

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 24 APRIL 2024

Ashleigh Sherry
Manager Business System and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 24 April 2024
via teleconference
Commencing at 10:00 AM**

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ACKNOWLEDGEMENT OF COUNTRY

As a sign of respect, the Northern Beaches Development Determination Panel acknowledges the traditional custodians of these lands on which we gather and pays respect to Elders past and present.

1.0 APOLOGIES & DECLARATIONS OF INTEREST

Nil

2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD ON 10 APRIL 2024

RECOMMENDATION

That the Panel note that the minutes of the Development Determination Panel held 10 April 2024 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1 REV2024/0001 - 9 LINCOLN AVENUE COLLAROY - REVIEW OF DETERMINATION OF APPLICATION DA2023/0123 FOR ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL

PURPOSE

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

RECOMMENDATION

THAT Council as the consent authority **approves** Development Consent to REV2024/0001 for Review of Determination of Application DA2023/0123 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 1 DP 16998, 9 Lincoln Avenue COLLAROY, subject to the conditions set out in the Assessment Report.

Reporting manager	Daniel Milliken
TRIM file ref	2024/268139
Attachments	1 Assessment Report 2 Site Plan and Elevations 3 Clause 4.6

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2024/0001
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Responsible Officer:	Nick Keeler
Land to be developed (Address):	Lot 1 DP 16998, 9 Lincoln Avenue COLLAROY NSW 2097
Proposed Development:	Review of Determination of Application DA2023/0123 for Alterations and additions to a dwelling house including a swimming pool
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Peter Gerard Prendergast Vanessa Jane Hodgson
Applicant:	Anna Jane Williams

Application Lodged:	12/02/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	19/02/2024 to 04/03/2024
Advertised:	Not Advertised
Submissions Received:	4
Clause 4.6 Variation:	4.3 Height of buildings: 6.5%
Recommendation:	Approval

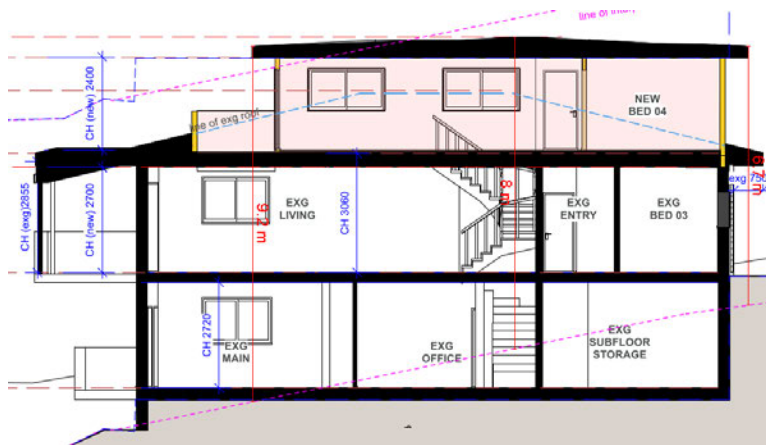
Estimated Cost of Works:	\$ 1,134,906.28
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EXECUTIVE SUMMARY

This development application seeks consent for Review of Determination of Application DA2023/0123 for alterations and additions to a dwelling house including a swimming pool.

The application is referred to the Development Determination Panel (DDP) due to the application being a review of determination with the previous DA being determined by the DDP. The proposed development also involves a building height of 9.05m, which exceeds the 8.5m building height limit by 6.5%.

The 4.6 variation to building height arises from the construction of a first floor addition located over existing excavated and filled levels of the lower ground floor. Based on interpolated natural ground levels along the building long section, the height would range between 6.7m at the front and 9.2m at the southwest corner. Most of the building is under the 8.5m height limit and the compliant portion at the front of the building largely screens the non-compliant portion at the rear when viewed from the dwellings on the northern side of Lincoln Avenue, resulting in negligible additional impact as a result of the non-compliant building height.



The proposed development was notified in accordance with the Northern Beaches Community Participation Plan (CPP) for fourteen (14) days, which received four (4) submissions objecting to the proposal. Concerns raised in the objections predominantly relate to the proposed building height and building bulk of the development, that cause amenity impacts to the surrounding properties (i.e. view loss and solar access).

Amendments were requested in light of the concerns raised in the objections. Amended plans were submitted with an increased western side setback and reduced floor area of the first floor addition.

Critical assessment issues include the proposed variations to the building height, wall height and side building envelope and the resultant impact upon building bulk and view sharing. The amendments are considered to demonstrate an acceptable balance of improved residential amenity for the subject site and minimising unreasonable built form, view loss and amenity impact upon adjacent and nearby properties.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposal (as amended) is suitable and presents an acceptable form of development for the subject site.

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

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks a Review of Determination of Application DA2023/0123 for Alterations and additions to a dwelling house including a swimming pool.

The proposed development involves the following elements:

- Demolition works,
- Alterations to the ground floor to provide an internal stair to the proposed new first floor,
- Construction of a new first floor comprising two bedrooms, a bathroom (one bathroom removed in amendment), living area and terrace,
- New and replaced windows, and
- Swimming pool and associated deck.

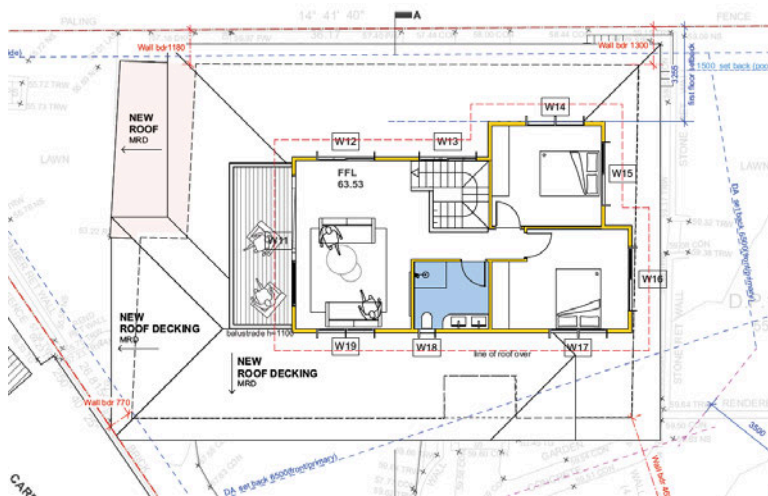
AMENDED PLANS

During assessment of the review of determination, Council raised concerns that the proposed development presented a bulk and scale that would unreasonably impact upon the amenity and views of adjacent and nearby properties.

To address these concerns, the applicant submitted plans which included the following amendments to the first floor addition (see image below):

- increased western side setback from 2.5m to between 3.2m and 4.4m
- reduction of floor area from 68m² to 63m², including deletion of one bathroom
- reduction of the area of the terrace from 17.3m² to 10.8m²

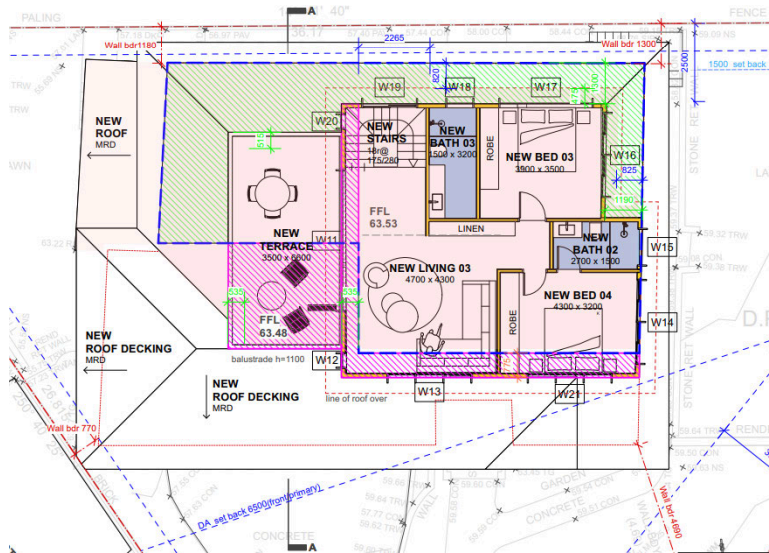
It is considered these amendments adequately address Council's concerns.



In accordance with the provisions of the Northern Beaches Community Participation Plan, re-notification of the application was not required. The amendments are considered to be minor and will result in a lesser environmental impact on nearby properties and the public domain. Despite this, all objectors were advised that amended plans had been received and were given the opportunity to provide additional comment.

ORIGINAL DA PLANS

For the benefit of the DDP, below is an extract of the first floor addition plan that was refused, which can be used to compare the siting of the first floor addition under consideration in this review of determination.



ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

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

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings

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 - D1 Landscaped Open Space and Bushland Setting

Warringah Development Control Plan - D7 Views

Warringah Development Control Plan - D9 Building Bulk

Warringah Development Control Plan - D16 Swimming Pools and Spa Pools

SITE DESCRIPTION

Property Description:	Lot 1 DP 16998 , 9 Lincoln Avenue COLLAROY NSW 2097
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the southern side of Lincoln Avenue and western side of Lancaster Crescent.</p> <p>The site is irregular in shape with a primary street frontage of 8.955m along Lincoln Avenue and secondary street frontage of 27.285m along Lancaster Crescent. The site has a surveyed area of 558.9m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a dwelling house.</p> <p>The site topography slopes downward from north to south by approximately 7m. The site consists of a lawn area to the north and south with various garden beds.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised predominately by both two (2) and three (3) storey dwelling houses of various architectural designs.</p>

Map:



SITE HISTORY

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

Application **DA2023/0123** for Alterations and additions to a dwelling house including a swimming pool was refused on 24/10/2023 by the Development Determination Panel.

The panel refused the DA for the following reasons:

1. *Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with Clause 4.3 Height of Buildings and Clause 4.6 Exception to development standards of the Warringah Local Environmental Plan 2011.*

Particulars

- i) *The proposal seeks consent to contravene the maximum building height by 6.5%. This variation in conjunction with the built form non-compliances of the WDCP 2011 which gives arise to amenity and visual impacts, fails to justify the acceptability of such a variation.*
- ii) *The environmental planning grounds advanced with the written Clause 4.6 exceptions to development standards are not considered to be sufficient.*

Comment:

The building design amendments demonstrated in the review plans and documents are considered to satisfy this reason for refusal. Despite still involving a 6.5% variation to the building height, the design and siting of the development has been amended to further reduce adverse amenity and visual impacts upon adjacent and nearby properties. The applicant has demonstrated that numerical compliance with the building height is unnecessary in this case and provides sufficient environmental planning grounds to justify variation to the building height development standard. Refer to detailed assessment under Clause 4.6 of WLEP 2011.

2. *Pursuant to Section 4.15(1)(a)(i) Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with Clause 1.2 Aims of the Plan of the Warringah Local Environmental Plan 2011.*

Particulars

- i) *The proposed development seeks consent for multiple non-compliances to the built form which, collectively, results in adverse amenity impacts upon surrounding properties. These nonconforming elements and the extent of variations sought, in conjunction with the size of the allotment, does not promote a design that is proportionally compatible with neighbouring development or the existing streetscape.*

Comment:

The built form of the proposed development has been revised to further reduce amenity impacts upon surrounding properties, including increased side setbacks of the first floor addition and reduction in building envelope non-compliance. It is considered the bulk and scale of the proposed development, as amended, demonstrates greater proportionality with the existing dwelling and the size of the allotment and is commensurate to the bulk and scale of other residential dwelling houses in the locality. As such, this reason for refusal is considered to be satisfied. Refer to detailed assessment under the WDCP development controls.

3. *Pursuant to Section 4.15(1)(a)(iii) and 4.15(1)(b) & (c) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the following controls*

within the Warringah Development Control Plan: A.5 Objectives, B1 Wall Heights, B3 Side Boundary Envelope, D7 Views and D9 Building Bulk.

Particulars

- i) The proposed development fails to meet the numerical requirements and underlying objectives of the controls as listed above, presenting a design of unacceptable building mass, resulting in an overdevelopment of the site, with the dwelling house breaching its built form limitations that are set by the DCP. The consequence of the development contributes to amenity impacts to surrounding properties.*
- ii) The proposed development by way of its building mass, and height breach gives rise to an unacceptable impact on views obtained by adjacent properties. It is considered that the impact to these views is not representative of view sharing and the outcome is contrary to the planning principle established in Tenacity v Warringah Council.*

Comment:

Despite still involving numerical non-compliance with the building height, wall height and building envelope development controls, the proposed development, as amended, is considered to more appropriately address the concerns regarding overdevelopment and amenity impact. The building mass and siting has been reduced to lessen the impact of the visual dominance of the new first floor addition, reduce overshadowing and ensure reasonable view sharing is provided between properties. A detailed view impact analysis of the proposed development has found that the extent of impact of existing views by the development is reasonable in the context of the site and surrounds, refer to detailed assessment under Part D7 of WDCP. As such, this reason for refusal is considered to be satisfied. Refer to detailed assessment under the WDCP development controls.

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

Particulars

- i) The extent of non-compliances of relevant controls within the Warringah Development Control Plan and clauses within the Warringah Local Environmental Plan 2011, 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.*

Comment:

The proposed development, as amended, is considered to more appropriately respond to the spatial constraints of the site and demonstrates a building design that aims to minimise adverse built form and amenity impact upon adjoining and nearby properties. As such, the proposed development is now considered to be in the public interest and this reason for refusal satisfied.

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

Section 4.15 Matters for Consideration	Comments
and economic impacts in the locality	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.

Section 8.3 Application for and conduct of review

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

In accordance with Section 8.3 (2) of the Act, the request for the review must be made and determined within 6 months after the date of determination of the development application. The application was determined on 24 October 2023 and the notice of determination was issued on 25 October 2023. The review was lodged on 12 February 2024 and is to be considered by the Development Determination Panel on 24 April 2024, which is within 6 months of the date of determination.

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

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

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 19/02/2024 to 04/03/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Ms Karlie Samantha Bombardier	475 Pittwater Road BROOKVALE NSW 2100
Benjamin Baxter	11 Lincoln Avenue COLLAROY NSW 2097
Withheld	COLLARROY NSW 2097
Mr Themis Garagounis	34 Cromer Road CROMER NSW 2099

The following issues were raised in the submissions:

- View loss
- Building height, bulk and scale
- Overshadowing

The above issues are addressed as follows:

- **View loss**

The submissions raised concerns that the proposed development will result in unreasonable view loss upon dwelling opposite the site on the northern side of Lincoln Avenue.

Comment:

A detailed view impact analysis of the proposed development has found that the extent of impact of existing views by the development is reasonable in the context of the site and surrounds. Refer to assessment made under Part D7 of WDCP for details.

- **Building height, bulk and scale**

The submissions raised concerns that the height, bulk and scale of the proposed development is excessive and will result in unreasonable impacts upon adjacent properties.

Comment:

A detailed assessment of the height, bulk and scale of the proposed development has found that no unreasonable built form or amenity impact upon adjacent or nearby properties is expected. Refer to assessment made under Clause 4.6 of WLEP 2011 and Parts B1, B3 and D9 of WDCP for details.

- **Overshadowing**

The submissions raised concerns that the proposed development will cause unreasonable overshadowing of the internal living areas of adjacent dwellings.

Comment:

The proposed development demonstrates compliance with the minimum solar access requirements to the main private open space of adjacent properties. The WDCP does not include a provision to consider the overshadowing and solar access to internal living areas. As such, unreasonable overshadowing is not expected to be caused by the proposed development.

In summary, the proposed development, as amended, is considered to adequately respond to the concerns raised in the submissions and by Council. As such, this assessment finds there to be no reasons to refuse the development application based on the issues raised in the submissions.

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	<p><i>Supported, subject to conditions</i></p> <p>The amended proposal and review application have been assessed against applicable biodiversity provisions. The application would result in limited changes to biodiversity outcomes; as such, the previous biodiversity referral comments remain relevant.</p>
External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p><i>No objection</i></p> <p>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.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No. A476712_03, dated 09/04/2024).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who raised no objections.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

- 1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:

- a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
- b) coastal environmental values and natural coastal processes,
- c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
- d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
- e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
- f) Aboriginal cultural heritage, practices and places,
- g) the use of the surf zone.

Comment:

The proposed development is not expected to cause adverse impact to the coastal environment area.

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

Comment:

Council is satisfied that the proposed development is appropriately designed and sited to ensure adverse impact to the items referred to in subsection (1) is avoided.

Division 5 General

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

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

Comment:

Council is satisfied the proposed development will not cause an increased risk of coastal hazards on the site or surrounding land.

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

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

Comment:

All relevant provisions of applicable certified coastal management programs have been considered as part of the assessment of the application.

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

Chapter 4 – Remediation of Land

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

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	9.05m	6.5%	No

Compliance Assessment

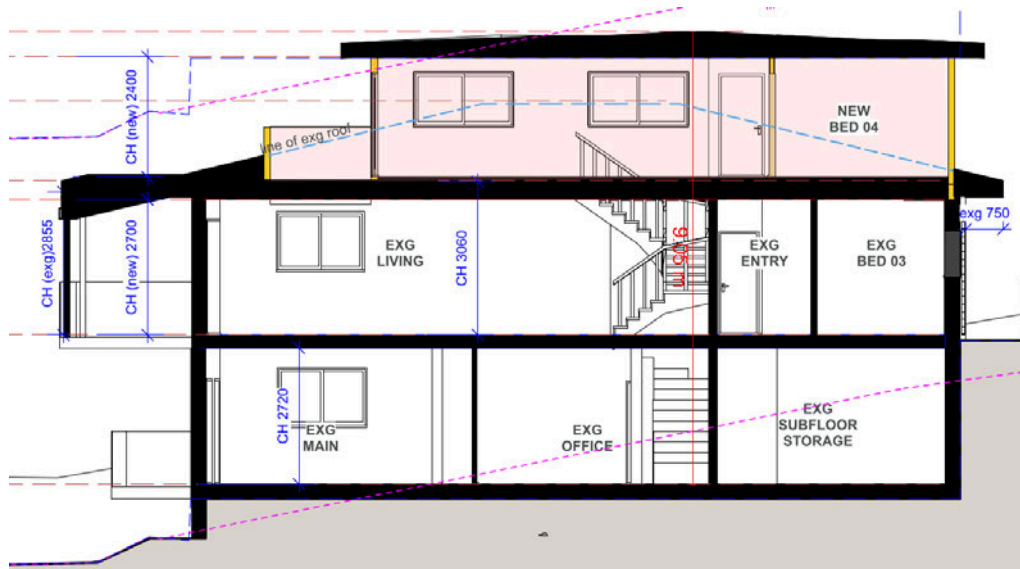
Clause	Compliance with Requirements
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment**4.6 Exceptions to development standards**

The application seeks consent to vary a development standard as follows:

Development standard: Clause 4.3 Height of Buildings

Requirement: 8.5m
Proposed: 9.05m
Percentage of variation: 6.5%



With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is accompanied by a document that sets out the grounds on which the Applicant seeks to demonstrate the matters set out in Clause 4.6(3)(a) and (b) of the WLEP 2011 (the 'Clause 4.6 Request').

Subclause (1) of this clause provides that:

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

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

Comment:

The objectives of this clause have been considered pursuant to Section 4.15(a)(i) of the *Environmental Planning and Assessment Act 1979*.

Subclause (2) of this clause provides that:

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

Comment:

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

Subclause (3) of this clause provides that:

(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

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

Comment:

Council is satisfied that the Applicant has demonstrated that compliance with Clause 4.3 Height of Buildings is unreasonable or unnecessary in the circumstances of this application for the following reasons:

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

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

Comment:

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

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

The Clause 4.6 Request argues, in part:

1. Historical excavation

The height breach occurs where the proposed upper roof form is situated over the excavated footprint of the existing dwelling. In accordance with the findings of the NSW LEC in Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582, *the prior excavation of the site within the footprint of the existing building, which distorts the height of buildings development standard plane overlaid above the site when compared to the topography of the hill, can properly be described as an environmental planning ground within the meaning of clause 4.6(3)(b) of WLEP 2011.*

2. Topography

The topography of the site is unusual, falling both north-south and east-west. This is evident in the Height Plane Blanket Diagrams, which reflects the natural fall of the land and highlights that the extent of non-compliance is responsive to the unusual topography of the site.

... the proposed upper floor is maintained well below the interpolated height plane for a considerably larger proportion of the dwelling than that which sits slightly above, demonstrating that the proposal is suitably responsive to the natural fall of the land.

3. Characterisation of development

The proposed development is appropriately characterised as alterations and additions to the existing dwelling and is bound by the levels of the existing development. The development has been designed to marry the architectural style of the existing dwelling, with a pitched roof proposed at the upper most level. This is seen to be a better outcome compared to other roof forms, as follows:

- *A flat roof, which would require a parapet, would increase the extent of non-compliance at the edges of the roof form, which seems somewhat counter-productive in light of the concerns raised by Council to date, and*
- *A skillion roof would require an increased height along the northern elevation. Whilst this may achieve a greater level of compliance at the southern end, the increased height along the front northern elevation would result in further impacts to views from the lower levels of upslope properties. Furthermore, this would be an inferior architectural outcome for the site noting the pitch of the existing roof is to be retained.*

Despite the minor non-compliance, the proposed amended roof design is the most skilful design solution in consideration of the context of the site.

4. Contextual response

There is a strong precedence of three storey development and exceedance of the 8.5m height limit in the vicinity of the site, including the recent developments approved by Council at:

- *4 Lincoln Avenue (DA2021/0077)*
- *6 Lincoln Avenue (DA2021/0324)*
- *8 Lincoln Avenue (DA2016/1321)*
- *20 Lancaster Crescent (DA2015/0171)*

In addition to these, there are a number of dwellings that have the appearance of a height that exceeds the height limit, having had the benefit of being developed without the inclusion of areas of existing excavation.

The previous Assessment Report suggests that the examples listed are not comparable, because the extent of variation proposed far exceeds that supported on adjoining sites. However, the Assessment Report incorrectly compares the proposed height exceedance when measured to existing ground level to prior height exceedances measured to natural ground level. The height measurements must be compared in the same context, and in this respect, any comparison should be made to the building height measured to natural ground level.

When measured to natural ground level, the height exceedance proposed is limited to 300mm or 3.5%, far less than the 7.25% - 20.4% variations supported on surrounding and nearby sites.

Council Response:

Council is satisfied that the Applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of Clause 4.3 Height of Buildings for the following reasons:

- The building height is artificially accentuated due to the existing area of excavation relative to the prevailing slope of the site and surrounds.

- The building height does not cause unreasonable view loss, as discussed under Part D7 of WDCP.
- The proposed development generally maintains the pattern of the neighbourhood including predominant heights.
- The development promotes good design and amenity of the built environment, noting that the dwelling house integrates and works with the sloping topography of the property while maintaining suitable amenity for adjoining properties.
- The proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, thereby satisfying objects 1.3(c) and (g) of the EPA Act.

Public Interest:

Matters relevant to public interest in respect of the development are considered in the relevant sections of this report as per Section 4.15(1)(e) of the EPA Act.

Conclusion:

Council is satisfied as to the matters set out in Clause 4.6 of the WLEP 2011.

It is considered on balance, that having regard to the particular circumstances where the upper level building bulk and scale has been centrally sited with large boundary setbacks and that a new numerically compliant dwelling house on the site could result in a more impactful built form, less view sharing and poorer amenity outcome to adjacent and nearby properties, the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation	Complies
B1 Wall height	E - 7.2m	8.4m	16.7%	No
	W - 7.2m	8.8m	22.2%	No
B3 Side Boundary Envelope	W - 4m	Outside envelope	Nil to 9.6%	No
	S - 4m	Within envelope	N/A	Yes
B5 Side Boundary Setbacks	W - 0.9m	LGF/GF - 1.2m	Existing	Yes
		FF - 3.2m	N/A	Yes
		Pool - 1.3m	N/A	Yes
	S - 0.9m	LGF/GF - 0.8m	Existing	As existing
		FF - 5.3m	N/A	Yes
B7 Front Boundary Setbacks	Primary - 6.5m	LGF/GF - 8.9m	Existing	Yes
		FF - 10m	N/A	Yes
		Pool - 3.1m	52.3%	No
	Secondary 3.5m	LGF/GF - 4.7m	Existing	Yes
		FF - 7.1m	N/A	Yes

		Pool - 2.7m	22.9%	No
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (223.6m ²)	36.9% (206.3m ²)	7.7% (17.3m ²)	No

Compliance Assessment

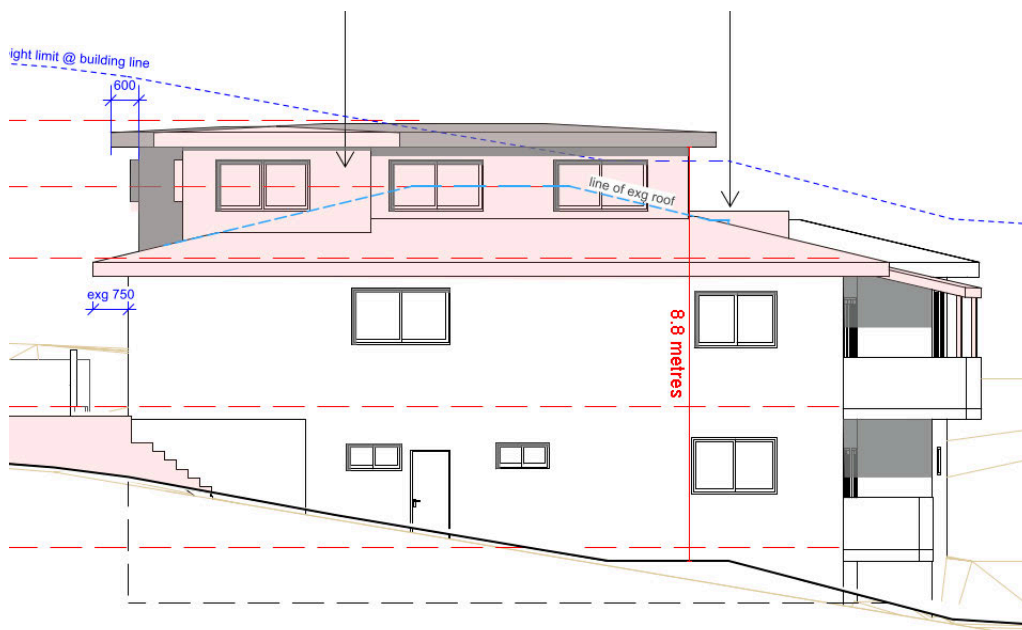
Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D16 Swimming Pools and Spa Pools	No	Yes
D20 Safety and Security	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
E10 Landslip Risk	Yes	Yes

Detailed Assessment**B1 Wall Heights**

Description of non-compliance

This control requires that walls do not to exceed 7.2 metres from ground level (existing) to the underside of the ceiling on the uppermost floor of the building.

The proposed maximum wall height of the dwelling is 8.8m, representing a variation of 22.2%.

Merit consideration:

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

- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

Comment:

Notwithstanding the non-compliance, the proposed development is considered to be appropriately sited to minimise visual impacts caused by the proposed wall height. The wall on the southwest corner with the largest variation is setback 4.4m from the side boundary and 10.4m from the southern boundary. Due to these setbacks, the overall height of the walls will not be readily discernible when viewed from adjacent properties, thereby ensuring the visual dominance of the building is minimised. The wall height is accentuated by the fall of the land towards the southwest and the existing excavation beneath the dwelling.

- *To ensure development is generally beneath the existing tree canopy level*

Comment:

The height of the proposed development is below the tree canopy level.

- *To provide a reasonable sharing of views to and from public and private properties.*

Comment:

The proposed development will not result in any unreasonable view impacts. A detailed assessment of the proposed development against the provisions of Part D7 of WDCP is provided elsewhere in this report.

- *To minimise the impact of development on adjoining or nearby properties.*

Comment:

As discussed above, the large setbacks of the walls from the side boundaries will assist in limiting the visual dominance of the building when viewed from adjacent properties. The extent of impact of the proposed development is considered to be reasonable in the context of the site and adjacent properties.

- *To ensure that development responds to site topography and to discourage excavation of the natural landform.*

Comment:

The proposed development does not require major earthworks or excavation. It is considered to appropriately respond to the topography of the site.

- *To provide sufficient scope for innovative roof pitch and variation in roof design.*

Comment:

The proposed roof form is consistent with other modern roof designs found within the locality. The roof form is designed to minimise view impact upon nearby dwellings.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of 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.

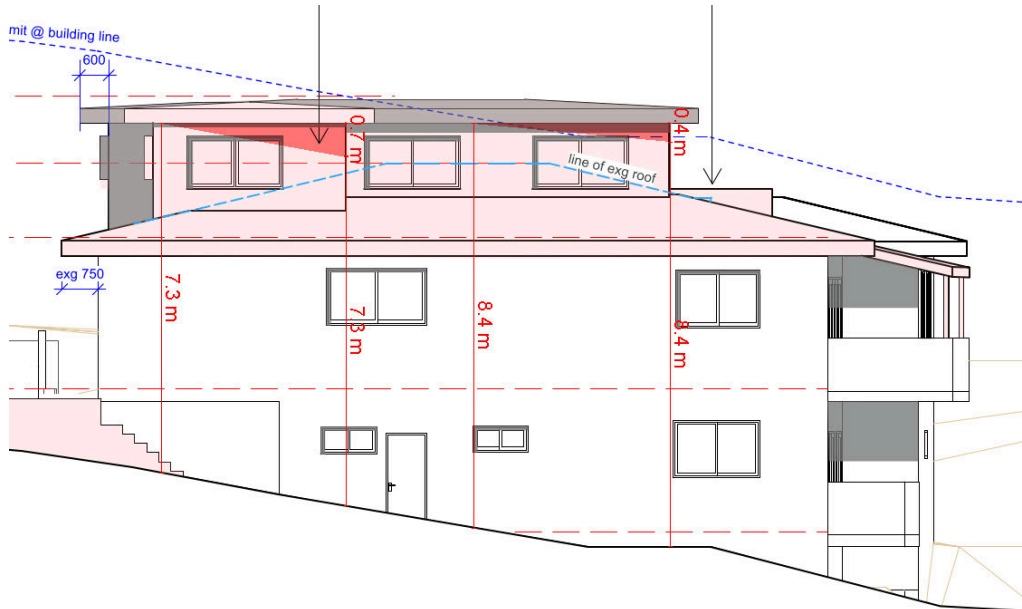
B3 Side Boundary Envelope

Description of non-compliance

The control requires that a building must be sited within the building envelope which is determined by projecting planes at 45° from a height of 4.0m above the ground level at the side boundary.

As shown in the image below, the dwelling encroaches into the side boundary envelope along the

western elevation to a height up to 0.7m, representing a maximum variation of 9.6%.



Merit consideration

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

- To ensure that development does not become visually dominant by virtue of its height and bulk.*

Comment:

The proposed non-compliance with the building envelope control is not found to cause any unreasonable visual impacts. The first floor addition is set back from the side boundaries and sufficiently articulated to ensure the visual dominance of the building is appropriately managed when viewed from adjacent properties. The dwelling will generally present a height, bulk and scale commensurate to that of other nearby dwellings. The locality includes several examples of recently constructed three-storey dwelling houses with side boundary envelope encroachments (see Nos. 4, 6 & 8 Lincoln Avenue). It is considered that the overall built form of the proposal is generally consistent with that of surrounding development.

- To ensure adequate light, solar access and privacy by providing spatial separation between buildings.*

Comment:

The application has demonstrated that the proposal will not have an unreasonable impact with regards to solar access. The adjoining properties will maintained solar access in accordance with the DCP requirements. Adequate levels of privacy between buildings is achieved.

- *To ensure that development responds to the topography of the site.*

Comment:

The proposed development does not require significant alteration to the existing topography of the site. No unreasonable streetscape or amenity impacts are expected to arise as a consequence of the development.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of 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.

B7 Front Boundary Setbacks

Description of non-compliance

The control requires development to be setback a minimum of 6.5m from the primary front boundary and 3.5m from secondary frontages where compatible with the predominant setbacks in that street.

The proposed swimming pool curtilage is setback 3.1m from the primary front boundary, representing a variation of 52.3%, and 2.7m from the secondary front boundary, representing a variation of 22.9%.

Merit consideration:

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

- *To create a sense of openness.*

Comment:

The proposed swimming pool is not expected to unreasonably impact upon the openness of the front setback area as it is located at ground level.

- *To maintain the visual continuity and pattern of buildings and landscape elements.*

Comment:

The existing front setback pattern of buildings along Lincoln Avenue is varied with some examples of swimming pools in the front setback area. The proposed development is not expected to cause unreasonable impact to the visual continuity between buildings and landscape elements.

- *To protect and enhance the visual quality of streetscapes and public spaces.*

Comment:

The proposed development is not considered to unreasonably impact upon the visual quality of the streetscape. The majority of landscaped area in the front setback is to be retained and is capable of the establishment of a variety of vegetation types and sizes.

- *To achieve reasonable view sharing.*

Comment:

The front setback of the proposed development will not cause unreasonable view loss.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of 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.

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

The control requires the minimum landscape open space (LOS) as being of 40% (223.6m²) of the site area with minimum dimensions of 2 metres.

The proposed development includes 36.9% (206.3m²) LOS, representing a variation of 7.7% (17.3m²).

The site has 43.2% (241.5m²) LOS when including areas with dimensions less than 2 metres.

Merit consideration

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

- *To enable planting to maintain and enhance the streetscape.*

Comment:

The proposal provides a sufficient area of soft landscaped and deep soil to the front of the site to enhance the existing streetscape. New screen planting is proposed along the front boundary behind the existing boundary fence to improve privacy of the private open space and soften the built form of the building when viewed from the street.

- *To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.*

Comment:

The site has been altered over the residential history of the allotment. There are no known threatened species or significant vegetation identified on site. No significant topographical

features are found on the site.

- *To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.*

Comment:

Sufficient landscaped open space is provided to establish vegetation that is able to mitigate the visual bulk of the proposed development. There is adequate room for canopy trees and vegetation that is of a scale to reduce the dominance of the built form.

- *To enhance privacy between buildings.*

Comment:

Acceptable levels of privacy are achieved between dwellings.

- *To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.*

Comment:

Adequate private open space is provided.

- *To provide space for service functions, including clothes drying.*

Comment:

Acceptable space for service functions is provided.

- *To facilitate water management, including on-site detention and infiltration of stormwater.*

Comment:

The site has adequate permeable surfaces to ensure that water management and the natural infiltration of stormwater into the ground can occur.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of 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.

D7 Views

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:

4 Lincoln Avenue

The views of concern obtained by this site is achieved towards the south, southeast and southwest partly over the subject site. The views consist of a partial view of Dee Why Beach (land/water interface), Dee Why Lagoon, North Curl Curl Headland, district views and a distant partial view of North Head and St. Patrick's Estate. The ocean views enjoyed by this property are slightly obstructed by powerlines and vegetation.

6 Lincoln Avenue

The views of concern obtained by this site is achieved towards the south, south-east and south-west partly over the subject site. The views consist of a partial view of Dee Why Lagoon, Dee Why Beach (land/water interface), North Curl Curl Headland, district and ocean views and a distant partial view of North Head and St. Patrick's Estate. The views enjoyed by this property are not significantly obstructed.

8 Lincoln Avenue

The views of concern obtained by this site is achieved towards the south, south-east and south-west partly over the subject site. The views consist of an extensive view of Dee Why Lagoon and Dee Why Beach (land/water interface), ocean views, North Curl Curl Headland, district views and distant partial view of North Head and St. Patrick's Estate. The views enjoyed by this property are not significantly obstructed.

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:

4 Lincoln Avenue

The views outlined under Principal 1 are obtained from both the upper ground floor and first floor living rooms (i.e. kitchen, lounge room, dining), bedrooms and balconies. These rooms are situated south (front of the dwelling house). The views are obtained primarily from a standing perspective, however, majority of the views can be obtained in a sitting position.

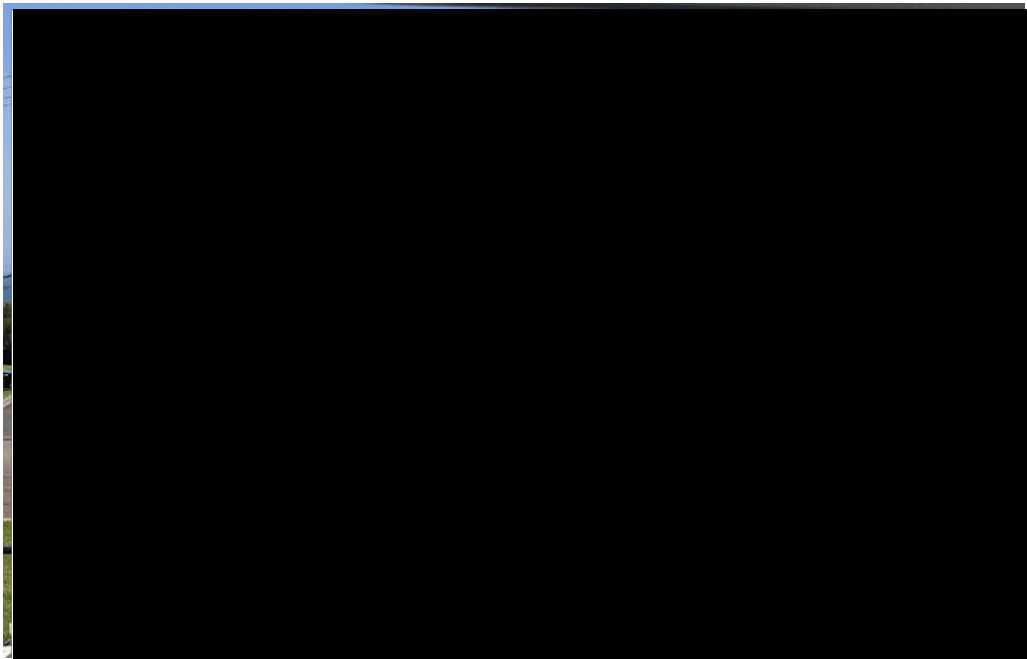


Image 1: View from No. 4 Lincoln Avenue - Upper Ground Floor balcony off main living area

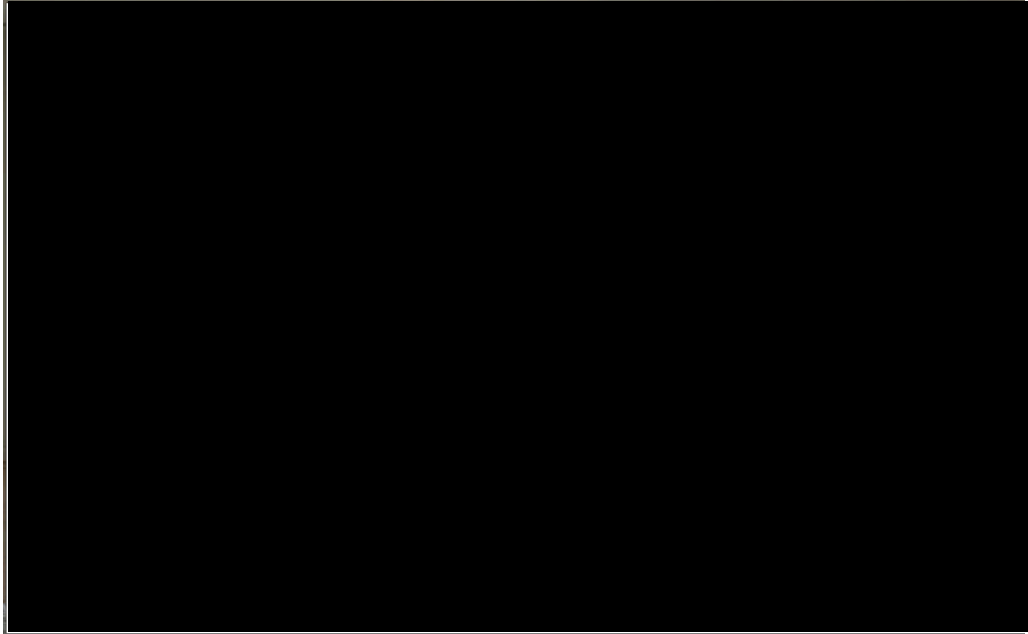


Image 2: View from No. 4 Lincoln Avenue - Upper Ground Floor kitchen

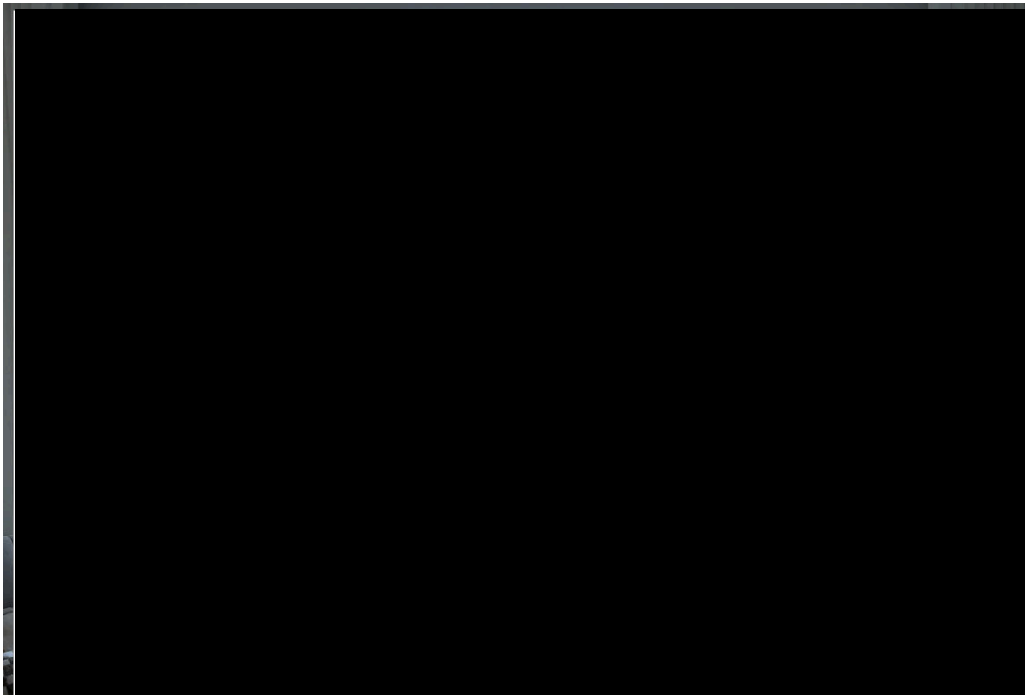


Image 3: View from No. 4 Lincoln Avenue - Upper Ground Floor master bedroom



Image 4: View from No. 4 Lincoln Avenue - First Floor balcony off 2nd living room

6 Lincoln Avenue

The views outlined under Principal 1 are obtained from both the upper ground floor and first floor living rooms (i.e. kitchen, lounge room, dining), bedrooms and balconies. These rooms are situated south (front of the dwelling house). The views are obtained primarily from a standing perspective, however, majority of the views can be obtained in a sitting position. A small portion of ocean views can be obtained from the lower ground floor.



Image 5: View from No. 6 Lincoln Avenue - Upper Ground Floor balcony off living area



Image 6: View from No. 6 Lincoln Avenue - Upper Ground Floor Living Area



Image 7: View from No. 6 Lincoln Avenue - Upper Ground Floor kitchen



Image 8: View from No. 6 Lincoln Avenue - Upper Ground Floor kitchen (zoomed)



Image 9: View from No. 6 Lincoln Avenue - First Floor bedroom balcony

8 Lincoln Avenue

The views outlined under Principal 1 are obtained from both the upper ground floor and first floor living rooms (i.e. kitchen, lounge room, dining), bedrooms and balconies. These rooms are situated south (front of the dwelling house). The views are obtained primarily from a standing perspective, however, majority of the views can be obtained in a sitting position.



Image 10: View from No. 8 Lincoln Avenue - Upper Ground Floor living area and balcony

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:

4 Lincoln Avenue

The view towards the south including a partial view of Dee Why Lagoon and view of Dee Why Beach (land/water interface) will not be significantly affected when viewed from the upper ground floor living rooms and balcony. The land/water interface and much of the sand area of Dee Why Beach and a corridor towards Dee Why Lagoon between the dwellings at No. 9 and No. 11 Lincoln Avenue will be retained. The view of Dee Why Beach including ocean views and the ocean pool will be obscured from the upper ground floor master bedroom and study. Ocean views towards the southeast and the distant partial view of North Head and St. Patrick's Estate will be retained. District views towards the southwest will not be impacted.

The first floor will lose a very small portion of Dee Why Lagoon from all affected rooms. Ocean views towards the southeast will be retained through obstructing vegetation. Majority of district views will be retained from this level, including views of North Curl Curl Headland and distant partial view of North Head and St. Patrick's Estate.

Overall view loss is considered to be **minor to moderate**.

6 Lincoln Avenue

The view towards the south of the land/water interface of North Curl Curl Headland will be reduced from the upper ground floor living room, bedroom and balcony and kitchen/dining areas. The view of Dee Why Beach and distant partial views of North Head will be retained. District views towards the southwest will not be impacted.

The first floor will lose a portion of Dee Why Beach (land/water interface) and sections of water views. It is considered that North Curl Curl Headland, Dee Why Lagoon and the distant partial view of North Head and St. Patrick's Estate will be retained, including other ocean and district views.

Overall view loss is considered to be **minor to moderate**.

8 Lincoln Avenue

Ocean views obtained from the upper ground floor and first floor will be slightly reduced. However, the views of Dee Why Lagoon and Beach (land/water interface), North Curl Curl Headland, district views and distant partial view of North Head and St. Patrick's Estate will be retained. District views towards the southwest will not be impacted.

Overall view loss is considered to be **negligible**.

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:

Despite partial non-compliance with the building height, wall height and side building envelope at the rear of the proposed first floor addition, the extent of impact upon dwellings on the northern side of Lincoln Avenue is considered to be reasonable.

The impact upon the view of Dee Why Beach from the master bedroom and study of No. 4 Lincoln Avenue, while significant, is not considered to be unreasonable as there are several other living areas of the dwelling where this view will be retained. Most of the view impact from this dwelling is caused by compliant built form elements along the Lincoln Avenue frontage. These built form elements are well under with the building height, wall height, side building envelope and setback control limits. The building design has been amended to form a more narrow upper floor to ensure the view corridors on the east and west sides of the dwelling are less impacted.

The impact upon the view towards North Curl Curl headland from the kitchen of No. 6 Lincoln Avenue is not considered to be unreasonable. Similarly to the dwelling at No. 4 Lincoln

Avenue, most of the view impact from this dwelling is caused by compliant built form elements along the Lincoln Avenue frontage. While the land/water interface on the northern side of the headland viewed from the ground floor front living room and kitchen will be impacted by the proposed, the headland interface further south, the partial view of North Head and majority of water views will be retained.

While it is acknowledged that the proposed development will result in a reduction of some existing views, there is potential for new a development on the site to be built higher and closer to the Lincoln Avenue frontage than the proposed development while achieving full numerical compliance, as demonstrated by the applicant's modelling (see Image 11). Such a development would have much more significant impact upon views including the land/water interface of Dee Why Beach and North Curl Curl headland and could result in a worse view sharing outcome compared to the proposed development (see Image 12).



Image 11: Modelling of a theoretical building envelope of a new development on the subject site



Image 12: Modelling of proposed development

As indicated in the images above, by retaining the existing dwelling and incorporating improved design solutions through the reduction of floor area of the first floor addition, lowering the roof profile, incorporating a ceiling height of 2.4m and increasing its the setback to the western side boundary, the proposed development will reduce the impact upon the view corridors on the eastern and western sides and above the dwelling. Specifically, the view corridor between the dwellings at No. 9 and No. 11 Lincoln Avenue towards Dee Why Lagoon from the dwelling at No. 4 Lincoln Avenue and towards Dee Why Beach and ocean pool from the dwelling at No. 6 Lincoln Avenue will be less impacted as a result of the increased western side setback and reduced floor area.

In light of the above assessment, the proposed development is considered to incorporate a skilful design aimed at ensuring reasonable view sharing is provided between dwellings and is commensurate to the height, bulk and scale of other dwellings in the locality.

- *To encourage innovative design solutions to improve the urban environment.*

Comment:

The proposed development demonstrates an innovative and skilful design solutions to minimise view impact and improve upon the urban environment.

- *To ensure existing canopy trees have priority over views.*

Comment:

No canopy trees are proposed to be removed to facilitate the proposed development.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of 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.

D9 Building Bulk

Merit consideration

The development is considered against the underlying Objectives of the Control as follows:

- *To encourage good design and innovative architecture to improve the urban environment.*

Comment:

The proposed development is sited and is of a bulk and scale that is commensurate to other dwellings in the locality. The non-compliant elements are the rear of the building are not considered to result in unreasonable built form or amenity impacts upon adjacent and nearby properties.

- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

Comment:

The proposed development will present as a two storey building from the public domain and the new upper level is appropriately set back from the lot boundaries to limit the visual impact when viewed from the public domain and adjacent properties. The upper floor will not be unreasonably visually dominant from the downslope properties due to its substantial setback from the southern boundary.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of 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.

D16 Swimming Pools and Spa Pools

Description of non-compliance

The control prohibits the siting of swimming pools within the front building setback.

The proposed swimming pool is located within the front setback area.

Merit consideration

The development is considered against the underlying Objectives of the Control as follows:

- *To ensure swimming pools and spas are located to preserve the natural environment, streetscape and residential amenity.*

Comment:

Due to the siting of the existing dwelling and slope of the site, the side and rear of the site is unsuitable for the construction of a swimming pool. The proposed swimming pool location is not expected to result in any unreasonable impact to the streetscape or residential amenity of the locality. The swimming pool is positioned behind the existing front fence and will not be readily visible from the public domain. Substantial landscaped open space is provided within the front setback area and throughout the site to ensure preservation of the natural environment on the site.

- *To encourage innovative design solutions to improve the urban environment.*

Comment:

In light of the above, the proposal and its location for the site is deemed acceptable for the existing urban environment.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of 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.

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 \$11,349 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,134,906.

CONCLUSION

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

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

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

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

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

Council is satisfied that the Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify variation of the development standard contained within Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

PLANNING CONCLUSION

This proposal, for Review of Determination of Application DA2023/0123 for alterations and additions to a dwelling house including a swimming pool has been referred to the Development Determination Panel (DDP) due to the application being a review of determination with the previous DA being determined by the DDP.

The concerns raised in the objections have been addressed and resolved by amending the siting of the first floor addition by increasing the western side setback and reducing the extent of the side building envelope non-compliance. It is considered that a new numerically compliant dwelling house built on the site may cause greater built form and amenity impact upon adjacent and nearby properties compared to the proposed development.

The critical assessment issues the proposed variations to the building height, wall height and side building envelope and the resultant impact upon building bulk and view sharing. These matters are considered to be satisfactorily addressed by the amended plans.

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

REASON FOR DETERMINATION

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

RECOMMENDATION

That Northern Beaches Council, as the consent authority, vary the development standard contained within Clause 4.3 Height of Buildings, pursuant to Clause 4.6 of the Warringah Local Environmental Plan 2011 because the Applicant’s written request has adequately addressed the merits required to be demonstrated by subclause (3) of Clause 4.6.

Accordingly Council as the consent authority grant Development Consent to REV2024/0001 for Review of Determination of Application DA2023/0123 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 1 DP 16998, 9 Lincoln Avenue, COLLAROY, 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
DA100	F	Site & Roof Plan Proposed	Your Beautiful Home	09/04/2024
DA110	F	Lower Ground Floor Plan Proposed	Your Beautiful Home	09/04/2024
DA111	F	Ground Floor Plan Proposed	Your Beautiful Home	09/04/2024

DA112	F	First Floor Plan Proposed	Your Beautiful Home	09/04/2024
DA113	F	Landscape Plan Proposed	Your Beautiful Home	09/04/2024
DA200	F	Elevation North Proposed	Your Beautiful Home	09/04/2024
DA210	F	Elevation South Proposed	Your Beautiful Home	09/04/2024
DA220	F	Elevation East Proposed	Your Beautiful Home	09/04/2024
DA230	F	Elevation West Proposed	Your Beautiful Home	09/04/2024
DA300	F	Sections Proposed AA	Your Beautiful Home	09/04/2024
DA301	F	Sections Proposed BB	Your Beautiful Home	09/04/2024
DA400	F	Materials Proposed	Your Beautiful Home	09/04/2024
DA700	F	Demolition / Excavation / Waste Plan	Your Beautiful Home	09/04/2024
DA900	F	Pool Drawings - 1 of 2	Your Beautiful Home	09/04/2024
DA901	F	Pool Drawings - 2 of 2	Your Beautiful Home	09/04/2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate No. A476712_03	-	Your Beautiful Home	09/04/2024
Preliminary Geotechnical Assessment (Ref: J4705)	-	White Geotechnical Group	15/12/2022
Waste Management Plan	-	Your Beautiful Home	30/11/2022

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

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

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

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	14/02/2024

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on

Council's website www.northernbeaches.nsw.gov.au)

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

3. **Approved Land Use**

Nothing in this consent shall authorise the use of the site beyond the definition of a *dwelling house*, in accordance with the Dictionary of the Warringah Local Environmental Plan 2011.

Any variation to the approved land use beyond the scope of the above definition will require the submission to Council of a new development application.

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

4. **Prescribed Conditions**

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

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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the

work relates (not being the Council) has given the Council written notice of the updated information.

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

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

Reason: Legislative requirement.

5. General Requirements

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

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

- (f) Prior to the release of the Construction Certificate, payment of the following is required:
- i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
 - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
 - iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
- i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished
- The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

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

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

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$11,349.06 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$1,134,906.28.

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. No Clearing of Vegetation

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

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

Reason: To protect native vegetation.

9. Stormwater Drainage Disposal

The stormwater drainage systems for the development are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy.

All stormwater drainage systems must comply with the requirements of Council's Water Management for Development Policy. Any recommendations identified within a Geotechnical Report relevant to the development are to be incorporated into the design of the stormwater drainage system. Details demonstrating compliance from a qualified and practising Civil Engineer and where relevant a Geotechnical Engineer must be submitted to and approved by the Certifier prior to the issue of a Construction Certificate.

When the proposed discharge point for the development in this consent cannot strictly comply with the Water Management for Development Policy, the Applicant must apply to verify the

proposed discharge point by gaining Council approval via a Stormwater Drainage Application. Council approval must be provided to the Certifier prior to the issue of a Construction Certificate when a Stormwater Drainage Application is required. The Stormwater Drainage Application form can be found on Council's website.

Compliance with this condition must not result in variations to the approved development or additional tree removal.

Reason: To ensure satisfactory management of stormwater.

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.

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. **Installation and Maintenance of Sediment Control**

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

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

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

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

13. **Compliance with Standards**

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

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

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

14. **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.

15. **Sydney Water "Tap In"**

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

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

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

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

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

DURING BUILDING WORK

16. **Wildlife Protection**

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

Reason: To protect native wildlife.

17. **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 at the following stages of construction:

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

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

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

20. Waste Management During Development

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

21. New Vegetation Planting

Any new landscaping is to incorporate locally native species in order to retain and enhance native vegetation and the ecological functions of wildlife corridors. Species are to be consistent with the relevant section of the Native Planting Guide available on Council's website.

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

Reason: To ensure compliance with the requirement to retain and protect native planting on the site.

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. **Stormwater Drainage Disposal Certification**

Certification from an appropriately qualified and practising Civil Engineer demonstrating the stormwater drainage systems have been designed and installed in accordance with the requirements of Council's Water Management for Development Policy and where relevant a Geotechnical Engineer shall be provided to the Principal Certifier prior to the issue of an Occupation Certificate, and;

If any on site stormwater detention system is installed the Applicant shall lodge the Legal Documents Authorisation Application with Council.

The application is to include the completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification. A guide to the process and associated Legal Document Authorisation Application form can be found on Council's website. The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater detention system within this development consent.

The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the authority to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user for the on-site stormwater detention system is to be submitted.

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

Reason: To ensure satisfactory management of stormwater.

24. **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.

25. **Removal of All Temporary Structures/Material and Construction Rubbish**

Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

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

Reason: To ensure bushland management.

26. **Waste Management Confirmation**

Prior to the issue of an Occupation Certificate, evidence / documentation must be submitted to the Principal Certifier that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

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

27. **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

28. Geotechnical Recommendations

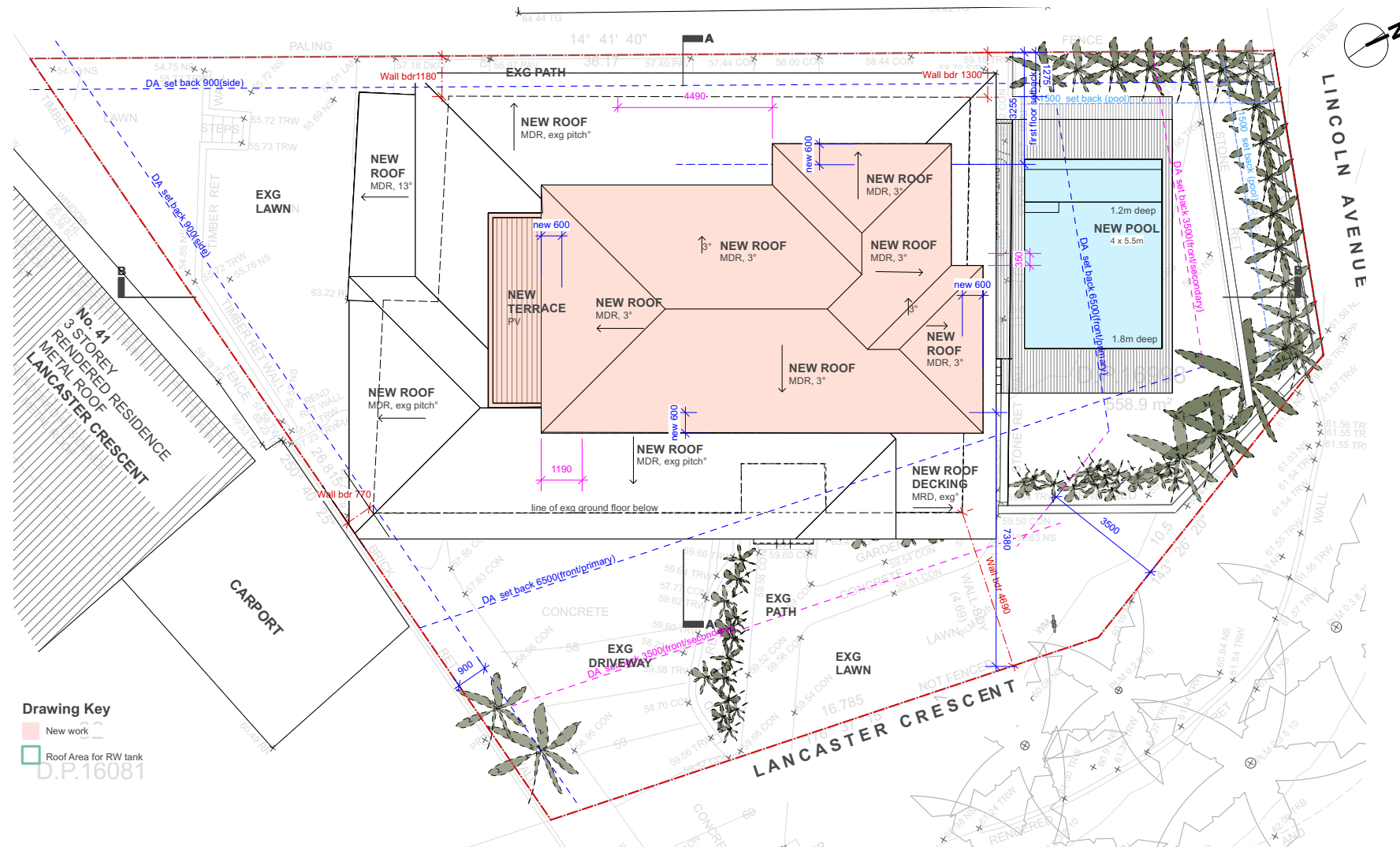
Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

29. 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.



YOUR
BEAUTIFUL
HOME

PROJECT ADDRESS
9 Lincoln Avenue
Collaroy NSW 2097
Lot 1 DP16998 558.9sqm

DATE
September 2022

CLIENT/S
Vanessa & Peter
Hodgson

STATUS
DA Application

REVISION
D 25/3/24
E 3/4/24
F 9/4/24

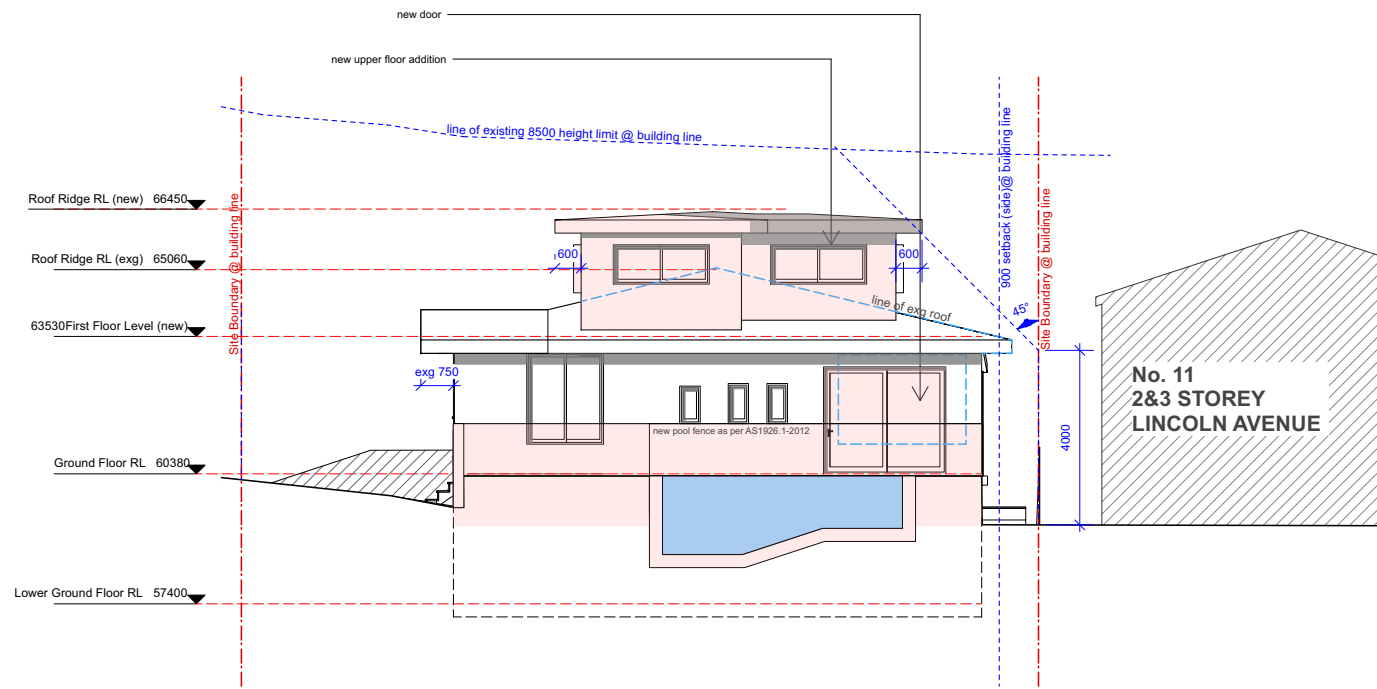
for council review
For council review
for council review

SITE & ROOF PLAN
PROPOSED

NOT FOR CONSTRUCTION

DA100

SCALE
1:100



Drawing Key

- New work
- New Walls
- Existing walls
- Demolish
- Fill

1 PROPOSED NORTH ELEVATION
Scale: 1:100



PROJECT ADDRESS
9 Lincoln Avenue
Collaroy NSW 2097
Lot 1 DP16998 558.9sqm

DATE
September 2022

CLIENT/S
Vanessa & Peter
Hodgson

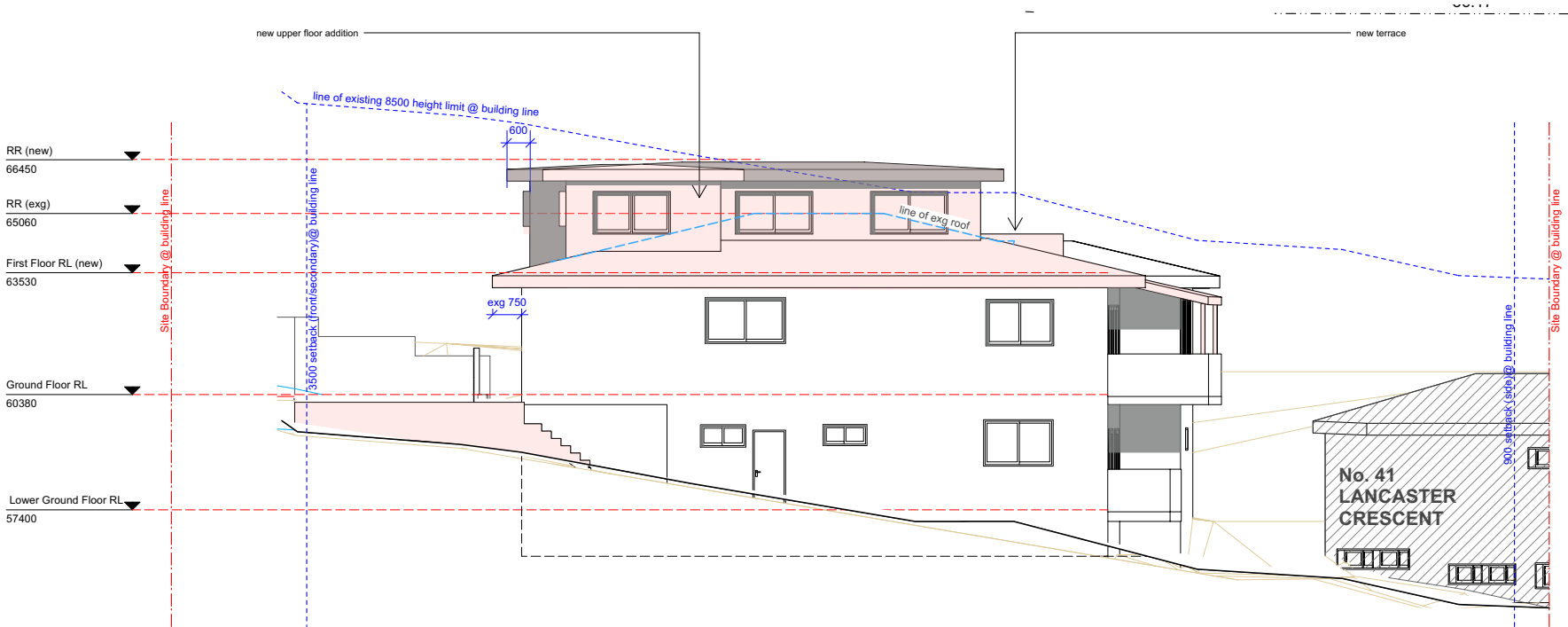
STATUS
DA Application

REVISION
D 25/3/24 for council review
E 3/4/24 For council review
F 9/4/24 for council review

ELEVATION NORTH
PROPOSED
NOT FOR CONSTRUCTION

DA200

SCALE
1:100



1 PROPOSED WEST ELEVATION
Scale: 1:100

Drawing Key

- New work
- New Walls
- Existing walls
- Demolish
- Fill



PROJECT ADDRESS
9 Lincoln Avenue
Collaroy NSW 2097
Lot 1 DP16998 558.9sqm

DATE
September 2022

CLIENT/S
Vanessa & Peter
Hodgson

STATUS
DA Application

REVISION
D 25/3/24 for council review
E 3/4/24 For council review
F 9/4/24 for council review

ELEVATION WEST
PROPOSED

NOT FOR CONSTRUCTION

DA230

SCALE
1:100



*request to vary
a development standard*



REQUEST TO VARY A DEVELOPMENT STANDARD (AMENDED)

9 LINCOLN AVENUE
COLLARROY NSW 2097

April 2024

Prepared by Rebecca Englund
B Arch Studies | M Plan | MPIA

Director | Northern Beaches Planning

Phone: 0472 65 74 74

Web: www.northernbeachesplanning.com.au

Email: rebecca@northernbeachesplanning.com.au



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introduction

This request to vary a development standard is made by Northern Beaches Planning on behalf of Vanessa and Peter Hodgson in relation to an application for alterations and additions to the existing dwelling and the construction of a swimming pool at 9 Lincoln Avenue, Collaroy (**site**). This request is made pursuant to clause 4.6 of Warringah Local Environmental Plan 2011 (**WLEP 2011**) and with regard to relevant case law.

standard to be varied

With a maximum building height of 9.05m, the proposed development is non-compliant with the 8.5m maximum building height prescribed by clause 4.3 of WLEP 2011. The maximum building height is a development standard, as defined by the EP&A Act, and as such, the provisions of clause 4.6 of WLEP 2011 can be applied.

Pursuant to clause 4.6(2) of WLEP 2011, consent may be granted for development even though the proposal contravenes a development standard prescribed by an environmental planning instrument. Whilst this clause does not apply to those standards expressly excluded from this clause, the building height development standard of clause 4.3 of WLEP 2011 is not expressly excluded and thus, the provisions of clause 4.6 can be applied in this instance.

extent of the proposed breach

The proposed development reaches a maximum height of 9.05m, representative of a 0.55m or 6.5% maximum variation to the 8.5m maximum building height development standard. The maximum height exceedance occurs at the pitch of the proposed upper floor roof (RL 66.45m AHD) over an area of historical excavation (RL 57.40m AHD) associated with the existing subfloor storage area. The extent of non-compliance with the 8.5m maximum building height development standard is highlighted in the Height Blanket Diagrams to Existing Ground Level prepared by Your Beautiful Home that form part of the plan set.

However, the extent of variation is exaggerated by historical excavation associated with an existing subfloor. If this historical excavation was excluded, consistent with the findings of the NSW LEC in *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582, the extent of non-compliance is reduced both in area and height, to a maximum height of only 300mm or 3.5%, being the thickness of the eave/gutter at the south-western corner of the upper floor, as shown in the Height Blanket Diagram to Interpolated Ground Level prepared by Your Beautiful Home that form part of the plan set.

unreasonable or unnecessary

Pursuant to clause 4.6(4) of WLEP 2011, consent can only be granted if the consent authority is satisfied that the applicant's written request to vary the development standard has addressed the criteria of clause 4.6(3) of WLEP 2011. Clause 4.6(3)(a) of WLEP 2011 requires the applicant to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

In accordance with the decision of the NSW LEC in the matter of *Wehbe v Pittwater Council* [2007] NSWLEC 827 and as confirmed in the matter of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, one way in which strict compliance with a development standard may be found to be unreasonable or unnecessary is if it can be demonstrated that the objectives of the standard are achieved, despite non-compliance with the development standard.

The proposed development is consistent with the objectives of the building height development standard, as prescribed by clause 4.3(1) of WLEP 2011, as follows:

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

Comment: As seen from Lincoln Avenue, the proposed development presents as a one and two storey dwelling. As seen from Lancaster Crescent, the dwelling presents as a two storey dwelling that steps down the slope of the site. A minor portion of the proposal reaches three storeys however this is not perceived from the public domain, with appropriate setbacks and articulation to ensure that the apparent size of the dwelling is minimised.

However, the incorporation of a third storey is not uncommon within the visual catchment of the site. Rather, three storey dwellings are entirely characteristic of the locality, with contemporary dwellings featuring three storeys in one plane highly prominent from the public domain, as evident in Figures 1-5 on the following pages.

Consistent with the findings of the NSW LEC in the matter of *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191, to be compatible in an urban design context is to be capable of existing in harmony together.

Visually, the height and scale of the proposed two-three storey dwelling is entirely compatible with of surrounding and nearby development. The non-compliance associated with the upper roof form, being a roof form associated with a portion of the dwelling that has a two storey appearance to the public domain, does not detract from consistency with this objective.

It is noted that the previous Assessment Report raises concerns that the resultant dwelling will sit higher than the dwellings to the west of the site. However, this is somewhat unavoidable when the land falls downwards to the west, as shown on the Lincoln Avenue Street Elevation (DA1000) by Your Beautiful Home at Figure 6. Noting that the height plane follows the natural fall of the land, it would be unreasonable for Council to refuse the proposal simply because it sits higher than downslope properties.



Figure 1 – Dwellings on the high side of Lincoln Avenue, from 2 Lincoln Avenue (far right) to 8 Lincoln Avenue (far left)
Source: NBP



Figure 2 –24 Lancaster Crescent
Source: NBP



Figure 3 –28 (right) and 30 Lancaster Crescent (left)
Source: NBP



Figure 4 –20 Lancaster Crescent
Source: NBP



Figure 5 –25 Suffolk Avenue
Source: NBP

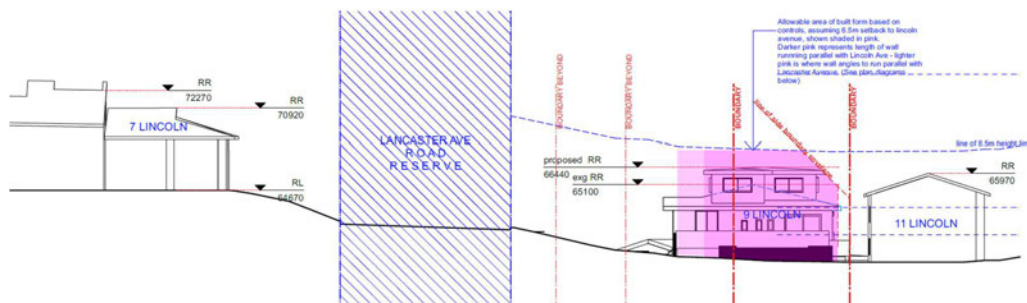


Figure 6 – The Lincoln Avenue Streetscape Elevation, demonstrating that the proposal is suitably responsive to the fall of the land and the height of the closest dwelling uphill and downhill dwellings
Source: Your Beautiful Home

(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,

Comment: As discussed above, the proposed development has been designed to minimise the visual appearance of the development, with a high degree of articulation and varied setbacks to ensure that, unlike other nearby dwellings, no three storey element presents to the public domain.

The proposed development will not result in adverse or unreasonable overshadowing of adjoining properties as demonstrated by the Shadow Diagrams prepared by Your Beautiful Home to accompany the application.

The non-compliant portions of the development are limited to the roof, which does not attribute to any adverse impacts upon privacy of adjoining properties.

Whilst the proposed roof will impact upon existing views obtained over the existing development, this impact will be reasonable. The extent of impact has been reasonably minimised, with a limited floor plate proposed at the upper level and considerable portions of the developable area maintained well below the height plane.

Based on the revised design, Council can be satisfied that:

- With respect to 4 Lincoln Avenue, the impact upon views is described as minor and reasonable, with the beach view maintained from living rooms and balconies and any impact to the view to Dee Why Lagoon or the beach from bedrooms arises from the compliant portion of the development.
- With respect to 8 Lincoln Avenue, impact upon views is described as minor and reasonable, with all primary elements of the views maintained and the resultant impact upon a portion of the ocean arising from the compliant portion of the development.

It is noted that Council has raised particular concern with regard to the potential impact upon views enjoyed from 6 Lincoln Avenue, and as such, the width of the upper floor has been further reduced to achieve compliance with the prescribed building envelope and to maximise the retention of views between properties.

As shown on Figure 7, the non-compliant portion of the proposal will have a minor impact upon the view towards the base of Dee Why Headland from the east of the living level front balcony. However, the majority of this impact is associated with compliant elements of the development, and all efforts have been made to minimise this impact, with nominal roof pitch and minimal internal ceiling heights. It is also relevant to observe the quick growing nature of the plants immediately adjacent/below to the area of potential impact, which are also likely to grow and obstruct the view in question.

Further, it is noted that this impact will not be as perceptible as one moves to the west on the living level front balcony, with these views wholly maintained from the front bedrooms and balcony on the level above. Further, the iconic elements of the view, being the view to St Patrick's Cathedral in Manly and views to the city skyline will also be maintained from both upper levels.

It is noted that the control seeks to "minimise" impacts upon views. This is distinctly different from any requirement to maintain or preserve existing views, and some level of impact upon views is foreshadowed.



Figure 7 – The outline of the modified development with the non-compliance highlighted in red
Source: Your Beautiful Home

- (c) *to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*

Comment: The proposed development is compatible with the form and scale of surrounding and nearby development and will not be visually offensive in the streetscape context or when seen at a distance from Dee Why Beach. The proposed upper floor addition has been designed to integrate with the form of the existing dwelling and the resultant development is a well-articulated and skilful design solution that is appropriately responsive to the context of the site.

- (d) *to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities,*

Comment: The proposed development presents as a one and two storey dwelling as seen from Lincoln Avenue, and as a two storey dwelling that steps down the slope of the site from Lancaster Crescent. When viewed from a distance, the proposed development would not be readily distinguishable in its context, which is characterised by comparably large dwellings with limited landscaping.

As such, strict compliance with the maximum building height development standard is unreasonable and unnecessary in the circumstances of this case.

sufficient environmental planning grounds

Clause 4.6(3)(b) of WLEP 2011 requires the applicant to demonstrate that there are sufficient environmental planning grounds to justify contravention of the standard. The specific environmental planning grounds to justify the proposed contravention of the height standard are as follows:

1. Historical excavation

The height breach occurs where the proposed upper roof form is situated over the excavated footprint of the existing dwelling. In accordance with the findings of the NSW LEC in *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582, the prior excavation of the site within the footprint of the existing building, which distorts the height of buildings development standard plane overlaid above the site when compared to the topography of the hill, can properly be described as an environmental planning ground within the meaning of clause 4.6(3)(b) of WLEP 2011.

2. Topography

The topography of the site is unusual, falling both north-south and east-west. This is evident in the Height Plane Blanket Diagrams, which reflects the natural fall of the land and highlights that the extent of non-compliance is responsive to the unusual topography of the site.

As shown in Figure 8, the proposed upper floor is maintained well below the interpolated height plane for a considerably larger proportion of the dwelling than that which sits slightly above, demonstrating that the proposal is suitably responsive to the natural fall of the land.



Figure 8 – Section BB
Source: Your Beautiful Home

3. Characterisation of development

The proposed development is appropriately characterised as alterations and additions to the existing dwelling and is bound by the levels of the existing development. The development has been designed to marry the architectural style of the existing dwelling, with a pitched roof proposed at the upper most level. This is seen to be a better outcome compared to other roof forms, as follows:

- A flat roof, which would require a parapet, would increase the extent of non-compliance at the edges of the roof form, which seems somewhat counter-productive in light of the concerns raised by Council to date, and
- A skillion roof would require an increased height along the northern elevation. Whilst this may achieve a greater level of compliance at the southern end, the increased height along the front northern elevation would result in further impacts to views from the lower levels of upslope properties. Furthermore, this would be an inferior architectural outcome for the site noting the pitch of the existing roof is to be retained.

Despite the minor non-compliance, the proposed amended roof design is the most skilful design solution in consideration of the context of the site.

4. Contextual response

There is a strong precedence of three storey development and exceedance of the 8.5m height limit in the vicinity of the site, including the recent developments approved by Council at:

- 4 Lincoln Avenue (DA2021/0077)
- 6 Lincoln Avenue (DA2021/0324)
- 8 Lincoln Avenue (DA2016/1321)
- 20 Lancaster Crescent (DA2015/0171)

In addition to these, there are a number of dwellings that have the appearance of a height that exceeds the height limit, having had the benefit of being developed without the inclusion of areas of existing excavation.

The previous Assessment Report suggests that the examples listed are not comparable, because the extent of variation proposed far exceeds that supported on adjoining sites. However, the Assessment Report incorrectly compares the proposed height exceedance when measured to existing ground level to prior height exceedances measured to natural ground level. The height measurements must be compared in the same context, and in this respect, any comparison should be made to the building height measured to natural ground level.

When measured to natural ground level, the height exceedance proposed is limited to 300mm or 3.5%, far less than the 7.25% - 20.4% variations supported on surrounding and nearby sites.

Allowing for the development to appropriately respond to the individual context of the site, including the levels of the existing dwelling and the irregular terrain of the site, promotes good design and

amenity of the built environment, and the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants, consistent with objectives (g) and (h) of the EP&A Act.

Furthermore, allowing for a variation to the height plane that is consistent with the height and scale of nearby development promotes the orderly and economic development of the land, consistent with objective (c) of the EP&A Act.

Overall, there are sufficient environmental planning grounds to justify contravention of the maximum height development standard.

public interest

Under the provisions of clause 4.6(4)(a) of WLEP 2011, consent must not be granted to a proposal that contravenes a development standard unless the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for the zone in which the development is to be carried out.

As identified above, the proposed development is consistent with the objectives of the building height development standard. Furthermore, the proposal is consistent with the objectives of the R2 Low Density Residential zone, as follows:

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

Comment: The proposed development provides for the growing/changing needs of the occupants of the dwelling within a low density environment.

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

Comment: Not applicable.

- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Comment: The resultant development has an appropriate landscaped character, commensurate with that of surrounding development.

Council can be satisfied that the proposal is in the public's interest, in so far as it is consistent with both the objectives of the zone and the objectives of the maximum height limit.

concurrence

Pursuant to clause 4.6(4) of WLEP 2011, development consent must not be granted to a development that contravenes a development standard unless the concurrence of the Secretary has been obtained. In accordance with the *Variations to Development Standards* Planning Circular issued by the Department of Planning, Industry and Investment on 5 May 2020, the Secretary's concurrence may be assumed as the proposed variation involves a numerical standard, and the extent of variation is less than 10%.

As such, the Secretary's concurrence can be assumed by the DDP in this instance.

conclusion

Overall, the consent authority can be satisfied that this written request has adequately addressed all relevant matters and that the provisions of clause 4.6 of WLEP 2011 have been met. As such, there is no jurisdictional impediment to the granting of consent in relation to the proposed breach of the building height development standard.



Rebecca Englund

B Arch Studies | M Plan | MPIA

Director | Northern Beaches Planning

ITEM 3.2	DA2023/1696 - 40 CASTLE CIRCUIT SEAFORTH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL
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PURPOSE

To refer the attached application for determination by the discretion of the Executive Manager Development Assessment.

RECOMMENDATION

THAT Council as the consent authority **approves** Development Consent to DA2023/1696 for alterations and additions to a dwelling house including a swimming pool on land at Lot 24 DP 20458, 40 Castle Circuit SEAFORTH, subject to the conditions set out in the Assessment Report.

Reporting manager	Rodney Piggott
TRIM file ref	2024/268153
Attachments	1 Assessment Report 2 Site Plan and Elevations

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/1696
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Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 24 DP 20458, 40 Castle Circuit SEAFORTH NSW 2092
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Michael Wicks
Applicant:	Michael Wicks

Application Lodged:	22/11/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	28/11/2023 to 12/12/2023
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 662,500.00
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EXECUTIVE SUMMARY

The proposal seeks consent for alterations and additions to the existing dwelling house and swimming pool at 40 Castle Circuit, Seaforth.

The application is referred to the Development Determination Panel (**DDP**) at the discretion of the Executive Manager, Development Assessment based on the history of unauthorised works.

Prior unauthorised works have been carried out on the site including the construction of a retaining wall to the rear of the site.

Two submissions were received in objection to the development, primarily raising concerns with the

existing and proposed retaining wall located to the rear of the site.

The proposal does not include any variations to the development standards under the Manly Local Environmental Plan (**MLEP**) 2013.

A detailed assessment has been conducted and the proposal is found to be consistent with the objectives of relevant standards and controls, with no matters that would warrant the refusal of the proposed development.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for alterations and addition to a dwelling house and swimming pool.

Specifically, the works proposed include:

- Lower ground floor extension and alterations including new double garage
- Ground floor extension and alterations
- New rear terrace
- Swimming pool within the front setback
- Associated Landscaping
- Partial demolition and reconstruction of the unauthorised retaining wall to the rear of the subject site; and
- Use of the remaining portion of the retaining wall to the rear of the subject site.

It is noted that prior unauthorised works, in the form of a retaining wall, is located at the rear of the site. Retrospective consent cannot be granted to any unauthorised works previously undertaken on the site. However, consent can be granted for the use of the retaining wall that is being partially retained.

AMENDED PLANS

Following a preliminary assessment of the application, Council wrote to the applicant on 31 January 2024 outlining concerns that would not allow Council to support the application in its current form. The concerns related to swimming pool built form non-compliance, stormwater non-compliance and insufficient information. Following receipt of the letter the applicant advised Council that they intended to amend the development application. Council agreed to accept amendments to the application.

The applicant subsequently provided amended plans on 26 February 2024, to address the concerns raised by Council. The amendments proposed included:

- Reduction of the swimming pool coping
- Deletion of the front fence

Additional information in the form of landscape plan, structural report, stormwater and hydraulic plan were also provided. Further information was also provided on 5 March 2024 and 15 April 2024 in the form of structural and geotechnical information to address ongoing concerns with the retaining wall aspect of the proposal.

Re-notification was not required in accordance with Northern Beaches Community Participation Plan.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental

Planning and Assessment Act 1979 and the associated Regulations. In this regard:

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 6.2 Earthworks
 Manly Local Environmental Plan 2013 - 6.4 Stormwater management
 Manly Local Environmental Plan 2013 - 6.8 Landslide risk
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Local Environmental Plan 2013 - 6.12 Essential services
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 3.7 Stormwater Management
 Manly Development Control Plan - 3.8 Waste Management
 Manly Development Control Plan - 3.9 Mechanical Plant Equipment
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
 Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features
 Manly Development Control Plan - 4.1.10 Fencing
 Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)
 Manly Development Control Plan - 5.4.1 Foreshore Scenic Protection Area

SITE DESCRIPTION

Property Description:	Lot 24 DP 20458 , 40 Castle Circuit SEAFORTH NSW 2092
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the southern side of Castle Circuit, Seaforth.</p> <p>The site is regular in shape with a frontage of 18.29m along Castle Circuit and a depth of 39.625m. The site has a surveyed area of 724.6m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a one and two storey</p>

rendered house with a tile and metal roof. Vehicular access to the site is available via a paved driveway to an attached garage. There is a retaining wall adjacent to the rear of the site that has been constructed without consent.

The site slopes from the rear southeast corner (RL92.35) towards the front northwest corner (RL87.41).

The site is characterised by small and medium size trees and vegetation. There is a large rock outcrop located within the rear of the site.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by similar one and two storey 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:

- July 2021 Building Certificate BC2021/0265 for a unauthorised retaining wall to the rear of the subject site was lodged.
- November 2021 DA2021/2196 was lodged for Alterations and additions to a dwelling house and the use of a retaining wall.
- May 2022 Building Certificate BC2021/0265 for the retaining wall within the rear of the site was refused by Council by Environmental Compliance.

- 26 August 2022 DA2021/2196 was approved by Council by way of deferred commencement.
- October 2022 a second application was lodged for a Building Information Certificate (BIC2022/0263) for the unauthorised retaining wall.
- 7 November 2022, a Class 4 appeal judicial review was lodged by the owners of No. 42 Castle Circuit, Seaforth.
- 15 December 2022, DA2021/2196 was surrendered by the applicant.
- 22 February 2023, Development Application DA2023/0183 for use of the unauthorised retaining wall was lodged.
- 22 November 2023, the applicant withdrew DA2023/0182.
- 17 November 2023, the current Development Application application was lodged.
- 22 November 2023, the subject Development Application was accepted by Council.

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)	<p>Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p>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.</p>

Section 4.15 Matters for Consideration	Comments
	<p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested (31 January 2024) in relation to built form non-compliance, stormwater management and insufficient information.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 (EP&A Act) 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 Bush Fire Planning Services, dated 13 November 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 28/11/2023 to 12/12/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Mr Matthew Robert Patfield	40 Stuart Street MANLY NSW 2095
Addisons Lawyers/ Boston Blyth Fleming Town Planners	22 Lancaster Crescent COLLAROY NSW 2097

The following issues were raised in the submissions:

- **Privacy**
- **Structural and geotechnical suitability of the retaining wall**
- **Drainage**
- **Unauthorised works**
- **Visual impact**
- **Built form non-compliance**
- **Inadequate information**
- **Public interest**

The above issues are addressed as follows:

- **Privacy**

The submissions raised concerns that the proposed retaining wall would result in adverse visual privacy impacts to the private open space and windows of adjoining neighbouring properties.

Comment:

The proposal has been assessed against the privacy provisions under Clause 3.4.2 of the Manly DCP in this report. In summary, the proposal complies with the relevant provisions and underlying objectives under Clause 3.4.2 of the Manly DCP, subject to conditions.

- **Structural and geotechnical suitability of the retaining wall**

The submissions raised concerns about the structural and geotechnical suitability of the existing and proposed retaining wall.

Comment:

A structural report and amended geotechnical report has been submitted by the applicant to address concerns raised by Council. In summary, the reports confirm that the proposed new retaining wall is safe and satisfactory and the portion of the existing retaining wall retained is structurally stable and geotechnically suitable. These matters have been considered under Clause 4.4.5 of the Manly DCP- Earthworks (Excavation and Filling). The proposal is consistent with the relevant underlying objectives, subject to conditions. Further, the recommendations proposed under the Geotechnical report (prepared by White Geotechnical Group, dated 15 April 2024) and structural report are imposed as part of this report/recommendation.

- **Drainage**

The submissions raises about the proposed drainage issues that may result from the proposed retaining wall.

Comment:

The application was supported by a geotechnical report to review the potential drainage issues, subject to remedial works recommended by structural report being carried out the existing wall is deemed satisfactory. This recommendation of this report are included as part of the conditions of consent.

- **Unauthorised works**

The submissions noted that the existing retaining wall is unauthorised.

Comment:

The western side and south-western portion of the existing retaining wall is proposed to be demolished and replaced with a new proposed stepped retaining wall, with a portion of the retaining wall being retained. The unauthorised works are under investigation by Council.

- **Visual impact**

The submissions raised concerns that the existing retaining wall will have a unreasonable visual impact as well as compromising the established landscape character of the area.

Comment:

The proposed new retaining wall and the existing partial retaining wall proposed under this application will not cause a unreasonable visual impact when viewed from neighbouring properties or the public realm. The retaining wall is not out of character in this residential context.

- **Built form non-compliance**

Concern is raised in regards to the extent of built form non-compliance (Fill, setbacks) proposed under this application.

Comment:

These matters have been assessed in detail within this report (refer 4.1 of Manly DCP 2013 section of this report). Clause 4.15(3A) of the EP&A Act requires Council to be flexible in the application of DCP provisions and allow reasonable alternative solutions that achieve the objects of those standards dealing with that aspect of the development. As such, where the proposal does not achieve strict compliance with an aspect of the DCP, an assessment of the proposal against the objectives of the control has been undertaken within this report.

- **Inadequate information**

The submissions raised concerns that insufficient information in the form or structural report, stormwater or landscape plan has been provided to assess the suitability of the retaining wall aspect of the proposal.

Comment:

The applicant has provided a structural report, updated geotechnical report and retaining wall plans to allow for a thorough assessment of the proposed works. The documentation and plans submitted are sufficient for the assessment of the application in accordance with Section 4.15 of the EP&A Act.

- **Public interest**

The submissions note that the application should be refused because it is not in the public interest due to the unauthorised works and non-compliance with 4.4.5.3 of the MDCP.

Comment:

The unauthorised works have been referred to the Council's building control team for investigation.

Sufficient information has been provided to allow for a rigorous assessment of the application. The proposed works will not lead to the unreasonable impacts on adjoining properties and is deemed to be satisfactory, subject to conditions.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p><i>Supported, with conditions</i></p> <p>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.</p>

Internal Referral Body	Comments
	<p>Landscape Plans are submitted with the development application. It is noted that no prescribed trees are impacted by the development. Existing street trees and all trees and vegetation within adjoining properties shall be protected. The existing rock outcrop at the rear of the property shall be retained as a natural landscape feature.</p> <p>The Landscape Plans propose hard and soft landscape items that enhances the landscape setting of the property in consideration of MDCP landscape objectives, and no concerns are raised, subject to conditions of consent.</p>
NECC (Development Engineering)	<p>Supported, with conditions</p> <p>Engineering Comments 11.03.24</p> <p>The stormwater management concerns have been addressed. A geotechnical report has been provided. Vehicle crossing construction is not proposed. Development Engineering has no further objections to the proposed development, subject to conditions.</p>
External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p>Supported, with conditions</p> <p>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.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No. A1374427 dated 31 October 2023).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Biodiversity and Conservation) 2021

Chapter 6 – Water catchments

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

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

6.6 Water quality and quantity

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

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

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

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

Comment:

The proposal has been reviewed by Council's Development Engineer and landscape Officer who have raised no objection to the works and their impacts to the nearby waterways (subject to conditions).

6.8 Flooding

- (1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the likely impact of the development on periodic flooding that benefits wetlands and other riverine ecosystems.*
- (2) Development consent must not be granted to development on flood liable land in a regulated catchment unless the consent authority is satisfied the development will not—*
 - (a) if there is a flood, result in a release of pollutants that may have an adverse impact on the water quality of a natural waterbody, or*
 - (b) have an adverse impact on the natural recession of floodwaters into wetlands and other riverine ecosystems*

Comment:

The site is not located within a flood prone area.

6.9 Recreation and public access

- (1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider—*
 - (a) the likely impact of the development on recreational land uses in the regulated catchment, and*
 - (b) whether the development will maintain or improve public access to and around foreshores without adverse impact on natural waterbodies, watercourses, wetlands or riparian vegetation.*
- (2) Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied of the following—*
 - (a) the development will maintain or improve public access to and from natural waterbodies for recreational purposes, including fishing, swimming and boating, without adverse impact on natural waterbodies, watercourses, wetlands or riparian vegetation,*
 - (b) new or existing points of public access between natural waterbodies and the site of the development will be stable and safe,*
 - (c) if land forming part of the foreshore of a natural waterbody will be made available for public access as a result of the development but is not in public ownership—public access to and use of the land will be safeguarded.*

Comment:

The proposed development will not have any impact upon public access along the foreshore. The proposed works are located entirely within the subject site.

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 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.

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	8.08m	-	Yes
Floor Space Ratio	FSR: 0.4:1 (289.84sqm)	FSR: 0.377:1 (273.60sqm)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes

Clause	Compliance with Requirements
6.12 Essential services	Yes

Detailed Assessment

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

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

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

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

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

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of MLEP 2013, MDCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

6.4 Stormwater management

Under 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.

6.8 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 a geotechnical risk assessment, architectural plans and stormwater management plans that demonstrate all geotechnical risks have been taken into account. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

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

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

Comment:

The proposed development is supported by a geotechnical risk assessment and stormwater management plans that demonstrate potential landslip is 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.

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 proposed alterations and addition to the proposed dwelling house will not have any unreasonable impact upon the harbour or coastal foreshore. The works proposed are generally consistent with that of other residential development within the foreshore area. Given the proposed separation between the subject site and foreshore the works will not have any discernible impact upon the coast or foreshore. The bulk and scale of development is responsive to the design of the existing dwelling house and consistent within the visual catchment of the site and the foreshore area for pattern of development.

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 proposed plans and supporting information confirm that all of the essential services listed above are available for the development if the application is to be approved.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 724.6m²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	E: 6.5m	GF: 5m LF: 2.5m	-	Yes
	W: 6.5m	GF: 5.4m LF: 2.6m	-	Yes
4.1.2.2 Number of Storeys	2	2	-	Yes
4.1.2.3 Roof Height	Height: 2.5m	2.8m	Up to 12%	No
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Swimming pool coping - 4.4m Garage - 7.7m	Up to 26.6%	No
4.1.4.2 Side Setbacks and Secondary Street Frontages	East (Lower floor): 0.83m	2.2m	-	Yes
	East (Ground floor): 1.66m	1.2m - 2.2m	9.1%	No
	West (Lower floor): 0.86m	1.237m	-	Yes
	West (Ground floor): 1.8m	1.237m	31.3%	No
	West (External stair): 1m	0.5m	50%	No
4.1.4.4 Rear Setbacks	8m	Terrace - 12.9m	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area (434.76m ²)	60.5% (439.1m ²)	-	Yes
	Open space above ground 25% of total	23.25% (102.1sqm)	-	Yes

	open space			
4.1.5.2 Landscaped Area	Landscaped area 40% of open space (175.64m ²)	59% (261.3sqm)	-	Yes
4.1.5.3 Private Open Space	18m ²	> 18m ²	-	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	6.23m	1%	No
4.1.9 Swimming Pools, Spas and Water Features	Not within front setback	Proposed within front setback	N/A	No
	1m height above ground	Ground level	-	Yes
	1m curtilage/1.5m water side/rear setback	0.8m, 1.65m setback	20%	No
4.1.10 Fencing	1m or 1.5m with at least 30% transparency	1.2m (at least 30% transparent)	-	Yes
4.4.5 Earthworks (Excavation and Filling)	>0.9m of side and rear boundaries.	0.1m (rear southern boundary) 0.9m (west)	89% -	No
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
3.4.1 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
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.10 Safety and Security	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.1.10 Fencing	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	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

Detailed Assessment

3.4.2 Privacy and Security

Merit consideration:

The development is considered against the underlying Objectives of the Control as follows:

Objective 1) To minimise loss of privacy to adjacent and nearby development by:

- *appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; and*
- *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

Comment:

No. 42 Castle Circuit, Seaforth

The physical separation proposed and privacy screens along the western edge of the rear terrace will offset any potential direct overlooking to the private open space and windows to the adjoining dwelling house to the west of the site. The proposed retaining wall will not have any direct sightlines to the adjoining property to the west, with the main sightlines from this retaining wall being over the top of the adjoining site, with an outlook to the harbour.



Image 1 - View from existing retaining wall looking west

The stepped retaining wall and garden bed to the top of the retaining wall will reduce the trafficable area to ensure useable area of the lawn area is setback at least 3.9m from the western property boundary. To mitigate visual privacy a condition has been imposed to ensure the proposed garden bed shown on the landscape and architectural plan has a minimum width of 2m.

While not relied upon to ensure visual privacy, to further help offset privacy impacts a condition has been incorporated as part of this recommendation to ensure planting to the proposed garden bed at lawn level (RL91.50) is to a mature height of at least 1m.

No. 34 Castle Circuit, Seaforth

The trafficable area to the top of the existing retaining wall along the southern side of the subject site does not have unreasonable visual privacy impacts to the private open space or living room windows of No. 34 Castle Circuit, Seaforth. However, a condition has been imposed to ensure the garden bed shown on the landscape plan has a minimum width of 2m to maintain reasonable levels of privacy for the life of the development.

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 provision of a privacy screen on the western elevation of the rear terrace will not compromise significant view lines from the subject site or adjacent properties, nor will the screen exacerbate overshadowing towards the adjacent development.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposed development will allow for the passive surveillance of the street.

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

3.7 Stormwater Management

As detailed by Council's Development Engineer the application has provided adequate information in respect to stormwater management. The proposed stormwater provisions are satisfactory.

3.8 Waste Management

A detailed waste management plan has been submitted with the application. The proposed waste management strategy is satisfactory and relevant conditions have been recommended to ensure compliance with the accompanying waste management plan.

3.9 Mechanical Plant Equipment

The MDCP 2013 requires external mechanical plant systems (for pools, and the like) to be acoustically enclosed. A condition is imposed in the consent to ensure the proposal will not result in any unreasonable impacts on the acoustic privacy of the neighbouring property arising from the pool equipment box.

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

Description of non-compliance

4.1.2.3 Roof Height

This control states:

a) Pitched roof structures must be no higher than 2.5m above the actual wall height

The proposed development has a pitched roof height of 2.8 metres, presenting a variation of 12%. As such, a merit assessment has been conducted.

As such, a merit assessment has been conducted.

Merit consideration

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

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

Comment:

The development is wholly within the maximum permissible height limit as evident on the architectural plans, and overall achieves a building height that is consistent with other residential dwellings along

Castle Circuit.

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

Comment:

The bulk and scale of the development is consistent with nearby development and will not result in any unreasonable impacts within the locality. The design of the roof is consistent with the bulk and scale of buildings in the area.

(c) to minimise disruption to the following—

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

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

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

Comment:

The proposal is considered to not result in unreasonable disruptions to views.

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

Comment:

The shadow diagrams provided with the proposal depict that there will be limited additional overshadowing impacts to public and private open spaces.

(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 development is located in a foreshore scenic protection area where by, there will be no substantial impacts to existing vegetation and topography or other aspects that might conflict with bushland and surrounding land uses.

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

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

Description of non-compliance

Clause 4.1.4.1 of the MDCP requires development to be setback 6.0 metres from the front boundary line or maintain the prevailing building line.

Clause 4.1.4.2 of the MDCP requires development to be setback from the side boundary at a distance calculated from one third of the proposed maximum wall height. The eastern wall is required to be setback at least 1.66m and 1.8m from the western boundary. Further, the external staircase is to be

setback 1m from the western boundary.

The development proposes the following:

- Front setback (Swimming Pool) - 4.4m (26.6% variation to the numeric control)
- Front setback (Dwelling) - 7.7m
- Western setback - 1.237m (31.3% variation to the numeric control)
- Eastern setback - 1.2m - 2.2m (9.1% variation to numeric control)
- External Stair - 0.5m (50% variation to the numeric control)

Merit consideration:

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

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

Comment:

The proposed ground floor is consistent with the western side setback of the existing dwelling and maintains the existing spatial proportions of the street. The proposal provides a modest two storey dwelling that is compatible with the existing streetscape and provides landscaping to enhance the street edge.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposed development will result in no unreasonable impacts in relation to privacy, sunlight access, views, streetscape character or traffic conditions.

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

Comment:

Flexibility is afforded in this circumstance, as the siting of the buildings is considered appropriate, and will not result in any unacceptable amenity impacts.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposed development results in a compliant landscaped area that provides opportunity for plantings, and enhancement of vegetation. The subject site does not detract from the context of the site and the site does not directly adjoin open space lands, national parks, or urban bushland

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

Comment:

The proposal is supported by a Bushfire Assessment Report ensuring suitable protection.

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

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

Description of non-compliance

Clause 4.1.6.1 of MDCP 2013, requires that the maximum width of any garage, carport or hardstand area is not to exceed a width equal to 50 percent of the frontage, up to a maximum width of 6.2m.

The proposed garages have a width of 6.23m. This represents a 1% variation to the control.

Merit consideration:

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

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

Comment:

The proposed development will allow for two (2) spaces for the dwelling house, consistent with the numeric control.

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:

Adequate on-site parking is provided, consistent with the numeric control.

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 proposal's design adequately provides two off-street parking spaces for the dwelling house that promotes efficient, safe, and convenient vehicular access.

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:

Subject to conditions of consent, imposed by Council's Development Engineer, the proposal is consistent with this control. The parking proposed to the front portion of the site limits excavation across the site

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

Comment:

The property will use a single driveway and cross over to reduce the disruption to the existing footpaths.

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 driveway is limited to single width to allow for minimum parking requirements.

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:

The subject site is not located within a established town centre noted within the Manly DCP.

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

4.1.9 Swimming Pools, Spas and Water Features

Description of non-compliance

Clause 4.1.9.2 of the MDCP stipulates that swimming pool are not to be located in the front setback. The proposed swimming pool is proposed within the front setback 4.4 from the front property boundary,

Further, swimming requires that the setback of the outer edge of the pool/spa concourse from the side and rear boundaries must be at least 1.0 metres, with the waterline being at least 1.5 metres from the boundary. The swimming pool concourse is setback 0.8m from the eastern property boundary and 1.65m from the waters edge.

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:

Despite the numeric non-compliance, there will not be opportunities for overlooking into the adjoining properties to the east, west or north. To ensure suitable acoustic privacy a condition has been included with this consent limiting the noise of sound producing plant to no more than 5dB(A) above the background level, which will minimise the impact of the filter noise on adjoining properties. Overall, the proposal meets this objective.

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

Comment:

While located in the front setback, given that the pool is located at ground level and offset by landscaping the proposed swimming pool will not cause adverse impacts upon the established streetscape. The resulting impact on the streetscape is negligible.

Objective 3) To integrate landscaping.

Comment:

Landscaping is proposed to the sides of the swimming pool. The proposal will meet the numeric control for landscape open space across the site. The existing and proposed landscape may further offset the visual impact of the swimming pool from surrounding properties

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

Comment:

The subject site is located in a bush fire asset protection zone, and may be a viable water resource during bushfire emergencies.

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.

4.1.10 Fencing

Under Clause 4.1.10 of MDCP 2013, fences between the front street boundary and the building are to be no more than 1m high above ground level at any point. In relation to open/transparent fences, the height may be increased to 1.5m where at least 30 per cent of the fence is open/transparent for at least that part of the fence higher than 1m.

More than 30 per cent of the proposed fence is higher than 1.0m is open/transparent and, therefore, is considered acceptable.

4.4.5 Earthworks (Excavation and Filling)

Description of non-compliance

Under Clause 4.4.5.1 General, natural and undisturbed ground levels to be maintained within 0.9 metres of side and rear boundaries. New and existing (unauthorised) retaining walls and fill are proposed within 0.9 metres of the side and rear boundaries, which does not satisfy the prescribed requirement.

The new and existing (unauthorised) retaining wall along the southern side of the site are proposed within 0.9 metres of the side and rear boundaries, which does not satisfy the prescribed requirement.

Further, Clause 4.4.5.3 (Filling) states "*Filling must not exceed 1m above natural ground level*". The proposal proposes more than 1m of filling to accommodate the proposed retaining wall.

Merit consideration

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

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

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

Comment:

The application has been accompanied by a Geotechnical Report (prepared by White Geotechnical Group, dated April 2024) and structural report (prepared by Demlakian, dated 15 April 2024), which stipulates that the proposed development will achieve an acceptable level of risk to neighbouring properties, subject to compliance with certain recommendations during construction and remediation works. It is noted that the earthworks proposed are not likely to create any adverse environmental impacts. Suitable conditions are included with this consent requiring dilapidation reports for adjoining properties to be prepared prior to the commencement of works, to demonstrate how the works can be carried out safely and without inappropriate hazard to the existing structure or surrounding properties.

To offset the height of the proposed retaining wall, planting is proposed to the top and bottom of the tiered western retaining wall to offset the visual impact.

Conclusion

As demonstrated above, the proposal satisfies the objectives of this control, subject to recommended conditions.

5.4.1 Foreshore Scenic Protection Area

Merit Assessment

The clause states the following:

Development in the Foreshore Scenic Protection Area must not detrimentally affect the 'visual or aesthetic amenity of land in the foreshore scenic area nor must the development similarly effect the views of that land, including ridgelines, tree lines and other natural features viewed from the Harbour or Ocean from any road, park or land in the LEP for any open space purpose or any other public place. Any adverse impacts considered in this paragraph will be mitigated. In accordance with these LEP objectives Council seeks to conserve and preserve tree canopies and street trees, wildlife corridors and habitat and minimise cumulative impacts on escarpment, rock shelves and other natural landscape features.

Comment:

- The scale of development is commensurate with surrounding development along the foreshore area near the site and the renovations and landscape work appropriately respond to the existing conditions of the site, including access, excavated areas, slope and visual outlook.
- The proposed development retaining wall allows for a outlook to the harbour. The overall height of the building, use of materials and colours is consistent with existing development along the foreshore and will not result in an unreasonable visual impact when viewed from public places.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$6,625 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$662,500.

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

Conclusion

The proposal seeks consent for alterations and additions to an existing dwelling house including a swimming pool.

When assessed against the MLEP 2013 and MDCP 2013 objectives, the proposed development is considered to align with the relevant aims and requirements of these policies, noting that the environmental and amenity impacts resulting from the development are acceptable.

The development is sympathetic to the character of the site and will maintain an appropriate visual relationship with the surrounding environment.

Therefore, the application is 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 Council as the consent authority grant Development Consent to DA2023/1696 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 24 DP 20458, 40 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
S1	C	Site Analysis	Sally Gardner Design and Draft	4 April 2024
S2	C	Site Plan/ Calculations/ Landscaping	Sally Gardner Design and Draft	4 April 2024
A1	A	Roof Plan	Sally Gardner Design and Draft	4 April 2024
A2	C	Ground Floor Plan	Sally Gardner Design and Draft	4 April 2024
A3	C	Lower Floor Plan	Sally Gardner Design and Draft	4 April 2024
A4	B	Elevation Sheet 1	Sally Gardner Design and Draft	4 April 2024
A5	B	Elevation Sheet 2	Sally Gardner Design and Draft	4 April 2024
A6	B	Section Sheet 1	Sally Gardner Design and Draft	4 April 2024
A7	B	Section Sheet 2	Sally Gardner Design and Draft	4 April 2024
A8	B	Section Sheet 3	Sally Gardner Design and Draft	4 April 2024
A10	B	Streetscape - Northern Elevation	Sally Gardner Design and Draft	4 April 2024
N2	B	Window & Door Schedule + BASIX	Sally Gardner Design and Draft	4 April 2024

		Commitments		
1/4	A	Stormwater & Hydraulic Notes	VDM Consulting Engineers	February 2024
2/4	A	Lower Ground Floor +Pipes Plan View	VDM Consulting Engineers	February 2024
3/4	A	Roof Gutter+ Downpipes+ Pipes Plan View	VDM Consulting Engineers	February 2024
4/4	A	Stormwater Rainwater Tanks Details	VDM Consulting Engineers	February 2024
2/3	A	Retaining Wall Plan View	VDM Consulting Engineers	April 2024
3/3	A	Retaining wall Section 1	VDM Consulting Engineers	April 2024
LPDA 24 - 149 / 1	C	Hardscape Plan	Concept Design Architects	22 February 2024
LPDA 24 - 149 / 2	C	Landscape Plan	Concept Design Architects	22 February 2024
LPDA 24 - 149 / 3	C	Planting Palette	Concept Design Architects	22 February 2024
LPDA 24 - 149 / 4	C	Details	Concept Design Architects	22 February 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate No. A1374427	-	Mrs Sally Gardner	30 October 2023
Geotechnical Report	J5232A	White Geotechnical Group	29 November 2023
Geotechnical Report (Review Existing Movement in Sandstone Block Retaining Wall)	J5232B	White Geotechnical Group	15 April 2024
Remedial Building Works	-	Demlakian Consulting Engineers	15 April 2024
Structural Report	-	Demlakian Consulting Engineers	15 April 2024
Bushfire Risk Assessment	3589	Bushfire Planning Services	13 November 2023

Waste Management Plan	-	Mr Michael Wicks	November 2023
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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	N/A

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

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

3. **Approved Land Use**

Nothing in this consent shall authorise the use of site as detailed on the approved plans for any land use of the site beyond the definition of a **dwelling house**, in accordance with the Dictionary of the Manly Local Environmental Plan 2013 as follows:

dwelling house means a building containing only one dwelling.

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

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

4. **Prescribed Conditions**

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

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

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

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

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

- A. the name and licence number of the principal contractor, and
- B. the name of the insurer by which the work is insured under Part 6 of that Act,

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

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

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

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

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

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

Reason: Legislative requirement.

5. Existing retaining wall

The portion of the retaining wall that that is existing is granted consent for use only. The existing physical works are not approved.

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

6. 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

7. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$6,625.00 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 \$662,500.00.

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.

8. Security Bond

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

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

9. Stormwater Disposal

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

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

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

11. Extent of consent

All works are to be located wholly within the subject site. No approval is given for works on adjoining properties.

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

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

12. Boundary Fencing

No consent is given for any boundary fencing.

Details demonstrating compliance must be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure compliance with the Dividing Fences Act 1991.

13. Compliance with Standards

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

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

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

14. 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.

15. Sydney Water "Tap In"

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

16. Pre-Construction Dilapidation Report

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

Properties:

42 Castle Circuit, Seaforth
38 Castle Circuit, Seaforth
34 Castle Circuit, Seaforth

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

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

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

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

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

DURING BUILDING WORK

17. 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.

18. Protection of Existing Street Trees

All existing street trees in the vicinity of the works shall be retained during all construction stages, and the street tree(s) fronting the development site shall be protected by tree protection fencing in accordance with Section 4 of AS4970-2009 Protection of trees on development sites. As a minimum the tree protection fencing for street tree(s) fronting the development site shall consist of standard 2.4m panel length to four sides and in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings, unless otherwise directed by an Arborist with minimum AQF Level 5 in arboriculture. All fencing shall be located to allow for unrestricted and safe pedestrian access upon the road verge.

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

Reason: Street tree protection.

19. Tree and Vegetation Protection

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

- i) all prescribed 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,
- ii) the following arboricultural requirements shall be adhered to unless authorised by an Arborist with minimum AQF level 5 qualifications: existing ground levels shall be maintained within the tree protection zone of trees to be retained; removal of existing tree roots at or >25mm (Ø) diameter is not permitted; no excavated material, building material storage, site facilities, nor

landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained; and structures are to bridge tree roots at or >25mm (Ø) diameter,
 iii) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
 iv) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
 v) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

c) The arboricultural works listed in a) and b) are undertaken as compliance to AS4970-2009 Protection of trees on development sites.

Reason: Tree and vegetation protection.

20. **Road Reserve**

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

Reason: Public safety.

21. **Geotechnical Requirements**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

22. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

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

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

23. **Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

24. Required Screen Planting

Planting along the western and southern side of the lawn area to the rear of the site is to be in accordance with the following:

- a) the selected planting is to comprise of native species with a minimum mature height of 1m.
- b) plants are to be installed at minimum 1 metre intervals and be of a minimum container size of 200mm at planting in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,

Reason: To maintain environmental amenity.

25. Landscape Completion

Landscape works are to be implemented in accordance with the approved Landscape Plan(s) (insert details), and inclusive of the following conditions:

- a) landscape works are to be contained within the legal property boundaries,
- b) tree, shrub and groundcover planting shall be installed as indicated on the approved Landscape Plans, unless otherwise imposed by conditions,
- c) all tree planting shall be a minimum pre-ordered planting size of 75 litres or as otherwise scheduled if greater in size; planted into a prepared planting hole 1m x 1m x 600mm depth 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 residential boundaries; and located either within garden bed or within a prepared bed within lawn,
- d) mass planting shall be installed as nominated on the approved Landscape Plans, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,
- e) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces,
- f) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone,
- g) where the property is certified Bush Fire Prone Land, any new planting may be managed in accordance with Planning for Bushfire Protection 2019.

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

Reason: Environmental amenity.

26. 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.

27. **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.

28. **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.

29. **Swimming Pool Requirements**

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

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

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2009;
- (iii) Swimming Pools Regulation 2008
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools

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

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

(d) A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING**

THIS POOL has been installed.

(e) Signage showing resuscitation methods and emergency contact

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

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

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of an Interim / Final Occupation Certificate.

Reason: To protect human life (DACPLF09)

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

30. 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 Plans and any conditions of consent.

The approved landscape area shall in perpetuity remain as planting under the development consent, and shall not be replaced with any hard paved surfaces or structures.

Reason: To maintain local environmental amenity.

31. 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.

32. Swimming Pool/Spa Motor Noise

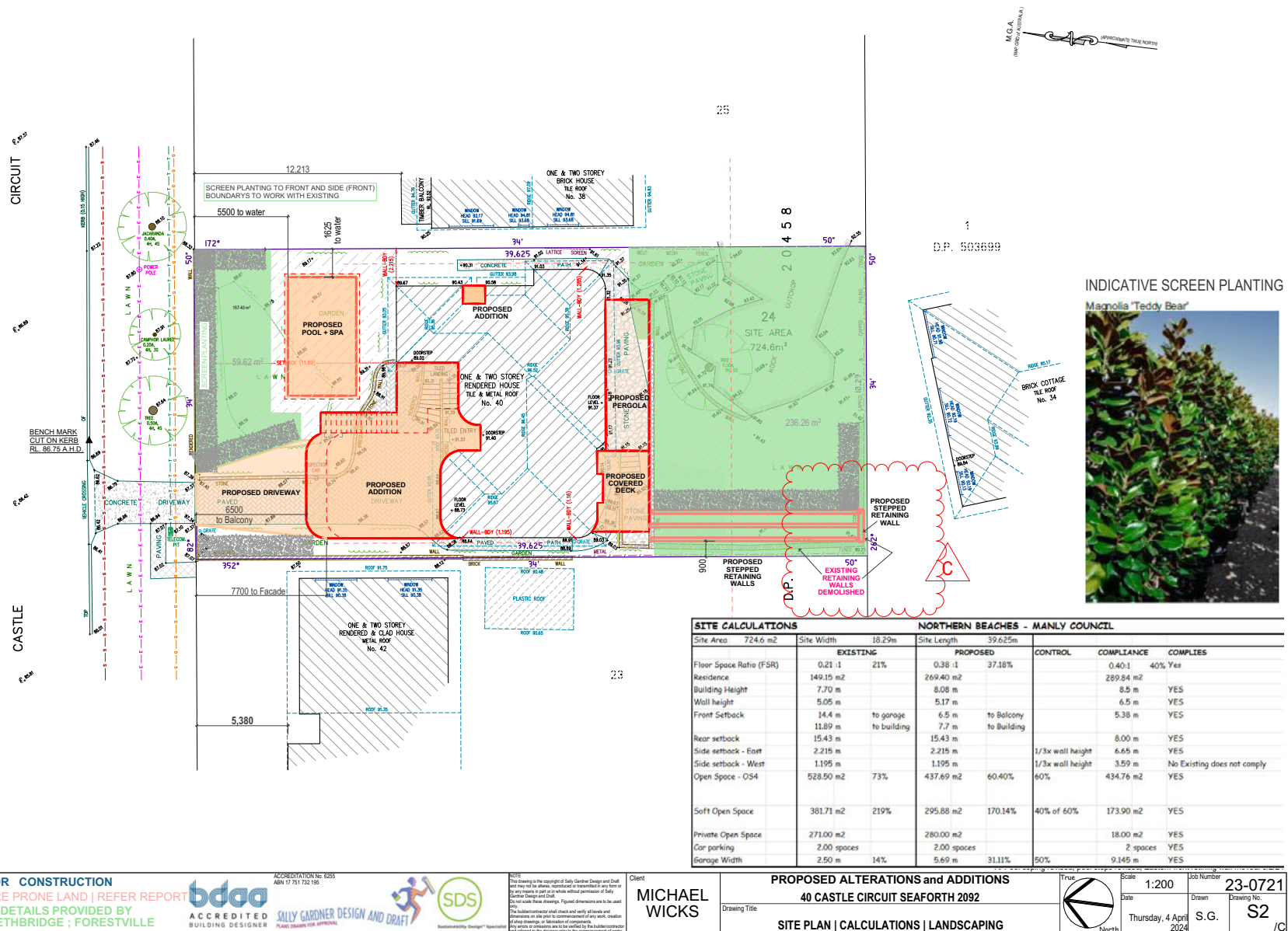
The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

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

33. Landscape Area

A landscaped non-trafficable garden bed, with a minimum width of 2m, is to be provided for the length of the western and southern boundary in the rear yard.

Reason: To ensure no unreasonable overlooking to the adjoining premises.





NORTHERN ELEVATION



SOUTHERN ELEVATION

NOT FOR CONSTRUCTION
BUSHFIRE PRONE LAND | REFER REPORT
SURVEY DETAILS PROVIDED BY
BEE & LETHBRIDGE ; FORESTVILLE

bdac
ACCREDITED
BUILDING DESIGNER

ACCREDITATION No. 6255
ABN 17 751 732 195

SALLY GARDNER DESIGN AND DRAFT
PRACTICE COMPANY VISA APPROVED

SDS
Sustainable Design Services
Sustainable Design Services

SDS
Sustainable Design Services
Sustainable Design Services

Client
MICHAEL WICKS

PROPOSED ALTERATIONS and ADDITIONS
40 CASTLE CIRCUIT SEAFORTH 2092

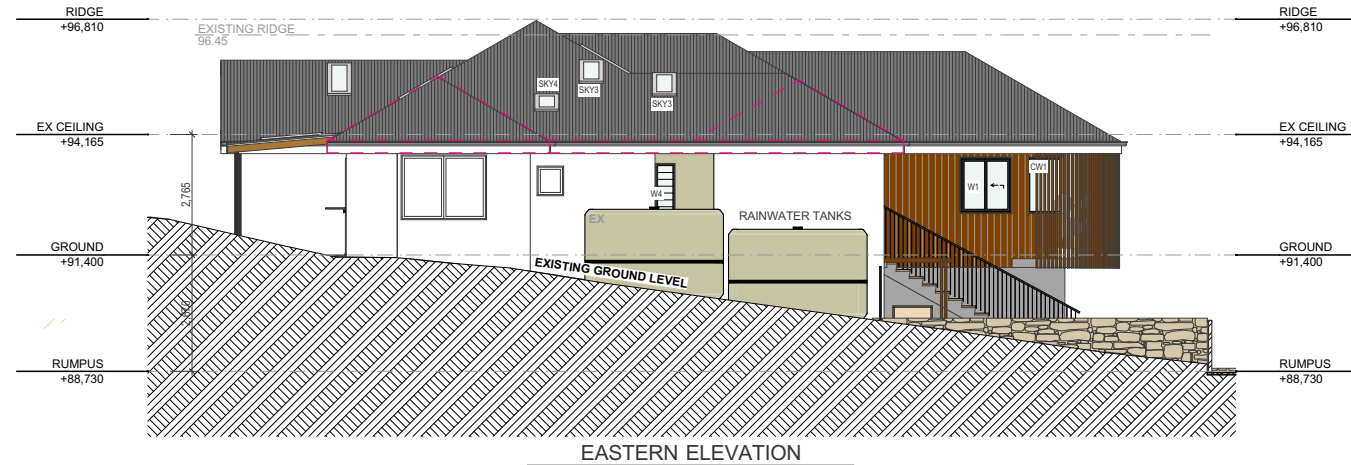
Drawing Title
ELEVATION SHEET 1

B/ Northern + Western Fence adjacent Retaining wall removed. 27/2/24
A/ Pool coping revised, pool steps revised, Eastern front retaining wall moved. 5/2/24

Scale
1:100
Date
Thursday, 4 April 2024

Job Number
23-0721
Drawing No.
A4
S.G.

/B



GENERAL WINDOW AND DOOR NOTE:
All windows to be Powder Coated Aluminium with fly screens.
Feature Front door to be glass with vertical cladding.
Garage Doors; Automatic Panel lift
All other external doors to be Powder Coated Aluminium.

EXTERNAL CLADDINGS:
Rendered Masonry + Timber look 'cedar' vertical cladding.
All claddings to be compliant with the requirements of NCC 2019 vol 2 part 3.5 of the BCA particularly with respect to the referenced Acceptable Construction Practice as detailed in the BCA for product materials and installations.

ROOFING:
Roof sheeting
All roofing to be compliant with the requirements of NCC 2019 vol 2 part 3.5 of the BCA particularly with respect to the referenced Acceptable Construction Practice as detailed in the BCA for product materials and installations.



B/ Northern + Western Fence adjacent Retaining wall removed. 27/2/24
A/ Pool coping revised, pool steps revised, Eastern front retaining wall moved. 5/2/24

NOT FOR CONSTRUCTION
BUSHFIRE PRONE LAND | REFER REPORT
SURVEY DETAILS PROVIDED BY
BEE & LETHBRIDGE ; FORESTVILLE

bdac
ACCREDITED
BUILDING DESIGNER

ACCREDITATION No. 6255
ABN 17 751 732 195

SALLY GARDNER DESIGN AND DRAFT
PRACTICE COMPANY VISA APPROVED

SDS
Sustainable Design
Sustainability Designer

NOTE:
This drawing is the copyright of Sally Gardner Design and Draft and may not be altered, reproduced or transmitted in any form or by any means, in print or in electronic form, without the written permission of Sally Gardner Design and Draft.
The contractor shall check and verify all levels and dimensions on site prior to commencement of any work, creation of any drawings, or fabrication of components.
Any errors and omissions shall be the responsibility of the contractor and referred to the designer prior to the commencement of work.

Client
MICHAEL WICKS

PROPOSED ALTERATIONS and ADDITIONS
40 CASTLE CIRCUIT SEAFORTH 2092

Drawing Title

ELEVATION SHEET 2

Scale
1:100
Date
Thursday, 4 April 2024

Job Number
23-0721
Drawing No.
A5
S.G.
/B

**ITEM 3.3 MOD2023/0549 - 50 LAUDERDALE AVENUE FAIRLIGHT -
MODIFICATION OF DEVELOPMENT CONSENT DA2017/1333
GRANTED FOR DEMOLITION AND CONSTRUCTION OF A NEW
DWELLING HOUSE**

PURPOSE

To refer the attached application for determination by the discretion of the Director Planning and Place.

RECOMMENDATION

THAT Council as the consent authority **approves** Development Consent to Mod2023/0549 for Modification of Development Consent DA2017/1333 granted for Demolition and construction of a new dwelling house on land at Lot 1 DP 305993, 50 Lauderdale Avenue FAIRLIGHT, subject to the conditions set out in the Assessment Report.

Reporting manager	Rodney Piggott
TRIM file ref	2024/269882
Attachments	↓ 1 Assessment Report ↓ 2 Site Plan and Elevations

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2023/0549
Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot 1 DP 305993, 50 Lauderdale Avenue FAIRLIGHT NSW 2094
Proposed Development:	Modification of Development Consent DA2017/1333 granted for Demolition and construction of a new dwelling house
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Tomislav Ristoski Jeannette Margaret Ristoski
Applicant:	Tomislav Ristoski
Application Lodged:	23/10/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	31/10/2023 to 14/11/2023
Advertised:	Not Advertised
Submissions Received:	5
Clause 4.6 Variation:	Nil
Recommendation:	Approval

EXECUTIVE SUMMARY

This development application seeks consent for modification of the consent approved for demolition and construction of a dwelling house under DA2017/1333. Specifically, the proposed works are ancillary to the dwelling at the rear of the site, including outdoor areas, gardens, walls and stairs.

The consent has been previously modified by 6 applications. These modifications relate to various changes to the dwelling and other changes to ancillary features of the dwelling.

The application is referred to the Development Determination Panel (DDP) under Executive Manager

discretion.

Various concerns raised in the objections have been addressed in this report. Concern is raised with the works previously constructed and works currently under construction. In particular, concern is raised that the terrace at the rear of the property is currently under construction and that it does not comply with previous consents. As the terrace is under construction, retrospective consent cannot be given to this structure under this application. A condition is imposed to require deletion of all references to the terrace under this application. A separate Development Control Order remains current with regard to these works.

The remaining proposed works include an outdoor area, walls to form gardens, removal of a stone wall, removal of stairs and construction of new stairs.

Council raised concern that there was a lack of information to assess the walls on the western boundary, including lack of information to assess location and height of these walls. In response, the applicant amended the application to delete the walls from the boundary. Sufficient information was provided to assess the remaining walls on site.

The remaining works (after conditions and amended plans) under this application are compliant with built form controls, are of reasonable size and scale, and would not cause any unreasonable visual or amenity impact.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal is for modification of the consent approved for demolition and construction of a dwelling house under DA2017/1333.

In detail, the application sought the following:

- Proposed outdoor area
- Removal of stairs and construction of new timber stairs and balustrade
- Retaining walls and new garden areas
- Completion of terrace that is under construction
- A concrete base wall to the rear of the terrace under construction
- Removal of existing stone wall (along sewer path)
- Landscaping

Amended plans

Amended plans were provided on 25 March 2024. These plans removed the walls proposed on the western boundary.

These plans did not require re-notification, consistent with the Community Participation Plan.

Condition relating to terrace

Having regard to the Supreme Court of Appeal decision under *Ku-ring-gai Council v Buyozo Pty Ltd* [2021] NSWCA 177 ("Buyozo"), there is no power to retrospectively approve works under a modification of consent. As such, only the prospective works sought under this application can be

accepted.

Specifically, the terrace works are under construction, and cannot be granted consent under this application.

Advice has also been provided by Council's Building control team that the BIC2021/0259 was only issued for the "Lift Shaft and Retaining Wall." Therefore, a condition has been imposed to remove the notation referring to this BIC on the 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 Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

SITE DESCRIPTION

Property Description:	Lot 1 DP 305993 , 50 Lauderdale Avenue FAIRLIGHT NSW 2094
Detailed Site Description:	<p>The subject site consists of one allotment located on the northern side of Lauderdale Avenue.</p> <p>The site is regular in shape with a frontage of 16.6m along an depth of approximately 30m. The site has a surveyed area of 682.7m².</p> <p>The site is located within the R1 General Residential zone and currently accommodates a dwelling house and ancillary structures.</p> <p>The site has a relatively steep slope from street level up to</p>

the rear of the property, having a level difference of approximately 15 metres from front to rear.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by dwellings that step down the slope on the northern side of Lauderdale Avenue and dwellings majorly below the road on the southern side of Lauderdale Avenue. There are also dwellings to the rear of the subject site that (due to the topography of the land) have views over the top of existing dwellings to the south.

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time. As previously stated under MOD2022/0081, the following is a site history:

- An unauthorised works building certificate was issued by Northern Beaches Council on 19 September 2017 for an outbuilding on the site.
- **Development Application No.DA2017/1333** - Demolition and construction of a new dwelling house was approved by Council on 28 March 2018 (the dwelling is now occupied and substantially complete).
- **Modification Application No.MOD2018/0435** - to modify Development Consent DA2017/1333 granted for demolition and construction of a new dwelling house approved by Council on 7 November 2018. The changes proposed internal and external changes including a reflection of some conditioned changes to the upper balustrade on the gym / roof terrace and part glass part masonry balustrade. Garage area reduced, lift relocated and a car turntable introduced.
- **Modification Application No.MOD2019/0099** to modify Development Consent No.DA2017/1333 granted for demolition and construction of a new dwelling house approved by

- Council on 12 March 2019. The modification proposed internal and external changes, including the use of a masonry balustrade for the gym / roof terrace level on its western side.
- **Modification Application No.MOD2019/0358** to modify Development Consent No.2017/1333 granted for demolition and construction of new dwelling house was approved by Council on 25 July 2019. The modification proposed internal and external changes, including the use of a higher (1.5m) masonry balustrade for the gym / roof terrace level on its western side (although Section DD shows a 1.0m balustrade as per MOD2019/0099).
 - **Modification Application No.MOD2020/0073** to modify Development Consent No.DA2017/1333 by way of seeking delete the car turntable that had previously been included with MOD2018/0435. The applicant statement of reason was that a turntable had been unnecessarily included in the drawings with MOD2018/0435 (and MOD2019/0099) by their consultant traffic advice demonstrated it was not required car access. The modification was approved on 3 March 2020.
 - **Modification Application No.MOD2020/0264** to modify Development Consent No.DA2017/1333 by way of seeking to revert back to the balustrade design similar to that shown as per MOD2018/0435 albeit with a short 1.5m blade wall (adjacent the air conditioner unit shown) rather than along the entire length of the western balustrade. In consideration of the change a condition was included to clarify the balustrade position and design as:

"2F The 1 metre high balustrade on the western elevation of Level 3 is to be 400mm cement render with 600mm high glass on top. For the avoidance of doubt the balustrade is to continue to remain setback 1 metre from the western edge of the building.

Reason: To rectify incorrect notations on stamped plans from MOD2019/0358."

Modification Application (Mod2022/0081) further modified DA2017/1333 including further changes to the Level 3 Terrace (above the dwelling).

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Reports for DA2017/1333, MOD2018/0435, MOD2019/0099, MOD2019/0358, MOD2020/0073, MOD2020/0264 and MOD2022/0081 in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	<p>Yes</p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <p>The proposal involves a new outdoor area adjacent to the dwelling that is well separated and screened from neighbouring living spaces. The other landscaping and ancillary works are also of a size and scale that would have minimal environmental impact.</p> <p>Further, it is noted that this application does not approve any changes to the rear terrace that is under construction.</p> <p>As such, the application is considered to be of minimal environmental impact.</p>
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2017/1333 for the following reasons:</p> <p>The proposal involves ancillary additions to the dwelling at the rear including addition of gardens, stairs and an a pergola area. As such, the envelope and footprint of the proposed dwelling will remain generally as approved under the original consent. Further, the ancillary additions at the rear do not result in any change to the quantum of overall open space, do not and do not result in any change to the land use (a dwelling house), and do not result in any substantial change to the amount of built form on site.</p>
(c) it has notified the application in accordance with:	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.</p>
(i) the regulations, if the regulations so require,	
or	
(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	

Section 4.55(1A) - Other Modifications	Comments
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p>Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 2001: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact</p>

Section 4.15 'Matters for Consideration'	Comments
and economic impacts in the locality	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 31/10/2023 to 14/11/2023 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 5 submission/s from:

Name:	Address:
BBF Town Planners	1 / 9 Narabang Way BELROSE NSW 2085
Mr Anthony Maxwell Walls	Po Box 156 MANLY NSW 1655
Ms Juanita Joan Walls	Po Box 156 MANLY NSW 1655
Four Towns Pty Ltd	Po Box 361 BALGOWLAH NSW 2093
Ms Dianne Julia Spencer	35 Upper Clifford Avenue FAIRLIGHT NSW 2094

The issues raised in the submissions are addressed as follows:

- **Concern with "terrace under construction" previously approved as paved area**

The submissions raised concerns that works have commenced including excavation has already occurred to accommodate the terrace. It is also stated that a previous modification and

BIC required a 2.63m setback.

Comment:

A site visit by Council's assessing officer confirmed construction works on the terrace had begun. This application cannot retrospectively works under a modification of consent (Supreme Court of Appeal decision under Ku-ring-gai Council v Buyozo Pty Ltd [2021] NSWCA 177 ("Buyozo")).

As such, a condition is imposed to require no works relating to the terrace are approved under this consent.

Further, the rear concrete Beser wall relies on the terrace for construction. As such, this wall relies on the terrace for construction and insufficient information can be provided to show the levels and location of this wall. A condition is therefore imposed to delete the wall.

- **Request for referral to DDP**

A submission made a request for the application to be referred to the Development Determination Panel

Comment:

The application is being referred to the Development Determination Panel under Executive Manager discretion.

- **Unauthorised building works**

Submissions raise concerns with various unauthorised building works including the rear terrace/paved area, a Spa, Planter boxes on unauthorised deck, stairs, fill and changes to levels.

Comment:

Subject to conditions, this application does not relate to or grant consent to any existing works (either under construction or completed).

A site visit by Council's Assessment officer found that all works completed without consent are subject to current or historical Building compliance investigation and action. This includes Building Information Certificates and a Development Control order.

Under a Development control order, the existing stairs are to be demolished. This application proposed new stairs and these are acceptable under this consent (they will not cause any unreasonable visual or amenity impact).

No unauthorised or retrospective works are granted consent under this application.

- **Impact on amenity (including views and privacy)**

The submissions raised concerns with impact on amenity, particularly with historical unauthorised works.

Concern with privacy from rear concrete deck.

Comment:

As retrospective works cannot be granted consent under this application, assessment of amenity is only relevant for the prospective works.

These works include the outdoor area adjacent to the rear of the dwelling, retaining walls and gardens, and stairs.

The above works comply with built form controls, are well separated from neighbouring living spaces and are not of a size that would not cause any unreasonable amenity impact. Privacy is also discussed further under the Manly DCP section of this report.

- **Concern is raised with regard to potential view impact of planting; Request to restrict height of planting to protect views**

Comment:

A condition has been imposed to require an appropriate height for planting, having regard to amenity including retention of views.

- **Lodgment of application as a 4.55(1A)**

The submissions raised concerns that the application does not meet the requirements to be a Section 4.55(1A) application.

Comment:

The application is considered to meet the requirements of Section 4.55(1A) of the Act. This reasons for this are discussed later in this report under the relevant section.

- **Insufficient information to assess proposed works (including lack of sections); lack of landscape plan**

Comment:

Council requested further information to assess the walls on the boundary including sections. In response, the applicant chose to remove these boundary walls from the application. The amended application submitted sufficient information to assess the application (as amended).

A Landscape plan was submitted with the original application and remains on the consent (as amended by conditions and subsequent modification consents).

- **Concern with lack of setback and works on the boundary**

The submissions raised concerns with the works on the side boundary, including the proposed walls.

Comment:

As above, the amended plans provided a setback to the proposed walls. This setback, design and height (as amended) is appropriate and would not result in any unreasonable visual or environmental impact.

Council requested further information to assess the walls on the boundary including sections. In response, the applicant chose to remove these boundary walls from the application. The amended application submitted sufficient information to assess the application (as amended).

A Landscape plan was submitted with the original application and remains on the consent (as amended by conditions and subsequent modification consents).

- **Concern with area labelled 'pile of rubbish' and 'plastic awning'**

A submission raised concern with area labelled 'pile of rubbish' and 'plastic awning'.

Comment:

This area does not form a part of the proposal. However, for clarity, a condition is imposed to delete this area from the plans.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The application is for modification to development consent DA2017/1333.</p> <p>No concerns are raised with the proposed modifications. The screen planting indicatively shown along the western boundary is supported and shall be able to attain a height of 1.8 metres above the finished deck level. The 'Required Screen Planting' condition shall be added as part of this modification.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.3m- 9.75m (dwelling)	No change to dwelling	N/A	No (no change to approved)
			3.5m (pergola)		Yes
			3m (stairs)		Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 682.7sqm	Requirement
4.1.4.2 Side Setbacks and Secondary Street Frontages	<u>Garden Retaining wall</u> 0.3m
	<u>Pergola (Outdoor area)</u> 1.17m

4.1.4.4 Rear Setbacks	8m
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (375.5sqm)
	Open space above ground 25% of total open space (106.5sqm)
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (238.9sqm)
4.1.5.3 Private Open Space	18m

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
3.6 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)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

Rear Terrace/ Paved area

A condition is imposed to require that the terrace under construction at the rear of the property is not to be included in this consent. As such, assessment of privacy is not relevant for this area under this application.

Proposed Outdoor area (rea of dwelling)

The proposed outdoor area has a compliant side setback. It is also well separated and offset from neighbouring living spaces. As such, the area is consistent with the objectives of the clause, without the requirement for any further separation or screening.





Photo 1: Taken from the rear of the site toward the rear of the dwelling.

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

A condition is imposed to remove the concrete beser wall, as it relates to the terrace under construction.

All other proposed works comply with the numerical requirements for side and rear setbacks.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

- Consistent with the objectives of the DCP

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

PLANNING CONCLUSION

The application is referred to the Development Determination Panel (DDP) under Executive Manager discretion.

The concerns raised in the objections have been addressed or resolved by conditions and amended plans.

Conditions have been imposed to ensure the works approved are prospective only.

Overall, the development (subject to conditions) is an acceptable design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.

REASON FOR DETERMINATION

The proposed works, as conditioned, are prospective only. These will not have any unreasonable visual or amenity impact.

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2023/0549 for Modification of Development Consent DA2017/1333 granted for Demolition and construction of a new dwelling house on land at Lot 1 DP 305993,50 Lauderdale Avenue, FAIRLIGHT, subject to the conditions printed below:

Modification Summary

The development consent is modified as follows:

MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
PAN-377120 - MOD2023/0549	The date of this notice of determination	Modification of the consent approved for demolition and construction of a dwelling house under DA2017/1333. Add Condition 1B Add Condition 2H, 2I and 2J

MOD2022/0081	24/06/2022	Delete Condition 2 F Add Condition 2G Add Condition 3A
MOD2021/0264	30/06/2021	Add Condition 2F
MOD2020/0073	03/03/2020	Add condition 1B
MOD2019/0258	14/10/2019	Add (amend) Condition 1 A Delete Condition 2(e) Modify Condition 6 Delete Conditions 7, 9 and 14 Modify Condition 15
MOD2019/0099	7/05/2019	Add (amend) Condition 1 A Modify Condition 2 Modify Condition 6
MOD2018/0435	7/11/20218	Add Condition 1A Modify Condition 2 (deletion of a, b and c)

Modified conditions**A. Add Condition No.1B - Modification of Consent - Approved Plans and supporting documentation, to read as follows:**

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
1-3	Issue 3	Site Plan	High Design	18.03.2023
2-3	Issue 3	Proposed/ Under Construction Level 2 Floor Plan	High Design	18.03.2023
3-3	Issue 3	East Elevation/ South Elevation/ North Elevation/Section A-A/ West Elevation	High Design	18.03.2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Geotechnical Assessment	-	Crozier Geotechnical Consultants	16 October 2023

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

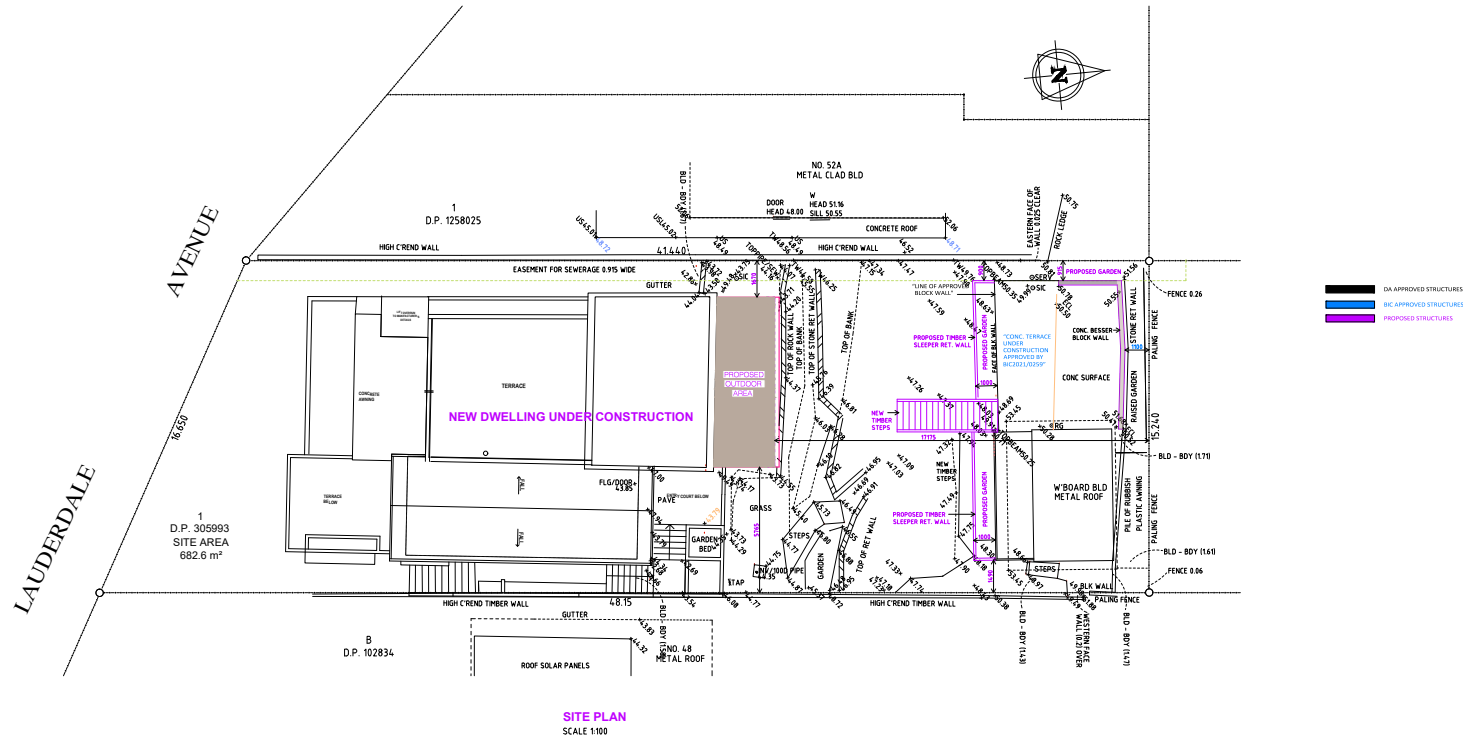
In the event of any inconsistency with the approved plans and a condition of this consent, the condition

Reason: To maintain environmental amenity.

D. Add Condition 2J - Deletion of reference to pile of rubbish and plastic awning to read as follows:

The reference on the plan to the pile of rubbish and plastic awning is to be deleted.

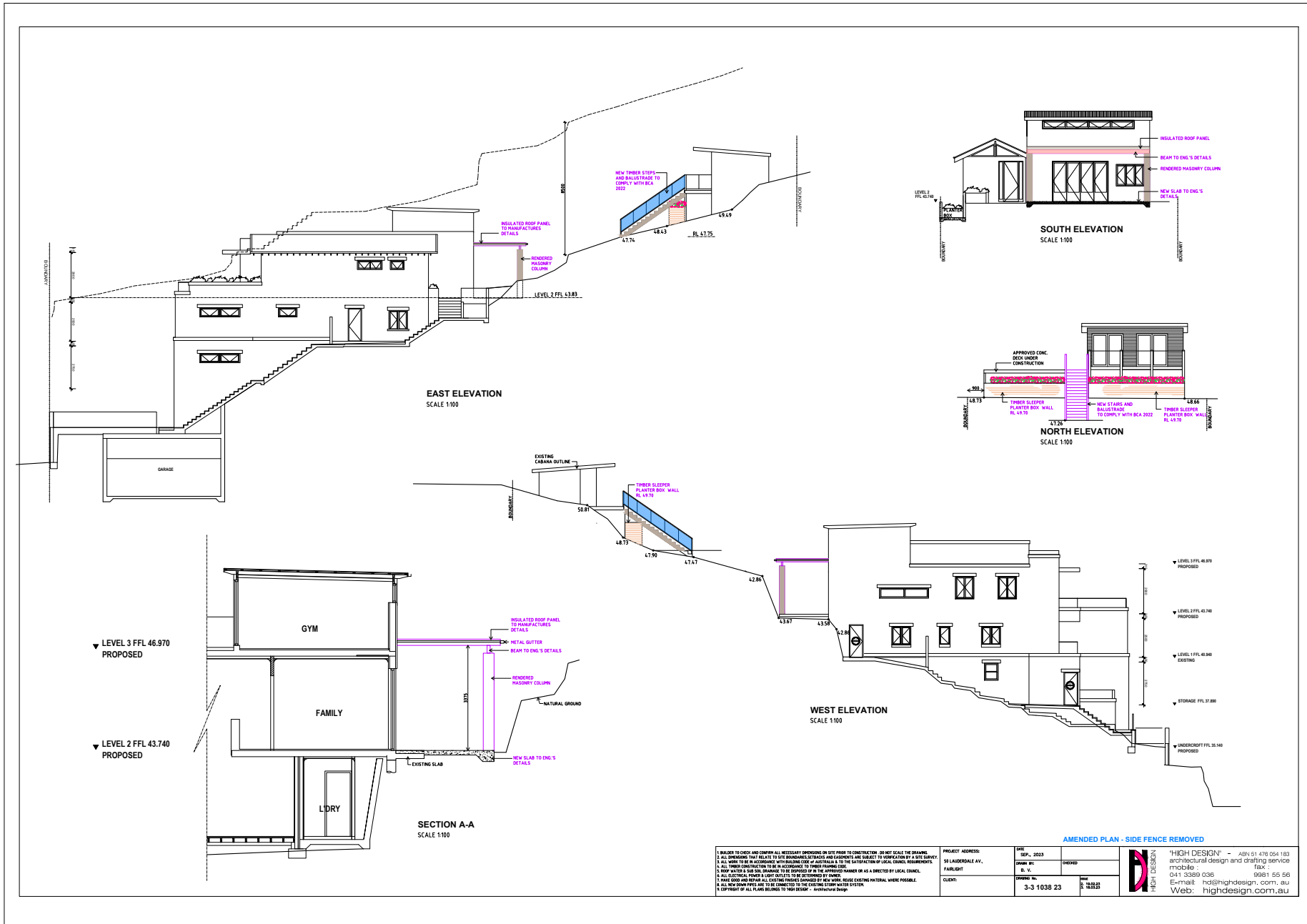
Reason: To provide clarity that this consent does not grant approval for these items.



SITE PLAN
SCALE 1:100

AMENDED PLAN - SIDE FENCE REMOVED

<p>1. BUILDER TO CHECK AND CONFIRM ALL NECESSARY OPENINGS ON SITE PRIOR TO CONSTRUCTION. DO NOT SCALE THE DRAWING. 2. ALL DIMENSIONS MUST BE TO THE FACE UNLESS SPECIFICALLY NOTED OTHERWISE. 3. ALL WALLS TO BE IN ACCORDANCE WITH BUILDING CODE OF AUSTRALIA & TO THE SATISFACTION OF LOCAL COUNCIL REQUIREMENTS. 4. ALL TYPED CONSTRUCTION TO BE IN ACCORDANCE TO THESE PLANNING CODES. 5. ROOF WATER & GAS SOL. DRAINAGE TO BE DISPOSED OF IN THE APPROVED MANNER OR AS DIRECTED BY LOCAL COUNCIL. 6. ALL ELECTRICAL, FENCE & LIGHT LOCATIONS TO BE DETERMINED BY OWNER. 7. FENCE LOCATIONS AND HEIGHT ALL TO BE DETERMINED BY NEW YORK. FENCE EXISTING MATERIAL WHERE POSSIBLE. 8. ALL NEW DRAIN PIPES ARE TO BE CONNECTED TO THE EXISTING STORM WATER SYSTEM. 9. COPYRIGHT © ALL PLANS BELONG TO HIGH DESIGN - Architectural Design.</p>	<p>PROJECT ADDRESS: 50 LAUDERDALE AV., FAIRLIGHT CLIENT:</p>	<p>DATE: SEP., 2023 DRAWN BY: B. V. CHECKED: B. V. DATE: 1-3 1038 23</p>	<p>FILE: 1038 23 1038 23</p>	<p>"HIGH DESIGN" - ABN 51 476 054 183 architectural design and drafting service mobile : 041 3389 036 fax : 9981 55 56 E-mail: hdi@highdesign.com.au Web: highdesign.com.au</p>



ITEM 3.4	DA2023/1904 - 2 JAMIESON PARADE COLLAROY - DEMOLITION WORKS AND CONSTRUCTION OF 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 **approves** Development Consent to DA2023/1904 for demolition works and construction of a dwelling house on land at Lot 10 DP 12012, 2 Jamieson Parade COLLAROY, subject to the conditions set out in the Assessment Report.

Reporting manager	Steve Findlay
TRIM file ref	2024/268170
Attachments	↓1 Assessment Report ↓2 Site Plan and Elevations

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/1904
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Responsible Officer:	Dean Pattalis
Land to be developed (Address):	Lot 10 DP 12012, 2 Jamieson Parade COLLAROY NSW 2097
Proposed Development:	Demolition works and construction of a dwelling house
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Richard Thomas Butlin Samantha Louise Butlin
Applicant:	Amde Construction Pty Ltd

Application Lodged:	18/01/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	25/01/2024 to 08/02/2024
Advertised:	Not Advertised
Submissions Received:	6
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 936,500.00
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EXECUTIVE SUMMARY

This development application seeks consent for the demolition of existing structures and the construction of a new 2-3 storey dwelling house.

The application is referred to the Development Determination Panel (DDP) due to greater than 5 community submissions being received during the community notification period.

Critical assessment issues include a minor variation to the secondary front setback control as well as impacts to view sharing. These impacts have been suitably addressed and resolved within this report

via merit discussion, considering the objectives of WDCP 2011 as well as the principles of Tenacity Consulting vs Warringah Council [2004]. It is resolved the proposed numerical setback non-compliance and view sharing outcome are acceptable in this circumstance.

Concerns raised in the objections predominantly relate to building bulk, building height, front boundary setbacks as well as view sharing and have also been addressed within the relevant section within this report.

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

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for the demolition of on-site structures and the construction of a new 2-3 storey dwelling house.

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 - B7 Front Boundary Setbacks
Warringah Development Control Plan - D7 Views

SITE DESCRIPTION

Property Description:	Lot 10 DP 12012 , 2 Jamieson Parade COLLAROY NSW 2097
Detailed Site Description:	<p>The subject site is an irregular shaped allotment located at the northwest intersection of Jamieson Parade and Anzac Avenue.</p> <p>The site is zoned R2 Low Density Residential.</p>

The site has a site area of 606.9m² with the eastern boundary having a frontage of 11.58m to Jamieson Parade. The site's southern boundary has a combined frontage of 49.675m to Anzac Avenue.

The property is a sloping allotment having a fall from the site's rear western corner (RL 32.48) to the front north eastern corner (RL 32.48). The total fall over the length of the site is approximately 4.48m.

The site currently supports a single storey stone and clad dwelling house with a metal pitched roof. A detached brick garage, with attached metal awning is located to the rear of the dwelling and orientated towards Anzac Avenue.

Map:



SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site.

The land has been used for residential purposes for an extended period of time.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any	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	Warringah Development Control Plan 2011 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p>Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan 2011 section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p>

Section 4.15 Matters for Consideration	Comments
	(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 25/01/2024 to 08/02/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 6 submission/s from:

Name:	Address:
Aaron Morrison	42 Anzac Avenue COLLAROY NSW 2097
Brian Stephen Tuckey	4 Jamieson Parade COLLAROY NSW 2097
Mr Craig Maurice Formosa Mrs Sarah Marcella Hayward Formosa	57 Carawa Road CROMER NSW 2099
Mr Michael Ashton Warrener	17 Bedford Crescent COLLAROY NSW 2097
Mrs Angela Jane McNay	19 Bedford Crescent COLLAROY NSW 2097
Mr Neville Francis Thompson	40 Anzac Avenue COLLAROY NSW 2097

Six (6) submissions were received during the community notification period and the following concerns were raised:

- **Bulk and Scale**

Comment:

Concern was raised in regards to the proposed bulk and scale of the development. It is noted that the proposal is compliant with the built form controls, except for a minor setback non-compliance relating to the ground floor alfresco. The proposal also incorporates suitably varied wall planes and roof lines to further soften the visual appearance of the development.

- **Building Height**

Comment:

Concern was raised in regards to the proposed building height of the development. The proposal is compliant with Clause 4.3 Height of Buildings under WLEP 2011.

- **Front boundary setback**

Comment:

Concern was raised in regards to the proposed front boundary setback. It is noted that the proposal is generally compliant with the front setback control, with the exception of a portion of the ground floor alfresco which has been addressed within this report under Clause B7 WDCP 2011.

- **Impacts to sight lines and road visibility resulting from the proposed encroachment to the front boundary setback.**

Comment:

As stated above, the proposed front setback is generally compliant with the exception of a small area of the alfresco. This non-compliance is not considered to result in any impact to vehicle sight lines whilst the remaining areas of the dwelling are considered to be suitable in this context. Council's Development Engineer has reviewed the proposal and raised no objection to approval, subject to recommended conditions.

- **Views**

Comment:

A view loss assessment has been included within this assessment report under Clause D7 WDCP 2011, specifically in relation to existing views obtained from No.42 Anzac Avenue. It was confirmed with the owners of No.40 Anzac Avenue that no ocean or iconic views would be impacted for their property from the proposed development.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	Supported The application is assessed by Landscape Referral against Warringah Local Environmental Plan 2011 (WLEP) and the following Warringah Development Control Plan 2011 (WDCP) controls (but not limited to): D1 Landscaped Open Space and Bushland Setting; E1

Internal Referral Body	Comments
	<p>Preservation of Trees or Bushland Vegetation; and E2 Prescribed Vegetation</p> <p>The existing property supports existing landscape features including prescribed trees, and otherwise supports gardens, lawn and pavements. Two prescribed trees are located within the front of the property. Street trees are presented and shall be protected as shall all trees and vegetation within adjoining properties. No arboricultural impact assessment is submitted to indicate how existing trees are to be protected including the prescribed trees within the property (Deodar Cedar and Paperbark) and conditions shall be imposed therefore including a Tree Protection Plan, and the requirement to relocate the proposed retaining walling / reduce the driveway hardstand at the front of the property away from the Deodar Cedrus, and to align with the Porch entry instead of the alignment as shown on Plans.</p> <p>A Landscape Plan is submitted and upon review conditions shall be imposed should the application be approved to improve the landscape setting including additional planting / varied landscape design to satisfy WDCP control D1 to "provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building".</p>
NECC (Development Engineering)	<p>Supported</p> <p>The proposal is for the construction of a new dwelling. No objections to approval subject to conditions as recommended.</p>

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

(SREPs)**SEPP (Sustainable Buildings) 2022**

A BASIX certificate has been submitted with the application (see Certificate No.1378798S_02 dated 14 December 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) 2021Ausgrid

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

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

Comment:

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

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

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

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	8.2m	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Warringah Development Control PlanBuilt Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	7m	-	Yes
B3 Side Boundary Envelope	4m (north)	Within envelope	-	Yes
	4m (west)	Within envelope	-	Yes
B5 Side Boundary Setbacks	0.9m (north)	1.42m (lower ground)	-	Yes
		1.6m (ground)	-	Yes
		3.95m (first floor)	-	Yes
	0.9m (west)	Complies	-	Yes
B7 Front Boundary Setbacks	6.5m 3.5m (secondary)	6.5m 2.8m (minimum)	- 20%	Yes No
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	54.39% (330.08m ²)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	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
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B7 Front Boundary Setbacks

Description of Non-compliance

For lots which have a double street frontage, the control permits a minimum front building setback of 3.5 metres for the secondary frontage.

The proposed development has a minimum setback of 2.8m to the secondary (southern) frontage, which does not comply with the control (20% variation).

The non-compliant area of the dwelling relates to the ground floor alfresco only, which is considered to be a low-lying and open structure. All remaining portions of the dwelling are entirely numerically compliant with all built form controls.

It is also considered the site is substantially constrained by its irregular lot configuration, which restricts absolute compliance with the control. Given the minimal visual impact of the alfresco, the non-compliance is considered acceptable in this instance.

Merit Consideration

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

- *To create a sense of openness.*

Comment:

The proposal will not impact on the sense of openness within the front setback.

- *To maintain the visual continuity and pattern of buildings and landscape elements.*

Comment:

The proposal is not uncharacteristic of the area or adjoining pattern of development.

- *To protect and enhance the visual quality of streetscapes and public spaces.*

Comment:

The proposal maintains a high-quality landscape outcome for the site, therefore enhancing the visual quality of the streetscape.

- *To achieve reasonable view sharing.*

Comment:

Views will not be unreasonably impacted by the proposal.

Having regard to the above assessment, it is concluded that the proposed development is consistent 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.

D7 Views

An objection from No. 42 Anzac Avenue, Collaroy raised concern about view loss as a result of the proposed development.

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 on Principle 1:

No.42 Anzac Avenue currently enjoys distant ocean views towards Collaroy to the north-east. These are considered partial views as they are substantially obstructed by an existing tree located on the road reserve to the front of the property, as well as general district trees and development. The views incorporate water views as well as some views of distant headlands and land-water interface towards the Central Coast.

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 on Principle 2:

No.42 Anzac Avenue is an existing 1-2 storey dwelling house with standing views currently experienced from the ground floor living/dining room, as well as two ground floor bedrooms. The views are obtained in a diagonal direction over the north-eastern corner of 42 Anzac Avenue, comprising some elements of both the front boundary and eastern side boundary.

Figure 1: Standing views from living room over the top of the subject site



Figure 2: Standing views from living room of No. 42 over the top of the subject site



Figure 3: Standing views from living room of No. 42 over eastern side boundary to right-hand side of road reserve tree



Figure 4: General outlook from living room of No. 42 looking towards subject site in a 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 on Principle 3:

The existing standing views obtained from the ground floor living room and two bedrooms which are experienced over the top of the existing development on the subject site, will be primarily lost as a result of the increased height of the proposed dwelling. These views are experienced on the left-hand side of the tree located in the road reserve (from the perspective of the living room). It is noted that only a small pocket of these existing water views located over the top of the existing development on the subject site are visible from the living room as they are obstructed by the road reserve tree. These views are more available from the ground floor bedrooms where views are considered not as critical to preserve.

Notwithstanding, views from the living room towards the north-east on the right-hand side of the tree, will be entirely unimpacted, and are over a side boundary.

The view loss impact to No.42 is therefore qualitatively assessed as **minor**.

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 on Principle 4:

The proposed development on the subject site is compliant with the height of buildings development standard under WLEP 2011, as well as built form controls under WDCP 2011, with the exception of a minor non-compliance to the secondary front setback resulting from the ground floor alfresco. The alfresco area is low-lying and not considered to result in any view loss impact. Therefore, the views in question are highly susceptible to change or loss, as the views exist within the envelope of a compliant development.

Furthermore, based on the site survey, the ridge level of the existing development adjoining the subject site (No.4 Jamieson Parade) is RL38.06, which is consistent (or slightly higher) with the ridge of the proposed development at No.2 which is RL37.624. This is despite the subject site being located at a higher topographical ground level. The proposal is therefore consistent with the general pattern, scale and height of adjoining dwellings.

In addition, the views in question are obtained from generally low-lying ground floor areas of No.42 Anzac Avenue, which further limits their retention potential in the context of new two-storey developments being proposed in the nearby locality, as would be reasonable.

As a result, given the proposal represents consistency with the existing character of adjoining developments, the proposal is considered to be acceptable in its current form and does not warrant any necessary or 'more skillful' design amendments to improve the proposed view sharing arrangement.

To encourage innovative design solutions to improve the urban environment.

Comment:

The proposed development demonstrates innovative design, in that it allows for redevelopment of the site within reasonable compliance, without unreasonable impacts.

To ensure existing canopy trees have priority over views.

Comment:

The proposed development does not require the unreasonable removal of any significant canopy trees.

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 \$9,365 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$936,500.

CONCLUSION

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

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

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

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

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

PLANNING CONCLUSION

This proposal, for demolition of existing structures and construction of a dwelling house is referred to the Development Determination Panel (DDP) due to there being greater than 5 submissions in response to the notification.

The concerns raised in the objections in relation to building bulk, height, front boundary setbacks and views have been addressed in this report.

Impacts to view sharing, as well as a numerical non-compliance to the secondary front setback control, have been suitably addressed and resolved via merit discussion within this report under Clause D7 and B7 of WDCP 2011 respectively. The report considers that despite some perceived view sharing

impact, the development proposes a generally compliant built form and maintains consistency with the height and scale of adjoining dwellings. As a result, the proposal is considered to be acceptable in its current form and does not warrant any necessary design amendments to improve the proposed view sharing arrangement.

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 Council as the consent authority grant Development Consent to DA2023/1904 for Demolition works and construction of a dwelling house on land at Lot 10 DP 12012, 2 Jamieson Parade, COLLAROY, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
A03	G	Site Plan	G.J. Gardner	15 January 2024
A05	G	Basement Floor	G.J. Gardner	15 January 2024
A06	G	Ground Floor	G.J. Gardner	15 January 2024
A07	G	First Floor	G.J. Gardner	15 January 2024
A08	G	Elevations	G.J. Gardner	15 January 2024
A09	G	Elevations	G.J. Gardner	15 January 2024
A10	G	Sections	G.J. Gardner	15 January 2024

A11	G	Demolition Plan	G.J. Gardner	15 January 2024
A15	G	Driveway Details	G.J. Gardner	15 January 2024
A19	G	Waste Management	G.J. Gardner	15 January 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate (1378798S_02)	-	Chapman Environmental	14 December 2023
Preliminary Geotechnical Assessment (J5284)	-	White Geotechnical Group	12 December 2023
Landscape Plan	B	Branching Out Co.	19 December 2023
Waste Management Plan	F	G.J. Gardner	19 December 2023
Stormwater Management (Drawing C1 to C3)	A	Nastasi & Associates	8 December 2023

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

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

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

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	29 January 2024

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

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

3. Prescribed Conditions

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

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

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

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

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

the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

4. General Requirements

(a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the following is required:
 - i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
 - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.

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

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

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$9,365.00 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 \$936,500.00.

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

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

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

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

6. Security Bond

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

7. Amended Plans

Amended Plans shall be issued to the Principal Certifier prior to the issue of a Construction Certificate to include the following details:

- a) the proposed retaining wall / driveway as shown on Plans at the front of the property shall be reduced to align the retaining wall with the Porch entry, on all construction Plans,
- b) the proposed stormwater pits and line near the existing Deodar Cedrus tree shall be relocated behind the relocated retaining wall alignment,

Additionally, the Landscape Plan shall be amended as follows:

- c) the nominated new tree planting shall be documented on the plan at a minimum pre-ordered planting size of 75 litres; selected from Northern Beaches Council's Native Plant Species Guide - Narrabeen Ward, or Council's Tree Guide; to achieve at least 8.5 metres height at maturity; and shall be located at least 3.0 metres from buildings or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,
- d) the location of the nominated 2 x Callistemon shall be documented,
- e) a Plant Schedule shall be documented to provide for the following pot sizes and densities: Syzygium screen planting (at 900mm centres and at min. 200mm pots); all other shrubs at a minimum 200mm container size at planting and at no more than 1 metre centres, and groundcovers at a minimum 140mm container size and at 4 plants per metre square.
- f) the existing two prescribed trees at the front of the property shall be preserved.

Certification shall be submitted to the Principal Certifier that these amendments have been documented.

Reason: Landscape amenity.

8. Tree Protection Plan

a) a Tree protection plan shall be submitted to the Certifier for approval prior to the issue of a Construction Certificate, demonstrating tree protection measures in accordance with AS4970-2009 Protection of trees on development sites, to protect the following trees:

- i) existing two (2) trees within the front of the property (Deodar Cedar and Paperbark).

b) the Tree Protection Plan shall be prepared by an Arborist with minimum AQF Level 5 in arboriculture, incorporating the following:

- i) location of all trees identified for retention, including extent of canopy,
- ii) access routes throughout the site for construction activity,
- iii) location of tree protection fencing / barriers,
- iv) root protection in the form of mulching or boards proposed within the tree protection zone,
- v) trunk and branch protection within the tree protection zone,

- vi) location of stockpile areas and materials storage,
- vii) other general tree protection measures.

Reason: Tree protection.

9. **Stormwater Disposal**

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

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

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

10. **Vehicle Crossings Application**

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing 3.0 metres wide in accordance with Northern Beaches Council Standard Drawing Extra High in accordance with Section 138 of the Roads Act 1993.

Note, driveways are to be in plain concrete only.

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

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

Reason: To facilitate suitable vehicular access to private property.

11. **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. **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.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

15. **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, for the existing two (2) trees within the front of the property (Deodar Cedar and Paperbark).

The Project Arborist shall be in attendance and supervise all works within the tree protection zones, and in particular:

- a) all excavation works for site levels or stormwater works,
- b) construction of the retaining wall / driveway.

All tree protection measures specified must: be in place before work commences on the site; be maintained in good condition during the construction period; 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.

DURING BUILDING WORK

16. **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,
 - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
 - iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
 - v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
 - vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
 - vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,
 - viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,
 - ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
 - x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree

canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
 xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

c) The arboricultural works listed in a) and b) are undertaken as complaint to AS4970-2009 Protection of trees on development sites, and any recommendations of a Project Arborist as applicable.

Reason: Tree and vegetation protection.

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. 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.

21. Survey Certificate

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

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

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

22. Waste Management During Development

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

23. Landscape Completion

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

- a) landscape works are to be contained within the legal property boundaries,
- b) tree, shrub and groundcover planting shall be installed as indicated on the approved Amended Landscape Plan, unless otherwise imposed by conditions,
- c) all tree planting shall be a minimum pre-ordered planting size of 75 litres; planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,
- d) mass planting shall be installed in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,
- e) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces.

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

Reason: Environmental amenity.

24. Condition of Retained Vegetation

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, including the following information:

- a) compliance to any Arborist recommendations for tree protection generally and during excavation works,
- b) extent of damage sustained by vegetation as a result of the construction works,
- c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree and vegetation protection.

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.

26. 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.

27. Waste Management Confirmation

Prior to the issue of an Occupation Certificate, evidence / documentation must be submitted to the Principal Certifier that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

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

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

28. Landscape Maintenance

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting. If any tree, shrub or groundcover required to be planted under this consent fails, they

are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan and any conditions of consent.

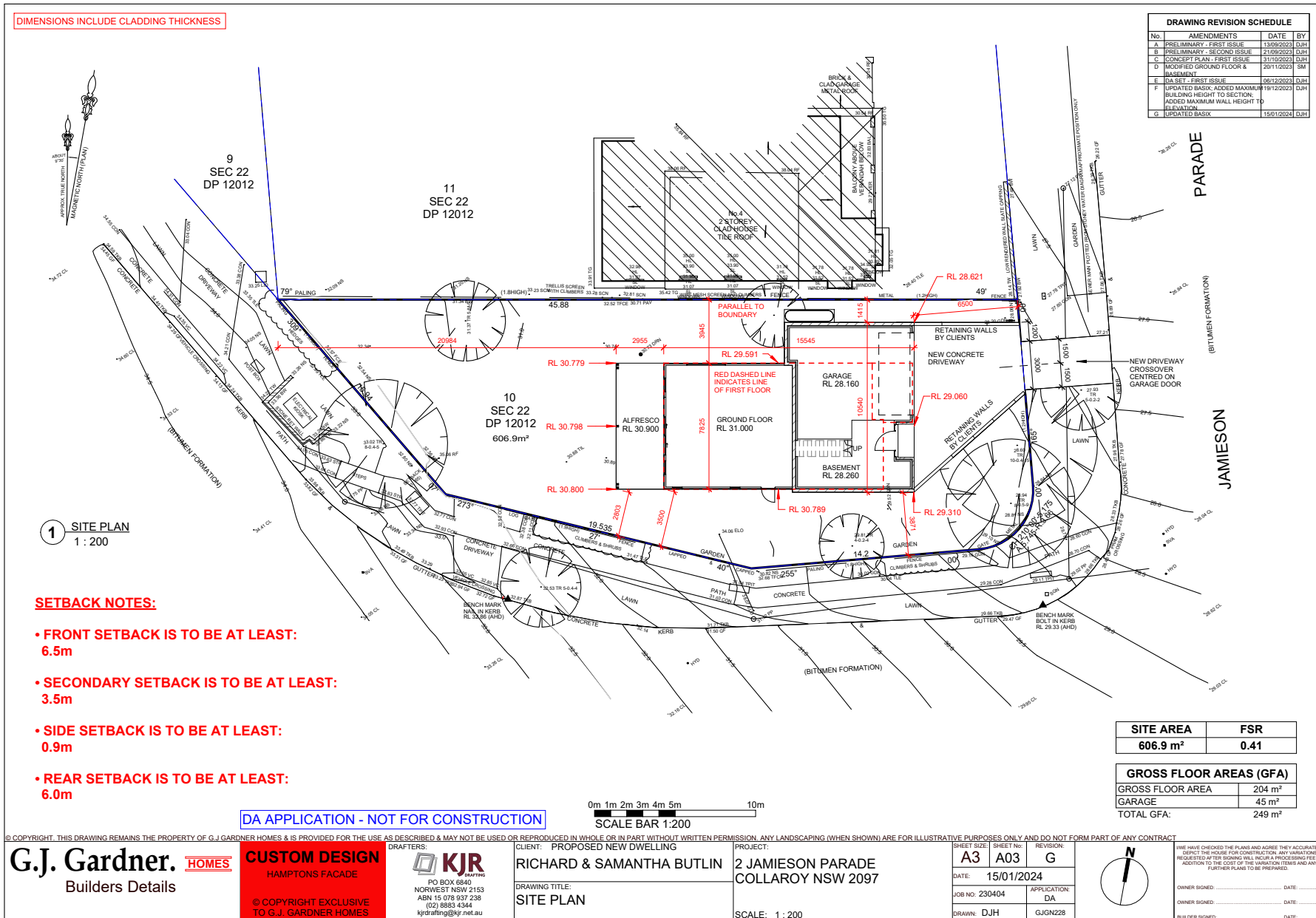
The approved landscape area shall in perpetuity remain as planting under the development consent, and shall not be replaced with any hard paved surfaces or structures.

Reason: To maintain local environmental amenity.

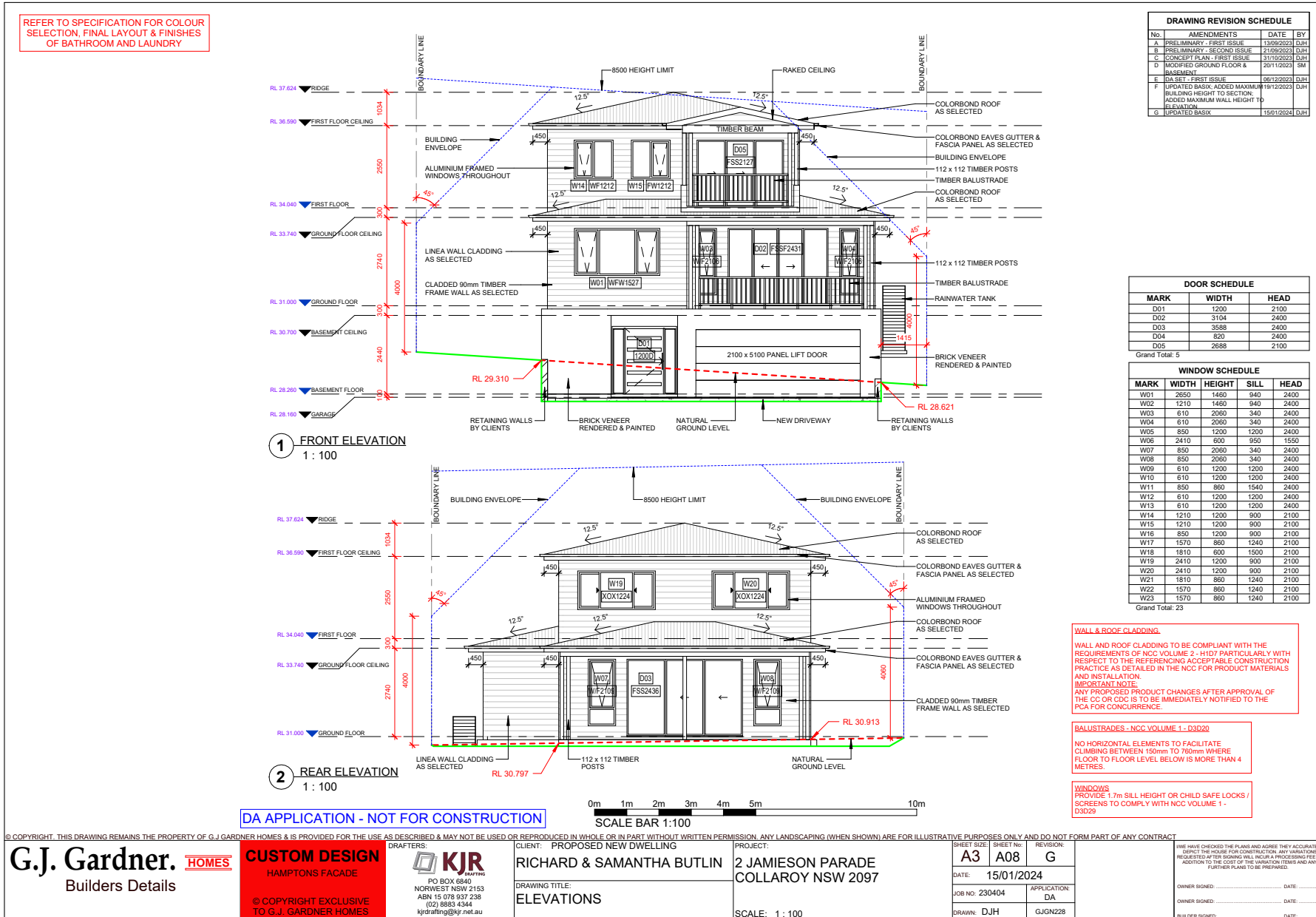
29. **Geotechnical Recommendations**

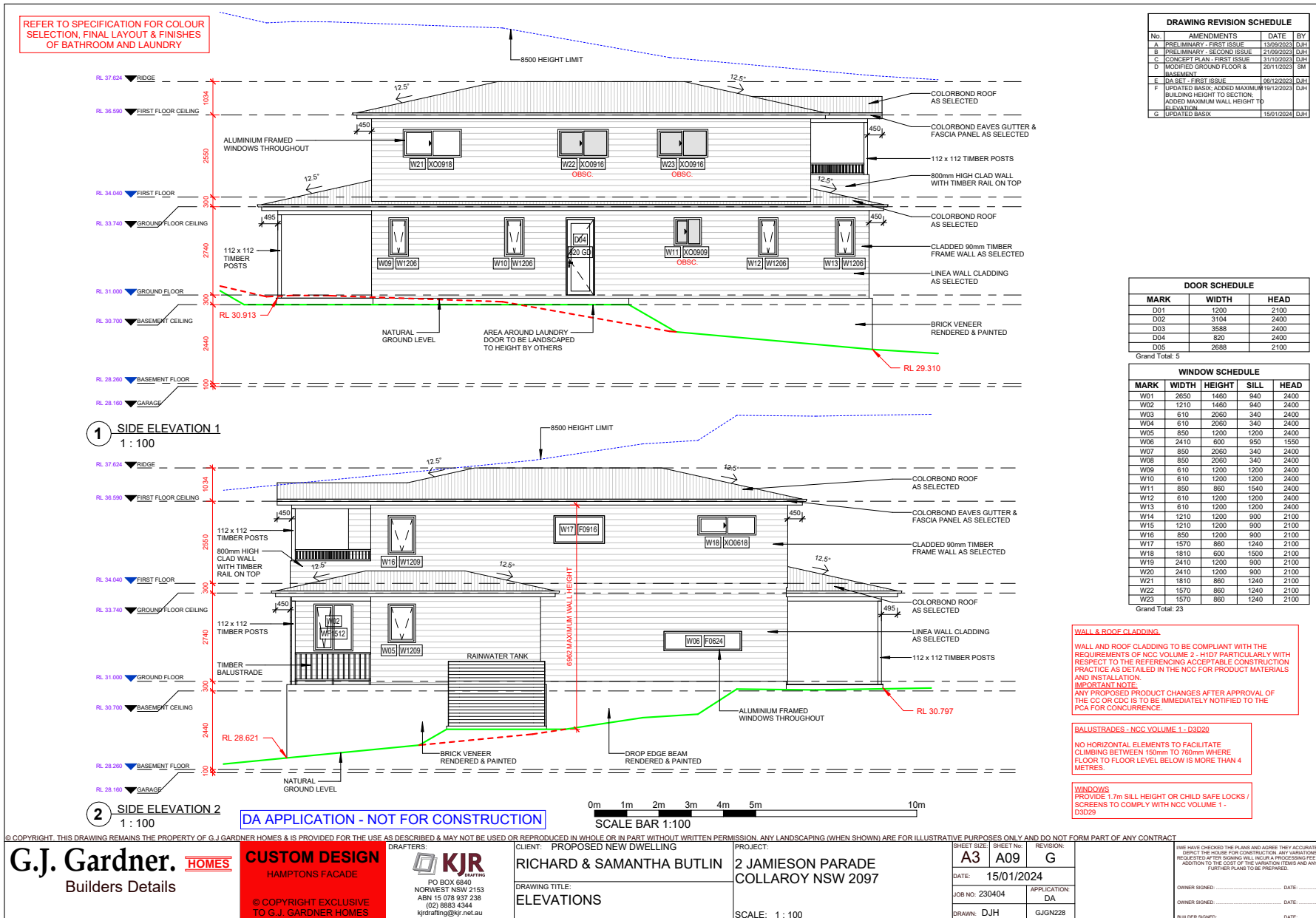
Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.



ATTACHMENT 2 : SITE PLAN AND ELEVATIONS - ITEM 3.4 - NORTHERN BEACHES COUNCIL MEETING - 24 APRIL 2024





ITEM 3.5	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	2024/268188
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:	<p>The subject site consists of one(1) allotment located on the eastern side of Monash Parade.</p> <p>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.</p> <p>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.</p> <p>The site is relatively flat throughout.</p> <p>The site does not have any details of any threatened species.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by a mix of ocean-side dwellings.</p>

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)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters are capable of being addressed via a condition of consent.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended Architectural Plans, Certified Shadow Diagrams, a Survey Plan and the installation of Height Poles.</p>

Section 4.15 Matters for Consideration	Comments
	<p><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.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. These matters are capable of being addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). These matters are capable of being addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (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)	<p><i>Supported, no conditions required</i></p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> - Supplied plans and reports; - Coastal Management Act 2016; - State Environmental Planning Policy (Resilience and Hazards) 2021 <p>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.</p> <p>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.</p>
External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p><i>Supported, subject to Conditions</i></p> <p>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.</p>
Aboriginal Heritage Office	<p><i>Supported, subject to Conditions</i></p> <p>Reference is made to the proposed development at the above area and Aboriginal heritage.</p>

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.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.

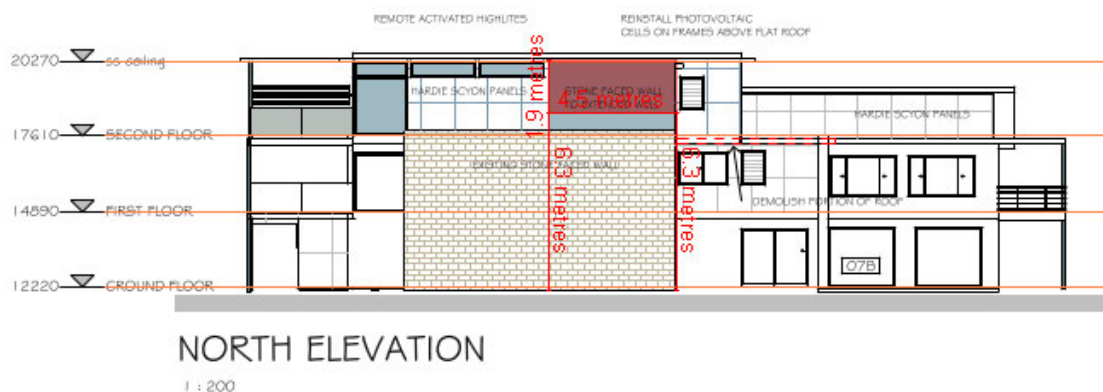


Figure 1- Envelope non-compliance- Northern Elevation

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. **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

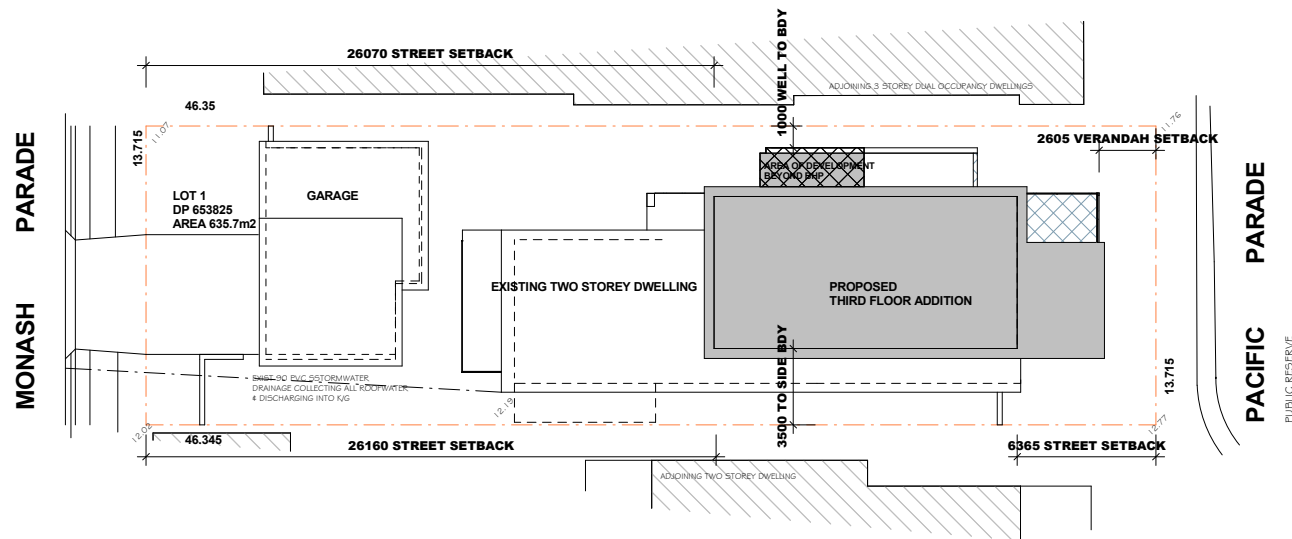
when considering the variations to the above-mentioned DCP provisions, is not representative of view sharing and the outcome is contrary to the planning principle established in *Tenacity v Warringah Council*.

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.

A3



SITE PLAN

1 : 200

REVISED DEVELOPMENT APPLICATION

DESIGN COPYRIGHT GRAHAM ZERK. 11A/40 BOWMAN STREET RICHMOND 2753 ph 45788844 EMAIL zerk@netspace.net.au

CONCEPT DRAWING NOT TO BE USED FOR CONSTRUCTION
DO NOT SCALE OFF DRAWING

13 OCTOBER 2023

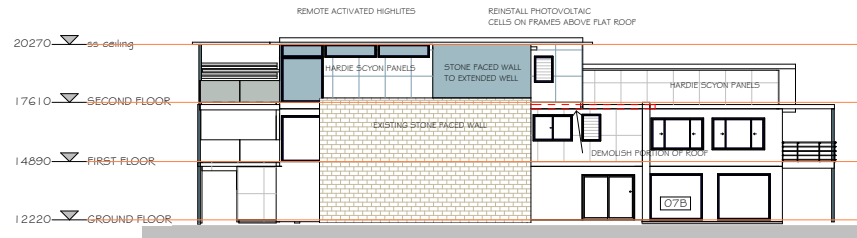
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DAI 1325

THIRD STOREY ADDITION TO DWELLING

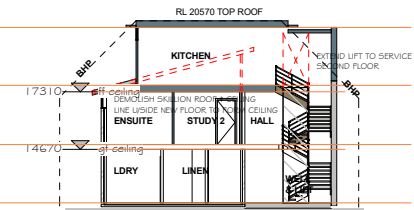
at 6 MONASH PARADE DEE WHY

A3



NORTH ELEVATION

1 : 200



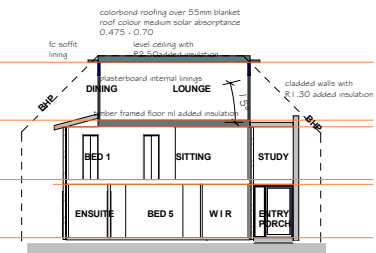
STAIR SECTION

1 : 200



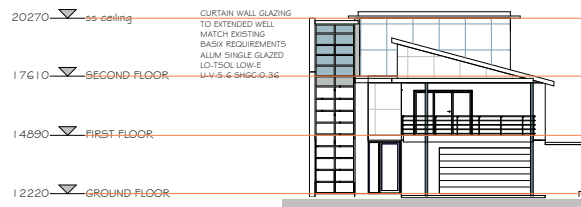
SOUTH ELEVATION

1 : 200



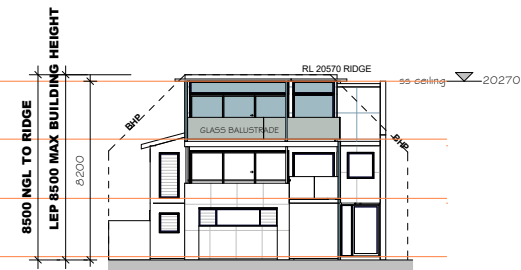
TYPICAL CROSS SECTION

1 : 200



WEST ELEVATION

1 : 200



EAST ELEVATION

1 : 200

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
1 : 200

DA3 1325

ITEM 3.6 DA2023/0957 - 7 PARR AVENUE NORTH CURL CURL - DEMOLITION WORKS AND THE ALTERATIONS AND ADDITIONS TO THE EXISTING DWELLING HOUSE, INCLUDING THE SUBDIVISION OF ONE LOT INTO TWO

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 DA2023/0957 for demolition works and the alterations and additions to the existing dwelling house, including the subdivision of one lot into two on land at Lot 91 DP 14113, 7 Parr Avenue NORTH CURL CURL, for the reasons for refusal set out in the Assessment Report.

Reporting manager	Adam Richardson
TRIM file ref	2024/268217
Attachments	↓1 Assessment Report ↓2 Site Plan and Elevations

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0957
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Responsible Officer:	Brittany Harrison
Land to be developed (Address):	Lot 91 DP 14113, 7 Parr Avenue NORTH CURL CURL NSW 2099
Proposed Development:	Demolition works and the alterations and additions to the existing dwelling house, including the subdivision of one lot into two.
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:	Rebecca Ross
Applicant:	Sean Clive Gartner

Application Lodged:	19/07/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Subdivision and Alterations/Additions
Notified:	21/02/2024 to 06/03/2024
Advertised:	Not Advertised
Submissions Received:	7
Clause 4.6 Variation:	Nil
Recommendation:	Refusal

Estimated Cost of Works:	\$ 270,000.00
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EXECUTIVE SUMMARY

This development application seeks consent for demolition works and the alterations and additions to the existing dwelling house, including the subdivision of one (1) lot into two (2). Proposed Lot 1 will upon it retain the existing dwelling house, which includes alterations. Proposed Lot 2 is to be vacant.

The application is referred to the Development Determination Panel (DDP) due to having received seven (7) unique submissions by way of objection.

The subdivision has been accompanied by indicative plans for the future allotments 1 and 2. These dwelling designs are then subject to separate applications proposed under DA2023/0958 and DA2023/0959. This application has generally been assessed in isolation of those application, however has considered and made reference to the cumulative impacts of these proposed dwellings, as the impacts are interrelated.

The development application upon lodgement was notified for a period of fourteen (14) days as per Council's Community Participation Plan (CPP). The concerns raised in the submissions are addressed under the 'submissions' section of this report. These concerns predominantly relate to traffic and parking, non-compliance with the lot width requirement specified under the Warringah Development Control Plan 2011 (WDCP 2011) and generated amenity impacts.

Amendments were requested on the 15 December 2023 through the issue of a Request for Information letter, in light of those concerns as well as additional planning issues. An amended application was submitted by the applicant on 13 February 2024, and the application was re-notified due to a change in the description of works.

A critical assessment was undertaken for Clause C1 Subdivision of the WDCP 2011 relating to the creation of the allotments, this assessment found that the submitted indicative plans are not acceptable designs. However, it was established that the future sites can accommodate dwelling houses, subject to the dwellings being designed to appropriately overcome site constraints and sensitively respond to the topography and overall context of the allotment shape and surrounding area.

Despite the above, the application lacks sufficient information and requires further amendments in relation to vehicle access design, stormwater plans and the need for an amended geotechnical assessment reflective of the alteration to the existing dwelling retained on Lot 1.

This report concludes with a recommendation that the DDP refuse the development application, subject to a lack of sufficient information and conflicting plans.

PROPOSED DEVELOPMENT IN DETAIL

This Development Application seeks consent for demolition works and the alterations and additions to the existing dwelling house, including the subdivision of one (1) lot into two (2).

Specifically, the works comprise of the following:

- Partial demolition of the front part of the dwelling, carport, outbuilding and the rear swimming pool;
- Construction of a new front deck and outdoor paved courtyard area;
- Building works to accommodate new existing building design;
- Torrens Title Subdivision of the existing lot into two (2) new lots (see subdivision plan below); and
- Associated driveway, ROW and drainage works.

Note: Proposed Lot 1 is to accommodate for the existing dwelling house and included alterations. Proposed Lot 2 is to be vacant.

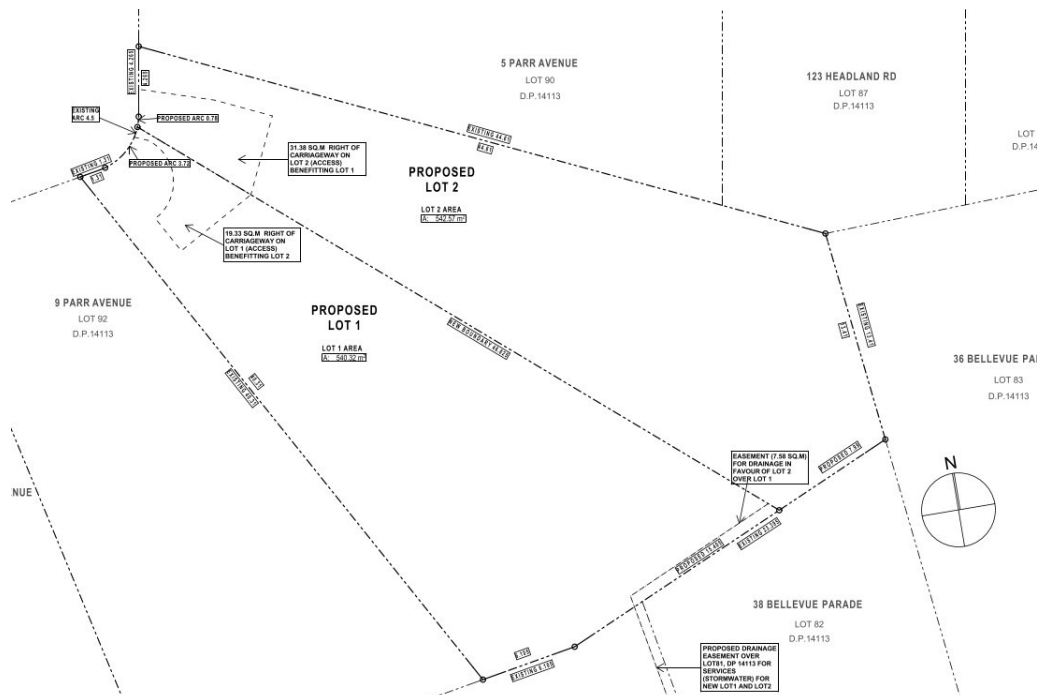


Figure 1: Proposed Subdivision Plan - Gartner Trovato Architects - Dated 29 January 2024 - Revision B

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 Local Environmental Plan 2011 - 6.4 Development on sloping land
Warringah Development Control Plan - B9 Rear Boundary Setbacks

Warringah Development Control Plan - C1 Subdivision
 Warringah Development Control Plan - C2 Traffic, Access and Safety
 Warringah Development Control Plan - C4 Stormwater
 Warringah Development Control Plan - D7 Views
 Warringah Development Control Plan - D8 Privacy
 Warringah Development Control Plan - E10 Landslip Risk

SITE DESCRIPTION

Property Description:	Lot 91 DP 14113 , 7 Parr Avenue NORTH CURL CURL NSW 2099
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the south-eastern side of Parr Avenue.</p> <p>The subject site is legally identified as Lot 91 in Deposited Plan 14113, No. 7 Parr Avenue, North Curl Curl.</p> <p>The site is irregular in shape with a street frontage of 9.79m and a depth of 40.31m along the south-western boundary and 44.61m along the north-eastern. The site has a surveyed area of 1082.51m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a dwelling house, outbuilding, carport and swimming pool.</p> <p>The site topography slopes downward from north to south by approximately 5.0m, and includes various rock outcrops to the north-east. The property includes lawn areas and various types of vegetation.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by low density residential development of various architectural designs.</p>

Map:



SITE HISTORY

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

The development application was notified for a period of fourteen (14) days, as stated within Council's Community Participation Plan, which resulted in seven (7) submissions.

Amended plans and additional information were requested on the 15 December 2023 to address the following:

- **Statement of Environmental Effects:** Clarification was required to confirm whether the demolition to the existing structures on site will occur under the subdivision application (DA2023/0957) or under the separate dwelling house applications (DA2023/0958 or DA2023/0959).
- **Clause C1 Subdivision (WDCP 2011):** Both lots are inconsistent with the width requirements. In light of an assessment (under separate development applications) of the dwelling houses proposed for the subdivided lots, issues were identified in relation to the built form controls under the WDCP 2011, which have the likelihood in adversely impacting surrounding properties in terms of privacy, view loss and visual dominance.
- **Development Engineer and Water Management Issues:** Request for additional and/or amended information.

A meeting with the applicant was undertaken on 24 January 2024 to discuss above issues.

The Request for Further Information Letter indicates that where an application is amended by association, this may necessitate updating or amending supporting documentation, (e.g., Updated BASIX certificate,

Bushfire Report, Geotechnical Report, etc.). Failure to do so may restrict Council's authority to support your application.

Amended Plans were received on 13 February 2024, however this information upon detailed assessment found that the amendments to the development are considered to be deficient in resolving the concerns identified in the assessment relating to Development Engineering. In addition it was identified that certain supporting documents (i.e. BASIX and Geotechnical Reports) had not be updated to reflect changes to the existing building that is to remain on site (Proposed Lot 1). These issues form reasons for refusal.

The proposal was also formally re-notified due to a change in description of works.

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 2011 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.

<p>Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)</p>	<p>Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters are capable of being addressed via a condition of consent, if the development be approved.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested, refer to 'Site History', for detail.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter is capable of being address via a condition of consent, if the application were to be approved.</p>
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Section 4.15 Matters for Consideration	Comments
	<p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter is capable of being address via condition of consent, if the development is approved.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan 2011 section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed development, in its current form.
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 2011 for the reasons set out in this report. Amended plans are required in relation to Stormwater and Vehicle Access. 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 21/02/2024 to 06/03/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 7 submission/s from:

Name:	Address:
Mrs Sharon Elizabeth Billyard Noel Frederick Billyard	5 Parr Avenue NORTH CURL CURL NSW 2099
Mrs Nicola Joy Wiebe	38 Bellevue Parade NORTH CURL CURL NSW 2099
Mrs Sandra Marshall Mr Stuart James Marshall	123 Headland Road NORTH CURL CURL NSW 2099
Hugh David Fraser	36 Bellevue Parade NORTH CURL CURL NSW 2099
Mr Laurence Edward Cronin Ms Christine Margaret Cronin	1 Parr Avenue NORTH CURL CURL NSW 2099
Ms Sarah Gabrielle Christie	3 Parr Avenue NORTH CURL CURL NSW 2099
Daniel John Billyard	11 York Street OATLANDS NSW 2117

Seven (7) submissions were received, with the issues summarised and addressed below:

- ***Traffic and parking concerns - street is a bus route and a route for the nearby school. Council has removed existing street parking by adding no stooping yellow marked lines. The applicant has sought to address this situation by retaining the single existing driveway as a combined right of way but the doubling of the dwelling density of the site will only exacerbate the existing problem as evidenced by frequent parking of existing vehicles on the footpath in front of their property and No. 5 Parr Avenue. ROW will prevent the residents of the new allotments to park in their driveway.***

Comment

Council's Development Engineer has reviewed the proposal and is not in support of the development due to inadequate information in relation to stormwater and vehicle access. the 'Development Engineering Referral' specifies the inadequacies with the development, with these reasons warranting refusal of the application. Council's Development Engineer did not raise concern with on-street parking issues, as the proposed dwelling provides the required two (2) minimum parking spaces (within double garage) and consists of only one (1) driveway crossover. If the application were to be approved, a Construction Traffic Management Plan (CTMP) would be required in that instance, to ensure pedestrian and vehicle safety during construction/demolition phase (to existing building), given the location, extent of excavation and context of the site and surrounds.

- ***Substantial loss of views as a result of the proposed future dwelling designs and location (being assessed under separate applications). The subject site has a narrow frontage, subdivision down the centre of the site, will provide for two (2) extremely narrow allotments, the bulk of these dwellings will need to be in the middle and rear sections of each subdivision site (where views are currently obtained from multiple properties - No. 1, No. 3 and No. 5 Parr Avenue and no. 123 Headland Road). Applicant submitted inaccurate view loss analysis.***

Comment

A view loss inspection was conducted at No. 1, No. 3 and No. 5 Parr Avenue, in addition to No. 123 Headland Road. Refer to 'Clause D7 Views' for further detail. The proposed dwellings (which are the proposals which would create issues in relation to view loss are proposed under separate applications) also include a detailed view loss analysis conducted by Council, which includes height poles. As such the issues are aligned to those applications.

- ***Non-compliance with Clause C1 Subdivision - lot widths (13.0m minimum) - creating narrow shaped allotments, and will in turn create an over-development of the sites. Over half of the site lengths will be non-compliant with the width, and consist of a street frontage of 5.25m. Currently the houses along the eastern side of Parr Avenue, numbers 1, 3, 5 and 7 have an established building line. This current line allows for an equally shared view for all.***

Comment

Refer to 'Clause C1 Subdivision' for detailed discussion, elsewhere in this report. It is considered that the development is otherwise satisfactory in this regard.

- ***Existing boundary walls along the north and west of No. 38 Bellevue Parade, to ensure the integrity of these walls be maintained. Drainage works do not impact No. 38 Bellevue Parade. Request conditions for Dilapidation Reports for affected properties.***

Comment

Any potentially affected/adjoining properties would be noted and added to a recommended Dilapidation Report condition, if the application were to be approved.

- ***Concerns that the Statement of Environmental Effects (prepared by a consultant who until recently was a senior member of Council's Planning staff) has sought to minimise the social, amenity and economic impacts of the proposal.***

Comment

Under Council's Management of Conflicts of Interest a former staff member (more than 12 months since employment) can be assessed within Council, said staff member has not been employed by Council since their departure (more than 12 months ago). Despite the discussions noted within the Statement of Environmental Effects, a thorough assessment by Council has been undertaken in regard to any social, amenity and economic impacts of the proposal.

- ***Building height to be misleading and inaccurate shadow diagrams. Non-compliance to built form controls of the Warringah Development Control Plan 2011 in relation to the future dwelling designs.***

Comment

These concerns relate to the future proposed dwelling design for Lot 1 and Lot 2. These dwelling designs are being assessed under separate development applications. No new

dwellings (apart from the alterations to the existing dwelling - located on Lot 1) will occur under this development application. The plans submitted that demonstrate the future dwellings on Lot 1 and Lot 2 in terms of this application are to be considered as indicative only.

- ***Non-adjoining/adjacent properties that will be affected were not notified, these being; No. 1 and No. 3 Parr Avenue.***

Comment

All processes and assessments have been satisfactorily followed and addressed. As stated within Council's Community Participation Plan (CPP) - at minimum - notification to adjoining property owners and occupiers and property owners and occupiers across a street or road from the subject site shall occur, along with the erection of a sign which has occurred. This application was notified correctly.

- ***Proposed future dwelling will result in privacy/overlooking issues.***

Comment

The plans submitted that demonstrate the future dwellings on Lot 1 and Lot 2 under indicative only when assessed under this application. These dwelling designs are being assessed under separate development applications. It can be considered that more skillful designs that include appropriate privacy protection elements can achieve acceptable visual privacy to both the occupants and neighbouring properties.

- ***Revision to application to now include part of the existing dwelling to remain on Lot 1. No other changes occurred with the subdivision section of the application, concern that the application was not withdrawn or refused after seven (7) months.***

Comment

The application was formally re-notified due to a change in description of works to allow for alterations to the existing dwelling house which will be located on proposed Lot 1. No changes to the subdivision allotment shapes etc. occurred. Council allows for the applicant to review the design and address any issues raised, and to submit amended plans/additional information, this contributed to the processing time of the application.

- ***Concerns with Development engineer comments - Council's Low Rise Housing Diversity Code - driveways should be located to maximise on-street parking. Street located near new driveway, may affect TPZ.***

Comment

Council's Development engineer advised for 3.5 metre wide driveway at boundary and not the layback to the road, the engineer ensured that this would not further impact existing on-street parking arrangements. Council's Landscape Officer has reviewed the proposal and if it were to be approved has included relevant conditions to protect any trees to be retained, including the street tree.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p><i>Supported, subject to conditions.</i></p> <p>The application seeks consent for subdivision of one lot into two and associated works.</p> <p>The Arborist's Report prepared by Treeism is noted.</p> <p>The Report indicates that the subdivision works can be undertaken with an acceptable level of impact on trees on and adjacent to the works.</p> <p>No objections are raised with regard to landscape issues subject to conditions.</p>
NECC (Development Engineering)	<p><i>Not supported, additional information required.</i></p> <p><u>Engineering Referral Comments 12/03/2024:</u></p> <p>Access Amended subdivision plans with reciprocal access rights are provided, (Internal Ref: TRIM2024/100512). As Parr Ave is not a very busy road and there is no need for vehicles to manoeuvre in forward in and forward out direction, hence the proposed ROW arrangement seems to be wider than it needs to be. ROW can be reduced to allow 3.5m wide at boundary and further tapering into each lot, like a triangle.</p> <p>Stormwater Amended plans (Individual On-site Stormwater Detention (OSD) systems for both lots are proposed -Internal Ref: TRIM2024/100514) shows full demolition of lot 1 and building footprints of proposed new dwellings on both lots are also shown, while this application is for the subdivision and alterations and additions of the existing dwelling only.</p> <p>As the proposal is for the subdivision and alterations and additions of the existing dwelling only, amended stormwater plans to show the stormwater management plan catering these alterations and additions only.</p> <p><u>Engineering Referral Comments 08/08/2023:</u> Development application is for subdivision of one lot into two and associated works.</p>

Internal Referral Body	Comments
	<p>Access Proposal is to retain existing driveway and create a right of carriageway on lot2 benefitting lot1. Right of Carriageway to also include internal portion of the driveway beyond driveway crossing within lot 1, burdening lot1 benefitting lot2. Right of carriageway must be created through reciprocal rights of carriageway under Sec88B of Conveyancing Act 1919. Amended plans are requested.</p> <p>Stormwater Proposal is to create two drainage easements. One on lot 1 benefitting lot 2 and second on lot 81, DP 14113 (40 Bellevue Parade NORTH CURL CURL) benefitting both lots. A conditional easement letter from owner of 40 Bellevue Parade NORTH CURL CURL is provided (internal Ref: TRIM 2023/452663). It is unclear, if the proposal is to demolish the whole dwelling on lot 1 or partial demolishing?</p> <p>In case partial demolition is proposed and the remaining impervious area is more than 40%, an onsite stormwater detention system will be required for lot1. Clarification is requested and in case partial demolition is proposed then stormwater plans with OSD on lot 1 shall be submitted.</p>
NECC (Flooding)	<p><i>Supported, no conditions required.</i></p> <p>The property is not within the Flood Planning Area.</p> <p>There are no applicable flood related development controls from Section E11 of the Warringah DCP (2011).</p>
NECC (Water Management)	<p><i>Supported, subject to conditions.</i></p> <p>This application was assessed in consideration of but not limited to:</p> <ul style="list-style-type: none"> • Supplied plans and reports; • Relevant LEP and DCP clauses; • Northern Beaches Water Management for Development Policy <p>The Subdivision is resulting in the creation of two (2) lots where the total post development impervious area of the new lots exceeds 40.0%.</p> <p>The stormwater management (quality and water balance) is to meet the General Stormwater Quality Requirements stated in table 5.</p> <p>The proposed stormwater management (quality and balance) is satisfactory.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p>Supported, subject to conditions.</p> <p>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.</p> <p>These recommendations would be included as a condition of consent, if the application were to be approved.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Sustainable Buildings) 2022

A development application for BASIX development must be accompanied by—

- (a) a relevant BASIX certificate for the development issued no earlier than 3 months before the day on which the development application is submitted on the NSW planning portal, and
- (b) the other matters required by the BASIX certificate.

A BASIX certificate is required for the alterations and additions to the existing dwelling house. A BASIX Certificate was not submitted, therefore the application cannot be supported due to a lack of sufficient information.

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 would be included in the recommendation of this report, if the application were to be approved.

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

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Minimum subdivision lot size	Lot 1: 450.0m ²	Lot 1: 540.32m ² (Excluding Right of Carriageway - 520.99m ²)	-	Yes
	Lot 2: 450.0m ²	Lot 2: 542.57m ² (Excluding Right of Carriageway - 511.19m ²)	-	Yes
Building Height	8.5 metres	Dwelling on Lot 1 to be altered: less than 8.5 metres	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision - consent requirements	Yes
2.7 Demolition requires consent	Yes
4.1 Minimum subdivision lot size	Yes
5.3 Development near zone boundaries	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	No

Detailed Assessment**6.4 Development on sloping land**

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 6.4 Development on Sloping Land of the Warringah Local Environmental Plan 2011.

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

- (a) *the application for development has been assessed for the risk associated with landslides in relation to both property and life, and*
- (b) *the development will not cause significant detrimental impacts because of stormwater discharge from the development site, and*
- (c) *the development will not impact on or affect the existing subsurface flow conditions.*

Comment

It is noted that a Geotechnical Report prepared by Crozier Geotechnical Consultants dated 20 January 2023 has been provided which relates to the subdivision and future dwellings (assessed under separate applications). However, no Geotechnical Assessment has been provided that relates to the new alterations to the existing dwelling to be situated on Lot 1. As per Council's lodgement requirements for sites located on Landslip Risk B - A preliminary assessment of site conditions, prepared by a suitably qualified, practicing and experienced geotechnical engineer must be submitted.

As such the application cannot be supported, subject to a lack of sufficient information.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall Height	7.2m	< 7.2m	-	Yes
B3 Side Boundary Envelope	5.0m <i>Western Elevation</i>	Proposed works: Within Envelope	-	Yes
	5.0m <i>Eastern Elevation</i>	Proposed works: Within Envelope	-	Yes
B5 Side Boundary Setbacks	0.9m <i>Western Boundary</i>	Dwelling: 2.0m <i>(existing)</i> New front deck: 1.7m	-	Yes
	0.9m <i>Eastern Boundary</i>	Side Patio: 1.0m Dwelling: > 0.9m	-	Yes
B7 Front Boundary Setbacks	6.5m <i>Northern Boundary</i>	Proposed works: > 6.5m	-	Yes
B9 Rear Boundary Setbacks	6.0m <i>Southern Boundary</i>	1.8m <i>(existing)</i>	70.0%	No
		Proposed works: > 6.0m	-	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40.0% (216.13m ²)	40.39% (218.26m ²)	-	Yes

The built form controls assessed above relate to the existing building which is to be altered as part of this subdivision application and located on proposed Lot 1.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C1 Subdivision	No	No
C2 Traffic, Access and Safety	No	No
C3 Parking Facilities	Yes	Yes
C4 Stormwater	No	No
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	No	Yes
D9 Building Bulk	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
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	No	No

Detailed Assessment

B9 Rear Boundary Setbacks

It is noted that the existing dwelling which is to be located on the proposed Lot 1 consists of an existing rear setback non-compliance. As no new rear non-compliances will be added under this application, no further assessment is required. In terms of the proposed works, the new alterations to the existing dwelling will comply with the rear setback requirements.

C1 Subdivision

Component	Requirement	Proposed	Compliant
Lot requirements	<p>R2 Low Density Residential zone requirements:</p> <p>Proposed new allotments:</p> <p>a) Minimum width: 13.0 metres b) Minimum depth: 27.0 metres; and c) Minimum building area: 150.0m²</p>	<p>Lot 1 a) Minimum width: 5.03m - 21.51m b) Minimum depth: 40.31m - 46.825m c) Minimum building area: > 150m²</p> <p>Lot 2 a) Minimum width: 5.04m - 46.825m b) Minimum depth: 44.61m c) Minimum building area: > 150m²</p>	<p>No - Does not comply wholly with the allotment width. Complies with minimum building area and depth.</p>

Access	<p>Motor vehicle access to each residential allotment is required from a constructed and dedicated public road.</p> <p>Where access is proposed to a section of unconstructed public road, then the subdivision will need to provide legal, constructed access to the Council's satisfaction.</p> <p>Access for Council service vehicles, emergency vehicles and garbage collection vehicles must be provided.</p> <p>Driveways, accessways, etc., to allotments should have a gradient not exceeding 1:4 and allow for transitions at a minimum length of 1.5m and at a grade no steeper than 1:10.</p> <p>Driveways in excess of 200 metres will not be allowed for residential development.</p> <p>Driveways that are 30m or more</p>	<p>Vehicle access is required via a Right of Carriageway with one (1) driveway crossover off Parr Avenue (public road).</p> <p>Access for Council service vehicles, emergency vehicles and garbage collection vehicles can be provided.</p> <p>Amended plans/information is required as stated within Council's 'Development Engineer Referral' regarding the width of the Right of Carriageway at the boundary to be reduced to a minimum of 3.5m.</p>	Yes
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in length require a passing bay to be provided every 30m. To provide a passing bay, driveways shall be widened to 5.0m for a distance of at least 10m.

Passing bays should have regard to sight conditions and minimise vehicular conflict.

Vehicular ingress/egress points to internal lots may be used as passing/turning bays, subject to extension of a right-of-carriageway over the passing/turning bay.

Rights-of-carriageway should be located so as to accommodate all vehicle turning facilities.

Width of accessways are to be as follows:

Number of lots to be serviced	Width of clear constructed accessway (m)
1 - 5	3.5
6 - 10	5.0
in excess of 10	Access is to be provided by a private or public road constructed with a width that is in accordance with Council standard specifications for engineering works (AUSPEC 1)

Provision of services in rights of carriageway are as follows:

Number of lots to be serviced	Additional width to be provided in Right of Carriageway (m)
Up to 3 lots	0.5

	4 or more lots	1.0	
Design and construction	<p>All roads, rights of carriageway, drainage design and construction is to be in accordance with Council's policy requirements including; AUSPEC 1 - Council's Specification for Engineering Works, Development Engineering Minor Works Specification, On Site Stormwater Detention (OSD) Technical Specification and Council's Water Sensitive Urban Design Policy. Additionally, internal roads must be designed in accordance with the relevant Australian Standards.</p> <p>Subdivision design needs to maximise and protect solar access for each dwelling by considering factors such as orientation, shape, size and lot width.</p>	<p>Amended plans/information is required as stated within Council's 'Development Engineer Referral' in relation to stormwater.</p> <p>Sensitive designs can provide for protection of solar access for each dwelling by considering factors such as orientation, shape, size and lot width.</p>	No
Drainage	<p>Provision should be made for each allotment to be drained by gravity to a Council-approved drainage system. The topography of the land should not be altered to adversely affect the natural drainage patterns. Stormwater should drain directly to a Council-approved drainage system and not via adjoining properties unless via a formalised interallotment drainage system. The proposed allotments are to be drained to the direction of the natural fall of the land. Interallotment drainage easements will be required through adjoining properties to adequately drain land to Council's downstream system.</p>	<p>Amended plans/information is required as stated within Council's 'Development Engineer Referral' in relation to stormwater.</p>	No

Restrictions	Any easement, right-of-carriageway, or other restriction that is placed on the title of any land as a requirement of the approval of the subdivision is to be protected by a positive covenant or like instrument with the Council nominated as a party.		Yes
Environmentally constrained land	In areas subject to constraints such as flooding, tidal inundation, threatened species, landslip risk, bushfire or any other matter, adequate safe area for building, where the risk from hazard is minimised, is to be provided within an allotment. Where possible, lot boundaries should utilise natural land features such as creeks, escarpments and rock outcrops.	Geotechnical Report is provided for the subdivision of land.	Yes
Bushfire	Subdivision should be designed to minimise the risk from potential bushfire. Asset protection zones should be contained within the property boundaries of the new subdivision.	Subject site is not located within Bushfire Prone Land	N/A

The required minimum width of a new allotment to be created which is specified by the DCP is 13.0m. The proposed allotments in the subdivision provide the widths as noted in the above table, where a partial-non-compliance to the numerical requirements results. The existing allotment is of an irregular shape with the northern boundary line (front) provides for shorter length and curved arc shape when compared to the larger southern boundary line, due to it being located on the bend of Parr Avenue. The proposed allotment widths due to the irregular shape widen from non-compliance to compliance when travelling further south down the site. Objections have indicated that the rear of these sites where the compliant allotment dimensions would be located is also the area of the view corridor that the northern properties obtain.

It is important that the subdivision pattern is fairly consistent in the area (rectangular shapes) however it does include various allotments of irregular size and battle-axe shapes. The area also consists of allotments with street frontages/widths of both lesser and more than 13.0m, which supports the notion that built form can be comfortably situated and positioned upon sections of the site that have lesser than 13.0m in width (Refer to Figure 2 below). This means that future development of these sites do not need to be wholly located within just the rear (area of compliant dimensions) but also in areas that have a variation with the allotment width requirement.

The proposed subdivision will allow for allotment depths in excess of the minimum requirement, in addition, the topography of the land slopes downward from north to south. The sites therefore can accommodate dwelling houses, subject to the dwellings being designed to appropriately overcome their constraints and step down the site and fit in with the overall context of the allotment shape and surrounding area.



Figure 2: Aerial view of immediate area - purple shading demonstrates sites with frontages less than 13.0 metres or irregular shaped allotments. Blue outline is subject site- indicative only

Merit Consideration

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

- ***To regulate the density of development.***

Comment

The proposed shaped allotments will still allow for development density that will contribute to the existing streetscape character, this being one (1) dwelling per allotment with areas that comply with the WLEP 2011 and that are consistent with site areas within the vicinity.

- ***To limit the impact of new development and to protect the natural landscape and topography.***

Comment

Lot 2 will consist of rock outcrops toward the rear of the site the indicative plans indicate that dwelling houses could be built around these topographical features which should be preserved. More sensitive designs could further demonstrate the protection of natural landscape and topography.

- ***To ensure that any new lot created has sufficient area for landscaping, private open space, drainage, utility services and vehicular access to and from the site.***

Comment

The indicative plans demonstrate that new dwellings on each lot could provide for compliant landscaping and private open space areas that align with the requirements under the Warringah Development Control Plan 2011. Council's Development Engineer has requested further amendments in relation to drainage and vehicular access, therefore the application does not meet this objective. Refer to 'Council's Development Engineer Referral Response'. It is noted that the Engineer is not strictly opposed to the subdivision, but requires additional information to satisfactorily assess impacts.

- ***To maximise and protect solar access for each dwelling.***

Comment

The proposal is for the subdivision of one (1) lot into two (2) lots, and as such the construction of dwelling houses is not included under this application but are rather subject to future/separate applications. The proposal does however, include alterations to an existing dwelling, which will not adversely impact solar access to adjoining properties. Subject to acceptable future dwelling designs, it is considered that acceptable solar access could be provided to the sites, and adjoining sites. Future dwellings would be assessed under the Warringah Development Control Plan 2011 in relation to Clause D6 Access to Sunlight.

- ***To maximise the use of existing infrastructure.***

Comment

The proposal can utilise existing infrastructure where necessary and provide for new upgraded infrastructure.

- ***To protect the amenity of adjoining properties.***

Comment

The specific indicative plans that accommodate the proposal indicate that view loss and privacy issues could occur to surrounding properties. It can be considered that despite the areas of lot width non-compliance, a 'skillful' design (including a lesser height, bulk and scale) which sensitively responds to the site topography, context and surrounding properties (in consideration of existing view corridors) could overcome the view loss concerns. Privacy elements and appropriate orientation of the dwellings can overcome any privacy issues. Future dwellings would be subject to separate applications, where view loss and privacy would be assessed to comply with the objectives of the Warringah Development Control Plan 2011.

- ***To minimise the risk from potential hazards including bushfires, land slip and flooding.***

Comment

Subject site is not located within Bushfire Prone Land. Council's Flooding Team have reviewed the proposal and do not have any objections in regard to flooding impacts. The application was accompanied with a Geotechnical Report for the subdivision. If the application were to be approved, the recommendation in that report would be adhered to via a condition.

Having regard to the above assessment, it is concluded that several applicable outcomes of the control could not be achieved and require amended/additional information. As such, the proposal is recommended for refusal based on insufficient information.

C2 Traffic, Access and Safety

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 C2 Traffic, Access and Safety of the Warringah Development Control Plan 2011.

Council's Development Engineer states that the proposed ROW arrangement is wider than required and requests that the ROW carriageway be reduced to allow 3.5m wide at boundary and further tapering into each lot, like a triangle. Refer to Council's 'Development Engineering Referral' for discussion.

In this regard, Council is not satisfied the proposed development meets the requirements of this clause and is therefore recommended for refusal, due to the inadequacies of the current design.

C4 Stormwater

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 C4 Stormwater of the Warringah Development Control Plan 2011.

Clause C4 Stormwater requires the following:

- *Stormwater runoff must not cause downstream flooding and must have minimal environmental impact on any receiving stormwater infrastructure, watercourse, stream, lagoon, lake or waterway or the like.*
- *The stormwater drainage systems for all developments are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy.*

Amendment to the development have been made which have the effect of changes the description of works to "*Demolition works and the alterations and additions to the existing dwelling house, including the subdivision of one lot into two*". The amended stormwater plans however, indicate the full demolition of Lot 1, with building footprints for the proposed new dwellings on both lots. This application is for the subdivision and alterations and additions of the existing dwelling only. Development Engineering are requesting that stormwater plans be amended to demonstrate the stormwater management plan catering the proposed alterations and additions only. Refer to Council's 'Development Engineering Referral' for discussion.

As such, the proposal is recommended for refusal based on insufficient information i.e. unacceptable stormwater plans to acceptably assess the stormwater impacts.

D7 Views

Merit Consideration

Submissions were received regarding view loss impacts to the below four (4) properties:

- No. 1 Parr Avenue, North Curl Curl.

- No. 3 Parr Avenue, North Curl Curl.
- No. 5 Parr Avenue, North Curl Curl.
- No. 123 Headland Road, North Curl Curl.

A site inspection was conducted at each property noted above. The subdivision proposal provides is accompanied by indicative plans for the development for residential purposes for each proposed allotment which are subject to assessment under separate applications. The indicative plans do not seek approval under this application, with this application is for the subdivision only including the alterations to an existing dwelling. The indicative plans that are provided indicate that these specific designs would result in unacceptable view loss impacts due to the placement, size and height of the buildings. However and despite this, it is considered that more 'skillful' designs (including a lesser height, bulk and scale) which sensitively responds to the site topography, context and surrounding properties (in consideration of existing view corridors) could overcome the view loss concerns and that dwellings of a contemporary amenity that has acceptable impacts could be readily achieved. A detailed view loss analysis is not needed to be undertaken when development applications are lodged for future dwelling houses on these proposed allotments.

The existing dwelling to remain on proposed Lot 1 would not create additional view loss, as the alterations would include demolition to part of the dwelling and an addition of a deck to the front façade.

Having regard to the above assessment, it is concluded that the applicable outcomes of the control could be achieved, if the application were to be supported.

D8 Privacy

Clause D8 Privacy stipulates that building layout should be designed to optimise privacy for occupants of the development and occupants of adjoining properties, and the windows of one dwelling are to be located so they do not provide direct views (i.e. from less than 9 metres away) into the windows of other dwellings.

The proposal does not include the construction of future dwellings on the proposed allotments, but rather alterations to an existing dwelling which would be located upon proposed Lot 1. The privacy issues of that existing dwelling will be assessed below. The future dwellings are assessed under separate applications, whilst privacy of these indicative plans will be noted under this assessment, the detailed privacy assessment will be under that related development application, these being DA2023/0958 and DA2023/0959.

The existing dwelling will experience demolition to the front half of the building, which will be replaced with a large open deck area, this deck area is in close proximity to No. 9 Parr Avenue. If the application was to be approved, a condition for a privacy screen along the western edge would be included. The windows to the dwelling will remain substantially the same.

The development is considered against the underlying Objectives of the Control as follows:

- ***To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.***

Comment

Subject to a recommended condition, the existing dwelling would provide for an acceptable level of visual and acoustic privacy for the subject site and adjoining neighbours within a residential setting.

- ***To encourage innovative design solutions to improve the urban environment.***

Comment

The existing dwelling combined with a recommended condition would result in a proposal that incorporates innovative design solutions to improve the urban environment.

- ***To provide personal and property security for occupants and visitors.***

Comment

A recommended condition for additional privacy elements would ensure that a sense of security and protection is provided for both occupants of the subject site and visitors.

Having regard to the above assessment, it is concluded that the applicable outcomes of the control would be achieved, subject to conditions, if the application were to be supported.

E10 Landslip Risk

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 E10 Landslip Risk of the Warringah Development Control Plan 2011.

For land identified as being in Area B or Area D:

A preliminary assessment of site conditions prepared in accordance with the Checklist for Council's assessment of site conditions (see Notes) must be carried out for development. The preliminary assessment must be prepared by a suitably qualified geotechnical engineer/ engineering geologist and must be submitted with the development application.

It is noted that a Geotechnical Report prepared by Crozier Geotechnical Consultants dated 20 January 2023 has been provided which relates to the subdivision and future dwellings (assessed under separate applications). However, no Geotechnical Assessment has been provided that relates to the new alterations to the existing dwelling to be situated on Lot 1.

As such the application cannot be supported, subject to a lack of sufficient information that is relevant to the current application.

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 \$2,700 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$270,000.

CONCLUSION

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, 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 demolition works and the alterations and additions to the existing dwelling house, including the subdivision of one (1) lot into two (2), has been referred to the Development Determination Panel (DDP) due to the application receiving seven (7) objections.

The development application was notified for fourteen (14) days, as stated within Council's Community Participation Plan, with the objections received being addressed under the 'Submissions' section of the report.

On balance, and considering the preceding detailed assessment of the application it is considered that the proposed allotments are capable of accommodating dwelling houses, subject the dwellings being designed to appropriately overcome site constraints and sensitively respond to the topography and overall context of the allotment shape and surrounding area.

It is considered however that the proposed development does not satisfy the appropriate controls due

to insufficient information being provided in relation to vehicle access, stormwater design and landslip risk. Subject to this lack of acceptable information, the application is referred to the DDP with a recommendation 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 DA2023/0957 for the Demolition works and the alterations and additions to the existing dwelling house, including the subdivision of one lot into two. on land at Lot 91 DP 14113,7 Parr Avenue, NORTH CURL CURL, for the reasons outlined as follows:

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

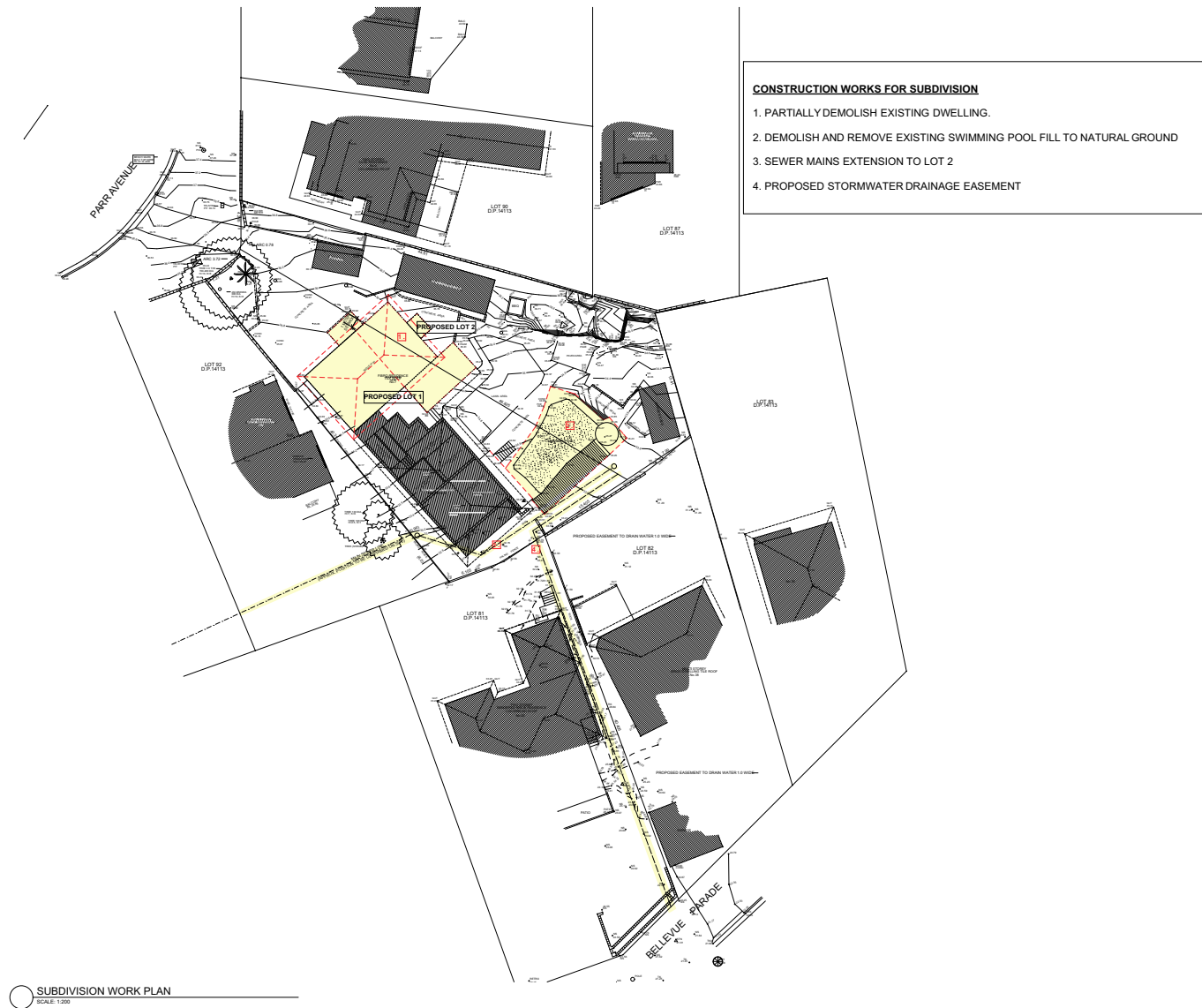
Particulars:

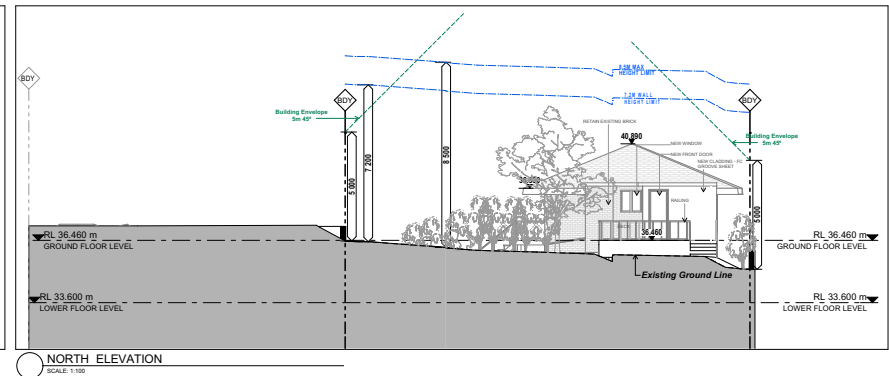
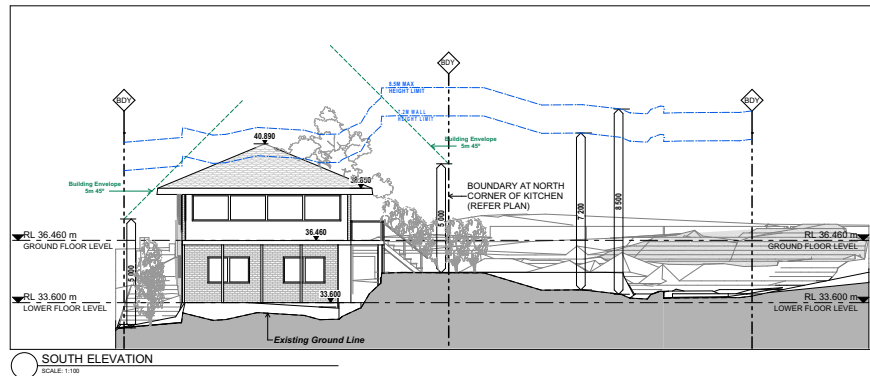
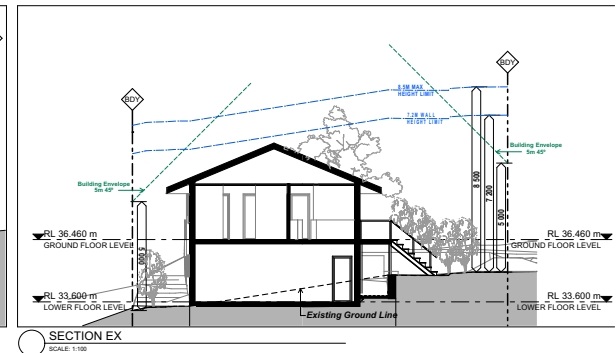
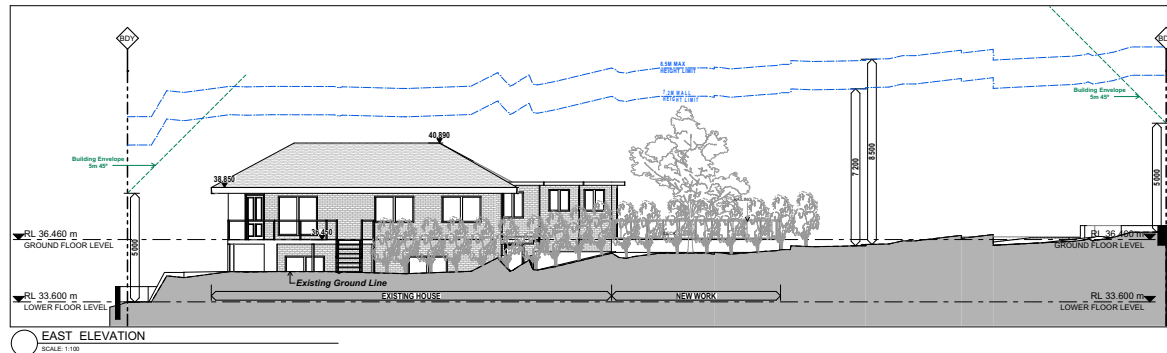
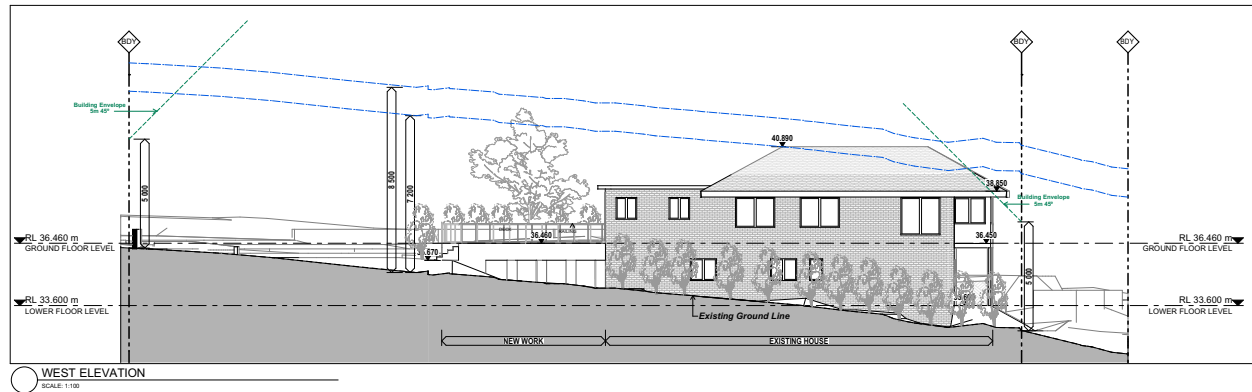
- i) The Stormwater Plan prepared by Barrenjoey Consulting Engineer Pty Ltd has been designed to indicate the complete demolition of the structures on Lot 1, with building footprints for the proposed new dwellings on both lots.
- ii) As this application seeks approval for subdivision and alterations and additions of the existing dwelling only. An amended Stormwater Plan prepared in accordance with Council's 'Water Management for Development Policy' is required that caters for the proposed alterations and additions to the existing dwelling on proposed Lot 1.
- iii) The proposed Right of Carriageway arrangement is shown wider than required, unreasonably burdening each lot. This is to be amended to allow 3.5m wide at boundary and further tapering into each lot.
- iv) No Geotechnical Assessment has been provided which relates to alterations to the existing dwelling to be situated on Lot 1, in conjunction with subdivision.
- v) As the proposal is located on Landslip Risk B - A preliminary assessment of site conditions, prepared by a suitably qualified, practicing and experienced geotechnical engineer is necessary and must be relevant to the current application.
- vi) A BASIX certificate is required for the alterations and additions to the existing dwelling house.

2. Pursuant to Section 4.15(1)(a)(i) & (iii) Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with SEPP (Sustainable Buildings) 2021; Clause 1.2 Aims of the Plan and Clause 6.4 Development on sloping land of the Warringah Local Environmental Plan 2011; Clause C1 Subdivision; C2 Traffic, Access and Safety; Clause C4 Stormwater; Clause E10 Landslip Risk of the Warringah Development Control Plan 2011.

Particulars:

i) Subject to the lack of sufficient Stormwater Plans, vehicle access design and preliminary Geotech assessment of site conditions relevant to the current application and the absence of a Basix Certificate, the proposed development cannot satisfy the objectives of the above.





Drawn	Rev	Description	Drawn	Rev	Description
12/07/23	A	DA SUBMISSION	AD	ESS	
22/07/24	B	REVISED DA SUBMISSION	AD	ESS	

ROSS	EXISTING HOUSE ELEVATIONS & SECTIONS FOR SUBDIVISION
SUBDIVISION	
7 PARK AVENUE, NORTH CURL CURLE	
NOTE: 1.1M MAX HEIGHT LIMIT	
LOTS 91 - 99 M415	
FOR REBECCA ROSS	

ITEM 3.7	DA2023/0958 - 7 PARR AVENUE NORTH CURL CURL - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE INCLUDING SWIMMING POOL AND GARAGE
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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 DA2023/0958 for demolition works and construction of a dwelling house including swimming pool and garage on land at Lot 91 DP 14113, 7 Parr Avenue NORTH CURL CURL, for the reasons for refusal set out in the Assessment Report.

Reporting manager	Adam Richardson
TRIM file ref	2024/268239
Attachments	1 Assessment Report 2 Site Plan and Elevations

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0958
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Responsible Officer:	Brittany Harrison
Land to be developed (Address):	Lot 91 DP 14113, 7 Parr Avenue NORTH CURL CURL NSW 2099
Proposed Development:	Demolition works and construction of a dwelling house including swimming pool and garage
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:	Rebecca Ross
Applicant:	Sean Gartner Architect

Application Lodged:	19/07/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	25/07/2023 to 08/08/2023
Advertised:	Not Advertised
Submissions Received:	6
Clause 4.6 Variation:	Nil
Recommendation:	Refusal

Estimated Cost of Works:	\$ 1,775,915.00
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EXECUTIVE SUMMARY

This development application seeks consent for the demolition works and construction of a dwelling house including a swimming pool, and is referred to the Development Determination Panel (DDP) as the application has received six (6) unique submissions by way of objection.

The dwelling is to be located upon a future allotment (Lot 1), which is subject of a separate application for a two (2) lot Torrens Title Subdivision proposed under DA2023/0957. A dwelling house for proposed Lot 2 of this subdivision application will also be assessed under a separate application (DA2023/0959). This application has generally been assessed in isolation, however has considered and made

reference to the cumulative impact of the dwelling proposed under DA2023/0959, as the impacts are interrelated.

The development application upon lodgement was notified for a period of fourteen (14) days as per Council's Community Participation Plan (CPP). The concerns raised in the submissions are addressed under the 'submissions' section of this report. These concerns predominantly relate to the proposed building's overall height, bulk and scale, which result in amenity impacts to surrounding properties (i.e. view loss, privacy, visual dominance).

Amendments were requested on the 15 December 2023 through the issue of a Request for Information letter, in light of those concerns as well as additional planning issues. An amended application was submitted by the applicant on 13 February 2024, however this information is deficient in resolving the concerns identified in the assessment.

Critical assessment issues include the overall proposed bulk and scale of the build in conjunction with the non-compliances to built form controls such as wall height and side boundary envelope, which contributes to an unacceptable building mass. Therefore, the proposal has not achieved a sensitive design that responds to the site topography, context, nor the immediate existing urban environment, resulting in amenity impacts (i.e. view loss) to four (4) surrounding properties, as noted within the view loss analysis in this report.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that, on balance the proposal (as amended) is unsuitable and does not present an acceptable form of development for the subject site for the reasons outline in this report.

This report concludes with a recommendation that the DDP **refuse** the development application, for the reasons cited within this report

PROPOSED DEVELOPMENT IN DETAIL

This Development Application seeks consent for the demolition works and construction of a dwelling house including a swimming pool on proposed Lot 1 (subdivision under a separate Development Application).

Specifically, the works comprise of the following:

- Demolition of existing structures on site;
- Construction of a three-level dwelling house (lower ground, upper ground and first floor level) with attached double garage. These levels will consist of the following:
 - **Lower Floor:** Games room, one bedroom (Bed 4), bathroom, laundry, gym, sauna, cellar and rear deck;
 - **Ground Floor:** Double garage, store, entry, open plan kitchen/living/dining area, pantry, bathroom and rear deck; and
 - **First Floor:** Master bedroom (Bed 01) with WIR, ensuite and rear deck, two bedrooms (Bed 02 and Bed 03), bathroom and powder room.
- Construction of a swimming pool and associated pool patio area;
- Excavation and fill to facilitate the construction of the lower level of the house, patio and swimming pool;
- Internal driveway and drainage works; and
- Associated landscaping and retaining walls.

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 - B5 Side Boundary Setbacks
 Warringah Development Control Plan - B9 Rear Boundary Setbacks
 Warringah Development Control Plan - C2 Traffic, Access and Safety
 Warringah Development Control Plan - C4 Stormwater
 Warringah Development Control Plan - D7 Views
 Warringah Development Control Plan - D8 Privacy
 Warringah Development Control Plan - D9 Building Bulk

SITE DESCRIPTION

Property Description:	Lot 91 DP 14113 , 7 Parr Avenue NORTH CURL CURL NSW 2099
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the south-eastern side of Parr Avenue.</p> <p>The subject site is legally identified as Lot 91 in Deposited Plan 14113, No. 7 Parr Avenue, North Curl Curl.</p> <p>The site is irregular in shape with a street frontage of 9.79m and a depth of 40.31m along the south-western boundary and 44.61m along the north-eastern. The site has a surveyed area of 1082.51m².</p> <p>The site is located within the R2 Low Density Residential</p>

zone under the provisions of the Warringah Local Environmental Plan 2011 and accommodates a dwelling house, outbuilding, carport and swimming pool.

The site topography slopes downward from north to south by approximately 5.0m, and includes various rock outcrops to the north-east. The property includes lawn areas and various types of vegetation.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by low density residential development of various architectural designs.

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.

The development application was notified for a period of fourteen (14) days, as stated within Council's Community Participation Plan, which resulted in six (6) submissions.

Amended plans and additional information were requested on the 15 December 2023 to address the following:

- **Statement of Environmental Effects:** Clarification was required to confirm whether the demolition to the existing structures on site will occur under the subdivision application

(DA2023/0957) or under the separate dwelling house applications (DA2023/0958 or DA2023/0959).

- **Clause 4.3 Height of Buildings (WLEP 2011):** Further clarification was needed (i.e., showing all existing ground level and/or additional sections) that the building height will comply.
- **Clause D7 Views (WDCP 2011):** The proposal was to demonstrate that view sharing is achieved through the application of the Land and Environment Court's planning principles for view sharing. Not enough information (detailed view analysis) had been provided to accurately determine whether unacceptable view loss will not occur. Height poles were requested to further assess these impacts.
- **Numerical non-compliances to Clause B1 Wall Heights, Clause B3 Side Boundary Envelope, Clause B5 Side Boundary Setbacks, B9 Rear Boundary Setbacks and Clause D1 Landscaped Open Space and Bushland Setting (WDCP 2011):** The cumulative impacts as a result of these numerical non-compliances would not be supported.
- **Clause D8 Privacy (WDCP 2011):** Various areas of potential privacy impact was noted. Any privacy protection to be contemplated was to consider the impact on views to neighbouring properties.
- **Clause D9 Building Bulk (WDCP 2011):** A review of the design is requested to demonstrate compliance with the objectives of the clause. Amendments to the design to sufficiently reduce building bulk shall include complying with the built form controls, reducing the building footprint, particularly to a dwelling located upon a site with a lot width non-compliance.
- **Solar Access:** To ensure that the diagrams are correct, Certification of Shadow Diagrams Form shall be filled out and submitted accordingly.
- **Development Engineer and Landscape Issues:** Request for further and amended information.

A meeting with the applicant was undertaken on 24 January 2024 to discuss above issues. It was advised on 12 February 2024 that certified height poles were erected, which were then inspected from the affected properties.

Amended Plans and supporting information were received on 13 February 2024, however this information is deficient in resolving the concerns identified in the assessment.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration	Comments
environmental planning instrument	
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p>Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters would be addressed via a condition of consent, if the application were to be approved.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested, refer to 'Site History'.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter would be addressed via a condition of consent, if the application were to be approved.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter would be addressed via a condition of consent, if the application were to be approved.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter would be addressed via a condition of consent, if the application were to be approved.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan 2011 section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p>

Section 4.15 Matters for Consideration	Comments
	<p>(iii) Economic Impact</p> <p>The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant requirement(s) of the B1 Wall Heights, B3 Side Boundary Envelope, C2 Traffic, Access and Safety, C4 Stormwater, D7 Views and D9 Building Bulk. The proposal presents a visually dominant design that is not acceptable for the proposed allotment context and will result in adverse amenity impacts, in particular view loss to several surrounding properties, 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 25/07/2023 to 08/08/2023 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 6 submission/s from:

Name:	Address:
Mrs Sharon Elizabeth Billyard Noel Frederick Billyard Daniel John Billyard	5 Parr Avenue NORTH CURL CURL NSW 2099
Mrs Nicola Joy Wiebe	38 Bellevue Parade NORTH CURL CURL NSW 2099
Mrs Sandra Marshall Mr Stuart James Marshall	123 Headland Road NORTH CURL CURL NSW 2099
Mr Laurence Edward Cronin Ms Christine Margaret Cronin	1 Parr Avenue NORTH CURL CURL NSW 2099
Ms Sarah Gabrielle Christie	3 Parr Avenue NORTH CURL CURL NSW 2099

Name:	Address:
Withheld Withheld	NORTH CURL CURL NSW 2099

Six (6) submissions were received, with the issues summarised and addressed below:

- ***Concerns pertaining to the subdivision (under separate application - DA2023/0957). The proposed subdivision will result in allotments that do not comply with the minimal requirements for lot width, and will in turn create an over-development of the sites. No. 7 Parr Avenue is only suitable for one (1) dwelling.***

Comment

The subdivision is assessed under a separate Development Application - DA2023/0957, the non-compliances regarding the subdivisions controls will be addressed in detail in the related assessment report. In terms of over-development of the site, refer to 'Clause D9 Building Bulk', elsewhere in this report.

- ***Non-compliance to built form controls of the Warringah Development Control Plan 2011. Specifically, numerical variations to Clause B3 Side Boundary Envelope and D1 Landscape Open Space.***

Comment

A request for amendments to address the non-compliance in regard to the built form controls was sent to the applicant, with amended plans received. Refer to 'Site History' for detail. It is noted that 'as amended' the proposal complies numerically with Clause D1 Landscape Open Space. The building does however, encroach the prescribed side boundary envelope on both the eastern and western elevations, presenting non-compliance with the numerical requirements of the clause.

Where the proposal seeks to vary a built form control, a merit assessment is conducted against the objectives of that clause within the relevant section of this report. Refer to 'Clause B3 Side Boundary Envelope' for further detail.

- ***The representation of Building height is considered to be misleading.***

Comment

Amendments to clarify the maximum building height was requested, with amended plans then received. The maximum building height is considered to comply with the Building Height Standard of 8.5 metres.

- ***Amenity impacts - view loss, visual privacy, overshadowing/sunlight access and noise impacts.***

Comment

Concerns were raised in the submissions received that the development will give rise to amenity impacts to adjoining residences, which are addressed below:

- A view loss analysis has been conducted in relation to the loss of views at No. 1, No. 3 and No. 5 Parr Avenue, in addition to No. 123 Headland Road. Refer to 'Clause D7 Views' for

further detail. It is considered that the view loss outcome is not acceptable, and this reason warrants refusal of the application.

- Visual privacy has been addressed in detail elsewhere in this report, refer to 'Clause D8 Privacy'.

- No unacceptable overshadowing is caused by the development and is considered to comply with the requirements under Clause D6 Access to Sunlight. This being; at least 50.0% of the required area of private open space of each dwelling and at least 50.0% of the required area of private open space of adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9.00am and 3.00pm on June 21.

- The proposal is not identified as noise generating development, and noise levels would be considered acceptable within a residential environment.

- ***Traffic congestion, on-street parking reduction, vehicle access and safety concerns.***

Comment

Council's Development Engineer has reviewed the proposal and is not in support due to unresolved issues in relation to stormwater and vehicle access. Refer to the 'Development Engineering Referral' for further information, these reasons warrant refusal of the application. Council's Development Engineer did not raise concern with on-street parking issues, as the proposed dwelling provides the required two (2) minimum parking spaces (within double garage) and consists of only one (1) driveway crossover. If the application were to be approved, A Construction Traffic Management Plan (CTMP) may be required in that instance, to ensure pedestrian and vehicle safety during construction phase, given the location, extent of excavation and context of the site and surrounds.

- ***Council should follow their guidelines, policies and regulations. Several properties were not notified of the development these being; No. 1 and No. 3 Parr Avenue.***

Comment

It is considered that the proposed development does not satisfy all the appropriate controls, it is noted that all processes and assessments have been satisfactorily followed and addressed. As stated within Council's Community Participation Plan (CPP) - at minimum - notification to adjoining property owners and occupiers and property owners and occupiers across a street or road from the subject site shall occur. This application was notified correctly. It is noted that various properties within the street are affected by the proposal and Council has been in contact with said property owners, throughout the process of the application assessment.

- ***Concerns in relation to excavation, drainage and retaining wall works. Request conditions for Dilatation Reports for affected properties.***

Comment

As stated above, Council's Development Engineer has reviewed the proposal and is not in support due to need for further requested amendments in relation to stormwater. If the application were to be approved, conditions would be applied to ensure that the construction of the dwelling follows the recommendations made in the submitted Geotechnical Assessment prepared by Crozier Geotechnical Consultants (dated 20 January 2023). In addition, any potentially affected/adjoining properties would be noted and added to a recommended Dilapidation Report condition.

- **Concerns that the Statement of Environmental Effects (prepared by a consultant who until recently was a senior member of Council's Planning staff) has sought to minimise the social, amenity and economic impacts of the proposal.**

Comment

Under Council's Management of Conflicts of Interest a former staff member (more than 12 months since employment) can be assessed within Council, said staff member has not been employed by Council since their departure (more than 12 months ago). Despite the discussions noted within the Statement of Environmental Effects, a thorough assessment by Council has been undertaken in regard to any social, amenity and economic impacts of the proposal.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p><i>Supported, subject to conditions.</i></p> <p><u>Additional Information Comment 03/04/2024</u> Amended Landscape Plans provided are noted.</p> <p>No objections are raised with regard to landscape issues subject to conditions, if the application were to be approved.</p> <p><u>Original Comment</u> The application seeks consent for demolition works and construction of a dwelling house including swimming pool and garage.</p> <p>The Landscape Plans indicate removal of 2 exempt trees and one non-exempt tree of Moderate retention value. No objections are raised to the proposed tree removals, providing replacement tree planting is provided.</p> <p>The Landscape Plans indicate replanting of replacement trees, along with shrubs other and groundcovers across the site.</p> <p>The Landscape Plans are considered unable to be supported as the tree species and proposed numbers of trees indicated in the Plan Schedule differ to those indicated graphically and via notation on the plans.</p> <p>In order to avoid confusion and clarify proposed planting, landscape plans are required to be updated to ensure that plant numbers and species match those indicated on the plans.</p> <p>At this stage, the proposal is not able to be supported with regard to landscape issues. If amended landscape plans are provided addressing the above, further assessment can be undertaken.</p>
NECC (Development Engineering)	<p><i>Not supported, additional information required.</i></p> <p><u>Engineering Referral Comments: 14/03/2024</u></p>

Internal Referral Body	Comments
	<p>Council's Development Engineer requests the following before supporting the proposal.</p> <p>Stormwater</p> <ul style="list-style-type: none"> There are some errors in the submitted DRAINS Model. The DRAINS Model shall be revised. <p>Site Access and Parking</p> <ul style="list-style-type: none"> The external parking spaces outside of the garage are recommended to be removed from the design. <p><u>Engineering Referral Comments: 3/10/2023:</u></p> <p>The applicant proposes "construction of a new dwelling on the yet to be created Lot 1 at 7 Parr Avenue, North Curl Curl (site)." This application is for proposed lot 1.</p> <p>Please note that these comments are subject to an approved subdivision of Lot 91 DP 14113.</p> <p>Access</p> <p>As part of the subdivision, the applicant is proposing to retain the existing driveway and propose a right of way over proposed Lot 2 to allow vehicular access to lot 1.</p> <p>As such, there is no loss of on street parking. It is noted however that the lot is on a bend with a front boundary width of approximately 9m. Clause C1 Subdivision of the Warringah DCP required new allotments to have a minimum width of 13 metres.</p> <p>The clause also states that a minimum driveway width of 3.5m is required. The existing driveway shall be widened to 3.5 metres at the kerb and follow an extra low profile.</p> <ul style="list-style-type: none"> Requesting amended plans to show this. Include the location and RL of the existing telecommunications pit in the road reserve. <p>As proposed, it is a difficult manouvre to reverse approximately 30m, with multiple turns back onto the street.</p> <ul style="list-style-type: none"> As such, requesting the driveway plans to be amended to widen at the boundary to allow for reversal in generally a straight line. <p>The proposed garage level is at RL36.3 (approximately 600mm above existing levels)</p>

Internal Referral Body	Comments
	<p>This is a change in levels and is in close proximity to the neighbouring property.</p> <ul style="list-style-type: none"> Requesting plans to show a kerb or barrier shall be constructed along the side of the driveway to prevent overland flow from being redirected onto the neighbouring downstream property. <p>There needs to be a right of way, burdening lot 2 and benefitting lot 1 for the proposed parking arrangement.</p> <p>Note to planner: This may mean a tree within the boundary needs to be removed.</p> <p>Stormwater The site falls to the rear and is located within region 2 as defined by the Water Management for Development Policy. In accordance with clause 9.3.2 of the policy, "Where subdivisions result in the creation of two (2) or more lots, OSD will be required where the total post developed impervious area of the new lots exceed 40% of the total site area. This requirement also applies to newly created lots with existing dwellings to be retained." The proposed impervious area is approximately 320m² or 60%. As such, OSD is required. A design is required in accordance with clauses 5.5 and 9.3.2 of the Water Management for Development Policy. There is a conditional approval for an easement provided by the owners of no. 40 Bellevue Parade, dated 10/05/23 (Internal Ref: 2023/452663). The plans prepared by Gartnertrocato Architects, drawing no. DA-201, dated 20/06/23, indicate there are proposed above ground OSD systems at the rear of the site.</p> <ul style="list-style-type: none"> This is not reflected on the stormwater plans prepared by Barrenjoey Consulting Engineers. The discrepancy needs to be clarified. <p>OSD and Rainwater tanks are proposed in the lower ground floor, accessible via a set of stairs along the side boundary. In accordance with clause 9.9.3 of the WMDP, "Council will not approve detention systems directly under habitable floors. In special circumstances, where approval is granted for enclosed systems, the control/inspection pit must be able to be accessed externally to the buildings."</p> <ul style="list-style-type: none"> The proposed OSD and rainwater tanks are under habitable floor areas (storeroom). Requesting details of how rising damp issues will be mitigated.

Internal Referral Body	Comments
	<ul style="list-style-type: none"> Requesting a section of the rainwater and OSD tanks in the room to demonstrate there is sufficient freeboard. <p>The policy also states "Unobstructed external access to the OSD system(s) must be provided at all times. A safe overflow route from the OSD system must also be provided. Access to the OSD system(s) via enclosed structures will not be acceptable."</p> <ul style="list-style-type: none"> Requesting the pit to be shown on the architectural plans. Requesting that the architectural plans clearly show how the pit and room for the tanks will be accessible. Include all details of the entrance and levels. The access pit appears to be 3m deep and only 600mm wide. This is not supported as it is not feasible for the maintenance. The location of the orifice and trash screen needs to be specified. The plans should clearly indicate there is no obstruction to the room. <p>In accordance with clause 6.6.2 of the Water Management for Development Policy, "Where stormwater discharge is to be connected to the kerb and gutter of a public roadway, it is not to exceed a discharge rate of 30 litres per second (l/s) in a 1% AEP storm event." The discharge at the kerb is at Bellevue Pde is proposed to be 39L/s in the 1% AEP.</p> <ul style="list-style-type: none"> Requesting an updated DRAINS model to be provided to restrict the discharge rate to 30 litres per second at the kerb. Clarification is required regarding the controlled and uncontrolled flows. Where discharge exceeds the above values, Council will require that the site discharge be piped to the nearest Council piped system, with a minimum 375mm diameter pipe, to Council's standards. <p>Geotechnical The site is classified as Land Slip Risk Map-Area B in the Warringah LEP2011. A Geotechnical report has been provided by Crozier Geotechnical Consultants. The report concluded that provided the recommendations of the report and any future geotechnical directive are implemented, the proposed development can be maintained within the "Acceptable" Risk Management Criteria.</p> <p>Note to planner: Please include the geotechnical report in the approved documents.</p> <p>As such, development engineering cannot support the application</p>

Internal Referral Body	Comments
	due to insufficient evidence to address C2, C3 and C4 of the Warringah DCP.
NECC (Water Management)	<p>Supported, subject to conditions.</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> • Supplied plans and reports; • Northern Beaches Water Management for Development Policy (WMD Policy); and • Relevant LEP and DCP clauses <p>The proposal is for demolition and construction of a residential development intended for Lot 1. The existence of Lot 1 is subject to the outcome of a separate development application (DA) for subdivision. As such, the comments of this referral are subject to the approval of subdivision under a separate DA.</p> <p>Section 4.0 of the WMD Policy applies. Water sensitive urban design, water reuse and infiltration into the soil, and the resulting quality of stormwater leaving the site are interconnected concepts that guide a merit-based assessment under the section. The proposed stormwater plan includes features to retain water and encourage infiltration.</p> <p>Note: water from the proposed pool must not enter the stormwater system.</p> <p>No objections regarding water management, subject to conditions, if the application were to be approved.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p>Supported, subject to conditions.</p> <p>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.</p> <p>These recommendations would be included as a condition of consent, if the application were to be approved.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1401680M_02 dated 11 July 2023).

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

Commitment	Required Target	Proposed
Water	40	41
Thermal Comfort	Pass	Pass
Energy	50	92

A condition would be included (if approved) 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 would form part of any approval were the application to be approved.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	8.5 metres	8.5 metres	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	Yes
5.3 Development near zone boundaries	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan**Built Form Controls**

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall Height	7.2m	8.1m	12.5%	No
B3 Side Boundary Envelope	5.0m Eastern Elevation	Outside Envelope	-	No
	5.0m Western Elevation	Outside Envelope	-	No
B5 Side Boundary Setbacks	0.9m Eastern Boundary	Pool: 1.0m Pool Paving: Nil Lower Ground Floor: 1.0m - 4.4m Upper Ground Floor: 1.0m - 5.3m First Floor: 1.0m - 6.1m	- 100.0% - - -	Yes No Yes Yes Yes
	0.9m Western Boundary	Walkway/stairs: 0.2m - 1.0m Retaining Wall: Nil Lower Ground Floor:	N/A 77.8% -	No No Yes

		2.0m - 2.8m Upper Ground Floor: 1.0m - 2.0m First Floor: 1.0m - 2.75m	- -	Yes Yes
B7 Front Boundary Setbacks	6.5m <i>Northern Boundary</i>	Dwelling: > 6.5m	-	Yes
B9 Rear Boundary Setbacks	6.0m <i>Southern Boundary</i>	Retaining Wall: 1.0m Pool: 5.9m Lower Ground Floor: > 6.0m Upper Ground Floor: 4.1m First Floor: > 6.0m	83.3% 1.7% - 31.7% -	No No Yes No Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40.0% (216.13m ²)	> 40.0% (217.52m ²)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	No	No
B1 Wall Heights	No	No
B3 Side Boundary Envelope	No	No
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	No	No
C3 Parking Facilities	Yes	Yes
C4 Stormwater	No	No
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	No	No
D8 Privacy	No	Yes
D9 Building Bulk	No	No
D10 Building Colours and Materials	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D16 Swimming Pools and Spa Pools	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

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 2011 (WDPC 2011).

Clause B1 Wall Heights stipulates 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.

The proposed development includes a wall height of 8.1 metres, with a variation of 12.5%.

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

- ***To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.***

Comment

The building bulk and envelope breach, in conjunction with the proposed wall height non-compliance discussed above, contributes to an unacceptable visual dominance of the building when viewed from both the public domain and adjoining properties. Refer to 'Clause D9 Building Bulk', elsewhere in this report for further detail.

- ***To ensure development is generally beneath the existing tree canopy level.***

Comment

The proposed development does not contain any significant trees on site, however, it is considered that the development would be situated below the height of surrounding canopy trees within the area.

- ***To provide a reasonable sharing of views to and from public and private properties.***

Comment

The proposed development does not achieve this objective, refer to 'Clause D7 Views' for further detail, elsewhere within this report.

- ***To minimise the impact of development on adjoining or nearby properties.***

Comment

This resultant dominance of the built form has been identified as generating unreasonable amenity and visual impacts to surrounding properties.

- ***To ensure that development responds to site topography and to discourage excavation of the natural landform.***

Comment

The proposal includes excavation for the lower ground floor level, however not at an extent that is considered unacceptable. The dwelling design however, does not sensitively respond to site topography due to the excessive nature and size of the dwelling. This is confirmed by the extent in building envelope breach and wall height breach to this particular dwelling design.

- ***To provide sufficient scope for innovative roof pitch and variation in roof design.***

Comment

The roof form of the dwelling house is a skillion roof, consistent with the urban environment in the immediate vicinity.

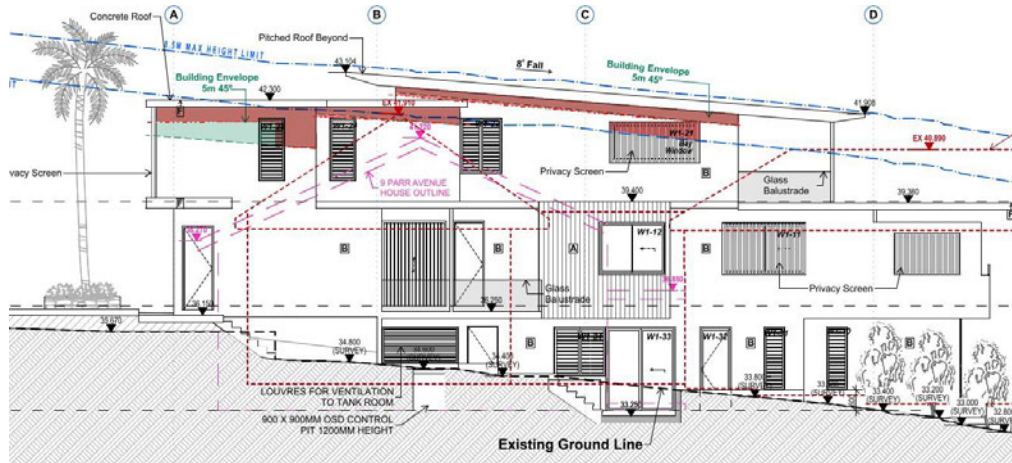
Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the aims and objectives. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

B3 Side Boundary Envelope

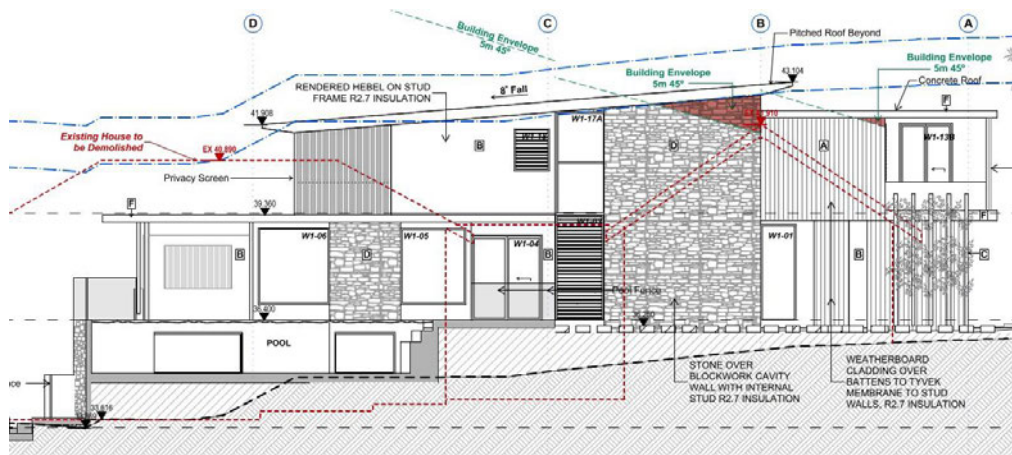
Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B3 Side Boundary Envelope of the Warringah Development Control Plan 2011 (WDGP 2011).

Clause B3 Side Boundary Envelope requires development to be sited within a 5.0 metres building envelope to ensure the bulk and scale of the built form is minimised.

The proposal for Lot 1 exhibits non-compliance with the envelope control on both the eastern western elevations (see figures below), with a maximum variation of approximately 26.0% (west) and 22.4% (east).



(Figure 1: Western Elevation - red shading indicates encroachment).



(Figure 2: Eastern Elevation - red shading indicates encroachment).

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

- **To ensure that development does not become visually dominant by virtue of its height and bulk.**

Comment

The proposed upper floor to this dwelling demonstrates an encroachment beyond the prescribed side boundary envelope numerical requirement in several areas of the building. The non-conforming elements being the wall height, side boundary envelope and building bulk indicates that the design in its current form is an over-development of the site, resulting in a dwelling house that is visually dominant, in which will tower over the western adjoining properties No. 9 Parr Avenue and southern adjoining properties. Refer to 'Clause D9 Building Bulk', elsewhere in this report for further detail.

- ***To ensure adequate light, solar access and privacy by providing spatial separation between buildings.***

Comment

Despite the compliance with the side setback control, the extent of side building envelope non-compliance determines that the spatial separation is insufficient. Refer to 'Clause D8 Privacy' and 'Clause D6 Access to Sunlight' for further detail.

- ***To ensure that development responds to the topography of the site.***

Comment

As previously discussed under Clause B1 Wall Heights, the proposal as a whole in relation to the overall size and bulk of the dwelling, does not ensure that the development has been designed to respond to the sloping topography of the site. This is confirmed by the extent in building envelope breach to this particular dwelling design.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the aims and objectives. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

B5 Side Boundary Setbacks

Description of Non-compliance

Clause B5 Side Boundary Setbacks requires a setback of 0.9 metres to each side boundary to sites located within the R2 Low Density Residential zone.

The proposal includes the following non-compliances:

- Walkway/stairs: 0.2 - 1.0 metres - western boundary;
- Retaining Wall: Nil - western boundary; and
- Pool Paving: Nil - eastern boundary.

Merit Consideration

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

- ***To provide opportunities for deep soil landscape areas.***

Comment

The proposal provides a numerical compliant landscape open space area. The proposed vegetated areas are of acceptable dimensions for future opportunities for deep soil landscape.

- ***To ensure that development does not become visually dominant.***

Comment

The non-conforming elements (i.e. access stairs, paving and retaining walls) are not

considered to be visually dominant structures.

- ***To ensure that the scale and bulk of buildings is minimised.***

Comment

The non-conforming elements (i.e. access stairs, pool paving and retaining walls) are not of a large scale, and are located close to ground level. Refer to 'Clause D9 Building Bulk' for further discussion in regard to the overall building.

- ***To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.***

Comment

Refer to 'Clause D8 Privacy' and 'Clause D6 Access to Sunlight' for further discussion.

- ***To provide reasonable sharing of views to and from public and private properties.***

Comment

The non-conforming elements (i.e. access stairs and retaining walls) will not contribute to any unreasonable view loss from public and/or private properties. Refer to 'Clause D7 Views' for further discussion regarding overall view impact.

-

Having regard to the above assessment, it is concluded that the outcomes of the clause would be achieved if the application were to be supported. This clause does not form part of the reasons for refusal.

B9 Rear Boundary Setbacks

Description of Non-compliance

Clause B9 Rear Boundary Setbacks requires development to comply with a rear setback of 6.0 metres.

On land zoned R2 Low Density Residential, exempt development, swimming pools and outbuildings that, in total, do not exceed 50.0% of the rear setback area, provided that the objectives of this provision are met, can be located within the rear setback.

The proposal includes the following rear setback non-compliances:

- Retaining Wall: 1.0 metre.
- Pool: 5.9 metres.
- Upper Ground Floor pergola: 4.1 metres.

The above elements do not exceed 50.0% of the rear setback area.

Merit Consideration

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

- ***To ensure opportunities for deep soil landscape areas are maintained.***

Comment

The subject site exhibits compliance with the landscape open space requirements, with majority of the rear setback area to be landscaped. It is therefore considered that the proposal provides opportunities for deep soil landscape.

- ***To create a sense of openness in rear yards.***

Comment

As above, majority of the rear setback area is to be vegetated, which will aid in the sense of openness to this area.

- ***To preserve the amenity of adjacent land, particularly relating to privacy between buildings.***

Comment

For further detail and discussion regarding privacy refer to 'Clause D8 Privacy', elsewhere in this report.

- ***To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.***

Comment

The existing visual continuity for such elements such as swimming pools, patios and pergolas consisted of being located within the rear setback area for many properties in the area. These elements are also located within the footprint of the existing dwelling house which is to be demolished. In terms of the dwelling and the impact the design has on the visual continuity overall refer to 'Clause D9 Building Bulk', elsewhere in this report.

- ***To provide opportunities to maintain privacy between dwellings.***

Comment

For further detail and discussion regarding privacy refer to 'Clause D8 Privacy', elsewhere in this report.

Having regard to the above assessment, it is concluded that the outcomes of the clause would be achieved, if the application were to be supported. This clause does not form part of the reasons for refusal.

C2 Traffic, Access and Safety

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 C2 Traffic, Access and Safety of the Warringah Development Control Plan (2011).

Council's Development Engineer requests for the external parking spaces to be removed from the design, as this could result in an impediment to internal vehicular access.

In this regard, Council is not satisfied the proposed development meets the requirements of this clause and is therefore recommended for refusal, due to the need for further design amendments.

C4 Stormwater

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 C4 Stormwater of the Warringah Development Control Plan (WDCP 2011).

Council's Development Engineer requested various amendments to the initial proposed Stormwater System, to ensure the system was acceptably designed in accordance with Council's 'Water Management for Development Policy'.

Amended Stormwater Plans were received on 13 February 2024 and were reviewed by Council's Development Engineer, who advised that the submitted DRAINS Model consists of errors, and should be revised.

As such, the proposal is recommended for refusal based on insufficient information and the need for further amendments i.e. unacceptable stormwater plans/information to acceptably assess the stormwater impacts.

D7 Views

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 D7 Views of the Warringah Development Control Plan 2011.

Submissions were received regarding view loss impacts to the below four (4) properties:

- No. 1 Parr Avenue, North Curl Curl.
- No. 3 Parr Avenue, North Curl Curl.
- No. 5 Parr Avenue, North Curl Curl.
- No. 123 Headland Road, North Curl Curl.

Council was advised that certified height poles were erected on the 12 February 2024.

A site inspection was conducted at each property and the photos taken from the inspections (which include the erected height poles) will be referenced in this assessment.

The dwelling on Lot 1 proposed under this DA will be referenced as 'proposed dwelling' or 'subject site' under this view loss assessment.

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

The nature of the views affected will be discussed below for each property:

No. 1 Parr Avenue: The views of concern obtained by this site are achieved towards the south over the subject site. The views consist of a partial view of North Head, St. Patrick's Estate, ocean views and district views. The views obtained by this property are obstructed by vegetation and other existing infrastructure.

No. 3 Parr Avenue: The views of concern obtained by this site are achieved towards the south and south-east over the subject site. The views consist of North Head, St. Patrick's Estate, ocean views, Curl Curl Lagoon and district views. Majority of the views obtained by this property are unobstructed by vegetation/infrastructure.

No. 5 Parr Avenue: The views of concern obtained by this site are achieved towards the south and south-east over the subject site. The views consist of North Head, St. Patrick's Estate, ocean views, Curl Curl Lagoon and district views. Majority of the views obtained by this property are unobstructed by vegetation/infrastructure.

No. 123 Headland Road: The views of concern obtained by this site are achieved towards the south-west and consist of a partial distant view of the City of Sydney Skyline (including Sydney Tower Eye aka Centrepoint Tower) and district views. Other views obtained by this property are towards the south and south-east and include fairly unobstructed views of the ocean, further district views, St. Patrick's Estate and North Head.

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 location of the obtained views will be discussed below for each property:

No. 1 Parr Avenue: The views mentioned above are obtained from the ground floor internal living space (lounge room/kitchen/dining) and outdoor open space area which includes alfresco dining and swimming pool. The views are also obtained from the upper level rear balcony and associated bedroom. These areas are situated toward the east (rear of the dwelling house). The views are obtained primarily from a standing perspective, however, majority of the views can also be obtained in a sitting position.

No. 3 Parr Avenue: The views mentioned above are obtained from the ground floor internal

living space (kitchen/dining) and outdoor open space area. The views are also obtained from the upper level rear balcony and additional internal living space (lounge room) and bedrooms. These areas are situated toward the east (rear of the dwelling house). The views are obtained from both a standing and sitting perspective.

No. 5 Parr Avenue: The views mentioned above are obtained from the ground floor front porch, internal living spaces (lounge room/kitchen/dining) and outdoor open space area which includes alfresco dining and swimming pool. The views are also obtained from the upper level rear balcony and associated bedroom, as well as an additional bedroom toward the front of the house. Majority of these areas are situated toward the east (rear of the dwelling house). The views are obtained from both a standing and sitting perspective.

No. 123 Headland Road: The views mentioned above are obtained from the ground floor master-bedroom, lower floor living area and outdoor open space area including a swimming pool. The views are also obtained from the upper floor internal living area. These areas are situated toward the south (rear of the dwelling house). The views are obtained primarily from a standing perspective, however, majority of the views can also be obtained in a sitting position. Ocean views are obtained from the upper floor balcony also.

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 will be discussed below for each property:

No. 1 Parr Avenue: Parts of the district views obtained toward the south from the lower ground floor will be impacted upon. Minimal impact will occur to St. Patrick's Estate, North Head and ocean views. No impact to these views should occur to the first floor level. It is considered that the view loss impact to this property will be **minimal**.

No. 3 Parr Avenue: Sections of the ocean view toward the south will be lost, along with majority of North Head, St. Patrick's Estate and southern district views from the ground floor areas. The first floor will not experience such an impact as compared to the ground floor area, but will impact the view of Curl Curl Lagoon. Sections of the ocean views toward the south-east will be retained. It is considered that the view loss impact to this property will be **severe**.

No. 5 Parr Avenue: Majority of the ocean views will be lost, along with the entirety of North Head, St. Patrick's Estate and southern district views from the ground floor areas (both internal and external areas). A minor section of ocean view with land/water interface will be retained toward the most eastern point, when viewed from the ground floor. North Head and the district views of Manly including St. Patrick's will be impacted upon from the first floor rear balcony and master-bedroom, some ocean views may also be impacted from this level with the ocean views more toward the north-east to be retained. Curl Curl Lagoon would be impacted from this area. The additional first floor bedroom located to the front of the house will lose ocean views, Curl Curl Lagoon, North Head, St Patrick's Estate and district views toward Manly. The front entry porch will lose the ocean view currently obtained. It is considered that the view loss

impact to this property will be **devastating**.

No. 123 Headland Road: The ocean views, North Head, Manly district views and St. Patrick's Estate will not be impacted upon. The City Skyline View will be lost when viewed from the master-bedroom as well as some distant district views. The downstairs media room and outdoor decking pool area will lose distant district views, the City Skyline will be impacted upon. All these areas can view the ocean and North Head. The upstairs area and balcony should not be impacted and retain views. It is considered that the view loss impact to this property will be **moderate**, due to the impact upon the iconic City Skyline view.



(Image 1 - No. 1 Parr Avenue - Ground Floor Living Area)



(Image 2 - No. 1 Parr Avenue - Ground Floor Outdoor Area)



(Image 3 - No. 3 Parr Avenue - Ground Floor Living Area)



(Image 4 - No. 3 Parr Avenue - First Floor Living Area)



(Image 5 - No. 5 Parr Avenue - Ground Floor Living Area)



(Image 6 - No. 5 Parr Avenue - Ground Floor Outdoor Area)



(Image 7 - No. 5 Parr Avenue - First Floor Master Bedroom/Balcony)



(Image 8 - No. 5 Parr Avenue - Additional Bedroom)



(Image 9 - No. 123 Headland Road - Master Bedroom)



(Image 10 - No. 123 Headland Road - Lower Living Area)

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 skillful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.”

Comment to Principle 4

The proposed dwelling for Lot 1 does not comply with the building bulk control, side boundary envelope (western and eastern envelope), wall heights and rear setback control (swimming pool and pergola) of the WDCP 2011. The dwelling does comply with the building height standard of the WLEP 2011. The non-compliances to wall height, building bulk and boundary envelope were found to be unacceptable, inconsistent with the objectives of the controls and are subsequently not supported. These non-compliances when considered cumulatively are considered to represent an excessive built form with detrimental impacts to neighbouring amenity. The mitigating factors which contribute to the view loss impact is the overall height, location, scale and bulk of the building - with the comments of 'Clause D9 Building Bulk' of relevance. The resultant affect of the proposed building mass is considered to impact on the existing view corridors to No. 1, No. 3, and No. 5 Parr Avenue and the additional No. 123 Headland Road. Although, this analysis was prepared in isolation of the dwelling on proposed Lot 2 (under DA2023/0959) when also viewed in conjunction with, the view loss impacts are further exacerbated.

The question of a more 'skillful design' which provides the residents of the subject site with a similar development potential and amenity, whilst also retaining or reducing the extent of view loss impact to the current view corridors, was identified and it was requested for alternate design to be explored within a 'Request for Further Information Letter' dated 15 December 2023, and then later discussed during a meeting on the 24 January 2024. Council additionally requested height poles to be erected to further assess the view impacts and detailed view loss analysis should be undertaken and submitted to Council. The applicant noted within the SEE that no unacceptable view loss occurs as a result of the proposed development. Amendments to be considered would be the complete reduction in building footprint (particularly to a dwelling located upon a site with a lot width non-compliance), the removal of the upper floor storey or significant reduction of this level (including a more recessive rear setback, stepping down the site topography) and consideration to the location of such elements on site (and the view corridors that may be impacted). The amended plans received did not include any amendments to address the view loss issues.

As stated within Council's 'Request for Further Information Letter', one genuine opportunity to address the raised issues is provided, given the extent of amendments and re-consideration of the dwelling design that is required to acceptably address the view loss impacts, a second opportunity was not afforded. The proposal is not deemed acceptable, particularly given that a more 'skillful' or 'sensitive' design can be achieved. It is however considered that sufficient scope is available whereby development of the site for the purposes of residential development occurs that has an acceptable view loss.

- ***To encourage innovative design solutions to improve the urban environment.***

Comment

An innovative design solution was not explored which would significantly improve the view impact as discussed above. Design solutions to consider is the reduction of the building footprint, re orientation of building elements, and the deletion/significant reduction of the first floor level.

- ***To ensure existing canopy trees have priority over views.***

Comment

No canopy trees are proposed for removal, ensuring vegetation has priority over views.

It is considered that the proposed development is inconsistent with the relevant objectives of the WDCP 2011. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance due to the extent of view loss that will result to surrounding properties.

D8 Privacy

Merit Consideration

Clause D8 Privacy stipulates that building layout should be designed to optimise privacy for occupants of the development and occupants of adjoining properties, and the windows of one dwelling are to be located so they do not provide direct views (i.e. from less than 9 metres away) into the windows of other dwellings. Orientate living areas, habitable rooms and windows to private open space areas or to the street to limit overlooking.

An assessment of the proposal established concerns with the below elements of the building:

- Elevated swimming pool.
- Upper ground floor deck area w/ BBQ.
- Outdoor shower area to the western elevation.
- Size of first floor deck area and the privacy impact to the western neighbour.
- Extent and size of various windows along both the eastern and western elevations, particularly to areas of high usage.

If the application were to be approved, the eastern edge of the swimming pool would consist of a privacy element (screening, obscured pool glass) with additional screen vegetation to the landscaped area between the boundary and pool via a recommended condition. The upper ground floor deck and BBQ area 'as amended' includes a fixed louvred privacy screen to protect No. 9 Parr Avenue to the west.

A privacy screen would be included as a condition of consent to both the western edges of the first floor balcony, and to the ground floor outdoor shower area. The windows to the western elevation are of louvre style, a condition would be applied that these be externally fixed, if the application be approved. A privacy protection element would also be condition for W1 -12 to the Kitchen (western elevation) and W1-05 and W1-06 (eastern elevation)

The pool area is located 5.9m from the rear boundary adjoining No. 38 Bellevue Parade, a combination of existing vegetation and proposed vegetation along the boundary would aid in visual protection from this area. The outdoor deck area is located at minimum 5.3 - 7.6 metres from No. 38

and No. 40 Bellevue Parade, with the first floor balcony being located at a minimum 9.8 metres from rear boundary. The design and orientation of these elements allows the viewing direction to be up and out towards the ocean views, rather than across into neighbouring properties. Majority of properties within this vicinity will have a degree of overlooking due to the topography of the area and location of existing buildings being orientated toward the ocean views. To limit any degree of overlooking is not considered a realistic outcome, but the level of overlooking should be minimised.

The development is considered against the underlying Objectives of the Control as follows:

- ***To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.***

Comment

Subject to the recommended conditions, the proposal would provide for an acceptable level of visual and acoustic privacy for the subject site and adjoining neighbours within a residential setting.

- ***To encourage innovative design solutions to improve the urban environment.***

Comment

The proposed development combined with the recommended condition would result in a proposal that incorporates innovative design solutions to improve the urban environment.

- ***To provide personal and property security for occupants and visitors.***

Comment

The recommended condition of consent would ensure that a sense of security and protection is provided for both occupants of the subject site and visitors.

Having regard to the above assessment, it is concluded that the applicable outcomes of the control would be achieved, subject to conditions, if the application were to be supported.

D9 Building Bulk

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 D9 Building Bulk of the Warringah Development Control Plan 2011.

Clause D9 Building Bulk stipulates the following requirements, which the proposal does not achieve:

- Side and rear setbacks are to be progressively increased as wall height increases.
- Large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief.
- On sloping land, the height and bulk of development 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.
- Building height and scale needs to relate to topography and site conditions.

- Articulate walls to reduce building mass.

The proposal will result in a three (3) level build with an extensive array of internal space and rooms, resulting in large building footprint, that expands majority of the allotment depth. This design, with the extent of built form (envelope and wall height breach) is not considered to be a sensitive design for the existing topography of the land or proposed lot width non-compliance. The design does not take into consideration the amenity and visual impacts that shall result and in turn affect surrounding properties. The proposal is not considered to be compatible with the height and scale of surrounding and nearby development, nor complement the building line and pattern that is present (despite the rear setback compliance to majority of the dwelling house).

The proposed development does not achieve all the requirements, and therefore will be assessed against the objectives of the clause.

- ***To encourage good design and innovative architecture to improve the urban environment.***

Comment

The concern regarding building bulk was raised in a 'Request for Further Information Letter' dated 15 December 2023. The letter advised that a review of the design is needed to demonstrate compliance with the requirements/objectives of this clause. Amendments of the design would need to significantly reduce the building footprint, particularly to a dwelling located upon a site with a lot width non-compliance. The dwelling exhibits a non-compliant side boundary envelope and wall height which in conjunction results in a largely scaled dwelling that expands majority of the allotment depth and will tower over surrounding properties. The design does not progressively increase side setbacks as the wall height increases.

The dwelling will facilitate a level of excavation to accommodate the lower ground level. Due to the extent of internal space located on the lower level, the need for the proposed internal space and the proposed room sizes to the first floor level is not deemed acceptable and can be considered a luxury that this site in particular cannot accommodate for. This combined with the proposed building on Lot 2 would further exacerbates these issues, and it is considered that the application does not promote good design and innovative architecture to improve the urban environment.

- ***To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.***

Comment

The proposal presents a visually dominant design by virtue of its height and scale, directly related to the built form non-compliances mentioned above, the overall building footprint and number of storeys and rooms the dwelling consists of. The proposal in its current form presents an over-development of the site, and does not provide a design that acceptable complements the context of the subject site or surrounds.

Having regard to the above assessment, it is concluded that the proposal is inconsistent with the aims and objectives of the control. Therefore, the application is not supported, in this particular circumstances.

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 \$17,759 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,775,915.

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 the demolition works and construction of a dwelling house including a swimming pool has been referred to the Development Determination Panel (DDP) due to the application receiving six (6) unresolved objections.

The development application was notified for fourteen (14) days, as stated within Council's Community Participation Plan, with the objections received being addressed under the 'Submissions' section of the report.

On balance, and considering the preceding detailed assessment of the application it is considered that the proposed dwelling house in terms of the overall size and scale is unacceptable in design, which would contribute to a detrimental impact to the visual character and amenity (i.e. view loss) of the area.

It is considered that the proposed development does not satisfy the appropriate controls and has not satisfactorily addressed Council's concerns. Accordingly, the application is referred to the DDP with a recommendation 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 DA2023/0958 for the Demolition works and construction of a dwelling house including swimming pool and garage on land at Lot 91 DP 14113,7 Parr Avenue, NORTH CURL CURL, for the reasons outlined as follows:

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

Particulars:

- i) The proposed development is inconsistent with Clause C4 Stormwater of the Warringah Development control Plan 2011 as the submitted DRAINS Model prepared for the application consists of errors. The conclusions drawn in the Model cannot be relied upon.
- ii) The proposed development is inconsistent with C2 Traffic, Access and Safety as the external parking spaces include in the design will result in an impediment to internal vehicular access. This element shall be deleted from the design.

2. **Pursuant to Section 4.15(1)(a)(i) &(iii) and 4.15(1)(b) & (c) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with Clause 1.2 Aims of the Plan of the Warringah Local Environmental Plan 2011 and the following controls within the Warringah Development Control Plan: A.5 Objectives, B1 Wall Heights, B3 Side Boundary Envelope, D7 Views, and D9 Building Bulk.**

Particulars:

- i) The proposed development fails to achieve the numerical requirements and underlying objectives of the controls as listed above, which in conjunction with unacceptable building mass is representative of a built form which has not been designed to complement and integrate with the site's topography nor the site constraints.
- ii) The proposal is not considered to be compatible with the height and scale of surrounding and nearby development, nor complement the building line and pattern that is present in the vicinity, despite strict compliance with the maximum building height prescribed under Clause 4.3 of the Warringah Local Environmental Plan 2011. The consequence of this is that the

resultant building is incompatible with the prevailing built form. The development results in amenity impacts to surrounding properties.

iii) The proposed development by way of its significant building mass gives rise to an unacceptable impact on views obtained by adjacent properties. It is considered that the impact to these views is not representative of view sharing and that the outcome is contrary to and fails the set within Planning Principle *Tenacity v Warringah Council*.

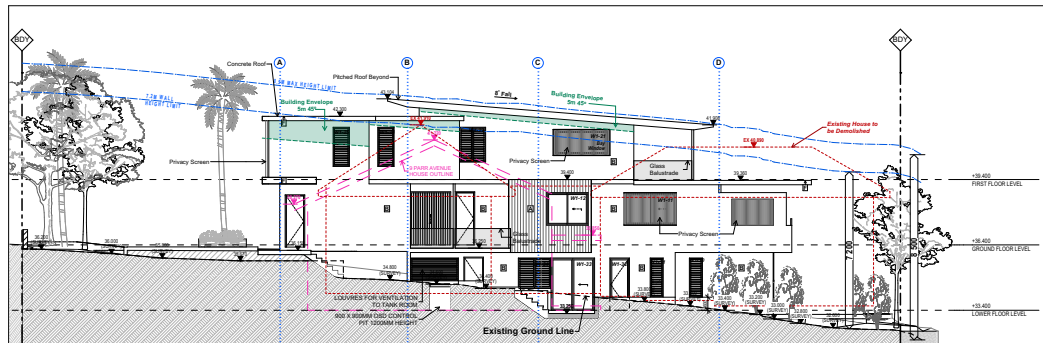
iv) A more 'skilful design' which provides the residents of the subject site with a similar development potential and amenity is considered to be achievable through a rationalisation of the building footprint, partial removal and/or modulation of the upper floor storey, as well as a greater and more recessive rear setback, that has regard to, and consideration of the location of such elements on site in relation to view corridors that may be impacted.

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

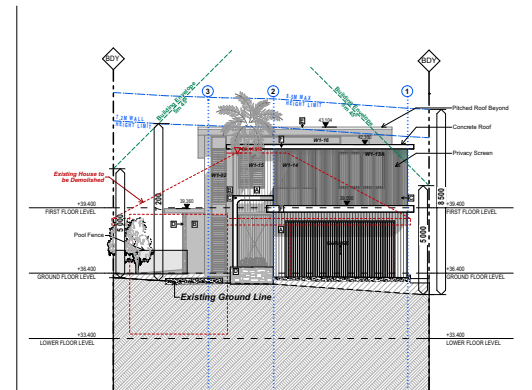
Particulars:

i) The extent 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.

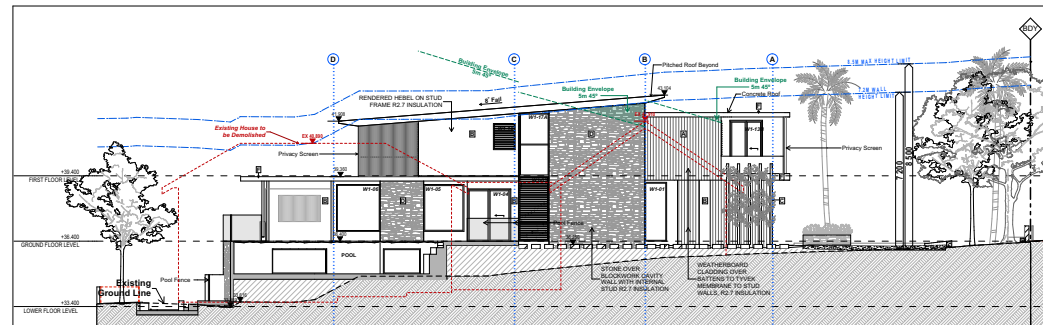




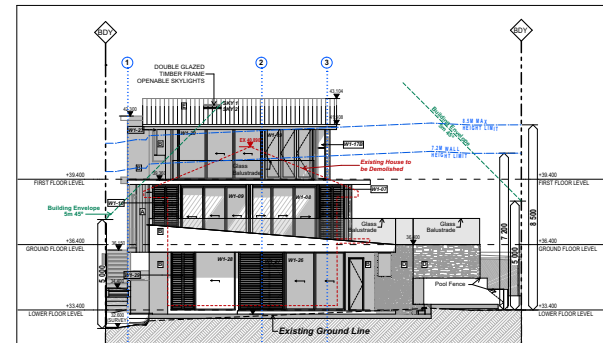
H1 WEST ELEVATION
SCALE: 1:100



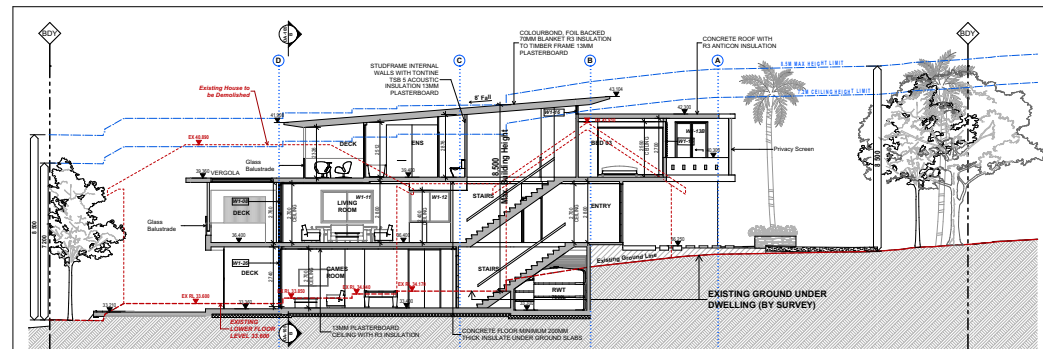
H1 NORTH ELEVATION
SCALE: 1:100



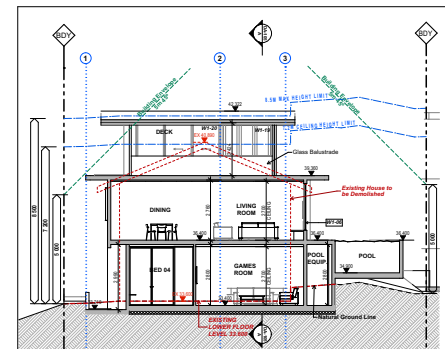
H1 EAST ELEVATION
SCALE: 1:100



H1 SOUTH ELEVATION
SCALE: 1:100



HOUSE 1 SECTION A
SCALE: 1:100



HOUSE 1 SECTION B
SCALE: 1:100

EXTERIOR FINISHES LEGEND

TIMBER CLADDING, BURNT FINISH	RENDER + PAINT FINISH RESINE "GRAVEL"
RENDER + PAINT FINISH RESINE "DOUBLE GRAVEL"	SANDSTONE CLADDING
METAL ROOFING	RENDER + PAINT FINISH RESINE "HALF ATHENS GREY"
A - TIMBER, CHARRED	B - RENDER + PAINT FINISH
C - RENDER + PAINT FINISH	D - SANDSTONE CLADDING
E - METAL ROOFING	F - RENDER + PAINT FINISH



Item No.	Rev.	Description	Issue	Checked	Date
10000001	A	CON SUBMISSION	AD	ESS	
10000002	B	REVISED CON SUBMISSION	AD	ESS	

ROSS	ELEVATIONS & SECTIONS
SUBDIVISION	HOUSE 1
7 PARK AVENUE, NORTH CURL CURL	
NSW	
LOTS 11 & 12 OF 14113	
FOR REFUGIA HOUSE	
2228	DA-105

ITEM 3.8	DA2023/0959 - 7 PARR AVENUE NORTH CURL CURL - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE INCLUDING SWIMMING POOL AND GARAGE
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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 DA2023/0959 for demolition works and construction of a dwelling house including swimming pool and garage on land at Lot 91 DP 14113, 7 Parr Avenue NORTH CURL CURL, for the reasons for refusal set out in the Assessment Report.

Reporting manager	Adam Richardson
TRIM file ref	2024/268264
Attachments	1 Assessment Report 2 Site Plan and Elevations

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0959
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Responsible Officer:	Brittany Harrison
Land to be developed (Address):	Lot 91 DP 14113, 7 Parr Avenue NORTH CURL CURL NSW 2099
Proposed Development:	Demolition works and construction of a dwelling house including swimming pool and garage
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:	Rebecca Ross
Applicant:	Sean Gartner Architect

Application Lodged:	19/07/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	25/07/2023 to 08/08/2023
Advertised:	Not Advertised
Submissions Received:	5
Clause 4.6 Variation:	Nil
Recommendation:	Refusal

Estimated Cost of Works:	\$ 1,744,268.00
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EXECUTIVE SUMMARY

This development application seeks consent for the demolition works and construction of a dwelling house including a swimming pool, and is referred to the Development Determination Panel (DDP) as the application has received six (6) unique submissions by way of objection.

The dwelling is to be located upon a future allotment (Lot 2), which is subject of a separate application for a two (2) lot Torrens Title Subdivision which is proposed under DA2023/0957. A dwelling house for proposed Lot 1 of this subdivision application will also be assessed under a separate application (DA2023/0958). This application has generally been assessed in isolation, however has considered

and made reference to the cumulative impact of the dwelling proposed under DA2023/0958, as the impacts are interrelated.

The development application upon lodgement was notified for a period of fourteen (14) days as per Council's Community Participation Plan (CPP). The concerns raised in the submissions are addressed under the 'submissions' section of this report. These concerns predominantly relate to the proposed building's overall height, bulk and scale, which result in amenity impacts to surrounding properties (i.e. view loss, privacy, visual dominance).

Amendments were requested on the 15 December 2023 through the issue of a Request for Information letter, in light of those concerns as well as additional planning issues. An amended application was submitted by the applicant on 13 February 2024, however this information is deficient in resolving the concerns identified in the assessment.

Critical assessment issues include the overall proposed bulk and scale of the build which has not been designed to sensitively respond to the topography or context of the site nor the surrounds. The proposal is considered to contribute to an unacceptable building mass that does not complement the immediate existing urban environment, resulting in amenity impacts (i.e. view loss) to four (4) surrounding properties, as noted within the view loss analysis in this report.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that, on balance the proposal (as amended) is unsuitable and does not present an acceptable form of development for the subject site for the reasons outlined in this report.

This report concludes with a recommendation that the DDP **refuse** the development application, for the reasons cited within this report.

PROPOSED DEVELOPMENT IN DETAIL

This Development Application seeks consent for the construction of a dwelling house including a swimming pool on proposed Lot 2 (subdivision under a separate Development Application).

Specifically, the works comprise of the following:

- Construction of a three-level dwelling house (lower ground, upper ground and first floor level) with attached double garage. These levels will consist of the following:
 - **Lower Floor:** Games room, bathroom, gym, store and rear patio area;
 - **Ground Floor:** Double garage, entry, guest bedroom, bathroom, laundry, open plan kitchen/living/dining area, butler's pantry, media room and elevated outdoor dining area; and
 - **First Floor:** Master bedroom (Bed 01) with WIR, ensuite and rear balcony, three (3) bedrooms (Bed 02, Bed 03 and Bed 04), two (2) bathrooms, powder room, and front and side balcony.
- Internal stairwell with void;
- Construction of a swimming pool and associated pool patio area;
- Excavation to facilitate the construction of the lower level of the house, patio and swimming pool;
- Internal driveway and drainage works; and
- Associated landscaping and retaining walls.

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 - B3 Side Boundary Envelope
 Warringah Development Control Plan - B5 Side Boundary Setbacks
 Warringah Development Control Plan - B9 Rear Boundary Setbacks
 Warringah Development Control Plan - C2 Traffic, Access and Safety
 Warringah Development Control Plan - C4 Stormwater
 Warringah Development Control Plan - D7 Views
 Warringah Development Control Plan - D8 Privacy
 Warringah Development Control Plan - D9 Building Bulk

SITE DESCRIPTION

Property Description:	Lot 91 DP 14113 , 7 Parr Avenue NORTH CURL CURL NSW 2099
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the south-eastern side of Parr Avenue.</p> <p>The subject site is legally identified as Lot 91 in Deposited Plan 14113, No. 7 Parr Avenue, North Curl Curl.</p> <p>The site is irregular in shape with a street frontage of 9.79m and a depth of 40.31m along the south-western boundary and 44.61m along the north-eastern. The site has a surveyed area of 1082.51m².</p> <p>The site is located within the R2 Low Density Residential zone under the provisions of the <i>Warringah Local</i></p>

Environmental Plan 2011 and accommodates a dwelling house, outbuilding, carport and swimming pool.

The site topography slopes downward from north to south by approximately 5.0m, and includes various rock outcrops to the north-east. The property includes lawn areas and various types of vegetation.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by low density residential development of various architectural designs.

Map:



SITE HISTORY

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.

The development application was notified for a period of fourteen (14) days, as stated within Council's Community Participation Plan, which resulted in five (5) submissions.

Amended plans and additional information were requested on the 15 December 2023 to address the following:

- **Statement of Environmental Effects:** Clarification was required to confirm whether the demolition to the existing structures on site will occur under the subdivision application (DA2023/0957) or under the separate dwelling house applications (DA2023/0958 or

DA2023/0959).

- **Clause 4.3 Height of Buildings (WLEP 2011):** Further clarification was needed (i.e., showing all existing ground level and/or additional sections) that the building height will comply.
- **Clause D7 Views (WDCP 2011):** The proposal was to demonstrate that view sharing is achieved through the application of the Land and Environment Court's planning principles for view sharing. Not enough information (detailed view analysis) had been provided to accurately determine whether unacceptable view loss will not occur. Height poles were requested to further assess these impacts.
- **Clause B1 Wall Heights (WDCP 2011):** The SEE makes mention that the proposed wall heights are compliant with the numerical requirement. The submitted elevations do not show the existing ground line but rather the natural ground line, clarification is required as to whether the wall height has been measured accurately.
- **Numerical non-compliances to Clause B1 Wall Heights, Clause B3 Side Boundary Envelope and B9 Rear Boundary Setbacks (WDCP 2011).**
- **Clause D8 Privacy (WDCP 2011):** Various areas of potential privacy impact was noted. Any privacy protection to be contemplated was to consider the impact on views to neighbouring properties.
- **Clause D9 Building Bulk (WDCP 2011):** A review of the design is requested to demonstrate compliance with the objectives of the clause. Amendments to the design to sufficiently reduce building bulk shall include complying with the built form controls, reducing the building footprint, particularly to a dwelling located upon a site with a lot width non-compliance.
- **Solar Access:** To ensure that the diagrams are correct, the Certification of Shadow Diagrams Form was requested be filled out and submitted accordingly.
- **Development Engineer and Landscape Issues:** Request for additional and/or amended information.

A meeting with the applicant was undertaken on 24 January 2024 to discuss above issues. It was advised on 12 February 2024 that certified height poles were erected, which were then inspected from the affected properties.

Amended Plans and supporting information were received on 13 February 2024, however this information is deficient in resolving the concerns identified in the assessment.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p>Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters would be addressed via a condition of consent, if the application were to be approved.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested, refer to 'Site History'.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter would be addressed via a condition of consent, if the application were to be approved.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter would be addressed via a condition of consent, if the application were to be approved.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter would be addressed via a condition of consent, if the application were to be approved.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan 2011 section in this report.</p> <p>(ii) Social Impact</p>

Section 4.15 Matters for Consideration	Comments
and economic impacts in the locality	<p>The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	<p>This assessment has found the proposal to be contrary to the relevant requirement(s) of the C2 Traffic, Access and Safety, C4 Stormwater, D7 Views and D9 Building Bulk.</p> <p>The proposal presents a visually dominant design that is not acceptable for the proposed allotment context and will result in adverse amenity impacts, in particular view loss to several surrounding properties, 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.</p>

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 25/07/2023 to 08/08/2023 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 5 submission/s from:

Name:	Address:
Mrs Sharon Elizabeth Billyard Noel Frederick Billyard Daniel John Billyard	5 Parr Avenue NORTH CURL CURL NSW 2099
Withheld Withheld Hugh David Fraser	NORTH CURL CURL NSW 2099

Name:	Address:
Withheld Withheld Hugh David Fraser	36 Bellevue Parade NORTH CURL CURL NSW 2099
Mrs Nicola Joy Wiebe	38 Bellevue Parade NORTH CURL CURL NSW 2099
Mrs Sandra Marshall Mr Stuart James Marshall	123 Headland Road NORTH CURL CURL NSW 2099
Ms Sarah Gabrielle Christie	3 Parr Avenue NORTH CURL CURL NSW 2099

Five (5) submissions were received, with the issues summarised and addressed below:

- ***Concerns pertaining to the subdivision (under separate application - DA2023/0957). The proposed subdivision will result in allotments that do not comply with the minimal requirements for lot width, and will in turn create an over-development of the sites. No. 7 Parr Avenue is only suitable for one (1) dwelling.***

Comment

The subdivision is assessed under a separate Development Application - DA2023/0957, the non-compliances regarding the subdivisions controls will be addressed in detail in the related assessment report. In terms of over-development of the site, refer to 'Clause D9 Building Bulk', elsewhere in this report.

- ***Non-compliance to built form controls of the Warringah Development Control Plan 2011. Specifically, numerical variations to Clause B3 Side Boundary Envelope and D1 Landscape Open Space.***

Comment

A request for amendments to address the non-compliance in regard to the built form controls was sent to the applicant, with amended plans received. Refer to 'Site History' for detail. It is noted that 'as amended' the proposal complies numerically with Clause D1 Landscape Open Space. The building does however, encroach the prescribed side boundary envelope on the western elevation, presenting non-compliance with the numerical requirements of the clause.

Where the proposal seeks to vary a built form control, a merit assessment is conducted against the objectives of that clause within the relevant section of this report. Refer to 'Clause B3 Side Boundary Envelope' for further detail.

- ***The representation of Building height is considered to be misleading.***

Comment

Amendments to clarify the maximum building height was requested, with amended plans then received. The maximum building height is considered to comply with the Building Height Standard of 8.5 metres.

- ***Amenity impacts - view loss, visual privacy, overshadowing/sunlight access and noise impacts.***

Comment

Concerns were raised in the submissions received that the development will give rise to amenity impacts to adjoining residences, which are addressed below:

- A view loss analysis has been conducted in relation to the loss of views at No. 1, No. 3 and No. 5 Parr Avenue, in addition to No. 123 Headland Road. Refer to 'Clause D7 Views' for further detail. It is considered that the view loss outcome is not acceptable, and this reason warrants refusal of the application.

- Visual privacy has been addressed in detail elsewhere in this report, refer to 'Clause D8 Privacy'.

- No unacceptable overshadowing is caused by the development on proposed Lot 2 and is considered to comply with the requirements under Clause D6 Access to Sunlight. This being; at least 50.0% of the required area of private open space of each dwelling and at least 50.0% of the required area of private open space of adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9.00am and 3.00pm on June 21.

- The proposal is not identified as noise generating development, and noise levels would be considered acceptable within a residential environment.

- ***Glare and reflection impacts as a result of the overall building design and materials.***

Comment

Concern was raised in relation to the concrete walls of the building to result in solar reflection to No. 5 Parr Avenue. It is considered that the development utilises material of low reflectivity, and complies with Clause D12 Glare and Reflection. Additionally, if the application were to be approved a standard condition would be included which states that any 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. This would be to ensure that excessive glare or reflectivity nuisance does not occur as a result of the development.

- ***Traffic congestion, on-street parking reduction, vehicle access and safety concerns.***

Comment

Council's Development Engineer has reviewed the proposal and is not in support due to unresolved issues in relation to stormwater and vehicle access. Refer to the 'Development Engineering Referral' for further information, these reasons warrant refusal of the application. Council's Development Engineer did not raise concern with on-street parking issues, as the proposed dwelling provides the required two (2) minimum parking spaces (within double garage) and consists of only one (1) driveway crossover. If the application were to be approved, A Construction Traffic Management Plan (CTMP) may be required in that instance, to ensure pedestrian and vehicle safety during construction phase, given the location, extent of excavation and context of the site and surrounds.

- ***Council should follow their guidelines, policies and regulations. Several properties were not notified of the development these being; No. 1 and No. 3 Parr Avenue.***

Comment

It is considered that the proposed development does not satisfy all the appropriate controls, it is noted that all processes and assessments have been satisfactorily followed and addressed. As stated within Council's Community Participation Plan (CPP) - at minimum - notification to adjoining property owners and occupiers and property owners and occupiers across a street or

road from the subject site shall occur. This application was notified correctly. It is noted that various properties within the street are affected by the proposal and Council has been in contact with said property owners, throughout the process of the application assessment.

- **Concerns in relation to excavation, drainage and retaining wall works. Request conditions for Dilatation Reports for affected properties.**

Comment

As stated above, Council's Development Engineer has reviewed the proposal and is not in support due to need for further requested amendments in relation to stormwater. If the application were to be approved, conditions would be applied to ensure that the construction of the dwelling follows the recommendations made in the submitted Geotechnical Assessment prepared by Crozier Geotechnical Consultants (dated 20 January 2023). In addition, any potentially affected/adjoining properties would be noted and added to a recommended Dilapidation Report condition.

- **Concerns that the Statement of Environmental Effects (prepared by a consultant who until recently was a senior member of Council's Planning staff) has sought to minimise the social, amenity and economic impacts of the proposal.**

Comment

Under Council's Management of Conflicts of Interest a former staff member (more than 12 months since employment) can be assessed within Council, said staff member has not been employed by Council since their departure (more than 12 months ago). Despite the discussions noted within the Statement of Environmental Effects, a thorough assessment by Council has been undertaken in regard to any social, amenity and economic impacts of the proposal.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Solid Fuel/Oil Heater)	<p>Supported, no conditions required.</p> <p><u>General Comments</u></p> <p>The application is seeking consent for the construction of a new dwelling including the installation of a fireplace. It has been confirmed by Northern Beaches Planning on 1 August 2023 that the fireplace is to be gas and not solid fuel.</p>
Landscape Officer	<p>Supported, subject to conditions.</p> <p><u>Additional Information Comment 03/04/2024</u></p> <p>Amended Landscape Plans are noted.</p> <p>No objections are raised with regard to landscape issues subject to conditions, if the application were to be approved.</p> <p><u>Original Comment</u></p> <p>The application seeks consent for demolition works and construction of a dwelling house including swimming pool and garage (Lot 2).</p>

Internal Referral Body	Comments
	<p>The plans indicate retention of a significant rock outcrop at the rear of the Lot, which is supported.</p> <p>The Landscape Plans indicate replanting of replacement trees, along with shrubs other and groundcovers across the site.</p> <p>The Landscape Plans are considered unable to be supported as the tree species and proposed numbers of trees indicated in the Plan Schedule differ to those indicated graphically and via notation on the plans.</p> <p>In order to avoid confusion and clarify proposed planting, landscape plans are required to be updated to ensure that plant numbers and species match those indicated on the plans for Lot 2. Similar has been required for Lot 1. The plans should address works specific to the application at hand, i.e. Lot 2.</p> <p>At this stage, the proposal is not able to be supported with regard to landscape issues. If amended landscape plans are provided addressing the above, further assessment can be undertaken.</p>
NECC (Development Engineering)	<p><i>Not supported, additional information required.</i></p> <p><u>Engineering Referral Comments: 14/03/2024</u></p> <p>Council's Development Engineer requests the following before supporting the proposal.</p> <p>Stormwater</p> <ul style="list-style-type: none"> There are some errors in the submitted DRAINS Model. The DRAINS Model shall be revised. The HED control pit for the OSD system shall not be located within the planting area and shall be consistent with the architectural plans. <p>Site Access and Parking</p> <ul style="list-style-type: none"> The external parking spaces outside of the garage are recommended to be removed from the design. <p><u>Engineering Referral Comments: 3/10/2023:</u></p> <p>The applicant proposes "construction of a new dwelling on the yet to be created Lot 1 at 7 Parr Avenue, North Curl Curl (site)."</p> <p>This application is for proposed Lot 2.</p> <p>Please note that these comments are subject to an approved subdivision of Lot 91 DP 14113.</p> <p>Access</p>

Internal Referral Body	Comments
	<p>As part of the subdivision, the applicant is proposing to retain the existing driveway and propose a right of way over proposed Lot 2 to allow vehicular access to lot 1.</p> <p>As such, there is no loss of on street parking. It is noted however that the lot is on a bend with a front boundary width of approximately 9m. Clause C1 Subdivision of the Warringah DCP required new allotments to have a minimum width of 13 metres.</p> <p>The clause also states that a minimum driveway width of 3.5m is required. The existing driveway shall be widened to 3.5 metres at the kerb and follow an extra low profile.</p> <ul style="list-style-type: none"> • Requesting amended plans to show this. Include the location and RL of the existing telecommunications pit in the road reserve. <p>Stormwater</p> <p>The site falls to the rear and is located within region 2 as defined by the Water Management for Development Policy.</p> <p>In accordance with clause 9.3.2 of the policy, "Where subdivisions result in the creation of two (2) or more lots, OSD will be required where the</p> <p>total post developed impervious area of the new lots exceed 40% of the total site area. This requirement also applies to newly created lots with existing dwellings to be retained."</p> <p>The proposed impervious area is approximately 350m² or 65%. As such, OSD is required.</p> <p>A design is required in accordance with clauses 5.5 and 9.3.2 of the Water Management for Development Policy.</p> <p>There is a conditional approval for an easement provided by the owners of no. 40 Bellevue Parade, dated 10/05/23 (Internal Ref: 2023/452663).</p> <p>An easement for drainage will be required as part of the subdivision to benefit lot 2 and burden lot 1.</p> <p>The plans prepared by Gartnertrocato Architects, drawing no. DA-201, dated 20/06/23, indicate there are proposed above ground OSD systems at the rear of the site.</p> <ul style="list-style-type: none"> • This is not reflected on the stormwater plans prepared by Barrenjoey Consulting Engineers. The discrepancy needs to be clarified. <p>OSD and Rainwater tanks are proposed in the lower ground floor. There are no doors which provide access externally. The only access is through the primary dwelling. This is not supported.</p> <p>In accordance with clause 9.9.3 of the WMDP, "Council will not approve detention systems directly under habitable floors. In special circumstances, where approval is granted for enclosed systems, the control/inspection pit must be able to be accessed externally to the buildings."</p>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> The proposed OSD and rainwater tanks are under habitable floor areas (media room). Requesting details of how rising damp issues will be mitigated. Requesting a section of the rainwater and OSD tanks in the room to demonstrate there is sufficient freeboard. The landscaping plan shows that tree will be planted along the side boundary where the proposed control pit will be. The pit will not be accessible. Requesting amended plans to include an accessible pit. <p>The policy also states "Unobstructed external access to the OSD system(s) must be provided at all times. A safe overflow route from the OSD system must also be provided. Access to the OSD system(s) via enclosed structures will not be acceptable."</p> <ul style="list-style-type: none"> Requesting the pit to be shown on the architectural plans. Requesting that the architectural plans clearly show how the pit and room for the tanks will be accessible. Include all details of the entrance and levels. The access pit appears to be 2.6m deep and only 600mm wide. This is not supported as it is not feasible for the maintenance. The location of the orifice and trash screen needs to be specified. The plans should clearly indicate the room can be directly accessible externally. <p>In accordance with clause 6.6.2 of the Water Management for Development Policy, "Where stormwater discharge is to be connected to the kerb and gutter of a public roadway, it is not to exceed a discharge rate of 30 litres per second (l/s) in a 1% AEP storm event." The discharge at the kerb is at Bellevue Pde is proposed to be 39L/s in the 1% AEP.</p> <ul style="list-style-type: none"> Requesting an updated DRAINS model to be provided to restrict the discharge rate to 30 litres per second at the kerb. Clarification is required regarding the controlled and uncontrolled flows. Where discharge exceeds the above values, Council will require that the site discharge be piped to the nearest Council piped system, with a minimum 375mm diameter pipe, to Council's standards. <p>Geotechnical The site is classified as Land Slip Risk Map-Area B in the Warringah LEP2011. A Geotechnical report has been provided by Crozier Geotechnical Consultants. The report concluded that provided the recommendations of the</p>

Internal Referral Body	Comments
	<p>report and any future geotechnical directive are implemented, the proposed development can be maintained within the "Acceptable" Risk Management Criteria.</p> <p>Note to planner: Please include the geotechnical report in the approved documents.</p> <p>As such, development engineering cannot support the application due to insufficient evidence to address C2, C3 and C4 of the Warringah DCP.</p>
NECC (Water Management)	<p><i>Supported, subject to conditions.</i></p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> • Supplied plans and reports; • Northern Beaches Water Management for Development Policy (WMD Policy); and • Relevant LEP and DCP clauses <p>The proposal is for demolition and construction of a residential development intended for Lot 2. The existence of Lot 2 is subject to the outcome of a separate development application (DA) for subdivision. As such, the comments of this referral are subject to the approval of subdivision under a separate DA.</p> <p>Section 4.0 of the WMD Policy applies. Water sensitive urban design, water reuse and infiltration into the soil, and the resulting quality of stormwater leaving the site are interconnected concepts that guide a merit-based assessment under the section. The proposed stormwater plan includes features to retain water and encourage infiltration. Note, water from the proposed pool must not enter the stormwater system.</p> <p>No objections regarding water management, subject to conditions, if the application were to be approved.</p>
External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p><i>Supported, subject to conditions.</i></p> <p>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.</p> <p>These recommendations would be included as a condition of consent, if the application were to be approved.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council

Policies have been considered in the merit assessment of this application.

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1401698M dated 11 July 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	92

A condition would be included (if approved) 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 would form part of any approval were the application to be approved.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	8.5 metres	7.7 metres	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	Yes
5.3 Development near zone boundaries	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan**Built Form Controls**

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall Height	7.2m	7.2m	-	Yes
B3 Side Boundary Envelope	5.0m <i>Eastern Elevation</i>	Within Envelope	-	Yes
	5.0m <i>Western Elevation</i>	Outside Envelope	14.0%	No
B5 Side Boundary Setbacks	0.9m <i>Eastern Boundary</i>	Swimming Pool: 5.9m Lower Ground Floor: 1.0m - 5.9m Upper Ground Floor: 1.0m - 5.9m First Floor: 1.0m - 4.7m	-	Yes

	0.9m <i>Western Boundary</i>	Swimming Pool: 3.5m Pool Patio: 1.0m Lower Ground Floor: 1.0m - 4.2m Upper Ground Floor: 1.0m - 3.5m First Floor: 1.0m - 4.1m Stairs/Retaining Wall: Nil - 0.2m	- 100.0%	Yes No
B7 Front Boundary Setbacks	6.5m <i>Northern Boundary</i>	> 6.5m	-	Yes
B9 Rear Boundary Setbacks	6.0m <i>Southern Boundary</i>	Dwelling: 8.5m Pool/Patio: 1.1m - 2.0m (minimum)	- 81.7%	Yes No
D1 Landscaped Open Space (LOS) and Bushland Setting	40.0% (217.0m ²)	40.23% (218.28m ²)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	No	No
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	No	No
C3 Parking Facilities	Yes	Yes
C4 Stormwater	No	No
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	No	No
D8 Privacy	No	Yes
D9 Building Bulk	No	No
D10 Building Colours and Materials	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D16 Swimming Pools and Spa Pools	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

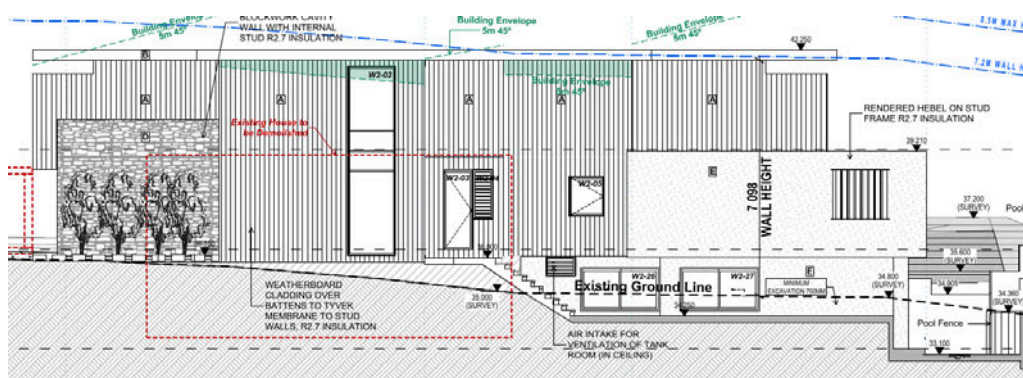
B3 Side Boundary Envelope

Description of Non-compliance

Clause B3 Side Boundary Envelope requires development to be sited within a 5.0m building envelope to ensure the bulk and scale of the built form is minimised.

The proposal for Lot 2 exhibits non-compliance with the envelope control on the western elevation which is adjacent to Proposed Lot 1 (see figure below), with a maximum variation of 14.0%. The eastern elevation adjacent to No. 5 Parr Avenue complies with this control.

It is noted that the non-compliant envelope on the western side would not change the view loss impact if it were to be amended to comply numerically.



(Figure 1: Western Elevation - green shading indicates encroachment).

Merit Consideration

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

- ***To ensure that development does not become visually dominant by virtue of its height and bulk.***

Comment

The envelope variation to the western elevation is not considered to be excessive, with the non-conforming elements (green shading in image above) not significantly contributing to overall bulk and scale of the building. For the overall building bulk of the dwelling, despite the envelope non-compliance refer to 'Clause D9 Building Bulk', elsewhere in this report.

- ***To ensure adequate light, solar access and privacy by providing spatial separation between buildings.***

Comment

For further detail and discussion regarding privacy refer to 'Clause D8 Privacy', elsewhere in this report. The non-conforming elements (green shading in image above) will not result in unacceptable solar access impacts.

- ***To ensure that development responds to the topography of the site.***

Comment

The envelope non-compliance is a s a result of the gradual slope in the existing landform in that specific area. In terms of how the dwelling overall relates to topography, despite the envelope non-compliance refer to 'Clause D9 Building Bulk', elsewhere in this report.

Having regard to the above assessment, it is concluded that the outcomes of the clause would be achieved, if the application were to be supported. This clause does not form part of the reasons for refusal.

B5 Side Boundary Setbacks

Description of Non-Compliance

Clause B5 Side Boundary Setbacks requires a setback of 0.9 metres to each side boundary to sites located within the R2 Low Density Residential zone.

The proposal includes side access stairs and retaining walls with a setback of Nil - 0.2 metres from the western boundary. The remainder of the works are compliant with the numerical requirements.

The clause consists of an exception for R2 zoned areas, which stipulates that structures not more than 1.0 metre above ground level (existing) may encroach beyond the minimum side setback. The non-conforming elements are approximately 1.0 metre in height.

Merit Consideration

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

- ***To provide opportunities for deep soil landscape areas.***

Comment

The proposal provides a numerical compliant landscape open space area. The proposed vegetated areas are of acceptable dimensions for future opportunities for deep soil landscape.

- ***To ensure that development does not become visually dominant.***

Comment

The non-conforming elements (i.e. access stairs and retaining walls) are not considered to be visually dominant structures.

- ***To ensure that the scale and bulk of buildings is minimised.***

Comment

The non-conforming elements (i.e. access stairs and retaining walls) are not of a large scale, and are located close to ground level. Refer to 'Clause D9 Building Bulk' for further discussion in regard to the overall building.

- ***To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.***

Comment

The building itself provides numerically compliant side setbacks, that are consistent with properties within the immediate area. The non-conforming elements (i.e. access stairs and retaining walls) will not result in unacceptable privacy or solar access. Refer to 'Clause D8 Privacy' for further discussion, in regard to the overall building impacts. Solar access requirements are compliant.

- ***To provide reasonable sharing of views to and from public and private properties.***

Comment

The non-conforming elements (i.e. access stairs and retaining walls) will not contribute to any unreasonable view loss from public and/or private properties. Refer to 'Clause D7 Views' for further discussion regarding overall view impact.

Having regard to the above assessment, it is concluded that the outcomes of the clause would be achieved if the application were to be supported. This clause does not form part of the reasons for refusal.

B9 Rear Boundary Setbacks

Description of Non-compliance

Clause B9 Rear Boundary Setbacks requires development to comply with a rear setback of 6.0m.

On land zoned R2 Low Density Residential, exempt development, swimming pools and outbuildings that, in total, do not exceed 50.0% of the rear setback area, provided that the objectives of this provision are met, can be located within the rear setback.

The proposal includes a swimming pool and pool patio area located within the rear setback located 1.1m - 2.0m (minimum) from the rear boundaries, which does not exceed 50.0% of the rear setback

area.

Merit Consideration

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

- ***To ensure opportunities for deep soil landscape areas are maintained.***

Comment

The subject site exhibits compliance with the landscape open space requirements, with majority of the rear setback area to be landscaped. It is therefore considered that the proposal provides opportunities for deep soil landscape.

- ***To create a sense of openness in rear yards.***

Comment

As above, majority of the rear setback area is to be vegetated, which will aid in the sense of openness to this area.

- ***To preserve the amenity of adjacent land, particularly relating to privacy between buildings.***

Comment

For further detail and discussion regarding privacy refer to 'Clause D8 Privacy', elsewhere in this report.

- ***To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.***

Comment

When in relation to the non-conforming elements this being the pool and patio, the existing visual continuity will not be disrupted, as many properties within the area include such elements located in the rear setback area. In terms of the dwelling (which complies with the rear setback control) and the impact the design has on the visual continuity overall refer to 'Clause D9 Building Bulk', elsewhere in this report.

- ***To provide opportunities to maintain privacy between dwellings.***

Comment

For further detail and discussion regarding privacy refer to 'Clause D8 Privacy', elsewhere in this report.

Having regard to the above assessment, it is concluded that the outcomes of the clause would be achieved, if the application were to be supported. This clause does not form part of the reasons for refusal.

C2 Traffic, Access and Safety

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 C2 Traffic, Access and Safety of the Warringah Development Control Plan (2011).

Council's Development Engineer requests for the external parking spaces to be removed from the design, as this could result in an impediment to internal vehicular access.

In this regard, Council is not satisfied the proposed development meets the requirements of this clause and is therefore recommended for refusal, due to the need for further design amendments.

C4 Stormwater

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 C4 Stormwater of the Warringah Development Control Plan (WDCP 2011).

Council's Development Engineer requested various amendments to the initial proposed Stormwater System, to ensure the system was acceptably designed in accordance with Council's 'Water Management for Development Policy'.

Amended Stormwater Plans were received on 13 February 2024 and were reviewed by Council's Development Engineer, who advised that the submitted DRAINS Model consists of errors, and should be revised. In addition, Council's Engineer noted that the HED control pit for the OSD system shall not be located within the planting area and shall be consistent with the architectural plans.

As such, the proposal is recommended for refusal based on insufficient information and the need for further amendments i.e. unacceptable stormwater plans/information to acceptably assess the stormwater impacts.

D7 Views

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 D7 Views of the Warringah Development Control Plan 2011.

Submissions were received regarding view loss impacts to the below four (4) properties:

- No. 1 Parr Avenue, North Curl Curl.
- No. 3 Parr Avenue, North Curl Curl.
- No. 5 Parr Avenue, North Curl Curl.
- No. 123 Headland Road, North Curl Curl.

Council was advised that certified height poles were erected on the 12 February 2024.

A site inspection was conducted at each property and the photos taken from the inspections (which include the erected height poles) will be referenced in this assessment.

The dwelling on Lot 2 proposed under this DA will be referenced as 'proposed dwelling' or 'subject site' under this view loss assessment.

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

The nature of the views affected will be discussed below for each property:

No. 1 Parr Avenue: The views of concern obtained by this site are achieved towards the south over the subject site. The views consist of a partial view of North Head, St. Patrick's Estate, ocean views and district views. The views obtained by this property are obstructed by vegetation and other existing infrastructure.

No. 3 Parr Avenue: The views of concern obtained by this site are achieved towards the south and south-east over the subject site. The views consist of North Head, St. Patrick's Estate, ocean views, Curl Curl Lagoon and district views. Majority of the views obtained by this property are unobstructed by vegetation/infrastructure.

No. 5 Parr Avenue: The views of concern obtained by this site are achieved towards the south and south-east over the subject site. The views consist of North Head, St. Patrick's Estate, ocean views, Curl Curl Lagoon and district views. Majority of the views obtained by this property are unobstructed by vegetation/infrastructure.

No. 123 Headland Road: The views of concern obtained by this site are achieved towards the south-west and consist of a partial distant view of the City of Sydney Skyline (including Sydney Tower Eye aka Centrepont Tower) and district views. Other views obtained by this property are towards the south and south-east and include fairly unobstructed views of the ocean, further district views, St. Patrick's Estate and North Head.

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 location of the obtained views will be discussed below for each property:

No. 1 Parr Avenue: The views mentioned above are obtained from the ground floor internal living space (lounge room/kitchen/dining) and outdoor open space area which includes alfresco dining and swimming pool. The views are also obtained from the upper level rear balcony and associated bedroom. These areas are situated toward the east (rear of the dwelling house). The views are obtained primarily from a standing perspective, however, majority of the views can also be obtained in a sitting position.

No. 3 Parr Avenue: The views mentioned above are obtained from the ground floor internal living space (kitchen/dining) and outdoor open space area. The views are also obtained from the upper level rear balcony and additional internal living space (lounge room) and bedrooms. These areas are situated toward the east (rear of the dwelling house). The views are obtained from both a standing and sitting perspective.

No. 5 Parr Avenue: The views mentioned above are obtained from the ground floor front porch, internal living spaces (lounge room/kitchen/dining) and outdoor open space area which includes alfresco dining and swimming pool. The views are also obtained from the upper level rear balcony and associated bedroom, as well as an additional bedroom toward the front of the house. Majority of these areas are situated toward the east (rear of the dwelling house). The views are obtained from both a standing and sitting perspective.

No. 123 Headland Road: The views mentioned above are obtained from the ground floor master-bedroom, lower floor living area and outdoor open space area including a swimming pool. The views are also obtained from the upper floor internal living area. These areas are situated toward the south (rear of the dwelling house). The views are obtained primarily from a standing perspective, however, majority of the views can also be obtained in a sitting position. Ocean views are obtained from the upper floor balcony also.

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 will be discussed below for each property:

No. 1 Parr Avenue: Parts of the district views obtained toward the south from the lower ground floor will be impacted upon. Minimal impact will occur to St. Patrick's Estate, North Head and ocean views. No impact to these views should occur to the first floor level. It is considered that the view loss impact to this property will be **minimal**.

No. 3 Parr Avenue: Sections of the ocean view toward the south will be lost, along with majority of North Head, St. Patrick's Estate and southern district views from the ground floor areas. The first floor will not experience such an impact as compared to the ground floor area, but will impact the view of Curl Curl Lagoon. Sections of the ocean views toward the south-east will be retained. It is considered that the view loss impact to this property will be **severe**.

No. 5 Parr Avenue: Majority of the ocean views will be lost, along with the entirety of North Head, St. Patrick's Estate and southern district views from the ground floor areas (both internal

and external areas). A minor section of ocean view with land/water interface will be retained toward the most eastern point, when viewed from the ground floor. Most of the ocean views and North Head will be retained from the first floor rear balcony and master-bedroom. Curl Curl Lagoon, St Patrick's Estate and district views are considered to be impacted from this location. The additional first floor bedroom located to the front of the house will lose majority ocean views, Curl Curl Lagoon, North Head, St Patrick's Estate and district views toward the south. The front entry porch will lose the ocean view currently obtained. It is considered that the view loss impact to this property will be **devastating**.

No. 123 Headland Road: The ocean views, North Head, Manly district views and St. Patrick's Estate will not be impacted upon. The City Skyline View will be lost when viewed from the master-bedroom as well as some distant district views. The downstairs media room and outdoor decking pool area will lose distant district views, the City Skyline will be impacted upon. All these areas can view the ocean and North Head. The upstairs area and balcony should not be impacted and retain views. It is considered that the view loss impact to this property will be **moderate**, due to the impact upon the iconic City Skyline view.



(Image 1 - No. 1 Parr Avenue - Ground Floor Living Area)



(Image 2 - No. 1 Parr Avenue - Ground Floor Outdoor Area)



(Image 3 - No. 3 Parr Avenue - Ground Floor Living Area)



(Image 4 - No. 3 Parr Avenue - First Floor Living Area)



(Image 5 - No. 5 Parr Avenue - Ground Floor Living Area)



(Image 6 - No. 5 Parr Avenue - Ground Floor Outdoor Area)



(Image 7 - No. 5 Parr Avenue - First Floor Master Bedroom/Balcony)



(Image 8 - No. 5 Parr Avenue - Additional Bedroom)



(Image 9 - No. 123 Headland Road - Master Bedroom)



(Image 10 - No. 123 Headland Road - Lower Living Area)

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 proposed dwelling for Lot 2 does not comply with the building bulk control, side boundary envelope (western envelope) and rear setback control (swimming pool) of the WDCP 2011. The dwelling does comply with the building height standard of the WLEP 2011. The non-compliances to the boundary envelope (western envelope) and rear setback controls do not give rise to the significant view loss addressed above. The predominant result of the view loss impact is the overall height, location, scale and bulk of the building refer to 'Clause D9 Building Bulk' for detailed discussion. The resultant affect of the proposed building mass is considered to impact on existing view corridors to No. 1, No. 3, and No. 5 Parr Avenue and the additional No. 123 Headland Road. Although, this analysis was prepared in isolation of the dwelling on proposed Lot 1 (under DA2023/0958) when also viewed in conjunction with, the view loss impacts are further exacerbated.

The question of a more 'skillful design' which provides the residents of the subject site with a similar development potential and amenity, whilst also retaining or reducing the extent of view loss impact to the current view corridors, were requested to be explored within a 'Request for Further Information Letter' dated 15 December 2023, and then later discussed during a meeting on the 24 January 2024. Council additionally requested height poles to be erected to further assess the view impacts and detailed view loss analysis should be undertaken and submitted to Council. The applicant noted within the SEE that no unacceptable view loss shall occur as a result of the initial proposal. Amendments to be considered would be the complete

reduction in building footprint (particularly to a dwelling located upon a site with a lot width non-compliance), the removal of the upper floor storey or significant reduction of this level (including a more recessive rear setback, stepping down the site topography) and consideration to the location of such elements on site (and the view corridors that may be impacted). The amended plans received did not include any amendments to address the view loss issues.

As stated within Council's 'Request for Further Information Letter', one genuine opportunity to address the raised issues is provided, given the extent of amendments and re-consideration of the dwelling design that is required to acceptably address the view loss impacts, a second opportunity was not afforded. The proposal is not deemed acceptable, particularly given that a more 'skillful' or 'sensitive' design can be achieved.

- ***To encourage innovative design solutions to improve the urban environment.***

Comment

An innovative design solution was not explored which would significantly improve the view impact as discussed above. Design solutions to consider is the reduction of the building footprint, re-orientation of building elements, and the deletion/significant reduction of the first floor level.

- ***To ensure existing canopy trees have priority over views.***

Comment

No canopy trees are proposed for removal, ensuring vegetation has priority over views.

It is considered that the proposed development is inconsistent with the relevant objectives of the WDCP 2011. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance due to the extent of view loss that will result to surrounding properties.

D8 Privacy

Merit Consideration

Clause D8 Privacy stipulates that building layout should be designed to optimise privacy for occupants of the development and occupants of adjoining properties, and the windows of one dwelling are to be located so they do not provide direct views (i.e. from less than 9 metres away) into the windows of other dwellings. Orientate living areas, habitable rooms and windows to private open space areas or to the street to limit overlooking.

An assessment of the proposal established concerns with the below elements of the building:

- The balcony associated with Bed 02.
- Elevated ground floor outdoor/BBQ area elevated in nature.

The balcony associated with Bed 02, now has a fixed louvered privacy screen as noted on the amended plans. The elevated ground floor outdoor area also includes a privacy screen adjacent to proposed Lot 1. The eastern edge of this elevated outdoor area that is adjacent to No. 5 Parr Avenue is located at 4.0 - 6.0 metres away and is also located at approximately 17.0 metres away from the windows of No. 123 Headland Road. This elevated outdoor area is situated at a lower level (minimum 3.0 metres lower) when compared to the above noted adjacent properties and their areas of concern that were raised within the submissions, and should not result in unacceptable privacy impacts. Any

additional privacy elements to this area may result in worse view loss outcomes.

The windows to the eastern elevation are of louvre style, a condition would be applied that these be externally fixed, if the application be approved. The first floor master-bedroom balcony, also includes a fixed louvre privacy screen and would be extremely difficult to overlook into No. 5 Parr Avenue or No. 123 Headland Road, given the orientation of the dwelling. The swimming pool area is situated at a low level when compared to adjoining properties, and is not considered to result in unacceptable privacy impacts.

The pool area is located 2.0 metres from the rear boundary adjoining No. 36 Bellevue Parade, a combination of existing vegetation and proposed vegetation along the boundary would aid in visual protection from this area. The outdoor area and first floor balcony is located at minimum 7.2 - 9.0 metres from No. 36 and No. 38 Bellevue Parade and is located at a high level. The design and orientation of these elements allows the viewing direction to be up and out towards the ocean views, rather than across into neighbouring properties. Majority of properties within this vicinity will have a degree of overlooking due to the topography of the area and location of existing buildings being orientated toward the ocean views. To limit any degree of overlooking is not considered a realistic outcome, but the level of overlooking should be minimised.

The window (W2-02) to the internal stairwell is quite large and is in close proximity to proposed Lot 1, if the proposal were to be approved, a condition of consent would be recommended to include frosted glazing and/or fixed louvred screening.

The development is considered against the underlying Objectives of the Control as follows:

- ***To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.***

Comment

Subject to the recommended conditions, the proposal would provide for an acceptable level of visual and acoustic privacy for the subject site and adjoining neighbours within a residential setting.

- ***To encourage innovative design solutions to improve the urban environment.***

Comment

The proposed development combined with the recommended condition would result in a proposal that incorporates innovative design solutions to improve the urban environment.

- ***To provide personal and property security for occupants and visitors.***

Comment

The recommended condition of consent would ensure that a sense of security and protection is provided for both occupants of the subject site and visitors.

Having regard to the above assessment, it is concluded that the applicable outcomes of the control would be achieved, subject to conditions, if the application were to be supported.

D9 Building Bulk

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 D9 Building Bulk of the Warringah Development Control Plan 2011.

Clause D9 Building Bulk stipulates the following requirements, which the proposal does not achieve:

- Side and rear setbacks are to be progressively increased as wall height increases.
- Large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief.
- On sloping land, the height and bulk of development 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.
- Building height and scale needs to relate to topography and site conditions.
- Articulate walls to reduce building mass.

The proposal will result in a three (3) level build with an extensive array of internal space and rooms, resulting in large building footprint, with significant length. This design, with the extent of built form and excavation required to accommodate the build is not considered to be a sensitive design for the existing topography of the land, proposed lot width non-compliance nor the amenity/visual impacts that shall result. The proposal is not considered to be compatible with the height and scale of surrounding and nearby development, nor complement the building line and pattern that is present (despite the rear setback compliance to majority of the dwelling house).

The proposed development does not achieve all the requirements, and therefore will be assessed against the objectives of the clause.

- ***To encourage good design and innovative architecture to improve the urban environment.***

Comment

The concern regarding building bulk was raised in a 'Request for Further Information Letter' dated 15 December 2023. The letter advised that a review of the design is needed to demonstrate compliance with the requirements/objectives of this clause. Amendments of the design would need to significantly reduce the building footprint, particularly to a dwelling located upon a site with a lot width non-compliance. Although the dwelling generally complies with majority of the built form controls, the design does not progressively increase side setbacks as the wall height increases, resulting in a minimally articulated wall plane adjacent to No. 5 Parr Avenue. This in conjunction with the the overall size and height of the building will create a walled-in presence for the residents at No. 5 Parr Avenue. The dwelling will also extend up and out, towering over many of the surrounding properties, despite the buildings numerical height compliance.

The dwelling will facilitate a large extent of excavation to accommodate for the lower ground level. Due to the extent of internal space located on the lower level, the need for the proposed internal space and the proposed room sizes to the first floor level is not deemed acceptable and can be considered a luxury that this site in particular cannot accommodate for. The first floor level is a predominant cause for view loss to several properties. This combined with the proposed building on Lot 1 would further exacerbate these issues, and it is considered that the

application does not promote good design and innovative architecture to improve the urban environment.

- ***To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.***

Comment

The proposal presents a visually dominant design by virtue of its height and scale, directly related to the building footprint, the size of the rooms within the dwelling and number of storeys. The proposal in its current form presents an over-development of the site and does not provide a design that acceptable complements the context of the subject site or surrounds.

Having regard to the above assessment, it is concluded that the proposal is inconsistent with the aims and objectives of the control. Therefore, the application is not supported, in this particular circumstances.

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 \$17,443 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,744,268.

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 the demolition works and construction of a dwelling house including a swimming pool has been referred to the Development Determination Panel (DDP) due to the application receiving six (6) unresolved objections.

The development application was notified for fourteen (14) days, as stated within Council's Community Participation Plan, with the objections received being addressed under the 'Submissions' section of the report.

On balance, and considering the preceding detailed assessment of the application it is considered that the proposed dwelling house in terms of the overall size and scale is unacceptable in design, which would contribute to a detrimental impact to the visual character and amenity (i.e. view loss) of the area.

It is considered that the proposed development does not satisfy the appropriate controls and has not satisfactorily addressed Council's concerns. Accordingly, the application is referred to the DDP with a recommendation 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 DA2023/0959 for the Demolition works and construction of a dwelling house including swimming pool and garage on land at Lot 91 DP 14113,7 Parr Avenue, NORTH CURL CURL, for the reasons outlined as follows:

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

Particulars:

i) The proposed development is inconsistent with Clause C4 Stormwater of the Warringah Development control Plan 2011 as the submitted DRAINS Model prepared for the application consists of errors. The conclusions drawn in the Model cannot be relied upon.

ii) The HED control pit for the OSD system shall not be located within the planting area. The design in this regard is inconsistent with the architectural plans.

iii) The proposed development is inconsistent with C2 Traffic, Access and Safety as the external parking spaces included in the design will result in an impediment to internal vehicular access.

2. Pursuant to Section 4.15(1)(a)(i) &(iii) and 4.15(1)(b) & (c) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with Clause 1.2 Aims of the Plan of the Warringah Local Environmental Plan 2011 and the following controls within the Warringah Development Control Plan: A.5 Objectives, D7 Views, and D9 Building Bulk.

Particulars:

i) The proposed design fails to achieve the requirements of Clause D9 Building Bulk resulting in a dwelling with a large building footprint, which in conjunction with unacceptable building mass is representative of a built form which has not been designed to complement and integrate with the site's topography nor the site constraints.

ii) The proposal is not considered to be compatible with the height and scale of surrounding and nearby development, nor complement the building line and pattern that is present in the vicinity, despite strict compliance with the maximum building height prescribed under Clause 4.3 of the Warringah Local Environmental Plan 2011. The consequence of this is that the resultant building is incompatible with the prevailing built form. The development results in amenity impacts to surrounding properties.

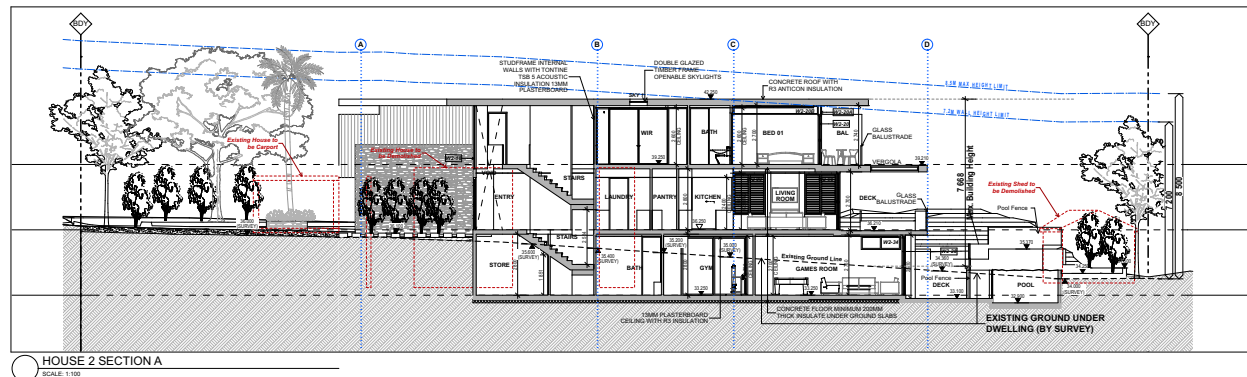
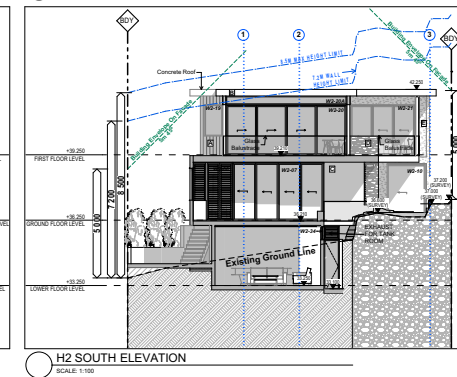
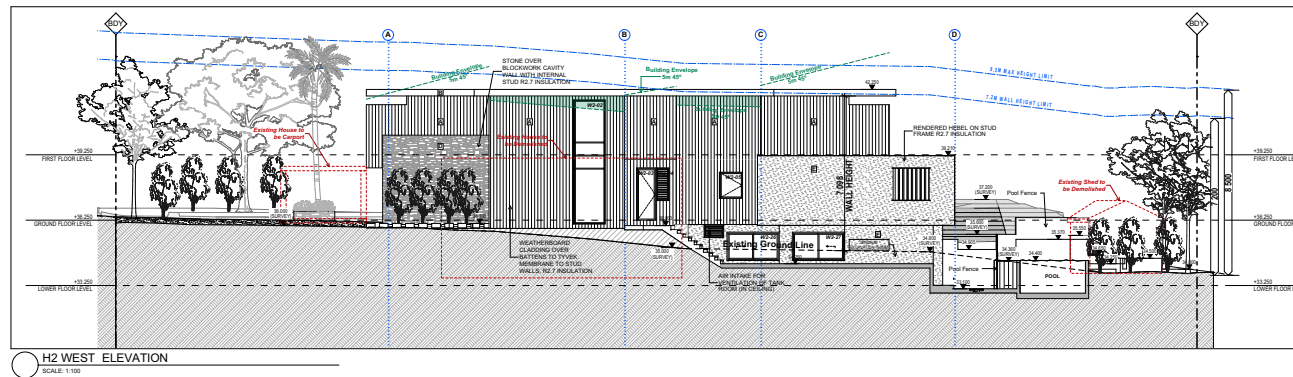
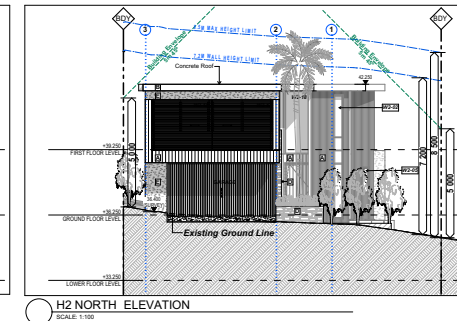
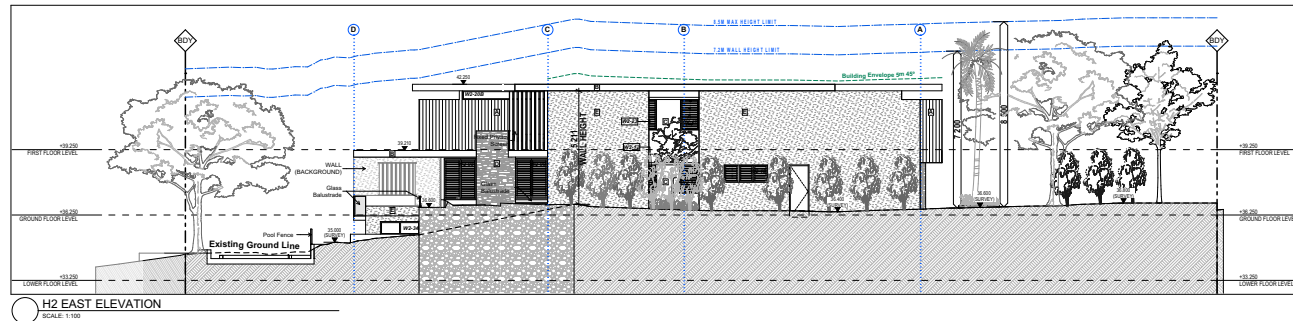
iii) The proposed development by way of its significant building mass gives rise to an unacceptable impact on views obtained by adjacent properties. It is considered that the impact to these views is not representative of view sharing and that the outcome is contrary to and fails the set within Planning Principle *Tenacity v Warringah Council*.

iv) A more 'skilful design' which provides the residents of the subject site with a similar development potential and amenity is considered to be achievable through a rationalisation of the building footprint, partial removal and/or modulation of the upper floor storey, as well as a greater and more recessive rear setback, that has regard to, and consideration of the location of such elements on site in relation to view corridors that may be impacted.

3. 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 resultant built form in conjunction with the unreasonable amenity impacts upon adjoining and nearby properties, is such that approval of the proposed development would not be within the public's interest.



EXTERIOR FINISHES LEGEND

- TIMBER CLADDING, BURNT FINISH
- RENDER + PAINT FINISH RESINE "HALF ATHENS GREY"
- RENDER + PAINT FINISH RESINE "ACROPOLIS"
- SANDSTONE CLADDING
- CONCRETE, OFF FORM

A. TIMBER CLADDING B. RENDER + PAINT FINISH
C. RENDER + PAINT FINISH D. SANDSTONE CLADDING
E. CONCRETE (OFF FORM)

WINDOW SCHEDULE BASIS H2

Window	Width	Height	Sill	Area
W2-02	600	1 100	200	1.12
W2-03	1 500	1 700	200	3.15
W2-04	300	2 400	200	2.16
W2-05	600	1 500	1 100	1.35
W2-06	1 100	1 200	1 200	1.32
W2-07	1 800	2 600	200	4.77
W2-08	4 000	2 500	200	11.10
W2-09	1 470	1 900	900	2.79
W2-10	1 470	1 900	900	2.79
W2-11	1 800	2 000	200	4.48
W2-12	2 200	1 300	1 100	2.85
W2-13	600	1 600	800	1.19
W2-14	600	1 600	800	1.19
W2-15	2 200	2 400	200	5.28
W2-16	2 600	600	1 800	1.60
W2-17	2 600	2 300	200	6.10
W2-18	2 600	2 300	200	6.10
W2-19	2 600	2 300	200	6.10
W2-20	2 600	2 300	200	6.10
W2-21	2 600	2 300	200	6.10
W2-22	2 600	2 300	200	6.10
W2-23	2 600	2 300	200	6.10
W2-24	2 600	2 300	200	6.10
W2-25	2 600	2 300	200	6.10
W2-26	2 600	2 300	200	6.10
W2-27	2 600	2 300	200	6.10
W2-28	2 600	2 300	200	6.10
W2-29	2 600	2 300	200	6.10
W2-30	2 600	2 300	200	6.10
W2-31	2 600	2 300	200	6.10
W2-32	2 600	2 300	200	6.10
W2-33	2 600	2 300	200	6.10
W2-34	2 600	2 300	200	6.10
W2-35	2 600	2 300	200	6.10
W2-36	2 600	2 300	200	6.10
W2-37	2 600	2 300	200	6.10
W2-38	2 600	2 300	200	6.10
W2-39	2 600	2 300	200	6.10
W2-40	2 600	2 300	200	6.10
W2-41	2 600	2 300	200	6.10
W2-42	2 600	2 300	200	6.10
W2-43	2 600	2 300	200	6.10
W2-44	2 600	2 300	200	6.10
W2-45	2 600	2 300	200	6.10
W2-46	2 600	2 300	200	6.10
W2-47	2 600	2 300	200	6.10
W2-48	2 600	2 300	200	6.10
W2-49	2 600	2 300	200	6.10
W2-50	2 600	2 300	200	6.10
W2-51	2 600	2 300	200	6.10
W2-52	2 600	2 300	200	6.10
W2-53	2 600	2 300	200	6.10
W2-54	2 600	2 300	200	6.10
W2-55	2 600	2 300	200	6.10
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W2-60	2 600	2 300	200	6.10
W2-61	2 600	2 300	200	6.10
W2-62	2 600	2 300	200	6.10
W2-63	2 600	2 300	200	6.10
W2-64	2 600	2 300	200	6.10
W2-65	2 600	2 300	200	6.10
W2-66	2 600	2 300	200	6.10
W2-67	2 600	2 300	200	6.10
W2-68	2 600	2 300	200	6.10
W2-69	2 600	2 300	200	6.10
W2-70	2 600	2 300	200	6.10
W2-71	2 600	2 300	200	6.10
W2-72	2 600	2 300	200	6.10
W2-73	2 600	2 300	200	6.10
W2-74	2 600	2 300	200	6.10
W2-75	2 600	2 300	200	6.10
W2-76	2 600	2 300	200	6.10
W2-77	2 600	2 300	200	6.10
W2-78	2 600	2 300	200	6.10
W2-79	2 600	2 300	200	6.10
W2-80	2 600	2 300	200	6.10
W2-81	2 600	2 300	200	6.10
W2-82	2 600	2 300	200	6.10
W2-83	2 600	2 300	200	6.10
W2-84	2 600	2 300	200	6.10
W2-85	2 600	2 300	200	6.10
W2-86	2 600	2 300	200	6.10
W2-87	2 600	2 300	200	6.10
W2-88	2 600	2 300	200	6.10
W2-89	2 600	2 300	200	6.10
W2-90	2 600	2 300	200	6.10
W2-91	2 600	2 300	200	6.10
W2-92	2 600	2 300	200	6.10
W2-93	2 600	2 300	200	6.10
W2-94	2 600	2 300	200	6.10
W2-95	2 600	2 300	200	6.10
W2-96	2 600	2 300	200	6.10
W2-97	2 600	2 300	200	6.10
W2-98	2 600	2 300	200	6.10
W2-99	2 600	2 300	200	6.10
W2-100	2 600	2 300	200	6.10

**ITEM 3.9 MOD2024/0108 - 220 BARRENJOEY ROAD NEWPORT -
MODIFICATION OF DEVELOPMENT CONSENT DA2023/0874
GRANTED FOR ALTERATIONS AND ADDITIONS TO A DWELLING
HOUSE INCLUDING A SWIMMING POOL**

PURPOSE

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

RECOMMENDATION

THAT Council as the consent authority **approves** Development Consent to Mod2024/0108 for Modification of Development Consent DA2023/0874 granted for Alterations and additions to a dwelling house including a swimming pool on land at Lot 8 DP 31532, 220 Barrenjoey Road NEWPORT, subject to the conditions set out in the Assessment Report.

Reporting manager	Adam Richardson
TRIM file ref	2024/269094
Attachments	↓1 Assessment Report ↓2 Site Plan and Elevations

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2024/0108
Responsible Officer:	Megan Surtees
Land to be developed (Address):	Lot 8 DP 31532, 220 Barrenjoey Road NEWPORT NSW 2106
Proposed Development:	Modification of Development Consent DA2023/0874 granted for 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:	Sandra Madeleine Cotter John James Cotter
Applicant:	Sandra Madeleine Cotter
Application Lodged:	19/03/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	26/03/2024 to 09/04/2024
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

EXECUTIVE SUMMARY

This modification application seeks consent to modify DA2023/0874 which was granted approval for alterations and additions to a dwelling house including a swimming pool. DA2023/0874 was referred to Council's Development Determination Panel (DDP). The DDP approved DA2023/0874 on 25 October 2023, with the inclusion of an amendment to Condition 10. Amendments to the approved plans.

This application is referred to the DDP as this modification application is a Section 4.55(2) Other Modification application which proposes design amendments which ultimately results in compliance with Condition 10, rendering that condition obsolete.

This modification application was notified to adjoining and nearby properties in accordance with Council's CPP for fourteen (14) days and no submissions were received during this time.

The modified development proposes variations to the relevant built form controls under the Pittwater 21 Development Control Plan (P21DCP), these being: D10.7 Front building line (excluding Newport Commercial Centre), D10.8 Side and rear building line (excluding Newport Commercial Centre) and D10.13 Landscaped Area - Environmentally Sensitive Land. The proposed modified works, in regard to these variations, do not result in any unreasonable environmental and/or amenity impacts, with the development achieving the relevant objectives of these controls, particularly given the presence of Condition 10.

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

PROPOSED DEVELOPMENT IN DETAIL

This modification application seeks consent to modify consent no. DA2023/0874 for alterations and additions to a dwelling house including a swimming pool.

The modified works include:

- Amending the development to align with the design amendments necessitated by Condition 10 and proposing the deletion of **Condition 10. Amendments to the approved plans.**
- Additional paved area to the northern elevation of the approved swimming pool (approx. 1.47m²).
- Additional paved area to the eastern elevation of the approved swimming pool enclosure (located off the approved rumpus and studio rooms) (approx. 6.95m²).
- Proposed pool fence along the western and southern elevation of the approved swimming pool enclosure - comprising 600 millimetre masonry and 1.2 metres glass (maximum height of 1.8 metres).
- Pool equipment relocated to the southern side of the dwelling.
- Amendments to the window and door schedule.
- Internal reconfiguration to rooms on the basement level, ground floor level, and level 1.
- Slab on the ground floor level along the western elevation is reduced.
- Gym removed from the laundry and replaced with a butlers pantry.
- Vergola removed and replaced with skylight above ground floor terrace.
- Roof changed to reduce hips and slopes.
- Rockery to the south of the approved garage has been extended and levelled, including a retaining wall along the western elevation.

ASSESSMENT INTRODUCTION

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

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater 21 Development Control Plan - D10.7 Front building line (excluding Newport Commercial Centre)

Pittwater 21 Development Control Plan - D10.8 Side and rear building line (excluding Newport Commercial Centre)

Pittwater 21 Development Control Plan - D10.13 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 8 DP 31532 , 220 Barrenjoey Road NEWPORT NSW 2106
Detailed Site Description:	<p>The site known as 220 Barrenjoey Road, Newport is described as Lot 8, DP 31532, and has an area of 696.5m².</p> <p>The site has a 21.62m frontage to Barrenjoey Road and a rear boundary of 14.935m. A shared right-of-carriageway occupies a 6.5m wide strip adjacent to the eastern boundary.</p> <p>The site is occupied by a two-storey rendered dwelling house with tile roof. Vehicular access to the site is from the shared right-of-carriageway, leading from Barrenjoey Road.</p> <p>Barrenjoey Road runs along the western boundary of the site at the base of an 8m - 10m vegetated rock escarpment. The site itself has a moderate slope of approximately 15 degrees, falling from east to west.</p> <p>The site is located within the C4 Environmental Living Zone.</p> <p>Adjoining and surrounding development is characterised by detached dwellings on steeply sloping sites. Properties are generally orientated toward the views of Pittwater available to the west and the ocean to the east.</p>

Map:



SITE HISTORY

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

- **DA2023/0874.** This development application sought consent for alterations and additions to a dwelling house, including the construction of a swimming pool. This application was approved by Council's Development Determination Panel (DDP) on 25 October 2023. A Construction Certificate (CC2024/0157) was obtained and provided to Council on 16 February 2024.

APPLICATION HISTORY

No additional information was requested in this case. The Applicant, however, provided amended plans which increased the setback of the swimming pool to the western boundary so as to minimise adverse impacts from excavation upon the existing stone retaining wall. This information was not requested by Council. The amended plans were uploaded to the Planning Portal on 9 April 2024. In accordance with Council's Community Participation Plan (CPP), the amended plans are not required to be renotified.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;

- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2023/0874, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2023/0874 for the following reasons:</p> <p>The original development granted consent for alterations and additions to a dwelling house, including the construction of a swimming pool.</p> <p>The proposed modified works seek to modify the approved works to the dwelling, with some modifications being in accordance with Condition 10 of DA2023/0874. The works within this modification application are, therefore, considered to be substantially the same as that which was approved under DA2023/0874.</p>
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA2023/0874 did not require concurrence from the relevant Minister, public authority or approval body.

Section 4.55 (2) - Other Modifications	Comments
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions were received in relation to this application.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 (2) the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 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)	<p>Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case. The Applicant, however, provided amended plans which increased the setback of the swimming pool to the western boundary so as to minimise adverse impacts from excavation upon the existing stone retaining wall. This information was not requested by Council. The amended plans were uploaded to the Planning Portal on 9 April 2024. In accordance with Council's Community Participation Plan (CPP), the amended plans are not required to be renotified.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 2001: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic</p>

Section 4.15 'Matters for Consideration'	Comments
	impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 26/03/2024 to 09/04/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	<p>The comments in this referral relate to the following applicable controls and provisions:</p> <ul style="list-style-type: none"> • Pittwater LEP clause 7.6 Biodiversity • Pittwater 21 DCP clause B4.6 Wildlife Corridors <p>The proposed modifications would take place in previously disturbed areas and are unlikely to impact upon native flora and fauna. No additional conditions are recommended.</p> <p>No native vegetation or fauna habitat would be impacted, the development is designed, sited and will be managed to avoid any significant adverse environmental impact.</p>

Internal Referral Body	Comments
NECC (Development Engineering)	Development engineering has reviewed the Statement of Modification and associated documents and raises no objections to the proposed development, subject to the retention of the existing engineering conditions of consent.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposed modified works were referred to Ausgrid who provided a response stating that the modified works are 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 (Sustainable Buildings) 2022

While there are amendments to the approved window schedule, there is no net change to the surfaces of the windows and doors thus an amended BASIX certificate is not required.

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

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

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

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.5m	7.2m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes

Pittwater 21 Development Control PlanBuilt Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
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Front building line (western boundary to Barrenjoey Road)	10.0m	Lower Ground - Existing Ground Floor - Existing Pool - 1m	<i>Lower Ground:</i> Pool: 1.7m <i>Ground Floor:</i> Dwelling: 8.85m <i>First Floor:</i> Dwelling: 21.21m	No, 83% variation No, existing Yes, as approved
Rear building line (eastern boundary to shared driveway)	6.5m	Lower Ground - Existing Ground Floor - 9.4m First Floor - 6.5m	<i>Lower Ground:</i> Dwelling: no change <i>Ground Floor:</i> Dwelling: no change <i>First Floor:</i> Dwelling: no change Levelling of rockery: 6.12m	Yes, as approved Yes, as approved Yes, as approved No, 5.85% variation
Side building line	Southern Boundary 2.5m	Lower Ground - Existing Ground Floor - Existing First Floor - 2.5m Pool - 0.45m (decking)	<i>Lower Ground:</i> Dwelling: No change Pool Fencing: 1.0m <i>Ground Floor:</i> Dwelling: No change <i>First Floor:</i> Dwelling: No change Levelling of rockery: Nil	No, as approved No, 60% variation No, as approved Yes, as approved No, 100% variation
	Northern Boundary 1m	Lower Ground - Existing Ground Floor - Existing First Floor - 2.7m - 1m Pool - 5.8m	<i>Lower Ground:</i> Pool Fence: 1.0m Pool: 5.7m Dwelling: No change <i>Ground Floor:</i> Dwelling: No change <i>First Floor:</i> Dwelling: No change	Yes Yes Yes, as approved Yes, as approved Yes, as approved
Building envelope	Southern Elevation	Ground Floor - Existing	No change	Yes, as approved

	3.5m	First Floor - Within envelope		
	Northern Elevation 3.5m	Ground Floor - Existing First Floor - Within envelope	No change	Yes, as approved
Landscaped area	60% (417.9m ²)	268.2m ² (38.51% incl. 6% allowance)	Without variation 30.2% (211.9m ²) With variation (6% allowance) 250.0m ² (or 35.9%)	No, variation of 49.6% No, variation of 40%

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.10 Newport Locality	Yes	Yes
B5.15 Stormwater	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
D10.1 Character as viewed from a public place	Yes	Yes
D10.3 Scenic protection - General	Yes	Yes
D10.4 Building colours and materials	Yes	Yes
D10.7 Front building line (excluding Newport Commercial Centre)	No	Yes
D10.8 Side and rear building line (excluding Newport Commercial Centre)	No	Yes
D10.11 Building envelope (excluding Newport Commercial Centre)	Yes	Yes
D10.13 Landscaped Area - Environmentally Sensitive Land	No	Yes
D10.16 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment**D10.7 Front building line (excluding Newport Commercial Centre)**Description of Non-Compliance

Due to the location of the subject site, the front boundary line has been allocated to the western boundary line, which is adjacent to Barrenjoey Road. As such, the front setback requirement is 10.0 metres. The swimming pool, as approved under DA2023/0874, had a front setback distance of 1.0 metre. The approved alterations and additions to the dwelling house maintained the existing front setback distance, which appeared to result in a numeric non-compliance at the lower ground and ground floor levels. There are no changes to the front setback distance to the dwelling house.

The proposed modified plans, as amended, have increased the front setback distance to the swimming pool to 1.7 metres to ensure excavation works to the swimming pool are not within close proximity to the existing stone retaining wall along the western boundary line. This presents a variation of 83%, notwithstanding an increase to that approved under the original DA.

As such, a merit consideration of the amended front setback distance to the approved swimming pool, which remains wholly in-ground.

Merit Consideration

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

- *Achieve the desired future character of the Locality. (S)*

Comment:

The proposed modified works to the swimming pool and associated safety fencing is minor and consistent with the previous approval, which was found to have achieved the desired future character of the locality.

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

Comment:

The proposed modified swimming pool is entirely sited in-ground, with the only elevated structure being the pool fencing which ranges between 1.2 metres and 1.8 metres. The adjoining dwelling are sited at a similar level to the dwelling on the subject site, therefore the in-ground swimming pool and associated safety fencing will not cause any unreasonable impacts upon views and vistas to and/or from public/private places.

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

Comment:

The proposed swimming pool remains wholly in-ground and atop the escarpment above Barrenjoey Road. In this instance, there are not unreasonable amenity impacts upon adjoining properties, or to the streetscape of Barrenjoey Road.

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

Comment:

No substantial vegetation is proposed for removal to accommodate the new setback distance to the swimming pool. The swimming pool is wholly in-ground and thus the built form is minor, with no unreasonable amenity or environmental impacts upon adjoining and nearby properties, as well as Barrenjoey Road.

- *Vehicle manoeuvring in a forward direction is facilitated. (S)*

Comment:

There is no impact of the proposed modified front setback upon the vehicle manoeuvring of the site. The vehicle manoeuvring was approved under the original development application.

- *To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.*

Comment:

Due to the steep escarpment to which the subject site is located, and the fact the swimming pool is retained as wholly in-ground, there is no unreasonable amenity impact upon Barrenjoey Road. The scale and density of the proposed modified is in keeping with the height of the surrounding natural environment.

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

Comment:

As above, the proposed modified swimming pool cannot be viewed from Barrenjoey Road due to the steep escarpment. As such, the existing street frontage and pedestrian amenity to Barrenjoey Road shall remain.

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

Comment:

The proposed modified front setback distance to the swimming pool better responds to the site constraints by moving the pool (and its required excavation works) further away from the existing stone retaining wall. In this instance, the proposed modified works appropriately respond to, reinforce and sensitively relates to the spatial characteristics of the existing urban environment.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D10.8 Side and rear building line (excluding Newport Commercial Centre)

Description of Non-Compliance

This control requires development to result in side setback distances of 2.5 metres on one side and 1.0 metre on the other side. This control also stipulates the rear setback requirement of 6.5 metres.

The proposed modified works include a retaining wall and levelling of rockery to the south of the approved driveway along the southern boundary, as well as a 1.8 metre high fence along the western elevation of the swimming pool.

The proposed 1.8 metre high fence extends into the northern side setback area. The proposed retaining wall and levelling of the rockery is sited entirely within the southern side setback area, and marginally extends into the rear setback area. These works are minor and sited well below the approved maximum ridge line and thus there is no unreasonable amenity impacts arising as a result of these modified works. Notwithstanding, a merit consideration of the proposed modified works against the outcomes of this control is undertaken below.

Merit Consideration

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

- *To achieve the desired future character of the Locality. (S)*

Comment:

The proposed modified works will be consistent with the desired future character of the Newport Locality.

- *The bulk and scale of the built form is minimised. (En, S)*

Comment:

The proposed works are an acceptable bulk and scale and are commensurate with development often sited within side setback areas to allow for ease of movement throughout the subject site.

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

Comment:

The proposed 1.8 metre high fence is located on the lower ground level, noting that adjoining and nearby dwellings are sited higher than the lower ground level of the subject site. Further, the retaining wall and levelling of the rockery is essentially located at ground level and steps with the slope of the land. Therefore, the proposed modified works will continue to allow for the equitable preservation of views and vistas to and/or from public/private places.

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

Comment:

As above, view sharing is able to be achieved, notwithstanding the numeric non-compliances as detailed above.

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

Comment:

As detailed above, the extent of non-compliance to this control does not cause any unreasonable privacy and solar access impacts or amenity issues upon the adjoining properties.

- *Substantial landscaping, a mature tree canopy and an attractive streetscape. (En, S)*

Comment:

Substantial landscaping on the site is not required to be removed to accommodate the proposed works within the side and rear setback areas. The existing site does not have any canopy trees, and the shared private driveway will not be unreasonably impacted by the proposed works. As detailed elsewhere in this report, the steep escarpment above Barrenjoey Road to which the site is located means that the proposed works cannot be viewed from Barrenjoey Road and, therefore, the existing streetscape is maintained.

- *Flexibility in the siting of buildings and access. (En, S)*

Comment:

The extent of non-compliances, as detailed above, do not restrict access throughout the site and flexibility in the siting of the works and access is achieved.

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

Comment:

As detailed above, no vegetation is required to be removed to accommodate the proposed modified works.

- *To ensure a landscaped buffer between commercial and residential zones is established. (En, S)*

Comment:

The subject site is located within, and surrounded by, a residential zone. This outcome does not apply to the subject site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D10.13 Landscaped Area - Environmentally Sensitive Land

Description of Non-compliance

This control requires development to result in a landscaped area of 60% (or 417.9m²). Where a proposal may not meet the numeric requirements, but can achieve the outcomes of this control, a variation may be permitted which includes the provision of 6% of the total site area and pathways of 1.0 metre width of less may be included in the landscaped area. As such, the original development application approved a landscaped area, inclusive of the 6% variation, of 268.2m² (or 38.51%).

The modified works result in a reduction to the approved landscaped area of 250.0m² (or 35.9%), which is inclusive of the 6% allowance in the variation.

It appears the discrepancy arises from the proposed paving on the lower ground level between the external western wall to the pillars. In this instance, a condition will be recommended to ensure the proposed paved area of 10.0m² to the west of the internal lower ground floor is to be deleted and shall remain as landscaping, which aligns with the original development consent which sought to ensure the

retention of as much landscaped area as possible. It is considered that any modification to the development must maintain the approved quantum of landscaped area so as to ensure an acceptable balance between the natural and built environments.

Merit Consideration

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

- *Achieve the desired future character of the Locality. (S)*

Comment:

As conditioned, the proposed modified works can achieve the desired future character of the locality.

- *The bulk and scale of the built form is minimised. (En, S)*

Comment:

The proposed modified works do not seek to alter the approved built form. In this instance, the built form is commensurate with adjoining and nearby properties, and appropriate for the context of the subject site. Therefore, the extent of non-compliance to this control does not give rise to an unreasonable built form.

- *A reasonable level of amenity and solar access is provided and maintained. (En, S)*

Comment:

The extent of non-compliance to this control does not unreasonably impact upon the amenity and solar access for the subject site and adjoining properties.

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

Comment:

As detailed above, the proposed modified works do not seek to alter the approved built form and the extent of non-compliance to this control does not give rise to an unreasonable built form.

- *Conservation of natural vegetation and biodiversity. (En)*

Comment:

As conditioned, the proposed modified works will conserve the natural vegetation and biodiversity on the site.

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

Comment:

The extent of non-compliance to this control does not give rise to the site's stormwater management. It is considered the site contains a reasonable amount of permeable surface which will contribute to the prevention of soil erosion and siltation of natural drainage channels.

- *To preserve and enhance the rural and bushland character of the area. (En, S)*

Comment:

As detailed above, no landscaping is required for removal to accommodate the proposed modified works. In this instance, the bushland character of the locality is preserved.

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

Comment:

As conditioned, the proposal maximises soft surfaces to provide for the infiltration of water to the water table, to minimise run-off and to assist with stormwater management.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

considered to be:

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

PLANNING CONCLUSION

This modification application seeks consent to modify DA2023/0874 which was granted approval for alterations and additions to a dwelling house including a swimming pool. DA2023/0874 was notified in accordance with Council's Community Participation Plan (CPP) for fourteen (14) days, which generated eight (8) submissions. As such, DA2023/0874 was referred to Council's Development Determination Panel (DDP). The DDP approved DA2023/0874 on 25 October 2023, with the inclusion of an amendment to Condition 10. Amendments to the approved plans.

The application is referred to the DDP as this modification application was lodged as a Section 4.55(2) Other Modification application which seeks consent for alterations and additions to the dwelling house and swimming pool, which ultimately results in compliance with Condition 10. Amendments to the approved plans. As the requirements of Condition 10 have been incorporated into the proposed modified plans, Condition 10 is obsolete and can be deleted.

No submissions were received during the fourteen (14) day notification period.

The proposal included several variations to the relevant built form controls under the Pittwater 21 Development Control Plan (P21DCP), these being: D10.7 Front building line (excluding Newport Commercial Centre), D10.8 Side and rear building line (excluding Newport Commercial Centre) and D10.13 Landscaped Area - Environmentally Sensitive Land. The proposed modified works, in regard to these variations, do not result in any unreasonable environmental and/or amenity impacts, with the development achieving the relevant objectives of these controls.

Overall, the proposed modified works are 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 Council as the consent authority grant approval to Modification Application No. Mod2024/0108 for Modification of Development Consent DA2023/0874 granted for Alterations and additions to a dwelling house including a swimming pool on land at Lot 8 DP 31532,220 Barrenjoey Road, NEWPORT, subject to the conditions printed below:

Modification Summary

The development consent is modified as follows:

MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
PAN-417523 MOD2024/0108	The date of this notice of determination	<p>Modification of Development Consent DA2023/0874 granted for Alterations and additions to a dwelling house including a swimming pool</p> <ul style="list-style-type: none"> Amend Condition 1. Approved Plans and supporting documentation Amend Condition 2. Compliance with Other Department, Authority or Service Requirements Amend Condition 10. Amendments to the approved plans

Modified conditions

A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting documentation, to read as follows:

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
A.01.01	E	Site Plan	Studio Lykke	9 April 2024
A.02.01	I	Basement Plan	Studio Lykke	9 April 2024
A.02.03	D	Ground Floor Plan	Studio Lykke	9 April 2024
A.02.05	E	Level 1 Plan	Studio Lykke	9 April 2024
A.02.07	C	Roof	Studio Lykke	9 April 2024
A.02.08	A	Pool Plan	Studio Lykke	9 April 2024
A.03.01	B	Elevation E & W	Studio Lykke	9 April 2024
A.03.02	B	Elevation N	Studio Lykke	9 April 2024
A.03.03	B	Elevation S	Studio Lykke	9 April 2024
A.04.01	A	Section A & B	Studio Lykke	9 April 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Section 4.55 Modification Letter (Reference: AG 23263.02)	-	Ascent Geo	14 March 2024

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

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

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

B. Modify Condition 2. Compliance with Other Department, Authority or Service Requirements to read as follows:

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	27 July 2023
Ausgrid	Ausgrid Referral Response	Not dated - received by Council on 8 April 2024

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

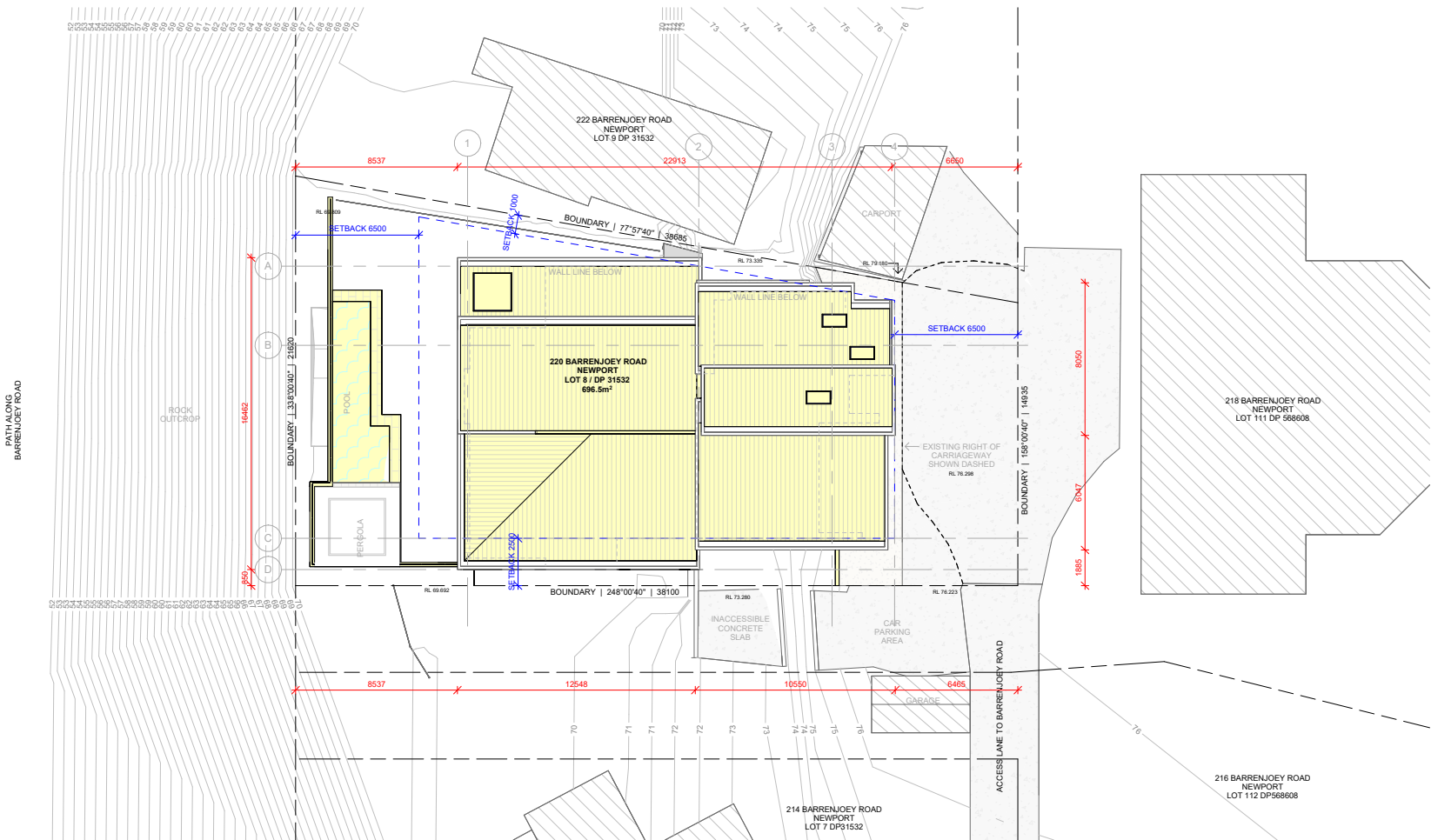
Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

C. Modify Condition 10. Amendments to the approved plans to read as follows:

DELETE

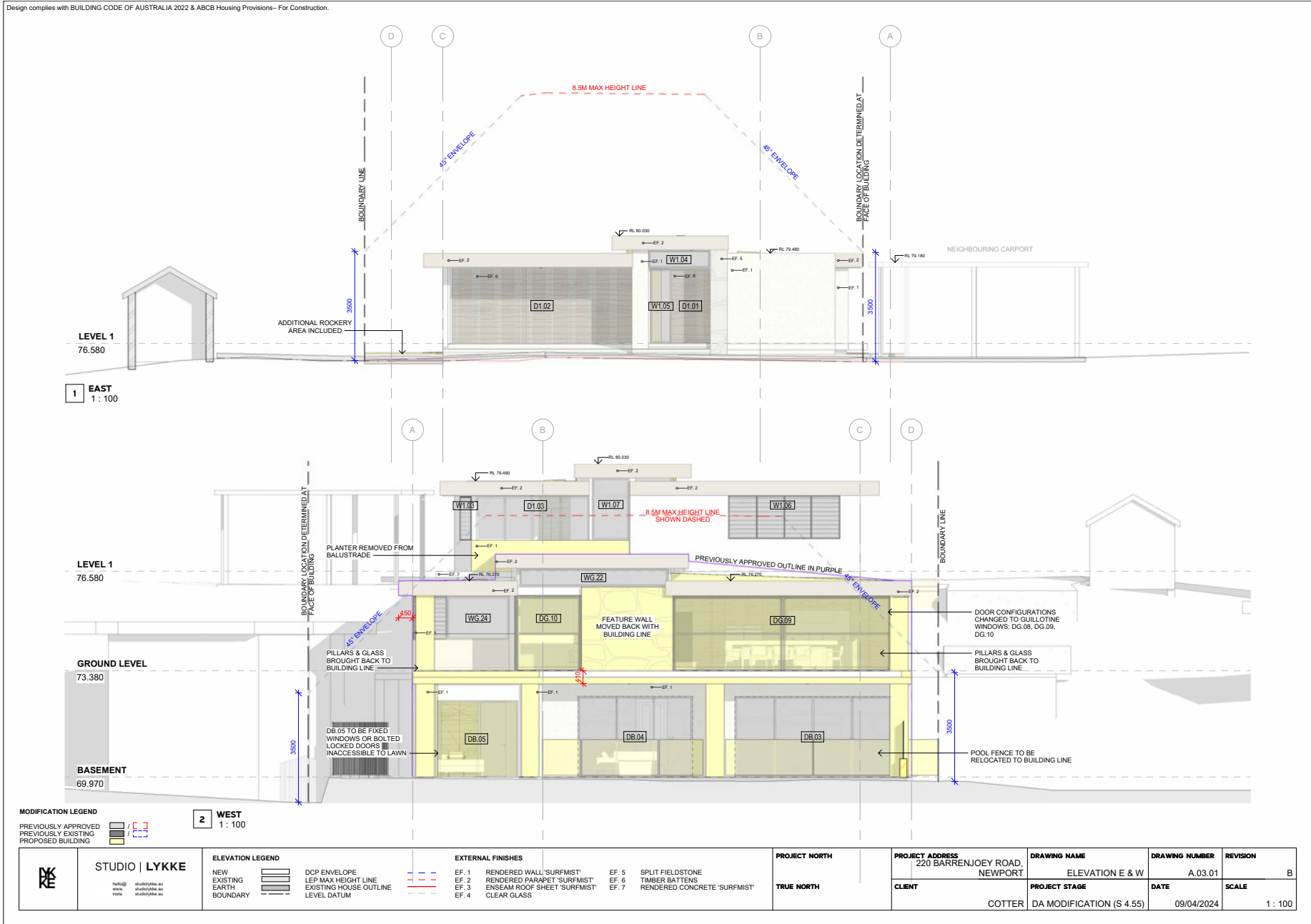
Reason: The approved plans show compliance with this condition.

Design complies with BUILDING CODE OF AUSTRALIA 2022 & ABCB Housing Provisions- For Construction.

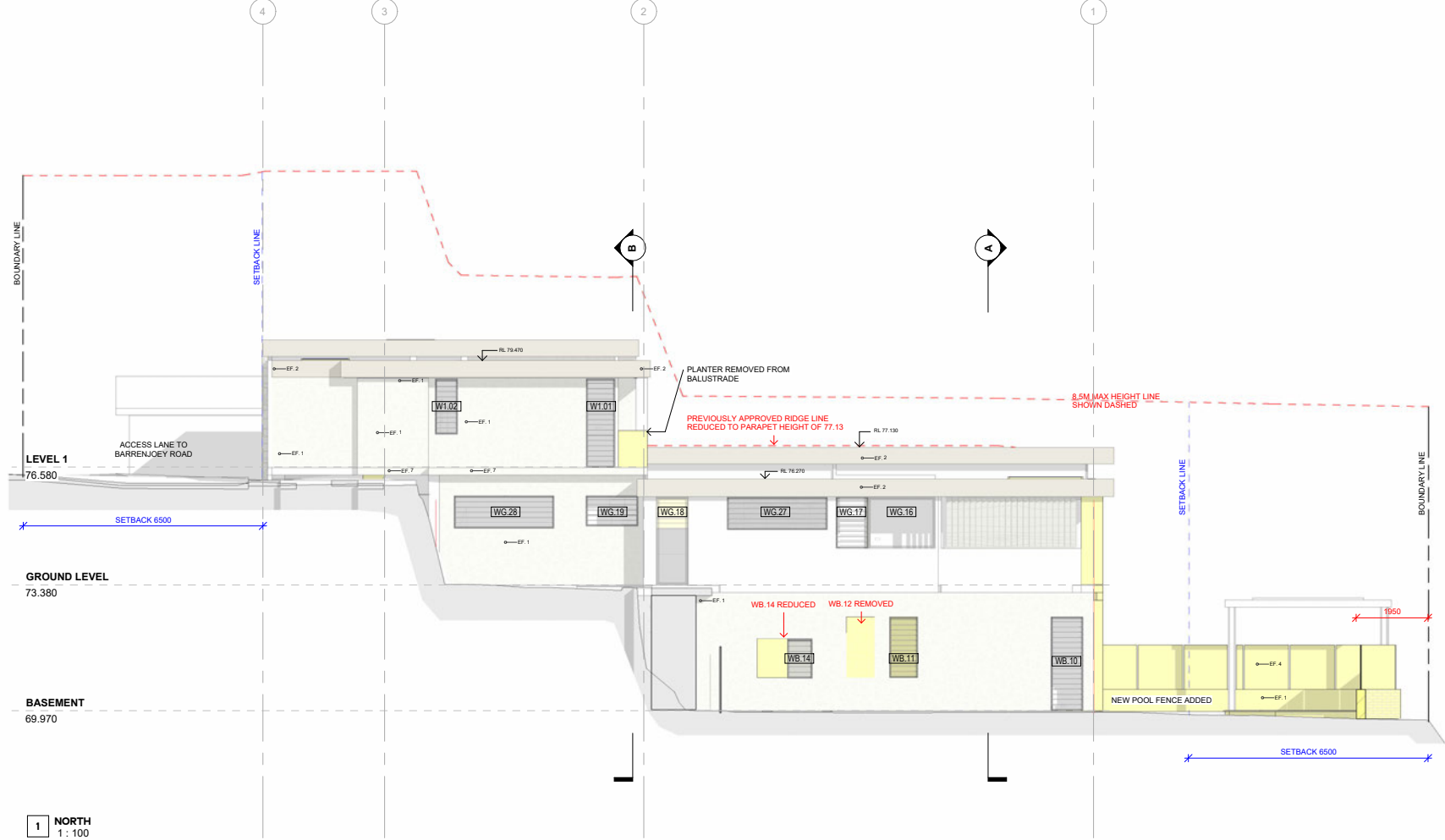


	STUDIO LYKKE hello@studio.lykke.au www.studio.lykke.au	SITE PLAN LEGEND NEIGHBOUR DRIVEWAY/ROAD RETAINING WALL EXISTING TREE PROPOSED TREE TOPOGRAPHY OBJECT ABOVE OBJECT BELOW PROPERTY LINE DCP SETBACK	 PROJECT NORTH TRUE NORTH	PROJECT ADDRESS 220 BARRENJOEY ROAD, NEWPORT	DRAWING NAME SITE PLAN	DRAWING NUMBER A.01.01	REVISION E
				CLIENT COTTER	PROJECT STAGE DA MODIFICATION (S 4.55)	DATE 09/04/2024	SCALE 1 : 200

ATTACHMENT 2 : SITE PLAN AND ELEVATIONS - ITEM 3.9 - NORTHERN BEACHES COUNCIL MEETING - 24 APRIL 2024



Design complies with BUILDING CODE OF AUSTRALIA 2022 & ABCB Housing Provisions - For Construction.



MODIFICATION LEGEND

PREVIOUSLY APPROVED	
PREVIOUSLY EXISTING	
PROPOSED BUILDING	



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hello@studio.lykke.au
www.studio.lykke.au

ELEVATION LEGEND

NEW	
EXISTING	
EARTH	
BOUNDARY	

DCP ENVELOPE	
LEP MAX HEIGHT LINE	
EXISTING HOUSE OUTLINE	
LEVEL DATUM	

EXTERNAL FINISHES

EF. 1	RENDERED WALL 'SURFMIST'
EF. 2	RENDERED PARAPET 'SURFMIST'
EF. 3	ENSEAM ROOF SHEET 'SURFMIST'
EF. 4	CLEAR GLASS

EF. 5	SPLIT FIELDSTONE
EF. 6	TIMBER BATTENS
EF. 7	RENDERED CONCRETE 'SURFMIST'

PROJECT NORTH

TRUE NORTH

PROJECT ADDRESS
220 BARRENJOEY ROAD,
NEWPORT

CLIENT
COTTER

DRAWING NAME
ELEVATION N

PROJECT STAGE
DA MODIFICATION (S 4.55)

DRAWING NUMBER
A.03.02

DATE
09/04/2024

REVISION
B

SCALE
1:100

