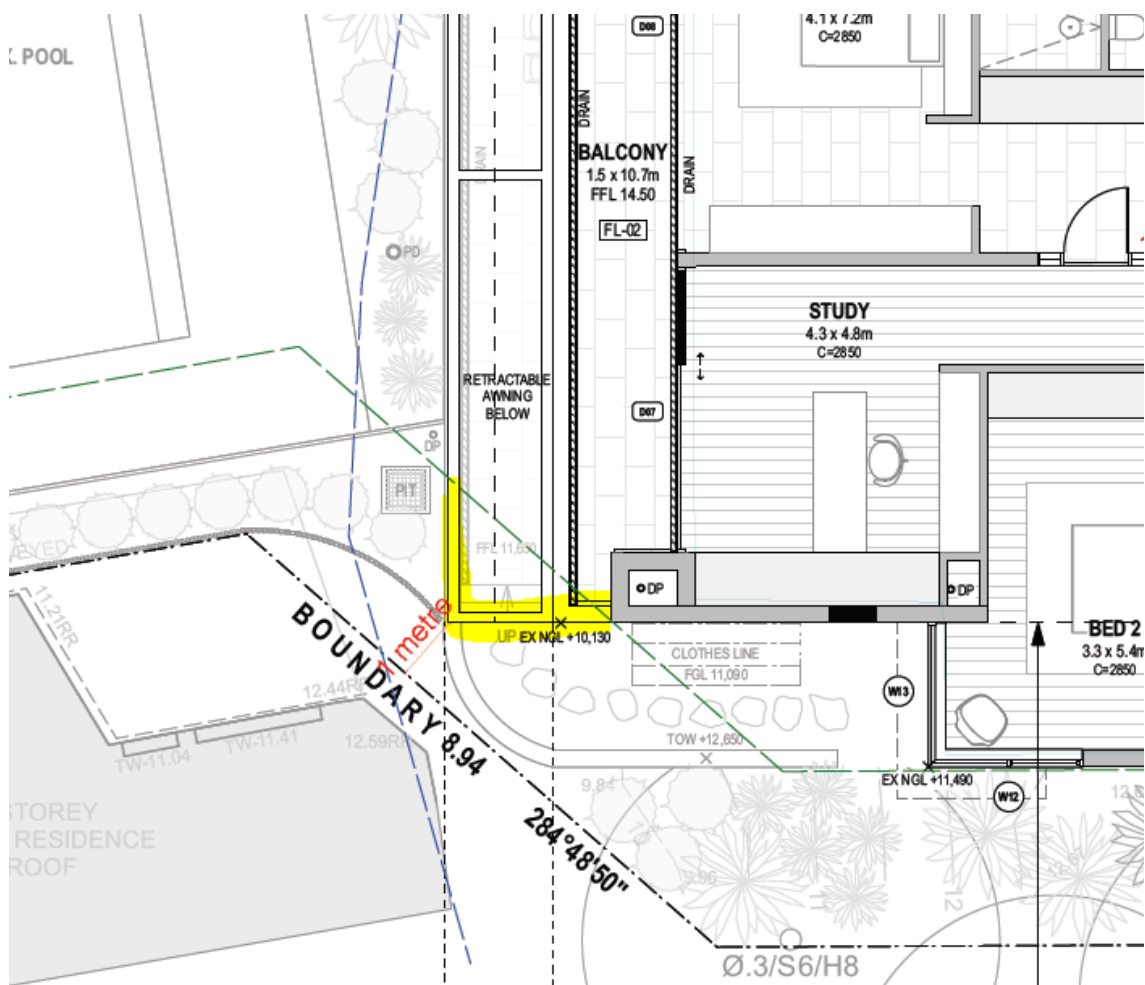
recommended for refusal in this particular circumstance.

D12.6 Side and rear building line

Description of non compliance

The DCP requires a 2.5m side setback to the southern side and 1m setback to the norther side.

The proposal is largely compliant, except for a minor encroachment to the south-western corner of the site, as shown below:



The southern side requires a 2.5m setback and there is a point encroachment to 1m.

It is noted that the existing building encroaches this setback on the ground and first floor deck. The new alterations maintain this corner setback and with the terrace on L1 and balcony on L2 remaining as encroachments. The new L3 is setback to 2.5m and therefore, the new elements are compliant.

The application is recommended for refusal for other reasons as therefore, a merit assessment of this

issue is not carried out. However, the proposal is not recommended for refusal based on the retention of the existing element non-compliant with the side setback.

D12.8 Building envelope

Description of Non-Compliance

Clause D12.8 of the P21 DCP prescribes a 3.5m side building envelope, but permits a variation to that envelope where the building footprint is situated on a slope of 16.7 degrees (30% gradient) or more, which is relevant to the subject site.

The proposal has an encroachment of the southern side boundary building envelope (Figure 1 below) and the northern side boundary (Figure 2 below).

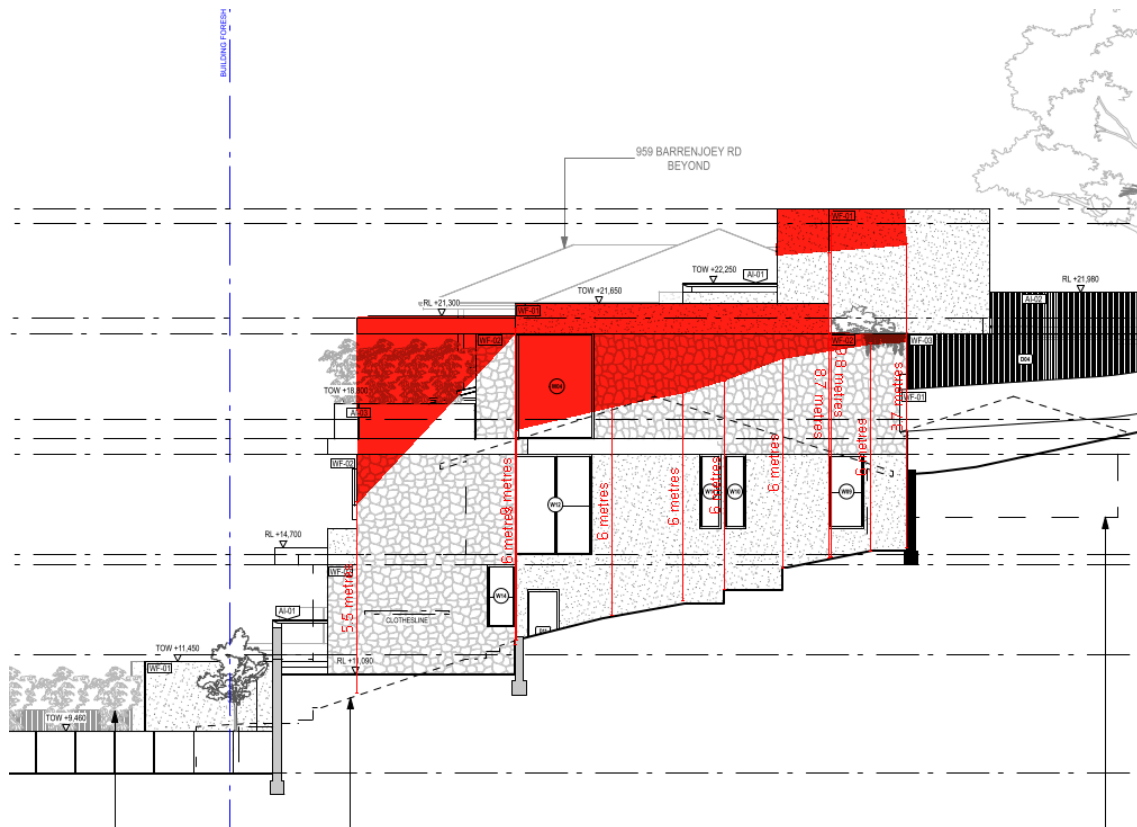


Figure 1 - Southern Side of building - Area marked red non-compliant.

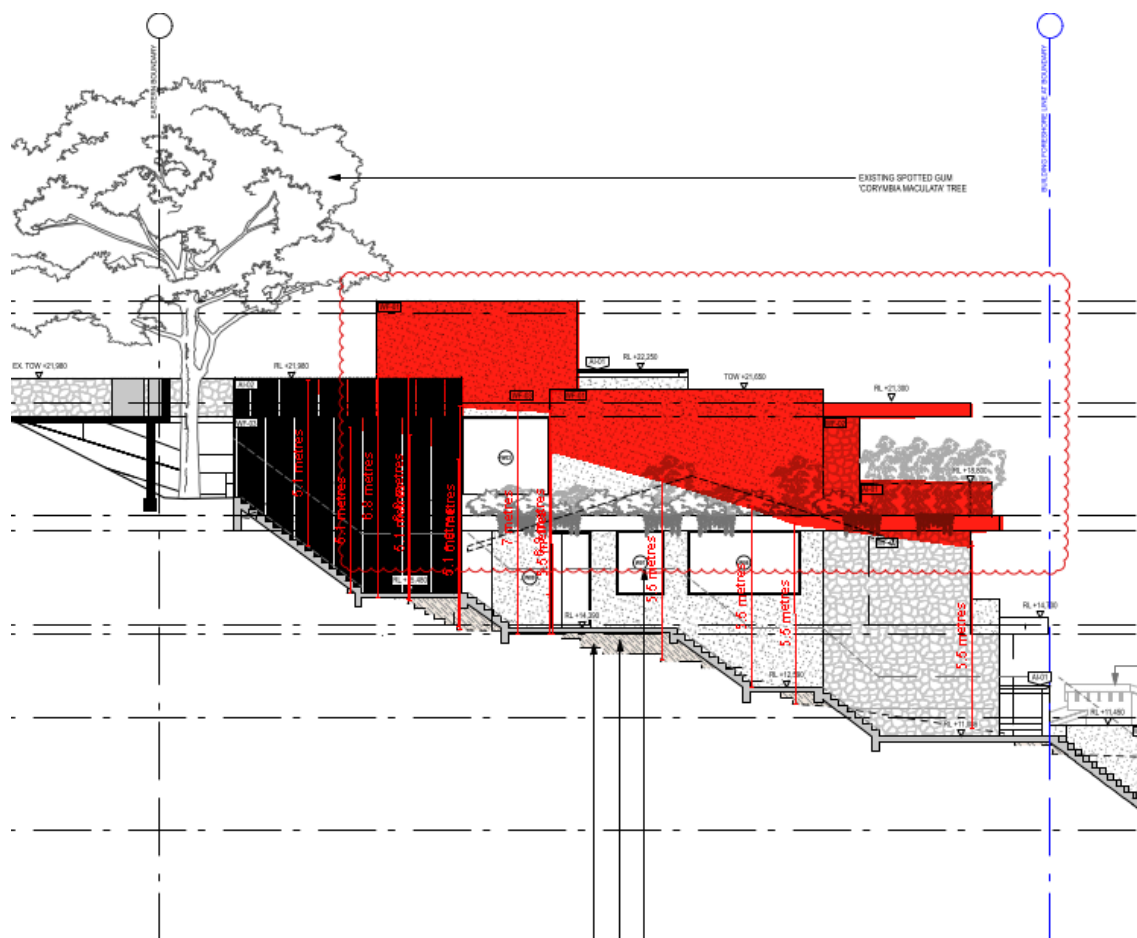


Figure 2 - Northern Side of Building - Area marked red non-compliant.

Merit Consideration

With regard to the consideration of the variation, the development is considered under the objectives of the control below:

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

Comment: The Palm Beach desired future character statement makes reference to development comprising of predominantly two storey dwellings in a landscape setting and the building stepping with the site to minimise bulk and scale. The proposed upper levels are not sufficiently stepped with the site topography to minimise bulk and scale and result in large breaches of the envelope control. Whilst it is recognised there are existing dwellings surrounding the site and within the locality that are three stories, the extent of breach and lack of upper floor setback will result in a building less compatible with the DFC. Inconsistent with this objective.

- *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 Level 4 entrance has large breach of the envelope and will be read from the street as a storey. The surrounding street character is generally low scale and less dominant in the streetscape, being below the canopy level. Inconsistent with this objective.

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

Comment: The proposed additions sit further forward of the alignment of the adjoining buildings facing the waterway. This does not respond to the characteristics and spatial proportions of the existing natural environment, which is to have buildings stepped back from the waterway.

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

Comment: The areas of breach are up to a full storey within the envelope and as such, bulk and scale has not been minimised having regard to the intent of the controls. Inconsistent with this objective.

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

Comment: The breaching elements directly contribute to view impacts for the adjoining site to the north. Inconsistent with this objective.

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

Comment: The balcony element fully breaches the building envelope which does not ensure reasonable privacy is maintained to the adjoining sites. Insufficient information has been provided with the application to demonstrate that the breaching elements will not have a further detrimental impact of sunlight access to the southern property. The southern wall contains windows that are in breach of the building envelope and as such, privacy is compromised. Inconsistent with this objective.

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

Comment: The existing trees on the site are retained and the existing landscape area is increased. This objective is met.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of PDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is **not supported**, in this particular circumstance.

D12.10 Landscaped Area - Environmentally Sensitive Land

The quantum of landscaping on the site is currently 21.6% of the site area. The proposal seeks to include additional areas of landscaping to bring the total amount of landscaping on the site to 25.7% of the site area. Although still non-compliant, the amount of landscaping is slightly increased.

However, as stated earlier within this report Council is not satisfied that the proposal can be categorised as alterations and additions. As such, the proposal is more akin to a new building and

there should be an increased effort to increase the quantum of landscaping on the site to meet the DFC.

Therefore, Council is not satisfied this control has been addressed in a satisfactory way.

D12.11 Fences - General

The application identifies 'Boundary Fencing to 1.8m height, however material has not been specified.

No owners consent has been provided for the boundary fencing. As such, the fencing is not supported based on the information at hand.

D12.14 Scenic Protection Category One Areas

The controls in relation to scenic protection mostly deal with the removal of trees and the enhancement of the vegetation to screen the development as visible from the waterway.

The proposal is of a scale that would require further screening from the waterway due to the breaches of the controls and insufficient stepping of the upper level away from the waterway.

As such, the proposal is not considered to meet this control based on the current design which is excessive in bulk and scale.

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 \$32,050 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$3,205,000.

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, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

Council is not satisfied that, as no Clause 4.6 request has been submitted, that:

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

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

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

PLANNING CONCLUSION

The application is referred to the Development Determination Panel (DDP) due to breaching the 8.5m by up to 15%, which represents a maximum height of 9.8m.

The assessment concludes that the pre-conditions of Clause 4.3(2D) are not satisfied in order for the applicant to rely on the 10m variation permitted under the clause. In this regard, no Clause 4.6 variation request was submitted with the application and as such, there is no power to approve the application.

The submissions raised concerns that there may be portions of the building exceeding 10m. This may be the case, however, there is not sufficient information provided in the form of a detailed height blanket diagram to verify this. Notwithstanding this, the exceptions requirements under 4.3(2D) are not met and hence the 8.5m control applies.

The remaining merit issues in relation to the extent of the building envelope breach on both the northern and southern side are considered excessive and do not properly respond to the site topography or site constraints and are reasons the application cannot be supported in the current form.

There are issues unresolved with regards to views, privacy, visual bulk and scale and overshadowing of the adjoining properties.

The design of Level 4 also brings into question view impacts from the public domain and the visual

presentation to the street, both of these issues are not resolved to Council's satisfaction.

This report concludes with a recommendation that the DDP refuse the development application for the reasons outlined within the report.

REASON FOR DETERMINATION

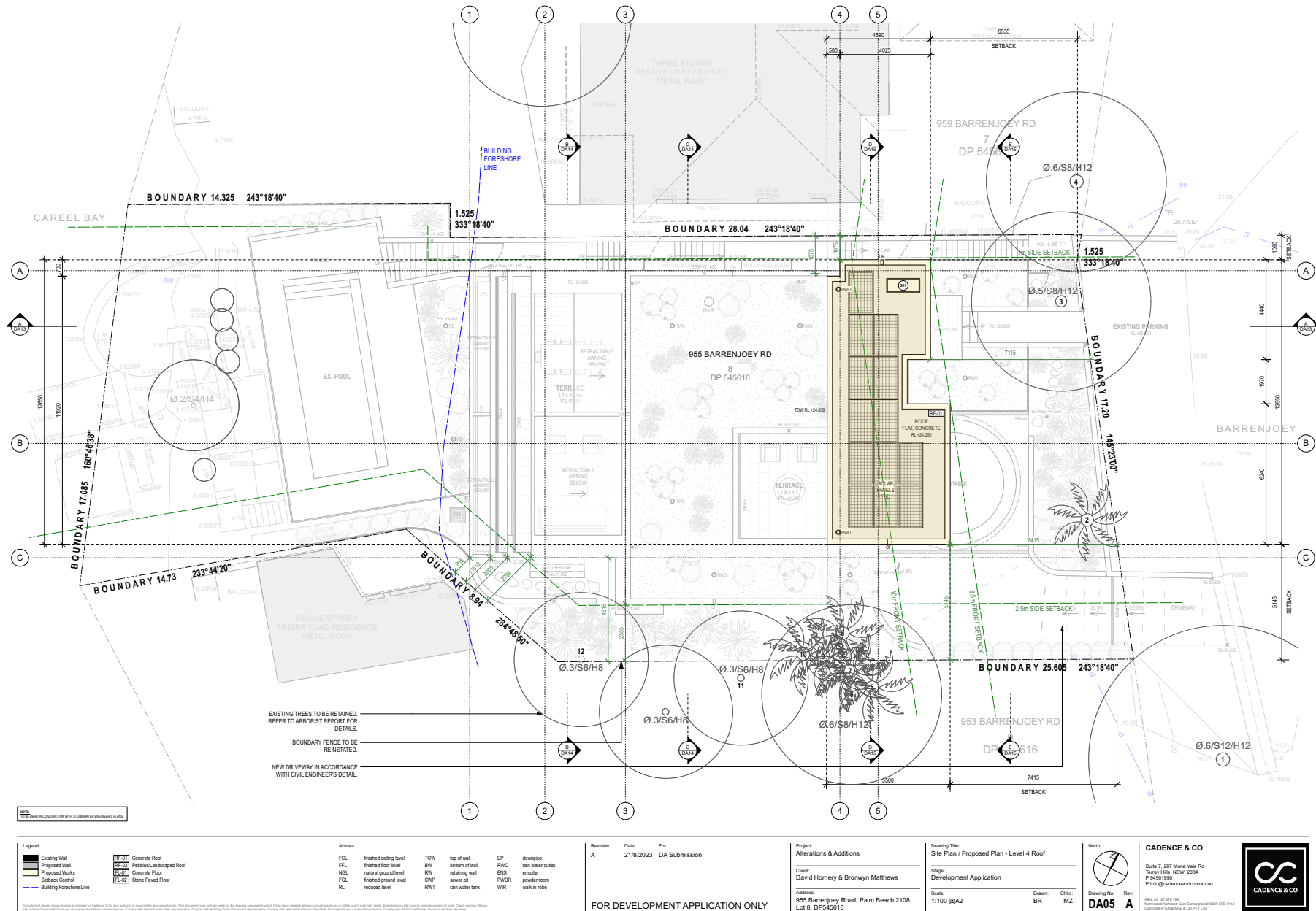
It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

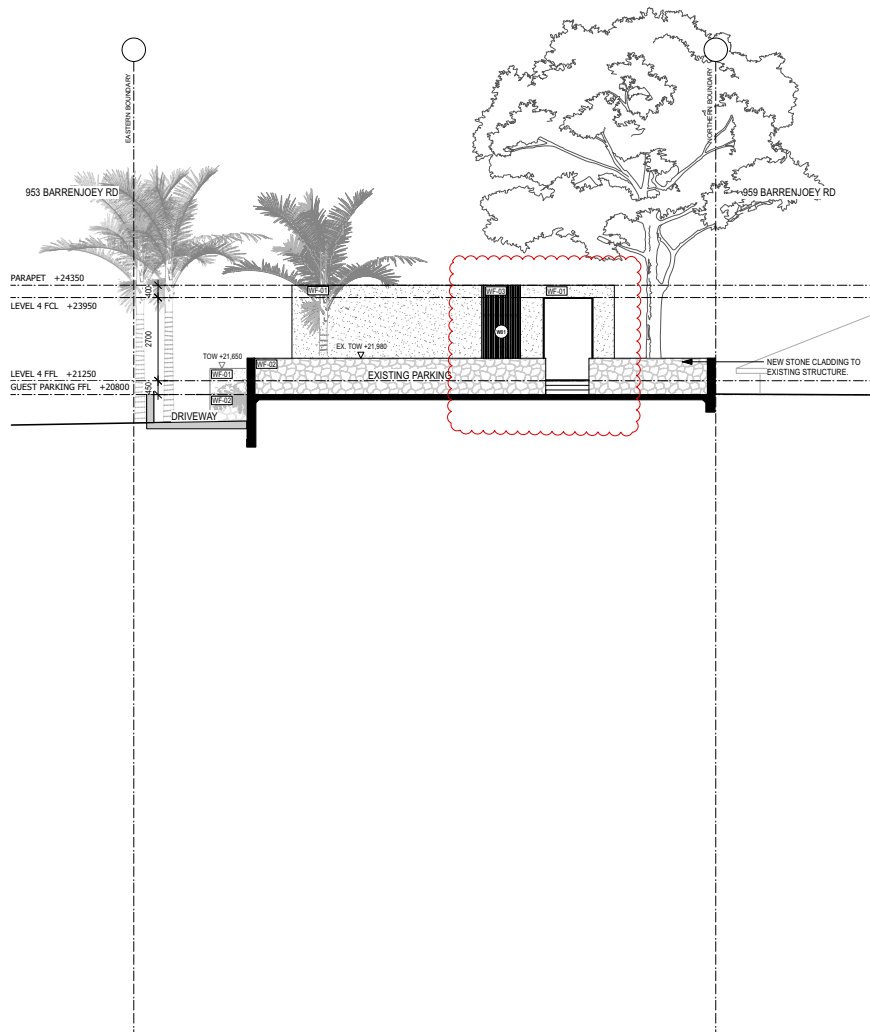
RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2023/1469 for the Alterations and additions to a dwelling house including a swimming pool on land at Lot 8 DP 545616,955 Barrenjoey Road, PALM BEACH, Lot LIC 526953,955 Barrenjoey Road, PALM BEACH, for the reasons outlined as follows:

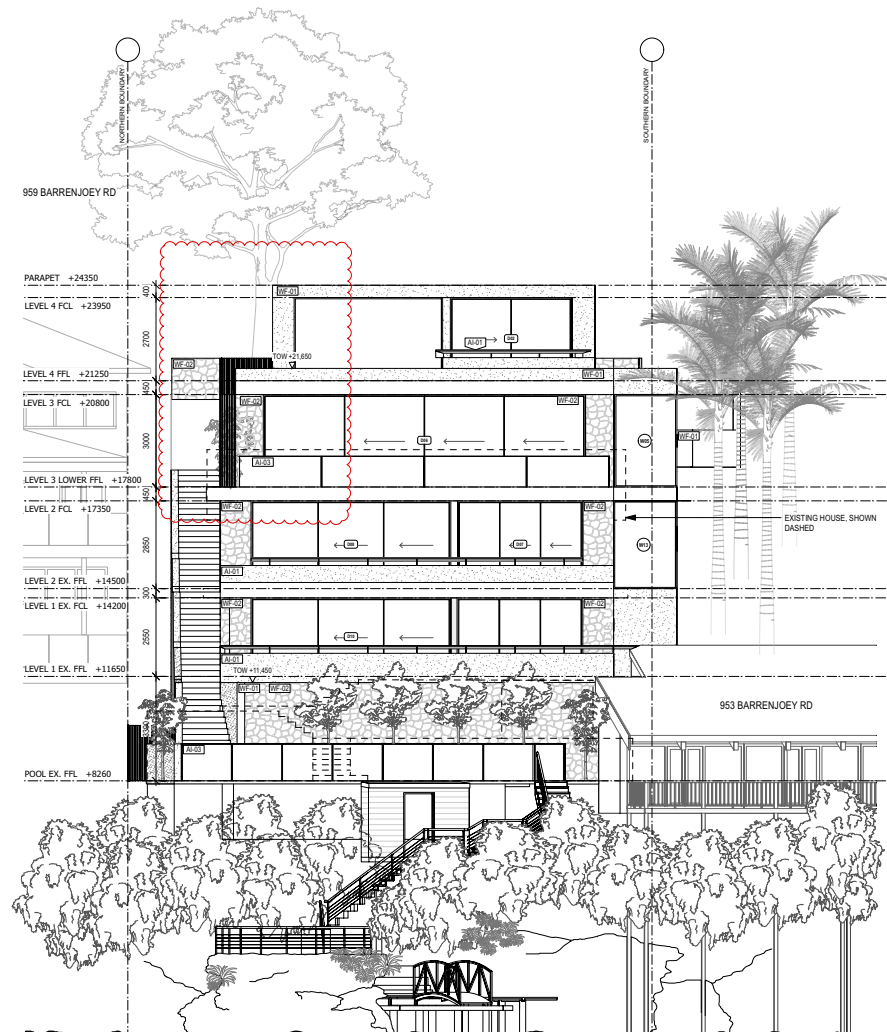
1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of State Environmental Planning Policy (Resilience and Hazards) 2021. In particular, Chapter 2, Division 4 - Coastal use area 2.11 Development on land within the coastal use has not been addressed as impacts to the scenic qualities of the coastline have not been minimised due to the overall bulk and scale of the building.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Pittwater Local Environmental Plan 2014.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause Zone E4 Environmental Living of the Pittwater Local Environmental Plan 2014.
4. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.3 Height of buildings of the Pittwater Local Environmental Plan 2014.
5. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to development standards of the Pittwater Local Environmental Plan 2014. In particular, no Clause 4.6 variation has been submitted with the development application.
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 C1.3 View Sharing of the Pittwater 21 Development Control Plan. In particular, there are view impacts as a result of the development for both public and private views that are caused by non-compliant elements of the building.
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 C1.4 Solar Access of the Pittwater 21 Development Control Plan.

8. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C1.5 Visual Privacy of the Pittwater 21 Development Control Plan. In particular, the design of Level 3 and the Level 3 balcony adjoining the living room is not designed in a way that maintains reasonable privacy for the surrounding properties.
9. Pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979 the proposed development is not appropriately categorised as alterations and additions to a dwelling house due to the extent of works proposed and further departure from the desired future character, resulting in visual impacts and amenity impacts upon the surrounding lands.
10. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D12.5 Front building line of the Pittwater 21 Development Control Plan. The design of Level 4 presenting to the street is not compatible with the surrounding properties and impacts upon public views.
11. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D12.6 Side and rear building line of the Pittwater 21 Development Control Plan.
12. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D12.8 Building envelope of the Pittwater 21 Development Control Plan.
13. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D12.10 Landscaped Area - Environmentally Sensitive Land of the Pittwater 21 Development Control Plan.
14. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D12.14 Scenic Protection Category One Areas of the Pittwater 21 Development Control Plan.



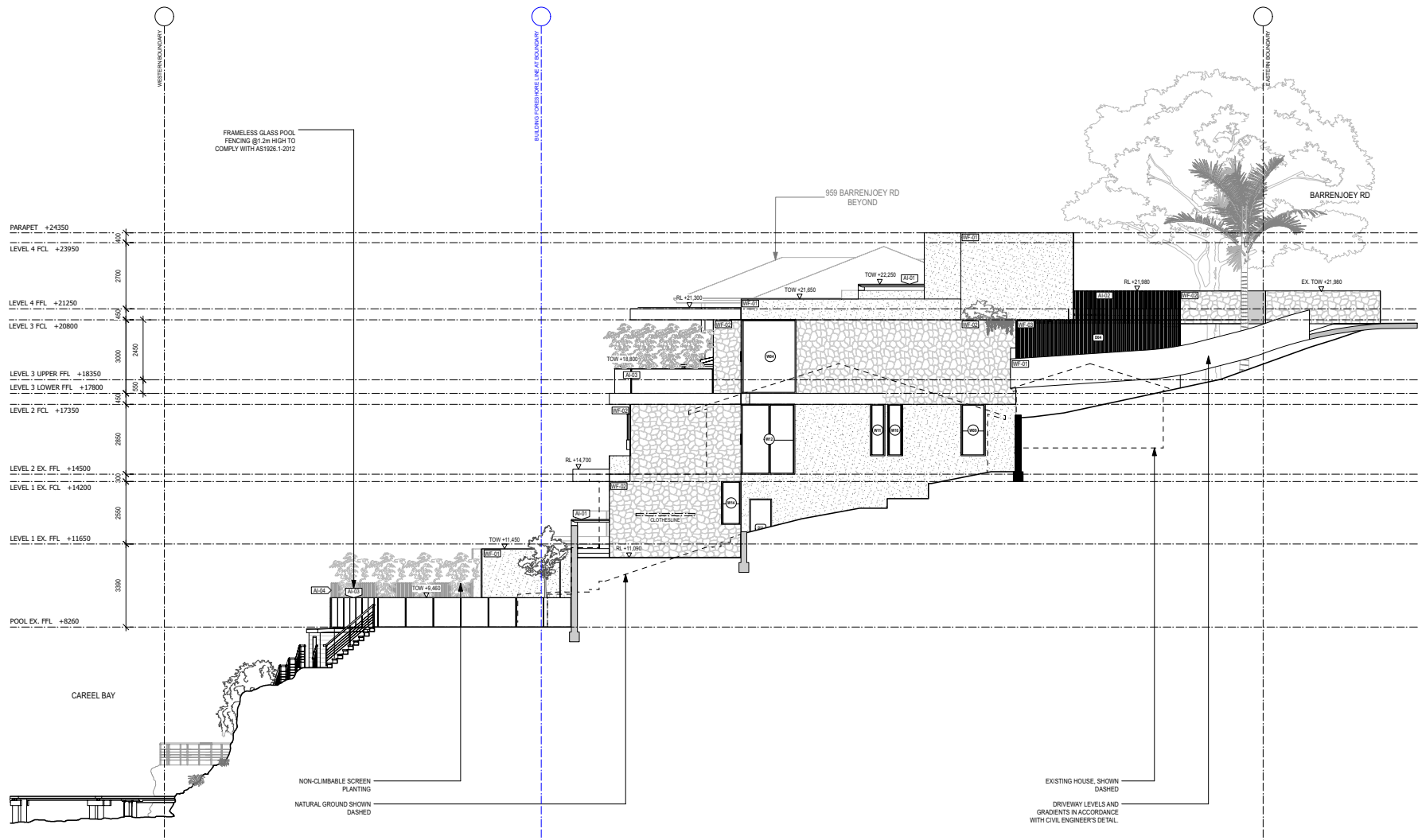


1 Street Elevation
Scale: 1:100



2 West Elevation
Scale: 1:100

Legend:		Abbrev:		Revision:		Date:		For:		Project:		Drawing Title:		North:		CADENCE & CO	
CR-01	Concrete Roof	AL-01	Rendered Wall With Timber Handrail	FCL	finished ceiling level	TOW	top of wall	DP	downpipe	A	21/8/2023	DA Submission	Proposed East & West Elevation				287, 287 Mona Vale Road Mona Vale NSW 2084 P 94501950 E info@cadenceandco.com.au ABN 62 167 271 781 Registered Address: 500 Greenfield NSW 488 9112 Copyright © CADENCE & CO PTY LTD
CR-02	Pebbles/Landscaped Roof	AL-02	Timber Batten Balustrade	FFL	finished floor level	BW	bottom of wall	RWO	rain water outlet	B	11/03/24	Amended DA	Stage: Development Application				
CR-03	Rendered Wall	AL-03	Glass Balustrade	NGL	natural ground level	RW	retaining wall	ENS	ensuite	Client:		David Homery & Bronwyn Matthews					
CR-04	Stone Cladding Wall	AL-04	Timber Batten Screen	FGL	finished ground level	SWP	sewer pit	PRDR	powder room	Address:		955 Barrenjoey Road, Palm Beach 2108 Lot 8, DP545616					
CR-05	Timber Batten Wall			RL	reduced level	RWT	rain water tank	WR	walk in robe	Scale:		1:100 @A2		Drawn: BR	Chkd: MZ		
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FOR DEVELOPMENT APPLICATION ONLY																	



Legend:

CP-01	Concrete Roof
CP-02	Pebbles/Landscaped Roof
CP-03	Rendered Wall
CP-04	Stone Cladding Wall
CP-05	Timber Batten Wall

AL-01	Rendered Wall With Timber Handrail
AL-02	Pebbles/Landscaped Roof
AL-03	Stone Cladding Wall
AL-04	Timber Batten Wall

Abbrev:

FCL	finished ceiling level	TOW	top of wall	DP	downslope
FFL	finished floor level	BW	bottom of wall	RWD	rain water outlet
NGL	natural ground level	RW	retaining wall	ENS	entrance
FGL	finished ground level	SWP	sewer pit	PWR	powder room
RL	reduced level	RWT	rain water tank	WR	walk in robe

Revision:	Date:	For:
A	21/8/2023	DA Submission
B	11/03/24	Amended DA

FOR DEVELOPMENT APPLICATION ONLY

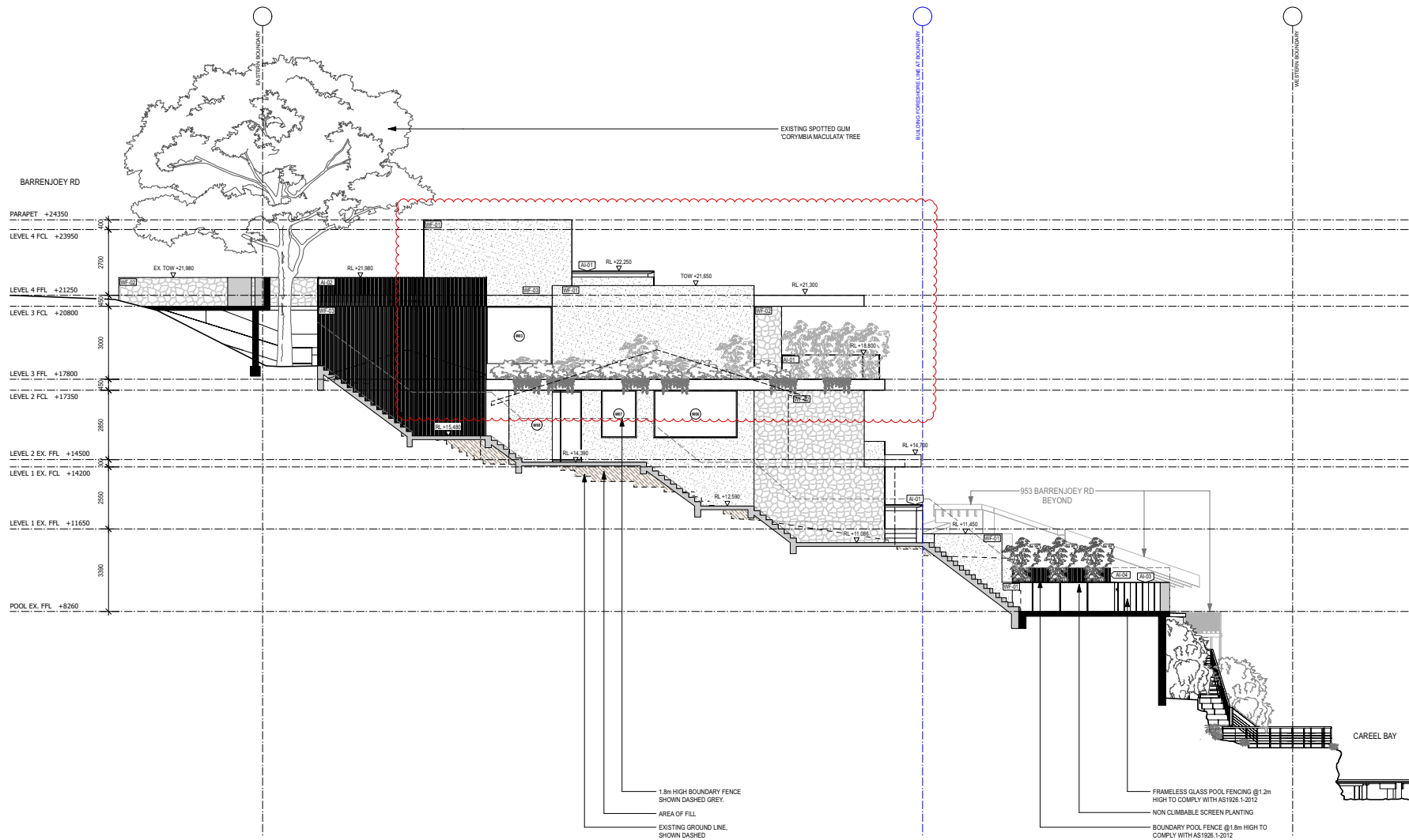
Project:
Alterations & AdditionsClient:
David Homery & Bronwyn MatthewsAddress:
955 Barrenjoey Road, Palm Beach 2108
Lot 8, DP545616Drawing Title:
Proposed South ElevationStage:
Development ApplicationScale:
1:100 @A2Drawn:
BRChd:
MZ

North:

Drawing No:
DA11Rev:
B

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Suite 7, 287 Mona Vale Rd
Mona Vale NSW 2084
P 94501950
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Legend:

CON-01	Concrete Roof	AW-01	Rendered Wall With Timber Handrail
CON-02	Pebbles/Landscaped Roof	AW-02	Timber Batten Balustrade
CON-03	Rendered Wall	AW-03	Timber Batten Screen
CON-04	Stone Cladding Wall		
CON-05	Timber Batten Wall		

Abbrev:

FCL	finished ceiling level	TOW	top of wall	DP	downslope
FFL	finished floor level	BW	bottom of wall	RWD	rain water outlet
NGL	natural ground level	RW	retaining wall	ENS	entrance
FGL	finished ground level	SWP	sewer pit	PWR	powder room
RL	reduced level	RWT	rain water tank	WR	walk in robe

Revision:	Date:	For:
A	21/8/2023	DA Submission
B	11/03/24	Amended DA

FOR DEVELOPMENT APPLICATION ONLY

Project:

Alterations & Additions

Client:
David Homery & Bronwyn Matthews

Address:
955 Barrenjoey Road, Palm Beach 2108
Lot 8, DP545616

Drawing Title:

Proposed North Elevation

Stage:
Development Application

Scale:
1:100 @A2

North:

BR

Chd:
MZ

Drawing No:
DA12

Rev:
B

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Suite 7, 287 Mona Vale Rd
Torre Vale NSW 2084
P 94501950
E info@cadenceandco.com.au
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ITEM 3.5	DA2023/1441 - 58 CASTLE CIRCUIT SEAFORTH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
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PURPOSE

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

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.

THAT Council as the consent authority **approves** Development Consent to DA2023/1441 for alterations and additions to a dwelling house on land at Lot 15 DP 200638, 58 Castle Circuit SEAFORTH, subject to the conditions set out in the Assessment Report.

REPORTING MANAGER	Adam Richardson
TRIM FILE REF	2024/189897
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:	DA2023/1441
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Responsible Officer:	Nick England
Land to be developed (Address):	Lot 15 DP 200638, 58 Castle Circuit SEAFORTH NSW 2092
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Gloria Yi Tai
Applicant:	Gloria Yi Tai

Application Lodged:	11/10/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	17/10/2023 to 31/10/2023
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 27% 4.4 Floor space ratio: 57%
Recommendation:	Approval

Estimated Cost of Works:	\$ 975,788.88
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EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) as the proposal results in a variation of more than 10.0% to Clauses 4.3 Height of Buildings and 4.4 Floor Space Ratio of the Manly Local Environmental Plan 2013 (MLEP 2013).

The maximum building height permitted under clause 4.3 MLEP 2013 is 8.5m. The proposed building height of 10.8m represents a variation of 27%. In support of the variation is a detailed written Clause 4.6 variation request where compliance with the development standard is considered both

unnecessary and unreasonable in the circumstances of this case. The variation is a result of a proposed pergola on an existing upper level balcony, on the west elevation of the dwelling. This pergola does not increase the overall height of the building and does not result in any impacts on adjoining properties.

The maximum floor space ratio (FSR) permitted under MLEP 2013 is 0.4:1. The proposed FSR is calculated at ratio of 0.63:1, which is a 57% variation with the standard. In support of the variation is a detailed written Clause 4.6 variation request where compliance with the development standard is considered both unnecessary and unreasonable in the circumstances of this case. The variation is a result of additional floor space on Levels 4, 3 and 2 of the dwelling, which predominately result from infill development within the existing footprint of the dwelling.

Despite the requested variations to the aforementioned development standards, the proposed works can demonstrate full compliance with the provisions of Manly Development Control Plan 2013 (MDCP 2013).

The proposed development was notified in accordance with the Northern Beaches Community Participation Plan (CPP) for fourteen (14) days. One (1) submission was received. The submission raised issue with the amount of floor space associated with the dwelling. For the reasons discussed within the report, the proposal is considered to contain an acceptable amount of floor space.

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 grant approval the development application, subject to recommended conditions.

PROPOSED DEVELOPMENT IN DETAIL

The application consists of the alterations and additions to an existing dwelling house. In detail, the works consist of:

- new metal roof, and solar panels;
- works to garage to include a plant room, new entry point and roof / windows;
- entry foyer and internal staircase and enclosure of existing breezeway and demolish the external staircase on Level 3;
- other works on Level 3 to include:
 - enclose the existing breezeway on north elevation to create an internal entry foyer and lift;
 - new entry door to the retained gym (via the new entry foyer);
 - convert the living room to a library;
 - new internal staircase and reduced void size;
 - reconfigure the existing WIR and ensuite, extending across the hallway to the gym;
 - retain and refurbish the existing master bedroom, entry foyer and balconies; and
 - windows and doors throughout.

Level 2 works to include:

- extend the dwelling to the north, converting the balcony to a dining room;
- convert the existing dining room to a living room;

- refurbish the existing kitchen, adding a breakfast nook;
- demolish the external stairs and extend to the east, to accommodate a hallway and lift;
- new internal staircase;
- convert bedrooms 2 & 3 to Office 1 & 2;
- retain the guest bedroom;
- refurbish the existing bathroom and balconies; and
- new windows and doors throughout.

Level 1 works to include:

- retain the existing storeroom and internal staircase;
- convert the existing bathroom to a WC and laundry;
- refurbish the existing balcony and recreation room, filling in the south facing window; and
- new windows and doors throughout.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Local Environmental Plan 2013 - 6.2 Earthworks
Manly Local Environmental Plan 2013 - 6.4 Stormwater management
Manly Local Environmental Plan 2013 - 6.5 Terrestrial biodiversity
Manly Local Environmental Plan 2013 - 6.8 Landslide risk
Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
Manly Local Environmental Plan 2013 - 6.12 Essential services
Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)

SITE DESCRIPTION

Property Description:	Lot 15 DP 200638 , 58 Castle Circuit SEAFORTH NSW 2092
Detailed Site Description:	The subject site consists of one (1) allotment located on the south-western side of Castle Circuit, Seaforth. The site is irregular in shape, with varied dimensions and frontages. The site has a surveyed area of 609.5m². A 2.3m wide access handle on the sites north-eastern corner junctions with Castle Circuit, however this is undeveloped for the purposes of access. The access point and developed frontage of the site is from the adjoining right-of-carriageways / shared driveway (ROWs) to the east of the site. These ROWs also service the adjoining properties, Nos.50, 52, 54 and 56 Castle Circuit. The site is located within the R2 Low Density Residential zone and accommodates a multi-level dwelling house. The site is also subject to the Coastal Use area designated under the SEPP (Resilience and Hazards) 2021, mapped as being with the Flame Zone of the NSW Rural Fire Service bush fire prone land mapping and designated as a Foreshore Scenic Protection Area under Manly LEP 2013. The site has a westerly aspect with a moderately steep topography falling down from the front (east) boundary to the rear (west) boundary. No significant vegetation or natural features exist on the site. Adjoining and surrounding development is characterised by dwelling houses to the south and east. Adjoining the north boundary of the site is vacant allotment No.60 Castle Circuit, which currently is subject to an undetermined development application (DA2023/0696). To the west is Castle Circuit Reserve, an public area of remnant native vegetation, which is zoned C2 Environmental Conservation under Manly LEP 2013.

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:

3968/91: Consent granted for "Proposed Attached Dual Occupancy" approved on 27 May 1991. The available records further elaborate that this consent was alterations and additions to an existing dwelling house, with the majority of the works being internal. Despite this development consent, there is no subsequent evidence that the necessary Building Application (as required by Condition No.3) was ever lodged or approved. Hence, the existing building is considered to retain its definition as a dwelling house.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Mainly Development Control Plan 2013 applies to this proposal.

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	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. However, 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 Manly Development Control Plan 2013 section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.

Section 4.15 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 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 Sydney Bushfire Consultants, dated 31 August 2023). The report stated that the bushfire attack level of the site is “Flame Zone” the report recommended an alternative solution to comply with Planning for Bush Fire Protection.

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. The proposed development is considered to satisfy the requirements of Section 4.14 of the Act.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 17/10/2023 to 31/10/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Ms Deborah Myrtle Barr	53 Castle Circuit SEAFORTH NSW 2092

One (1) submission was received during the notification period. The issues raised in this submission have been summarised and are addressed as follows:

- ***The proposed floor space ratio will exceed the maximum permitted under Council's standards, and this is not equitable in the context of recent determinations on adjoining properties (specifically No.53 Castle Circuit) where full compliance was required.***

Comment: Council has the discretion to consider a development application on its own merits at

the time that it is lodged, consistent with the relevant without prejudice from any previous determinations or decisions. It also has the responsibility as the consent authority to undertake an assessment in accordance with the relevant legislation, in particular the Environmental Planning and Assessment Act 1979 (the Act), and its associated Regulations. A consideration of Section 4.15 of the Act is provided elsewhere in this report. In regard to the amount of floor space proposed and the floor space ratio, a detailed assessment of the proposed variation to the development standard, pursuant to Clause 4.6 of the Manly LEP 2013, has been undertaken. The conclusion of this assessment is that there are sufficient environmental planning grounds to support the requested variation, and full compliance with the standard is not considered necessary nor reasonable, under the circumstances. It is relevant to note that the most recent consent at No.53 Castle Circuit (DA2020/1477, dated 14 April 2021) also approved a variation to the floor space ratio, estimated at 20% in the planner's assessment report.

In summary, the issues raised in this submission are not considered to warrant refusal of the application.

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	<i>Supported, subject to Conditions</i> The proposed development has been assessed against the objectives of Manly LEP 2013 clause 6.5 Terrestrial biodiversity and State Environmental Planning Policy (Resilience and Hazards) 2021 clause 2.10 Development on land within the coastal environment area. The development will not result in any removal of significant native vegetation or fauna habitats, and is considered unlikely to have an adverse impact to the integrity and resilience of the ecological values of the site and adjoining land. Limited native planting is proposed due to bushfire constraints. The proposed landscaping area within the front setback is noted, and as this is located away from the adjoining bushland reserve is generally acceptable, however some species substitutions have been conditioned. Therefore the development is designed, sited and will be managed to avoid any significant adverse environmental impact.
NECC (Coast and Catchments)	<i>Supported, subject to Conditions</i> The application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, State Environmental Planning Policy (Resilience & Hazards) 2021, Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity & Conservation) 2021 and Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005. It has also been assessed against requirements of the Manly LEP and DCP.

Internal Referral Body	Comments
	Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>. State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA. Clauses 2.10 (coastal environment area) and 2.11 (coastal use area) do not apply as the site is also located within the Sydney Harbour catchment area. Hence, only Clause 2.12 of the SEPP R & H apply for this DA. Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Watermark Planning Pty. Ltd. Dated September 2023, the DA satisfies requirements under clause 2.12 of the SEPP R&H. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021. Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity & Conservation) 2021 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

Internal Referral Body	Comments
	consent, among others, must consider clause 6.28. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Watermark Planning Pty. Ltd. Dated September 2023, 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 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 Watermark Planning Pty. Ltd. Dated September 2023, the DA satisfies requirements under Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013. As such, it is considered that the application does comply with the requirements of the Manly DCP 2013.
NECC (Development Engineering)	<i>Supported, subject to Conditions</i> The proposed development adjoins a reserve and as such OSD is not required. The submitted stormwater management plan is acceptable subject to conditions. Development Engineering support the proposal, subject to conditions as recommended.
Strategic and Place Planning (Heritage Officer)	<i>Supported, subject to Conditions</i>
	Discussion of reason for referral
	This application has been referred as it adjoins a heritage item, being <i>Item 1268 - Bantry Bluff, Seaforth</i> listed in Schedule 5 of Manly LEP 2013.
	Details of heritage items affected
	Details of this heritage item in the vicinity, as included within the Heritage inventory, are:

Internal Referral Body	Comments		
	Item I268 - Bantry Bluff, Seaforth		
	<u>Statement of Significance</u>		
	Recognised natural landform and landscape. Significant visual backdrop to Middle Harbour.		
	<u>Physical Description</u>		
	Natural landscape type. Steep slopes with indigenous vegetation in good condition. Scrubland to woodland with localised wet gully flora.		
	Other relevant heritage listings		
	SEPP (Biodiversity and Conservation) 2021	No	Comment if applicable
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	
Consideration of Application			
This application is for alterations and additions to an existing multi-level brick dwelling. These mainly involve internal changes, with minor additions on the northern side, largely within the existing building envelope. These additions are to extend the garage and create an entry foyer with new lift, and covered access all levels of the dwelling. An existing balcony is also proposed to be enclosed. The works also include replacing all windows and doors, replacing the roof with Colorbond and installing solar panels. The heritage item, Bantry Bluff, is an area of natural vegetation along Middle Harbour, which adjoins this property on its western boundary. Given that the proposed works are relatively minor and contained within the property boundaries and the existing building footprint, it is considered that here will be no adverse impact upon the significance of the adjoining heritage item. While the dwelling is visible from the heritage item, these proposed changes will have a negligible impact on the appearance of the dwelling when viewed from the heritage item. Therefore, no objections are raised on heritage grounds and no conditions required. <u>Consider against the provisions of CL5.10 of MLEP 2013:</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? N/A Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? N/A			

Internal Referral Body	Comments
External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<i>Supported, subject to Conditions</i> 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	<i>Supported, subject to Conditions</i> The NSW Rural Fire Service have advised that they have no objection to the proposed development, subject to recommended conditions.
Aboriginal Heritage Office	<i>Supported, subject to Conditions</i> Reference is made to the proposed development at the above area and Aboriginal heritage. No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development. Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.A501120 dated 21 August 2023).

The BASIX Certificate indicates that the development will achieve the sustainability requirements of the SEPP.

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Biodiversity and Conservation) 2021

Chapter 6 – Water catchments

The subject property is located within the Sydney Harbour Catchment and Sydney Harbour Foreshores and Waterways Area therefore the provisions of Chapter 6 Water catchments of *State Environmental Planning Policy (Biodiversity and Conservation) 2021* apply to this development. Accordingly, an assessment under the sections of Chapter 6, which are relevant to the proposed development, 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 recommended 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 site is located approximately 60m from the adjoining Middle Harbour foreshore to the west. As stated previously, 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. Hence, no adverse impact on the adjoining aquatic ecology is likely.

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 application will have no adverse impact on access or enjoyment of adjoining areas of recreation and public access.

6.10 Total catchment management

In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consult with the council of each adjacent or downstream local government area on

which the development is likely to have an adverse environmental impact.

Comment:

The proposal has been reviewed by Council's Coastal Officer, Development Engineer, 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: 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 surrounding natural environment. Based on the expert advice provided and conditions imposed, the proposed works are not considered to have an adverse impact on the adjoining sub-catchment.

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: Not relevant to the proposed development.

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 will present no adverse impact in regard to the matters (a) to (e) listed in Clause 2.10 (1).

- 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: As stated above, the application will present no adverse risk in respect to those relevant matters within Clause 2.10(1) and hence will be consistent with Clause 2.10 (2).

Division 4 Coastal use area

2.11 Development on land within the coastal use area

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

Comment: The proposed development will not be inconsistent with those matters outlined in Clause 2.11.

Division 5 General

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

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

Comment: The proposed development will present no adverse risk in regard to coastal hazards.

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

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

Comment: There are no coastal programs that are relevant to the proposed development.

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	10.8m*	27%	No
Floor Space Ratio	0.4:1 or 244m ²	0.63:1** or 377.4m ²	57%	No

* existing height is estimated at 9.8m or 13% variation

** existing FSR is estimated at 0.55:1 or 38% variation

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
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

A consideration of non-compliance with both the Height of Buildings and Floor Space Ratio development standards is provided in 1) and 2), below:

1.Height of Buildings of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	10.8m
Percentage variation to requirement:	27%

An excerpt from the plans of the non-compliance is shown below:

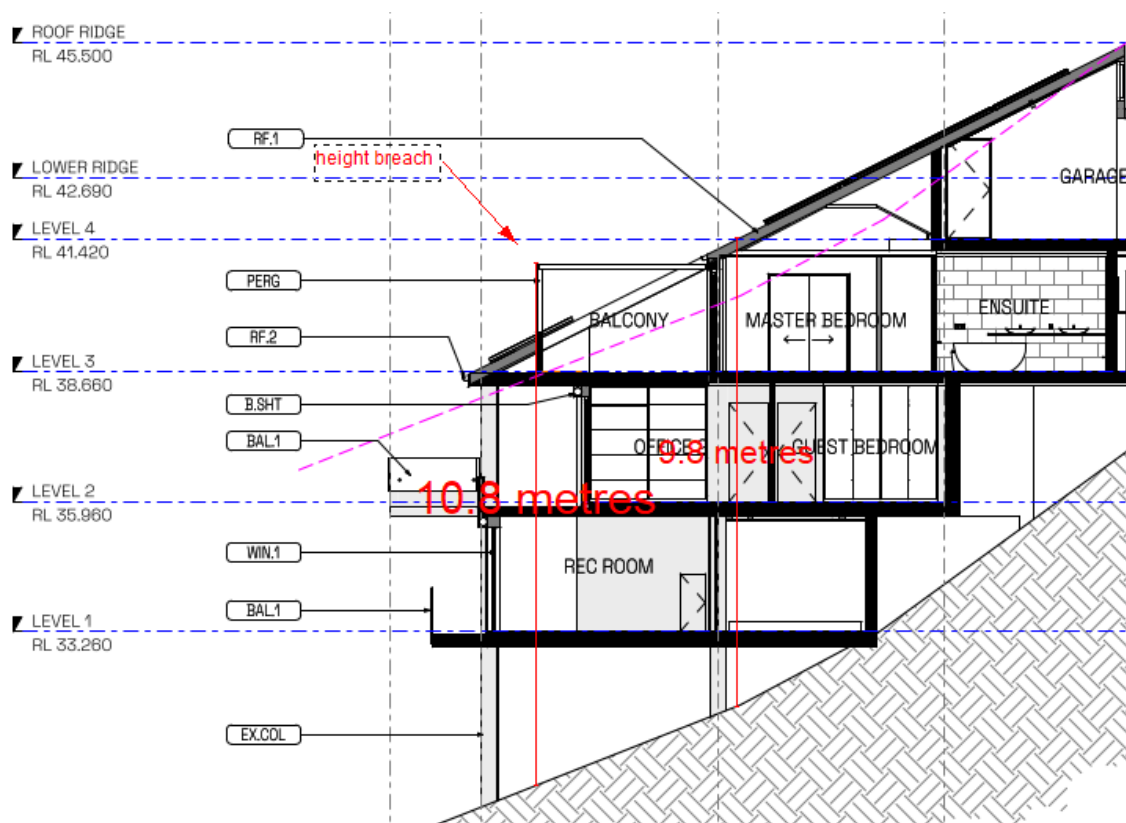


Figure 1: extent of height breach

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

Comment:

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

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required

by cl 4.6(3)(a).

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- There is recent precedent for similar variations to Cl 4.3 Building Height of the Manly LEP 2013 being accepted by Council:
- The proposed development does not present with excessive bulk and is of a consistent scale to the existing dwelling and surrounding properties:
- The proposal will not result in any unreasonable impacts;
- The works will allow for the housing needs of the residents to be met, in their current community;
- The existing building has a non-compliant maximum building height and the new works are limited to the replacement of the existing roof and a new open pergola structure over an existing balcony; and

- The objectives of the R2 Low Density Residential zone can be met despite the numerical variation.

With the exception of the argument relating to precedents, the arguments offered are considered valid to justify the proposed variation. A closer examination of the written report shows that the report relies on the "First Way" test applied in the LEC judgement, *Wehbe v Pittwater* [2007] NSW LEC 827.

This test focuses on whether the application can meet the objectives of the standard, notwithstanding the non-compliance. A detailed consideration of the proposal against the objectives of the standard is provided elsewhere in this report. The "first way" test is considered relevant to the application, and critically, the application is considered to readily meet the objectives of the control.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

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

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

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

Comment: The proposed pergola will represent an approximately 1m increase in the existing building heights on the site. In numerical terms, this represents a minor increase in the existing height of the building and more pertinently, the pergola is at least 4.6m below the ridge height of

the existing building. Further, the specific works that relate to the non-compliance are a pergola structure over an existing balcony, which is open in structure (no new walls or roof proposed) and results in no significant additional height above the existing topography. The slope on the land is relatively pronounced, with higher projections in building heights not uncommon. Therefore, it is considered that the building height proposed 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,

Comment: As discussed in detail above, the works subject to the proposed variation is a transparent, open structure, with no walls or roof. The total height of the pergola (RL 40.92m AHD) will be well below the existing upper roof height (RL 45.5m AHD) and will not be visible from the road reserve at Castle Circuit. Limited visibility from adjoining properties to the south is likely. Hence, the bulk and scale of the proposed development is considered to be consistent with this objective.

c) to minimise disruption to the following:

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

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

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

Comment: As stated above, based on the nature of the proposed works, they are considered to have a negligible visual presence when viewed from adjoining public areas. Whilst the site adjoins a public reserve, the area immediately adjoining the site is heavily vegetated and not readily accessible by the public. The adjoining foreshore to the west is estimated at a distance of 60m from the proposed works. As such, the proposed variation to the standard is not considered to result in an adverse disruption to any views to and from public spaces, from both adjoining residential development and adjoining spaces. Therefore, the application can demonstrate compliance with this objective.

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

Comment: The shadow diagrams provided with the application demonstrate no substantive increase in the existing shadow cast by the proposed development, therefore this objective is achieved.

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: As the site is not located in a recreation or environmental protection zone, this objective is not relevant to the proposed development.

Zone objectives

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

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

Comment: As the works relate to alterations and additions to an existing dwelling, this objective is

achieved.

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

Comment: As the works proposed are residential, this objective is not relevant to the proposed development.

Conclusion on Height of Buildings variation:

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

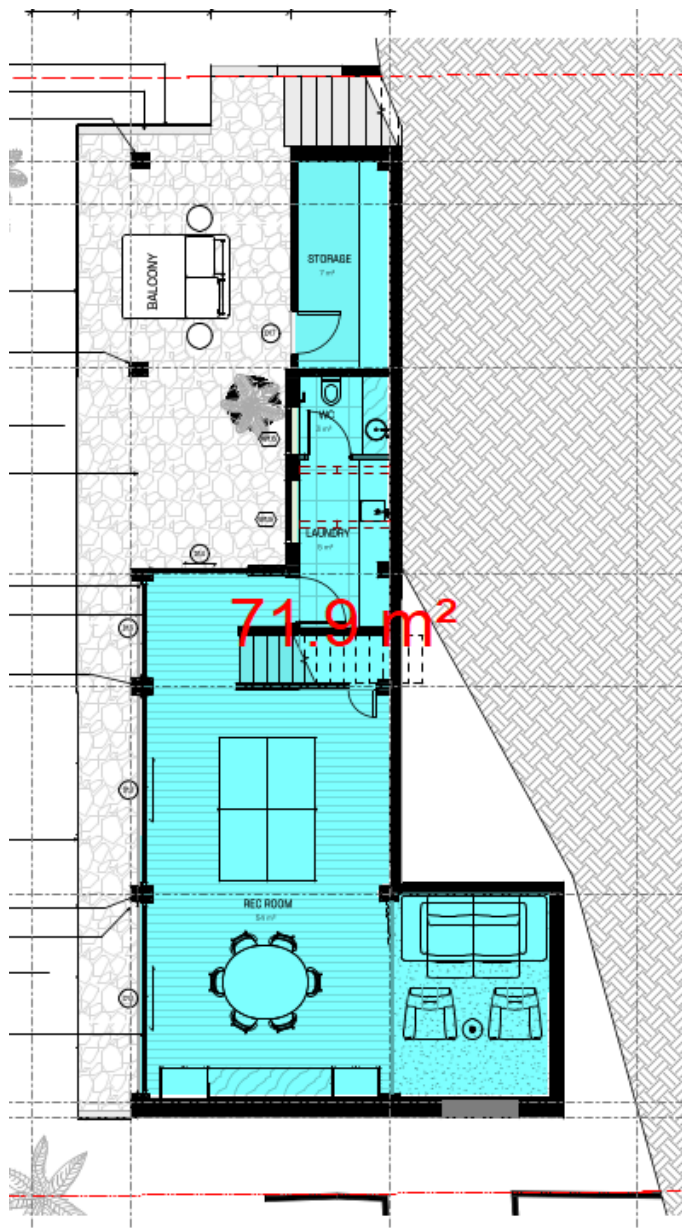
It is considered on balance, that having regard to the particular circumstances, being the: minor increase in the existing building height; no increase to the upper building height of the building; limited visibility of the proposed pergola from the adjoining public domain and residences; and its negligible contribution to existing bulk and scale, the proposed departure from the development standard is acceptable and it is reasonable that flexibility in the application of the standard be applied.

2. Floor Space Ratio non-compliance:

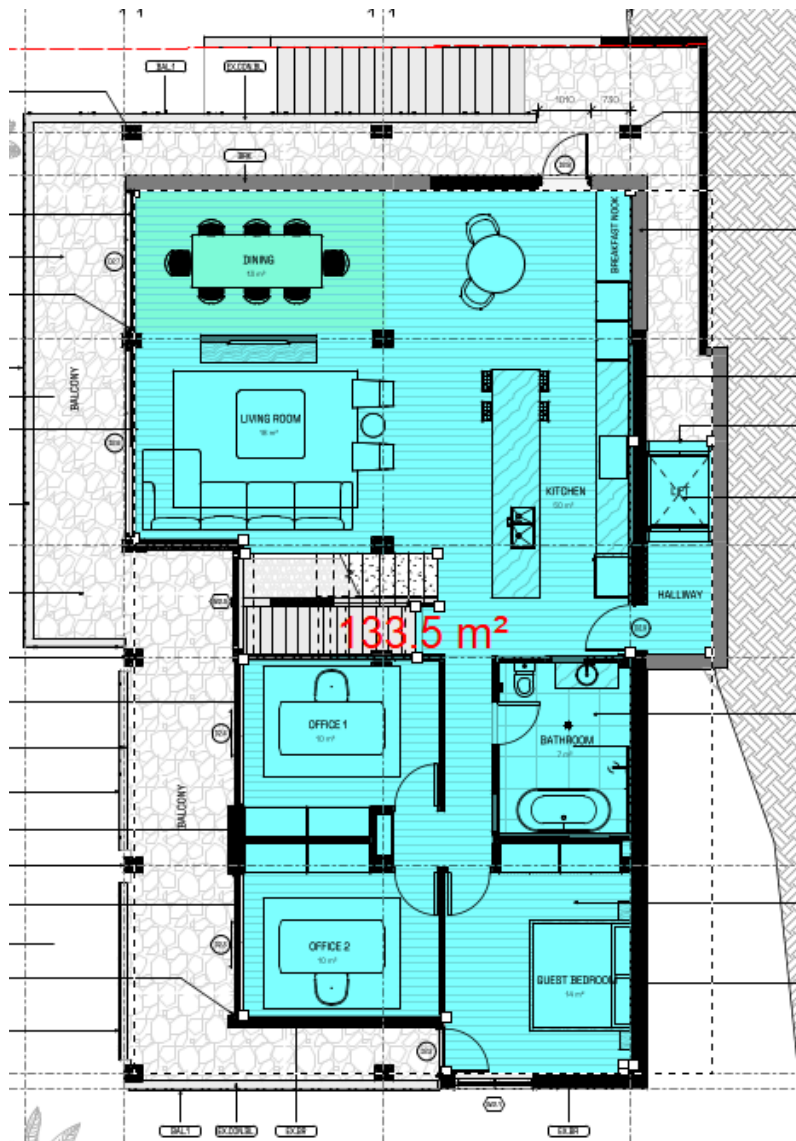
Development standard:	Floor space ratio
Requirement:	244m ² or 0.4:1*
Proposed:	384m ² or 0.63:1
Percentage variation to requirement:	57%

* Part 4.1.3 of Manly DCP would permit up to 300m², based on the undersized allotment.

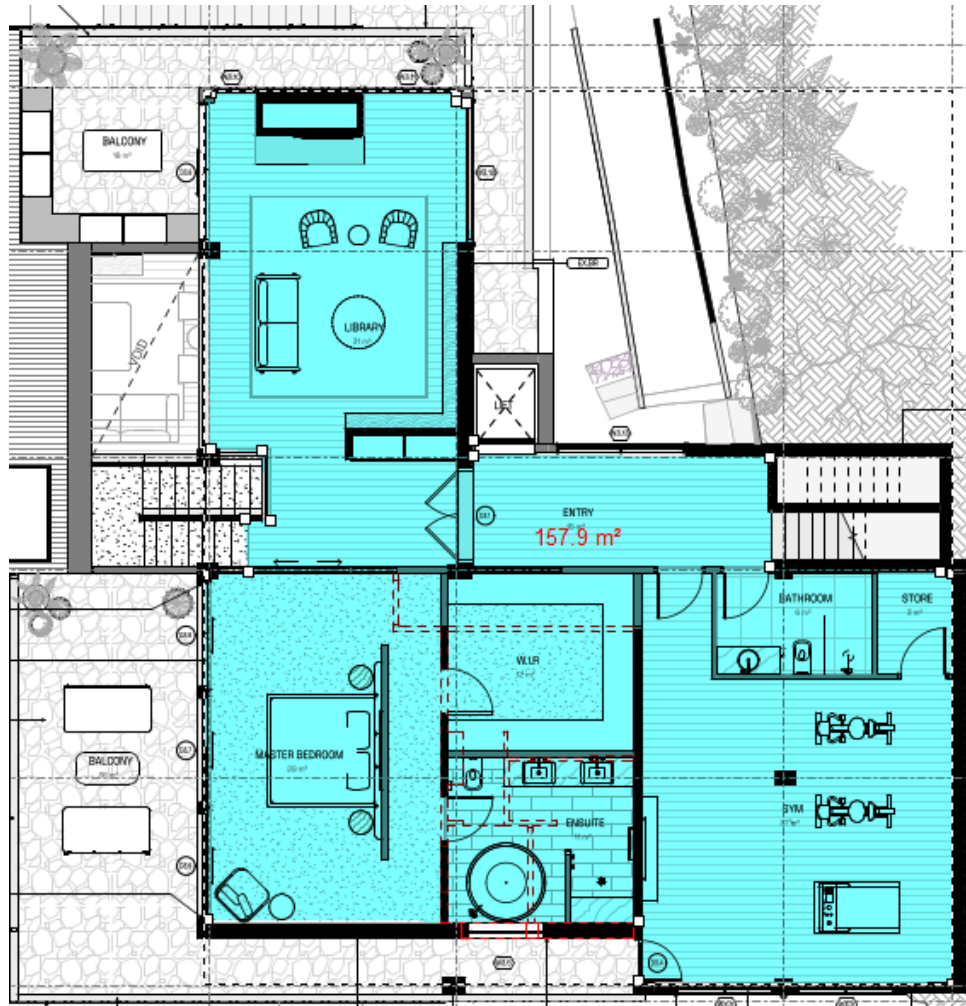
Extract from the working plans of the estimated gross floor area (GFA) for each level is shown below:



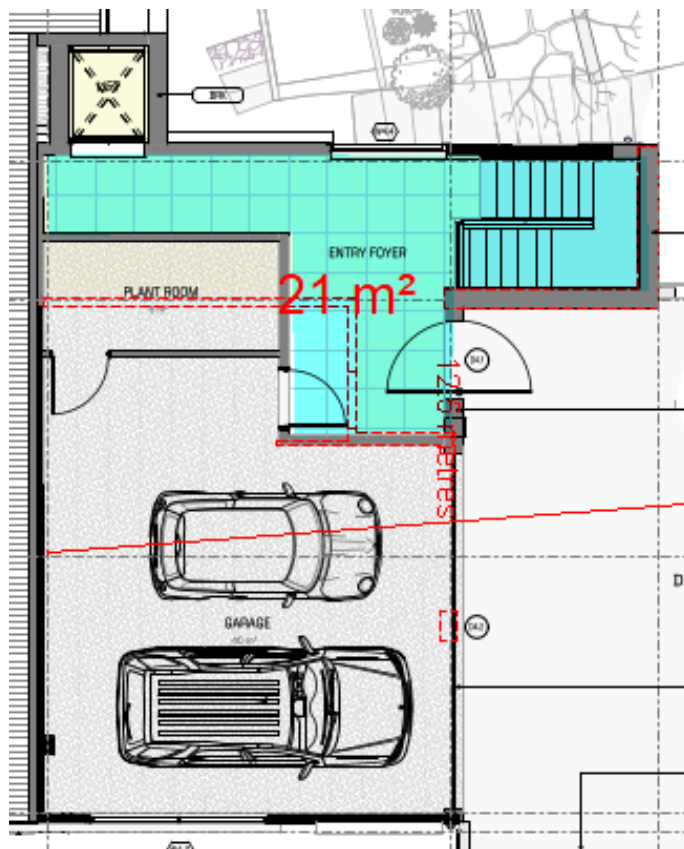
Level: 1: 71.9m²



Level 2: 133.5m²



Level 3: 157.9m²



Level 4: 21m²

Figure 2: GFA calculations

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- There is recent precedent for similar variations to CI 4.4 FSR of the Manly LEP 2013 being accepted by Council;
- The proposed development does not present with excessive bulk and is of a consistent scale to the existing dwelling and surrounding properties;
- The proposal will not result in any unreasonable impacts;
- The works will allow for the housing needs of the residents to be met, including the opportunity to work from home, in their current community;
- The development proposes a minor increase of 29.31m² to the existing GFA, as such is considered minor and appropriate; and
- The objectives of the R2 zone can be met despite the numerical variation.

With the exception of the argument relating to precedents, the arguments offered are considered valid to justify the proposed variation.

The written report relies on the "First Way" test applied in the LEC judgement, *Wehbe v Pittwater* [2007] NSW LEC 827. This test focuses on whether the application can meet the objectives of the standard, notwithstanding the non-compliance. A detailed consideration of the proposal against the objectives of the standard is provided elsewhere in this report. The "first way" test is considered relevant to the application, and critically, the application is considered to readily meet the objectives of the control.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

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

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

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

Comment: The proposed works, in respect to additional floor space, is effectively "infill" of the existing building footprint, on the west and north elevations of the dwelling. These relate to: enclosure of existing stairway and access breezeway on Levels 4 and 3; infill of existing balcony on Level 2 to extend living room by 13m²; and inclusion of lift to service Level 2 and 3. The proposed lift represents the only additional area of building footprint. This will result in a proposed bulk and scale that is predominantly similar to the existing building and in turn, is consistent with this objective.

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

Comment: The subject site is located in a relatively inconspicuous location, with the existing dwelling (and works) approximately 20m from the Castle Circuit road reserve and critically, approximately 10m below the level of the adjoining formed road reserve. This would have the effect of making the works not readily visible from the adjoining road reserve. Also, in regard to

the adjoining public reserve and foreshore to the west, the works on the north and east elevations will not be visible from these areas. In this regard, the proposed building bulk would not obscure important landscape and townscape features, and the development can demonstrate compliance with this objective.

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

Comment: As stated above, the proposed works are not readily visible from the adjoining road reserve, nor other significant public areas. In regard to the dwellings that directly adjoin the site, the existing dwellings situated on the shared right-of-carriageway (Nos.50, 52, 54 and 56) share similar siting characteristics, in regard to close building proximity to the "frontage" adjoining the shared driveways. Hence, the application is consistent with this objective.

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

Comment: No specific amenity impacts to adjoining land, and the adjoining public domain, is likely as a result of the proposed variation to the floor space ratio. Therefore, this objective is achieved.

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: As the site is not located in a business zone, this objective is not relevant to the proposed development.

Zone objectives

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

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

Comment: As the works relate to alterations and additions to an existing dwelling, this objective is achieved.

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

Comment: Not relevant to the proposed development.

Conclusion on Floor Space Ratio variation:

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, in particular: the substantial retention of the existing building footprint; the new floor space being in effect "infill" of existing floor areas; the negligible visual impact of the works, when viewed from both adjoining existing dwellings and areas of the public domain, 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 requests for both the Height of Buildings and Floor Space Ratio development standards, are considered to be well founded having regard to the circumstances of the development, which have been elaborated upon in this section of the report. It is therefore considered appropriate that in this instance, flexibility in the application of the development standards, Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio 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 both the Height of Buildings and Floor space ratio Development Standards, associated with a single dwelling house (Class 1 building).

6.2 Earthworks

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

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

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

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

Comment: No significant earthworks are incorporated into the proposed alterations and additions, hence no adverse impacts in this regard are likely.

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

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

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

Comment: A 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: 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: A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

(f) the likelihood of disturbing relics

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

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

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

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

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

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

6.4 Stormwater management

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

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

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

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

Comment: Council's Development Engineer has advised that the proposed development adjoins a reserve and as such OSD is not required. The submitted stormwater management plan are acceptable, subject to recommended conditions of consent.

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

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

6.5 Terrestrial biodiversity

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

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

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

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

Comment: Council's Biodiversity Officer has reviewed the application and has advised that there is no significant concern with the regard to potential impacts on biodiversity in the surrounding area.

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

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

Comment:

The proposed development is considered to be designed, sited and managed to avoid any significant adverse environmental impact.

6.8 Landslide risk

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

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

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

- (a) *site layout, including access,*
- (b) *the development's design and construction methods,*
- (c) *the amount of cut and fill that will be required for the development,*
- (d) *waste water management, stormwater and drainage across the land,*
- (e) *the geotechnical constraints of the site,*
- (f) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment:

A geotechnical report was provided with the application that demonstrates that the proposal will represent no unacceptable geotechnical or hydrological risk.

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

- (a) *the development is designed, sited and will be managed to avoid any landslide risk or significant adverse impact on the development and the land surrounding the development, or*
- (b) *if that risk or impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that risk or impact, or*
- (c) *if that risk or impact cannot be minimised—the development will be managed to mitigate that risk or impact.*

Comment:

Council's Development Engineer has advised that the proposal will represent no adverse stormwater / drainage issue.

6.9 Foreshore scenic protection area

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

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

Comment: Despite the numerical non-compliances proposed in the application, in regard to building height and floor space, the extent of the proposed works are such that they will not represent: any change to the existing building footprint; no change to the overall existing building height of the dwelling; and in the case of the proposed floor space, no substantial or unreasonable increase in the existing floor space on the site.

In visual terms, when viewed from the adjoining coastal foreshores, the works will remain mostly imperceptible, in contrast to the existing dwelling. There are no adjoining public places adjoining the site that will lose any existing views / vistas as a result of the proposed works. In turn, there will be no adverse impact on the scenic qualities of the surrounding coastline and the application is, by its innovative design, suitable for its location within the coastal foreshore area.

The proposed development will result in no conflict with any land-based and water-based coastal activities.

In summary, the proposed development has sufficiently demonstrated compliance with the provisions of Clause 6.9.

6.12 Essential services

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

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

Comment:

The site is adequately serviced by utilities, to cater for the proposed development.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 690.5m²	Requirement	Proposed	% Variation	Complies
4.1.2.1 Wall Height	North: 8m (based on gradient 1:4+)	5.7m	N/A	N/A
	South: 8m (based on gradient 1:4+)	No change	N/A	N/A
	East: 7.1m (based on gradient 1.8)	2.7 - 3.8m	N/A	N/A
	West: 7.3m (based on gradient 1:7)	No change	N/A	Yes
4.1.2.2 Number of Storeys	2	No change	N/A	N/A
4.1.4.1 Street Front Setbacks*	Prevailing building line / 6m	17.7m to Castle Circuit	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages*	1.2m (based on max. wall height of 3.8m on east elevation)	2.6m	N/A	Yes
	Windows: 3m	6m (east) 12.6m (west)	N/A N/A	Yes Yes

4.1.4.4 Rear Setbacks*	8m	No change	N/A	N/A
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area	No change	N/A	N/A
	Open space above ground 25% of total open space	No change	N/A	N/A
4.1.5.2 Landscaped Area	Landscaped area 40% of open space	No change	N/A	N/A
4.1.5.3 Private Open Space	18m ²	120m 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	No change	N/A	N/A
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

* for the purposes of the assessment, the north boundary is considered the frontage, the side setbacks are from the east and west boundaries and the rear boundary is south boundary.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.4 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
3.7 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)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

4.1.3 Floor Space Ratio (FSR)

The site is located in area designated as "U" under the Minimum Lot Size map of Manly LEP 2013, which specifies a minimum allotment size of 1,150m².

The subject site is 609.5m² in area, hence the application is subject to the "Undersized Lots" control.

Under Part 4.1.3, the maximum floor space in the proposed development could be assessed at the rate of a 750m² allotment.

This permits a maximum floor space of 300m², as opposed to the development standard which sets a maximum of 244m².

The proposed floor space is estimated at 377.4m², which exceeds the control set by Part 4.1.3.

A detailed consideration of the circumstances of the proposed variation is provided elsewhere in this report. As the objectives of Part 4.1.3 are in effect the same objectives contained within the development standard for Floor Space Ratio in Clause 4.4 of MLEP 2013, the commentary within that part of the assessment holds true for the relevant objectives. As such, despite the variation, the application is considered to meet the objectives of Part 4.1.3.

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 \$9,758 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$975,789.

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 both 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 an existing dwelling house, has been referred to the DDP due to variations to both the Height of Buildings and Floor Space Ratio development standards of MLEP 2013, which exceed 10.0%.

The proposed 27% variation to the Height of Buildings development standard is considered, under the circumstances, to be acceptable based generally on: the limited visual presence of the proposed additions; the negligible bulk and scale of the structure that relates to the non-compliance; no definable

adverse amenity impact on the adjoining private and public domains; and clear and consistent compliance with both the objectives of the standard.

The proposed 57% variation to the Floor Space Ratio development standard is considered, under the circumstances, to be acceptable based generally on: the additional floor space being located largely within the footprint of the existing building; the limited visual impact of the proposal; no definable adverse amenity impact on the adjoining private and public domains; and clear and consistent compliance with both the objectives of the standard.

The issues raised in the submission received during the notification period would not warrant the refusal of the application.

Based on the detailed assessment provided in this report, it is therefore recommended that the application be **approved**, subject to condition.
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 both clauses 4.3 Height of Buildings and 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 DA2023/1441 for Alterations and additions to a dwelling house on land at Lot 15 DP 200638, 58 Castle Circuit, SEAFORTH, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
A0.03 - 5	5	Exterior Materials + Finishes	Dieppe	31 August 2023

A0.11 - 5	5	Site Plan	Dieppe	31 August 2023
A0.21 - 3	3	Ext Floor Plans	Dieppe	31 August 2023
A1.11 - 5	5	Level 1	Dieppe	31 August 2023
A1.12 - 5	5	Level 2	Dieppe	31 August 2023
A1.13 - 5	5	Level 3	Dieppe	31 August 2023
A1.14 - 5	5	Level 4 (Garage)	Dieppe	31 August 2023
A1.15 - 3	3	Roof Plan	Dieppe	31 August 2023
A2.01 - 3	3	Elevations 1	Dieppe	31 August 2023
A3.01 - 3	3	Section 1	Dieppe	31 August 2023
A0.12 - 1	1	Landscape Plan	Dieppe	31 August 2023

Approved Reports and Documentation			
Document Title / No	Version Number	Prepared By	Date of Document
Bushfire Assessment Report 79BA–2660–2	2	Sydney Bushfire Consultants	31 August 2023
BASIX Certificate A501120	-	Dieppe Design	21 August 2023
Preliminary Geotechnical Assessment AG 23187	1	Ascent Geo	12 May 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	1 November 2023

NSW Rural Fire Service	Referral - RFS - 58 Castle Circuit Seaforth	27 October 2023
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(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

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

3. Prescribed Conditions

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

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

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

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

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

Reason: Legislative requirement.

4. General Requirements

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

Demolition and excavation works are restricted to:

 - 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

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 \$9,757.89 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$975,788.88.

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. Amendment of Landscape Plans

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

- deletion of Grevillea species cultivars
- replacement with locally native shrubs and groundcovers species selected from the Manly Ward section of the Native Planting Guide available on Council's website.

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

Reason: To maintain and replace habitat on the site.

8. **Stormwater Disposal**

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent in accordance with the concept design by Aiden Hogan, drawing number 2305 C02 Rev A, C03 Rev A and C04 Rev A dated 07/09/23 and AS/NZS 3500 and Council's Water Management for Development Policy. The plans are to be prepared by an appropriately qualified and practicing Civil 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 a suitably designed level spreader. The design is to be checked and certified by a Geotechnical Engineer to ensure it complies with the recommendations of the Geotechnical Report by Ascentgeo Geotechnical Consulting, Ref: AG 23014 dated 9 February 2023.

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

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

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

10. **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.

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. **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.

13. **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.

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

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

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

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

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

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

DURING BUILDING WORK

15. **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.

16. **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.

17. **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.

18. **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.

19. **Survey Certificate**

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

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

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

20. **Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

21. **Aboriginal Heritage**

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

Department of Planning and Environment.

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

Reason: Aboriginal Heritage Protection.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

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

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

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

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

23. **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.

24. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably 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.

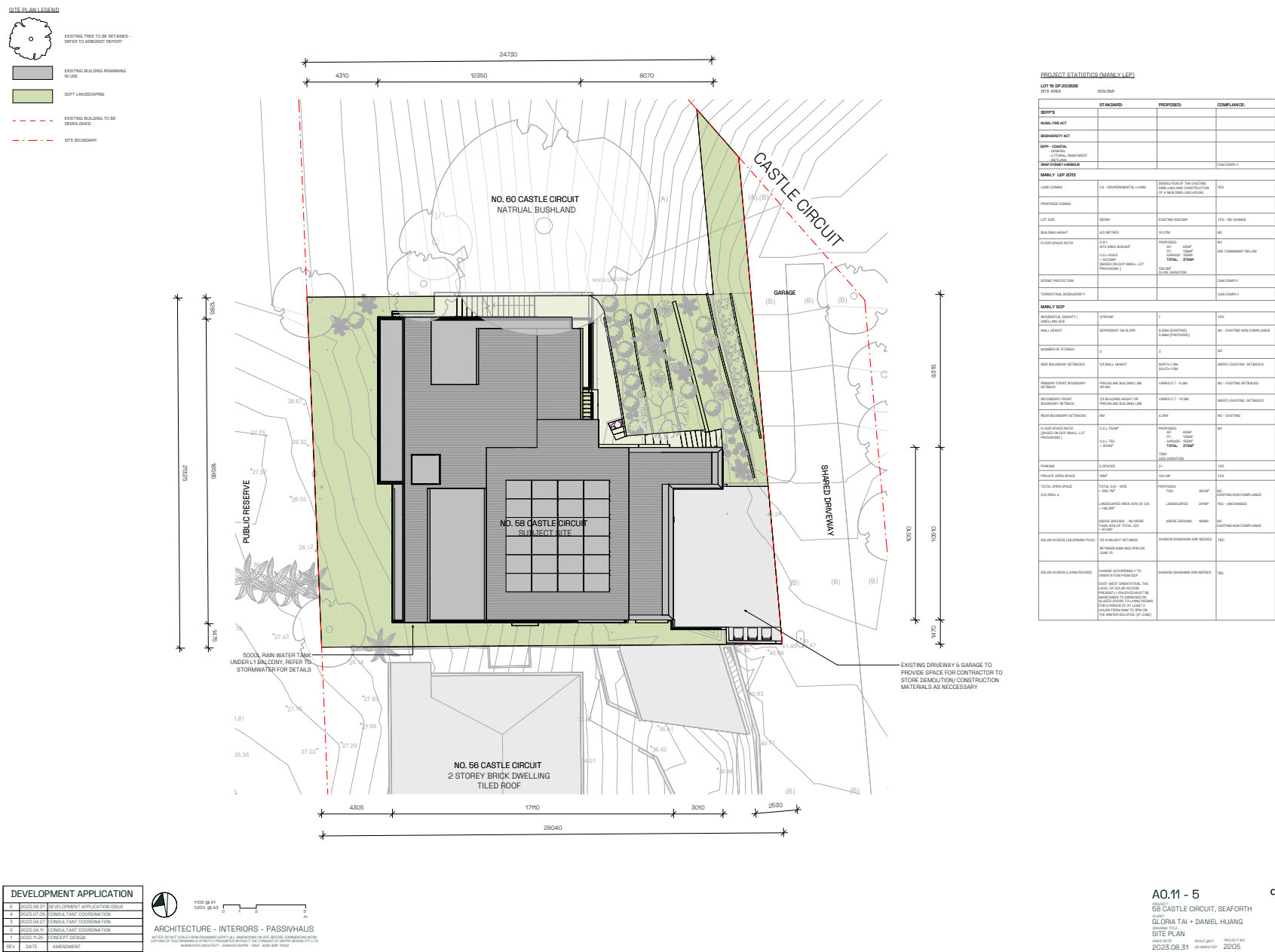
ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

25. **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.

ATTACHMENT 2 : SITE PLAN AND ELEVATIONS - ITEM 3.5 - NORTHERN BEACHES COUNCIL MEETING - 10 APRIL 2024



Clause 4.6 Exceptions to Development Standards – Building Height 58 Castle Circuit Seaforth

Clause 4.6 of the Manly Local Environmental Plan 2013 (MLEP 2013) permits departures from development standards in certain circumstances. In this case, it is necessary to consider if compliance with the development standard is consistent with the aims of the policy and, in particular, does compliance with the development standard tend to hinder the attainment of the objects specified in section 1.3 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) being:

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

The aims and objectives of Manly LEP 2013 Clause 4.6 are as follows:

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



Under Clause 4.6(3) and (4) of the MLEP 2013, consent for a development that contravenes a development standard must not be granted unless the consent authority is satisfied that:

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

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

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

These matters, along with case law judgements from the NSW Land and Environment Court, are addressed below.

1. Environmental Planning Instrument Details (Manly LEP 2013)

1.1 What is the name of the environmental planning instrument that applies to the land?

Manly Local Environmental Plan 2013

1.2 What is the zoning of the land?

R2 – Low Density Residential

1.3 What are the objectives of the zone?

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

1.4 What is the development standard being varied?

Cl. 4.3 - Height of Buildings

1.5 Under what clause is the development standard listed in the environmental planning instrument?

Cl. 4.3 of the Manly Local Environmental Plan 2013



1.6 What are the objectives of the development standard?

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

- (a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*
- (b) to control the bulk and scale of buildings,*
- (c) to minimise disruption to the following—*
 - (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
 - (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
 - (iii) views between public spaces (including the harbour and foreshores),*
- (d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*
- (e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

1.7 What is the numeric value of the development standard in the environmental planning instrument?

The numeric value of the height of buildings development standard applicable to the subject site is a maximum of 8.5m.

1.8 What is proposed numeric value of the development standard in your development application?

The existing dwelling has a non-compliant maximum building height of 10.07 metres and the development proposes to replace the existing tile roof with a metal roof and construct an open pergola structure, at a maximum height of 10.8 metres, as illustrated in the plan extract below.

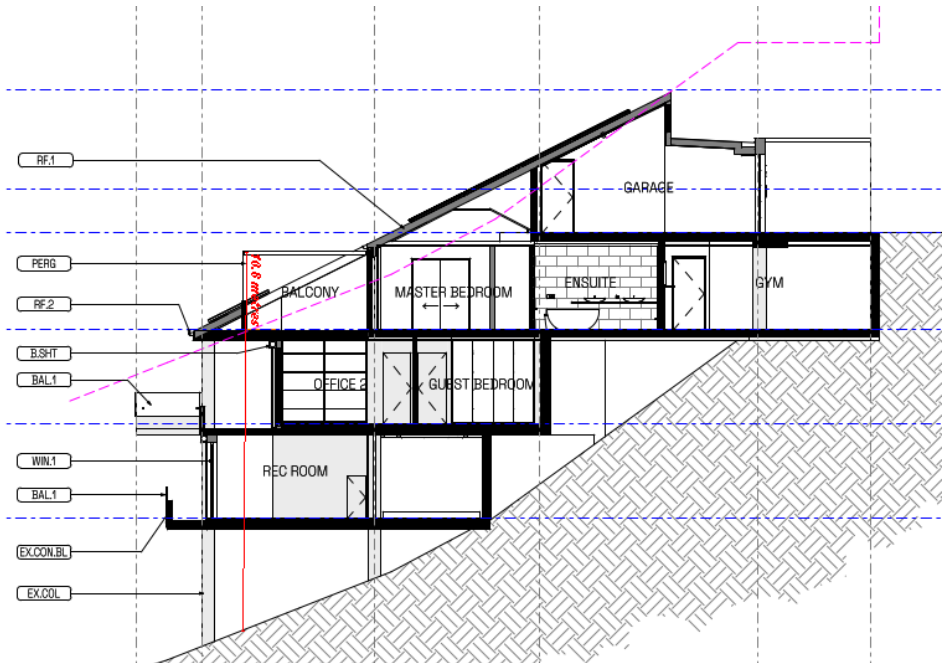


Figure 1: Plan Extract – Section 1

1.9 What is the percentage variation (between your proposal and the environmental planning instrument)?

The development proposes a numerical variation of 2.3 metres or 27%.

2. NSW Land and Environment Court Case Law

Several key Land and Environment Court (NSW LEC) judgements have refined the manner in which variations to development standards are required to be approached. The key findings and direction of each of these matters are outlined in the following discussion.

2.1 Wehbe v Pittwater [2007] NSW LEC 827

The decision of Justice Preston in *Wehbe v Pittwater [2007] NSW LEC 827*, (expanded on the findings in *Winten v North Sydney Council*), identified 5 ways in which the applicant might establish that compliance with a development standard is unreasonable or unnecessary. It was not suggested that the five ways were the only ways that a development standard could be shown to be unreasonable or unnecessary.



The five ways outlined in *Wehbe* include:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Way).*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Way).*

In the *Micaul* decision Preston CJ confirmed that the requirements mandated by SEPP 1 (as discussed in *Wehbe*) are only relevant in demonstrating that compliance with a development standard is unreasonable or unnecessary for the purpose of Clause 4.6(3)(a).

2.2 *Four2Five Pty Ltd v Ashfield Council* [2015] NSW LEC

In the matter of *Four2Five Pty Ltd v Ashfield Council* [2015] NSW LEC, initially heard by Commissioner Pearson, upheld on appeal by Justice Pain, it was found that an application under Clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe V Pittwater* [2007] NSW LEC 827 and demonstrate the following:

1. Compliance with the particular requirements of Clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP;
2. That there are sufficient environment planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity);
3. That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone in which the site occurs;
4. All three elements of clause 4.6 have to be met and it is best to have different reasons for each but it is not essential.



2.3 Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7

In Randwick City Council v Micaul Holdings, the Court allowed a departure from development standards, provided the processes required by clause 4.6 are followed, a consent authority has a broad discretion as to whether to allow a departure from development standards under clause 4.6, even where the variation is not justified for site or development specific reasons.

Preston CJ noted that *the Commissioner did not have to be satisfied directly that compliance with each development standard was unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the appellant's written request had adequately addressed the matter in clause 4.6(3)(a) that compliance with each development standard was unreasonable or unnecessary.*

2.4 Zhang v City of Ryde

Commissioner Brown reiterated that clause 4.6 imposes three preconditions which must be satisfied before the application could be approved:

1. The consent authority must be satisfied that the proposed development will be consistent with the objectives of the zone;
2. The consent authority must be satisfied that the proposed development will be consistent with the objects of the standard which is not met; and
3. The consent authority must be satisfied that the written request demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances and there are sufficient environmental planning grounds to justify contravening the development standard.

It is only if all of these conditions are met that consent can be granted to the application, subject to an assessment of the merits of the application.

The Commissioner applied the now familiar approach to determining consistency with zone objectives by considering whether the development was antipathetic to the objectives.

In contrast to four2five, the reasons relied on to justify the departure from the standards in this case were not necessarily site specific.

2.5 Action Pty Ltd v Woollahra Municipal Council [2018]

In Action Pty Ltd v Woollahra Municipal Council, the court demonstrated the correct approach to the consideration of clause 4.6 requests, including that the clause does not require that a development that contravenes a development standard, must have a neutral or better environmental planning outcome than one that does not.



3. Consideration

The following section addresses the provisions of clause 4.6 of the MLEP 2013 together with principles established in the NSW Land and Environment Court Case Law outlined above.

Clause 4.6(3)(A) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (and is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case)?

In order to demonstrate that compliance with the development standard is unreasonable or unnecessary, in the circumstances of the case, the Five (5) Part Test established in *Winten v North Sydney Council* and expanded by Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827 is considered:

The five ways outlined in *Wehbe* include:

3.1 Five (5) Part Test - *Wehbe v Pittwater*

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).*

The objectives of the standard are:

(a) to 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,

Consistent. The development proposes works above the maximum 8.5 metre building height, including the replacement of the existing tile roof with a metal roof, while retaining the existing maximum height of main roof structure. A new open pergola is proposed on level 3, providing a structure for new landscaping as illustrated below.



Figure 2: Extract: Illustration of Proposed Pergola on Level 3.

The numerical height variation results from the significant slope of the site and the works will not substantially alter the existing built form. It is considered this objective is met, despite the numerical variation.

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

Comment

The existing dwelling does not comply with the 8.5 metre development standard and the extent of the non-compliance is limited to a new open pergola structure off the master bedroom and to allow for the replacement of the existing roof.

The works will not alter the bulk and scale of the existing dwelling as such it considered this objective is met, despite the numerical variation.

(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 site visit has been undertaken and it is considered the proposed development will not result in any view loss impacts, as the works are located within the existing building envelope.

It is therefore considered this objective is met, despite the numerical variation.

(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 numerical variation to the building height control does not result in any unreasonable solar access impacts to adjoining dwellings.

Given that compliant solar access is achieved, despite the height variation sought, it is considered the underlying objective of this clause has been satisfied.

(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

No applicable as the subject site is not located in a recreation or environmental protection zone.

2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).

This exception to development standards request does not rely on this reason.

3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).

This exception to development standards request does not rely on this reason

4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Way).

This exception to development standards request does not rely on this reason.



- 5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Way).***

This exception to development standards request does not rely on this reason.

This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the height of buildings control pursuant to the First Way outlined in Wehbe.

Thus it is considered that compliance with Clause 4.6(3)(a) is satisfied.

3.2 Clause 4.6(3)(B) – Are there sufficient environmental planning grounds to justify contravening the development standard?

There are sufficient grounds to permit the variation of the development standard. The development has been considered below with particular reference to the Objects of the Environmental Planning and Assessment Act 1979, which are accepted as the best gauge of *environmental planning grounds*. In particular:

Context

- The area surrounding the subject site is characterised by 2 and 3 storey residential dwellings, stepped to accommodate the steeply sloping topography.
- The existing dwelling has a non-compliant maximum building height of 10.07 metres and the development proposes to replace the existing tile roof with a metal roof and construct an open pergola structure, at a maximum height of 10.8 metres,
- The numerical height variation is the result of taking into account the steep slope of the site and the existing approved building,
- Variation to the Manly LEP 2013 Cl. 4.3 Building Height control has been the subject of recent precedent for the following developments:
 - DA2022/1279 – 60 Heathcliff Crescent BALGOWLAH HEIGHTS NSW 2093, Height Variation 25.9% (*Description: The 4.6 request for the non-compliance with height standard arises from the sloping nature of the site towards the eastern boundary, as the existing footprint is situated on a slope in excess of the 30%. The existing dwelling does not comply with the 8.5 metre*



development standard and the extent of the non compliance is limited to the rear (east) portion of the building with a minor area of the skillion roof and balcony balustrade.)

- DA2021/2661 – 33 Beatrice Street CLONTARF NSW 2093, Height Variation 76.5% (*Description: The 4.6 request for the non-compliance with the 8.5m Height of Buildings standard arises from the unique and constraining situation whereby the site slopes significantly down from the street frontage and contains a deep gully for drainage under the existing dwelling creating the large numerical non compliance with the additions).*
- DA2021/1813 – 7 Bruce Avenue MANLY NSW 2095, Height Variation 37.6% (*Description: The 4.6 request for the non-compliance with height standard arises due to the steep site topography and from the site being partially excavated underneath the existing ground level of the building by 5.7m for a small section of the building approximately 121m2 in area.)*
- The setting and context with similar Height variations recently approved, demonstrates that a varied building height is reasonable and that it is consistent with clause 1.3(c) and (d).

Future Development

- The proposed alterations and additions will allow for the refurbishment of the existing dwelling, including a new roof and open pergola structure,
- The built form proposed is consistent with the existing dwelling and other buildings in the locality,
- Given the existing non-compliant building height of 10.07 metres, replacing the existing roof and the addition of an open pergola structure, to a maximum height of 10.8 metres is considered reasonable as it is located above an existing balcony and does not result in any unreasonable impacts to neighbouring properties.
- The proposed works will not hinder any future development of the lot,
- The alterations proposed demonstrate fulfillment of clause 1.3(a), (b), (c) and (g).

Consistent with Zone Objectives

- The extent of the variation is considered to be in the public interest, as the proposal remains consistent with the objectives of the zone, allowing for the refurbishment of an existing dwelling in a residential zone, with a bulk and scale consistent with the existing dwelling and the locality. Compliance with the current numerical building height standard based on this would be unreasonable, with clause 1.3(c) demonstrated as fulfilled.



Natural Environment

- The proposed development allows for the current and future housing needs of the residents to be met, without developing a greenfield site, representing an efficient use of existing developed land,
- The proposal will not change the existing approved landscaped area,
- The development does not require the removal of any trees,
- Environmental impacts are minimised, by locating works within the existing disturbed portion of the lot,
- The natural environment is unaffected by the departure to the development standard and it would be unreasonable for the development to be refused on this basis with CI 1.3(b) satisfied.

Social and Economic Welfare

- The variation to the numerical building height control will have a positive social impact, as it will allow the housing needs of the residents to be met in their current local community, including the ability to work from home in the dedicated home offices. It utilises existing services, satisfying CI1.3(b). Accordingly, refusal of the development based on this reason would be unreasonable.

Appropriate Environmental Planning Outcome

- The works proposed do not represent an overdevelopment of the site and satisfies the objectives of the zone and the development standard as is detailed earlier in the report.

The sufficient environmental planning grounds stipulated above demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the building height variation.

3.3 Clause 4.6(4)(A)(ii) – Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and objectives for development within the zone which the development is proposed to be carried out.

The proposed development is consistent with the objectives of the standard (see CI 4.6(3)(A)). An assessment of consistency with the objectives of the Zone is provided below:

Zone – R2 Low Density Residential

Objectives of zone



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

Consistent. The proposal is for alterations and additions to an existing single residential dwelling.

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

Not relevant. The proposal is for works to a residential dwelling.

Despite the proposal seeking an exception to the building height clause, the bulk and scale of the building will have minimal effects as it represents a minor exceedance and is consistent with surrounding development.

The proposed development is not contrary to the public interest, because it is consistent with the objectives of the standard (see Cl 4.6(3)(A)) and objectives for development within the zone.

Clause 4.6(5)(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning,

The non-compliance will not raise any matter of State or Regional Significance.

Clause 4.6(5)(b) the public benefit of maintaining the development standard,

The proposed development is not contrary to the public interest, accordingly there can be no quantifiable or perceived public benefit in maintaining the standard.

Clause 4.6(5)(c) any other matters required to be taken into consideration by the Secretary before granting concurrence

How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Act.

Strict compliance with the standard would hinder the attainment of the objects specified in section 1.3 of the Act

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



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

Strict compliance with the 8.5 metres height development standard would hinder the development for the purpose of *promoting the orderly and economic use and development of land, promoting good design and amenity of the built environment and promoting the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.*

Conclusion

The proposed development to alter and refurbish the existing residential dwelling, on land zoned R2 Low Density Residential is appropriate and reasonable for the following reasons:

- There is recent precedent for similar variations to Cl 4.3 Building Height of the Manly LEP 2013 being accepted by Council,
- The proposed development does not present with excessive bulk and is of a consistent scale to the existing dwelling and surrounding properties,
- The proposal will not result in any unreasonable impacts,
- The works will allow for the housing needs of the residents to be met, in their current community,



- The existing building has a non-compliant maximum building height and the new works are limited to the replacement of the existing roof and a new open pergola structure over an existing balcony,
- The objectives of the R2 zone can be met despite the numerical variation.

Strict numerical compliance is considered to be unnecessary and unreasonable given that the proposed variation sought is consistent with the underlying objectives of the control despite the numerical variation, of which have been reasonably satisfied under the provisions of Clause 4.6. The statement sufficiently demonstrates that compliance with the development standard is both unreasonable and unnecessary in this instance.

The sufficient environmental planning grounds stipulated within this request, demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the height variation.

The proposed variation satisfies the objectives of the zone, underlying intent of Clause 4.6 and Clause 4.3, and therefore the merits of the proposed variation are considered to be worthy of approval.

Clause 4.6 Exceptions to Development Standards – Floor Space Ratio 58 Castle Circuit Seaforth

Clause 4.6 of the Manly Local Environmental Plan 2013 (MLEP 2013) permits departures from development standards in certain circumstances. In this case, it is necessary to consider if compliance with the development standard is consistent with the aims of the policy and, in particular, does compliance with the development standard tend to hinder the attainment of the objects specified in section 1.3 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) being:

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

The aims and objectives of Manly LEP 2013 Clause 4.6 are as follows:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*



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

Under Clause 4.6(3) and (4) of the MLEP 2013, consent for a development that contravenes a development standard must not be granted unless the consent authority is satisfied that:

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

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

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

These matters, along with case law judgements from the NSW Land and Environment Court, are addressed below.

1. Environmental Planning Instrument Details (Manly LEP 2013)

1.1 What is the name of the environmental planning instrument that applies to the land?

Manly Local Environmental Plan 2013

1.2 What is the zoning of the land?

R2 – Low Density Residential

1.3 What are the objectives of the zone?

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

1.4 What is the development standard being varied?

Cl. 4.4 – Floor Space Ratio

1.5 Under what clause is the development standard listed in the environmental planning instrument?

Cl. 4.4 of the Manly Local Environmental Plan 2013



1.6 What are the objectives of the development standard?

(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) 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.*

1.7 What is the numeric value of the development standard in the environmental planning instrument?

The numeric value of the FSR development standard applicable to the subject site is 0.4:1, this equates to a maximum floor area of 243.8m² for the site area of 609.5m².

1.8 What is proposed numeric value of the development standard in your development application?

The development proposes a maximum floor area of 384m² or FSR of 0.63:1.

Note: The subject site has an existing non-compliant Gross Floor Area of 354.69m² or FSR of 0.581:1 and the development proposes a minor increase to the GFA of 29.31m².

1.9 What is the percentage variation (between your proposal and the environmental planning instrument)?

The percentage variation sought is 140.2m² or 57.5%.

2. NSW Land and Environment Court Case Law

Several key Land and Environment Court (NSW LEC) judgements have refined the manner in which variations to development standards are required to be approached. The key findings and direction of each of these matters are outlined in the following discussion.

2.1 *Wehbe v Pittwater* [2007] NSW LEC 827

The decision of Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827, (expanded on the findings in *Winten v North Sydney Council*), identified 5 ways in which the applicant might



establish that compliance with a development standard is unreasonable or unnecessary. It was not suggested that the five ways were the only ways that a development standard could be shown to be unreasonable or unnecessary.

The five ways outlined in *Wehbe* include:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Way).*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Way).*

In the *Micaul* decision Preston CJ confirmed that the requirements mandated by SEPP 1 (as discussed in *Wehbe*) are only relevant in demonstrating that compliance with a development standard is unreasonable or unnecessary for the purpose of Clause 4.6(3)(a).

2.2 *Four2Five Pty Ltd v Ashfield Council* [2015] NSW LEC

In the matter of *Four2Five Pty Ltd v Ashfield Council* [2015] NSW LEC, initially heard by Commissioner Pearson, upheld on appeal by Justice Pain, it was found that an application under Clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe V Pittwater* [2007] NSW LEC 827 and demonstrate the following:

1. Compliance with the particular requirements of Clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP;
2. That there are sufficient environment planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity);
3. That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone in which the site occurs;



4. All three elements of clause 4.6 have to be met and it is best to have different reasons for each but it is not essential.

2.3 Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7

In *Randwick City Council v Micaul Holdings*, the Court allowed a departure from development standards, provided the processes required by clause 4.6 are followed, a consent authority has a broad discretion as to whether to allow a departure from development standards under clause 4.6, even where the variation is not justified for site or development specific reasons.

Preston CJ noted that *the Commissioner did not have to be satisfied directly that compliance with each development standard was unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the appellant's written request had adequately addressed the matter in clause 4.6(3)(a) that compliance with each development standard was unreasonable or unnecessary.*

2.4 Zhang v City of Ryde

Commissioner Brown reiterated that clause 4.6 imposes three preconditions which must be satisfied before the application could be approved:

1. The consent authority must be satisfied that the proposed development will be consistent with the objectives of the zone;
2. The consent authority must be satisfied that the proposed development will be consistent with the objects of the standard which is not met; and
3. The consent authority must be satisfied that the written request demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances and there are sufficient environmental planning grounds to justify contravening the development standard.

It is only if all of these conditions are met that consent can be granted to the application, subject to an assessment of the merits of the application.

The Commissioner applied the now familiar approach to determining consistency with zone objectives by considering whether the development was antipathetic to the objectives.

In contrast to *four2five*, the reasons relied on to justify the departure from the standards in this case were not necessarily site specific.

2.5 Action Pty Ltd v Woollahra Municipal Council [2018]

In *Action Pty Ltd v Woollahra Municipal Council*, the court demonstrated the correct approach to the consideration of clause 4.6 requests, including that the clause does not require that a



development that contravenes a development standard, must have a neutral or better environmental planning outcome than one that does not.

3. Consideration

The following section addresses the provisions of clause 4.6 of the MLEP 2013 together with principles established in the NSW Land and Environment Court Case Law outlined above.

Clause 4.6(3)(A) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (and is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case)?

In order to demonstrate that compliance with the development standard is unreasonable or unnecessary, in the circumstances of the case, the Five (5) Part Test established in *Winten v North Sydney Council* and expanded by Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827 is considered:

The five ways outlined in *Wehbe* include:

3.1 Five (5) Part Test - *Wehbe v Pittwater*

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).*

The objectives of the standard are:

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

Comment

The development proposes to enclose a portion of the existing approved balcony and breezeway area to create a new dining room, entry foyer and lift. The apparent bulk and scale of the dwelling will be negligibly impacted, from the existing approved dwelling and the new refurbishment works will ensure a positive contribution to the streetscape.

It is considered this objective is met, despite the numerical variation.

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

Comment

The development will result in a built form and massing that is of a consistent scale to the existing dwelling and surrounding properties. The development will not obscure any



important landscape or townscape features and will not result in any view loss impacts.

It is therefore considered this objective is met, despite the numerical variation.

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

Comment

The proposed works are visually appropriate for the locality and propose a built form consistent with the existing dwelling. The landscaped area on the property will remain unchanged, as proposed works are located within the existing building footprint.

In this regard, the underlying intent of this objective has been satisfied despite the numerical departure.

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

Comment

The proposed variation to floor space ratio does not result in any unreasonable environmental impacts, as works are located within the already disturbed portion of the lot. The use or enjoyment of adjoining land and the public domain will be unaffected by the minor additions proposed.

In this regard, the underlying intent of this objective has been satisfied despite the numerical departure.

(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.

Comment

Not relevant as the subject site is not located in Zone E1 and no business or service activities are proposed.

2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).

This exception to development standards request does not rely on this reason.



3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).*

This exception to development standards request does not rely on this reason.

4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Way).*

This exception to development standards request does not rely on this reason.

5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Way).*

This exception to development standards request does not rely on this reason.

This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the floor space ratio control pursuant to the First Way outlined in Wehbe.

Thus, it is considered that compliance with Clause 4.6(3)(a) is satisfied.

3.2 Clause 4.6(3)(B) – Are there sufficient environmental planning grounds to justify contravening the development standard?

There are sufficient grounds to permit the variation of the development standard. The development has been considered below with particular reference to the Objects of the Environmental Planning and Assessment Act 1979, which are accepted as the best gauge of *environmental planning grounds*. In particular:

Context

- The area surrounding the subject site is characterised by 2 and 3 storey residential dwellings, stepped to accommodate the steeply sloping topography.
- The proposed dwelling has been designed to remain consistent with the character of the locality, despite the variation to FSR, through design, architectural features and complimentary materials and colour choices.
- The subject site has an existing non-compliant Gross Floor Area of 354.69m² or FSR of



0.581:1 and the development proposes a minor increase to the GFA of 29.31m². The proposal does not increase the bulk or scale of the existing building.

- Variation to the Manly LEP 2013 Cl. 4.4 FSR, control has been the subject of recent precedent for the following developments:
 - DA2022/1838 – 1/9 Eustace Street Manly, FSR Variation 24.6% (*Description: The 4.6 request for the non-compliance with FSR standard arises from a 14.4m² increase in gross floor area at the ground floor. The existing building is 3 storeys and has an existing floor space ratio of 0.91:1 (637.5m²) which is above compliance with the LEP requirement of 0.75:1 (523.05m²). Overall, the proposal does not increase the bulk or scale of the existing building.*)
 - DA2022/1131 – 25 Montpelier Place Manly, FSR Variation 34.47% (*Description: The 4.6 request for the non-compliance with FSR standard arises from a first floor addition at the rear of the building above existing floorspace and is consistent with the surrounding built form).*
 - DA2022/1651 – 6 Richmond Road Seaforth, FSR Variation 45% (*Description: The 4.6 request for the non-compliance with the FSR standard arises from a 14m² increase in floorspace. The existing building has an existing floor space of 433m² or 0.56:1. The new FSR will be a minor increase to 461m² or 0.58:1. Despite the non compliance, the proposal is not considered to result in any further unreasonable bulk, scale or amenity impacts from the street frontage and adjoining properties)*
- The setting and context with similar FSR variations recently approved, demonstrates that a varied FSR is reasonable and that it is consistent with clause 1.3(c) and (d).

Future Development

- The proposed alterations and additions will allow for the provision of a modern floor plan, with refurbished and improved internal spaces,
- This represents an efficient use of an existing developed site, with all services readily available.
- The built form proposed is consistent with the existing dwelling and other buildings in the locality,
- Given the existing non-compliant Gross Floor Area of 354.69m² or FSR of 0.581:1, the minor increase to the floor area of 29.31m² is considered reasonable as it is located within the existing balcony and breezeway and does not result in any unreasonable impacts to neighbouring properties.
- The proposed works will not hinder any future development of the lot,
- The alterations proposed demonstrate fulfillment of clause 1.3(a), (b), (c) and (g).



Consistent with Zone Objectives

- The extent of the variation is considered to be in the public interest, as the proposal remains consistent with the objectives of the zone, allowing for additional residential floor space in a residential zone, with a bulk and scale consistent with the existing dwelling and the locality. Compliance with the FSR standard based on this would be unreasonable, with clause 1.3(c) demonstrated as fulfilled.

Natural Environment

- The proposed development allows for the current and future housing needs of the residents to be met, without developing a greenfield site, representing an efficient use of existing developed land,
- The proposal will not change the existing approved landscaped area,
- The development does not require the removal of any trees,
- Environmental impacts are minimized, by locating works within the approved roofed footprint.
- The natural environment is unaffected by the departure to the development standard and it would be unreasonable for the development to be refused on this basis with Cl 1.3(b) satisfied.

Social and Economic Welfare

- The variation to the FSR will have a positive social impact, as it will allow the housing needs of the residents to be met in their current local community, including the ability to work from home in the dedicated home offices. It utilises existing services, satisfying Cl 1.3(b). Accordingly, refusal of the development based on this reason would be unreasonable.

Appropriate Environmental Planning Outcome

- The development proposed is not an overdevelopment of the site and satisfies the objectives of the zone and the development standard as is detailed earlier in the report.

Consistent with Zone Objectives

- The extent of the variation is considered to be in the public interest, as the proposal remains consistent with the objectives of the zone, allowing for additional residential floor space in a residential zone, with a bulk and scale consistent with the existing dwelling and the locality. Compliance with the FSR standard based on this would be unreasonable, with clause 1.3(c) demonstrated as fulfilled.



Natural Environment

- The proposed development allows for the current and future housing needs of the residents to be met, without developing a greenfield site, representing an efficient use of existing developed land,
- The proposal will not change the existing approved landscaped area,
- The development does not require the removal of any trees,
- Environmental impacts are minimized, by locating works within the approved roofed footprint.
- The natural environment is unaffected by the departure to the development standard and it would be unreasonable for the development to be refused on this basis with Cl 1.3(b) satisfied.

Social and Economic Welfare

- The variation to the FSR will have a positive social impact, as it will allow the housing needs of the residents to be met in their current local community, including the ability to work from home in the dedicated home offices. It utilises existing services, satisfying Cl 1.3(b). Accordingly, refusal of the development based on this reason would be unreasonable.

Appropriate Environmental Planning Outcome

- The development proposed is not an overdevelopment of the site and satisfies the objectives of the zone and the development standard as is detailed earlier in the report.

The sufficient environmental planning grounds stipulated above demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the FSR variation.

3.3 Clause 4.6(4)(A)(ii) – Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and objectives for development within the zone which the development is proposed to be carried out.

The proposed development is consistent with the objectives of the standard (see Cl 4.6(3)(A).

An assessment of consistency with the objectives of the Zone is provided below:

Zone – R2 Low Density Residential

Objectives of zone



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

Consistent. The proposal is for alterations and additions to an existing single residential dwelling.

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

Not relevant. The proposal is for a residential dwelling.

The proposed development is not contrary to the public interest, because it is consistent with the objectives of the standard (see Cl 4.6(3)(A)) and objectives for development within the zone.

Clause 4.6(5)(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning,

The non-compliance will not raise any matter of State or Regional Significance.

Clause 4.6(5)(b) the public benefit of maintaining the development standard,

The proposed development is not contrary to the public interest, accordingly there can be no quantifiable or perceived public benefit in maintaining the standard.

Clause 4.6(5)(c) any other matters required to be taken into consideration by the Secretary before granting concurrence

How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Act.

Strict compliance with the standard would hinder the attainment of the objects specified in section 1.3 of the Act

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



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

Strict numerical compliance with the 0.4:1 FSR development standard would hinder the development for the purpose of *promoting the orderly and economic use and development of land, promoting good design and amenity of the built environment and promoting the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.*

Conclusion

The proposed development to alter and refurbish the existing residential dwelling, on land zoned R2 Low Density Residential is appropriate and reasonable for the following reasons:

- There is recent precedent for similar variations to CI 4.4 FSR of the Manly LEP 2013 being accepted by Council,
- The proposed development does not present with excessive bulk and is of a consistent scale to the existing dwelling and surrounding properties,
- The proposal will not result in any unreasonable impacts,
- The works will allow for the housing needs of the residents to be met, including the opportunity to work from home, in their current community,
- The development proposes a minor increase of 29.31m² to the existing GFA, as such is considered minor and appropriate,
- The objectives of the R2 zone can be met despite the numerical variation.

Strict numerical compliance is considered to be unnecessary and unreasonable given that the proposed variation sought is consistent with the underlying objectives of the control despite



the numerical variation, of which have been reasonably satisfied under the provisions of Clause 4.6. The statement sufficiently demonstrates that compliance with the development standard is both unreasonable and unnecessary in this instance.

The sufficient environmental planning grounds stipulated within this request, demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the FSR variation.

The proposed variation satisfies the objectives of the zone, underlying intent of Clause 4.6 and Clause 4.4, and therefore the merits of the proposed variation are considered to be worthy of approval.

ITEM 3.6	DA2023/0729 - 6 MONASH PARADE DEE WHY - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
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PURPOSE

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

RECOMMENDATION

THAT Council as the consent authority **refuses** Development Consent to DA2023/0729 for alterations and additions to a dwelling house on land at Lot 1 DP 653825, 6 Monash Parade DEE WHY, for the reasons for refusal set out in the Assessment Report.

REPORTING MANAGER	Adam Richardson
TRIM FILE REF	2024/233828
ATTACHMENTS	↓ 1 Assessment Report ↓ 2 Site Plan and Elevations

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0729
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Responsible Officer:	Michael French
Land to be developed (Address):	Lot 1 DP 653825, 6 Monash Parade DEE WHY NSW 2099
Proposed Development:	Alterations and additions to 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:	Carol Ann Taggart James Donald Taggart
Applicant:	Rebecca Zerk

Application Lodged:	13/06/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	20/06/2023 to 04/07/2023
Advertised:	Not Advertised
Submissions Received:	8
Clause 4.6 Variation:	Nil
Recommendation:	Refusal

Estimated Cost of Works:	\$ 484,456.00
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EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) due to the proposal receiving more than five (5) objections.

The proposed development was notified in accordance with the Northern Beaches Community Participation Plan (CPP) for fourteen (14) days. A total of eight (8) objections were received.

Concern raised in the objections predominantly relate to the amenity impacts resulting from the

proposal (i.e. privacy, solar access, view loss).

Amendments were requested on 8 September 2023 through a Request for Information Letter as the original proposal was deemed unsupportable. An amended application was submitted by the applicant which fails to adequately address the concerns raised in the Request for Further Information letter.

The proposal as amended, includes several variations to the controls provided for in the Warringah Development Control Plan. The proposed development has been found to be non-compliant with Controls *Clause B1 Wall Heights*, *Clause B3 Side Boundary Envelope*, *Clause B7 Front Boundary Setbacks* and *Clause D7 Views*.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that, on balance the proposal (as amended) is not an acceptable development for the subject site for the reasons outlined in this report.

This report concludes with a recommendation that the DDP refuse the development application.

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for the following:

- Addition of a third storey to the existing dwelling; and
- Minor internal alterations and additions so as to integrate the proposed third storey into the dwelling.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Development Control Plan - B1 Wall Heights

Warringah Development Control Plan - B3 Side Boundary Envelope

Warringah Development Control Plan - B7 Front Boundary Setbacks
 Warringah Development Control Plan - D6 Access to Sunlight
 Warringah Development Control Plan - D7 Views
 Warringah Development Control Plan - D8 Privacy
 Warringah Development Control Plan - D9 Building Bulk

SITE DESCRIPTION

Property Description:	Lot 1 DP 653825 , 6 Monash Parade DEE WHY NSW 2099
Detailed Site Description:	The subject site consists of one(1) allotment located on the eastern side of Monash Parade. The site is regular in shape with a frontage of 13.715m along Monash Parade and a depth of 46.35m. The site has a surveyed area of 635.7m². The site is located within the R2 Low Density zone pursuant to the Warringah Development Control Plan 2011 and accommodates a single, two-storey dwelling with a detached garage. The site is relatively flat throughout. The site does not have any details of any threatened species. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by a mix of ocean-side 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.

APPLICATION HISTORY

- 6 June 2023: Application lodged
- 14 June to 4 July 2023: Application notified
- 8 September 2023: Request for Information letter sent
- 13 October 2023: Response to request for information provided
- 1 November 2023: Request for the erection of height poles made
- 1 January 2024: Survey conformation of height poles provided

It is noted that the amended application was not re-notified as the development did not represent a greater impact than that of the original development.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters are capable of being addressed via a condition of consent. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended Architectural Plans, Certified Shadow Diagrams, a Survey Plan and the installation of Height Poles.

Section 4.15 Matters for Consideration	Comments
	<u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. These matters are capable of being addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. These matters are capable of being addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). These matters are capable of being 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 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	This assessment has found the proposal to be contrary to the relevant requirement(s) of the Warringah Development Control Plan and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 20/06/2023 to 04/07/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Mrs Susan Mary Wright	13 / 186 Pacific Parade DEE WHY NSW 2099
Ms Louise Frances Howitt	30 Carlton Road NORTH ROCKS NSW 2151
David Ian Palmer	11 / 186 Pacific Parade DEE WHY NSW 2099
Mrs Karen Grozier	4 / 186 Pacific Parade DEE WHY NSW 2099
Bill Tulloch on behalf of Mrs Deborah Anne Yates	PO Box 440 MONA VALE NSW 1660
Building Certificates 4 U	PO Box 7048 GWYNNEVILLE NSW 2500
Tony Smith	Address Unknown
Boston Blyth Fleming Pty Ltd on behalf of Jason Matthew Guildea	1 / 9 Narabang Way BELROSE NSW 2085

The following issues were raised in the submissions:

- View Loss
- Overshadowing/ Access to Sunlight
- Visual Privacy
- Bulk and Scale
- Survey Plan
- Clause 4.6 Variation Request
- Front Boundary Setback
- Side Boundary Setbacks
- Building Envelope
- Wall Height

The above issues are addressed as follows:

- **View Loss**

The submissions raised concerns regarding the potential loss of foreshore and ocean views due to the proposed addition of a third storey. They underscore that this concern is further amplified by the lack of compliance with the built form controls as stipulated within the Warringah Development Control Plan.

Comment:

Assessment against *Clause D7 Views* is undertaken elsewhere within this report. It is considered that the proposed development presents an unacceptable impact. This is a reason for refusal.

- **Overshadowing/ Access to Sunlight**

The submissions raised concerns regarding the overshadowing impact of the proposed development on neighboring properties. Furthermore, they criticise the lack of sufficient diagrammatic evidence to support an accurate evaluation of potential solar access loss during mid-winter.

Comment:

Assessment against *Clause D6 Access to Sunlight* is undertaken elsewhere within this report. It is considered that the shadows generated by the proposed development do not result in a non-compliance with the solar access controls of the DCP. This is not a reason for refusal.

- **Visual Privacy**

The submissions raised concerns regarding the proposed development's impact on visual privacy. They assert that the development would lead to unacceptable overlooking of adjoining dwellings and their associated private open spaces.

Comment:

Assessment against *Clause D8 Privacy* is undertaken elsewhere within this report. The proposed development is considered to have an acceptable impact upon the privacy of adjoining properties. This is not a reason for refusal.

- **Bulk and Scale**

The submissions raised concerns regarding the bulk, scale, density, and height of the proposed development. They argue that these elements are excessive and do not align with the established and desired streetscape character, and therefore is contrary to public interest.

Comment:

Assessment against *Clause D9 Building Bulk* is undertaken elsewhere within this report. The bulk of the building has been found to be acceptable pursuant of the criteria set within section D9 of the DCP, notwithstanding the view loss impacts that the development causes. This is not a reason for refusal.

- **Survey Plan**

The submissions raised concerns that the Survey Plan is not adequate in providing the detail necessary to meet the required standards.

Comment:

It was considered that the submitted Survey Plan failed to meet Councils minimum lodgment requirements. Consequently, a revised Survey Plan was requested. The revised version has been reviewed and is deemed sufficient. It has been prepared and signed by a registered surveyor.

- **Clause 4.6 Variation Request**

The submissions raised concerns that the Clause 4.6 Variation Request is insufficient in adequately demonstrating that the proposal achieves the relevant objectives of the development standard or that there are sufficient planning grounds to justify the extent of variation to Clause 4.3 Building Height.

Comment:

An assessment of the application had found that there were no constraints or special circumstances that provide substantive grounds as to why it is unreasonable or unnecessary to comply with the development standard or that sufficient environmental planning grounds exist that would warrant a Clause 4.6 variation to the maximum building height. In this regard, amended plans were requested that proposed a dwelling which complied with the maximum building height of the LEP. The proposal as amended complies with the Height of Buildings Development Standard.

- **Front Boundary Setback**

The submissions raised concerns relating to the inadequacy of the secondary front boundary setback. Specifically, the objections expressed concern that this non-compliance will directly lead to amenity issues.

Comment:

Assessment against *Clause B7 Front Boundary Setbacks* is undertaken elsewhere within this report. The front setback of the proposal is considered to be unsatisfactory. This is a reason for refusal.

- **Side Boundary Setbacks**

The submissions raised concerns that the proposed third-storey addition is not appropriately setback from either side boundary.

Comment:

The proposal is considered to wholly comply with the requirements and objectives of *Clause B3 Side Boundary Setbacks*. This is not a reason for refusal.

- **Building Envelope**

The submissions raised concerns regarding the building envelope non-compliance and the resulting amenity impacts.

Comment:

Assessment against *Clause B3 Building Envelope* is undertaken elsewhere within this report. It is considered that the non-compliance with the building envelope control contributes to the issues with view loss. This is a reason for refusal.

- **Wall Height**

The submissions raised concerns about the proposed wall height non-compliance. Specifically that this will directly result in an unacceptable building bulk and amenity impact.

Comment:

Assessment against *Clause B1 Wall Heights* is undertaken elsewhere within this report. It is

considered that the breach of the DCP's wall height control contributes to the impacts of the proposal in respect of view loss. This is a reason for refusal.

REFERRALS

Internal Referral Body	Comments
NECC (Coast and Catchments)	<i>Supported, no conditions required</i> This application was assessed in consideration of: - Supplied plans and reports; - Coastal Management Act 2016; - State Environmental Planning Policy (Resilience and Hazards) 2021 Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore the Coastal Management Act 2016 is applicable to this DA. The proposed development is considered to be consistent with the objects, as set out under Part 1 Section 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). Hence, Clauses 2.10, 2.11 and 2.12 apply for this DA. On internal assessment the DA satisfies requirements under clauses 2.10, 2.11 and 2.12 of the SEPP. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021.
External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<i>Supported, subject to Conditions</i> 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	<i>Supported, subject to Conditions</i> Reference is made to the proposed development at the above area and Aboriginal heritage.

External Referral Body	Comments
	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.A459412_03).

In the event that the proposed development is approved, a condition would be necessary 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 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.
- 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:

It is considered that works are unlikely to cause an adverse impact on land within the Coastal environment area. The proposed works adhere to the above criteria.

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 foreshores,
 - iv) foreshores,
 - v) the visual amenity and scenic qualities of the coast, including coastal headlands, Aboriginal cultural heritage, practices and places, cultural and built environment heritage, and
 - b) is satisfied that:
 - i) the development is designed, sited and will be managed to avoid an
 - 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:

It is considered that works are unlikely to cause an adverse impact on land within the Coastal use area. The proposed works adhere to the above criteria.

Division 5 General

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

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

Comment:

The proposed works will not unreasonably increase the risk of coastal hazards on the site or any adjoining or surrounding land.

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

Chapter 4 – Remediation of Land

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

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

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	8.5m	N/A	Yes

Note: The original proposal was at a height of 9.35m causing a variation of 10%.

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.3 Development near zone boundaries	Yes

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	8.2m (south elevation) 8.2m (north elevation)	13.9%	No
B3 Side Boundary Envelope	5m (north elevation)	outside envelope (at a height of 1.9m for a length of 4.5m)	38%	No
	5m (south elevation)	within envelope	N/A	Yes
B5 Side Boundary Setbacks	0.9m (north elevation)	1.2m (liftwell extension)	N/A	Yes
	0.9m (south elevation)	3.5m (third-storey addition)	N/A	Yes
B7 Front Boundary Setbacks	3.5m	2.6m (third-storey addition)	25.7%	No
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	43.3% (275.45m ²)(existing-unchanged)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	No
B3 Side Boundary Envelope	No	No
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	No
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
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	No	No
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
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
E4 Wildlife Corridors	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Clause B1 Wall Heights requires that walls are not to exceed 7.2 metres from ground level (existing) to the underside of the ceiling on the uppermost floor of the building.

In this case, the development proposes a wall height along the northern and southern elevation of 8.2 metres, causing a variation of 13.9% to the control.

Where the requirements of this clause have not been met and a variation is sought, the objectives of the clause must be met.

The following objective has not been adequately met.

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

The view loss directly resulting from the non-compliance translates into an unreasonable impact on views from adjacent and surrounding sites.

In this regard, the proposal is not supported in its current form. This is a reason for refusal.

B3 Side Boundary Envelope

Clause B3 Side Boundary Envelope requires that built structures are sited within an envelope, measured at the side elevations of the dwelling by projecting planes at 45 degrees from a 5 metre height.

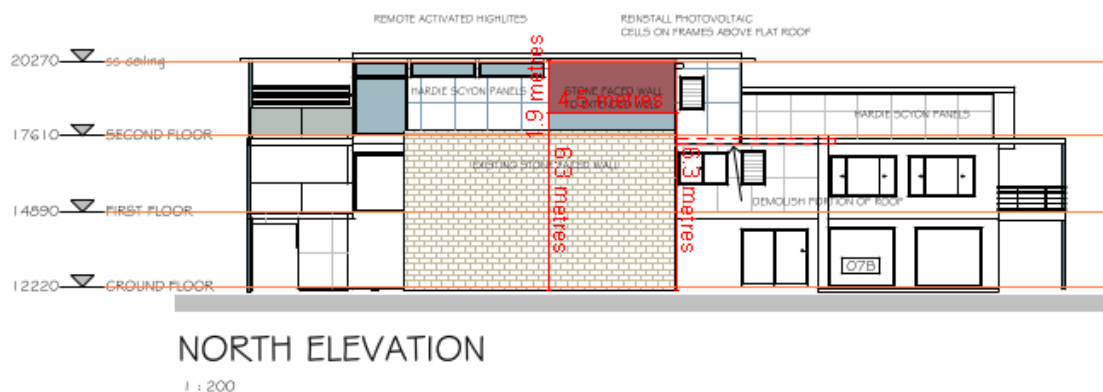


Figure 1- Envelope non-compliance- Northern Elevation

In this case, the development proposes a protrusion of the building envelope along the northern side elevation, at a height of 1.9 metres for a length of 4.5 metres, causing a variation of 38% to the control.

Where the requirements of this clause have not been met and a variation is sought, the objectives of the clause must be met.

The following objective has not been adequately met.

- To ensure that development does not become visually dominant by virtue of its height and bulk.

The view loss directly resulting from the non-compliance, particularly resulting from the height of the works outside of the prescribed building envelope, translates into an unreasonable impact on views from adjacent and surrounding sites. It is considered that the non-compliant element of the dwelling becomes visually dominate, despite the proposal complying with the maximum building height of the LEP.

In this regard, the proposal is not supported in its current form. This is a reason for refusal.

B7 Front Boundary Setbacks

Clause B7 Front Boundary Setbacks requires a minimum 3.5 metres setback for the secondary frontage, however provides that secondary street variations must consider the character of the secondary street and the predominant setbacks existing to that street.

In this case, the development proposes a 2.6 metres setback from the secondary frontage toward the eastern side of the site, causing a variation of 25.7%.

Where the requirements of this clause have not been met and a variation is sought, the objectives of the clause must be met.

The following objective has not been adequately met.

- *To achieve reasonable view sharing.*

The view loss directly resulting from the non-compliance translates into an unreasonable impact on views from adjacent and surrounding sites.

In this regard, the proposal is not supported in its current form. This is a reason for refusal.

D6 Access to Sunlight

Clause D6 Access to Sunlight requires the following:

1. *Development should avoid unreasonable overshadowing any public open space.*
2. *At least 50% of the required area of private open space of each dwelling and at least 50% of the required area of private open space of adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21.*

The Certified Shadow Diagrams adequately depict compliance with the above-mentioned requirements of this clause. The development is found to be acceptable in this regard.

D7 Views

In response to concerns related to view loss resulting from the proposed addition, a site inspection to the following adjacent and surrounding sites was undertaken.

- 4 Monash Parade, Dee Why.
- 8 Monash Parade, Dee Why.
- 9/149 Oaks Avenue, Dee Why.
- 4/186 Pacific Parade, Dee Why.
- 11/186 Pacific Parade, Dee Why.
- 13/186 Pacific Parade, Dee Why.

Height poles were considered necessary to determine the extent of impact. Certified height poles have been erected.

Merit consideration

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

- *To allow for the reasonable sharing of views.*

Comment:

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

1. Nature of the views affected

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

Comment to Principle 1:



Figure 2- the proposal as viewed from 9/149 Oaks Avenue, Dee Why



Figure 3- the proposal as viewed from 4/186 Pacific Parade, Dee Why



Figure 4 - the proposal as viewed from 11/186 Pacific Parade



Figure 5 - 1the proposal as viewed from 3/186 Pacific Parade, Dee Why



Figure 6 - the proposal as viewed from 8 Monash Parade, Dee Why (taken from first-floor study- seated position)



Figure 7 - the proposal as viewed from 8 Monash Parade, Dee Why (taken from first-floor balcony- standing position)



Figure 8 - the proposal as viewed from 8 Monash Parade, Dee Why (taken from first-floor balcony- seated position)



Figure 9 - the proposal as viewed from 8 Monash Parade, Dee Why (taken from first-floor balcony- standing position)

The images above illustrate the view loss from objecting sites, intended for reference in support of the information provided below.

The location of the obtained views will be discussed for each respective site below.

9/149 Oaks Avenue, Dee Why- The views of concern obtained by this site are achieved towards the east over the rear of the subject site. The view consists of a partial view of the ocean, east of Dee Why Headland.

4/186 Pacific Parade, Dee Why- The views of concern obtained by this site are achieved towards the east over the rear of the subject site. The view consists of a partial view of the ocean, east of Dee Why Headland.

11/186 Pacific Parade, Dee Why- The views of concern obtained by this site are achieved towards the east over the rear of the subject site. The view consists of a partial view of the ocean, east of Dee Why Headland, including the land/water interface.

13/186 Pacific Parade, Dee Why- The views of concern obtained by this site are achieved towards the east over the rear of the subject site. The view consists of a partial view of the ocean, east of Dee Why Headland, including the land/water interface.

8 Monash Parade, Dee Why- The views of concern obtained by this site are achieved towards the east over the rear of the subject site and over the northern side boundary of the site. The view over the eastern boundary of the subject site consists of a partial view of the ocean, east of Dee Why Headland. The view to the north consists of ocean to the east of Dee Why Beach, Long Reef Beach (including the land/water interface) and Long Reef Headland (including the land/water interface).

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

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

Comment to Principle 2:

The views from the following sites are obstructed from the following places.

9/149 Oaks Avenue, Dee Why- The views are obstructed from standing and seating positions from the east facing rooms which includes a living room and a bedroom, as well as from the adjoining balcony.

4/186 Pacific Parade, Dee Why- The views are obstructed from standing positions from the east facing windows over the rear of the subject site as well as from the adjoining balcony.

11/186 Pacific Parade, Dee Why- The views are obstructed from standing positions from the east facing windows over the rear of the subject site as well as from the adjoining balcony.

13/186 Pacific Parade, Dee Why- The views are obstructed from standing positions from the east facing windows over the rear of the subject site as well as from the adjoining balcony.

8 Monash Parade, Dee Why- The views are obstructed from a seated position in the study through the east facing window, a minor obstruction from a seated and standing position on the eastern portion of the living/dining room including from the dining room table, and from a seated and standing position from the rear balcony, all of which are located on the first floor of this site.

3. Extent of impact

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

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

Comment to Principle 3:

The extent of impact for each property is discussed below:

9/149 Oaks Avenue, Dee Why- The view of the ocean, east of Dee Why Headland will be, to a significant extent, obstructed by the addition. Notably the view is partially obstructed by the portion of the dwelling forming the northern side envelope non-compliance. In this regard, the view loss impact is considered **moderate to severe**.

4/186 Pacific Parade, Dee Why- The view of the ocean, east of Dee Why Headland will be partially obstructed by the addition. In this regard, the view loss impact is considered **minor**.

11/186 Pacific Parade, Dee Why- The view of the ocean, east of Dee Why Headland will be partially obstructed by the addition, including the land/water interface to the east of the subject site. In this regard, the view loss impact is considered **moderate**.

13/186 Pacific Parade, Dee Why- The view of the ocean, east of Dee Why Headland will be partially obstructed by the addition, including the land/water interface to the east of the subject site. In this regard, the view loss impact is considered **moderate**.

8 Monash Parade, Dee Why- The view of the ocean, east of Dee Why Beach and Long Reef Beach will be partially obstructed. Additionally, the view to Long Reef Beach (including the land/water interface) will be almost wholly obstructed, and partially toward Long Reef Headland (including the land/water interface). In this regard, the view loss impact is considered **severe**.

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:

Assessment against the objectives of this control are detailed below.

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

Comment:

The proposal is not considered to adequately encourage an innovative design solution that improves the urban environment.

- *To ensure existing canopy trees have priority over views.*

Comment:

The proposal does not include the addition or removal of any canopy trees.

As detailed within the 'Request for Further Information Letter' dated 8 September 2023, the matter of devising a more skillfully designed solution that maintains or reduces the impact of view loss on neighboring properties while offering comparable development potential and amenity for the residents

of the subject site was brought to the applicants attention. Subsequently, upon receiving amended plans, a request was made on 1 November 2023 for the applicant to install height poles. These poles were to be positioned in a manner facilitating a comprehensive view loss assessment. The amended proposal, which included mitigating measures such as an increase in the southern side setback and a reduction in building height to comply with Development Standards, still proposed several non-compliances. Notably, these included *Clause B1 Wall Height, Clause B3 Side Boundary Envelope, and Clause B7 Front Boundary Setbacks*, all of which contribute to the above identified view loss.

Despite the amendments that have been made to the development, it is considered that they are unacceptable to overcome view loss impacts, and the proposal is not supported in this instance and it was considered that the proposal fails to achieve a 'skillful' or 'sensitive' design that achieves compliance with the planning principle established in *Tenacity v Warringah Council*. Therefore, this is a reason for refusal.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D8 Privacy

Clause D8 Privacy requires the following:

- 1. Building layout should be designed to optimise privacy for occupants of the development and occupants of adjoining properties.*
- 2. Orientate living areas, habitable rooms and windows to private open space areas or to the street to limit overlooking.*
- 3. The effective location of doors, windows and balconies to avoid overlooking is preferred to the use of screening devices, high sills or obscured glass.*
- 4. The windows of one dwelling are to be located so they do not provide direct or close views (ie from less than 9 metres away) into the windows of other dwellings.*
- 5. Planter boxes, louvre screens, pergolas, balcony design and the like are to be used to screen a minimum of 50% of the principal private open space of a lower apartment from overlooking from an upper apartment.*

The first-floor addition is considered to adequately meet the requirements of *Clause D8 Privacy*. The proposed Windows on the North and South elevations on the 3rd-Storey addition, inclusive of the 2nd-storey 'new ensuite window', are not considered to provide any excessive direct overlooking into any neighbouring private spaces. Additionally, the balcony on both side elevations is proposed have an 1800 millimeters high privacy screen to ensure that there is no excessive overlooking impact to either adjoining site. As such, it is considered that the proposal as amended is acceptable in regard to privacy. This is not a reason for refusal.

D9 Building Bulk

Clause D9 Building Bulk requires the following:

- 1. Side and rear setbacks are to be progressively increased as wall height increases.*
- 2. Large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief.*
- 3. On sloping land, the height and bulk of development (particularly on the downhill side) is to be minimised, and the need for cut and fill reduced by designs which minimise the building footprint and allow the building mass to step down the slope. In particular:*

The amount of fill is not to exceed one metre in depth.

Fill is not to spread beyond the footprint of the building.

Excavation of the landform is to be minimised.

4. Building height and scale needs to relate to topography and site conditions.

5. Orientate development to address the street.

6. Use colour, materials and surface treatment to reduce building bulk.

7. Landscape plantings are to be provided to reduce the visual bulk of new building and works.

8. Articulate walls to reduce building mass.

The proposal as amended is considered to adequately comply with the requirements of *Clause D9 Building Bulk*. The proposed development provides acceptable articulation by stepping and recessing the the 3rd-storey addition and providing a balcony at the rear to soften the built form. The considerations in respect of building bulk are different to those which relate to view loss.

The aforementioned factors considered, it is deemed that the proposal as amended is acceptable in regard to building bulk. This is not a reason for refusal.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$4,845 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$484,456.

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, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

PLANNING CONCLUSION

This proposal, for alterations and additions to a dwelling house has been referred to the Development Determination Panel (DDP) due to the proposal resulting in greater than five (5) objections.

It is considered that the concerns raised in the objections have not been adequately addressed via an amended proposal.

The critical assessment issues include variations to *Clause B1 Wall Heights*, *Clause B3 Side Boundary Envelope*, *Clause B7 Front Boundary Setbacks* and *Clause D7 Views*. These proposed variations will result in unacceptable impacts on the environment and amenity of adjoining sites, ultimately leading to the development's inability to meet the objectives of the above clauses.

Overall, the development will result in unreasonable impacts to adjoining and nearby properties, and the natural environment. The proposal has therefore been recommended for refusal.

REASON FOR DETERMINATION

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2023/0729 for the Alterations and additions to a dwelling house on land at Lot 1 DP 653825,6 Monash Parade, DEE WHY, for the reasons outlined as follows:

1. **1. 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 B1 Wall Heights of the Warringah Development Control Plan.**
 - **Clause B3 Side Boundary Envelope of the Warringah Development Control Plan.**
 - **Clause B7 Front Boundary Setbacks of the Warringah Development Control Plan.**
 - **Clause D7 Views of the Warringah Development Control Plan.**

Particulars:

- i) The proposed development fails to meet the numerical requirements and underlying objectives stipulated within Clause B1 Wall Heights, Clause B3 Side Boundary Envelope, and Clause B7 Front Boundary Setbacks.
- ii) The proposed development gives rise to an unacceptable impact on views obtained by adjacent and surrounding sites. It is considered that the impact upon these views, particularly

when considering the variations to the above-mentioned DCP provisions, is not representative of view sharing and the outcome is contrary to the planning principle established in *Tenacity v Warringah Council*.

2. 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:

i) The cumulative impact of non-compliances of relevant controls within the Warringah Development Control Plan, and the resultant unreasonable amenity impacts upon adjoining and nearby properties, is such that approval of the proposed development would not be within the public's interest.



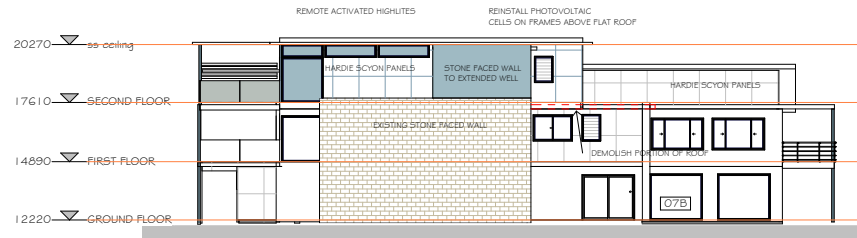
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13 OCTOBER 2023

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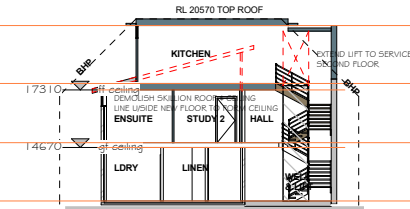
at 6 MONASH PARADE DEE WHY

A3



NORTH ELEVATION

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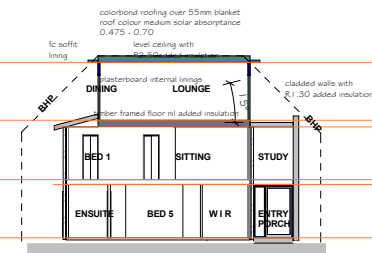
STAIR SECTION

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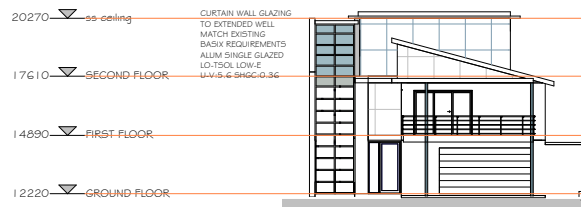
SOUTH ELEVATION

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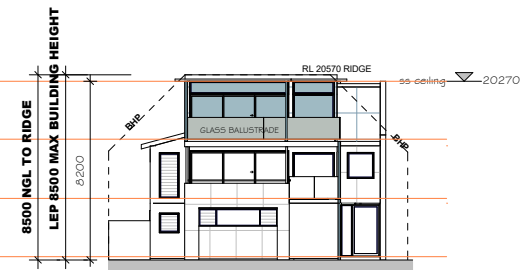
TYPICAL CROSS SECTION

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WEST ELEVATION

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EAST ELEVATION

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NOTE: ALL DIMENSIONS INCLUDING LEVELS TO BE VERIFIED ON SITE

REVISED DEVELOPMENT APPLICATION

DESIGN COPYRIGHT GRAHAM ZERK UNIT 11A, 40 BOWMAN STREET, RICHMOND 2753 ph 4578 8844 fax 4578 8833 EMAIL zerk@netspace.net.au

THIRD STOREY ADDITION TO DWELLING

at 6 MONASH PARADE DEE WHY

13 OCTOBER
2023
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