AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 8 MAY 2024

Ashleigh Sherry
Manager Business System and Administration

Agenda for a Meeting of the Development Determination Panel to be held on Wednesday 8 May 2024 via teleconference Commencing at 10:00 AM

1.0 APOLOGIES & DECLARATIONS OF INTEREST

2.0 MINUTES OF PREVIOUS MEETING

2.1 Minutes of Development Determination Panel held on 29 April 2024 2

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS 4

3.1 DA2023/1652 - 6 Moore Street CLONTARF - Alterations and additions to a dwelling house 4

3.2 DA2023/1832 - 5 Portions Lovett Bay LOVETT BAY -Construction of a dwelling house and detached studio 65

3.3 DA2024/0281 - 290 Hudson Parade CLAREVILLE - Alterations and additions to a dwelling house 121

3.4 DA2024/0211 - 5 Dobroyd Road BALGOWLAH HEIGHTS - Alterations and additions to a dwelling house including a swimming pool 174

3.5 DA2023/1607 - 145 Riverview Road AVALON BEACH - Demolition works and construction of a cottage 226

3.6 DA2024/0089 - 17 Crown Road QUEENSCLIFF - Alterations and additions to a dwelling house 304

3.7 DA2023/1846 - 1 Rosedale Avenue FAIRLIGHT - Alterations and additions to a dwelling house 347

3.8 DA2024/0161 - 77 Castle Circuit SEAFORTH - Alterations and additions to a dwelling house 395

3.9 DA2023/1862 - 214 Hudson Parade CLAREVILLE - Alterations and additions to a boatshed, decking and skid ramp 453

3.10 DA2023/1350 - 40 Bassett Street MONA VALE - Demolition works and construction of a dwelling house including swimming pool 515

ACKNOWLEDGEMENT OF COUNTRY

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

1.0 APOLOGIES & DECLARATIONS OF INTEREST

Nil

2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD ON 24 APRIL 2024

RECOMMENDATION

That the Panel note that the minutes of the Development Determination Panel held on 24 April 2024 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1 DA2023/1652 - 6 MOORE STREET CLONTARF - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE

PURPOSE

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

RECOMMENDATION

That Council as the consent authority, vary the Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

THAT Council as the consent authority **approves** Development Consent to DA2023/1652 for alterations and additions to a dwelling house on land at Lot B DP 344989, 6 Moore Street CLONTARF, subject to the conditions set out in the Assessment Report.

Reporting manager	Adam Richardson
TRIM file ref	2024/293442
Attachments	⇩1 Assessment Report ⇩2 Site Plan and Elevations ⇩3 Clause 4.6 - FSR ⇩4 Clause 4.6 - BHS

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/1652

Responsible Officer:	Olivia Ramage
Land to be developed (Address):	Lot B DP 344989, 6 Moore Street CLONTARF NSW 2093
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Angela Dianne Borrelli
Applicant:	Angela Dianne Borrelli

Application Lodged:	30/11/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	29/03/2024 to 12/04/2024
Advertised:	Not Advertised
Submissions Received:	5
Clause 4.6 Variation:	4.3 Height of buildings: 6.47% 4.4 Floor space ratio: 49%
Recommendation:	Approval

Estimated Cost of Works:	$ 532,000.00

EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) due to a variation to Clause 4.4 Floor Space Ratio (FSR) which is greater than 10%. The application proposes an FSR of 0.59:1 presenting a 49% variation to the 0.4:1 required FSR. The breach of development standard is supported by a detailed written Clause 4.6 variation request for the non-compliance with FSR standard, which arises due to the undersized allotment. It is noted that the amount of floor space achieves compliance with the FSR variations permitted within Manly DCP for undersized allotments.

The proposal also contravenes Clause 4.3 Height of Buildings providing a maximum building height of 9.05 metres presenting a 6.47% variation to the required 8.5 metres maximum height. The height variation arises due to the previous excavation of the site and the built form of the existing dwelling. It is noted that the proposal provides a reduced building height from that of the existing dwelling, with the variation in height being supported by a detailed written Clause 4.6 variation request.

Concerns raised in the objections predominantly relate to view loss and privacy. Throughout the assessment process, additional information was requested in relation to engineering matters, FSR, view loss, privacy and front setbacks. The applicant submitted amended plans addressing these issues, providing a reduction in the size of the ground floor and first floor balconies providing greater front setbacks. The first floor balcony has also been relocated more centrally on the site to provide greater spatial separation allowing views to be shared over the site. The amended plans were re-notified to surrounding properties from 29 March 2024 to 12 April 2024.

The application was notified for a period of fourteen (14) days in accordance with the Northern Beaches Community Participation Plan (CPP). 4 submissions were received objecting to the proposal.

Critical assessment issues included height, FSR, view loss, privacy and front setbacks. Overall, this assessment finds that the amended proposal achieves acceptable view sharing and maintains a reasonable level of privacy to surrounding properties and provides a dwelling of an appropriate bulk and scale.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposed development consists of alterations and additions to a dwelling house. The lower ground floor provides a new garage, stairs, plant area, storage area and lift shaft. The ground floor provides two bedrooms with ensuites, master bedroom with ensuite, walk-in-robe and a balcony, study, lobby, stairs, laundry and lift shaft. The first floor provides another bedroom, toilet, open plan kitchen, living and dining area that opens onto the balcony, pantry, stairs and lift shaft.

Application History
Additional information was requested on 19 February 2024 raising concerns in relation to Development Engineering, FSR, View Loss, Privacy and Front Setbacks. Amended Plans were provided by the applicant as a response on 19 March 2023 and were re-notified to surrounding properties. Further amended plans were provided on 2 April 2024 in accordance with the updated BASIX Certificate but do not alter the design of the development.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Development Control Plan - 3.4.2 Privacy and Security
Manly Development Control Plan - 3.4.3 Maintenance of Views
Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
Manly Development Control Plan - 4.1.5 Open Space and Landscaping

SITE DESCRIPTION

Property Description:	Lot B DP 344989 , 6 Moore Street CLONTARF NSW 2093
Detailed Site Description:	The subject site consists of one (1) allotment located on the northern side of Moore Street. The site is regular in shape with a frontage of 18.3m along Moore Street and a depth of 27.43m. The site has a surveyed area of 499.5m². The site is located within the R2 Low Density Residential Zone under the MLEP 2013. The site is currently occupied by a two storey dwelling with garage below. The site slopes down from the northern rear towards the southern street frontage. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by residential dwellings of varying sizes and styles.

Map:



SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site.

The land has been used for residential purposes for an extended period of time.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	**Comments**
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to Development Engineering, floor space ratio, views, privacy, front setback. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 29/03/2024 to 12/04/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 5 submission/s from:

Name:	Address:
Mr Glenn Lyall Johnstone	10 Moore Street CLONTARF NSW 2093
Mr William Paul Tulloch	4 Moore Street CLONTARF NSW 2093
Mr Stephan Bjarne Dahl	3 Moore Street CLONTARF NSW 2093
Mr Mark John Hickey	8 Moore Street CLONTARF NSW 2093
Jaimie Johnstone	Address Unknown

The application was initially notified from 6 December 2023 to 11 January 2024 and received 4 submissions. Amended plans were received and the application was re-notified from 29 March 2024 to 12 April 2024 and received 1 submission. As per Council's Community Participation Plan (CPP), submissions received on or behalf of the same property are counted as 1 submission. As such, a total of 4 submissions have been received.

The following issues were raised in the submissions:

- Height and FSR Non-compliance
- Front Setback
- Privacy
- View Loss
- Overdevelopment / Bulk and Scale
- Incomplete Information
- Aims of LEP and Zone Objectives
- Solar Access
- Stormwater
- Precedent and Public Interest

The above issues are addressed as follows:

- **Height and FSR Non-compliance**

  The submissions raised concerns that the proposal seeks a variation to both the height and FSR development standards and questions whether there are sufficient environmental planning grounds to justify the variation. Concern is also raised that the proposal does not comply with the required wall height and number of storeys prescribed by the MDCP 2013.

  Comment:

  A detailed assessment on the variations to the Height of Buildings and FSR standards is provided under Clause 4.6 Exceptions to development standards of this report. In summary, this assessment finds that there are sufficient environmental planning grounds to justify the variations. A detailed assessment on wall height and number of storeys is provided under 4.1.2 of this report.

- **Front Setback**

  The submissions raised concerns that proposed front setback is inadequate.

  Comment:

  The MDCP 2013 requires front setbacks to be consistent with the prevailing front building line of surrounding properties and where there is no prevailing front building line, a 6 metres front setback applies. The properties to the west along Moore Street are setback generally 12 metres to the front façade of the dwellings and any elevated front balconies with ancillary structures forward of this building line. It is noted that these properties are deeper lots and the subject site has a much shallower lot depth. The adjoining eastern property has a front setback of 6.25 metres and a similar lot depth. As such, when compared to the properties to the west along Moore Street, the proposed development is inconsistent with the prevailing front building line, however, when compared to the adjoining eastern property, the proposed development is consistent with the prevailing front building line. Additionally, if the 6 metres front setback is applied, the proposed development complies. The proposed front setback is considered acceptable and a detailed assessment is provided under 4.1.4 Setbacks of this report.

- **Privacy**

  The submissions raised concerns that the proposed development results in unreasonable privacy impacts. The submissions raise concerns that the elevated front balconies allow for overlooking into the surrounding properties.

  Comment:

  The existing dwelling and surrounding dwellings provide an existing situation where there is a degree of mutual overlooking due to the orientation of dwellings to enjoy views. The surrounding properties have large open balconies to the front façade to maximise views which restricts the ability for complete privacy to be achieved. The proposal has been amended to achieve a balance between privacy impacts and view sharing outcomes. The ground floor and first floor balcony have been reduced in size and provide greater setbacks to adjoining properties allowing spatial separation to improve privacy outcomes. A detailed assessment is provided under 3.4.2 Privacy and Security of this report.

- **View Loss**

  The submissions raised concerns that the proposal causes a loss of views from No. 4 and 8 Moore Street. The properties enjoy iconic views of Sydney Harbour including Grotto Point, Middle Head, South Head, Watsons Bay and out to the Pacific Ocean. Concern is raised that the proposal extends the house forward and will block views from surrounding properties. The submissions suggest some amendments to the proposal to improve the view impacts including increased front setbacks particularly on the western side of the dwelling, reduce balcony overhangs, more clear glazing, no screens or window coverings to the glazing to the study and entrance, and clear glass balustrade to ground floor balcony.

  Comment:

  As above, the proposal has been amended to achieve a balance between privacy impacts and view sharing. The amended plans provide greater front and side setbacks to the balconies and also an open design to allow views to be shared over the balconies. A detailed assessment is provided under 3.4.3 Maintenance of Views of this report, where the impact has been found to be acceptable.

- **Overdevelopment / Bulk and Scale**

  The submissions raised concerns that the proposal does not comply with several controls of the MLEP 2013 and MDCP 2013 and presents an overdevelopment of the site. The submissions raised concerns that the proposal does not step down with the topography of the site, the proposal does not allow for enough landscaping to reduce the bulk and scale, the proposal does not provide articulation and fails to minimise the visual impact when viewed from adjoining properties and streets.

  Comment:

  The proposal has been assessed against the relevant controls of the MLEP 2013 and MDCP 2013 throughout this report. In summary, the proposal provides a 3 storey dwelling that is consistent with the existing dwelling and actually reduces the height of the existing dwelling. Surrounding development consists of 3 storey dwellings with large front balconies, which the proposal achieves compatibility with. The proposal does step down with topography providing greater front setbacks to the first floor and a slanted roof in response to the slope of the site. The proposal provides a compliant quantum of landscaped area include new plantings within the front and rear yard

to soften the development. Lastly, the front facing balconies provide articulation to minimise the visual impact and break up the bulk of the development. As such, the proposal is not considered to generate unreasonable bulk and scale.

- **Incomplete Information**

  The submissions raised concerns that spot survey levels and contour lines have not been adequately transferred to the architectural plans to enable an accurate assessment of height and impacts to adjoining properties. The submission states that neighbouring dwellings have not been located on the plans including location of windows and decks.

  Comment:

  The submitted Boundary Identification Survey shows all required details in accordance with Council's Lodgement Requirements. Additionally, the architectural plans adequately show levels and locations of adjoining development including windows and balconies based off the survey information.

- **Aims of LEP and Zone Objectives**

  The submissions raised concerns that the proposal is contrary to the aims of the LEP and zone objectives as it compromises amenity impacts on neighbours, is not compatible with the desired future character of the locality in terms of building height and roof form and does not minimise the adverse effects of the bulk and scale.

  Comment:

  This assessment finds that the proposal does not result in unreasonable amenity impacts on surrounding properties in terms of privacy, view loss or solar access. The proposal reduces the height of the existing building through a lower slanted roof form that is compatible with surrounding dwellings. As such, the proposal is considered to be consistent with the aims of the LEP and the zone objectives.

- **Solar Access**

  The submissions raised concerns that the applicant has not provided adequate shadow diagrams and the proposal will cause unreasonable overshadowing to No. 4 Moore Street.

  Comment:

  Shadow diagrams have been submitted at hourly intervals as well as elevational diagrams showing the shadow impacts of the proposal between 9am-3pm on June 21 which is in accordance with the Lodgement Requirements. Essentially, the site faces south and majority of the proposed shadows fall on the street with only a small amount of shadows falling on No. 4 at 2pm and 3pm. The proposal does not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties and maintains the existing level of solar access to windows to living rooms for at least 4 hours from 9am-3pm on June 21. As such, the proposal complies with the requirements for solar access.

- **Stormwater**

  The submissions raised concerns that the proposal fails to provide adequate stormwater control outcomes.

  Comment:

  Amended stormwater management plans have been provided and reviewed by Council's Development Engineer deeming it acceptable subject to the recommended conditions.

- **Precedent and Public Interest**

  The submissions raised concerns that if approved, the proposal will create an undesirable precedent for similar inappropriate development in the area. The submissions raised concerns that the proposal is contrary to the public interest as it is inconsistent with the scale and intensity of development that the community can reasonably expect. The submission states that the development does not represent orderly development of appropriate bulk, scale or amenity impact in the locality.

  Comment:

  Each development application is evaluated based on its individual merits and is not bound by precedent. The proposed development has been assessed against the relevant MLEP 2013 and MDCP 2013 controls in particular, height, floor space ratio and setbacks and is considered to be of an acceptable bulk and scale. The proposal has also been assessed with regards to amenity impacts in relation to privacy and view loss and is found to be acceptable.

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	There are no applicable biodiversity-related controls which apply to the subject site.
NECC (Development Engineering)	The proposed development has not addressed on-site detention requirements for the site. On-site detention is required in accordance with Section 9.3.3.2 of the Water Management for Development Policy (pg 44) and Appendix 16 (pg 92) of the Water Management for Development

Internal Referral Body	Comments
	Policy Version 2, 26 February 2021. **Engineering comments 19.03.24** Amended stormwater management plans have been provided. Development engineering raises no objections to the proposed development, 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 (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No. A504744_02 dated 2 April 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.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.05m	6.47%	**No**
Floor Space Ratio	FSR: 0.4:1 (199.8m^2)	FSR: 0.59:1 (297.57m^2)	49%	**No**

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Clause 4.3 Height of Buildings

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

Development standard: Clause 4.3 Height of Buildings
Requirement: 8.5m
Proposed: 9.05m
Percentage of variation: 6.47%

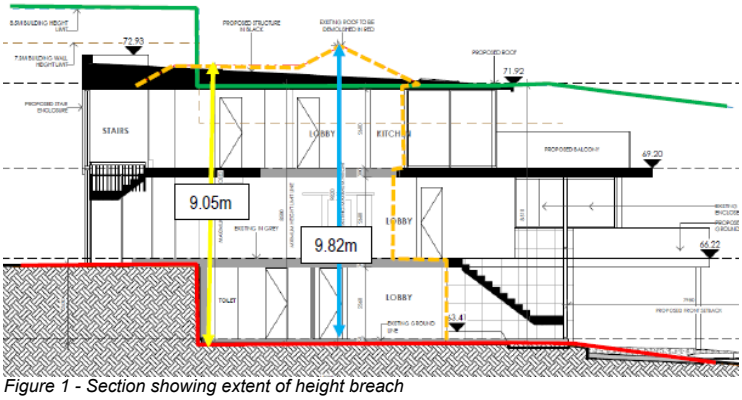


Figure 1 - Section showing extent of height breach

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 MLEP 2013 (the 'Clause 4.6 Request').

Subclause (1) of this clause provides that:

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

Comment:

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

Subclause (2) of this clause provides that:

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

Comment:

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

Subclause (3) of this clause provides that:

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

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

Comment:

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

The proposed development achieves the objectives of the standard notwithstanding the height variation and the resultant height is consistent with the height of surrounding buildings. The proposed development reduces the height of the existing building and improves the design by creating a slanted roof form where the existing roof was pitched. Additionally, the height breach arises as a result of the existing built form, excavation and topography of the site.

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

Comment:

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

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

The Clause 4.6 Request argues, in part:

- *The height non-compliance is minor and is attributed to only a portion of the new roof.*
- *The proposal improves the design by creating a slanted roof form that reduces the height of the existing dwelling.*
- *The resultant height is consistent with other 2-3 storey dwellings in the vicinity.*
- *There is an existing excavated basement on the site which contributes to the height variation.*

The applicant's Clause 4.6 Request is well-founded and the justifications are generally agreed with. It is acknowledged that the existing dwelling is over the height limit and the proposal provides a new roof form that reduces the height of the dwelling. This improves the design of the dwelling and also provides a slanted roof form that provides less bulk and scale. It is also noted that the site has been previously excavated which further contributes to the height variation. In Summary, the resultant height variation is justified and is not considered to render the development incompatible with the height and scale of surrounding development.

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

The proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, thereby satisfying objects 1.3(c) and (g) of the EPA Act. Notwithstanding this, the breach in height is notably less than that of the existing structure and is in part attributed to the previous excavation of the site.

Public Interest:

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

Conclusion:

Council is satisfied as to the matters set out in Clause 4.6 of the MLEP 2013.

It is considered on balance, that having regard to the particular circumstances, the Clause 4.3 Height of Building non-compliance arising largely due to the existing built form and previous excavation of the site, the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

Clause 4.4 Floor Space Ratio

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

Development standard: Clause 4.4 Floor Space Ratio
Requirement: 0.4:1
Proposed: 0.59:1
Percentage of variation: 49%

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 MLEP 2013 (the 'Clause 4.6 Request').

Subclause (1) of this clause provides that:

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

Comment:

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

Subclause (2) of this clause provides that:

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

Comment:

Clause 4.4 Floor Space Ratio is not expressly excluded from the operation of this clause.

Subclause (3) of this clause provides that:

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

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

Comment:

Council is satisfied that the Applicant has demonstrated that compliance with Clause 4.4 Floor Space Ratio is unreasonable or unnecessary in the circumstances of this application for the following reasons:

The proposed development achieves the objectives of the standard notwithstanding the non-compliance. The proposed development achieves the desired low density character of the area and is compatible with the height, bulk and scale of surrounding development. The site is an undersized lot and a compliant FSR would restrict the development and the potential amenity. The proposal is not considered to give rise to unreasonable amenity impacts in terms of privacy, view loss or overshadowing to surrounding properties.

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

Comment:

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

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

The Clause 4.6 Request argues, in part:

- *The site is an undersized lot with an area of 499.5m^2 and the minimum lot size is 750m^2. Under 4.1.3.1 of the MDCP 2013, the subject site has an allowable GFA of 300m^2 to which the proposal complies with.*
- *The proposed development does not generate significant bulk and scale and is compatible with surrounding development.*
- *The proposal promotes the orderly and economic use and development of the land by allowing site improvements that are consistent with the desired low density character of the area.*

The applicant's Clause 4.6 Request is generally supported. It is noted that the site is an undersized lot and benefits from the dispensations prescribed by 4.1.3.1 of the MDCP 2013. Under this clause, the allowable GFA is 300m^2 which the proposal complies with. As such, the site is constrained by the undersized nature of the lot. It is also acknowledged that the existing dwelling is already in breach of the FSR standard whereby any additional floor space would immediately result in non-compliance. In summary, the FSR variation is not considered to result in unreasonable bulk and scale and the proposed development is compatible with the character of surrounding development.

Council is satisfied that the Applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of Clause 4.4 Floor Space Ratio for the following reasons:

The proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, thereby satisfying objects 1.3(c) and (g) of the EPA Act.

Public Interest:

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

Conclusion:

Council is satisfied as to the matters set out in Clause 4.6 of the MLEP 2013.

It is considered on balance, that having regard to the particular circumstances, the Clause 4.4 Floor Space Ratio variation arising due to the undersized lot, the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 499.5m^2	**Requirement**	**Proposed**	**% Variation***	**Complies**
4.1.2.1 Wall Height	E: 7.5m (based on gradient 1:6)	8.4m	5%	**No**
	W: 8.0m (based on gradient 1:2.4)	8.0m	N/A	Yes
4.1.2.2 Number of Storeys	2	3	50%	**No**
4.1.2.3 Roof Height	Height: 2.5m	0.7m	N/A	Yes
	Pitch: maximum 35 degrees	3 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Basement: 7.4m Ground Floor Balcony: 6.2m Ground Floor: 7.4m First Floor Balcony: 6.5m First Floor: 10.4m	N/A N/A N/A N/A N/A	Yes Yes Yes Yes Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	East: Dwelling: 2.8m (based on wall height) First Floor Balcony: 2.3m	Ground Floor: 0.96m First Floor balcony: 5.8m First Floor: 1.2m	65.7% N/A 57.1%	**No** Yes **No**
	West: Dwelling: 2.7m Ground Floor Balcony: 1.4m First Floor Balcony: 2.5m	Dwelling: 2.1m Ground Balcony: 9.8m First Floor Balcony: 3.7m	22.2% N/A N/A	**No Change** Yes Yes
	Windows: 3m	0.96m	68%	**No**
4.1.4.4 Rear Setbacks	8m	3.7m	53.8%	**No Change**
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS1/2/3/4	Open space 60% of site area	50.6% (252.9m^2)	15.7%	**No**
	Open space above ground 25% of total open space	19.8% (50.2m^2)	N/A	Yes

4.1.5.2 Landscaped Area	Landscaped area 40% of open space	90.7% (229.3m^2)	N/A	Yes
	2 native trees	5 trees	N/A	Yes
4.1.5.3 Private Open Space	18sqm	>18sqm	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	5.0m	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

Merit consideration:

Submissions have been received raising concerns regarding the privacy impacts of the proposed development. Concern is raised that the front balconies will have a direct line of sight into the master bedroom and living area at No. 10 Moore Street. Additionally, the location and design of the balconies and excessive glazed windows facing the side boundary will result in unacceptable visual and acoustic impacts on No. 4 Moore Street. Concern is also raised that the front balcony will look directly into the bedroom and front balcony at No. 3 Moore Street.

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

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

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

Comment:

The orientation of the site and surrounding properties has created an existing situation of mutual overlooking. This is seen through the siting of private open space areas including balconies and swimming pools at the front of properties to enjoy views in this direction. Additionally, No. 4 Moore Street is angled towards the subject site to obtain views across this boundary creating an existing situation of mutual overlooking. As such, the front facing balconies are not considered to result in unreasonable privacy outcomes given the existing mutual overlooking. Additionally, the proposal includes fixed privacy blinds internally to the western facing windows for privacy. On the eastern side, windows are off-set from the windows of adjoining properties to mitigate direct viewing.

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 has been amended to balance privacy impacts and view sharing outcomes given that any privacy screening will result in obstruction of views. The ground floor balcony has been significantly reduced in size to minimise the use of the balcony for extended periods of time. Additionally, the first floor balcony has been reduced in size and shifted to the west to be located centrally on the site. This provides 3.7 metres of spatial separation to the western side boundary and 5.8 metres to the eastern side boundary from the trafficable area of the first floor balcony. Furthermore, the proposal provides more than 15 metres of spatial separation from the first floor balcony to the dwelling at No. 10 Moore Street and more than 30 metres to the dwelling at No. 3 Moore Street. Such spatial separation is considered to adequately mitigate opportunities for overlooking. Additionally, the first floor balcony is orientated south to enjoy the iconic views in this direction. As such, occupants will be looking south towards the views and are unlikely to look back towards the east and west into neighbouring properties.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal allows for casual surveillance to encourage awareness of neighbourhood security.

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.

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. 4 Moore Street
This property enjoys sweeping views of Sydney Harbour extending from the east of Grotto Point to South Head, Watsons Bay, Middle Head, Balmoral Beach, Chinamans Beach and to the west towards Middle Cove and the Chatswood skyline. The views extend south to the Pacific Ocean. The views directly to the west of Chatswood are partly obstructed by the existing dwellings to the west. The lower portion of the Harbour views to the south are minorly obstructed by vegetation, powerlines and existing dwellings on the southern side of Moore Street. The views of Balmoral Beach and Chinamans Beach are whole views containing the land and water interface and are highly valued.



Figure 2 - View from No. 4 top floor living room looking west



Figure 3 - View from No. 4 top floor living room looking south-west



Figure 4 - View from No. 4 top floor balcony looking south



Figure 5 - View from No. 4 top floor balcony looking south-east

No. 8 Moore Street
This property enjoys sweeping views of Sydney Harbour extending from the east of Grotto Point to South Head, Watsons Bay, Middle Head, Balmoral Beach, Chinamans Beach and to the west towards Middle Cove. The views extend south to the Pacific Ocean. The views directly to the east to Grotto Point are partly obstructed by vegetation and the existing dwelling at the subject site. The views to the west of Middle Cove are partly obstructed by the existing dwellings to the west. The Harbour views to the south are partly obstructed by vegetation, powerlines and the existing dwellings on the southern side of Moore Street. The views of Balmoral Beach and Chinamans Beach are whole views containing the land and water interface and are highly valued.



Figure 6 - View from No. 8 verandah looking east



Figure 7 - View from No. 8 verandah looking east



Figure 8 - View from No. 8 verandah looking south



Figure 9 - View from No. 8 verandah looking south-west

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. 4 Moore Street
The views of Sydney Harbour extending from the east of Grotto Point to South Head, Watsons Bay, Middle Head are obtained over the front boundary from the top floor living room and balcony. The views of Balmoral Beach, Chinamans Beach and to the west of the Chatswood skyline are obtained over the western side boundary from the top floor living room and balcony. The views are obtained from both sitting and standing positions.

No. 8 Moore Street

The views of Sydney Harbour to the east of Grotto Point, South Head, Watsons Bay and Middle Head are obtained from the living room and verandah over the eastern side boundary. The views of Balmoral Beach and Chinamans Beach are obtained from the living room and verandah over the front boundary. The views to the west towards Middle Cove are obtained from the living room and verandah over the western side boundary. The views are obtained from both sitting and standing positions.

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:

No. 4 Moore Street
The views to the west of the Chatswood skyline and portions of Middle Cove will be obstructed by the proposed development. The views to the south of the land and water interface of Chinamans Beach and Balmoral Beach will be retained along with the Harbour views to South Head, Watsons Bay, Middle Head and to the east of Grotto Point. As such, the most iconic views of landmarks and the land and water interface views which are highly valued and over the front boundary are retained. The views to the west towards Chatswood and Middle Cove are less iconic and are obtained over the side boundary and are therefore more difficult to protect. Therefore, given the extent of iconic views retained, the view loss is categorised as minor.

No. 8 Moore Street
The proposal will obstruct the views to the east of Grotto Point and partly obstruct the views to Watsons Bay. The views to the south-east of Middle Head will be mostly retained and the views to the south of Balmoral Beach and Chinamans Beach including the land and water interface will be unaffected by the proposed development. The views to the west towards Middle Cove will also be unaffected by the proposal. Evidently, the views that are most affected are obtained over the eastern side boundary and are thus more difficult to retain. Additionally, it is noted that the dwelling at No. 8 is single storey and is likely to be further developed in the future. As such, it is considered greater view opportunities could be available through additional storeys and further development of No. 8. Overall, given the extent of iconic views to be retained, the view loss is categorised as moderate.

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 proposal has been amended to improve view sharing outcomes for surrounding properties. The amendments constitute reducing the size of the ground floor and first floor balconies to provide a greater front setback. The first floor balcony has also been relocated centrally and amended to more of an open design to allow view sharing over the balcony from the eastern and western adjoining properties. The proposed front building line has been amended to sensitively relate to the front building line of neighbouring properties and considers the lot dimensions and orientations. Ultimately, the site is constrained due to being an undersized allotment with a shallow depth whereby a greater front setback would not deliver the same development potential or amenity outcome for the occupants. To maintain or minimise available views would significantly constrain the ability of the subject dwelling to be expanded in any meaningful way. As a result, the proposal impacts to a minor extent, the views obtained over the side boundaries from adjoining properties but retains the views over the front boundaries. It is considered an unreasonable expectation that all side views would be retained. Consequently, the view sharing outcome is considered reasonable and acceptable.

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

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

Description of non-compliance

Under Clause 4.1.2.1 of the MDCP 2013, the required external wall height is calculated based on the slope of the land under the proposed wall. On the eastern façade, the required wall height is 7.5 metres. The proposed development has a maximum wall height on the eastern façade of 8.4 metres which does not comply. On the western façade, the required wall height is 8.0 metres The proposed development has a maximum wall height on the western façade of 8.0 metres which complies.

Under Clause 4.1.2.2 of the MDCP 2013, buildings must not exceed 2 storeys. The proposed development provides 3 storeys which is consistent with the existing dwelling and maintains the existing non-compliance with the control.

Merit consideration

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

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

Comment:

The proposed development results in a reduced height to the existing building through a new slanted roof. The proposed development at its highest point sits at RL 72.94 and the adjoining eastern property sits at RL 73.31 providing a three storey dwelling. Evidently, the proposed development provides a building height that is consistent with the prevailing building height and desired future streetscape character in the locality.

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

Comment:

The height variation is largely attributed to the built form of the existing dwelling and the previous excavations on the site resulting in a lower ground level. As such, the height variation is not considered to generate unreasonable bulk and scale.

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

Comment:

A detailed assessment on view loss is provided under 3.4.3 Maintenance of Views of this report. In summary, the proposal maintains reasonable view sharing for surrounding properties.

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

Comment:

As demonstrated in the submitted shadow diagrams, majority of the proposed increase in shadows fall on the street and the proposal does not overshadow public and private open spaces. The proposal maintains adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings.

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

Comment:

The proposal does not require the removal of any significant vegetation and has regard to existing vegetation and topography.

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.

4.1.3 Floor Space Ratio (FSR)

The proposed development exceeds the maximum FSR development standard. Refer to the detailed assessment under Clause 4.4 of MLEP 2013.

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

Description of non-compliance

Under 4.1.4.1 of the MDCP 2013, street front setbacks must relate to the front building line of neighbouring properties and the prevailing building lines in the immediate vicinity. Where the street front building lines of neighbouring properties are variable and there is no prevailing building line in the immediate vicinity i.e. where building lines are neither consistent nor established, a minimum 6m front setback generally applies.

The proposal provides the following street front setbacks:

- Basement: 7.4 metres
- Ground Floor Balcony: 6.2 metres
- Ground Floor: 7.4 metres
- First Floor Balcony: 6.5 metres
- First Floor: 10.4 metres

The prevailing front building line along Moore Street is generally 12m to the front façade of the dwellings and any elevated front balconies. There is a presence of ancillary structures forward of this building line, but this is limited to swimming pools and garages predominantly sited at ground level and of low height. It is noted that the adjoining corner lot No. 4 Moore Street presents an anomaly with a minimum front setback of 6.25 metres to the corner of the awning due to its irregular orientation. It is noted, the existing dwelling at the subject site has a front setback of 11.8 metres to the front balcony.

As such, when compared to the properties to the west along Moore Street, the proposed development is inconsistent with the prevailing front building line, however, when compared to the adjoining eastern property, the proposed development is consistent with the prevailing front building line. Additionally, if the 6 metres front setback is applied, the proposed development complies.

Under 4.1.4.2 of the MDCP 2013, setbacks between any part of a building and the side boundary must not be less than one third of the height of the adjacent external wall of the proposed building. Additionally, all new windows from habitable dwellings that face the side boundary are to be setback at least 3 metres from side boundaries. On the eastern façade, the required setbacks are 2.8 metres to the dwelling and 2.3 metres to the first floor balcony. On the western façade the required setbacks are 2.7 metres to the dwelling, 1.4 metres to the ground floor balcony and 2.5 metres to the first floor balcony.

The proposed development has the following eastern side setbacks:

- Ground Floor: 0.96 metres
- First Floor balcony: 5.8 metres
- First Floor: 1.2 metres

The proposed development has the following western side setbacks:

- Dwelling: 2.1 metres
- Ground Balcony: 9.8 metres
- First Floor Balcony: 3.7 metres

Evidently, the proposed development is non-compliant with the side setbacks for the ground floor and first floor of the dwelling. It is noted that the proposal retains the existing wall on the western façade of the dwelling presenting an existing non-compliance which is not changing.

Under 4.1.4.4 of the MDCP 2013 the distance between any part of a building and the rear boundary must not be less than 8 metres. The existing dwelling is setback 3.6 metres from the stairs and 6.4 metres from the dwelling to the rear boundary. The proposal does not change these existing setbacks.

Merit consideration:

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

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

Comment:

The proposed development includes a ground floor and first floor balcony to the front façade which is consistent with the adjoining properties along Moore Street at No. 4, 8, 10 and 12. While the proposed development sits slightly in front of the adjoining western properties, these lots are much deeper. The proposed development is sited in line with the existing dwelling at No. 4 which has a similar depth to the subject site. The proposal provides a large landscaped area within the front yard to enhance the existing streetscape and landscape character of the street.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposal provides privacy by the increased side setbacks for the ground floor and first floor balconies allowing sufficient spatial separation. Fixed privacy blinds are provided internally to the glazing facing the western façade to provide privacy between the adjoining property. The proposal maintains compliant solar access and provides equitable access to light, sunshine and air movement. The proposal largely maintains the side setbacks of the existing dwelling and the front facing balconies are significantly stepped in with an open design to facilitate view sharing. A detailed assessment on view sharing is provided under 3.4.3 Maintenance of Views of this report. The proposal provides sufficient space between adjoining buildings to create a rhythm and pattern of spaces. Lastly, the proposal does not impact on existing traffic conditions.

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

Comment:

The proposed development utilises the siting of the existing dwelling and extends it. The proposal provides a transition the eastern dwelling at No. 4 and the western dwellings to relate the prevailing front building lines.

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 enhances and maintains natural features by providing a compliant quantum of landscaped area across the site. New plantings are provided which ensure the nature of the 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.

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

Comment:

The site is not located within bush fire prone land.

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

4.1.5 Open Space and Landscaping

Description of non-compliance

Under 4.1.5 of the MDCP 2013, at least 60% of the site area is to be total open space of which up to 25% can be above ground. Of the total open space, at least 40% is to be landscaped area.

The proposal provides 50.6% (252.9m^2) total open space of which 19.8% (50.2m^2) is above ground, and 90.7% (229.3m^2) is landscaped area. As such, the proposal does not comply with the required total open space.

Merit consideration:

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

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

Comment:

The proposal does not require the removal of any significant vegetation or landscape features. The proposal has been reviewed and supported by Council's Bushland and Biodiversity Officer.

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

Comment:

The proposal provides large lawn areas in both the front and rear yard at ground level which support tree planting including new natives and hedging.

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

Comment:

The proposal provides hedging along the side and rear boundary to act as screening for privacy between the adjoining properties. As demonstrated in the submitted shadow diagrams, the proposal provides a compliant level of solar access to adjoining properties. Additionally, as discussed under 3.4.3 Maintenance of Views of this report, the proposal maintains reasonable view sharing for surrounding properties.

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

Comment:

The proposal has been reviewed by Council's Development Engineer with regards to stormwater deeming it acceptable subject to the recommended conditions.

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

Comment:

The proposed development is not considered likely to cause the spread of weeds and the degradation of private and public open space.

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

Comment:

The proposal will not impact on wildlife habitat or the potential for wildlife corridors.

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 $5,320 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $532,000.

CONCLUSION

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

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

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

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

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

Council is satisfied that the Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify variation of the development standard contained within Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

Council is satisfied that the Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify variation of the development standard contained within Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

PLANNING CONCLUSION

This proposal, for alterations and additions to a dwelling house has been referred to the Development Determination Panel (DDP) due to a variation to Clause 4.3 Floor Space Ratio greater than 10%.

The concerns raised in the objections have been addressed and resolved by amended plans increasing the front setback and altering the design of the front balconies and front façade.

The critical assessment issues include height, floor space ratio, view loss, privacy and front setbacks.

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

REASON FOR DETERMINATION

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

RECOMMENDATION

That Northern Beaches Council, as the consent authority, vary the development standard contained within Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio, pursuant to Clause 4.6 of the Manly Local Environmental Plan 2013 because the Applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) of Clause 4.6.

Accordingly Council as the consent authority grant Development Consent to DA2023/1652 for Alterations and additions to a dwelling house on land at Lot B DP 344989, 6 Moore Street, CLONTARF, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

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

Approved Plans				
Plan Number	**Revision Number**	**Plan Title**	**Drawn By**	**Date of Plan**
DA101	B	Site Plan	Terra Partners	11 March 2024
DA105	A	Demolition Plan	Terra Partners	7 September 2023
DA111	C	Basement Floor Plan	Terra Partners	2 April 2024
DA112	C	Ground Floor Plan	Terra Partners	2 April 2024
DA113	C	First Floor Plan	Terra Partners	2 April 2024
DA114	C	Roof Plan	Terra Partners	2 April 2024
DA251	C	Sections	Terra Partners	2 April 2024
DA252	C	Sections	Terra Partners	2 April 2024
DA260	C	Exterior Elevations	Terra Partners	2 April 2024
DA261	C	Exterior Elevations	Terra Partners	2 April 2024

Approved Reports and Documentation			
Document Title	**Version Number**	**Prepared By**	**Date of Document**
BASIX Certificate No. A504744_02	-	Porus	2 April 2024
Stormwater Concept Drainage Plan Sheet 1-4	SWD2163	BMB Engineers	8 February 2024

Preliminary Geotechnical Assessment	J5246	White Geotechnical Group	21 November 2023
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.

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	Undated

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

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

3. **Prescribed Conditions**

(a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

(b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);

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

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

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

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

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

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

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

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

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

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

A. the name of the owner-builder, and

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

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

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

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

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

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

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

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

Reason: Legislative requirement.

4. **General Requirements**

(a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,

- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

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

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

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

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

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

iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.

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

(h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

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

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

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

i) Building/s that are to be erected

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

iii) Building/s that are to be demolished

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

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

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

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

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

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

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

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

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

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

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

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

(3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

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

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

FEES / CHARGES / CONTRIBUTIONS

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

A monetary contribution of $5,320.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of $532,000.00.

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

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

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

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

6. **Security Bond**

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

7. **On-Site Stormwater Detention Details**
The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by BMB Engineers, drawing number SWD2163, dated 08.02.2024. 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.

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

8. **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.

9. **Vehicle Crossings Application**
The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing a maximum of 5.0 metres wide in accordance with Northern Beaches Council Standard Drawing A4 3330/2 NH in accordance with Section 138 of the Roads Act 1993.

Note, driveways are to be in plain concrete only.

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

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

Reason: To facilitate suitable vehicular access to private property.

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

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

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

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

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

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

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

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

12. **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.

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

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

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

14. **External Finishes to Roof**
The external finish to the roof shall have a Solar Absorptance (SA) greater than 0.46 in accordance with the requirements of the BASIX Certificate to minimise solar reflections to neighbouring properties. Any roof with a metallic steel or reflective finish is not permitted.

Green roofs and areas where solar panels (PV) are installed are excluded from conforming to the SA range.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development.

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

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

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

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

DURING BUILDING WORK

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

Reason: Public safety.

17. **Removing, Handling and Disposing of Asbestos**
Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:
- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

19. **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.

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

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

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

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

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

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

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

23. **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.

24. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**
The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), and Civil Engineers' certification.

The Applicant shall create on the Title a restriction on the use of land and a positive covenant in respect to the ongoing maintenance and restriction of the on-site stormwater disposal structures within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted.

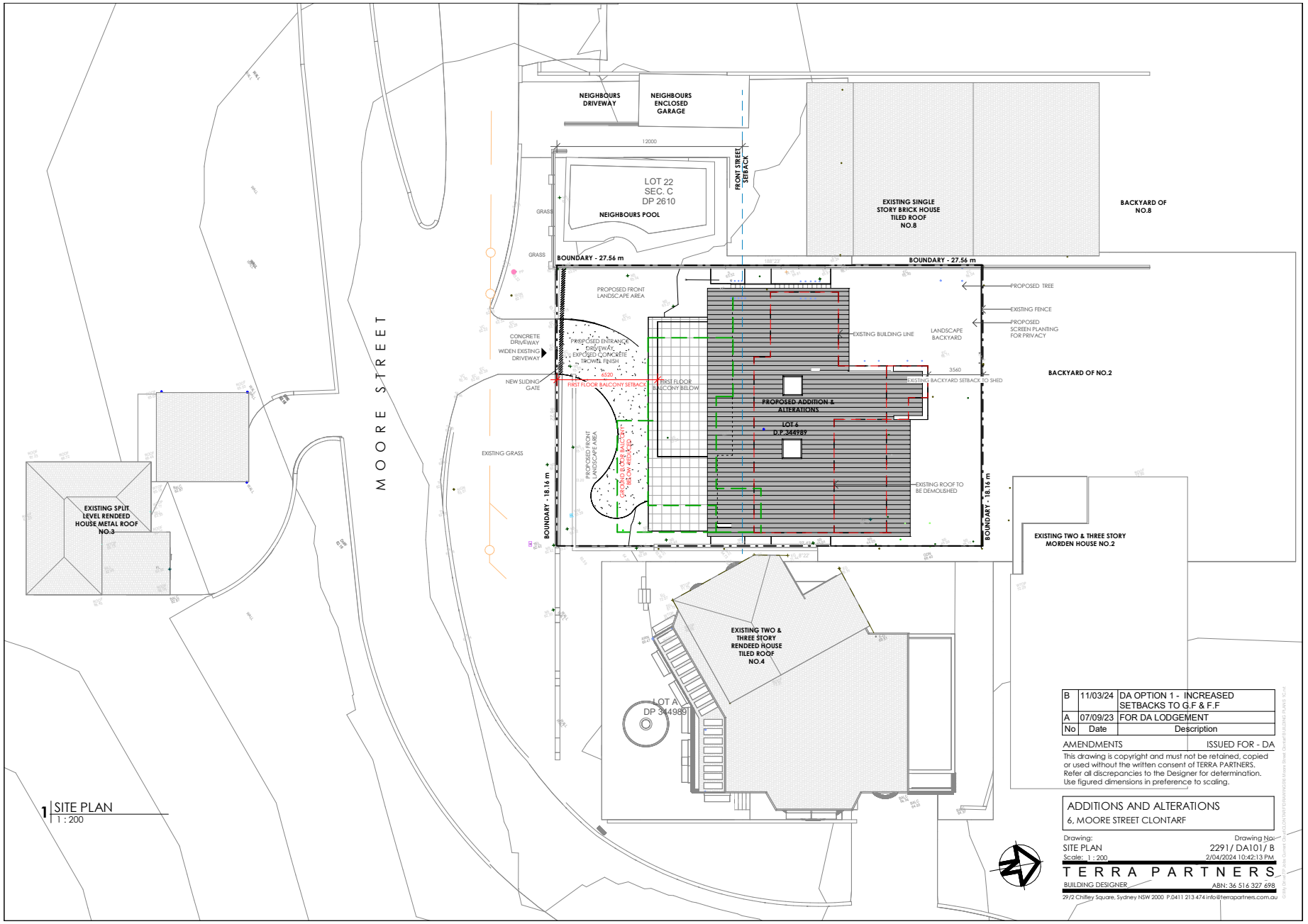
Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.

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

25. **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.



1 SITE PLAN
1 : 200

No	Date	Description
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A	07/09/23	FOR DA LODGEMENT

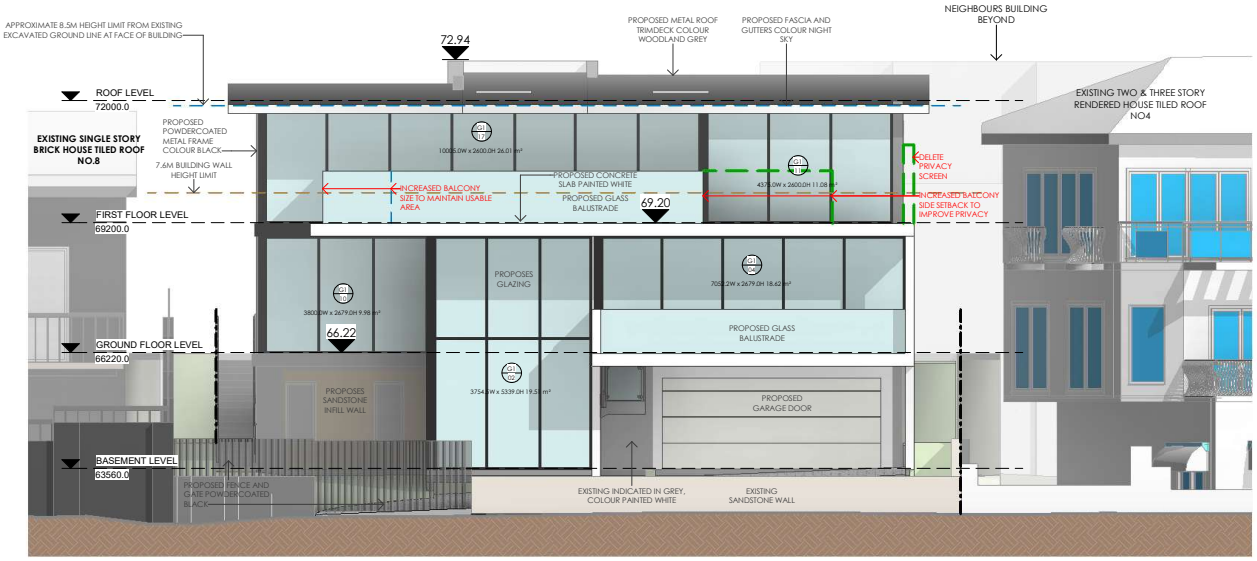
AMENDMENTS ISSUED FOR - DA

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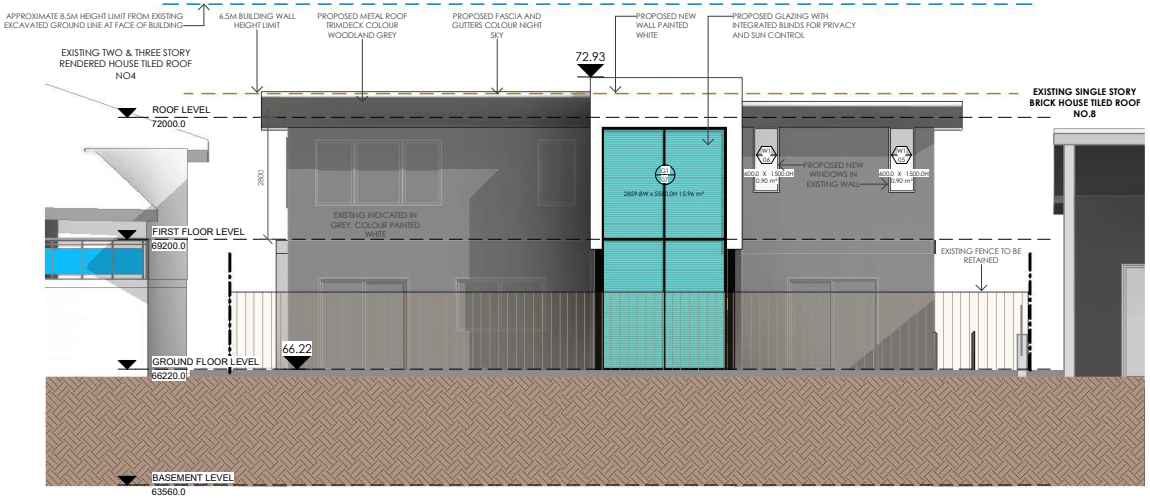
ADDITIONS AND ALTERATIONS
6, MOORE STREET CLONTARF

Drawing: SITE PLAN
Drawing No: 2291/ DA101/ B
Scale: 1 : 200
2/04/2024 10:42:13 PM

TERRA PARTNERS
BUILDING DESIGNER ABN: 36 516 327 698
29/2 Chifley Square, Sydney NSW 2000 P.0411 213 474 info@terrapartners.com.au



1 SOUTH ELEVATION - STREET ELEVATION
1 : 100



2 NORTH ELEVATION
1 : 100



No	Date	Description
C	02/04/24	BASIX UPDATE
B	11/03/24	DA OPTION 1 - INCREASED SETBACKS TO G.F & F.F
A	07/09/23	FOR DA LODGEMENT

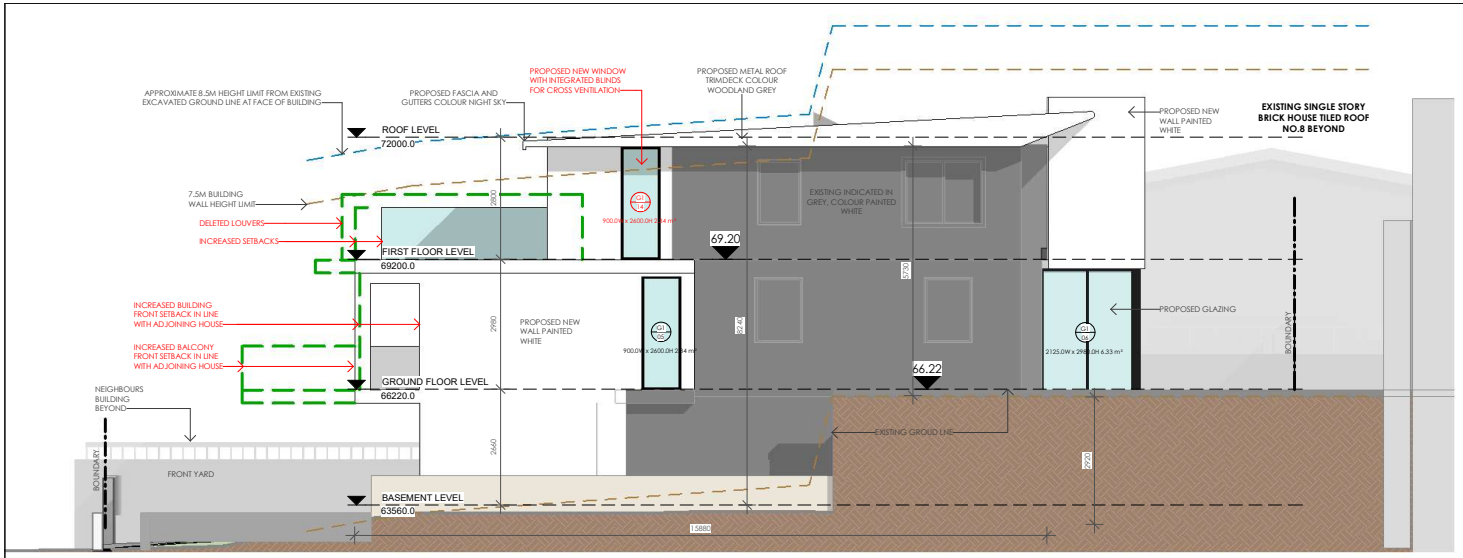
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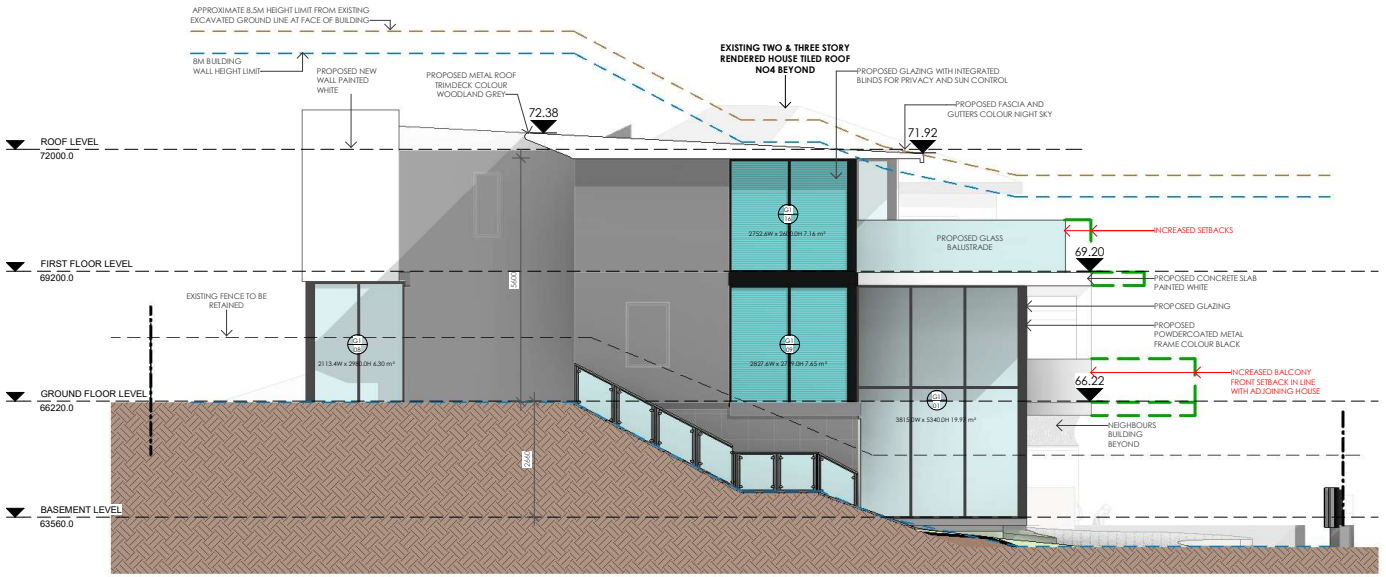
ADDITIONS AND ALTERATIONS
6, MOORE STREET CLONTARF

Drawing: EXTERIOR ELEVATIONS
Drawing No: 2291/ DA260/ C
Scale: 1 : 100
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TERRA PARTNERS
BUILDING DESIGNER ABN: 36 516 327 698
29/2 Chifley Square, Sydney NSW 2000 P.0411 213 474 info@terrapartners.com.au



1 EAST ELEVATION
1 : 100



2 WEST ELEVATION
1 : 100



No	Date	Description
C	02/04/24	BASIX UPDATE
B	11/03/24	DA OPTION 1 - INCREASED SETBACKS TO G.F & F.F
A	07/09/23	FOR DA LODGEMENT

AMENDMENTS ISSUED FOR - DA

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Refer all discrepancies to the Designer for determination.
Use figured dimensions in preference to scaling.

ADDITIONS AND ALTERATIONS
6, MOORE STREET CLONTARF

Drawing: EXTERIOR ELEVATIONS
Drawing No: 2291/ DA261/ C
Scale: 1 : 100
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TERRA PARTNERS
BUILDING DESIGNER ABN: 36 516 327 698
29/2 Chifley Square, Sydney NSW 2000 P.0411 213 474 info@terrapartners.com.au

gsa planning

MANLY LEP 2013 Clause 4.6 Exceptions to Development Standards – Floor Space Ratio (FSR)

Proposed alterations and additions to existing dwelling house

No. 6 Moore Street, Clontarf

Prepared for:
Angela Borrelli

Prepared by:
GSA PLANNING
Urban Design, Environmental & Traffic Planners
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MANLY LOCAL ENVIRONMENTAL PLAN (LEP) 2013
CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS

APPLICANT'S NAME: Angela Borrelli

SITE ADDRESS: No. 6 Moore Street, Clontarf

PROPOSAL: Proposed alterations and additions to existing dwelling house

1.

(i) Name of the applicable planning instrument which specifies the development standard:

Manly Local Environmental Plan (LEP) 2013

(ii) The land is zoned:

The objectives of the R2 Low Density Residential zone are as stated:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

(iii) The number of the relevant clause therein:

Clause 4.4 – Floor Space Ratio

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

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

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

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

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

(e) to provide for the viability of Zone E1 and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

(2A) Despite subclause (2), the floor space ratio for a building on land identified as "Gross Floor Area for Certain Commercial Premises" on the Key Sites Map may exceed the maximum floor space ratio allowed under that subclause by up to 0.5:1 if the consent authority is satisfied that at least 50% of the gross floor area of the building will be used for the purpose of commercial premises.

This Clause 4.6 Exception to Development Standards should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by GSA Planning.

2. Overview

This Clause 4.6 Exception to Development Standards has been prepared in accordance with the most recent case law. In our opinion, the variation achieves the objectives of the zone and development standard and has demonstrated there are sufficient environmental planning grounds to justify contravening the development standard.

3. Specify the nature of Development Standard sought to be varied and details of variation:

The development standard to which this request for variation relates is Clause 4.4 of the LEP – Floor Space Ratio. This Clause operates in conjunction with the FSR Map which indicates a maximum 0.40:1 applies to the subject site. Clause 4.4 is consistent with the definition for a development standard under Section 1.4 of the Environmental Planning and Assessment Act 1979 (EPA Act).

The subject site has an area of 499.5m², which results in a maximum GFA of 199.8m² based on the 0.40:1 standard. The proposed alterations and additions result in an increased GFA of 297.57m² and FSR of 0.59:1, which is a 48.78% departure from the standard (see **Figure 1** on the following page). Despite this departure from the LEP standard, 'Clause 4.1.3.1 – Exceptions to FSR for Undersized Lots' in the Manly DCP 2013, must also be considered. This Clause allows for smaller residential lots such as the subject site to have a higher FSR than permitted in the LEP. The clause is as follows.

> ***Note:*** *On existing sites in Residential LEP Zones (including E3 & E4) with a site area less than the minimum lot size required on the LEP Lot Size (LSZ) Map, Council may consider exceptions to the maximum FSR under LEP clause 4.6 when both the relevant LEP objectives and the provisions of this DCP are satisfied. See LEP clause 4.6(4)(a).*
>
> *The undersized nature of a lot is a matter that Council may consider in determining whether 'compliance with the standard is unreasonable or unnecessary in the circumstances of the case' and 'there is sufficient environment planning grounds to justify contravening the development standard' under LEP clause 4.6(3).*
>
> *a) The extent of any exception to the LEP FSR development standard pursuant to LEP clause 4.6 in this plan is to be no greater than the achievable FSR for the lot size indicated in Figure 30 - Extent of FSR Variation for Undersized Lots.*
>
> ***Figure 30 - Extent of FSR Variation for Undersized Lots***
> ***Subzones on the LEP Lot Size (LSZ) Map Maximum variation to FSR for undersized lots***
> *Area 'C' on the LEP LSZ map Calculation of FSR based on 250 sqm lot size/ site area*
> *Area 'D' on the LEP LSZ map Calculation of FSR based on 300 sqm lot size/ site area*
> *Area 'I' on the LEP LSZ map Calculation of FSR based on 500 sqm lot size/ site area*
> *Area 'M' on the LEP LSZ map Calculation of FSR based on 600 sqm lot size/ site area*
> *Areas 'R','T'&'U' on the LEP LSZ map Calculation of FSR based on 750 sqm lot size/ site area*

Based on the LEP Lot Size Map, the above Clause would allow the calculation of FSR to be based on a lot size of 750m² (site classified as Area R on Lot Size Map). This would equate to a maximum permitted GFA of 300m², which the proposal complies with. The proposed FSR is consistent with both the LEP FSR Zone objectives, and DCP FSR objectives, which is discussed throughout this report.



Source: Terra Partners

Figure 1: Existing vs Proposed GFA Plans

We note that the GFA and FSR has been calculated based on the classification of GFA in the Manly LEP 2013. The plant rooms which includes a rainwater tank and service area at the Basement Level Plan are excluded from GFA by way of definition.

4. Consistency with Objectives of Clause 4.6

The objectives of Clause 4.6 seek to provide appropriate flexibility to the application of development standards in order to achieve better planning outcomes both for the development and from the development. In the Court determination in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] 236 LGERA 256 (*Initial Action*), Preston CJ notes at [87] and [90]:

> *Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development…In any event, Clause 4.6 does not give substantive effect to the objectives of the clause in Clause 4.6(a) or (b). There is no provision that requires compliance with the objectives of the clause.*

However, it is still useful to provide a preliminary assessment against the objectives of the Clause. The objectives of Clause 4.6 and our planning response are as follows:

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

Flexibility is sought in the application of the FSR development standard to the proposed development in the circumstance of this particular case. Given that the site is identified as being undersized, and clause 4.1.3.1 of the DCP allows for a variation to the FSR, the additional FSR is acceptable in the circumstance of this case. The proposed FSR will facilitate a built form that generally complies with the height development standard, and key building envelope controls of the DCP.

Strict compliance with the FSR standard would not result in a better planning outcome. It would result in

a building on the site to be incompatible with the bulk and scale of nearby existing and approved developments, which would be incongruous in the streetscape; and reduce the potential for the site to accommodate the proposed dwelling, which is a size and scale that meets the needs of the residents.

To refuse this application would prevent the orderly and economic use and development of the land. Accordingly, in our opinion, as the proposal is consistent with the objectives of Clause 4.6, the variation is acceptable in this instance.

5. Justification of Variation to Development Standard

Clause 4.6(3) outlines that a written request must be made seeking to vary a development standard and that specific matters are to be considered. The Clause states, inter alia:

> *(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.*

This written request justifies the contravention of the development standard by demonstrating that compliance is unreasonable or unnecessary in the circumstances; and there are sufficient environmental planning grounds to justify the non-compliance. These matters are discussed in the following sections.

5.1 Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case

Clause 4.6(3)(a) requires the applicant to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. In *Wehbe v Pittwater Council* (2007) 156 LGERA 446 (*Wehbe*), Preston CJ established five potential tests for determining whether a development standard could be considered unreasonable or unnecessary. This is further detailed in *Initial Action* where Preston CJ states at [22]:

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

It is our opinion that the proposal satisfies Test 1 established in *Wehbe* and for that reason, the development standard is unreasonable and unnecessary in this instance. The relevant test will be considered below.

Test 1 - The objectives of the standard are achieved notwithstanding non-compliance with the standard;

Despite the proposed development's non-compliance with the applicable FSR development standard, the proposal achieves the desired low density character of the area. The proposal provides a height, bulk and scale that is generally consistent with that envisaged by Council's controls. Reasons why the proposed development achieves the objectives of the FSR standard are explained below.

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

The proposed FSR will facilitate alterations and additions to an existing dwelling, to accommodate a two storey dwelling sited above a double garage with a well-resolved internal layout, that is consistent with surrounding development in the streetscape on both sides of Moore Street.

Development to the east No. 4 Moore Street consists of a two storey dwelling with a partial third floor level. Developments further to the west such as Nos. 10 and 12 Moore Street and beyond also contain two to three storey built forms. No. 8 directly adjoining the site to the west is currently an underdeveloped site which would likely undergo substantial alterations and additions in the future.

The proposed built form provides a subtle transition between these adjoining developments and reduces the existing building height by 0.77m through transition of roof form styles.

The proposal and associated FSR will therefore ensure the existing and desired streetscape character is retained.

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

Compliance with key building envelope controls of the LEP and DCP ensures the bulk and scale is acceptable for the site and does not obscure nearby landscape features. The subject site is a small lot and classed as 'undersized' in the DCP. The proposed FSR meets the requirements of Clause 4.1.3.1 of the DCP which then allows an increased FSR equivalent to a GFA of 300m² on the site. Accordingly, the concession can be applied to this site, and to the proposal.

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

Despite the additional FSR, the proposal will maintain an appropriate visual relationship with the existing character of the area through providing a residential dwelling house that is generally compliant with the key building envelope development standards and controls. The dwelling is consistent in overall height, bulk and scale with adjoining and nearby dwellings. The design offers an appropriate transition from the east to the west where the lot depths are substantially greater in size.

The proposal, despite the additional FSR above the LEP standard, provides increased landscaping on site compared to the existing situation. The proposal is consistent and compatible with neighbouring dwellings when viewed from street, given its general compliance with the key building envelope controls in the LEP and DCP, in particular the FSR exception in the DCP.

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

The proposed FSR complies with DCP Clause 4.1.3.1 and has been sympathetically designed by creating open areas to the street front. Environmental impacts in terms of privacy, solar access and views will be addressed separately below.

Privacy
In terms of amenity on adjoining land, the proposal has been designed to minimise potential overlooking to private open space and windows of adjoining dwellings. Privacy measures in the form of internal fixed screens and non-trafficable areas to balconies have been applied to cater for this. Where mutual overlooking currently exists, this will be maintained.

Solar Access
To assess the effect of the proposed development in terms of solar access, shadow diagrams have been prepared for 9:00 am, 12 noon and 3:00 pm for the winter solstice (June 21) and are submitted separately. These diagrams indicate that all additional shadows are limited to areas of Moore Street and will not impact any areas of private open space to adjoining dwellings.

Only a portion of habitable room window at 2pm and 3pm to No. 4 Moore Street would be impacted by shadow however, this is considered negligible and for all alternate times between 9am and 3pm shadows would remain the same.

In light of the above it can be determined that the existing situation in terms of solar access will generally remain unchanged and is considered appropriate in relation to the public domain and adjoining dwellings.

Views
In the assessment of development applications relating to view issues, the NSW Land and Environment Court rely on the principle of the Tenacity v Warringah Council [2004] NSWLEC 140. Our assessment of the proposal against this planning principle is included below. The four steps in assessing view affectation are considered as follows:

- Assessment of the Views Affected
- From What Part of the Property are the Views Obtained?
- The Extent of the Impact
- The Reasonableness of the Proposal

The dwellings that will be assessed relating to view sharing are identified in **Figure 2** below. This will also illustrate views available from the site towards Sydney Harbour.



Figure 2: Potential Views Available from Neighbouring Dwellings

Each of the above dwellings and their views will be discussed below:

No. 7 Alma Street (north)
No. 7 Alma Street is located north-east of the site (to the rear) and abuts No. 2 Moore Street. This dwelling is likely to have south views across the subject site of Sydney Harbour. It is likely the POS and habitable room windows that benefit from these views are likely to be uninterrupted by the proposal as the roof ridge is to be reduced by 0.77m from the existing built form.

It is also important to note the topography of the land in which No. 7 Alma Street is sited on. This sits substantially higher than the subject site as such, overlooking of the subject site from primary habitable room windows and POS areas is likely to occur.

No. 9 Alma Street (north)
No. 9 Alma Street (currently under construction) is located north-west of the site (to the rear). This dwelling is likely to have south and south-east across the site to Sydney Harbour. It is likely the POS and habitable room windows that benefit from these views are likely to be uninterrupted by the proposal as the roof ridge is to be reduced by 0.77m from the existing built form.

It is also important to note the topography of the land in which No. 9 Alma Street is sited on. This sits substantially higher than the subject site as such, overlooking of the subject site from primary habitable room windows and POS areas is likely to occur.

No. 2 Moore Street (north)
No. 2 Moore Street has its primary POS areas fronting Moore Street with an outlook to the east. This will remain uninterrupted by the proposal. For windows that face south, these are likely disrupted by No. 4 Moore Street. However, some windows may have an outlook across the subject site at No. 6

Moore Street, but it is unlikely these would be interrupted by the proposal as the roof ridge is to be reduced by 0.77m from the existing built form.

No. 4 Moore Street (east)
No. 4 Moore Street has a primary outlook of the Sydney Harbour to the south and east and is situated forward of the subject site. Oblique views from habitable room windows may be available along the western façade this is identified in **Photograph 1** below.



Photograph 1: View of Sydney Harbour from subject sites POS and adjoining dwelling No. 4 Moore Street (east)

Views to the south and south-east of No. 4 Moore Street to Sydney Harbour will remain uninterrupted. In terms of the oblique views from the habitable room windows along the western façade these are to be primarily maintained. At the ground floor level, the façade of the master bathroom is setback to align with the south-west corner of No. 4 Moore Street offering views from the south-west habitable room window. The balcony at the first floor level will be predominantly non-trafficable. This design intent is to avoid the need for screening at the eastern elevation in order to allow cross views from No. 4 Moore Street out towards the Sydney Harbour as illustrated in **Figure 3** below.



Figure 3: View line from western window of No. 4 Moore Street

No. 8 Moore Street

No.8 Moore Steet has a primary outlook towards Sydney Harbour to the south and oblique views to the south-east and south-west. **Photograph 2** shows southern views available from the subject site which would be similar to that available from No. 8 Moore Street and **Photograph 3** shows the south-west views available from the subject site when looking at No. 8 Moore Street.

In terms of the southern views these will remain uninterrupted given the siting of No. 8 Moore Street and the subject proposal. In terms of the south-west views this would be the same. For south-east views across the site (refer to **Photograph 1** above) these are likely to be obscured by either the existing built form or No. 4 Moore Street to the east.

The additions proposed to the subject site are mostly to the eastern side of No. 6 Moore Street and align or don't protrude beyond No. 4 Moore Street therefore views to the east will be generally maintained. Additionally, it is important to note that the alterations and additions proposed have been skilfully designed to optimise views across the site where possible. In this case this has been undertaken by creating substantially open balconies with limited roof cover to preserve views where possible.



Photograph 2: Subject site looking south

In light of the above, the proposed design is considered reasonable and appropriate for the site and aims to respect views available from neighbouring properties.



Photograph 3: Upper POS and adjoining dwelling No. 8 Moore Street (West)

In light of the above, the sympathetic design appears to have negligible impact in terms of view loss from neighbouring properties and appear to maintain a similar situation as existing.

Objective (e) to provide for the viability of Zone E1 and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

N/A – The proposal is not in a business zone.

Accordingly, although the proposal is greater than the FSR standard for a large lot, this is unlikely to have any effect as the design is generally contained within a compliant building envelope and complies with the DCP FSR control for undersized lots.

5.2 There are Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard

There are several environmental planning grounds that justify the proposed FSR in this circumstance which justify contravening the development standard in this instance. They include consistency with existing context; consequences of compliance; and orderly and economic use of land. These will now be discussed.

Undersized Lots
The subject site has an area of 499.5m². In accordance with Clause 4.1.3.1 of the DCP there is exceptions to FSR for Undersized Lots. As the subject site does not meet the minimum lot size of 750m² it is considered an undersized lot.

In light of Clause 4.1.3.1 the subject site has an allowable permitted GFA of 300m², which the proposal complies with. The proposed FSR is consistent with both the LEP FSR Zone objectives, and DCP FSR objectives, which is discussed throughout this report.

Consistency with Context
Consistency in the context is recognised as an environmental planning ground in *Initial Action v Woollahra Municipal Council* [2019] NSWLEC 1097, Commissioner O'Neill states at [42] that:

> *I am satisfied that justifying the aspect of the development that contravenes the development standard as creating a consistent scale with neighbouring development can properly be described as an environmental planning ground within the meaning identified by His Honour in Initial Action [23], because the quality and form of the immediate built environment of the development site creates unique opportunities and constraints to achieving a good design outcome (see s 1.3(g) of the EPA Act).*

This report demonstrates that the proposed additional FSR is compatible with the existing streetscape and desired future character of the area. The proposal's build form complies with the key building envelope standards and controls and includes a reduction to the existing building height by 0.77m, this limits bulk and scale from the street.

The proposal will provide alterations and additions that will be compatible with the existing streetscape and provide a visual benefit by improving the existing dwelling with a high-quality contemporary materials. The works result in a dwelling compatible with the nearby existing development include No. 4 to the east and Nos. 10 and 12 onwards to the west.

Overall, the proposed FSR variation will facilitate the uplift of the existing dwelling, in terms of appearance, amenity and functionality. When viewed from the streetscape the proposal will provide a recessive and

complementary design that will maintain and improve its compatibility with the existing character of the context.

Orderly and Economic Use of Land
Flexibility in this circumstance will provide a better outcome from development. The proposed additional FSR allows the built form to be compatible in the Moore Street streetscape and provides consistency with the desired future character of the area. The proposal improves the site in accordance with Object (c) of the Environmental Planning and Assessment Act 1979, to "promote the orderly and economic use and development of land". The proposal is an elegant and well-designed response to the site and surrounding Sydney Harbour setting.

Other Matters for Consideration:
It should also be noted that the proposal improves the amenity of the subject site while maintaining the amenity of neighbouring; achieves the objectives of the R2 Low Density Residential Zone and the relevant DCP built form and amenity provisions; and results in an improved streetscape outcome for the site. While these factors may not strictly constitute environmental planning grounds, they should be considered in the assessment of the FSR breach.

Accordingly, in our opinion, the non-compliance will not be inconsistent with existing and desired future planning objectives for the locality. For the reasons contained in this application, there are sufficient environmental planning grounds to justify the minor variation to the development standard in the circumstances of this case, as required in Clause 4.6(3)(b).

6. Clause 4.6(4)(a) Requirements

Clause 4.6(4)(a) guides the consent authority's consideration of this Clause 4.6 variation request. It provides that:

> *(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*

The applicant submits that the consent authority can be satisfied of each of the requirements of Clause 4.6(4)(a), for all the reasons set out in this written request and having regard to the site and locality.

In our opinion, the proposal achieves the objectives of the FSR Development Standard, as already demonstrated; and the R2 Low Density Residential Zone, as discussed below:

Objective: *To provide for the housing needs of the community within a low density residential environment.*
Response: The proposal will provide improvements to an existing dwelling and will continue to meet the needs of the community within a low density residential environment.

Objective: *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
Response: N/A

From this, we consider the proposal is in the public interest and should be supported.

7. Clauses 4.6(4)(b) and 4.6(5) Requirements

Clause 4.6(4)(b) of the LEP requires the concurrence of the Secretary (of the Department of Planning and Environment) before the consent authority can exercise the power to grant development consent for development that contravenes a development standard.

Under Clause 55 of the Environmental Planning and Assessment Regulation 2021, the Secretary has given written notice dated 5 May 2020, attached to the Planning Circular PS 20-002 issued on 5 May 2020, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under Clause 4.6, subject to the conditions in the table in the notice. While the proposal exceeds the development standard by over 10%, the Planning Circular provides for the Local Planning Panel to assume concurrence.

Nevertheless, the matters in Clause 4.6(5) should still be considered when exercising the power to grant development consent for development that contravenes a development standard (*Fast Buck$ v Byron Shire Council* (1999) 103 LGERA 94 at [100] and *Wehbe* at [41]). In deciding whether to grant concurrence, the Secretary is required to consider the following:

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

The proposal is not considered to raise any matter of significance for State or regional environmental planning. The FSR non-compliance will enhance the amenity and functionality of the proposed alterations and additions to the existing dwelling without significantly, unreasonably, or unacceptably impacting neighbouring properties.

The public benefit of maintaining the development standard is not considered significant given that, regardless of the non-compliance, the proposal will appear consistent in the streetscape.

Accordingly, the proposal is consistent with the matters required to be taken into consideration before concurrence can be granted. The non-compliance contributes to a quality development which is consistent with the desired character of the precinct and is, in our opinion, in the public interest.

8. Conclusion

This written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard. This is summarised in the compliance matrix prepared in light of *Initial Action* (see **Table 1** on the following page).

We are of the opinion that the consent authority should be satisfied that the proposed development will be in the public interest because it achieves the objectives of the standard and the R2 Low Density Residential Zone objectives of the R2 Low Density Residential Zone pursuant to the LEP. On that basis, the request to vary Clause 4.4 should be upheld.

Table 1: Compliance Matrix				
Para (*Initial Action*)	**Requirement**	**Section of this Report**	**Summary**	**Satisfied**
10	Is it a development standard (s.1.4)	1	Yes	
11	What is the development standard	1	Clause 4.4: FSR	
12	What is the control	1 & 2	0.40:1	
14	**First Precondition to Enlivening the Power** – Consent authority must form 2 positive opinions:		Both positive opinions can be formed as detailed below.	YES
15, 25	**1st Positive Opinion** – 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 Clause 4.6(3). There are two aspects of that requirement.	5	The Clause 4.6 variation has adequately addressed both matters in Clause 4.6(3) by providing a detailed justification in light of the relevant tests and planning considerations.	YES
16-22	**First Aspect is Clause 4.6(3)(a)** - That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. Common ways are as set out in *Wehbe*.	5.1	The proposal satisfies Tests 1 of *Wehbe*: • The objectives of the standard are achieved notwithstanding the non-compliance with the standard;	YES
23-24	**Second Aspect is Clause 4.6(3)(b)** – 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 Clause 4.6(4)(a)(i) that the written request has adequately addressed this matter. The environmental planning grounds must be "sufficient" in two respects: a) The environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus 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. b) 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.	5.2	Sufficient environmental planning grounds include, inter alia: • The proposed FSR facilitates a low density development achieves the planning objectives of the area; • **Undersized Lots** - The subject site has an area of 499.5m². In accordance with Clause 4.1.3.1 of the DCP there is exceptions to FSR for Undersized Lots. As the subject site does not meet the minimum lot size of 750m² it is considered an undersized lot. In light of Clause 4.1.3.1 the subject site has an allowable permitted GFA of 300m², which the proposal complies with. The proposed FSR is consistent with both the LEP FSR Zone objectives, and DCP FSR objectives, which is discussed throughout this report. • **Consistency with context** - The proposed FSR variation will facilitate the uplift of the existing dwelling, in terms of appearance, amenity and functionality. When viewed from the streetscape the proposal will provide a complementary design that will maintain and improve its compatibility with the existing character of the context. • **Orderly and Economic Use of Land** - Flexibility in this	YES

			circumstance will provide a better outcome from development. The proposed additional FSR allows the built form to be compatible in the Moore Street streetscape and provides consistency with the desired future character of the area. The proposal improves the site in accordance with Object (c) of the Environmental Planning and Assessment Act 1979, to "promote the orderly and economic use and development of land". The proposal is an elegant and well-designed response to the site and surrounding foreshore setting.	
26-27	**2nd Positive Opinion** – That the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out.	6	The proposed development achieves the objectives of the FSR standard as addressed under Test 1 of *Wehbe*. The proposal also achieves the objectives of the R2 Low Density Residential Zone.	YES
28-29	**Second Precondition to Enlivening the Power** – That the concurrence of the Secretary has been obtained [Clause 4.6(4)(b)]. On appeal, the Court has the power to grant development consent, subject to being satisfied of the relevant matters under Clause 4.6.	7	As the relevant matters for consideration under Clause 4.6 have been satisfied as outlined above, the Council can grant development consent.	YES

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MANLY LEP 2013
Clause 4.6 Exceptions to Development Standards – Height

Proposed alterations and additions to existing dwelling house

No. 6 Moore Street, Clontarf

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MANLY LOCAL ENVIRONMENTAL PLAN (LEP) 2013
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APPLICANT'S NAME: Angela Borrelli

SITE ADDRESS: No. 6 Moore Street, Clontarf

PROPOSAL: Proposed alterations and additions to existing dwelling house

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(i) Name of the applicable planning instrument which specifies the development standard:

Manly Local Environmental Plan (LEP) 2013

(ii) The land is zoned:

The objectives of the R2 Low Density Residential Zone are as stated:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

(iii) The number of the relevant clause therein:

Clause 4.3 – Height of Buildings which is stated as follows:

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

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

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

This Clause 4.6 Exception to Development Standards should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by GSA Planning.

2. Overview

This Clause 4.6 Exception to Development Standards has been prepared in accordance with the most recent case law. In our opinion, the variation achieves the objectives of the zone and development standard and has demonstrated there are sufficient environmental planning grounds to justify contravening the development standard.

3. Specify the nature of Development Standard sought to be varied and details of variation:

The development standard to which this request for variation relates is Clause 4.3 of the LEP – Height. This Clause operates in conjunction with the height Map which indicates a maximum 8.5m applies to the subject site. Clause 4.3 is consistent with the definition for a development standard under Section 1.4 of the Environmental Planning and Assessment Act 1979 (EPA Act).

The proposal generally complies with the building height standard, with exception of a small portion of the roof exceeding the height limit. The non-compliance with the height relates to a new roof above the first floor level and will result in an overall reduction to the existing building height by 0.77m. The works will have a maximum height of 9.05m at the area of greatest non-compliance (6.47% above the development standard), which is below the existing.

As the area above the height standard relates to improvement works to the existing building and do not increase the existing height the non-compliance is technical in nature. The areas of non-compliance when compared to the existing dwelling reduce the bulk and scale of the roof form. As the height non-compliance is minor it would not be readily visible from the streetscape or neighbouring properties.

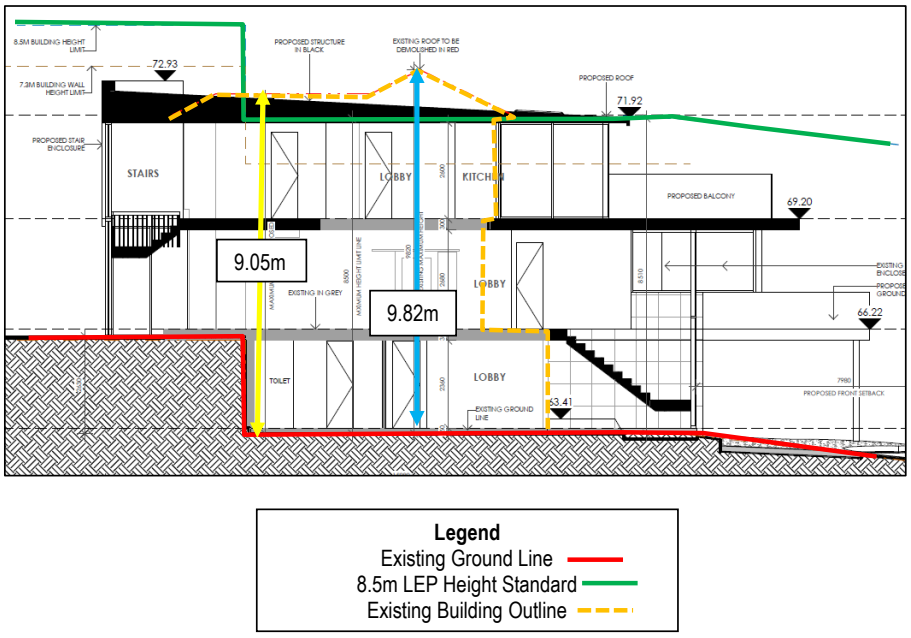


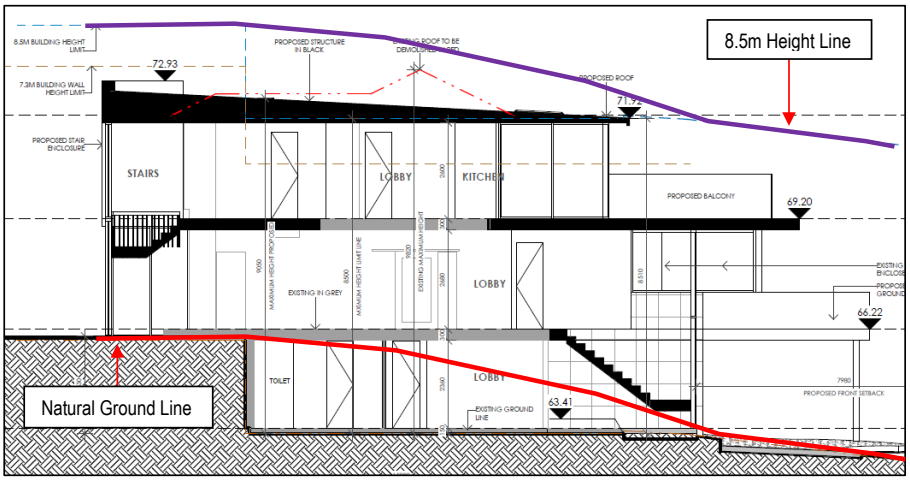
Figure 1: Section Demonstrating Existing and Proposed Building Height

Further, it is important to note that majority of the non-compliance is a function of the existing excavation at site as a result of the existing Basement Floor Level. This is discussed in light of *Bettar v Council of the City of Sydney* [2014] NSWLEC *(Bettar)* (see below), where the interpretation of height was considered.

The interpretation of height has been considered by the Court in *Bettar.* The Court dealt with a site with similar characteristic to the subject site in that a basement existing on some parts of the site and not others. The Court took the approach of measuring height with the intent, in part, of relating the development proposal to its context and made the following relevant comments:

> *It is relevant to consider the objectives of the building height development standard in considering how best to determine the maximum height of the building using the dictionary definitions in LEP 2012. As one of the purposes of the development standard is to relate the proposal to its context, it follows that* ***the determination of the existing ground level should bear some relationship to the overall topography*** *that includes the site… (emphasis added)*

This relates to the subject site as a similar situation occurs where the existing basement area is substantially excavated. The area of non-compliance predominantly occurs to the centre of the site above the existing basement, which deviates from the site's natural and perceived ground level (see **Figure 2**). When measured from the natural ground line, the proposal complies with the height limit.



Source: Terra Partners

Figure 2: Section Illustrating Natural Ground Line and Building Height Compliance

The proposed alterations and additions provide a compatible building height alignment with the existing dwelling and nearby developments. The non-compliances are considered technical, resulting from the existing built form and will result in an overall reduction which is an improvement to the site.

4. Consistency with Objectives of Clause 4.6

The objectives of Clause 4.6 seek to provide appropriate flexibility to the application of development standards in order to achieve better planning outcomes both for the development and from the development. In the Court determination in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] 236 LGERA 256 (*Initial Action*), Preston CJ notes at [87] and [90]:

> *Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development…In any event, Clause 4.6 does not give substantive effect to the objectives of the clause in Clause 4.6(a) or (b). There is no provision that requires compliance with the objectives of the clause.*

However, it is still useful to provide a preliminary assessment against the objectives of the Clause. The objectives of Clause 4.6 and our planning response are as follows:

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

Flexibility is sought in the application of the height development standard to the proposed development in the circumstance of this particular case. The height departure relates to a portion of the roof structure which is positioned above the maximum height. However, this will be 0.77m below the existing ridge height which is an improvement to the current situation. The technical non-compliance is attributed to the envelope of the existing dwelling and is ultimately a result of the existing topography and excavation of the site. Changes to the envelope at the front portion of the dwelling do not result in a building height non-compliance. On this basis, the non-compliance is considered to be consistent with the objectives of Clause 4.6.

Flexibility in this circumstance will provide a better outcome for and from the development. This includes a refurbished dwelling, a lowered roof form, improved POS and landscaping which will have no direct effect on the amenity of adjoining residents or the public domain.

5. Justification of Variation to Development Standard

Clause 4.6(3) outlines that a written request must be made seeking to vary a development standard and that specific matters are to be considered. The Clause states, inter alia:

> *(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.*

This written request justifies the contravention of the development standard by demonstrating that compliance is unreasonable or unnecessary in the circumstances; and there are sufficient environmental planning grounds to justify the non-compliance. These matters are discussed in the following sections.

5.1 Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case

Clause 4.6(3)(a) requires the applicant to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. In *Wehbe v Pittwater Council* (2007) 156 LGERA 446 (*Wehbe*), Preston CJ established five potential tests for determining whether a development standard could be considered unreasonable or unnecessary. This is further detailed in *Initial Action* where Preston CJ states at [22]:

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

It is our opinion that the proposal satisfies Test 1 established in *Wehbe* and for that reason, the development standard is unreasonable and unnecessary in this instance. The relevant test will be considered below.

Test 1 - The objectives of the standard are achieved notwithstanding non-compliance with the standard;

Despite the proposed development's non-compliance with the applicable height development standard, the proposal achieves the desired medium density character of the area. The proposal provides a height, bulk and scale that is generally consistent with that envisaged by Council's controls. Reasons why the proposed development achieves the objectives of the /height standard are explained below.

***(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*,**

The proposed building height resulting from the alterations and additions is generally compliant with the LEP standard, with exception of a portion of the roof which decreases the overall building height compared to the existing. The proposal will improve the design by creating a slanted roof form in a location that previously consisted of a pitch. The area of height non-compliance is minor and not readily noticeable from the streetscape, and not discernible compared to the existing dwelling.

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

The areas above the height standard do not result in increases to the existing height and are a result of the existing built form, excavation, and sloping topography of the site. The proposal will continue to provide a two storey appearance sited above a garage, which is consistent with the existing dwelling and surrounding development. Therefore, the non-compliance will not result in an increase to the bulk and scale of the built form from the site.

(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)

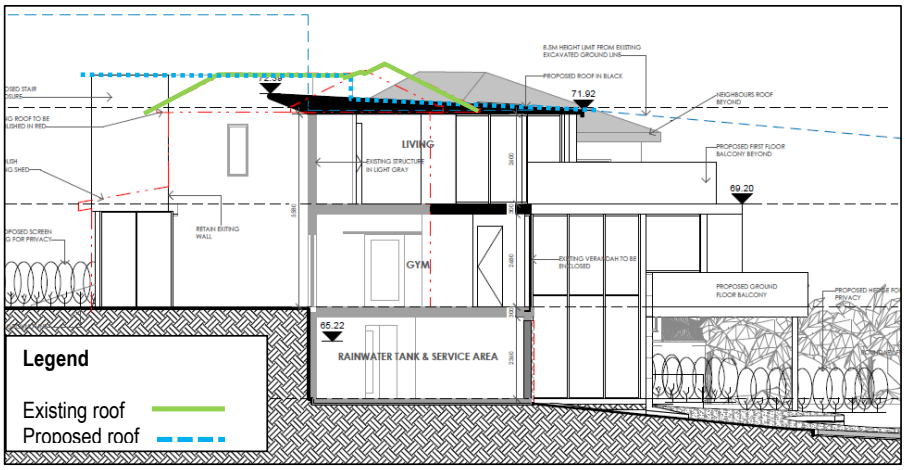
In the assessment of development applications relating to view issues, the NSW Land and Environment Court rely on the principle of the *Tenacity v Warringah Council* [2004] NSWLEC 140. Our assessment of the proposal against this planning principle is included below. The four steps in assessing view affectation are considered as follows:

- *Assessment of the Views Affected*
- *From What Part of the Property are the Views Obtained?*
- *The Extent of the Impact*
- *The Reasonableness of the Proposal*

No. 4 Moore Street has a primary outlook south and south-east towards Sydney Harbour. This is evident through the location of the balconies to the dwellings front and roof top terrace. Oblique views may be available to the west. The location of the non-compliance being the slab thickness of the proposed roof form is minor in extent and set higher than habitable room windows and POS areas to No.4 Moore Street as such, views are unlikely to be interrupted by the height non-compliance.

No. 8 Moore Street appears to have oblique views to the south-east and sout-west of the Sydney Harbour with its primary views directed to the south. This is evident through the POS locations at the dwellings front. The location of the non-compliance being the slab thickness of the proposed roof form is minor in extent and set higher than habitable room windows and POS areas to No.4 Moore Street as such, views are unlikely to be interrupted by the height non-compliance.

In terms of dwellings located to the rear of the site along Alma Street. Specifically, Nos. 7 and 9 Alma Street, these are sited higher than the subject site. The existing roof ridge is to be removed and replaced with an elongated flat roof from decreasing the overall building height by 0.77m this will improve views towards the Sydney Harbour (see **Figure 3**).



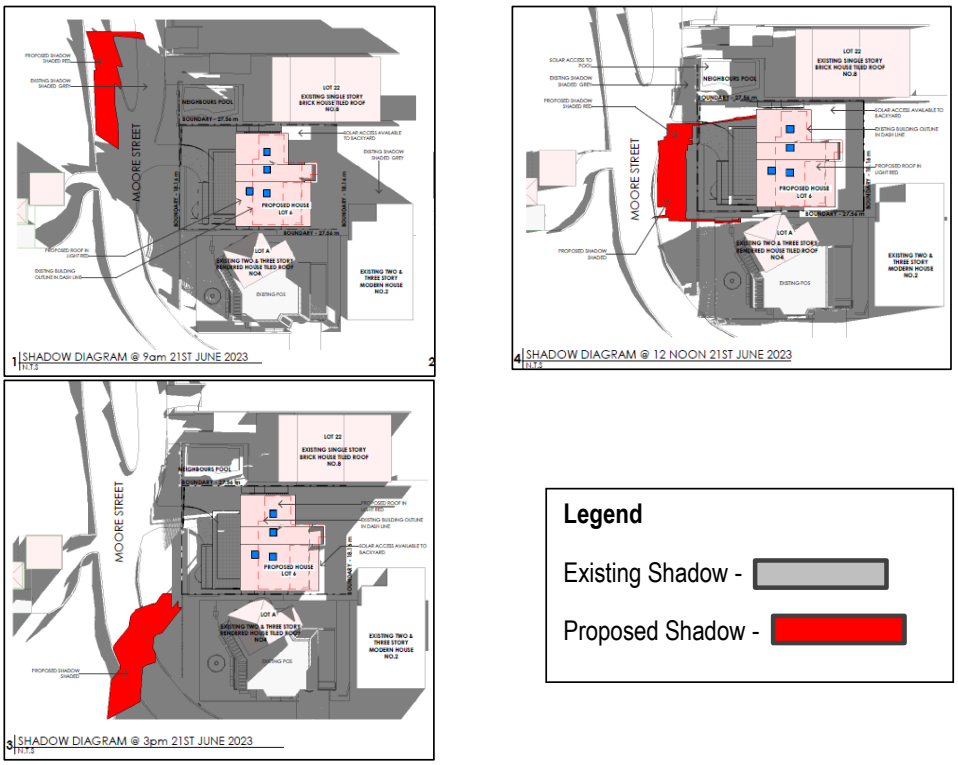
Source: Terra Partners

Figure 3: Existing and proposed roof form illustrating difference in dwelling height

In light of the above, the building height is likely to maintain the existing situation at site and in some instances improve views of properties to the rear.

(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,

To assess the effect of the proposed development in terms of solar access, shadow diagrams have been prepared for 9:00 am, 12 noon and 3:00 pm for the winter solstice (June 21). These diagrams indicate that all additional shadows are proposed to Moore Street and will not impact any areas of private open space to adjoining dwellings (see **Figure 4**).



Source: Terra Partners

Figure 4: Solar Diagrams – Existing vs Proposed (9am to 12 noon)

Only a portion of habitable room window at 2pm and 3pm to No. 4 Moore Street would be impacted by shadow however, this is considered negligible and for all alternate times between 9am and 3pm they would remain the same.

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

The existing vegetation and topography of the site and its surrounds has been taken into consideration in the proposal, which retains trees on site and provides generous soft landscaped areas, whilst minimising cut and fill to retain the site topography. The proposed areas above the height standard are minor and technical in nature and will not impact the existing vegetation and topography of the site and surrounding land uses, including nearby vegetation and bushland.

5.2 There are Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard

The proposal is permissible in the R2 Low Density Residential Zone, is consistent with the relevant zone objectives and satisfies Test 1 established by the Court in *Wehbe.* There are sufficient environmental planning grounds to justify the building height non-compliance as a result the existing basement level and will improve amenity to the occupants of the site. This is further discussed below.

Minor Extent of Non-compliance
The proposed building height resulting from the alterations and additions is generally compliant with the LEP standard, with exception of a portion of the roof that decreases the overall building height compared to the existing. The non-compliance is considered minor in nature with a maximum non-compliance of 0.55m.

Consistency with Context
The proposal will improve the design by creating a slanted roof form in a location that previously consisted of a pitch. The area of height non-compliance is minor and not readily noticeable from the streetscape, and not discernible compared to the existing dwelling. The proposed design is consistent with prevailing character along Moore Street and the greater Clontarf area where there is a clear predominance in dwellings of 2-3 storeys in height sited above garages. As such, the proposal, is consistent with the character of the area.

Function of existing excavation
Given the existing basement excavation at site any external change to the roof form is likely to exceed the height standard. The existing ground line shows an articulated depression within the site. As a result, this roof form already exceeds the 8.5m height standard. It is near inevitable that any works on this area would also not comply.

Further, given the circumstance of the site *Betta* should be applied. When applied the area of non-compliance as measured from the natural ground line would comply with the height limit.

Other Matters for Consideration
It should also be noted that the proposal improves the amenity of the subject site while maintaining the amenity of neighbouring development; achieves the objectives of the R2 Low Density Residential Zone and the relevant DCP built form and amenity provisions; and results in an improved streetscape outcome for the site. While these factors may not strictly constitute environmental planning grounds, they should be considered in the assessment of the height breach.

6. Clause 4.6(4)(a) Requirements

Clause 4.6(4)(a) guides the consent authority's consideration of this Clause 4.6 variation request. It provides that:

> *(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*

The applicant submits that the consent authority can be satisfied of each of the requirements of Clause 4.6(4)(a), for all the reasons set out in this written request, and having regard to the site and locality.
In our opinion, the proposal achieves the objectives of the Height Development Standard, as already demonstrated; and the R2 Low Density Zone, as discussed below:

Objective: *To provide for the housing needs of the community within a low density residential environment.*
Response: The proposal will provide improvements to an existing dwelling and will continue to meet the needs of the community within a low density residential environment.

Objective: *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
Response: N/A

From this, we consider the proposal is in the public interest and should be supported.

7. Clauses 4.6(4)(b) and 4.6(5) Requirements

Clause 4.6(4)(b) of the LEP requires the concurrence of the Secretary (of the Department of Planning and Environment) before the consent authority can exercise the power to grant development consent for development that contravenes a development standard.

Under Clause 55 of the Environmental Planning and Assessment Regulation 2021, the Secretary has given written notice dated 5 May 2020, attached to the Planning Circular PS 20-002 issued on 5 May 2020, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under Clause 4.6, subject to the conditions in the table in the notice. Since the conditions in the table do not apply in this case, the concurrence of the Secretary can be assumed.

Nevertheless, the matters in Clause 4.6(5) should still be considered when exercising the power to grant development consent for development that contravenes a development standard (*Fast Buck$ v Byron Shire Council* (1999) 103 LGERA 94 at [100] and *Wehbe* at [41]). In deciding whether to grant concurrence, the Secretary is required to consider the following:

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

The proposal is not considered to raise any matter of significance for State or regional environmental planning. The height non-compliance will enhance the amenity and functionality of the proposed alterations and additions without significantly, unreasonably, or unacceptably impacting neighbouring properties.

The public benefit of maintaining the development standard is not considered significant given that, regardless of the non-compliance, the proposal will appear consistent in the streetscape.

Accordingly, the proposal is consistent with the matters required to be taken into consideration before concurrence can be granted. The non-compliance contributes to a quality development which is consistent with the desired character of the precinct and is, in our opinion, in the public interest.

8. Conclusion

This written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard. This is summarised in the compliance matrix prepared in light of *Initial Action* (see **Table 1** on the following page).

We are of the opinion that the consent authority should be satisfied that the proposed development will be in the public interest because it achieves the objectives of the standard and the objectives of the R2 Low Density Residential Zone pursuant to the LEP. On that basis, the request to vary Clause 4.3 should be upheld.

Table 1: Compliance Matrix				
Para (*Initial Action*)	**Requirement**	**Section of this Report**	**Summary**	**Satisfied**
10	Is it a development standard (s.1.4)	1	Yes	
11	What is the development standard	1	Clause 4.3: Height of Buildings	
12	What is the control	1 & 2	8.5m	
14	**First Precondition to Enlivening the Power** – Consent authority must form 2 positive opinions:		Both positive opinions can be formed as detailed below.	YES
15, 25	**1st Positive Opinion** – 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 Clause 4.6(3). There are two aspects of that requirement.	5	The Clause 4.6 variation has adequately addressed both matters in Clause 4.6(3) by providing a detailed justification in light of the relevant tests and planning considerations.	YES
16-22	**First Aspect is Clause 4.6(3)(a)** - That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. Common ways are as set out in *Wehbe*.	5.1	The proposal satisfies Tests 1 of *Wehbe*: • The objectives of the standard are achieved notwithstanding the non-compliance with the standard;	YES
23-24	**Second Aspect is Clause 4.6(3)(b)** – 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 Clause 4.6(4)(a)(i) that the written request has adequately addressed this matter. The environmental planning grounds must be "sufficient" in two respects: a) The environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus 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. b) 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.	5.2	Sufficient environmental planning grounds include, inter alia: • The proposed height facilitates a low density development achieves the planning objectives of the area; • **Minor Extent of Non-compliance** - The proposed building height resulting from the alterations and additions is generally compliant with the LEP standard, with exception of a portion of the roof that decreases the overall building height compared to the existing. The non-compliance is considered minor in nature with a maximum non-compliance of 0.55m. • **Consistency with Context -** The proposal will improve the design by creating a slanted roof form in a location that previously consisted of a pitch. The area of height non-compliance is minor and not readily noticeable from the streetscape, and not discernible compared to the existing dwelling. The proposed design is consistent with prevailing character along Moore Street and the greater Clontarf area where there is a clear predominance in dwellings of 2-3 storeys in height sited above garages. As such, the proposal, is consistent with the character of the area.	YES

			• **Function of existing excavation -** Given the existing basement excavation at site any external change to the roof form is likely to exceed the height standard. The existing ground line shows an articulated depression within the site. As a result, this roof form already exceeds the 8.5m height standard. It is near inevitable that any works on this area would also not comply. Further, given the circumstance of the site Betta should be applied. When applied the area of non-compliance as measured from the natural ground line would comply with the height limit.	
26-27	**2nd Positive Opinion** – That the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out.	6	The proposed development achieves the objectives of the height standard as addressed under Test 1 of *Wehbe*. The proposal also achieves the objectives of the R2 Low Density Zone.	YES
28-29	**Second Precondition to Enlivening the Power** – That the concurrence of the Secretary has been obtained [Clause 4.6(4)(b)]. On appeal, the Court has the power to grant development consent, subject to being satisfied of the relevant matters under Clause 4.6.	7	As the relevant matters for consideration under Clause 4.6 have been satisfied as outlined above, the Council can grant development consent.	YES

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ITEM 3.2 DA2023/1832 - 5 PORTIONS LOVETT BAY LOVETT BAY - CONSTRUCTION OF A DWELLING HOUSE AND DETACHED STUDIO

PURPOSE

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

RECOMMENDATION

THAT Council as the consent authority **approves** Development Consent to DA2023/1832 for construction of a dwelling house and detached studio on land at Lot 5 DP 590990 & Lot LIC 301874, 5 Portions Lovett Bay LOVETT BAY, subject to the conditions set out in the Assessment Report.

Reporting manager	Adam Richardson
TRIM file ref	2024/293508
Attachments	⇩1 Assessment Report ⇩2 Site Plan and Elevations

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/1832

Responsible Officer:	Stephanie Gelder
Land to be developed (Address):	Lot 5 DP 590990, 5 Portions Lovett Bay LOVETT BAY NSW 2105 Lot LIC 301874, 5 Portions Lovett Bay LOVETT BAY NSW 2105
Proposed Development:	Construction of a dwelling house and detached studio
Zoning:	C3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Karen Jane Lambert Richard Dennis Leplastrier Mallee Myers Leplastrier Lambert Aero Coorong Lambert Leplastrier
Applicant:	Richard Dennis Leplastrier

Application Lodged:	21/12/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	29/03/2024 to 12/04/2024
Advertised:	Not Advertised
Submissions Received:	7
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	$ 852,500.00

EXECUTIVE SUMMARY

This development application seeks consent for construction of a dwelling house and detached studio.

The application is referred to the Development Determination Panel (DDP) due to more than 5 submissions received, with a total of 7 unique submissions received.

The application was notified for a period of 14 days in accordance with the Northern Beaches Community Participation Plan (CPP). The concerns raised in the 7 objections predominantly related to the location of the stormwater absorption pit, stormwater disposal in general, height of the proposed studio, privacy impacts, view loss from Pittwater waterway, overdevelopment, heritage items, and view sharing.

Assessment issues included landscaped area, and visual privacy. It is considered that the proposal presents an acceptable landscaped area, and the visual privacy concerns have been mitigated through recommended conditions.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposed development comprises of the following works:

- Construction of a dwelling house;
- Construction of a detached studio; and
- Associated landscaping works.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone C3 Environmental Management
Pittwater 21 Development Control Plan - C1.3 View Sharing
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - D8.9 Landscaped Area

SITE DESCRIPTION

Property Description:	Lot 5 DP 590990 , 5 Portions Lovett Bay LOVETT BAY NSW 2105 Lot LIC 301874 , 5 Portions Lovett Bay LOVETT BAY NSW 2105
Detailed Site Description:	The subject site consists of one (1) allotment located on the northern side of Portions Lovett Bay. The site is irregular in shape with a frontage of approximately 5m along Pittwater Waterway and a depth of approximately 158m. The site has a surveyed area of 5456m². The site is located within the C3 Environmental Management zone from PLEP 2014 and accommodates a vacant allotment with a retaining wall currently on site. The site slopes from the southern front boundary upwards to the northern rear boundary over approximately 57 metres. The site contains lawn areas, trees, and dense vegetation at the northern rear of the site. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by dwelling houses to the west, and south. Directly to the north, and east is Ku-Ring-Gai National Park. The battle axe handle of the allotment meets Pittwater Waterway to the south.

Map:



SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site.

The land has been used for residential purposes for an extended period of time.

APPLICATION HISTORY

Following the preliminary assessment of the application, on 15 February 2024 Council requested additional information in relation to Clause A4.8 Lower Western Foreshores and Scotland Island Locality of Pittwater 21 Development Control Plan (P21 DCP), Clause C1.4 Solar Access of P21 DCP, Clause D8.1 Character as viewed from a public place of P21 DCP, Clause D8.2 Scenic protection – General of P21 DCP, Clause D8.9 Landscaped Area of P21 DCP, clarification regarding the Wastewater Report, and the request for a Construction Methodology Plan. Council's Bushland and Biodiversity Officer requested further information to include clarification on the maximum distance north and include a map identifying the APZ area.

Subsequently, on 25 March 2023, the applicant submitted the following documentation:

- Amended Master Plans;
- Amended Wastewater Report;
- Amended BASIX Certificate;
- Amended NatHERS Certificate;
- Bushfire Report - Addendum; and
- Construction Management Plan.

The proposed changes included the reduction of the studio from three (3) storeys to two (2) storeys.

The application was re-referred to Council's internal referral officers, and externally to NSW Rural Fire Service.

The application was formally re-notified from 29 March 2024 - 12 April 2024 in accordance with the Northern Beaches Community Participation Plan (CPP).

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	**Comments**
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 29 of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to Clause A4.8 Lower Western Foreshores and Scotland Island Locality of Pittwater 21 Development Control Plan (P21 DCP), Clause C1.4 Solar Access of P21 DCP, Clause D8.1 Character as viewed from a public place of P21 DCP, Clause D8.2 Scenic protection – General of P21 DCP, Clause D8.9 Landscaped Area of P21 DCP, clarification regarding the Wastewater Report, and the request for a Construction Methodology Plan. Council's Bushland and Biodiversity Officer requested further information to include clarification on the maximum distance north and include a map identifying the APZ area. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including

Section 4.15 Matters for Consideration	Comments
	fire safety upgrade of development). This clause is not relevant to this application. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the application (prepared by Bushfire Planning Services, dated 29 September 2023). The report stated that the bushfire attack level of the site is “Flame Zone” and the report recommended an alternative solution to comply with Planning for Bush Fire Protection.

The application was referred to the NSW Rural Fire Service for further assessment. On 19 January

2024, the NSW RFS raised no objections to approval, subject to conditions. The recommendations of the Bush Fire Report, along with the conditions from the NSW RFS have been included as part of the recommended conditions of consent.

A Bush Fire Report - Addendum was submitted with the application (prepared by Bushfire Planning Services, dated 16 February 2024). The application was re-referred to the NSW Rural Fire Service for further assessment. The NSW RFS referral response stated the following: *The New South Wales Rural Fire Service (NSW RFS) has reviewed the submitted amendments and raises no objections subject to compliance with our previous advice dated 19/01/2024.* It is considered that the proposed development satisfies the maters for consideration prescribed under Section 4.14 of the Act.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 29/03/2024 to 12/04/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 7 submission/s from:

Name:	Address:
Mr Gregory David Brewer Hurst	3 Greycliffe Street QUEENSCLIFF NSW 2096
Mr Michael Robert Gordon Rich	PO Box 244 CHURCH POINT NSW 2105
Helen Felicity Monks Mr Robert Story Ms Susan Elizabeth Duncan Highlight Consulting	3 Portions Lovett Bay LOVETT BAY NSW 2105
Mrs Edwina Dusseldorp	72 Cameron Street EDGECLIFF NSW 2027
Withheld	VAUCLUSE NSW 2030
Ms Jane Jobson	28 Bona Crescent MORNING BAY NSW 2105
Mr Piers Stewart Akerman	83 Stafford Street PADDINGTON NSW 2021

The following issues were raised in the submissions:

- **Location of Absorption Pit & Adequacy of Absorption Pit**
- **Accuracy of Broadcrest Consulting Wastewater Report**
- **Stormwater**
- **Three Storey Studio**
- **Privacy**
- **View from Pittwater Waterway**
- **Use of Studio**
- **Overdevelopment**
- **Width of Dwelling House**
- **Shadow Diagrams**
- **Geotechnical**
- **Heritage Items**
- **Construction Materials**

- **Bushfire Report/NSW Rural Fire Service**
- **Landscape Plan**
- **Tree Removal**
- **Cost of Works**
- **View Sharing**

The above issues are addressed as follows:

- **Location of Absorption Pit & Adequacy of Absorption Pit**

  The submissions raised concerns surrounding the location of the absorption pit, specifically in relation to the site boundaries of No.3 Portions Lovett Bay, and No.6 Portions Lovett Bay. Further concern was raised in relation to the adequacy of the absorption pit in relation to the number of bathrooms on the site.

  Comment:
  Council's Environmental Health Officer (Unsewered Lands) has reviewed the Wastewater Report - Amended (prepared by Broadcrest Consulting Pty Ltd, dated 12 March 2024). The referral comments are contained under the Internal Referrals section contained within this report. In summary, the proposed location of the absorption pit and capacity of the absorption pit is acceptable, subject to recommended conditions.

- **Accuracy of Broadcrest Consulting Wastewater Report**

  The submissions raised concerns surrounding the accuracy of the Wastewater Report prepared by Broadcrest Consulting.

  Comment:
  The applicant submitted an amended Wastewater Report prepared by Broadcrest Consulting as there was an error with the site boundary lines. Council's Environmental Health Officer (Unsewered Lands) reviewed the amended report, and is acceptable of the proposed wastewater system and report, subject to recommended conditions.

- **Stormwater**

  The submissions raised concerns surrounding the collection and disposal of stormwater.

  Comment:
  Council's Development Engineer has reviewed the proposal, and provided referral comments that are contained under the Internal Referrals section contained within this report. In summary, the proposed location of the stormwater disposal system at the northern rear of the proposed dwelling house is acceptable, subject to recommended conditions.

- **Three Storey Studio**

  The submissions raised concerns surrounding the three (3) storey studio.

  Comment:
  The applicant submitted amended plans reducing the studio from three (3) storeys to two (2) storeys. It is considered the proposed studio is acceptable, and will not result in any unacceptable bulk and scale, given the compliant height of buildings, compliance with the side

building line, and compliance with the building envelope control.

- **Privacy**

  The submissions raised concerns surrounding privacy from the proposed dwelling house, and studio.

  Comment:
  A detailed assessment has been conducted under Clause C1.5 Visual Privacy of P21 DCP. In summary, it is considered that the proposed dwelling house, and studio is consistent with the outcomes of the control, and will not result in any unacceptable privacy impacts to the adjoining sites to the south.

- **View from Pittwater Waterway**

  The submissions raised concerns that the proposed height of the dwelling and studio will be dramatic as viewed from Pittwater Waterway.

  Comment:
  The location of the dwelling house, and studio is approximately 50 metres from the Pittwater Waterway, due to the battle-axe arrangement of the lot. Furthermore, the proposed dwelling house, and studio are both compliant with the 8.5m height of buildings development standard. Furthermore, the proposal is accompanied by a Schedule of Colours and Materials that demonstrates appropriate colours that are consistent with D8.3 Building colours and materials of Pittwater 21 Development Control Plan. As such, the proposal will not result in any unacceptable visual impact as viewed from Pittwater Waterway.

- **Use of Studio**

  The submissions raised concerns surrounding the use of studio as multiple rentals.

  Comment:
  The studio does not include any kitchen facilities, and as such a suitable condition has been recommended to ensure that there is no approval for a secondary dwelling on the site under this application.

- **Overdevelopment**

  The submissions raised concerns that the proposal is an overdevelopment of the site.

  Comment:
  The proposal is considered to be appropriate given the site previously accommodated a residential dwelling house. Furthermore, the proposal has demonstrated that the site provides adequate landscaping area that meets the outcomes of the control. It is considered that the dwelling house, and studio is appropriate, and suitable for the subject site.

- **Width of Dwelling House**

  The submissions raised concerns that the proposed dwelling house is too wide.

  Comment:
  The proposal is compliant with the side building line setbacks, and building envelope controls demonstrating that the design is located in a suitable footprint. It is considered that the site is

constrained by the rear dense vegetation, and the proposed location for a dwelling house, and studio is therefore appropriate. The proposal includes a variety of colours, and materials that will visually break up the southern façade, as well as the windows that will provide for visual relief. It is noted that the proportions of the dwelling are commensurate with the proportions of the site.

- **Shadow Diagrams**

  The submissions raised concerns that the accompanying Shadow Diagrams are incorrect.

  Comment:
  The applicant submitted a Declarations Form that certifies the Shadow Diagrams. A review of the Shadow Diagrams concludes that the proposal is compliant with Clause C1.4 Solar Access of Pittwater 21 Development Control Plan.

- **Geotechnical**

  The submissions raised concerns that the profile of the site is misleading, and the slope of the land is not accurately depicted.

  Comment:
  The proposal is accompanied by a Survey Plan, and Geotechnical Report. It is considered that these documents are satisfactory, and that the proposed site is depicted appropriately.

- **Heritage Items**

  The submissions raised concerns that the proposal is located on a site with Heritage Items.

  Comment:
  Council's Heritage Officer has reviewed the proposal and provided comments under the Internal Referrals section contained within this report. Council's Heritage Officer has not raised any concerns with the proposal, subject to recommended conditions.

- **Construction Materials**

  The submissions raised concerns surrounding how the construction materials will be brought to the site.

  Comment:
  The applicant has submitted a Construction Management Plan to detail the constructability of the proposal. It is considered that the proposed Construction Management Plan is acceptable, and a recommended condition has been included to ensure the proposal follows the plan accordingly.

- **Bushfire Report/NSW Rural Fire Service**

  The submissions raised concerns surrounding the bushfire report requirements, and how these are to be met.

  Comment:
  The proposal was externally referred to NSW Rural Fire Service. The NSW Rural Fire Service reviewed the proposal, and is supportable subject to recommended conditions. The recommended conditions from the Bushfire Report, and NSW Rural Fire Service referral

comments, are recommended conditions, and subject to compliance with these conditions the proposal is supportable. For clarification, the recommendations within the NSW Rural Fire Service Referral Response are conditions of consent that are required to be complied with.

- **Landscape Plan**

  The submissions raised concerns that the Landscape Plan is not integrated with the Bushfire Report.

  Comment:
  Council's Bushland and Biodiversity Officer, and Landscape Officer have reviewed the proposal, and have provided referral comments under the Internal Referrals section contained within this report. In summary, the referral bodies have reviewed the proposal, and are supportable subject to recommended conditions.

- **Tree Removal**

  The submissions raised concerns surrounding tree removal of a Jacaranda.

  Comment:
  Council's Landscape Officer has reviewed the proposal, and is supportable of the proposal, subject to recommended conditions. It is noted that Jacaranda trees are on Council's exempt tree species list.

- **Cost of Works**

  The submissions raised concerns surrounding the cost of works.

  Comment:
  The applicant has submitted a Cost Summary Report that provides a detailed breakdown of the costing involved. It is considered that the Cost Summary Report is acceptable.

- **View Sharing**

  The submissions raised concern that the proposal will result in view loss to the adjoining sites to the south at No.3 Portions Lovett Bay, and No.6 Portions Lovett Bay.

Comment:

A view loss assessment has been conducted under Clause C1.3 View Sharing of Pittwater 21 Development Control Plan contained within this report. In summary, it is considered that the proposal presents an acceptable proposal, and this will result in a negligible view loss.

Concluding Comments:
In summary, the concerns raised have been addressed and do not warrant the refusal of the proposed application.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Solid Fuel/Oil Heater)	***Supported - subject to conditions*** General Comments This application is seeking consent for the construction of a four-bedroom dwelling and a studio. The architectural drawings indicate a solid fuel heater within the living room area of the dwelling. Environmental Health recommends approval subject to conditions.
Environmental Health (Unsewered Lands)	***Supported - subject to conditions*** General Comments This application is seeking consent for the construction of a new dwelling and a studio. A wastewater report has been prepared and has recommended an AWTS with absorption beds. The site has limiting factors in relation to buffer distances and available land area. The proposed land application area is proposed within sandy loam soils which are ideal for drainage and absorption of wastewater. The land application area is pressure dosed. Given the contours of the land, Council recommends surface water diversion around the land application area for risk management. Australian Standard 1547:21012 states, *Land application systems shall be sited so that, where practicable, they are not shaded from sunlight, or are placed where nearby plants can help evapotranspiration of the effluent.* This site is partially constraint by solar exposure however given the ideal soil conditions, effluent can be absorbed into the soil efficiently. Council will apply a condition for a review of the land application area in relation to its length and whether it can be lengthened further towards the south-west. Environmental Health recommends approval subject to conditions.
Landscape Officer	***Supported - subject to conditions*** The proposal is supported with regard to landscape issues. Additional Information Comment 25/03/24: The amended reports and plans are noted and no further comments are raised. Original Comment: The site is within zone C3 Environmental Management, and the following objectives are to be achieved and/or maintained by development: protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values; provide for residential development of a low density and scale integrated with the landform and landscape, and not visually prominent; encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors; and ensure the continued viability of ecological communities and threatened species.

Internal Referral Body	Comments
	As outlined in the reports and plans the new dwelling will be located in an existing cleared area on the property. No significant trees or vegetation will be removed to facilitate the works, which is supported. The Geotechnical Investigation report recommends the the inclusion of a rockfall ditch which is shown on the plans upslope of the new dwelling. Due to the requirements of the rockfall ditch (1.0m deep and 2.0m wide) and its potential to impact existing trees on the slope, it shall be designed in collaboration with an Arborist. Furthermore, a Project Arborist shall be engaged to supervise the construction of the rockfall ditch, and also advise on the location of the proposed rainwater tanks if necessary. The landscape statement is noted and in this circumstance a plan is not deemed necessary.
NECC (Bushland and Biodiversity)	***Supported - subject to conditions*** **Additional Comments (26/02/2024)** The addendum letter from the Bushfire Consultant (16/02/2024) is noted. The Consultant has confirmed that 'no further tree removal is proposed as part of the APZ requirements for the proposal'. NSW RFS have provided their General Terms of Acceptance noting an APZ north to a distance of 15m. No impacts to vegetation within the BV map and as such, a BDAR is not required. No objections in relation to biodiversity, subject to conditions. **Original Comments (3/01/2024)** Council's Biodiversity referrals team have assessed the Development Application for compliance against the following applicable provisions: • NSW Biodiversity Conservation Act 2016 • NSW Biodiversity Conservation Regulation 2017 • Pittwater LEP 2014 cl. 7.6 Biodiversity Protection • Pittwater 21 DCP cl. B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community • Bushfire Prone Land - Planning for Bushfire Protection 2019 • SEPP (Resilience and Hazards) 2021 cl. 2.10 Development within the coastal environment area The Development Application seeks consent for Construction of a dwelling house and detached studio. The majority of the site is identified on the NSW Department of Planning and Environment's Biodiversity Values Map (BV Map). Under the NSW Biodiversity Conservation Act 2016, any removal of native vegetation from within mapped areas will trigger the

Internal Referral Body	Comments
	Biodiversity Offset Scheme (BOS) and the requirement for a Biodiversity Development Assessment Report (BDAR). The Statement of Environmental Effects (Vaughn Milligan Development Consulting, December 2023) has stated that "*the proposal does not require the removal of any significant vegetation to accommodate the new works. An existing Jacaranda and Illawarra Flame Tree which are both exempt tree species will be retained in the method of construction within the vicinity of the trees will consider their retention as shading elements to the building. No further Arboricultural Impact Assessment has been provided as trees are exempt species and could be removed by the owner as required and also for bushfire planning purposes*". Therefore, whilst the development footprint is located within the BV Map, no native vegetation is proposed for removal to facilitate the development and as such does not trigger the BOS. The Bushfire Risk Assessment Report (Bush Fire Planning Services, September 2023) submitted with the application has recommended that "*At the commencement of building works and in perpetuity the property around the building footprint shall be managed as follows and as outlined within Planning for Bushfire Protection 2019 and the New South Wales Rural Fire Service document standards for Asset Protection Zones:* • *North as an Inner Protection Area to at least the currently managed distance.* • *East as an Inner Protection Area to the property boundary.* • *South as an Inner Protection Area to the property boundary.* • *West as an Inner Protection Area to the property boundary.* *It should be noted that no additional expansion of the already managed vegetation will be required*". The Bushfire Consultant is to amend the report to include clarification on the maximum distance north and include a map identifying the APZ area. Should the APZ extend into areas of remnant vegetation a BDAR may be required. Upon receiving the amended information, Council's Biodiversity referrals team will recommence assessment of the application.
NECC (Coast and Catchments)	***Supported - without conditions*** On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Resilience & Hazards) 2021 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP. The proposal seeks consent for the construction of a new one and

Internal Referral Body	Comments
	two-storey dwelling and a detached studio within the site, which is currently vacant. **Coastal Management Act 2016** The subject site has been identified as being within the coastal zone and therefore *Coastal Management Act 2016* is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the *Coastal Management Act 2016*. **State Environmental Planning Policy (Resilience & Hazards) 2021** The subject land has partly been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA. Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Vaughan Milligan Development Consulting Pty. Ltd. dated December 2023, the DA satisfies requirements under clauses 2.10, 2.11 and 2.12 of the SEPP R&H. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021. **Pittwater LEP 2014 and Pittwater 21 DCP** **Estuarine Risk Management** The subject property has also been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site. On internal assessment, the ground floor level for the proposed constructions is above the applicable Estuary Planning Level (EPL) for the site. The proposed development is therefore not required to satisfy the relevant estuarine risk management requirements of P21 DCP. **Development on Foreshore Area** A section of the subject property is within the foreshore building line. Part 7, Clause 7.8 –Limited development on foreshore area of the Pittwater LEP 2014 applies for any development within the foreshore area.

Internal Referral Body	Comments
	The DA proposes no works on the foreshores area and hence, the DA does not require to satisfy the objectives and requirements of Part 7, Clause 7.8 of the Pittwater LEP 2014.
NECC (Development Engineering)	***Supported - subject to conditions*** No objections to approval subject to conditions as recommended. **Amended Plans Provided on 25/3/2024** The site stormwater management system shall be designed in accordance with the recommendations provided in the Geotechnical report by Broadcrest Consulting Pty Ltd, dated 28/9/2023 which has been conditioned to ensure flows are managed to limit impact on adjacent properties.
NECC (Riparian Lands and Creeks)	***Supported - subject to conditions*** This application was assessed in consideration of: • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Resilience and Hazards) 2021; • Relevant LEP and DCP clauses; and • Northern Beaches Water Management for Development Policy The site is within Pittwater estuary and a watercourse exists to the west of the site. Pittwater estuary and the nearby watercourse are both mapped under the Water Management (General) Regulation 2018 Hydro Line spatial data. However, the proposed development appears to be outside the 40 meter buffer. The proposed development is within the coastal management area, being mapped as within both coastal environment area and coastal use area. Consent must not be granted to development within such areas unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on any of the items listed for these areas in the SEPP (Resilience and Hazards) 2021. It is unclear how the building materials will be delivered to site (i.e., air or water). Seagrass is mapped below the property and must not be harmed by vessels accessing the site. No objections regarding riparian lands and creeks provided conditions are adhered to.

Internal Referral Body	Comments
NECC (Water Management)	***Supported - subject to conditions*** This application was assessed in consideration of: • Supplied plans and reports; • Northern Beaches Water Management for Development Policy (WMD Policy), and; • Relevant LEP and DCP clauses; The proposal is for a residential development. Section 4.0 of the WMD Policy applies. Instead of specific targets, this section of the Policy outlines water management outcomes sought by Council. Water sensitive urban design, water reuse and infiltration into the soil, and the resulting quality of stormwater leaving the site are interconnected concepts that guide this merit-based assessment. The site is not connected to a public stormwater system. Instead, all roof water will be captured and directed to rainwater tanks, with runoff from all other surfaces managed to infiltrate into the soil. No objections regarding water management.
Parks, reserves, beaches, foreshore	***Supported - subject to conditions*** The property adjoins National Park to the east and north. As outlined in the Developments Adjacent to National Parks and Wildlife Service lands guideline, the National Park land shall not be used for access, or to store materials, equipment or machinery. No physical encroachments over the site boundaries are permitted, and structures and built elements are not permitted beyond the site boundaries. All development works must ensure that surface sediment runoff and/or erosion is controlled, managed and contained within the site boundaries.
Strategic and Place Planning (Heritage Officer)	***Supported - subject to conditions*** HERITAGE COMMENTS Discussion of reason for referral The proposal has been referred to Heritage as the subject property contains two heritage items **Stone Retaining Wall** - 2 to 6 Portions Lovett Bay **Road Remnants -** 4 and 5 Portions Lovett Bay and National Park Details of heritage items affected **Stone Retaining Wall** Statement of Significance The Stone Retaining Wall is associated with the first development works at Lovett Bay. The sandstone retaining wall is aesthetically

<table>
<tr><th>Internal Referral Body</th><th>Comments</th></tr>
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distinctive as having been constructed during a very early phase of development in Pittwater.
Physical Description
Sandstone retaining wall.

Road Remnants
Statement of Significance
The Road Remnants are associated with the first development works at Lovett Bay. They are aesthetically distinctive as having been constructed during a very early phase of development in Pittwater.
Physical Description
Remnants of cut and fill formation

<table>
<tr><td colspan="3">Other relevant heritage listings</td></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>
Consideration of Application
Updated plans and documents have been submitted to address a number of issues. This includes a construction management plan to account for the offshore location and no road access. The plan does not address the heritage item across the front of the properties on this side of Lovett Bay, being the stone retaining wall. Heritage will condition that the Construction Management Plan be updated to account for this heritage item and provide measures for its protection during works. Otherwise Heritage raises no objections with the proposal.

Therefore Heritage raises no objections and requires one condition.

Consider against the provisions of CL5.10 of PLEP.

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
</td></tr>
</table>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	***Supported - subject to conditions*** The proposal was referred to Ausgrid who provided a response stating that a decision is not required as there are no Ausgrid Assets present near the proposed development.
Rural Fire Service - Local Branch - EP&A Act, s4.14	***Supported - subject to conditions*** The proposal was referred to NSW Rural Fire Service who provided a response on 19 January 2024, and 7 April 2024 stating that the proposal is acceptable subject to compliance with the recommended conditions. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	***Supported - subject to conditions*** Development Application No. DA2023/1832 Description: Construction of a dwelling house and detached studio Address: 5 Portions Lovett Bay LOVETT BAY Reference is made to the proposed development at the above area and Aboriginal heritage. No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development. Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

(SREPs)

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.1423595S_03 dated 19 March 2024). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No.0008943235-03 dated 18 March 2024).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	71
Thermal Comfort	Pass	Pass
Energy	50	50

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:
The proposal was referred to Ausgrid who provided a response stating that a decision is not required as there are no Ausgrid Assets present near the proposed development.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 3 Coastal environment area
2.10 Development on land within the coastal environment area

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

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

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	6.9m (Dwelling Hosue) 7.5m (Studio)	- -	Yes Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes
Schedule 5 Environmental heritage	Yes

Detailed Assessment

Zone C3 Environmental Management

The site is located in Zone C3 Environmental Management of Pittwater Local Environmental Plan 2014.

As such, the proposal has been assessed against the objectives of zone as detailed below.

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

  Comment:
  The proposal will appropriately protect, management, and restore areas with special ecological, scientific, cultural, or aesthetic values.

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

  Comment:
  The proposal for a dwelling house and studio will present a limited development that will not

result in any adverse effect on any special ecological, scientific, cultural, or aesthetic values.

- ***To provide for residential development of a low density and scale integrated with the landform and landscape, and not visually prominent.***

  Comment:
  The proposal will provide for residential development that is of a low density, and scale that is integrated with the landform, and landscape. It is considered the proposed development will not result in any unacceptable visual prominence.

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

  Comment:
  The proposal will not result in any adverse impacts to the riparian, foreshore vegetation, and wildlife corridors.

- ***To ensure the continued viability of ecological communities and threatened species.***

  Comment:
  The proposal will ensure the continued viability of ecological communities, and threatened species.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m (South)	54.0m	-	Yes
Rear building line	6.5m (North)	>6.5m	-	Yes
Side building line	2.5m (East)	4.3m	-	Yes
	1m (West)	1.1m	-	Yes
Building envelope	3.5m (East)	Within envelope	-	Yes
	3.5m (West)	Within envelope	-	Yes
Landscaped area	230m^2 Not Landscaped Area	274.8m^2 Not Landscaped Area	19.48% (44.8m^2)	**No**

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.8 Lower Western Foreshores and Scotland Island Locality	Yes	Yes
B1.1 Heritage Conservation - Heritage items, heritage conservation areas and archaeological sites listed in Pittwater Local Environmental Plan 2014	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.2 Bushfire Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
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
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
C1.14 Separately Accessible Structures	Yes	Yes
C1.23 Eaves	Yes	Yes
D8.1 Character as viewed from a public place	Yes	Yes
D8.2 Scenic protection - General	Yes	Yes
D8.3 Building colours and materials	Yes	Yes
D8.5 Front building line	Yes	Yes
D8.6 Side and rear building line	Yes	Yes
D8.8 Building envelope	Yes	Yes
D8.9 Landscaped Area	No	Yes
D8.10 Fences	N/A	N/A
D8.11 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D8.12 Companion animals	Yes	Yes
D8.13 Stormwater overflow	Yes	Yes
D8.14 Parking management	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D8.15 Site disturbance	Yes	Yes
D15.12 Development seaward of mean high water mark	Yes	Yes

Detailed Assessment

C1.3 View Sharing

The submissions raised concern that the proposal will result in view loss to the adjoining sites to the south at No.3 Portions Lovett Bay, and No.6 Portions Lovett Bay.

It is considered that the views to the north of the subject site will result in a negligible view loss. It is important to note, that the sites of No.3 Portions Lovett Bay, and No.6 Portions Lovett Bay adjoin the subject site to the north, and the views are of the subject site that is currently vacant. Further views include Ku-Ring-Gai National Park that is located to the east of the subject site. However, it is important to note, that this view is obtained from No.3 Portions Lovett Bay by view across the subject site.

Notwithstanding a detailed view assessment has been conducted.

Merit consideration

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

A reasonable sharing of views amongst dwellings.

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

1. Nature of the views affected

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

Comment to Principle 1:
The views affected are to the north of No.3 Portions Lovett Bay, and No.6 Portions Lovett Bay that include the subject site of No.5 Portions Lovett Bay. Currently, as the site does not contain a dwelling house, the neighbouring sites have views of the subject site located to the north that is largely vegetation. As such, the nature of the view is the existing vegetation on the vacant site (see Figure 1 and see Figure 2).

Further photographs have been provided by Submission - Highlight Consulting that provide images from No.3 Portions Lovett Bay.



Figure 1. View from 5 Portions Lovett Bay facing east towards No.3 Portions Lovett Bay and No.6 Portions Lovett Bay (taken on site 23 January 2024).



Figure 2. View from 5 Portions Lovett Bay facing west towards No.4 Portions Lovett Bay (taken on site 23 January 2024).

2. What part of the affected property are the views obtained

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

Comment to Principle 2:
The views are obtained across the northern rear boundaries of No.3 Portions Lovett Bay, and No.6 Portions Lovett Bay (across the southern side of the subject site) due to the battle-axe arrangement of the lot. The views are obtained from a standing, and sitting position from the rear of the properties of No.3 Portions Lovett Bay, and No 6. Portions Lovett Bay.

3. Extent of impact

"*The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating*".

Comment to Principle 3:
It is considered that the view loss is negligible, as it is unreasonable and unrealistic for a view of an adjoining vacant site to be protected. The sites No.3 Portions Lovett Bay, and No.6 Portions Lovett Bay will not have an view impacts to the view to the south of Pittwater Waterway. Furthermore, the view towards Ku-ring-gai National Park is located across the site of No.5 Portions Lovett Bay, and as such the retention of this view across another site should not be relied upon.

4. Reasonableness of the proposal that is causing the impact

"*The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable*."

Comment to Principle 4:
The proposed development is compliant with the height of buildings development standard, and built form controls, with the exception of landscaped area that is supportable based on a merit assessment. As such, it is considered that the proposal is acceptable, and the view impact to No.3 Portions Lovett Bay, and No.6 Portions Lovett Bay is negligible.

- ***Views and vistas from roads and public places to water, headland, beach and/or bush views are to be protected, maintained and where possible, enhanced.***

  Comment:
  The views from the public place of Pittwater Waterway will be appropriately protected, and maintained as a result of the proposed development. It is considered that the proposed development will integrate appropriately with the existing bushland, and not result in any unreasonable visual impact.

- ***Canopy trees take priority over views.***

  Comment:
  The proposal includes the retention of significant canopy trees that take priority over views.

C1.5 Visual Privacy

Description of non-compliance

Concerns were raised from objectors surrounding the impact of privacy as a result of the proposed dwelling house, and studio.

Clause C1.5 stipulates the following:
Private open space areas including swimming pools and living rooms of proposed and any existing adjoining dwellings are to be protected from direct overlooking within 9 metres by building layout, landscaping, screening devices or greater spatial separation as shown in the diagram below (measured from a height of 1.7 metres above floor level).

The proposed ground floor deck of the dwelling house terrace is located 9.0m from the southern side boundaries at the closest point. The proposed studio is located approximately 8.5m from the southern side boundary at the closest point.

It is important to note that the siting of the studio is angled with the proposed location of the windows to be facing south-east and south-west. To ensure no unacceptable privacy impacts arise from the top floor studio, a condition is recommended for the top floor studio windows facing south-east and south-west to require a minimum sill height of 1.7m from the top floor finished floor level. It is considered that the first floor studio windows as amended, will ensure adequate privacy to the adjoining sites to the south.

It is considered that the proposal, as amended via recommended conditions will provide acceptable privacy.

Merit consideration

- ***Habitable rooms and outdoor living areas of dwellings optimise visual privacy through good design. (S)***

  Comment:
  The habitable rooms, and outdoor living areas of dwellings will optimise visual privacy through good design. It is considered that the design of the proposed dwelling house, and studio have been sited in the most appropriate location on the site, given the dense vegetation located to the rear. It is considered that the proposal will not result in any unacceptable privacy impacts.

- ***A sense of territory and safety is provided for residents. (S)***

  Comment:
  The proposal will provide for appropriate territory and safety for the residents, and adjoining residents.

D8.9 Landscaped Area

Detailed description of non-compliance

Clause D8.9 Landscaped Area of Pittwater 21 Development Control Plan stipulates the maximum area not provided as landscaped area for sites greater than 1000m^2 to be 230m^2.

The proposal presents a total of 274.8m^2 not landscaped area, presenting a variation of 19.48% (44.8m^2) to the required 230m^2 not landscaped area.

Under Clause D8.9 Landscaped Area of Pittwater 21 Development Control Plan variations may be permitted on the landscaped proportion of the site including the following:
On sites larger than 1000 square metres, the maximum area not provided for landscaping may be increased up to 23% of the site, upon application to Council. In such instances it must be demonstrated that development is kept in scale with the Locality, that the natural features of the site are preserved, and that the supply of water and the treatment of wastewater is sufficient for the size of

the proposed development, without adverse environmental impact.

As such, 23% of the site is 1254.88m^2. It is noted that the site presents a total not landscaped area of 5.04%.

As detailed by Council's Environmental Health (unsewered lands) Officer the proposal presents a suitable wastewater system that is sufficient for the proposed development, and subject to recommended conditions will not result in any adverse environmental impacts.

A detailed assessment against the outcomes of the control have been undertaken, and it is considered that the proposal meets the outcomes, and as such the variation is considered acceptable.

Merit consideration

With regard to the consideration of a variation, the proposed development is considered against the underlying Outcomes of this 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 Lower Western Foreshores and Scotland Island Locality. It is considered that the proposal is consistent with the following desired character statement: "*The Lower Western Foreshores and Scotland Island locality will remain primarily a low-density residential area with dwelling houses a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape.*"

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

  Comment:
  The proposal presents an appropriate bulk and scale through the articulation of the proposal and use of varying materials, and window treatments that visual break up the development. The proposal is compliant with the building envelope control that aims to mitigate the bilk and scale of the development.

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

  Comment:
  The proposal will ensure a reasonable level of privacy, amenity, and solar access is provided with the development site and to adjoining sites. The proposal is physically separated to the adjoining sites to the south by approximately 8 metres at the closest point. Furthermore, the proposal is accompanied with shadow diagrams that demonstrate compliance with Clause C1.4 Solar Access of Pittwater 21 Development Control Plan.

- ***Vegetation is retained and enhanced within the building design to screen the visual impact of the built form. In residential areas, buildings are to give the appearance of being secondary to landscaping and vegetation including tree canopy. (En)***

  Comment:
  The proposal includes the retention, and enhancement of vegetation that will assist to provide visual relief to the built form. It is considered that the proposed landscaping is acceptable, noting Council's Landscape Officer, and Council's Bushland and Biodiversity Officer have

reviewed the proposed development and are supportable, subject to recommended conditions.

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

  Comment:
  The proposal is accompanied with a Concept Stormwater Plan that has been reviewed by Council's Development Engineer. Council's Development Engineer is supportable to the proposed stormwater plan, subject to recommended conditions. Therefore, it is considered that the proposal will appropriately manage stormwater runoff, that will prevent soil erosion, and siltation of natural drainage channels.

- ***To ensure the distribution of height and mass preserves, and enhances neighbourhood amenity and has regard to site characteristics and environmental constraints.***

  Comment:
  The proposal appropriately distributes height and mass across the site, noting the proposed dwelling house presents a varied height. It is considered that the proposed development presents an appropriate neighbourhood amenity, and has been designed in the location of the generally flat portion of the site. It is noted that the rear of the site is subject to dense vegetation, and as such the proposed development has been located in the most appropriate location, that was the location of a previous dwelling house that was destroyed in a bushfire in 1994.

- ***To conserve significant natural features of the site and contribute to effective management of biodiversity.***

  Comment:
  The proposal appropriately conserves the natural features of the site that largely include the dense vegetation located to the north of the location of the proposed development. Council's Bushland and Biodiversity Officer has reviewed the proposal, and is supportable subject to recommended conditions.

- ***The area of site disturbance is minimised. (En)***

  Comment:
  The proposal limits the area of disturbance to a portion of the site, that was the location of the previous dwelling house. It is considered that the proposal has been designed to limit the disturbance to the site.

- ***Soft surface is maximised. (En, S)***

  Comment:
  The proposal maximises soft surfaces that will ensure appropriate infiltration of water, and limited disturbance to the overall site.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of $8,525 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $852,500.

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, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

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

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

PLANNING CONCLUSION

This proposal, for construction of a dwelling house and detached studio has been referred to the Development Determination Panel (DDP) due to more than 5 submissions received, with a total of 7 unique submissions received.

The concerns raised in the objections have been addressed and resolved by a detailed merit assessment finding the development acceptable, and recommended conditions to mitigate any unreasonable amenity impacts.

The critical assessment issues have been resolved via amended plans, and subsequent recommended conditions that present a development that is acceptable.

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2023/1832 for Construction of a dwelling house and detached studio on land at Lot 5 DP 590990, 5 Portions Lovett Bay, LOVETT BAY, Lot LIC 301874, 5 Portions Lovett Bay, LOVETT BAY, 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**
LB1	-	Ground Floor Plan (house, studio) and Mezzanine Plan (house)	Richard Leplastrier and Karen Lambert	13 September 2023
LB2	-	House Sections (N-S & W-E) and East Elevation (house)	Richard Leplastrier and Karen Lambert	25 September 2023
LB3	-	North, South and West Elevations (house)	Richard Leplastrier and Karen Lambert	13 September 2023
LB4 1 of 2	-	Site Plan	Richard Leplastrier and Karen Lambert	13 September 2023
LB4 2 of 2	-	Site Plan with Landscape Concept, Site Analysis, Excavation and Fill, Erosion and Soil	Richard Leplastrier and Karen Lambert	13 September 2023

		Control, Waste Management, Concept Stormwater Management		
LB5		Plans, Sections, and Elevations (studio)	Richard Leplastrier and Karen Lambert	19 March 2024

Approved Reports and Documentation			
Document Title	**Version Number**	**Prepared By**	**Date of Document**
BASIX Certificate	1423595S_03	Renovation Solutions Pty Ltd	19 March 2024
Bushfire Report	4482	Bushfire Planning Services Pty Ltd	29 September 2023
Bushfire Report - Addendum	-	Bushfire Planning Services Pty Ltd	16 February 2024
Construction Management Plan	-	No Author	n.d.
Geotechnical Report	-	Broadcrest Consulting Pty Ltd	28 September 2023
NatHERS Certificate	0008943235-03	NatHERS & BASIX Solutions	18 March 2024
Schedule of Colours and Finishes	-	No Author	n.d.
Waste Management Plan	-	Aero Leplastrier, Mallee Lambert, Richard Leplastrier, Karen Lambert	27 September 2023
Wastewater Report - Amended	3258-WW-A-02	Broadcrest Consulting Pty Ltd	12 March 2024

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

In the event of any inconsistency 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**
Aboriginal Heritage Office	Referral - Aboriginal Heritage Office - 5 Portions Lovett Bay Lovett Bay	8 January 2024

NSW Rural Fire Service	RFS Referral Response	19 January 2024
NSW Rural Fire Service	RFS Referral Response	7 April 2024

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

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

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.

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

7. **Rockfall Ditch Design Near Trees to be Retained**
a) rockfall ditch layout plans shall be developed in co-ordination with an Arborist with AQF minimum Level 5 qualifications in arboriculture, and a qualified Geotechnical Engineer, complying AS 4970-2009 Protection of trees on development sites. Non-destructive tree root investigations may be undertaken, if deemed necessary by the Arborist, to help inform the location for the construction works.

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

c) the Arborist shall submit certification to the Certifier that the location of the rockfall ditch is accepted.

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

Reason: Tree protection.

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

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

Reason: To protect native vegetation.

9. **Amendment of Landscape Plans**
The submitted Landscape Plan is to be amended in accordance with the following:

- Development shall ensure that at least 80% of any new planting incorporates native vegetation (as per species found on the site or listed in Pittwater Spotted Gum Endangered Ecological Community)
- Landscaping must be prepared in accordance with the requirements for Planning for Bushfire Protection 2019 and the Bushfire Hazard Assessment Report (Bush Fire Planning Services, 29/09/2023).

The Landscape Plan is to be amended by a qualified landscape architect and provided to the Principal Certifier prior to issue of the Construction Certificate.

Reason: To maintain and replace habitat on the site.

10. **Delineation of Asset Protection Zones**
Prior to the commencement of any vegetation clearance/modification, the boundaries of the bushfire Asset Protection Zone (APZ) are to be surveyed and clearly marked by way of temporary fencing, flagging tape or markers. Clearing of vegetation for APZ establishment must only occur within the marked APZ boundaries.

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

Reason: To protect native vegetation and wildlife.

11. **Stormwater Disposal**
The applicant is to submit Stormwater Engineering Plans and Certification for the new development within this development consent in accordance with AS/NZS 3500 and Council's Water Management for Development Policy and the recommendation in the Geotechnical Report by Broadcrest Consulting Pty Ltd, dated 28/9/2023, 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.

The design of the stormwater management system to to be certified by the Geotechnical engineer to ensure compliance with the recommendations of the Geotechnical report. 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.

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by Broadcrest Consulting Pty Ltd dated 28/9/2023 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Certifier.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

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. **Amendments to the approved plans**

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

- The top floor studio windows facing south-east and south-west shall have a minimum sill height of 1.7m from the top floor finished floor level.

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

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

15. **Updated Construction Management Plan**
The Construction Management Plan is to be updated to account for the stone retaining wall heritage item (Item 2270049) and provide measures to ensure its protection during works.

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

Reason: Protection of the heritage item during works.

16. **Amendment to Wastewater Report**
Prior to the release of the Construction Certificate, the applicant is to engage a wastewater consultant to amend the wastewater report to provide details and wastewater plans for the installation of surface water diversion drains/banks upslope of and around the land application area in accordance with Australian Standard 1547:2012.

A review of the land application area is to be undertaken and if practicable, extend the land application area further to the south-west to provide further solar exposure.

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

Reason: To ensure compliance with wastewater management

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

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

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

18. **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.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

19. **Project Arborist**
a) a Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged prior to any commencement of works on site to provide tree protection measures in accordance with AS

4970-2009 Protection of trees on development sites.

b) the Project Arborist shall be in attendance and supervise all works around existing trees to be retained, and in particular:
i) the construction of the rockfall ditch, and location and installation of the proposed rainwater tanks.

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

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

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

Reason: Tree protection.

DURING BUILDING WORK

20. **Wastewater Disposal Areas**
Proposed works shall not impact on any wastewater disposal (Land Application Areas) building materials and equipment shall not be stored within the wastewater disposal areas on site.

Reason: To protect land and infrastructure in the wastewater disposal area from damage and failure.

21. **Tree and Vegetation Protection**
a) existing trees and vegetation shall be retained and protected, including:
i) all trees within the site not approved for removal, including trees and vegetation nominated for retention on the approved Plans,
ii) all trees and vegetation located on adjoining properties,
iii) all trees and vegetation within the road reserve.

b) tree protection shall be undertaken as follows:
i) tree protection shall be in accordance with AS 4970-2009 Protection of trees on development sites,
ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,

vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,
viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS 4970-2009 Protection of trees on development sites,
ix) the activities listed in section 4.2 of AS 4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS 4373-2007 Pruning of amenity trees,
xi) the tree protection measures specified in this clause must: be in place before work commences on the site, be maintained in good condition during the construction period, and remain in place for the duration of the construction works.

c) the Principal Certifier must ensure that:
i) If activated, the arboricultural works listed in a) and b) are undertaken and certified by an Arborist/Project Arborist as complaint to AS 4970-2009 Protection of trees on development sites.

Reason: Tree and vegetation protection.

22. **Condition of Trees**
a) during the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to, or by seeking arboricultural advice from an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture during the works. In this regard all protected trees shall not exhibit:
i) a general decline in health and vigour,
ii) damaged, crushed or dying roots due to poor pruning techniques,
iii) more than 10% loss or dieback of roots, branches and foliage,
iv) mechanical damage or bruising of bark and timber of roots, trunk and branches,
v) yellowing of foliage or a thinning of the canopy untypical of its species,
vi) an increase in the amount of deadwood not associated with normal growth,
vii) an increase in kino or gum exudation,
viii) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
ix) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

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

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

Reason: Protection of trees.

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

Reason: To protect native wildlife.

24. **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.

25. **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.

26. **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.

27. **No Access Through Land Owned or Managed by NPWS**
Site access is not approved for delivery of materials nor construction of the development through adjacent land owned or managed by NPWS, without the written approval of NPWS.

Reason: Public safety, landscape amenity and tree protection.

28. **Storage of Materials on Land Owned or Managed by NPWS Prohibited**
The dumping or storage of building materials, equipment, machinery, spoil, vegetation, green waste or any other material in land owned or managed by NPWS is prohibited.

Reason: Public safety and environmental protection.

29. **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.

30. **Survey Certificate**
A survey certificate prepared by a Registered Surveyor at the following stages of construction:

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

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

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

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

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

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

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

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

Reason: Aboriginal Heritage Protection.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

33. **Installation and Certification of Solid/Fuel Burning Heater**
The solid fuel heater must be certified to comply with Australian Standards 4012 and 4013.

Provide to the Principal Certifier certification that the solid fuel heater has been installed by an appropriately experienced and qualified person, in accordance with the relevant provisions of AS2918 – Domestic Solid Fuel Burning Appliances – Installation.

Reason: To ensure the installation is completed in a legislatively compliant manner.

34. **Wastewater System Compliance**
All recommendations and required works as contained within the report by Broadcrest Consulting Pty Ltd dated March 2024, reference 3258-WW-A-02, and amended report as per prior to Construction Certificate condition being implemented.

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

Reason: To ensure the wastewater disposal system is compliant and will not create a risk to public health.

35. **Wastewater System Installation Approved by a Suitably Qualified Person**
Prior to the release of the Occupation Certificate evidence must be supplied to the Principal Certifier from a suitably qualified person that the on-site wastewater management system has been installed according to requirements listed in the certificate of accreditation for the wastewater system and wastewater report by Broadcrest Consulting Pty Ltd referenced as 3258-WW-A-02 and dated March 2024.

Reason: To ensure the wastewater system has been installed correctly to minimise the potential for harm.

36. **Specification of Wastewater System to be Installed**
The NSW Health certificate of accreditation of the Aerated Wastewater Treatment System (AWTS) to be installed must be provided to the Principal Certifier and Council for its records prior to the release of the Construction Certificate.

Reason: To ensure the wastewater system to be installed is accredited for domestic use.

37. **Landscape Completion**
a) any new landscape works are to be implemented in accordance with the following conditions:
i) landscape works are to be contained within the legal property boundaries,
ii) any 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,
iii) any proposed tree planting shall be located at least 2 metres from common boundaries,
iv) where the property is certified Bush Fire Prone Land, any new planting may be managed in accordance with Planning for Bushfire Protection 2019.

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

Reason: Environmental amenity.

38. **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.

39. **Native Landscaping**
Any new landscaping is to incorporate a minimum 80% of any new planting incorporates native vegetation (as per species found on the site or listed in Pittwater Spotted Gum Endangered Ecological Community).

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

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

40. **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.

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

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

42. **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.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

44. **Certification of Solid Fuel Burning Heaters**
A certificate from an appropriately qualified person indicating the system is compliant with all relevant legislation, Building Code of Australia, Australian Standards, Specifications and manufacturer requirements is to be submitted to Council prior to the operation of the solid fuel heater.

Reason: To ensure the system operates in a legislatively compliant manner.

45. **Wastewater System Approval to Operate**
Prior to the issuing of an Occupation Certificate, a copy of a s68 (Local Government Act 1993) approval to operate the wastewater system, and the wastewater system must be activated and effectively operating to the satisfaction of the Principal Certifier.

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

Reason: To ensure the premises a maintained in an appropriate manner in perpetuity.

46. **No Impacts to Native Vegetation Within Biodiversity Values Map**

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

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

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

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

Reason: Proper identification of buildings.

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

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

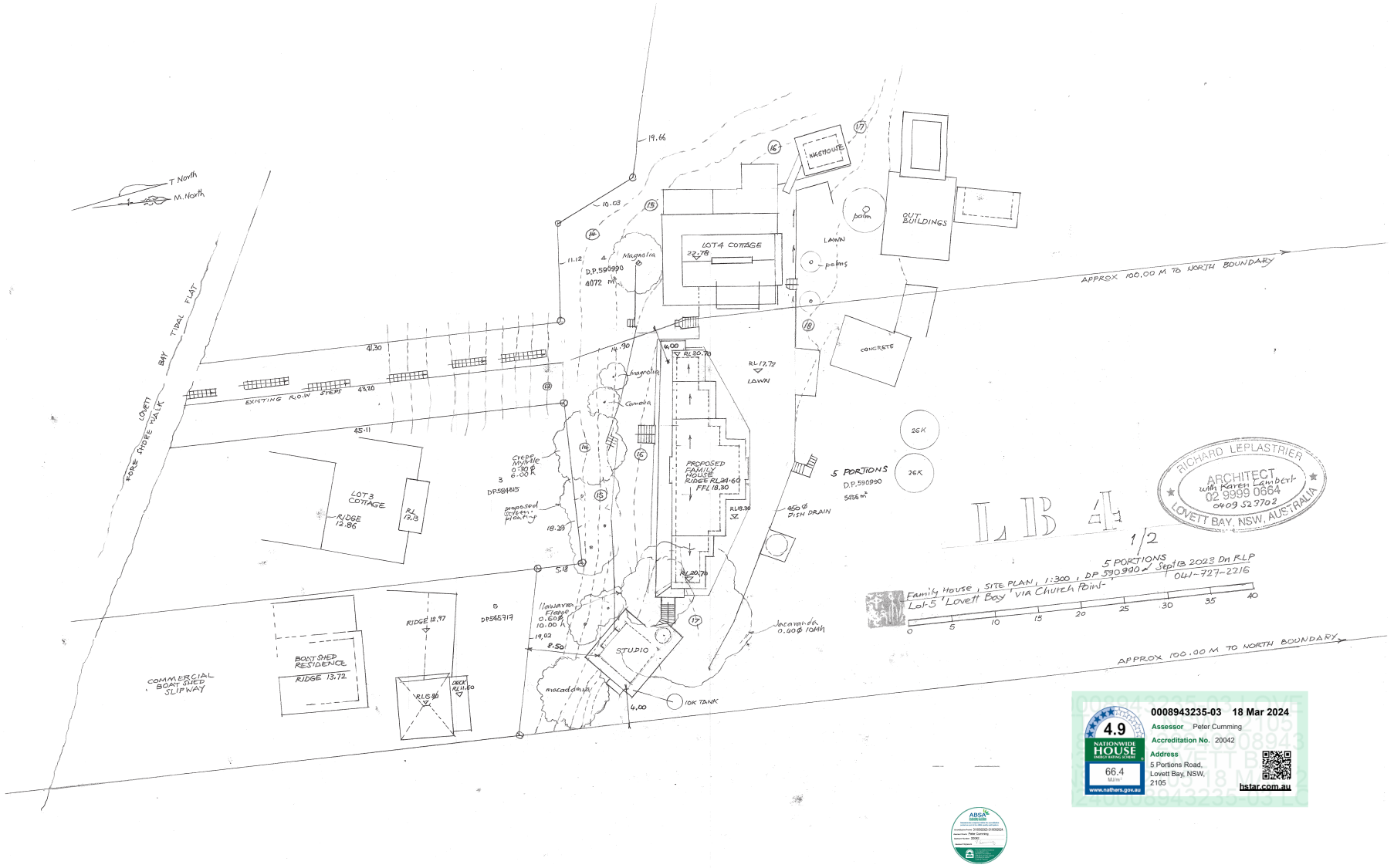
b) the approved landscape planted areas, whether containing lawn, gardens or planters shall in perpetuity remain as planting under the development consent, and shall not be replaced with any hard paved surfaces or structures.

Reason: To maintain local environmental amenity.

49. **No Impacts to Native Vegetation Within Biodiversity Values Map**
Impacts to any native vegetation (including for APZ establishment/maintenance) within the area mapped as Biodiversity Values Map will require an application for development consent which must be accompanied by a Biodiversity Development Assessment Report prepared by an

ecologist accredited in application of the NSW Biodiversity Assessment Method, unless otherwise approved under an existing development consent, Local Land Services Native Vegetation Panel permit, or Threatened Species License.

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


T. North
M. North
LOT 4 COTTAGE
22.78
D.P.590990
4072 m²
WAREHOUSE
OUT BUILDINGS
palm
LAWN
palms
APPROX 100.00 M TO NORTH BOUNDARY
CONCRETE
RL 20.70
RL 17.79
LAWN
Magnolia
Camellia
EXISTING R.O.W STEPS
LOVETT BAY TIDAL FLAT
FORE SHORE WALK
LOT 3 COTTAGE
RIDGE 12.86
RL 13.78
Cycas Mysicle 0.30ϕ 6.00 H
3 DP584815
proposed system
PROPOSED FAMILY HOUSE RIDGE RL 21.60 FFL 18.30
RL 18.36
SZ
450ϕ DISH DRAIN
5 PORTIONS
D.P.590990
5456 m²
26K
26K
RICHARD LEPLASTRIER
ARCHITECT
with Karen Lambert
02 9999 0664
0409 523702
LOVETT BAY, NSW, AUSTRALIA
L B A
1/2
5 PORTIONS
Sept'23 2023 Dn RLP
041-727-2216
Family House | SITE PLAN | 1:300 | DP 590900
Lot-5 'Lovett Bay' VIA Church Point-
0 5 10 15 20 25 30 35 40
BOAT SHED RESIDENCE
RIDGE 13.72
RIDGE 12.97
RL 6.90
DECK RL 11.60
COMMERCIAL BOAT SHED SLIPWAY
B DP545719
Hawthorn Hedge 0.60ϕ 10.00 H
19.02
8.50
STUDIO
macadamia
Jacaranda 0.40ϕ 10MH
10K TANK
4.00
19.66
10.03
11.12
41.30
43.20
45.11
14.90
18.20
5.18
4.00
0008943235-03 18 Mar 2024
Assessor Peter Cumming
Accreditation No. 20042
Address
5 Portions Road, Lovett Bay, NSW, 2105
4.9
NATIONWIDE HOUSE
66.4
MJ/m²
www.nathers.gov.au
hstar.com.au

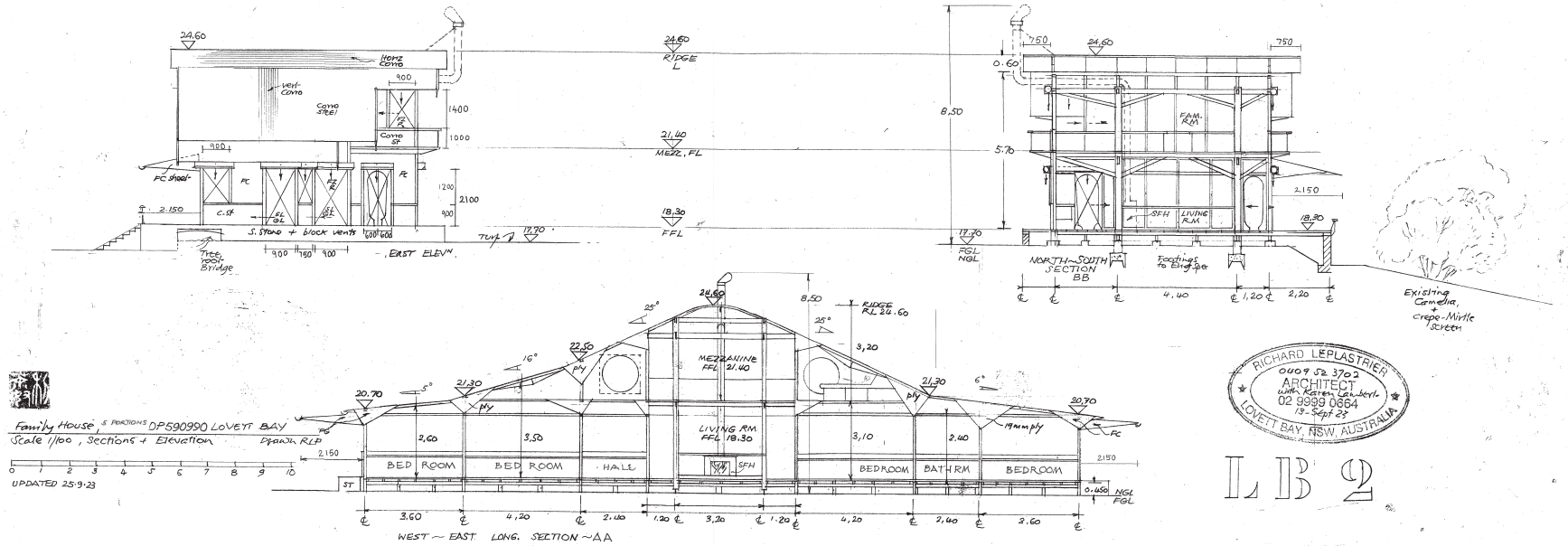


Annual average wind strength and direction data is shown for Pittwater region as best proxy for Lovett Bay.
Source: https://windy.app/forecast2/spot/128784/pittwater/statistics



BASIX information

Minimum 55mm foil lined blanket under metal roof.
R2.5 insulation to all ceilings except living/dining/kitchen (this is in addition to above roof insulation).
All external walls to have reflective sarking/16mm firecheck barrier/R2.5 insulation/ply lining.
All internal walls ply stud with R2.5 adjacent to bathrooms.
R2.5 underfloor insulation to framed/suspended floor.
Studio w/c timber/glass door U=5.4 SHGC=0.56.
Windows/glass doors of mezzanine floor, living/dining/kitchen, corridors, and studio DG/clear U=3.6 SHGC=0.47 (hinged) SHGC=0.54 (sliding).
Windows/glass doors of bedrooms and bathrooms DG/clear U=4.3 SHGC=0.47 (+/-10%) hinged SHGC=0.53 (+/-10%) sliding.
All recessed downlights sealed and to allow for uninterrupted ceiling insulation.



4.9 NATIONWIDE HOUSE ENERGY RATING SCHEME
66.4 MJ/m²
www.nathers.gov.au

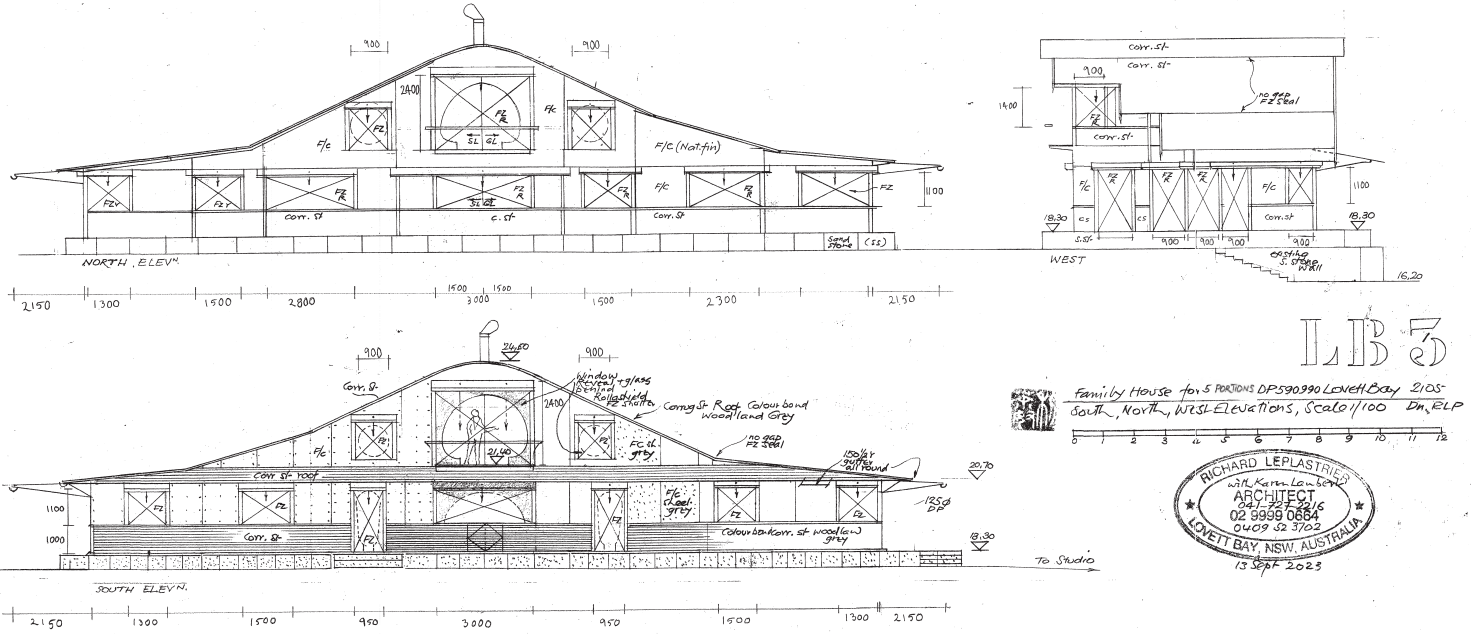
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Assessor Peter Cumming

Accreditation No. 20042

Address
5 Portions Road,
Lovett Bay, NSW,
2105

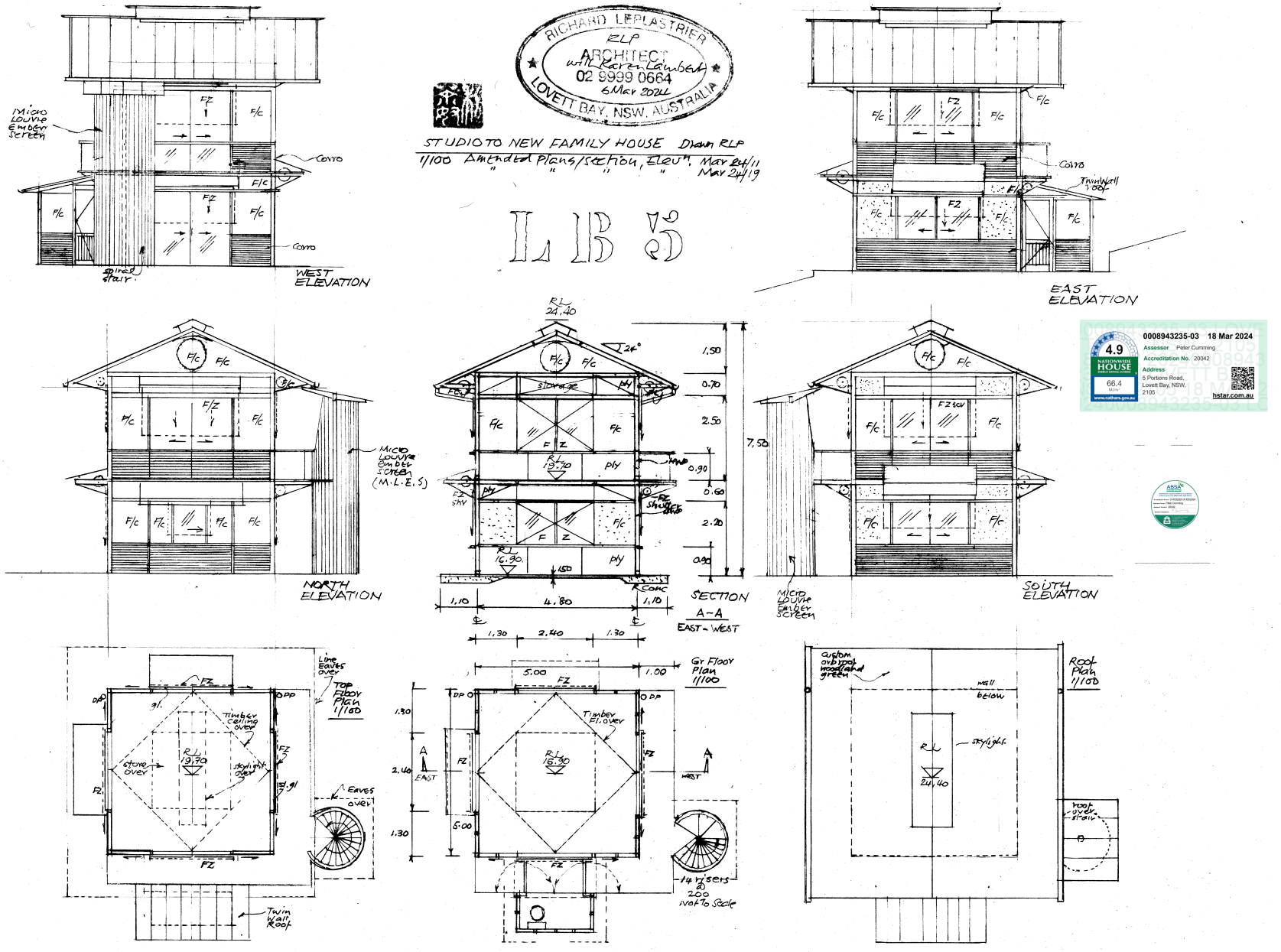
hstar.com.au



LB 7D

Family House for 5 PORTIONS DP590990 LOVETT Bay 2105
South, North, WEST Elevations, Scale 1/100 Dn. RLP

RICHARD LEPLASTRIER
with Karen Lambert
ARCHITECT
021 727 216
02 9999 0664
0409 52 3702
LOVETT BAY, NSW, AUSTRALIA
13 Sept 2023


RICHARD LEPLASTRIER
RLP
ARCHITECT
with Karen Lambert
02 9999 0664
6 May 2021
LOVETT BAY, NSW, AUSTRALIA
STUDIO TO NEW FAMILY HOUSE Drawn RLP
1/100 Amended Plans/Section, Elevn. Mar 8th/11
" " " " May 24th/19
LIBRARY
WEST ELEVATION
EAST ELEVATION
NORTH ELEVATION
SOUTH ELEVATION
SECTION A-A
EAST - WEST
Top Floor Plan 1/100
Gr Floor Plan 1/100
Roof Plan 1/100
Micro Louvre Ember Screen
Timber Ceiling over
Timber Fl. over
Skylight
Eaves over
Line Eaves over
Twin Wall Roof
Custom orb roof woodland green
wall below
14 risers @ 200
Not to Scale
0008943235-03 18 Mar 2024
4.9
Assessor Peter Cumming
Accreditation No. 20042
Address 5 Portions Road, Lovett Bay, NSW, 2105
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ITEM 3.3 DA2024/0281 - 290 HUDSON PARADE CLAREVILLE - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE

PURPOSE

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

RECOMMENDATION

That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of PLEP 2014 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

THAT Council as the consent authority **approves** Development Consent to DA2024/0281 for alterations and additions to a dwelling house on land at Lot 11 DP 228119, 290 Hudson Parade CLAREVILLE, subject to the conditions set out in the Assessment Report.

Reporting manager	Adam Richardson
TRIM file ref	2024/293534
Attachments	⇩1 Assessment Report ⇩2 Site Plan and Elevations ⇩3 Clause 4.6

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/0281

Responsible Officer:	Stephanie Gelder
Land to be developed (Address):	Lot 11 DP 228119, 290 Hudson Parade CLAREVILLE NSW 2107
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Andrew Vickery Carlton Isles Victoria Isles
Applicant:	Richard Francis Smith

Application Lodged:	22/03/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	01/04/2024 to 15/04/2024
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 16.12%
Recommendation:	Approval

Estimated Cost of Works:	$ 247,500.00

EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) as the proposal presents a variation of more than 10% to Clause 4.3 Height of Buildings of Pittwater Local Environment Plan 2014.

The proposal presents a height of 9.87m, that results in a variation of 16.12% (1.37m) to the required 8.5m height of buildings development standard. The proposal is for the reconstruction of a lower and upper deck that was damaged by a landslip event in May 2022, which is subject to an Emergency

Order. The proposal seeks to reconstruct the rear decks that were previously approved and constructed under N0167/14.

The height breach has been supported by a detailed written Clause 4.6 variation request for the non-compliance with height standard. The breach in height arises as a consequence of the ground level (existing) being altered as a result of the landslip event. It is important to note, that DA2022/1459 for the Construction of a swimming pool and associated timber decks that was approved on 17 April 2023 will rectify the ground level on site. As such, subject to the reinstated ground level the proposal would demonstrate compliance with the height of buildings development standard.

The proposal includes variations to the built form controls under Pittwater 21 Development Control Plan including side building line, building envelope, and landscaped area. It is considered that these variations are acceptable, as the proposal meets the outcomes of the controls, and will not result in any unacceptable amenity, or environmental impacts.

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

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

PROPOSED DEVELOPMENT IN DETAIL

The proposed development seeks consent for the following works:

- Reconstruction of rear lower-level deck;
- Reconstruction of upper-level deck, pergola, and central gable roof; and
- Construction of stairs from the lower-level deck to upper-level deck.

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 Local Environmental Plan 2014 - 7.8 Limited development on foreshore area
Pittwater 21 Development Control Plan - D3.7 Side and rear building line
Pittwater 21 Development Control Plan - D3.9 Building envelope
Pittwater 21 Development Control Plan - D3.11 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 11 DP 228119 , 290 Hudson Parade CLAREVILLE NSW 2107
Detailed Site Description:	The subject site consists of one (1) allotment located on the north-western side of Hudson Parade. The site is regular in shape with a frontage of 8.385m and 6.87m along Hudson Parade and a depth of 39.205m. The site has a surveyed area of 731.1m². The site is located within the C4 Environmental Living zone from PLEP 2014 and accommodates a dwelling house, and garage currently on the site. The site slopes downwards from the south-eastern front boundary downwards to the rear north-western boundary over approximately 12 metres. The site contains trees, and plantings. The rear of the site is largely cleared as a result of the landslide event. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by dwelling houses varying in architectural style and design. Directly to the north-west of the subject site is a Public Reserve owned by Council.

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:

N0167/14
Development Application for Demolition of existing house and construction of a new single dwelling, pool and secondary dwelling.
Approved on 13 October 2014.

T0208/17
Tree/Bushland Works for Tree Removal (1 tree).
Approved on 15 May 2017.

DA2021/0234
Development Application for Alterations and additions to a dwelling house to include a driveway, front fence and gate.
Approved on 21 May 2021.

DA2021/1609
Development Application for Construction of a front fence.
Approved on 29 October 2021.

LGA2022/0027
Emergency Order under the Local Government Act 1993 for Landslip.
Dated 12 May 2022.

DA2022/1459
Development Application for Construction of a swimming pool and associated timber decks.
Approved on 17 April 2023.

APPLICATION HISTORY

Following the preliminary assessment of the application, on 10 April 2024 Council requested additional information in relation to an amended Geotechnical Report, as the submitted report is in reference to the previous application. An amended Geotechnical Report was submitted on 12 April 2024 which referenced the proposed development.

On 18 April 2024, Council requested additional information to clarify if any fill works were proposed under this application. On, 29 April 2024 the applicant submitted amended plans to detail that there are no proposed fill works under this application.

The amended documentation 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 Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 29 of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to an amended Geotechnical Report, as the submitted report is in reference to the previous application. An amended Geotechnical Report was submitted on 12 April 2024 which referenced the proposed development. On 18 April 2024, Council requested additional information to clarify if any fill works were proposed under this application. On, 29 April 2024 the applicant submitted amended plans to detail that there are no proposed fill

Section 4.15 Matters for Consideration	Comments
	works under this application. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 01/04/2024 to 15/04/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Landscape Officer	***Supported - without conditions*** The development application is for the proposed upper level deck and central gable roof addition, with a stair from the lower deck in the same configuration as approved under DA N0167/14. It is noted that the application further reduces the landscape area from 38.5% to 34.4% and thus matter shall be determined by the Assessing Planning Officer. A Landscape Plan that is conceptual is submitted under this application and no concerns are raised, as it is noted that the landscape design information applicable to landscape works is a detailed under development consent DA2022/1459.
NECC (Bushland and Biodiversity)	***Supported - subject to conditions*** The comments in this referral relate to the following applicable controls and provisions: • SEPP (Resilience and Hazards) 2021 - Coastal Environment Area • Pittwater LEP - Clause 7.6 Biodiversity Protection • Pittwater DCP - Clause B4.7 Pittwater Spotted Gum Forest Endangered Ecological Community The proposal would take place in previously disturbed areas of the site and is unlikely to impact upon native flora and fauna. The proposed landscape plan is generally consistent with applicable controls. Potential impacts to the marine environment should be assessed by the appropriate referral body. The development is designed, sited and will be managed to avoid any significant adverse environmental impact.
NECC (Coast and Catchments)	***Supported - without conditions*** This Development Application is to seek consent for an upper-level deck and central gable roof, with a stair from the lower deck.

Internal Referral Body	Comments
	The application has been assessed in consideration of the *Coastal Management Act 2016*, State Environmental Planning Policy (Resilience & Hazards) 2021 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP. **Coastal Management Act 2016** The subject site has been identified as being within the coastal zone and therefore *Coastal Management Act 2016* is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the *Coastal Management Act 2016*. **State Environmental Planning Policy (Resilience & Hazards) 2021** The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA. Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Richard Smith Architects dated March 2024, the DA satisfies requirements under clauses 2.10, 2.11 and 2.12 of the SEPP R&H. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021. **Pittwater LEP 2014 and Pittwater 21 DCP** **Development on Foreshore Area** A section of the subject property is within the foreshore building line. Part 7, Clause 7.8 –Limited development on foreshore area of the Pittwater LEP 2014 applies for any development within the foreshore area. The DA proposes no works on the foreshores area and hence, the DA does not require to satisfy the objectives and requirements of Part 7, Clause 7.8 of the Pittwater LEP 2014.
NECC (Riparian Lands and Creeks)	***Supported - subject to conditions*** This application was assessed in consideration of: - Supplied plans and reports; - Coastal Management Act 2016; - State Environmental Planning Policy (Resilience and Hazards) 2021; - Relevant LEP and DCP clauses; and - Northern Beaches Council Water management for development policy.

Internal Referral Body	Comments
	Riparian The site is nearby Pittwater estuary and as such the development must not significantly impact on the biophysical, hydrological or ecological integrity of Pittwater estuary, or the quantity and quality of surface and ground water flows that it receives. *Sediment Management* 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. *Water Management* Swimming pool water must empty to sewer to ensure proper treatment of chlorinated water. Subject to conditions, the proposal is unlikely to have an adverse effect on the integrity and resilience of the biophysical, ecological and hydrological environment of Pittwater estuary.
Parks, reserves, beaches, foreshore	***Supported - without conditions*** The development site adjoins Pittwater waterway that is located downslope of the property. Development consent DA2022/1459 is active and Parks Reserves and Foreshores Referral conditions apply. All development works must ensure that surface sediment runoff and/or erosion is controlled, managed and contained within the site boundaries and prevented from travelling across the boundary and into the Reserve. The development is not detrimental to the landscape character of the adjoining Reserve, and as such Parks, Reserves and Foreshores raise no concerns with the development proposal.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	***Supported - subject to conditions*** The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	***Supported - subject to conditions*** Development Application No. DA2024/0281 Description: Alterations and additions to a dwelling house Address: 290 Hudson Parade CLAREVILLE Reference is made to the proposed development at the above area

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No.A1739998 dated 15 March 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 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?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.87m	16.12% (1.37m)	**No**

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.10 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	N/A
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 residential development will not have any adverse effects on the special ecological, scientific or aesthetic values.

- ***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 low density and scale development 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 4.3 Height of buildings
Requirement: 8.5m
Proposed: 9.87m
Percentage of variation: 16.12% (1.37m)

The proposed variation sought is detailed in Figure 1. It is important to note, that the variation is resultant of the altered ground level (existing), and subject to the reinstatement of the ground level, the

proposal would demonstrate compliance with the height of buildings development standard.

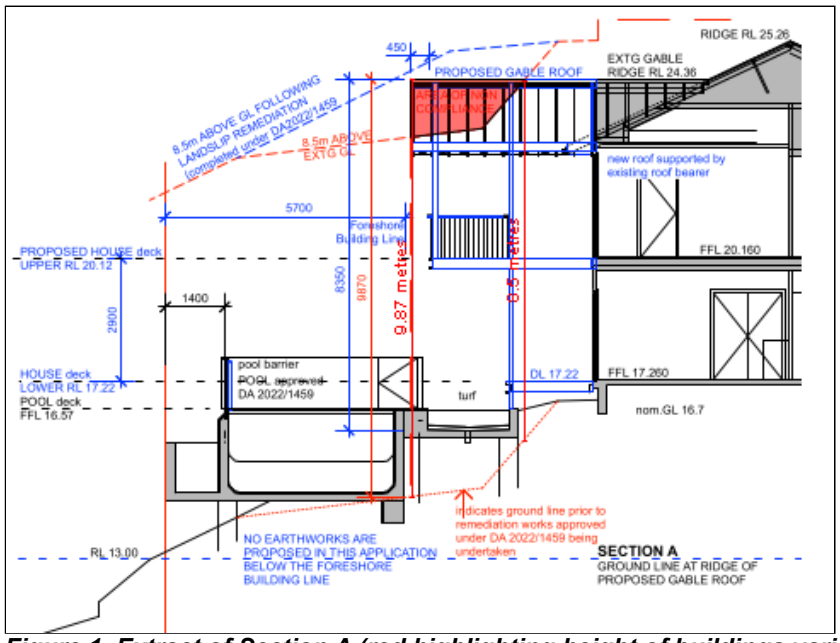


Figure 1. Extract of Section A (red highlighting height of buildings variation)

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

Subclause (1) of this clause provides that:

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

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

Subclause (2) of this clause provides that:

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

Comment:
Clause 4.3 Height of buildings is not expressly excluded from the operation of this clause.

Subclause (3) of this clause provides that:

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

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

Comment:

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

The applicant has stated the following: *"Full compliance with the maximum height of building requirements at 8.5 metres is considered to be unreasonable or unnecessary in the circumstances of this case as the portion of roof in breach only became in breach due to the landslip event and once remediation is carried out as required the roof will no longer be in breach of the height limit".*

It is agreed that compliance is unreasonable or unnecessary in the circumstances of this application as the non-compliance is a direct result of the landslip event that has altered the ground level (existing) on site.

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

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

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

The Clause 4.6 Request argues, in part:

"The proposed design scheme provides for a built form that will fit comfortably within the subject allotment. The portion of roof above the maximum height of building requirements will not form a detracting feature that compromises the character of the home when viewed from Pittwater.

The variation to the height of buildings development standard will not give rise to any unreasonable level of amenity impacts in regard to visual privacy, overshadowing and or view loss impacts to the neighbouring dwellings.

The development provides adequate justification in contravening the development standard and will provide for a better planning outcome in terms of scale, bulk and shading".

It is considered that the sufficient environmental planning grounds are attributed to the landslip event that has resulted in the requirement to rebuild the rear of the dwelling house. It is considered that the

proposed design is largely the same as previously approved under N0167/14, and the rebuilding of the works will not result in any unacceptable amenity, or environmental impacts.

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

- The proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, thereby satisfying objects 1.3(c) and (g) of the EPA Act.

Public Interest:

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

Conclusion:

Council is satisfied as to the matters set out in Clause 4.6 of the PLEP 2014.

It is considered on balance, that having regard to the particular circumstances of Clause 4.3 Height of buildings, the proposed works that are non-compliant are acceptable, given the landslide event that has altered the ground level (existing). The proposal seeks to rebuild the rear of the dwelling house as per the existing and as such the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

7.2 Earthworks

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

It is important to note, the earthworks are to be conducted under DA2022/1459 as detailed on the Master Plans.

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

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

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

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

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

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

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

be of a suitable quality.

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

Comment: The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties.

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

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

(f) the likelihood of disturbing relics

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

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

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

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

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

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

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

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

7.6 Biodiversity protection

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

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

the land, and
(iv) any adverse impact on the habitat elements providing connectivity on the land, and

Comment:
The development has been assessed by Council's 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 and 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, Architectural Plans, and Stormwater Plans that demonstrate all geotechnical risks have been taken into account.

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, and Stormwater Plans that demonstrate waste water, stormwater and drainage are suitably managed on site. Suitable conditions have been recommended to ensure the proposed stormwater disposal is compliant with Council's Water Management for Development Policy.

(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.

7.8 Limited development on foreshore area

The proposed development is located above the foreshore building line, and therefore no development is proposed within the foreshore area.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m (South-East)	26m	-	Yes
Rear building line	Foreshore Building Line	Above Foreshore Building Line	-	Yes
Side building line	2.5m (South-West)	1.8m	28% (0.7m)	**No**
	1m (North-East)	1m	-	Yes
Building envelope	3.5m (South-West)	Outside envelope	54.42% (2.9m)	**No**
	3.5m (North-East)	Within envelope	-	Yes
Landscaped area	60% (438.66m^2)	36.02% (263.2m^2) 6% Impervious (43.85m^2) Total: 42.02% (307.05m^2)	30% (131.61m^2)	**No**

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.3 Bilgola Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
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
C1.23 Eaves	Yes	Yes
D3.1 Character as viewed from a public place	Yes	Yes
D3.3 Building colours and materials	Yes	Yes
D3.6 Front building line	Yes	Yes
D3.7 Side and rear building line	No	Yes
D3.9 Building envelope	No	Yes
D3.11 Landscaped Area - Environmentally Sensitive Land	No	Yes
D3.13 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D3.14 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D3.15 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

D3.7 Side and rear building line

Description of non-compliance

The required side building line is 2.5m for one side and 1.0m for the other side. In this instance the 2.5m has been applied to the south west side boundary, and the 1.0m is applied to the north east side boundary. The proposal is compliant with the 1.0m north east side boundary line.

The proposal presents a variation to the south west side boundary line presenting a setback of 1.8m, resulting in a variation of 28% (0.7m).

It is important to note that the proposal is rebuilding the existing decks that were were approved under N0167/14.

The proposal has been assessed against the outcomes of the control, and it is considered that the variation is supportable in this circumstance as the outcomes have been met.

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.***

  Comment:
  The proposal is consistent with the desired future character of the Bilgola Locality.

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

  Comment:
  The bulk and scale of the decks is minimised as they are largely open structures that will not present any unacceptable visual impact.

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

  Comment:
  The proposal will not result in any impact upon any significant 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 not impact upon any view sharing, and is considered the proposal is a responsive design, that will not impact upon existing 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 proposal will provide a reasonable level of privacy, amenity, and solar access within the development site, and to adjoining sites.

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

  Comment:
  The proposal will enhance the landscaping on site as a result of the proposed development to rectify the development as a result of the landslip event. The proposal is located at the rear of the dwelling house, and is not visible from the streetscape.

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

  Comment:
  Flexibility is afforded as the location of the proposed decks is appropriate given the existing dwelling house.

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

  Comment:
  The proposal will reestablish landscaping and vegetation in the rear yard that will visually reduce the built form.

- ***To ensure a landscaped buffer between commercial and residential zones is established.***

  Comment:
  The proposal is surrounded by a residential zones. Therefore, this outcome is not relevant.

D3.9 Building envelope

Description of non-compliance

Under Clause D3.9 Building envelope of Pittwater 21 Development Control Plan, the building envelope control outlines buildings are to be sited within planes projected at 45 degrees from a height of 3.5 metres above ground level (existing) at the side boundaries.

The proposal presents a building envelope breach along the south west side elevation. The south west elevation is outside of the building envelope with a maximum vertical height of 2.9m and horizontal length of 2.0m, presenting in a variation of 54.42% as outlined in Figure 2.

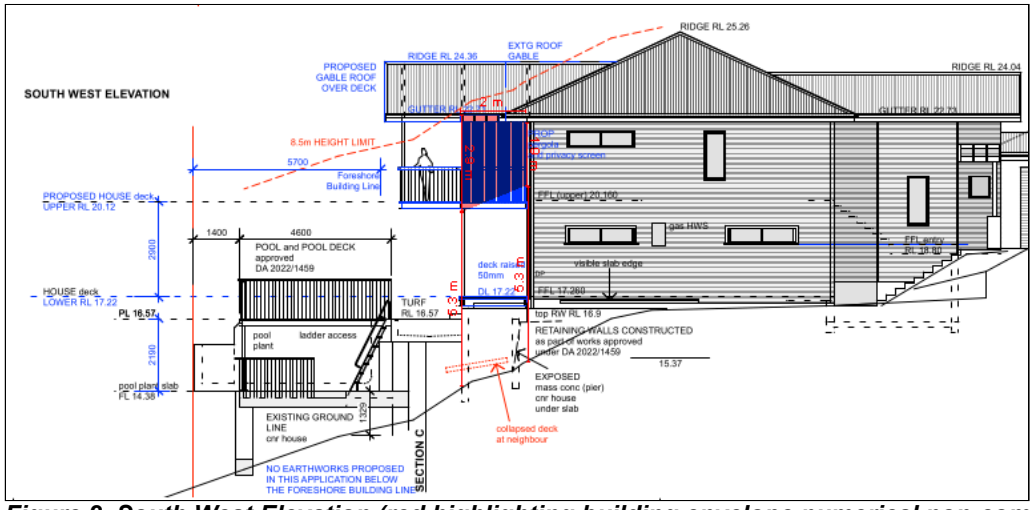


Figure 2. South West Elevation (red highlighting building envelope numerical non-compliance)

The proposed variation has been assessed against the outcomes of the control. In this instance, the building envelope variation is supportable as the outcomes of the control have been met as outlined 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.***

  Comment:
  The proposed development is consistent with the desired future character of the Bilgola 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 proposal is located at the rear of the existing dwelling house, and as such will not be visible from the streetscape. Notwithstanding, the proposal is located below the existing roof, and therefore is considered to be of an appropriate building 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 sensitively to the the existing spatial characteristics of the existing natural environment, noting that no significant vegetation is removed as part of the proposal.

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

  Comment:
  The proposal is considered to be of minimal bulk and scale through the articulated lower and upper decks, that will not present any excessive bulk or scale as it is largely an open structure.

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

  Comment:
  The proposal equitable preserve views and vistas to and from public and private places.

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

  Comment:
  The proposal includes privacy screens along the south west elevation and north east elevation similar to the previous deck arrangement. The proposal will provide adequate amenity, and solar access to the subject site and adjoining sites.

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

  Comment:
  The proposal does not result in any significant vegetation to be removed, and as such the built form will not result in any visual detriment.

D3.11 Landscaped Area - Environmentally Sensitive Land

Description of non-compliance

Under Clause D3.11 Landscaped Area - Environmentally Sensitive Land of Pittwater 21 Development Control Plan, the required landscaped area is 60% (438.66m^2).

The control permits variations in the following circumstances:
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)).*

The proposal includes a total of 36.02% (263.2m^2), and 6% (43.85m^2) impervious areas, resulting in a total of 42.02% (307.05m^2) that presents a variation of 30% (131.61m^2). It is considered that the 6% impervious area is permitted in this instance by way of the rear decks, and pool coping areas and therefore the inclusion of the impervious area in the landscaped area is acceptable.

It is considered that the variation to the landscaped area control is supportable, given the proposal is

for the reconstruction of previously approved deck structures. Furthermore, as detailed below the proposal is consistent with the outcomes of the control, and as such the variation is acceptable.

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.***

  Comment:
  The proposed development is consistent with the desired future character of the Bilgola Locality.

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

  Comment:
  The proposed development will present an acceptable bulk and scale, and it is considered that the proposed decks will not present any unacceptable visual or amenity impact.

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

  Comment:
  The proposal presents an acceptable level of amenity, and solar access to the subject site and adjoining sites.

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

  Comment:
  The proposal does not result in the removal of any significant vegetation. The proposal will not result in any unacceptable visual impacts.

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

  Comment:
  The proposal will conserve the natural vegetation and biodiversity of the site. Council's Bushland and Biodiversity Officer has reviewed the proposal, and is supportable subject to recommended conditions.

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

  Comment:
  The proposed soft surface areas will assist with reducing the stormwater runoff that will prevent soil erosion, and siltation of natural drainage channels. Furthermore, suitable conditions have been recommended to ensure adequate disposal of stormwater.

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

  Comment:
  The proposal will preserve and enhance the rural and bushland character of the area. Specifically, the adjoining Council Reserve to the rear of the site will be protected. Council's

Parks, Reserves, Beaches, Foreshore Officer has reviewed the proposal, and is supportable subject to recommended conditions.

- ***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:
  The proposal presents soft surfaces to maximise the infiltration of water to the water table that will assist 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 $2,475 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $247,500.

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, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

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

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

Council is satisfied that the Applicant's written request under Clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking to justify variation of the development standard contained within Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

PLANNING CONCLUSION

This proposal, for alterations and additions to a dwelling house has been referred to the Development Determination Panel (DDP) due to a variation of more than 10% to Clause 4.3 Height of Buildings of Pittwater Local Environment 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 proposal seeks a variation to Clause 4.3 height of buildings of Pittwater Local Environmental Plan 2014, as a result of the proposed building height of the rear upper deck. Furthermore, the proposal includes variations to the built form controls under Pittwater 21 Development Control Plan including side building line, building envelope, and landscaped area. It is considered that variations are acceptable, as the proposal meets the outcomes of the controls, and will not result in any unacceptable amenity, or environmental impacts.

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

REASON FOR DETERMINATION

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

RECOMMENDATION

That Northern Beaches Council, as the consent authority, vary the development standard contained within Clause 4.3 Height of Buildings, pursuant to Clause 4.6 of the Pittwater Local Environmental Plan 2014 because the Applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) of Clause 4.6.

Accordingly Council as the consent authority grant Development Consent to DA2024/0281 for

Alterations and additions to a dwelling house on land at Lot 11 DP 228119, 290 Hudson Parade, CLAREVILLE, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

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

Approved Plans				
Plan Number	**Revision Number**	**Plan Title**	**Drawn By**	**Date of Plan**
DA 01	-	Roof Plan	Richard Smith Architect	26 April 2024
DA 02	-	Floor Plans	Richard Smith Architect	26 April 2024
DA 03	-	North West and South West Elevations	Richard Smith Architect	26 April 2024
DA 04	-	North East Elevation and Sections	Richard Smith Architect	26 April 2024
DA 05	-	South East Elevation	Richard Smith Architect	26 April 2024

Approved Reports and Documentation			
Document Title	**Version Number**	**Prepared By**	**Date of Document**
BASIX Certificate	A1739998	Richard Smith	15 March 2024
Geotechnical Report - 17647-GR-1-2	0	Alliance Geotechnical & Environmental Solutions	11 April 2024
Landscape Plan - DA 07	-	Richard Smith Architect	12 March 2024
Stormwater Drainage Plan - 2022/79-SW1	A	Law & Dawson	12 February 2024
Stormwater Drainage Details - 2022/79-SW2	A	Law & Dawson	12 February 2024
Waste Management Plan	-	No Author	n.d.

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
Aboriginal Heritage Office	Referral - Aboriginal Heritage Office - 290 Hudson Parade Clareville	28 March 2024
Ausgrid	Ausgrid Referral Response	10 April 2024

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

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

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 $2,475.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of $247,500.00.

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).

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

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

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

Reason: To protect native vegetation.

8. **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.

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

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

When the proposed discharge point for the development in this consent cannot strictly comply with the Water Management for Development Policy, the Applicant must apply to verify the proposed discharge point by gaining Council approval via a Stormwater Drainage Application. Council approval must be provided to the Certifier prior to the issue of a Construction Certificate when a Stormwater Drainage Application is required. The Stormwater Drainage Application form can be found on Council's website.

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

Reason: To ensure satisfactory management of stormwater.

10. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**
The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Certifier.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

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

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

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

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

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

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

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

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

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

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

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

DURING BUILDING WORK

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

Reason: To protect native wildlife.

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

Reason: To protect wildlife habitat.

16. **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.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

18. **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.

19. **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.

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

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

Reason: Aboriginal Heritage Protection.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

21. **Native Landscaping**
Any new landscaping is to incorporate a minimum 80% locally native vegetation species as a proportion of the total number of plants. Locally native species are to be consistent with the relevant section of the Native Planting Guide available on Council's website.

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

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

22. **No Weeds Imported On To The Site**
No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan) are to be imported on to the site prior to or during construction works.

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

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

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

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

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

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

Reason: To ensure satisfactory management of stormwater.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

25. **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

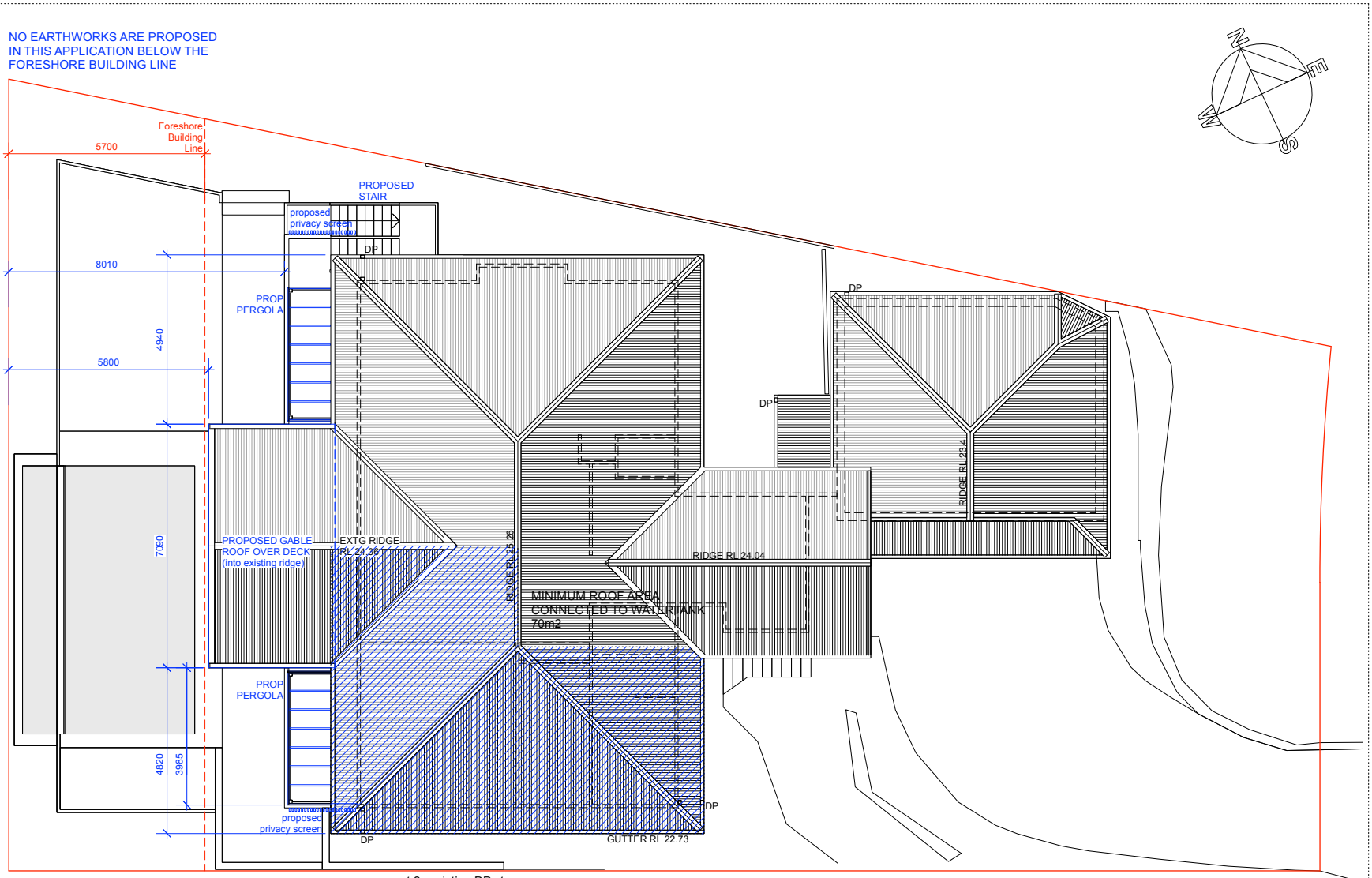
26. **Control of Domestic Dogs/Cats**
Domestic dogs and cats are to be kept from entering wildlife habitat areas at all times.

Dogs and cats are to be kept in an enclosed area and/or inside the dwelling, or on a leash such that they cannot enter areas of wildlife habitat, bushland or foreshore unrestrained, on the site or on surrounding properties or reserves.

Reason: To protect native wildlife and habitat.

27. **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.

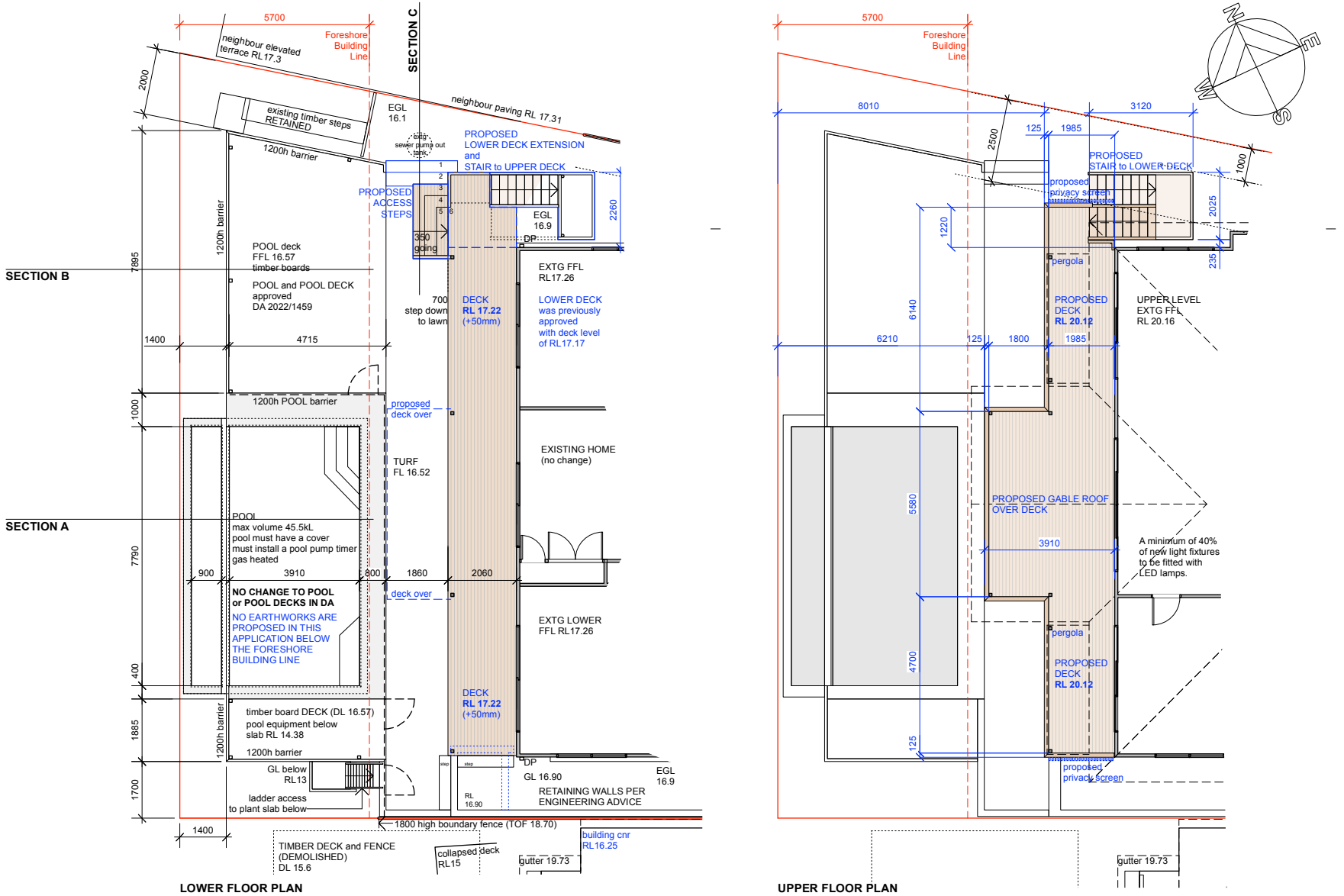


BASIX CERTIFICATE NUMBER A1736192
DATE OF ISSUE 16 February 2024
(new BASIX Certificate issued for this DA application)

connect 2x existing DPs to
rainwater system and
overflow to SW system

ROOF PLAN

RICHARD SMITH ARCHITECT ARB 6963	290 Hudson Parade CLAREVILLE NSW 2107	Lot 11 DP 228119	**SITE PLAN and ROOF PLAN** **DA 01**
0412 115 499 www.architectsmith.com.au	Victoria and Andrew Isles	26 April 2024	1:100



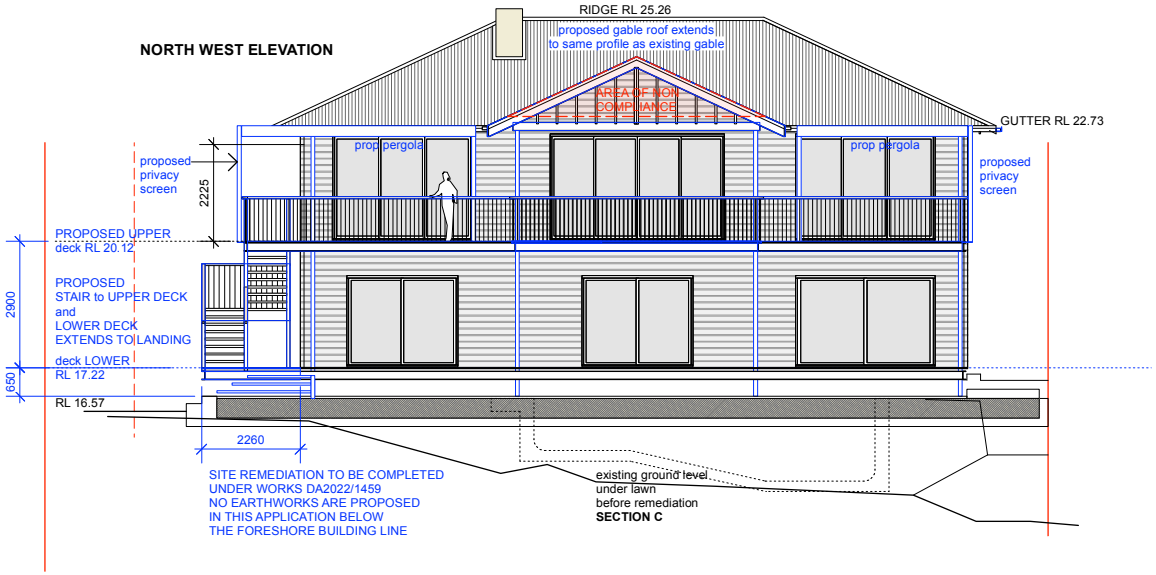
RICHARD SMITH ARCHITECT ARB 6963
0412 115 499 www.architectsmith.com.au

290 Hudson Parade CLAREVILLE NSW 2107
Victoria and Andrew Isles

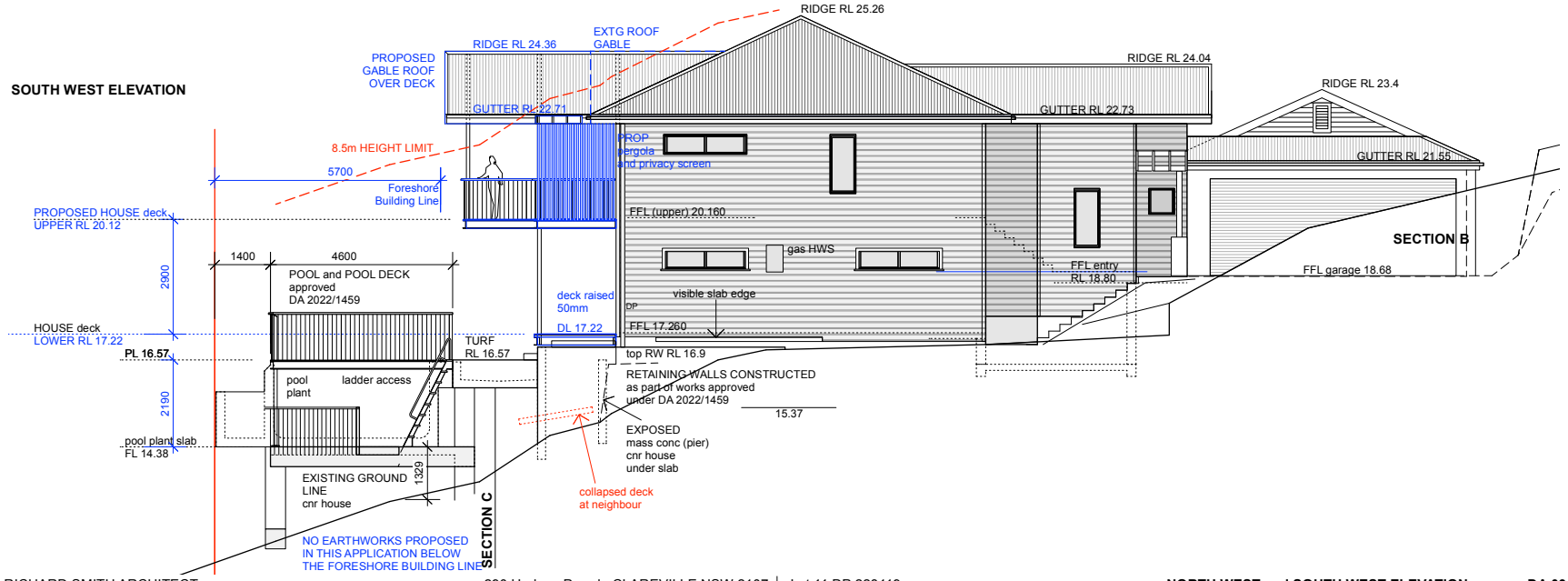
Lot 11 DP 228119
26 April 2024

FLOOR PLANS DA 02
1:100

NORTH WEST ELEVATION



SOUTH WEST ELEVATION

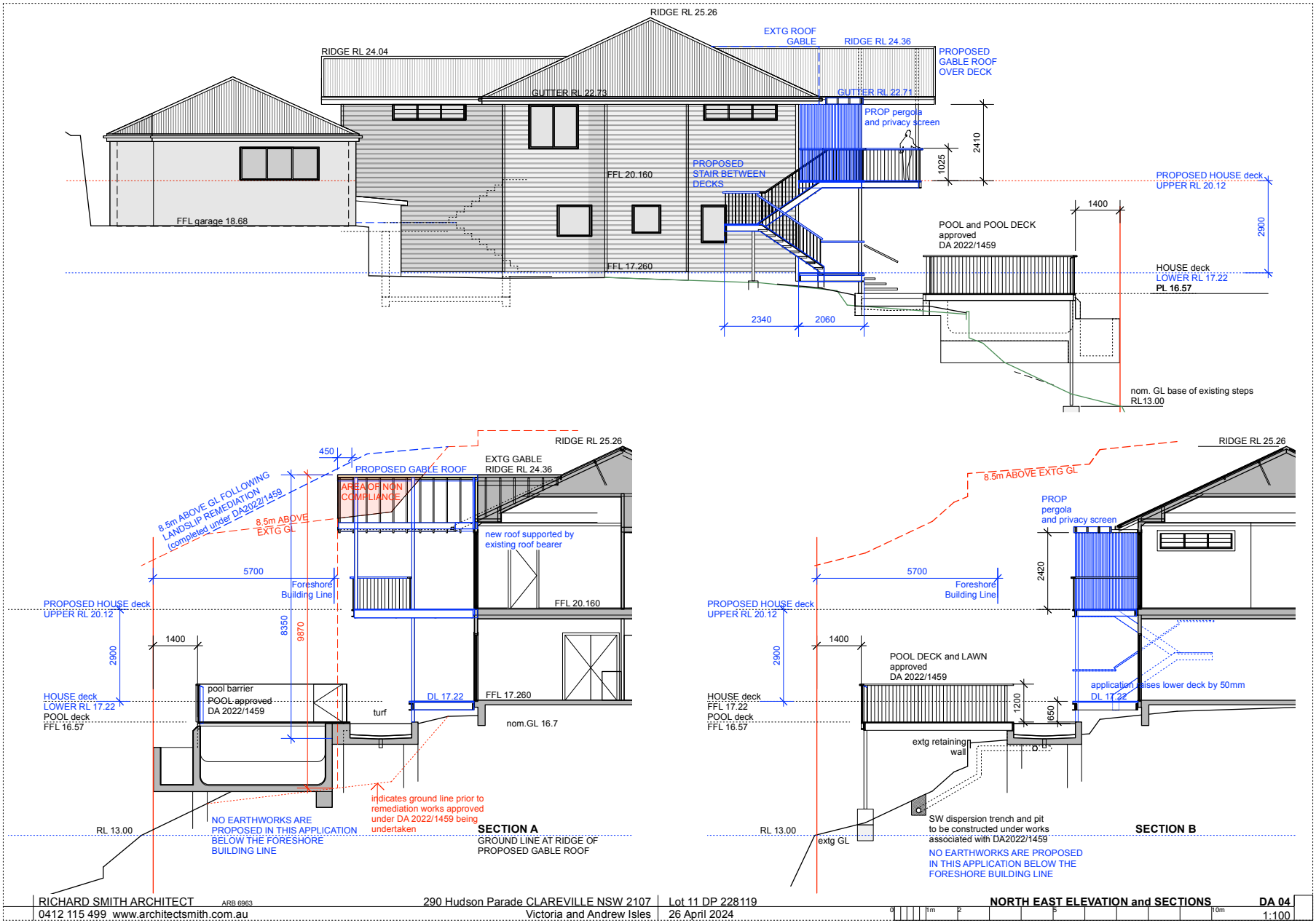


RICHARD SMITH ARCHITECT ARB 6963
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290 Hudson Parade CLAREVILLE NSW 2107
Victoria and Andrew Isles

Lot 11 DP 228119
26 April 2024

NORTH WEST and SOUTH WEST ELEVATION **DA 03**
1:100

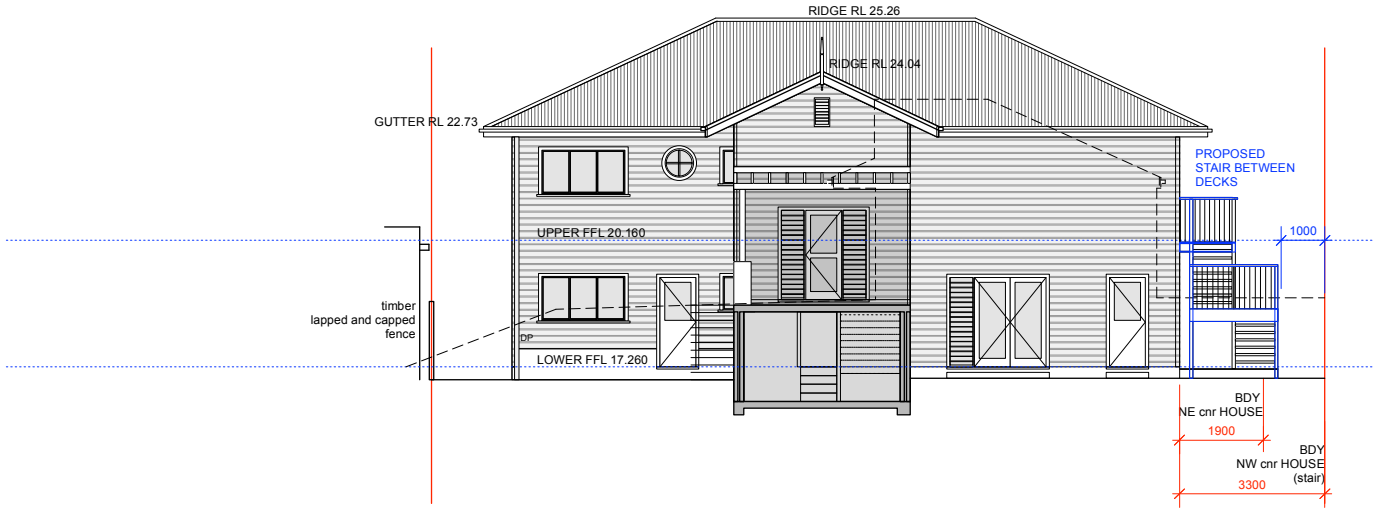


RICHARD SMITH ARCHITECT ARB 6963
0412 115 499 www.architectsmith.com.au

290 Hudson Parade CLAREVILLE NSW 2107
Victoria and Andrew Isles

Lot 11 DP 228119
26 April 2024

NORTH EAST ELEVATION and SECTIONS **DA 04**
1:100



RICHARD SMITH ARCHITECT ARB 6963
0412 115 499 www.architectsmith.com.au

290 Hudson Parade CLAREVILLE NSW 2107
Victoria and Andrew Isles

Lot 11 DP 228119
26 April 2024

SOUTH EAST ELEVATION **DA 05**
1:100

Richard Smith
Architect

290 Hudson Parade
CLAREVILLE

Clause 4.6 Variation Statement

Exception to Pittwater LEP 2014 Development Standard

Clause 4.3 - Maximum Height of Buildings

for

Additions to 290 Hudson Parade CLAREVILLE NSW 2017



Figure 1: External View of house circa prior to Landslip Event, March 2022.

1. Introduction

This Clause 4.6 application has been prepared by the applicant and Registered Architect Richard Smith in support of the Development Application for the addition of a deck, stair and gable roof.

The request seeks to vary by 1.4m the maximum height of buildings development standard prescribed in Clause 4.3: Height of Buildings of the Pittwater Local Environmental Plan 2014 and the variation of the development standard request has been prepared pursuant of Clause 4.6 of the PLEP 2014.

PLEP Clause 4.3 (2) specifies that the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

Figure 2: Extract from the Pittwater LEP 2014 Height of Buildings Map



The Height of Buildings Map prescribes for the site that the development has a maximum building height of 8.5 metres.

Clause 4.3 (1) outlines the objectives of Height of Buildings and reads as follows:

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

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

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

(c) to minimise any overshadowing of neighbouring properties,

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

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

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

SITE HISTORY

DA N0167/14 gave Consent for a gable roof over the central portion of a deck at the upper level of the home, this work was carried out and a final certificate issued 7 March 2018.

A landslip event occurred at the property in early 2022. The decks and gable roof were removed under Emergency Order LGA2022/0027, dated 12 May 2022.

The area west of the house, including a lawn, deck and pool, slipped and subsequently failed requiring demolition of the structures. The current condition of the site is shown in Figure 3 and 4.

Figure 3 and 4: Current conditions at the site (Foreshore area) December 2023.





The landslip resulted in ground levels across the site, below the house, nearly two metres below their old height.

DA 2022/1459 granted Consent for the lawn, pool and pool decks to be rebuilt in a slightly different configuration. A deck was also approved alongside the lower level of the home.

This Development Application seeks to reinstate the upper deck and gable roof in the same position and configuration as the deck and roof given Consent in DA N0167/14.

Remediation is required on the site, in particular the unretained ground batter, as specified in the Geotech report that was submitted with DA 2022/1459 and is relied upon in Condition 17 of that Consent.

Figure 5 shows the ground level, as a proposed BLUE DASHED LINE, that will result following remediation.

This written exception will demonstrate:

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

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

Proposed height of roof ridge over existing – unremediated – GL	9.87 metres
Maximum Permissible height of building	8.5 metres
Exceedance of the LEP development standard	**1.37m (16% variation)**

Richard Smith
Architect

2. Variation to the maximum height of buildings requirement

The area of non-compliance to the maximum height of building requirements to the proposed residence is as follows:

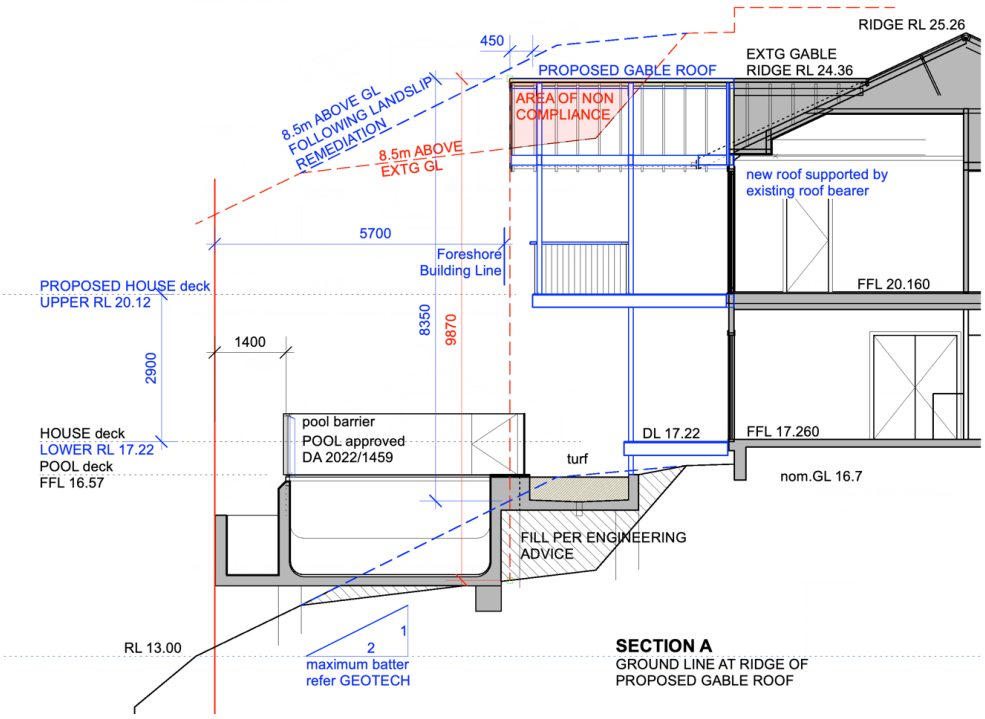


Figure 5: SECTION through property at midpoint of proposed gable roof (Section A)

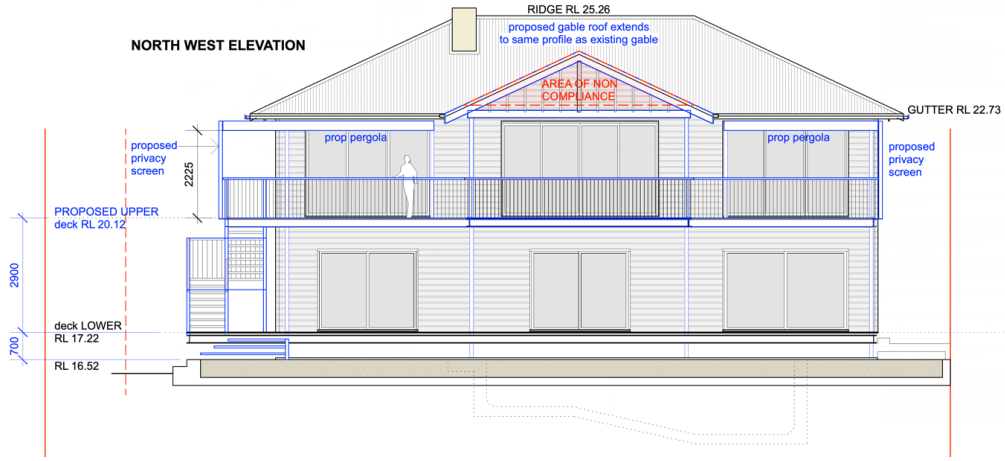


Figure 6: ELEVATION of house showing proposed gable roof (North Western Elevation)

The degree of non-compliance is limited to part of the gable roof over the upper deck.

The Objective of Clause 4.6: Exceptions to Development Standards, is to provide an appropriate degree of flexibility in applying certain development standards to particular development.

The Clause contends that strict compliance with the maximum height of 8.5 metres (as prescribed within Clause 4.3(2) of the Pittwater Local Environmental Plan 2014) is unreasonable and unnecessary in the circumstances of the case and that exceedance by **1.4m** can be supported by Council in considering the merits of the proposal.

The maximum height control is a development standard to which exceptions can be granted pursuant to Clause 4.6 of the LEP being achieved.

The relevant objectives and provisions of Clause 4.6 are as follows:

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

(a) to provide an appropriate degree of flexibility in applying certain development standards to development,

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

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

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

(5) In deciding whether to grant concurrence, the Planning Secretary must consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

Richard Smith
Architect

3. Compliance with Clause 4.6 (3) Exceptions to Development Standards

3.1 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.

The objectives of Clause 4.3: Height of Buildings within the Pittwater Local Environmental Plan 2014 are achieved as follows:

(a) to ensure development allows for reasonable solar access to existing buildings and public areas,

Comment: The non compliance is limited to the middle seven metre wide section of roof, on a site of 21 metres width, which extends above the 8.5m limit by between zero at the sides, and 1.4 metres at the ridge.

The roof does not impact the solar access to existing buildings or neighbouring public area.

(b) to ensure that privacy and visual impacts of development on neighbouring properties are reasonable,

Comment: The roof will not reduce the privacy between neighbouring properties, it will be improved. The view of vegetation around and over the house is not impacted by the roof.

(c) to seek alternative design solutions in order to maximise the potential sunlight for the public domain,

Comment: There is no impact on sunlight for the public domain.

(d) to relate development to topography.

Comment: The deck and open gable roof steps out at the central third section of the home. These structures sit in front of the two storey wall of the existing house, which runs in one line from side to side. The roof eave and pergolas either side of the gable do not breach the height limit.

The decks and roof will articulate and cast shade onto the façade and minimise the bulk and scale of the built form.

3.2 Is compliance with the Development Standard unreasonable or unnecessary in the circumstances of the case?

Full compliance with the maximum height of building requirements at 8.5 metres is considered to be unreasonable or unnecessary in the circumstances of this case as the portion of roof in breach only became in breach due to the landslip event and once remediation is carried out as required the roof will no longer be in breach of the height limit.

3.3 Are there sufficient environmental planning grounds to justify contravening the development standard?

The proposed design scheme provides for a built form that will fit comfortably within the subject allotment. The portion of roof above the maximum height of building requirements will not form a detracting feature that compromises the character of the home when viewed from Pittwater.

The variation to the height of buildings development standard will not give rise to any unreasonable level of amenity impacts in regard to visual privacy, overshadowing and or view loss impacts to the neighbouring dwellings.

The development provides adequate justification in contravening the development standard

and will provide for a better planning outcome in terms of scale, bulk and shading.

4. The Five Part Test (Wehbe v Pittwater Council [2007] NSWLEC 827

In relation to the matters required to be demonstrated by subclause (3) there are various ways that may be invoked to establish that compliance with a development standard is unreasonable or unnecessary as discussed by Chief Justice Preston of the NSW Land and Environment Court in the case of in Wehbe v Pittwater Council [2007] NSWLEC 827. Although the Wehbe case was determined in respect to State Environmental Planning Policy No. 1 – Development Standards ("SEPP 1") it is still applicable in identifying ways in which an applicant may demonstrate that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case.

In the Wehbe case Justice Preston said the most commonly invoked way to establish that compliance with a development standard is unreasonable or unnecessary is to demonstrate that the objectives of the development standard are achieved notwithstanding non-compliance with the standard. The five-part test outlined in *Wehbe v Pittwater Council [2007] NSWLEC 827 is* as follows:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the parcel of land should not have been included in the particular zone.

4.1 The objectives of the standard are achieved notwithstanding non-compliance with the standard;

Comment: Refer to Section 3.1 for comment relating to compliance with the development standard.

4.2 The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;

Comment: Refer to Section 3.2 for comment relating to relevance of the development standard.

4.3 The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.

Comment: The underlying objective of the development standard is to ensure any new development is contextually compatible with the height and character of the immediate locality whilst ensuring the amenity of adjoining properties and public space is retained. In this case,

the objective is thwarted if compliance with the development standard is strictly observed.

The area of non-compliance from the height of buildings requirement is visible from a public space however, when the property is viewed from Pittwater the gable roof sits entirely in front of the existing roof. There is no reduction in view through to vegetation around the home.

The breach from a minor portion of the roof is acceptable in that it re-establishes a height and scale that previously existed. The roof is sympathetic to the character and scale of the neighbouring buildings.

In addition to the above, the minor breach does not form a detracting element and contributes to the reduction of visual bulk and scale impacts that would otherwise compromise the appearance of the building.

Above all, the breach to the building height does not compromise the amenity of the adjoining neighbours. The neighbouring properties continue to receive adequate solar access and the roof will not contribute to any overlooking impacts to the adjoining dwellings given the distance between the deck and the neighbours.

In considering the above, the underlying purpose of the above objective requires a building that is appropriate to the height, context and character of the area and this would not be achieved if strict compliance with the building height was required.

4.4 The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;

No Comment

4.5 The zoning of the land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the parcel of land should not have been included in the particular zone.

Comment: Not applicable. The site is appropriately zoned as R2 Low Density Residential and is suitable for low density forms of residential accommodation including single dwellings such as this.

5. Conclusion

In conclusion, strict compliance with the 8.5 metre building height development standard is unreasonable and unnecessary in the circumstances of this case and there are sufficient environmental planning grounds to justify the minor non-compliance.

The proposal is consistent with the objectives of both the R2 Low Density Residential Zone and the objectives for the height of buildings in accordance with Clause 4.3 of the Pittwater Local Environmental Plan 2014.

ITEM 3.4 DA2024/0211 - 5 DOBROYD ROAD BALGOWLAH HEIGHTS - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL

PURPOSE

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

RECOMMENDATION

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

THAT Council as the consent authority **approves** Development Consent to DA2024/0211 for alterations and additions to a dwelling house including a swimming pool on land at Lot 3 DP 758044, 5 Dobroyd Road BALGOWLAH HEIGHTS, subject to the conditions set out in the Assessment Report.

Reporting manager	Adam Richardson
TRIM file ref	2024/293070
Attachments	⇩1 Assessment Report ⇩2 Site Plan and Elevations ⇩3 Clause 4.6

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/0211

Responsible Officer:	Brittany Harrison
Land to be developed (Address):	Lot 3 DP 758044, 5 Dobroyd Road BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Sally Elizabeth Fisk Adriano Bittencourt Vieira
Applicant:	Edifice Design Pty. Limited

Application Lodged:	08/03/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	14/03/2024 to 28/03/2024
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 12.9%
Recommendation:	Approval

Estimated Cost of Works:	$ 820,059.00

EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) as the proposal results in a variation of more than 10.0% to Clause 4.3 Height of Buildings of the *Manly Local Environmental Plan 2013* (MLEP 2013).

The maximum permitted building height under the MLEP 2013 is 8.5 metres. The proposed building

height is 9.6 metres resulting in a variation of 12.9%. In support of the variation is a detailed written Clause 4.6 variation request where compliance with the development standard is considered unreasonable in the circumstances of this case. The variation arises from the addition of a first floor level, where an isolated portion of the new roof is located above existing excavated levels of the garage to the lower level. The assessment found that the proposed dwelling will be consistent with the overall area and will sit in conformity with the surrounding dwellings located on the southern side of Dobroyd Road.

The proposal results in variations to the built form controls under the Manly Development Control Plan 2013 (MDCP 2013), these being Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height); Clause 4.1.4 Setbacks (front, side and rear) and Building Separation and Clause 4.1.5 Open Space and Landscaping. The proposal in regard to these variations do not result in unacceptable environment and/or amenity impacts, with the development achieving the relevant objectives.

The proposed development was notified in accordance with the Northern Beaches Community Participation Plan (CPP) for fourteen (14) days. One (1) submission was received and is addressed under the 'Submissions' section of the report.

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

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

PROPOSED DEVELOPMENT IN DETAIL

This Development Application seeks consent for the alterations and additions to an existing dwelling house including a swimming pool.

Specifically, the works comprise of the following:

- Excavation to lower basement level to accommodate for new internal staircase and stormwater pits;
- Internal reconfiguration to ground floor level including a rear addition and internal staircase to new upper floor level;
- Construction of an upper floor level to accommodate for master-bedroom, ensuite/walk-in-robe, two (2) additional bedrooms and bathroom;
- Window/door amendments and additions;
- Excavation to accommodate for inground swimming pool and alfresco area (patio);
- Demolition to front retaining wall to extend driveway and provide bin store area and new retaining wall;
- Removal of several trees and associated landscaping works.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - Zone R2 Low Density Residential
Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Local Environmental Plan 2013 - 6.2 Earthworks
Manly Development Control Plan - 3.4.2 Privacy and Security
Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
Manly Development Control Plan - 4.1.5 Open Space and Landscaping

SITE DESCRIPTION

Property Description:	Lot 3 DP 758044 , 5 Dobroyd Road BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	The subject site consists of one (1) allotment located on the southern side of Dobroyd Road. The subject site is legally identified as Lot 3, Section 28 in Deposited Plan 758044, No. 5 Dobroyd Road, Balgowlah Heights. The site is rectangular in shape with a frontage of 16.765m and a depth of 37.615m. The site has a surveyed area of 630.5m². The site is located within the R2 Low Density Residential zone and accommodates a dwelling house. The site topography slopes downward from south to north by approximately 4.0m - 3.0m. The site includes trees, shrubbery and a lawn area to the rear, a lawn area and various vegetation is present at the

	front of the site. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by two (2) to three (3) storey residential development.

Map:



SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site.

The land has been used for residential purposes for an extended period of time.

Application History

The development application was notified for a period of fourteen (14) days, as stated within Council's Community Participation Plan, which resulted in one (1) submission.

An amended Arboricultural Assessment Report was requested due to an identified discrepancy on the 9 April 2024. An amended report was provided on the 10 April 2024, Councils Landscape Officer was satisfied that the amended report adequately assessed tree impacts that were created by the proposed development.

The application did not require re-notification, as per Councils' 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	Manly Development Control Plan 2013 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 29 of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in this case in relation to an amended Arboricultural Assessment. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan 2013 section in this report. (ii) **Social Impact**

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the application that included a certificate (prepared by Bushfire Consultancy Australia, dated 9 November 2023) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent. It is considered that the proposed development satisfies the considerations of Section 4.14 of the Act.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 14/03/2024 to 28/03/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Mr Winston Smart Mrs Elena Smart	2 Nolan Place BALGOWLAH HEIGHTS NSW 2093

The following issues were raised in the one (1) submission received.

- ***Tree B noted in submitted Arboricultural Impact Assessment (prepared by TreeTalk, dated February 2024) is incorrectly identified as a Red Gum, when it is a Lemon Scented Gum. No damage to occur to roots as a result of new stormwater system.***

  Comment
  An amended Arboricultural Report was submitted to Council correctly identifying Tree B as a Lemon Scented Gum Tree, this amended has not resulted in any changes to the original arborist recommendations in the report. Council's Landscape Officer is in support, subject to recommended conditions.

- ***The proposed excavation for drainage system along retaining wall should have no impact to it's structural integrity. Request for Dilapidation Report for No. 2 Nolan Place, Balgowlah Heights.***

  Comment
  A recommended condition for a Dilapidation Report is included for No. 2 Nolan Place, due to the stormwater system being located close to rear boundary and adjoining trees.

- ***Roof tiles - request dark coloured non-reflective roof tiles to avoid a stark skyline and to ensure that solar panels and services are unobtrusive.***

  Comment
  A standard condition is included for for external roof colours to be of medium to dark colours, with no metallic/reflective material permitted. Solar Panels can be installed as exempt development subject to meeting the relevant standards. The solar panels noted on the roof plan will be removed via recommended condition, and are not approved under this application.

- ***Privacy - south facing windows are fitted with shutters.***

  Comment
  The southern facing windows are located 9.0 metres at minimum from rear boundary and are associated with bedrooms that are considered low usage rooms. Refer to 'Clause 3.4.2 Privacy and Security' for further detail.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	***Supported, subject to conditions.*** Additional Information Comment 17/04/2024 The amended Arborist Report addressing the identification of Tree B is noted, as is the comment from the adjoining neighbour's Arborist. Conditions have been upgraded to reflect the additional information. No objections are raised with regard to landscape issues subject to conditions. Original Comment 20/03/2024 The application seeks consent for: Alterations and additions to a

Internal Referral Body	Comments
	dwelling house including a swimming pool. The Arborist's report prepared by Tree Talk and Landscape Plan prepared by ATC are noted. The Arborist's Report appears to mix references to Tree 1 and Tree 2. However, as indicated on the Landscape Plan, it is apparent that 1 x *Banksia integrifolia* and 1 x *Glochidion ferdinandi* will be required to be removed to accommodate the proposed works. All other trees on and adjacent to the site are to be retained. The Banksia is noted to have some structural issues and conflicts with a retaining wall. The Glochidion is indicated as being relatively small with Low amenity value. No objections are raised to removal subject to replanting. The Landscape Plan indicates planting of trees shrubs and groundcovers on the site, which is supported. No objections are raised with regard to landscape issues subject to conditions.
NECC (Development Engineering)	***Supported, subject to conditions.*** The proposed development is in Region 3. On-site detention is not required. Vehicle crossing construction is not proposed. A Geotechnical Report has been provided. Development engineering raises no objections to the proposed development, subject to conditions.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No. A1378500_02 dated 29 February 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.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	8.5m	9.6m	12.9% (1.1m)	**No** *Refer to Clause 4.6*
Floor Space Ratio	0.45:1 (283.7m²)	0.43:1 (272.9m²)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

Detailed Assessment

Zone R2 Low Density Residential

The objectives of the R2 Low Density Residential zone are addressed below

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

  Comment
  The proposal will provide a dwelling house with a low density design, meeting the needs of the community within a low density residential environment.

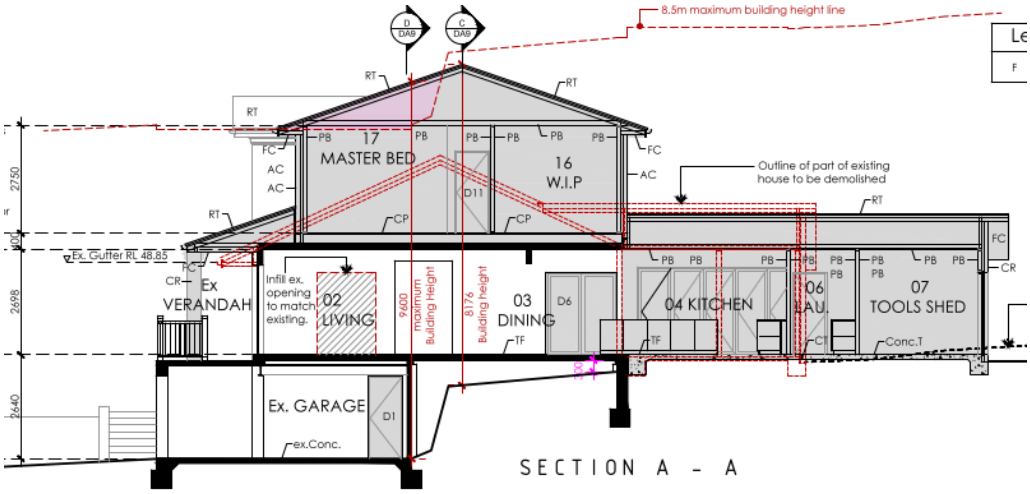
- ***To enable other land uses that provide facilities or services to meet the day to day needs of residents.***

  Comment
  The proposal is for a dwelling located in a residential area, this objective does not relevant.

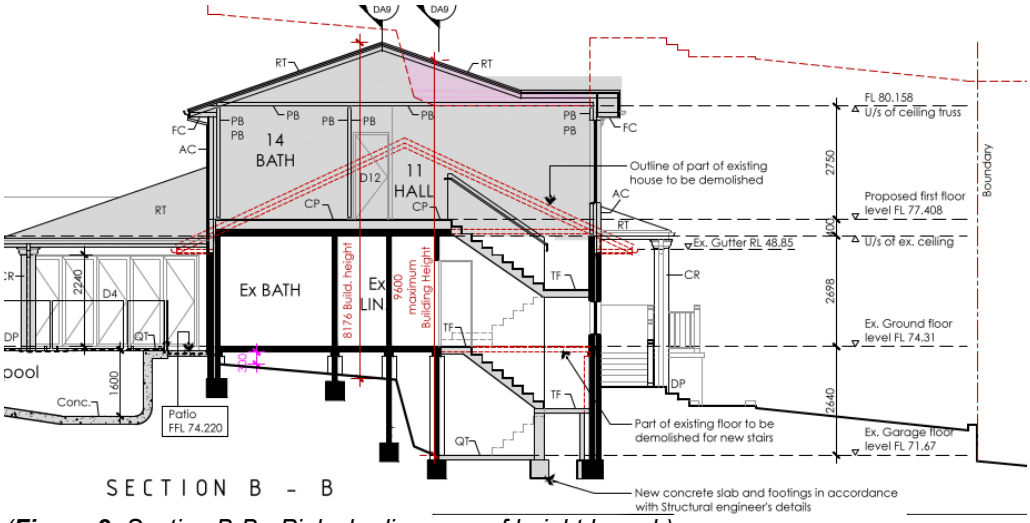
4.6 Exceptions to development standards

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

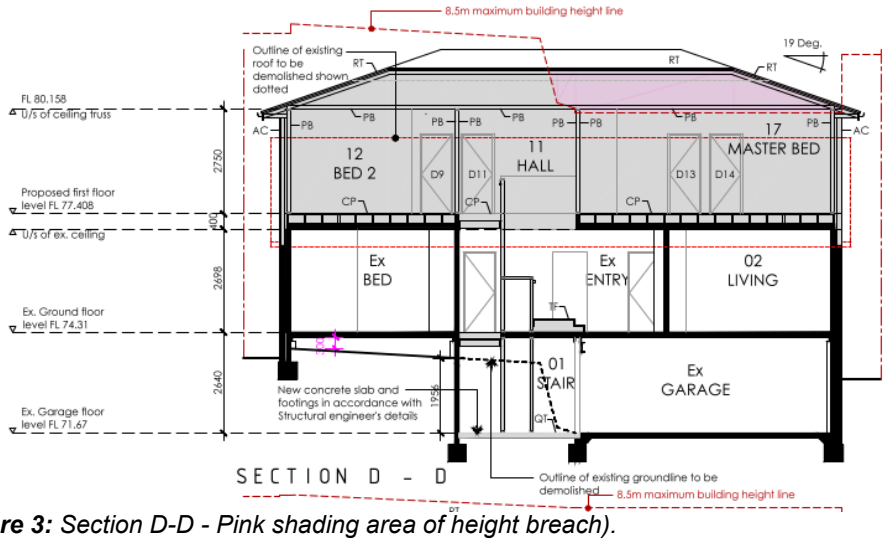
Development standard: Clause 4.3 Height of Buildings
Requirement: 8.5 metres
Proposed: 9.6 metres
Percentage of variation: 12.9%



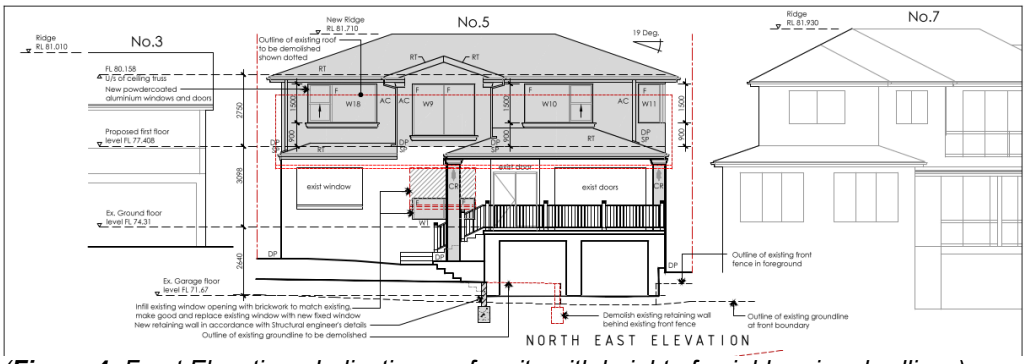
*(**Figure 1:** Section A-A - Pink shading area of height breach).*



*(**Figure 2:** Section B-B - Pink shading area of height breach).*



(***Figure 3:*** *Section D-D - Pink shading area of height breach).*



(***Figure 4:*** *Front Elevation - Indicating conformity with height of neighbouring dwellings).*

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 MLEP 2013 (the 'Clause 4.6 Request').

Subclause (1) of this clause provides that:

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

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

Subclause (2) of this clause provides that:

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

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

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

Subclause (3) of this clause provides that:

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

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

Comment
Council is satisfied that the Applicant has demonstrated that compliance with Clause Height of Buildings is unreasonable or unnecessary in the circumstances of this application for the following reasons (extract from submitted Clause 4.6 prepared by Solutions Zane):

- *The departure of 1.1m or 12.9% from the standard is relatively minor .*
- *The strictly non-compliant portion of the proposed development relates to a very small section of roof over the proposed master bedroom along the first floor level* (refer to above figures).
- *Given the steep sloping nature of the subject site from the rear to Dobroyd Road of approximately 4.3m, the minor non-compliance in this instance is a result of the topography of the locality and the existing ground levels. In addition, the further necessary excavation at existing garage level exacerbates the strict numerical non-compliance of this artificial variation, however, will not be apparent when viewed from outside the building.*
- *Despite the strict numerical departure from the development standard, the proposed development is consistent with the objectives of the standard.*

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

Comment
In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the Applicant's written request has adequately demonstrated that 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 (extract from submitted Clause 4.6 prepared by Solutions

Zane):

- *The proposed development, inclusive of the strictly non-compliant component, will significantly improve the external amenity of the proposed dwelling by retaining the continuity of the streetscape in terms of the height, bulk and scale of this elevation, being entirely consistent with the existing and future adjoining development*

- *Measures incorporated into the proposed development will ensure that minimal adverse environmental impacts will be generated in terms of visual bulk, solar access, privacy, or view loss by the minor non-compliant component.*

- *The minor non-compliant components assist in the enhancement of the aesthetic appearance of the dwelling house on the subject site when viewed from surrounding properties and will not adversely impact the positive contribution to the streetscape character.*

- *The minor non-compliant components will result in an architectural typology of a garage at the lower level and two storey upper levels and pitched roofs that is reflective of the existing and likely future streetscape.*

- *The non-compliant component will not adversely impact on the internal amenity of the dwelling including natural ventilation, solar and daylight access, energy efficiency and thermal comfort, as evidenced in the BASIX certificate which accompanies the application.*

- *Unacceptable solar access and overshadowing impacts in this instance, will not be caused by the strict numerically non-compliant component, due to its centralised location within the building footprint.*

- *Having regard to the acceptable scale of development, generally commensurate with that on surrounding properties and that likely to occur in the future, the strict numerically non-compliant component will contribute to a better streetscape outcome than that which would be facilitated by a compliant form of development.*

Council is satisfied that the Applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of Clause 4.3 Height of Buildings, as demonstrated above.

The proposal is consistent with the locality and surrounding developments within the immediate vicinity that are of similar height and scale these being; No. 3 Dobroyd Road (Roof Ridge: 81.01), No. 7 Dobroyd Road (Roof Ridge: 81.93), No. 9 Dobroyd Road (Roof Ridge: 81.48) and No. 13 Dobroyd Road (Roof Ridge: 80.42). It is considered that the development on the southern side of Dobroyd Road have overtime been developed, many of these properties include three (3) storeys with the additional lower floor accommodating a garage/entry due to the topography of the land and existing excavated levels. This being the predominant cause for the resulting height variations. No. 5 Dobroyd Road is one of the remaining houses that have not experienced any updated works to the existing dwelling, the proposed roof ridge will be approximately RR 81.27 consistent with other dwellings as indicated above, with the variation being isolated to one portion of the roof, which is to the front of the house, located above existing excavated levels.

The proposal is considered to be an appropriate design to preserve the low density residential setting

with the amenity impacts to surrounding development being acceptably minimised.

The proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, thereby satisfying objects 1.3(c) and (g) of the EPA Act.

Public Interest:

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

Conclusion:

Council is satisfied as to the matters set out in Clause 4.6 of the MLEP 2013.

It is considered on balance, that having regard to the particular circumstances, the proposed building height of 9.6 metres will not give arise to adverse visual or amenity impacts and is isolated to a portion of roof area located above existing excavated levels of the garage on the lower level. The building height will complement and sit in conformity with the dwellings located on the southern side of Dobroyd Road and is therefore consistent with existing building envelopes in the area, the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

6.2 Earthworks

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

(a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, and

(b) to allow earthworks of a minor nature without requiring separate development consent.

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

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

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

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

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

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

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

be of a suitable quality.

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

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

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

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

(f) the likelihood of disturbing relics

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

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

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

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

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

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

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 630.5m²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	North-west: 6.9m *(based on gradient 1.15)*	6.9m	-	Yes
	South-east: 6.9m *(based on gradient 1.15)*	6.3m	-	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.5m	-	Yes
	Pitch: maximum 35 degrees	19 degrees	-	Yes

4.1.4.1 Street Front Setbacks	Prevailing building line / 6.0m	6.0m - 10.3m, consistent with prevailing setback	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	North-west: 2.27m *(based on wall height)*	Ground Floor: 1.03m First Floor: 1.03m	54.6%	**No**
	South-east: 2.08m *(based on wall height)*	Ground Floor: 10.8m First Floor: 0.97m Pool/Patio: 1.0m - 1.5m	- 53.4% 51.9%	Yes **No** "
	Windows: 3.0m	Ground Floor: 1.03m First Floor: 0.97m - 1.03m	67.7%	**No**
4.1.4.4 Rear Setbacks	8.0m	> 8.0m	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55.0% of site area (346.8m²)	52.5% (330.7m²)	4.6% (16.1m²)	**No**
	Open space above ground 25.0% of total open space (82.7m²)	< 25.0% (19.0m²)	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 35.0% of open space (115.7m²)	> 35.0% (244.41m²)	-	Yes
4.1.5.3 Private Open Space	18.0m² per dwelling	18.0m² per dwelling	-	Yes
4.1.9 Swimming Pools, Spas and Water Features	1.0m height above ground	< 1.0m	-	Yes
	1.0m curtilage 1.5m water side/rear setback	1.0m curtilage 1.5m water side/rear setback	-	Yes
Schedule 3 Parking and Access	Dwelling: 2 spaces	2 spaces	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3 Landscaping	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

Description of Non-compliance
Clause 3.4.2.1 Window Design and Orientation requires the following:

a) Use narrow, translucent or obscured glass windows to maximise privacy where necessary.
b) When building close to boundaries, windows must be off-set from those in the adjacent building to restrict direct viewing and to mitigate impacts on privacy.

Window W2 and Window W3 are located in close proximity to No. 7 Dobroyd Road bedroom windows. Window W2 and W3 are associated with a living area and kitchen and will experience high usage. These windows are to therefore be frosted with obscured glazing as a recommended condition. This is to ensure privacy impacts are mitigated, which will benefit both properties. All other windows are acceptably located and orientated to limit direct overlooking. The windows to the first floor are associated with bedrooms, which are not considered high usage rooms.

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

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

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

Comment
Subject to recommended condition, the proposal will provide for acceptable privacy levels to surrounding properties, mitigating direct viewing between windows.

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

Comment
The proposed windows and the recommended conditions will not compromise significant view lines or access to air and light.

Objective 3) To encourage awareness of neighbourhood security.

Comment
The proposal will not compromise casual surveillance of the street from the property.

Subject to compliance with the recommended condition, the proposal will be consistent with the requirements and outcomes of this control.

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

Buildings must not exceed two (2) storeys. The proposed development includes an existing lower ground level that accommodates a double garage and internal stair entry. The remainder of the floor space area is located on the upper ground floor level and new first floor addition.

The overall height of the building is non-compliant with the Height of Buildings Standard (8.5 metres) of the *Manly Local Environmental Plan 2013*. The proposed works will result in a building that is a maximum of 9.6 metres, with a variation of 12.9%. Refer to 'Clause 4.6' elsewhere in this report, for further discussion.

It is noted however that the works comply with the requirements for wall height and roof height.

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

Description of Non-compliance
Clause 4.1.4.2 Side setbacks and secondary street frontages stipulates that the setbacks between any part of a building and the side boundary must not be less than one third of the height of the building, in this instance a side setback of 2.27m (based on wall height) is required to the north-west, and 2.08m (based on wall height) is required for the south-east.

The proposed works exhibits the following side setbacks:

- Upper-ground Level/First Floor Level: 1.03m to the north-west.
- Upper-ground Level: 10.8m to the south-east.
- First Floor Level: 0.97m to the south east.
- Pool/Patio: 1.0m - 1.5m to the south-east.

Under the above mentioned clause, the requirements for all new windows that face the side boundary are to be setback at least 3.0m. The proposed new windows to the north-west are setback 1.03m on the ground floor, and 1.03m to the first floor. The new windows to the south-east are setback 0.97m, consistent with the above setbacks.

Front and rear setbacks are compliant with the numeric requirements of the clause.

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

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

Comment
The proposed works are compliant with the front setback requirements and maintains the prevailing front setback dimensions of the vicinity and immediate adjoining properties. The side setbacks although numerically non-compliant are consistent in relation to the spatial proportions when compared to surrounding properties. The landscape character of the subject site will be enhanced via the proposed new plantings in accordance with the Landscape Plan prepared by A Total Concept (dated 26 February 2024). Overall, the proposal has been spatially designed to complement and conform with the existing buildings within the street.

Objective 2) To ensure and enhance local amenity by:

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

Comment
Despite the the non-conforming elements, the side setbacks provided are consistent with the spatial proportions of surrounding dwellings and will provide acceptable spatial separation to adjoining properties. The proposal complies with the solar access requirements of the MDCP 2013 and will also provide for acceptable/safe traffic conditions. No view impacts were identified during the assessment. Refer to Clause 3.4.2 Privacy and Security for privacy discussion, elsewhere in this report.

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

Comment
As mentioned above, the proposal overall promotes flexibility on site, and will not unacceptably impact the amenity of adjoining properties.

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
Compliant dimensions of landscaped area is provided on site to accommodate for plantings, deep soil zones, and vegetation to maintain and enhance the natural features of site.

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

Comment
The subject site is not located within bush fire prone land and therefore this objective is not relevant.

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

4.1.5 Open Space and Landscaping

Description of Non-compliance
The subject site is located within Residential Open Space Area 3, which requires at least 55.0% of the site to be open space, in this case 346.8m². In addition, at least 35.0% of the proposed open space is to be landscaped area, in this instance, 115.7m². The proposed development results in a numerically non-compliant total open space area of 52.5.0% or 330.7m², presenting a variation of 4.6% to the clause requirements. The proposal achieves compliance with the landscaped area exhibiting a total of more than 35.0% of the proposed open space area.

In relation to dwelling houses, no more than 25.0% of total open space is to be above ground level. The proposal includes 19.0m², less than 25.0% as open space above ground.

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

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

Comment
The subject site does not consist of any significant topographical features. Additional plantings are proposed under this application in accordance with the Landscape Plan prepared by A Total Concept (dated 26 February 2024). Council's Landscape Officer has also provided conditions for further replacement plantings.

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

Comment
As above, additional plantings are proposed, subject to conditions recommended by Council's Landscape Officer. The proposal will maintain a sufficient lawn area to the rear, and gardens to the front of the property, The area for additional plantings are acceptance for the accommodation of a variation of vegetation types that will aid in visual softening of the development and enhancing the landscape qualities of the area.

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

Comment
The proposal complies with the requirements of 'Clause 3.4 Amenity (Views, Overshadowing, Overlooking/Privacy, Noise)' of the MDCP 2013. The extent of open space and landscaping to the streetscape is consistent with surrounding properties.

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

Comment
An acceptable amount of soft landscaping is provided on site to minimise stormwater runoff and maximise water infiltration. The proposal has been reviewed and supported by Councils Development Engineer.

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

Comment
The proposed development is not likely to increase the spread of any weeds, or degradation of private or public open space.

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

Comment
The retention of existing landscaping (in exception on the removal of a banksia tree) and the proposed new landscaping elements will provide for potential wildlife habitat, acceptable for a residential environment.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of $8,201 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $820,059.

CONCLUSION

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

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

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

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

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

Council is satisfied that the Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify variation of the development standard contained within Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

PLANNING CONCLUSION

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

The application is referred to the Development Determination Panel (DDP) as the proposal results in a variation of more than 10.0% to Clause 4.3 Height of Buildings of the *Manly Local Environmental Plan 2013* (MLEP 2013).

The proposed development was notified in accordance with the Northern Beaches Community Participation Plan (CPP) for fourteen (14) days, with the objection received being addressed under the 'Submissions' section of the report.

On balance, and considering the preceding detailed assessment of the application, including a detailed analysis of the variation to Clause 4.3 of the MLEP 2013, it is considered that the proposal, subject to recommended conditions will result in a development that is acceptable in design, and not detrimentally impact the character or amenity of the area.

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

REASON FOR DETERMINATION

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

RECOMMENDATION

That Northern Beaches Council, as the consent authority, vary the development standard contained within Clause 4.3 Height of Buildings, pursuant to Clause 4.6 of the Manly Local Environmental Plan 2013 because the Applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) of Clause 4.6.

Accordingly Council as the consent authority grant Development Consent to DA2024/0211 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 3 DP 758044, 5 Dobroyd Road, BALGOWLAH HEIGHTS, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

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

Approved Plans				
Plan Number	**Revision Number**	**Plan Title**	**Drawn By**	**Date of Plan**
DA1	A	Site/Analysis Plan	Edifice Design Pty Ltd.	28 February 2024

DA2	A	Basement Level Floor Plan	Edifice Design Pty Ltd.	28 February 2024
DA3	A	Ground Level Floor Plan	Edifice Design Pty Ltd.	28 February 2024
DA4	A	First Level Floor Plan	Edifice Design Pty Ltd.	28 February 2024
DA5	A	Roof Plan	Edifice Design Pty Ltd.	28 February 2024
DA6	A	North East Elevation + North West Elevation	Edifice Design Pty Ltd.	28 February 2024
DA7	A	South West Elevation + Section A-A	Edifice Design Pty Ltd.	28 February 2024
DA8	A	South East Elevation + Section B-B	Edifice Design Pty Ltd.	28 February 2024
DA9	A	Section C-C + Section D-D	Edifice Design Pty Ltd.	28 February 2024

Approved Reports and Documentation			
Document Title	**Version Number**	**Prepared By**	**Date of Document**
Bush Fire Assessment Report (Ref. 5Dob-01)	-	Bushcon Australia Pty Ltd	9 November 2023
Geotechnical Site Investigation (Ref. 2023-234)	Issue 0	Crozier Geotechnical Consultants	18 December 2023
Arboricultural Impact Assessment (Ref. 5525/B)	-	Tree Talk Arboricultural Consulting	February 2024
Basix Certificate (No. A1378500_02)	-	The House Energy Rating Company of Australia Pty Ltd	29 February 2024
Waste Management Report	-	-	-
L/01, Proposed Landscape Plan	-	A Total Concept Landscape Architects & Swimming Pool Designers	26 February 2024

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

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

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	3 April 2024

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

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

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 $8,200.59 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 $820,059.00.

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

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

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

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

6. **Security Bond**

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

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

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

8. **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.

9. **Amendments to the approved plans**
The following amendments are to be made to the approved plans:

- Windows W2 (DINING/LIVING) and W3 (KITCHEN) as shown on the approved plans, are to consist of obscured/frosted glazing.

- No solar panels approved under this consent.

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.

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

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

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

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

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

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

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

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

12. **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.

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

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

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

14. **External Finishes to Roof**
The external finish to the roof shall have a Solar Absorptance (SA) greater than 0.46 in accordance with the requirements of the BASIX Certificate to minimise solar reflections to neighbouring properties. Any roof with a metallic steel or reflective finish is not permitted.

Green roofs and areas where solar panels (PV) are installed are excluded from conforming to the SA range.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development.

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

16. **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. The Project Arborist is to be in attendance during any works

within the subject site in the Tree Protection Zone of the tree referred to as Tree B, located on the adjoining property at 2 Nolan Place.

All tree protection measures specified must:

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

The Project Arborist shall provide certification to the Principal 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.

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

Property: 2 Nolan Place, Balgowlah Heights

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

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

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

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

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

DURING BUILDING WORK

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

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

Reason: Street tree protection.

19. **Tree and Vegetation Protection**
a) Existing trees and vegetation shall be retained and protected, including:
   i) all trees within the site not indicated for removal on Landscape Plan Dwg No. L/01 dated 26/02/2024 prepared by ATC,
   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 the Project Arborist. The Project Arborist is to be in attendance during any works within the subject site in the Tree Protection Zone of the tree referred to as Tree B, located on the adjoining property at 2 Nolan Place.
   iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with the Project Arborist,
   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 the Project Arborist on site,
   vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with the Project Arborist including advice on root protection measures,
   vii) should either or all of v) or vi) occur during site establishment and construction works, the Project Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the 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 the 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.

20. **Condition of Trees**

During the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to or by seeking arboricultural advice from the Project Arborist during the works.

In this regard all protected trees shall not exhibit:

i) a general decline in health and vigour,

ii) damaged, crushed or dying roots due to poor pruning techniques,

iii) more than 10% loss or dieback of roots, branches and foliage,

iv) mechanical damage or bruising of bark and timber of roots, trunk and branches,

v) yellowing of foliage or a thinning of the canopy untypical of its species,

vi) an increase in the amount of deadwood not associated with normal growth,

vii) an increase in kino or gum exudation,

viii) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,

ix) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist are to be implemented.

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

Reason: Protection of trees.

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. **Removing, Handling and Disposing of Asbestos**
Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:
- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

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

23. **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.

24. **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.

25. **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.

26. **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

27. **Required Tree Planting**
Trees shall be planted in accordance with the following:
1 x *Banksia integrifolia*, minimum pot size 25 litre, located within the grounds of the property.
Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of any Occupation Certificate.

Reason: To maintain environmental amenity.

28. **Landscape Completion**
Landscape works are to be implemented in accordance with the approved Landscape Plans, and inclusive of the following conditions:

a) landscape works are to be contained within the legal property boundaries,

c) tree, shrub and groundcover planting shall be installed as indicated on the approved Landscape Plans,

e) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces,

f) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone,

g) where the property is certified Bush Fire Prone Land, any new planting may be managed in accordance with Planning for Bushfire Protection 2019.

Prior to the issue of an Occupation Certificate, details (from a qualified landscape architect, landscape designer or 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.

29. **Condition of Retained Vegetation**
Prior to the issue of an Occupation Certificate, a report prepared by the Project Arborist with minimum AQF Level 5 qualifications in arboriculture shall be submitted to the Principal Certifier, assessing the health and impact on all existing trees required to be retained on the approved Plans or as listed in the Arboricultural Impact Assessment, including the following information:

a) compliance to any Arborist recommendations for tree protection generally and during excavation works,
b) extent of damage sustained by vegetation as a result of the construction works,
c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree and vegetation protection.

30. **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.

31. **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.

32. **Geotechnical Certification Prior to Occupation Certificate**
A Geotechnical Engineer or Engineering Geologist is to provide written confirmation that they have inspected the site during construction or reviewed information relating to the construction and that they are satisfied that development referred to in the development consent has been constructed in accordance with the intent of the Geotechnical Report referenced in Condition 1 of this consent.
Written certification is to be provided to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

33. **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.

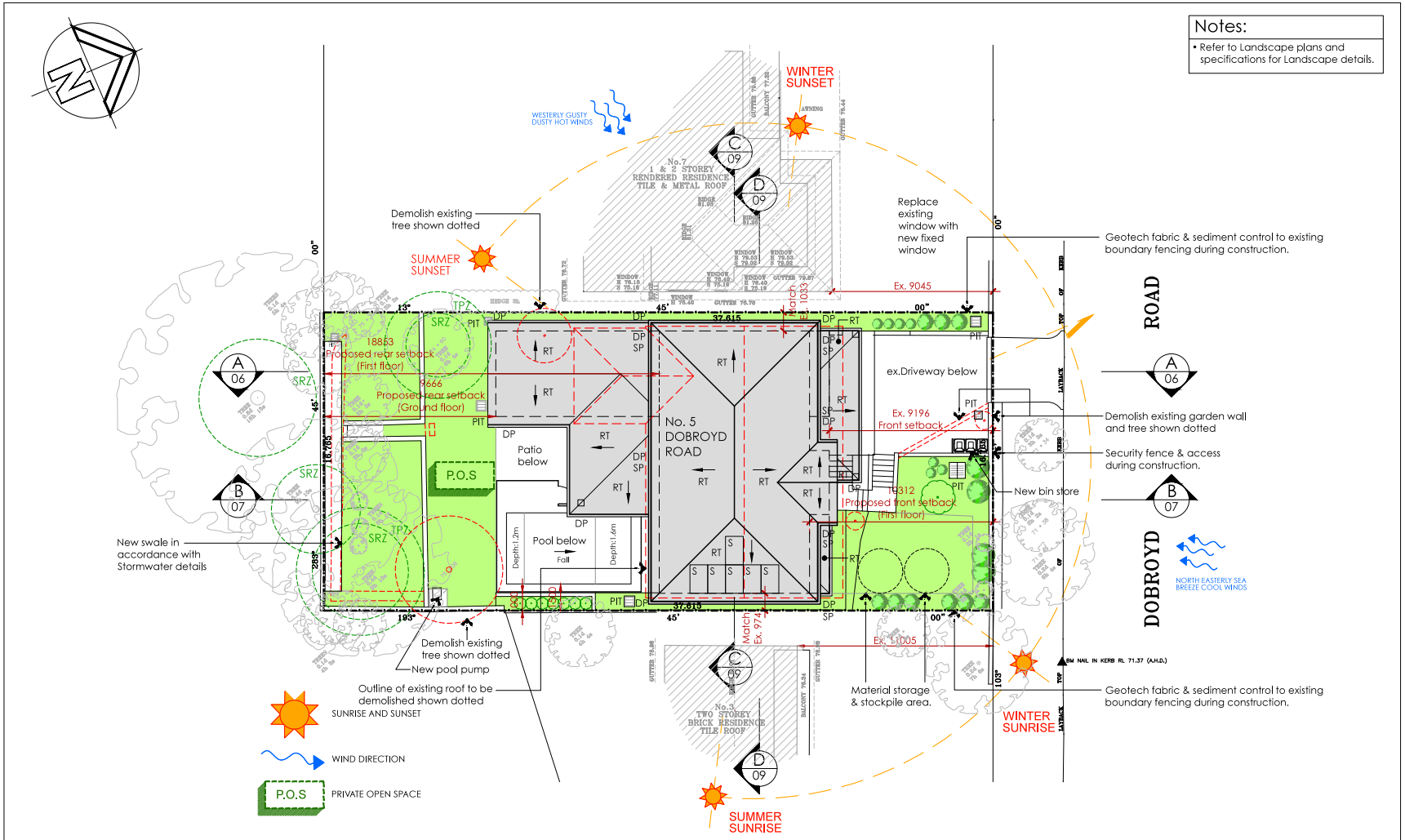
ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

34. **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.

35. **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.



Amendments:		
Revision	Date	Description
A	28/02/24	ISSUE FOR DEVELOPMENT APPLIC.

ARCHITECT:
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Michael Grimshaw, Director & Nominated Architect, Reg #5192

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CLIENT:
Ms Sally Fisk &
Mr Adriano Vieira
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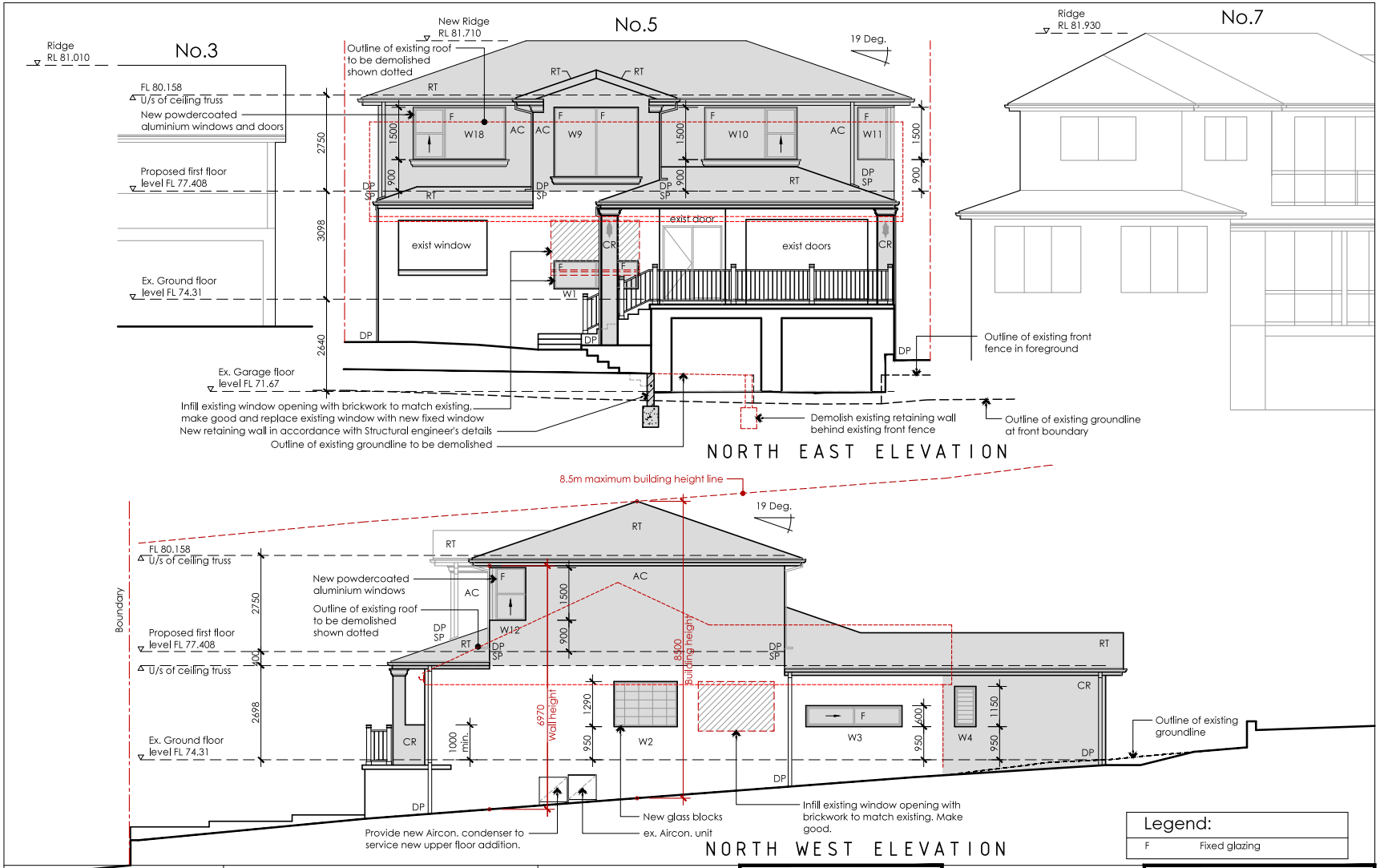
PROJECT:
Proposed Alteration and additions development
Lot 3, Section 28, DP 758044
5 Dobroyd Road, Balgowlah Heights, NSW, 2093

DRAWING TITLE:
SITE/ANALYSIS PLAN

DRAWN: TL

STAGE:
DEVELOPMENT APPLICATION

SCALE: 1:200@A3
JOB No: 23427
DATE: 07.08.23
DWG No: DA1
Revision: A



Amendments:		
Revision	Date	Description
A	28/02/24	ISSUE FOR DEVELOPMENT APPLIC.

ARCHITECT:
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Michael Grimshaw, Director & Nominated Architect, Reg #5192

CLIENT:
Ms Sally Fisk &
Mr Adriano Vieira
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PROJECT:
Proposed Alteration and additions development
Lot 3, Section 28, DP 758044
5 Dobroyd Road, Balgowlah Heights, NSW, 2093

DRAWING TITLE:
NORTH EAST ELEVATION
NORTH WEST ELEVATION

DRAWN: TL

STAGE: DEVELOPMENT APPLICATION

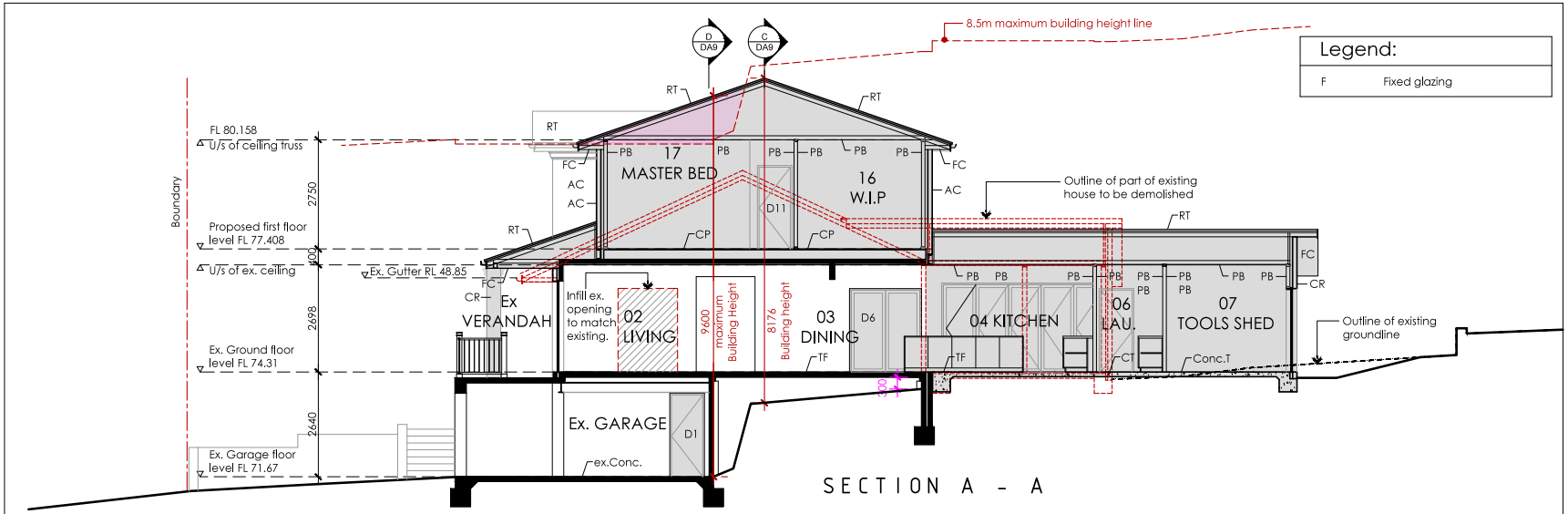
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JOB No: 23427

DATE: 07.08.23

DWG No: DA6

Revision: A



Amendments:		
Revision	Date	Description
A	28/02/24	ISSUE FOR DEVELOPMENT APPLIC.

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PROJECT:
Proposed Alteration and additions development
Lot 3, Section 28, DP 758044
5 Dobroyd Road, Balgowlah Heights, NSW, 2093

DRAWING TITLE:
SOUTH WEST ELEVATION
SECTION A - A

DRAWN: TL

STAGE: DEVELOPMENT APPLICATION

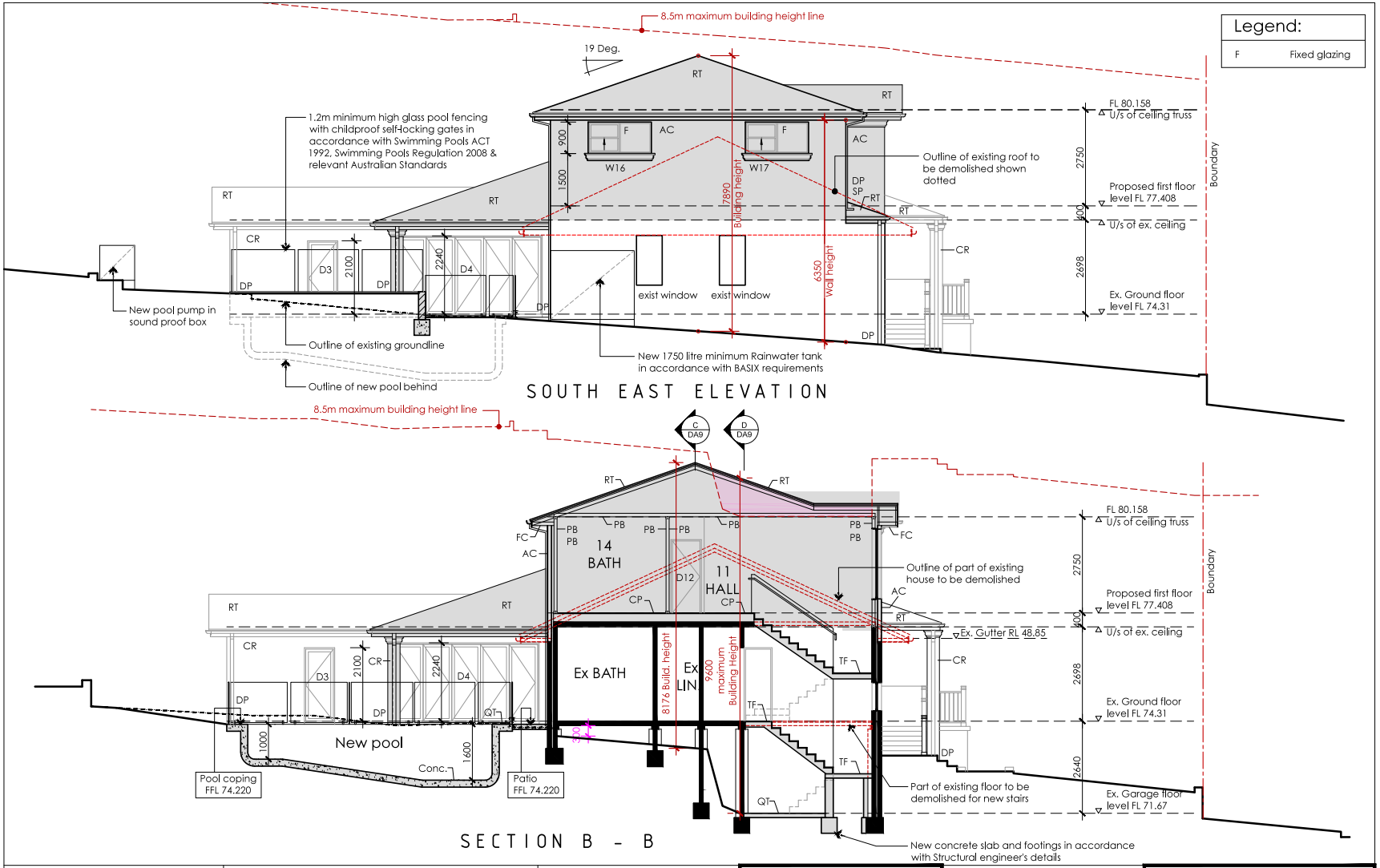
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JOB No: 23427

DATE: 07.08.23

DWG No: DA7

Revision: A



Amendments:		
Revision	Date	Description
A	28/02/24	ISSUE FOR DEVELOPMENT APPLIC.

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Michael Grimshaw, Director & Nominated Architect, Reg #5192

CLIENT:
Ms Sally Fisk &
Mr Adriano Vieira
Mob: 0414 136 381

PROJECT:
Proposed Alteration and additions development
Lot 3, Section 28, DP 758044
5 Dobroyd Road, Balgowlah Heights, NSW, 2093

DRAWING TITLE:
SOUTH EAST ELEVATION
SECTION B - B

DRAWN: TL

STAGE: DEVELOPMENT APPLICATION

SCALE: 1:100@A3

JOB No: 23427

DATE: 07.08.23

DWG No: DA8

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LIAISON – LAND USE APPRAISALS – EXEMPT AND COMPLYING DEVELOPMENT CHECKS – STATEMENTS OF ENVIRONMENTAL EFFECTS – ENVIRONMENTAL IMPACT STATEMENTS – PLANNING PROPOSALS – LAND & ENVIRONMENT COURT REPRESENTATION

Clause 4.6 Request for Contravention to the Maximum Height of Buildings under Clause 4.3 of the MLEP 2013

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MANLY LOCAL ENVIRONMENTAL PLAN 2013 (MLEP) CLAUSE 4.6 REQUEST FOR CONTRAVENTION OF THE DEVELOPMENT STANDARD

APPLICANT: Ms. Sally Fisk & Mr. Adriano Vieira
ADDRESS: Lot 3 Section 28 DP 758044 No. 5 Dobroyd Road, Balgowlah Heights
PROPOSAL: Proposed alterations and additions to the existing dwelling house.

DEVELOPMENT STANDARD:
Maximum Height of Buildings under Clause 4.3 of the MLEP

INTRODUCTION
This submission is a request for contravention of the abovementioned development standard in relation to the proposed alterations and additions to the existing dwelling house involving the addition of a first floor on the basis that:

1. Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and;
2. There are sufficient environmental planning grounds to justify contravening the development standard and;
3. The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.
4. Contravention of the standard in this instance will not raise any matters of State or Regional significance.
5. There is no public benefit in maintaining the standard on this occasion.
6. The proposal achieves the objectives of Clause 4.6 of the MLEP of providing an appropriate degree of flexibility in applying certain development standards to particular development and achieves better outcomes for and from development by allowing flexibility in particular circumstances.

The development standard to which the request relates
Clause 4.3 (2) states:

> ***(1) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.***

The corresponding map identifies a maximum allowable height of buildings of 8.5m in respect of the subject site.

The objectives of the development standard
The objectives of the development standard are:

> ***(a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,***
> ***(b) to control the bulk and scale of buildings,***
> ***(c) to minimise disruption to the following—***

(i) views to nearby residential development from public spaces (including the harbour and foreshores),
(ii) views from nearby residential development to public spaces (including the harbour and foreshores),
(iii) views between public spaces (including the harbour and foreshores),
(d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,
(e) to ensure the height and bulk of any proposed building or structure in a recreation or conservation zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

The nature of the departure from the development standard
The proposal will result in a maximum building height of 9.6m for a very small portion of the building above the proposed master bedroom, equating to a strict numerical departure of 12.9% from the standard.

Why compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.
Compliance with the maximum height of buildings is unreasonable and unnecessary in the circumstances for the following reasons:

- The departure of 1.1m or 12.9% from the standard is relatively minor .
- The strictly non-compliant portion of the proposed development relates to a very small section of roof over the proposed master bedroom along the first floor level as indicated below:

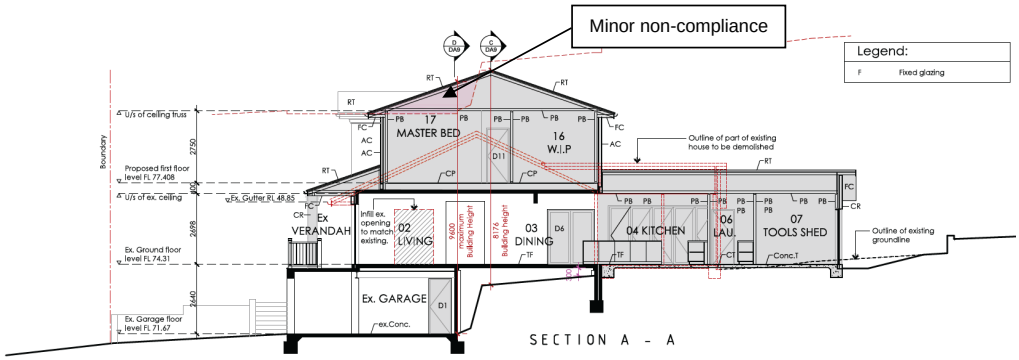


Figure 1: Extract of Section A-A indicating the minor extent of first floor roof form non-compliant with the development standard highlighted in pink with the 8.5m maximum building height under the LEP indicated in a doted red line. (Source: architectural drawings)

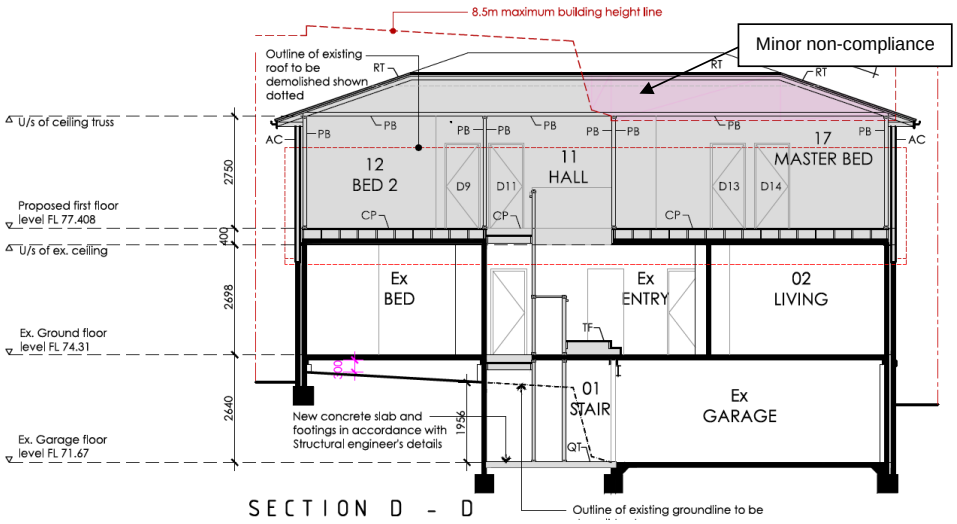


Figure 2: Extract of Section D-D indicating the minor extent of first floor roof form non-compliant with the development standard highlighted in pink with the 8.5m maximum building height under the LEP indicated in a doted red line. (Source: architectural drawings)

- Given the steep sloping nature of the subject site from the rear to Dobroyd Road of approximately 4.3m, the minor non-compliance in this instance is a result of the topography of the locality and the existing ground levels. In addition, the further necessary excavation at existing garage level exacerbates the strict numerical non-compliance of this artificial variation, however, will not be apparent when viewed from outside the building.
- Despite the strict numerical departure from the development standard, the proposed development is consistent with the objectives of the standard in that:
    - The scale of the end development will be commensurate with the adjoining developments on either side of the subject site, which comprise of multi-storey houses stepping down to Dobroyd Road.
    - The proposal will ensure to retain the continuity of the streetscape in terms of the height, bulk and scale of this elevation being entirely consistent with the existing and future adjoining development, as demonstrated on the streetscape elevation below:

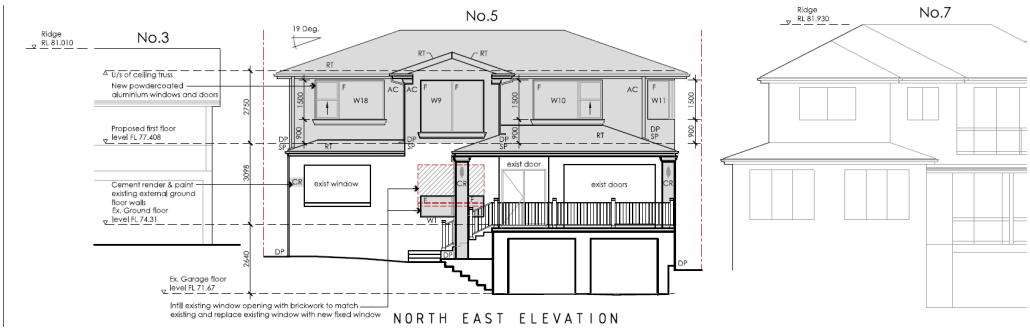


Figure 3: Streetscape elevation showing overall height, bulk, and scale of the end development with that of similar developments on adjoining lots presenting to Dobroyd Road (Source: architectural drawings)

- While design consideration was given to ensure that the end development would be within the strict numerical compliance, this would inevitably result in

a flat roof with a very low internal ceiling height. This would cause a severe inconsistency with the streetscape as a flat roof for height compliance would be out of character with existing roof forms along Dobroyd Road and the adjoining lots. The internal amenity of the proposed development would also be compromised.

- The minor numerical non-compliance will ensure that the proposed roof form is one that is reflective of the adjoining developments in terms of height, roof pitch and materiality.
- The considered streetscape presentation in this regard will ensure that the proposed development is consistent with the desired scale and character of the street and locality in which it is located.
- The proposed development, inclusive of the strictly non-compliant component, will continue to allow for reasonable daylight access to adjoining buildings and the surrounding public domain, as demonstrated on the shadow diagrams which accompany the application.
- Through a consistent architectural typology of a garage at lower level, two storey upper levels, pitched roofs and generally compliant side boundary setbacks, the end development will maintain existing views over the subject site and the surrounding public domain, ensuring the existing view lines are not compromised.
- The side boundary facing windows proposed at the upper level are offset from the neighbouring lots with adequate privacy measures in place.
- Retention of the existing front setbacks to Dobroyd Road are not compromised thus reducing the overall bulk of the end development.
- Unacceptable solar access and overshadowing impacts in this instance, will not be caused by the strict numerically non-compliant component, due to its centralised location within the building footprint.
- The visual impacts of the proposed development will be further minimised by way of a variety of materials and finishes, as well as suitable horizontal and vertical articulations at all levels.

Chief Justice Preston of the NSW Land and Environment Court in the case of *in Wehbe v Pittwater Council [2007] NSWLEC 827* established 5 ways in which a departure from a development standard can be justified and this was reiterated by Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*. The most invoked means of justifying a departure from a development standard is the achievement of the end objectives, despite the strict numerical non-compliance.

For the reasons outlined above, the relevant objectives of the Height of Buildings standard, in this instance, are achieved and the request for departures is entirely justified and worthy of support on this occasion.

Given the justification provided in this request, the remaining ways by which a clause 4.6 Request may be justified do not require elaboration. Notwithstanding, for the purposes of completeness, the remaining ways are articulated with relevant commentary:

- *The underlying objective or purpose of the standard is not relevant to the development*

Comment
The underlying objective of the standard is relevant in this instance, moreover, has been satisfied notwithstanding the strict numerical departure in this instance.

- *The underlying objective or purpose would be defeated or thwarted if compliance was required.*

Comment
In this instance, the underlying objective or purpose would be defeated or thwarted if compliance was required, as compliance would not facilitate any discernible benefits whilst compromising the internal amenity and architectural integrity of the proposal.

- *The standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and/or*

Comment
The abovementioned standard has not been abandoned or destroyed by the Council's own actions.

- *The zoning of land was unreasonable or inappropriate, such that the standards for that zoning are also unreasonable or unnecessary.*

Comment
The zoning of the land on this occasion is not regarded as unreasonable or inappropriate.

As such, the request on this occasion satisfies more than one (one only required) means of justifying contravention of the standard and is manifestly worthy of support.

The environmental grounds which justify contravening the development standard
Sufficient environmental planning grounds exist to justify departure from the development standard on this occasion in that:

- The proposed development, inclusive of the strictly non-compliant component, will significantly improve the external amenity of the proposed dwelling by retaining the continuity of the streetscape in terms of the height, bulk and scale of this elevation, being entirely consistent with the existing and future adjoining development.
- Measures incorporated into the proposed development will ensure that minimal adverse environmental impacts will be generated in terms of visual bulk, solar access, privacy, or view loss by the minor non-compliant component.
- The minor non-compliant components assist in the enhancement of the aesthetic appearance of the dwelling house on the subject site when viewed from surrounding properties and will not adversely impact the positive contribution to the streetscape character.
- The minor non-compliant components will result in an architectural typology of a garage at the lower level and two storey upper levels and pitched roofs that is reflective of the existing and likely future streetscape.
- The non-compliant component will not adversely impact on the internal amenity of the dwelling including natural ventilation, solar and daylight access, energy efficiency and thermal comfort, as evidenced in the BASIX certificate which accompanies the application.
- Unacceptable solar access and overshadowing impacts in this instance, will not be caused by the strict numerically non-compliant component, due to its centralised location within the building footprint.
- Having regard to the acceptable scale of development, generally commensurate with that on surrounding properties and that likely to occur in the future, the strict

numerically non-compliant component will contribute to a better streetscape outcome than that which would be facilitated by a compliant form of development.

- Council has a documented history of applying a flexible approach to the maximum Height of Buildings standard as per the allowances under Clause 4.6, in appropriate circumstances, such as is the case on this occasion.

The above environmental planning grounds are not general propositions. They are unique circumstances of the proposed development in the context of the subject site and surrounding properties.

Having regard to the environmental benefits associated with the development in its current form and the acceptable amenity impacts, notwithstanding the strict numerical departure from the standard, the proposed variation is justified and there are sufficient environmental grounds to support the departure.

The Public Interest/Consistency with the Objectives of the Standard and the objectives for development within the zone.
The proposed development is consistent with the relevant objectives of the standard as detailed above.

The objectives of the zone are:

- ***To provide for the housing needs of the community within a low-density residential environment.***
- ***To enable other land uses that provide facilities or services to meet the day to day needs of residents***

The proposed development is consistent with the zone objectives in that:

- Through suitable design and siting, the proposal will result in a low-density residential development which will maintain and enhance the ecological and aesthetic values of the site.
- The proposed development will not result in the removal of significant vegetation, while proposed landscaping arrangements will substantially enhance the subject site's contribution to the landscaped setting of the locality.
- The considered form, materiality and landscaping of the end development will result in positive contribution to the existing and desired future character of the locality.
- The end development will continue enabling other land uses to provide facilities or services to meet the day to day needs of residents.

As such, the proposed development is in the public interest in that consistency with the objectives of the development standard and the objectives for development within the zone, have been achieved.

Significance for State and Regional Planning
The proposed development is consistent with State and Regional Planning Policies in that the proposed development, inclusive of the strict departure from the maximum height of buildings standard, will result in an orderly and economic use of the land, in accordance with the objects of the Environmental Planning and Assessment Act, 1979.

Despite the non-compliance with the strict numerical requirements under Clause 4.3 of the MLEP, the proposed development, inclusive thereof, provides for a logical distribution of height, bulk and scale, in a manner that will continue to achieve the stated objectives of the standard. The proposed development will achieve on this occasion associated sustainable

environmental impacts, superior to those which would be achieved by a compliant form of development.

The proposed development will contribute to the existing and desired future character of this established residential area, which is well located in relation to schools, local and regional centres and community infrastructure. The site is well connected to public transport providing access to local and regional centres and the Sydney CBD.

As such the proposed development does not raise any matters of significance for State or Regional planning.

The justification for the departure from the development standard is worthy of support.

Consistency with Clause 4.6 of the SSLEP
The objectives of Clause 4.6 are:

> ***(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.***

The justification for the provision of an appropriate degree of flexibility in the present circumstances has been demonstrated in this request. The wider planning intentions for the locality will not be compromised by the departure in the circumstances.

Having regard to the contents of this submission, this request for contravention is well founded and worthy of support.

Departure from the standard on this occasion, (whilst not required to) will achieve a better outcome for and from the proposed development by way of consistency with the objectives of the height of buildings standard and those of the R2 – Low Density Residential zone, will not raise any matter of significance for State or Regional Environmental Planning and no public benefit will be served by maintaining the standard in the circumstances.

The justification for the departure from the development standard is worthy of support.



Mark Swain MPIA
Principal
27 February 2024

ITEM 3.5 DA2023/1607 - 145 RIVERVIEW ROAD AVALON BEACH - DEMOLITION WORKS AND CONSTRUCTION OF A COTTAGE

PURPOSE

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

RECOMMENDATION

That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of PLEP 2014 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

THAT Council as the consent authority **approves** Development Consent to DA2023/1607 for demolition works and construction of a cottage on land at Lot 215 DP 752046 & Lot 1 DP 19402, 145 Riverview Road AVALON BEACH, subject to the conditions set out in the Assessment Report.

Reporting manager	Adam Richardson
TRIM file ref	2024/293552
Attachments	⇩1 Assessment Report ⇩2 Site Plan and Elevations ⇩3 Clause 4.6

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/1607

Responsible Officer:	Brittany Harrison
Land to be developed (Address):	Lot 1 DP 19402, 145 Riverview Road AVALON BEACH NSW 2107 Lot 215 DP 752046, 145 Riverview Road AVALON BEACH NSW 2107
Proposed Development:	Demolition works and construction of a cottage
Zoning:	C4 Environmental Living W1 Natural Waterways
Development Permissible:	Yes - Zone C4 Environmental Living No - Zone W1 Natural Waterways
Existing Use Rights:	Yes
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Christopher McLeod Watt Fiona Talei Zielinski
Applicant:	Christopher McLeod Watt

Application Lodged:	17/11/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	24/11/2023 to 08/12/2023
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 43.0%
Recommendation:	Approval

Estimated Cost of Works:	$ 903,260.00

EXECUTIVE SUMMARY

This development application seeks consent for the demolition works and construction of a cottage (dwelling).

The application is referred to the Development Determination Panel (DDP) as the proposed dwelling contravenes Clause 4.3 Height of Buildings under the *Pittwater Local Environmental Plan 2014* (PLEP

2014) by more than 10.0% for a Class 1 building.

The maximum permitted building height under the PLEP 2014 is 4.0 metres for sites located within the W1 Natural Waterway zone. The proposed building height is 5.72 metres resulting in a variation of 43.0%. In support of the variation is a detailed written Clause 4.6 variation request where compliance with the development standard is considered unreasonable in the circumstances of this case. The written Clause 4.6 variation request for the non-compliance with height standard arises from the proposed cottage being located upon an existing stone foundation situated within the Pittwater Waterway, in addition to raising the floor levels to achieve acceptable outcomes in relation to the Estuarine Hazard and EPL. Amended plans were received which reduced the initial proposed building height, these amended plans are the basis of this assessment. It can be considered that the dwelling is consistent with the overall area and will sit in conformity with the surrounding development i.e. boatsheds within the area, and has been designed to withstand the impacts of sea level rises over its lifespan and have an acceptable visual impact from the Pittwater Waterway.

It is noted that proposed dwelling is a prohibited land use within the W1 Natural Waterways zone under the provisions of the PLEP 2014. The proposed development relies upon existing use rights, which has been adequately established by the applicant, satisfying the requirements under Section 4.65 of the *Environmental Planning and Assessment Act 1979 (EP&A Act 1979).* Refer to *'Existing Use Rights'* section of this report.

The proposed development was notified in accordance with the Northern Beaches Community Participation Plan (CPP) for fourteen (14) days. One (1) submission was received which was in support of the application. No objections were received.

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

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

PROPOSED DEVELOPMENT IN DETAIL

This development application seeks consent for the demolition works and construction of a cottage.

Specifically, the works comprise of the following:

- Demolition of existing cottage;
- Extension of seawall perimeter (within boundaries) with watertight gate;
- Construction of new cottage (dwelling) which includes two (2) bedrooms, a bathroom, open living/kitchen area and loft area above;
- Change in existing floor levels;
- Outdoor area with pergola screening; and
- Installation of solar panels on roof of cottage.

The proposed works are located upon No. 145 Riverview Road (Lot 215, DP 752046) and will be referred to as the 'subject site' or 'subject allotment' within this assessment.

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 - Zone W1 Natural Waterways
Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 7.1 Acid sulfate soils
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection
Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area
Pittwater 21 Development Control Plan - B3.7 Estuarine Hazard - Low density residential
Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements
Pittwater 21 Development Control Plan - C1.7 Private Open Space
Pittwater 21 Development Control Plan - D1.5 Building colours and materials
Pittwater 21 Development Control Plan - D1.8 Front building line
Pittwater 21 Development Control Plan - D1.9 Side and rear building line
Pittwater 21 Development Control Plan - D15.3 Building colours and materials
Pittwater 21 Development Control Plan - D15.14 Minimum frontage for waterfront development

SITE DESCRIPTION

Property Description:	Lot 1 DP 19402 , 145 Riverview Road AVALON BEACH NSW 2107 Lot 215 DP 752046 , 145 Riverview Road AVALON BEACH NSW 2107
Detailed Site Description:	The site consists of two (2) allotments located on the western side of Riverview Road. **Allotments:** • Lot 1 in Deposited Plan No. 19402, No. 145 Riverview Road, Avalon Beach.

	• Lot 215 in Deposited Plan No. 752046, No. 145 Riverview Road, Avalon Beach. The proposed development is in relation to Lot 215 in Deposited Plan No. 752046, No. 145 Riverview Road, Avalon Beach. The subject allotment is irregular in shape with no street frontage, but rather fronts Pittwater Waterway, with an average depth of 18.9m. The surveyed site area for this subject allotment is 175.0m². The subject allotment is located seaward of the M.H.W.M , however is not owned by the Crown and is a Torrens title parcel of land. The subject allotment is located within the W1 Natural Waterways zone under the provisions of the *Pittwater Local Environmental Plan 2014* and accommodates an existing cottage. The subject allotment adjoins Lot 1 in Deposited Plan No. 19402, No. 145 Riverview Road, Avalon Beach, which accommodates and existing garage structure and has previous approval for a dwelling house, this allotment is located on the C4 Environmental Living zone under the provisions of the Pittwater Local Environmental Plan 2014. The subject allotment has no vegetation, due to the site being located upon an existing stone supporting structure. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by dwelling houses to the east (landward of the M.H.W.M) situated within a landscaped setting. The development to the north and south of the allotment is categorised by waterway structures such a jetties, pontoons, seawalls and boatsheds, in some instances the existing boatsheds in the area are used for habitable uses.

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:

Subject Site History
Refer to 'Existing Use Rights' section of this report for a summary.

Previous Application History

PLM2021/0359
Pre-lodgement Meeting for the construction of a dwelling house held on 22 February 2022.

PLM2022/0071 - *related to this development application.*
Pre-lodgement Meeting for the construction of a cottage held on 5 May 2022.

DA2022/1030
Development Application for the demolition works, lot consolidation and the construction of a dwelling house.
Refused by the Development Determination Panel on 8 March 2023.

REV2023/0011
Review of Determination of DA2022/1030 for demolition works, lot consolidation and the construction of a dwelling house.
Approved by the Development Determination Panel on 18 August 2023.

Mod2024/0196 - *Currently active in Council.*

Current Application History

The development application was notified for a period of fourteen (14) days, as stated within Council's Community Participation Plan and resulted in one (1) submission of support.

Council requested amended plans and additional information on the 22 March 2024, to address the clause requirements/objectives for the following:

- **Clause 4.6 – In relation to Height of Buildings:** The original Clause 4.6 written request did seek to vary the 4.0 metres height of buildings standard by 58.1%. The extent of breach is as a result of the proposed loft area and pitch of the roof. Whilst a height variation was acknowledged to occur, the design was requested to be revised to reduce the height variation and provide for more harmonisation with the surrounding buildings and natural environment. The Clause 4.6 was also requested to provide detailed justification in regard to the sufficient environmental planning grounds for a variation.

- **Seawall Extension:** The seawall extension should be located wholly within site boundaries.

Amended plans were submitted to Council on the 2 April 2024 which were sufficient in addressing the above, the amended plans did not require re-notification, due to a reduction in environmental impact.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 29 of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested, refer to 'Site History'.

Section 4.15 Matters for Consideration	Comments
	Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

- **Does the existing use satisfy the definition of "existing use" under the *Environmental Planning and Assessment Act 1979* (the ‘Act')?**

Section 4.65 of the Act defines an existing use as:

"(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for this Division, have the effect of prohibiting that use, and

(b) the use of a building, work or land:
(i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and
(ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse."

This necessarily requires the following questions to be answered:

1. **Was the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for this Division, have the effect of prohibiting that use?**

Comment
The applicant has provided the following documents to support the claim of existing use rights these being;

- Legal Advice from Malcom Craig KC and Pikes & Verekers Lawyers and;
- Historical Development and Use Report prepared by Historian Mark Dunn.

It is noted that any initial approval for the existing cottage predates Council's records. The W1 Natural Waterways zoning of Lot 215 imposed upon the commencement of the LEP in 2014, prohibited the use of that lot for the purpose of a dwelling.

To provide context and the history of the subject site including evidence of the cottage is as follows:

The Historical Development and Use Report makes reference to a building record of an approval for “Ads” in 1946 for Lot 1, indicating completion of works in 1946. It is unclear as to what the “Ads”, i.e. additions were for, Dunn notes that the only building known to be on the property at this time was the waterfront cottage. Dunn later makes reference that the “building” was converted to a cottage in 1949 (pg. 4, figure 3 of document). It should be noted that the owner applied under special provisions to the Department of Lands to reclaim a section of waterfront land (approx. 170.0m²). Both the permission to reclaim the Site published in the Government Gazette in 1954 and the Crown Grant for the Site, dated 1955, refer to buildings in place on the land as of 1 January 1951. The owner purchased Lot 2 in 1950, which included a boatshed that is situated close to the structure at 145 Riverview Road. In 1951 a valuation record rated a lot known as "P.O" with a street name of Riverview Road as having a residence and boatshed on the site.

A survey is shown dated 27 June 1955 showing the reclaimed portion of land granted to Horace and the cottage in place on the site (Source: HLRV Certificate of Title Vol 6983 f.167) and in 1955 an aerial photograph showing the cottage in place and the platform built on the reclaimed land (NSW Department of Customer Service Historical Imagery Viewer). A Building Card for Warringah Council, 1956-57 indicates building approval for “Timber/Fibro Adds” dated 1957 for Lot 1. The house continued to be used regularly by the extended Shaw family and was rated as a ‘Weekender’ by the Valuer General in 1962. Images are provided within the Historical Development and Use Report showing the

cottage, boatshed and seawalls as it stands today between the years of 1957 - 1965, indicating that is did exist and continues to exist.

Councils records have also identified the following:

- There is a record of a resolution dated 1969, refusing an application for an extension to a dwelling on Lot 1. The resolution refers to an “existing use.
- There is a file note dated 1983, which refers to a “large fibro/tiled roof “boatshed” used as dwelling. Loungeroom (stet) – kitchen, bedroom apparent, all well furnished… power supply….”.
- There is a letter dated 1983 from Council to then Land Board Office – “… notwithstanding that the dwelling is an existing use which, from Council’s records, has existed for some considerable time.”

“Ascertaining whether the use is lawful involves tracing the history of the use back in time to establish that when the use commenced it was for a lawful purposes and that the use has continued to be for a lawful purpose up to the point in time immediately before the coming into force of the [EPI] that has the effect of prohibiting that use: Steedman v Baulkham Hills Shire Council (No 2) at 567, 569; BYT Nominees Pty Ltd v North Sydney Council (2008) 161 LGERA 77; [2008] NSWLEC 164 at [27].”

Craig KC in his advice, at paragraphs 20 and 21 indicates in summary:

- Up until 1945 – there were no land use controls, except for the requirement to obtain a building approval for erection of the structure;
- There was no requirement to obtain a consent or approval for the use of an existing dwelling.

The advices as to the application of the presumption of regularity where the Site, and this Cottage is concerned. There has been a recognition of the residential use of the Cottage, as an existing use for years by the Council (former Warringah Council). This in particular where the rating is concerned, but also the approval for timber/fibro additions in 1957.

The above information reveals that the use of the building commenced prior to the coming into force of the Warringah Local Environmental Plan 1985.

2. **Was the use of the building/ land granted development consent before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use?**

Comment
As noted above.

3. **Has the use of the building/ land been carried out within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse?**

Comment
The Applicant has provided historical evidence (as noted above). As there is no record of any recent development applications, it is considered that the building has been continually used as an occupancy. As noted above, images provided between the years of 1957 - 1965 show the cottage as it still stands today.

- **What is “the land on which the existing use was carried out" for the purposes of cl 162-167 of the Environmental Planning and Assessment Regulation 2021 (“the Regulation”)?**

Meagher JA in *Steedman v Baulkham Hills Shire Council [No. 1] (1991) 87 LGERA 26* stated (at 27) the rule to be applied as follows: *“if the land is rightly regarded as a unit and it is found that part of its area was physically used for the purpose in question it follows that the land was used for that purpose*”.

Comment
Having regard to the above case law, it is noted that the whole of the area of the land was physically used for the purpose in question and therefore, it is considered that the land was used for that purpose and that existing use rights apply to the whole of the subject site (No. 145 Riverview Road, Avalon Beach - Lot 215, DP 752046).

- **What are the planning principles that should be adopted in dealing with an application to alter enlarge or rebuild and existing use?**

The judgement in *Fodor Investments v Hornsby Shire Council (2005) NSWLEC 71*, sets out the planning principles that should be applied in dealing with development applications seeking to carry out development on the basis of existing use rights. The principles of Fodor Investments v Hornsby Shire Council (2005) NSWLEC 71 however have been varied by more recent judgements of the Court to the extent described in Saffioti v Kiama Municipal Council [2019] NSWLEC 57 and Made property Group Pty Ltd v North Sydney Council [2020] NSWLEC 1332 in that the planning controls apply to the existing use provided they do not derogate, due to the planning controls within an EPI being 'incorporated provisions' and therefore matters for consideration as described within Clause 4.67 of the Environmental Planning and Assessment Act, 1979.

The following four principles adopted by the NSW Land and Environment Court in this case will have general application in dealing with development applications that rely on existing use rights:

1. How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?

While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessments.

Comment
Planning Principle 1 clearly stipulates that whilst development (relying on existing use rights) is not strictly bound against the numerical controls governing bulk and scale, such controls still need to be

taken into account in order to gain an informed understanding of the future context and character of surrounding development.

The focus of the assessment therefore, is to draw a comparison between the height, bulk, scale and density of the proposed and existing development in the surrounding area and what is likely to occur in the vicinity in the future, based on the applicable planning controls.

Local Environmental Plan

Building Height: The site is subject to the building height development standard of 4.0 metres, as applicable to all buildings located within the W1 Natural Waterways zone. The proposed development will result in a maximum building height of 5.72 metres with a variation of 43.0%. A detailed assessment has been undertaken and is provided under 'Clause 4.6 Exceptions to development standards', elsewhere within the report. The extent of breach is found to be acceptable in this particular instance, which has been assessed in regard to the existing built form and character of the subject site and surrounding area.

Development Control Plan
As the subject site is located within the Waterways Locality few built form controls apply, the proposed works will therefore be subject to a merit assessment. This assessment will also be assessed against the built form controls of the Avalon Beach Locality.

Side Boundary Envelope: Buildings are subject to a building envelope which is determined by projecting planes at 45 degrees from a height of 3.5 metres above ground level. The proposed development complies with the requirements of the control.

Side Boundary Setbacks: Buildings are generally subject to a side setback of 1.0 metres to one side and 2.5 metres to the other side. The proposed building exhibits a side setback of approximately 1.4 metres to the northern side setback and approximately 0.2 metres to the southern boundary, the proposed seawall extension is setback 0.1 metres from each boundary. The numerical non-compliance is discussed in detail under 'Clause D1.9 Side and rear building line', elsewhere in this report, where it is found to be acceptable.

Front Boundary Setbacks: Buildings are generally subject to a 6.5 metre front setback. The front boundary and access adjoins No. 145 Riverview Road (Lot 1, DP 19402). The proposed works exhibit a front setback of approximately 0.2 metres. The DCP (and mapping) states that this site is subject to a merit assessment, and is discussed in detail under 'Clause D1.8 Front building line', elsewhere in this report, where it is found to be acceptable.

Rear Boundary Setbacks: Buildings are subject to a 6.5 metre rear setback or the FSBL. The subject site is located seaward of the FSBL and M.H.W.M. The rear boundary is considered to be the western boundary that adjoins the Pittwater Waterway. The proposed works include a rear setback to this boundary of 0.1 metres (sea wall extension), 1.1 metres (pergola) and 5.0 metres (building). The numerical non-compliance is discussed in detail under ' Clause D1.9 Side and rear building line', elsewhere in this report, where it is found to be acceptable.

Landscaped Open Space: The adjoining site No. 145 Riverview Road (Lot 1, DP 19402) is subject to a 60.0% minimum landscaped area requirement and is located within the Avalon Beach Locality. The subject site No. 145 Riverview Road (Lot 215, DP 752046) is located within the Waterways Locality and does not have a landscaping control that applies. The subject site also includes a concrete/stone foundation and therefore no deep soil landscaping is possible.

Adjoining and Surrounding Land: Surrounding land uses within the Waterways Locality include

water recreation development i.e. Boatsheds, jetties, pontoons etc. that are associated with dwelling houses. The proposed dwelling has been designed to complement the existing boatsheds within the immediate area in terms of materials, overall height and built form. There are various boatsheds in the area that exhibit non-complaint building heights and/or are used for purposes that may surpass the definition of a boatshed. It is considered that the new design, although exhibiting non-compliance with the height of buildings standard, utlises a design that is better related to a boat shed than that of the existing cottage, and in turn provide conformity with surrounding development within the waterways zone.

In this instance, the proposed development is not considered out of character or inconsistent with the surrounding bulk and scale. As such, the proposed development will provide a suitable relationship between the subject site, adjacent and surrounding sites in relation to the existing and future context.

2. What is the relevance of the building in which the existing use takes place?

Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor space ratio, height or parking provision.

Comment
As stated above, the proposed development will result in acceptable bulk and scale with a visual presentation that is to commensurate with nearby development within the waterways zone.

3. What are the impacts on adjoining land?

The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.

Comment
The proposed development will not impact the sunlight access on adjoining properties and would comply with the relevant requirements of Clause C1.4 Solar Access. No unacceptable view loss has been identified. The building provides for acceptable spatial separation between adjoining development and will maintain similar privacy levels to that of the existing cottage. No further discussion is required.

4. What is the internal amenity?

Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.

Comment
The proposal will provide for a larger dwelling and increased internal floor space but will maintain similar level of outdoor recreation space to that of the existing cottage. Private Open Space is discussed under 'Clause C1.7CPrivate Open Space', elsewhere in this report.

Conclusion

Existing use rights have been established as detailed in the above assessment. Subsequently, the use can be retained under the current environmental planning instrument (*Pittwater Local Environmental Plan 2014*).

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 24/11/2023 to 08/12/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Mr Clive Steirn	147 Riverview Road AVALON BEACH NSW 2107

One (1) submission was raised in relation to the proposed works, which was in the form of support rather than objection. No further comment is required.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Acid Sulfate)	***Supported, no conditions required.*** <u>General Comments</u> This application is seeking consent for the demolition of the existing cottage and construction of a new cottage. The location of the cottage is in Class 1 Acid Sulfate Soils however the existing cottage is on a raised concreate and stone foundation which is not proposed to be demolished. There is no excavation proposed within the Class 1 Acid Sulfate Soils area therefore no further assessment on acid sulfate soils is required. Environmental Health recommends approval.
Environmental Health (Solid Fuel/Oil Heater)	***Supported, subject to conditions.*** <u>General Comments</u> This application is seeking consent for demolition and construction of a cottage which includes the installation of a fireplace in the living room. Given the location of the cottage and its risk of smoke emanating up higher and potentially affecting other residents, Environmental Health recommends that the fireplace is gas operated and not wood burning.

Internal Referral Body	Comments
	Environmental Health recommends approval subject to conditions.
NECC (Bushland and Biodiversity)	***Supported, subject to conditions.*** Additional Comments (21/12/23) It has been confirmed by the applicant that construction will be undertaken via the waterway on a barge. As such there will be no impacts on vegetation in the rear lot located within the BV Map. No additional information is required to be submitted in relation to biodiversity. No objections in relation to biodiversity, subject to conditions. Original Comments (14/12/23) Council's Biodiversity referrals team have assessed the Development Application for compliance against the following applicable biodiversity related provisions: • NSW Biodiversity Conservation Act 2016 • NSW Biodiversity Conservation Regulation 2017 • Pittwater LEP 2014 cl. 7.6 Biodiversity Protection • Pittwater 21 DCP cl. B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community • SEPP (Resilience and Hazards) - Coastal Environment Area The development application seeks consent for Demolition works and construction of a cottage. Whilst the proposal does not appear to require the removal of any native vegetation, the rear portion of the lot is located within the NSW Department of Planning and Environment's Biodiversity Values Map (BV Map). Impacts occurring within DPE's *Biodiversity Values* Mapping will require assessment under the Biodiversity Assessment Methodology (BAM) 2020 if they involve: • Impacts to Native Vegetation (as defined under *60B of the Local Land Services Act 2013*) including clearing and/or establishment of Asset Protection Zones; or • Prescribed actions (as defined under *6.1 of the Biodiversity Conservation Regulation 2017*). It is unclear from the proposal whether construction activities will impact upon the BV Mapped areas. The Statement of Environmental Effects makes mention of a Construction Management Plan however this was not submitted with the application. A letter is to be prepared by a suitably qualified Ecologist to identify whether construction impacts will trigger the Biodiversity Offset Scheme due to either native vegetation removal or prescribed impacts within the BV Mapped area.

Internal Referral Body	Comments
	Upon receipt of this information, Council's Biodiversity Referrals team will recommence assessment of the proposal.
NECC (Coast and Catchments)	***Supported, subject to conditions.*** The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Resilience and Hazards) 2021 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP. The proposed development includes the works outlined below.: • Demolition of the existing cottage. • Construction of a new cottage, to include: - Raising the external floor level from 1.45L to 1.8 AHD - Raising the internal floor level from 1.62 to 2.1AHD - A combined living/kitchen area - 2 x bedrooms - 1 x bathroom, and an - Outdoor area. • Installation of solar panels on roof of cottage. • Reparation of the existing sea wall. • Extension of the perimeter of the sea wall, from 2.1 to 2.8 AHD. • New watertight gate The subject site is located on the Pittwater water on the W1 Natural Waterways zone. Any dwelling is prohibited in the W1 zone. Existing User Right (EUR) of the cottage, when accepted, calls for other considerations. **Coastal Management Act 2016** The subject site has been identified as being within the coastal zone and therefore *Coastal Management Act 2016* is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the *Coastal Management Act 2016.* Further, the applicant has proposed modification of an existing seawall. Hence the proposed development has been assessed also against the requirements of the Section 27 of the *Coastal Management Act 2016*. As required, the impact & risk associated with the construction/modification of the seawall has been assessed in an Estuarine Risk Assessment Report prepared by Stantec Australia Pty. Ltd. dated 9 August 2022 with submission of a memo dated 11 October 2023. Based on the impact and risk identified, Council applies maintenance condition as per Section 27(b)(ii) in approving this DA.

Internal Referral Body	Comments
	State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA. <u>Comment</u> On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Levy Planning dated November 2023, the DA satisfies requirements under clauses 2.10, 2.11 and 2.12 of the SEPP R&H. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021. **Pittwater LEP 2014 and Pittwater 21 DCP** **Estuarine Risk Management** The subject property has also been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site. In accordance with the Pittwater Estuary Mapping of Sea Level Rise Impacts Study (2015), a base estuarine planning level (EPL) of RL 3.16 m AHD at the year 2100 would apply at the subject site. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Levy Planning dated November 2023 and as assessed in the submitted Estuarine Risk Assessment Report prepared by Stantec Australia Pty. Ltd. dated 9 August 2022 with submission of a memo dated 11 October 2023, the ground level for the proposed additions and alterations is below the derived EPL for the site.

Internal Referral Body	Comments
	The proposed development is therefore subject to conditions to satisfy the relevant estuarine risk management requirements of P21 DCP.
NECC (Development Engineering)	***Supported, subject to conditions.*** The proposed development does not involve vehicle crossing construction and does not require on-site detention.
NECC (Flooding)	***Supported, no conditions required.*** The proposed development is for the demolition and construction of a new cottage on a raised platform jutting out into the Pittwater waterway. There is a slight amount of Medium Flood Risk Precinct just inside the Lot, at the eastern end of the platform. However this is really just associated with the downstream ocean boundary of the flood model. The development site would be subject to estuarine wave action and tidal inundation, and these factors would override any flooding affectation. Please refer to comments from the Riparian / Coastal assessments.
NECC (Riparian Lands and Creeks)	***Supported, subject to conditions.*** This application was assessed in consideration of: - Supplied plans and reports; - Coastal Management Act 2016; - State Environmental Planning Policy (Resilience and Hazards) 2021; - Relevant LEP and DCP clauses; and - Northern Beaches Council Water management for development policy. The site is located adjacent to Pittwater and as such proposed 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. Recommendations from the Stormwater and Civil Design report must be followed. Seagrass surrounding the site must not be damaged (see conditions for details).

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

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1339967S dated 28 September 2023).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	43
Thermal Comfort	Pass	Pass
Energy	50	98

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

SEPP (Transport and Infrastructure) 2021

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

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

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

SEPP (Resilience and Hazards) 2021

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

Division 3 Coastal environment area
2.10 Development on land within the coastal environment area

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

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 subject site adjoins the Pittwater Waterway and relies upon existing use rights for a dwelling. The new proposed dwelling has been designed in an acceptable manner mitigate adverse impact. To further ensure no impacts occur to the surrounding environment, and that the biophysical, hydrological and ecological environment is protected, Council's Riparian Lands, Coastal, Biodiversity, Development Engineering and Landscape Officers have included conditions to be adhered to.

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
Recommended conditions are included to ensure the protection of the environment and to mitigate any adverse impacts. Council's Coastal Engineer has reviewed the proposal and is in support, subject to conditions .The proposal has been designed to consider and mitigate impacts to the foreshore or waterway areas and will not detract from the scenic quality of the locality, maintaining an appropriate visual relationship with the surrounding built environment.

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
It is considered that the proposed development has been adequately designed, subject to recommended conditions to respond to the environmental constraints of the site, such that it can be stated that the proposed development is not likely to cause increased risk of coastal hazards within the locality.

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
Council's Coastal Officer has reviewed the proposal. It is considered that the relevant provisions of any certified coastal management program (if applies) to the land has occurred.

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?	Zone C4 : Yes Zone W1 : No
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Zone C4 : Yes Zone W1 : Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	4.0m *(W1 - Natural Waterways)*	Cottage: 5.72m	43.0% (1.72m)	No *(Refer to Clause 4.6)*

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.5 Additional permitted uses for particular land	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.7 Development below mean high water mark	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	N/A
7.10 Essential services	Yes
23 Use of certain land in the W1 Natural Waterways Zone	Yes

Detailed Assessment

Zone C4 Environmental Living

The proposal has been assessed under the objectives of the C4 Environmental Living zone, as the subject site is linked to No. 145 Riverview Road (Lot 1 DP 19402).

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

  Comment
  The proposal includes the demolition and construction of a dwelling house (located in the Natural Waterways zone) but adjoins the C4 Environmental Living zone. The dwelling is subject to a 4.0 metre building height standard (refer to Clause 4.6 Exceptions to development standards).The proposal has been reviewed by the relevant interdepartmental Officers to ensure low impact to the ecological, scientific or aesthetic values of the site.

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

  Comment
  No. 145 Riverview Road (Lot 1 DP 19402) is located within the Department of Planning and Environment's Biodiversity Values Map (BV Map). It was confirmed by the applicant that construction will be undertaken via the waterway on a barge. As such there will be no impacts on vegetation in the rear lot located within the BV Map. This will be ensured by a recommended condition.

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

Comment
The proposed development provides for low density development that has been designed to acceptably suit the landform and landscape of the site.

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

  Comment
  Council's Riparian, Biodiversity and Acid Sulfate Officers have reviewed the proposal and support the development subject to recommended conditions of consent to ensure that the impacts to the riparian and native wildlife corridors are also minimised.

Zone W1 Natural Waterways

The proposal has been assessed under the objectives of the W1 Natural Waterways zone below. The proposed development is not permissible in the zone, however relies upon existing use rights, refer to the 'Existing Use Rights' section of this report.

- ***To protect the ecological and scenic values of natural waterways.***

  Comment
  The site is located adjacent to Pittwater Waterway and as such proposed 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. In addition, the subject site is within proximity to Seagrass, which not be impacted upon adversely. Recommended conditions have been provided by Council's Interdepartmental Officers (Coastal, Development Engineer, Riparian, Biodiversity, Acid Sulfate) that will ensure that the ecological values of the site and surrounds are protected. It is noted that the application was accompanied by a Geotechnical Report and Estuarine Risk Assessment. The proposal has been designed (built form and materials) to fit in conformity with surrounding boat sheds and similar developments, and is not considered to unacceptable impact the scenic value of the waterway.

- ***To prevent development that would have an adverse effect on the natural values of waterways in this zone.***

  Comment
  As above, conditions have been provided to ensure appropriate mitigation methods are adhered to to protect the natural values of the zone. In addition, relevant reports have been provided that also consist of recommendations that have been included as conditions of consent.

- ***To provide for sustainable fishing industries and recreational fishing.***

  Comment
  Not applicable to the proposal.

- ***To ensure development does not adversely impact on the natural environment or obstruct the navigation of the waterway.***

Comment
In terms of natural environment see comments above. The proposed development will not obstruct the navigation of the waterway as it is located wholly within the boundaries of the allotment.

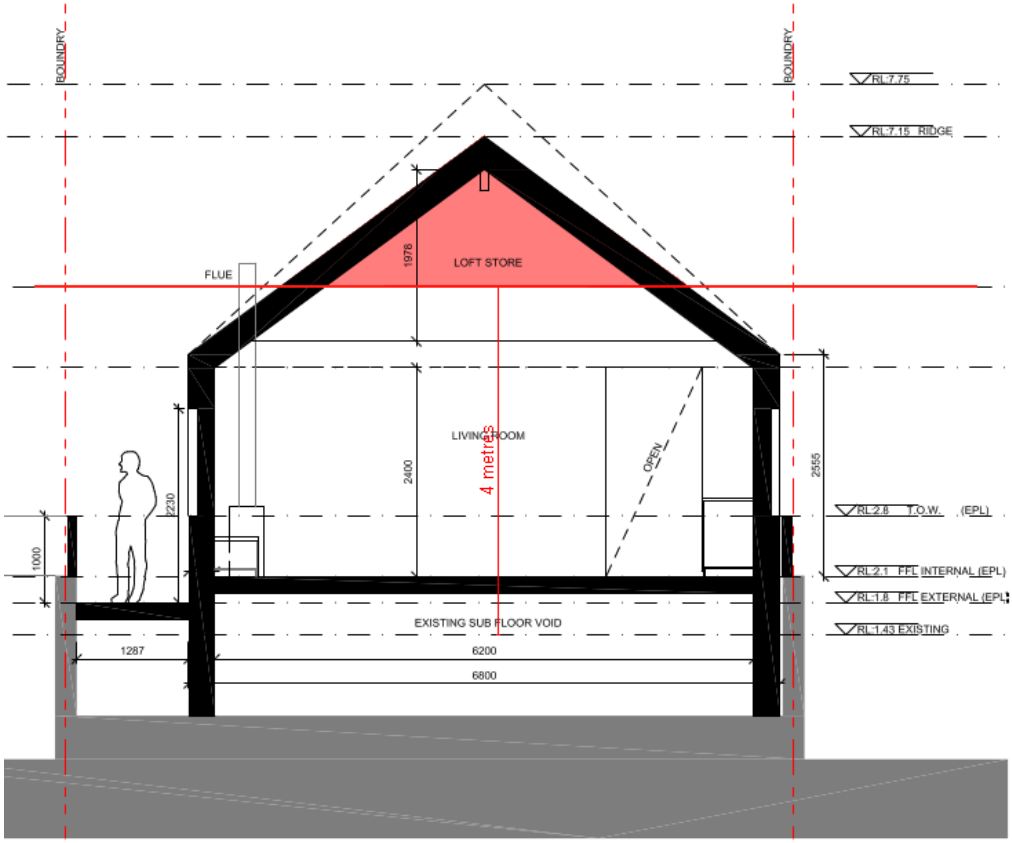
- ***To provide opportunities for private access to the waterway where these do not cause unnecessary impact on public access to the foreshore.***

  Comment
  The proposal is not considered to impact any existing public access to the foreshore. The proposal allows the continued use of the waterway for private access

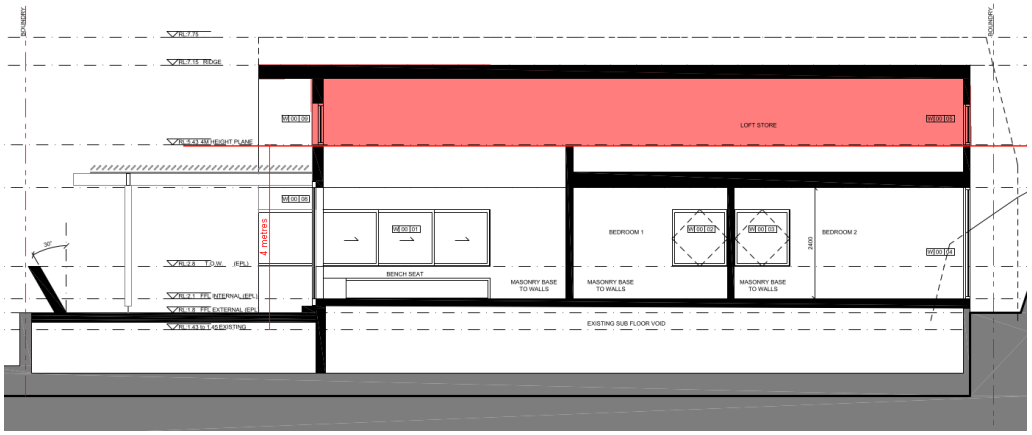
4.6 Exceptions to development standards

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

Development standard: Clause 4.3 Height of Buildings
Requirement: 4.0 metres
Proposed: 5.72 metres
Percentage of variation: 43.0%



(Figure 1: Section from Masterset - Amended, Red shading identifies breach).



(Figure 2: Section from Masterset - Amended, Red shading identifies breach).

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

'Clause 4.6 Request').

Subclause (1) of this clause provides that:

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

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

Subclause (2) of this clause provides that:

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

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

Subclause (3) of this clause provides that:

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

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

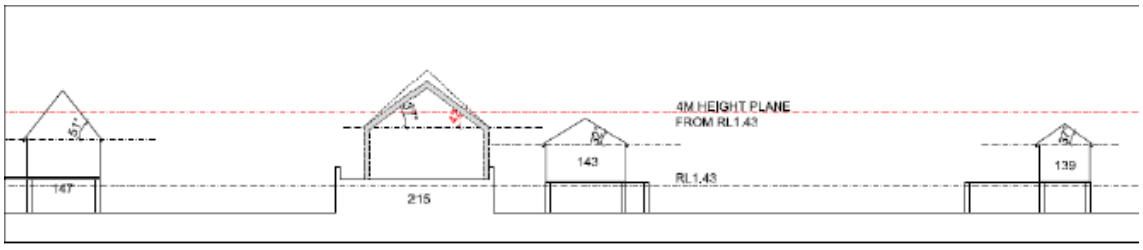
Comment
Council is satisfied that the Applicant has demonstrated that compliance with Clause 4.3 Height of Buildings is unreasonable or unnecessary in the circumstances of this application for the following reasons (extract from submitted Clause 4.6 prepared by Levy Planning):

- *The proposed cottage height is compatible with the built form of the surrounding boat sheds. It similarly has a pitched roof and a narrow façade.*
- *The boat sheds and proposed cottage are not visually dominate as viewed from the waterways, rather they are complementary and contribute to the nautical character of the locality.*
- *The proposed cottage is similar in bulk and scale to the surrounding boatsheds.*
- *The surrounding boat sheds have the following height RL: (Proposal: 7.150 RL)*
  No.147 boatshed - 6.650 RL
  No.143 boatshed – 5.130 RL
  No.139 boatshed – 4.830 RL
  No. 137 boatshed – 6.130 RL
- *The current design is an exemplary example of a cottage that has been designed to respond to the unique aspect of the site, being situated on a pontoon on the waterway.*
- *The materials and finishes proposed complement the natural tones of the site, for example sandstone and timber finishes.*

The reasons noted above demonstrate that the proposed dwelling on Lot 215 achieves the objectives of Clause 4.3 Height of Buildings, and in addition will have an absence of amenity impact to surrounding properties. In addition, visual representations from the submitted Clause 4.6 have been provided below (Figure 4 and 5) to demonstrate the proposed cottage within the context of existing neighbouring boatsheds/development.



(Figure 3: Indicative building envelope of cottage within the context of existing neighbouring boatsheds to the north and south).



(Figure 4: Proposed cottage within the context of existing neighbouring boatsheds).

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

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

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

The Clause 4.6 Request argues, in part (extract from submitted Clause 4.6 prepared by Levy Planning):

- *The unique location of the site, being on a pontoon located on the Pittwater waterway.*
- *The need to provide a built form that is compatible with the style of the surrounding boat sheds, specifically the dominant pitched roof form.*
- *The need to raise the 'ground level' to meet the requirements of the Estuarine Planning Level (EPL) by 370mm.*
- *The need to provide residential amenity to the proposed cottage.*
- *A design approach which enhances cross ventilation whereby the pitched roof collects hot air and allows it to be dispersed through the openable skylight and windows.*
- *The pitched roof also facilitates the use of photovoltaic solar panels that have the capacity to generate a minimum of 10 peak kilowatts.*
- *The specific design approach results in a better environmental outcome in that the current cottage is in disrepair and in need of renovation.*
- *The proposal, inclusive of the height variation will promote ecologically sustainable development by achieving the required environmental requirements of SEPP BASIX.*
- *The proposed development, inclusive of the variation, will comply with the relevant provisions of the BCA (for e.g. ceiling height)and will promote the health and safety of occupants.*

Council is generally satisfied that the Applicant has demonstrated sufficient environmental planning grounds to justify the contravention of Clause 4.3 Height of Buildings, as demonstrated above and under the 'unreasonable or unnecessary' section of this assessment. The subject site (Lot 215) is located upon an existing stone foundation on the Pittwater waterway and is unique in nature, due to its historical background discussed in the 'Existing Use Rights' section of this report. This foundation and the requirement of raising the floor level to achieve appropriate outcomes in relation to the Estuarine Hazard is the primary cause of the height exceedance. The design was initially amended from a height of 6.325 metres to 5.72 metres to better conform and demonstrate consistency with the surrounding built form (i.e. boatsheds) within the area. In conjunction with the built form and materials/colours used for the development, it is considered that this new design is more consistent with the locality than that of the original cottage design (coastal/nautical). The proposed height shall not disrupt the environmental significance of the area, or visual quality of the Pittwater waterway or foreshore area. In addition, the existing vegetation located behind Lot 215 will aid in visual softening and provide for a landscaped background.

The proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, thereby satisfying objects 1.3(c) and (g) of the EPA Act.

Public Interest:

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

Conclusion:

Council is satisfied as to the matters set out in Clause 4.6 of the PLEP 2014.

It is considered on balance, that having regard to the particular circumstances the proposed height of 5.72 metres will not give arise to adverse visual or amenity impacts, with the exceedance arising from a unique circumstance i.e. existing stone foundation/pontoon located over the Pittwater Waterway. The building height will complement and sit in conformity with the the proposed boatsheds in the area and therefore the departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

7.1 Acid sulfate soils

Clause 7.1 - 'Acid sulfate soils' requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

The site is located in an area identified as Acid Sulfate Soil Class 1, as indicated on Council's Acid Sulfate Soils Planning Map.

Any works within a Class 1 acid sulfate soil area are required to be assessed to determine if any impact will occur.

Despite the above, Subclause (6) stipulates that development consent is not required under this clause if:

a) the works involve the disturbance of less than 1 tonne of soil, and
b) the works are not likely to lower the watertable.

The location of the development will be upon a raised concrete/stone foundation which is to be retained. No excavation works are proposed within the Acid Sulfate Soil Class 1 area, specifically within the boundaries of Lot 215 (subject site) - as stated in the submitted Statement of Environmental Effects (prepared by Levy Planning).The Geotechnical Site Investigation Report prepared by Crozer (dated 2 November 2023) indicates that *"The works require localized excavation to a maximum anticipated depth of 1.0m to facilitate a small easterly extension to the original footprint."* and *"The localized excavation of the toe of the slope within the east of the site will need to be supported by either a standalone retaining wall or, alternatively the east wall of the new structure could be designed (by a suitably qualified structural engineer) to function as a retaining structure."*

However, it its noted that landscaping works to accommodate for waterway access stairs and an outdoor levelled area within the foreshore area was approved under Rev2023/0011. The stamped plans indicate that the existing sloped landscape is to be battered back to suit new stairs and retaining walls, and demonstrates on the stamped plans an excavated levelled area between Lot 215 and Lot 1 of No. 145 Riverview Road, which is directly east of the subject allotment.

As these works (excavation and stairs) were approved under the Rev2023/0011 and is shown on the site plan of this DA, it is not considered (despite the recommendation in the Crozier Report) that any further excavation will need to occur as this will be undertaken under Rev2023/0011.

Council's Environmental Health - Acid Sulfate has reviewed the proposal and due to the reasons stated above, supports the proposal with no conditions required. It is considered that with regard to the dispensations under subclause (6) of Clause 7.1, the proposed development is acceptable.

7.2 Earthworks

No excavation works shall occur under this development application, as stated within the Statement of Environmental Effects (prepared by Levy Planning). No excavation is indicated on the submitted plans within Lot 215.

7.6 Biodiversity protection

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

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

Comment
The development has been assessed by Council's Biodiversity Team, who raised no objections to approval, subject to conditions. The rear portion of the lot is located within the NSW Department of Planning and Environment's Biodiversity Values Map (BV Map), the proposal does not consist of any vegetation/tree removal. In addition, the applicant confirmed construction will be undertaken via the waterway on a barge. As such there will be no impacts on vegetation in the rear lot located within the BV Map.

It can be considered that the development will not have any adverse impact on the condition, ecological value and significance of the fauna and flora on the land; the importance of the vegetation on the land to the habitat and survival of native fauna; or the habitat elements providing connectivity on the land. 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
It can be considered that the proposal includes appropriate measures to avoid, minimise, or mitigate the impacts of the development. This will be ensured via recommended conditions of consent.

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.

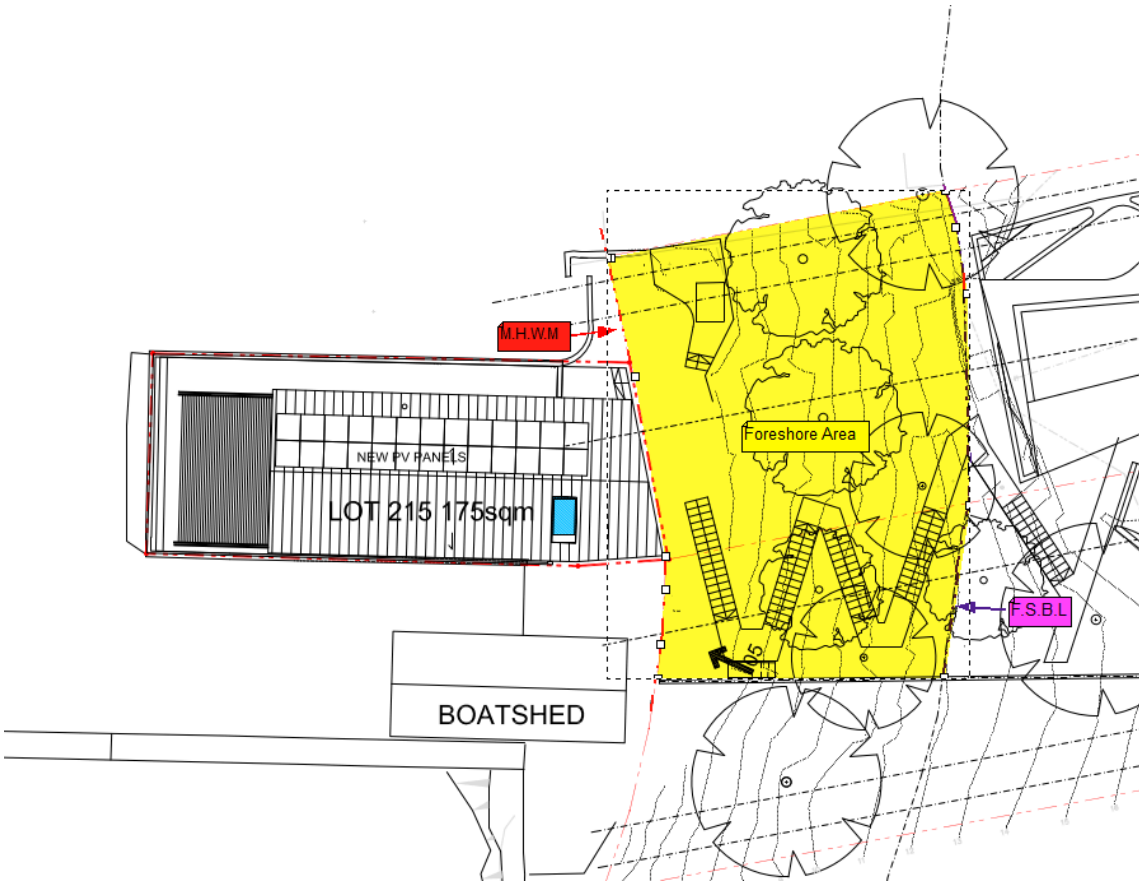
Comment

It can be considered that the development is designed, sited and will be managed to any significant adverse environmental impact.

7.8 Limited development on foreshore area

Clause 7.8 Limited development on foreshore area does not apply to the subject site as the allotment is located seaward of the M.H.W.M and not within the foreshore area. Refer to below figure (Figure 1).

No works under proposed within the Foreshore Area under this application. The works (landscape and waterway access stairs) shown in figure below, are contained within Lot 1 - 145 Riverview Road and was approved under Rev2023/0011. As such the proposed development is not affected by the requirements of Clause 7.8 of the LEP.



(Figure 5: Foreshore Area Diagram)

Pittwater 21 Development Control Plan

Built Form Controls
The subject site is located within the Waterways Locality which does not include the below built form controls. The DCP Mapping for the subject site however does include a front and rear setback requirement. The side setbacks and boundary envelope will be assessed against the built form controls of the Avalon Beach Locality due to the subject site being associated with No. 145 Riverview

Road (Lot 1, DP 19402).

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front Building Line	Merit Assessment (as per DCP) *Eastern Boundary*	Dwelling: 0.2m	N/A	No
Rear Building Line	FSBL (as per DCP) *Western Boundary*	The works are located seaward of both the FSBL and MHWM. Dwelling: 5.0m Pergola: 1.1m Seawall Extension: 0.1m	N/A*	No
Side Building Line	2.5m *Southern Boundary*	Dwelling: 0.2m Seawall Extension: 0.1m	92.0% 96.0%	No
	1.0m *Northern Boundary*	Dwelling: 1.4m Seawall Extension: 0.1m	- 10.0%	No
Building Envelope	3.5m *Southern Elevation*	Within Envelope	-	Yes
	3.5m *Northern Elevation*	Within Envelope	-	Yes
Landscaped Area	60.0%	No landscaping proposed - site located atop stone foundation.	N/A	N/A

*The rear setback has been assessed on a merit basis due to the site being located seaward of the FSBL and MHWM.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	Yes	Yes
A4.15 Waterways 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	No	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	No	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.23 Eaves	Yes	Yes
D1.1 Character as viewed from a public place	Yes	Yes
D1.5 Building colours and materials	No	Yes
D1.8 Front building line	Yes	Yes
D1.9 Side and rear building line	No	Yes
D1.11 Building envelope	Yes	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	N/A	N/A
D1.17 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D1.20 Scenic Protection Category One Areas	Yes	Yes
D15.1 Character as viewed from a public place	Yes	Yes
D15.3 Building colours and materials	No	Yes
D15.11 Waterfront lighting	Yes	Yes
D15.12 Development seaward of mean high water mark	Yes	Yes
D15.14 Minimum frontage for waterfront development	No	Yes
D15.15 Waterfront development	N/A	N/A

Detailed Assessment

B3.7 Estuarine Hazard - Low density residential

Council's Coast and Catchments Team have reviewed the proposal and are in support, subject to relevant conditions.

The subject property has 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 requirements under this clause apply. In accordance with the Pittwater Estuary Mapping of Sea Level Rise Impacts Study (2015), a base estuarine planning level (EPL) of RL 3.16m AHD at the year 2100 applies at the subject site.

An Estuarine Risk Management Report prepared by Stantec Australia Pty. Ltd. dated 9 August 2022 and an Addendum (memo) dated 11 October 2023, the ground level for the proposed additions and alterations is below the derived EPL for the site. A stated by Council's Coastal Team, the proposed development is subject to conditions to satisfy the relevant estuarine risk management requirements of P21 DCP.

Having regard to the above and subject to conditions, it is concluded that the outcomes of the clause will be achieved. Therefore, the application is supported in this particular circumstance.

B6.3 Off-Street Vehicle Parking Requirements

Merit Assessment
Clause B6.3 Off-Street Vehicle Parking requires two (2) carparking spaces for a principal dwelling (2 bedrooms plus).

The Statement of Environmental Effects states that *"It is proposed that permanent car parking will be provided in the garage level of the proposed house at 145 Riverview Road (REV2023/0011)"* and the proposed cottage/dwelling will be used by the owners of No. 145 Riverview Road (Lot 1 DP 19402). In this case it can be considered that acceptable vehicle parking will be provided, this being a minimum of one (1) space. It s noted that an existing single car stone garage was located on No. 145 Riverview Road (Lot 1 DP 19402) which was related to the existing cottage.

The proposed development will be considered against the underlying outcomes of the clause as follows:

- ***An adequate number of parking and service spaces that meets the demands generated by the development.***

  Comment
  The dwelling house approved on No. 145 Riverview Road (Lot 1 DP 19402) provides a garage with minimum four (4) spaces. The submitted Statement of Environmental Effects indicates that one (1) space is allocated to the cottage. As the approved garage provides more than two (2) spaces (require minimum) and is related to the cottage on the subject site, it is considered s likely to meet the demands generated by the development.

- ***Functional parking that minimises rainwater runoff and adverse visual or environmental impacts while maximising pedestrian and vehicle safety.***

  Comment
  Parking was approved under a separate application, and is considered to be acceptable in terms of environmental impacts.

- ***Safe and convenient parking.***

  Comment
  As stated above, parking was approved under a separate application which is considered to be safe and convenient for the residents.

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

C1.7 Private Open Space

Description of Non-Compliance
Clause C1.7 Private Open Space stipulates that the minimum private open space area for a dwelling house is 80.0m², with no dimension less than 3.0m.

The proposed dwelling although a new construction provides a similar amount of private open space when compared to the existing cottage to be demolished. The proposal provides a private open space area of approximately 51.8m², which is situated to the rear toward Pittwater Waterway and is associated with the living areas of the dwelling. The variation to the numerical control is 35.3%.

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

- ***Dwellings are provided with a private, usable and well-located area of private open space for the use and enjoyment of the occupants. (S)***

  Comment
  The private open space area is in the same location as the existing, to the rear adjoining the Pittwater Waterway. The area of open space, although deficient numerically, provides sufficient space for acceptable outdoor use for a modest dwelling on an undersized allotment.

- ***Private open space is integrated with, and directly accessible from, the living areas of dwellings. (S)***

  Comment
  The private open space is associated with the living areas of the dwelling, and can be utilised as an alfresco area.

- ***Private open space receives sufficient solar access and privacy. (En, S)***

  Comment
  The open space area will be provided with acceptable levels of sunlight access, and privacy.

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

D1.5 Building colours and materials

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

The proposed development indicates that the primary materials for the exterior walls will be blackened

hardwood cladding and sandstone to the seawall extension. Other colours/materials include white window and door architraves, and red corrugated metal roof.

The roof colour is similar to the existing roof colour of the cottage, and therefore, shall not create any additional visual impacts (in terms of colours/materials), particularly given that the external wall colours are changing from cream to black. Given this would be a minor potion of the development, which is not considered to visually dominate or disrupt the existing character of the area within the immediate vicinity, the proposed lighter colour is considered acceptable in this instance.

A condition is to be imposed to ensure the proposed roof maintains a medium to dark range (BCA classification M and D) and that any roof with a metallic steel finish is not permitted in order to minimise solar reflections to neighbouring properties

D1.8 Front building line

Description of Non-compliance
Clause D1.8 Front Building Line usually prescribes a front boundary setback requirement of 6.5 metres for all built structures, other than driveways, fences and retaining walls. However, the site is subject to a merit assessment as per the requirements within the DCP.

The eastern boundary of the subject site adjoins No. 145 Riverview Road (Lot 1, DP 19402), and does not have a street frontage. The proposed dwelling exhibits a front setback of 0.2 metres from the eastern boundary.

Although the subject site benefits from existing use rights, consideration of this clause is required.

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 desired future character for Avalon Beach is to maintain a low density residential design, the proposal achieves this objective. The Waterways locality is to remain primarily a recreational boating area, the proposed development although a dwelling house provides the representation of a boatshed and will conform with surrounding developments in similar areas. The development will be supported by adequate infrastructure.

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

  Comment
  The subject site does not adjoin a main road. This objective does not apply.

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

  Comment
  No vegetation on the subject site due to the site being atop an existing stone foundation. The vegetation including trees on the adjoining site (No. 145 Riverview Road, Lot 1, DP 19402) will hover aid in visually reducing built form, similar to sites with boatsheds.

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

  Comment
  Vehicle access/parking is provided on adjoining site (No. 145 Riverview Road, Lot 1, DP 19402). Maneuvering in a forward direction could be facilitated.

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

  Comment
  The subject site does not have a street frontage and will not be viewed form the street. Pedestrian access via stairs within foreshore area of adjoining site (No. 145 Riverview Road, Lot 1, DP 19402).

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

  Comment
  The proposed dwelling provides setbacks similar to that of surrounding developments on the waterfront (i.e. boatsheds), and will complement the existing urban environment.

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

D1.9 Side and rear building line

Description of Non-compliance
Clause D1.9 Side and Rear Building line prescribes a side setback of 2.5 metres to one side and 1.0 metres to the other, with a rear setback being the FSBL. The site is not subject to the side setback control but is subject tot he FSBL rear setback.

The subject site is located seaward of the FSBL and MHWM, a merit assessment will apply below. The 2.5 metres side setback will be applied to the southern boundary and the 1.0 metres side setback will be applied to the northern boundary.

Although the subject site benefits from existing use rights, consideration of this clause is required.

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 desired future character for Avalon Beach is to maintain a low density residential design, the proposal achieves this objective. The Waterways locality is to remain primarily a recreational boating area, the proposed development although a dwelling house provides the representation of a boatshed and will conform with surrounding developments in similar areas. The development will be supported by adequate infrastructure.

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

Comment
The proposed dwelling is of similar height and scale of surrounding boatsheds. The surrounding vegetation will aid in visually reducing any perceivable bulk.

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

  Comment
  The proposal is not considered to result in any unacceptable view loss from surrounding private properties or the public domain.

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

  Comment
  As stated above, the proposed works are not considered to adversely impact on any current view sharing of the adjoining properties.

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

  Comment
  The proposal overall will provide acceptable levels of privacy, amenity and solar access in relation to the subject site and adjoining properties.

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

  Comment
  No vegetation on the subject site due to the site being atop an existing stone foundation. The canopy trees on the adjoining site (No. 145 Riverview Road, Lot 1, DP 19402) will hover aid in visually reducing built form, similar to sites with boatsheds. The subject site does not have a street frontage.

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

  Comment
  Pedestrian access via stairs within foreshore area of adjoining site (No. 145 Riverview Road, Lot 1, DP 19402).

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

  Comment
  As noted above.

- ***A landscaped buffer between commercial and residential zones is achieved.(En,S)***

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

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

D15.3 Building colours and materials

Refer to Clause D1.5 Building colours and materials, elsewhere in this report.

D15.14 Minimum frontage for waterfront development

Description of Non-compliance
Clause D15.14 Minimum frontage for waterfront development stipulates the below:

Where an existing allotment has a water frontage of less than 15.0 metres, limited development such as a jetty, ramp and pontoon will generally only be permitted. Multiple facilities below mean high water mark (i.e. boatsheds, jetty and slipway etc.) will not be permitted. The applicant must demonstrate, to the satisfaction of Council, that shared facilities are not appropriate and that the objectives of this part would not be compromised.

The subject site consists of an existing frontage to the waterway of 8.32 metres, with the proposed works being a dwelling house, rather than waterway recreation development. Thee proposal does rely upon existing use rights.

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

- ***To minimise the individual and cumulative visual impact of waterfront development. (S)***

  Comment
  The proposed development is to demolish an existing dwelling (cottage) and construct a new dwelling. As an existing dwelling was located on the site, it is not considered that a replacement dwelling would create additional impacts, subject to the design being acceptable for the context of the site. In this case, the design will sit in conformity and is of a similar built form/shape of surrounding boat sheds. The further reduction in the height of the building (as requested) minimises visual impact, and allows for the surrounding landscaping behind the dwelling to visually soften the built form and provide for acceptable visual interest. It is also noted that the material/colours used for the new dwelling is more sympathetic to the natural environment than that of the white colour scheme of the existing cottage.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of $9,033 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $903,260.

CONCLUSION

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

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

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

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

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

Council is satisfied that the Applicant's written request under Clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking to justify variation of the development standard contained within Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

PLANNING CONCLUSION

This proposal, for the demolition works and construction of a cottage (dwelling) has been referred to the Development Determination Panel (DDP) due to the proposal resulting in a variation of more than 10.0% to Clause 4.3 Height of Buildings of the *Pittwater Local Environmental Plan 2014* (PLEP 2014).

The proposed development was notified in accordance with the Northern Beaches Community Participation Plan (CPP) for fourteen (14) days, and received one (1) supporting submission and no objections.

The critical assessment issues relate primarily to existing use rights and the Clause 4.6 written request to vary Clause 4.3 Height of buildings. The proposed works were (although not strictly bound to) assessed against the built form and amenity controls under the Pittwater 21 Development Control Plan, which were found to be acceptable on a merit basis.

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

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

REASON FOR DETERMINATION

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

RECOMMENDATION

That Northern Beaches Council, as the consent authority, vary the development standard contained within Clause 4.3 Height of Buildings, pursuant to Clause 4.6 of the Pittwater Local Environmental Plan 2014 because the Applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) of Clause 4.6.

Accordingly Council as the consent authority grant Development Consent to DA2023/1607 for Demolition works and construction of a cottage on land at Lot 1 DP 19402, 145 Riverview Road, AVALON BEACH, Lot 215 DP 752046, 145 Riverview Road, AVALON BEACH, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

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

Approved Plans				
Plan Number	**Revision Number**	**Plan Title**	**Drawn By**	**Date of Plan**
DA-05-01	Revision B	Site Plan Proposed	No Mad Architects	1 April 2024
DA-10-14	Revision B	Elevations - 215 Detail Elevations	No Mad Architects	1 April 2024
DA-10-19	Revision B	Sections - Cross Sections Short & Long	No Mad Architects	1 April 2024
DA-21-00	Revision B	Detail Floor Plans - 215 Cottage Floor Plans	No Mad Architects	1 April 2024
DA-21-05	Revision B	Detail Floor Plans - 215 Cottage Roof Plan	No Mad Architects	1 April 2024

Approved Reports and Documentation			
Document Title	**Version Number**	**Prepared By**	**Date of Document**
BASIX Certificate (No. 1339967S)	-	No Mad Architects	28 September 2023
Estuarine Risk Assessment Report: 145 Riverview Road, Avalon (Ref. 304600726/L002:PDT)	-	Stantec Australia Pty Ltd	9 August 2022
Estuarine Risk Assessment Report: 145 Riverview Road, Avalon, NSW, 2107 - Memo (Ref. 304501246)	-	Stantec Australia Pty Ltd	11 October 2023
Report on Geotechnical Site Investigation (Ref. 2021-277.2)	Issue 0	Crozier Geotechnical Consultants	2 November 2023
Waste Management Plan	-	Dr. Chris watt & Fiona Zielinski	-
143/145 Riverview Road Avalon - Lot 215 Stormwater and Civil Design: Report for DA submission (Ref. C1827-WAT-CE-LE-004)	Revision A	Capital Consulting Engineers Pty Ltd	26 November 2022

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

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

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

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	23 November 2023

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

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

3. **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.

5. **Construction Management - Delivery and removal of materials**
The demolition works and the construction of the dwelling will be undertaken via the waterway and not through the adjoining property (Lot 1 19402 - No. 145 Riverview Road, Avalon Beach). All materials/plant delivery and /or removal of material is to occur via the waterway.

Reason: To ensure the protection of the native vegetation and that appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process.

FEES / CHARGES / CONTRIBUTIONS

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

A monetary contribution of $9,032.60 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 $903,260.00.

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

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

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

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

7. **Security Bond**

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

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

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

Reason: To protect native vegetation.

9. **Stormwater Disposal**
The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's Water Management for Development Policy. Stormwater shall be conveyed from the

site to a waterbody. Details by an appropriately qualified and practicing Civil or Hydraulic Engineer demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with Council's policy are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

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

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by Crozier Geotechnical Consultants dated 02.11.2023 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

11. **Boundary Identification Survey**
A boundary identification survey, prepared by a Registered Surveyor, shall be provided in respect of the subject site.

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

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

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

12. **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.

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

13. **Estuarine Planning Level Requirements**
An Estuarine Planning Level (EPL) of 3.16m AHD has been adopted by Council for the subject site and shall be applied to all development proposed below this level as follows:

1. All structural elements below 3.16m AHD shall be of flood compatible materials;
2. All electrical equipment, wiring, fuel lines or any other service pipes and connections must be located either above 3.16m AHD or waterproofed to this level; and

3. The storage of toxic or potentially polluting goods, chemicals or materials, which may be hazardous or pollute the waterway, is not permitted below 3.16m AHD.
4. All interior power supplies (including electrical fittings, outlets and switches) must be located at or above 3.16m AHD. All exterior power supplies (including electrical fittings, outlets and switches) shall be located at or above 3.16m 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.

14. **Compliance with Estuarine Risk Management Report**
The development is to comply with all recommendations of the approved Estuarine Risk Management Report prepared by Stantec Australia Pty. Ltd. dated 9 August 2022 including the memo dated 11 October 2023 and these recommendations are to be incorporated into construction plans and specifications and maintained over the life of the development.

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

15. **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 100years) the development is able to withstand the wave impact forces and loadings identified in the approved Estuarine Risk Management Report prepared by Stantec Australia Pty. Ltd. dated 9 August 2022 including a memo dated 11 October 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

16. **Seawall Structure to be Properly Maintained**

A maintenance program shall be prepared by the structural engineer, with input as necessary from a chartered professional engineer with coastal engineering as a core competency, to ensure that for its design life the seawall is maintained in a sound structural condition. The maintenance program shall be submitted to the Certifying Authority for approval prior to the release of the Construction Certificate. The seawall shall be repaired and maintained in accordance with the program and as may be required from time to time to ensure its structural integrity for its design life.

Reason: To ensure appropriate maintenance of the development and to fulfil maintenance requirements under clause 27(b)(ii) of the Coastal Management Act 2016.

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

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

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

18. **External Finishes to Roof**
The external finish to the roof shall have a Solar Absorptance (SA) greater than 0.43 in accordance with the requirements of the BASIX Certificate to minimise solar reflections to neighbouring properties. Any roof with a 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.

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

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

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

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

20. **Works located within site boundary**
All parts of the approved works are required to be wholly located within the boundaries of the subject property (Lot 215 DP 752046 - No. 145 Riverview Road, Avalon Beach) and shall not encroach onto or past boundary lines.

Reason: To ensure works are located within site boundary.

DURING BUILDING WORK

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

Reason: To protect native wildlife.

22. **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.

23. **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.

24. **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 stormwater & civil design report must be followed.

Reason: To protect the aquatic environment.

25. **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.

26. **Removing, Handling and Disposing of Asbestos**
Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:
    - Work Health and Safety Act;
    - Work Health and Safety Regulation;
    - Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
    - Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
    - Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
    - The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

28. **Demolition Works - Asbestos**
Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifier, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

29. **Survey Certificate**
A survey certificate prepared by a Registered Surveyor at the following stages of construction:

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

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

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

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

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

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

31. **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

32. **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.

33. **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.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

35. **Fireplace Installation**
The fireplace within the cottage is to be installed as a gas operated fireplace only and must not operate by burning firewood.

Reason: To avoid creating a smoke nuisance to nearby residents.

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

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

Reason: To ensure bushland management.

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

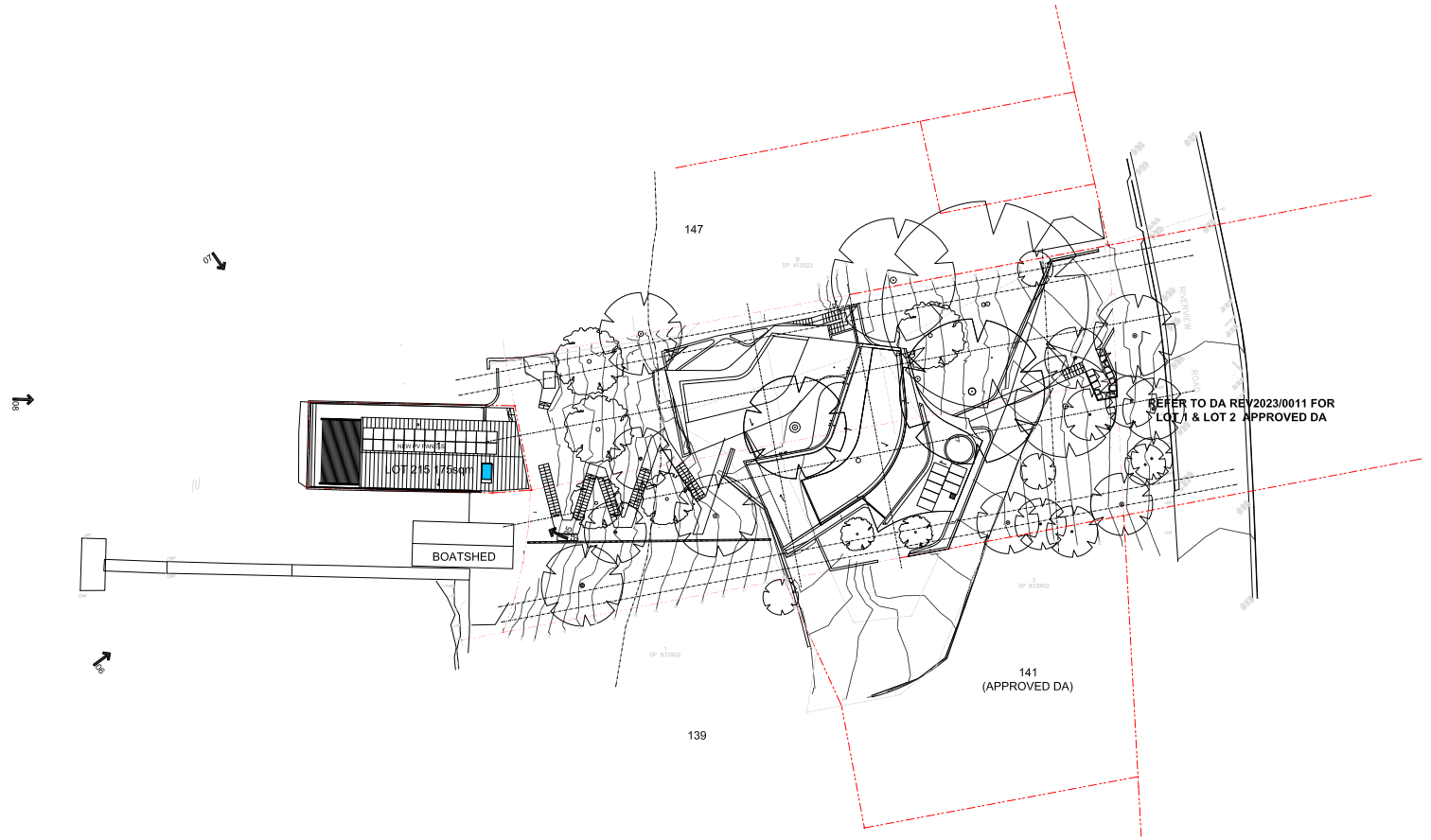
37. **Geotechnical Recommendations**
Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be

maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

38. **Compliance with Estuarine Risk Management Report**
The development is to comply with all recommendations of the approved Estuarine Risk Management Report prepared by Stantec Australia Pty. Ltd. dated 9 August 2022 with an additional memo dated 11 October 2023 and these recommendations are to be maintained over the life of the development.

Reason: To ensure preservation of the development and the estuarine environment



CONTACT
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Strawberry Hills NSW 2012
Sydney, Australia
Nominated Architect: Chris Rogers 7759

GENERAL NOTES

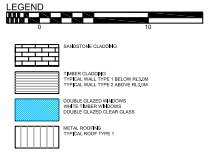
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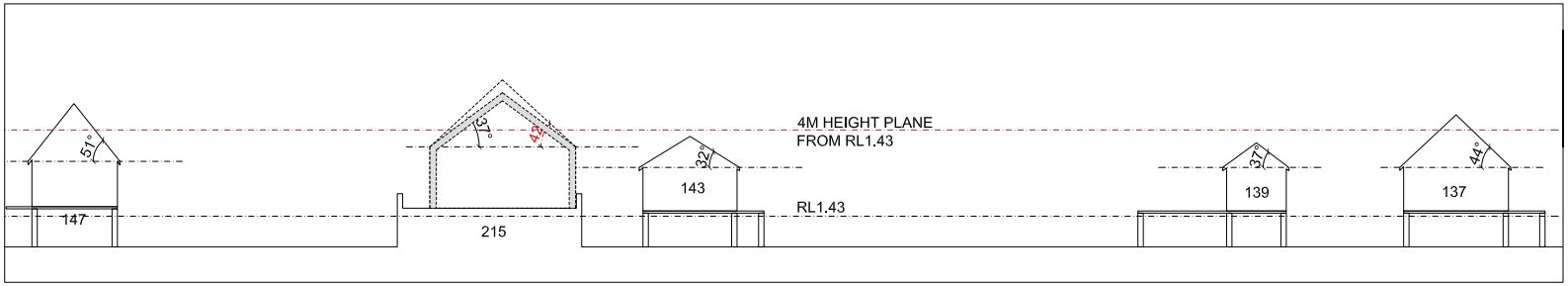
CONFIRM ALL DIMENSIONS AND SETOUTS ON SITE PRIOR TO MANUFACTURE & INSTALLATION

ALL WORK IN ACCORDANCE WITH RELEVANT AUSTRALIAN STANDARDS

TO BE READ IN CONJUNCTION WITH ENGINEERS DOCUMENTS

LEGEND





CONTEXTUAL ANALYSIS
TYPICAL BOAT SHED VERNACULAR

Rev	Date	Description
B	01.04.24	CONSHOL DIRECTED CHANGES
A	05.10.23	DA SUBMISSION

File No: PL-05-01
Date Plotted: 11/5/2023

NOMAD

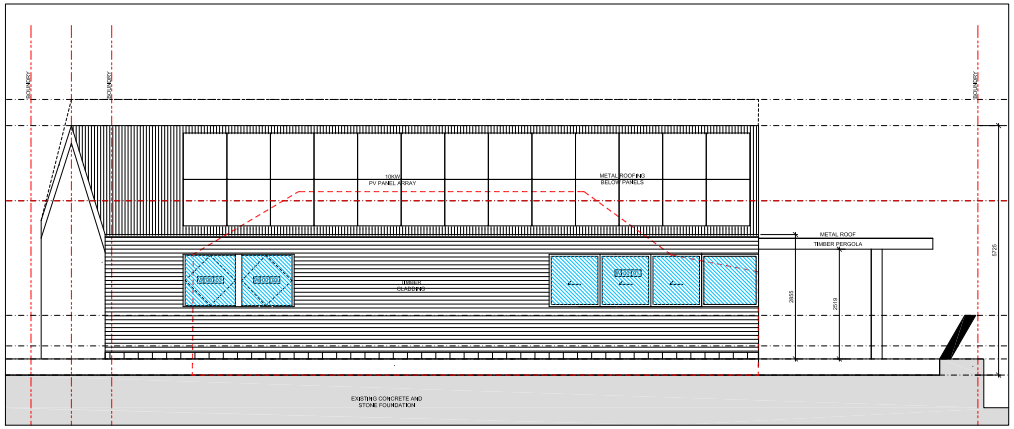
Project:
AVALON COTTAGE
143 RIVERVIEW ROAD
LOT 215

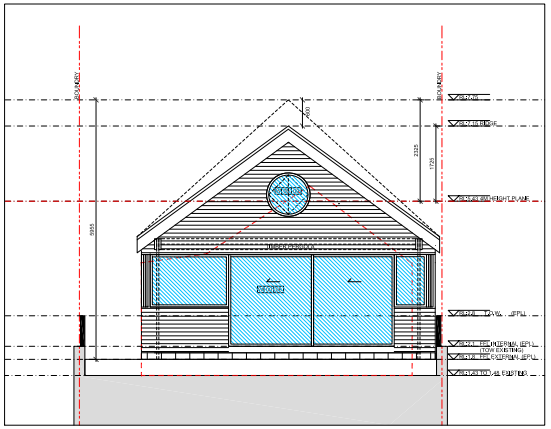
Drawing Description:
SITE PLAN PROPOSED

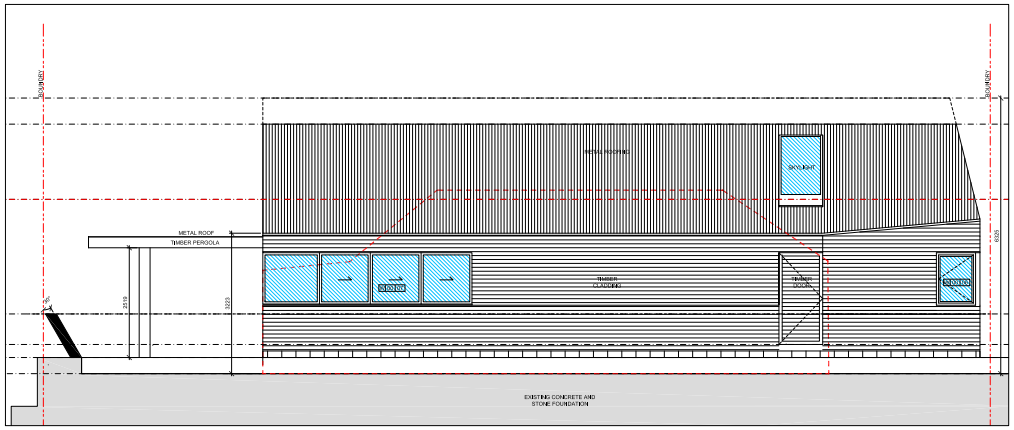
Drawn by:	Checked by:
CR	CR
Project No:	Scale:
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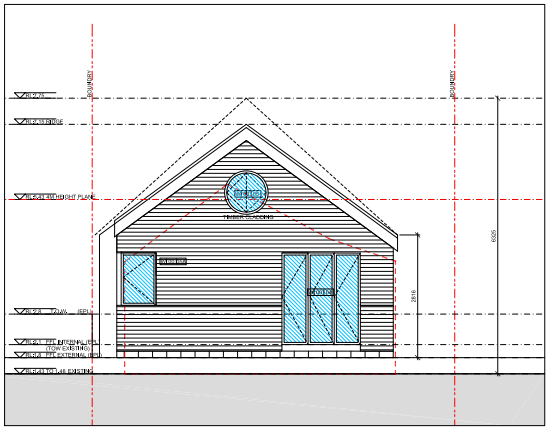
DWG NO: DA-05-01 REV NO: B

Drawing Status: DA SUBMISSION









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GENERAL NOTES

DO NOT SCALE FROM THIS DRAWING

CONFIRM ALL DIMENSIONS AND SETOUTS ON SITE PRIOR TO MANUFACTURE & INSTALLATION

ALL WORK IN ACCORDANCE WITH RELEVANT AUSTRALIAN STANDARDS

TO BE READ IN CONJUNCTION WITH ENGINEERS DOCUMENTS

LEGEND

BOUNDARY LINES

DEMOLITION OF STRUCTURES

LOCATION OF CAMERA

WIND DIRECTION

NOTE:
1. EXISTING ELECTRICAL SERVICES TO BE RELOCATED TO PROVIDE NEW SERVICES TO ALSO BE UNDERGROUND.
2. REFER PRIVACY DESIGN REPORT EXTRACT FOR FURTHER SITE ANALYSIS.

SANDSTONE CLADDING

TIMBER CLADDING
TYPICAL WALL TYPE 1 BELOW RL/DW
TYPICAL WALL TYPE 2 ABOVE RL/DW

DOUBLE GLAZED WINDOWS
WHITE TIMBER WINDOWS
DOUBLE GLAZED CLEAR GLASS

METAL ROOFING
TYPICAL ROOF TYPE 1

WALL TYPE 1 MASONRY (R-VALUE 3.4
TIMBER • INSULATION • BOARDWORK • TIMBER

WALL TYPE 2 LIGHTWEIGHT (R-VALUE 3.4
TIMBERFRAME • INSULATION • TIMBER CLADDING

FLOOR TYPE 1 SUSPENDED SLAB (R-VALUE 1.2) (DOWN
BORDER SLAB • R1.80 INSULATION

ROOF TYPE 1 LIGHTWEIGHT (R-VALUE 5.2) UP
METAL ROOF WITH 100mm R3.5 BLANKET
• INSULATION • CEILING

NOTE:
1. REFER TO BASIX CERTIFICATE PREPARED BY NOMAD ARCHITECTS FOR FURTHER DETAIL OF WATER AND ENERGY RESULTS.
2. + SOLID FUEL FIREPLACE TO COMPLY WITH AS/NZS 4013 & 13
3. HOT WATER SYSTEM TO BE ELECTRIC HEAT PUMP WITH 4† TO 45 STCh OR BETTER.

Rev	Date	Description
B	01.04.23	COUNCIL DIRECTED CHANGES
A	05.10.22	DA SUBMISSION

File No: EL-10-14
Date Plotted: 5/11/2022

NOMAD

Project:
AVALON COTTAGE
143 RIVERVIEW ROAD
LOT 215

Drawing Description:
ELEVATIONS
215 DETAIL ELEVATIONS

Drawn by:	Checked by:
CR	CR
Project No:	Scale:
2021_01	1:50@A1

DWG NO: DA-10-14 REV NO: B

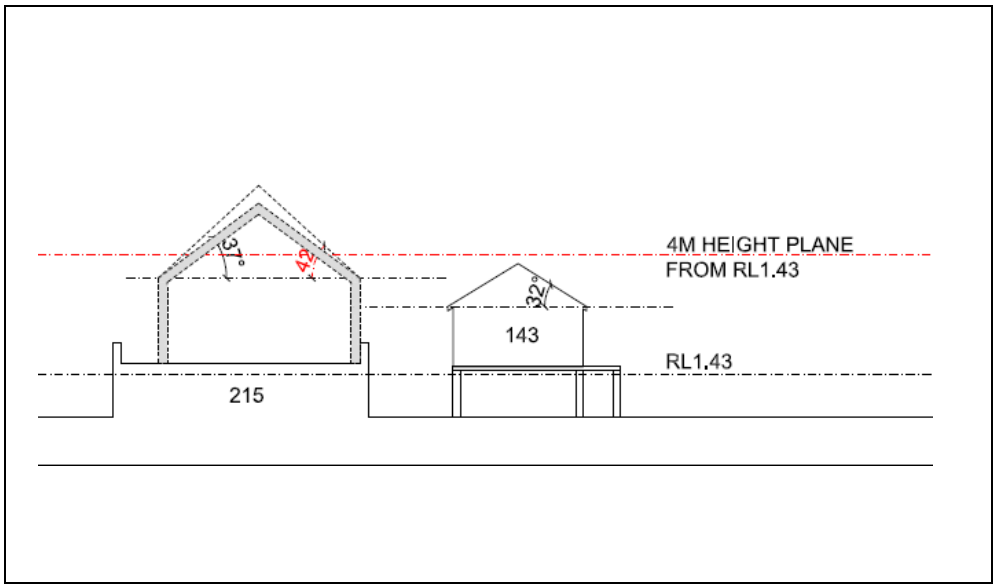
Drawing Status: DA SUBMISSION

CLAUSE 4. 6 VARIATION REQUEST- HEIGHT (REV.2)

TO ACCOMPANY A DEVELOPMENT APPLICATION
FOR

DEMOLITION AND CONSTRUCTION OF A NEW COTTAGE

LOT 215, DP 145 RIVERIVEW ROAD,
AVALON, NSW 2107



Prepared by:

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APRIL 2024

1. INTRODUCTION 3
2. DEVELOPMENT STANDARD TO BE VARIED 5
2.1 Height Standard to be Varied 5
2.2 Exceptions to development standards 5
3. EXTENT OF VARIATION 8
4. UNREASONABLE AND UNNECESSARY 9
4.1 Test 1- Objectives of Standard are achieved 9
4.2 Test 2 -Underlying objective is not relevant 14
4.3 Test 3-The objective would be defeated 14
4.4 Test 4-The development standard has been abandoned 14
4. 5 Test 5- The Zoning is unreasonable or inappropriate 14
5. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS 15
5.1 Environmental Planning 15
5.2 The pitched roof facilitates the use of photovoltaic solar panels that have the capacity to generate a minimum of 10 peak kilowatts 15
5. 2 Consistency with Objects of the EP&A Act 15
6. PUBLIC INTEREST 18
6.1 Consistency with objectives of the development standard 18
6.2 Consistency with objectives of the zone 18
7. STATE OR REGIONAL ENVIRONMENTAL PLANNING and concurrence 20
8. CONCLUSION 21

1. INTRODUCTION

This is a written request, prepared in accordance with Clause 4.6 of the Pittwater Local Environmental Plan, (**PLEP**) 2014 to justify a variation to the building development standard of Height.

This Development Application (**DA**) is submitted to Northern Beaches Council for demolition and construction of a cottage which is located in a W1 Natural Waterways Zone. Council have advised in Pre DA-Notes dated 9 June 2022 that they request a Clause 4.6 Variation to assess the implications of the proposed height of the new cottage. It should be noted the height plane refers to boatsheds only, and not to habitable cottages in this location.

Further, in a Request for Additional Information (**RFI**) dated 22 March 2024 Council identified the need to further reduce the height of the cottage. It is to this end that this amended Report is submitted.

The maximum building height that applies to the site for boatsheds, under Clause 4.3 of the PLEP is 4.00 metres The proposed cottage exceeded the 4m height by 2.32m, resulting in a total height of 6.325 at the highest point of the pitched roof. **Further to the RFI, the height of the cottage has been reduced by 600mm resulting in a total height of 5.72m and an exceedance of the 4m height plane for boatsheds exceeded by 1.72m.**

The extent of the breach varies from 12.5% to 43.0% (at the pitch of the roof)

The exceedance is due to the following reasons:

- The unique location of the site, being on a pontoon located on the Pittwater waterway;
- The need to provide a built form that is compatible with the style of the surrounding boat sheds, specifically the dominant pitched roof form;
- The need to raise the external 'ground level' to meet the requirements of the Estuarine Planning Level (**EPL**) by **370mm**.
- The need to provide residential amenity to the proposed cottage.

It should be noted that there is no additional bulk (floor area) created due to the height variation.

The objectives of Clause 4.6 are to provide an appropriate level of flexibility in applying certain development standards to particular development, and to achieve better outcomes for and from development, by allowing flexibility in particular circumstances.

This request has been prepared having regard to the Department of Planning and Environment's Guidelines to Varying Development Standards (August 2011) and various recent decisions in the New South Wales Land and Environment Court (LEC) and New South Wales Court of Appeal (Appeals Court).

A Clause 4.6 Variation requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard (see Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130) and Al Maha Pty Ltd v Huajun Investments Pty Ltd (2018) 233 LGERA 170; [2018] NSWCA 245.

1. That the applicant has adequately demonstrated that compliance with the development standard is **unreasonable or unnecessary** in the circumstances of the case [clause 4.6(3)(a)].

2. That the applicant has adequately demonstrated that there are sufficient **environmental planning grounds** to justify contravening the development standard [clause 4.6(3)(b)]; and

3. That the proposed development will be in **the public interest** because it is consistent with the objectives of the particular development standard and the objectives for development within the zone in which the development is proposed to be carried out [clause 4.6(4)].

It should be noted that as per Amendments that came into force on 1 November 2023, the need to address the public interest has been removed from the legislation. Notwithstanding it is retained within this Report.

This request considers that compliance with the Height development standard for boatsheds, as applied to a cottage, is unreasonable and unnecessary in the circumstances of the proposed development because **the objectives of the development standard are achieved.**

There are **strong environmental planning grounds to justify the variation**.

- Such as an external '**ground level' being raised by 370mm in order to meet the EPL** requirements which raises the entire cottage.
- a design approach which **enhances cross ventilation** whereby the pitched roof collects hot air and allows it to be dispersed through the openable skylight and windows.
- The pitched roof also facilitates the use of **photovoltaic solar panels** that have the capacity to generate a minimum of 10 peak kilowatts.

The development satisfies the objectives of the height standard, as well as the **objectives of the W1 Natural Waterways zone** and is therefore in the public interest.

Further, the Report considers whether contravention of the development standard raises any matter of significance for State or regional environmental planning and addresses the requirement for concurrence of the Secretary as required by Clause 4.6(4)(b).

On balance It is considered appropriate in these circumstances to grant the Clause 4.6 variation request.

2. DEVELOPMENT STANDARD TO BE VARIED

2.1 Height Standard to be Varied

The standard that is proposed to be varied is the Height of Building development standard, which is set out in Clause 4.3 of the PLEP, 2014 as follows:

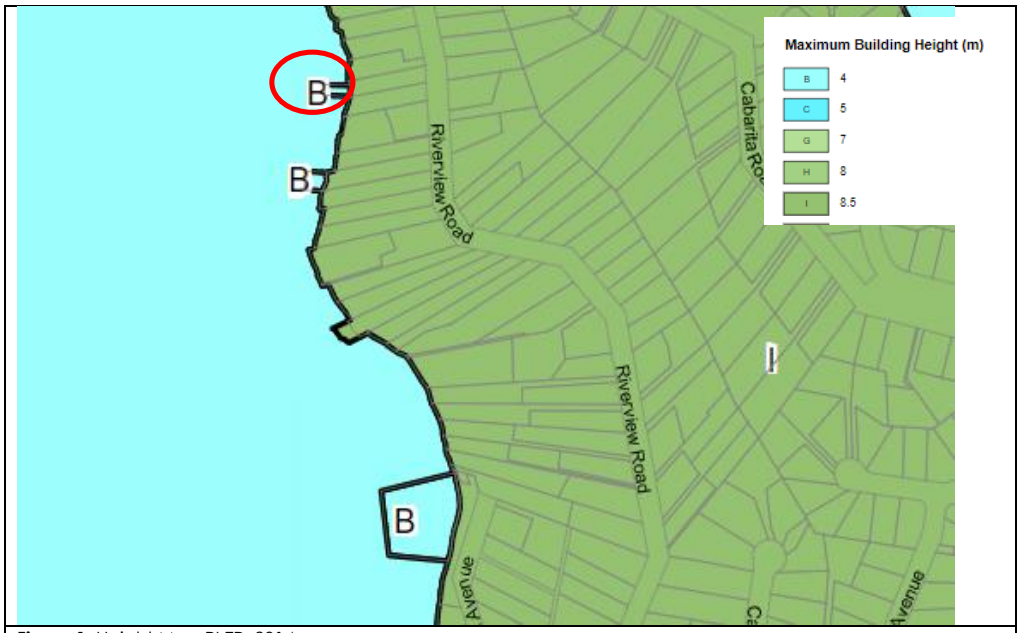


Figure 1: Height Map PLEP, 2014

Clause 4.3 (2) states "*The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map*".

The applicable height control for boatsheds is 4m and the proposed height of the cottage at the highest point of the pitched roof is 5.72m, which is an exceedance of 1.72m. The height limit pertains to boat sheds only. However, it is adopted for the purposes of comparison and context.

2.2 Exceptions to development standards

Clause 4.6 of the PLEP, 2014 allows exemptions to a development standard. The relevant Clauses are addressed below.

Clause 4.6 Objectives
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.*

Control	Commentary
(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*	The development standard to be varied is not specifically excluded from the operation of clause 4.6 of the LEP and applies.
(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating— *(a) that compliance with the development standard is* ***unreasonable or unnecessary*** *in the circumstances of the case, and* *(b) that there are sufficient* ***environmental planning*** *grounds to justify contravening the development standard*	The Submission of a Clause 4.6 variation request is the subject of this Report and meets this requirement. a) The issue of unreasonable or unnecessary is addressed in Section 4 of this Report b) The issue pertaining to environmental planning grounds is addressed in Section 5 of this Report
(4) Development consent must not be granted for development that contravenes a development standard unless— *(a) the consent authority is satisfied that—* *(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and* *(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and* *(b) the concurrence of the Planning Secretary has been obtained.*	The purpose of this report is to address Clause 4 a(i) (ii) is addressed in Section 6 of this Report. (b) is addressed in Section 7 of this Report.
(*5) In deciding whether to grant concurrence, the Planning Secretary must consider—* *(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and* *(b) the public benefit of maintaining the development standard, and* *(c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.*	Clause 5(a) is addressed in Section 7 of this Report. Clause 5(b)is addressed in Section 6 of this Report. Clause 5(c) is addressed in Section 7 of this Report.

Assistance on the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the NSW Land and Environment Court in:

1. Wehbe v Pittwater Council [2007] NSW LEC 827.
2. Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009.
3. Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 (Initial Action).
4. Al Maha Pty Ltd v Huajun Investments Pty Ltd [2018] NSWCA 245 (Al Maha).

The response in this Report is informed by the above.

3. EXTENT OF VARIATION

The area of the height breach pertains to the roof area only. The breach varies from the **4m height plane by 1.72m resulting in a height of 5.72m at** the highest point of the pitched roof The variation is a "**point in time" and is continually reducing with the slope of the roof.**

Site area	174						
Roof area	134						
					m2		
				% of	Area of	% of	% of
Site Levels	**RL**	**over**	**% Extra**	**4**	**Breach**	**Roof**	**Site**
Existing RL	1.43						
Existing RL plus 4M	5.43						
Roof at RL 5.93	5.93	0.5	9.2%	12.5%	52	38.8%	29.9%
Roof at RL 6.43	6.43	1	18.4%	25.0%	30	22.4%	17.2%
Roof at RL 6.93	6.93	1.5	27.6%	37.5%	9.5	7.1%	5.5%
Roof at RL 7.15	7.15	1.72	31.7%	43.0%	0	0.0%	0.0%

Figure 2: Extent of breach
Source: NoMad Architects.

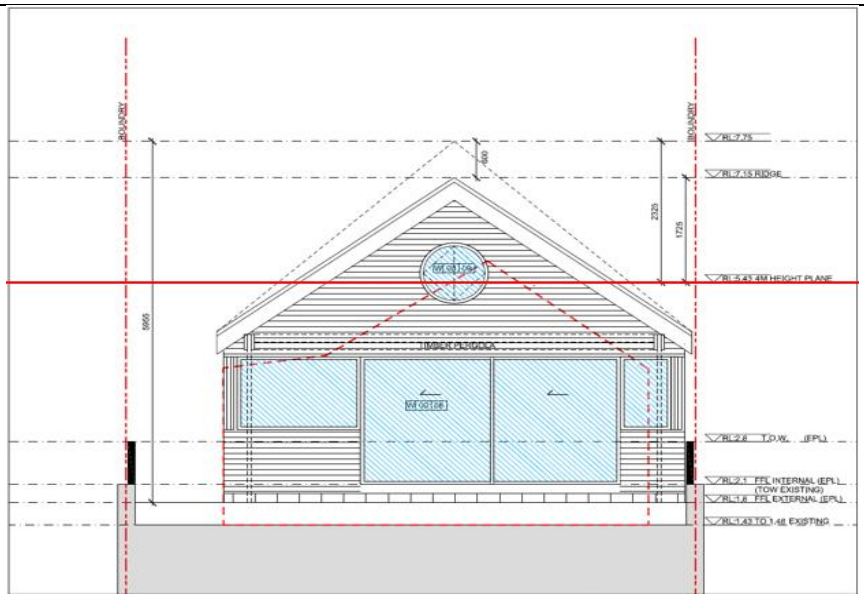


Figure 3: Extent of breach in Elevation
Source: NoMad Architects.

4. UNREASONABLE AND UNNECESSARY

In this section it is demonstrated why compliance with the development standard is **unreasonable and unnecessary** in the circumstances of this case as required by Clause 4.6(3)(a) of the PLEP, 2014.

The Court has held that there are at least five different ways, and possibly more, through which an applicant might establish that compliance with a development standard is unreasonable or unnecessary.

The decision in *Wehbe v Pittwater [2007] NSW LEC 827* expanded on the findings in *Winten v North Sydney Council* and established a five (5) part test to determine whether compliance with a development standard is unreasonable or unnecessary considering the following.

1. The **objectives of the standard** are achieved notwithstanding non-compliance with the standard**.**
2. The underlying **objective or purpose of the standard** is not relevant to the development and therefore compliance is unnecessary**.**
3. The underlying **objective or purpose would be defeated** or thwarted if compliance was required and therefore compliance is unreasonable.
4. The development standard has been **virtually abandoned or destroyed** by the Councils own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.
5. The "**zoning of particular land**" is unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable and unnecessary as it applied to that land and compliance with the standard would be unreasonable and unnecessary. That is, the particular parcel of land should not have been included in the particular zone. Consequently, compliance with that development standard is unnecessary and unreasonable.

It is sufficient to demonstrate only one of these ways to satisfy clause 4.6(3)(a) (Wehbe v Pittwater Council [2007] NSWLEC 827, Initial Action Pty Limited v Woollahra Municipal Council [2018] NSWLEC 118 at [22] and RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130 at [28]) and SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112 at [31].

Nonetheless, we have considered each of the ways as follows.

4.1 Test 1- Objectives of Standard are achieved

The underlying objectives or purpose of the development standard are achieved notwithstanding non-compliance with the standards.

<table>
<tr><th>Objective</th><th>Commentary</th></tr>
<tr><td colspan="2">4. 3 Height of buildings
(1) The objectives of this clause are as follows -</td></tr>
<tr><td>(a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,</td><td><u>Height</u>

The proposed cottage height is compatible with the built form of the surrounding boat sheds. It similarly has a pitched roof and a narrow façade.

The boat sheds and proposed cottage are not visually dominate as viewed from the waterways, rather they are complementary and contribute to the nautical character of the locality.</td></tr>
<tr><td></td><td><u>Scale</u>
Scale refers to functionality and aesthetics. Establishing the balance between the two is what creates an appropriate structure.

The proposed cottage is similar in bulk and scale to the surrounding boatsheds.</td></tr>
<tr><td colspan="2"> 
Figure 4 : Existing cottage within the context of neighbouring boatsheds to the north and south.
Source: NoMad Architects</td></tr>
<tr><td colspan="2">The proposed cottage is compatible in terms of height and scale with the surrounding proposed cottage is able to achieve Objective1 a).</td></tr>
<tr><td>(b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development</td><td>The surrounding boat sheds have the following height RL :</td></tr>
</table>

	No.147 boatshed - 6.650 RL No.143 boatshed – 5.130 RL No.139 boatshed – 4.830 RL No. 137 boatshed – 6.130 RL Lot 215 cottage – 7.150 RL at the ridge. The site is surrounded by structures of a similar height and scale. It is noted that in Councils Pre DA-Notes of the 5 May 2022 (Page 4) states that: ***"The design of the proposed cottage is considered reasonable within the immediate and broader context of adjoining development within the waterway"***



Figure 5: Indicative building envelope of cottage within the context of existing neighbouring boatsheds to the north and south. Note: NTS
Source: NoMad Architects

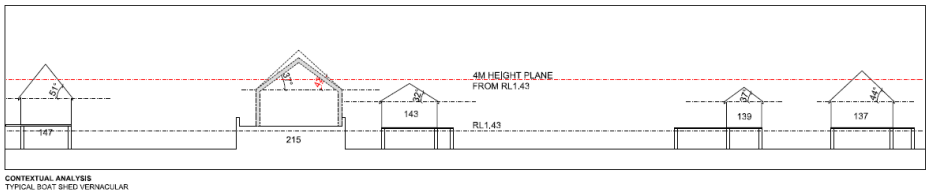


Figure 6: Proposed cottage within the context of existing neighbouring boatsheds
Source: NoMad Architects

<table>
<tr><td colspan="2">The proposed cottage is compatible in terms of height and scale with the surrounding proposed cottage and is able to achieve Objective 1b).</td></tr>
<tr><td>(c) to minimise any overshadowing of neighbouring properties,</td><td>The subject site is orientated east west and there are no neigbouring properties, therefore there is no overshadowing.</td></tr>
<tr><td colspan="2">The proposed cottage does not generate any overshadowing, due to its location in the waterway and is able to meet Objective1 c).</td></tr>
<tr><td>(d) to allow for the reasonable sharing of views,</td><td>There are no view loss issues from the subject site, due to its unique location on the waterways.</td></tr>
<tr><td>,</td><td>Tenacity Consulting v Warringah Council states that the following 4 steps are to be considered.

1 – <u>Assessment of views to be affected.</u>
Water views are valued more highly than land views. In this instance all water views from neighbouring boatsheds are maintained. Whole views are more important than partial. The whole views from neighbouring sites are completely retrained.

2-From which part of the property are the views.

Views across side boundaries are harder to protect than front and rear.

In this case the front views of all neighbouring sites are entirely protected.

3-Extent of the Impact
There is no view loss associated with the proposed cottage from any of the neighbouring sites. The status quo is retained.

4- Reasonableness
All views are from the neighbouring sites are entirely protected,

Note: The structures that are in close proximity to the proposed cottage are the boat houses. In all cases the boat houses are not habitable and are utilised for boat and equipment storage only.</td></tr>
<tr><td colspan="2">The proposed cottage does impact on any neighbouring residential views due to its location in the waterway and is able to meet Objective1 d).</td></tr>
</table>

(e) to encourage buildings that are designed to respond sensitively to the natural topography,	The current design is an exemplary example of a cottage that has been designed to respond to the unique aspect of the site, being situated on a pontoon on the waterway. Materials and finishes The materials and finishes proposed complement the natural tones of the site, for example sandstone and timber finishes.
The proposed cottage is complementary to the natural topography and is able to meet Objective 1e).	
(f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.	It is not located within an area of heritage conservation or near heritage items. Impact on natural environment. It will not impact on the natural environment. The visual impact on the natural environment, the waterways is complemented by proposing a design that is genuinely responsive to its coastal environment . **The degree of the roof pitch is less than those of the surrounding boat sheds.** No.147 boatshed – 51-degree roof pitch No.143 boatshed – 32-degree roof pitch No.139 boatshed – 37-degree roof pitch No. 137 boatshed – 44-degree roof pitch **The proposed cottage pitch is 37 degrees.** The proposed cottage has no impact on heritage items or conservation area, as they not located in the vicinity of the subject site.
The proposed cottage will not result in an adverse visual impact on the natural environment and is able to meet Objective 1 (f)	

Therefore, the objectives of Clause 4.3(1)a Height of buildings is achieved.

In accordance with the decision in Wehbe v Pittwater Council [2007] NSWLEC 827, Initial Action Pty Limited v Woollahra Municipal Council [2018] NSWLEC 118, Al Maha Pty Ltd v Huajun Investments Pty Ltd (2018) 233 LGERA 170; [2018] NSWCA 245 and Rebel MH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130 and SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112 at [31], therefore, compliance with the Height of building development standard is demonstrated to be unreasonable or unnecessary and the requirements of clause 4.3(a) have been met on this way alone. For the sake of completeness, the other recognised ways are considered as follows.

4.2 Test 2 -Underlying objective is not relevant

The underlying objective or purpose IS relevant to the development and is therefore not relied upon.

4.3 Test 3-The objective would be defeated

The third test states that the objective would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable. In this instance, the objective would NOT be defeated or thwarted if compliance was required. Therefore, this reason is not relied upon.

4.4 Test 4-The development standard has been abandoned

The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence the standard is unreasonable and unnecessary. The standard has not been abandoned by Council and is therefore NOT relied upon.

4. 5 Test 5- The Zoning is unreasonable or inappropriate

The zoning of the subject site W1 Natural Waterways is considered reasonable and appropriate and is therefore NOT relied upon.
Therefore, that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case.

5. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS

5.1 Environmental Planning

Clause 4.6 (3)(b) of the PLEP, 2014 requires contravention of the development standard to be justified by demonstrating that there are sufficient environmental planning grounds to justify the contravention.

In Initial *Action Pty Ltd v Woollahra Council [2018] NSWLEC 118*, Preston CJ observed that in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6 to contravene a development standard, the focus must be on **the aspect or element** of the development that **contravenes the development standard**, not on the development as a whole.

In *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90,* Pain J observed that it is within the discretion of the consent authority to consider whether the environmental planning grounds relied on **are particular to the circumstances of the proposed development on the particular site.** The elements of the development which contravene the Height of Building development standard relate to the roof only

There are sufficient environmental planning grounds to justify contravention of the height of buildings development standard in this specific instance, as described below.

There are **strong environmental planning grounds to justify the variation**.

- Such as a design approach which **enhances cross ventilation** whereby the pitched roof collects hot air and allows it to be dispersed through the openable skylight and windows.

- The pitched roof facilitates the use of photovoltaic solar panels that have the capacity to generate a minimum of 10 peak kilowatts

- The need to raise the external 'ground level' to meet the requirements of the Estuarine Planning Level (EPL) by 370mm.

5. 2 Consistency with Objects of the EP&A Act

In *Initial Action,* the Court stated that the phrase "environmental planning grounds" is not defined but would refer grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects in section 1.3 of the Act.
While this does not necessarily require that the proposed development should be consistent with the objects of the Act, nevertheless, as set out in the Table below, we consider the proposed development is broadly consistent with each object, notwithstanding the proposed variation of the height development standard.

Assessment of consistency with the Objects of the EP&A Act	
Object	**Commentary**
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	The proposed height variation will promote the economic and social welfare of the community by providing a continued residential use within the context of surrounding boat sheds. The specific design approach results in a better environmental outcome in that the current cottage is in disrepair and in need of renovation.
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment	The proposal, inclusive of the height variation will promote ecologically sustainable development by achieving the required environmental requirements of SEPP BASIX.
(c) to promote the orderly and economic use and development of land	The proposed height variation promotes the orderly and economic use and development of the land by. The use of the land for a residential purpose is the appropriate use within the context given that this use has existed for a number of years without any negative issues.
(d) to promote the delivery and maintenance of affordable housing	This object is not relevant to this proposal.
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats	The proposed height variation and the proposal will not have any impact on threatened species or ecological communities.
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage)	No items or areas of built or cultural heritage will be negatively impacted by the proposed height variation. It should be noted that the Client has commenced initial conversations with 'Bush To Bowl' who are a 100% Aboriginal owned community enterprise. Their mission is around sensitively managing the land. These connections may inform the implementation of the landscape design and management of the site landscape as the project develops.
(g) to promote good design and amenity of the built environment	The proposed height variation will promote good design and amenity of the built environment by exhibiting a unique and bespoke design.
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants	The proposed development, inclusive of the variation, will comply with the relevant provisions of the BCA (for e.g. ceiling height)and will promote the health and safety of occupants. This is further ensured by the raising

	of the external and internal ground and floor levels respectively.
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State	This object is not relevant to this proposal.
(j) to provide increased opportunity for community participation in environmental planning and assessment	The proposed development will be publicly exhibited in accordance with the requirements of Council's Community Participation Plan.

Further to the above, there are two recent development applications under the PLEP, 2014 which have been endorsed by Council which have a comparable % Variation above the Height plane.

DA2023/0564 – 25 B Bakers Road, Church Point – Variation 46.60%
DA2022/2234 – 19 Morella Road, Whale Beach – Variation 42.2%
DA2022/1755 63 Hillside Road, Newport – Variation 54.1%
DA2020/1697 – 28 Palm grove Road, Avalon – Variation of 40%.

For these reasons, there are sufficient environmental planning grounds to justify the contravention of the maximum building height development standard, as it promotes good design and amenity of the built environment and there are no adverse environmental impacts as a result of the proposed height .

6. PUBLIC INTEREST

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 i**n which the development is proposed to be carried out. This was upheld by Initial Action at [27] This is required by clause 4.6(4)(a)(ii) of the LEP.
Consistency Caselaw

Consistency has been defined throughout caselaw including the following Land and Environment Court cases:

- Addenbrooke v Woollahra Municipal Council [2008] NSWLEC 190
- Schaffer Corporation v Hawkesbury City Council (1992) 77 LGRA 21
- Raissis v Randwick City Council [2019] NSWLEC 1040
- Abrams v Council of City of Sydney [2018] NSWLEC 1648
- Kingsland Developments v Parramatta Council [2018] NSWLEC 1241
- Dem Gillespies v Warringah Council (2002) 124 LGERA 147

In these cases, consistency is considered to be different to that of 'achievement'. The term 'consistent' has been considered in a judgement of the Court in relation to zone objectives and has been interpreted to mean **"compatible** "or "capable of existing together in harmony "(Dem Gillespies v Warringah Council (2002) 124 LGERA 147; Addenbrooke Pty Ltd v Woollahra Municipal Council [2008] NSWLEC 190) or "not being antipathetic "(Schaffer Corporation v Hawkesbury City Council (1992) 77 LGRA 21). Whichever interpretation is adopted the test of "consistency ", is less onerous than that of "achievement ".

6.1 Consistency with objectives of the development standard

The proposed development is consistent with the objectives of the height of buildings development standard, for the reasons discussed in Section 4 of this report.

6.2 Consistency with objectives of the zone

The table below considers whether the proposal is also consistent with the objectives of the zone

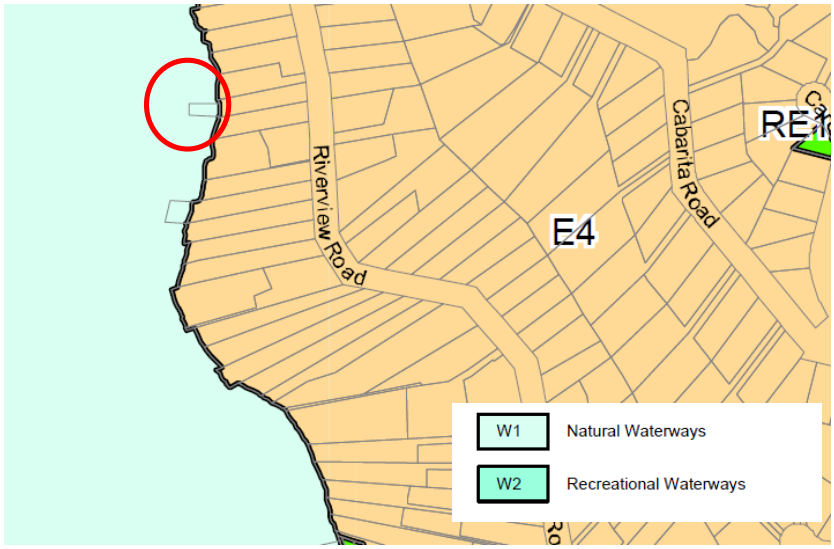


Figure 6: Zoning Map PLEP, 2014

Objectives of the W1 Natural Waterways - Objectives	Commentary
To protect the ecological and scenic values of natural waterways	The ecological values of the waterways are maintained, and the scenic values are enhanced by the replacement of a cottage in need of repair with an architecturally appropriate response in terms of height, bulk and scale.
To prevent development that would have an adverse effect on the natural values of waterways in this zone	There will be no adverse impacts on the waterways as this use has been in place for many years with no issues reported.
To provide for sustainable fishing industries and recreational fishing.	The proposal will not impact the fishing industry and continues to provide opportunities for recreational fishing.
To ensure development does not adversely impact on the natural environment or obstruct the navigation of the waterway	The proposal will not obstruct navigation of the waterway
To provide opportunities for private access to the waterway where these do not cause unnecessary impact on public access to the foreshore.	The use of the proposed cottage is entirely for private use and does not impact public access to the foreshore which continues to be available on Lot 1 DP 19402, 145 Riverview Road.

The proposal is consistent with the objectives of the height standard and the zone objectives and is therefore in the public interest.

7. STATE OR REGIONAL ENVIRONMENTAL PLANNING AND CONCURRENCE

This section considers whether contravention of the development standard raises any matter of significance for State or regional environmental planning, the public benefit of maintaining the development standard, and any other matters required to be taken into consideration by the Secretary before granting concurrence required by clause 4.6(5 (a). There is no identified outcome which would be prejudicial to planning matters of state or regional significance that would result as a consequence of varying the development standard as proposed by this application.

As demonstrated already, the proposal is consistent with the objectives of the development standard and the objectives of the zone, that there are environmental grounds for the variation, and in our opinion, there are no additional matters which would indicate there is any public benefit of maintaining the development standard in the circumstances of this application.

Finally, we are not aware of any other matters required to be taken into consideration by the Secretary before granting concurrence.

8. CONCLUSION

This submission requests a variation, under clause 4.6 of the PLEP, 2014 to the Height of building development standard for this submission demonstrates that:

• Numeric compliance with the height development standard would be unreasonable and unnecessary in the circumstances of this development.

• The development achieves the objectives of the development standard and is consistent with the objectives of the zone.

• There are sufficient environmental planning grounds to justify the contravention; and

• There development is in the public interest.

The concurrence of the Secretary can be assumed in accordance with Planning Circular PS 18-003.

On this basis, it is appropriate to exercise the flexibility provided by clause 4.6 of the PLEP, 2014 in the circumstances of this application.

ITEM 3.6 DA2024/0089 - 17 CROWN ROAD QUEENSCLIFF - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE

PURPOSE

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

RECOMMENDATION

That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of WLEP 2011 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

THAT Council as the consent authority **approves** Development Consent to DA2024/0089 for alterations and additions to a dwelling house on land at Lot 7 DP 958673, 17 Crown Road QUEENSCLIFF, subject to the conditions set out in the Assessment Report.

Reporting manager	Rodney Piggott
TRIM file ref	2024/293456
Attachments	⇩1 Assessment Report ⇩2 Site Plan and Elevations ⇩3 Clause 4.6

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/0089

Responsible Officer:	Simon Ferguson Tuor
Land to be developed (Address):	Lot 7 DP 958673, 17 Crown Road QUEENSCLIFF NSW 2096
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Samantha Louise O'Connor
Applicant:	Polly Harbison

Application Lodged:	13/02/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	20/02/2024 to 05/03/2024
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 14%
Recommendation:	Approval

Estimated Cost of Works:	$ 517,440.00

EXECUTIVE SUMMARY

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

The application is referred to the Northern Beaches Development Determination Panel (DDP) as the proposal contravenes Clause 4.3 Building Height development standard by greater than 10%.

There were no objections received during the notification period.

The critical assessment issues included non-compliance with Clause 4.3 Height of Building of WLEP, B3 Side Boundary Envelope, B5 Side Boundary Setbacks and B7 Front Boundary Setbacks of

Warringah Development Control Plan.

The 4.6 request for the non-compliance with height standard arises from the the slope of the site and the height of the existing dwelling. The proposed repairs and replacement of windows and privacy screens result in a minor non-compliance creating a 14% variation for a small section of the building.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for alterations and additions to the existing dwelling as follows:

- alterations to the existing windows and privacy screening
- internal reconfiguration of the kitchen and bathrooms
- construction of a new balcony terrace to the street frontage.

There is no tree removal proposed.

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 - 4.3 Height of buildings
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - B5 Side Boundary Setbacks
Warringah Development Control Plan - B7 Front Boundary Setbacks

SITE DESCRIPTION

Property Description:	Lot 7 DP 958673 , 17 Crown Road QUEENSCLIFF NSW 2096
Detailed Site Description:	The subject site consists of one allotment located on the northern side of Crown Road. The site is regular in shape with a frontage of 7.62m along Crown Road and a depth of 18.29m. The site has a surveyed area of 139.3m². The site is located within the R2 Low Density Residential zone and accommodates an existing 3 storey residence. The site slopes down approximately 5m from the front (south west) to the rear (north east). The site has virtually no vegetation except for some shrubs and screening plants. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by multi storey residential dwellings on small lots with little to no landscaping. Pavilion Reserve, a public park is located across the road, to the south.

Map:



SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site.

The land has been used for residential purposes for an extended period of time.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	**Comments**
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	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)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 29 of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 20/02/2024 to 05/03/2024 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	The application seeks consent for alterations and additions to a dwelling house. The Plans and SEE indicate that no significant landscape features

Internal Referral Body	Comments
	are impacted by the proposed works. No trees are to be removed or rock outcrops excavated. No objections are raised with regard to landscape issues subject to conditions.
NECC (Bushland and Biodiversity)	The comments in this referral relate to the following applicable controls and provisions: • SEPP (Resilience and Hazards) 2021 - Coastal Environment Area • Warringah DCP - Clause E2 - Prescribed Vegetation • Warringah DCP - Clause E4 -Wildlife Corridors • Warringah DCP - Clause E6 - Retaining unique environmental features The proposal would take place in a site that has been heavily disturbed and is unlikely to impact upon native flora and fauna. No native vegetation or fauna habitat would be impacted, the development is designed, sited and will be managed to avoid any significant adverse environmental impact.
NECC (Coast and Catchments)	The application seeks alterations to the existing windows, internal reconfiguration of the kitchen, and bathrooms, and proposes the construction of a new balcony terrace to the first floor above the existing garage, to the street frontage. The application has been assessed in consideration of the *Coastal Management Act 2016,* State Environmental Planning Policy (Resilience & Hazards) 2021 and has also been assessed against requirements of the Warringah LEP 2011 and Warringah DCP 2011. **Coastal Management Act 2016** The subject site has been identified as being within the coastal zone and therefore *Coastal Management Act 2016* is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the *Coastal Management Act 2016.* **State Environmental Planning Policy (Resilience & Hazards) 2021** The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021. Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA.

Internal Referral Body	Comments
	Comment: On internal assessment, the DA satisfies requirements under clauses 2.10, 2.11 and 2.12 of the SEPP R&H. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021 **Warringah LEP 2011 and Warringah DCP 2011** No other coastal related issues identified. As such, it is considered that the application does comply with the requirements of the coastal relevant clauses of the Warringah LEP 2011 and Warringah DCP 2011.
NECC (Development Engineering)	The proposed development is in Region 2. On-site detention is not required. Vehicle crossing construction is not proposed. A geotechnical report has been provided. I have no objections to the proposed development subject to the inclusion of the recommended engineering conditions of consent.
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS Discussion of reason for referral The proposal has been referred to Heritage as the subject site adjoins a heritage item with local significance, listed within the Warringah LEP 2011: **Item – I118 – House** - 17A Crown Road. Details of heritage items affected Details of the item as contained within the Northern Beaches Inventory is as follows: **Item I118 – House** Statement of significance A locally rare surviver of a number of small cottages which were built on the cliff face between Freshwater and Queenscliff. Historically represents the nature of early development in the area. Physical description Original single storey weatherboard dwelling located on cliffside. Corrugated metal gabled roof with skillion roofed verandah structures which have been enclosed. The building has been altered by the enclosure of the verandah. Sandstone block foundations appear in good condition and are an important feature

<table>
<tr><th>Internal Referral Body</th><th>Comments</th></tr>
<tr><td></td><td>
of the building.
There have been further alterations and a 2 storey pavilion style addition to the north-east (beach side) of the original building in the late 1990s.

<table>
<tr><td colspan="3">Other relevant heritage listings</td></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>
Consideration of Application
The proposal seeks consent for alterations and additions to the existing dwelling including internal reconfigurations, window replacements and the construction of a new balcony terrace to the first floor above the existing garage, to the street frontage. The proposed works do not increase the existing footprint or the envelope visible from the heritage item. The change of materials and colour scheme have been identified as recessive earthy tones in the submitted HIS, however a detailed colour scheme is required. Given the proposed works are mainly at the street frontage and the visibility from the heritage item is limited, the impact of the proposal upon the heritage building is considered manageable.

Therefore, no objections are raised on heritage grounds subject to one condition.

<u>Consider against the provisions of CL5.10 of WLEP 2011.</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
</td></tr>
</table>

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

External Referral Body	Comments
Aboriginal Heritage Office	The proposal was referred to the Aboriginal Heritage Office who provided a response stating that the proposal is acceptable subject to recommendations which will be included as a condition of consent. The Aboriginal Heritage Officer provided the following comment: 'No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development. Should any additional works occur then further review will be required. Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.'

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No. A1733188 dated 23 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 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 proposal does not result in the removal of native vegetation and does not preclude access to and along the foreshore area. Moreover, the proposal has been reviewed by the Aboriginal Heritage Office, who have noted that the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. A Geotechnical Report has been submitted with this application and states that the proposal will be acceptable from a geotechnical standpoint, subject to certain recommendations to reduce coastal and landslip hazards. Based off the above, Council can be satisfied that the proposal has been designed, sited and will be managed to avoid an adverse impact upon the matters referred to in subclause (1).

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

Comment:
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:
As noted above, the proposal does not preclude access to and along the foreshore. The proposal has been reviewed by Council's Heritage Officer and the Aboriginal Heritage Office and found to be acceptable in terms of Aboriginal cultural heritage and built environmental heritage. The proposal does not result in a loss of views towards Freshwater Beach and does not result in overshadowing of the foreshore. The alterations and additions respect the topography by stepping down the slope and will not be visually imposing. The proposed development is consistent with surrounding development along the headland in terms of bulk and scale. Based on the above, Council can be satisfied that the proposal satisfies the requirements of Clause 2.11.

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

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

Comment:

Given the nature of the works proposed and the conditions included to negate coastal hazards, Council can be satisfied that the proposal is not likely to cause an unacceptable level of risk on adjoining properties or the subject site.

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

Chapter 4 – Remediation of Land

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.7m (window) 4.7m (new balcony)	14%	**No (see comments)**

Compliance Assessment

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

Detailed Assessment

4.6 Exceptions to development standards

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

Development standard: Clause 4.3 - Height of Buildings
Requirement: 8.5m
Proposed: 9.7m
Percentage of variation: 14%

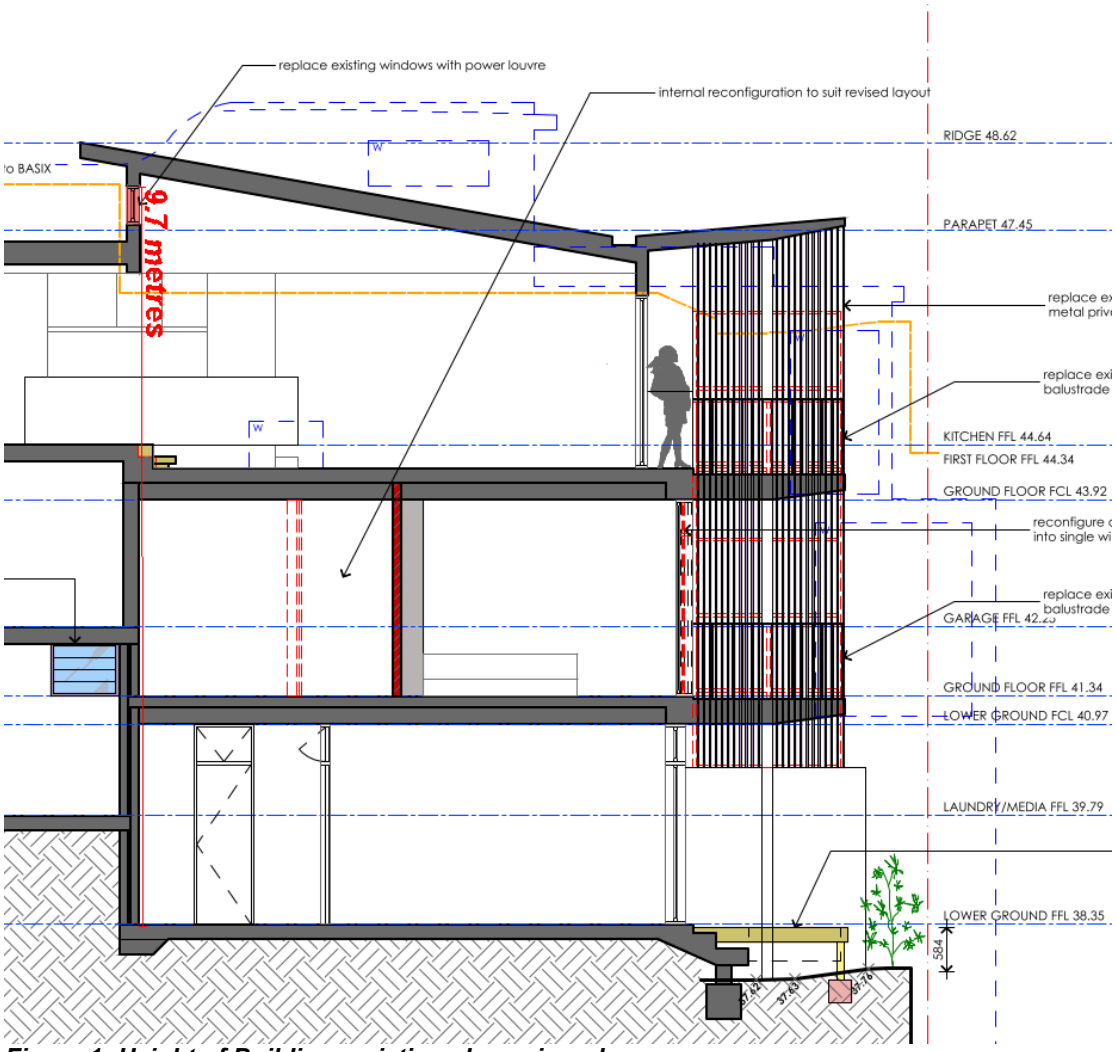


Figure 1: Height of Building variation shown in red

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

Subclause (1) of this clause provides that:

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

Comment:

The objectives of this clause have been considered pursuant to Section 4.15(a)(i) of the *Environmental*

Planning and Assessment Act 1979.

Subclause (2) of this clause provides that:

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

Comment:

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

Subclause (3) of this clause provides that:

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

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

Comment:

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

The variation sought is very minor and will have no discernable impacts. Strict compliance with the control would result in poorer amenity results.

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

Comment:

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

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

The Clause 4.6 Request argues, in part:

There are sufficient environmental planning grounds to justify contravening the development standard. The planning objectives of the subject development seek to minimise impact and retain existing characteristics for the public domain.
Strict application of the maximum building is difficult in the context of the existing building on a site that has already been excavated to accommodate the existing three storey building. A positive planning

outcome is achieved in this instance by not strictly complying with the building height, as demonstrated in this clause 4.6 submission and in the Statement of Environmental Effects.
Supporting a proposal that aims to repair and replace defective building elements without adversely impacting on the environment, character or amenity of the locality is appropriate and providing for a better outcome for the existing dwelling, justifies contravening the subject development standards. Council must also be satisfied that the proposal meets the objectives of the standards and the objectives of the subject zone. The proposal meets the objectives of the maximum building height standards, as discussed above and as detailed in the SEE and meets the objectives of the R2 Low Density Residential Zone.

Council's Planning Assessment Officer concurs with the applicant's justification.

The proposed work includes minor repair and replacement of existing elements within the existing envelope which require maintenance that exceed the allowable building height. The non-compliance would also be a direct result of the existing built form and slope of the land. It is also agreed that the proposal will not have any unreasonable amenity impact to surrounding properties as a result of the height non-compliance. The proposal has been designed to allow for adequate internal amenity, without compromising the amenity of adjoining properties.

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

The proposed development is an orderly and economic use and development of the land, and that minor improvements and repairs will ensure the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, thereby satisfying objects 1.3(c) and (g) of the EPA Act.

Public Interest:

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

Conclusion:

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

It is considered on balance, that having regard to the particular circumstances of the minor Height of Building non compliance due to existing site constraints and topography, the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	4.8m	N/A	Yes
B3 Side Boundary Envelope	5m (NW)	outside envelope	N/A	**No (see comments)**
	5m (SE)	within envelope	N/A	Yes

B5 Side Boundary Setbacks	0.9m (NW)	0.3m	66%	**No (see comments)**
	0.9m (SE)	1m	N/A	Yes
B7 Front Boundary Setbacks	6.5m	1.6m	75%	**No (see comments)**
B9 Rear Boundary Setbacks	6m	1.1m (no change to existing)	N/A	N/A
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	no change to existing	N/A	N/A

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	N/A	N/A
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B3 Side Boundary Envelope

Description of non-compliance

The proposal has one encroachment on the north western elevation up to 3.4m for a length of 2m, as displayed below:

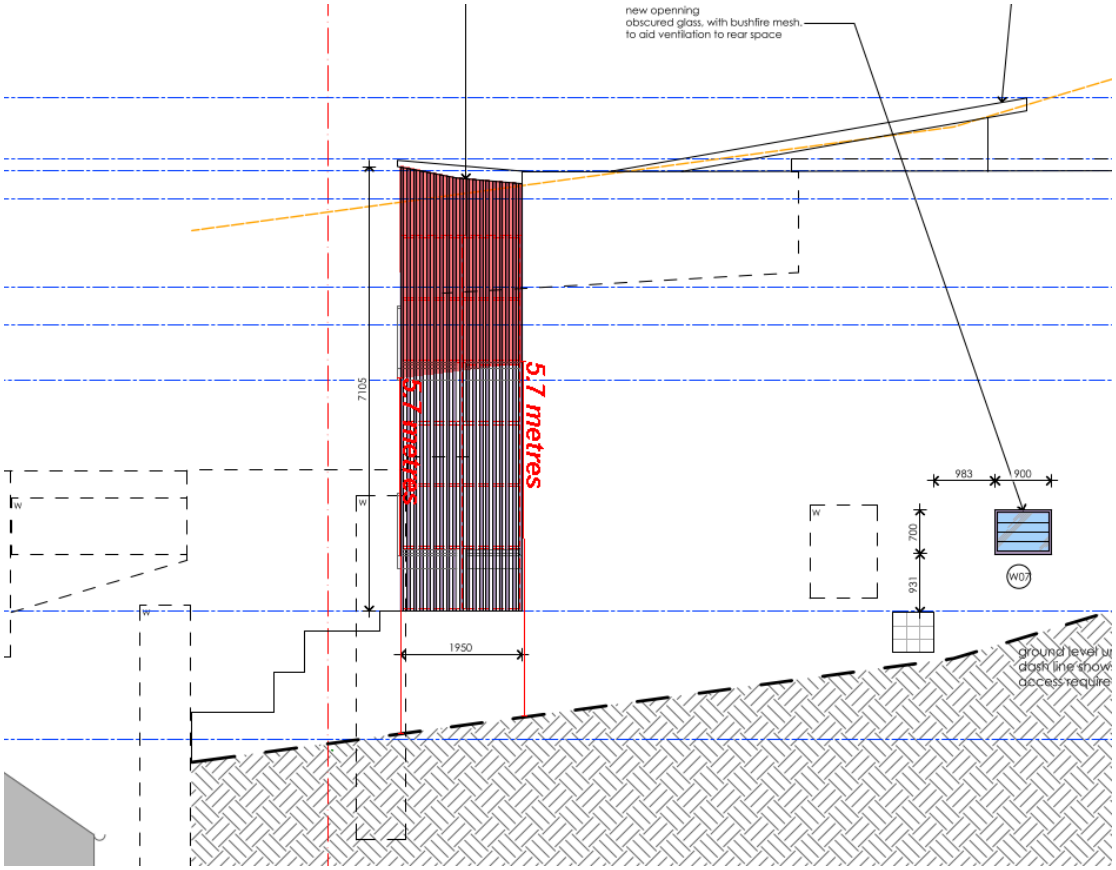


Figure 2. *North Western boundary building envelope non-compliance.*

Merit consideration

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

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

  Comment:

  The proposed encroachment within the north western building envelope only relates to a lightweight privacy screen that is not considered to be unreasonably scaled or bulky.

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

  Comment:

  The proposed privacy screen is replacing the existing privacy screening and will not alter the existing built form of the dwelling. The small increase in height so as the privacy screen abuts the roof line is an architectural feature and will have no additional impacts. Rather, the privacy screening will enhance privacy for both the occupants of the development and neighbouring properties. Overshadowing from this aspect of the development is negligible in comparison to existing site conditions. Therefore, the proposal will reasonably ensure that adequate light, solar access and privacy is maintained between adjoining properties.

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

  Comment:

  The proposal is located within the existing building footprint and responds appropriately to the topography of the site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

B5 Side Boundary Setbacks

Description of non-compliance

The existing development includes a wall on the northern western boundary with a 0.1m setback. The proposed front deck extends this setback 0.1m with the 3m privacy screen. The proposed front terrace is at a 0.3m setback and extends 3metres forward of the existing building line. The proposed development exacerbates this non-compliance only in that the terrace is extended to match the existing non-compliant wall.

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 development does not alter the existing landscaped area at the site.

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

  Comment:

  The proposed front terrace is modest and of a similar design and style to the neighbouring property to the south. The existing building footprint is largely unaltered and the proposed alterations will not increase its visual prominence any more than is reasonable.

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

  Comment:

  As above, the proposed front terrace is in a similar location and style as that of the neighbouring property to the south. The existing built form is at a 0.1m setback and the non-compliance is a result of good architectural design whereby the terrace and associated privacy screen will appear flush with the existing wall. The terrace is located over the existing building footprint and well below the existing roof ridge of the dwelling house. The proposed 0.3m setback wall is located immediately abutting the garage structure on the adjoining site to the north, thereby reducing the impact of the wall on the neighbour. That is, the wall is not located closely to habitable rooms or private open space of the adjoining site and is not imposing in that regard.

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

  Comment:

  The proposed development provides suitable amenity to adjoining sites and retains suitable amenity for the site itself. The proposed development is compliant with the requirements of the relevant privacy, amenity, and solar access clauses of the WDCP 2011, as noted within this report.

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

  Comment:

  The proposed development does not unreasonably impact upon views to or from public or private properties.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

B7 Front Boundary Setbacks

Description of non-compliance

This control requires development to be setback 6.5m from the front boundary. The proposal involves the construction of a first floor terrace over the existing garage with a setback of 1.6m which does not comply.

Merit consideration:

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

- *To create a sense of openness.*

  Comment:

  The proposal maintains the existing front setback area and matches the setbacks and designs of adjoining residences.

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

  Comment:

  The proposal maintains a generally consistent front building line and is consistent with the building alignment of adjoining dwellings. As such, the proposal maintains the visual continuity, pattern of buildings and landscape elements.

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

  Comment:

  The proposal provides an open terrace which is similar dimensions and design to the adjoining terrace at the site to the south. The proposed setback is is consistent with other developments on Crown Road and will not impact on the visual quality of streetscapes and public spaces from the streetscape.

- *To achieve reasonable view sharing.*

  Comment:

  The proposed development does not impact on any views. No submissions have been received in relation to view loss.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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 $5,174 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $517,440.

CONCLUSION

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

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

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

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

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

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

- Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and

- There are sufficient environmental planning grounds to justify the variation.

PLANNING CONCLUSION

This proposal, for alterations and additions to a dwelling house has been referred to the Northern Beaches Development Determination Panel (DDP) as the proposal contravenes Clause 4.3 Building Height development standard by greater than 10%.

There were no objections received during the notification period.

The critical assessment issues included non-compliance with Clause 4.3 Height of Building of WLEP, B3 Side Boundary Envelope, B5 Side Boundary Setbacks and B7 Front Boundary Setbacks of Warringah Development Control Plan.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.
It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2024/0089 for Alterations and additions to a dwelling house on land at Lot 7 DP 958673, 17 Crown Road, QUEENSCLIFF, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

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

Approved Plans

Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA100	A	Proposed Site Plan	Polly Harbison Design	23.01.2023
DA101	A	Proposed First Floor Plan	Polly Harbison Design	23.01.2023
DA102	A	Proposed Ground Floor	Polly Harbison Design	23.01.2023
DA103	A	Proposed Lower Ground Floor	Polly Harbison Design	23.01.2023
DA200	A	Proposed South East Elevation	Polly Harbison Design	23.01.2023
DA201	A	Proposed North West Elevation	Polly Harbison Design	23.01.2023
DA202	A	Proposed South West Elevation	Polly Harbison Design	23.01.2023
DA203	A	Proposed North East Elevation	Polly Harbison Design	23.01.2023
DA210	A	Proposed Section A	Polly Harbison Design	23.01.2023
DA220	A	Proposed Section B	Polly Harbison Design	23.01.2023

Approved Reports and Documentation			
Document Title	**Version Number**	**Prepared By**	**Date of Document**
Basix Certificate A1733188	-	Polly Harbison Design	23.01.2024
Geotechnical Assessment	-	Green Geotechnics	05.02.2024
Waste Management Report	-	Polly Harbison Design	05.02.2024

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

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

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	16.02.2024

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

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

3. **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 $5,174.40 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 $517,440.00.

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

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

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

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

6. **Security Bond**

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

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

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

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

The recommendations 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.

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

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

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

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

10. **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.

11. **External materials and colour scheme**
Details of the proposed materials and external colour scheme are to be submitted to the Council's Heritage Advisor for approval prior to the issue of the Construction Certificate.

Reason: To ensure the external materials and colour scheme is compatible with the character of the heritage item in the vicinity.

12. **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

13. **Protection of Rock and Sites of Significance**
All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.

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

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

Reason: Preservation of significant environmental features.

14. **Tree and Vegetation Protection**

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

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

Reason: Tree and vegetation protection.

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

Reason: Public safety.

16. **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.

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

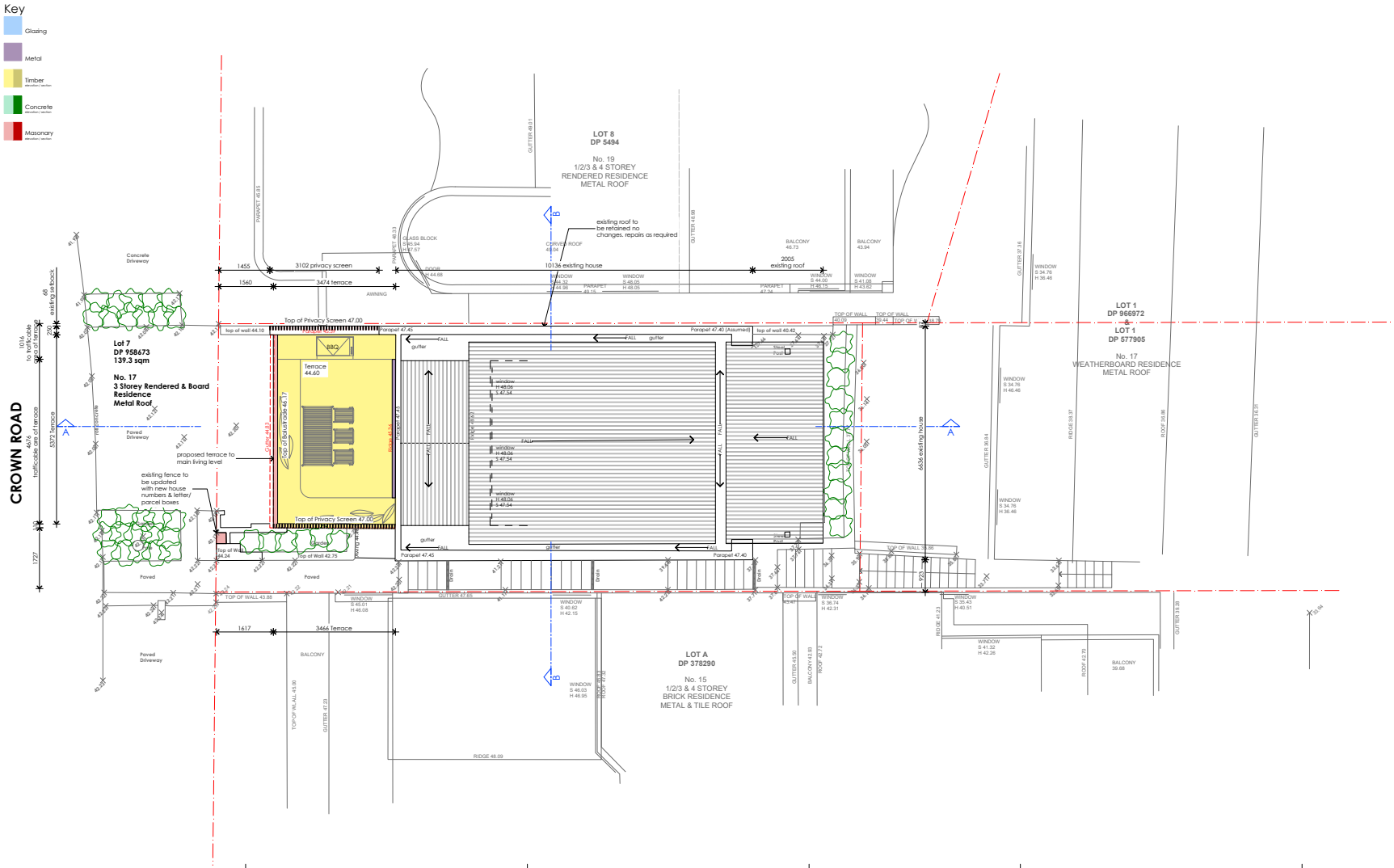
BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

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

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

19. **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.



DEVELOPMENT APPLICATION

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NOT FOR CONSTRUCTION

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E info@pollyharbison.com.au

DESCRIPTION	DATE	REV
DA Submission	23.01.2023	A

PROJECT
17 CROWN ROAD
QUEENSCLIFF NSW 2096

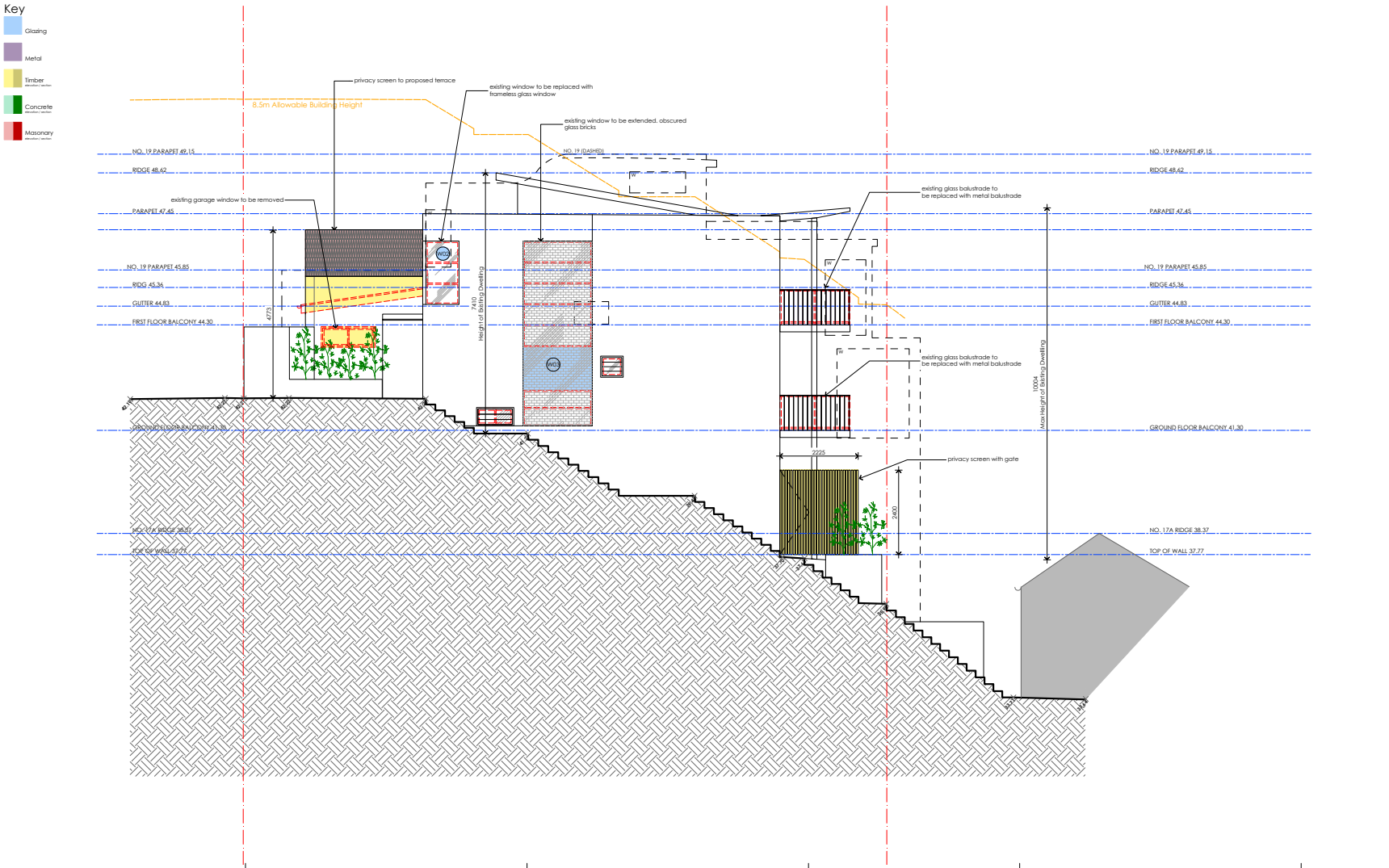
CLIENT
SAMANTHA O'CONNOR

DRAWING TITLE
PROPOSED SITE PLAN

DRAWING NO.
DA 100

SCALE
1:100

REVISION
A



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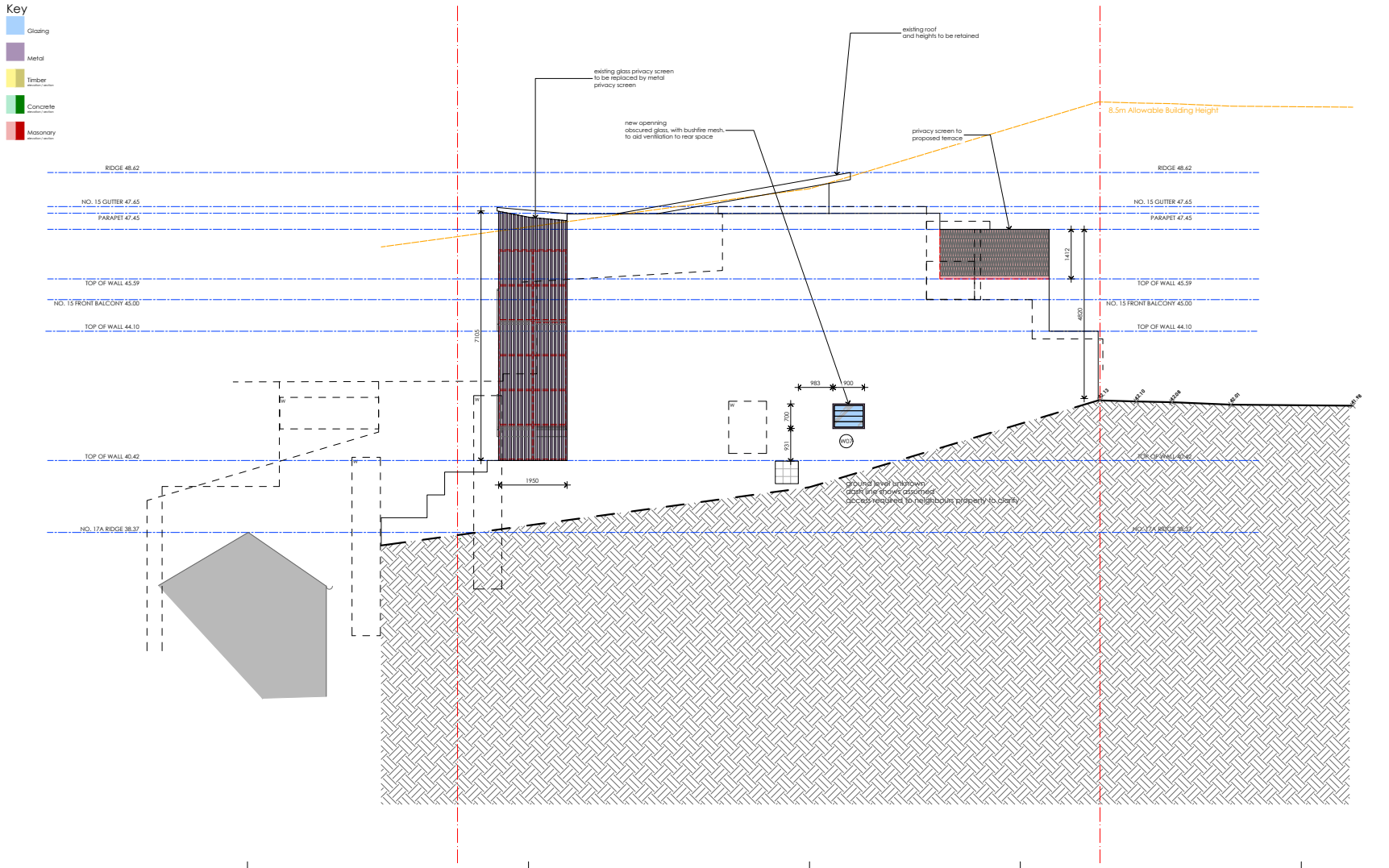
CLIENT
SAMANTHA O'CONNOR

DRAWING TITLE
PROPOSED SOUTH EAST ELEVATION

DRAWING NO.
DA 200

SCALE
1:100

REVISION
A



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PROJECT
17 CROWN ROAD
QUEENSCLIFF NSW 2096

CLIENT
SAMANTHA O'CONNOR

DRAWING TITLE
PROPOSED NORTH WEST ELEVATION

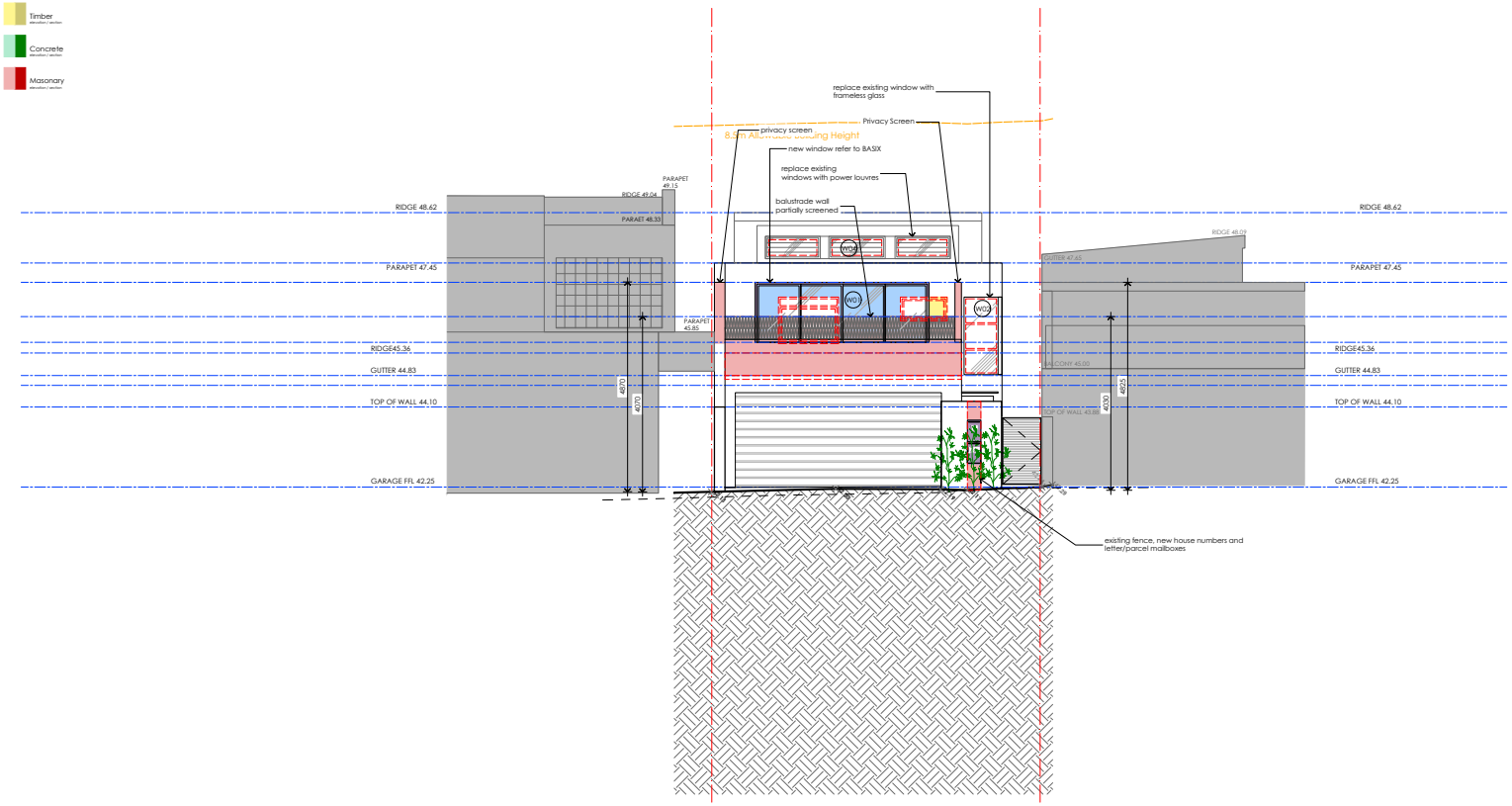
DRAWING NO.
DA 201

SCALE
1:100

REVISION
A

Key

- Glazing
- Metal
- Timber
- Concrete
- Masonary



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QUEENSCLIFF NSW 2096

CLIENT
SAMANTHA O'CONNOR

DRAWING TITLE
PROPOSED SOUTH WEST ELEVATION

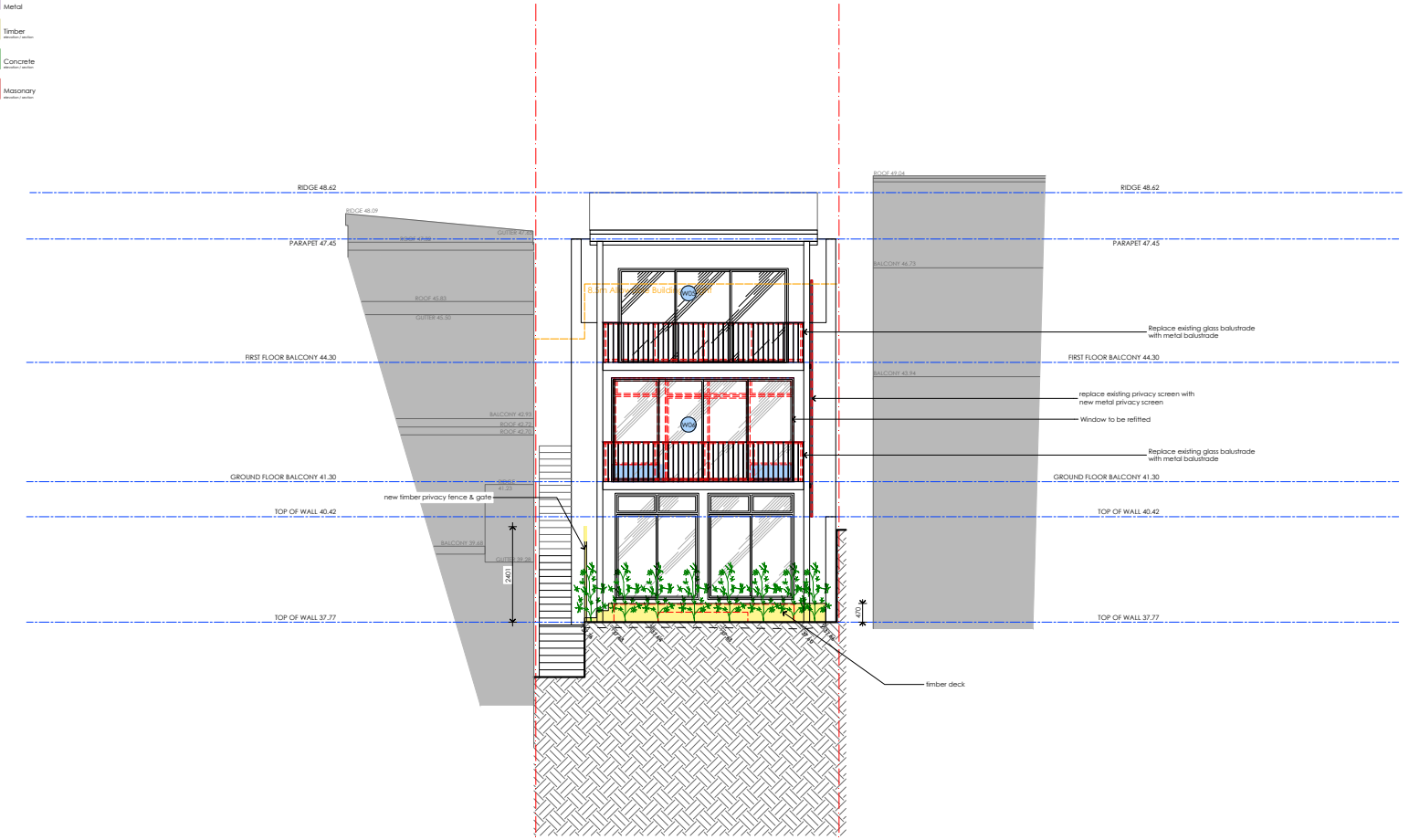
DRAWING NO.
DA 202

SCALE
1:100

REVISION
A

Key

- Glazing
- Metal
- Timber
- Concrete
- Masonary



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DESCRIPTION	DATE	REV
DA Submission	23.01.2023	A

PROJECT
17 CROWN ROAD
QUEENSCLIFF NSW 2096

CLIENT
SAMANTHA O'CONNOR

DRAWING TITLE
PROPOSED NORTH EAST ELEVATION

DRAWING NO.
DA 203

SCALE
1:100

REVISION
A

polly harbison design pty ltd

CLAUSE 4.6 REQUEST FOR A VARIATION TO DEVELOPMENT STANDARDS

Warringah Local Environment Plan 2011
Part 4 Principal Development Standards
Clause 4.3 Height of buildings

ALTERATIONS AND ADDITIONS TO EXISTING DWELLING HOUSE AT 17 CROWN ROAD, QUEENSCLIFF.

1. Introduction

Clause 4.6 of Warringah Local Environmental Plan 2012 (MLEP 2012) allows for flexibility in the application of certain development standards to provide *an appropriate degree of flexibility in applying certain development standards to particular development, and to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

The proposal seeks approval for alterations and additions to an existing dwelling, where the existing dwelling house exceeds the allowable building height of 8.5m. The proposed work includes minor repair and replacement of existing elements within the existing envelope which require maintenance that exceed the allowable building height.

It is proposed to retain the existing 3 storey dwelling, and its existing roof form, with alterations to the internal layout and repair, maintenance of existing windows and privacy screens which require replacement due to wear and tear along with the addition of a new first floor terrace which complies with the Warringah LEP height of Building as shown on architectural drawings included with this application.

2. The relevant development standards

Clause 4.3 of WLEP 2011 sets out objectives for the height of buildings. As stated below;
The Clause states:

4.3 Height of buildings

(1) The objectives of this clause are as follows—
(a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,
(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,
(c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,
(d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.

3. Requested variation to the standards

The proponent seeks to repair and replace (where required) existing building elements (a window and privacy screen) which exceed the allowable building height limit of 8.5m. All proposed new building works are within the allowable 8.5m height limit

The proposed repairs and replacements occur within the existing envelope of the building and do not propose altering the overall height and bulk of the existing dwelling. Refer to drawing (refer to architectural drawing DA 210 prepare by Polly Harbison Design),

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4. Requirements of clause 4.6 – Exceptions to development standards

The objectives of clause 4.6 are as follows:

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

Clause 4.6(3) requires that a request to contravene the control, to demonstrate:

> *"(a) 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."*

These matters are addressed below in Sections 5 and 6.

5. Compliance with the development standard is unreasonable or unnecessary

It is considered that enforcing compliance would be unreasonable and unnecessary in this case, for the following reasons.

The existing dwelling currently exceeds the allowable 8.5m building height. All proposed works within the area of noncompliance are works of maintenance or replacement required due to wear and tear on the existing building. These proposed repairs/replacements do not reduce or negatively impact on the privacy and amenity of the neighbouring buildings or the public domain. A minor increase in height of the existing rear privacy screen, increases the privacy of number 19 Crown Road to reduce overlooking from the internal living space to the adjacent window at 19 Crown Road (refer to architectural drawing DA 210 prepare by Polly Harbison Design), and for structural support of the proposed new screen.

The objectives for clause 4.3 building height control are as follows:

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

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

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

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

The proposal achieves the above objectives as detailed in the following assessment.

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

The proposed changes do not alter the overall height and scale of the existing dwelling. Which is consistent with the neighbouring dwelling heights, when viewed from both the street and the Freshwater beach. All proposed works over 8.5m are within the existing envelope of

the building, and a related to the repair, replacement or maintenance of existing building elements.

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

The proposed changes do not impact on the visual impact, views or loss of solar access to the neighbouring properties or adjacent street. The proposed replacement of the rear privacy screen aims to increase the privacy of no. 19 Crown Road by increasing in the existing privacy screen height slightly, still within the existing envelope of the building. Its increased height does not reduce the solar access of this property.

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

The proposed dwelling is compatible with the above objective. The proposed changes which exceed the allowable height are minor repairs and replacement which are within the existing envelope of the building. The subject site can be viewed from the freshwater beach however the repairs and maintenance will be within the existing envelope and will not impact or significantly alter the scenic quality of the coastal environment.

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

The proposed dwelling is compatible with the above objective. The proposed changes which exceed the allowable height are minor repairs and replacement which are within the existing envelope of the building. The subject site can be viewed from the freshwater beach and pavilion reserve. The repairs and maintenance will be within the existing envelope and will not impact or significantly alter the visual impact of the dwelling when viewed from these public places.

The proposal achieves the objectives of the R2 Low Density Residential Zone

The zone objectives of the R2 Low Density Residential Zone are noted and commented upon below;

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

The proposal achieves the zone objectives as detailed in the following assessment.

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

The proposal is for low density housing comprising a single dwelling house within a low-density residential environment and meets the housing needs of the community by providing a contemporary dwelling which provides a higher level of occupant amenity, commensurate with expectations for harbourside living.

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

The proposal is for a single dwelling and therefore the zone objective relating to non-residential land uses is not applicable.

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

The proposal is alterations and additions to a single detached dwelling which is compatible with the single dwelling character of the locality. The proposed is alterations to the existing dwelling with a small complying addition for additional private open space accessible to the primary living level retaining a significant portion of the existing dwelling and retaining the low-density residential environments charactered in this setting.

Compliance would result in a poorer planning outcome

One of the objectives of Clause 4.6 is "*to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*" In this case a substantially better outcome for the development is achieved by allowing for some flexibility in relation to the allowable building height. As the proposed changes which impact on the 8.5m allowable height are for reasonable maintenance of the existing building, and do not negatively impact on the amenity of the surrounding area and neighbours. The proposed alterations aim to improve the visual privacy of the neighbouring property at 19 Crown Road.

A superior planning outcome is achieved by allowing some flexibility to maximum building height in this instance.

Lack of impact

As noted in the above discussion and in the Statement of Environmental Effects, despite the minimal height non-compliance, the environmental and visual qualities of the locality, streetscape and amenity of surrounding properties will be maintained by the alterations and additions to substantially retained dwelling at 17 Crown Road.

There are sufficient environmental planning grounds to justify contravening the development standard. The planning objectives of the subject development seek to minimise impact and retain existing characteristics for the public domain.

Strict application of the maximum building is difficult in the context of the existing building on a site that has already been excavated to accommodate the existing three storey building. A positive planning outcome is achieved in this instance by not strictly complying with the building height, as demonstrated in this clause 4.6 submission and in the Statement of Environmental Effects.

Supporting a proposal that aims to repair and replace defective building elements without adversely impacting on the environment, character or amenity of the locality is appropriate and providing for a better outcome for the existing dwelling, justifies contravening the subject development standards.

Council must also be satisfied that the proposal meets the objectives of the standards and the objectives of the subject zone. The proposal meets the objectives of the maximum building height standards, as discussed above and as detailed in the SEE and meets the objectives of the R2 Low Density Residential Zone.

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Also in acting in the Secretary's concurrence role, Council must consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.

In relation to (a), the proposed building height variations are minor and are not of any State or regional significance.

In relation to (b), there is no public benefit from maintaining the standard as there is no adverse impact on the public domain or neighbour amenity, the proposal is consistent with other relevant planning controls and a better outcome is achieved. Building height standards should be applied with some degree of flexibility where proposal are including maintenance of existing built elements within the existing building envelope. Such an approach is in the interest of orderly and efficient development and maintenance of land and properties.

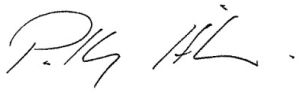
In relation to (c), there are no other matters that require consideration.

6. Conclusion

The proposed alterations and additions are consistent with the established 2 to 3 storey building scale in the locality and is compatible with the existing and desired future character and streetscape, as envisaged in the planning controls for the R2 Low Density Residential Zone.

The development, in the form proposed, retains existing portions of the dwelling which exceed the building height limit, alterations for the purpose of maintenance and repair to existing building elements does not impact the density, scale and height, with no material environmental, streetscape or amenity impacts. The proposal is consistent with the objects of the EP&A Act. Requiring 100% compliance is unreasonable and unnecessary in this case, as it would not result in any material benefit in relation to urban design or amenity. As demonstrated in this submission, requiring strict numerical compliance would not consider the existing condition of the retained dwelling on site.

The proposal achieves the objectives of the R2 Low Density Residential Zone and the building height standards, despite the numerical non-compliances. The requested modest variation to the 8.5m maximum building height standard is appropriate and worthy of support.



Polly Harbison
Principal
Polly Harbison Design Pty Ltd

ITEM 3.7 DA2023/1846 - 1 ROSEDALE AVENUE FAIRLIGHT - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE

PURPOSE

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

RECOMMENDATION

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

THAT Council as the consent authority **approves** Development Consent to DA2023/1846 for alterations and additions to a dwelling house on land at Lot B DP 330181, 1 Rosedale Avenue FAIRLIGHT, subject to the conditions set out in the Assessment Report .

Reporting manager	Rodney Piggott
TRIM file ref	2024/293495
Attachments	⇩1 Assessment Report ⇩2 Site Plan and Elevations ⇩3 Clause 4.6

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/1846

Responsible Officer:	Simon Ferguson Tuor
Land to be developed (Address):	Lot B DP 330181, 1 Rosedale Avenue FAIRLIGHT NSW 2094
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Kenneth Luke Macnab Kirsty Mackay-Fisher
Applicant:	Cradle Design

Application Lodged:	18/01/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	29/01/2024 to 12/02/2024
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 12.9%
Recommendation:	Approval

Estimated Cost of Works:	$ 1,203,744.00

EXECUTIVE SUMMARY

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

The application is referred to the Northern Beaches Development Determination Panel (DDP) as the proposal contravenes Clause 4.3 Building Height development standard by greater than 10%.

There were no objections received during the notification period.

The critical assessment issues included non-compliance with Clause 4.3 Height of Building of MLEP and 4.1.4.1 Street Front setbacks of MDCP.

The 4.6 request for the non-compliance with height standard arises from the the slope of the site and the height of the existing dwelling. The proposed additions result in a minor non-compliance creating a 12.9% variation for a small section of the building.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for alterations and additions to the existing dwelling as follows:

Sub Floor

- Demolish the existing single detached garage and adjacent stairs
- Construct a new integrated double garage and internal access stairs
- Construct a new driveway and entry stairs

Ground Floor

- Demolish existing northern elevation of ensuite and bedroom 2 and associated structures
- Construct new walk-in robe and ensuite to master bedroom
- Extend bedroom 2 and add new ensuite

First Floor

- Internal reconfigurations
- New roof above to additions at ground floor level.

There are no changes proposed to the existing landscaping at the site and no tree removal proposed.

ASSESSMENT INTRODUCTION

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

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

- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Development Control Plan - 3.4.3 Maintenance of Views
Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

SITE DESCRIPTION

Property Description:	Lot B DP 330181 , 1 Rosedale Avenue FAIRLIGHT NSW 2094
Detailed Site Description:	The subject site consists of one allotment located on the western side of Rosedale Avenue in Fairlight, on the corner of Willyama Avenue. The site is irregular in shape with a an eastern boundary of 35.40 metres (Rosedale Avenue frontage), southern boundary of 26.985 metres (Willyama Avenue), western boundary of 22.435 metres and northern boundary of 13.5 metres (7.645m and 5.855m). The site has a surveyed area of 511.6m². The site is located within the R1 General Residential zone and accommodates one and two storey rendered and clad dwelling house, with a tile roof. The lot has vehicular access from Willyama Avenue to a single detached garage. The site slopes gently from the north-eastern corner down towards the south-western corner (from Rosedale Avenue to Willyama Avenue). The site contains grassed areas, shrubs, hedges and some trees. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by residential land uses including single detached, attached, and multi-dwelling strata titled dwellings.

Map:



SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site.

The land has been used for residential purposes for an extended period of time.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration	Comments
Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	These matters have been addressed via a condition of consent. Clause 29 of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application.This clause is not relevant to this application. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 29/01/2024 to 12/02/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The proposal is supported with regard to landscape issues. Council's Landscape Referral section have considered the application against the Manly Local Environment Plan, and the following Manly DCP 2013 controls (but not limited to): • 3.3.1 Landscaping Design • 3.3.2 Preservation of Trees or Bushland Vegetation • 4.1.5 Open Space and Landscaping The proposed works are mainly contained to the existing dwelling footprint. The removal of the detached garage allows for some more substantial landscaping along the western boundary. All trees and vegetation shown to be retained shall be protected during works. The landscape proposal is generally supported and all proposed planting shall be installed in accordance with the requirements outlined in the conditions of consent. *Cupaniopsis anacardioides* and all *Rhaphiolepis* species shall be substituted with suitable alternatives.
NECC (Development Engineering)	The proposed development is in Region 3. Additional on-site detention is not required. Vehicle crossing construction is not proposed. A geotechnical report has been provided. I have no objections to the proposed development subject to the inclusion of the recommended engineering conditions of consent.
Strategic and Place Planning (Heritage Officer)	No HERITAGE COMMENTS Discussion of reason for referral This application has been referred as the property is located adjacent to **Item I2 -**

Internal Referral Body	Comments
	All stone kerbs, which is listed in Schedule 5 of Manly LEP 2013.
	Details of heritage items affected
	Details of this heritage item in the vicinicty, as contained within the heritage inventory, are as follows: Heritage item I2 Statement of significance Stone kerbs are heritage listed. Physical Description Sandstone kerbing to streets relating to paving and kerbing of streets in the nineteenth century. Mostly located within Manly Village area and adjacent lower slopes of Eastern Hill and Fairlight Detail what heritage items are affected by the proposal and outline why these items are of heritage significance (include the Statement of Significance from the Heritage Inventory Sheet)
	Other relevant heritage listings
	SEPP (Biodiversity and Conservation) 2021 — No
	Australian Heritage Register — No
	NSW State Heritage Register — No
	National Trust of Aust (NSW) Register — No
	RAIA Register of 20th Century Buildings of Significance — No
	Other — No
	Consideration of Application
	The application proposes alterations and additions to an existing 2 storey dwelling, including alterations to the ground floor level, demolition of the existing detached garage, construction of a sub floor garage, and an addition at first floor level. The works do not propose any changes to the existing driveway location and hence the proposed works do not impact upon the heritage listed stone kerb in Willyama Avenue and therefore will

Internal Referral Body	Comments
	not have an adverse impact upon the heritage significance of this item. **Therefore, no objections are raised on heritage grounds and no conditions** **required.** Consider against the provisions of CL5.10 of WLEP. Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? N/A Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? N/A

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No. A505104_03 dated 13 December 2023.

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

SEPP (Transport and Infrastructure) 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	9.6m	12.9%	**No (see comments)**
Floor Space Ratio	FSR: 0.6:1	FSR: 0.53:1	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

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

Development standard: Clause 4.3 - Height of Buildings
Requirement: 8.5m
Proposed: 9.6m
Percentage of variation: 12.9%

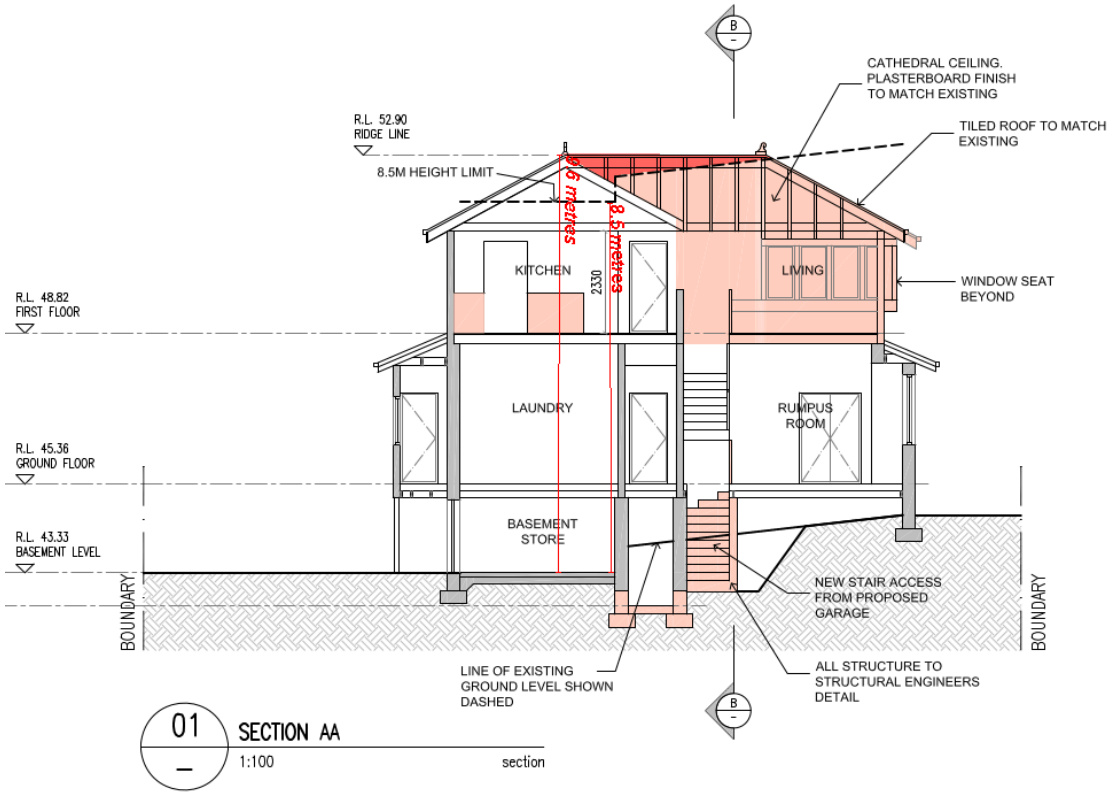


Figure 1: Height of Building variation shown in red

With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is accompanied by a document that sets out the grounds on which the Applicant seeks to demonstrate the matters set out in Clause 4.6(3)(a) and (b) of the MLEP 2013 (the 'Clause 4.6 Request').

Subclause (1) of this clause provides that:

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

Comment:

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

Subclause (2) of this clause provides that:

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

excluded from the operation of this clause.

Comment:

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

Subclause (3) of this clause provides that:

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

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

Comment:

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

The variation sought is very minor and will have no discernable impacts. Strict compliance with the control would result in poorer amenity results.

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

Comment:

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

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

The Clause 4.6 Request argues, in part:

Context

- *The area surrounding the subject site is characterised by 2 and 3 storey residential dwellings, stepped to accommodate the sloping topography and to enjoy views towards North Harbour.*
- *The existing dwelling has a non-compliant maximum building height and the proposed development does not exceed the existing building height, with an aesthetically pleasing first floor addition fronting Rosedale Avenue.*
- *The numerical height variation is the result of taking into account the slope of the site and the existing dwelling,*
- *Variation to the Manly LEP 2013 Cl. 4.3 Building Height control has been the subject of recent precedent for the following developments:*

oDA2022/1279 – 60 Heathcliff Crescent BALGOWLAH HEIGHTS NSW 2093, Height Variation 25.9%
oDA2021/2661 – 33 Beatrice Street CLONTARF NSW 2093, Height Variation 76.5%
oDA2021/1813 – 7 Bruce Avenue MANLY NSW 2095, Height Variation 37.6%
oDA2022/1953 – 52 Castle Circuit SEAFORTH NSW 2092, Height Variation 18.8%

- *The setting and context with Height variations recently approved, demonstrates that a varied building height is reasonable and that it is consistent with clause 1.3(c) and (d).*

Future Development

- *The proposed alterations and additions will allow for the refurbishment of the existing dwelling, including improved living and dining areas,*
- *The built form proposed is consistent with the existing dwelling and other buildings in the locality,*
- *Given that the proposed development maintains the existing maximum building height and does not result in any unreasonable impacts to neighbouring properties.*
- *The proposed works will not hinder any future development of the lot,*
- *The alterations proposed demonstrate fulfillment of clause 1.3(a), (b), (c) and (g).*

Consistent with Zone Objectives

- *The extent of the variation is considered to be in the public interest, as the proposal remains consistent with the objectives of the zone, allowing for the refurbishment of an existing dwelling in a residential zone, with a bulk and scale consistent with the existing dwelling and the locality. Compliance with the current numerical building height standard based on this would be unreasonable, with clause 1.3(c) demonstrated as fulfilled.*

Natural Environment

- *The proposed development allows for the current and future housing needs of the residents to be met, without developing a greenfield site, representing an efficient use of existing developed land,*
- *The proposal will not change the existing approved landscaped area,*
- *The development does not require the removal of any trees,*
- *Environmental impacts are minimised, by locating works within the existing disturbed portion of the lot,*
- *The natural environment is unaffected by the departure to the development standard and it would be unreasonable for the development to be refused on this basis with Cl 1.3(b) satisfied.*

Social and Economic Welfare

- *The variation to the numerical building height control will have a positive social impact, as it will allow the housing needs of the residents to be met in their current local community, including the ability to work from home in the dedicated home offices. It utilises existing services, satisfying Cl1.3(b). Accordingly, refusal of the development based on this reason would be unreasonable.*

Appropriate Environmental Planning Outcome

- *The works proposed do not represent an overdevelopment of the site and satisfies the objectives of the zone and the development standard as is detailed earlier in the report.*

The sufficient environmental planning grounds stipulated above demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the building height variation.

Council's Planning Assessment Officer concurs with the applicant's justification.

The proposed variation to building height is contained to a minor portion of the new upper level roof. The proposed additions are comparable with that of the built form and overall height of surrounding dwellings. The works are largely confined to the existing building footprint and do not result in unreasonable excavation, tree removal or environmental impact. The non-compliance would also be a direct result of the existing built form and slope of the land. It is also agreed that the proposal will not have any unreasonable amenity impact to surrounding properties as a result of the height non-compliance. The proposal has been designed to allow for adequate internal amenity, without compromising the amenity of adjoining properties.

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

The proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, thereby satisfying objects 1.3(c) and (g) of the EPA Act.

Public Interest:

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

Conclusion:

Council is satisfied as to the matters set out in Clause 4.6 of the MLEP 2013.

It is considered on balance, that having regard to the particular circumstances of the minor Height of Building non compliance due to existing site constraints and topography, the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 511.6m^2	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	N: 7.3m (based on gradient 1:7.5)	6.8m	N/A	Yes
	E: 6.5m (based on gradient 0)	6.2m	N/A	Yes
	S: 6.6m (based on gradient	6.3m	N/A	Yes

	1:60)			
4.1.2.2 Number of Storeys	2	2 (no change to existing)	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	2m	N/A	Yes
	Pitch: maximum 35 degrees	32 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	5.33m (ground floor) 2.98m (1st floor)	N/A	**No (see comments)**
4.1.4.2 Side Setbacks and Secondary Street Frontages	(N) 1.3m (based on wall height)	2.32m	N/A	Yes
	(S) 2.2m (based on wall height) Secondary street frontage	3.42m (no change to existing)	N/A	Yes
	Windows: 3m	3.3m	N/A	Yes
4.1.4.4 Rear Setbacks	8m	1.36m (no change to existing)	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS1/2/3/4	Open space 55% of site area	55.4% (no change to existing)	N/A	Yes
	Open space above ground 25% of total open space	24.8% (no change to existing)	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	35% (no change to existing)	N/A	Yes
4.1.5.3 Private Open Space	18sqm / 12sqm per dwelling	36sqm	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	5.5m	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

Compliance Assessment

Clause	**Compliance with Requirements**	**Consistency Aims/Objectives**
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	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)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.5 Road Widening and Realignment	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.3 Maintenance of Views

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.

There were no objections received in relation to view loss and it is considered that the proposal will not disrupt views from nearby properties or public spaces. The proposed alterations and additions are sited within the existing building footprint and the design has minimised the loss of views by maintaining existing setbacks. A site visit was conducted by the assessing officer which confirmed the design will be consistent with view sharing principles.

Given the above, it was not considered that a full merit assessment of views was necessary in this instance. Council is satisfied the proposal meets the objectives of the control.

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

Description of non-compliance

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

The development proposes the following:

- Front setback (Ground Floor) - 5.33m (11% variation to the numeric control)
- Front setback (First Floor) - 2.98m (50% variation to the numeric control)

Merit consideration:

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

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

Comment:

The proposal is consistent with the existing front setback of the existing dwelling and maintains the spatial proportions of the street. The proposal provides a modest extension of the existing non compliant setback at ground floor level that is compatible with the existing streetscape and provides landscaping to enhance the street edge. The proposed first floor addition results in a larger non-compliance to the control. However, the first floor addition follows the existing building envelope and is further setback than neighbouring properties in the street. The non-compliance does not result in any removal of landscaping, overshadowing or view loss and ensures the amenity of neighbours will be retained and the streetscape view will be complementary to the desired character for the street.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

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

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

Comment:

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

Objective 4) To enhance and maintain natural features by:

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

Comment:

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

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

Comment:

Not applicable

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in 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 $12,037 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $1,203,744.

CONCLUSION

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

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

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

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

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

Council is satisfied that the Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify variation of the development standard contained within Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

Council satisfied that the Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify variation of the development standard contained within Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

PLANNING CONCLUSION

This proposal, for alterations and additions to a dwelling house has been referred to the Northern

Beaches Development Determination Panel (DDP) as the proposal contravenes Clause 4.3 Building Height development standard by greater than 10%.

There were no objections received during the notification period.

The critical assessment issues included non-compliance with Clause 4.3 Height of Building of MLEP and 4.1.4.1 Street Front setbacks of MDCP.

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

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

RECOMMENDATION

That Northern Beaches Council, as the consent authority, vary the development standard contained within Clause 4.3 Height of Buildings, pursuant to Clause 4.6 of the Manly Local Environmental Plan 2013 because the Applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) of Clause 4.6.

Accordingly Council as the consent authority grant Development Consent to DA2023/1846 for Alterations and additions to a dwelling house on land at Lot B DP 330181, 1 Rosedale Avenue, FAIRLIGHT, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

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

Approved Plans				
Plan Number	**Revision Number**	**Plan Title**	**Drawn By**	**Date of Plan**
DA01	A	Site & Site Analysis Plan	Cradle	27.11.2023
DA06	A	Demolition Plan - Basement & Ground	Cradle	27.11.2023

		Floor		
DA07	A	Demolition Plan - First Floor & Roof Plan	Cradle	27.11.2023
DA08	A	Proposed Basement & Ground Floor Plans	Cradle	27.11.2023
DA09	A	Proposed First Floor & Roof Plans and Sediment & Erosion Control Plan	Cradle	27.11.2023
DA10	A	Proposed Elevations	Cradle	27.11.2023
DA11	A	Proposed Sections AA & BB	Cradle	27.11.2023
DA14	A	Colours & Finishes	Cradle	27.11.2023

Approved Reports and Documentation			
Document Title	**Version Number**	**Prepared By**	**Date of Document**
Landscape Site Plan 001	Rev D	Formed Gardens	28.11.2023
Site Area Diagram + Planting Plan & Schedule 002	Rev D	Formed Gardens	28.11.2023
Basix Certificate A505104_03	-	Cradle Design	13.12.2023
Waste Management Plan	-	Cradle Design	11.08.2023
Geotechnical Assessment (Ref: AG 23829)	-	AscentGeo	21.12.2023

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. **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.

3. **General Requirements**

(a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

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

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

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

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

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

iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.

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

(h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

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

(j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically

approved in this consent including for the erection of any fences, hoardings or other temporary works.

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

i) Building/s that are to be erected

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

iii) Building/s that are to be demolished

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

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

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

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

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

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

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

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

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

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

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

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

(3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

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

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

FEES / CHARGES / CONTRIBUTIONS

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

A monetary contribution of $12,037.44 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of $1,203,744.00.

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

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

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

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

5. **Security Bond**

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

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

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

7. **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.

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

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

Reason: Compliance with this consent.

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

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

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of any Construction Certificate.

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

10. **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.

11. **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.

12. **Sydney Water "Tap In"**
The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifier demonstrating the works are in compliance with Sydney Water requirements.

Please refer to the website www.sydneywater.com.au for:
- "Tap in" details - see http://www.sydneywater.com.au/tapin
- Guidelines for Building Over/Adjacent to Sydney Water Assets.

Or telephone 13 000 TAP IN (1300 082 746).

Reason: To ensure compliance with the statutory requirements of Sydney Water.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

13. **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: 2 Willyama Avenue, Fairlight

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifier and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifier must be satisfied that the requirements of this condition have been met prior to commencement of any works. If access is denied, then no dilapidation report is required.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

DURING BUILDING WORK

14. **Protection of Existing Street Trees**
a) all existing street trees in the vicinity of the works shall be retained during all construction stages, and the street tree(s) fronting the development site shall be protected by tree protection fencing in accordance with Section 4 of AS 4970-2009 Protection of trees on development sites. As a minimum the tree protection fencing for street tree(s) fronting the development site shall consist of standard 2.4m panel length to four sides and in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings, unless otherwise directed by an Arborist with minimum AQF Level 5 in arboriculture. All fencing shall be located to allow for unrestricted and safe pedestrian access upon the road verge.

b) all street trees within the road verge are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree(s) is prohibited. No excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of street trees.

Reason: Street tree protection.

15. **Tree and Vegetation Protection**
a) existing trees and vegetation shall be retained and protected, including:
i) all trees within the site not approved for removal, including trees and vegetation nominated for retention on the approved Plans,
ii) all trees and vegetation located on adjoining properties,
iii) all trees and vegetation within the road reserve.

b) tree protection shall be undertaken as follows:
i) tree protection shall be in accordance with AS 4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in

arboriculture,
iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,
viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS 4970-2009 Protection of trees on development sites,
ix) the activities listed in section 4.2 of AS 4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS 4373-2007 Pruning of amenity trees,
xi) the tree protection measures specified in this clause must: be in place before work commences on the site, be maintained in good condition during the construction period, and remain in place for the duration of the construction works.

c) the Principal Certifier must ensure that:
i) If activated, the arboricultural works listed in a) and b) are undertaken and certified by an Arborist/Project Arborist as complaint to AS 4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

Reason: Tree and vegetation protection.

16. **Condition of Trees**
a) during the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to, or by seeking arboricultural advice from an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture during the works. In this regard all protected trees shall not exhibit:
i) a general decline in health and vigour,
ii) damaged, crushed or dying roots due to poor pruning techniques,
iii) more than 10% loss or dieback of roots, branches and foliage,
iv) mechanical damage or bruising of bark and timber of roots, trunk and branches,
v) yellowing of foliage or a thinning of the canopy untypical of its species,
vi) an increase in the amount of deadwood not associated with normal growth,
vii) an increase in kino or gum exudation,
viii) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
ix) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

b) any mitigating measures and recommendations required by the Arborist/Project Arborist are to be implemented.

c) the owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of trees.

17. **Road Reserve**
The applicant shall ensure the public footways and roadways adjacent to the site are maintained in a safe condition at all times during the course of the work.

Reason: Public safety.

18. **Removing, Handling and Disposing of Asbestos**
Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:
- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

19. **Survey Certificate**
A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all perimeter walls columns and or other structural elements, floor levels and the finished roof/ridge height are in accordance with the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier when the external structure of the building is complete.

Reason: To demonstrate the proposal complies with the approved plans.

20. **Waste Management During Development**
The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

Details demonstrating compliance must be submitted to the Principal Certifier.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

21. **Landscape Completion**
a) landscape works are to be implemented in accordance with the approved Landscape Plan(s) (drawing 002 by Formed Gardens dated 28/11/23), and inclusive of the following conditions:
i) landscape works are to be contained within the legal property boundaries,
ii) planting shall be installed as indicated on the approved Landscape Plan(s) unless otherwise imposed by any conditions,

iii) substitute *Cupaniopsis anacardioides* with a suitable native alternative of a similar height and generally selected from Northern Beaches Council's Native Plant Species Guide, or Council's Tree Guide; and substitute all *Rhaphiolepis* species with a suitable alternative as Council deems these species an environmental threat,
iv) all tree planting shall be a minimum pre-ordered planting size of 75 litres or as otherwise scheduled if greater in size; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth generally, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and located either within garden bed or within a prepared bed within lawn,
v) at least one proposed native tree shall be located at least 3.0 metres from buildings and other trees or more, and all trees shall be located at least 1 metre from common boundaries,
vi) mass planting shall be installed in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,
vii) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces.

b) prior to the issue of an Occupation Certificate, details (from a landscape architect, landscape designer or qualified horticulturalist) shall be submitted to the Principal Certifier, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

22. **Stormwater Disposal**
The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified 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.

23. **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.

24. **Geotechnical Certification Prior to Occupation Certificate**
A Geotechnical Engineer or Engineering Geologist is to provide written confirmation that they have inspected the site during construction or reviewed information relating to the construction and that they are satisfied that development referred to in the development consent has been

constructed in accordance with the intent of the Geotechnical Report referenced in Condition 1 of this consent.
Written certification is to be provided to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

25. **Certification of Off Street Parking Works**
The Applicant shall submit a certificate from a suitably qualified person certifiying that the parking facility was constructed in accordance within this development consent and the relevant provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical Controls and Section 2.6 Design of Domestic Driveways.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: Compliance with this consent.

26. **Garbage and Recycling Facilities**
All internal walls of the storage area shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To prevent pollution of the environment and to protect the amenity of the area.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

27. **Landscape Maintenance**
a) if any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components.

b) trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

c) if any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan(s) and any conditions of consent.

d) the approved landscape planted areas, whether containing lawn, gardens or planters shall in perpetuity remain as planting under the development consent, and shall not be replaced with any hard paved surfaces or structures.

Reason: To maintain local environmental amenity.

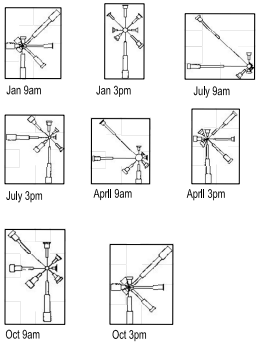
LEGEND			
PROPOSED EXTENSION	GARDEN	NEIGHBOURS	

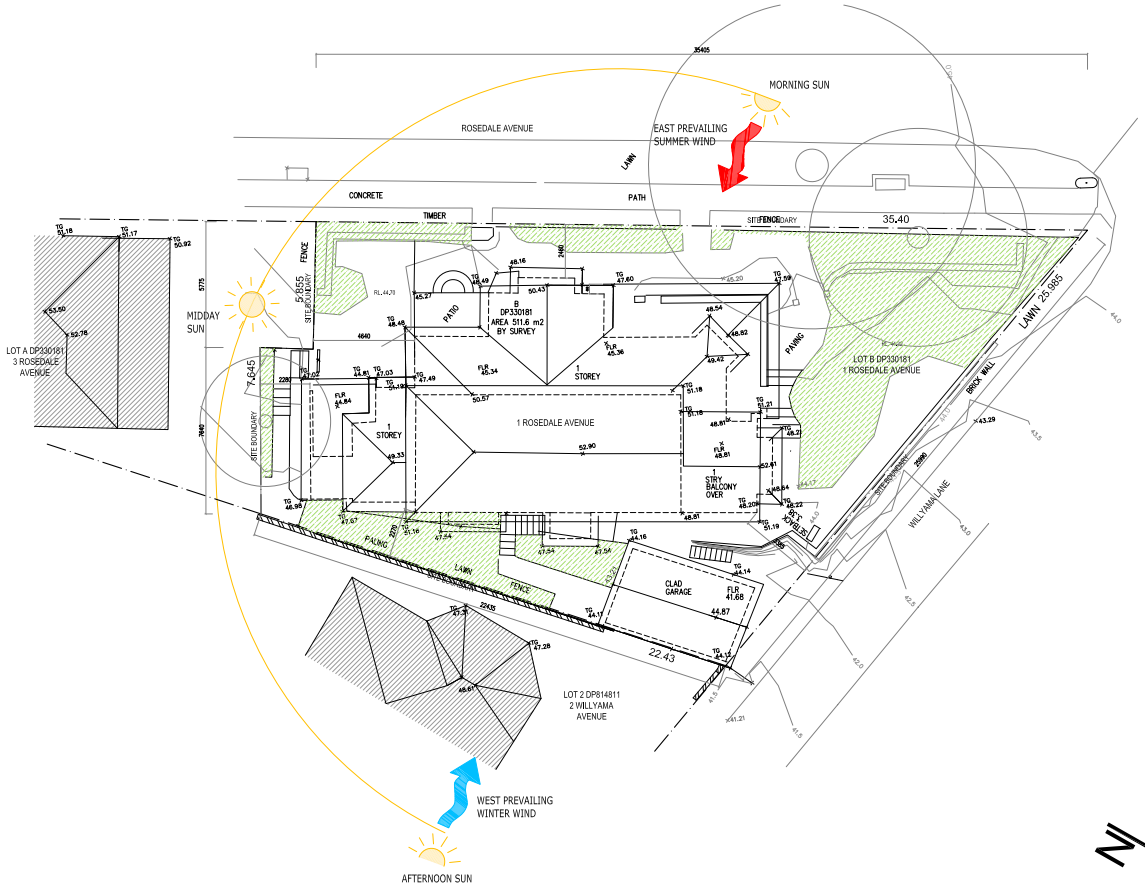
GROSS FLOOR AREA CALCULATIONS		
	EXISTING	PROPOSED
GROSS FLOOR AREA	**BASEMENT** non-habitable rooms (store) - 29.5 m2 Single garage - 21 m2 **GROUND FLOOR** - 135 m2 **FIRST FLOOR** - 62 m2 **TOTAL GFA** - 206 m2 (excludes basement areas)	**NEW UNDER HOUSE DOUBLE GARAGE** (incl access) - 48.5 m2 **EXISTING BASEMENT** non-habitable rooms (store) - 29.5 m2 **GROUND FLOOR** - 150 m2 **FIRST FLOOR** (stair well incl) - 103 m2 **TOTAL GFA** - 269.5m2 (excludes basement store & 33m2 for new double garage)

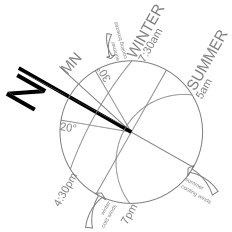
LANDSCAPE & OSD CALCULATIONS		
	EXISTING	PROPOSED
SITE AREA	511.6m²	NO CHANGE
OPEN SPACE AREA (REQ 55% OF SITE AREA=281.2SQ)	283.27m²	NO CHANGE
LANDSCAPED AREA (REQ 35% OF OPEN SPACE AREA = 99.14M2)	**FRONT GARDEN** - 80 m2 **REAR GARDEN** - 18 m2 (30M2 LESS THAN 1.5M WIDE) **TOTAL** - 98 m2	**FRONT GARDEN** - 80 m2 **REAR GARDEN** - 18 m2 **TOTAL** - 98 m2
OSD (required if there is a 40% increase in site coverage or the total site coverage exceeds 65%)	**OVERALL LANDSCAPING AREA REMAINS UNCHANGED AS THE NEW DRIVEWAY INCORPORATES AREAS OF HARD LANDSCAPING ONLY** **PERCENTAGE OF OVERALL SITE COVERAGE** = 23% **landscaping area** 98/511.6x100 = 19%	

WIND ROSES

Sydney Airport AMO/AWS:
Source NSW Bureau of Meteorology







This drawing and design is subject to copyright and may not be reproduced without prior written consent. All dimensions to be verified on site prior to commencement of any work. Do not scale drawings.

DEVELOPMENT APPLICATION

STUDIO: cradle

NOT FOR CONSTRUCTION

PROJ MGR

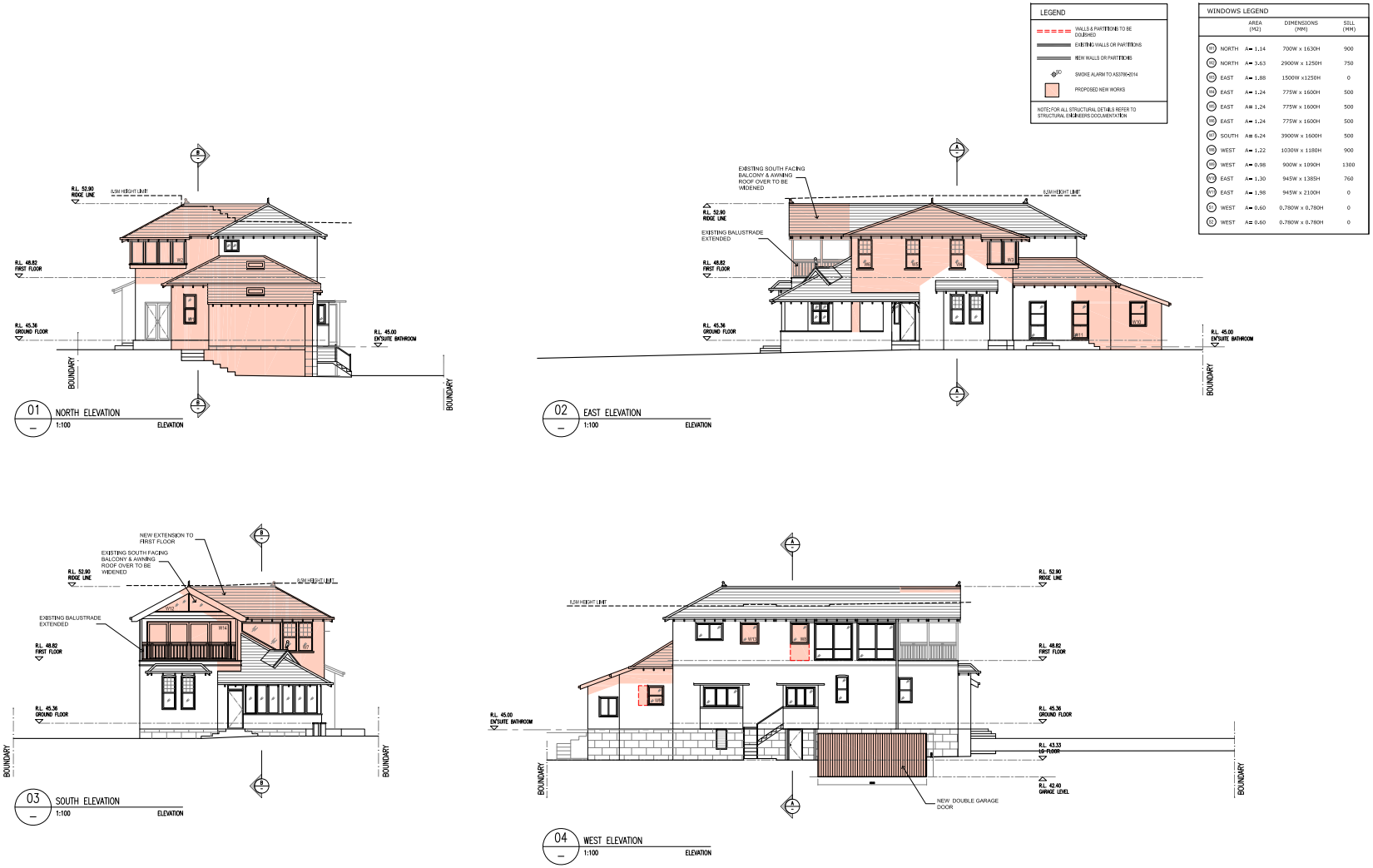
ORIENTATION

REVISION

DETAILS
CLIENT
KIRSTY & LUKE MACKAY-FISHER
ADDRESS
LOT B DP330181 - 1 ROSEDALE AVENUE, FAIRLIGHT, NSW 2094

PROJECT
DRAWING TITLE
SITE & SITE ANALYSIS PLAN
REFERENCE
SCALE 1:100@A1
DRAWN PL

DA | 01 A



DEVELOPMENT APPLICATION

STUDIO cradle

NOT FOR CONSTRUCTION

PROJ MGR

ORIENTATION

REVISION

DETAILS
CLIENT
KIRSTY & LUKE MACKAY-FISHER
ADDRESS
LOT B DP330181 - 1 ROSEDALE AVENUE, FAIRLIGHT, NSW 2094

PROJECT
DRAWING TITLE
PROPOSED ELEVATIONS
REFERENCE
SSS - 1 ROSEDALE AVENUE
SCALE 1:100@A1
DRAWN PL

DA| 10 A

Clause 4.6 Exceptions to Development Standards – Building Height
1 Rosedale Avenue, Fairlight

Clause 4.6 of the Manly Local Environmental Plan 2013 (MLEP 2013) permits departures from development standards in certain circumstances. In this case, it is necessary to consider if compliance with the development standard is consistent with the aims of the policy and, in particular, does compliance with the development standard tend to hinder the attainment of the objects specified in section 1.3 of the *Environmental Planning and Assessment Act 1979 (EP&A Act) being:*

(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,

(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,

(c) to promote the orderly and economic use and development of land,

(d) to promote the delivery and maintenance of affordable housing,

(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,

(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),

(g) to promote good design and amenity of the built environment,

(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,

(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,

(j) to provide increased opportunity for community participation in environmental planning and assessment.

The aims and objectives of Manly LEP 2013 Clause 4.6 are as follows:

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Under Clause 4.6(3) and (4) of the MLEP 2013, consent for a development that contravenes a development standard must not be granted unless the consent authority is satisfied that:

(3)(a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(3)(b) there are sufficient environmental planning grounds to justify contravening the development standard.

(4)(a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out,

These matters, along with case law judgements from the NSW Land and Environment Court, are addressed below.

1. Environmental Planning Instrument Details (Manly LEP 2013)

1.1 What is the name of the environmental planning instrument that applies to the land?

Manly Local Environmental Plan 2013

1.2 What is the zoning of the land?

R2 – Low Density Residential

1.3 What are the objectives of the zone?

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

1.4 What is the development standard being varied?

Cl. 4.3 - Height of Buildings

1.5 Under what clause is the development standard listed in the environmental planning instrument?

Cl. 4.3 of the Manly Local Environmental Plan 2013

1.6 What are the objectives of the development standard?

(1) The objectives of this clause are as follows:

(a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,

(b) to control the bulk and scale of buildings,

(c) to minimise disruption to the following—

(i) views to nearby residential development from public spaces (including the harbour and foreshores),

(ii) views from nearby residential development to public spaces (including the harbour and foreshores),

(iii) views between public spaces (including the harbour and foreshores),

(d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,

(e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

1.7 What is the numeric value of the development standard in the environmental planning instrument?

The numeric value of the height of buildings development standard applicable to the subject site is a maximum of 8.5m.

1.8 What is proposed numeric value of the development standard in your development application?

The development proposes a first-floor level addition at a maximum height of 9.6 metres. The proposed development does not exceed the existing maximum height of the dwelling, as illustrated in the plan extract below.

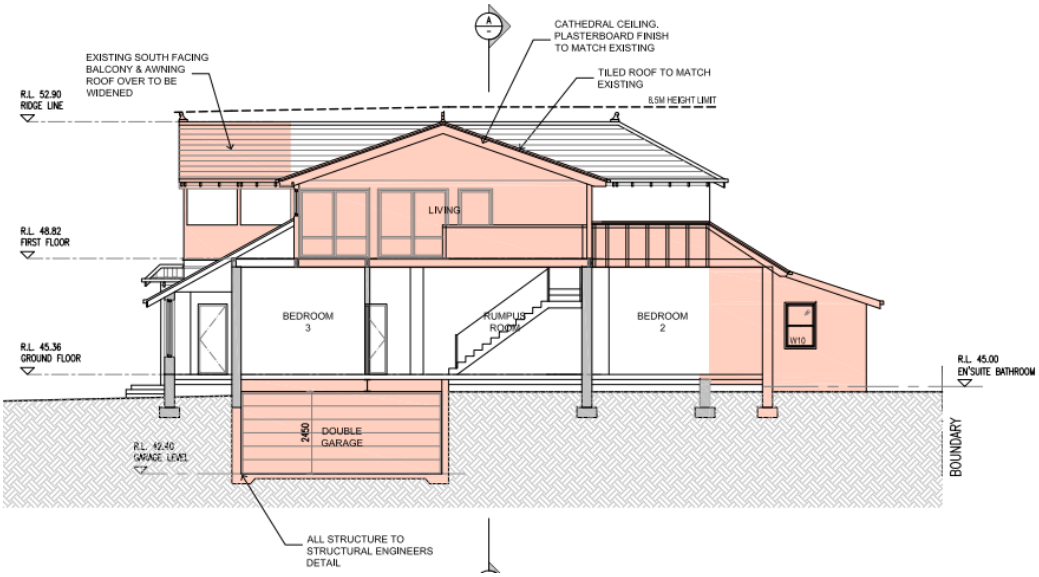


Figure 1. Plan Extract – Section 02 BB, Architectural Drawing DA 11A

1.9 What is the percentage variation (between your proposal and the environmental planning instrument)?

The development proposes a numerical variation of 1.1 metres or 12.94%.

2. NSW Land and Environment Court Case Law

Several key Land and Environment Court (NSW LEC) judgements have refined the manner in which variations to development standards are required to be approached. The key findings and direction of each of these matters are outlined in the following discussion.

2.1 Wehbe v Pittwater [2007] NSW LEC 827

The decision of Justice Preston in *Wehbe v Pittwater [2007] NSW LEC 827, (*expanded on the findings in *Winten v North Sydney Council),* identified 5 ways in which the applicant might establish that compliance with a development standard is unreasonable or unnecessary. It was not suggested that the five ways were the only ways that a development standard could be shown to be unreasonable or unnecessary.

The five ways outlined in *Wehbe* include:

*1. The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Way**).*

*2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Way**).*

*3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Way**).*

*4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (**Fourth Way**).*

*5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (**Fifth Way**).*

In the Micaul decision Preston CJ confirmed that the requirements mandated by SEPP 1 (as discussed in Wehbe) are only relevant in demonstrating that compliance with a development standard is unreasonable or unnecessary for the purpose of Clause 4.6(3)(a).

2.2 Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC

In the matter of *Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC*, initially heard by Commissioner Pearson, upheld on appeal by Justice Pain, it was found that an application under Clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe V Pittwater [2007] NSW LEC 827* and demonstrate the following:

1. Compliance with the particular requirements of Clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP;
2. That there are sufficient environment planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity);
3. That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone in which the site occurs;
4. All three elements of clause 4.6 have to be met and it is best to have different reasons for each but it is not essential.

2.3 Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7

In Randwick City Council v Micaul Holdings, the Court allowed a departure from development standards, provided the processes required by clause 4.6 are followed, a consent authority has a broad discretion as to whether to allow a departure from development standards under clause 4.6, even where the variation is not justified for site or development specific reasons.

Preston CJ noted that *the Commissioner did not have to be satisfied directly that compliance with each development standard was unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the appellant's written request had adequately addressed the matter in clause 4.6(3)(a) that compliance with each development standard was unreasonable or unnecessary.*

2.4 Zhang v City of Ryde

Commissioner Brown reiterated that clause 4.6 imposes three preconditions which must be satisfied before the application could be approved:

1. The consent authority must be satisfied that the proposed development will be consistent with the objectives of the zone;

2. The consent authority must be satisfied that the proposed development will be consistent with the objects of the standard which is not met; and

3. The consent authority must be satisfied that the written request demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances and there are sufficient environmental planning grounds to justify contravening the development standard.

It is only if all of these conditions are met that consent can be granted to the application, subject to an assessment of the merits of the application.

The Commissioner applied the now familiar approach to determining consistency with zone objectives by considering whether the development was antipathetic to the objectives.

In contrast to four2five, the reasons relied on to justify the departure from the standards in this case were not necessarily site specific.

2.5 Action Pty Ltd v Woollahra Municipal Council [2018]

In Action Pty Ltd v Woollahra Municipal Council, the court demonstrated the correct approach to the consideration of clause 4.6 requests, including that the clause does not require that a development that contravenes a development standard, must have a neutral or better environmental planning outcome than one that does not.

3. Consideration

The following section addresses the provisions of clause 4.6 of the MLEP 2013 together with principles established in the NSW Land and Environment Court Case Law outlined above.

Clause 4.6(3)(A) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (and is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case)?

In order to demonstrate that compliance with the development standard is unreasonable or unnecessary, in the circumstances of the case, the Five (5) Part Test established in Winten v North Sydney Council and expanded by Justice Preston in Wehbe v Pittwater [2007] NSW LEC 827 is considered:

The five ways outlined in *Wehbe* include:

3.1 Five (5) Part Test - Wehbe v Pittwater

1. ***The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).***

The objectives of the standard are:

(a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,

Comment

The development proposes a first floor level addition which maintains the maximum building height of the existing dwelling.

The proposed works will not substantially alter the existing built form or visual appearance of the dwelling when viewed from Rosedale Avenue. The architectural design is consistent with the existing dwelling and complimentary with neighbouring dwellings in the locality. The proposal maintains the visual character of the streetscape, which is predominantly large residential dwellings that have been designed according to the topographic landscape of the area and to benefit from water views. It is considered this objective is met, despite the numerical variation.

(b) to control the bulk and scale of buildings,

Comment

The existing dwelling does not comply with the 8.5 metre development standard and the proposed development maintains the existing maximum height of the dwelling. The design of the first floor level addition incorporates appropriate articulation through increased setbacks and results in a reasonable bulk and scale, being consistent with neighbouring development. Existing mature vegetation within the front setback to Rosedale Avenue is also unaffected which will maintain the natural environment of the locality and soften the appearance of the built form. As such it considered this objective is met, despite the numerical variation.

(c) to minimise disruption to the following:
(i) views to nearby residential development from public spaces (including the harbour and foreshores),
(ii) views from nearby residential development to public spaces (including the harbour and foreshores),
(iii) views between public spaces (including the harbour and foreshores),

Comment

A site visit has been undertaken and it is considered the proposed development will not result in any view loss impacts.

It is therefore considered this objective is met, despite the numerical variation.

(d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,

Comment

The proposed numerical variation to the building height control does not result in any unreasonable solar access impacts to adjoining dwellings.

Given that compliant solar access is achieved, despite the height variation sought, it is considered the underlying objective of this clause has been satisfied.

(e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.
Comment

No applicable as the subject site is not located in a recreation or environmental protection zone.

2. ***The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).***

This exception to development standards request does not rely on this reason.

3. ***The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).***

This exception to development standards request does not rely on this reason

4. ***The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Way).***

This exception to development standards request does not rely on this reason.

5. ***The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Way).***

This exception to development standards request does not rely on this reason.

This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the height of buildings control pursuant to the First Way outlined in Wehbe.

Thus it is considered that compliance with Clause 4.6(3)(a) is satisfied.

3.2 Clause 4.6(3)(B) – Are there sufficient environmental planning grounds to justify contravening the development standard?

There are sufficient grounds to permit the variation of the development standard. The development has been considered below with particular reference to the Objects of the Environmental Planning and Assessment Act 1979, which are accepted as the best gauge of *environmental planning grounds*. In particular:

Context

- The area surrounding the subject site is characterised by 2 and 3 storey residential dwellings, stepped to accommodate the sloping topography and to enjoy views towards North Harbour.
- The existing dwelling has a non-compliant maximum building height and the proposed development does not exceed the existing building height, with an aesthetically pleasing first floor addition fronting Rosedale Avenue.

- The numerical height variation is the result of taking into account the slope of the site and the existing dwelling,

- Variation to the Manly LEP 2013 Cl. 4.3 Building Height control has been the subject of recent precedent for the following developments:

    - DA2022/1279 – 60 Heathcliff Crescent BALGOWLAH HEIGHTS NSW 2093, Height Variation 25.9%
    - DA2021/2661 – 33 Beatrice Street CLONTARF NSW 2093, Height Variation 76.5%
    - DA2021/1813 – 7 Bruce Avenue MANLY NSW 2095, Height Variation 37.6%
    - DA2022/1953 – 52 Castle Circuit SEAFORTH NSW 2092, Height Variation 18.8%

- The setting and context with Height variations recently approved, demonstrates that a varied building height is reasonable and that it is consistent with clause 1.3(c) and (d).

Future Development

- The proposed alterations and additions will allow for the refurbishment of the existing dwelling, including improved living and dining areas,
- The built form proposed is consistent with the existing dwelling and other buildings in the locality,
- Given that the proposed development maintains the existing maximum building height and does not result in any unreasonable impacts to neighbouring properties.
- The proposed works will not hinder any future development of the lot,
- The alterations proposed demonstrate fulfillment of clause 1.3(a), (b), (c) and (g).

Consistent with Zone Objectives

- The extent of the variation is considered to be in the public interest, as the proposal remains consistent with the objectives of the zone, allowing for the refurbishment of an existing dwelling in a residential zone, with a bulk and scale consistent with the existing dwelling and the locality. Compliance with the current numerical building height standard based on this would be unreasonable, with clause 1.3(c) demonstrated as fulfilled.

Natural Environment

- The proposed development allows for the current and future housing needs of the residents to be met, without developing a greenfield site, representing an efficient use of existing developed land,
- The proposal will not change the existing approved landscaped area,
- The development does not require the removal of any trees,
- Environmental impacts are minimised, by locating works within the existing disturbed portion of the lot,
- The natural environment is unaffected by the departure to the development standard and it would be unreasonable for the development to be refused on this basis with Cl 1.3(b) satisfied.

Social and Economic Welfare

- The variation to the numerical building height control will have a positive social impact, as it will allow the housing needs of the residents to be met in their current local community, including the ability to work from home in the dedicated home offices. It utilises existing services, satisfying Cl1.3(b). Accordingly, refusal of the development based on this reason would be unreasonable.

Appropriate Environmental Planning Outcome

- The works proposed do not represent an overdevelopment of the site and satisfies the objectives of the zone and the development standard as is detailed earlier in the report.

The sufficient environmental planning grounds stipulated above demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the building height variation.

Clause 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*

Will the proposed development be in the public interest?

The proposed development is not contrary to the public interest, accordingly there can be no quantifiable or perceived public benefit in maintaining the standard.

How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Act.

Strict compliance with the standard would hinder the attainment of the objects specified in section 1.3 of the Act

> *(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
>
> *(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
>
> *(c) to promote the orderly and economic use and development of land,*
>
> *(d) to promote the delivery and maintenance of affordable housing,*
>
> *(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
>
> *(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
>
> *(g) to promote good design and amenity of the built environment,*
>
> *(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
>
> *(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
>
> *(j) to provide increased opportunity for community participation in environmental planning and assessment.*

Strict compliance with the 8.5 metres height development standard would hinder the development for the purpose of *promoting the orderly and economic use and development of land, promoting good design and amenity of the built environment* and *promoting the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.*

Conclusion

The proposed development to alter and refurbish the existing residential dwelling, on land zoned R2 Low Density Residential is appropriate and reasonable for the following reasons:

- There is recent precedent for variations to Cl 4.3 Building Height of the Manly LEP 2013 being accepted by Council,
- The proposed development does not present with excessive bulk and is of a consistent scale to the existing dwelling and surrounding properties,
- The proposal will not result in any unreasonable impacts to neighbouring dwellings, including privacy and solar access,
- The proposed dwelling does not disrupt existing views to North Harbour from neighbouring dwellings,
- The works will allow for the housing needs of the residents to be met, in their current community,
- The existing building has a non-compliant maximum building height and the new works maintain the existing height, representing a modest extension of the dwelling (with an easily compliant FSR) to facilitate improved family and living areas,

Strict numerical compliance is considered to be unnecessary and unreasonable given that the proposed variation sought is consistent with the underlying objectives of the control despite the numerical variation, of which have been reasonably satisfied under the provisions of Clause 4.6. The statement sufficiently demonstrates that compliance with the development standard is both unreasonable and unnecessary in this instance.

The sufficient environmental planning grounds stipulated within this request, demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the height variation.

The proposed variation satisfies the objectives of the zone, underlying intent of Clause 4.6 and Clause 4.3, and therefore the merits of the proposed variation are considered to be worthy of approval.

ITEM 3.8 DA2024/0161 - 77 CASTLE CIRCUIT SEAFORTH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE

PURPOSE

To refer the attached application for determination due to directions provided by the Department of Planning & Environment in relation to applications with a clause 4.6 variation to the floor space ratio.

RECOMMENDATION

That Council as the consent authority, vary the Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

THAT Council as the consent authority **approves** Development Consent to DA2024/0161 for alterations and additions to a dwelling house on land at Lot 33 DP 200638, 77 Castle Circuit SEAFORTH, subject to the conditions set out in the Assessment Report.

Reporting manager	Rodney Piggott
TRIM file ref	2024/305271
Attachments	⇩1 Assessment Report ⇩2 Site Plan and Elevations ⇩3 Clause 4.6

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/0161

Responsible Officer:	Jordan Howard
Land to be developed (Address):	Lot 33 DP 200638, 77 Castle Circuit SEAFORTH NSW 2092
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Nicole Mary Algar
Applicant:	Jonathan Algar

Application Lodged:	29/02/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	07/03/2024 to 21/03/2024
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.4 Floor space ratio: 48.2%
Recommendation:	Approval

Estimated Cost of Works:	$ 86,900.00

EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to a dwelling house.

The application is referred to the Development Determination Panel (DDP) due to a request to vary the floor space ratio development standard, established by the Manly Local Environmental Plan 2013, by greater than 10%.

Concerns raised in the one (1) objection received predominantly relate to objection to the request to vary the floor space ratio development standard, objection to variations proposed to MDCP built form controls, and objection to the perceived visual / amenity impact of the proposal. These issues are addressed within the section of this report on Notification & Submission Received, with none sufficient

to warrant refusal of the application. Assessment of the proposed development has found that the proposal will not result in unreasonable impacts to neighbouring properties, is commensurate to surrounding development and does not present unreasonable bulk or scale. The view loss impact of the proposal has been assessed as negligible.

Critical assessment issues included assessment of the Clause 4.6 Request to vary the floor space ratio development standard, assessment of potential view loss, as well as assessment of MDCP non-compliances, including wall height and setbacks.

The 4.6 request for the non-compliance with FSR standard arises from a 25.2sqm increase in floorspace. A recently approved Development Application (DA2022/2208) approved alterations and additions to the subject site which would result in an approved FSR of 0.55:1 (308.2sqm), already a 37% (83.16sqm) variation to the required FSR of 0.4:1 (225.04sqm). This proposal seeks development consent for alterations and additions that will result in the dwelling exhibiting a FSR of 0.59:1 (333.4sqm), a proposed 48.2% (108.36sqm) variation to the 0.4:1 control. However, this increase occurs entirely within an area of the existing dwelling that is currently occupied by a garage / carport. This space as existing is excluded from GFA calculations, as the space is an open carport, despite appearing like a garage. Therefore, the increase in GFA occurs largely within an area of existing built form, within the existing building footprint, and is not considered to contribute in a significant manner to increased bulk and scale.

This report concludes with a recommendation that the DDP grant approval to the development application, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

This Development Application seeks development consent for alterations and additions to a dwelling house. Specifically, the application proposes alterations and additions to the existing dwelling house in addition to those recently approved pursuant to development consent DA2022/2208. The application seeks to convert the existing rear garage / carport structure to a study / home office, noting that a new double garage accessed directly from Castle Circuit was approved pursuant to the recently granted DA2022/2208, making the rear garage / carport structure obsolete.

Refer to the section of this report on Site History for further information about the prior development consent DA2022/2208.

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 - 4.4 Floor space ratio
Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Development Control Plan - 3.4.3 Maintenance of Views
Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
Manly Development Control Plan - 4.1.5 Open Space and Landscaping

SITE DESCRIPTION

Property Description:	Lot 33 DP 200638 , 77 Castle Circuit SEAFORTH NSW 2092
Detailed Site Description:	The subject site consists of one (1) allotment located on the southern side of Castle Circuit. The site is irregular in shape with a curved frontage of 24.341m along Castle Circuit, an eastern side boundary length of 26.245m, a western side boundary length of 21.74m, and a southern rear boundary length of 25.305m. The site has a surveyed area of 562.6sqm. The site is located within the R2 Low Density Residential zone and accommodates a dwelling house and swimming pool. The site slopes steeply from the south (rear) down towards the north (front), with a crossfall of approximately 16m. The site contains trees, lawn areas and garden beds. There are no details of any threatened species on the subject site. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by dwelling houses.

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

Development Application No. DA3736/1990 issued by Manly Council for 'Proposed Timber Deck' on 27 August 1990.

Development Application No. DA597/2003 issued by Manly Council for 'Retaining Walls and landscaping (including removal of certain trees)' on 16 March 2003.

Development Application No. DA2022/2208 issued by Northern Beaches Council for 'Alterations and additions to a dwelling house' on 28 June 2023 under the delegation of the Development Determination Panel (DDP). The proposal that is the subject of this report is seeking alterations and additions to the existing dwelling house in addition to those approved pursuant to DA2022/2208.

It is noted that DA2022/2208 as originally submitted included a "parent's lounge/study" and associated deck to be located above the rear existing garage (which was proposed to be converted into storage area). However, the DPP was not satisfied with the variation to the floor space ratio development standard or the impacts resulting from the proposed upper level addition. The DDP requested the applicant provide amended plans deleting the "parent's lounge/study" and associated deck, plus updated clause 4.6 requests for height and floor space to reflect the amended plans, and an amended BASIX certificate. These were provided and the application was ultimately approved without the "parent's lounge/study" and associated deck.

The study proposed within this application is not identical to that deleted from DA2022/2208. Rather than retaining the garage as a storage area and proposing an addition on-top of it (as was originally proposed in DA2022/2208), the current proposal looks to convert the garage into a study and raise the floor level in doing so. As a result, the current proposal is smaller, with the maximum RL of the roof 0.78m lower than that originally proposed in DA2022/2208 (RL 56.23m vs RL 55.45m), and there is no associated deck proposed. More of the proposed study is contained within the existing garage, with less overall additional built form proposed as compared to that originally proposed in DA2022/2208.

Figure 1, Figure 2 and Figure 3 below provide visual comparisons, first showing the existing state of this carport (as ultimately approved in DA2022/2208 following the deletion of the proposed "parent's lounge/study" and associated deck), secondly showing the originally proposed "parent's lounge/study" and associated deck from DA2022/2208, and finally showing the study proposed in the current application.

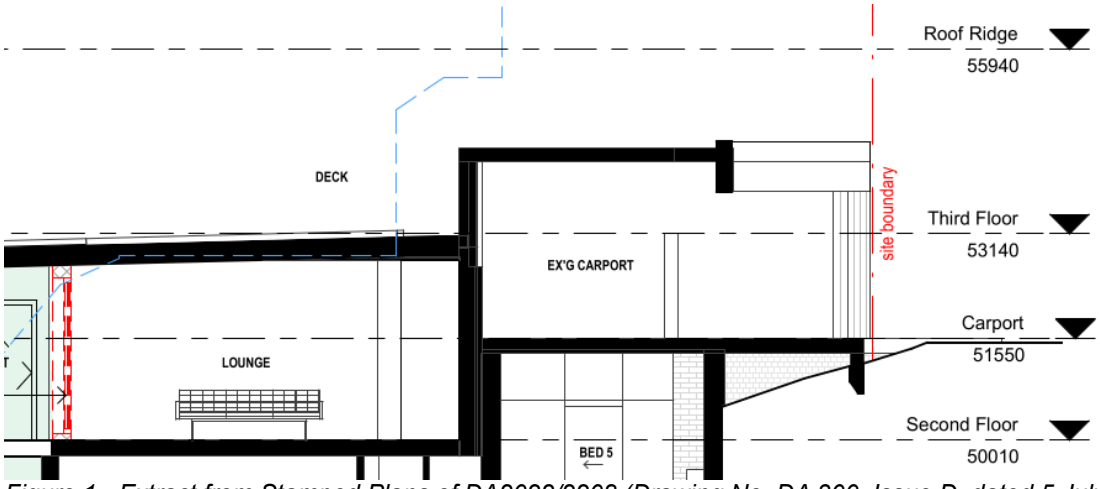


Figure 1 - Extract from Stamped Plans of DA2022/2208 (Drawing No. DA 300, Issue D, dated 5 July 2023) showing existing and approved state of the garage / carport.

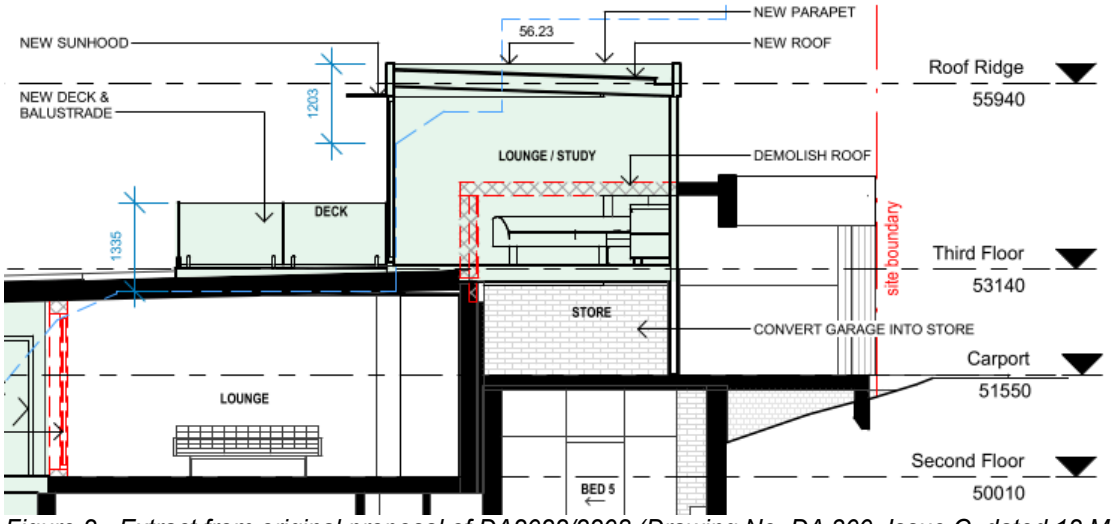


Figure 2 - Extract from original proposal of DA2022/2208 (Drawing No. DA 300, Issue C, dated 12 May 2023) showing previously proposed but deleted "parent's lounge/study" and associated deck.

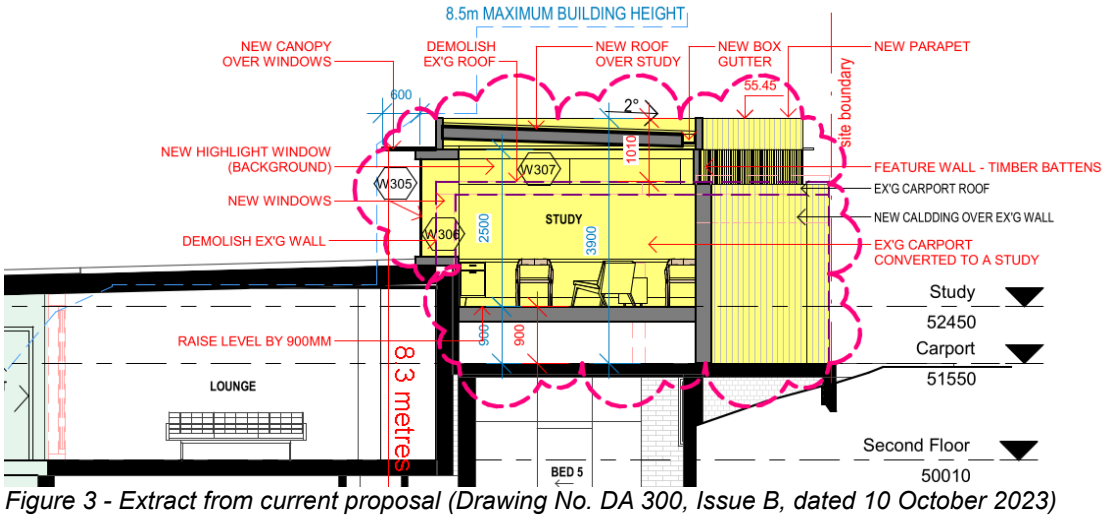


Figure 3 - Extract from current proposal (Drawing No. DA 300, Issue B, dated 10 October 2023) showing currently proposed study.

As this application seeks to further amended DA2022/2208, a suitable condition of consent will be recommended to clarify the relationship between the development consents / works.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 Matters for Consideration	**Comments**
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 29 of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.

Section 4.15 Matters for Consideration	Comments
	Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the application that included a certificate (prepared by Sydney Bushfire Consultants, dated 5 October 2023) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 07/03/2024 to 21/03/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Bill Tulloch	Po Box 440 MONA VALE NSW 1660

It is also noted that during the assessment process, the applicant provided letters from surrounding property owners in support of the proposal. This included letters from owners / occupiers of the following properties:

- 64 Castle Circuit, Seaforth.
- 83 Castle Circuit, Seaforth.
- 87 Castle Circuit, Seaforth.

These letters partially note the support of neighbours with vehicular access along a private laneway to the rear of the subject site. This is due to the perceived reduction of traffic / congestion along the private laneway at the rear, as the proposal includes the conversion of a garage / carport with access to this laneway into a study.

The following issues were raised in the one (1) formal submission made in objection to the proposed development, which was made on behalf of the owners / occupiers of 85 Castle Circuit, Seaforth:

- **Height of buildings**

  The submission contends that the proposed development breaches the 8.5m height of buildings development standard and contends that the application has not been submitted with a request to vary this development standard pursuant to Clause 4.6 of the MLEP 2013.

  Comment:
  Council is satisfied that the proposal is compliant with Clause 4.3 Height of buildings of the MLEP 2013. The proposed development exhibits a building height of 8.3m, measured on Section 1 (Drawing No. DA 300, Rev B, dated 10 October 2023), which is compliant with the 8.5m development standard. The submission's contentions appear to be based on the eastern side elevation and survey points not located directly under the proposed works.

As the building complies with the height of buildings development standard established by Clause 4.3, a request to vary the development standard pursuant to Clause 4.6 is not required, as no variation is sought.

This issue is not sufficient to warrant refusal of the application.

- **Aims of the MLEP 2013**

The submission raised concerns that the proposal is contrary to the aims of the MLEP 2013 in that the development compromises the amenity of neighbouring properties, is not compatible with the desired future character of the locality and will not minimise the adverse effects of the bulk and scale of buildings.

Comment:
The assessment of the proposed development has found that the proposal will not result in unreasonable impacts to neighbouring properties, is commensurate to surrounding development and does not present unreasonable bulk or scale. The proposal is considered to meet the aims of the MLEP 2013 as established by Clause 1.2 Aims of Plan.

This issue is not sufficient to warrant refusal of the application.

- **Zone objectives**

The submission raised concerns that proposal is contrary to the zone objectives of the R2 Low Density Residential zone.

Comment:
As above, the assessment of the proposed development has found that the proposal will not result in unreasonable impacts to neighbouring properties, is commensurate to surrounding development and does not present unreasonable bulk or scale. The proposal is considered to meet the objectives of the R2 Low Density Residential zone as established by the MLEP 2013.

This issue is not sufficient to warrant refusal of the application.

- **Bulk and scale**

The submission contends that the proposed development should be refused due to its excessive bulk and scale and its failure to comply with the numerical standards and controls.

Comment:
As above, the assessment of the proposed development has found that the proposal will not result in unreasonable impacts to neighbouring properties, is commensurate to surrounding development and does not present unreasonable bulk or scale. Where non-compliances with planning controls arise, they have been assessed within this report as acceptable on merit.

This issue is not sufficient to warrant refusal of the application.

- **Character and streetscape**

The submission raised concerns about the compatibility of the proposal with the character of

the area and the impact of the proposal on the streetscape.

Comment:
The location of the proposal is uphill and to the rear of the existing dwelling. The alteration and additional will not be readily discernable from Castle Circuit below. As above, the assessment of the proposed development has found that the proposal will not result in unreasonable impacts to neighbouring properties, is commensurate to surrounding development and does not present unreasonable bulk or scale. The proposal is considered to be within the character of dwellings in the area, which can be characterised as large and multi-storey, constrained by sloping typography which results in the need to step with the slope, and oriented to obtain views of Middle Harbor.

This issue is not sufficient to warrant refusal of the application.

- **Floor Space Ratio (FSR)**

The submission raised concerns that the proposed GFA and resulting FSR are excessive and non-compliant with MELP 2013 Clause 4.4 Floor space ratio. The submission contents that the summited request to vary the development standard pursuant to Clause 4.6 of the MELP 2013 is inadequate.

Comment:
Refer to the section of this report on MELP 2013 Clause 4.6 Exceptions to development standards for a detailed assessment of the FSR variation request. In summary, Council is satisfied that the Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify variation of the development standard contained within Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:
- Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
- There are sufficient environmental planning grounds to justify the variation.

This issue is not sufficient to warrant refusal of the application.

- **Wall Height**

The submission raised concerns that the proposal exhibits a non-compliant wall height and contends that this results in unacceptable impacts.

Comment:
Refer to the section of this report on MDCP Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height) for a detailed assessment of wall height. In summary, the proposed development is considered to meet the underlying objectives of the control, is not considered to result in unreasonable impacts or an unreasonable built form outcome, and the variation to the wall height built form control is supported on merit.

This issue is not sufficient to warrant refusal of the application.

- **Setbacks / Building Separation**

The submission raised concerns that the proposal exhibits a non-compliant side and rear setback and contends that this results in unacceptable impacts.

Comment:

Refer to the section of this report on MDCP Clause 4.1.4 Setbacks (front, side and rear) and Building Separation for a detailed assessment of setbacks. In summary, the proposed development is considered to meet the underlying objectives of the control, is not considered to result in unreasonable impacts or an unreasonable built form outcome, and the variation to the side and rear setback built form control is supported on merit.

It should be noted that the proposal is for alterations and additions to an existing dwelling house, with existing non-compliances, including an existing rear setback of nil.

This issue is not sufficient to warrant refusal of the application.

- **View loss**

The submission raised concerns that the proposal would result in unreasonable view loss to an adjoining neighbour to the south (85 Castle Circuit).

Comment:
Refer to the section of this report on MDCP Clause 3.4.3 Maintenance of Views for a detailed assessment of views. In summary, the proposal provides an acceptable level of view sharing to public and private spaces and does not result in unreasonable view loss.

This issue is not sufficient to warrant refusal of the application.

- **Impacts on neighbouring properties**

The submission contends that the development application should be refused as it results in unreasonable impacts to surrounding properties.

Comment:
As above, the assessment of the proposed development has found that the proposal will not result in unreasonable impacts to neighbouring properties, is commensurate to surrounding development and does not present unreasonable bulk or scale. The proposal does not create any unreasonable amenity, view loss, privacy or overshadowing impacts. It is noted that the objecting property (85 Castle Circuit) is located uphill and approximately 18m away from the subject site. Shadows will not be cast uphill onto this property in a significant way, with only minor shadows cast onto its lower driveway and frontage. It is adequate spaced away from the subject site in regard to privacy.

It must be noted the area is an R2 Low Density Residential zone, where it must be expected that some level of neighboring built form will be visible within the landscaped setting. It is not a rurally zoned area, where one may expect not to see any surrounding built form other than their own property. Furthermore, it should be noted that in areas such as this, where all properties are attempting to gain views across other properties towards a desirable view corridor (in this case, Middle Harbor), that there is some level of trade off between absolute privacy and views.

This issue is not sufficient to warrant refusal of the application.

- **Undesirable precedent**

The submission contends that the approval of this development would create an undesirable precedent and be against the public interest.

Comment:
All development applications received by Council are assessed against relevant planning controls, policies and procedures on their own merit. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed. No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

This issue is not sufficient to warrant refusal of the application.

- **Insufficient information**

The submission contends that insufficient information has been submitted with the application.

Comment:
Sufficient information has been submitted with the application, which, combined with information that Council has in its records (such as information submitted in prior development applications at the subject site), and information / understanding that has been collected during the assessment (such as during a site inspection), has allowed for a full and adequate assessment. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

This issue is not sufficient to warrant refusal of the application.

REFERRALS

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	***Supported, with conditions.*** The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	***Supported, with conditions.*** Reference is made to the proposed development at the above area and Aboriginal heritage. 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.

External Referral Body	Comments
	Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development. Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No. A478115_04,issued 12 Febuary 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.

Manly Local Environmental Plan 2013

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.3m (to proposed works)	-	Yes
Floor Space Ratio	FSR: 0.4:1 (225.04sqm)	Existing FSR (approved by DA2022/2208): 0.55:1 (308.2sqm) Proposed FSR: 0.59:1 (333.4sqm)	37% (83.16sqm) 48.2% (108.36sqm)	**No** (but approved by DA2022/220) **No**

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes

Clause	Compliance with Requirements
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.4 Floor space ratio

The alterations and additions approved under DA2022/2208 resulted in an approved FSR of 0.55:1 (308.2sqm), already a 37% (83.16sqm) variation to the required FSR of 0.4:1 (225.04sqm)

This proposal seeks development consent for alterations and additions that will result in the dwelling exhibiting a FSR of 0.59:1 (333.4sqm). This has been calculated from the following GFA measures of each level:

- Garage: 15.8sqm (noting that the two car spaces required by the MDCP and access between these spaces and the lift are excluded from GFA calculation).
- Ground Floor: 59.7sqm
- First Floor: 136.4sqm
- Second Floor (including proposed study): 121.5sqm

Therefore, this proposal increases the GFA of the dwelling by 25.2sqm as compared to that approved by DA2022/2208.

The proposed FSR of of 0.59:1 (333.4sqm) represents a 48.2% (108.36sqm) variation to the required FSR of 0.4:1 (225.04sqm). Refer to the section of this report on MLEP 2013 Clause 4.6 Exceptions to development standards for an assessment of the proposed variation.

It should be noted that this increase occurs entirely within an area of the existing dwelling that is currently occupied by a garage / carport. This space as existing is excluded from GFA calculations, as the space is an open carport, despite appearing like a garage. Therefore, the increase in GFA occurs within an area of existing built form, a factor that is discussed further in the section of this report on MLEP 2013 Clause 4.6 Exceptions to development standards.

4.6 Exceptions to development standards

The application seeks consent to vary a development standard as follows:

Development standard: Clause 4.4 Floor Space Ratio
Requirement: FSR: 0.4:1 (225.04sqm)
Proposed: FSR: 0.59:1 (333.4sqm)
Percentage of variation: 48.2% (108.36sqm)

With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is accompanied by a document that sets out the grounds on which the Applicant seeks to demonstrate the matters set out in Clause 4.6(3)(a) and (b) of the MLEP 2013 (the 'Clause 4.6 Request').

Subclause (1) of this clause provides that:

(1) The objectives of this clause are as follows:
(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Comment:
The objectives of this clause have been considered pursuant to Section 4.15(a)(i) of the *Environmental Planning and Assessment Act 1979*.

Subclause (2) of this clause provides that:

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Comment:
Clause 4.4 Floor Space Ratio is not expressly excluded from the operation of this clause.

Subclause (3) of this clause provides that:

(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

(a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

Comment:
Council is satisfied that the Applicant has demonstrated that compliance with Clause 4.4 Floor Space Ratio is unreasonable or unnecessary in the circumstances of this application for the following reasons:

In accordance with *Wehbe v Pittwater Council [2007] NSWLEC 827*, an applicant may demonstrate 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. The applicant has demonstrated that the proposal is consistent with the objectives of the FSR development standard, with the assessment made by the applicant generally concurred with. The garage / carport conversion will have no dissemble impact from the street, is contained largely within the footprint of the existing dwelling and within existing areas of build form, and will not unreasonably impact surrounding properties.

(b) there are sufficient environmental planning grounds to justify contravening the development standard.

Comment:
In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the Applicant's written request has adequately demonstrated that that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

The Clause 4.6 Request argues, in part:

"I have formed the opinion that sufficient environmental planning grounds exist to justify the variation including the compatibility of the height, bulk and scale of the development, as reflected by floor space, with the built form characteristics established by adjoining development and development generally within the site's visual catchment.

In this particular case, the additional floor space can be located generally within the established building footprint such that it does not in any significant manner contribute to the overall bulk and scale of the development.

Further, the variation provisions contained at clause 4.1.3.1 of Manly DCP reflect an acceptance that the FSR standard on undersized allotments does not provide for the orderly and economic use and development of the land and in my opinion represents an abandonment of the FSR standard on undersized allotments.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- *The proposal promotes the orderly and economic use and development of land (1.3(c)).*
- *The development represents good design (1.3(g)).*
- *The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (1.3(h))."*

Is not accepted that the FSR standard has been abandoned for undersized allotments. Rather Clause 4.1.3.1 of the MDCP provides additional guidance in assessing FSR variations on such allotments. Nonetheless, other arguments provided by the applicant are generally concurred with. The additional floor space is largely provided within an existing garage / carport area. This area is not currently counted as GFA, due to the open nature of the carport on the south side, however, it presents as solid built form. The proposal includes the increasing of the height of this structure in making the alterations and additions (importantly, remaining compliant with the height of buildings development standard) and this area is converted into GFA. As a result, the increased GFA results in only minimal additional built form, which will not cause unreasonable amenity impacts on surrounding properties and is commensurate to surrounding development.

Council is satisfied that the Applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of Clause 4.4 Floor Space Ratio for the following reasons:

- The proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, thereby satisfying objects 1.3(c) and (g) of the EPA Act.
- The proposed development will not cause unreasonable amenity impacts on surrounding properties, and is commensurate to surrounding development.
- The additional floor space is located generally within the established building footprint and built form such that it does not in any significant manner contribute to increased bulk and scale.

Public Interest:

Matters relevant to public interest in respect of the development are considered in the relevant sections of this report as per Section 4.15(1)(e) of the EPA Act.

Conclusion:

Council is satisfied as to the matters set out in Clause 4.6 of the MLEP 2013.

It is considered on balance, that having regard to the particular circumstances, the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 562.6sqm	**Requirement**	**Proposed**	**% Variation**	**Complies**
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwellings	1	-	Yes
	Dwelling Size: 134sqm (5 bedroom, 5 bathroom)	333.4sqm	-	Yes
4.1.2.1 Wall Height	East: 8m (based on gradient 1:4+)	9.1m	13.75%	**No**
	West: 8m (based on gradient 1:4+)	7.7m	-	Yes
4.1.2.2 Number of Storeys	2	5	150%	**No**
4.1.2.3 Roof Height	Height: 2.5m	0.7m	-	Yes
	Parapet Height: 0.6m	0.5m	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	>6m, behind prevailing setback	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	East: 3m to study (based on wall height 9.1m)	1.5m - 2.8m	Max. 50%	**No**
	West: 2.6m to study (based on wall height 7.7m)	14.4m	-	Yes
	No windows within 3m of side boundaries	2 new windows proposed within 3m of side boundaries	N/A	**No**
4.1.4.4 Rear Setbacks	8m	Nil	100%	**No**
4.1.5.1 Minimum Residential Total Open Space	Open space 60% of site area (337.6sqm)	63.6% (357.9sqm)	-	Yes

Requirements Residential Open Space Area: OS4	Open space above ground no more that 25% of total open space (89.5sqm)	51.7% (185.1sqm)	106.8%	**No** but approved in DA2022/2208 and unchanged
4.1.5.2 Landscaped Area	Landscaped area 40% of open space (143.2sqm)	40.7% (145.6sqm)	-	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	-	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	-	Yes

Compliance Assessment

Clause	**Compliance with Requirements**	**Consistency Aims/Objectives**
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.3.3 Footpath Tree Planting	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.3 Maintenance of Views

A submission received from an adjoining property to the south of the subject site (85 Castle Circuit) raised view loss as a concern. As such, the proposal is considered against the provisions of MDCP Clause 3.4.3 Maintenance of Views and planning principles outlined within the NSW Land and Environment Court case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*.

It is noted that view loss was also raised as a concern by 85 Castle Circuit during the assessment of DA2022/2208. During the assessment of DA2022/2208 a site inspection was carried out from this adjacent property on 10 February 2023 to ascertain the extent of the view impact, with a detailed view loss assessment included within the Assessment Report of DA2022/2208.

Refer to the section of this report on Site History for further information about the prior development consent DA2022/2208, including details about the differences between a deleted element of that proposal, and the study currently proposed within this application. In summary, the study proposed within this application is not identical to that deleted from DA2022/2208. Rather than retaining the garage as a storage area and proposing an addition on-top of it (as was originally proposed in DA2022/2208), the current proposal looks to convert the garage to a study and raise the floor level in doing so. As a result, the current proposal is smaller, with the maximum RL of the roof 0.78m lower than that originally proposed in DA2022/2208 (RL 56.23m vs RL 55.45m), and there is no associated deck proposed. More of the proposed study is contained within the existing garage, with less overall additional built form proposed as compared to that originally proposed in DA2022/2208.

As such, the view loss impact of the study proposed in this application will be less that that originally proposed in DA2022/2208, due to the lower height of the current proposal and reduction in additional built form.

Another site visit to 85 Castle Circuit has not been necessary for the assessment of this application, as the prior visit to 85 Castle Circuit, as well as another inspection of the subject site and surrounds undertaken during the course of this assessment, has been sufficient to allow for an assessment of the view loss. It is noted that large parts of the following assessment are replicated from the view loss assessment contained included within the Assessment Report of DA2022/2208 (with changes made

as necessary to reflect the differences in the proposed works), including utilising photographs from the prior visit, as the view in question is the same.

It is noted that the information submitted with the application was sufficient to enable an accurate view impact assessment based off the levels of the existing building. Height poles were not required to be erected in this instance.



Figure 4 - View from kitchen of 85 Castle Circuit looking North (towards subject site), taken on 10 February 2023.



Figure 5 - View from lounge room of 85 Castle Circuit looking North (towards subject site), taken on 10 February 2023.



Figure 6 - View from balcony of 85 Castle Circuit looking North (towards subject site), taken on 10 February 2023.



Figure 7 - View from balcony of 85 Castle Circuit looking North-West (showing main view unaffected by the proposal), taken on 10 February 2023.

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.

1. Nature of the views affected

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 to Principle 1:
The view affected from 85 Castle Circuit is one looking north and downhill from the vantage point of the kitchen, living room and lounge room. *Figure 4, Figure 5 & Figure 6* depict this northern view of trees, vegetation and bushland over the subject site, which will be minimally obscured by the proposed conversion of the garage / carport into a study. This would be caused by the raising of the roof at this section by 1.01m from RL 54.44m (existing garage roof top) to RL 55.45m (proposed study roof top). It is also noted that there exists a tree between the subject site and affected property which partially obscures the view towards the subject site.

Notably, only a small portion of this northern outlook towards bushland will be affected, with the development occurring downhill and approximately 18m away. Furthermore, considering the view as a whole, 85 Castle Circuit benefits from north-western views up Middle Harbor towards Bantry Bay, seen in *Figure 7*. In this direction, the land-water interface of both sides of Middle Harbor are clearly discernable, along with large areas of bushland. This view is obtained primarily from the balcony, but is also visible from the lounge room and kitchen. Of the northern and north-western outlook obtained by 85 Castle Circuit, views toward Middle Harbor are considered to be the most significant element. This element of the view is unaffected by the proposal.

2. What part of the affected property are the views obtained

The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

Comment to Principle 2:
As shown in *Figure 4, Figure 5 & Figure 6*, the view affected is obtained from the kitchen, living room and balcony. The portion of the view affected by the proposed development can be viewed sitting or standing in the living room or on the balcony, whilst only by standing in the kitchen. The portion of the view affected by the proposed development is obtained over what is arguably a front boundary, as access to the property is provided by a right of carriageway at this northern end of 85 Castle Circuit.

3. Extent of impact

The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20 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 to Principle 3:
As has been discussed in the comments to Principle 1, the property obtains a sweeping north to north-west view primarily from the balcony, but also from the lounge room and kitchen.

The proposed development impacts on a very small portion of this view. Considering the view as a whole, the proposed development does not impact the most significant element of this view (being Middle Harbor), only impacting a limited outlook on bushland downhill to the north, away from the significant elements of the view. As such, the view loss is considered to be negligible.

4. Reasonableness of the proposal that is causing the impact

The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

Comment to Principle 4:
The proposal presents some breaches to planning controls, including FSR, wall height and setbacks. However, the proposal is for additions and alterations to an existing dwelling, meaning it is constrained by existing building layout and existing non-compliances. Furthermore, the subject site, and surrounding sites, are impacted by natural typography and a steep slope to the north. The reasonableness of the proposed breaches to planning controls are assessed on merit within the various sections of this report, concluding the proposal is supported on merit. Furthermore, the 4.6 Variation Request to vary the FSR development standard has demonstrated compliance with the standard is unreasonable or unnecessary in the circumstances of the case pursuant to Clause 4.6 of the MELP 2013. Finally, the view loss is considered to have a negligible impact on 85 Castle Circuit, therefore not demonstrating that breaches to planning controls are unreasonably impacting the view attained from 85 Castle Circuit, and not necessitating a 'more skillful design' be employed.

The proposed development is considered to satisfy the objectives and requirements of this 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.

4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

Description of non-compliance

Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height) stipulates that walls are not to exceed:

- 8m (based on gradient 1:4+) for the eastern elevation.
- 8m (based on gradient 1:4+) for the western elevation.

The proposal presents a compliant wall height on the western elevation of 7.7m.

The proposal presents a non-compliant wall height on the eastern elevation of 9.1m, representing a variation of 13.75% to the control.

The control also requires that buildings must not exceed two (2) storeys. The proposed dwelling contains a maximum of five (5) storeys.

Merit consideration

There are no underlying objectives of this control under which to consider the merits of this variation. This clause instead relies on the objectives for the Height of Buildings at clause 4.3 in the Manly LEP

2013. An assessment against these objectives is as follows:

(a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,

Comment:
The proposal is of a comparable size, height and scale to surrounding development. Surrounding development is also restricted by steeply sloping typography and the proposal is commensurate to surrounding residential development. The flat roof form has been designed to minimise the overall height of the development where possible. Notably, the proposed study complies with the height of buildings development standard. The proposed development is considered to satisfy this objective.

(b) to control the bulk and scale of buildings,

Comment:
It is not considered that the breaches of this Clause contribute to excessive bulk or scale, considering the surrounding residential environment, topography and existing vegetation, which acts to soften the impact of the built form. The proposed development is considered to satisfy this objective.

(c) to minimise disruption to the following—
(i) views to nearby residential development from public spaces (including the harbour and foreshores),
(ii) views from nearby residential development to public spaces (including the harbour and foreshores),
(iii) views between public spaces (including the harbour and foreshores),

Comment:
Refer to the section of this report on MDCP Clause 3.4.3 Maintenance of Views for a detailed assessment of views. The proposal provides an acceptable level of view sharing to public and private spaces and does not result in unreasonable view loss. The proposed development is considered to satisfy this objective.

(d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,

Comment:
the development is not considered to create unreasonable overshadowing on pubic or private spaces. The proposed development is considered to satisfy this objective.

(e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

Comment:
The subject site is not a recreation or environmental protection zone. Nonetheless, the height and bulk of the proposal are not considered to impact on existing vegetation. No significant trees or vegetation are required to be removed, with all proposed works located within the footprint of the existing building. The proposed development is considered to satisfy this objective.

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 s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.3 Floor Space Ratio (FSR)

A detailed assessment of the Floor Space Ratio (FSR) variation has been undertaken within the section of this report relating to Clause 4.6 of the MLEP 2013. In summary, the applicant has adequately justified that compliance with the requirements stipulated within Clause 4.4 Floor Space Ratio Development Standard is unreasonable and unnecessary, and that there are sufficient environmental planning grounds to contravene this development standard.

The subject site has a total area of 562.6sqm and has an FSR requirement of 0.4:1 (225.04sqm) under the MLEP 2013. The proposed FSR is 0.59:1 (333.4sqm), which represents a variation of 48.2% (108.36sqm) to the control.

Under this MDCP Clause, the subject site is an 'undersized allotment' as it is located within Area U on the LEP LSZ map, which requires a minimum lot size of 1150sqm. This allows for a variation to FSR as established by Figure 30 of the MDCP, with FSR calculated against a site area of 750sqm.

When calculating the FSR against a site area of 750sqm, the FSR requirement equates to 0.4:1 (300sqm). As the proposed GFA exceeds 300sqm, it would not technically comply with the variation allowed by this MDCP control. However, the variation would be reduced to 11.1% (33.4sqm).

Notwithstanding, the proposal has been assessed against the requirements and objectives of Clause 4.6 of the MLEP 2013 within this report. The provisions of MLEP 2013 Clause 4.6 Exceptions to development standards operate independently from, and superior to, the MDCP.

4.1.4 Setbacks (front, side and rear) and Building Separation

Description of non-compliance

Clause 4.1.4.2 Side Setbacks and Secondary Street Frontages stipulates that the setbacks between any part of a building and the side boundary must not be less than one third of the wall height.

The proposed development is compliant with side setback requirements to the western boundary. However, the proposal exhibits a non-compliance with side setback requirements to the eastern boundary. Based on a wall height of 9.1m, the proposal requires a 3m eastern side setback, instead exhibiting a 1.5m to 2.8m setback. This represents a maximum 50% variation to the control.

Clause 4.1.4.2 Side Setbacks and Secondary Street Frontages also requires that no new windows be located within 3m of side boundaries. The proposal includes two (2) on the eastern elevation of the proposed study.

Clause 4.1.4.4 Rear Setbacks stipulates that the distance between any part of a building and the rear boundary must not be less than 8m. The proposal exhibits a non-compliant rear setback of nil, representing a 100% variation to the control. However, it should be noted that this nil setback is existing, with the alterations and additions maintaining this established setback.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

Objective 1) To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.

Comment:
Non-compliances with proposed side and rear setbacks are all towards the rear of the property and not readily visible from the street. The streetscape is not considered to be adversely impacted, particularity given that all proposed works are located to the rear of the existing dwelling and will be unable to easy discern from Castle Circuit below.

Objective 2) To ensure and enhance local amenity by:

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*
- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
- *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

Comment:
The development is not considered to create unreasonable overshadowing on pubic or private spaces. The development is also not considered to create unreasonable privacy impact on adjoining properties, with the proposal including adequate privacy screening and being located with sufficient distance to surrounding dwellings. Refer to the section of this report on MDCP Clause 3.4.3 Maintenance of Views for a detailed assessment of views. In summary, the proposal provides an acceptable level of view sharing to public and private spaces and does not result in unreasonable view loss. The proposal is also considered to maintain the existing streetscape characteristic and not detrimentally impact on traffic conditions.

Objective 3) To promote flexibility in the siting of buildings.

Comment:
Flexibility is required in the siting of alterations and additions to existing dwellings as the proposal must contend with existing site structures with existing non-compliances. The proposed alterations and additions are not expected to result in any unreasonable amenity impacts on surrounding properties. As such, flexibility is warranted, in this instance.

Objective 4) To enhance and maintain natural features by:

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Comment:
The proposal is compliant with the landscape area provisions of the MDCP and maintains adequate landscaping and vegetation. Proposed works are located entirely within the footprint of the existing dwelling and will not impact on landscaped area.

Objective 5) To assist in appropriate bush fire asset protection zones.

Comment:
The site is classified as bush fire prone land. A Bush Fire Report was submitted with the application that included a certificate stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent. As such, the proposed development is considered to satisfy this objective.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.5 Open Space and Landscaping

The subject site is located within Residential Open Space Area OS4, which requires at least 60% (337.6sqm) of the site to be open space. In addition, a least 40% (143.2sqm) of the proposed total open space is to be landscaped area. Additionally, no more than 25% (89.5sqm) of total open space can be provided above ground level.

The site as approved pursuant to DA2022/2208 has a compliant total open space of 63.6% (357.9sqm). Furthermore, the site is compliant with landscaped area requirements, with 40.7% (145.6sqm) of total open space being landscaped area. However, the site exhibits 51.7% (185.1sqm) of open space above ground level, a non-compliance of 106.8% to the control requiring no more than 25% of open space be above ground level.

Nonetheless, the current proposal will not change any of these dimensions, with all works proposed within the footprint of the existing dwelling. With the non-compliant open space above ground level approved under DA2022/2208 and unchanged by this proposal, the outcomes of the original consent are maintained and a detailed merit assessment is not required in this instance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

As the estimated cost of works is less than $100,001.00 the policy is not applicable to the assessment of this application.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

Council is satisfied that the Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify variation of the development standard contained within Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
- There are sufficient environmental planning grounds to justify the variation.

PLANNING CONCLUSION

This proposal, for alterations and additions to a dwelling house has been referred to the Development Determination Panel (DDP) due to a request to vary the floor space ratio development standard, established by the Manly Local Environmental Plan 2013, by greater than 10%.

The concerns raised in the one (1) objection received have been addressed within the section of this report on Notification & Submission Received, with none sufficient to warrant refusal of the application.

Critical assessment issues included assessment of the Clause 4.6 Request to vary the floor space ratio development standard, assessment of potential view loss, as well as assessment of MDCP non-compliances, including wall height and setbacks.

The 4.6 request for the non-compliance with FSR standard arises from a 25.2sqm increase in floorspace. A recently approved Development Application (DA2022/2208) approved alterations and additions to the subject site which would result in an approved FSR of 0.55:1 (308.2sqm), already a 37% (83.16sqm) variation to the required FSR of 0.4:1 (225.04sqm). This proposal seeks development

consent for alterations and additions that will result in the dwelling exhibiting a FSR of 0.59:1 (333.4sqm), a proposed 48.2% (108.36sqm) variation to the 0.4:1 control. However, this increase occurs entirely within an area of the existing dwelling that is currently occupied by a garage / carport. This space as existing is excluded from GFA calculations, as the space is an open carport, despite appearing like a garage. Therefore, the increase in GFA occurs largely within an area of existing built form, within the existing building footprint, and is not considered to contribute in a significant manner to increased bulk and scale.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.

REASON FOR DETERMINATION

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

That Northern Beaches Council, as the consent authority, vary the development standard contained within Clause 4.4 Floor Space Ratio, pursuant to Clause 4.6 of the Manly Local Environmental Plan 2013 because the Applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) of Clause 4.6.

Accordingly Council as the consent authority grant Development Consent to DA2024/0161 for Alterations and additions to a dwelling house on land at Lot 33 DP 200638, 77 Castle Circuit, SEAFORTH, subject to the conditions printed below:

Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

GENERAL CONDITIONS

1. **Approved Plans and Supporting Documentation**
   Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	**Revision Number**	**Plan Title**	**Drawn By**	**Date of Plan**
DA 010	B	Site Analysis	Hot House Architects	10 October 2023
DA 102	B	Second Floor Plan	Hot House Architects	10 October 2023

DA 110	B	Roof Plan	Hot House Architects	10 October 2023
DA 200	B	East Elevation	Hot House Architects	10 October 2023
DA 201	B	West Elevation	Hot House Architects	10 October 2023
DA 202	B	Street (North) Elevation	Hot House Architects	10 October 2023
DA 203	B	South Elevation	Hot House Architects	10 October 2023
DA 300	B	Section	Hot House Architects	10 October 2023

Approved Reports and Documentation			
Document Title	**Version Number**	**Prepared By**	**Date of Document**
BASIX Certificate	A478115_04	Hot House Studio	12 February 2024
Bushfire Assessment Report	-	Sydney Bushfire Consultants	5 October 2023
Bushfire Risk Assessment Certificate	-	Sydney Bushfire Consultants	5 October 2023
Geotechnical Investigation	J4559	White Geotechnical Group	11 October 2022
Geotechnical Comments in regards to New Plans	J4559A	White Geotechnical Group	11 October 2023
Waste Management Plan - 77 Castle Circuit, Seaforth	-	Hot House Architects	20 October 2023
Stormwater Management Plan, Drawings No. D1 - D10	Issue C	NY Civil Engineering	5 October 2023

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency 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	Referral Response - Ausgrid	05/03/2024 (on EDMS)

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

3. **Prescribed Conditions**

(a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

(b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);

(c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

(i) showing the name, address and telephone number of the Principal Certifier for the work, and

(ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and

(iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

(d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

(i) in the case of work for which a principal contractor is required to be appointed:

A. the name and licence number of the principal contractor, and

B. the name of the insurer by which the work is insured under Part 6 of that Act,

(ii) in the case of work to be done by an owner-builder:

A. the name of the owner-builder, and

B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

(e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

(i) protect and support the adjoining premises from possible damage from the excavation, and

(ii) where necessary, underpin the adjoining premises to prevent any such damage.

(iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

(iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative requirement.

4. **General Requirements**

(a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:
- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

(b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.

(c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

(d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

(e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

(f) Prior to the release of the Construction Certificate, payment of the following is required:

i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less

than $250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.

iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.

(g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

(h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

(k) Prior to the commencement of any development onsite for:

i) Building/s that are to be erected

ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place

iii) Building/s that are to be demolished

iv) For any work/s that is to be carried out

v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

(l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

(m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

(n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

(1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools

(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

(2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

(3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

(4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

5. **No Approval for Secondary Dwelling**
No approval is granted or implied under this Development Consent for the use of any part of the dwelling house for the purpose of a secondary dwelling or separate occupancy. Built in cooking facilities are not permitted to be installed, other than those shown in the designated kitchen area.

Reason: To ensure compliance with the terms of this consent.

FEES / CHARGES / CONTRIBUTIONS

6. **Security Bond**

A bond (determined from cost of works) of $2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the Certifier prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at www.northernbeaches.nsw.gov.au).

Reason: To ensure adequate protection of Council's infrastructure.

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

7. **Stormwater Drainage Disposal**
The stormwater drainage systems for the development are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy.

All stormwater drainage systems must comply with the requirements of Council's Water Management for Development Policy. Any recommendations identified within a Geotechnical Report relevant to the development are to be incorporated into the design of the stormwater drainage system. Details demonstrating compliance from a qualified and practising Civil Engineer and where relevant a Geotechnical Engineer must be submitted to and approved by the Certifier prior to the issue of a Construction Certificate.

When the proposed discharge point for the development in this consent cannot strictly comply with the Water Management for Development Policy, the Applicant must apply to verify the proposed discharge point by gaining Council approval via a Stormwater Drainage Application. Council approval must be provided to the Certifier prior to the issue of a Construction Certificate when a Stormwater Drainage Application is required. The Stormwater Drainage Application form can be found on Council's website.

Compliance with this condition must not result in variations to the approved development or additional tree removal.

Reason: To ensure satisfactory management of stormwater.

8. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**
The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of a Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

9. **Boundary Identification Survey**
A boundary identification survey, prepared by a Registered Surveyor, shall be provided in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of any

Construction Certificate.

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

10. **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.

11. **Compliance with Standards**
The development is required to be carried out in accordance with all relevant Australian Standards.

    Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifier prior to the issue of the Construction Certificate.

    Reason: To ensure the development is constructed in accordance with appropriate standards.

12. **Sydney Water "Tap In"**
The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifier demonstrating the works are in compliance with Sydney Water requirements.

    Please refer to the website www.sydneywater.com.au for:
    - "Tap in" details - see http://www.sydneywater.com.au/tapin
    - Guidelines for Building Over/Adjacent to Sydney Water Assets.

    Or telephone 13 000 TAP IN (1300 082 746).

    Reason: To ensure compliance with the statutory requirements of Sydney Water.

13. **Amending Consent to DA2022/2208**
To the extent of any inconsistency between this consent ("DA2024/0161") and the development consent granted to Development Application No. DA2022/2208 by Northern Beaches Council for "Alterations and additions to a dwelling house" at 77 Castle Circuit, Seaforth

("DA2022/2208"), the plans, drawings and documents approved by, and the conditions of DA2024/0161 shall prevail.

In particular, but without limitation, the alterations and additions to the dwelling within DA2024/0161 supersede the plans and requirements of DA2022/2208, and must be complied with as requirements of this consent.

Reason: To prevent any inconsistencies between consents applying to the site (pursuant to Clause 4.17 of EPA Act, 1979 & Clause 68 EPA Regulation 2021).

DURING BUILDING WORK

14. **Removing, Handling and Disposing of Asbestos**
Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:
    - Work Health and Safety Act;
    - Work Health and Safety Regulation;
    - Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
    - Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
    - Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
    - The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

    Reason: For the protection of the environment and human health.

15. **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.

16. **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.

17. **Waste Management During Development**
The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

    Details demonstrating compliance must be submitted to the Principal Certifier.

    Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

18. **Aboriginal Heritage**
If in undertaking excavations or works any Aboriginal site or object is, or is thought to have

been found, all works are to cease immediately and the applicant is to contact the Aboriginal Heritage Officer for Northern Beaches Council, and the Cultural Heritage Division of the Department of Planning, Housing and Infrastructure.

Any work to a site that is discovered to be the location of an Aboriginal object, within the meaning of the National Parks and Wildlife Act 1974, requires a permit from the Director of the Department of Planning, Housing and Infrastructure.

Reason: Aboriginal Heritage Protection.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

19. **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.

20. **House / Building Number**
House/building number is to be affixed to the building to be readily visible from the public domain.

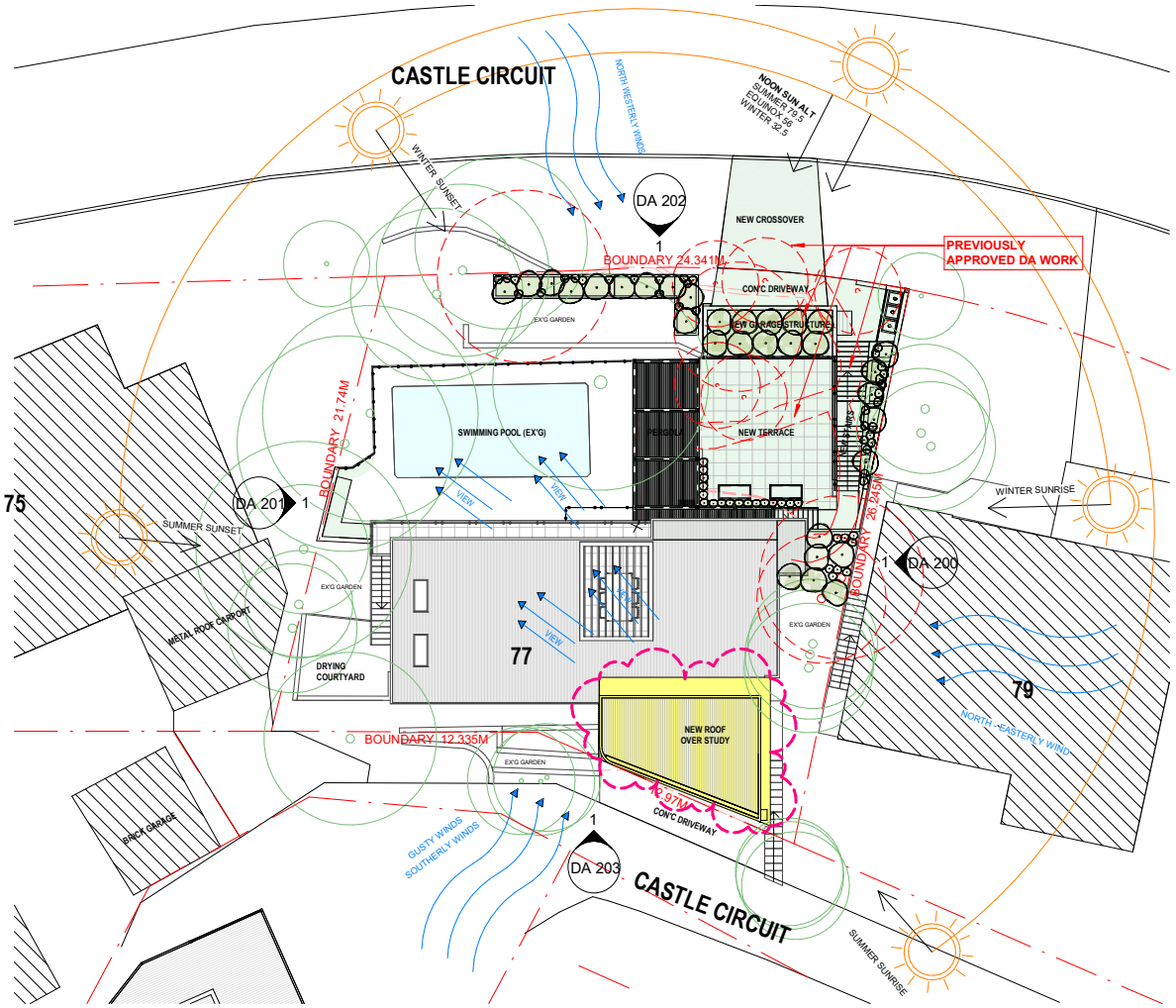
Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: Proper identification of buildings.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

21. **Geotechnical Recommendations**
Any ongoing recommendations (if any) of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.



2 Site
1 : 200

FOR DEVELOPMENT APPLICATION ONLY

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APPROVED DA WORK
NEW WORK
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OVERLAND FLOW

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DRAWINGS TO BE READ IN CONJUNCTION WITH BASIX CERTIFICATE AND THE SURVEY

HOT HOUSE ARCHITECTS
Nominated Architect: Wade Stewart Cogle
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abn: 355 0579 1074

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HOT HOUSE PROJECTS PTY LTD TRA HOT HOUSE ARCHITECTS

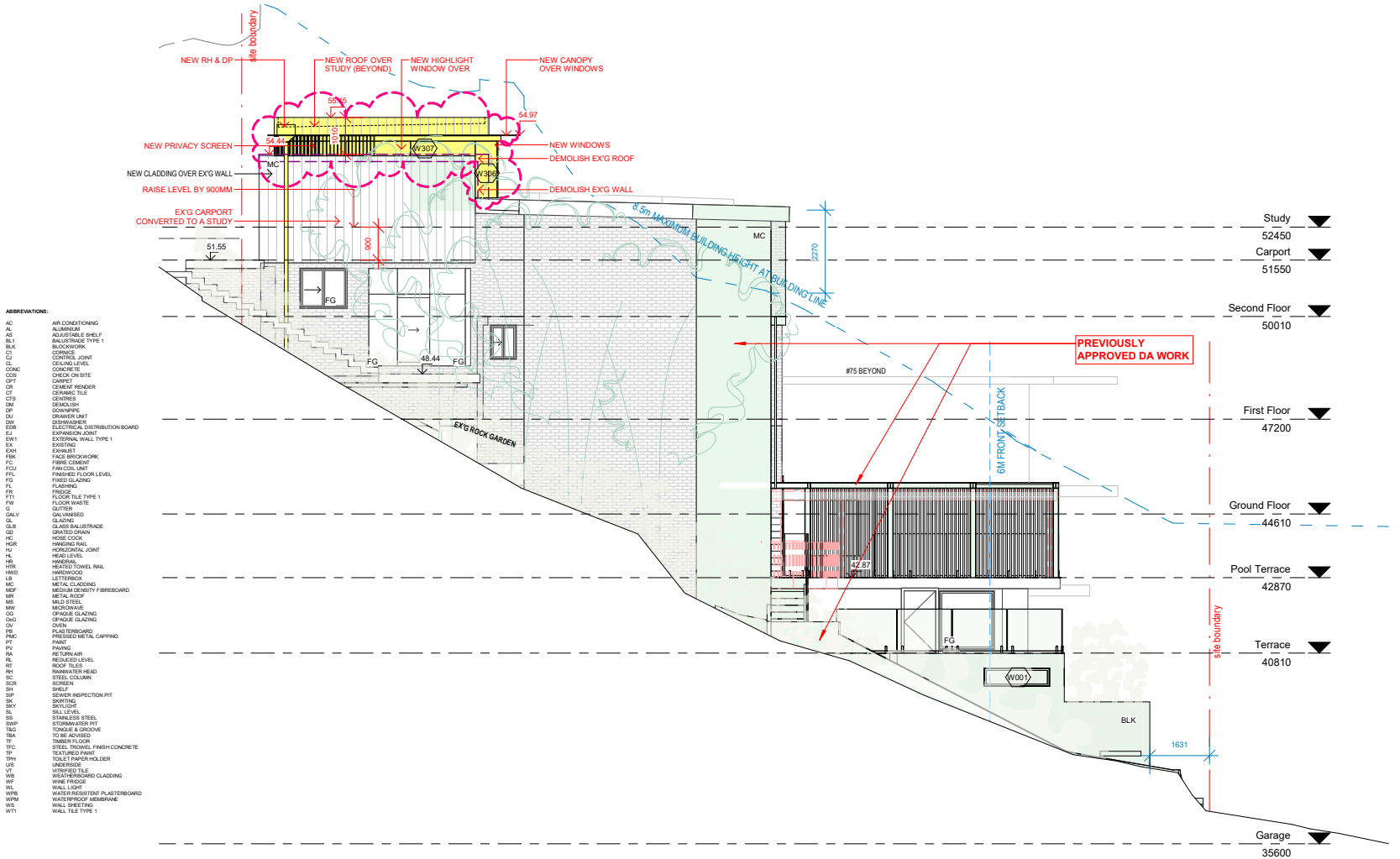
ISSUE	DESCRIPTION	DATE
A	DA2022/2208 - Approved	12-07-23
B	DA (Study)	10-10-23

CLIENT: Jonathan Algar
PROJECT: Alterations and Additions
ADDRESS: 77 Castle Circuit, Seaforth, NSW, 2092

SITE ANALYSIS

PROJECT NO.	1037 HHA		
DATE	10 October 2023		
LOT:	33	DRAWN BY:	JG
DP:	200638	CHECKED BY:	WC
SCALE:	As indicated		

DA 010



ABBREVIATIONS:

AC	AIR CONDITIONING
AL	ALUMINIUM
AS	ADJUSTABLE SHELF
BL1	BALUSTRADE TYPE 1
BLK	BLOCKWORK
C1	CORNICE
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WPM	WATERPROOF MEMBRANE
WS	WALL SHEETING
WT1	WALL TILE TYPE 1

1 East Elevation
1 : 100

FOR DEVELOPMENT APPLICATION ONLY

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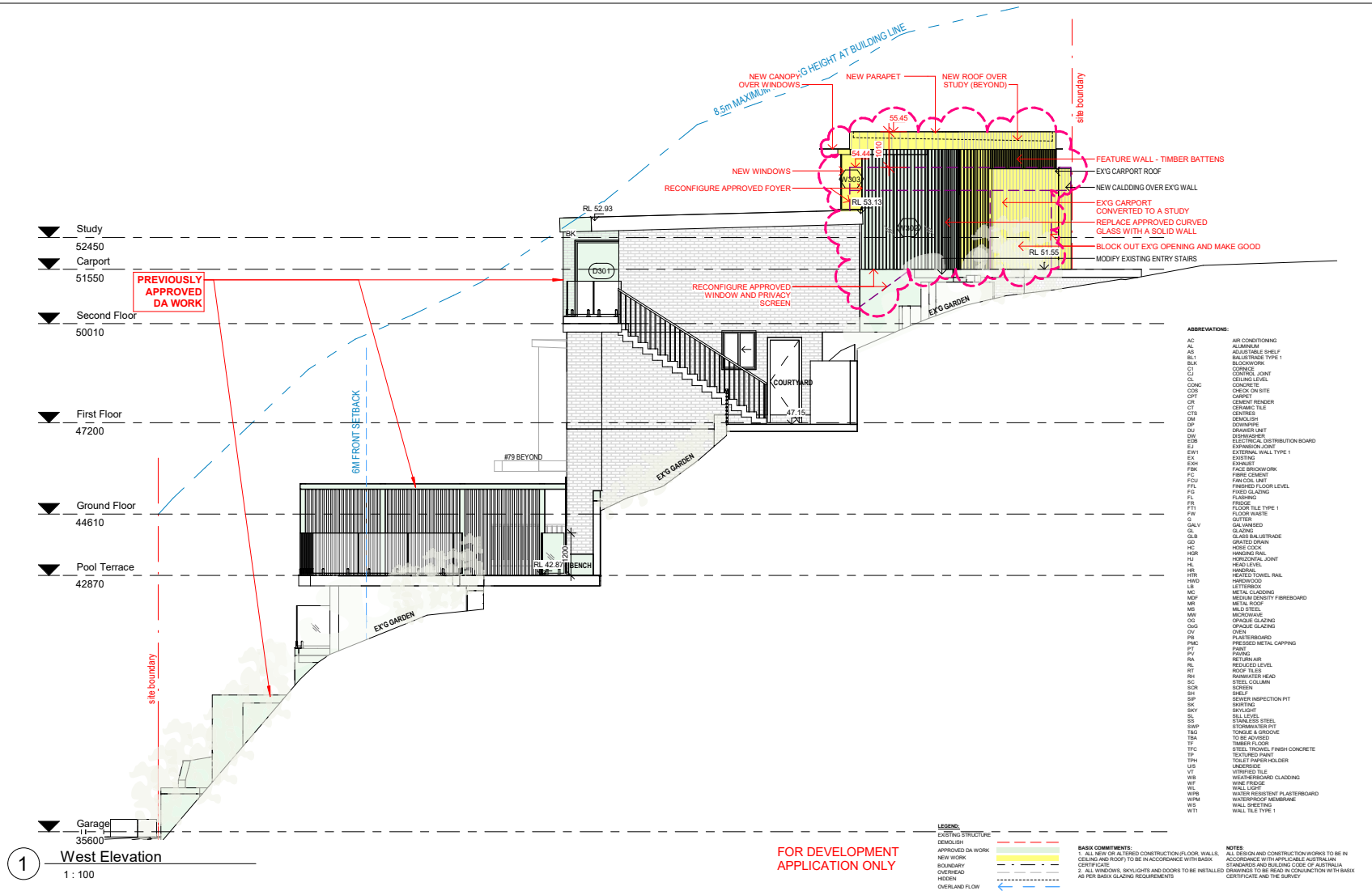
ISSUE	DESCRIPTION	DATE
A	DA2022/2208 - Approved	12-07-23
B	DA (Study)	10-10-23

CLIENT: Jonathan Algar
PROJECT: Alterations and Additions
ADDRESS: 77 Castle Circuit, Seaforth, NSW, 2092

EAST ELEVATION

PROJECT NO.	1037 HHA		
DATE	10 October 2023		
LOT:	33	DRAWN BY:	JG
DP:	200638	CHECKED BY:	WC

DA 200
SCALE: As indicated



1 West Elevation
1 : 100

FOR DEVELOPMENT APPLICATION ONLY

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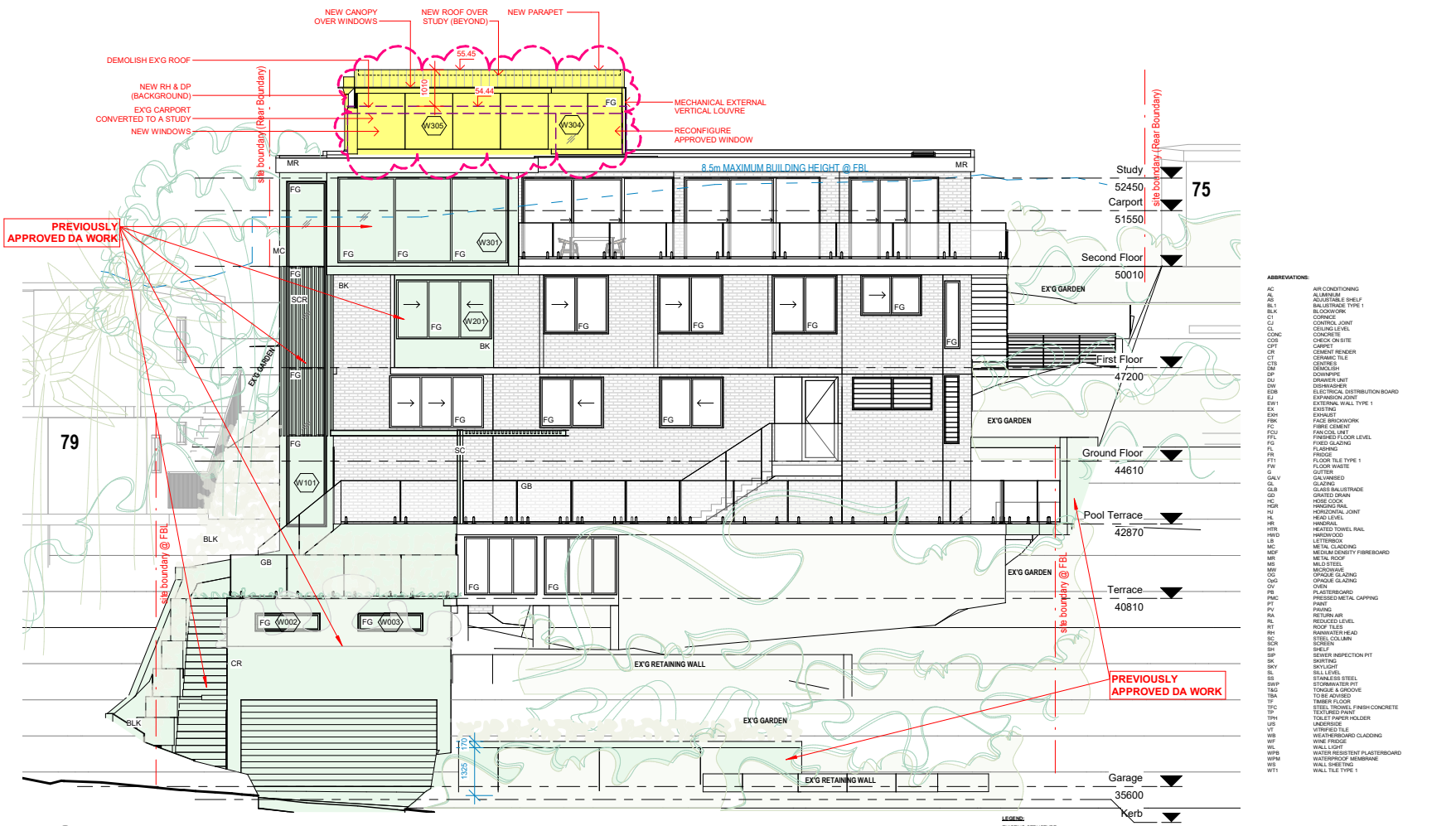
CLIENT: Jonathan Algar
PROJECT: Alterations and Additions
ADDRESS: 77 Castle Circuit, Seaforth, NSW, 2092

WEST ELEVATION

PROJECT NO. 1037 HHA
DATE 10 October 2023
LOT: 33 DRAWN BY: JG
DP: 200638 CHECKED BY: WC

DA 201

SCALE: As indicated



1 North Elevation
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FOR DEVELOPMENT APPLICATION ONLY

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OVERLAND FLOW

BASIX COMMITMENTS:
1. ALL NEW OR ALTERED CONSTRUCTION (FLOOR, WALLS, CEILING AND ROOF) TO BE IN ACCORDANCE WITH BASIX CERTIFICATE
2. ALL WINDOWS, SKYLIGHTS AND DOORS TO BE INSTALLED AS PER BASIX GLAZING REQUIREMENTS

NOTES:
ALL DESIGN AND CONSTRUCTION WORKS TO BE IN ACCORDANCE WITH APPLICABLE AUSTRALIAN STANDARDS AND BUILDING CODE OF AUSTRALIA
DRAWINGS TO BE READ IN CONJUNCTION WITH BASIX CERTIFICATE AND THE SURVEY

HOT HOUSE ARCHITECTS
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PRINT DATE: 20/10/2023 12:12:25 PM PRINT SIZE: A3

NOTES:
Builder is to examine the site and verify conditions and dimensions. Any discrepancies must be brought to the architect's attention. Use figured dimensions only. Do not scale drawings. All work shall comply with the Building Code of Australia and relevant Australian Standards.

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HOT HOUSE PROJECTS PTY LTD TRADING AS HOT HOUSE ARCHITECTS

ISSUE	DESCRIPTION	DATE
A	DA2022/2208 - Approved	12-07-23
B	DA (Study)	10-10-23

CLIENT: Jonathan Algar
PROJECT: Alterations and Additions
ADDRESS: 77 Castle Circuit, Seaforth, NSW, 2092

STREET (NORTH) ELEVATION

PROJECT NO. 1037 HHA
DATE 10 October 2023
LOT: 33 DRAWN BY: JG
DP: 200638 CHECKED BY: WC
SCALE: As indicated

DA 202

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Clause 4.6 variation request – FSR
Alterations and additions to existing dwelling house
77 Castle Circuit, Seaforth
8.2.24

1.0 Introduction

This clause 4.6 variation has been prepared having regard to the Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe)* at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney [2019]* NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

2.0 Manly Local Environmental Plan 2013 ("MLEP")

2.1 Clause 4.4 – Floor space ratio

Pursuant to Clause 4.4 MLEP 2013 the maximum FSR for development on the site is 0.4:1, which based on a site area of 562.6m², represents a maximum gross floor area of 225.04m². The stated objectives of this clause are:

(a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,

(b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,

(c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,

(d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,

(e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

It has been determined that the proposal provides for 300m² of GFA which equates to an FSR of 0.416:1. This represents a variation of 12m² square metres or 4.1%.

I note that the recently approved development application involving alterations and additions to the existing dwelling house (DA2020/2208) proposed a GFA (as calculated by Council) of 336.6m² representing an FSR of 0.6:1. Such GFA calculation differed to the calculation contained on the plans submitted in support of the application on the basis that Council included the area of the pre-existing garage as GFA on the basis that these spaces were in addition to the approved double garage and accordingly were deemed GFA for the purpose of calculating FSR. Accordingly, the conversion of the pre-existing garage into a study/home office does not alter the previously approved GFA/ FSR.

I have carefully calculated the GFA in accordance with the GFA definition and confirm a GFA calculation of 326.1m² representing an FSR of 0.58:1. I do however acknowledge that the proposal exceeds the FSR standard by 101.06m² (44.9%) triggering the need for the preparation of a clause 4.6 variation request in support of the variation sought.

That said, clause 4.1.3 of Manly Development Control Plan 2013 contains FSR exemption provisions applicable to land where the site area is less than the minimum Lot size required on the LEP Lot size map provided the relevant LEP objectives and the provisions of the DCP are satisfied.

The Lot size map identifies the subject site as being in sub zone “U” in which a minimum Lot area of 1150m² is required. The site having an area of only 562.6m² is significantly below the minimum Lot area provision and accordingly the clause 4.1.3 Manly DCP FSR variation provisions apply.

Clause 4.1.3.1 states that the extent of any exception to the LEP FSR development standard pursuant to clause 4.6 of the LEP is to be no greater than the achievable gross floor area for the lot indicated in Figure 30 of the DCP. We confirm that pursuant to Figure 30 the calculation of FSR is to be based on a site area of 750m² with an achievable gross floor area of 300m².

In this regard, the 326.1m² of gross floor area proposed, representing an FSR of 0.43:1 (based on 750m²), is non-compliant with the maximum prescribed gross floor area of 300m² by 26.1m² and as non-compliant with the DCP variation provision by 8.7%. Such variation is considered to be minor.

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of MLEP provides:

(1) 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 cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

> *"In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard "achieve better outcomes for and from development". If objective (b) was the source of the Commissioner's test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test."*

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of MLEP provides:

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

This clause applies to the clause 4.4 Floor Space Ratio Development Standard.

Clause 4.6(3) of MLEP provides:

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

The proposed development does not comply with the floor space ratio provision at 4.4 of MLEP which specifies a maximum FSR 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.

3.0 Relevant Case Law

In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827* continue to apply as follows:

17. The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].

18. A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].

19. A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].

20. A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].

21. A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51].

The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.

22. These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 4.4 of MLEP a development standard?

2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:

    (a) compliance is unreasonable or unnecessary; and
    (b) there are sufficient environmental planning grounds to justify contravening the development standard

4.0 Request for variation

4.1 Is clause 4.4 of MLEP a development standard?

The definition of “development standard” at clause 1.4 of the EP&A Act includes:

(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,

Clause 4.4 MLEP prescribes a floor space height provision which seeks to limit the bulk, scale and density of the development. Accordingly, clause 4.4 MLEP is a development standard.

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 option, which has been adopted in this case, is to establish that compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Consistency with objectives of the floor space ratio standard

An assessment as to the consistency of the proposal when assessed against the objectives of the standard is as follows:

> *(a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*

Response: The proposed garage conversion works are located such that they will not be discernible as viewed from the street and to that extent will have no impact on existing streetscape character. The works are single storey in nature and do not in any significant or detrimental manner contribute to the bulk and scale of the development such that the resultant building bulk and scale, in particular the floor space associated with the proposed works, will be perceived as being inconsistent with the existing and desired streetscape character.

This objective is satisfied, notwithstanding the non-compliant FSR proposed, as the bulk and scale of development is consistent with the existing and desired streetscape character.

> *(b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*

Response: Neither the LEP or DCP identify any important landscape or townscape features either on or within proximity of the subject site. My own observations did not identify and landscape or townscape features that I would consider important in terms of their visual significance.

I am satisfied that the proposal, notwithstanding the FSR non-compliance, achieves this objective as the floor space associated with the alterations and additions proposed will not obscure any important landscape and/ or townscape features.

(c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,

Response: As previously indicated, the proposal achieves objective (a) of the clause 4.4 MLEP FSR standard namely to *ensure the bulk and scale of development is consistent with the existing and desired streetscape character.* Accordingly, I am satisfied that the development, notwithstanding the FSR non-compliance, maintains an appropriate visual relationship between new development and the existing built form character of the area.

In relation to landscape character, the application does not require the removal of any trees or vegetation with no change to establish building footprint. The alterations and additions will sit within a landscaped setting. The location of the additional floor space will ensure that the additions will blend into the vegetated escarpment which forms and backdrop to the site. An appropriate visual relationship between new development and the existing landscape of the area is maintained.

I am satisfied that the development, notwithstanding its FSR non-compliance, achieves the objective as it maintains an appropriate visual relationship between new development and the existing character and landscape of the area.

(d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,

Response: In responding to this objective. I have adopted views, privacy, solar access and visual amenity as environmental factors which contribute to the use and enjoyment of adjoining public and private land.

Views

Having inspected the site and its surrounds to identify potential view lines over and across the site I am of the opinion that the only property potentially affected in relation to views is No. 85 Castle Circuit, to the south east of the site. This property enjoys views in a north westerly direction over the subject site towards Middle Harbour and its foreshores.

Having reviewed the Council assessment report associated with DA2020/2208 we are satisfied that the minor increase in building height to accommodate the garage conversion will not impact on the scenic views currently available from the principal living areas and adjacent balcony of 85 Castle Circuit as depicted in the image over page.



Figure 1 – View available from the balcony of 85 Castle Circuit

Having reviewed the detail of the application we have formed the considered opinion that a view sharing scenario is maintained between adjoining properties in accordance with the principles established in *Tenacity Consulting Pty Ltd v Warringah Council* [2004] NSWLEC140 and *Davies v Penrith City Council* [2013] NSWLEC 1141.

Notwithstanding the non-compliant FSR, the proposal achieves the objective of minimising view impact as demonstrated by the view sharing outcome achieved.

Privacy

I we note that all surrounding properties are orientated to take advantage of views with such outcome resulting in a trade-off between absolute privacy and views. That is, a significant number of properties obtain views across other properties where direct line of sight is available into living areas and private open spaces.

That said, given the spatial separation maintained between surrounding properties, and the primary orientation of study to the north towards available views, I am satisfied that the design, although non-compliant with the FSR standard, minimises adverse environmental impacts in terms of privacy and therefore achieves this objective.

Solar access

The accompanying shadow diagrams demonstrate that the works, although non-compliant with the FSR standard, will not give rise to any unacceptable shadowing impact to the existing living room and open space areas of the adjoining residential properties with compliant levels of solar access maintained.

Visual amenity/ building bulk and scale

As indicated in response to objective (a), I have formed the considered opinion that the bulk and scale of the building is contextually appropriate with the floor space appropriately distributed across the site to achieve acceptable visual amenity and residential amenity outcomes.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council (2005) NSW LEC 191,* I have formed the considered opinion that most observers would not find the proposed development by virtue of its visual bulk and scale offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the site's visual catchment.

I have formed the considered opinion that the building, notwithstanding the FSR non-compliance, achieves the objective through skilful design that minimises adverse environmental impacts on the use and enjoyment of adjoining land and the public domain.

> *(e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

Response: This objective is not applicable.

Having regard to the above, the proposed building form which is non-compliant with the FSR standard will achieve the objectives of the standard to at least an equal degree as would be the case with a development that complied with the FSR standard. Given the developments consistency with the objectives of the FSR standard strict compliance has been found to be both unreasonable and unnecessary under the circumstances.

The non-compliant development, as it relates to FSR, demonstrates consistency with objectives of the FSR standard objectives. Adopting the first option in *Wehbe* strict compliance with the FSR standard has been demonstrated to be unreasonable and unnecessary.

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]-[24] that:

23. As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26].
The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.

24. The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard".

The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.

The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].

Sufficient environmental planning grounds

I have formed the opinion that sufficient environmental planning grounds exist to justify the variation including the compatibility of the height, bulk and scale of the development, as reflected by floor space, with the built form characteristics established by adjoining development and development generally within the site's visual catchment.

In this particular case, the additional floor space can be located generally within the established building footprint such that it does not in any significant manner contribute to the overall bulk and scale of the development.

Further, the variation provisions contained at clause 4.1.3.1 of Manly DCP reflect an acceptance that the FSR standard on undersized allotments does not provide for the orderly and economic use and development of the land and in my opinion represents an abandonment of the FSR standard on undersized allotments. The proposal is consistent with such provisions.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposal promotes the orderly and economic use and development of land (1.3(c)).

- The development represents good design (1.3(g)).

- The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (1.3(h)).

It is noted that in *Initial Action,* the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment).

Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

There are sufficient environmental planning grounds to justify contravening the development standard.

5.0 Conclusion

Pursuant to clause 4.6(4)(a), the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

As such, I have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of an FSR variation in this instance.

Boston Blyth Fleming Pty Limited



Greg Boston
B Urb & Reg Plan (UNE) MPIA
Director

ITEM 3.9 DA2023/1862 - 214 HUDSON PARADE CLAREVILLE - ALTERATIONS AND ADDITIONS TO A BOATSHED, DECKING AND SKID RAMP

PURPOSE

To refer the attached application for determination due to directions provided by the Department of Planning & Environment in relation to applications with a clause 4.6 variation to the building height standard.

RECOMMENDATION

That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of PLEP 2014 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

THAT Council as the consent authority **approves** Development Consent to DA2023/1862 for alterations and additions to a boatshed, decking and skid ramp on land at Lot 41 DP 13760 & Lot LIC 187249, 214 Hudson Parade CLAREVILLE, subject to the conditions set out in the Assessment Report.

Reporting manager	Steve Findlay
TRIM file ref	2024/293476
Attachments	⇩1 Assessment Report ⇩2 Site Plan and Elevations ⇩3 Clause 4.6

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/1862

Responsible Officer:	Jordan Howard
Land to be developed (Address):	Lot 41 DP 13760, 214 Hudson Parade CLAREVILLE NSW 2107 Lot LIC 187249, 214 Hudson Parade CLAREVILLE NSW 2107
Proposed Development:	Alterations and additions to a boatshed, decking and skid ramp
Zoning:	C4 Environmental Living
Development Permissible:	Yes - Zone C4 Environmental Living Yes - Zone W1 Natural Waterways
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Peter Karl Heller Marianne Heller Patrick Alexander Heller Nicole Susanne Heller
Applicant:	Patrick Alexander Heller

Application Lodged:	22/01/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	30/01/2024 to 13/02/2024
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 17%
Recommendation:	Approval

Estimated Cost of Works:	$ 194,500.00

EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to a boatshed, decking and skid ramp.

The application is referred to the Development Determination Panel (DDP) due to a request to vary the height of buildings development standard, established by the Pittwater Local Environmental Plan 2014, by greater than 10%.

As a result of public exhibition of the application Council received no submissions.

Critical assessment issues included assessment of the Clause 4.6 Request to vary the height of buildings development standard, as well as assessment of Pittwater 21 Development Control plan non-compliances, including:

- Clause D1.9 Side and rear building line.
- Clause D15.13 Lateral limits to development seaward of mean high water mark.
- Clause D15.15 Waterfront development

The 4.6 Request for the non-compliance with the height standard arises from the construction of a boatshed which straddles the the Mean High Water Mark (MHWM). Above the MHWM the building height development standard is 8.5m. Below the MHWM the standard is 4m. The portion of the proposed boatshed above the MHWM exhibits a building height of 5m, compliant with the 8.5m development standard. However, below the MHWM the proposed boatshed exhibits a building height of 4.68m at the southernmost point of the boatshed, representing a 17% variation to the 4m development standard. Notably, the proposed boatshed is located over the footprint of an exiting boatshed, with the non-compliance arising due to the measuring of building height from an existing concrete boat ramp, which is to be built over. The design of the boatshed is generally in accordance with the prescriptive requirements for boatsheds outlined in the P21DCP, with only minor variations to theses prescriptions arising due to the use of the existing boatshed footprint.

The variation of the height of buildings development standard is assessed as acceptable within the section of this report on PLEP 2014 Clause 4.6 Exceptions to development standards.

This report concludes with a recommendation that the DDP grant approval to the development application, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

This Development Application seeks development consent for alterations and additions to a boatshed, decking and skid ramp. Specifically, the following is proposed:

Ground Floor (boatshed, internal and external):

- Partial demolition of the existing boatshed, including the removal of concrete block walls and existing roof.
- The footings, concrete slipway, rails and existing timber jetty are to remain.
- The sandstone walls are to be retained and new concrete block walls built to provide enclosed storage for a boat.
- Additional kayak storage is to be provided under the western eaves.
- New timber decking to be built over existing concrete slip.
- New “private landing steps” (stepped tidal landing) and “skid” (ramp).

Storage Platform (within boatshed):

- High level storage for equipment, materials or other products which must be stored above the Estuarine Planning Level.
- New pop-up roof provided above storage platform.

Additional information was requested in relation to Clause 4.3 Height of Buildings & Clause 4.6 Exceptions to Development Standard of Pittwater Local Environmental Plan 2014. Amended / additional information was provided, which did not require re-notification in accordance with the Northern Beaches Community Participation Plan.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living
Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings
Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area
Pittwater 21 Development Control Plan - D1.5 Building colours and materials
Pittwater 21 Development Control Plan - D1.9 Side and rear building line
Pittwater 21 Development Control Plan - D1.14 Landscaped Area - Environmentally Sensitive Land
Pittwater 21 Development Control Plan - D15.12 Development seaward of mean high water mark
Pittwater 21 Development Control Plan - D15.13 Lateral limits to development seaward of mean high water mark
Pittwater 21 Development Control Plan - D15.15 Waterfront development

SITE DESCRIPTION

Property Description:	Lot 41 DP 13760 , 214 Hudson Parade CLAREVILLE NSW 2107 Lot LIC 187249 , 214 Hudson Parade CLAREVILLE NSW 2107

Detailed Site Description:	The subject site consists of one (1) allotment located on the southern side of Hudson Parade, with a rear boundary abutting the Pittwater Waterway. The site is irregular in shape with a frontage of 15.24m along Hudson Parade and a maximum depth of 52.12m. The site has a surveyed area of 739.8sqm. The site is located within the C4 Environmental Living zone and accommodates a dwelling house. Below the Mean High Water Mark (MHWM), which forms the southern rear boundary, is the Pittwater Waterway, which is zoned W1 Natural Waterways. The site slopes steeply from the front (north) down towards the Pittwater Waterway at the rear (south), with a fall across the site of approximately 19m. The site contains trees, garden beds, lawn areas and vegetation. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by dwelling houses. Surrounding properties that also abut the Pittwater Waterway have associated boatsheds, jetties and bout ramps of various styles and ages.

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

Development Application No. DA2021/1790
Alterations and additions to a dwelling house, including a swimming pool and garage.
Approved on 18 April 2022.

Modification Application No. Mod2022/0314
Modification of Development Consent DA2021/1790 granted for Alterations and additions to a dwelling house, including a swimming pool and garage.
This application was refused by Council on 13 September 2022. This decision was appealed in the NSW Land and Environment Court and the appeal was upheld, with DA2021/1790 modified in accordance with the determination of the Court on 13 December 2023.

Modification Application No. Mod2022/0625
Modification of Development Consent DA2021/1790 granted for Alterations and additions to a dwelling house, including a swimming pool and garage.
Approved on 15 March 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	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 29 of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to Clause 4.3 Height of Buildings & Clause 4.6 Exceptions

Section 4.15 Matters for Consideration	Comments
	to Development Standard of Pittwater Local Environmental Plan 2014. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 30/01/2024 to 13/02/2024 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
NECC (Bushland and Biodiversity)	***Supported, subject to conditions.*** The proposal has been assessed against the following applicable controls and provisions: • SEPP (Resilience and Hazards) 2021 - Coastal Environment Area • Pittwater LEP - Clause7.6 Biodiversity Protection • Pittwater DCP - Clause B4.7 Pittwater Spotted Gum Forest Endangered Ecological Community The proposal is unlikely to impact upon native terrestrial fauna and flora. Portions of the land where works are proposed are noted to have been identified as containing seagrasses. Therefore, impacts to the marine environment will be assessed by the appropriate referral body. No native vegetation or fauna habitat would be impacted, the development is designed, sited and will be managed to avoid any significant adverse environmental impact.
NECC (Coast and Catchments)	***Supported, subject to conditions.*** The application proposes partial demolition and rebuild a boatshed, and construct a new ramp and tidal landing over an existing slipway. The existing boatshed was granted approval on the 5th of June, 1991 that allowed the boatshed to be constructed in its current location and to its current footprint of 5m wide by 7.3m in length. This application was assessed in consideration of: • Supplied plans and reports including; • Estuarine Risk Management Report by Horton Coastal Engineering Pty. Ltd. dated 13 January 2023 • Coastal Area Environmental Assessment Report by Total Earth Care dated 17 January 2023 • Aquatic Ecology Assessment by Marine Pollution Research Pty. Ltd. dated 15 November 2022 • Coastal Management Act 2016; • State Environmental Planning Policy (Resilience and Hazards) 2021

Internal Referral Body	Comments
	(section 2.10, 2.11 & 2.12); • Relevant LEP and DCP clauses. The application has been assessed in consideration approval/support of: • Consent to lodge DA from the NSW Department of Planning and Environment – Crown Lands and Public Spaces dated 14 December 2023 enclosing dated and signed maps • No navigational concerns from the Transport for NSW-Maritime Division dated 16 January 2024 enclosing dated and signed maps • No Objection from the DPI-Fisheries, a division of the Department of Primary Industries dated19 February 2024 enclosing dated and signed maps and also indicating If excavation for foundations is to occur, a permit to dredge will be required from the Department under s.201 of the Fisheries Management Act. **State Environmental Planning Policy (Resilience & Hazards) 2021** The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA. Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Utz-Sanby Architects dated August 2023 and also as assessed in the submitted Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated January 2023, the DA satisfies requirements under clauses 2.10, 2.11 and 2.12 of the SEPP R&H. **Pittwater LEP 2014 and Pittwater 21 DCP** **Estuarine Risk Management** The subject property has also been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site. The Estuarine Hazard Controls do not apply to Jetties, Bridging Ramps or Pontoons located on the seaward side of the foreshore edge.

Internal Referral Body	Comments
	As per submitted Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 13 January 2023, a base estuarine planning level (EPL) of RL 3.03m AHD would apply at the subject site. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Utz-Sanby Architects dated August 2023 and also as assessed in the submitted Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated January 2023, the ground floor level of the refurbished boatshed is still below the EPL for the site. The proposed development is therefore subject to conditions to satisfy the relevant estuarine risk management requirements of P21 DCP. **Development on Foreshore Area** A section of the subject property is within the foreshore building line. Part 7, Clause 7.8 –Limited development on foreshore area of the Pittwater LEP 2014 applies for any development within the foreshore area. The DA proposes works outside the foreshore building line although are permissible due to the fact it is a boatshed and utilises the location and size of the existing boatshed. All these proposed works are consistent with Clause 7.8(2)(b). On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Utz-Sanby Architects dated August 2023, the DA satisfies the objectives and requirements of Part 7, Clause 7.8 of the Pittwater LEP 2014. **Development seaward of mean high water mark** Proposed development works are located on crown land below the Mean High Water Mark. Hence, Section D15.12: Development seaward of mean high water mark of the Pittwater 21 DCP applies to proposed development. Comment:

Internal Referral Body	Comments
	On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Utz-Sanby Architects dated August 2023, the DA satisfies requirements under the Section D15.12: Development seaward of mean high water mark of the Pittwater 21 DCP. An analysis of the proposal demonstrated that the proposed development will not adversely impact on the visual amenity of the foreshore or water quality. The boatshed straddles the mean high water mark. The existing boatshed's footprint is retained. The boatshed contains no further encroachment onto the waterway. This allows for continued access to boats whilst minimising the impact on water quality hydrodynamics. The applicant has also submitted Aquatic Ecology Assessment prepared by Marine Pollution Research Pty. Ltd. dated 15 November 2022. The report concluded that the construction of a boat-shed and ramp facility can be undertaken with no significant impact on overall fish habitat values of the locality as intertidal to shallow sub-tidal native marine vegetation. Losses will be balanced against larger losses of pest algae habitat and an overall gain in shallow oyster reef fish habitat assemblages. Construction related risks can be mitigated and managed by the use of appropriate and specific aquatic habitat protection measures that can be incorporated into the project Construction Environment Management Plan (CEMP). The project may still require a Section 205 Permit under the FMA to ensure that the construction related risks are properly managed for the construction phase. or estuarine habitat of the Pittwater waterway As such, it is considered that the application does comply subject to approval conditions with the requirements of the Section D15.12: Development seaward of mean high water mark of the Pittwater 21 DCP. **Lateral Limit to develop seaward of mean high water mark** Proposed development works are located on crown land below the Mean High Water Mark. Hence, Section D15.13: Lateral limit to develop seaward of mean high water mark of the Pittwater 21 DCP applies to proposed development. Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Utz-Sanby Architects dated August 2023, the DA satisfies requirements under the Section D15.13: Lateral limit to develop seaward of mean high water mark of the Pittwater 21 DCP. The SEE report indicated that the proposed boatshed utilises the existing boatshed footprint to

Internal Referral Body	Comments
	minimise the impact on neighbours. In doing this the perpendicular nature of the boatshed to the shoreline is maintained. Since the waterfront development utilises the existing footprint it is not distanced 2m from the lateral limit lines originating at the boundary, instead sitting 1m from this line. As such, it is considered that the application does comply following existing footprint with the requirements of the Section D15.13: Lateral limit to develop seaward of mean high water mark of the Pittwater 21 DCP. **Waterfront Development** Proposed development of boatshed are located on crown land below the Mean High Water Mark. Hence, Section D15.15: Waterfront development, sub-section c) Boatshed of the Pittwater 21 DCP applies to proposed development. This sub-section specifies height, design and utilization of the boatshed. Boatsheds shall be one storey and no greater than 4.5m in building height above the platform on which it is built,, irrespective of its location Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Utz-Sanby Architects dated August 2023, the proposed boatshed utilises the locational footprint of the existing footprint of the existing boatshed. As such, it is considered that the application does comply, subject to conditions, with the requirements of the Section D15.15: Waterfront development, sub-section c) Boatshed of the Pittwater 21
NECC (Riparian Lands and Creeks)	***Supported, subject to conditions.*** This application was assessed in consideration of: - Supplied plans and reports; - Coastal Management Act 2016; - State Environmental Planning Policy (Resilience and Hazards) 2021; - Relevant LEP and DCP clauses; and - Northern Beaches Council Water management for development policy. This proposal is supported. Details below. *Riparian*

Internal Referral Body	Comments
	The site is located adjacent to Pittwater and as such proposed 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 Management* 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. *Working in the marine environment* Recommendations from the Coastal Area Environmental Assessment Report and the Aquatic Ecology report apply.
Parks, reserves, beaches, foreshore	***Supported, without conditions.*** The development site adjoins Pittwater waterway that is located downslope of the property. The development is not detrimental to the landscape/aquatic character of the adjoining waterway, and as such Parks, Reserves and Foreshores raise no concerns with the development proposal.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	***Supported, subject to conditions.*** The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	***Supported, subject to conditions.*** Reference is made to the proposed development at the above area and Aboriginal heritage. No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development. Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease

External Referral Body	Comments
	in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, the Department of Planning, Industry and Environment (DPIE) and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:
The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

Division 2 Coastal Vulnerability Area
2.9 Development on land within the coastal vulnerability area

Development consent must not be granted to development on land that is within the area identified as "coastal vulnerability area" on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and

b) the proposed development:
   i) is not likely to alter coastal processes to the detriment of the natural environment or
   ii) other land, and
   iii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and

c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.

Comment:
There is currently no adopted Coastal Vulnerability Area Map, however, Council's Coasts and Catchments Officer has reviewed the proposed development and it is supported, subject to conditions.

Division 3 Coastal environment area
2.10 Development on land within the coastal environment area

1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:
   a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
   b) coastal environmental values and natural coastal processes,
   c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
   d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
   e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
   f) Aboriginal cultural heritage, practices and places,
   g) the use of the surf zone.

Comment:
Council's Coasts and Catchments Officer has reviewed the proposed development and it is supported, subject to conditions.The works are not considered to have adverse impacts on the above matters.

2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or
b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:
Council's Coasts and Catchments Officer has reviewed the proposed development and it is supported, subject to conditions.The proposed development has been sited so as not to cause adverse impacts on the coastal environment.

Division 4 Coastal use area
2.11 Development on land within the coastal use area

1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
   a) has considered whether the proposed development is likely to cause an adverse impact on the following:
      i) existing, safe access to and along the foreshore, beach, headland or rock
      ii) platform for members of the public, including persons with a disability,
      iii) overshadowing, wind funnelling and the loss of views from public places to
      iv) foreshores,
      v) the visual amenity and scenic qualities of the coast, including coastal headlands,
      Aboriginal cultural heritage, practices and places,
      cultural and built environment heritage, and
   b) is satisfied that:
      i) the development is designed, sited and will be managed to avoid an
      ii) adverse impact referred to in paragraph (a), or
      iii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
      if that impact cannot be minimised—the development will be managed to mitigate that impact, and
   c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:
Council's Coasts and Catchments Officer has reviewed the proposed development and it is supported subject to conditions.The works are not considered to have adverse impacts on the above matters.

Division 5 General
2.12 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

Council's Coasts and Catchments Officer has reviewed the proposed development and it is supported, subject to conditions. The proposed development is not likely to cause increased risk of coastal hazards.

2.13 Development in coastal zone generally—coastal management programs to be considered

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Comment:
Council's Coasts and Catchments Officer has reviewed the proposed development and it is supported, subject to conditions. The consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies 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?	Zone C4 : Yes Zone W1 : Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Zone C4 : Yes Zone W1 : Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m in C4 zone (i.e. above MHWM)	5m	-	Yes
	4m in W1 zone (i.e. below MHWM)	4.68m	17%	**No**

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No

Clause	Compliance with Requirements
4.6 Exceptions to development standards	Yes
5.7 Development below mean high water mark	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone C4 Environmental Living

The proposal is considered against the objectives of the C4 Environmental Living zone below:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*

  Comment:
  The proposal provides for the development of a boatshed and related waterfront development, ancillary to a low-density residential development (a dwelling house). The proposal maintains the special ecological, scientific and aesthetic values of the site, considering that the site as existing has been disturbed for low density and scale residential use.

- *To ensure that residential development does not have an adverse effect on those values.*

  Comment:
  As above, the proposal maintains the special ecological, scientific and aesthetic values of the site, considering that the site as existing has been disturbed for low density and scale residential use.

- *To provide for residential development of a low density and scale integrated with the landform and landscape.*

  Comment:
  The proposal is ancillary to a low density residential development (a dwelling house). The proposed boatshed and related development is itself low in scale and density, and integrated with the landform and landscape, as much as possible whilst still maintaining usefulness for its intended purpose.

- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

  Comment:
  Council's Coasts and Catchments Officer has reviewed the proposed development and it is

supported, subject to conditions. Council's Bushland and Biodiversity Officer has also reviewed the proposed development and it is supported, subject to conditions. The proposal does not adversely impact on riparian and foreshore vegetation and wildlife corridors.

As demonstrated above, the proposal compiles with the objectives of the C4 Environmental Living zone.

It is also noted that the proposal includes works within the W1 Natural Waterways zone. The portion of the proposal within the W1 zone (including portions of the decking, boat ramp and boatshed) is also considered to be consistent with the objectives of that zone.

4.3 Height of buildings

The subject site straddles the Mean High Water Mark (MHWM). Above the MHWM the building height development standard is 8.5m. Below the MHWM the building height development standard is 4m.

The proposed development includes a boatshed partially proposed over the MHWM. The portion of the proposed boatshed above the MHWM exhibits a building height of 5m, compliant with the 8.5m development standard. However, below the MHWM the proposed boatshed exhibits a building height of 4.68m at the southernmost point of the boatshed, representing a 17% variation to the 4m development standard.

Refer to the section of this report on PLEP 2014 Clause 4.6 Exceptions to development standards for an assessment of the proposed variation.

4.6 Exceptions to development standards

The application seeks consent to vary a development standard as follows:

Development standard: Clause 4.3 Height of buildings
Requirement: 4m (below the MHWM)
Proposed: 4.68m
Percentage of variation: 17%

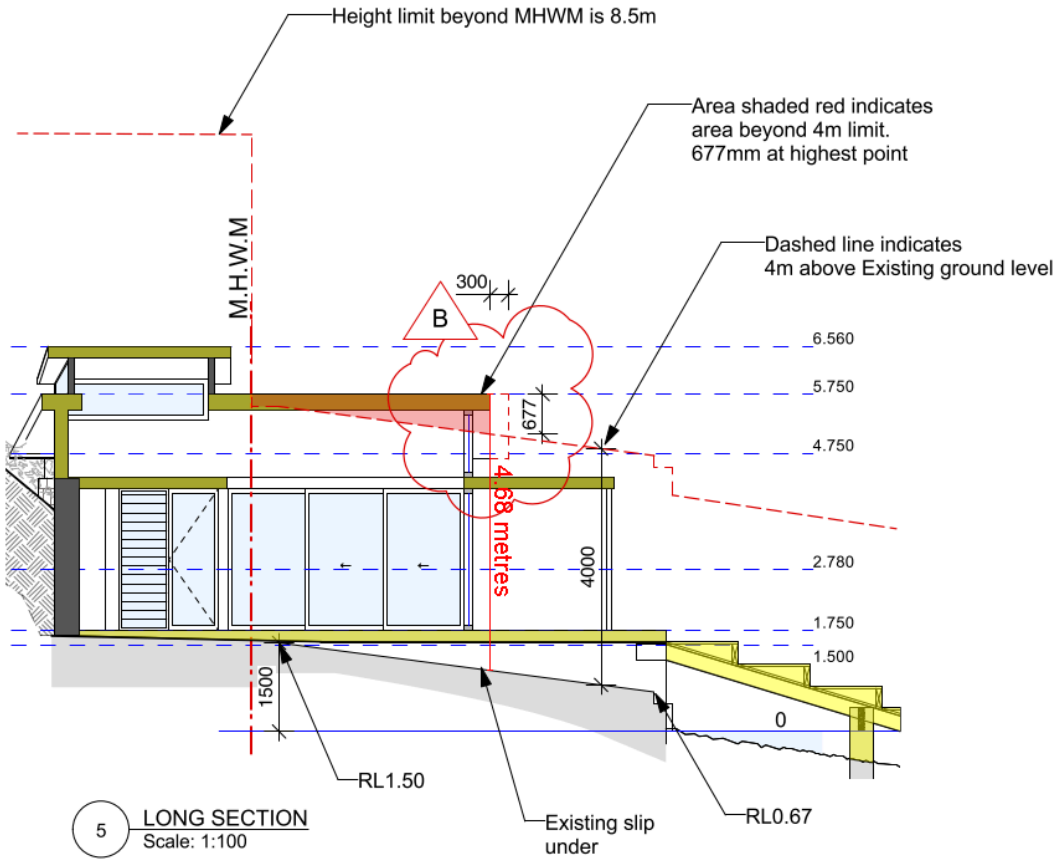


Figure 1 - Long Section of the proposed boatshed with the portion of the roof breaching the height of buildings development standard in red.

With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is accompanied by a document that sets out the grounds on which the Applicant seeks to demonstrate the matters set out in Clause 4.6(3)(a) and (b) of the PLEP 2014 (the 'Clause 4.6 Request').

Subclause (1) of this clause provides that:

(1) The objectives of this clause are as follows:
(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Comment:
The objectives of this clause have been considered pursuant to Section 4.15(a)(i) of the *Environmental Planning and Assessment Act 1979*.

Subclause (2) of this clause provides that:

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Comment:
Clause 4.3 Height of buildings is not expressly excluded from the operation of this clause.

Subclause (3) of this clause provides that:

(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

(a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

Comment:
Council is satisfied that the Applicant has demonstrated that compliance with Clause 4.3 Height of buildings is unreasonable or unnecessary in the circumstances of this application for the following reasons:

In accordance with *Wehbe v Pittwater Council [2007] NSWLEC 827*, one way in which strict compliance with a development standard may be found to be unreasonable or unnecessary is if it can be demonstrated that the objectives of the standard are achieved, despite non-compliance with the development standard. The applicant has demonstrated that the proposal meets the objectives of Clause 4.3 Height of buildings. As such, strict compliance with the building height development standard is unreasonable and unnecessary in the circumstances of this case.

(b) there are sufficient environmental planning grounds to justify contravening the development standard.

Comment:
In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the Applicant's written request has adequately demonstrated that that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

The Clause 4.6 Request argues, in part:

"The non-compliances have been demonstrated to have no greater amenity effects on neighbouring development with regard to solar access and loss of views. The minor contravention of height regarding the proposed gabled roof can be considered in relation to the major amenity benefits it will bring to this particular development. To allow the Applicants to undertake the necessary re-building of the existing dilapidated and unsightly boat shed, are in themselves, justification on environmental planning grounds.

In considering the environmental planning grounds particular to the circumstances of the proposed development in relation to Section 1.3 of the EPA Act:

- *The proposed design will promote good design and a high level of amenity for the owners without having any greater impact upon the amenity of the surrounding neighbours.*
- *The existing boat shed is dilapidated and unsightly. It detracts from the aesthetic qualities of the local area. By allowing the Applicants to re-build the boat shed on it's existing footprint, this will greatly enhance aesthetic qualities of the water's edge and contribute to the locality."*

These arguments are generally concurred with. The design of the boatshed is generally in accordance with the prescriptive requirements for boatsheds outlined in the P21DCP, with only minor variations to theses prescriptions arising due to the use of the existing boatshed footprint, and as such can be considered to be of good design. There are no anticipated visual or amenity impacts, considering the proposal is commensurate with surrounding waterfront development. Furthermore, it is noted that the variation results from the existing boat ramp level over which the boatshed is proposed, with the greatest extent of the variation above the southern end of this ramp.

Council is satisfied that the Applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of Clause 4.3 Height of buildings for the following reasons:

- The design of the boatshed is generally in accordance with the prescriptive requirements for boatsheds outlined in the P21DCP, with only minor variations to theses prescriptions arising due to the use of the existing boatshed footprint, and as such can be considered to be of good design.
- The proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, thereby satisfying objects 1.3(c) and (g) of the EPA Act.

Public Interest:

Matters relevant to public interest in respect of the development are considered in the relevant sections of this report as per Section 4.15(1)(e) of the EPA Act.

Conclusion:

Council is satisfied as to the matters set out in Clause 4.6 of the PLEP 2014.

It is considered on balance, that having regard to the particular circumstances, the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

7.8 Limited development on foreshore area

Under Clause 7.8 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, but only if the development will not result in the footprint of the building extending further into the foreshore area,*

- *boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*

Comment:
The proposed development is for the construction of a boatshed and slipway, as well as ancillary decking which acts as both a wharves and for waterway access purposes. These uses are for purposes listed above. Furthermore, the proposed boatshed and decking is to be located on the footprint of existing works, specifically with the boatshed constructed within the footprint of an existing boatshed and the decking on the the footprint of an existing concrete reclamation apron.

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, or*
    - *the removal or disturbance of remnant riparian vegetation, 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 C4 Environmental Living zone and W1 Natural Waterways 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, drainage patterns or remnant riparian vegetation. The proposed development will not cause congestion or generate conflict between people using the adjacent open space or waterway. The proposed development allows access around the boatshed through the use of decking, which is beneficial to public foreshore access. Nonetheless, existing public foreshore access is limited by neighbouring development, but the proposal does not worsen this situation. 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 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:

- *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 allows access around the boatshed through the use of decking, which is beneficial to public foreshore access. Nonetheless, existing public foreshore access is limited by neighbouring development, but the proposal does not worsen this situation. In this regard, 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.

As such, the development complies with the requirements of this Clause.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation	Complies
Front building line	6.5m	>6.5m	-	Yes
Rear building line	FSBL applies*	Seward of FSBL	N/A	Yes**
Side building line	East: 2.5m	8.7m	-	Yes
	West: 1m	0.6m - 1.3m (to boatshed)	40%	**No**
Building envelope	East: 3.5m	Within envelope	-	Yes
	West: 3.5m	Within envelope	-	Yes
Landscaped area	60% (443.9sqm)	No change from existing***	N/A	N/A
Lateral Limits	East: 2m from lateral limit line	>2m	-	Yes
	West: 2m from lateral limit line	2.1m (to ramp) 0.5m (to boatshed) Nil (to decking)	- 75% 100%	Yes **No** **No**

* The 6.5m rear setback does not apply as the Foreshore Building Line applies. Refer to the section of this report on P21DCP Clause D1.9 Side and rear building line for details.
** Refer to the section of this report on PLEP 2014 Clause 7.8 Limited development on foreshore area for an assessment of the proposal against this Clause. In summary, the proposed structures are for purposes that are permitted within the foreshore area and comply with the requirements of the Clause.
*** The proposed structures are located over water or on an existing impervious area (comprising of an existing boatshed, decking and concreting), therefore the proposal does not decrease landscaped area from existing. Refer to the section of this report on P21DCP Clause D1.14 Landscaped Area - Environmentally Sensitive Land for further details.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B3.8 Estuarine Hazard - Medium Density Residential	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
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
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.23 Eaves	Yes	Yes
D1.1 Character as viewed from a public place	Yes	Yes
D1.5 Building colours and materials	Yes	Yes
D1.8 Front building line	Yes	Yes
D1.9 Side and rear building line	No	Yes
D1.11 Building envelope	Yes	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	N/A	N/A
D1.17 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D1.20 Scenic Protection Category One Areas	Yes	Yes
D15.11 Waterfront lighting	Yes	Yes
D15.12 Development seaward of mean high water mark	Yes	Yes
D15.13 Lateral limits to development seaward of mean high water mark	No	Yes
D15.14 Minimum frontage for waterfront development	Yes	Yes
D15.15 Waterfront development	No	Yes
D15.18 Seawalls	Yes	Yes
D15.19 Dredging	Yes	Yes

Detailed Assessment

D1.5 Building colours and materials

A schedule of colours and materials has not been provided with this application. However, the Statement of Environmental Effects, on page 28, states that *"the proposed boatshed consists of rendered concrete block construction. The external cladding of the building is a mid-grey colour, non-reflective and resistant to corrosion. The mid-grey of this cladding makes it unobtrusive from the waterfront and allows it to blend in with its natural surrounds."*

In this instance, a condition will be recommended to ensure compliance with the above statement, as mid-grey is an acceptable finish, in accordance with the colours permitted by the Clause. A condition will also be recommended to ensure the roof is not finished with a reflective finish. As conditioned, the proposed development can achieve the requirements and underlying outcomes of this control.

D1.9 Side and rear building line

Description of non-compliance

The proposed works are located at the rear of the property, which abuts the Pittwater Waterway.

The advisory notes of this control stipulate the following:

"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."

The Foreshore Building Line applies to the rear boundary and therefore takes precedent over the rear boundary line control. Refer to the section of this report on PLEP 2014 Clause 7.8 Limited development on foreshore area for an assessment of the proposal against this control. In summary, the proposed structures are for purposes that are permitted within the foreshore area.

As such, no merit assessment is required of the rear setback.

Regarding side setbacks, the control requires development to be setback 2.5m from one side boundary and 1m from the other side boundary. For the purpose of this assessment the 2.5m side building line is applied to the eastern boundary, whilst the 1m side building line is applied to the western boundary. The proposed boatshed exhibits a compliant 8.7m eastern side setback. However,

the proposed boatshed exhibits a non-compliant 0.6m - 1.3m western side setback, representing a maximum 40% variation to the control.

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 outcomes of the desired future character of the Avalon Beach Locality.

- *The bulk and scale of the built form is minimised.*

  Comment:
  The bulk and scale of the proposed boatshed, decking and ramp are commensurate to surrounding waterfront development.

- *Equitable preservation of views and vistas to and/or from public/private places.*

  Comment:
  The proposed development is not expected to obstruct any views or vistas to or from public or private places and is therefore consistent with Clause C1.3 View Sharing of the P21DCP.

- *To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.*

  Comment:
  As above, the proposal is not expected to impact on any view corridors.

- *To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.*

  Comment:
  The proposal is not considered to have any unreasonable impacts on surrounding residential properties in terms of privacy, amenity or solar access.

- *Substantial landscaping, a mature tree canopy and an attractive streetscape.*

  Comment:
  No trees are proposed for removal, with works proposed on a portion of the site that has already been disturbed by built works, and Council's Bushland & Biodiversity team have supported the proposal, subject to conditions.

- *Flexibility in the siting of buildings and access.*

  Comment:
  The proposal, including the siting of buildings and access, is considered suitable.

  Vegetation is retained and enhanced to visually reduce the built form.

- Comment:
  As above, no trees are proposed for removal, with works proposed on a portion of the site that has already been disturbed by built works. The landscape outcome is considered acceptable for the site and locality.

- *A landscaped buffer between commercial and residential zones is achieved.*

  Comment:
  Not applicable, as no commercial sites adjoin the subject site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D1.14 Landscaped Area - Environmentally Sensitive Land

This Clause of the P21DCP applies to land in the locality within Areas 1 and 2 of the Landscaped Area Map. The subject site is within Area 1 of the Landscaped Area Map, and therefore requires a minimum of 60% (443.88sqm) of the site area to be landscaped area.

The exact landscaped area is unable to determined, as the proposal only includes detailed plans of the southern portion of the subject site, focused on the foreshore and waterway area where the proposed works are located. These are acceptable for the purposes of assessing this development.

Nonetheless, the proposed structures are located over water and on a section of the site that as existing is impervious / built area. Therefore, the proposal does not decrease landscaped area. As such, no further merit assessment is required.

D15.12 Development seaward of mean high water mark

This control restricts all new buildings to be located landward of mean high water mark, with the exception of structures associated either with the accommodation, servicing or provision of access to boats

The proposed structures are therefore permitted by the control.

D15.13 Lateral limits to development seaward of mean high water mark

Description of non-compliance

Clause D15.13 Lateral limits to development seaward of mean high water mark stipulates that waterfront development shall be set back a minimum of 2.0 metres along the full length of the lateral limit line. Diagram 1 of this Clause outlines how lateral limit lines are to be plotted at curved waterfronts. The submitted plans do not denote lateral limit lines, but provide sufficient detail to plot these lines onto the plans.

The proposed development is setback further than 2m from the eastern lateral limit line, compliant with this control.

The proposed development exhibits the following setbacks to the western lateral limit line:

- 2.1m (to ramp) - compliant with the control.
- 0.5m (to boatshed) - representing a 75% non-compliance.
- Nil (to decking) - representing a 100% non-compliance.

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying objectives of the Control as follows:

- *To ensure that fair and equitable enjoyment of the waterway is achieved between neighbouring waterfront landowners through restricting unreasonable encroachment of waterfront development in front of adjoining properties.*

  Comment:
  The proposed boatshed, decking and ramp will continue to allow for fair and equitable enjoyment of the waterway. The positioning of the waterfront development has been designed in consideration of neighbouring development, existing development at the subject site, the depth of the water and navigational concerns, and is considered to be placed in a suitable position in this regard. The proposed development is accompanied by a letter from Transport for NSW Maritime dated 3 February 2023 advising that "an inspection/assessment has been conducted by the local Boating Safety Officer and there are no navigational concerns regarding the designated proposal". Most significantly, the proposal is located within an area of the site already occupied by a boatshed and boating infrastructure, with the proposal to replace these. As such, the proposal causes no additional impact on any of the above matters. Considering the site context, constraints, surrounding waterfront development, and nature of the works as replacement of existing boating infrastructure, the positioning of the proposal is not considered to be unreasonable, or to unreasonably encroach the waterfront of adjoining properties.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

D15.15 Waterfront development

Description of non-compliance

The proposal includes the construction of a boatshed, skid ramp and associated decking.

P21DCP Clause D15.15 Waterfront development provides various controls on the design of waterfront development. Proposed variations to the listed requirements are discussed below:

Boatsheds:

- *"Boatsheds shall be one storey and no greater than 4.5 metres in building height above the platform on which it is built, 4.0 metres in width and 6.0 metres in length, as illustrated in Diagram 4. The use of lofts or similar design concepts shall not be permitted."*

The proposed boatshed is 4m in height from the platform on which it is built where below the MHWM. However, above the MHWM the proposal includes a storage platform within an elevated / pop-up section of roof, increasing the height above the platform to 4.8m. The boatshed also has a width of 4.9m and a length of 7.3m (noting that this is maintaining the footprint of the existing boatshed that is to be replaced). The pop-up roof and storage area do not form a loft or second-storey, rather it provides storage space above the Estuarine Planning Level.

Furthermore, the proposed development includes the construction of a skid ramp adjacent to an existing jetty. Ramps are generally not favored, however, the Clause allows for a variation to this requirement, stating that Council may consider such structures where they are unlikely to detract from the visual character of the foreshore, will not affect marine vegetation and will not restrict public foreshore access.

The proposal is not considered to detract from the visual character of the foreshore, considering surrounding properties contain existing boatsheds, jetties, and skid ramps. The applicant has submitted an Aquatic Ecology Assessment report which concludes that "*the project can be constructed and used with no measurable alteration of residual risk for the protection of marine fish habitats of Pittwater and can meet the aims of aquatic ecological conservation of the Fisheries Management Act (1994) and of the Northern Beaches Council DCP (Pittwater 21)*". The proposed development allows access around the boatshed through the use of decking, which is beneficial to public foreshore access. Nonetheless, existing public foreshore access is limited by neighbouring development, but the proposal does not worsen this situation. The proposed skid ramp will not obstruct foreshore access.

The proposal has been reviewed by Council's Coastal Officer who has raised no objections to the works, subject to conditions.

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying outcomes of the control as follows:

- *Waterfront development does not have an adverse impact on the water quality and estuarine habitat of Pittwater.*

  Comment:
  The proposed development is accompanied by two letters from the Department of Primary Industries Fisheries (dated 3 April 2023 and 19 February 2024), raising no objection to the proposal. Additionally, the applicant has provided an Aquatic Ecology Assessment which supports the proposed works. Council's Bushland and Biodiversity Officer and Coast and Catchments Officer have also both reviewed the proposal having regard to water quality and habitat, and have raised no objections, subject to conditions. Overall, this demonstrates that the proposal, subject to conditions, will not have an adverse impact on the water quality and estuarine habitat of Pittwater.

- *Public access along the foreshore is not restricted.*

  Comment:
  It is noted that access to the foreshore is limited by surrounding development on neighbouring allotments. However, access along the foreshore will not be further obstructed by the proposal and is maintained by decking around the boatshed for the portion of the waterfront at the

subject site.

- *Waterfront development does not encroach on navigation channels or adversely affect the use of ferries and service vessels or use of the waterway by adjoining landowners.*

  Comment:
  The proposed development is accompanied by a letter from Transport for NSW Maritime dated 3 February 2023 advising that "an inspection/assessment has been conducted by the local Boating Safety Officer and there are no navigational concerns regarding the designated proposal". As such, the proposal is considered sufficient in this regard.

- *Structures blend with the natural environment.*

  Comment:
  A schedule of colours and materials has not been provided with this application. However, the Statement of Environmental Effects, on page 28, states that "the proposed boatshed consists of rendered concrete block construction. The external cladding of the building is a mid-grey colour, non-reflective and resistant to corrosion. The mid-grey of this cladding makes it unobtrusive from the waterfront and allows it to blend in with its natural surrounds." In this instance, a condition will be recommended to ensure compliance with the above statement, as mid-grey is an acceptable finish. A condition will also be recommended to ensure the roof is not finished with a reflective finish. As conditioned, the proposal will appropriately blend with the surrounding natural environment.

- *Structures are not detrimental to the visual quality, water quality or estuarine habitat of the Pittwater Waterway.*

  Comment:
  The proposal will be visually consistent and comparable with surrounding waterfront development. It is considered that the proposed development will not be detrimental to the visual quality, water quality or estuarine habitat of the Pittwater Waterway, subject to conditions included in the recommendations of this report.

- *To promote a mix of commercial waterfront development for the accommodation of boats, their repair and maintenance, and for organised waterfront development.*

  Comment:
  The proposal is not for a commercial waterfront development. Therefore, this outcome is not applicable.

- *Waterfront development which does not comply with the outcomes of this clause are removed.*

  Comment:
  As demonstrated above, the proposed waterfront development complies with the outcomes of this Clause and is considered to be both appropriate and acceptable. As such, no element of the proposed or existing waterfront development requires removal.

Having regard to the above assessments, it is concluded that the proposed development is consistent with the relevant outcomes of the P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of $ 973 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of $ 194,500.

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, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

Council is satisfied that the Applicant’s written request under Clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking to justify variation of the development standard contained within Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
- There are sufficient environmental planning grounds to justify the variation.

PLANNING CONCLUSION

This proposal, for alterations and additions to a boatshed, decking and skid ramp, has been referred to the Development Determination Panel (DDP) due to a request to vary the height of buildings development standard, established by the Pittwater Local Environmental Plan 2014, by greater than 10%.

As a result of public exhibition of the application Council received no submissions.

Critical assessment issues included assessment of the Clause 4.6 Request to vary the height of buildings development standard, as well as assessment of Pittwater 21 Development Control plan non-compliances, including:

- Clause D1.9 Side and rear building line.
- Clause D15.13 Lateral limits to development seaward of mean high water mark.
- Clause D15.15 Waterfront development

The 4.6 Request for the non-compliance with the height standard arises from the construction of a boatshed which straddles the the Mean High Water Mark (MHWM). Above the MHWM the building height development standard is 8.5m. Below the MHWM the standard is 4m. The portion of the proposed boatshed above the MHWM exhibits a building height of 5m, compliant with the 8.5m development standard. However, below the MHWM the proposed boatshed exhibits a building height of 4.68m at the southernmost point of the boatshed, representing a 17% variation to the 4m development standard. Notably, the proposed boatshed is located over the footprint of an exiting boatshed, with the non-compliance arising due to the need to measure the height from an existing concrete boat ramp, which is to be built over. The design of the boatshed is generally in accordance with the prescriptive requirements for boatsheds outlined in the P21DCP, with only minor variations to theses prescriptions arising due to the use of the existing boatshed footprint.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.

REASON FOR DETERMINATION

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

That Northern Beaches Council, as the consent authority, vary the development standard contained within Clause 4.3 Height of Buildings, pursuant to Clause 4.6 of the Pittwater Local Environmental Plan 2014 because the Applicant’s written request has adequately addressed the merits required to be

demonstrated by subclause (3) of Clause 4.6.

Accordingly Council as the consent authority grant Development Consent to DA2023/1862 for Alterations and additions to a boatshed, decking and skid ramp on land at Lot 41 DP 13760, 214 Hudson Parade, CLAREVILLE, Lot LIC 187249, 214 Hudson Parade, CLAREVILLE, subject to the conditions printed below:

Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

GENERAL CONDITIONS

1. **Approved Plans and Supporting Documentation**
   Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	**Revision Number**	**Plan Title**	**Drawn By**	**Date of Plan**
DA-01	C	Boatshed	Utz-Sanby Architects	16 April 2024
DA-02	B	Site Plan	Utz-Sanby Architects	12 December 2023
DA-06	A	Height Limit Diagrams	Utz-Sanby Architects	16 April 2024

Approved Reports and Documentation			
Document Title	**Version Number**	**Prepared By**	**Date of Document**
Aquatic Ecology Assessment	-	Marine Pollution Research	15 November 2022
Coastal Area Environmental Assessment Report	-	Total Earth Care	17 January 2023
Geotechnical Assessment	R.01.Rev2	Douglas Partners	2 Feburary 2023
Estuarine Risk Management Report	-	Horton Coastal Engineering	13 January 2023
Waste Management Plan - 214 Hudson Parade, Clareville	-	-	-

In the event of any inconsistency between the approved plans, reports and documentation, the

approved plans prevail.

In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

2. **Compliance with Other Department, Authority or Service Requirements**
The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	31/01/2024 (on EDMS)
NSW Department of Primary Industries - DPI Fisheries	DPI Fisheries - Referral Response	19 February 2024
NSW Department of Primary Industries - DPI Fisheries	DPI Fisheries Approval	3 April 2023

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

3. **Prescribed Conditions**

(a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

(b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);

(c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

(i) showing the name, address and telephone number of the Principal Certifier for the work, and

(ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and

(iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

(d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

(i) in the case of work for which a principal contractor is required to be appointed:
   A. the name and licence number of the principal contractor, and
   B. the name of the insurer by which the work is insured under Part 6 of that Act,

(ii) in the case of work to be done by an owner-builder:
   A. the name of the owner-builder, and
   B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

(e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
   (i) protect and support the adjoining premises from possible damage from the excavation, and
   (ii) where necessary, underpin the adjoining premises to prevent any such damage.
   (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
   (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative requirement.

4. **General Requirements**

(a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:
- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

(b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian

Standards.

(c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

(d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

(e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

(f) Prior to the release of the Construction Certificate, payment of the following is required:

i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than $250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.

iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.

(g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

(h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

(k) Prior to the commencement of any development onsite for:

i) Building/s that are to be erected

ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place

iii) Building/s that are to be demolished

iv) For any work/s that is to be carried out

v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

(l) A “Road Opening Permit” must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

(m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

(n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

(1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools

(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

(2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

(3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

(4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

5. **No Approval for Secondary Dwelling**

No approval is granted or implied under this Development Consent for the use of any part of the boatshed for the purpose of a secondary dwelling or separate occupancy. At no time shall the boatshed be utilised or converted to provide for residential habitation.

Reason: To ensure compliance with the terms of this consent.

FEES / CHARGES / CONTRIBUTIONS

6. **Policy Controls**
Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of $972.50 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of $194,500.00.

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.

7. **Security Bond**

A bond (determined from cost of works) of $2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the Certifier prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at www.northernbeaches.nsw.gov.au).

Reason: To ensure adequate protection of Council's infrastructure.

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

8. **No Clearing of Vegetation**
Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Construction Certificate.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to issue of Construction Certificate.

Reason: To protect native vegetation.

9. **Stormwater Drainage Disposal**
The stormwater drainage systems for the development are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy.

All stormwater drainage systems must comply with the requirements of Council's Water Management for Development Policy. Any recommendations identified within a Geotechnical Report relevant to the development are to be incorporated into the design of the stormwater drainage system. Details demonstrating compliance from a qualified and practising Civil Engineer and where relevant a Geotechnical Engineer must be submitted to and approved by the Certifier prior to the issue of a Construction Certificate.

When the proposed discharge point for the development in this consent cannot strictly comply with the Water Management for Development Policy, the Applicant must apply to verify the proposed discharge point by gaining Council approval via a Stormwater Drainage Application. Council approval must be provided to the Certifier prior to the issue of a Construction Certificate when a Stormwater Drainage Application is required. The Stormwater Drainage Application form can be found on Council's website.

Compliance with this condition must not result in variations to the approved development or additional tree removal.

Reason: To ensure satisfactory management of stormwater.

10. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**
The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Certifier.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of a Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

11. **Boundary Identification Survey**
A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of any Construction Certificate.

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

12. **Installation and Maintenance of Sediment Control**
Prior to any works commencing on site, including demolition, an erosion and sediment control plan must be prepared by a suitably qualified person in accordance with the following documents and provided to the Principal Certifier:

1. Council's relevant development control plan,
2. The guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate' (the Blue Book) (as amended from time to time), and
3. The 'Do it Right On-Site, Soil and Water Management for the Construction Industry' (Southern Sydney Regional Organisation of Councils and the Natural Heritage Trust) (as amended from time to time).

Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To ensure no substance other than rainwater enters the stormwater system and waterways.

13. **Boatshed to be Properly Maintained: Development of a Maintenance Program**

As the FFL of the boatshed is below the recommended Estuary Planning Level, a maintenance program shall be prepared by the structural engineer, with input as necessary from a chartered professional engineer with coastal engineering as a core competency, to ensure that for its design life the boatshed is maintained in a sound structural condition. The maintenance program shall be submitted to the Certifying Authority for approval prior to the release of the Construction Certificate. The boatshed shall be repaired and maintained in accordance with the program and as may be required from time to time to ensure its structural integrity for its design life.

Reason: To ensure appropriate maintenance of the boatshed located in the estuarine environment

14. **Lawful Authority to Use and Occupy Crown Land or Waterway**

An executed licence agreement from the relevant NSW government agency governing the use and occupation of Crown land in accordance with Condition #5 of the Crown Land's letter of landowner's consent dated 14 December 2023, is required to be obtained prior to the issue of a construction certificate. Evidence demonstrating compliance is to be provided to the certifying authority for approval.

Reason: To ensure that lawful authority under the Crown Land Management Act 2016 to use and occupy Crown land or waterway is obtained before construction commences.

15. **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.

To ensure Council's recommended flood evacuation strategy of 'shelter-in-place', it will need to be demonstrated that there is safe pedestrian access to a 'safe haven' above the Estuarine Planning Level.

Reason: To minimise risks associated with coastal hazards for development in an estuarine environment.

16. **Estuarine Planning Level Requirements**
An Estuarine Planning Level (EPL) of 3.03m AHD has been adopted by Council for the subject site and shall be applied to all development proposed below this level as follows:

1. All structural elements below 3.03m AHD shall be of flood compatible materials;
2. All electrical equipment, wiring, fuel lines or any other service pipes and connections must be located either above 3.03 m AHD or waterproofed to this level; and
3. The storage of toxic or potentially polluting goods, chemicals or materials, which may be hazardous or pollute the waterway, is not permitted below 3.03 m AHD.
4. All interior power supplies (including electrical fittings, outlets and switches) must be located at or above 3.03 m AHD. All exterior power supplies (including electrical fittings, outlets and switches) shall be located at or above 3.03 m 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.

17. **Compliance with Estuarine Risk Management Report**
The development is to comply with all recommendations of the approved Estuarine Risk Management Report prepared by Horton Coastal Engineering, dated 13 January 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.

18. **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 60years as recommended and accepted by Council, the development is able to withstand the wave impact forces and loadings identified in the approved Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 13 January 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

19. **Preparation and adherence to Construction Environment Management Plan**

A Construction Environmental Management Plan (CEMP) must be prepared in accordance with the environmental risks and mitigation methods identified in Coastal Area Environmental Assessment Report by Total Earth Care dated 17 January 2023 and the Aquatic Ecology Assessment prepared by Marine Pollution Research Pty. Ltd. dated 15 November 2022 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.

Reason: To protect estuarine vegetation, wildlife, habitats.

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 0.43 in accordance with the requirements of the BASIX Certificate to minimise solar reflections to neighbouring properties.

Any roof with a 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. **External Finishes to Walls**
The external finish to the walls shall have be a dark and earthy tone, consistent with the

permitted colours within Clause D1.5 Building Colours and Materials of the P21DCP, which includes: black, dark grey, dark green, dark brown, mid grey, green, brown and dark blue.

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.

23. **Sydney Water "Tap In"**
The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifier demonstrating the works are in compliance with Sydney Water requirements.

Please refer to the website www.sydneywater.com.au for:
- "Tap in" details - see http://www.sydneywater.com.au/tapin
- Guidelines for Building Over/Adjacent to Sydney Water Assets.

Or telephone 13 000 TAP IN (1300 082 746).

Reason: To ensure compliance with the statutory requirements of Sydney Water.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

24. **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

25. **Wildlife Protection**
If construction activity associated with this development results in injury or displacement of a native mammal, bird, reptile or amphibian, a licensed wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To protect native wildlife.

26. **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.

27. **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 report must be followed.

Reason: To protect the aquatic environment.

28. **Removing, Handling and Disposing of Asbestos**
Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:
- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

29. **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.

30. **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.

31. **Waste Management During Development**
The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

Details demonstrating compliance must be submitted to the Principal Certifier.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

32. **Pollution Control**
All stockpiles, materials, waste and slurry associated with works (including excavated material) is to be contained at source within the construction area and enclosed in waterproof covering and/or sediment and erosion control while not in use. All waste/debris is to be removed off site

and disposed of as frequently as required in accordance to local regulations.

Reason: To protect the surrounding environment, and ensure that pollutants and building associated waste do not leave the construction site.

33. **Aboriginal Heritage**
If in undertaking excavations or works any Aboriginal site or object is, or is thought to have been found, all works are to cease immediately and the applicant is to contact the Aboriginal Heritage Officer for Northern Beaches Council, and the Cultural Heritage Division of the Department of Planning, Housing and Infrastructure.

Any work to a site that is discovered to be the location of an Aboriginal object, within the meaning of the National Parks and Wildlife Act 1974, requires a permit from the Director of the Department of Planning, Housing and Infrastructure.

Reason: Aboriginal Heritage Protection.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

34. **No Weeds Imported On To The Site**
No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan) are to be imported on to the site prior to or during construction works.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To reduce the risk of site works contributing to spread of Priority and environmental weeds.

35. **Geotechnical Certification Prior to Occupation Certificate**
The Applicant is to submit the completed Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) to the Principal Certifier prior to issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

36. **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

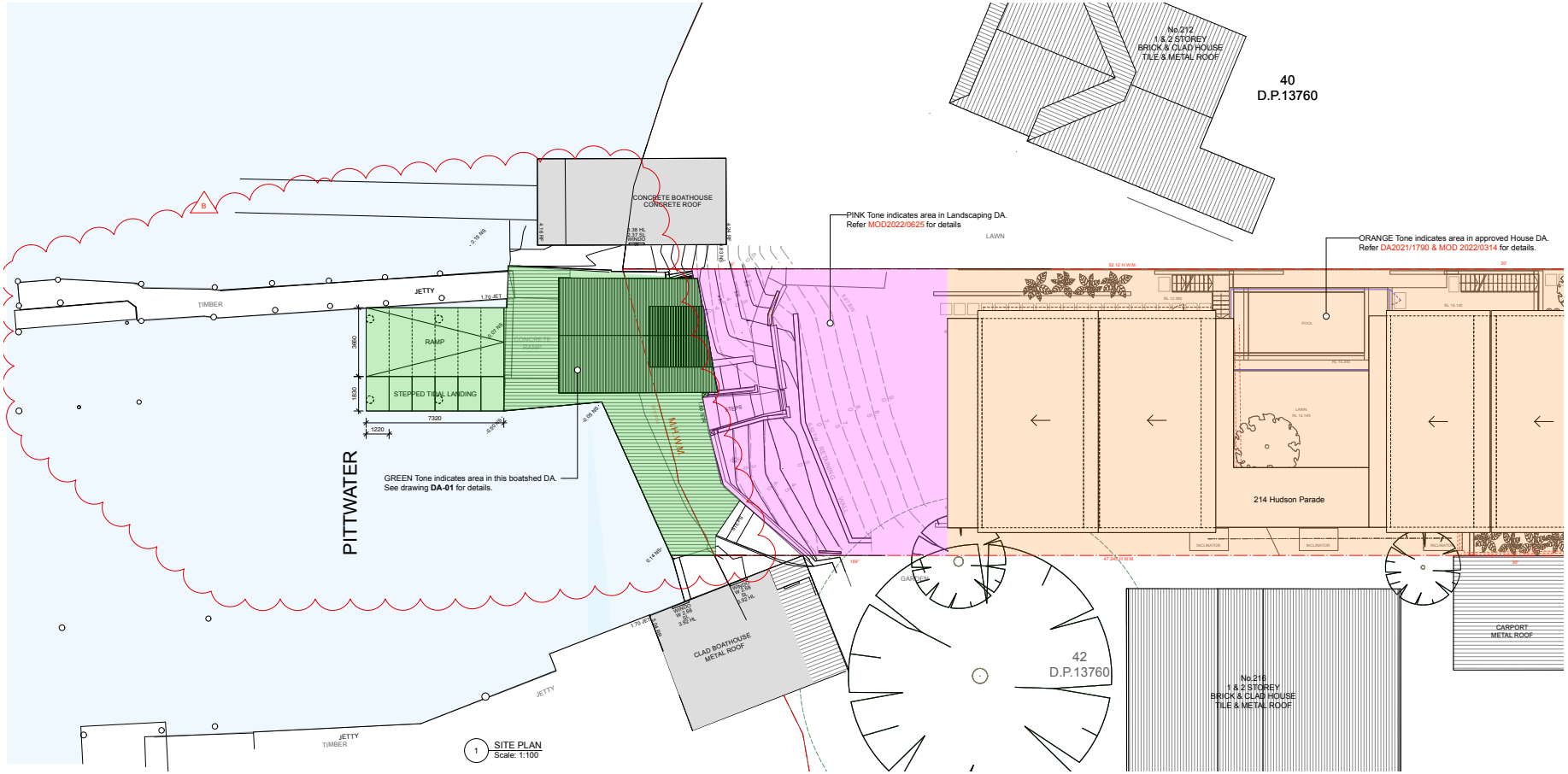
37. **Geotechnical Recommendations**
Any ongoing recommendations (if any) of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

38. **Boatshed Not for Habitation**

At no time shall the boatshed be utilised or converted to provide for residential habitation. The boatshed must not be used for any other purpose than the storage of small boats, light watercraft and boating and marine equipment. The incorporation of any internal kitchen facilities, habitable rooms, shower or toilet facilities is not permitted.

Reason: To ensure compliance with Pittwater Estuarine Risk Management Policy.



Rev	Date	Note	By
B	12/12/23	Updated survey information	TD
A	12/12/23	Raised roof and clestory windows moved behind M.H.W.M.	TD

General Notes:

Reason For Issue:

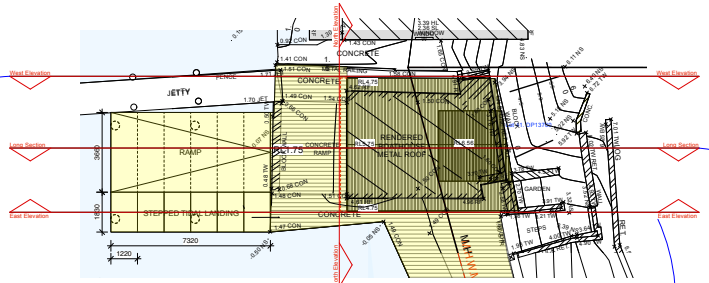
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Site Plan

Alterations & Additions
214 Hudson Parade,
Clareville NSW 2107
-Northern Beaches Council-
For Mr. Patrick & Mrs. Nicole Heller

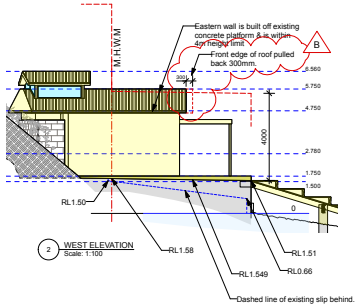
Suite 103, 506 Miller St
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UTZ SANBY ARCHITECTS

Project No.	Drawing No.	Rev No.
2019	DA-02	B
SCALE	Drawn By	Checked By
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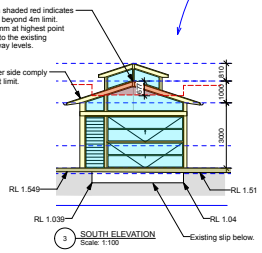


1 SITE PLAN
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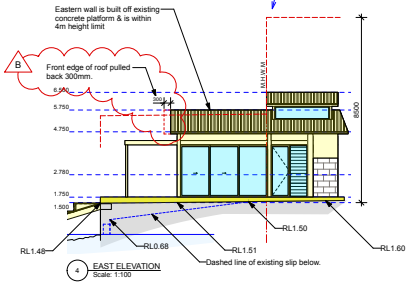
Site plan showing proposed overlaid the Existing Survey.



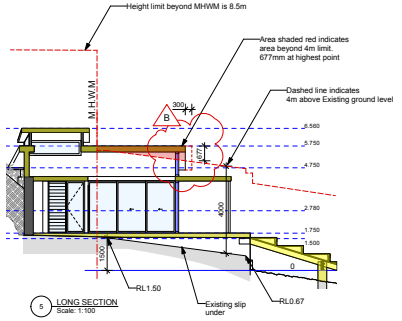
2 WEST ELEVATION
Scale: 1:100



3 SOUTH ELEVATION
Scale: 1:100



4 EAST ELEVATION
Scale: 1:100



5 LONG SECTION
Scale: 1:100

Pittwater LEP 2011:

Max height is 4m below MHWM.
Max height is 8.5m behind MHWM.

At the maximum point the roof is 677mm above this control or 16.9% variation.

Pittwater 21 DCP:

c) Boatsheds
Boatsheds shall meet the following criteria:

i. Boatsheds shall be located above mean high water mark on freehold land, where practicable. Where this cannot realistically be achieved, as much of the proposed boatshed as is practical must be located above mean high water mark to minimise encroachment onto the littoral zone below mean high water mark.

ii. Boatsheds shall be one storey and no greater than 4.5 metres in building height above the platform on which it is built, 4.0 metres in width and 6.0 metres in length, as illustrated in Diagram 4. The use of lofts or similar design concepts shall not be permitted.

iii. Boatsheds shall not prevent or hinder public foreshore access. Alternative access must be provided where a proposed boatshed is likely to make existing foreshore access below mean high water mark difficult.

iv. Boatsheds cannot be used for any other purpose than the storage of small boats and/or boating equipment. The incorporation of any internal kitchen facilities, habitable rooms, shower or toilet facilities shall not be permitted. Roof areas of boatsheds shall not be used for recreational or observational purposes.

v. Boatsheds shall be constructed of low maintenance materials that are of a tone and colour which is sympathetic to the surrounding setting. Structures proposed along the western foreshores, McCarrs Creek, Horseshoe Cove, Salt Pan Cove, Refuge Cove, Clareville and Careel Bay are to have specific regard for the natural landscaped character of the area. Reflective materials and finishes for private boatsheds shall not be permitted.

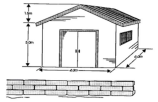
vi. The minimum floor level for proposed boatsheds shall be in accordance with the B3 Estuarine Hazard controls for foreshore development around the Pittwater Waterway.

vii. Boatsheds shall be able to be entirely enclosed. Boatsheds which either partially or wholly do not incorporate appropriate wall cladding shall not be permitted, as such structures tend to become visually obtrusive when viewed from the waterway.

viii. All electrical equipment and wiring shall be water tight below the designed flood/tidal inundation level.

Boatsheds which cannot meet these criteria are considered out of scale and character with the type of residential foreshore development that exists around the Pittwater Waterway. Boats which cannot be accommodated in the recommended size boatshed are considered inappropriate and should be accommodated using alternative facilities.

Diagram 4: Design Guidelines for Boatsheds



• See also B3 Estuarine Hazard Controls relating to boatsheds

Rev	Date	Note	By
A	16/04/24	Issued for DA	TD

General Notes:

Reason For Issue:

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Height Limit diagrams

Alterations & Additions
214 Hudson Parade,
Clareville NSW 2107
-Northern Beaches Council-
For Mr. Patrick & Mrs. Nicole Heller

Suite 103, 506 Miller St
PO Box 224, Cammeray 2062
T 02 9904 2515
E architects@utzsanby.com
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UTZ SANBY ARCHITECTS

Project No.	Drawing No.	Rev No.
2019	DA-06	A
SCALE: 1:100@A1	Drawn By: TD	Checked By: XX

UTZ SANBY ARCHITECTS

Suite 103, 506 Miller St
PO Box 224, Cammeray 2062
T 02 9904 2515
E architects@utzsanby.com
utzsanby.com

Project Address: 214 Hudson Parade, Clareville, NSW, 2107
Owners: Patrick Heller, Nicole Heller, Peter Heller and Marianne Heller.
Proposal: Alterations and Additions to an existing boatshed.

CLAUSE 4.6 Exception

Justification under Clause 4.6 of Pittwater Local Environmental Plan 2014 – Exceptions to Development Standards.

Clause 4.3 Height of Buildings

(1) The objectives of this clause are as follows:

(a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,

(b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,

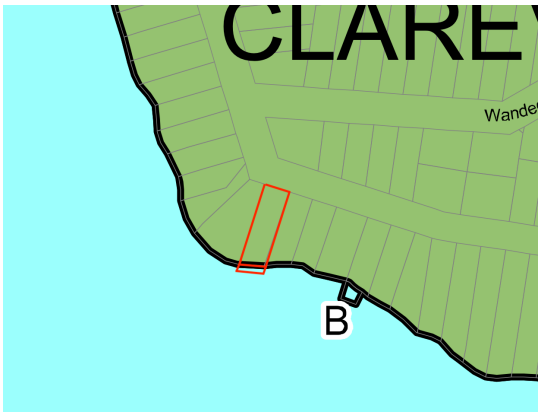
(c) to minimise any overshadowing of neighbouring properties,

(d) to allow for the reasonable sharing of views,

(e) to encourage buildings that are designed to respond sensitively to the natural topography,

(f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.



The Clause operates in conjunction with the Height of Buildings Map HOB_010, shown on the left.

The subject site straddles the Mean High Water Mark (MHWM).

Part of the building has an 8.5m height limit and the other has a 4m height limit.

Clause 4.6 states:

4.6 Exceptions to development standards

(1) The objectives of this clause are as follows—

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) Development consent must not be granted 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, and

(b) there are sufficient environmental planning grounds to justify the contravention of the development standard.

(4) The consent authority must keep a record of its assessment carried out under subclause (3).

(5) (Repealed)

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

(7) (Repealed)

(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

(a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,

UTZ SANBY ARCHITECTS

Discussion

The subject property is described as 214 Hudson Parade, being Lot 41, DP. 13760 with a site area of 739.8m2. The property is located at the southern side of Hudson Parade and fronts on to Pittwater.

The Application is for a proposed deck, boatshed refurbishment and ramp that straddles the Mean High Water Mark (MHWM) that sits at about RL1.5m.

The existing boatshed is in disrepair and is built out of concrete block with metal roof construction and contains a slipway with two rails extending out into Pittwater.

The proposal includes the removal of the slip rails, re-construction of boatshed on existing footprint, new tidal landing into Pittwater and construction of level platform over the existing concrete deck.



Photo above showing the boatshed's existing East Elevation



Photo above showing the boatshed's existing South Elevation.

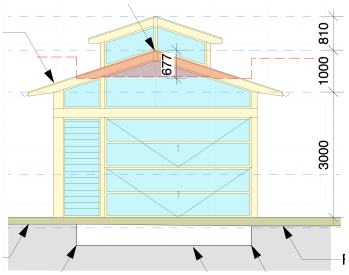
The proposed Application consists of:

Ground Floor

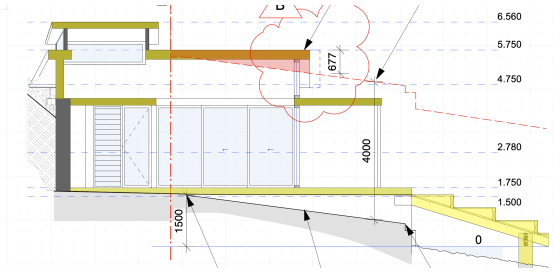
- Partial demolition of the existing boatshed, including the removal of concrete block walls and existing roof.
- The footings, concrete slipway and existing timber jetty are to remain.
- The sandstone walls are to be retained and new concrete block walls built to provide enclosed storage for a boat.
- Additional kayak storage is to be provided under the western eaves.
- New timber decking to be built over existing concrete slip.
- New "private landing steps" (stepped tidal landing) and "Skid" (ramp).

Storage Platform

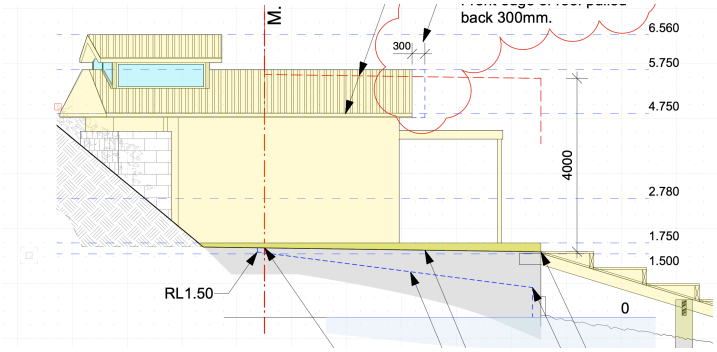
- High level storage for equipment, materials or other products which must be stored above the Estuarine Planning Level.
- New pop-up roof provided above storage platform.



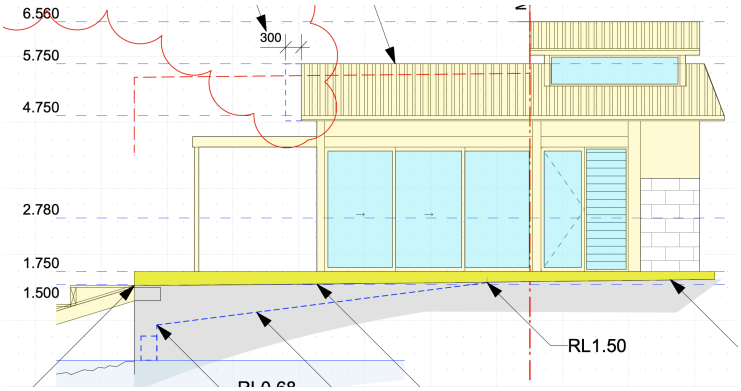
On the South Elevation (shown above) the 4 metre Maximum Building Height is indicated as the red dashed line with the area of non-compliance shaded red.
This elevation clearly shows that the non-compliance is due entirely, to the recess of the existing slipway below the proposed floor level of the boat shed.



A small section of gabled roof highlighted in the section above is the non-compliance with Clause 4.3. It is a small triangular section of the roof, highlighted in red above.
At it's highest point the ridge is 677mm above the 4m Maximum Building Height Line due to the sloped profile of the existing slipway below.



The **West Elevation** shows the 4m Maximum Building height line as a red dashed line. The walls and gutters on both sides of the boatshed are within the envelope. The non-compliance is with the front edge of the pitched roof.



The **East Elevation** shows the 4 metre Height Line, which follows the natural ground level in the sub-floor void below. The non-compliance is a small triangular section of the existing gabled roof

To summarize, the non-compliances with Clause 4.3 Height of Buildings are of a minor nature and are due to the unique circumstances of the existing slipway ramp under the proposed boatshed.

We will now address each aspect of Clause 4.6 in turn for completeness:

(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.

It is noted that the objectives of the Clause 4.6 is to provide appropriate flexibility to the application of development standards in order to achieve better planning outcomes, both for the development and from the development.

The proposal seeks flexibility in the application of the building height development standard to the proposed Application, to give the Applicant the flexibility to re-build their boatshed to be practical to use and fit in with the existing boatsheds along the Pittwater / Clareville foreshore.

It is noted that the existing boat shed is of inadequate construction and is detrimental to the area, specifically when viewed from the water and adjacent sites down at the water's edge. This Application seeks to re-build within the existing footprint to create a useable boat shed with acceptable facilities to current standards and to contribute to the aesthetics of waterfront development in this local area.

Strict compliance with the 4m height limit is considered unnecessary in this particular circumstance as the slipway that is causing the non-compliance, will not be visible once the development is carried out.

(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.

The development standard proposed to be contravened, Clause 4.3 Height of Buildings is not expressly excluded from the operation of this clause.

(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, and

(b) there are sufficient environmental planning grounds to justify the contravention of the development standard.

This submission is the written request for consideration by the consent authority. This written request justifies the contravention of the development standard by demonstrating that compliance is both unreasonable and unnecessary in these circumstances; and there are sufficient environmental planning grounds to justify the non-compliance.

To fulfill Clause 4.6, (3) (a) above, we will demonstrate that the Application fulfills the applicable objectives of Clause 4.3 Height of Buildings, and therefore actual compliance with the development standard is unnecessary in this circumstance.

The objectives of Clause 4.3, Height of Buildings are discussed below:

(a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,

Northern Beaches Council's Pittwater 21 Development Control Plan D15.14 Waterfront Development C) Boatsheds, provides prescriptive Design Guidelines for Boatsheds. This is understood by the applicants to describe Northern Beaches Councils' desired character for the locality in terms of boat sheds viewed from Pittwater.
Point ii. notes:
"Boatsheds shall be one storey and no greater than 4.5 meters in building height above the platform on which it is built."

The platform from which it is built in this case is the proposed decking level.
It is considered that the proposal is consistent with the desired character of the locality, despite the level of the existing slipway underneath, which technically results in the front edge of the pitched roof being over the 4m height limit stipulated in the LEP.

Overall, the proposed boat shed is generally consistent with Diagram 4: Design Guidelines for Boatsheds as indicated in the diagrams below. Therefore we would argue that, by virtue of following the Diagram 4 in the DCP, the proposal will be consistent with the desired character of the locality.

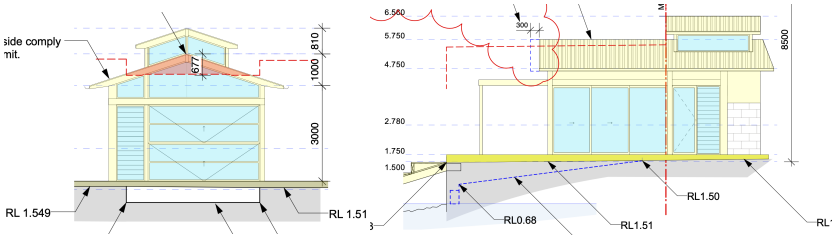
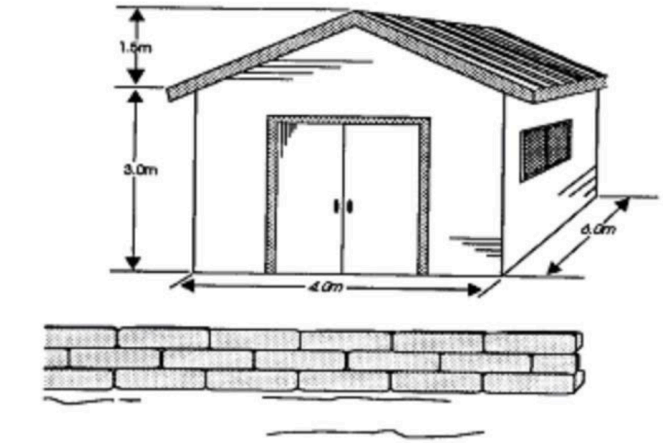


Diagram 4: Design Guidelines for Boatsheds



• See also B3 Estuarine Hazard Controls relating to boatsheds

Nominated Architect: Duncan Sanby. Reg. No. 6227

(b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,

Below are photos taken from Pittwater showing existing boat sheds on nearby properties to show examples of boat sheds that have been approved by Council over recent years.



244 Hudson Parade, Clareville



242 Hudson Parade, Clareville



Located in the Pittwater Area.

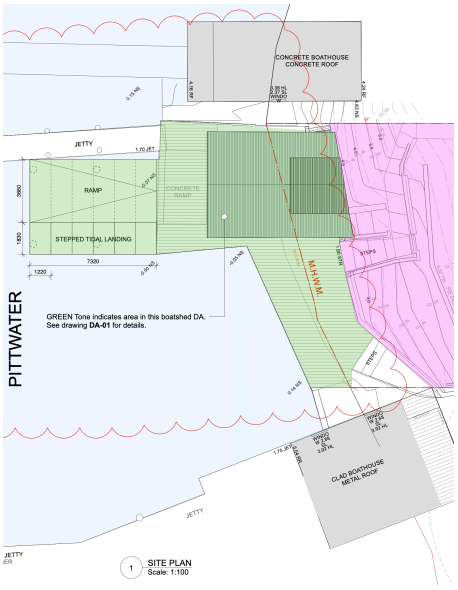


228 Hudson Parade, Clareville

These four photos show clearly that there is not a consistent 'theme' that runs through the recently approved boat sheds, rather the overall height and scale can vary substantially, some having two storeys.
We would argue that this Application is more in keeping with the Diagram 4 and associated guidelines from the DCP and there will contribute and indeed reinforce it's compatibility within surrounding development.

(c) to minimise any overshadowing of neighbouring properties,

The boat shed is located close to the water's edge – facing south and is a single storey structure. The adjacent boatshed on the neighbouring property to the West is located approximately 1 metre away from the boundary. Due to it's height, location and orientation, the proposed Boat shed will not overshadow any private open space or outdoor area.



(d) to allow for the reasonable sharing of views,



The photo above shows the existing boat shed from the lower level of the house on the subject site. It is clear that the boat shed will not impact any views across Pittwater from the subject site or neighbouring properties due to the existing setbacks and topography.

(e) to encourage buildings that are designed to respond sensitively to the natural topography,

As we have explained above, we have sought to follow the prescriptive requirements for boat sheds as set out in Council's DCP. We have worked to the 4.5 metre height requirement above the platform upon which it is built and propose a gabled roof facing Pittwater. As such, we would argue that we have by definition, responded sensitively to the natural topography and surround features.

(f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

It is noted that there are no heritage items within proximity of this Application and the Application is not within a designated Conservation Area so Clause (f) is not applicable in this instance.

We have explained previously that the design has followed the prescriptive requirements for Council's DCP and as such has minimized any adverse visual impacts that could occur with a development of this nature.

With respect to Clause 4.6 (3) (b):

> *(b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

In determining whether there are sufficient environmental planning grounds the L & E Court has previously considered the development standard and zone objectives. The proposal is consistent with the relevant zone objectives and we have demonstrated above, that the proposal fulfils all of the objectives of Clause 4.3 Height of Buildings.

In *Initial Action,* Preston CJ states (23) –(24) that the environmental planning grounds must be 'sufficient' in two respects;

a) ***The environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus 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.***
b) ***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.***

Therefore, we shall consider only the elements that are contributing to the development's additional height above the Height of Buildings requirement of 4.0 metres:

- The proposed gable roof above the existing slipway that is above the 4.0 metre height requirement.

The non-compliances have been demonstrated to have no greater amenity effects on neighbouring development with regard to solar access and loss of views. The minor contravention of height regarding the proposed gabled roof can be considered in relation to the major amenity benefits it will bring to this particular development. To allow the Applicants to undertake the necessary re-building of the existing dilapidated and unsightly boat shed, are in themselves, justification on environmental planning grounds.

In considering the environmental planning grounds particular to the circumstances of the proposed development in relation to Section 1.3 of the EPA Act:

- The proposed design will promote good design and a high level of amenity for the owners without having any greater impact upon the amenity of the surrounding neighbours.
- The existing boat shed is dilapidated and unsightly. It detracts from the aesthetic qualities of the local area. By allowing the Applicants to re-build the boat shed on it's existing footprint, this will greatly enhance aesthetic qualities of the water's edge and contribute to the locality.

We have demonstrated above that there are sufficient environmental planning grounds particular to this development that justifies a departure from the strict adherence to the development standard in this instance.

UTZ SANBY ARCHITECTS

In relation to

(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.

We have demonstrated on the previous pages that the proposed development is consistent with the objectives of Clause 4.3 Height of Buildings and is similar in bulk and scale to other boat shed development within the area. We have also demonstrated above within Clause 4.6 (3) (a) that the proposal is consistent with objectives of the particular development standard and with the zone objectives.

Objectives of zone C4 Environmental Living:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have 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.*

The proposal is consistent with the zone objectives described above. The proposal maintains the current low-density pattern, allows local facilities, communal space and the foreshore are to be maintained across the water's edge.

The boat shed has been designed to adhere to the prescriptive design guidelines given with Council's DCP and will therefore enhance the desired future character of the area.

It should be noted that the breach of the 4m height limit will not have any impact on the ecological or scientific values of the site. The proposal's ecological impact is reviewed in depth in the DA's accompanying reports including a Coastal Area Environmental Impact Report, Aquatic Ecology Assessment and Estuarine Risk Management Report.

(5) In deciding whether to grant concurrence, the Secretary must consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

The contravention raises no matters of State or Regional significance. It is considered that where the proposal is consistent and compatible with the neighbouring sites in terms of its bulk, scale and character and there is no public benefit in maintaining the development standard. No other matters are required to be taken into consideration.

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

This is not applicable to the subject site and Application

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

The consent authority will keep a record of the determination.

(8) This clause does not allow development consent to be granted for development that would contravene any of the following:

(a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,

(ba) clause 4.4, to the extent that it applies to land identified on the Key Sites Map as Site F, Site G, Site H or Site I,

(c) clause 5.4.

(d) clause 6.7, to the extent it applies to land identified on the Key Sites Map as Site F or Site G

(caa) clause 5.5.

The proposal is not complying development. The development standard does not arise from regulations in connection with BASIX. The standard does not arise from Clause 5.4, Clause 5.5 or Clause 6.7 or any of the other exclusions listed.

In this instance it is considered appropriate to make an exception to the Building Height Limit development standard under the provision of Clause 4.6 for the reasons outlined in the preceding discussion.



Signed .....
Duncan Sanby of Utz Sanby Architects Pty. Ltd.
Reg. No. 6227

ITEM 3.10 DA2023/1350 - 40 BASSETT STREET MONA VALE - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE INCLUDING SWIMMING POOL

PURPOSE

To refer the attached application for determination as required under adopted delegations of the Charter.

RECOMMENDATION

THAT Council as the consent authority **approves** Development Consent to DA2023/1350 for demolition works and construction of a dwelling house including swimming pool on land at Lot 26 DP 6195, 40 Bassett Street MONA VALE, subject to the conditions set out in the Assessment Report.

Reporting manager	Steve Findlay
TRIM file ref	2024/312895
Attachments	⇩1 Assessment Report ⇩2 Site Plan and Elevations

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/1350

Responsible Officer:	Reeve Cocks
Land to be developed (Address):	Lot 26 DP 6195, 40 Bassett Street MONA VALE NSW 2103
Proposed Development:	Demolition works and construction of a dwelling house including swimming pool
Zoning:	R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Simon David Edwards Wendy Morton-Edwards
Applicant:	Simon David Edwards

Application Lodged:	05/10/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	05/04/2024 to 19/04/2024
Advertised:	Not Advertised
Submissions Received:	6
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	$ 1,457,380.00

EXECUTIVE SUMMARY

This development application seeks consent for the demolition of existing structures and the construction of a two storey dwelling house, attached double garage and swimming pool.

The application is referred to the Development Determination Panel (DDP) due to receiving 5 or more unique submissions in objection to the public notification.

Concerns raised in the objections predominantly relate to building bulk, visual and acoustic privacy.

Critical assessment issues included:

1. Flood planning level and total building height clarification.
2. Visual privacy for adjoining apartment residents at 38 Bassett Street directly southeast of the proposed development.
3. Side Boundary Setback non-compliance.

The proposal, as submitted, had significant visual privacy issues due to the north orientation of the adjoining residential flat building at 38 Bassett Street. The applicant submitted an amended design following the recommendations made by Council on 1 March 2024. The amended plans adjusted the size and location of windows including adding privacy screening, glazing and increasing the minimum sill heights to provide for greater visual privacy between dwellings. The overall height of the dwelling house has also been reduced to minimize the impact on adjoining dwellings.

This report concludes with a recommendation that the DDP grant approval to the development application, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The proposal involves the demolition of existing structures and the construction of a two storey dwelling house, including an attached double garage, swimming pool and associated landscaping works.

Amendments to the Proposal

Council requested amended information to clarify the flood planning level across the site, and amend the size and location of windows to ensure a reasonable level of privacy.

The applicant has also reduced the overall building height and amended the proposed windows in line with Councils concerns.

It is considered that these amendments result in a design that achieves a reasonable level of amenity for both the applicant and adjoining neighbours.

Specifically, the amended proposal involves the following:

Ground Level

- Attached double garage
- Family Room
- Guest bedroom (bedroom 1)
- Bathroom and laundry
- Walk-in-pantry, kitchen, dining and living areas with a fireplace
- covered alfresco area
- swimming pool
- Internal staircase

First Storey

- Office

- Three (3) bedrooms (bedrooms 2,3 and master bedroom) each with attached ensuites
- 2 walk-in-robes attached to the master bedroom and bedroom 2
- 2 balconies

The proposal also involves the removal of trees, new access driveway and new landscaping.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

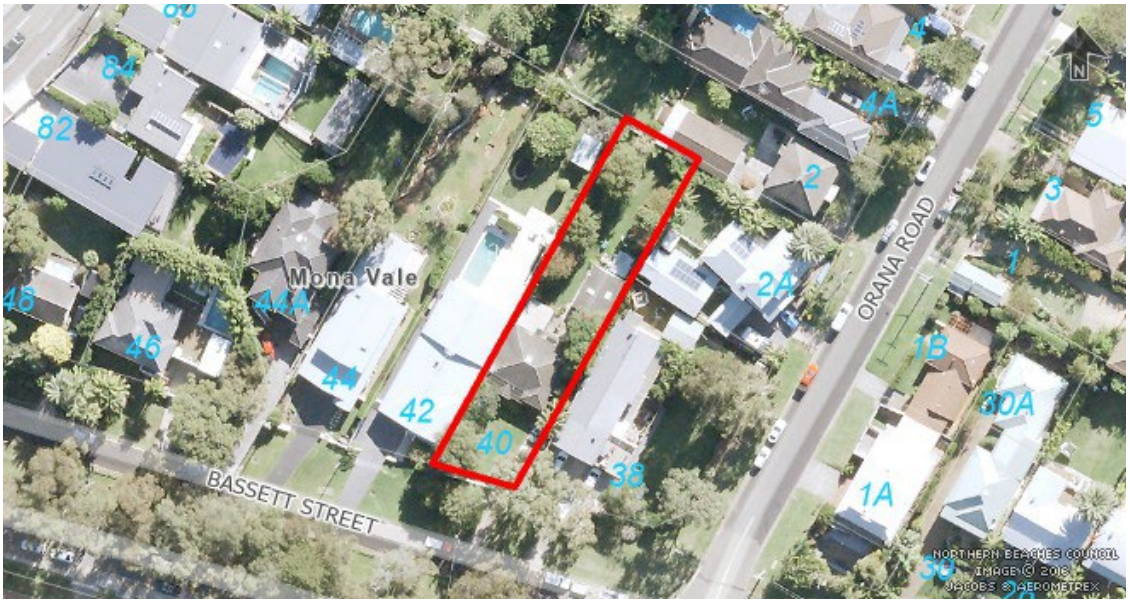
Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings
Pittwater Local Environmental Plan 2014 - 5.21 Flood planning
Pittwater Local Environmental Plan 2014 - 7.1 Acid sulfate soils
Pittwater 21 Development Control Plan - B3.11 Flood Prone Land
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - D9.7 Side and rear building line

SITE DESCRIPTION

Property Description:	Lot 26 DP 6195 , 40 Bassett Street MONA VALE NSW 2103
Detailed Site Description:	The subject site consists of 1073m² allotment located on the northern side of Bassett Street. The site is regular in shape with a frontage of 15.67m along Bassett Street and a depth of 72.255m. The site has a surveyed area of 1073m². The site is located within the R2 Low Density Residential zone and accommodates an existing single storey rendered cottage with tile and flat metal roof, rendered garage tile roof, and metal shed.

	The site is generally flat with a gradual incline of about 3 metres that steepens towards the rear of the site. The site is mostly covered by grass areas with some exempt tree scattered throughout the site. There are no threatened species on site that will be affected by the development. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by one and two storey detached dwelling houses and strata planned residencies. Council notes that a majority of the lots are substantial in size with substantially large dwelling houses.

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time.

A search of Council's records has revealed the following relevant history:

Development Application DA2023/1350 - Demolition works and construction of a dwelling house including swimming pool (Current DA)

Section 4.55 Modification Mod2022/0119 (Approved 9 June 2022) - Modification of Development Consent DA2021/0487 granted for demolition works and construction of a dwelling house including a swimming pool (Mod of Active Consent)

Development Application DA2021/0487 (Approved 29 September 2021) - Demolition works and

construction of a dwelling house including a swimming pool (Active Consent)

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 29 of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended plans and additional information regarding flood planning. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent

Section 4.15 Matters for Consideration	Comments
	authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 05/04/2024 to 19/04/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 6 submission/s from:

Name:	Address:
Joshua Kai Perry	2 / 38 Bassett Street MONA VALE NSW 2103
Mrs Susan Margaret Carr	2 A Orana Road MONA VALE NSW 2103
Connor Thomas McLeod Tina Chan	4 / 38 Bassett Street MONA VALE NSW 2103
Ms Sarah May Twibill	42 Bassett Street MONA VALE NSW 2103

Name:	Address:
Mr Terence Paul Dawe	3 / 38 Bassett Street MONA VALE NSW 2103
Mr Timothy Anthony Malakou	Po Box 1312 MONA VALE NSW 1660

The following issues were raised in the submissions:

- *Bulk and scale of the proposed dwelling house with specific reference to the roof form.*
- *Solar access and overshadowing concerns.*
- *Ventilation.*
- *Visual and acoustic privacy.*
- *Groundwater flow and stormwater management.*
- *Removal of native tree and other tree planting.*
- *Vibration and construction work damages*
- *Location of swimming pool pump.*

The above issues are addressed as follows:

- **Ventilation**

  The submissions raised concerns that the bulk and scale of the development may reduce air flow to adjoining properties and result in building and resident health concerns.

  Comment:
  There are no specific controls within the Pittwater 21 DCP that relate to the ventilation for adjoining dwellings. The applicant proposes to provide between 1.79m, 2.35m, and 3.15m setback from the eastern side boundary. It is considered that this will provide adequate building separation and allow for adequate air flow between properties and existing structures. It should be noted that the Pittwater DCP enforces a 1.0m and 2.5m side setback control to maintain the amenity of the area.

- **Solar Access and Overshadowing**

  The submissions raised concerns that the proposed development would result in unacceptable solar access loss for adjoining properties.

  Comment:
  The subject lot and adjoining lots are generally north-south oriented with the rear of the properties facing the north. An assessment of the solar access finds that the proposed development is complaint with the relevant controls. Residents at No. 38 Bassett Street will continue to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st to their principal living areas. It should be noted that the amended plans provided by the applicant have reduced the total building height, which will further reduce the overshadowing impacts of the proposed dwelling house.

- **Groundwater flow and stormwater management**

  The submissions raised concerns that the proposed development will result in unacceptable groundwater flow impacts.

  Comment:
  The applicant has provided a stormwater management plan, geotechnical report, acid sulfate report, and flood planning report in support of the application. This information has been reviewed by Councils Landscape, Environmental Health and Engineering Teams. Relevant conditions of consent have been included to ensure groundwater flow impact is mitigated by the proposed development. It is considered that no further action is required.

- **Removal of native tree and other planting**

  The submissions raised concerns that the applicant is proposing the removal of a native tree at the front of the site.

  Comment:
  Council notes that the removal of the tree has been previously approved under DA2021/0487. Councils Landscape Officer has also reviewed the application and added relevant conditions of consent.

- **Swimming pool pump**

  The submissions raised concerns that the applicant's plans fail to show where the proposed swimming pool pump would be located.

  Comment:
  Council has included a condition of consent to ensure that pool pumping equipment does not cause any significant acoustic privacy impacts.

- **Bulk and scale**

  The submissions raised concerns that the proposed bulk and scale of the dwelling house are not consistent with the objectives of the zone.

  Comment:
  The amended designs provided on the 1 March 2024 reduced the total building height to be compliant with the 8.5m height of buildings development standard. It is considered that the development does not represent an overdevelopment of the site, nor does it present as unreasonably large, out of scale or bulky within the context of the locality.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Acid Sulfate)	**Supported Without Conditions** **General Comments** This application is seeking consent for a new dwelling and pool. Previous DA2021/0487 and Mod2022/0119 were approved however design changes are being proposed with this DA. An acid sulfate soils report was provided and no acid sulfate soils were found. Environmental Health recommends approval. This outcome is the same as the above DA2021/0487 and the MOD2022/0119
Landscape Officer	**Supported Subject to Conditions** **General Comments** The application seeks consent for demolition works and construction of a dwelling house including swimming pool. The Arborist's report prepared by Rain Tree Consulting and Landscape Plan by Cabarita Landscapes are noted. The site is noted to have a previous approval under DA2021/0487, which includes approval to remove a number of exempt trees and low value trees across the site. The Plans and Arborist's report indicates that the same trees are proposed for removal under this application. the Landscape Plan indicates replanting of 6 individual trees and 70 hedge trees capable of attaining a height of +5m at maturity. No objections are raised with regard to landscape issues subject to conditions.
NECC (Development Engineering)	**Supported Subject to Conditions** **General Comments** The proposed development is in Region 1. On-site detention is not required as the site is flood affected. A geotechnical report has been provided. Vehicle crossing has been proposed. I have no objections to the proposed development.
NECC (Flooding)	**Supported Subject to Conditions** **General Comments** The proposal seeks consent for the demolition of all existing structures and construction of a new two storey residential dwelling with an attached garage, inground swimming pool and associated landscaping works.

Internal Referral Body	Comments
	The property is affected by the identified medium and low flood risk precincts, a H3 flood hazard category and the hydraulic category varies between floodway, storage and fringe. In the design flood event (1% AEP flood) overland flows are expected to traverse the property from north to south. Subject to the following conditions, council is satisfied that the proposal is compliant with Section B3.11 of the Pittwater 21 DCP 2021 and Clause 5.21(2)(a-e) of the Pittwater LEP 2014, with consideration of Clause 5.21(3)(a-d) of the Pittwater LEP 2014
NECC (Riparian Lands and Creeks)	**Supported Subject to Conditions** **General Comments** This application was assessed in consideration of: - Supplied plans and reports; - Coastal Management Act 2016; - State Environmental Planning Policy (Resilience and Hazards) 2021; - Relevant LEP and DCP clauses; and - Northern Beaches Council Water management for development policy. Riparian The proposed development lies within mapped creek and riparian habitats so must not significantly impact on the biophysical, hydrological or ecological integrity of the creek or the quantity and quality of surface and ground water flows that it receives. The site is located within 40m of mapped Pittwater creeklines , however the creekline has been piped. The proposed development poses no major risk to creek water quality or the receiving waters of Mona Vale Basin. Sediment Management 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.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

Pittwater Local Environmental Plan 2014

Is the development permissible?	Yes

After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	8.5m (from flood planning level - FPL)	9.290m (total) 8.5m (flood planning level - FPL)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.10 Essential services	Yes

Detailed Assessment

4.3 Height of buildings

In accordance with Part 4.3 Height of Buildings (2C) of *Pittwater Local Environmental Plan 2014,* development on land identified within specific areas may exceed the maximum building height of 8.5m.

The subject site is located within "Area 3", thus allowing a maximum building height of 8.5 metres above the flood planning level (FPL). The Flood Inundation and Risk Assessment Report, prepared by Barrenjoey Consulting Engineers P/L, states that there are varying flood planning levels across the site (ranging from RL4.85 to RL7.74). The proposed development, despite being greater than 8.5 metres from existing ground level, is compliant with the overall height control when measured from the FPL.

Hence, the proposal complies with the relevant building height development standard under PLEP 2014.

5.21 Flood planning

Under this clause, development consent must not be granted to development on land that the consent

authority considers to be within the flood planning area unless the consent authority is satisfied the development:

(a) is compatible with the flood function and behaviour on the land, and
(b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and
(c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and
(d) incorporates appropriate measures to manage risk to life in the event of a flood, and
(e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.

Comment: The proposed building design and provided flood risk assessment report satisfy the flood officers that the development will not adversely affect flood function or behaviour on site. The proposed dwelling house is elevated above the flood planning level and is complaint with the flood planning controls, subject to conditions.

In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters:

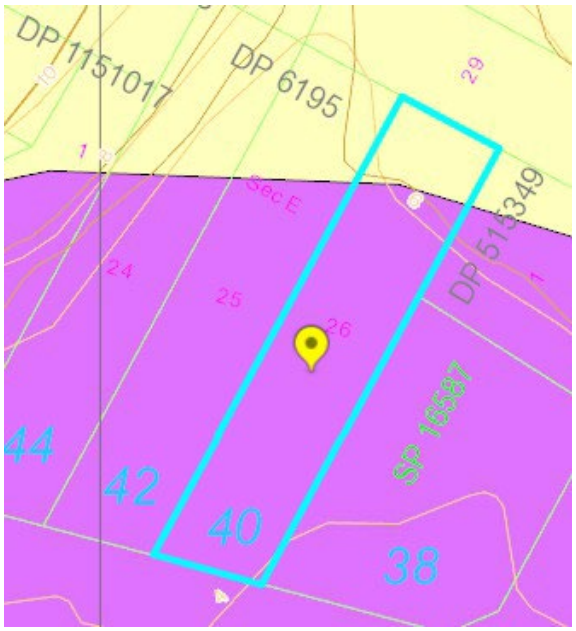
(a) the impact of the development on projected changes to flood behaviour as a result of climate change,
(b) the intended design and scale of buildings resulting from the development,
(c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,
(d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.

Comment: Council has considered the above matters and determined that the clause applies to the subject site.

7.1 Acid sulfate soils

Clause 7.1 - 'Acid sulfate soils' of PLEP 2014 requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

The site is located in an area identified as Acid Sulfate Soil Class 4 and 5, as indicated on Council's Acid Sulfate Soils Planning Map.



An excavation to a maximum depth of ~3.0m is required for the proposed swimming pool. It will cover an area of ~34m2. The excavation is only a risk in regards to potential acid sulfate soils while it is open. On completion of the pool shell, the surface will be sealed preventing access of oxygen to the soil and therefore greatly reducing the potential for acid generation.

The preliminary assessment undertaken by White Geotechnical Group Pty Ltd indicates that an Acid Sulfate Soils Management Plan is not required for the proposed works.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	19.1m	-	Yes
Rear building line	6.5m	5.8m (pool)	-	Yes (exception applies)
		16.6m (dwelling house)	-	Yes
Side building line	2.5m	2.35m (Guest Room) 3.15m (Living/Dining) 1.79m (BBQ Area)	6.0% - 28.4%	**No** Yes **No**
	1.0m	1.39m (garage) 2.5m (family room) 4.65m (awning)	- - -	Yes Yes Yes
Building envelope	3.5m	Within envelope	-	Yes
	3.5m	Within envelope	-	Yes
Landscaped area	50%	57%	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.9 Mona Vale Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.6 On-Street Parking Facilities	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
C5.1 Landscaping	Yes	Yes
C5.11 Third Party Signage	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C5.17 Pollution control	Yes	Yes
C5.18 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C5.21 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D9.1 Character as viewed from a public place	Yes	Yes
D9.2 Scenic protection - General	Yes	Yes
D9.3 Building colours and materials	Yes	Yes
D9.6 Front building line	Yes	Yes
D9.7 Side and rear building line	No	Yes
D9.9 Building envelope	Yes	Yes
D9.10 Landscaped Area - General	Yes	Yes
D9.12 Fences - General	Yes	Yes
D9.14 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

B3.11 Flood Prone Land

Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is consistent with the provisions of Clause B3.11 Flood Prone Land of the Pittwater 21 Development Control Plan.

C1.5 Visual Privacy

Detailed Description of Non-compliance

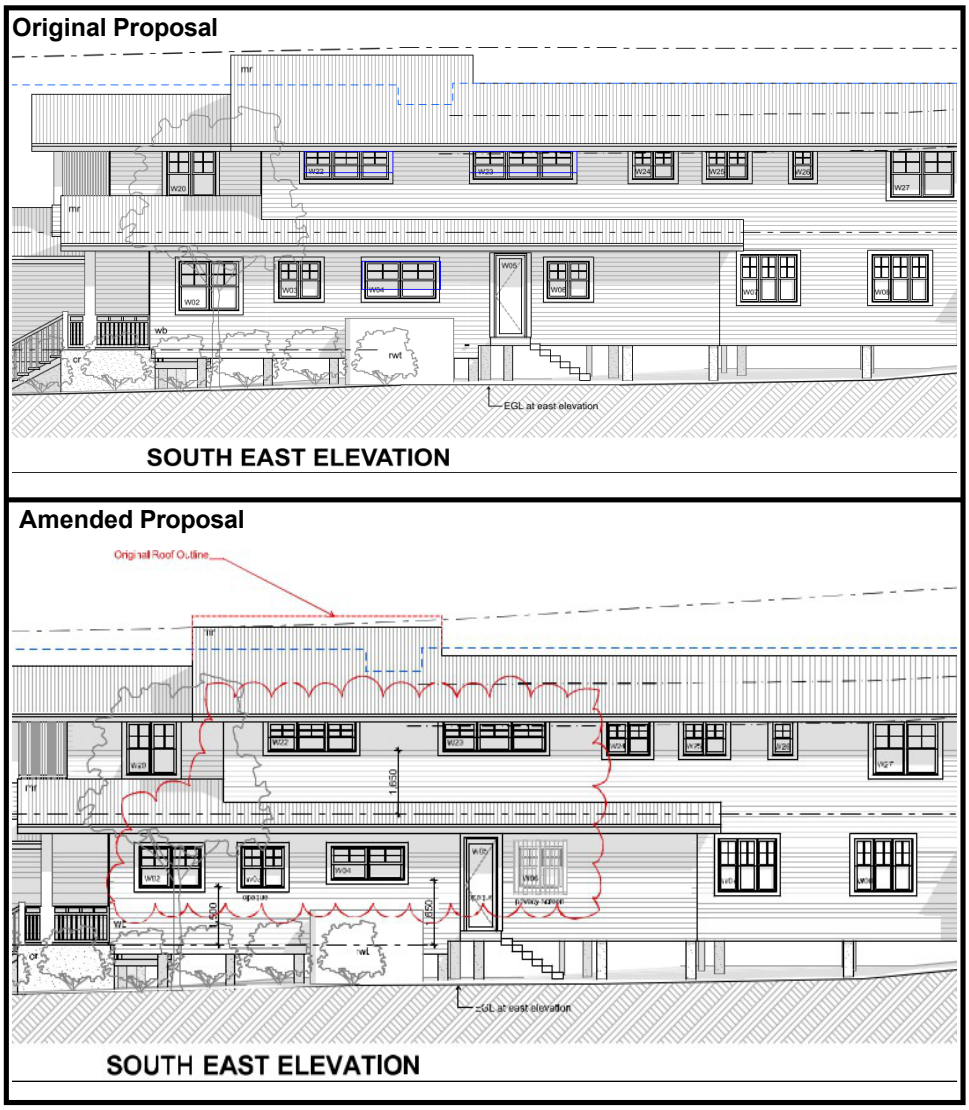
It is noted that the originally proposed design resulted in multiple visual privacy concerns for adjoining residents at 38 Bassett Street.

Specifically, windows W17, W02, W03, W04, W05 (pantry door), W06, W22 and W23 were of concern.

These concerns were conveyed to the Applicant and the following changes were made to mitigate privacy impacts.

W02 - Minimum sill height raised from 1200mm to 1500mm from finished ground floor level.
W03 - To be treated with opaque glazing.
W04 - Minimum sill height raised from 1500mm to 1650mm from finished ground floor level.
W05 (door) - To be treated with opaque glazing.
W06 - External privacy screening to be included to Council specifications as conditioned.
W22 - Minimum sill height raised from 1500mm to 1650mm from finished first floor level.
W23 Minimum sill height raised from 1500mm to 1650mm from finished first floor level.

It is considered that the changes will sufficiently mitigate the privacy impacts of the proposed development on adjoining neighbours.



Merit Consideration

- *Habitable rooms and outdoor living areas of dwellings optimise visual privacy through good design. (S)*

  Comment:
  The proposed design amendments minimize cross viewing into adjoining where possible by raising the minimum sill height, opaque treatment, or privacy screening. It is considered that the design proposed optimises visual privacy for both the subject site and adjoining dwellings.

- *A sense of territory and safety is provided for residents. (S)*

  Comment:

It is considered that the proposed design will allow for a sense of territory and provide safety for residents.

Having regard to the above assessment, it is considered that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D9.7 Side and rear building line

Under Clause D9.7 Side and rear building line of the Pittwater 21 Development Control Plan, the following requirements apply for rear boundary setbacks:

- *Land zoned R2 Low Density Residential, R3 Medium Density Residential, or E4 Environmental Living must provide a setback of 2.5 to at least one side; 1.0 for other side and 6.5 rear (other than where the foreshore building line applies).*

The proposed dwelling house will have varying side setbacks of between 1.39m to 4.65m on western side and 1.79m to 3.15m on the eastern side.

The proposal has a rear setback varying between 5.8m (pool) to 16.6m (dwelling). The pool is permitted on a 1.0m side and rear setback based on the exceptions provisions under Clause D9.7, which is discussed below.

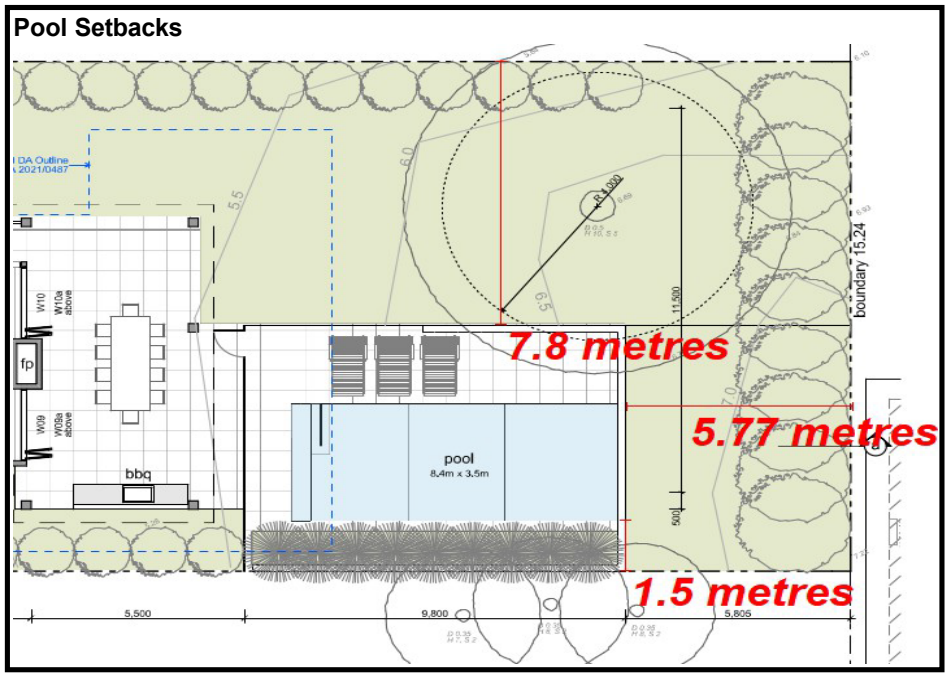
Pool Rear Setback

For swimming pools and spas, a 1.0m minimum setback from the boundary to the pool coping may be permitted subject to the following:

- *satisfactory landscaping within the setback from the pool or spa coping to the side or rear boundary, and*
- *Council is satisfied that the adjoining properties will not be adversely affected, and*
- *the pool or spa is not more than 1 metre above ground level (existing), and*
- *that the outcomes of this clause are achieved without strict adherence to the standards, and*
- *where the site constraints make strict adherence to the setback impractical, and*
- *where strict compliance with these requirements will adversely impact on the views of adjoining residential properties.*

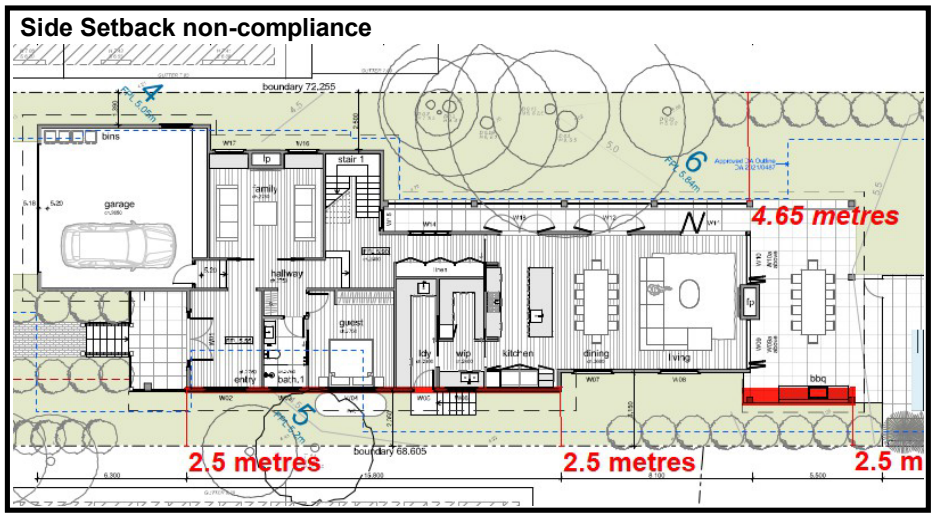
The proposed pool has a rear setback of 5.8m from the northern rear boundary and an eastern side setback of 1.5m from the pool water. The proposed total landscaping is in surplus of the control and the 1.5m eastern side setback is proposed to be built garden landscaped area. The adjoining property to the rear of the site has an approved secondary dwelling with a nil side setback. It is considered that the adjoining secondary dwelling will not be adversely impacted. The pool is not proposed to be located more than 1.0m above ground level and that the outcomes of the clause are still achieved. It is considered that strict compliance with the control would result in visual and acoustic privacy impacts

for adjoining neighbours and the applicants.



Dwelling House Side Setback non-compliance

The applicant proposes an eastern side setback ranging from 1.79m (to covered alfresco BBQ area), 2.35m (foyer to kitchen), and 3.15m (dining and living room). This presents a maximum variation of 28.4% to the covered alfresco BBQ area, and a 6% variation from the foyer to kitchen areas. It is noted that this setback is increased to 3.15m towards the north (rear) of the dwelling house. The western side of the dwelling house has a varying setback between 1.39m and 4.5m. It is considered that despite the numerical non-compliance the dwelling house is generally consistent with the outcomes of the control as seen below.



Outcomes

a. ***To achieve the desired future character of the Locality.***

- The setback non-compliance does not impact the site and proposal achieveing the desired future character of the locality. The proposal is consistent with the desired development of the R2 Low Density Residential zone and the desired outcomes of the Mona Vale locality.

b. ***The bulk and scale of the built form is minimised.***

- The dwelling house is compliant with the overall building height control and building envelope control. The side setback non-compliance is minor and does not result in the bulk and scale of the built form being unreasonable.

c. ***Equitable preservation of views and vistas to and/or from public/private places.***

- The non-compliance will not result in an impact on existing views and vistas to and/or from public/private places.

d. ***To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.***

- The dwelling house has been designed and situated to minimize overlooking into the private open space of adjoining sites. Adequate landscaping has been provided in the front, rear and side setbacks and the amended window sill heights represent responsive design.

e. ***To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.***

- The dwelling house is compliant with section C1.4 of the Pittwater Development Control Plan. The setback non-compliance does not hinder the developments ability to ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.

f. ***Substantial landscaping, a mature tree canopy and an attractive streetscape.***

- The proposed side setback non-compliance does not impact the streetscape of the development. The proposed landscaped area is compliant with the DCP control.

g. ***Flexibility in the siting of buildings and access.***

- The proposed pergola does not limit the siting of buildings or access.

h. ***Vegetation is retained and enhanced to visually reduce the built form.***

- The landscape plan demonstrates that the provided landscaping is in excess of C1.1, D9.10 and D9.11 landscaped area DCP controls. The retained and enhanced landscaping visually reduces the built form as viewed from the public domain as well as from adjoining properties.

i. ***To ensure a landscaped buffer between commercial and residential zones is established.***

The subject site is not located on the boundary or in close proximity to the boundary of a commercial zone.

It is therefore considered by Council that the proposed development achieves the desired outcomes of the control without strict numerical compliance.

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 $14,574 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $1,457,380.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

PLANNING CONCLUSION

This proposal, for the demolition of an existing dwelling house and construction of a two (2) storey dwelling house with attached garage, attached covered alfresco area and swimming pool, numbered DA2023/1350 in Council records has been referred to the Development Determination Panel (DDP) due to receiving 5 unique submissions.

The following non-compliances with Pittwater 21 DCP have been addressed within this assessment report.

- C1.5 Visual privacy
- C1.6 Acoustic privacy
- D9.7 Side and rear building line

Summary of Non-compliances
Council raised concerns regarding the visual and acoustic privacy of adjoining neighbours at 38 Bassett Street. The applicant addressed Councils concerns relating to C1.5 and C1.6 by amending the design of the proposed dwelling house through the implementation of privacy screening, opaque glazing of glass and raising of sill heights (see assessment report for specific measurements). It is considered that the adverse impacts on visual and acoustic amenity have been reasonably mitigated and that the development is no longer inconsistent with the outcomes of C1.5 Visual Privacy and C1.6 Acoustic Privacy.

The proposed dwelling house provides a varied eastern side setback from 1.79m to 3.15m resulting in a maximum variation of 28.4% from the numerical control. The eastern side building line non-compliance has been assessed against the desired outcomes of the control. The majority (15.75m) of the eastern building line is setback 2.35m which represents a variation of 6% from the control. The main living and kitchen areas are setback 3.15m which is compliant with the numerical control. The attached rear alfresco area has a setback of 1.79m. It is considered that the proposed dwelling house is consistent with the outcomes of D9.7 without strict numerical compliance due to the main living and kitchen areas being compliant with the building line control.

Concerns Raised by Objectors
The concerns raised in the objections have been addressed and resolved through amending the design, bulk, and scale of the dwelling house through the reduction of the total building height, and implementation of privacy screening, raising of window sill heights, and opaque glazing.

The critical assessment issues include:

- Visual and Acoustic Privacy
- Building Bulk and Scale
- Solar Access

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.

REASON FOR DETERMINATION

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2023/1350 for Demolition works and construction of a dwelling house including swimming pool on land at Lot 26 DP 6195, 40 Bassett Street, MONA VALE, subject to the conditions printed below:

Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

GENERAL CONDITIONS

1. **Approved Plans and Supporting Documentation**
   Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans			
Plan Number	**Revision Number**	**Plan Title**	**Drawn By**
A.01	A	Site Plan/ Site Analysis	Gartner Trovato Arch
A.02	B	Floor Plan - ground	Gartner Trovato Arch
A.03	A	Floor Plan - first floor	Gartner Trovato Arch
A.04	C	Elevations + materials	Gartner Trovato Arch
A.05	B	Sections	Gartner Trovato Arch
SW1	-	Stormwater Management Plan	Barrenjoey Consultin
01 - 40 Basset	C	Landscape Plan	Cabarita Landscapes

Approved Reports and Documentation			
Document Title	**Version Number**	**Prepared By**	**Date of Document**
Sediment & Erosion Control Plan	A	Barrenjoey Consulting Engineers Pty Ltd	27 July 2023

Waste Management Plan	-	Gartner Trovato Architects	26 September 2023
Geotechnical Report	-	White geotechnical group	24 July 2023
Flood Report	-	Barrenjoey Consulting Engineers Pty Ltd	July 2023
Arboricultural Management	-	raintree consulting	26 August 2023
Acid Sulfate Report	-	White geotechnical group	24 September 2021
Basix Certificate	Certificate No. 1192083S_05	Gartner Trovato Architects	11 August 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	26 October 2023

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

3. **Prescribed conditions (Demolition):**
(a) 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 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
(ii) 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.

(b) 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.

(c) 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.

Reason: Legislative Requirement.

4. **Prescribed Conditions**

(a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

(b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);

(c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

(i) showing the name, address and telephone number of the Principal Certifier for the work, and

(ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and

(iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

(d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work

relates (not being the Council) has given the Council written notice of the following information:

(i) in the case of work for which a principal contractor is required to be appointed:

A. the name and licence number of the principal contractor, and

B. the name of the insurer by which the work is insured under Part 6 of that Act,

(ii) in the case of work to be done by an owner-builder:

A. the name of the owner-builder, and

B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

(e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

(i) protect and support the adjoining premises from possible damage from the excavation, and

(ii) where necessary, underpin the adjoining premises to prevent any such damage.

(iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

(iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative requirement.

5. **General Requirements**

(a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

(b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.

(c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

(d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

(e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

(f) Prior to the release of the Construction Certificate, payment of the following is required:

i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than $250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.

iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.

(g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

(h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

(k) Prior to the commencement of any development onsite for:

i) Building/s that are to be erected

ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place

iii) Building/s that are to be demolished

iv) For any work/s that is to be carried out

v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

(l) A “Road Opening Permit” must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

(m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

(n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

(1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools

(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

(2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

(3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

(4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

FEES / CHARGES / CONTRIBUTIONS

6. **Policy Controls**
Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of $14,573.80 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of $1,457,380.00.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website at Northern Beaches Council - Development Contributions.

Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.

7. **Security Bond**

A bond (determined from cost of works) of $10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the Certifier prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at www.northernbeaches.nsw.gov.au).

Reason: To ensure adequate protection of Council's infrastructure.

8. **Construction, Excavation and Associated Works Security Bond(s)**
The applicant is to lodge a bond with Council for the following:

Drainage Works
As security against any damage or failure to complete the construction of stormwater drainage works required as part of this consent a bond of $5,000.

Details confirming payment of the bond(s) are to be submitted to the Principal Certifier prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

9. **Flood effects caused by development**
There is to be no filling of the land or any other reduction of the available flood storage which results in a net loss of storage below the relevant 1% AEP flood level.

Details demonstrating compliance are to be submitted to the Principal Certifier for approval.

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

10. **Building components and structural soundness**
B1 - All new development below the relevant Flood Planning Level shall be designed and constructed from flood compatible materials.

B2 -The shelter in place refuge must be designed to ensure structural integrity up to the relevant Probable Maximum Flood level, with the remainder of the new development designed to ensure structural integrity up to the relevant Flood Planning Level. The forces of floodwater, debris load, wave action, buoyancy and immersion must all be considered.

B3 - All new and existing electrical equipment, power points, wiring and connections must be located above the relevant Flood Planning Level, protected from flood water or have residual current devices installed to cut electricity supply during flood events.

Details demonstrating compliance are to be submitted to the Principal Certifier for approval.

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

11. **Floor levels**
C1 - New floor levels within the development shall be set at or above relevant Flood Planning Level.

C3 - The underfloor area of the dwelling below the 1% AEP flood level is to be designed to allow clear passage of floodwaters. At least 50% of the perimeter of the underfloor area must be of an open design from the natural ground level up to the 1% AEP flood level.

Details demonstrating compliance are to be submitted to the Principal Certifier for approval.

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

12. **Car parking**
D5 - The floor level of the proposed garage shall be set at or above the 1% AEP flood level..

Details demonstrating compliance are to be submitted to the Principal Certifier for approval.

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

13. **Emergency response**

E1 - The shelter-in-place refuge must:

a) Have a floor level at or above the relevant Probable Maximum Flood level

b) Have a floor space that provides at least 1m² per person; and

c) Be intrinsically accessible to all people on the site, plainly evident, and self-directing, with sufficient capacity of access routes for all occupants without reliance on electrical means.

Details demonstrating compliance are to be submitted to the Principal Certifier for approval.

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

14. **Fencing**

New fencing (including pool fencing, boundary fencing, balcony balustrades and accessway balustrades) shall be open to allow for the unimpeded movement of flood waters. It must be designed with a minimum of 50% open area along any straight length, from the natural ground level up to the 1% AEP flood level. Openings shall be a minimum of 75mm x 75mm.

Details demonstrating compliance are to be submitted to the Principal Certifier for approval.

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

15. **Storage of Goods**

Storage areas for hazardous or potentially polluting materials shall not be located below the relevant Flood Planning Level AHD unless adequately protected from floodwaters in accordance with industry standards.

Details demonstrating compliance are to be submitted to the Principal Certifier for approval.

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

16. **Pools**

All electrical equipment associated with the pool (including pool pumps) is to be waterproofed and/or located at or above the relevant Flood Planning Level.
All chemicals associated with the pool are to be stored at or above the relevant Flood Planning Level.

Details demonstrating compliance are to be submitted to the Principal Certifier for approval.

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

17. **Stormwater Disposal**
The applicant is to submit Stormwater Engineering Plans for the new development within this development consent in accordance with AS/NZS 3500 and Council's Water Management for Development Policy, prepared by an appropriately qualified and practicing Civil or Hydraulic Engineer who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) , indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to Council stormwater pit SPP50073.

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.

18. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by White Geotechnical Group dated 24.07.2023 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

19. **Vehicle Crossings Application**
The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing 3.0 metres wide in accordance with Northern Beaches Council Standard Drawing A4 3330/1 N in accordance with Section 138 of the Roads Act 1993.

Note, driveways are to be in plain concrete only.

The fee associated with the assessment and approval of the application is to be in accordance with Council’s Fee and Charges.

A Council approval is to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

20. **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.

21. **Stormwater Drainage Disposal**
The stormwater drainage systems for the development are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy.

All stormwater drainage systems must comply with the requirements of Council's Water Management for Development Policy. Any recommendations identified within a Geotechnical Report relevant to the development are to be incorporated into the design of the stormwater drainage system. Details demonstrating compliance from a qualified and practising Civil Engineer and where relevant a Geotechnical Engineer must be submitted to and approved by the Certifier prior to the issue of a Construction Certificate.

When the proposed discharge point for the development in this consent cannot strictly comply with the Water Management for Development Policy, the Applicant must apply to verify the proposed discharge point by gaining Council approval via a Stormwater Drainage Application. Council approval must be provided to the Certifier prior to the issue of a Construction Certificate when a Stormwater Drainage Application is required. The Stormwater Drainage Application form can be found on Council's website.

Compliance with this condition must not result in variations to the approved development or additional tree removal.

Reason: To ensure satisfactory management of stormwater.

22. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**
The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Certifier.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of a Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

23. **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.

24. **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.

25. **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 private stormwater pipe connection to Pit SPP50073 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 Engineer. The design must include the following information: 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.

26. **Pre-Construction Stormwater Assets Dilapidation Report**
The Applicant is to submit a pre-construction / demolition Dilapidation Survey of Council's Stormwater Assets prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset, to record the existing condition of the asset prior to the commencement of works. Council's Guidelines are available at: https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/2009084729guidelineforpreparingadilapidationsurveyofcouncilstormwaterassets2

The pre-construction / demolition Dilapidation Report must be submitted to Council for approval and the Principal Certifier prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

27. **Compliance with standards (Demolition):**
The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to Council prior to the commencement of demolition works.

Reason: To ensure the development is constructed in accordance with appropriate standards.

28. **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.

29. **Sydney Water "Tap In"**
The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifier demonstrating the works are in compliance with Sydney Water requirements.

Please refer to the website www.sydneywater.com.au for:
- "Tap in" details - see http://www.sydneywater.com.au/tapin
- Guidelines for Building Over/Adjacent to Sydney Water Assets.

Or telephone 13 000 TAP IN (1300 082 746).

Reason: To ensure compliance with the statutory requirements of Sydney Water.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

30. **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:
i) 1 x *Callistemon* sp. to accomodate the new driveway crossover
ii) 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 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.

DURING BUILDING WORK

31. **Protection of Sites of Significance**
Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office contacted to assess the finds.

Under Section 89a of the NPW Act should the objects be found to be Aboriginal, NSW Biodiversity and Conservation Division, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

Reason: Preservation of significant environmental features.

32. **Tree and Vegetation Protection**
a) Existing trees and vegetation shall be retained and protected, including:
   i) all trees within the site not indicated for removal on the approved plans, including trees and vegetation nominated for retention on the approved Plans,
   ii) all trees and vegetation located on adjoining properties,
   iii) all trees and vegetation within the road reserve not approved for removal.

b) Tree protection shall be undertaken as follows:
   i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
   ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,

iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,

iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,

v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,

vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,

vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,

viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,

ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,

x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,

xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

c) The arboricultural works listed in a) and b) are undertaken and complaint to AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

Reason: Tree and vegetation protection.

33. **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.

34. **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.

35. **Removing, Handling and Disposing of Asbestos**
Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:
- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

36. **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.

37. **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.

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.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

39. **Landscape Completion**
Landscape works are to be implemented in accordance with the approved Landscape Plans 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 or as otherwise scheduled if greater in size; may be selected from Northern Beaches Council's Native Plant Species Guide, or Council's Tree Guide; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and 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 Plans,

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 qualified landscape architect, landscape designer or 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.

40. **Certification of Works as Executed**
A suitably qualified engineer and/or registered surveyor is to certify that the completed works have been constructed in accordance with this consent and the approved plans with respect to the following:

1. Floor levels for ground floor, shelter in place refuge and garage are set at or above the required level
2. There has been no filling on the land other than what has been approved
3. Openings are provided under floor areas where required for the free passage of flood waters
4. Openings are provided in fencing where required for the free passage of flood waters

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

41. **Post- Construction Stormwater Assets Dilapidation Report (Council stormwater assets)**
The Applicant shall submit a post-construction Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset in order to determine if the asset has been damaged by the works. Council's Guidelines are available at https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-

information/engineering-specifications/preparingdilapidationsurveyforcouncilstormwaterassets.pdf

The post-construction / demolition dilapidation report must be submitted to Council for review and approval. Any damage to Council's stormwater infrastructure is to be rectified prior to the release of any Drainage security bonds. Council's acceptance of the Dilapidation Survey is to be submitted to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: Protection of Council's infrastructure.

42. **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.

43. **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.

44. **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.

45. **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.

46. **Geotechnical Certification Prior to Occupation Certificate**
The Applicant is to submit the completed Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) to the Principal Certifier prior to issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

47. **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.

48. **Swimming Pool Requirements**
The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:
(i) Swimming Pools Act 1992;
(ii) Swimming Pools Amendment Act 2009;
(iii) Swimming Pools Regulation 2018
(iv) Australian Standard AS1926 Swimming Pool Safety
(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certiifier, certifying compliance with Australian Standard 1926.

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system. Appropriate instructions of artificial resuscitation methods.

(d) A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.

(e) Signage showing resuscitation methods and emergency contact

(f) All signage shall be located in a prominent position within the pool area.

(g) Swimming pools and spas must be registered with the *Division of Local Government*.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To protect human life.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

49. **Flood Management**
Flood Effects Caused by Development (A2)

There shall be no filling of the land below the relevant 1% AEP flood level, blocking of areas required by DA consent to be left open, or any other obstruction of flow paths through the property.

Flood Emergency Response (E1)
Appropriate access to the shelter in place refuge is to be maintained at all times from all areas within the development and it must contain as a minimum: sufficient clean water for all occupants; portable radio with spare batteries; torch with spare batteries; and a first aid kit.

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

50. **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.

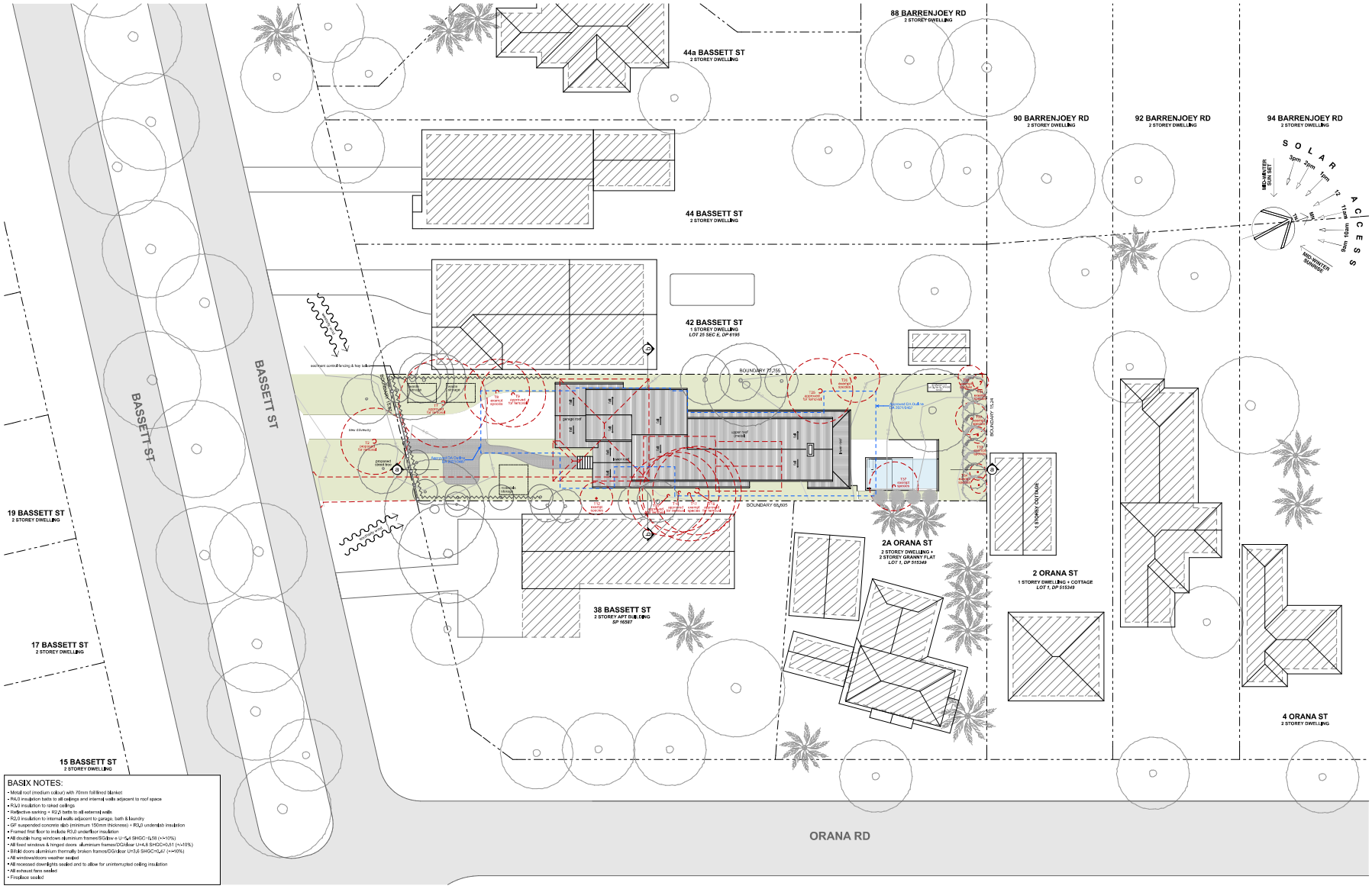
In signing this report, I declare that I do not have a Conflict of Interest.

Signed

Steven Findlay, Manager Development Assessments

The application is determined on //, under the delegated authority of:

Steven Findlay, Manager Development Assessments



GARTNERTROVATO
ARCHITECTS
A 1B/TRAFER PLACE
LV15-16 PARK STREET
PO BOX 1122
MONA VALE, NSW 2103
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E GTA@GT.COM.AU

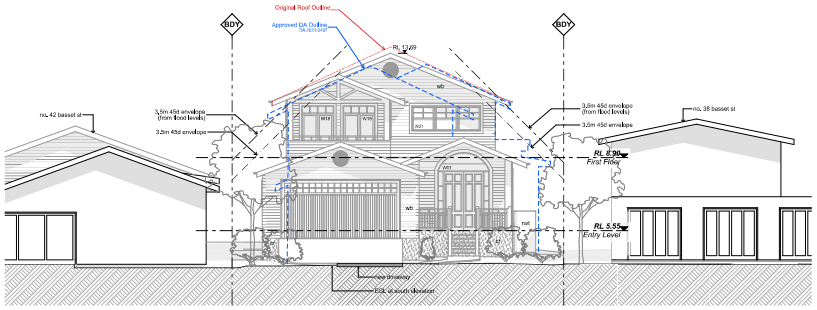
issue	date	description
A	11/8/23	DA_issue

PROJECT
DEVELOPMENT APPLICATION
40 BASSETT STREET, MONA VALE
LOT 26, SECT E, DP 6195

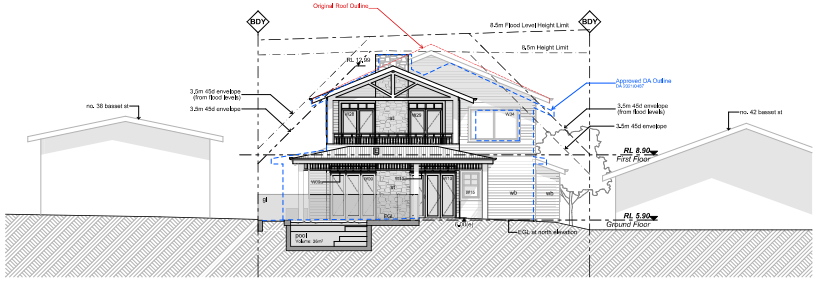
FOR SIMON EDWARDS

DRAWING TITLE
Site plan / Site analysis

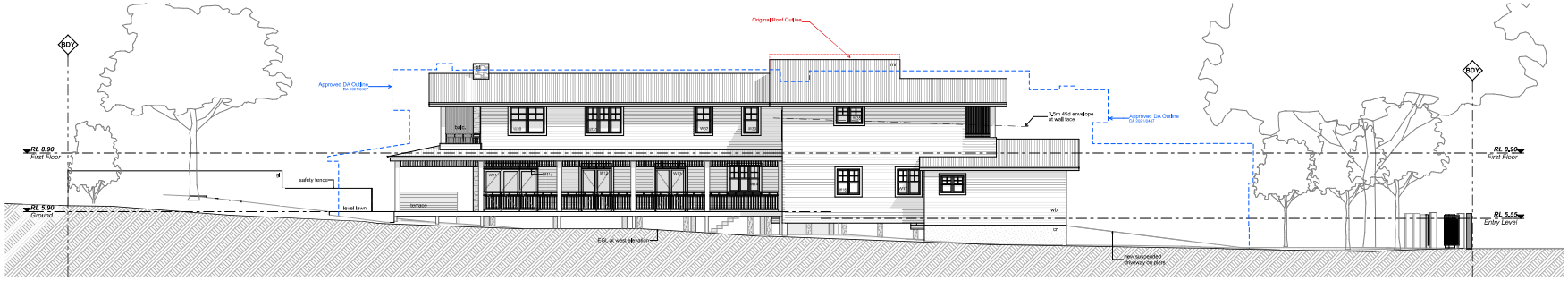
PROJECT NO.	DRAWN BY	PLOT DATE
2102	LT / AB	11/8/23
SCALE	DRAWING NO.	ISSUE
1:200 @ A1	A.01	A



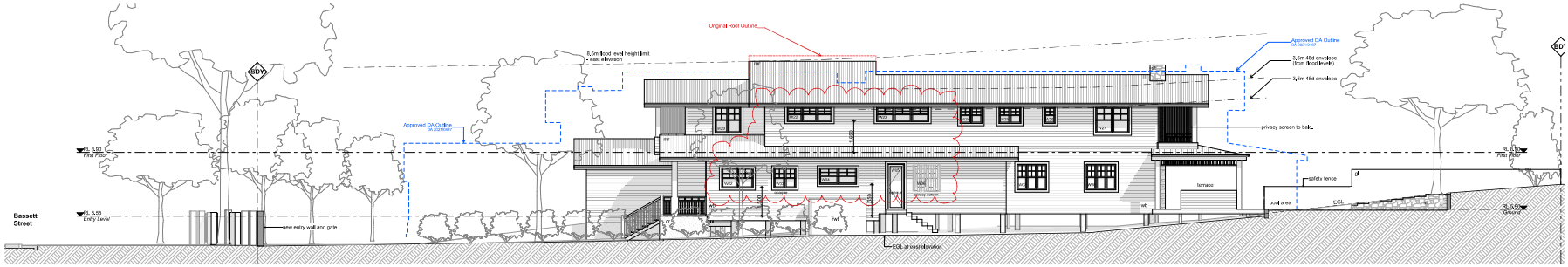
SOUTH WEST ELEVATION



NORTH EAST ELEVATION



NORTH WEST ELEVATION



SOUTH EAST ELEVATION

BASIX NOTES:

- Metal roof (medium colour) with 70mm foil lined blanket
- R4.0 insulation batts to all ceilings and internal walls adjacent to roof space
- R3.0 insulation to raked ceilings
- Reflective sarking + R2.5 batts to all external walls
- R2.0 insulation to internal walls adjacent to garage, bath & laundry
- GF suspended concrete slab (minimum 150mm thickness) + R3.0 underslab insulation
- Framed first floor to include R3.0 underfloor insulation
- All double hung windows aluminium frames/SG/clear U=5.4 SHGC=0.58 (+/-10%)
- All fixed windows & hinged doors aluminium frames/DG/clear U=4.8 SHGC=0.51 (+/-10%)
- Bifold doors aluminium thermally broken frames/DG/clear U=3.6 SHGC=0.47 (+/-10%)
- All windows/doors weather sealed
- All recessed downlights sealed and to allow for uninterrupted ceiling insulation
- All exhaust fans sealed
- Fireplace sealed

EXTERIOR FINISHES LEGEND

wb	–	Weatherboards, paint finish, triple sea fog
st	–	Sandstone cladding
tmb	–	Timber, white paint finish
cr	–	Concrete render, mid grey
mr	–	Colorbond roofing, mid grey



GARTNERTROVATO ARCHITECTS

A 101/37 WATER PLACE
LEVEL 1/ 9 MARK STREET
PO BOX 1122
MONA VALE, NSW 2103
P +61 2 9970 4411
E GTA@GTCONLAU

scale 0 1 5 10 metres

Issue	date	description
A	11/8/23	DA_Issue
B	15/2/24	RFI
C	29/02/2024	amended windows, flood planning blanket, and roof height

PROJECT
DEVELOPMENT APPLICATION
40 BASSETT STREET, MONA VALE
LOT 26, SECT E, DP 6195

FOR SIMON EDWARDS

DRAWING TITLE
Elevations + materials

PROJECT NO. 2102
DRAWN BY LT / AB
PLOT DATE 29/02/2024
SCALE 1:100 @ A1
DRAWING NO. A.04
ISSUE C