

# AGENDA

## NORTHERN BEACHES LOCAL PLANNING PANEL

Notice is hereby given that the Northern Beaches Planning Panel will be held via Teleconference on

**WEDNESDAY 1 MAY 2024**

Beginning at 12:00pm for the purpose of considering and determining matters included in this agenda.



**Daniel Milliken**  
**Acting Executive Manager Development Assessment**

**Quorum**

A quorum is three Panel members

**Conflict of Interest**

Any Panel Member who has a conflict of Interest must not be present at the site inspection and leave the Chamber during any discussion of the relevant Item and must not take part in any discussion or voting of this Item.



## Agenda for the Northern Beaches Local Planning Panel to be held on Wednesday 1 May 2024

<b>1.0</b>	<b>APOLOGIES &amp; DECLARATIONS OF INTEREST</b>	
<b>2.0</b>	<b>MINUTES OF PREVIOUS MEETING</b>	
2.1	Minutes of Northern Beaches Local Planning Panel held on 17 April 2024 .....	3
<b>3.0</b>	<b>CATEGORY 3 APPLICATIONS</b>	
<b>4.0</b>	<b>PUBLIC MEETING ITEMS .....</b>	<b>5</b>
4.1	DA2024/0111 - Lot 27 DP 7912, 13 Coles Road FRESHWATER - Alterations and additions to a dwelling house including a carport .....	5
4.2	DA2023/1741 - Part Lot 7011 DP 1074608 Lic 102, 0 East Esplanade - Alterations and additions to the Manly Yacht Club Wharf .....	43
4.3	DA2024/0113 - Lot 25 DP 13457, 106 Prince Alfred Parade NEWPORT - Demolition works and construction of an inclinator.....	77
<b>5.0</b>	<b>NON PUBLIC MEETING ITEMS .....</b>	<b>135</b>
	A statutory Direction by the Minister of Planning and Public Spaces states the panel is only required to hold a public meeting where the development application has attracted 10 or more unique submissions by way of objection. These applications do not satisfy that criterion.	
5.1	DA2023/1043 - Lot 1 DP 4889, 21 Battle Boulevarde SEAFORTH - Demolition works and construction of a dwelling house including swimming pool.....	135

## **ACKNOWLEDGEMENT OF COUNTRY**

As a sign of respect, the Northern Beaches Local Planning 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 NORTHERN BEACHES LOCAL PLANNING PANEL HELD ON 17 APRIL 2024**

##### **RECOMMENDATION**

That the Panel note that the minutes of the Northern Beaches Local Planning Panel held on 17 April 2024 were adopted by the Chairperson and have been posted on Council's website.

## 4.0 PUBLIC MEETING ITEMS

ITEM 4.1	<b>DA2024/0111 - LOT 27 DP 7912, 13 COLES ROAD FRESHWATER - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A CARPORT</b>
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### PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is the subject of 10 or more unique submissions by way of objection.

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### RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2024/0111 for Alterations and additions to a dwelling house (deleting the carport) on land at Lot 27 DP 7912, 13 Coles Road FRESHWATER subject to the conditions set out in the Assessment Report.

<b>Reporting manager</b>	Rodney Piggott
<b>TRIM file ref</b>	2024/299075
<b>Attachments</b>	<a href="#">↓1 Assessment Report</a> <a href="#">↓2 Site Plan &amp; Elevations</a>

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2024/0111
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<b>Responsible Officer:</b>	Peter Robinson
<b>Land to be developed (Address):</b>	Lot 27 DP 7912, 13 Coles Road FRESHWATER NSW 2096
<b>Proposed Development:</b>	Alterations and additions to a dwelling house including a carport
<b>Zoning:</b>	Warringah LEP2011 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Nicholas Herbertson
<b>Applicant:</b>	Nicholas Herbertson

<b>Application Lodged:</b>	14/02/2024
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	22/02/2024 to 07/03/2024
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	11
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 50,000.00
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### EXECUTIVE SUMMARY

The development application seeks consent for alterations and additions to an existing dwelling house. The proposal has the effect of amending an existing complying development consent approved through a Complying Development Certificate, CDC2021/045, which is currently being constructed. This is a valid approval pathway in accordance with the *Environmental Planning and Assessment Act 1979* (EP&A Act) having regard to the decision of Commissioner Gray in *Pritchard v Northern Beaches Council* [2020] NSWLEC 1310.

The public exhibition of the application in accordance with Council's Community Participation Plan attracted 11 submissions in objection to the proposal. As such, the application is reported to the

Northern Beaches Local Planning Panel for determination.

The issues raised in the submissions broadly relate to the validity of the approval pathway sought, the visual and amenity impacts of the proposal, the use/occupancy of the development and the adequacy of the supplied documentation. The submissions are addressed in detail in this report and conditions of consent are recommended where necessary, including various privacy attenuation measures and limitation on the use of the building as a dwelling house. None of the issues included in the submissions warrant the refusal of the application.

Critical assessment issues include the compliance of the proposal with the applicable WDCP built form controls and car parking. Consideration of the resulting visual and amenity impacts have been addressed with conditions. The reduction of the on-site car parking is not supported and conditions have been recommended to require the parking, as approved under the CDC to be enacted. The proposed carport within the front setback is not supported and a condition is recommended requiring its deletion.

The proposal, as conditioned in combination with the CDC approval, is considered to satisfy the relevant planning controls and has sufficient merit to be recommended for **approval** by the Northern Beaches Local Planning Panel, subject to the conditions included in the Recommendation of this report.

#### **PROPOSED DEVELOPMENT IN DETAIL**

The proposal is for alterations and additions to the existing/approved dwelling house that have the effect of amending the complying development consent approved through CDC No. 2021/045.

Specifically, the subject proposal includes the following works:

##### Ground floor

- New single carport
- New blade wall privacy screen at western elevation
- New window W1 at western elevation
- Removal of existing decking/paving within the front and rear yards
- Retention of the existing garage to be used as storage (CDC No. 2021/045 approved the demolition of the western and southern walls to create a partially enclosed carport).

##### First floor

- Extension of the approved living room
- New internal walls to create a bathroom and study
- New rear deck and privacy screen
- New stair access to rear yard
- New window W2 at eastern elevation
- Changes to living room doors and windows
- Increase part of roof pitch to 3 degrees

#### Amendment of Application

Following lodgement, the following amendments were made to the application:

- Living room eastern setback increased from 1.9m to 2.26m
- Rear stair reconfigured and eastern setback reduced from 1.4m to 900mm
- New window W1 changed to frosted glazing

The amended proposal, as conditioned, results in a reduction in environmental impacts relative to the submitted application. Therefore, no re-notification is required in accordance with the Northern Beaches Community Participation Plan.

#### Amendment of Complying Development Consent

Having regard to the decision of Commissioner Gray in *Pritchard v Northern Beaches Council [2020] NSWLEC 1310*, Council accepts that a development application that has the effect of amending a complying development consent may be lawfully made pursuant to the EP&A Act.

A condition of consent is recommended to link the CDC approval to this development consent.

**Note:** Any reference to CDC No. 2021/045 refers to the complying development consent as modified and operable.

### **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 - 6.2 Earthworks  
Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land  
Warringah Development Control Plan - B3 Side Boundary Envelope  
Warringah Development Control Plan - B5 Side Boundary Setbacks  
Warringah Development Control Plan - B7 Front Boundary Setbacks  
Warringah Development Control Plan - C3 Parking Facilities  
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting  
Warringah Development Control Plan - D3 Noise

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

<b>Property Description:</b>	Lot 27 DP 7912 , 13 Coles Road FRESHWATER NSW 2096
<b>Detailed Site Description:</b>	<p>The subject site consists of one allotment located on the northern side of Coles Road.</p> <p>The site is regular in shape with a frontage of 12.19m along Coles Road and a depth of 45.265m. The site has a surveyed area of 550.1m<sup>2</sup>.</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a two-storey dwelling house, the first floor of which remains under construction.</p> <p>The site slopes a maximum of 2m from front (south) to rear (north) and includes a crossfall of up to approximately 800mm.</p> <p>The site does not contain any significant trees, with existing vegetation comprising screening plants and small bushes.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by one and two-storey detached dwellings.</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:

- DA2009/1555 - Alterations and additions to a dwelling house - Approved 18/01/2010.
- CDC2013/0140 - Construction of and in-ground swimming pool - Approved 13/05/2013.
- Mod2017/0145 - Modification of Consent DA2009/1555 granted for alterations and additions to a dwelling house - Approved 14/07/2017.
- CDC2021/0016 - Construction of first floor addition and alteration and addition to the existing dwelling - Refused 21/2/2021.
- CDC2021/0230 - Alterations and additions to an existing dwelling - 2021/045/01 - Approved 23 March 2021.
- CDC2022/0879 - MODIFIED - Alterations and additions to an existing dwelling - 2021/045/02Mod - Approved 29/8/2022.
- CDC2022/1211 - Modifications to Alterations and additions to an existing dwelling - 2021/045/Mod03 - Approved 23/11/2022.
- CDC2022/1312 - Modifications to Alterations and additions to an existing dwelling - 2021/045/04MOD - Approved 21/12/2022.
- DA2022/1018 - Alterations and additions to a dwelling house - Withdrawn 20/10/2023.
- BC2023/0248 - Building Information Certificate - Issued 7/12/2023.

#### 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&amp;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&amp;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&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in the form of amended plans to address privacy and building bulk concerns raised by Council.</p> <p><u>Clause 61</u> of the EP&amp;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&amp;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&amp;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&amp;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) <b>Environmental Impact</b></p> <p>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>

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

#### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

#### BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

#### NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 22/02/2024 to 07/03/2024 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 11 submission/s from:

Name:	Address:
Withheld	FRESHWATER NSW 2096
Withheld	FRESHWATER NSW 2096
Withheld	FRESHWATER NSW 2096
Withheld	FRESHWATER NSW 2096
Withheld	FRESHWATER NSW 2096
Withheld	FRESHWATER NSW 2096
Councillor Kristyn Glanville (Councillor)	Northern Beaches Council 725 Pittwater Road DEE WHY NSW 2099
Withheld	FRESHWATER NSW 2096
Withheld	FRESHWATER NSW 2096
Withheld	FRESHWATER NSW 2096

Name:	Address:
Withheld	BELROSE NSW 2085

The issues raised in the submissions are addressed as follows:

- **Amendment of approved Complying Development Consent**

The submissions raised concerns that the proposal includes a first floor addition and balcony in a location approved as a roof area through CDC No. 2021/045. Concern was also raised that the proposal does not comply with the complying development provisions of SEPP (Exempt and Complying Development Codes) 2008.

Comment:

As discussed in the Detailed Description section at the beginning of this report, the decision of Commissioner Gray in *Pritchard v Northern Beaches Council [2020] NSWLEC 1310* confirms that a development application may be made concerning a prospective development that has the effect of amending a complying development consent.

The effect of granting consent to the subject application is that the development to be carried out will be that approved through CDC No. 2021/045, as altered by the works approved through this development application.

Any elements of the existing or approved dwelling under a valid CDC that are unaffected by the proposed development are beyond the scope of this assessment. The works proposed through this development application are assessed in this report and found to be satisfactory.

This matter does not warrant refusal of the application.

- **Visual and amenity impacts**

The submissions raised concerns that the proposed first floor living room, balcony and external stair will cause adverse privacy (visual and acoustic), visual bulk and character impacts. Concern was also raised regarding privacy impacts resulting from the proposed ground floor kitchen window and first floor safety rail/balustrade and visual and overshadowing impacts caused by the proposed ground floor blade wall.

Comment:

Given that the proposed living room, balcony and stair works comply with the applicable height, setback and building envelope controls, the proposal is not considered to result in excessive bulk or visual impact. The proposal, as conditioned, will not cause adverse impacts upon the privacy of surrounding properties as discussed in detail under D8 Privacy in this report. A summary of this assessment is provided as follows:

- The proposed living room does not contain any east-facing windows;
- The proposed kitchen window W1 is amended to have frosted/obscured glazing and a condition is imposed to require that the window be fixed and inoperable;
- The proposed bathroom window W2 is conditioned to have frosted/obscured glazing;
- The proposed balcony incorporates screening at the eastern elevation and the 17.79m rear

setback provides sufficient physical separation to mitigate overlooking of properties to the north;

- The proposed stair is a point of access and is not reasonably expected to be used frequently or for extended periods of time, thereby having limited potential for privacy impacts. The amended stair is set back 13.53m at its closest point to the rear boundary, the lower flight of the stair is located at the closer point to the eastern boundary and a condition is recommended requiring the inclusion of a privacy screen and a minimum 1.4m side setback. While external stairs are not a common feature of dwellings in the vicinity of the site, the level of impact associated with the proposed stair is not sufficient to warrant its removal from the development. As such, its inclusion is considered acceptable, subject to the increased setback required.
- The previously proposed safety rail/balustrade at the first floor level has been deleted from the proposal;

The proposed ground floor blade wall is a maximum height of 4m and complies with the wall height, setback and envelope controls. Given its position below the first floor above, it is not expected to cause any material additional overshadowing impacts. The existing boundary fencing and dense screen planting located within the setback between the proposed wall and the western side boundary that will largely screen the built form; a condition is recommended to require the retention of screen planting in this location for the life of the development. On balance, the wall is not considered to cause an unreasonable level of building bulk or overshadowing that would warrant its removal from the development.

These matters do not warrant refusal of the application

- **Use/occupancy**

The submissions raised concerns that the proposed works would enable the use of the building as a dual occupancy.

Comment:

The existing/approved dwelling provides an internal stair connection between the ground and first floors and the proposal does not seek consent for the inclusion of cooking or other facilities that would enable the use of any part of the building for separate habitation. Conditions are recommended limiting the approved use of the building to a dwelling house. It is noted that Council cannot assume future non-compliance with conditions of development consent.

This matter does not warrant refusal of the application

- **Insufficient information**

The submissions raised concerns that the application does not include shadow diagrams or a current survey plan, and that the landscaped area calculation plan is inaccurate.

Comment:

The amended application includes shadow diagrams and an assessment of overshadowing impacts included in this report. The submitted survey plan is dated 1 November 2023 and is sufficient for the purpose of this assessment. Council has completed an independent calculation of the proposed landscaped area (based on the survey plan and an inspection of the site) in accordance with the WLEP landscaped area definition and WDCP D1.

These matters do not warrant refusal of the application

Based on the above consideration of the submissions received, the proposal is not found to be contrary to the public interest.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	<b>Supported with conditions.</b>  Any works near existing prescribed trees within the property or any trees and vegetation within adjoining properties shall be protected as imposed by standard Council conditions.
NECC (Development Engineering)	<b>Supported with conditions.</b>  The proposed development is in Region 2. On-site detention is not required for alterations and additions. A geotechnical report has been provided. The development application includes car port construction. The development site is not serviced by a vehicle crossing. Vehicle crossing construction has been conditioned. No objections are raised, subject to conditions.

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

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

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

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

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

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

### SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A1733721 dated 29 January 2024).

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

**SEPP (Transport and Infrastructure) 2021**Ausgrid

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

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

Comment:

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

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

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

**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	Approved (CDC): 8.5m	N/A	Yes
		Proposed (DA): 7.6m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment**6.2 Earthworks**

The proposal does not include any significant earthworks that would adversely impact adjoining properties or the natural environment.

**6.4 Development on sloping land**

The site is mapped as Landslip Risk Areas A and B. A preliminary geotechnical assessment was submitted with the application and concludes that no further geotechnical investigation is required in this case.

**Warringah Development Control Plan**Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	6.9m-7.2m	N/A	Yes
B3 Side Boundary Envelope	E: 5m	Within envelope	N/A	Yes
	W: 5m	Within envelope	N/A	Yes
		1 existing breach	N/A	No (existing)
B5 Side Boundary Setbacks	E: 0.9m	Ex. GF: 1.17m	N/A	Yes
		Ex. powder/store: 0.13m-0.15m	N/A	No (existing)
		Prop. carport: 0.03m	96.7%	<b>No</b>
		Prop. stair: 0.9m-0.92m	N/A	Yes
		Prop FF living/balcony: 2.22m-2.26m	N/A	Yes
	W: 0.9m	Ex. GF: 0.9m-1.38m	N/A	Yes
		Prop. screen: 0.97m-1m	N/A	Yes
		Ex. FF: 1.5m	N/A	Yes
B7 Front Boundary Setbacks	6.5m	Carport: 1.2m	77%	<b>No</b>
		Ex. dwelling: 2.7m	N/A	No (existing)
B9 Rear Boundary Setbacks	6m	Prop. dwelling: 14.86m	N/A	Yes
		Prop. balcony: 17.79m	N/A	Yes
		Prop. stair: 13.53m	N/A	Yes

D1 Landscaped Open Space (LOS) and Bushland Setting	40% 220.04m <sup>2</sup>	28.8% 158.2m <sup>2</sup>	N/A	No (see comment)
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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	No	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	No	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	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
D14 Site Facilities	Yes	Yes
D20 Safety and Security	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**Compliance with control



The proposed wall and privacy screen at the eastern elevation comply with the building envelope control, as amended. The proposed ground floor western wall also complies with the building envelope control.

The existing minor breach of the building envelope control at the first floor of the western elevation is not relevant to the subject application and is beyond the scope of this assessment. The extent of the existing envelope breach is shown shaded red in Figure 1 below, for illustrative purposes only.

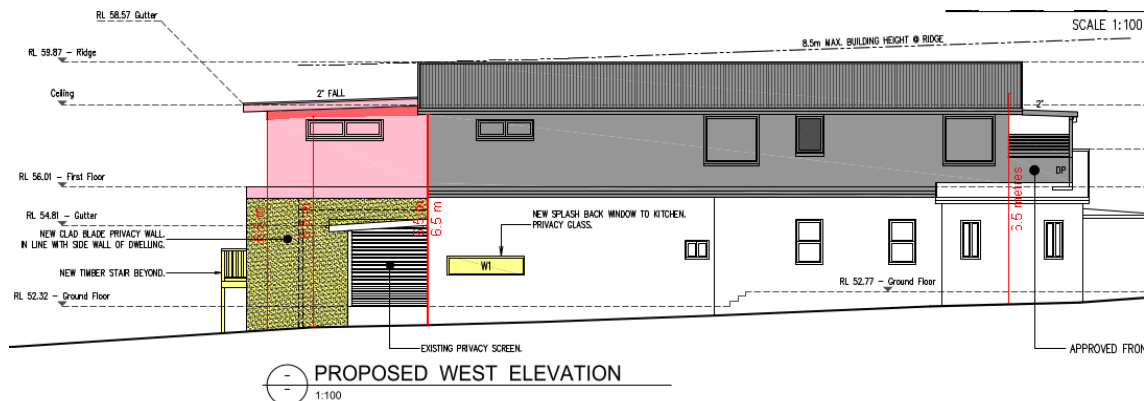


Figure 1. Extent of existing building envelope variation at the western elevation.

## B5 Side Boundary Setbacks

### Description of non-compliance

The proposed 30mm eastern side setback to the carport is non-compliant with the 900mm control.

### 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 proposed carport is located over an existing hardstand area and does not require the removal of any landscaped area.

- To ensure that development does not become visually dominant.*

#### Comment:

The proposed carport location will result in a visually dominant development when viewed from the street frontage as a result of the front and side setback breaches.

- To ensure that the scale and bulk of buildings is minimised.*

Comment:

The bulk and scale of the development is not minimised as demonstrated by the front and side setback breaches.

- *To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.*

Comment:

The proposed carport will not adversely impact the privacy, amenity or solar access of the adjoining property, despite the side setback breach.

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

Comment:

The proposed carport will not impact any significant views available from surrounding properties.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the control. Accordingly, this assessment finds that the proposal is supported in this particular circumstance, subject to the deletion of the proposed carport.

## **B7 Front Boundary Setbacks**

Description of non-compliance

The proposed 1.2m front setback to the carport is non-compliant with the 6.5m control. The existing dwelling front setback remains unchanged.

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:

Despite the unenclosed design of the carport, its location within the front setback will unreasonably impact the sense of openness at the street frontage. The deletion of the proposed carport as conditioned will ensure that this objective is met.

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

Comment:

The surrounding streetscape included limited examples of parking structures forward of the prevailing building line, with the primary exception being the adjoining property to the east, 11 Coles Road. The proposal does not maintain the visual continuity and pattern of structures and

landscape elements. To ensure that this objective is met, conditions are recommended requiring the retention of the carport approved through CDC No. 2021/045 and the deletion of the carport proposed through this application, resulting in one covered parking space behind the building line and one hardstand space over the driveway forward of the building line.

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

Comment:

The siting of the proposed carport does not protect and enhance the visual quality of the streetscape. The recommended conditions will ensure that this objective is met.

- *To achieve reasonable view sharing.*

Comment:

The proposed carport will not impact any significant views available from surrounding properties.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the control. Accordingly, this assessment finds that the proposal is supported in this particular circumstance, subject to the deletion of the proposed carport.

### **C3 Parking Facilities**

Description of non-compliance

The site presently provides a single-car garage in addition to a hard stand within the front setback which provides informal parking for a second car. The 2.2m internal width of the existing garage does not meet the Australian Standard minimum dimension for an enclosed car space. The approved CDC No. 2021/045 included the demolition of the western and southern walls to create a partially enclosed carport in accordance with the required minimum dimensions. The submitted plans propose the retention of the existing garage (to be used as storage) in lieu of the partially enclosed carport approved through CDC No. 2021/045 and the construction of a new carport within the front setback.

The proposal under the Development Application results in the removal of 1 of the 2 parking spaces (as provided under the current CDC through which works have substantially been undertaken) leaving only 1 car space on-site, resulting in a shortfall of 1 space.

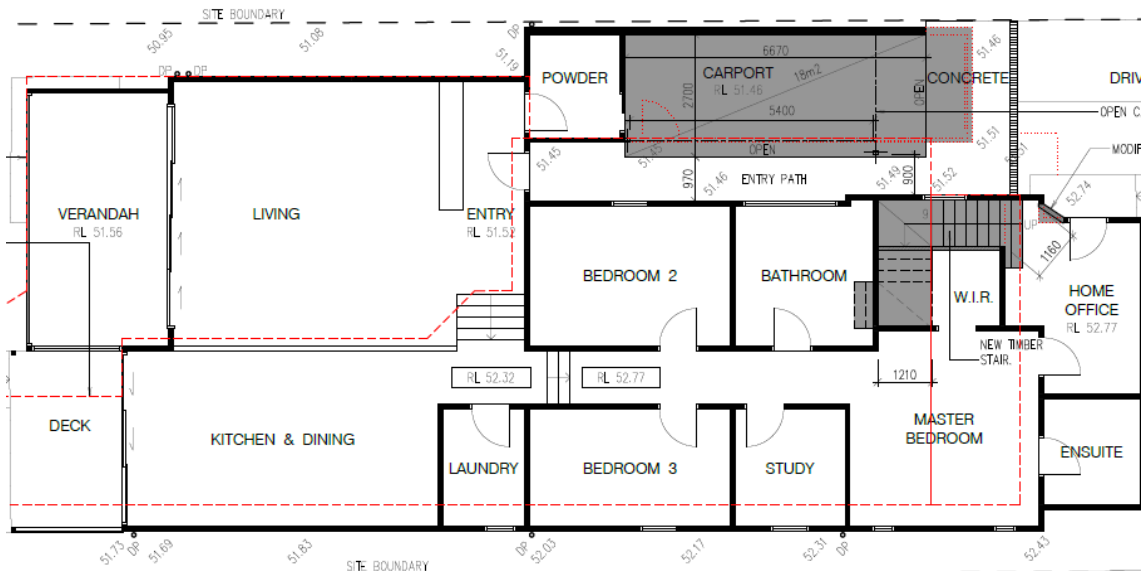


Figure 2. Location of approved carport approved through CDC No. 2021/045.

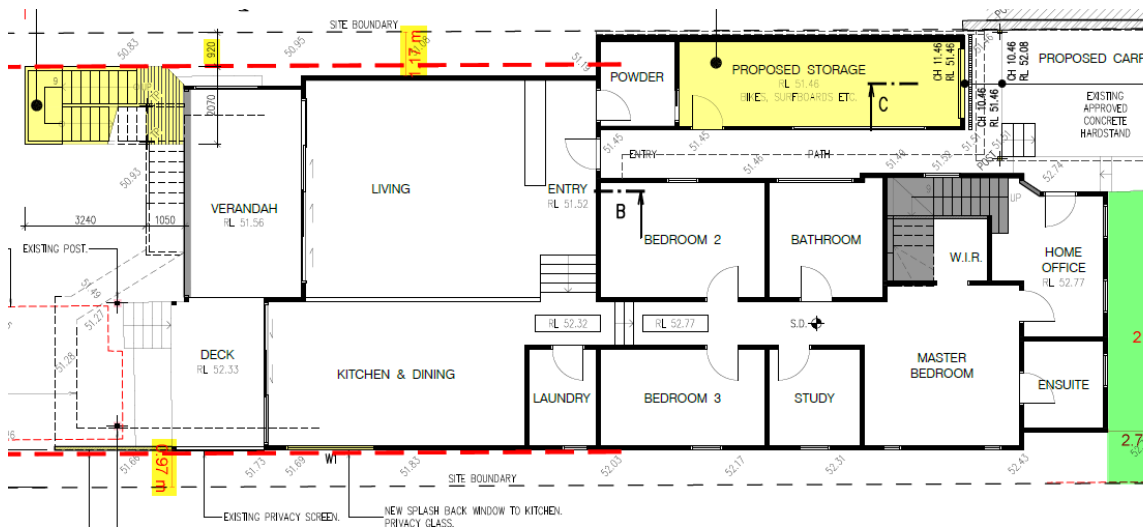


Figure 3. Proposed plans indicating the retention of the existing garage structure in lieu of the approved carport.

#### Merit consideration

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

- To provide adequate off street carparking.
- To site and design parking facilities (including garages) to have minimal visual impact on the street frontage or other public place.
- To ensure that parking facilities (including garages) are designed so as not to dominate the street frontage or other public spaces.

Comment:

The additional accommodation provided by the development in accordance with CDC No. 2021/045 and the subject proposal is considered to increase the parking demand associated with the site. Furthermore, there is high demand for on-street parking in the vicinity and the site is capable of accommodating two car spaces in a tandem configuration. As such, the retention of the existing garage structure to be used storage is not supported and the approved partially enclosed carport must instead be incorporated into the development. Conditions are recommended in this regard to removing the retention of the storage room, leaving the demolition to occur as part of the CDC to ensure that 2 car parking spaces are provided.

As discussed further under the B5 and B7 sections of this report, the location of the proposed carport within the front and side setback areas does not minimise the visual impact upon the streetscape and is not supported. A condition is recommended requiring the deletion of the carport structure, with the second car space to be provided as a hardstand.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the control. 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 proposal includes a calculable landscaped area of 28.8% (158.2m<sup>2</sup>), resulting in a shortfall of 61.84m<sup>2</sup>. Notwithstanding the shortfall, the proposal increases the existing landscaped area of the site by 23.3m<sup>2</sup>.

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.*
- *To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.*
- *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.*
- *To enhance privacy between buildings.*
- *To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.*
- *To provide space for service functions, including clothes drying.*
- *To facilitate water management, including on-site detention and infiltration of stormwater.*

Comment:

The proposed development includes increased landscaped area within the front setback that will maintain and enhance the streetscape. No existing significant vegetation is proposed for removal and the the proposed landscaped area is sufficient to accommodate the maintenance and establishment of suitable landscaping. Existing boundary planting affords supplementary

privacy screening and is conditioned to be maintained for the life of the development. The proposed landscaped area is sufficient for outdoor recreation and service functions and the increased permeable area of the site will facilitate water management.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the control. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

### **D3 Noise**

The use of the proposed first floor addition, deck and stair is not expected to cause any adverse noise impact beyond what could be reasonably expected for a dwelling house.

### **D6 Access to Sunlight**

The proposed first floor works will not cause any significant additional overshadowing given their position below the height of the approved first floor roof. Similarly, the proposed ground floor blade wall is positioned below the existing first floor. A compliant level of solar access will be retained to the private open spaces of adjoining properties in accordance with the control.

### **D7 Views**

Based on an inspection of the site and several adjoining properties, it is not expected that the proposed works will adversely impact any significant views available from surrounding properties.

### **D8 Privacy**

#### Merit consideration

The development is considered against the underlying Objectives of the Control, having regard to the requirements of the control and the planning principle established in *Meriton v Sydney City Council* [2004] NSWLEC 313, as follows:

- *To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.*

#### Comment:

##### *Windows*

The proposed side boundary-facing windows W1 and W2 are conditioned to prevent view lines into windows and private open spaces of adjoining properties.

##### *Balcony & Stair*

The location and design of the proposed rear balcony, stair and living room windows are acceptable in relation to the requirements of control D9, which seek to minimise privacy impacts through building layout and appropriate orientation/location of rooms and balconies while allowing for screening devices to be incorporated where required. The proposed rear balcony is supportable based on the 2.22m eastern side setback, 17.79m rear setback and the inclusion of a privacy screen at the eastern elevation. The proposed rear living room windows are set back 14.86m from the rear boundary. The proposed rear stair is discussed further below.

The privacy planning principle provides that the primary considerations for privacy are density, separation, use and design.

The proposed balcony setbacks noted above are appropriate in the low density context of the site. The separation distance between the proposed balcony and the main private open space area and windows of 168 Wyndora Avenue exceeds 35m and the proposed privacy screen will prevent overlooking of the main area of private open space of 11 Coles Road. While the proposed balcony is anticipated to be used as a primary private open space area, the combination of setbacks and screening provided is sufficient to minimise its impact. Given the reasonableness of the impact and the lack of an alternative location for the first floor balcony, it is not considered to be of poor design.

The proposed rear stair is located closer to the side and rear boundaries than the balcony, providing an eastern side setback of 900mm and a rear setback of 13.53m (a minimum separation distance of approximately 34m to the main private open space area and windows of 168 Wyndora Avenue). It is also noted that the stair is not screened in the same manner as the balcony. As a means of access between the ground level and first floor, the stair is not reasonably expected to be used frequently or for extended periods of time, therefore having reduced potential for adverse overlooking. The proposed stair location, being set back only 900mm from the eastern side boundary, is not considered to constitute good design as a greater side setback would have a reduced impact on the privacy of 11 Coles Road while maintaining the same amenity to the subject site (that amenity being external access between the ground level and the first floor). On the balance of these considerations, the proposed rear setback to the stair is acceptable, however a condition is recommended requiring a minimum 1.4m side setback to the outer (eastern) edge of the stair.

Subject to the recommended conditions of consent, the proposal will not cause adverse visual or acoustic privacy impacts and is consistent with this objective.

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

Comment:

Based on the reasonableness of the proposed works and the resulting impacts, the implementation of innovative design solutions is unnecessary in this case.

- *To provide personal and property security for occupants and visitors.*

Comment:

The proposal affords security for occupants and visitors of the subject site and adjoining properties.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the control. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

## **D9 Building Bulk**

### Compliance with control

The works proposed in the subject application do not result in excessive bulk or scale. The proposed dwelling additions are contained within the existing/approved building footprint and fully comply with the applicable WLEP and WDCP built form controls. The proposed additions incorporate increased first floor setbacks and appropriate articulation of the side elevations to provide visual relief, as directed by the requirements of the control.

The proposed carport is not acceptable with regard to visual bulk and impact for the reasons discussed in this report. As discussed earlier in this report the building envelope breach at the western elevation of the first floor, as illustrated in Figure 1, is beyond the scope of this assessment.

Based on the above, the proposal complies with the control.

#### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

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

#### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

#### **POLICY CONTROLS**

##### **Northern Beaches Section 7.12 Contributions Plan 2022**

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this application.

#### **CONCLUSION**

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- 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**

The application, for alterations and additions to the existing/approved dwelling, is reported to the Local Planning Panel as it attracted 11 submissions by way of objection.

The concerns raised in the objections have been addressed and resolved through the amendment of the proposal and the imposition of conditions where necessary.

The critical assessment issues, being the compliance of the proposal with the applicable WDCP built form controls and consideration of the resulting visual and amenity impacts, are discussed in this report and are found to be satisfactorily resolved. The application does not propose any variations to development standards.

On balance, the development performs appropriately against the relevant controls and will not result in unreasonable impacts upon adjoining or nearby properties. The application is therefore 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 the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2024/0111 for Alterations and additions to a dwelling house (deleting the carport) on land at Lot 27 DP 7912, 13 Coles Road, FRESHWATER, subject to the conditions printed below:

**Terms and Reasons for Conditions**

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

**GENERAL CONDITIONS****1. Approved Plans and Supporting Documentation**

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

<b>Approved Plans</b>				
<b>Plan Number</b>	<b>Revision Number</b>	<b>Plan Title</b>	<b>Drawn By</b>	<b>Date of Plan</b>
DA-01	B	Site Plan	Michael Airey	January 2024
DA-07	B	Proposed Ground Floor Plan	Michael Airey	January 2024
DA-08	B	Proposed First Floor Plan	Michael Airey	January 2024
DA-09	B	Proposed Roof Plan	Michael Airey	January 2024
DA-10	B	Proposed East and North Elevations	Michael Airey	January 2024
DA-11	B	Proposed West and South Elevations	Michael Airey	January 2024
DA-12	B	Section A-A, Section B-B	Michael Airey	January 2024
DA-13	B	Section C-C	Michael Airey	January 2024

<b>Approved Reports and Documentation</b>			
<b>Document Title</b>	<b>Version Number</b>	<b>Prepared By</b>	<b>Date of Document</b>
BASIX Certificate No. A1733721	-	Michael Airey	29 January 2024
Waste Management Plan	-	-	-

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.

In the event of any inconsistency between the approved plans and conditions of consent of this development consent and Complying Development Certificate No. 2021/045 (as modified), this consent 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	20 February 2024

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

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

3. **Approved Land Use**

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a dwelling house, in accordance with the Dictionary of the Warringah Local Environmental Plan 2011, 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. **No Approval for Second Dwelling**

No approval is granted or implied under this Development Consent for the use of any part of the dwelling house for the purpose of a secondary dwelling or separate occupancy. Built in cooking facilities are not permitted to be installed, other than those shown in the designated kitchen area.

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

5. **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.

**6. Amendment of Complying Development Certificate**

Complying Development Certificate CDC No. 2021/045/04Mod, issued by Vladan Blagojevic on 21 December 2022 ("the CDC"), is modified as shown in yellow on the plans listed in Condition 1 to enable the development shown in the approved plans for this development consent to be constructed and integrated with the development approved by the CDC.

The building construction details for the modified CDC are to be provided with the construction certificate plans and details for this consent.

Reason: Orderly development of land.

**7. Scope of Development Consent**

1. The works approved by this development consent are limited to those shown in yellow on the plans listed in Condition 1, subject to (2) and (3) below.
2. No approval is granted or implied under this Development Consent for any works that:
  - a. Are the subject of Complying Development Certificate No. 2021/045 (as modified); or
  - b. Are the subject of Building Information Certificate No. 2023/0248
  - c. Have been carried out on site prior to the issue of this consent.
3. No approval is granted or implied under this development consent for the retention of the existing western wall of the garage, or for the use of the structure for storage.

Reason: Orderly development of land.

**8. 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

### 9. Security Bond

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

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

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

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

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

#### **BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE**

**10. Stormwater Disposal from Low Level Property**

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

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

**11. Vehicle Crossings Application**

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing 3.0 metres wide in accordance with Northern Beaches Council Standard Drawing A4 3330/3 NL in accordance with Section 138 of the Roads Act 1993.

Note, driveways are to be in plain concrete only.

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

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

Reason: To facilitate suitable vehicular access to private property.

**12. Off Street Parking Design**

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

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

Reason: Compliance with this consent.

**13. Amendments to the approved plans**

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



- The proposed rear stair shall be amended as follows:
  - i. The lower flight of the stair is to be set back a minimum of 1.4m from the eastern side boundary,
  - ii. The upper flight of the stair is to be set back a minimum of 2.4m from the eastern side boundary,
  - iii. The stair is to be set back a minimum of 13.53m from the rear boundary,
  - iv. The eastern balustrades of the stair flights and landings are to be 1.8m high and have a maximum transparency of 30%.
- The proposed window W1 glazing shall be frosted/obscured and fixed/non-operable.
- The proposed window W2 glazing shall be frosted/obscured.

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

Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development.

**14. Boundary Identification Survey**

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

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

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

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

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

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

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

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

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

16. **Compliance with Standards**

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

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

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

17. **Car parking**

1. The retention of the existing western wall of the garage and the use of the structure for storage is not approved.
2. A carport shall be constructed as shown on the plans approved through CDC No. 2021/045/04Mod, dated 21 December 2022.
3. The driveway levels indicated on drawing No. DA-13, Rev. B dated January 2024, shall be amended such that vehicular access may be gained to the carport approved through CDC No. 2021/045.
4. The carport proposed under this development application shall be deleted from the plans and provided as an uncovered hardstand car parking space.

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

Reason: To ensure that adequate car parking is provided on site.

18. **Materials and Finishes**

The proposed external works shall be constructed of materials and finishes that complement the existing dwelling.

A schedule of materials and finishes shall be submitted to the Certifier prior to the issue of a Construction Certificate.

Reason: To ensure the visual quality of development.

19. **Waste Management Plan**

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

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

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

**DURING BUILDING WORK**

20. **Tree and Vegetation Protection**

- a) Existing trees and vegetation shall be retained and protected, including:
- i) all prescribed trees within the site,
  - 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.

21. **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.

22. **Survey Certificate**

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

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

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

23. **Property Boundary Levels**

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

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

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

24. **Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

#### BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

25. **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. **Reinstatement of Kerb**

The Applicant shall reinstate all redundant laybacks and vehicular crossings to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant.

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

Reason: To facilitate the preservation of on street parking spaces.

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

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

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

Reason: Compliance with this consent.

28. **House / Building Number**

House/building number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings.

29. **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.

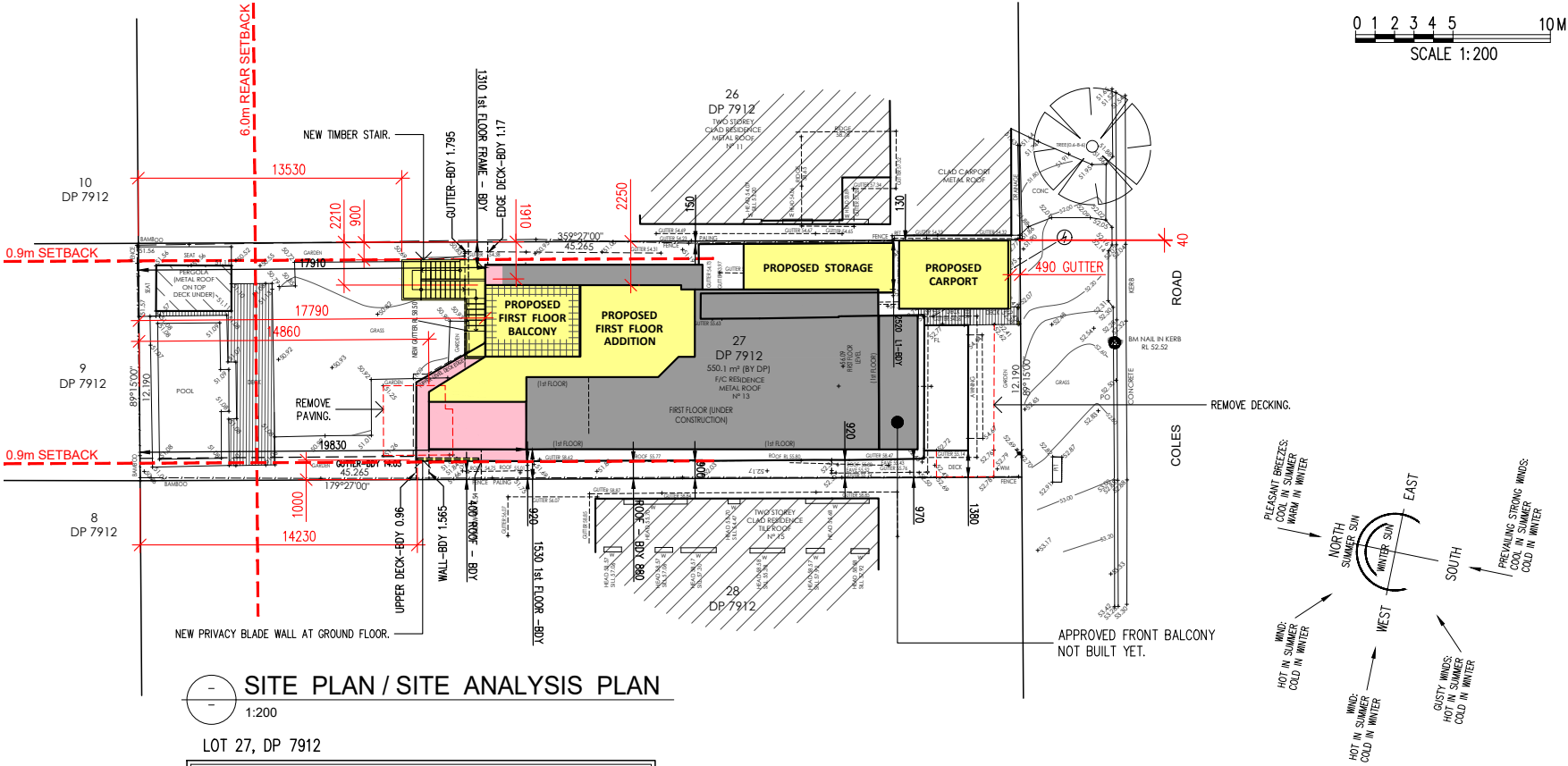
Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

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

30. **Screen Planting**

Screen planting capable of attaining a height of 4m above existing ground level shall be maintained for the life of the development within the eastern and western side setbacks adjacent to the proposed additions.

Reason: To ensure that the existing level of screen planting is maintained in perpetuity.



DEVELOPMENT APPLICATION

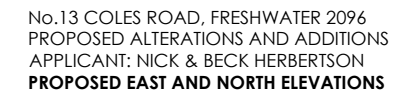
No.13 COLES ROAD, FRESHWATER 2096  
PROPOSED ALTERATIONS AND ADDITIONS  
APPLICANT: NICK & BECK HERBERTSON  
**SITE PLAN / SITE ANALYSIS PLAN**

SCALE 1:200 @ A3  
DATE JANUARY 2024

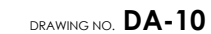
MICHAEL AIREY ABN 26 769 291 556  
4/84 WYADRA AVENUE, FRESHWATER NSW 2096  
PHONE 9939 7003, MOBILE 0418 289 585  
EMAIL mikeairey@bigpond.com.au

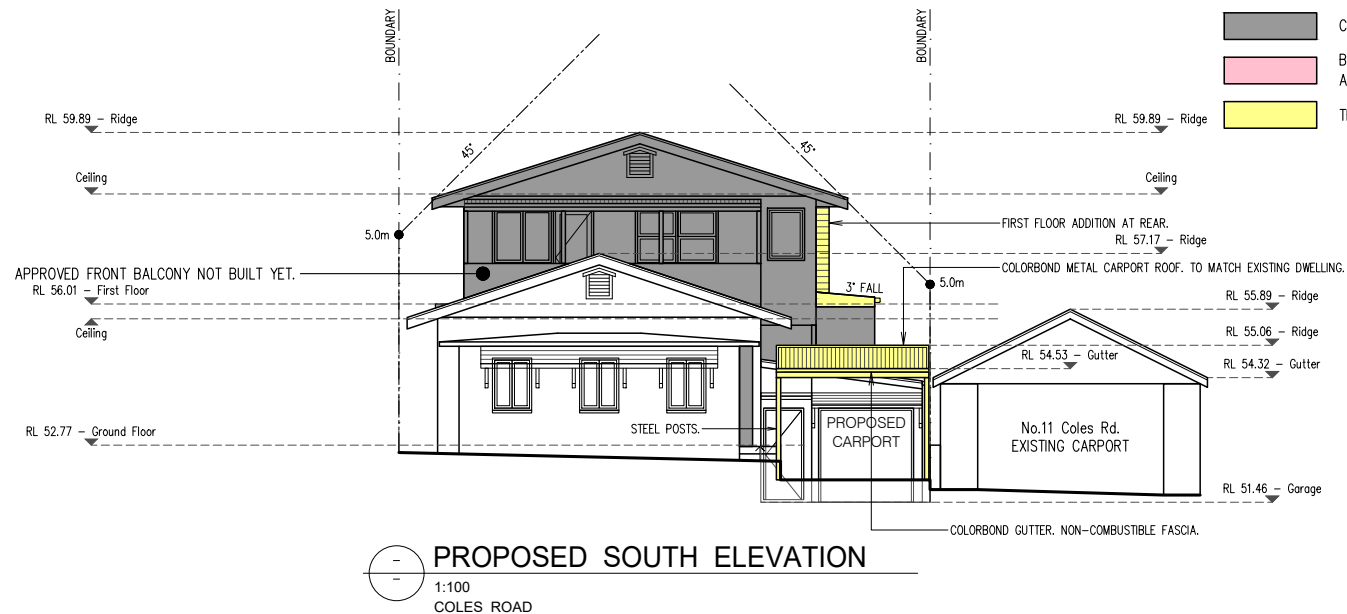
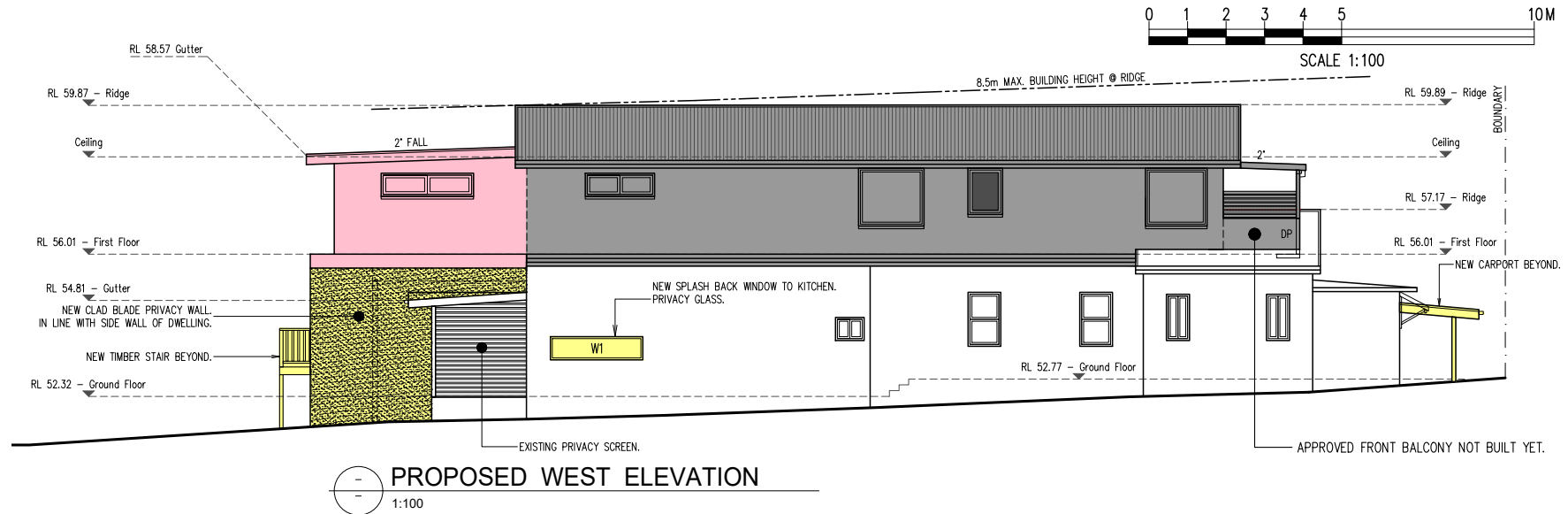
DRAWING NO. **DA-01**

REV. **B**



MICHAEL AIREY ABN 26 769 291 556  
4/84 WYADRA AVENUE, FRESHWATER NSW 2096  
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EMAIL [mikeairey@bigpond.com.au](mailto:mikeairey@bigpond.com.au)

REV. **B**



- COMPLYING DEVELOPMENT CERTIFICATE No. 2021/045
- BUILDING INFORMATION CERTIFICATE No. BC2023/0248 AND COMPLYING DEVELOPMENT CERTIFICATE No. 2021/045
- THIS DEVELOPMENT APPLICATION.

## DEVELOPMENT APPLICATION

No.13 COLES ROAD, FRESHWATER 2096  
 PROPOSED ALTERATIONS AND ADDITIONS  
 APPLICANT: NICK & BECK HERBERTSON  
**PROPOSED WEST AND SOUTH ELEVATIONS**

SCALE 1:100 @ A3  
 DATE JANUARY 2024

MICHAEL AIREY ABN 26 769 291 556  
 4/84 WYADRA AVENUE, FRESHWATER NSW 2096  
 PHONE 9939 7003, MOBILE 0418 289 585  
 EMAIL mikeairey@bigpond.com.au

DRAWING NO. **DA-11**

REV. **B**



<b>ITEM 4.2</b>	<b>DA2023/1741 - PART LOT 7011 DP 1074608 LIC 102, 0 EAST ESPLANADE - ALTERATIONS AND ADDITIONS TO THE MANLY YACHT CLUB WHARF</b>
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**PURPOSE**

This application has been referred to the Northern Beaches Local Planning Panel as the applicant/land owner is the council.

**RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT**

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2023/1741 for alterations and additions to the Manly Yacht Club Wharf at Part Lot 7011 DP 1074608 Lic 102, 0 East Esplanade, subject to the conditions set out in the Assessment Report.

<b>Reporting manager</b>	Rodney Piggott
<b>TRIM file ref</b>	2024/299036
<b>Attachments</b>	<a href="#">↓1 Assessment Report</a> <a href="#">↓2 Site Plan &amp; Elevations</a>



## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2023/1741
<b>Responsible Officer:</b>	Danielle Deegan – Consultant Town Planner
<b>Land to be developed (Address):</b>	Part Lot 7011 DP 1074608 Lic 102, 0 East Esplanade
<b>Proposed Development:</b>	Alterations and additions to the Manly Yacht Club Wharf
<b>Zoning:</b>	State Environmental Planning Policy (Biodiversity and Conservation) 2021 – Zone 2 Environment Protection Manly LEP2013 - Land zoned RE1 Public Recreation
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	NBLPP
<b>Owner:</b>	Manly Yacht Club NSW Department of Planning and Environment - Crown Lands
<b>Applicant:</b>	The Trustee For Buck and Simple Unit Trust
<b>Application Lodged:</b>	13/12/2023
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Other
<b>Notified:</b>	12/01/2024 to 09/02/2024
<b>Advertised:</b>	09/01/2024
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 263,500.00

### EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to the Manly Yacht Club wharf comprising the replacement of an existing section of deck.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) for determination as the subject site is within Crown land and land which is under the care and control of Council. Council is the land manager on which the land based buildings are located. The wharf is located outside the Local Government boundary on crown land and is within the Sydney Harbour catchment.

The application is the subject of the Council's policy for the Management of Council related Development Applications, which provides strategies for the management of conflicts for development on Council owned



or managed land. The application has been managed and assessed in accordance with this policy and satisfied the requirements under the plan.

The Manly Yacht Club wharf forms part of the curtilage of a heritage item (clubhouse).

The application was exhibited between 12/01/2024 to 09/02/2024. No submissions were received.

Critical assessment issues include potential heritage and environmental impacts. The assessment finds that the proposal will have a negligible impact on the significance of the adjoining heritage buildings. The new section of the deck will allow sunlight penetration to the seabed below thereby improving environmental conditions. Potential impacts on the environment during construction can be managed by adopting best practice work methods. A recommended condition of consent will require the submission of a Construction Environmental Management Plan.

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

## PROPOSED DEVELOPMENT IN DETAIL

The development application seeks consent for alterations to the wharf at the Manly Yacht Club comprising of the rebuilding the section of the wharf outlined in Figure 1 below, which is currently in a state of disrepair.

The proposed works include:

### Demolition

The removal of 18 timber piles and a 6.5m x 16.5m section of timber decking.

### Building works

The construction of the new section of the wharf comprising of:

- The installation of 8 steel piles covered in high-density polyethylene (HDPED) sleeves;
- An supporting structure (bearers and joists);
- A 38mm fibre-reinforced plastic (FRP) grated deck, in a grey colour, to blend with the remaining timber decking. The new section of the deck has the same area (6.5m x 16.5m) as the section being demolished.

The change in wharf materials from timber to steel piles and FRP decking will ensure the longevity of the structure whilst allowing light to penetrate to the seabed below.

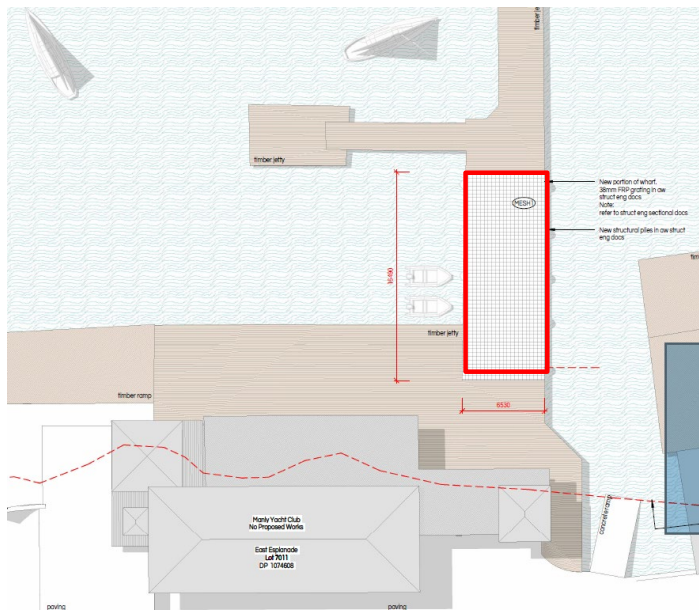


Figure 1. Extract from site plan with replaced deck area outlined in red (source: Buck and simple)

## 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 – Clause 5.10 Heritage Conservation
- Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity and Conservation) 2021 – Clause 6.2 and 6.3
- Sydney Harbour Foreshores and Waterways Development Control Plan – Sections 2, 3 and 4

## SITE DESCRIPTION



<b>Property Description:</b>	Part Lot 7011 DP 1074608, East Esplanade, MANLY NSW 2095
<b>Detailed Site Description:</b>	<p>The land containing the Manly Yacht Club building is located in East Esplanade Park, East Esplanade, Manly, on land legally described as part Lot 7011, DP 1074608.</p> <p>The associated timber wharf structure projects beyond the lot boundary, approximately 50m into Manly Cove.</p> <p>The Yacht Club building is a two storey brick and tile building with timber balustrades. It is located above the Mean High Water Mark (MHWM) within the RE1 Public Recreation zone under the provisions of Manly Local Environmental Plan 2013 (MLEP 2013).</p> <p>The area of the proposed wharf repair works is located below MHWM and is therefore outside of the boundaries of Northern Beaches local government area. The area is in Zone 2 - Environment Protection under the provisions of State Environmental Planning Policy (Biodiversity and Conservation) 2021.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Directly to the north and west of the site is Manly Cove, to the northeast of the site is Manly Cove Launch Club and to the southwest of the site is the 16ft Skiff Sailing Club. To the south and southeast of the site is a mix of residential development. East Esplanade Park extends around the foreshore area of Manly Cove to Manly Wharf.</p>

Map:





## SITE HISTORY

The land has been used for recreational boating purposes for an extended period of time. A search of Council's records has revealed the following development approvals:

- On 3 February 2004, Manly Council approved Development Application DA 7/2004 for the conversion of an existing storage area to an accessible toilet.
- On 2 November 2011, Manly Council refused Development Application DA122/2010 for security fencing and gates to the existing jetty and deck.

## NOTIFICATION and SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 12/01/2024 to 09/02/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

## REFERRALS

Internal Referral Body	Comments
Environmental Health (Acid Sulfate)	<p><b>Support, subject to conditions</b></p> <p>Environmental Health have been requested to consider this proposal for "alterations and additions to the Manly Yacht Club wharf" in relation to the presence of acid sulfate soils.</p> <p>The land that is the subject of this proposal is identified as class 1 acid sulfate soils in accordance with the provisions of the Manly Local Environmental Plan 2013.</p> <p>The Statement of Environmental Effects, plans and report titled: "DECK REPAIRS AT MANLY SAILING CLUB ASS Assessment against Clause 6.1 Manly LEP 2013" have been reviewed. The works will involve removal and replacement of up to 21 piles.</p> <p>The report identifies a small potential for acid sulfate soils to be exposed by sediments adhered to piles being extracted during works and recommends certain measures to be undertaken as outlined in section 2.5 of the report to reduce risk and manage the potential for exposure of acid sulfate soils.</p> <p>Accordingly, Environmental Health supports the proposal and recommends conditions of consent requiring compliance with the measures outlined in section 2.5 of the report.</p>
NECC (Coast and Catchments)	<p><b>Support, subject to conditions</b></p> <p>The application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i>, Schedule 1 of the <i>State Environmental Planning Policy Amendments (Water Catchments) 2022</i> amending the <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i> and Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005. It has also been assessed against requirements of the Manly LEP and DCP.</p> <p>Key aspects of the proposal include removal of ~18 piles now supporting the wharf and installation of 8 new sleeved support piles supporting aluminium bearers and joists covered with a 38mm grated fibreglass decking in a neutral grey colour. The objective is to undertake necessary</p>





Internal Referral Body	Comments
	<p>repair and replacement works to the wharf to make safe and ensure the longevity of the structure.</p> <p>The application has been assessed in consideration approval/support of:</p> <ul style="list-style-type: none"> <li>• No navigational Concerns from the Transport for NSW- Maritime Division dated 22 November 2023 enclosing dated and signed maps.</li> <li>• Conditional approval from the DPI-Fisheries, a division of the</li> <li>• Department of Primary Industries dated 21 July 2023 requiring S205 permit.</li> </ul> <p><b>Coastal Management Act 2016</b> The subject site has been identified as being within the coastal zone and therefore Coastal Management Act 2016 is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p><b>State Environmental Planning Policy (Resilience and Hazards) 2021</b> The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience and Hazards) 2021 (SEPP R and H). Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R and H) apply for this DA. Clauses 2.10 (coastal environment area) and 2.11 (coastal use area) do not apply as the site is also located within the Sydney Harbour catchment area. Hence, only Clause 2.12 of the SEPP R and H apply for this DA.</p> <p><u>Comment:</u> On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Balance Planning dated 8 September 2023 and also as assessed in the submitted Coastal Engineering Advice prepared by Horton Coastal Engineering Pty. Ltd. dated 7 September 2023, the DA satisfies requirements under clause 2.12 of the SEPP R&amp;H. As such, it is considered that the application does comply with the requirements of the <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i>.</p> <p><b>Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity and Conservation) 2021</b></p> <p><u>Sydney Harbour Catchment</u> The subject site is located within the Sydney Harbour Catchment. Hence Part 6.2 of the Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity and Conservation) 2021 will apply in assessing this DA.</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Balance Planning dated 8 September 2023, it is determined that the relevant clauses of the Part 6.2 have been followed.</p> <p><u>Foreshores and Waterways Area</u> The subject site is located within the Sydney Harbour Catchment and is identified as being within the Foreshores and Waterways Area. Hence Part 6.3 of the Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity and Conservation) 2021 will apply in assessing this DA. Development consent, among others, must consider clause 6.28.</p>



Internal Referral Body	Comments
	<p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Balance Planning dated 8 September 2023, it is determined that the relevant clauses of the Part 6.3 including the clause 6.28 have been followed.</p> <p><b><u>Zoning of Foreshores and Waterways Area</u></b> The subject site is located within/adjacent to the Zone 2 (Environment Protection). On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Balance Planning dated 8 September 2023, it is determined that the objectives and assessment criteria of the zone have been met. Recreational or club facilities are permitted with development consent.</p> <p><b><u>Aquatic Ecology Assessment</u></b> (as proposed development are below MHWM) The subject site is located within/adjacent to the Aquatic Ecological Community Type "mixed rocky intertidal and sand" with seagrass beds offshore.</p> <p>An Aquatic Ecology Assessment Report prepared by Marine Pollution Research dated June 2023 is supplied with this application and finds that the proposed development can be undertaken with low risk of impact to threatened species and low risk of impact on the aquatic habitats at the site. Residual risk will be mitigated in the manner outlined in the Aquatic Ecology Assessment Report.</p> <p>However, as indicated by the DPI-Fisheries, a division of the Department of Primary Industries dated 21 July 2023 requiring a permit under section 205 of the Fisheries Management Act 1994 to account for residual construction related risk.</p> <p><b>Manly LEP 2013 and Manly DCP Foreshores Scenic Protection Area Management</b></p> <p>The subject site is also shown to be as "Manly Foreshores Scenic Protection Area" on Council's Foreshores Scenic Protection Area in Manly LEP 2013. As such, Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013 will apply to proposed development on the site.</p> <p>On internal assessment, the DA satisfies requirements under Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013. As such, it is considered that the application does comply with the requirements of the Manly DCP 2013.</p> <p><b>Estuarine Hazard Management</b> In accordance with the North and Middle Harbour Estuary Planning Level Study (2022), the subject site is affected by estuarine hazard. The applicant has submitted Coastal Engineering Advice prepared by Horton Coastal Engineering Pty. Ltd. dated 7 September 2023. According to this report, the proposed development is at an acceptably low risk of being damaged by coastal processes for an acceptably rare storm over an acceptably long life if designed and operated as per the requirements in Section 8 of the report.</p>
NECC (Riparian Lands and Creeks)	<p><b>Support, subject to conditions</b></p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> <li>• Supplied plans and reports;</li> </ul>





Internal Referral Body	Comments
	<ul style="list-style-type: none"> <li>• Coastal Management Act 2016;</li> <li>• State Environmental Planning Policy (Resilience and Hazards) 2021;</li> <li>• Relevant LEP and DCP clauses; and</li> <li>• Northern Beaches Water Management for Development Policy</li> </ul> <p>The site is in Sydney Harbour. The proposal is for the replacement of decking and piles.</p> <p>A referral letter from NSW DPI Fisheries has been provided and contains no objections.</p> <p>An Aquatic Ecology Assessment has been provided and raises no concerns provided appropriate controls are put in place during construction. All conditions proposed for the construction in the Aquatic Ecology Assessment to protect the aquatic environment must be adopted.</p> <p>On review of the proposal, no objections provided conditions are adhered to.</p>
Parks, reserves, beaches, foreshore	<p><b>Support, subject to conditions</b></p> <p><u>Additional Information Comment 25/03/24:</u> The applicant has stated that all material delivered to or removed from site will be via barge. No concerns are raised with workers arriving by foot.</p> <p><u>Original Comment:</u> The proposed works are to repair and make safe an existing wharf structure. A Construction Management Plan/Report is required to outline how the proposed works will be completed. In particular, more information is required regarding the intended access for the works. Will materials be delivered and removed via water access, or is the intent to access the site via the Council managed public reserve? The construction access and any associated traffic management shall be made clear in the Construction Management Plan/Report.</p> <p>All surrounding public and Council assets utilised by the community shall be protected during works. All public recreational open space and facilities utilised by the public are to remain open and accessible during works.</p> <p>Parks, Reserves and Foreshores can continue their assessment upon receipt of a Construction Management Plan/Report.</p>
Strategic and Place Planning (Heritage Officer)	<p><b>Support</b></p> <p>The proposal has been referred to Heritage as the subject site contains a heritage item, being Item I142 - Manly Rowing, Sailing, Yacht and Launch Club, group of buildings at East Esplanade, and adjacent to two heritage items:</p> <p>Item I143 - Park/Reserve - East Esplanade</p> <p>Item I1 - Harbour foreshores - Manly municipal area boundary adjacent to the Harbour</p> <p><u>Details of the heritage items affected:</u></p> <p>Detail of the heritage items as contained in the Manly Heritage Inventory is as follows:</p>



Internal Referral Body	Comments																					
	<p><b>Item I142 - Manly Rowing, Sailing, Yacht and Launch Club, group of buildings</b></p> <p><u>Statement of Significance</u> Regional significance as a group of use-related buildings of varying age and architectural character and in their contribution to the harbour foreshore. Including an interesting example of the Inter-War Georgian revival style of architecture for a maritime building.</p> <p><u>Physical Description</u> Group of buildings including: timber boatshed (possibly late 19th century) with decorative barge board to gable end and extension, also in timber, to east; Georgian-revival two storey (painted) brick and tile Yacht Club (originally Manly Swimming Baths), constructed 1927, designed by architect E. Lindsay Thompson (the balustrading has been replace but to near original detail); other timber sheds or workshops of various dates - generally early 20th century.</p> <p><b>Item I1 - Harbour foreshores</b></p> <p><u>Statement of Significance</u> Natural landscape type - Aesthetic.</p> <p><u>Physical Description</u> Length of foreshore including natural and built elements of the landscape. Rocky sandstone ledgers, beaches, mud flats and sandstone retaining walls and timber structures.</p> <table><tr><th colspan="3">Other relevant heritage listings</th></tr><tr><td>SEPP (Biodiversity and Conservation) 2021</td><td>No</td><td></td></tr><tr><td>Australian Heritage Register</td><td>No</td><td></td></tr><tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr><tr><td>National Trust of Aust (NSW) Register</td><td>No</td><td></td></tr><tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td><td></td></tr><tr><td>Other</td><td>No</td><td></td></tr></table> <p><b>Consideration of Application:</b></p> <p>The proposal seeks consent for the removal of the existing piles (18 piles) currently supporting the wharf, a portion (6.5mx16.5m) of timber decking and the installation of 8 new sleeved piles supporting aluminium bearers and joists covered with a 38mm grated fibreglass polymer decking in a neutral grey colour.</p> <p>Although the existing deck is not part of the significant fabric, the existing materiality of the deck is complimentary to the heritage context. It is noted that the proposed replacement of the deck is a repair of non-original fabric, and in principle no objections are raised on heritage grounds to the proposed supporting structure, however, Heritage raised concerns to the</p>	Other relevant heritage listings			SEPP (Biodiversity and Conservation) 2021	No		Australian Heritage Register	No		NSW State Heritage Register	No		National Trust of Aust (NSW) Register	No		RAIA Register of 20th Century Buildings of Significance	No		Other	No	
Other relevant heritage listings																						
SEPP (Biodiversity and Conservation) 2021	No																					
Australian Heritage Register	No																					
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National Trust of Aust (NSW) Register	No																					
RAIA Register of 20th Century Buildings of Significance	No																					
Other	No																					



Internal Referral Body	Comments
	<p>cover material, as this portion of the deck is part of the heritage context and the proposed material is considered inappropriate for the heritage context. Therefore, a like for like replacement for the cover material is recommended.</p> <p><b>Revised comments - 25 March 2024</b></p> <p>A document, dated 19 March 2024, has been received from DPI fisheries regarding the requirement for light to penetrate the deck via a mesh construction. Given that the proposed material is supported by DPI Fisheries and the required conditions for protecting the marine environment were included in the referral by Natural Environment Referral Response – Riparian, the heritage condition can be removed.</p> <p>Therefore, no objections are raised on heritage grounds and no conditions required.</p> <p><u>Consider against the provisions of CL5.10 of MLEP2013:</u>  Is a Conservation Management Plan (CMP) Required? No  Has a CMP been provided? No  Is a Heritage Impact Statement required? Yes  Has a Heritage Impact Statement been provided? Yes</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	<p><b>Support, subject to conditions</b></p> <p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <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>
Department of Planning and Environment - Water	<p><b>Support</b></p> <p>The proposed works are exempt from the need to obtain a controlled activity approval.</p>
Department of Primary Industry – Fisheries	<p><b>Support</b></p> <p>The application was referred to DPI – Fisheries and upon receipt of the referral confirmed that a permit under S205 of the Fisheries Management Act was not required. As such, the proposal is not integrated development.</p>

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

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	Sydney Harbour Foreshores and Waterways Development Control Plan 2005 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 regulations	<p><u>Division 8A</u> of the EP&amp;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 50(1A)</u> of the EP&amp;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 54 and 109</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested to address construction management, elevations and heritage.</p> <p><u>Clause 92</u> of the EP&amp;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 93 and/or 94</u> of the EP&amp;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 98</u> of the EP&amp;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 98</u> of the EP&amp;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> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2021 requires the submission of a design verification certificate from the</p>



Section 4.15 'Matters for Consideration'	Comments
	building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
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) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Sydney Harbour Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> 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 and 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.

#### ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

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

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

#### STATE ENVIRONMENTAL PLANNING POLICIES (SEPPS) AND STATE REGIONAL ENVIRONMENTAL PLANS (SREPS)

##### SEPP (Transport and Infrastructure) 2021

###### Ausgrid

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

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



- within 5.0m of an overhead power line.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.

**Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity and Conservation) 2021**

The subject property is located within the Sydney Harbour Catchment and Sydney Harbour Foreshores and Waterways Area therefore the provisions of *Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the 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 the Council's Coastal Officer, Riparian Lands Officer, Water Management Officer, Environmental Health Officer, Development Engineer and Bushland and Biodiversity Officer, all who have raised no objection to the works or their impacts on the adjoining waterway (subject to conditions).

**6.7 Aquatic ecology**

- (1) *In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the following—*
- (a) *whether the development will have a direct, indirect or cumulative adverse impact on terrestrial, aquatic or migratory animals or vegetation,*



- (b) *whether the development involves the clearing of riparian vegetation and, if so, whether the development will require—*
    - (i) *a controlled activity approval under the Water Management Act 2000, or*
    - (ii) *a permit under the Fisheries Management Act 1994,*
  - (c) *whether the development will minimise or avoid—*
    - (i) *the erosion of land abutting a natural waterbody, or*
    - (ii) *the sedimentation of a natural waterbody,*
  - (d) *whether the development will have an adverse impact on wetlands that are not in the coastal wetlands and littoral rainforests area,*
  - (e) *whether the development includes adequate safeguards and rehabilitation measures to protect aquatic ecology,*
  - (f) *if the development site adjoins a natural waterbody—whether additional measures are required to ensure a neutral or beneficial effect on the water quality of the waterbody.*
- (2) *Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied of the following:*
- (a) *the direct, indirect or cumulative adverse impact on terrestrial, aquatic or migratory animals or vegetation will be kept to the minimum necessary for the carrying out of the development,*
  - (b) *the development will not have a direct, indirect or cumulative adverse impact on aquatic reserves,*
  - (c) *if a controlled activity approval under the Water Management Act 2000 or a permit under the Fisheries Management Act 1994 is required in relation to the clearing of riparian vegetation—the approval or permit has been obtained,*
  - (d) *the erosion of land abutting a natural waterbody or the sedimentation of a natural waterbody will be minimised,*
  - (e) *the adverse impact on wetlands that are not in the coastal wetlands and littoral rainforests area will be minimised.*

**Comment:**

The proposal has been reviewed by the Council's Coastal Officer, Riparian Lands Officer, Water Management Officer, Environmental Health Officer, Development Engineer and Bushland and Biodiversity Officer, all of who have raised no objection to the works or their impacts on the adjoining waterway (subject to conditions).

The application is supported by an Aquatic Ecology Assessment prepared by Marine Pollution Research Pty Ltd, dated June 2023, which concludes that the proposal can be undertaken with a low risk of impact on threatened species that may be in the vicinity of the site and low risk of impact on the aquatic habitats at the site. The report also recommends the use of best practice work methods that are to be specified in the Construction Environmental Management Plan (CEMP) as required by a recommended consent condition.

**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.

**6.8 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 proposal will not impact existing public access arrangements.

**6.9 Total catchment management**

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

Comment:

The proposal has been reviewed by Council's Coastal Officer, Riparian Lands Officer, Water Management, Environmental Health, Development Engineer and Bushland and Biodiversity Officers who have raised no objection to the works and their impacts on the surrounding natural environment. Based on the expert advice provided and the conditions imposed, the proposed works are not considered to have an adverse environmental impact. As such consultation with adjoining local government areas was not undertaken in this instance.

**Division 3 Controls on development in specific areas**

**6.10 Land within 100m of natural waterbody**

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

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





Comment:

The proposed works will meet these requirements.

## **Part 6.3 Foreshores and Waterways Area**

### **Division 1 Preliminary**

#### **6.25 Consent authority**

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

*(a) development comprising the subdivision of land owned by TfNSW in or abutting the Foreshores and Waterways Area,*

*(b) development carried out in the Foreshores and Waterways Area wholly below the mean high water mark,*

*(c) development carried out in the Foreshores and Waterways Area for one or more of the following purposes, including development carried out wholly or partly inside a local government area—*  
*Above-water boat lifts; Advertisements; Advertising structures; Aids to navigation; Aviation facilities; Boat lifts; Charter and tourism boating facilities; Commercial port facilities; Dredging; Floating boat platforms; Flora and fauna enclosures; Houseboats; Maintenance dredging; Mooring pens; Private landing facilities; Private landing steps; Private marinas; Private swimming enclosures; Public boardwalks; Public water transport facilities; Single moorings; Skids; Slipways*

*(2) Despite subsection (1), the Minister administering the Environmental Planning and Assessment Act 1979 is the consent authority for the following development carried out in the Foreshores and Waterways Area—*

*(a) development carried out partly above and partly below the mean high water mark,*

*(b) development carried out below the mean high water mark for the purposes of one or more of the following—*

*Boat building and repair facilities; Boat launching ramps; Boat sheds; Marinas; Reclamation works; Swimming pools; Water-based restaurants and entertainment facilities; Waterfront access stairs; Water recreation structures; Wharf or boating facilities that are sea walls*

*(c) development carried out wholly or partly inside the zoned waterway, including development carried out below the mean high water mark, for the purposes of one or more of the following—*  
*Car parks; Commercial premises; Recreational or club facilities; Residential accommodation; Restaurants or cafes; Retail premises; Tourist facilities*

*(3) Subsections (1) and (2) do not apply if another environmental planning instrument specifies a different public authority, other than the council, as the consent authority for the development.*

Comment:

The applicant has provided confirmation that the Minister for Planning had delegated the consent authority functions for the proposed works to the Council of the local government area in which the proposed development to be carried out, i.e. Northern Beaches Council.

### **Division 2 - Zoning of Foreshores and Waterways Area**

The wharf is located in Zone 2 (Environment Protection).

The zone objectives and land use table are outlined below:

#### **Zone 2 Environment Protection**

##### **1 Objectives of zone**



- To protect the natural and cultural values of waters in the zone.
- To prevent damage to, or the possibility of long term adverse impact on, the natural and cultural values of waters in the zone and adjoining foreshores.
- To enhance and rehabilitate the natural and cultural values of waters in the zone and adjoining foreshores.
- To provide for the long term management of the natural and cultural values of waters in the zone and adjoining foreshores.

## **2 Permitted without consent**

*Aids to navigation; Demolition, other than demolition of a heritage item; General restoration works; Naval activities; Single moorings*

## **3 Permitted with consent**

*Boat launching ramps; Community facilities; Dredging; Flora and fauna enclosures; Maintenance dredging; Private landing steps; Public boardwalks; Public water recreational facilities; Public water transport facilities; Recreational or club facilities; Telecommunications facilities*

## **4 Prohibited**

*Above-water boat lifts; Advertisements; Advertising structures; Aviation facilities; Boat building and repair facilities; Boat lifts; Boat sheds; Charter and tourism boating facilities; Commercial port facilities; Floating boat platforms; Houseboats; Intertidal dredging; Marinas; Mooring pens; Private landing facilities; Private swimming enclosures; Reclamation works; Residential accommodation; Skids; Slipways; Swimming pools; Tourist facilities; Water-based restaurants and entertainment facilities; Waterfront access stairs*

Comment: The proposed development is for the purpose of a 'recreational club or facility' and is therefore permissible with consent. The proposal is consistent with the Zone 2 objectives.

## **Division 3 Development in Foreshores and Waterways Area**

### **6.28 General**

*(1) In deciding whether to grant development consent to development in the Foreshores and Waterways Area, the consent authority must consider the following—*

*(a) whether the development is consistent with the following principles—*

*(i) Sydney Harbour is a public resource, owned by the public, to be protected for the public good,*

*(ii) the public good has precedence over the private good,*

*(iii) the protection of the natural assets of Sydney Harbour has precedence over all other interests,*

*(b) whether the development will promote the equitable use of the Foreshores and Waterways Area, including use by passive recreation craft,*

*(c) whether the development will have an adverse impact on the Foreshores and Waterways Area, including on commercial and recreational uses of the Foreshores and Waterways Area,*

*(d) whether the development promotes water-dependent land uses over other land uses,*

*(e) whether the development will minimise risk to the development from rising sea levels or changing flood patterns as a result of climate change,*

*(f) whether the development will protect or reinstate natural intertidal foreshore areas, natural landforms and native vegetation,*

*(g) whether the development protects or enhances terrestrial and aquatic species, populations and ecological communities, including by avoiding physical damage to or shading of aquatic vegetation,*

*(h) whether the development will protect, maintain or rehabilitate watercourses, wetlands, riparian lands, remnant vegetation and ecological connectivity.*

*1.*

*(2) Development consent must not be granted to development in the Foreshores and Waterways Area unless the consent authority is satisfied of the following—*

*(a) having regard to both current and future demand, the character and functions of a working harbour*



*will be retained on foreshore sites,*

*(b) if the development site adjoins land used for industrial or commercial maritime purposes—the development will be compatible with the use of the adjoining land,*

*(c) if the development is for or in relation to industrial or commercial maritime purposes—public access that does not interfere with the purposes will be provided and maintained to and along the foreshore,*

*(d) if the development site is on the foreshore—excessive traffic congestion will be minimised in the zoned waterway and along the foreshore,*

*(e) the unique visual qualities of the Foreshores and Waterways Area and its islands, foreshores and tributaries will be enhanced, protected or maintained, including views and vistas to and from—*

*(i) the Foreshores and Waterways Area, and*

*(ii) public places, landmarks and heritage items.*

Comment: The proposal is for repair works to the existing wharf structure and will not increase the height or surface area of the wharf deck. The development is consistent with the relevant provisions of clause 6.28 as follows:

- The assessment of aquatic ecology has found that there is low risk of impact on aquatic habitats and potential risk will be mitigated by implementing best practice work methods outlined in the Aquatic Ecology Assessment Report.
- The repair and replacement works will not diminish or obstruct public access or equitable use of the Foreshores and Waterways Area. The works will facilitate access to and ongoing use of the Manly Cove waters by the Manly Yacht Club members.
- The development will not impinge on other nearby commercial and recreational functions of the Foreshores and Waterways Area.

The proposal satisfies the relevant matters set out at subclause 6.28 (1) and (2).

## **6.29 Rocky foreshores and significant seagrasses**

*(2) Development consent must not be granted to development on land to which this section applies unless the consent authority is satisfied the development—*

*(a) will preserve and enhance the health and integrity of seagrasses, areas containing seagrasses and ecological communities in rocky foreshore areas, and*

*(b) will maintain or increase the connectivity of seagrass vegetation and natural landforms, and*

*(c) will prevent, or will not contribute to, the fragmentation of aquatic ecology, and*

*(d) will not cause physical damage to aquatic ecology.*

Comment: The site is identified as a 'rocky foreshore or significant seagrass area' on the Rocky Foreshores and Significant Seagrasses Map.

The Aquatic Ecology Assessment has found that there is a low risk of impact on observed seagrasses and potential risk will be mitigated by implementing the work methods outlined in the Aquatic Ecology Assessment Report.

## **SEPP (Resilience and Hazards) 2021**

### **Chapter 2 – Coastal Management**

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

Clauses 2.10 and 2.11 do not apply to land within the Foreshores and Waterways Area within the meaning of Chapter 6 of State Environmental Planning Policy (Biodiversity and Conservation) 2021..

### **Division 5 General**



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

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

Comment: The proposal includes repair works to the existing wharf structure and will not increase the height or surface area of the structure. The proposed repair works are unlikely to cause an increased risk of coastal hazards at or near the development site.

The proposal has been reviewed by the Council's Coastal Officer, Riparian Lands Officer, Water Management Officer, Environmental Health Officer, Development Engineer and Bushland and Biodiversity Officer, all of whom have not objected to the works or their impacts on the adjoining waterway (subject to conditions).

## 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: Former Manly Council published the Manly Cove Coastal Zone Management Plan in November 2011. The proposed repair works are consistent with the strategic management options set out therein to the extent that they are relevant to 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 recreational purposes for a significant period with no prior land use. 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 recreational land use.

### **MANLY LOCAL ENVIRONMENTAL PLAN 2013**

The proposed works occur below MHW and are outside of the LGA boundary. Therefore, the Manly Local Environmental Plan 2013 does not apply to the proposal. Nevertheless, an assessment of the proposal against the provisions of the MLEP 2013, is provided below.

It is noted that the MLEP 2013 Heritage Map shows that the proposed works will occur within the mapped curtilage of item I142 "Manly Rowing, Sailing, Yacht and Launch Club, group of buildings" which extends beyond the LGA boundary.

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

### Compliance Assessment



Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.6 Exceptions to development standards	N/A
5.7 Development below mean high water mark	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	N/A
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.5 Terrestrial biodiversity	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes
6.21 Noise impacts—licensed premises	N/A
Schedule 5 Environmental heritage	Yes

#### Development below mean high water mark (clause 5.7)

The application satisfies this clause which requires an appropriate environmental assessment for development carried on land covered by tidal waters.

#### Heritage Conservation (clause 5.10)

The development works will occur within the mapped curtilage of item I142 "Manly Rowing, Sailing, Yacht and Launch Club, group of buildings" which extends beyond the LGA boundary. As outlined in the referrals table above, Council's Heritage Officer supports the proposal.

#### Acid Sulfate Soils (clause 6.1)

The land is identified as class 1 acid sulfate soils. The Acid Sulfate Soils (ASS) report, prepared by Marine Pollution Research submitted with the application, identifies a small potential for acid sulfate soils to be exposed by sediments adhered to piles being extracted during works and recommends certain measures to be undertaken to reduce risk and manage the potential for exposure of acid sulfate soils.

Council's Environmental Health Officer supports the proposal, subject to recommended conditions of consent including compliance with the measures outlined in section 2.5 of the ASS report.

#### Limited development on foreshore area (clause 6.10)

Clause 6.10(2)(c) of MLEP 2013 states that wharves and jetties are permissible in the Foreshore Area.

The proposal satisfies the requirements of clauses 6.10(3) as follows:

- (a) The proposal satisfies the zone objectives,
- (b) the appearance of the proposed new section of the wharf is compatible with the existing wharf and surrounding area,
- (c) Subject to appropriate conditions of consent, the development will not cause environmental harm including:
  - (i) pollution or siltation of the waterway, or
  - (ii) adverse effects on surrounding uses, marine habitat, fauna and flora habitats,
  - (iii) an adverse effect on drainage patterns



The aquatic ecology assessment concludes that the proposed development has a low risk of impact on threatened species and aquatic habitats, with residual risk of potential impact of pile and deck demolition and construction works mitigated by the use of appropriate work methods outlined in their report. There are no works to be undertaken in seagrass beds, so there will be no loss of marine vegetation arising from the proposal, provided the potential construction-related impact avoidance measures provided in their report are implemented.

The proposed deck is permeable and therefore will not alter drainage patterns.

Opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised.

The Heritage Impact Assessment dated 12 July 2023 concludes that the replacement of the rigging deck is a repair of non-significant fabric, and therefore there will be no heritage impacts.

Sea level rise has been considered in the design as outlined in the Coastal Engineering advice, prepared by Horton Coastal Engineering, dated 7.9.2023, submitted in support of the proposal.

The proposal satisfies the provisions of clause 6.10.

### **Manly Development Control Plan**

Part 1.2 of Manly Development Control Plan 2013 (MDCP) indicates that the Plan applies to land where the MLEP applies as identified on the MLEP Land Application Map.

As previously established, the development works occur beyond the boundary nominated on the Land Application Map and therefore MDCP does not apply to the proposal.

### **Sydney Harbour Foreshores and Waterways Development Control Plan**

The site is identified as an area where the Sydney Harbour Foreshores and Waterways Area Development Control Plan (SHDCP) applies, therefore an assessment under ecological, landscape and design guidelines has been undertaken below.

#### Ecological Assessment

Section 2 of the SHDCP deals with ecological assessment and in this regard, the Aquatic Ecology Assessment, prepared by Marine Pollution Research Pty Ltd, dated June 2023 identifies an aquatic ecological community of *Zostera* seagrass beds located near the deck location. The conservation significance of the seagrass beds is high. Seagrass beds were observed near the wharf. Table 1 of the Sydney Harbour DCP assigns seagrass beds a "high" conservation status.

The Aquatic Ecology Assessment finds that the proposed works can be undertaken with a low risk of impact on threatened species and a low risk of impact on aquatic habitats.

The proposal will essentially replace the existing deck area, ensuring no alterations to the footprint and thereby avoiding any shading impacts. Any potential effects are confined to the construction process itself.

Residual risk of impact associated with demolition and construction works can be mitigated by adopting the best practice work methods outlined in the Report.

#### Landscape Assessment



Section 3 of the SHDCP deals with Landscape Assessment. The site is located in the area with Landscape Character Type 8. This area has a high level of built form with waterside commercial, industrial and residential uses. The commercial and industrial uses play an important role in terms of tourism and maritime services which support water-based activities. The proposal for wharf repair works will have a negligible impact on the landscape character and is consistent with the performance criteria for this area.

#### Design Guidelines

Section 4 of the SHDCP provides design guidelines for water based and land/water interface development. Clause 4.3 states that foreshore access is to be encouraged and promoted. The proposal maintains public access to and along the foreshore. The proposed wharf repair is consistent with Clause 4.7 which lists guiding principles for the location, design and layout facilities and services and the visual impact of marinas.

The proposal results in a net reduction of support piles for the same area of decking above therefore reducing visual impact. The replacement grated decking is a grey colour similar to the existing timber boards, thereby minimising the impact on views to and from the foreshore area. The proposal is consistent with the relevant general requirements, building siting, and built-form criteria set out in Part 4 of SHDCP.

#### **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 \$2,635 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$263,500.

#### **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;
- Sydney Harbour Foreshores and Waterways Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, and all other documentation supporting the application. The proposal does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties or the waterway, 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 development application seeks consent for DA2023/1741 for alterations and additions to the Manly Yacht Club wharf comprising the replacement of existing piles and decking.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) for determination as the subject site is within Crown land and land which is under the care and control of Council. The application is the subject of the Council's policy for the Management of Council related Development Applications, which provides strategies for the management of conflicts for development on Council owned or managed land. The application has been managed and assessed in accordance with this policy and satisfied the requirements under the plan.

Critical assessment issues include potential heritage and environmental impacts. The assessment finds that the proposal will have a negligible impact on the significance of the adjoining heritage buildings. The new section of the deck will allow sunlight penetration to the seabed below thereby improving environmental conditions. Potential impacts to the environment during construction can be managed by appropriate work practices. The submission of a Construction Environmental Management Plan, incorporating best practice work methods, is required by a recommended condition of consent.

Overall, the development is an appropriate design that performs well against the relevant controls and will not result in an unreasonable impact on the aquatic ecology or the curtilage of the surrounding heritage buildings. The proposal is therefore recommended for approval.

## REASON FOR DETERMINATION

The proposed development satisfies the appropriate controls and all processes and assessments have been satisfactorily addressed.

## RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2023/1741 for alterations and additions to the Manly Yacht Club wharf on land at Part Lot 7011 DP 1074608 Lic 102, 0 East Esplanade, MANLY, subject to the conditions printed below:

### Terms and Reasons for Conditions

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

## GENERAL CONDITIONS

### 1. Approved Plans and Supporting Documentation





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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
D002	1	Specifications	Buck and Simple	13.09.2023
D011	1	Site existing and demolished	Buck and Simple	13.09.2023
D012	1	Site layout - proposed	Buck and Simple	13.09.2023
D060	1	Erosion, sediment, stormwater and waste management	Buck and Simple	13.09.2023
D400	1	South elevation	Buck and Simple	20.03.2024
D901	1	Perspectives and materials	Buck and Simple	13.09.2023
KR2109 08-100-1	A	Manly Yacht Club Repair	Kraken	26.08.2021

Document Title	Version Number	Prepared By	Date of Document
Statement of Environmental Effects	Final	Balance Planning	08.09.2023
Aquatic Ecology Assessment	-	Marine Pollution Research	June 2023
Coastal Engineering Advice	-	Horton Coastal Engineering	7.09.2023
Heritage Impact Statement	-	Michael Bogle	12.07.2023
Waste Management Plan	-	Ethan Koch	11.04.2023
ASS Assessment	-	Marine Pollution Research	June 2023

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	24.01.2024

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website [www.northernbeaches.nsw.gov.au](http://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 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
  - ii) Building/s that are to be demolished
  - iii) For any work/s that is to be carried out
  - iv) For any work/s that is to be demolished

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

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

## FEES / CHARGES / CONTRIBUTIONS

### 5. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$2,635.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning and Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$263,500.00.

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

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

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

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

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

### **BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE**

#### 7. **Construction Environment Management Plan**

A Construction Environmental Management Plan (CEMP) must be prepared in accordance with the environmental risks and mitigation methods identified in the Aquatic Ecology Assessment and must be kept in the site office. The CEMP must identify and appropriately manage invasive species (e.g. *Caulerpa taxifolia*).

An induction plan for site personnel must be prepared and implemented that addresses the CEMP. Induction records must be maintained and available onsite at all times.

The CEMP and site induction plan must be submitted to the Principal Certifier for approval prior to the issue of the Construction Certificate.

Reason: To protect native vegetation, wildlife, habitats and receiving waterways.

#### 8. **Estuarine Hazard Design Requirements**

All development or activities must be designed and constructed such that they will not increase the level of risk from estuarine processes for any people, assets or infrastructure in surrounding properties; they will not adversely affect estuarine processes; they will not be adversely affected by estuarine processes.

Reason: To minimise risks associated with coastal hazards for development in an estuarine environment.

#### 9. **Estuarine Planning Level Requirements**



A level of 2.34 m AHD has been recommended through a Coastal Engineering Advice prepared by Horton Coastal Engineering Pty. Ltd. dated 7 September 2023 for the subject site and shall be applied to all development proposed below this level as follows:

1. All electrical equipment, wiring, fuel lines or any other service pipes and connections must be located either above 2.34m AHD or waterproofed to this level; and
2. The storage of toxic or potentially polluting goods, chemicals or materials, which may be hazardous or pollute the waterway, is not permitted below 2.34m AHD.
3. All interior power supplies (including electrical fittings, outlets and switches) must be located at or above 2.34m AHD. All exterior power supplies (including electrical fittings, outlets and switches) shall be located at or above 2.34m AHD to avoid the likelihood of contact with splashing waves and spray.

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

**10. Compliance with Estuarine Risk Management Report**

The development is to comply with all recommendations of the approved Coastal Engineering Advice prepared by Horton Coastal Engineering Pty. Ltd. dated 7 September 2023 and these recommendations are to be incorporated into construction plans and specifications and maintained over the life of the development.

Reason: To minimise potential hazards associated with development in an estuarine habitat.

**11. Structural Engineering for Estuarine Risk**

Structural engineering design for the development shall be prepared, with input as necessary from a chartered professional engineer with coastal engineering as a core competency, to ensure that for its design life, taken to be 25 years as justified and accepted by Council, the development is able to withstand the wave impact forces and loadings identified in the approved Coastal Engineering Advice prepared by Horton Coastal Engineering Pty. Ltd. dated 7 September 2023.

The potential for component fatigue (wear and tear) should be recognised for the less severe, but more frequent, wave impact loadings.

Reason: To ensure structural engineering is prepared by an appropriately qualified professional

**12. Submission of a Construction Environment Management Plan**

A Construction Environmental Management Plan (CEMP) must be prepared in accordance with the environmental risks and mitigation methods identified in the Aquatic Ecology Assessment Report prepared by Marine Pollution Research dated June 2023 and must be kept in the site office. The CEMP must identify and appropriately manage invasive species (e.g.

*Caulerpa taxifolia*). An induction plan for site personnel must be prepared and implemented that addresses the CEMP. Induction records must be maintained and available onsite at all times. The CEMP and site induction plan must be submitted to the Principal Certifier for approval prior to the issue of the Construction Certificate.

Reason: To protect native vegetation, wildlife, habitats and receiving 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.

#### CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

14. **Installation and Maintenance of Sediment and Erosion Control**

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

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

#### DURING BUILDING WORK

15. **Acid Sulfate Soils - Compliance with Report**

All measures as outlined in section 2.5 of the report by MARINE POLLUTION RESEARCH PTY LTD titled:

"DECK REPAIRS AT MANLY SAILING CLUB - ASS Assessment against Clause 6.1 Manly LEP 2013" and dated 23 June 2023, shall be complied with.

Reason: To ensure management of potential acid sulfate soils.

16. **Requirement to notify about new Acid Sulfate Soils evidence**

Any new information revealed during works that has the potential to alter previous conclusions about Acid Sulfate Soils shall be immediately notified to the Council and the Principal Certifier and a report be obtained from a suitably qualified person. Any recommendations provided by the report are to be complied with during works.

Reason: To protect the environment.

17. **Management of Caulerpa taxifolia**

The invasive marine alga *Caulerpa taxifolia* is present on this site. Site personnel must be able identify *Caulerpa*. All tools, machinery and environmental control devices must be inspected and cleaned thoroughly prior to leaving the site to prevent the spread of *Caulerpa* to other sites.

Any *Caulerpa* removed from the waterway should be tightly sealed in a plastic bag and lawfully disposed in general waste.

Reason: *Caulerpa taxifolia* is listed under the Biosecurity Act 2015 for all NSW waters.

18. **Aquatic environment protection**

Environmental safeguards are to be used during construction to protect the aquatic environment. Appropriate methods must be installed and secured to ensure damage to the aquatic environment is minimised. Actions and recommendations of the Aquatic Ecology Assessment must be followed.





Reason: To protect the aquatic environment.

19. **Use of equipment and vessels in the vicinity of seagrass**

No equipment is to be placed on any seagrass beds.

Inshore infrastructure for mooring vessels and plant must be used where suitable. Where mooring lines or cables are required, they shall be suitably buoyed prior to laying and kept buoyed once laid to prevent cable drag or swing damage (scalping). Where this is impractical, contractors should use a floating rope.

Vessels must have adequate clearance over seagrass beds, including allowance for tidal movement, swell/wind wave heights and vessel propulsion.

Reason: Protection of seagrass.

20. **No Access Through Land Owned or Managed by Council**

As outlined by the applicant all plant and equipment will come to site by barge and all rubbish and old timber will leave the site by barge. Site access is not approved for delivery or removal of materials, nor for construction activities (other than workers arriving by foot) of the development through adjacent land owned or managed by Council, without the written approval of Council.

Reason: Public safety, landscape amenity and tree protection.

21. **Protection of Council's Public Assets**

Any damage to Council's public assets shall be made good by the applicant, and/or the contractor, to the satisfaction of Council.

Council's public assets include, but is not limited to, the following: road, kerb and gutters, crossovers, crossings, paths, grass verge, open space and associated elements such as furniture, recreational facilities and the like, within the meaning of the Local Government Act 1993.

Existing trees shall be protected in accordance with AS4970-2009 Protection of Trees on Development Sites, with particular reference to Section 4, with no ground intrusion into the tree protection zone and no trunk, branch nor canopy disturbance.

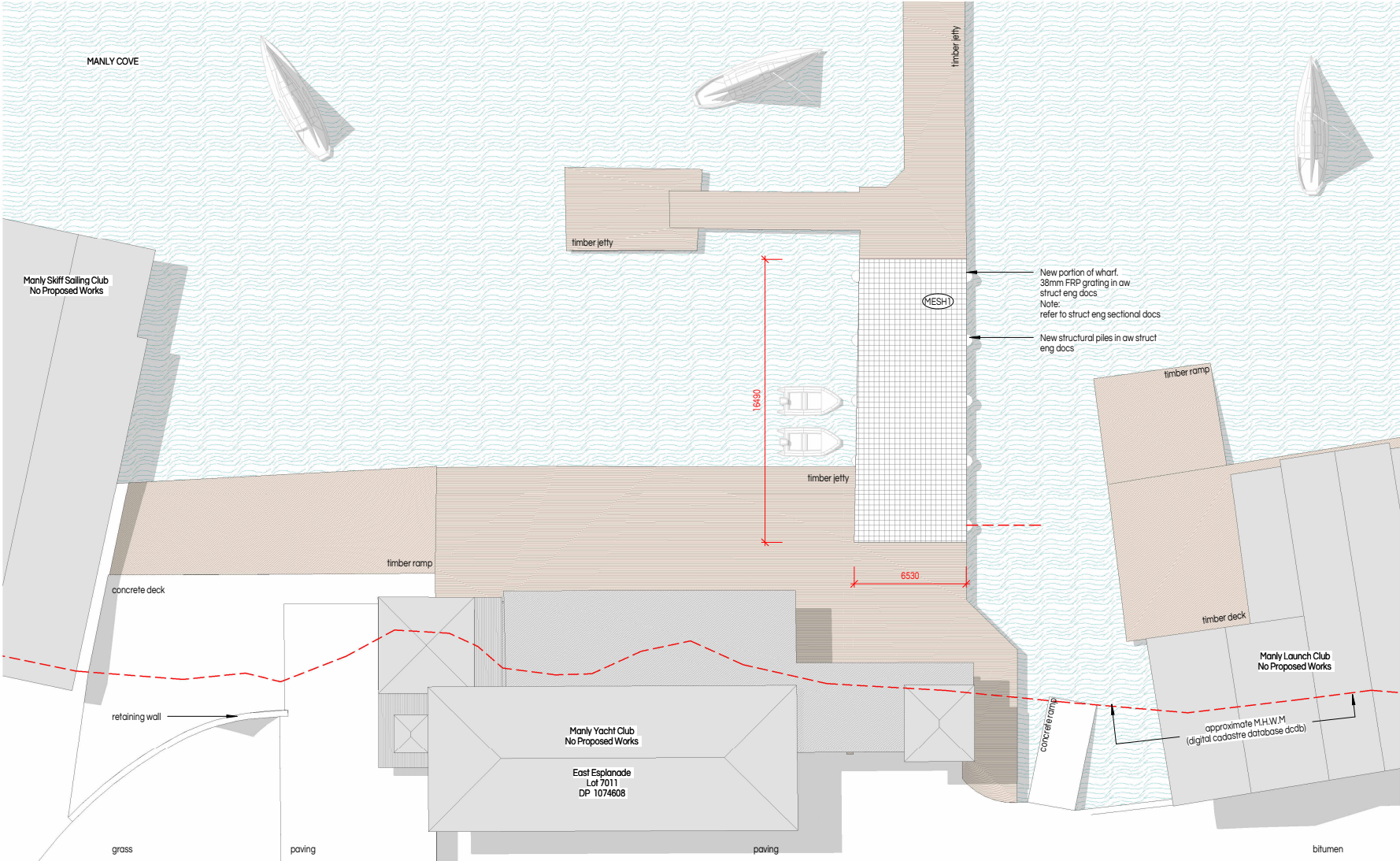
Reason: To protect and/or restore any damaged public asset.

**FINAL DECLARATION**

Consultant Name: Danielle Deegan, DM Planning

In submitting this report to Council, I declare that I do not have a conflict of interest in making this recommendation

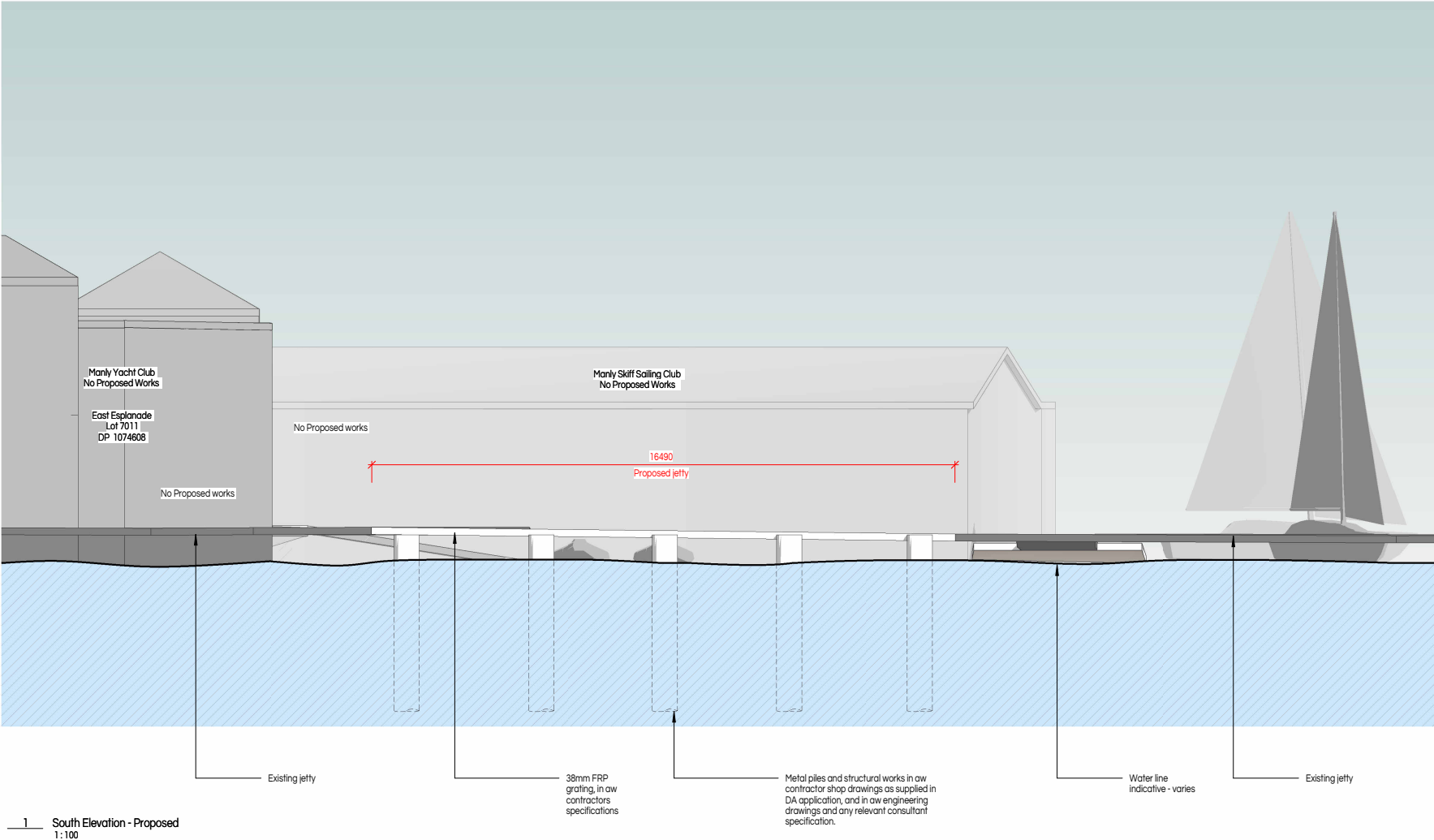




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Contact: info@buckandsimple.com ABN : 86 106 604 025 NSW #8631 VIC #19664 <a href="http://www.buckandsimple.com">www.buckandsimple.com</a>				Location E Esplanade, Manly, NSW, 2095	Project Issue Date	Sheet Issue Date	Revision
				Client Manly Yacht Club	Issue Date	Sep 13	
				Drawing Site Layout & Site Analysis - Proposed	Project number 1238	Drawing # D012	Revision 1
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Contact: info@buckandsimple.com ABN : 86 106 604 025 NSW #8631 VIC #19664 <a href="http://www.buckandsimple.com">www.buckandsimple.com</a>				Location E Esplanade, Manly, NSW, 2095	Project Issue Date	Sheet Issue Date	
				Client Manly Yacht Club	Issue Date		Mar 20
				Drawing South Elevation - Proposed	Project number	Drawing #	Revision
					1238	D400	1

20/03/2024 2:38:44 PM

<b>ITEM 4.3</b>	<b>DA2024/0113 - LOT 25 DP 13457, 106 PRINCE ALFRED PARADE NEWPORT - DEMOLITION WORKS AND CONSTRUCTION OF AN INCLINATOR</b>
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## PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

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## RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2024/0113 for the demolition works and construction of an inclinator on land at Lot 25 DP 13457, 106 Prince Alfred Parade, NEWPORT, for the reasons for refusal set out in the Assessment Report.

<b>Reporting manager</b>	Daniel Milliken
<b>TRIM file ref</b>	2024/291067
<b>Attachments</b>	<a href="#">↓1</a> Assessment Report <a href="#">↓2</a> Site Plan & Elevations <a href="#">↓3</a> Clause 4.6

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2024/0113
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<b>Responsible Officer:</b>	Adam Richardson
<b>Land to be developed (Address):</b>	Lot 25 DP 13457, 106 Prince Alfred Parade NEWPORT NSW 2106
<b>Proposed Development:</b>	Demolition works and construction of an inclinator
<b>Zoning:</b>	C4 Environmental Living
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Teresa Aruego Easter
<b>Applicant:</b>	Erik Smithson Architecture

<b>Application Lodged:</b>	22/02/2024
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Other
<b>Notified:</b>	27/02/2024 to 12/03/2024
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	7.8 Limited development on foreshore area
<b>Recommendation:</b>	Refusal

<b>Estimated Cost of Works:</b>	\$ 214,500.00
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### EXECUTIVE SUMMARY

This development application seeks consent for demolition works and construction of an inclinator which extends past the dwelling into the foreshore building line.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to the development proposing a departure from a non-numeral development standard being Clause 7.8 Limited development on foreshore area of Pittwater Local Environmental Plan 2014, seeking to vary the restrictions set by Clause 7.8 with a written Clause 4.6 variation request.

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

The application has been found to be unacceptable due to the absence of sufficient environmental planning grounds which would warrant flexibility under Clause 4.6 Exceptions of development standards of Pittwater Local Environmental Plan 2014.

This report concludes with a recommendation that the NBLPP refuse the development application for the recommended reasons.

### **PROPOSED DEVELOPMENT IN DETAIL**

The proposed development seeks consent for demolition works and construction of an inclinor.

### **ASSESSMENT INTRODUCTION**

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

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

### **SUMMARY OF ASSESSMENT ISSUES**

Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living  
Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards  
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks  
Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection  
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards  
Pittwater 21 Development Control Plan - C1.19 Incline Passenger Lifts and Stairways  
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 - D10.11 Building envelope (excluding Newport Commercial Centre)  
Pittwater 21 Development Control Plan - D10.13 Landscaped Area - Environmentally Sensitive Land

### **SITE DESCRIPTION**



<b>Property Description:</b>	Lot 25 DP 13457 , 106 Prince Alfred Parade NEWPORT NSW 2106
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the northern side of Prince Alfred Parade.</p> <p>The site is regular in shape with a frontage of 13.54 metres along Prince Alfred Parade and a depth of 44.5 metres. The site has a surveyed area of 581.7m<sup>2</sup>.</p> <p>The site is located within the C4 Environmental Living zone from PLEP 2014 and accommodates a dwelling house currently under construction, and boat shed currently on the site.</p> <p>The site slopes from the front southern boundary downwards to the rear northern boundary over approximately 16 metres.</p> <p>The site contains trees, and plantings. The site does not include details of any threatened species.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by dwelling houses of similar scale. Directly to the north is access to Pittwater Waterway including a private jetty.</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:

**DA2021/1448**

Development Application for Alterations and additions to a dwelling house, including a detached double carport and swimming pool.

Approved on 22 December 2021.

**S138A2024/0002**

Infrastructure Works Application for elevated driveway, elevated walkway, retaining structures supporting driveway and landscape works within public road reserve.

Re-approved on 20 March 2024.

**CC2024/0321**

Construction Certificate for 21 Alterations and additions to a dwelling house, including a detached double carport and swimming pool.

Approved on 22 March 2024 by external Certifier.

**APPLICATION HISTORY**

Following the preliminary assessment of the application, Council requested additional information on 18 March 2024 in relation to details on the Master Plans including the Pittwater Foreshore Building Line, Section Plan of the inclinator, East Elevation showing the entire length of the inclinator and, location of adjoining inclinator. Further information was for a Demolition Plan, Schedule of Colours and Finishes, and an amended Clause 4.6. Subsequently, the applicant submitted amended Master Plans, amended Clause 4.6, a Section Plan, and an amended Statement of Environmental Effects.

The amended plans did not alter the environmental impact and therefore, the application was not required to be re-notified, in accordance with the Northern Beaches Community Participation Plan (CPP).

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)**

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent.

Section 4.15 Matters for Consideration	Comments
Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p>These matters have been addressed are capable of being addressed by a condition of consent, should the development be approved.</p> <p><u>Clause 29</u> of the EP&amp;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&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to details on the Master Plans including the location of the Pittwater Foreshore Building Line, Section Plan of the inclinator, East Elevation showing the entire length of the inclinator and, location of adjoining site inclinator. Further information was for a Demolition Plan, Schedule of Colours and Finishes, and an amended Clause 4.6. Subsequently, the applicant submitted amended Master Plans, amended Clause 4.6, a Section Plan, and an amended Statement of Environmental Effects.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter is capable of being address addressed via a condition of consent, should the development be approved.</p> <p><u>Clauses 62 and/or 64</u> of the EP&amp;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&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter is capable of being address via a condition of consent, should the development be approved.</p> <p><u>Clause 69</u> of the EP&amp;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 a condition of consent, should the development be approved.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> 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) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> 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 27/02/2024 to 12/03/2024 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 of the application Council received no submissions.

### REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p><b><i>Supported - subject to conditions</i></b></p> <p>The application is for construction of an inclinator within the property. An Arboricultural Impact Assessment is submitted for existing trees in proximity to the proposed inclinator, with tree protection measures included in the recommendations and conditions shall be imposed. Existing Golden Cane and Kentia Palms impacted by the works are noted for removal and these are exempt species that do not require Council consent for management or removal. The submitted Landscape Plan is noted that no concerns are raised.</p>
NECC (Bushland and Biodiversity)	<p><b><i>Supported - subject to conditions</i></b></p> <p>The comments in this referral relate to the following applicable controls and provisions:</p> <ul style="list-style-type: none"> <li>SEPP (Resilience and Hazards) 2021 - Coastal Environment Area</li> <li>Pittwater LEP 2014 - Clause 7.6 Biodiversity Protection</li> </ul>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> <li>Pittwater DCP 21 - Clause B4.7 Pittwater spotted gum forest endangered ecological community</li> </ul> <p>The proposal has been submitted with an arboricultural impact assessment that has concluded that no prescribed trees will need to be removed for the proposed works to take place. Tree protection measures have been recommended.</p> <p>The removal of two prescribed palms is indicated in the submitted landscape plans which are found to be consistent with the requirements of PDCP B4.7. No objections are raised in relation to the proposed removals of exempt palms.</p> <p>The development is designed, sited and will be managed to avoid any significant adverse environmental impact.</p>
NECC (Coast and Catchments)	<p><b><i>Supported - subject to conditions</i></b></p> <p>This Development Application is to seek consent for construction and installation of an Inclinor.</p> <p>The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Resilience &amp; Hazards) 2021 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP.</p> <p><b>Coastal Management Act 2016</b> The subject site has been identified as being within the coastal zone and therefore Coastal Management Act 2016 is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the Coastal Management Act 2016.</p> <p><b>State Environmental Planning Policy (Resilience &amp; Hazards) 2021</b> The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience &amp; Hazards) 2021 (SEPP R &amp; H). Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R &amp; H) apply for this DA.</p> <p>Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by YSCO Geomatics dated 7 February 2024, the DA satisfies requirements under clauses 2.10, 2.11 and 2.12 of the SEPP R&amp;H. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience &amp; Hazards) 2021.</p> <p><b><u>Pittwater LEP 2014 and Pittwater 21 DCP</u></b></p> <p><b>Estuarine Risk Management</b></p>

Internal Referral Body	Comments
	<p>The subject property has also been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site.</p> <p>In accordance with the Pittwater Estuary Mapping of Sea Level Rise Impacts Study (2015), a base estuarine planning level (EPL) of RL 2.68m AHD would apply at the subject site. A reduction factor (RF) based upon the distance from the foreshore of proposed development may also apply at a rate of 0.06m reduction to the EPL for every 5.00m distance from the foreshore edge up to a maximum distance of 40.00m.</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by YSCO Geomatics dated 7 February 2024, both the bottom terminal and the bottom landing of the proposed inclinor are located above the applicable Estuary Planning Level (EPL) for the site.</p> <p>The proposed development is therefore not required to satisfy the relevant estuarine risk management requirements of P21 DCP.</p> <p><b>Development on Foreshore Area</b></p> <p>A large section of the subject property is within the foreshore building line. Part 7, Clause 7.8 –Limited development on foreshore area of the Pittwater LEP 2014 applies for any development within the foreshore area.</p> <p>The DA proposes construction of bottom landing of the inclinor and access stairs within the foreshores area. All these proposed works are generally consistent with Clause 7.8(2)(b).</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by YSCO Geomatics dated 7 February 2024, the DA satisfies the objectives and requirements of Part 7, Clause 7.8 of the Pittwater LEP 2014.</p> <p><b>Inclined Passenger Lifts and Stairways</b></p> <p>The DA proposes construction of Inclined Passenger Lift and Stairways. Section C1.9 of the Pittwater DCP controls applies.</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by YSCO Geomatics dated 7 February 2024, the DA satisfies the objectives and requirements of the Pittwater DCP.</p>

Internal Referral Body	Comments
NECC (Riparian Lands and Creeks)	<p><b>Supported - subject to conditions</b></p> <p>This application has been assessed against relevant legislation and policy relating to waterways, riparian areas, and groundwater.</p> <p>This site abuts Pittwater estuary and as such the development must not significantly impact on the biophysical, hydrological or ecological integrity of Pittwater, or the quantity and quality of surface and ground water flows that it receives. Sediment and erosion controls must be installed prior to any disturbance of soil on site and maintained until all work is complete and groundcover re-established.</p> <p>This application, subject to conditions, is recommended for approval as it is unlikely to have an adverse effect on the integrity and resilience of the biophysical, ecological and hydrological environment of Pittwater if conditions are adhered to.</p>
Parks, reserves, beaches, foreshore	<p><b>Supported - without conditions</b></p> <p>The development site adjoins Pittwater waterway that is located downslope of the property.</p> <p>All development works must ensure that surface sediment runoff and/or erosion is controlled, managed and contained within the site boundaries and prevented from travelling across the boundary and into the waterway. No physical encroachments over the site boundaries are permitted, and structures and built elements are not permitted beyond the site boundaries.</p> <p>The development is not detrimental to the landscape or waterway character, and as such Parks Reserves and Foreshores raise no concerns with the development proposal.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p><b>Supported - subject to conditions</b></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><b>Supported - subject to conditions</b></p> <p>Development Application No. DA2024/0113 Description: Demolition works and construction of an inclinometer Address: 106 Prince Alfred Parade NEWPORT</p> <p>Reference is made to the proposed development at the above area and Aboriginal heritage.</p> <p>No sites are recorded in the current development area and the area</p>

External Referral Body	Comments
	<p>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 (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 5.0 metres of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30 metres 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 recommended conditions if the application were to be approved.

## **SEPP (Resilience and Hazards) 2021**

### **Chapter 2 – Coastal Management**

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

#### **Division 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 subject site is located within land identified as "coastal environment area". The proposed development is not likely to cause adverse impact to items listed under Clause 2.10(1)(a-g) inclusive.

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

#### **Comment:**

The proposed development has been designed, sited, and managed to avoid an adverse impact to items listed under Clause 2.10(1)(a-g) inclusive.

#### **Division 4 Coastal use area**

##### **2.11 Development on land within the coastal use area**

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

Comment:

The subject site is located within land identified as "coastal use area". The proposed development is not likely to cause an adverse impact to items listed under Clause 2.11(1)(a)(i-v) inclusive. The proposal has been designed, sited, and managed to avoid any adverse impacts as detailed under Clause 2.11(1)(a)(i-v) inclusive.

**Division 5 General**

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

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

Comment:

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

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

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

Comment:

There is no certified coastal management program applicable to the land.

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

**Chapter 4 – Remediation of Land**

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

**Pittwater Local Environmental Plan 2014**

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	No

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	4.8m	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	No
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	No
7.10 Essential services	Yes

Detailed Assessment**Zone C4 Environmental Living**

The subject site is located in Zone C4 Environmental Living of Pittwater Local Environmental Plan 2014.

The proposal has been assessed against the objectives of zone as detailed below:



- ***To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.***

Comment:

The proposal will continue to provide for low-impact residential development in areas with special ecological, scientific, or aesthetic values.

- ***To ensure that residential development does not have an adverse effect on those values.***

Comment:

The proposed development will add additional built form to the foreshore area, which will affect the aesthetic values of the area insofar that the interface between the land and water is not natural, rather it has the effect of contributing to the dominance of the built form of the environment.

- ***To provide for residential development of a low density and scale integrated with the landform and landscape.***

Comment:

The proposal will continue to provide a development of a low density and scale that will integrate with the landform, and landscape.

- ***To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.***

Comment:

The development will not impact upon any riparian, foreshore vegetation, or wildlife corridors.

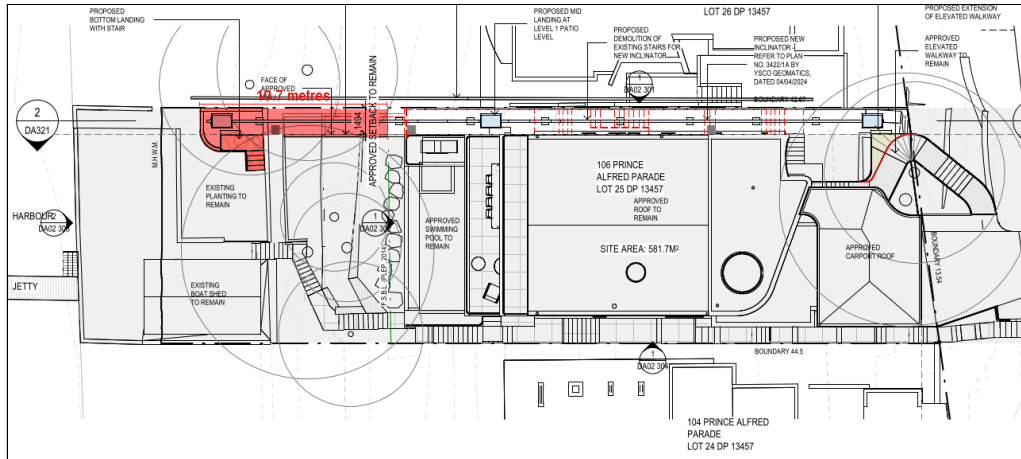
#### **4.6 Exceptions to development standards**

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

Development standard: Clause 7.8 Limited development on foreshore area

Requirement: Above Foreshore Building Line

Proposed: Below Foreshore Building Line (10.7m extension into foreshore area).



**Figure 1. Foreshore building line variation (red highlighting inclinator below Foreshore Building Line)**

With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is/is not accompanied by a document that sets out the grounds on which the Applicant seeks to demonstrate the matters set out in Clause 4.6(3)(a) and (b) of the PLEP 2014 (the 'Clause 4.6 Request').

Subclause (1) of this clause provides that:

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

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

Comment:

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

Subclause (2) of this clause provides that:

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

Comment:

Clause 7.8 Limited development on foreshore area 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:

In accordance with the framework of the judgment surrounding *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, the applicant has proposed to demonstrate that it is unreasonable and unnecessary to comply with the development standard insofar that the development is able to satisfy the objective of the particular zone of the land, which in this case is C4. It is considered that the applicant has broadly demonstrated how the development is satisfactory with the C4 zone objective and hence, the written Clause 4.6 variation request has adequately demonstrated that the development can satisfy the C4 zone objectives.

*(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:

*"This submission demonstrates that the installation of the 'Inclinor' will not contravene any of the objectives of the zone or locality pursuant to Pittwater Local Environmental Plan, 2014.*

*There are no significant environmental implications for construction of the Inclinor below the foreshore building line within the terraced and landscaped yard of the property.*

*The Inclinor does not require any vegetation removal or significant ground disturbance and will not be visible from the waterway of Pittwater.*

*The Inclinor is situated wholly within the subject land on a largely developed and landscaped foreshore. It will have no impact upon the encouragement of public waterfront access, foreshore character or environmental conditions.*

*In conclusion, the Inclinor*

- *will not require the removal of any trees of significance for its construction,*
- *is not set in a 'natural environment',*
- *will not impede the passage of wildlife,*
- *will not impede access along the waterfront of the land as the structure*
- *will be situated wholly within private land.*
- *will be situated within the Mean High Water Mark boundary of the subject land above existing paved and reclaimed land.*
- *will have an adequate buffer zone to the waterline to ensure no negative impacts on foreshore vegetation, scenic quality of the waterway or aquatic species.*
- *will not require excessive excavation for its construction,*

- *will predominantly sit as close as possible to the terraced ground levels of the land. Hence, there will be no significant impact on the visual qualities of the land as viewed from the waterway,*
- *be screened by existing structures and vegetation on the subject and adjoining lands,*
- *be painted to blend in with the natural landscape,*
- *be wholly located on private land,*
- *not emit any waste products in its continued operation".*

Having regard to the above environmental planning grounds, they are not considered to be sufficient to warrant variation to the requirements of Clause 7.8 of the PLEP.

The grounds advanced by the applicant within the written Clause 4.6 variation request are either factual statements to which the development and subject site finds itself (for example '*will be situated wholly within private land*') or are grounds that are insufficient to warrant variation (for example '*will predominantly sit as close as possible to the terraced ground levels of the land. Hence, there will be no significant impact on the visual qualities of the land as viewed from the waterway*').

Where the written Clause 4.6 advances environmental planning grounds which are not facts, they contradict objective (a) of Clause 7.8. The objective sets the pretense of the control that development within the foreshore area is not to impact on the natural foreshore processes or affect the significance and amenity of the area. The grounds advanced within the written Clause 4.6 purport to have an acceptable impact on the significance or amenity of the area. Variation to the restricted forms of development under Clause 7.8 cannot be overcome with seeking to apply the framework of Clause 4.6, when the development has not otherwise demonstrated that it can satisfy the objectives of the subject control.

It is noted that there are no apparent environmental planning grounds that maybe deemed sufficient to warrant justification for a variation to the restrictions on development imposed under Clause 7.8 of the PLEP.

#### **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 not satisfied as to the matters set out in Clause 4.6 of the PLEP 2014.

It is considered on balance, that having regard to the particular circumstances, the proposed departure from the development standard is not acceptable and it is unreasonable that flexibility to the standard be applied.

#### **7.2 Earthworks**

The objective of Clause 7.2 - 'Earthworks' requires development to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

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

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

*the locality of the development*

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

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

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

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

Comment: The excavated material will be processed according to the Waste Management Plan for the development.

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

Comment: The proposed earthworks for the footings of the inclinators will not result in unreasonable amenity impacts on adjoining properties.

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

Comment: The excavated material will be processed according to the Waste Management Plan for the development.

*(f) the likelihood of disturbing relics*

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

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

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

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

Comment: Recommended Geotechnical conditions are included in the recommendation of this report if the application were to be approved, that will minimise the impacts of the development.

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

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

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

## **7.6 Biodiversity protection**

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

*(a) whether the development is likely to have:*

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

Comment:

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

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

Comment:

The development has been assessed by Council's Bushland and Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the proposal includes appropriate measures to avoid, minimise, or mitigate the impacts of the development.

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

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

Comment:

The development has been assessed by Council's Bushland Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the development is designed, sited and will be managed to any significant adverse environmental impact.

## **7.7 Geotechnical hazards**

Under Clause 7.7 Geotechnical Hazards, before determining a development application for development on land to which this clause applies, the consent authority must consider the following matters to decide whether or not the development takes into account all geotechnical risks:

- (a) site layout, including access,*
- (b) the development's design and construction methods,*
- (c) the amount of cut and fill that will be required for the development,*

- (d) waste water management, stormwater and drainage across the land,  
 (e) the geotechnical constraints of the site,  
 (f) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Comment:

The proposed development is supported by a Geotechnical Report (prepared by Crozier Geotechnical Consultants, dated 12 December 2023). As such, it is considered that the proposal has considered the geotechnical risks, and subject to recommended conditions, the proposal accounts for all geotechnical risks.

Development consent must not be granted to development on land to which this clause applies unless:

- (a) the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and

Comment:

The proposed development is supported by a Geotechnical Report (prepared by Crozier Geotechnical Consultants, dated 12 December 2023). The proposal will appropriately manage waste water, stormwater, and drainage across the land, and it is considered the proposal will not result in any adverse stormwater impacts.

- (b) the consent authority is satisfied that:

- (i) the development is designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development, or  
 (ii) if that risk or impact cannot be reasonably avoided - the development is designed, sited and will be managed to minimise that risk or impact, or  
 (iii) if that risk or impact cannot be minimised - the development will be managed to mitigate that risk or impact.

Comment:

Council can be satisfied that the proposed development has been designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development.

## Pittwater 21 Development Control Plan

### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m (South)	1.5m	76.93% (5.0m)	No
Rear building line	Foreshore Building Line (North)	Below Foreshore Building Line	10.7m Below Foreshore Building Line	No
Side building line	2.5m (West)	9.9m	-	Yes
	1m (East)	0.4m	60% (0.6m)	No
Building envelope	3.5m (West)	Within envelope	-	Yes
	3.5m (East)	Outside envelope	23.08% (0.9m)	No

Landscaped area	60% (349.02m <sup>2</sup> )	39% (226.2m <sup>2</sup> ) Impervious 6% (34.09m <sup>2</sup> ) Total: 45% (260.29m <sup>2</sup> )	25.42% (88.73m <sup>2</sup> )	<b>No - existing non-compliance reduced</b>
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Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.10 Newport Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	No	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D10.1 Character as viewed from a public place	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)	No	Yes
D10.13 Landscaped Area - Environmentally Sensitive Land	No	Yes
D10.16 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D10.18 Scenic Protection Category One Areas	Yes	Yes

#### Detailed Assessment

#### **C1.19 Incline Passenger Lifts and Stairways**

##### Description of non-compliance

Clause C1.9 Incline Passenger Lifts and Stairways stipulates the following:

- i) be designed and located so they do not involve excessive excavation, or the removal of natural rock or trees, and*
- ii) be erected as near as possible to the ground level (existing) of the site, and shall not involve the erection of high piers or visible retaining structures, and*
- iii) be located and designed to minimise the effects of noise from the motor and overlooking of adjoining dwellings, and*
- iv) be painted to blend in with surrounding vegetation and screened by landscaping and*
- v) be set back two (2) metres from the side boundary to the outer face of the carriage*
- vi) be located wholly on private land, and*
- vii) have a privacy screen where there is a direct view within 4.5m to a window of a habitable room of another dwelling.*

##### Comment:

i) The proposed inclinator has been designed to limit excavation, and does not result in the removal of natural rock or significant trees.

ii) The proposed inclinator is located near as possible to ground level (existing), and does not result in the erection of unnecessarily high piers.

iii) The proposed inclinator adjoins an inclinator of the site located to the east at No.108 Prince Alfred Parade. As such, it is considered that the noise likely to be emanated from the operation of the inclinator will not result in any unacceptable acoustic impacts, or the unreasonable overlooking of adjoining dwellings.

iv) The proposed colour of the inclinator is shown recessive, with the use of earthy colours, and as such will appropriately blend in with surrounding vegetation and screened by existing and proposed landscaping.

v) The proposed set back from the outer face of the carriage is approximately 0.4m from the adjoining boundary, presenting a variation to the control. Notwithstanding, the inclinator is physically separated by an existing boundary fencing, and will not result in any unacceptable amenity impacts to the adjoining site to the east at No.108 Prince Alfred Parade. It is important to note the inclinator that is located on No.108 Prince Alfred Parade is located closer to the side boundary line.

vi) The proposed inclinator is located wholly within the site boundaries.

vii) The proposed inclinator is located within 4.5 metres of windows of the adjoining site to the east. As such, if the application were to be approved a privacy screen is recommended for the outer eastern side of the inclinator to ensure no unacceptable privacy impacts arise.

#### Merit consideration

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

- ***Incline passenger lifts and stairways that cause minimal visual and acoustic disturbance to the environment and neighbours. (En, S)***

#### Comment:

It is considered that the proposed incline passenger lift will result in visual and acoustic disturbance to the environment and neighbours. It is not considered that these impacts have been minimised.

### **D10.7 Front building line (excluding Newport Commercial Centre)**

#### Description of non-compliance

The proposed inclinator at the top of the site is located 1.5 metres from the front building line, presenting a variation of 76.93% (5.0 metres) to the 6.5 metres front boundary line.

The proposal has been assessed against the outcomes of the control, and it is considered in this instance that the proposal is consistent with the outcomes.

#### 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 proposal is consistent with the desired future character of the Newport Locality.

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

#### Comment:

The proposal will ensure preservation of views and vistas to and/or from public and private places.

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

Comment:

The site does not adjoin a main road. Therefore this outcome is not relevant.

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

Comment:

The proposal largely includes the retention of existing vegetation, albeit the exempt palm species. The proposal is accompanied by a Landscape Plan that details enhanced plantings that will assist to visually reduce the built form.

- ***Vehicle manoeuvring in a forward direction is facilitated. (S)***

Comment:

There are no changes to the existing vehicular access under this application.

- ***To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.***

Comment:

The proposal will present appropriately to the streetscape, and will present a scale and density that is consistent with surrounding developments. Furthermore, the proposed maximum height of the inclinator carriage is in keeping with the height of the natural environment.

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

Comment:

The proposal will present an attractive street frontage, and there are no changes to the existing pedestrian amenity.

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

Comment:

The proposed inclinator responds appropriately that the existing spatial characteristics that include inclinator within the existing urban environment. It is important to note the adjoining sites to the east and west both contains inclinator.

#### **D10.8 Side and rear building line (excluding Newport Commercial Centre)**

##### Description of non-compliance

Clause D10.8 Side and rear building line of Pittwater 21 Development Control requires a side setback of 2.5 metres to one side, and 1.0 metres to the other side. The rear setback is the Foreshore Building line. The Foreshore Building Line is as per the Foreshore Building Line Map in the Pittwater Local Environmental Plan 2014. The Foreshore Building Line takes precedence over this control, and as such this has been discussed under Clause 4.6 of this report.

The proposed inclinator presents a side setback of 0.4 metres to the eastern side boundary, presenting a variation of 60% (0.6 metres) to the required 1.0 metres control. The proposal is compliant with the western side boundary setback of 2.5 metres.

A detailed assessment has been conducted against the outcomes of the control and it is considered that the proposed variation is supportable in this instance. Furthermore, the side setback of the inclinator has been discussed under Clause C1.19 Incline Passenger Lifts and Stairways of Pittwater 21 Development Control Plan contained within this report.

#### 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 proposal is 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 inclinator will not present any unacceptable bulk and scale, and as such the built form is minimal.

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

#### Comment:

The proposal will not result in any impacts to 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:

The proposal will provide view sharing through the location of the inclinator, design, and proposed landscaping.

- ***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:

The proposed inclinator will provide a reasonable level of privacy, amenity, and solar access to the development site, and adjoining residential properties.

- ***Substantial landscaping, a mature tree canopy and an attractive streetscape. (En, S)***

#### Comment:

The proposal retains existing trees, and plantings, that will present appropriately to the street scape.

- **Flexibility in the siting of buildings and access. (En, S)**

Comment:

Flexibility is afforded as the proposed location is considered the most appropriate given the location of the existing dwelling house.

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

Comment:

The proposal includes retained and enhanced vegetation that will visually reduce the built form.

- **To ensure a landscaped buffer between commercial and residential zones is established. (En, S)**

Comment:

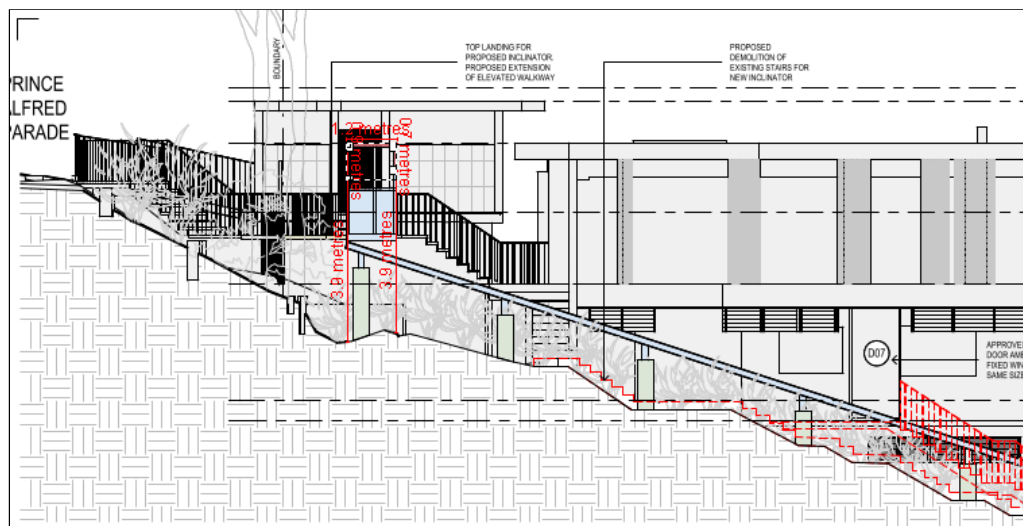
The site is not in or surrounded by commercial zones. Therefore, this outcome is not relevant.

#### D10.11 Building envelope (excluding Newport Commercial Centre)

##### Description of non-compliance

Under Clause D10.11 Building envelope of Pittwater 21 Development Control Plan, buildings are to be sited within the following envelope determined by planes projected at 45 degrees from a height of 3.5 metres above ground level (existing) at the side boundaries to the maximum building height.

The eastern elevation of the proposed inclinator carriage sits outside of the building envelope. The east elevation presents a maximum encroachment of 0.9 metres in height for a horizontal length of 1.2 metres, presenting a maximum variation of 23.08% (see Figure 2).



**Figure 2. Building Envelope variation (red highlighting numerical non-compliance)**

The proposed variation is to the roof and side posts of the inclinator carriage, and as such it is considered that the variation is supportable as the proposal meets the outcomes of the control as

detailed 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 proposal is consistent with the desired future character of the Newport Locality.

- ***To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.***

#### Comment:

The proposed inclinator will not result in any significant changes to the streetscape as the site is located below the street level. The proposed inclinator will present a scale and density that is below the height of the trees of the natural environment.

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

#### Comment:

The proposed development responds to the spatial characteristics of the existing natural environment as the proposal does not result in the removal of any significant vegetation.

- ***The bulk and scale of the built form is minimised. (En, S)***

#### Comment:

The proposal is considered to be of minimal bulk and scale as the inclinator carriage is an open and lightweight structure.

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

#### Comment:

The proposal will not result in the impact of any significant views and vistas to and/or from public/private places.

- ***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:

The proposal will provide for an appropriate level of privacy, amenity, and solar access within the development site and to adjoining residential properties.

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

#### Comment:

The proposal largely retains the existing vegetation, and includes the addition of plantings that will assist to visually reduce the built form.

**D10.13 Landscaped Area - Environmentally Sensitive Land**Description of non-compliance

The proposed development presents 39% (226.2m<sup>2</sup>) of landscaped area, and 6% impervious landscaped area (34.09m<sup>2</sup>), resulting in a total of 45% (260.29m<sup>2</sup>).

It is important to note, that the proposal increases the landscaped area on site, noting the recent application (DA2021/1448) approved a total of 33.28% (193.6m<sup>2</sup>) of landscaped area. Therefore, the proposed inclinor results in the increase of landscaped area as a result of the demolition of the existing stairs.

Under Clause D10.13 of Pittwater 21 Development Control Plan, provided the outcomes of this control are achieved, the following may be permitted on the landscaped proportion of the site:

- *impervious areas less than 1 metre in width (e.g. pathways and the like);*
- *for single dwellings on land zoned R2 Low Density Residential, R3 Medium Density Residential or E4 Environmental Living, up to 6% of the total site area may be provided as impervious landscape treatments providing these areas are for outdoor recreational purposes only (e.g. roofed or unroofed pergolas, paved private open space, patios, pathways and uncovered decks no higher than 1 metre above ground level (existing)).*

In this instance it is considered that the additional 6% of impervious landscaped areas are acceptable, as the outcomes of the control have been achieved.

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 development is consistent with the Newport Desired Future Character Statement.

- ***The bulk and scale of the built form is minimised. (En, S)***

Comment:

The proposed development sits below the existing maximum height of buildings, and as such it is considered that the proposed inclinor is of minimal bulk and scale.

- ***A reasonable level of amenity and solar access is provided and maintained. (En, S)***

Comment:

The proposal will retain a reasonable level of amenity and solar access as a result of the proposed development. The proposed inclinor is unlikely to have an adverse impact on the adjoining site to the east at No.108 Prince Alfred Parade, given the adjoining site has an

inclinators along the side boundary line.

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

Comment:

The proposal is accompanied by a Landscape Plan that details additional vegetation and plantings that will visually reduce the built form.

- ***Conservation of natural vegetation and biodiversity. (En)***

Comment:

The proposal will conserve the natural vegetation and biodiversity contained within the site. Furthermore, Council's Bushland and Biodiversity Officer has reviewed the proposal, who is supportable subject to recommended conditions if the application were to be approved.

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

Comment:

The proposal retains adequate soft landscaped area to reduce stormwater runoff, prevent soil erosion, and siltation of natural drainage channels.

- ***To preserve and enhance the rural and bushland character of the area. (En, S)***

Comment:

The rural and bushland character of the area is adequately 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:

There are ample soft surfaces to provide for infiltration of water to the water table, to minimise run-off, and assist with stormwater management.

## 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 \$2,145 is required for the provision of new and augmented public



infrastructure. The contribution is calculated as 1% of the total development cost of \$214,500.

## **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;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

Council is not satisfied that the Applicant's written request under Clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking to justify variation of the development standard contained within Clause 7.8 Limited development on foreshore area 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 demolition works and construction of an inclinor, has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to departure from a non-numeral development standard being Clause 7.8 Limited development on foreshore area of Pittwater Local Environmental Plan 2014.

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

The application must fail as the accompanying written Clause 4.6 variation request fails to provide sufficient environmental planning grounds, with those advanced unsupportable. The Clause 4.6 does not present sufficient environmental planning grounds to justify the contravention of Clause 7.8 Limited

development on foreshore area. Therefore, the proposal has been recommended for refusal.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council , as the consent authority REFUSE Development Consent to Development Application No DA2024/0113 for the Demolition works and construction of an inclinator on land at Lot 25 DP 13457, 106 Prince Alfred Parade, NEWPORT, for the reasons outlined as follows:

1. **1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to development standards of the Pittwater Local Environmental Plan 2014.**

### Particulars:

The environmental planning grounds advanced by the applicant, including in relation to the factual circumstances of the proposal acceptable impacts of the proposal, are not deemed sufficient to justify the variation. As such, it is considered that the development cannot be found to have sufficient environmental planning grounds to justify contravening the development standard. It is considered that compliance with the development standard is reasonable and necessary in the circumstances.

2. **Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979 the site is not suitable for the proposed development.**

### Particulars:

The proposed inclinator is not permitted development within the foreshore area and results in adverse visual impacts on the public domain. Therefore, the site is not considered to be suitable for the proposed development.

3. **Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause Zone C4 Environmental Living of the Pittwater Local Environmental Plan 2014.**

### Particulars:

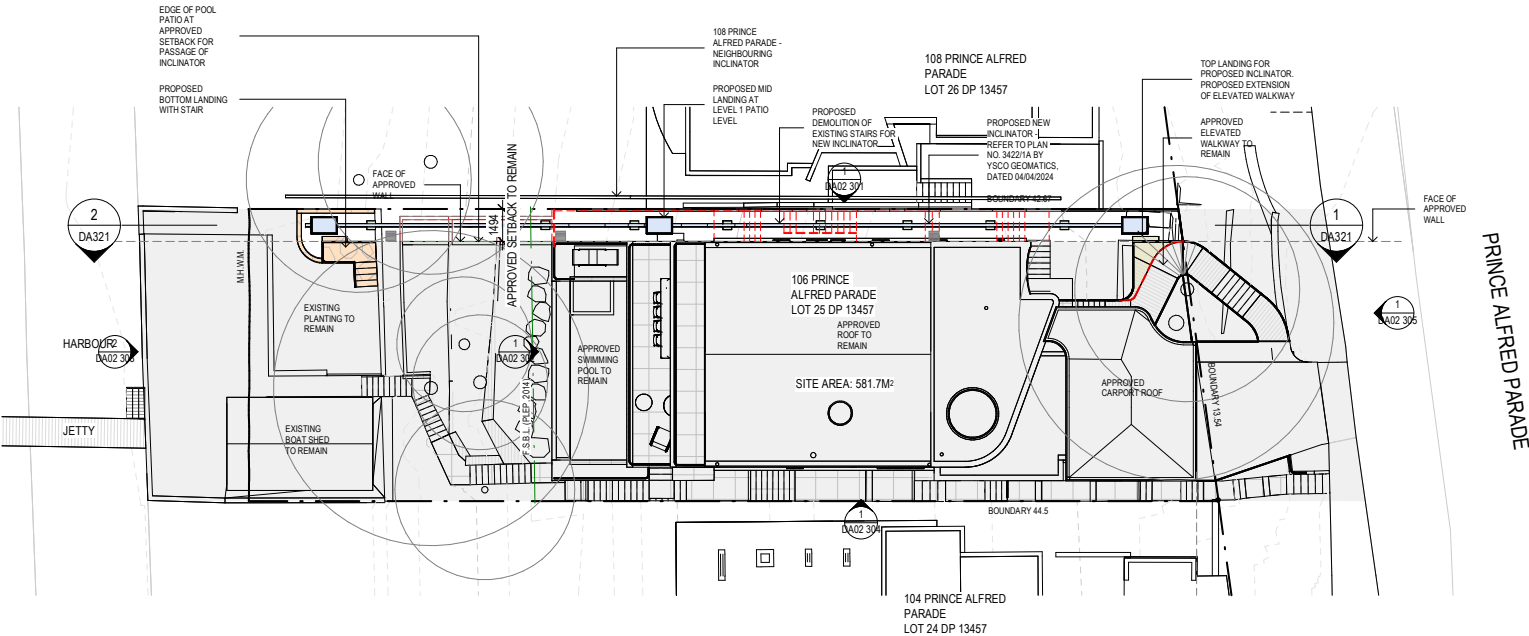
The proposed inclinator is visible from the public domain and has an adverse effect on the aesthetic values of the area.

4. **Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 7.8 Limited development on foreshore area of the Pittwater Local Environmental Plan 2014.**

Particulars:

Inclinators are not permitted development within the foreshore area. Further the development is inconsistent with the objective of the Pittwater Local Environmental Plan 2014 in clause 7.8 (1)

(a) Limited development on foreshore area, namely, to ensure that development in the foreshore area will not affect the significance and amenity of the area.



**MATERIAL - LEGEND**

	CEMENT RENDER		TIMBER
	GLASS		NATURAL STONE
	METAL		SANDSTONE
	BRICK		CONCRETE

**KEY**

	BOUNDARY
	DEMOLITION OF EXISTING
	APPROVED WORK TO REMAIN

ERIK SMITHSON ARCHITECTURE



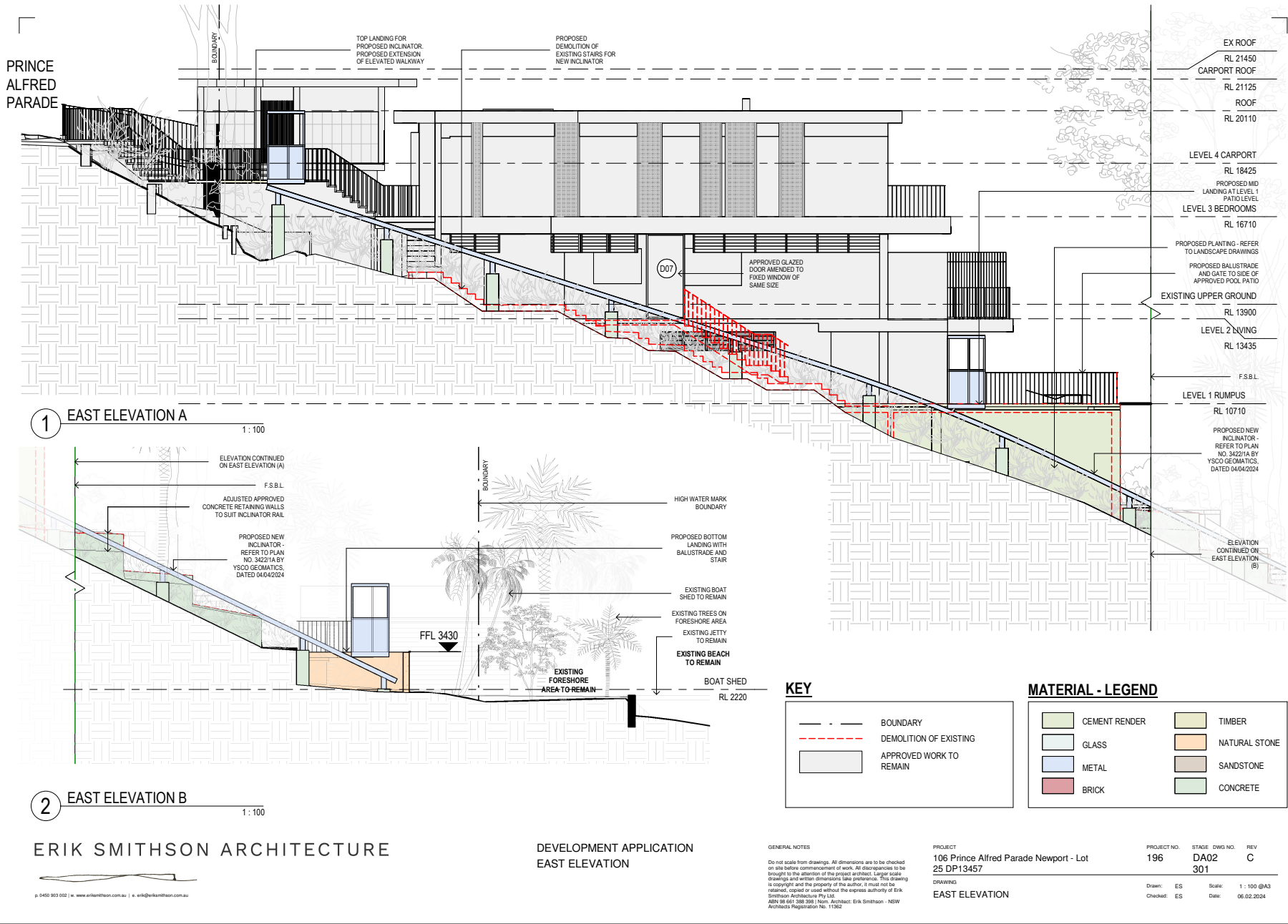
DEVELOPMENT APPLICATION  
SITE PLAN / ROOF PLAN

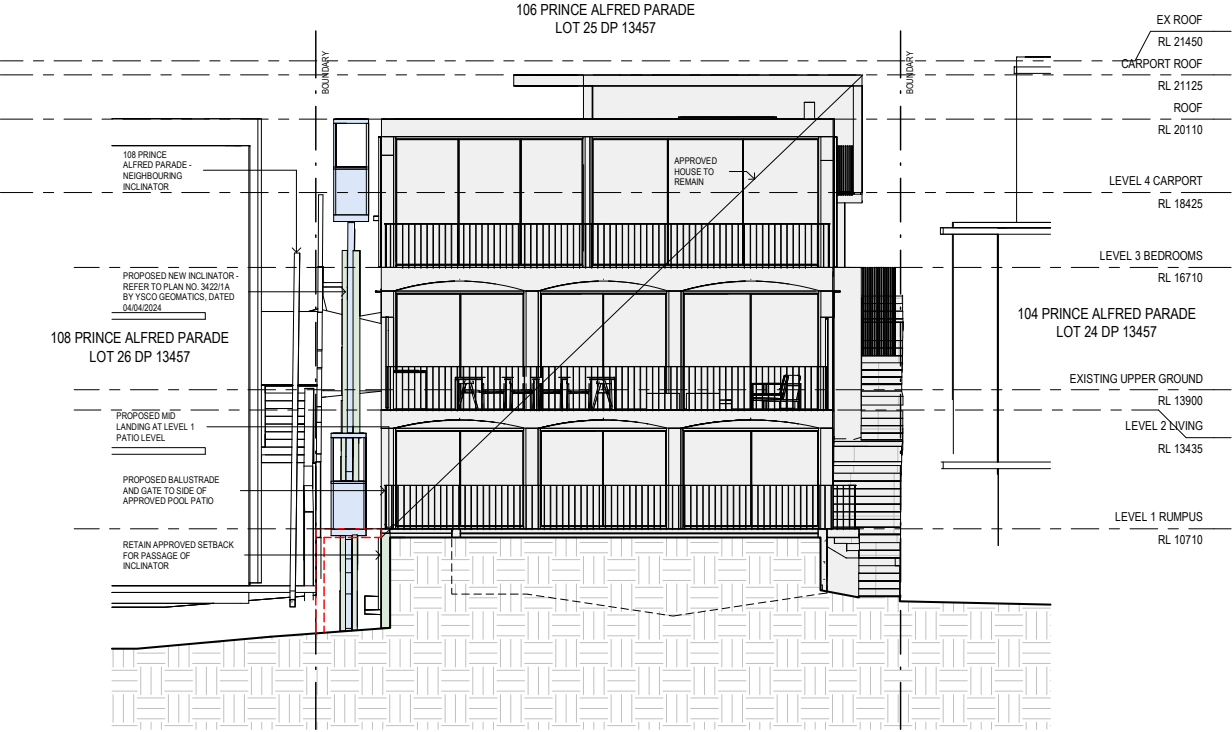


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ABN 56 661 588 398 | Name: Architect: Erik Smithson - NSW Architects Registration No. 11362

PROJECT  
106 Prince Alfred Parade Newport - Lot 25 DP13457  
DRAWING  
SITE PLAN / ROOF PLAN

PROJECT NO.	STAGE	DWG NO.	REV
196	DA02	101	C
Drawn:	ES	Scale:	As indicated @A3
Checked:	ES	Date:	06.02.2024





**KEY**

---	BOUNDARY
---	DEMOLITION OF EXISTING
---	APPROVED WORK TO REMAIN

**MATERIAL - LEGEND**

CEMENT RENDER	TIMBER
GLASS	NATURAL STONE
METAL	SANDSTONE
BRICK	CONCRETE

ERIK SMITHSON ARCHITECTURE

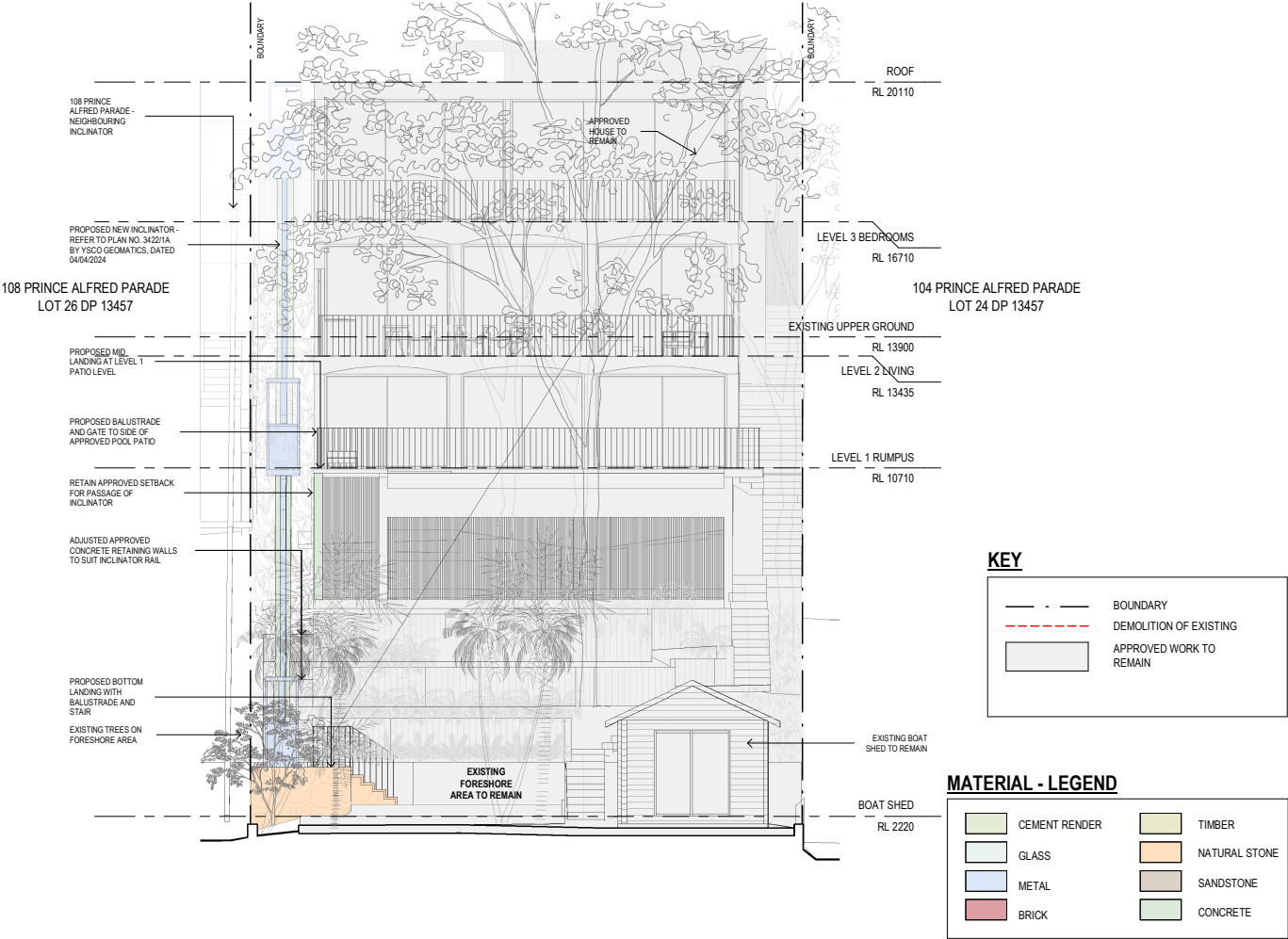


DEVELOPMENT APPLICATION  
NORTH ELEVATION

GENERAL NOTES  
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ABN 56 651 588 395 | Name: Architect: Erik Smithson - NSW Architects Registration No. 11362

PROJECT  
106 Prince Alfred Parade Newport - Lot  
25 DP13457  
DRAWING  
NORTH ELEVATION

PROJECT NO.	STAGE	DWG NO.	REV
196	DA02	302	C
Drawn: ES	Scale: 1:100 @A3		
Checked: ES	Date: 06.02.2024		



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DEVELOPMENT APPLICATION  
NORTH ELEVATION -  
PITTWATER

GENERAL NOTES

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ABN 56 661 588 395 | Nom. Architect: Erik Smithson - NSW Architects Registration No. 11362

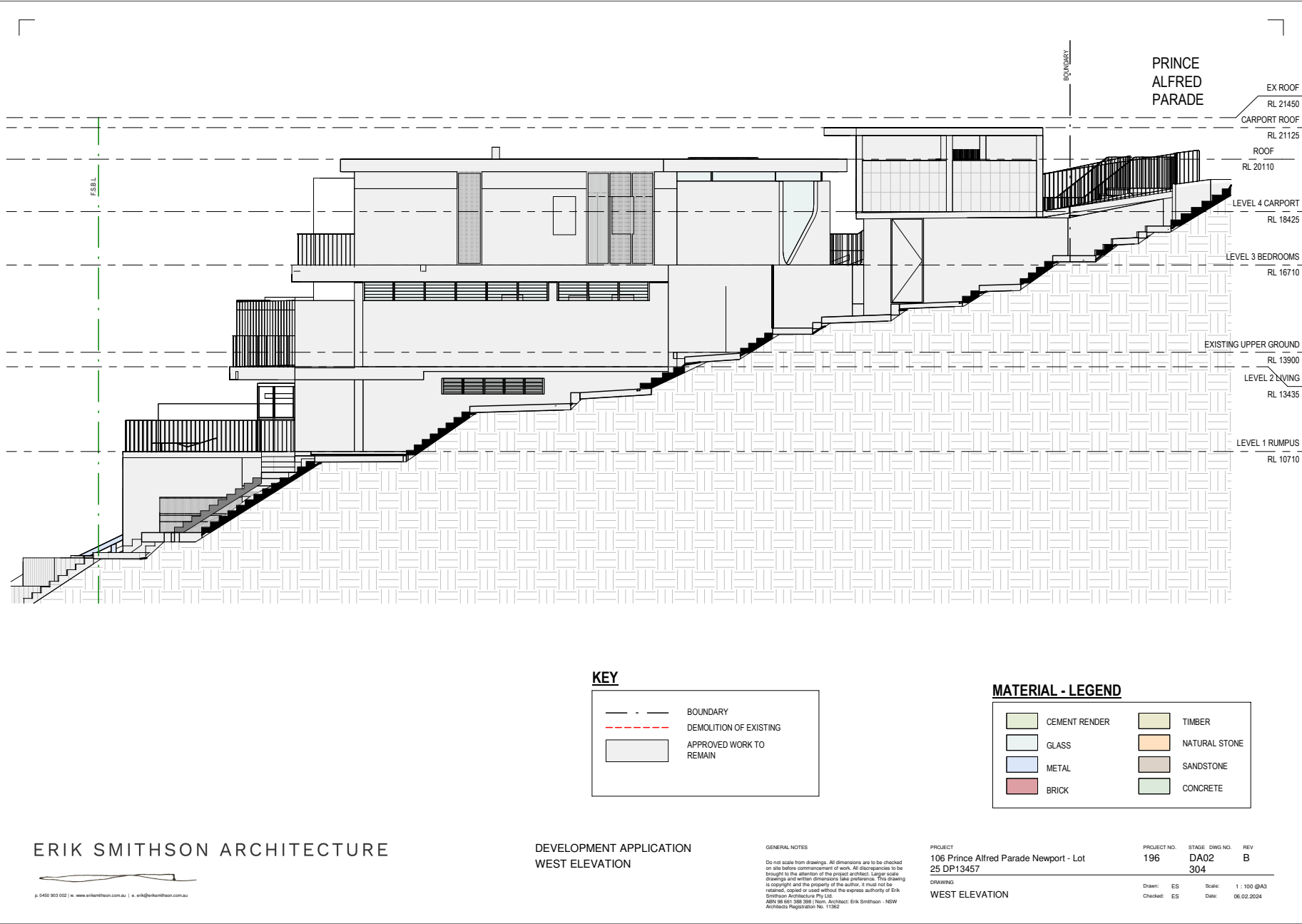
PROJECT  
106 Prince Alfred Parade Newport - Lot  
25 DP13457

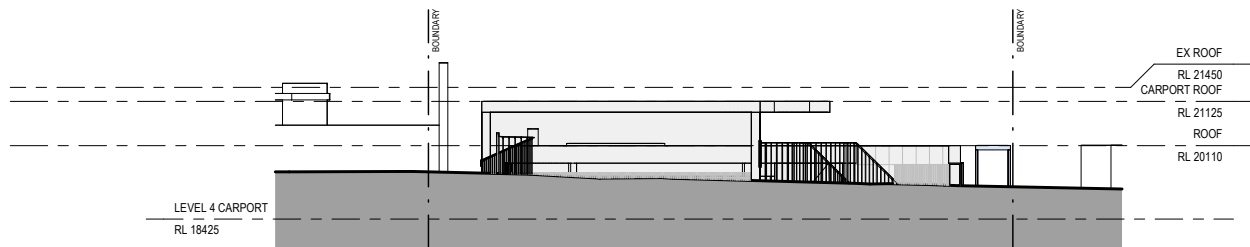
DRAWING  
NORTH ELEVATION - PITTWATER

PROJECT NO.	STAGE	DWG NO.	REV
196	DA02	303	A

Drawn:	ES	Scale:	1:100 @A3
Checked:	ES	Date:	05.04.2024







1 SOUTH ELEVATION - STREET  
1 : 100

**KEY**

---	BOUNDARY
---	DEMOLITION OF EXISTING
---	APPROVED WORK TO REMAIN

**MATERIAL - LEGEND**

CEMENT RENDER	TIMBER
GLASS	NATURAL STONE
METAL	SANDSTONE
BRICK	CONCRETE

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DEVELOPMENT APPLICATION  
SOUTH ELEVATION

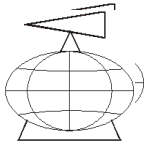
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ABN 56 651 388 395 | Name: Architect: Erik Smithson - NSW Architects Registration No. 11362

PROJECT  
106 Prince Alfred Parade Newport - Lot  
25 DP13457  
DRAWING  
SOUTH ELEVATION

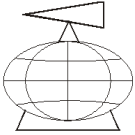
PROJECT NO.	STAGE	DWG NO.	REV
196	DA02	305	B
Drawn:	ES	Scale:	1 : 100 @A3
Checked:	ES	Date:	06.02.2024

This aerial map displays a residential neighborhood with property boundaries and lot numbers. A central lot is highlighted with a red border. The map includes a curved road labeled 'PRINCE ALFRED PARADE' and several waterfront properties with boat docks. Lot numbers are visible in pink text, and specific property identifiers like 'DP 131514' and 'DP 13457' are marked.

## SECTION 4.6 – REQUEST TO VARY A DEVELOPMENT STANDARD



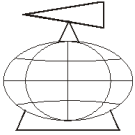
<b>SUBJECT</b>	<b><u>CONTENTS</u></b>	<b>PAGE</b>
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<b>2. SITE LOCATION AND DESCRIPTION</b>		
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#### **APPENDICES**

Appendix No.1 - Site Photographs



## 1. INTRODUCTION

This application requests to vary a development standard in relation to construction of an Inclinator within property No.106 Prince Alfred Parade, Newport. It has been prepared in accordance with clause 4.6 of Pittwater Local Environmental Plan, 2014, clause 35B(2) of the Environmental Planning and Assessment Regulation, 2021, and the 'Guide to Varying Development Standards', issued by the NSW Department of Planning and Environment, dated November 2023.

The construction of the proposed Inclinator below Council's mapped Foreshore Building Line represents a variation to a development standard in *Non-numerical* terms. This request will demonstrate that;

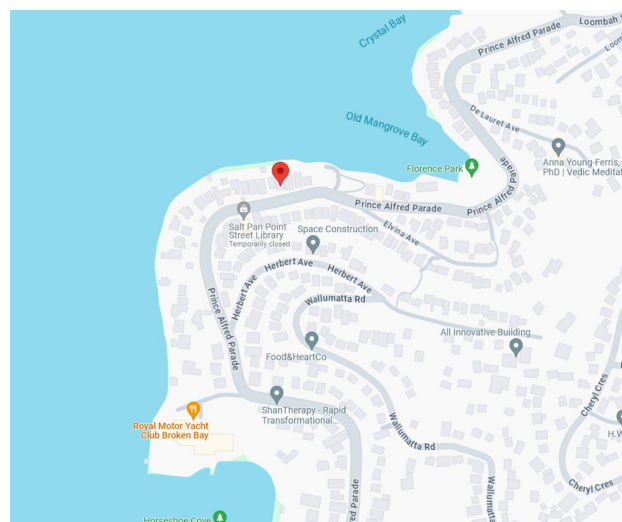
- \* compliance with the development standard is unnecessary in the circumstances and,
- \* there are sufficient environmental planning grounds to justify the contravention of the development standard.

The request has been prepared by YSCO Geomatics on behalf of the Owner of the land, Mrs Teresa Easter.

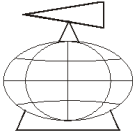
## 2. SITE LOCATION AND DESCRIPTION

### 2.1 Site Location and Context

The land is located as shown on Figure 1 below;



**Figure 1: SITE LOCATION**  
(Google Maps)



## 2.2 Site Description

The land is currently held in title by Ms Teresa Easter as Lot 25 in Deposited Plan 13457.

Situated upon the land is a cement rendered brick residence together an enclosed concrete swimming pool and a weatherboard boatshed, known as No. 106 Prince Alfred Parade, Newport.

Various improvements are situated beyond the Mean High Water Mark boundary of the land within Pittwater including the roof overhang and deck of the weatherboard boatshed, a paved reclaimed area, a timber jetty and a pontoon.

## 2.3 Adjoining Development

*To the East of the subject land is:*

A three storey cement rendered brick residence known as No.108 Prince Alfred Parade, Newport.

*To the West of the subject land is:*

A residence known as No.104 Prince Alfred Parade, Newport.

The structures referred to on the subject and adjoining land are based on the Site Plan by Chadwick & Cheng Consulting Surveyors, Ref: 40157/D3-MGA, updated on the 15<sup>th</sup> January, 2024.

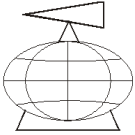
## 3. DESCRIPTION OF THE INCLINATOR PROPOSAL

Development consent is sought for construction and installation of an Inclinator. The plans submitted by P.R. King & Sons Pty Ltd., Ref: 3422/1A, dated the 7<sup>th</sup> of February, 2024, shows the proposed location and extent of the Inclinator on the land.

### 3.1 Siting

The 'Inclinator' is proposed to be situated adjacent to part of the Eastern boundary of the subject land for a horizontal distance of approximately 38 metres as shown on the design plan lodged with the application.

The bottom terminal of the proposed is to be situated approximately 10 metres below the Foreshore Building Line as mapped by Northern Beaches Council, pursuant to Pittwater Council, LEP, 2014.



### 3.2 Access

The proposed 'Inclinor' will be used primarily to provide equitable access between the residence and the lower waterfront level of the land & include a mid landing station. It will provide improved access for the owners of the land, guests, elderly guests and also any person having a disability or impaired mobility.

### 3.3 Structures and Appearance

The proposed 'Inclinor' carriage is to be 0.8 metres wide, 1.2 metres long and 1.1 metres high (above floor plate) with an aluminium frame.

The rail is to be a 150mm wide U.C. steel beam supported on concrete foundations of 400mm diameter with a steel universal beam riser connected to the rail.

The lift is to be painted a colour that blends in with the surroundings. Colour is to be Woodland Grey or a similar tone. (black, dark green, charcoal, pale eucalypt, ironstone, etc).

### 3.4 Landings

The top landing station is intended to align with a stair access landing at R.L. 17.88 (approximate) as shown on the design plan.

A mid landing is intended to be located on a terrace at R.L. 3.43 (approximate) as shown.

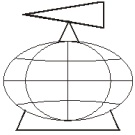
The proposed bottom landing station to be situated approximately 0.9 metres above the existing lower grassed terrace level within the land and approximately 3 metres inside the Mean High Water Mark boundary. The landing is proposed to be constructed at nominal R.L. 3.43 as shown on the design plan.

### 3.5 Lift Motor & Noise

The lift will be powered by an electric motor and will emit no pollutants or waste products. The Inclinor is designed to operate in a residential environment in consideration of noise levels established by 'EPA' guidelines.

The Inclinor will travel adjacent to the existing Inclinor situated within the adjoining land known as No. 108 Prince Alfred Parade, Newport. A nominally 2.1 high lapped paling fence is constructed on the boundary. Inclinors are used only occasionally and intermittently. Hence, in this particular instance it can be concluded that noise will not have any impact on the adjoining residence.





### 3.6 Erosion & Sedimentation Control

Excavation work will be required to enable the excavation of approximately 12 foundations, placement of the rail and the passage of the Inclinator carriage between the desired landing stations as shown on the plans.

Three foundations together with the bottom landing are to be constructed below the mapped Foreshore Building Line.

It is intended to demolish the tiled path on the Eastern side of the house and replace with soft landscaping.

Silt fencing is to be installed below the proposed works areas prior to commencement of works and any temporarily stored topsoil or other material is to be covered & protected for the duration of the works. This is indicated on the design plan by P.R. King & Sons Pty Ltd., Ref: 3422/1A, submitted with the application.

### 3.7 Waste Management

Approximately 7.5 cubic metres of earth will require excavation for the foundations and passage of the Inclinator.

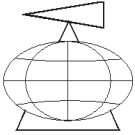
The paved stairs beside the house and part of the existing pool terrace slab are to be removed.

Any waste material shall be reused, recycled or disposed of responsibly at a Council approved waste disposal centre.

There will be no excess building waste generated in the construction of the Inclinator.

Apart from pouring the required amount of concrete to form foundations, the remainder of the Inclinator components are constructed off site from factory measurements and installed on site with no wastage.

The works are generally minor and as such the amount of site disturbance & waste generated will be minimal.

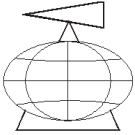


### 3.8 Schedule of Site Works

Works being the subject of this application for construction and installation of and Inclinator include;

#### **ALL SITE PROPOSED WORKS**

<b>Item No.</b>	<b>Site Work</b>	<b>Drawing Reference</b>
1.	Site establishment & install Sediment & Erosion Control facilities.	Plan 'P.R. King & Sons P/L, Ref 3422/1A, dated 07/02/24.
2.	Demolition of; Tiled pathway and stairs on Eastern side of house, & disposal of materials.  The East extent of the existing pool terrace area.	Plan- Erik Smithson Architecture, Project 196, Ref: DA110, Rev.B, dated 06/02/2024.  Plan 'P.R. King & Sons P/L, Ref 3422/1A, dated 07/02/24.
3.	Adjustment & lower section of concrete garden retaining walls approved in DA2021/1448, Plan L100C, to allow passage of rail and Inclinator car.	Plan- Erik Smithson Architecture, Project 196, Ref: DA110, Rev.B, dated 06/02/2024.  Plan 'P.R. King & Sons P/L, Ref 3422/1A, dated 07/02/24.
4.	Construct Inclinator foundations.	Plan- Erik Smithson Architecture, Project 196, Ref: DA02, Rev.B, dated 06/02/2024.  Plan 'P.R. King & Sons P/L, Ref 3422/1A, dated 07/02/24.
5.	Proposed landscaping on Eastern side of house in location of demolished tiled pathway and stairs. To increase deep planting.	Landscape plan, ref: L100A, by Spirit Level, dated 25/01/2024.
6.	Construct top Inclinator landing to connect to approved stair access from Prince Alfred Parade.	Plan- Erik Smithson Architecture, Project 196, Ref: DA02, Rev.B, dated 06/02/2024.
7.	Construct bottom Inclinator landing and access stairs.	Plan- Erik Smithson Architecture, Project 196, Ref: DA02, Rev.B, dated 06/02/2024.
8.	Mid landing to be incorporated into Inclinator installation.	Plan 'P.R. King & Sons P/L, Ref 3422/1A, dated 07/02/24.
9.	Stormwater drainage works	Plan ITM Design, Ref: H-DA2-00, Rev B, "Proposed New Inclinator"
10.	Installation of Inclinator components including steel support brackets, steel rail and carriage.	Plan 'P.R. King & Sons P/L, Ref 3422/1A, dated 07/02/24.



#### WORK BELOW THE MAPPED FORESHORE BUILDING LINE

Item No.	Site Work	Drawing Reference
1.	Construct 3 Inclinator foundations & bottom landing structure and access stairs.	Plan 'P.R. King & Sons P/L, Ref 3422/1A, dated 07/02/24.  Plan- Erik Smithson Architecture, Project 196, Ref: DA02-101 & DA02-301, Rev.B, dated 06/02/2024.
2.	Adjustment & lower section of concrete garden retaining walls approved in DA2021/1448, Plan L100C, to allow passage of rail and Inclinator car.	Plan- Erik Smithson Architecture, Project 196, Ref: DA02-110, Rev.A, dated 06/02/2024.  Plan 'P.R. King & Sons P/L, Ref 3422/1A, dated 07/02/24.

#### 4. RELEVANT ENVIRONMENTAL PLANNING INSTRUMENT

The applicable environmental planning is Pittwater Local Environmental Plan, 2014.

##### 4.1 Zoning

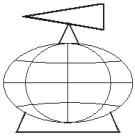
The land is zoned 'C4 - Environmental Living' pursuant to Pittwater Local Environmental Plan, 2014.

##### 4.2 Pittwater Local Environmental Plan, 2014 (PLEP, 2014).

###### (i) Clause 2.3 - Objectives of Zone C4 Environmental Living

The objectives of zone C4 are;

- \* *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- \* *To ensure that residential development does not have an adverse effect on those values.*
- \* *To provide for residential development of a low density and scale integrated with the landform and landscape.*
- \* *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*



### 4.3 The Development Standard to be Varied

#### (i) Clause 7.8 – Limited Development on Foreshore Area

The objectives of this clause are as follows;

- (a) to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area,
- (b) to ensure continuous public access along the foreshore area and to the waterway.

Pursuant to clause 7.8 (2), Inclinator is not listed as structures that can be approved within the 'foreshore area'.

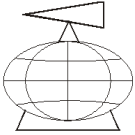
Structures that can be approved include *boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors)*.

The mapped Foreshore Building Line is indicated on Figure 2 below. (PLEP, 2014).



**Figure 2:** Northern Beaches Council - Foreshore Building Line Map, PLEP, 2014.

The Foreshore Building Line is plotted on plans submitted with this Development Application.



#### **4.4 The Type of Development Standard**

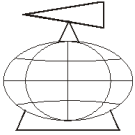
The development standard to be varied is non-numeric. An exception to the standard to be varied is dependent on a justification that the installation of the Inclinator will not have an impact on the environmental considerations outlined in clauses 7.8(3) and 7.8(4) of Pittwater LEP, 2014.

Clauses 7.8(3) and 7.8(4) are as follows;

##### Clause 7.8(3)

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

- (a) the development will contribute to achieving the objectives for the zone in which the land is located, and*
- (b) the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and*
- (c) the development will not cause environmental harm such as—*
  - (i) pollution or siltation of the waterway, or*
  - (ii) an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or*
  - (iii) an adverse effect on drainage patterns, or*
  - (iv) the removal or disturbance of remnant riparian vegetation, and*
- (d) the development will not cause congestion or generate conflict between people using open space areas or the waterway, and*
- (e) opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and*
- (f) any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and*
- (g) in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and*
- (h) sea level rise, coastal erosion and recession, or change of flooding patterns as a result of climate change, have been considered.*



Clause 7.8(4)

*In deciding whether to grant consent for development in the foreshore area, the consent authority must consider whether and to what extent the development would encourage the following;*

- (a) continuous public access to and along the foreshore through or adjacent to the proposed development,*
- (b) public access to link with existing or proposed open space,*
- (c) public access to be secured by appropriate covenants, agreements or other instruments registered on the title to land,*
- (d) public access to be located above mean high water mark,*
- (e) the reinforcing of the foreshore character and respect for existing environmental conditions. (Pittwater local Environmental Plan, 2014)*

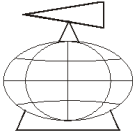
**4.5 Justification of the Proposed Variation**

The development standard to be varied is non-numeric. An exception to the standard to be varied is dependent on a justification that the Inclinator installation does not cause any significant impacts in terms of the environmental considerations outlined in clause 2.3, Zone Objectives and also clauses 7.8(3) and 7.8(4).

*(i) Clause 2.3 - Objectives of Zone C4 Environmental Living*

In terms of zone objectives;

- (a) The subject land has been occupied for residential purposes since approximately 1925 following the subdivision of the land in Deposited Plan 13457. The land forward of the Foreshore Building Line has been landscaped with typical residential gardens which terrace down to a grassed and brick paved area adjacent to the mean High Water boundary of the land. The characteristics of the land and landscaped gardens are indicated in photographs in Appendix No.1 to this request. The land has no special ecological or scientific values.
- (b) The Pittwater waterway and foreshores have aesthetic values. However, an Inclinator is a device that has a minimal footprint on the land and is not highly visible in comparison to other more substantial built structures along the water frontage such as multi storey dwellings and boat sheds.



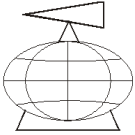
The Inclinometer will be screened by existing vegetation on the subject and adjoining lands and it will not be visible from the waterway.

- (c) Inclinometers are designed to complement living in a low density environment and provide equitable access from dwellings to and from the waterfront boundary of a property. The Inclinometer is designed to integrate with the landform and landscape.
- (d) The proposed Inclinometer is setback 3 metres inside the Mean High Water boundary of the land and there is a further 5 metres of pavement extending out from the boundary. Therefore, the setback from the waterline is substantial and there will be no significant impact on the riparian foreshore and no restriction on the movement of local fauna.

(ii) Clause 7.8(3) - Pittwater Local Environmental Plan, 2014.

In terms of satisfying the requirements of this clause, the Inclinometer;

- a) does not contravene the objectives of the land zone C4,
- b) represents a low structure of minor proportions that will not be visible from Pittwater,
- c) operates via an electric motor and does not emit any exhaust or pollution in the course of its operation, and,  
  
will be situated wholly within the subject land and will not have any impact on drainage patterns or the aquatic environment of Pittwater.
- d) will have no impact on public open space or the waterway,
- e) will not compromise existing access along the waterfront,
- f) will not compromise any natural or aesthetic values of the land. As noted already in section 4.5(1) above, the part of the land upon which the Inclinometer is to be situated does not possess any significant historic, scientific, cultural, social, archaeological or architectural designations,
- g) will be situated approximately 2.1 metres above the level of Mean High Water at its lowest level and be wholly above the estuarine planning level of 2.65 metres A.H.D. for the vicinity, to allow for future climate change and sea level rise.



(ii) Clause 7.8(4) - Pittwater Local Environmental Plan, 2014.

In terms of satisfying the requirements of this clause, the Inclinator is situated wholly within the subject land on a largely developed and landscaped foreshore. It will have no impact upon the encouragement of public waterfront access, foreshore character or environmental conditions.

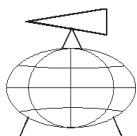
In conclusion, the Inclinator

- \* will not require the removal of any trees of significance for its construction,
- \* is not set in a 'natural environment',
- \* will not impede the passage of wildlife,
- \* will not impede access along the waterfront of the land as the structure will be situated wholly within private land.
- \* will be situated within the Mean High Water Mark boundary of the subject land above existing paved and reclaimed land.
- \* will have an adequate buffer zone to the waterline to ensure no negative impacts on foreshore vegetation, scenic quality of the waterway or aquatic species.
- \* will not require excessive excavation for its construction,
- \* will predominantly sit as close as possible to the terraced ground levels of the land. Hence, there will be no significant impact on the visual qualities of the land as viewed from the waterway,
- \* be screened by existing structures and vegetation on the subject and adjoining lands,
- \* be painted to blend in with the natural landscape,
- \* be wholly located on private land,
- \* not emit any waste products in its continued operation.

(iii) Previous Departures from the development standard

While there is not a suggestion of an abandonment of the standard in relation to installation of an Inclinator below the Foreshore Building Line, the following table provides a sample of approvals gained for installations either partially or fully below the Foreshore Building Line to provide access to the Mean High water boundary.





Inclinometer installations on waterfront properties are constructed for the purpose of accessing the waterfront.

#### A LIST OF PRIOR CONSENTS

D.A.	Date of Consent	Nature of Consent	Property Address
2020/1225	14/01/2021	Partially (8m) below FSBL – 3.5m inside MHW	98 Prince Alfred Parade, Newport
2018/1540	10/01/2019	Fully (23m) below FSBL – 0.5m inside MHW	21 'Lameroo' The Portions, Lovett Bay
2018/0923	07/09/2018	Partially (12m) Below FSBL - 2m inside MHW	48 Bona Crescent, Morning Bay.
N0194/15	19/06/2015	Partially (13m) Below FSBL - 5m inside MHW	111 Richard Road, Scotland Island
	2016	Partially (11m) below FSBL – 3.5m inside MHW	108 Prince Alfred Parade, Newport
NSWLEC1334 (*)	4/08/2008	Partially (11m) below FSBL- 3.5 inside MHW	205 Riverview Road, Clareville

- (\*) The court decision was based on a submission from the Southern neighbour in relation to cross viewing and visibility of approximately 2 metres of rail at the top landing station. The action was not in relation to work below the Foreshore Building Line.

#### 5. Relevant Case Law

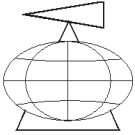
Application where requests for variance to standards on the basis of compliance being 'Unreasonable and Unnecessary' have been considered within the following LEC court cases. These include;

- i) *Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46*
- j) *Wehbe v Pittwater Council [2007] NSWLEC 827*
- k) *Initial Action Ltd v Woollahra Municipal Council [2018] NSWLEC 118*
- l) *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7*

A detailed analysis or summary of the cases is outside the scope of this submission

In each case, decisions are centred around the impacts of the proposal in terms of core zone objectives and also development objectives relative to the specific situation of the proposal and impacts on surrounding properties.

This request for a non numeric variance to a development standard is based on the objectives not being compromised. It has been demonstrated that there are no sensitive matters of environmental significance that will be impacted in this application by installation of the Inclinometer.



## 6. **Other Considerations to Support the Request**

### (i) **Northern Beaches Council Disability Inclusion Access Plan**

Northern Beaches Council is committed to creating and enabling access and inclusion for all people in the community. While the action plan focuses on community facilities, the principle should extend to enabling access within private property. The Inclinator will provide equitable access for the owners of the land, their visitors including any person with a disability or impaired mobility.

While a set of stairs can provide access to the waterfront of the land, the level difference between the pool terrace (R.L.10.7) and the waterfront of the property (R.L.1.7) is 9 metres. It would be impossible for a visitor with a physical disability to access the waterfront.

### (ii) **Construction of the Inclinator.**

The Inclinator construction will consist of 3 foundations within the foreshore area being constructed on concrete foundations at 400mm diameter on 600mm square pads. This represents a total of approximately 1.1 square metres of foundations. The rail is a 150mm square steel section. Hence, a very minimal development footprint.

The Inclinator is to be constructed adjacent to the existing Inclinator within property No.108 Prince Alfred Parade which is set at a similar setback to the common property boundary.

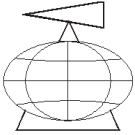
Refusal of the Request to accept a variance to the development standard to allow construction below the mapped Foreshore Building Line will impact the viability of proceeding with the installation. Inclinator are generally installed on steep sites to allow more efficient and equitable access between a car parking area at street frontage and a dwelling or from a dwelling to the waterfront or a property or a combination of both.

## 7. **Contravention of the Development Standard on Environmental Planning Grounds.**

This submission demonstrates that the installation of the 'Inclinator' will not contravene any of the objectives of the zone or locality pursuant to Pittwater Local Environmental Plan, 2014.

There are no significant environmental implications for construction of the Inclinator below the foreshore building line within the terraced and landscaped yard of the property.

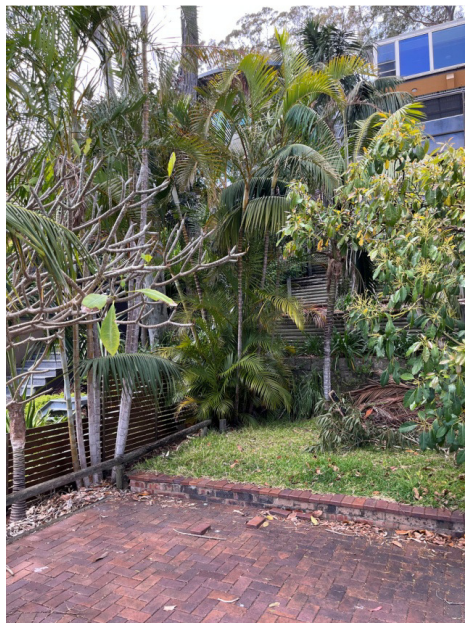
The Inclinator does not require any vegetation removal or significant ground disturbance and will not be visible from the waterway of Pittwater.



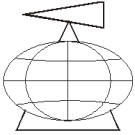
APPENDIX No.1 – Site Photographs



*The property facing Pittwater. The Inclinator will be a relatively minor installation forward of the Foreshore Building Line. Not visible from Pittwater*



*Bottom landing area. The Inclinator to terminate behind the brick paving on the lawn area adjacent to the existing Inclinator landing station situated on the adjoining property to the East. (No.108)*



*Landscaped and terraced gardens. Inclinator will clear the stone wall. Log walls to be replaced in approved house DA2021/1448.*



*Inclinator on adjoining property –low visual impact and screened by vegetation and blending in with landscaped gardens.*



## 5.0 NON PUBLIC MEETING ITEMS

**ITEM 5.1      DA2023/1043 - LOT 1 DP 4889, 21 BATTLE BOULEVARDE  
SEAFORTH - DEMOLITION WORKS AND CONSTRUCTION OF A  
DWELLING HOUSE INCLUDING SWIMMING POOL**

### PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

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### RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 and contravention of a non-numerical development standard, being 4.3A special height provisions pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
  
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2023/1043 for Demolition works and construction of a dwelling house including swimming pool on land at Lot 1 DP 4889, 21 Battle Boulevarde, SEAFORTH subject to the conditions set out in the Assessment Report.

<b>Reporting manager</b>	Rodney Piggott
<b>TRIM file ref</b>	2024/292254
<b>Attachments</b>	<a href="#">↓1 Assessment Report</a> <a href="#">↓2 Site Plan &amp; Elevations</a> <a href="#">↓3 Clause 4.6</a>

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2023/1043
<b>Responsible Officer:</b>	Dean Pattalis
<b>Land to be developed (Address):</b>	Lot 1 DP 4889, 21 Battle Boulevard SEAFORTH NSW 2092
<b>Proposed Development:</b>	Demolition works and construction of a dwelling house including swimming pool
<b>Zoning:</b>	Manly LEP2013 - Land zoned C3 Environmental Management
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Shan Yu
<b>Applicant:</b>	Ursino Architects
<b>Application Lodged:</b>	04/08/2023
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Single new detached dwelling
<b>Notified:</b>	10/08/2023 to 24/08/2023
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	2
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 38.71% 4.3A Special height provisions
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 3,209,301.00

### EXECUTIVE SUMMARY

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

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to contravention of a non-numerical development standard, being Clause 4.3A Special height provisions of MLEP 2013.

It is also noted the development contravenes Clause 4.3 Height of Buildings MLEP 2013 by a maximum variation of 38.71%.

Critical assessment issues included a Clause 4.6 assessment addressing both Clause 4.3 and Clause

4.3A, as well as impacts to amenity including privacy and view loss. These aspects have been addressed and resolved via merit discussions under the relevant sections within this report.

Two unique submissions were received which raised issues predominantly relating to building height, view loss, structural integrity and loss of amenity. A detailed response to the concerns raised in the submissions has also been provided within this report.

The 4.6 request for the non-compliance with Clause 4.3 Height of Buildings arises from the steep drop in topography at the central area of the site of which a portion of the upper floor is located above.

The 4.6 request for the non-compliance with Clause 4.3A Special height provisions arises from the proposed access driveway platform which connects to the road frontage. The non-compliance specifically relates to the safety balustrades located on either side of the driveway.

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

## **PROPOSED DEVELOPMENT IN DETAIL**

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

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

### Amended Information

Amended information has been provided during the application in response to a Request for Further Information provided by Council. The amendments included the scaling back of the projecting elements at each of the floor levels to provide greater compliance with the height of buildings development standard, as well as additional details on the proposed shadow diagrams and floor space ratio calculation plans. The applicant has also submitted an additional Clause 4.6 request addressing a non-compliance to Clause 4.3A Special height provisions of MLEP 2013. The amended information resulted in a reduction in environmental impact and does not require further community notification in accordance with Council's Community Participation Plan.

## **ASSESSMENT INTRODUCTION**

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

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

- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

### SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards  
 Manly Local Environmental Plan 2013 - 6.10 Limited development on foreshore area  
 Manly Development Control Plan - 3.4.2 Privacy and Security  
 Manly Development Control Plan - 3.4.3 Maintenance of Views  
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)  
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation  
 Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features  
 Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

### SITE DESCRIPTION

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

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

#### ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration	Comments
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<p>Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&amp;A Regulation 2021)</p>	<p><u>Part 4, Division 2</u> of the EP&amp;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&amp;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&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in response to a Council RFI, which provided a reduced built form resulting in greater compliance with the height standard.</p> <p><u>Clause 61</u> of the EP&amp;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&amp;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&amp;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&amp;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>
<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>	<p>(i) <b>Environmental Impact</b> 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) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered suitable for the proposed development.</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>See discussion on "Notification &amp; Submissions Received" in this report.</p>

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.
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**EXISTING USE RIGHTS**

Existing Use Rights are not applicable to this application.

**BUSHFIRE PRONE LAND**

The site is not classified as bush fire prone land.

**NOTIFICATION & SUBMISSIONS RECEIVED**

The subject application has been publicly exhibited from 10/08/2023 to 24/08/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

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

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

**No.19 Battle Boulevard**

- Floor Space Ratio

Comment:

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

- Building Height

Comment:

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

overlaid to the site plan to provide for easier interpretation of the proposed height at different points of the development. A detailed discussion addressing the merit of the height variation has been included within this report under Clause 4.6.

- View Loss

Comment:

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

- Wall Height

Comment:

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

- Setbacks

Comment:

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

- Envelope

Comment:

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

- Landscaped Area

Comment:

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

- Solar access

Comment:

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

- Visual Privacy

Comment:

Concern was raised in regards to visual privacy. An assessment of the proposed visual privacy arrangement in the context of adjoining dwellings has considered that further mitigation measures are necessary. It is considered the first floor rear balcony shall be a highly trafficable space given it adjoins an internal living/dining area. As a result, conditions of consent are recommended for a privacy screen on the eastern elevation of the balcony. The privacy screen, as conditioned, shall not encroach the 8.5m height limit.

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

- Swimming Pool

Comment:

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

- Excavation

Comment:

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

- Stormwater Management

Comment:

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

**No 23 Battle Boulevard**

- Building Height

Comment:

The objector maintains that design amendments are available to reduce the proposed variation to the height of building development standard, including reducing floor to ceiling heights and slab thickness. Whilst this may be possible, the assessment under Clause 4.6 within the assessment report considers the height variation, as proposed, to possess sufficient environmental planning grounds including being contextually consistent with the character of adjoining development. The floor to ceiling heights as proposed are considered to provide a high level of amenity to the property owner whilst not resulting in an unreasonable outcome under Clause 4.6.

The objector also raised concern that the proposed driveway represents a variation to Clause 4.3A Special height provisions under MLEP 2013. It is advised that the applicant has submitted a new Clause 4.6 Report during the assessment process addressing this non-compliance. A merit discussion under Clause 4.6 has also been included within this assessment report.

- Floor Space Ratio

Comment:

The objector considers the proposal to be non-compliant with Clause 4.4 Floor Space Ratio, citing that the landing to the staircase on the ground floor level as well as the walls surrounding the lift shaft have been incorrectly excluded. In response, it is considered that the landing to the staircase as well as the walls surrounding the lift shaft are necessary parts of those structures which serve their function and are therefore reasonably excluded from the calculation as per the dictionary definition for Gross Floor Area under MLEP 2013.

- View Loss

Comment:

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

- Rear Setback

Comment:

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

- Light Nuisance

Comment:

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

- Vegetation Protection

Comment:

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

- New access driveway.

Comment:

Concern was raised regarding the visual impact of the proposed access driveway. This aspect has been discussed under Clause 4.6 MLEP 2013 within this report. The proposed driveway is considered to slope down from the street frontage with the natural topography of the site and result in a low-lying visual presentation. The proposed driveway is also not considered to be out of keeping with examples of similar structures on adjoining sites.

- Visual Privacy.

Comment:

A suitable condition of consent has been recommended for window W14 on the western elevation of the first floor living/dining room to be affixed with a privacy screen at 1.5m above FFL. As discussed above, the privacy arrangement for the remaining areas of the dwelling are considered reasonable. The proposed ground floor consists of bedrooms which are low-trafficable spaces that are not conducive to high volumes of pedestrian movement, whilst the lower ground floor is located considerably more rearward of the building line of adjoining sites that is not in proximity to any private open space or principal living areas.

- Proposed photomontage considered by objector to be inadequate

Comment:

It is contended by the objector that the photomontage provided with the application is inadequate for the purposes of the development assessment. In response, it is advised that the photomontage has not been relied upon as an essential material for this assessment but has rather been provided as a supporting document by the applicant. The recommendations and conclusions of the assessment are not contingent or dependent on this photomontage.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p><b>Supported</b></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):</p> <ul style="list-style-type: none"> <li>• 3.3.1 Landscaping Design</li> <li>• 3.3.2 Preservation of Trees or Bushland Vegetation</li> <li>• 4.1.5 Open Space and Landscaping, including 4.1.5.2 (c) Minimum Tree Plantings where applicable</li> </ul> <p>A Landscape Plan and a Arboricultural Impact Assessment are submitted and no concerns are raised by Landscape Referral, and conditions shall be imposed reflecting the recommendations of both documents.</p>


NECC (Bushland and Biodiversity)	<p><b>Supported</b></p> <p>The proposed development has been assessed against the requirements of :-</p>
<b>Internal Referral Body</b>	<b>Comments</b>
NECC (Bushland and Biodiversity)	<p><b>Supported</b></p> <p>The proposed development has been assessed against the requirements of :-</p> <ul style="list-style-type: none"> <li>• Manly LEP 2013 cl 6.5 Terrestrial Biodiversity, and</li> <li>• State Environmental Planning Policy (Resilience and Hazards) 2021 cl. 2.10 Development on land within the coastal environment area.</li> </ul> <p>The development will have limited impact to native vegetation, with removal of one Pittorsporum species. The application includes a Landscape Plan that has been conditioned for implementation by other referral bodies.</p> <p>Therefore , the development is designed, sited and will be managed to avoid any significant adverse environmental impact.</p>
NECC (Coast and Catchments)	<p><b>Supported</b></p> <p>The application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, State Environmental Planning Policy (Resilience &amp; Hazards) 2021, Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity &amp; Conservation) 2021 and Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005. It has also been assessed against requirements of the Manly LEP and DCP.</p> <p><b><i>Coastal Management Act 2016</i></b></p> <p>The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p>



Internal Referral Body	Comments
	<p><b>State Environmental Planning Policy (Resilience &amp; Hazards) 2021</b></p> <p>The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience &amp; Hazards) 2021 (SEPP R &amp; H). Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R &amp; H) apply for this DA. Clauses 2.10 (coastal environment area) and 2.11 (coastal use area) do not apply as the site is also located within the Sydney Harbour catchment area. Hence, only Clause 2.12 of the SEPP R &amp; H apply for this DA.</p> <p>Comment:</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by BBF Pty. Ltd. dated July 2023, the DA satisfies requirements under clause 2.12 of the SEPP R&amp;H.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience &amp; Hazards) 2021.</p> <p><b>Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity &amp; Conservation) 2021</b></p> <p><b>Foreshores &amp; Waterways Area</b></p> <p>The subject site is located within the Sydney Harbour Catchment and is identified as being within the Foreshores and Waterways Area. Hence Part 6.3 of the Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity &amp; Conservation) 2021 will apply in assessing this DA. Development consent, among others, must consider clause 6.28.</p> <p><b>Zoning of Foreshores &amp; Waterways Area</b></p> <p>The subject site is located within/adjacent to the Zone 6 (Scenic Waters – Active Use). On internal assessment, it is determined that the objectives and assessment criteria of the zone have been met.</p>

Internal Referral Body	Comments
	<p><b>Manly LEP 2013 and Manly DCP</b></p> <p><b>Foreshores Scenic Protection Area Management</b>  The subject site is also shown to be as “Manly Foreshores Scenic Protection Area” on Council’s Foreshores Scenic Protection Area in Manly LEP 2013. As such, Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores</p> <p>Scenic Protection Area of the Manly DCP 2013 will apply to proposed development on the site.</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by BBF Pty. Ltd. dated July 2023, the DA satisfies requirements under Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013. As such, it is considered that the application does comply with the requirements of the Manly DCP 2013.</p> <p><b>Development on Foreshore Area</b></p> <p>The subject site is also shown to be as “Manly Foreshores Area” on Council’s Area “within the foreshore building line Map” in Manly LEP 2013. Hence, Part 6, Clause 6.10 –Limited development on foreshore area of the Manly LEP 2013 applies for any development within the foreshore area.</p> <p>The DA proposes no works on the foreshores area and hence, the DA does not require to satisfy the objectives and requirements of Part 6, Clause 6.10 of the Manly LEP 2013</p>
NECC (Development Engineering)	<p><b>Supported</b></p> <p>The proposal is for demolition works and construction of a new dwelling including a suspended driveway off Battle Boulevard.</p> <p>The site currently has pedestrian and vehicular access off a low level shared access road and footpath. As the proposed suspended driveway will be constructed over the existing low level driveway/footpath which appears to extend beyond the subject site concurrence and comments from Council's Road Asset team is required prior to Development Engineering finalising comments.</p> <p><b>Engineering Comments 19.01.24</b>  Council's Road Assets section has raised no objections to the proposed development. No objections from Development Engineering subject to the inclusion of the recommended engineering conditions of consent</p>

Internal Referral Body	Comments
NECC (Riparian Lands and Creeks)	<p><b>Supported</b></p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> <li>- Supplied plans and reports;</li> <li>- Coastal Management Act 2016;</li> <li>- State Environmental Planning Policy (Resilience and Hazards) 2021;</li> <li>- Relevant LEP and DCP clauses; and</li> <li>- Northern Beaches Council Water management for development policy.</li> </ul> <p>Subject to conditions</p>
Parks, reserves, beaches, foreshore	<p><b>Supported</b></p> <p>The development site adjoins Middle Harbour waterway that is located downslope of the property. All development works must ensure that surface sediment runoff and/or erosion is controlled, managed and contained within the site boundaries and prevented from travelling across the boundary and into the waterway.</p> <p>The development is not detrimental to the landscape character of the adjoining waterway or as viewed from public areas with the lower slopes natural landscape preserved including sandstone outcrops and foreshore vegetation, and as such Parks, Reserves and Foreshores raise no concerns with the development proposal.</p>

Road Reserve	<p><b>Supported</b></p> <p>No in principle objection to proposed elevated driveway subject to Road Reserve consent as per former Manly Council Policy subject to the structure not imposing any loads on existing retaining structures on the road reserve. Development Engineering to ensure sufficient clearance under the structure is available for access. Existing pavement on road reserve to be maintained for public access.</p> 
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Internal Referral Body	Comments
Strategic and Place Planning (Heritage Officer)	<b>Supported</b>
	<b>HERITAGE COMMENTS</b>
	<b>Discussion of reason for referral</b>
	The proposal has been referred to Heritage as the subject site adjoins two heritage items
	<b>Item I266 – Retaining wall, Battle Boulevarde, Seaforth</b>
	<b>Item I1 – Harbour foreshores</b>
	<b>Details of heritage items affected</b>
	<b>Retaining wall, Battle Boulevarde</b>
	<u>Statement of Significance</u> The Battle Boulevarde Retaining Wall is a representative example of historical infrastructure built by the Municipal Council of Manly. It provides evidence of the high quality of urban elements in the pre-modern period in this area.
	<b>Harbour foreshores</b>
	<u>Statement of Significance</u> Natural landscape type - Aesthetic.
	<u>Physical Description</u> Length of foreshore including natural and built elements of the landscape. Rocky sandstone ledgers, beaches, mud flats and sandstone retaining walls and timber structures.
	<b>Other relevant heritage listings</b>
	SEPP (Biodiversity and Conservation) 2021
	No
	Australian Heritage Register
	No
	NSW State Heritage Register
	No
	National Trust of Aust (NSW) Register
	No
	RAIA Register of 20th Century Buildings of Significance
	No
	Other
	No
	<b>Consideration of Application</b>

Internal Referral Body	Comments
	<p>The proposal seeks consent for a new dwelling, including a suspended driveway from Battle Boulevard over the existing lower accessway. The harbour foreshore listings runs along the bottom of this property. No works are proposed in the lower section of the property adjoining the harbour. Therefore Heritage considers there is no impact to this item.</p> <p>The heritage listed sandstone retaining wall runs in the road reserve outside this property, although there is a section outside this property that had been replaced with a painted block wall.</p> <p>However the stone wall is still in place in the road reserve at either end of the property where it adjoins both 21 and 25 Battle Boulevard. The proposed suspended driveway passes close to where the heritage retaining wall remains close to the boundary with number 25. While Heritage does not raises objections to this approach, it would prefer vehicle access to the dwelling to continue to be provided from the existing lower accessway. To control impacts from the construction of the new dwelling and driveway, Heritage will condition the protection of the stone retaining wall through pre and post construction heritage dilapidation reports and a temporary heritage protection plan.</p> <p>Note that Heritage does not in anyway approve the removal of any of the existing heritage listed stone retaining wall in the road reserve outside this site.</p> <p><b>Therefore heritage raises no objections, subject to the imposition of a number of conditions.</b></p> <p><u>Consider against the provisions of CL5.10 of MLEP 2013:</u>  Is a Conservation Management Plan (CMP) Required? No  Has a CMP been provided? No  Is a Heritage Impact Statement required? No  Has a Heritage Impact Statement been provided? No</p>
External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

Aboriginal Heritage Office	<p>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>
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### **ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)\***

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

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

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

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

#### **SEPP (Building Sustainability Index: BASIX) 2004**

A BASIX certificate has been submitted with the application (see Certificate No.1392951S dated 25 July 2023).

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

#### **SEPP (Transport and Infrastructure) 2021**

##### Ausgrid

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

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

Comment:

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

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

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

**Manly Local Environmental Plan 2013**

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

Principal Development Standards

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

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.3A Special height provisions	No
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes



6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

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

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

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

- (a) *the consent authority is satisfied that:*
  - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated*

by subclause (3), and

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

*1.3 Objects of Act(cf previous s 5)*

*The objects of this Act are as follows:*

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of*

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

The applicant's written request argues, in part:

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

#### Planner Comment

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

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

It is also agreed that the proposed development is located below the ridge of adjoining dwellings located along the southern side of Battle Boulevard. According to the site survey, there are numerous developments located to the east and west of the subject property which contain greater ridge heights than the proposed ridge of RL37.07. These include the development adjoining immediately to the west at No.23 Battle Boulevard which has a ridge level of RL39.11. The proposed upper floor of the development maintains a consistent building line with the similarly non-compliant upper floors on the adjoining site. The proposed non-compliance is therefore not considered to result in a development that is inconsistent or out of character with the existing pattern of development.

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

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

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

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

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

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

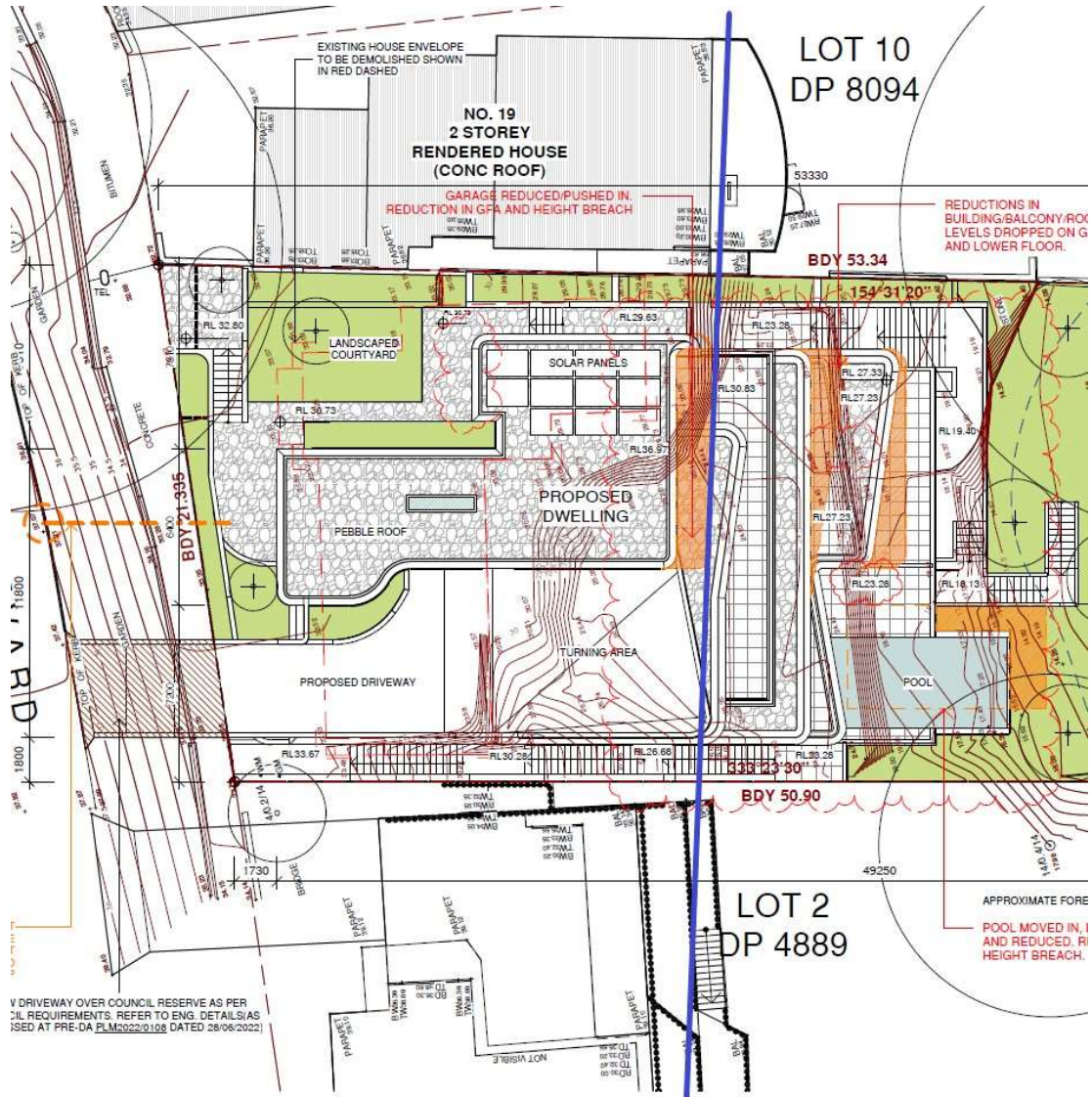


Figure 2: Height plane diagram identifying area of non-compliance in comparison to adjoining development.



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

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

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

Comment:

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

**Objectives of development standard**

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

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

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

Comment:

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

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

Comment:

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

*c) to minimise disruption to the following:*

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

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

## **Zone objectives**

### The underlying objectives of the C3 Environmental Management zone

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

The ecological characteristics of the locality are maintained.

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

Comment:

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

Conclusion:

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

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

**Exception to Development Standards conclusion**

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



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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning & Infrastructure, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the Local Planning Panel.

Description of non-compliance:

Development standard:	Special Height Provisions
Requirement:	The highest point of the road adjoining the centre point of the lot frontage (RL37.07)
Proposed:	RL37.90 (driveway balustrade)

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

Clause 4.3A – Special height provisions development standard is not expressly excluded from the operation of this clause.

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

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

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

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

*(a) the consent authority is satisfied that:*

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

*1.3 Objects of Act (cf previous s 5)*

*The objects of this Act are as follows:*

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

The applicant's written request argues, in part:

- The proposed balustrade structures which encroach the standard are essential for the driveway to be able to facilitate safe vehicular access to the subject property

#### Planner Comment

It is agreed that there is no ability to provide driveway access of a compliant gradient directly from Battle Boulevard to the subject property without the need for a balustrade or safety barrier at either side of the driveway. Due to the natural topography of the site, the balustrading is necessary to provide safe passage for vehicles using the access driveway. Therefore given the driveway must connect to the road, to some degree the balustrade must breach the special height provisions of MLEP.

There is also an existing character of similar elevated driveway structures located along this section of Battle Boulevard. These structures provide direct vehicle access to dwellings which are constrained by their natural topography as well as a shared carriageway which becomes a pedestrian pathway in the road reserve. The proposed driveway structure is consistent and compatible with the character of the existing elevated driveways of adjoining properties along this section of Battle Boulevard, including the immediate property to the west at No.23.

Figure 3: Existing concrete bitumen and carriageway to the front of the subject property with access driveway to No.23 visible.



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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Special height provisions development standard and

the objectives of the C3 Environmental Management zone. An assessment against these objectives is provided below.

### **Objectives of development standard**

The underlying objective of the standard, pursuant to Clause 4.3A – ‘Special height provisions’ of the MLEP 2013 is:

- *To maintain public views to Sydney Harbour from street level on local roads above steeply sloping sites on certain land.*

#### Comment:

The proposed driveway structure is not considered to result in any unreasonable loss of views from the public domain at the front of the subject site. The proposed driveway slopes down from the street frontage with the natural topography of the site and therefore the majority of the driveway is located below street level. The minor portion of the balustrade that is visible from the streetscape is not considered to be of a height or scale that may result in an unreasonable impact to public view sharing. As stated above, the proposed driveway and balustrade are also compatible with the character of similar adjoining driveway structures.

Figure 4: View towards frontage of subject site



### **Zone objectives**

The underlying objectives of the C3 Environmental Management zone

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

The ecological characteristics of the locality are maintained.

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

Comment:

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

Conclusion:

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

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

applied.

#### **Exception to Development Standards conclusion**

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

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning & Infrastructure, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Special height provisions Development Standard is assumed by the Local Planning Panel.

#### **6.10 Limited development on foreshore area**

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

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

#### Comment:

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

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

- *the development will contribute to achieving the objectives for the zone in which the land is located, and*
- *the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and*
- *the development will not cause environmental harm such as:*
  - *pollution or siltation of the waterway, or*
  - *an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or*
  - *an adverse effect on drainage patterns, and*

- *the development will not cause congestion or generate conflict between people using open space areas or the waterway, and*
- *opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and*
- *any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and*
- *in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and*
- *sea level rise, coastal erosion and recession, or change of flooding patterns as a result of climate change have been considered.*

Comment:

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

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

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

Comment:

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

### Manly Development Control Plan

Built Form Controls

<b>Built Form Controls - Site Area: 1037m<sup>2</sup></b>	<b>Requirement</b>	<b>Proposed</b>	<b>% Variation*</b>	<b>Complies</b>
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwellings	1	-	Yes
	Dwelling Size: 139sqm (5 bed, 6 bath)	414.8gfa	-	Yes



4.1.2.1 Wall Height	<u>East</u> Second Floor: 8m (based on 1:4+) First Floor: 8m (based on 1:4+) Ground Floor: 8m (based on 1:4+) Lower Ground: 8m (based on 1:4+) Lower Yard: 8m (based on 1:4+)	7m (max.) 5m (max.) 7m (max.) 4m (max.) 4.5m (max.)	- - - - -	Yes Yes Yes Yes Yes
	<u>West</u> Second Floor: 8m (based on 1:4+) First Floor: 8m (based on 1:4+) Ground Floor: 8m (based on 1:4+) Lower Ground: 8m (based on 1:4+) Lower Yard: 8m (based on 1:4+)	4m - 11.44m 8m (max.) 4m - 6m 3.5m (max.) 4.5m (max.)	43% - - - -	<b>No</b> Yes Yes Yes Yes
4.1.2.2 Number of Storeys	2	1-4	100%	<b>No</b>
4.1.2.3 Roof Height	Height: 2.5m	0.35m	-	Yes
	Parapet Height: 0.6m	0.35m	-	Yes
	Pitch: maximum 35 degrees	Complies	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line	Consistent with prevailing setback	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	<u>East</u> Second Floor: 2.31m First: 1.65m Ground : 2.31m Lower Ground: 1.32m Lower Yard: 1.49m	2.41m 2.41m 2.41m 2.94m 0.9m	- - - - 39.6%	Yes Yes Yes Yes <b>No</b>
	<u>West</u> Second Floor: 3.78m First: 2.64m Ground: 1.32m - 1.98m Lower Ground: 1.16m Lower Yard: 1.49m	8.7m 3.1m 1.8m - 3.1m 1.5m 1.5m	- - - - -	Yes Yes Yes Yes Yes
4.1.4.5 Foreshore Building Lines and Foreshore Area	Foreshore Building Line (CI 6.10 MLEP 2013)	See discussion under CI 6.10	-	See discussion
4.1.5.1 Minimum Residential Total Open Space Requirements	Open space 60% of site area	61.1% (633.5m <sup>2</sup> )	-	Yes

Residential Open Space Area: OS4	Open space above ground 25% of total open space	23.4% (148.5m <sup>2</sup> )	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space	62% (386m <sup>2</sup> )		Yes
4.1.5.3 Private Open Space	18sqm	Complies	-	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	Complies	-	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	8m	100%	<b>No</b>
	1m curtilage/1.5m water side/rear setback	Complies	-	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	-	Yes

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.3.3 Footpath Tree Planting	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	No	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.4.1 Demolition	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.4.5 Earthworks (Excavation and Filling)	No	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

#### Detailed Assessment

### **3.4.2 Privacy and Security**

#### Description of Non-Compliance

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

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

Furthermore, window W14 on the western elevation of the first floor dining room is also recommended to be affixed with a privacy screen with a minimum height of 1.5m to prevent overlooking.

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

#### Merit consideration:

The development is considered against the objectives of the clause as follows:

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

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

#### Comment:

Subject to conditions the proposal meets this objective.

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

#### Comment:

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

*Objective 3) To encourage awareness of neighbourhood security.*

Comment:

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

### **3.4.3 Maintenance of Views**

Merit consideration:

The development is considered against the Objectives of the Control:

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

*Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).*

*Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.*

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

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

Comment:

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

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

Comment:

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

*The third step is to assess the extent of the impact. This should be done for the whole of the property,*

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

Comment:

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

Figure 5: Rear boundary views obtained from first floor living room/balcony of No.23 in a standing position.



Figure 6: Views obtained from first floor living room/balcony of No.23 in a standing position over the eastern side boundary towards the subject site.



Figure 7: Views obtained from corner of first floor living room/balcony of No.23 in a standing position over the eastern side boundary towards the subject site.





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

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



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





Figure 10: Views obtained from ground floor living room of No.19 in a standing position over the rear boundary



Figure 11: Views obtained from ground floor living room of No.19 in a standing position over the rear boundary



Figure 12: Views obtained from ground floor living room of No.19 in a standing position over the rear boundary





*The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.*

Comment:

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

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

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

##### Description of non-compliance

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

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

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

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

The control also does not comply with clause 4.1.2.2(a) which states buildings must not exceed 2 storeys, except on land in areas 'L' and 'N1' on the LEP Height of Building Map and notwithstanding the wall and roof height controls in this plan. However, the clause states that a variation may be considered where specific physical site constraints warrant an exception to this requirement.

##### Merit consideration:

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

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

##### Comment:

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

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

##### Comment:

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

*c) to minimise disruption to the following:*

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

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

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

Comment:

The proposal will not result in an unreasonable loss of views, as established under Part 3.4.3 Manly DCP 2013 within this report

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

Comment:

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

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

Comment:

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

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

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

Description of non-compliance

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

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

Merit consideration

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

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

Comment:

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

*Objective 2) To ensure and enhance local amenity by:*

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

Comment:

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

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

Comment:

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

*Objective 4) To enhance and maintain natural features by:*

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

Comment:

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

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

Comment:

The subject site is not bushfire prone.

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

#### **4.1.9 Swimming Pools, Spas and Water Features**

Description of non-compliance

The control states:

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

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

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

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

Merit consideration

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

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

Comment:

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

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

Comment:

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

*Objective 3) To integrate landscaping.*

Comment:

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



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

Comment:

The site is not bushfire prone.

Conclusion

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

**4.4.5 Earthworks (Excavation and Filling)**

Detailed description of non-compliance

This control requires the following:

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

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

Merit consideration

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

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

Comment:

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

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

**THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

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

## **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

## **POLICY CONTROLS**

### **Northern Beaches Section 7.12 Contributions Plan 2022**

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

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

## **CONCLUSION**

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

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

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

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

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

Council is satisfied that:

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

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

2) The proposed development will be in the public interest because it is consistent with the objectives

of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

## **PLANNING CONCLUSION**

This proposal, for demolition of existing on-site structures and the construction of a new four (4) storey dwelling and new driveway access, has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to contravention of a non-numerical development standard, being Clause 4.3A Special height provisions of MLEP 2013.

It is also noted the development contravenes Clause 4.3 Height of Buildings MLEP 2013 by a maximum variation of 38.71%.

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

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

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## RECOMMENDATION

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

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2023/1043 for Demolition works and construction of a dwelling house including swimming pool on land at Lot 1 DP 4889, 21 Battle Boulevard, SEAFORTH, subject to the conditions printed below:

## Terms and Reasons for Conditions

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

### GENERAL CONDITIONS

#### 1. Approved Plans and Supporting Documentation

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
A202	B	Site Plan 01	Ursino Architects	27 March 2024
A203	B	Site Plan 02	Ursino Architects	27 March 2024
A301	B	Garage Floor Plan	Ursino Architects	27 March 2024
A302	B	First Floor Plan	Ursino Architects	27 March 2024
A303	B	Ground Floor Plan	Ursino Architects	27 March 2024
A304	A	Lower Ground Floor Plan	Ursino Architects	18 July 2023
A305	B	Lower Yard Plan	Ursino Architects	27 March 2024
A307	B	Pool Plan	Ursino Architects	27 March 2024
A308	B	Pool Section	Ursino Architects	27 March 2024
A309	C	Driveway Plan/Section	Ursino Architects	10 April 2024
A401	B	Section AA	Ursino Architects	27 March 2024
A402	B	Section BB	Ursino Architects	27 March 2024
A403	B	Section CC	Ursino Architects	27 March 2024
A404	B	Section DD	Ursino Architects	27 March 2024

A501	B	North Elevation	Ursino Architects	27 March 2024
A502	B	South Elevation	Ursino Architects	27 March 2024
A503	B	West Elevation	Ursino Architects	27 March 2024
A504	B	East Elevation	Ursino Architects	27 March 2024

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

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

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

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

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	10 August 2023

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

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

**3. Prescribed Conditions**

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

- plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- (i) showing the name, address and telephone number of the Principal Certifier for the work, and
  - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - (iii) stating that unauthorised entry to the work site is prohibited.
- Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
    - A. the name and licence number of the principal contractor, and
    - B. the name of the insurer by which the work is insured under Part 6 of that Act,
  - (ii) in the case of work to be done by an owner-builder:
    - A. the name of the owner-builder, and
    - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
  - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
  - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
  - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

#### 4. General Requirements

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

hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
  - i) Building/s that are to be erected
  - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
  - iii) Building/s that are to be demolished
  - iv) For any work/s that is to be carried out
  - v) For any work/s that is to be demolished

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

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
  - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage



system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

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

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

## FEES / CHARGES / CONTRIBUTIONS

### 5. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$32,093.01 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$3,209,301.00.

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

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

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

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

### 6. Security Bond

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

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

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

To process the inspection fee and bond payment a Bond Lodgement Form must be completed

with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au)). Reason: To ensure adequate protection of Council's infrastructure.

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

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

**Crossing / Kerb & Gutter / Footpath Works**

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

Details confirming payment of the bond(s) are to be submitted to the Principal Certifier prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

### BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

8. **No Clearing of Vegetation**

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

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

Reason: To protect native vegetation.

9. **On-Site Stormwater Disposal Details**

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater disposal in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by Cates Consulting Engineers, drawing number 23042 C2.00, dated 11.07.2023. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

- i. Provision of a Level Spreader of three (3) metre minimum length.

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

10. **Stormwater Disposal**

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent in accordance with AS/NZS 3500 and Council's Water Management for Development Policy, prepared by an appropriately qualified and practicing Civil or Hydraulic Engineer who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG), indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to a minimum three (3) metre long

level spreader.

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

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

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

**12. Off Street Parking Design**

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

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

Reason: Compliance with this consent.

**13. Erosion and Sediment Control Plan**

An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:

- Site Boundaries and contours
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities)
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls that must include sediment fences, stabilised site access, materials and waste stockpiles locations, location of any stormwater pits on the site and how they are going to be protected.
- North point and scale.

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

Reason: To protect the receiving environment.

14. **Water Quality Management**

The applicant must install a filtration device (such as a sediment control pit or absorption trench) that captures organic matter and coarse sediments prior to discharge of stormwater from the land. All stormwater treatment measures must make provision for convenient and safe regular inspection, periodic cleaning, and maintenance.

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

Reason: Protection of the receiving environment.

15. **Amendments to the approved plans**

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

- A 1.5 metre privacy screen (measured from finished floor level) is to be erected along the eastern elevation of the first floor balcony located off the living/dining room as shown on the approved plans. The screen shall be 2 metres in length commencing from the external wall of the living/dining room. The privacy screen shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.
- A 1.5 metre privacy screen (measured from finished floor level) is to be affixed to window W14 on the western elevation of the first floor dining room. The privacy screen shall be of fixed panels or louver style construction (angled 45° and with a maximum spacing of 20mm), in materials that complement the design of the approved development.
- The eastern wall of the external staircase which runs along the eastern boundary on the lower ground floor and lower yard plan shall result in a height of no greater than 2.7m above existing ground level at any point.
- The plant schedule of the approved Landscape Plan prepared by Ecodesign shall be amended to not include any new plantings or species possessing a mature height of greater than 5m.

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

Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development.

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

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

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

The design must include the following information:

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

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

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

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

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

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

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

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

**18. Heritage Protection Plan**

A Heritage Protection Plan is to be prepared by a suitably qualified and experienced heritage consultant and submitted to Council's Heritage Officer for approval prior to the issuing of the Construction Certificate. The Heritage Protection Plan must:

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

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

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

19. **Pre-Commencement Dilapidation Report**

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

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

Reason: Protection of Council's infrastructure during construction.

20. **Compliance with Standards**

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

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

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

21. **External Finishes to Roof**

The external finish to the roof shall have a Solar Absorptance (SA) greater than 0.46 in accordance with the requirements of the BASIX Certificate to minimise solar reflections to neighbouring properties. Any roof with a metallic steel or reflective finish is not permitted.

Green roofs and areas where solar panels (PV) are installed are excluded from conforming to the SA range.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development.

22. **Sydney Water "Tap In"**

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

Please refer to the website [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

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

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

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

## CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

### 23. **Project Arborist**

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

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

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

All tree protection measures specified must:

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

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

Note:

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

Reason: Tree protection.

### 24. **Tree Removal Within the Road Reserve**

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

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

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

Reason: Public liability.

### 25. **Installation and Maintenance of Sediment and Erosion Control**

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

sufficiently stabilised with vegetation.

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

**26. Pre-Construction Dilapidation Report**

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

Property / Properties:

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

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

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

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

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

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

**27. Installation and Maintenance of Sediment and Erosion Control**

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

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

## DURING BUILDING WORK

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

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



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

Reason: Preservation of significant environmental features.

**29. Protection of Existing Street Trees**

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

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

Reason: Street tree protection.

**30. Tree and Vegetation Protection**

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

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

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,
- ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining

site,

x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,  
xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

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

Reason: Tree and vegetation protection.

**31. Protection of Habitat Features**

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

Reason: To protect wildlife habitat.

**32. Road Reserve**

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

Reason: Public safety.

**33. Installation and Maintenance of Sediment and Erosion Controls**

Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan prior to commencement of any other works on site.

Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: To protect the receiving environment.

**34. Removing, Handling and Disposing of Asbestos**

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

- o Work Health and Safety Act;
- o Work Health and Safety Regulation;
- o Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- o Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- o Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005;
- and

- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

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

**35. Geotechnical Requirements**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

**36. Demolition Works - Asbestos**

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifier, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

**37. Survey Certificate**

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

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

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

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

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

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

**38. Property Boundary Levels**

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

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

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

**39. Traffic Control During Road Works**

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

Reason: Public Safety.

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

Where site fill material is necessary, fill materials must:

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

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

Reason: To ensure protection of the natural environment.

**41. Implementation of Heritage Protection Plan**

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

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

Reason: Protection of the heritage listed stone wall.

**42. Protection of Heritage Stone Wall**

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

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

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

**43. Waste Management During Development**

The reuse, recycling or disposal of waste during works must be done generally in accordance

with the Waste Management Plan for this development.

Details demonstrating compliance must be submitted to the Principal Certifier.

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

**44. Aboriginal Heritage**

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

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

Reason: Aboriginal Heritage Protection.

### BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

**45. Landscape Completion**

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

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

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

Reason: Environmental amenity.

**46. Protection of Habitat Features**

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

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

Reason: To protect wildlife habitat.

**47. No Weeds Imported On To The Site**

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

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

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

**48. Priority Weed Removal and Management**

All Priority weeds (as specified in the Northern Beaches Local Weed Management Plan) within the development footprint are to be removed using an appropriate control method.

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

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

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

The Applicant shall submit a certification by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) that the completed works have been constructed in accordance with this consent and the approved Section 138 and/or Construction Certificate plans. Works as Executed data certified by a registered surveyor in relation to boundaries and/or relevant easements, prepared in accordance with Council's 'Guideline for preparing Works as Executed data for Council Assets' in an approved format shall be submitted to the Principal Certifier for approval prior to the issue of the Occupation Certificate.

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

**50. Stormwater Disposal**

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

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

**51. Post-Construction Dilapidation Report**

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

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

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

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

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

52. **Geotechnical Certification Prior to Occupation Certificate**

A Geotechnical Engineer or Engineering Geologist is to provide written confirmation that they have inspected the site during construction or reviewed information relating to the construction and that they are satisfied that development referred to in the development consent has been constructed in accordance with the intent of the Geotechnical Report referenced in Condition 1 of this consent.

Written certification is to be provided to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

53. **Reinstatement of Kerb**

The Applicant shall reinstate all redundant laybacks and vehicular crossings to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant.

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

Reason: To facilitate the preservation of on street parking spaces.

54. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**

The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), and Civil Engineers' certification.

The Applicant shall create on the Title a restriction on the use of land and a positive covenant in respect to the ongoing maintenance and restriction of the on-site stormwater disposal structures within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water disposal structure as to user is to be submitted.

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

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.

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

The Applicant shall submit a certificate from a suitably qualified person certifying that the

parking facility was constructed in accordance within this development consent and the relevant provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical Controls and Section 2.6 Design of Domestic Driveways.

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

Reason: Compliance with this consent.

56. **Post-Construction Dilapidation Report**

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

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

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

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

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

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

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

58. **House / Building Number**

House/building number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings.

59. **Swimming Pool Requirements**

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

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

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



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

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

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

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

(e) Signage showing resuscitation methods and emergency contact

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

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

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

Reason: To protect human life.

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

60. **Landscape Maintenance**

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

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

Reason: To maintain local environmental amenity.

61. **Geotechnical Recommendations**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

62. **Swimming Pool/Spa Motor Noise**

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

Reason: To ensure that the development does not impact on the acoustic privacy of

surrounding residential properties.

**63. General Foreshore Matters**

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

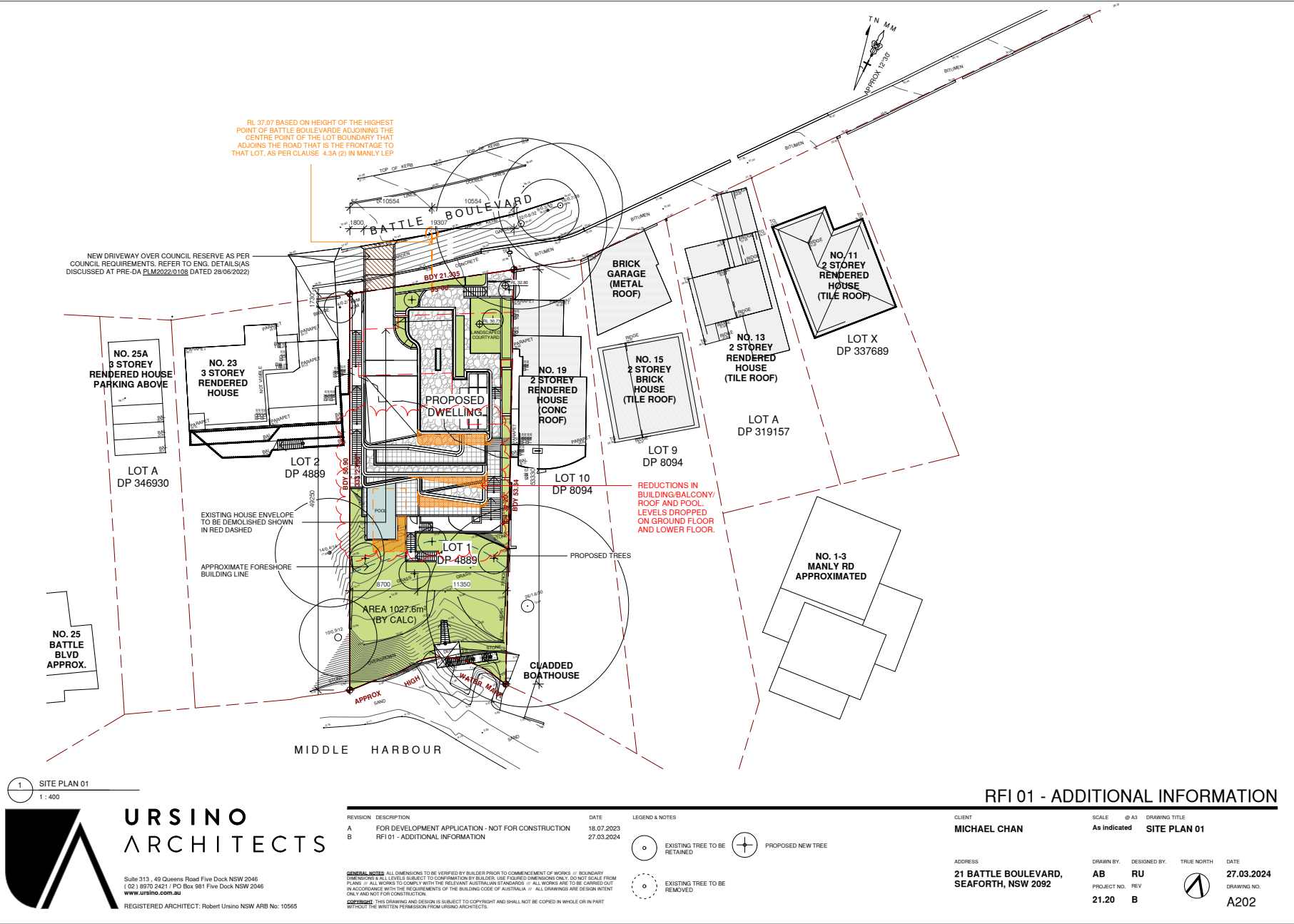
- a) no materials or cleared vegetation that may obstruct flow or cause damage to the foreshore are left within the coastal foreshore area,
- b) all drainage works must not obstruct flow of water within the coastal waters. Drain discharge points are stabilised to prevent erosion. Any excavation must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

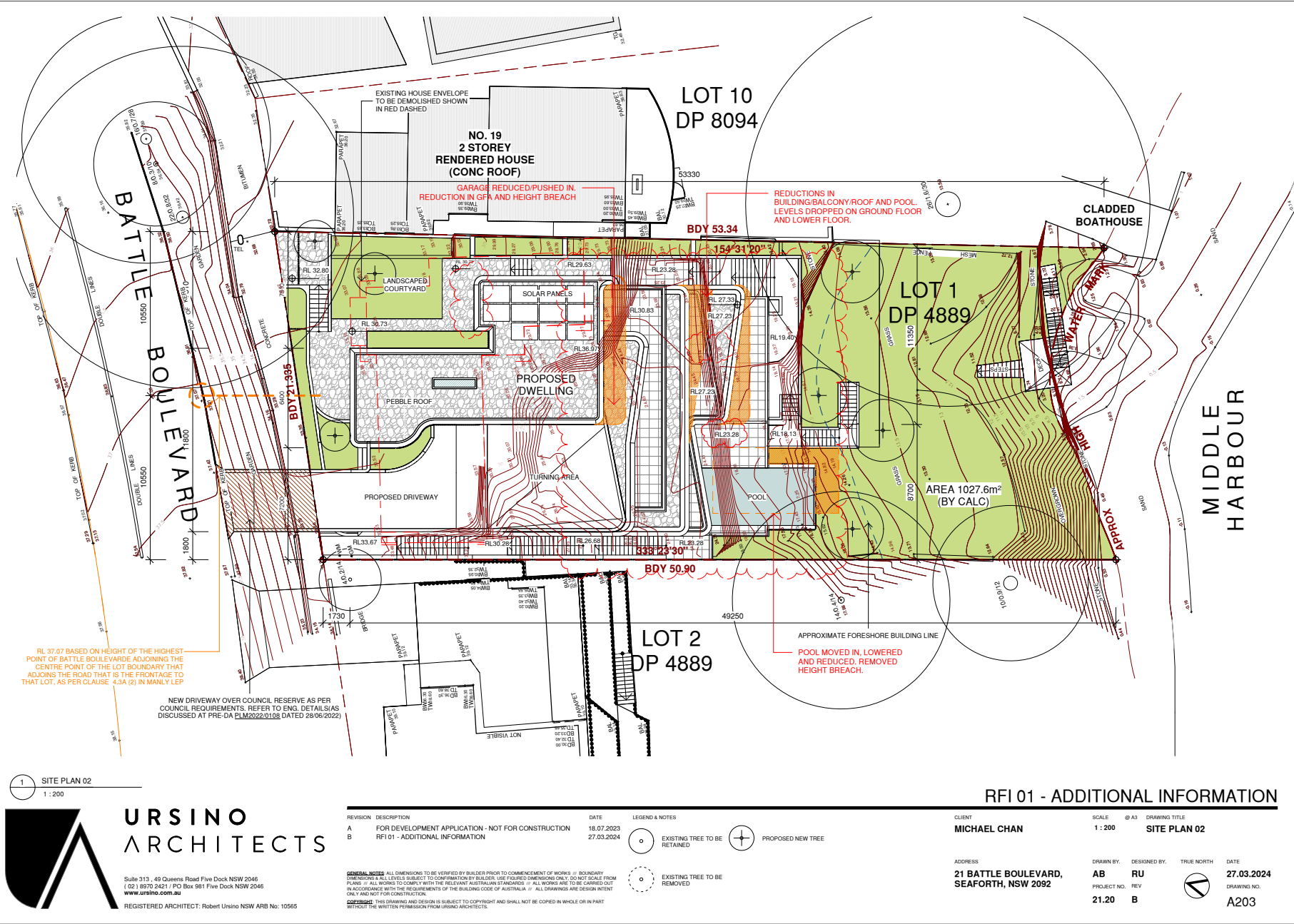
Reason: Environmental protection, monitoring and enhancement of the foreshore.

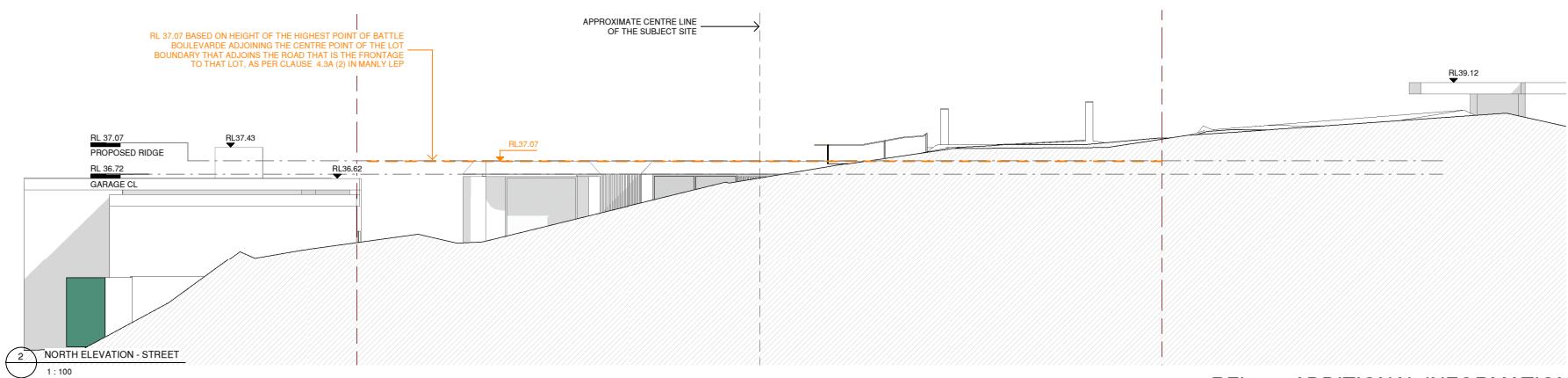
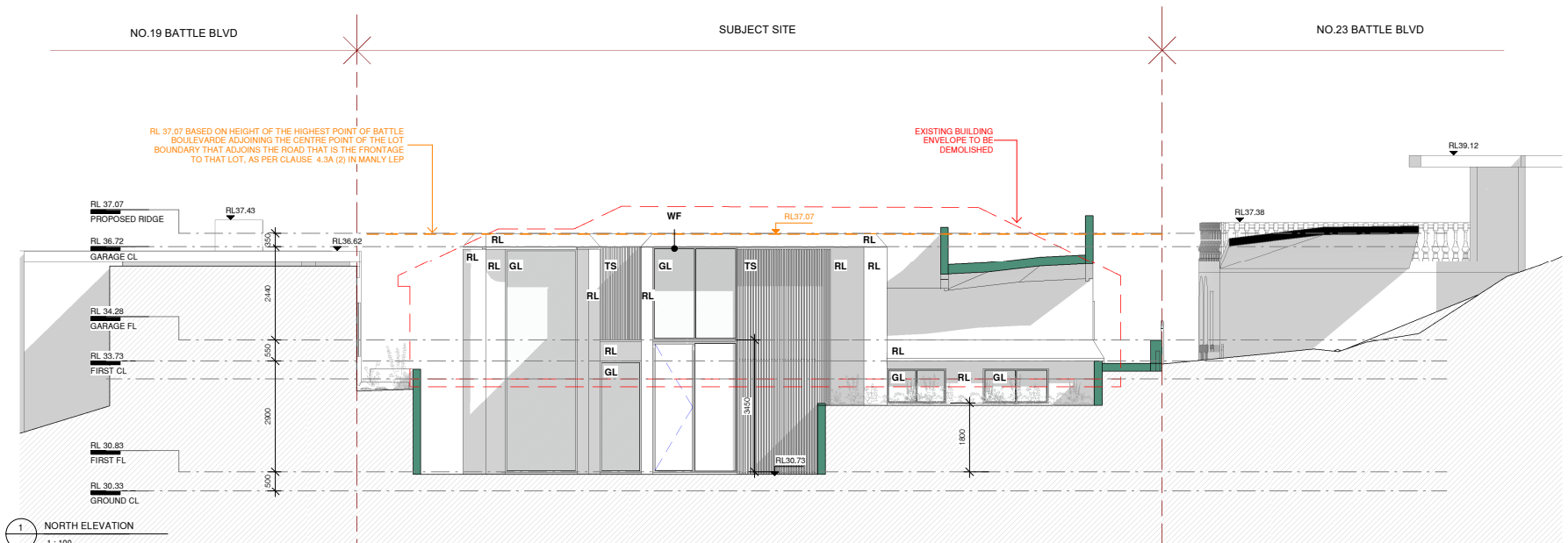
**64. No Approval for Secondary Dwelling**

No approval is granted or implied under this Development Consent for the use of any part of the dwelling house for the purpose of a secondary dwelling or separate occupancy. Built in cooking facilities are not permitted to be installed, other than those shown in the designated kitchen area.

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







**URSINO ARCHITECTS**

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

REGISTERED ARCHITECT: Robert Ursino NSW ARB No: 10565

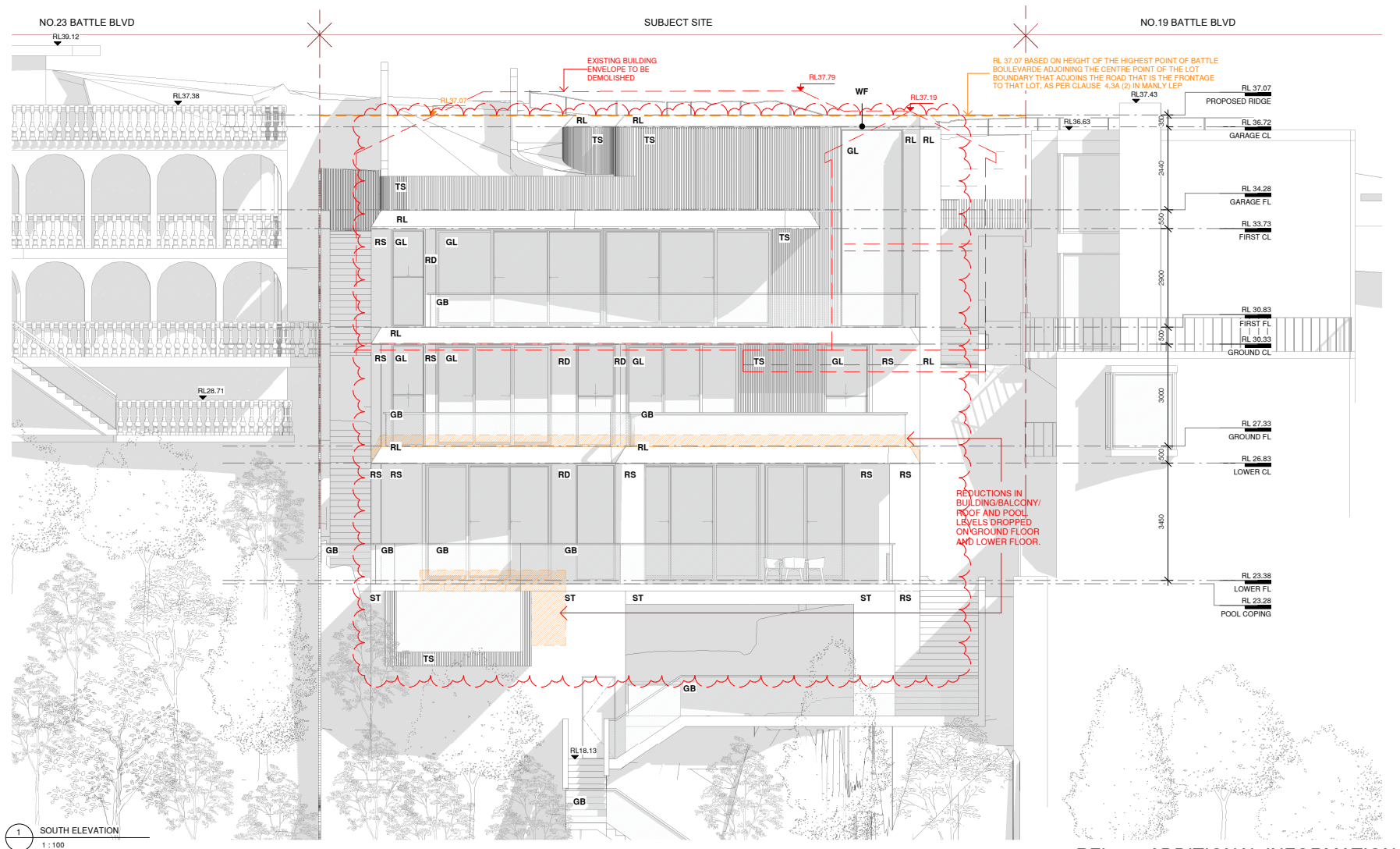
REVISION	DESCRIPTION	DATE	LEGEND & NOTES
A	FOR DEVELOPMENT APPLICATION - NOT FOR CONSTRUCTION	18.07.2023	MATERIALS LEGEND (REFER TO D4901)
B	RFI 01 - ADDITIONAL INFORMATION	27.03.2024	

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

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RL - RENDER - LIGHT RD - RENDER - DARK GL - GLASS TS - TIMBER SCREEN PO - PEBBLE ROOF ST - STONE CLADDING	RS - RENDER - SANDSTONE WF - WINDOW FRAMES AL - ALUMINIUM LOUVRES MS - METAL SURROUNDS DR - DRIVEWAY CONCRETE GB - GLASS BALUSTRADE
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RFI 01 - ADDITIONAL INFORMATION			
CLIENT	SCALE	@ A3	DRAWING TITLE
MICHAEL CHAN	1 : 100		NORTH ELEVATION
ADDRESS	DRAWN BY	DESIGNED BY	TRUE NORTH
21 BATTLE BOULEVARD, SEAFORTH, NSW 2092	AB	RU	
	PROJECT NO.	REV	DATE
	21.20	B	27.03.2024
			DRAWING NO.
			A501



RFI 01 - ADDITIONAL INFORMATION

**URSINO ARCHITECTS**

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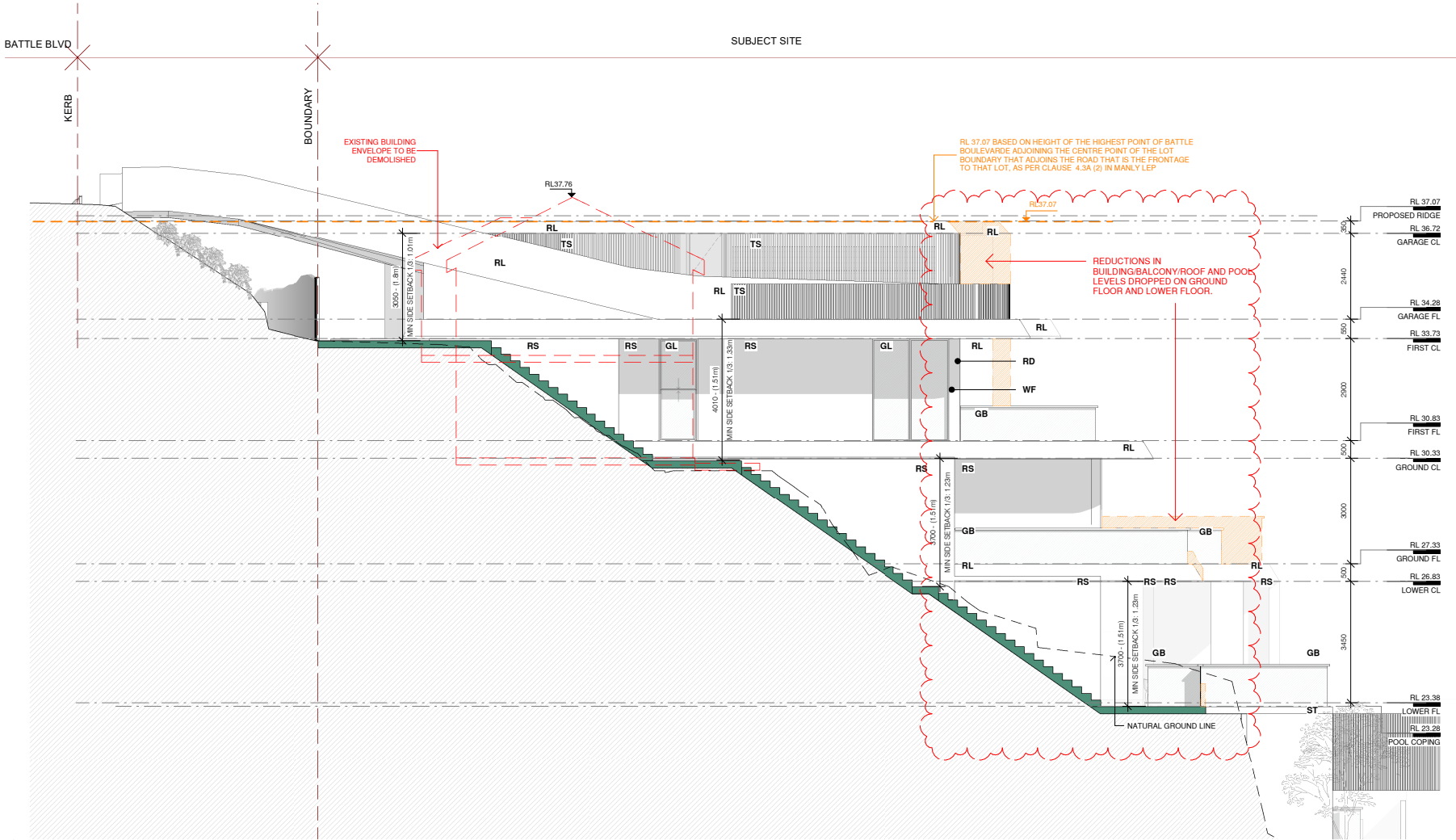
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- RL - RENDER - LIGHT  
RD - RENDER - DARK  
GL - GLASS  
TS - TIMBER SCREEN  
PO - PEBBLE ROOF  
ST - STONE CLADDING
- RS - RENDER - SANDSTONE  
WF - WINDOW FRAMES  
AL - ALUMINIUM LOUVRES  
MS - METAL SURROUNDS  
DR - DRIVEWAY CONCRETE  
GB - GLASS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

CLIENT	SCALE	BY	DRAWING TITLE
MICHAEL CHAN	1 : 100	A3	SOUTH ELEVATION
ADDRESS	DRAWN BY	DESIGNED BY	TRUE NORTH
21 BATTLE BOULEVARD, SEAFORTH, NSW 2092	AB	RU	
	PROJECT NO.	REV	DATE
	21.20	B	27.03.2024
			DRAWING NO.
			A502





1 WEST ELEVATION  
1:100



**URSINO  
ARCHITECTS**

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REGISTERED ARCHITECT: Robert Ursino NSW ARB No: 10565

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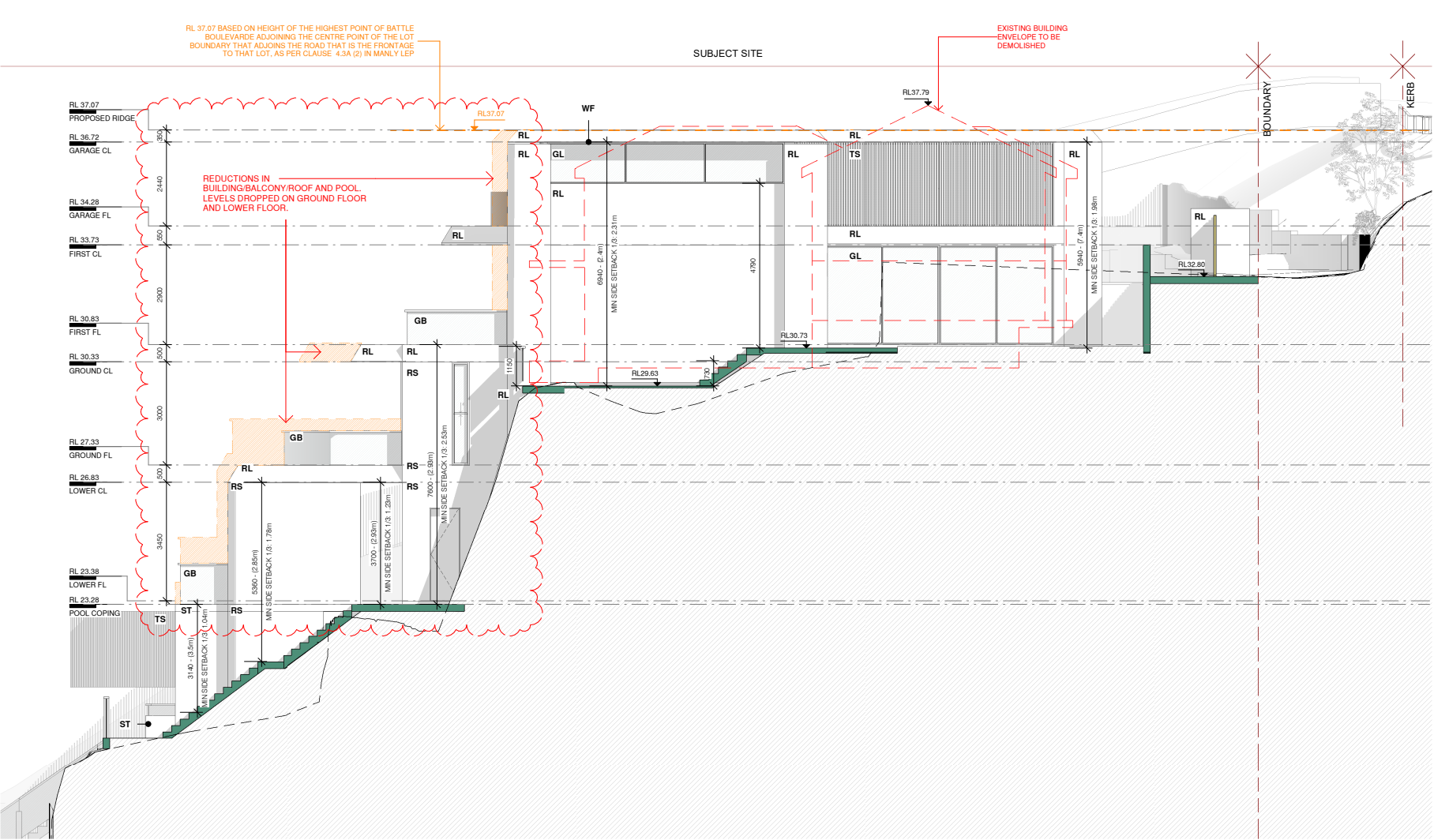
LEGEND & NOTES
MATERIALS LEGEND (REFER TO D4901)

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

CLIENT <b>MICHAEL CHAN</b>	SCALE <b>1:100</b>	@ A3 <b>DRAWING TITLE WEST ELEVATION</b>
ADDRESS <b>21 BATTLE BOULEVARD, SEAFORTH, NSW 2092</b>	DRAWN BY <b>AB</b>	DESIGNED BY <b>RU</b>
	PROJECT NO. <b>21.20</b>	TRUE NORTH <b>B</b>
	REV <b>B</b>	DATE <b>27.03.2024</b>
		DRAWING NO. <b>A503</b>



1 EAST ELEVATION  
1 : 100



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REGISTERED ARCHITECT: Robert Ursino NSW ARB No: 10565

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

LEGEND & NOTES
MATERIALS LEGEND (REFER TO DA901)

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

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**RFI 01 - ADDITIONAL INFORMATION**

CLIENT	SCALE	@ A3	DRAWING TITLE
MICHAEL CHAN	1 : 100		EAST ELEVATION
ADDRESS	DRAWN BY	DESIGNED BY	TRUE NORTH
21 BATTLE BOULEVARD, SEAFORTH, NSW 2092	AB	RU	
PROJECT NO.	REV	DRAWING NO.	DATE
21.20	B	A504	27.03.2024



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Town Planners

**DA 2023/1043**

**Proposed new dwelling house | 21 Battle Boulevard, Seaforth**

## Clause 4.6 variation request – Special height provisions

### 1.1 Introduction

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

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

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

## 1.2 Manly Local Environmental Plan 2013 (MLEP 2013)

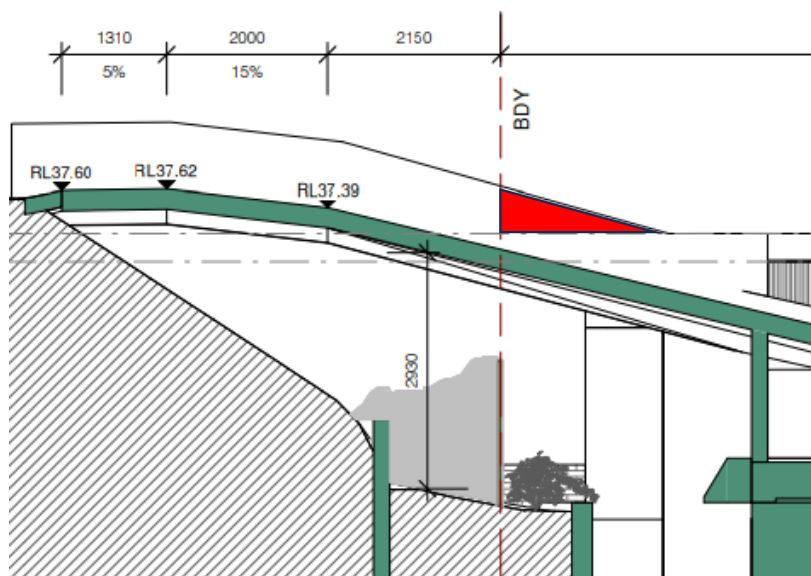
### 1.2.1 Clause 4.3A – Special height provisions

Pursuant to Clause 4.3A(2) of MLEP 2013, the height of a building on a lot identified as “Special height provisions” on the Height of Buildings Map must not exceed the height of the highest point of the road adjoining the centre point of the lot boundary that adjoins the road that is the frontage to that lot. The stated objective of this control is:

*to maintain public views to Sydney Harbour from street level on local roads above steeply sloping sites on certain land*

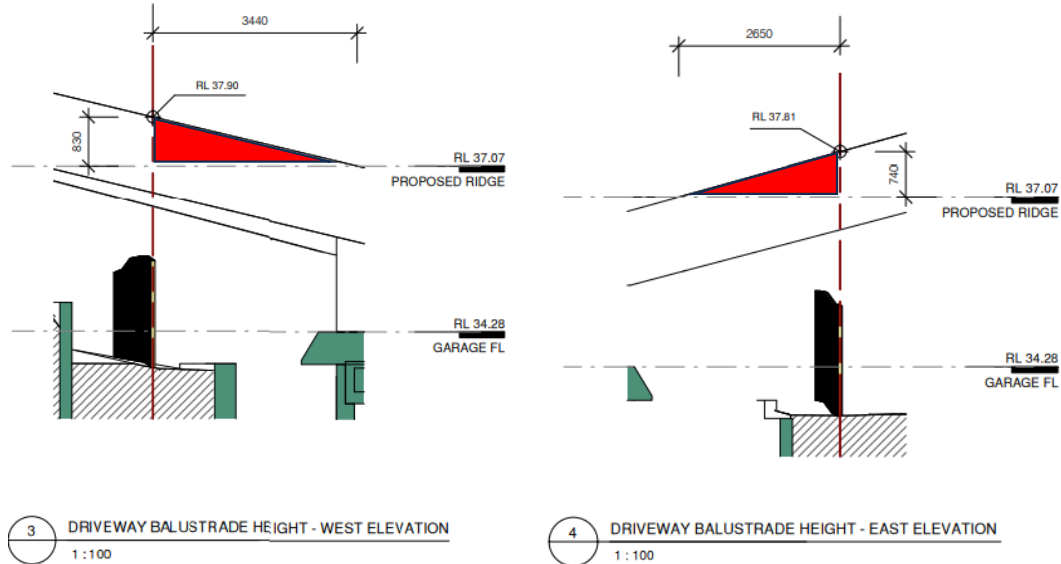
It has been determined by survey that the highest point of the road adjoining the centre point of the lot boundary that adjoins the road that is the frontage to that lot is RL37.07m AHD.

We confirm that whilst the proposed dwelling has a maximum roof RL of 37.07m AHD that the 1m high safety handrails/barrier on either side of the proposed access driveway, were located on the subject lot, exceeds RL 37.07m AHD by between 740mm and 830mm as depicted on the plan extracts below and over page.



**Figure 1** - Driveway section extract showing extent of non-compliance driveway safety handrail/barrier relative to highest point of the road adjacent the centre point of the lot boundary (in red).

| Clause 4.6 Request | Special height provisions



**Figure 2** – Elevation plans demonstrating extent of non-compliance driveway safety handrail/barrier relative to highest point of the road adjacent the centre point of the lot boundary (in red).

### 1.2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of MLEP 2013 provides:

*The objectives of this clause are:*

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

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

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

*“In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”.*

*If objective (b) was the source of the Commissioner's test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test."*

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

Clause 4.6(2) of MLEP 2013 provides:

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

This clause applies to the height of building development standard in clause 4.3A of MLEP 2013.

Clause 4.6(3) of MLEP 2013 provides:

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

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

The proposed development does not comply with the height of buildings development standard at clause 4.3A of MLEP 2013. However, strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

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

Clause 4.6(4) of MLEP 2013 provides:

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

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

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

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

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

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

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

### 1.3 Relevant Case Law

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

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

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

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

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

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

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

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

1. Is clause 4.3A of MLEP 2013 a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
  - (a) compliance is unreasonable or unnecessary; and
  - (b) there are sufficient environmental planning grounds to justify contravening the development standard
3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.3A of MLEP 2013 and the objectives for development for in the zone?
4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.3A of MLEP 2013?

## 1.4 Request for variation

### 1.4.1 Is clause 4.3A of MLEP 2013 a development standard?

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

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

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

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

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

The first approach is relevant in this instance, being that compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

#### **Consistency with objectives of the height of buildings development standard**

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

*to maintain public views to Sydney Harbour from street level on local roads above steeply sloping sites on certain land*

Comment: Having inspected the site to determine the public views currently available from Battle Boulevard across the subject property towards Sydney Harbour I am satisfied that the non-compliant driveway balustrade/barrier elements will have no impact on the views to and from Sydney Harbour from the public domain as depicted in the photomontage over page.



**Figure 2** - Photomontage demonstrating that the non-compliant driveway balustrade/barrier elements will not impact on existing views from Battle Boulevard towards Sydney Harbour

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

#### **Consistency with zone objectives**

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

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

Comment: The non-compliant driveway/ barrier elements will not prevent the achievement of this objective.

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

Comment: The non-compliant driveway/ barrier elements will not prevent the achievement of this objective.

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

Comment: The non-compliant driveway/ barrier elements will not prevent the achievement of this objective.



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

Comment: The non-compliant driveway/ barrier elements will not prevent the achievement of this objective.

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

Comment: The non-compliant driveway/ barrier elements will not prevent the achievement of this objective.

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

Comment: The non-compliant driveway/ barrier elements will not prevent the achievement of this objective.

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

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

In *Initial Action* the Court found at [23]-[25] that:

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

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

*The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15].*

*Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*

### **Sufficient environmental planning grounds**

#### **Ground 1 – To facilitate safe vehicular access to the subject property**

There is no ability to provide driveway access of compliant gradient directly from Battle Boulevard to the subject property without the need for a 1 m high balustrade/safety barrier at either side of the driveway which will in some location breach the special height provisions of MLEP.

Approval of the variation will promote the orderly development of the land and provide for the safety of occupants and visitors to the subject property in relation to the use of the proposed driveway for access purposes consistent with objectives 1.3(c) and (g) of the Act.

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

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

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

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

*The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.*

*It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).*

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

Accordingly, the consent authority can be satisfied that the proposed development will be in the public interest.

#### 1.4.5 Secretary's concurrence

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

#### Conclusion

Pursuant to clause 4.6(4)(a) of MLEP 2013, the consent authority can be satisfied that this written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

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

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

**Boston Blyth Fleming Pty Limited**



**Greg Boston**

B Urb & Reg Plan (UNE) MPIA

**Director**

12.4.24