AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 12 JUNE 2024

Ashleigh Sherry
Manager Business System and Administration

Agenda for a Meeting of the Development Determination Panel to be held on Wednesday 12 June 2024 via teleconference Commencing at 10:00 AM

1.0 APOLOGIES & DECLARATIONS OF INTEREST

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ACKNOWLEDGEMENT OF COUNTRY

As a sign of respect, the Northern Beaches Development Determination Panel acknowledges the traditional custodians of these lands on which we gather and 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 22 MAY 2024

RECOMMENDATION

That the Panel note that the minutes of the Development Determination Panel held on 22 May 2024 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1 DA2024/0081 - 21 A WARILI ROAD & 49 BLACKBUTTS ROAD FRENCHS FOREST - DEMOLITION OF ALL EXISTING STRUCTURES ON SITE

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 DA2024/0081 for demolition of all existing structures on site on land at Lot 1 DP 524083 & Lot 1 DP 1298188, 21 A Warili Road & 49 Blackbutts Road FRENCHS FOREST, subject to the conditions set out in the Assessment Report.

Reporting manager	Rodney Piggott
TRIM file ref	2024/398245
Attachments	⇩1 Assessment Report ⇩2 Demolition Plan

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/0081

Responsible Officer:	Jordan Howard
Land to be developed (Address):	Lot 1 DP 524083, 21 A Warili Road FRENCHS FOREST NSW 2086 Lot 1 DP 1298188, 49 Blackbutts Road FRENCHS FOREST NSW 2086
Proposed Development:	Demolition of all existing structures on site
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:	Aruma Services
Applicant:	Sekisui House Services (NSW) Pty Limited

Application Lodged:	13/02/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	19/02/2024 to 04/03/2024
Advertised:	Not Advertised
Submissions Received:	5
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	$ 800,000.00

EXECUTIVE SUMMARY

This development application seeks consent for demolition of all existing structures on site.

The application is referred to the Development Determination Panel (DDP) as the application has received submissions from five (5) unique households by way of objection. The DDP is responsible for determining applications with five or more objections.

Concerns raised in the objections predominantly relate to the amenity impacts of demolition works,

tree removal / environmental concerns and future development of the site.

Critical assessment issues included consideration of community submissions, as well as consideration of referral responses from internal Council referral teams. These included issues related to tree removal, which were raised by Council's Landscape team and Bushland and Biodiversity team. Ultimately, as conditioned, this application would only permit the removal of exempt species (which may be removed without Council permission regardless), and the removal of eight (8) prescribed trees (Trees 10, 23, 28, 60, 64, 101, 114 and 137) which are in close proximity to structures to be demolished. Council has imposed conditions requiring other existing prescribed trees, some of which the applicant sought to remove, to be retained and protected by fencing during the demolition of structures. Furthermore, tree replacement planting is conditioned to compensate for the removal of prescribed native trees. As conditioned, Council's Landscape team and Bushland and Biodiversity team are both supportive of the proposal. Any further tree removal proposed in applications for future development or subdivision of the site shall be considered under future Development Applications.

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 demolition of all existing structures on site. This constitutes initial steps towards future development of the site for low-density residential use (to be considered under a separate Development Application).

Additional information was requested in relation to referral responses from Council's Landscape team, Bushland and Biodiversity team and Development Engineering team. Addition information was submitted and did not require re-notification, in accordance with the Northern Beaches Community Participation Plan.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land
Warringah Development Control Plan - E10 Landslip Risk

SITE DESCRIPTION

Property Description:	Lot 1 DP 524083 , 21 A Warili Road FRENCHS FOREST NSW 2086 Lot 1 DP 1298188 , 49 Blackbutts Road FRENCHS FOREST NSW 2086
Detailed Site Description:	The subject site consists of two (2) allotment located on the southern side of Blackbutts Road and northern side of Warili Road. The lot abutting Blackbutts Road is Lot 1 DP 1298188, known as 49 Blackbutts Road, and is the larger of the two lots. The lot abutting Warili Road is Lot 1 DP 524083, know as 21A Warili Road, and is significantly smaller. 49 Blackbutts Road is irregular in shape, with a frontage of 60.637m along Blackbutts Road and a maximum depth of 167.724m. The site has an area of 9970sqm. 21A Warili Road is regular in shape, with a frontage of 8.23m along Warili Road and a depth of 25.406m. The site has an area of 208.6sqm. The site is located within the R2 Low Density Residential zone of the WLEP 2011 and accommodate buildings previously associated with a faciality operated by Aruma Services, a provider of disability services and support. The 49 Blackbutts Road lot contains buildings and internal driveways associated with the facility, with 21A Warili Road connecting the rear of the larger lot to Warili Road through a rear access driveway. The site slopes from the Blackbutts Road frontage (north) to the Warili Road frontage (south), with a fall across the site of approximately 9m. The site contains lawn areas, trees and widespread vegetation amongst the built form. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by low-density residential development. Across Blackbutts Road to the north is Lionel Watts Reserve and Frenchs Forest Showground. A short distance to the north-west is Glenrose Village Mall.

Map:

SITE HISTORY

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

Pre-Lodgment Meeting No. PLM2023/0120 was held on 5 October 2023 to discuss a 13 lot subdivision of the site.

It is noted that Council has received **Development Application No. DA2024/0492** for "Community title subdivision comprising of 13 lots and new road access", which was lodged following the lodgment of the application for demolition of site structures (this DA), and is separate to this DA. DA2024/0492 is currently under sperate assessment (as of the writing of this report).

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 29 of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to referral responses from Council's Landscape team, Bushland and Biodiversity team and Development Engineering team. 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 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 Matters for Consideration	Comments
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

Name:	Address:
Mr Adam Colin Williams	25 Warili Road FRENCHS FOREST NSW 2086
Graham James Payne Miss Rebecca Sally Gotelee	9 Malbara Crescent FRENCHS FOREST NSW 2086
Mrs Samantha Jane Gavel	4 Rikara Place FRENCHS FOREST NSW 2086
Mr Robert Charles Scott	7 Malbara Crescent FRENCHS FOREST NSW 2086
Ms Gail Jennifer Phillips	3 Malbara Crescent FRENCHS FOREST NSW 2086

The following issues were raised in the submissions:

- **Asbestos or other hazardous materials**

  The submissions raised concerns that asbestos or other hazardous materials may be present in the buildings to be demolished, rasing concerns about contamination, containment and notification of such materials.

  Comment:
  Conditions of consent are imposed which require the demolition and removal of asbestos to be carried out in accordance with WorkCover requirements, relevant Australian Standards and other regulatory requirements.

This issue has been adequately considered and is not sufficient to warrant refusal of the application.

- **Stormwater / drainage**

The submissions raised concerns that the demolition works may result in changed stormwater flows and impact surrounding properties.

Comment:
The proposed demolition works include removal of significant areas of hard surfaces, including buildings, driveways and pathways, which will benefit natural water absorption into the ground and return the site to a more natural state. Conditions of consent are imposed which require the establishment of erosion and sediment control during works. Council's Development Engineer has reviewed this proposal for demolition works, including in regards to stormwater management, and is supportive, subject to conditions. Concerning future potential development of the site, any proposed future stormwater management will be assessed within a future Development Application.

This issue has been adequately considered and is not sufficient to warrant refusal of the application.

- **Boundary / dividing fencing**

The submissions raised concerns about boundary fencing between the site and surrounding proprieties, requesting that replacement fencing be installed.

Comment:
Temporary site fencing will be necessary during demolition works in accordance with relevant worksite safety legislation. Regarding permanent dividing fencing between the subject site and neighbouring properties, this is a civil matter between involved parties (the site owners and surrounding site owners). Council is not party to maters concerning dividing fencing between private properties. This is not a relevant consideration of this assessment, as no dividing fencing is proposed in this application.

This issue has been adequately considered and is not sufficient to warrant refusal of the application.

- **Traffic / access to Warili Road**

The submissions raised concerns about the use of the Warili Road, as well as general traffic, amenity and safety impacts relating to traffic management .

Comment:
The application has been reviewed by Council's Traffic Engineer and is supported, subject to conditions. These conditions include the preparation of a Demolition Traffic Management Plan (DTMP) which must be submitted to and approved by the Northern Beaches Council Traffic Team prior to commencement any demolition work. All works and demolition activities are then to be undertaken in accordance with the approved DTMP. The DTMP is intended to minimise impact of construction activities on the surrounding community, in terms of vehicle traffic (including traffic flow and parking) and pedestrian amenity adjacent to the site. This will ensure

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

This issue has been adequately considered and is not sufficient to warrant refusal of the application.

- **Tree removal / impact on fauna**

The submissions raised concerns that it was not clear within the application which trees were proposed for removal and raised concerns about the removal of trees and vegetation. Concerns were also raised with the potential of future tree removal to accommodate future development.

Comment:
The application was reviewed by Council's Landscape team and Bushland and Biodiversity team in regards to tree removal and potential environmental impacts. Their referral comments can be found in full in the section of this report on Internal Referrals.

During the assessment it was noted that the provided Statement of Environmental Effects stated that "*no tree removal is proposed as part of this DA"*, and *"any trees on Site that are within 2 metres of the existing buildings to be demolished and that meet the Northern Beaches Council exempt criteria for tree removal without a permit will be removed. Given the proximity of these trees to the buildings proposed to be demolished, the tree removal will be carried out concurrently with the demolition works."* Removal of exempt trees within the property does not require Council consent and Council's Landscape team raised no issue with the removal of exempt trees.

However, the submitted Arboricultural Impact Assessment (AIA) report appeared to be written in response to future works and proposed further trees be removed beyond the Statement of Environmental Effects, including a number of prescribed trees. Further clarification was sought from the applicant. Ultimately, Council's Landscape team considered it appropriate to permit the removal of some prescribed trees within close proximity to structures to be demolished. However, the team did not support the removal of a number of other prescribed trees across the site, and has conditioned the protection of these trees, along with all others indicated in the AIA report for tree fencing protection. These concerns were echoed by Council's Bushland and Biodiversity team, who are also now satisfied by the outcome of the assessment from the Landscape team. Furthermore, the Bushland and Biodiversity team have conditioned tree replacement planting to compensate for the removal of prescribed native trees, as this demolition application stands alone from potential future development of the site.

In summary, the development / demolition, as conditioned, only permits the removal of exempt species (which may be removed without Council permission regardless), and the removal of 8 prescribed trees (Trees 10, 23, 28, 60, 64, 101, 114 and 137) which are in close proximity to structures to be demolished. Council has imposed conditions requiring other existing trees to be retained and protected by fencing during the demolition of structures. Furthermore, Council has conditioned tree replacement planting to compensate for the removal of prescribed native trees. As conditioned, Council's Landscape team and Bushland and Biodiversity team are both supportive of the proposal.

It is also noted that imposed conditions include ones related to ecological inspection for native wildlife and protection of native wildlife.

Regarding future development of the site, any tree removal proposed in applications for future

development or subdivision shall be considered under future Development Applications.

This issue has been adequately considered and is not sufficient to warrant refusal of the application.

- **Potential for damage to surrounding properties**

The submissions raised concerns that demolition may damage surrounding properties.

Comment:

- Damage to private property is a matter covered by relevant criminal and civil law, should this situation arise during demolition. General conditions are in place to limit the impacts of demolition works.

This issue has been adequately considered and is not sufficient to warrant refusal of the application.

- **Vermin**

The submissions raised concerns that during demolition there may be an exodus of vermin from the subject site.

Comment:
Should unhealthy or unsafe sanatory conditions, such as a vermin infestation, be identified, the matter can be raised by concerned parties with Council. The matter could be inspected in regard to public health and safety, and orders issues, should such a situation arise.

This issue has been adequately considered and is not sufficient to warrant refusal of the application.

- **Noise**

The submissions raised concerns that the demolition would create a noise amenity impact on neighbouring properties.

Comment:
General conditions are in place to limit the impacts of demolition works, including the requirement that demolition works are limited to between 8.00am and 5.00pm Monday to Friday only. Some level of noise is ultimately an unavoidable reality of demolition and development, however, conditions are in place to limit the impact of noise on neighbouring amenity.

This issue has been adequately considered and is not sufficient to warrant refusal of the application.

- **Future development of the site**

The submissions raised concerns that the application did not reveal detailed future plans for the site. Furthermore, submissions raised concerns with DA2024/0492, a separate application submitted to Council for residential subdivision and development of the site, including contending that the community engagement / notification process was inadequate.

Comment:

Following the submissions of this application (DA2024/0081) for the demolition of site structures, Council has received an application for proposed future development of the site as a Community Title subdivision comprising of 13 lots and new road access under the Development Application No. DA2024/0492. These applications are able to be assessed separately. This application (DA2024/0081) has been adequately notified in accordance with the Northern Beaches Community Participation Plan (NBCPP), and DA2024/0492 is currently in the process of being notified in accordance with the NBCPP (as of the time of the writing of this report). Community engagement / notification has therefore been adequate for this application (DA2024/0081), and the same is expected for DA2024/0492 or any other future application for development at the subject site (with that ultimately determined during the assessment process of future applications).

DA2024/0081 may be assessed and approved concerning the demolition of existing site structures without impacting the assessment of DA2024/0492 or any other future application for development at the subject site. There is no impediment for the approval of this application concerning site demolition. Any future development of the site must be approved by another development application, subject to the full rigor of a separate development assessment. Concerns with proposed future development may be directed in submission to DA2024/0492 or other future applications.

This issue has been adequately considered and is not sufficient to warrant refusal of the application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	***Supported, subject to conditions.*** The proposed application is for demolition works of existing structures upon the property. As noted in the Statement of Environmental Effects (SoEE) the purpose of the demolition is to clear the site for future low density residential development. Further comments 07/05/2024: Landscape Referral raise no objections to tree removal of species identified as Exempt Species under Warringah Development Control Plan (WDCP), including tree species listed in the Exempt Tree List; trees under 5 metres in height; located within two metres of an existing approved building (not including decks, pergolas, sheds, patios or the like, even if they are attached to a building), with the measurement made from the building to the base of the tree trunk; or is considered a high risk/imminent danger certified by a Level 5 qualified arborist. Additionally there are a limited number of prescribed trees (ie. protected by WDCP) that are in close proximity to structures such as driveways that are proposed for removal and following consideration the following prescribed trees shall also be approved for removal: T10, 23, 28, 60, 64, 101, 114 and 137). However the Arboricultural Impact Assessment (AIA) report recommendations to remove the following prescribed trees: T7, 10, 15, 16, 29, 59, 74, 75, 77, 83, 84, 85, 86, 88, 89, 91, 96, 99, 100 and

Internal Referral Body	Comments
	121, is not supported and these trees shall be protected during demolition works along with all others indicated in the AIA report for tree fencing protection. The site contains large areas of existing bitumen for demolition storage, pre demolition of buildings or post demolition of building, with or without the bitumen surface, such that the areas supporting existing trees do not need to be disturbed or utilised for site facilities, storage, machinery etc. The areas for demolition works and storage are further increased in area where exempt species are to be removed. Upon review of the Plans it is considered that removal of the above listed exempt species as well as prescribed trees T10, 23, 28, 60, 64, 101, 114 and 137 provides adequate areas for the orderly demolition of structures. Council shall impose conditions on existing trees required to be retained and protected by fencing during the demolition of structures. Should the property be subdivided into separate lots, then any proposed new dwelling(s) and structures that require possible tree removal shall be considered under such separate Lot applications for agreeance to remove, or otherwise consideration of an alternative site planning strategy to preserve trees. Updated comments 16/04/2024: *Landscape Referral shall consider the application for demolition works only and shall not consider future works as information is not provided to allow for any determination beyond the application at hand, and future intentions cannot be determined and may also change.* *It is noted that the SoEE writes that "no tree removal is proposed as part of this DA", and furthermore but without concern from Landscape Referral "Any trees on Site that are within 2 metres of the existing buildings to be demolished and that meet the Northern Beaches Council exempt criteria for tree removal without a permit will be removed. Given the proximity of these trees to the buildings proposed to be demolished, the tree removal will be carried out concurrently with the demolition works." Removal of exempt trees within the property does not require Council consent and the exempt species located within the property include: species listed in the Exempt Species List, trees within 2 metres of existing approved buildings, and trees under 5 metres in height.* *The submitted Arboricultural Impact Assessment (AIA) report appears to be written in response to future works and proposes further trees be removed beyond the SoEE statement, and references a Earthworks Cut and Fill Plan, which is not part of the submitted documents under this development application, and as indicated applications for future works applications may change. As such Landscape Referral do not accept any of the recommendations*

Internal Referral Body	Comments
	for tree removal beyond the Exempt Species. Previous comment 26/04/2024: *The proposed application is for demolition works of existing structures upon the property. The Demolition Work Plan provides for perimeter fencing and for stockpiling of demolished material. Concern is raised that the Demolition Work Plan provides no consideration of existing prescribed trees within the property in terms of tree protection measures during the demolition works, and thus there is no protection mechanism in place to prevent damage to such prescribed trees.* *To assess the application further, Landscape Referral require a definitive Tree Protection Plan prepared by a qualified Arborist that identifies existing prescribed trees and these shall be protected during demolition. It is expected that all prescribed trees within the site shall be protected by standard chain-wire construction fencing and this shall be documented in the Tree Protection Plan, and all stockpile areas shall be excluded from within the tree fencing zones.* *In summary, the Tree Protection Plan, prepared by an Arborist with minimum AQF Level 5 in arboriculture shall document:* *i) location of all prescribed trees, including extent of canopy; ii) access routes throughout the site for demolition activity; iii) location of tree protection fencing / barriers; iv) root protection in the form of mulching or boards proposed within the tree protection zone; v) trunk and branch protection within the tree protection zone; vi) location of stockpile areas and materials storage; and vii) other general tree protection measures.* *Reason: Tree protection.* <u>Planner Comment:</u> Changes to conditions recommended by Council's Landscape team have been made to remove references to Construction and Occupation Certificates, as these are not relevant to demolition consents.
NECC (Bushland and Biodiversity)	***Supported, subject to conditions.*** AMENDED COMMENTS A Flora and Fauna Assessment has been submitted with the application (Consultants Australia Pty Ltd TA Kingfisher Urban Ecology and Wetlands, April 2024) and concluded that the proposal will not trigger entry into the Biodiversity Offsets Scheme as the area clearing threshold is not met. No threatened species have been detected on site and no Threatened Ecological Communities or Plant Community Types have been identified on the site. A test of signficiance (5 part test) has been conducted for the Grey headed flying fox (Pteropus poliocephalus) and concluded that the application will have no significant impacts. No objections are raised with these conclusions.

Internal Referral Body	Comments
	As per the Landscape Referral comments, the Statement of Environmental Effects (Willow Tree Planning, February 2024) indicates that only Exempt trees are to be removed for the purpose of demolition of all existing structures on the site: "It is noted that no tree removal is proposed as part of this DA. Any trees on Site that are within 2 metres of the existing buildings to be demolished and that meet the Northern Beaches Council exempt criteria for tree removal without a permit will be removed.". However, this information is inconsistent with the proposed removals in the submitted Arboricultural Impact Assessment (The Tree Guardian, April 2024) where additional prescribed trees are being proposed for removal. Therefore, tree removal will be conditioned to exempt removals based on species/height as well as proximity to existing structures as conditioned in the landscape referral. Tree replacement planting will be conditioned to compensate for the removal of prescribed native trees 10, 23, 28, 64, 101 and 114 as per WDCP 2011 Clause E2 where objectives state among others: • "To retain and enhance native vegetation communities and the ecological functions of wildlife corridors." • "Promote the retention of native vegetation in parcels of a size, condition and configuration which will as far as possible enable plant and animal communities to survive in the long-term." The development is designed, sited and will be managed to avoid any significant adverse environmental impact. ORIGINAL COMMENTS The comments in this referral relate to the following applicable controls and provisions: • Warringah DCP - Clause E2 Prescribed Vegetation • Warringah DCP - Clause E6 Retaining unique environmental features It is noted that the Statement of Environmental Effects confirms that no tree removal will take place unless trees to be removed are considered exempt under Council's current tree management regulations. The proposal has been submitted without an arboricultural impact assessment. Impacts to prescribed trees from the proposed demolition works need to be assessed as indicated during the PLM meeting. Additionally, if more than 4 prescribed trees are to be removed due to impacts stemming from the impact of works, a Flora and Fauna assessment will have to be prepared by an appropriately qualified

Internal Referral Body	Comments
	ecologist as per Council's Biodiversity requirements for Development Applications available on Council's website: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://files-preprod-d9.northernbeaches.nsw.gov.au/nbc-prod-files/documents/general-information/environmental-and-community-protections/biodiversity-requirements-development-applications.pdf The biodiversity referral will recommence upon reception of an arboricultural impact assessment. <u>Planner Comment:</u> Changes to conditions recommended by Council's Bushland and Biodiversity team have been made to remove references to Construction and Occupation Certificates, as these are not relevant to demolition consents.
NECC (Development Engineering)	***Supported, subject to conditions.*** **12/04/2024:** Council pipe survey is provided, pipe is located within neighbouring property No 19 Warili Road and 11 Malbara Crescent FRENCHS FOREST. No objections to approval subject to conditions as recommended. **12/03/2024:** Development Application is for demolition works of existing structures upon the property. Council maps shows there is Council's stormwater pipe running parallel along Northwest boundary of the subject site. Demolition works can have detrimental impact on Council drainage infrastructure, hence applicant is advised to accurately locate, confirm dimensions including depth, and plot to scale Council's stormwater pipeline and associated infrastructure on the survey and master plans that outline the proposal. This should be carried out by a service locating contractor and registered surveyor (evidence of methodology used for locating stormwater system should be provided). **For planner:** Site has dual frontages, at front to Blackbutt Road and at rear to Warili Road. Please seek comments from Council's traffic team for the construction vehicle movements.
Traffic Engineer	***Supported, subject to conditions.*** No objection to the proposed demolition of structures on this land 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

External Referral Body	Comments
	stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards, SafeWork NSW Codes of Practice and conditions provided by Ausgrid. Compliance with this referral 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 (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 and commercial purposes (as a disability services and support facility, including residential accommodation) 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 proposed demolition. The suitability of future uses would be assessed within future development applications.

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
This Development Application does not seek consent for the construction of new buildings or subdivision, just demolition of existing site structures. Therefore, there are no applicable numerical WLEP 2011 Principal Development Standards.

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

6.4 Development on sloping land

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

(a) the application for development has been assessed for the risk associated with landslides in relation to both property and life, and
(b) the development will not cause significant detrimental impacts because of stormwater discharge from the development site, and
(c) the development will not impact on or affect the existing subsurface flow conditions.

Comment:
The subject site is mapped within both Landslip Risk Map Area A and B. A preliminary geotechnical assessment is not required as this application is only for the demolition of existing site structures, in preparation for future development of the site. No building works are proposed. Future development of the site may require further geotechnical investigation, to be assessed with a separate DA.

This application has been assessed by Council's Development Engineers, who raise no geotechnical or stormwater issues with the proposed demolition, subject to conditions. Therefore, Council is satisfied that the development will not result in adverse impacts on the above.

Warringah Development Control Plan

Built Form Controls
This Development Application does not seek consent for the construction of new buildings or subdivision, just demolition of existing site structures. Therefore, there are no applicable numerical WDCP Built Form Controls.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D3 Noise	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
E10 Landslip Risk	Yes	Yes

Detailed Assessment

E10 Landslip Risk

The subject site is mapped within both Landslip Risk Map Area A and B. A preliminary geotechnical assessment is not required as this application is only for the demolition of existing site structures, in preparation for future development of the site. No building works are proposed. Future development of the site may require further geotechnical investigation, to be assessed with a separate DA.

This application has been assessed by Council's Development Engineers, who raise no geotechnical or stormwater issues with the proposed demolition, subject to conditions. Therefore, Council is satisfied that the development will not result in adverse geotechnical impacts.

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 $8,000 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $800,000.

CONCLUSION

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result

in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

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

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

PLANNING CONCLUSION

This proposal, for demolition of all existing structures on site, has been referred to the Development Determination Panel (DDP) as the application has received submissions from five (5) unique households by way of objection.

Concerns raised in the objections predominantly relate to the amenity impacts of demolition works, tree removal / environmental concerns and future development of the site. These concerns have been adequately considered and are not sufficient to warrant refusal of the application.

Critical assessment issues included consideration of community submissions, as well as consideration of referral responses from internal Council referral teams. These included issues related to tree removal, which were raised by Council's Landscape team and Bushland and Biodiversity team. Ultimately, as conditioned, this application would only permit the removal of exempt species (which may be removed without Council permission regardless), and the removal of eight (8) prescribed trees (Trees 10, 23, 28, 60, 64, 101, 114 and 137) which are in close proximity to structures to be demolished. Council has imposed conditions requiring other existing prescribed trees, some of which the applicant sought to remove, to be retained and protected by fencing during the demolition of structures. Furthermore, tree replacement planting is conditioned to compensate for the removal of prescribed native trees. As conditioned, Council's Landscape team and Bushland and Biodiversity team are both supportive of the proposal. Any further tree removal proposed in applications for future development or subdivision of the site shall be considered under future Development Applications.

The proposal is recommended for approval, subject to conditions.

REASON FOR DETERMINATION

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2024/0081 for Demolition of all existing structures on site on land at Lot 1 DP 524083, 21 A Warili Road, FRENCHS FOREST, Lot 1 DP 1298188, 49 Blackbutts Road, FRENCHS FOREST, 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**
24076 2/4	D	Overall Demolition Plan	Sekisui House	16 January 2024
24076 3/4	D	Demolition Plan (1:200)	Sekisui House	16 January 2024
24076 4/4	D	Demolition Plan (1:200)	Sekisui House	16 January 2024

Approved Reports and Documentation			
Document Title	**Version Number**	**Prepared By**	**Date of Document**
Arboricultural Impact Assessment Report	2	The Tree Guardian	17 March 2024
Flora and Fauna Assessment for Demo DA	Final	Kingfisher Urban Ecology and Wetlands	April 2024
Demolition Work Plan	-	ACE Civil	22 August 2023
Demolition Waste Management Plan	-	Atlas Demolition Group.	30 January 2024

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

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

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	08/03/2024 (on EDMS) 7 March 2024 (on document)

(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. **General requirements (Demolition):**
(a) Unless authorised by Council:
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) At all times after the submission a Notice of Commencement to Council, a copy of the Development Consent is to remain onsite at all times until completion of demolition works. The consent shall be available for perusal of any Authorised Officer.

(c) 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.

(d) 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.

(e) The applicant shall bear the cost of all works that occur on Council's property.

(f) No building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

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

(h) All sound producing plant, equipment, machinery or fittings will not exceed more than 5dB(A) above the background level when measured from any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy.)

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

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 $8,000.00 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 $800,000.00.

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

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

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

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

6. **Security Bond**

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

7. **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 Tree Protection Plan.

The Project Arborist shall be in attendance and supervise all works as nominated in the Tree Protection Plan. All tree protection measures specified 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. The Project Arborist shall provide certification to the Certifier that all tree protection measures under AS4970-2009 have been

satisfied, and the works under the approved Tree Protection Plan 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.

8. **Tree Removal Within the Property**
This consent approves the removal of existing prescribed trees on the subject site as listed below:
a) tree numbers 10, 23, 28, 60, 64, 101, 114 and 137,
b) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised development works.

9. **Tree Protection Plan**
a) a Tree Protection Plan shall be submitted to the Certifier for approval prior to any commencement of works on site, demonstrating tree protection measures in accordance with AS4970-2009 Protection of trees on development sites, to protect the following trees:
i) tree numbers 1 to 5, 7 to 22, 25, 27, 29 to 31, 34 to 39, 41 to 43, 44, 46 to 50, 52 to 55, 57, 59, 67, 71, 74, 75, 77, 79, 81 to 86, 88, 89, 91, 96, 99, 100, 120, 121, 140, 141, 143, 145 to 149.

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

Reason: Tree protection.

10. **Demolition Traffic Management Plan**
As a result of the site constraints, limited vehicle access and parking, a Demolition Traffic Management Plan (DTMP) shall be prepared by an suitably accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to commencing any demolition work.

Due to heavy traffic congestion throughout the area, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm.

The DTMP must:-
- Make provision for all construction materials to be stored on site, at all times.
- The DTMP is to be adhered to at all times during the project.

- Specify construction truck routes and truck rates. Nominated truck routes are to be distributed over the surrounding road network where possible.
- Provide for the movement of trucks to and from the site, and deliveries to the site. Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site is not permitted unless prior approval is granted by Council's Traffic Engineers.
- Include a Traffic Control Plan prepared by an TfNSW accredited traffic controller for any activities involving the management of vehicle and pedestrian traffic.
- Specify that a minimum fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measures.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes, structures proposed on the footpath areas (hoardings, scaffolding or temporary shoring) and extent of tree protection zones around Council street trees.
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the DTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities. These communications must be documented and submitted to Council prior to work commencing on site.
- Specify spoil management process and facilities to be used on site.
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of demolition. At the direction of Council, the applicant is to undertake remedial treatments such as patching at no cost to Council.

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

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

Reason: This condition is to ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems. The DTMP is intended to minimise impact of construction activities on the surrounding community, in terms of vehicle traffic (including traffic flow and parking) and pedestrian amenity adjacent to the site.

11. **No Clearing of Vegetation**
Unless otherwise exempt, no vegetation is to be cleared prior to commencement of works on the site.

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

Reason: To protect native vegetation.

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

1. Council's relevant development control plan,

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

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

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

13. **Compliance with standards (Demolition):**
The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to Council prior to the commencement of demolition works.

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

DURING BUILDING WORK

14. **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,
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 Tree Protection Plan or 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 as complaint to AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Tree Protection Plan or Arboricultural Impact Assessment and/or Project Arborist as applicable.

Reason: Tree and vegetation protection.

15. **Pre-clearance Survey - Certified by Project Ecologist**
Any habitat for for native wildlife (including tree hollows) approved for removal is to be inspected for native wildlife by the Project Ecologist prior to its removal. If native wildlife is found within habitat to be removed, the animal is to be safely relocated by the Project Ecologist to a suitable location.

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

Written evidence of compliance (including records of inspections and any wildlife incidents) is to be prepared by the Project Ecologist and provided to the Principal Certifier.

Reason: To protect native wildlife.

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

Reason: To protect native wildlife.

17. **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.

18. **Replacement of Canopy Trees**
At least 6 locally native canopy trees are to be planted and will include at least 2 (two) Corymbia gummifera and 1 (one) Eucalyptus botroyides on the site to replace native protected trees approved for removal. Species are to have a minimum mature height of 8.5m and be consistent with the Native Planting Guide available on Council's website.

Tree plantings are to be retained for the life of the development and/or for their safe natural life. Trees that die or are removed must be replaced with another locally native canopy tree.

Replacement plantings are to be certified as being completed in accordance with these conditions of consent by a qualified landscape architect, and details submitted to the Principal Certifier.

Reason: To establish appropriate native landscaping.

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

Reason: Public safety.

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

Reason: To ensure compliance and Council's ability to modify the approved Construction Traffic Management Plan where it is deemed unsuitable during the course of the project.

21. **Ongoing Management**
The applicant shall be responsible in ensuring that the road reserve remains in a serviceable state during the course of the demolition and building works.

Reason: To ensure 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. **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.

24. **No Weeds Imported On To The Site**
No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan) are to be imported on to the site prior to or during construction works.

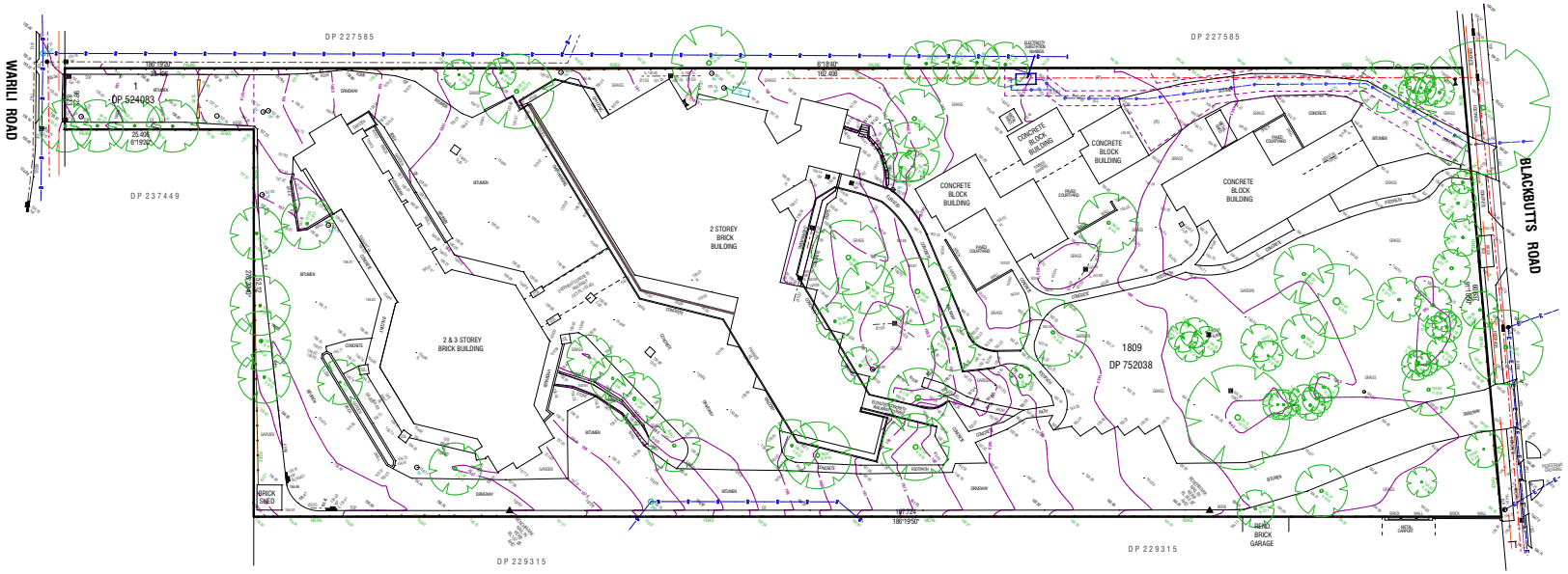
Details demonstrating compliance are to be submitted to the Principal Certifier.

Reason: To reduce the risk of site works contributing to spread of Priority and environmental weeds.

25. **Priority Weed Removal and Management**
All Priority weeds (as specified in the Northern Beaches Local Weed Management Plan) within the development footprint are to be removed using an appropriate control method.

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

Reason: To reduce the risk of site works contributing to spread of Priority weeds.



Site Plan

1:400

CLD studio
c: Suite 29 No 1 Railway Parade Burwood 2134
e: cameron@CLDStudio.com.au
p: 0431598956

bdaa ACCREDITED BUILDING DESIGNER

REV	AMENDMENT	DATE
A	DEMOLITION PLAN	04.10.23
B	UPDATED TREES TO BE REMOVED	04.10.23
C	ADDED LEGEND	19.12.23
D	UPDATED ALL TREES TO BE RETAINED	16.01.24

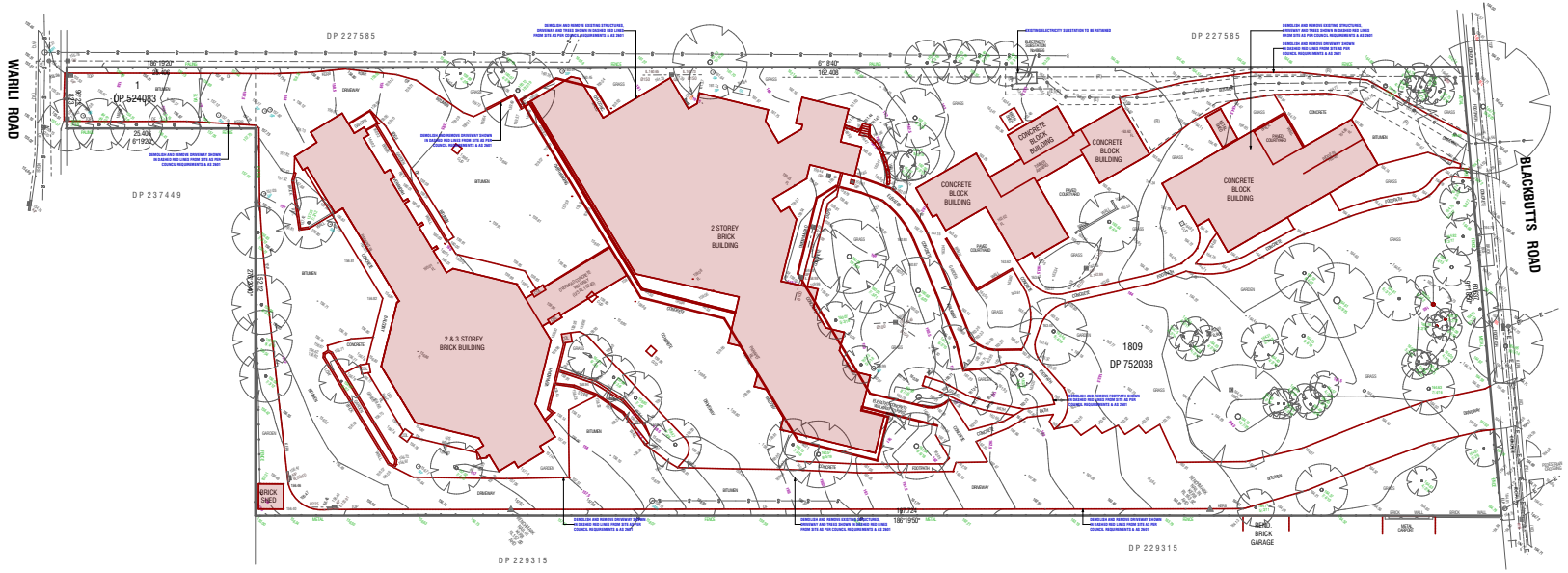
CLIENT:	SEKISUI HOUSE	LOT NO:	1809
ADDRESS:	49 BLACKBUTTS ROAD	DP NO:	DP752038
SUBURB:	FRENCHES FOREST	POSTCODE:	2086

SHEET NAME:	SURVEY PLAN	COUNCIL:	NORTHERN BEACHES
SCALE:	1:400 @ A2	DRAWN:	CL
HOUSE NAME:		DATE:	03.10.23

NORTH:

DRAWING NO.:	24076	SHEET NO.:	1/4
		REVISION:	D

SEKISUI HOUSE



Demolition Plan

1:400

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e: cameron@CLDStudio.com.au
p: 0431598956

bdaa ACCREDITED BUILDING DESIGNER

REV	AMENDMENT	DATE
A	DEMOLITION PLAN	04.10.23
B	UPDATED TREES TO BE REMOVED	04.10.23
C	ADDED LEGEND	19.12.23
D	UPDATED ALL TREES TO BE RETAINED	16.01.24

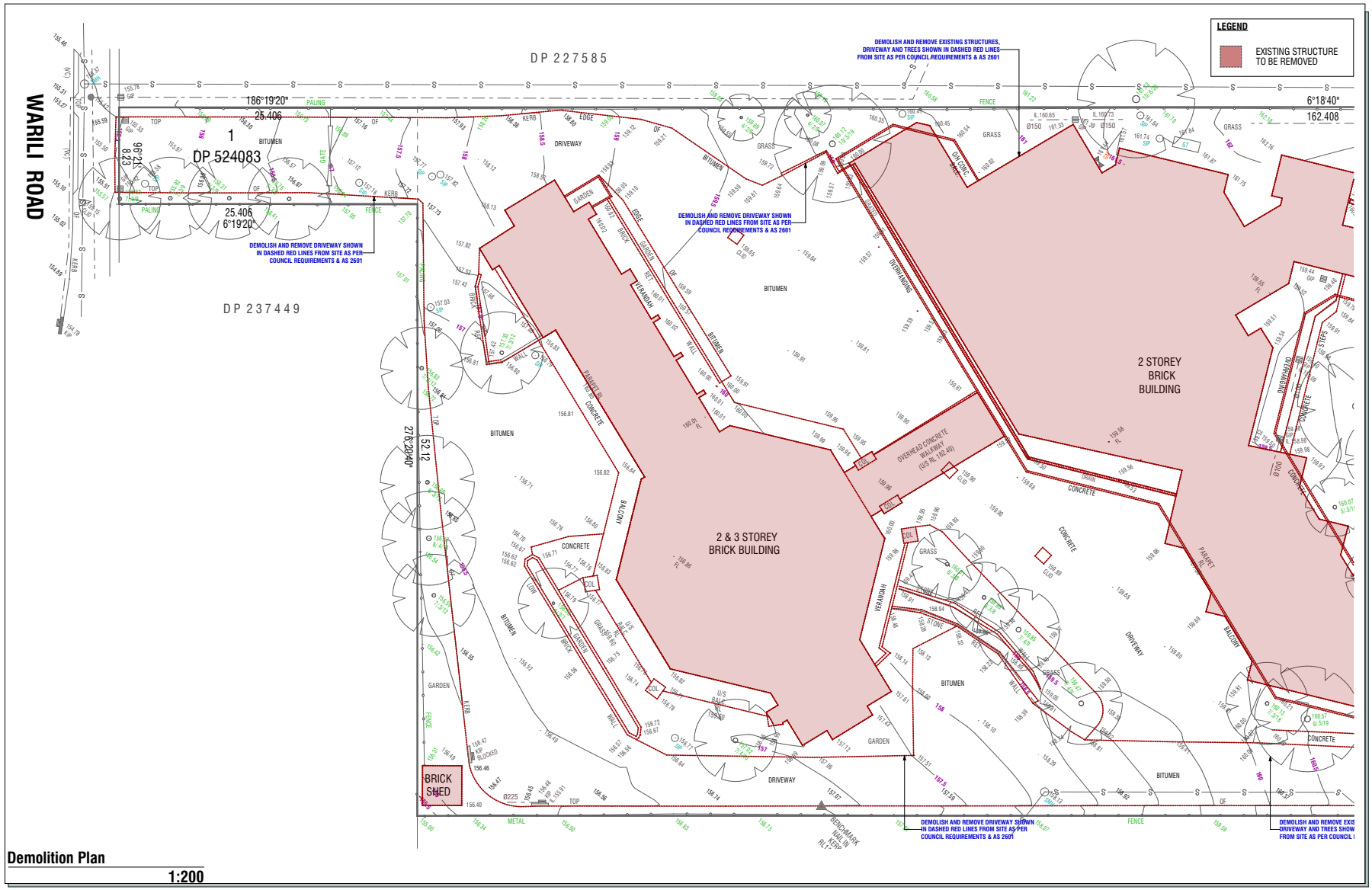
CLIENT:	SEKISUI HOUSE	LOT NO:	1809
ADDRESS:	49 BLACKBUTTS ROAD	DP NO:	DP752038
SUBURB:	FRENCHES FOREST	POSTCODE:	2086

SHEET NAME:	OVERALL DEMOLITION PLAN	COUNCIL:	NORTHERN BEACHES
SCALE:	1:400, 1:100 @ A2	DRAWN:	CL
HOUSE NAME:		DATE:	03.10.23

NORTH:

SHEET NO.:	2/4
REVISION:	D
DRAWING NO.:	24076

SEKISUI HOUSE



Demolition Plan

1:200

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bdaa ACCREDITED BUILDING DESIGNER

REV	AMENDMENT	DATE
A	DEMOLITION PLAN	04.10.23
B	UPDATED TREES TO BE REMOVED	04.10.23
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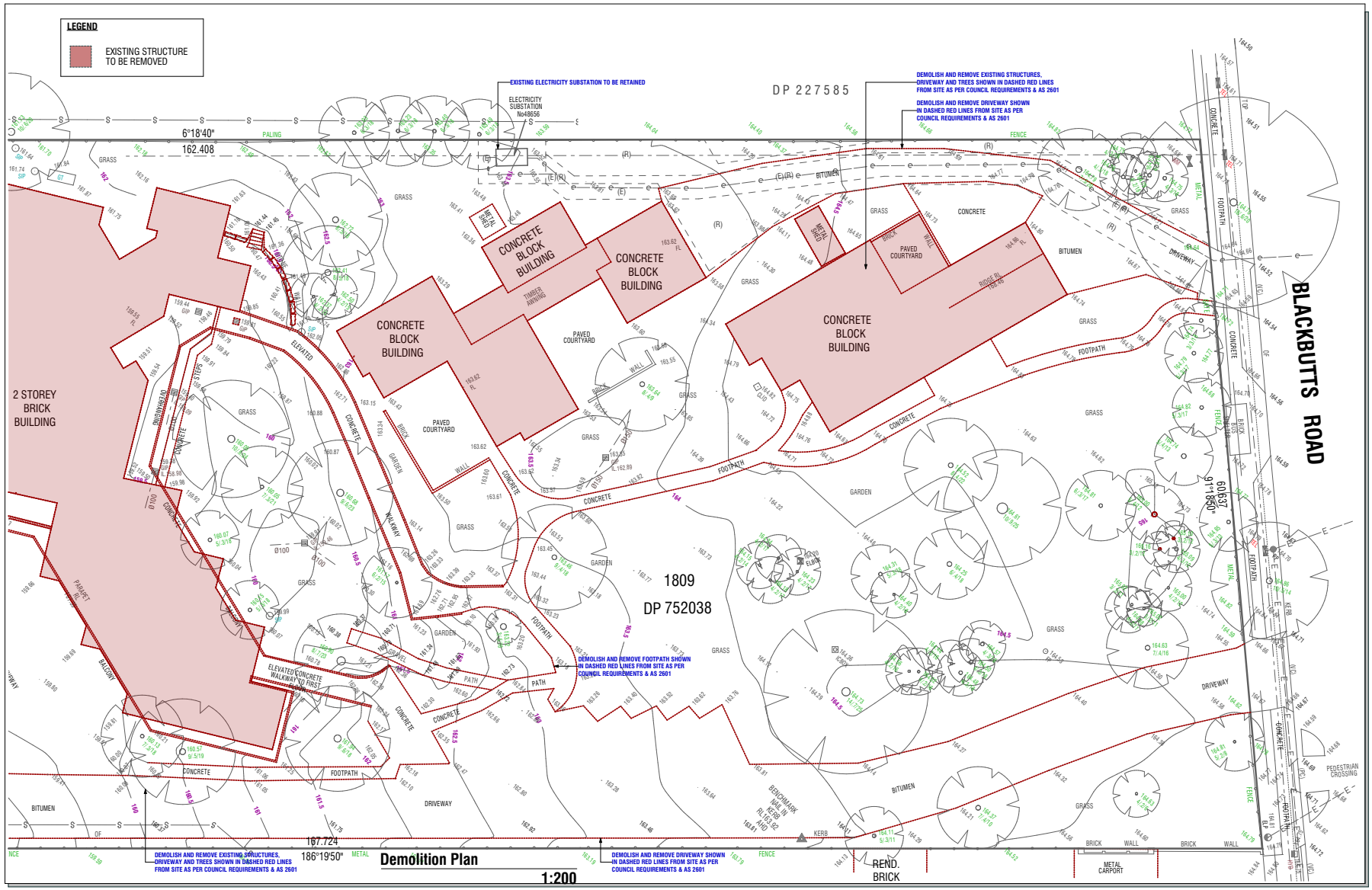
CLIENT:	SEKISUI HOUSE	LOT NO:	1809
ADDRESS:	49 BLACKBUTTS ROAD	DP NO:	DP752038
SUBURB:	FRENCHES FOREST	POSTCODE:	2086

SHEET NAME:	DEMOLITION PLAN (1:200)	COUNCIL:	NORTHERN BEACHES
SCALE:	1:200, 1:100 @ A2	DRAWN:	CL
HOUSE NAME:		DATE:	03.10.23

NORTH:	SHEET NO.: 3/4	REVISION: D
DRAWING NO.: 24076		

SEKISUI HOUSE



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A	DEMOLITION PLAN	04.10.23
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D	UPDATED ALL TREES TO BE RETAINED	16.01.24

CLIENT:	SEKISUI HOUSE	LOT NO:	1809
ADDRESS:	49 BLACKBUTTS ROAD	DP NO:	DP752038
SUBURB:	FRENCHES FOREST	POSTCODE:	2086

SHEET NAME:	DEMOLITION PLAN (1:200)	COUNCIL:	NORTHERN BEACHES
SCALE:	1:200, 1:100 @ A2	DRAWN:	CL
HOUSE NAME:		DATE:	03.10.23

NORTH:	SHEET NO.: 4/4	REVISION: D
DRAWING NO.: 24076		

SEKISUI HOUSE

ITEM 3.2 DA2023/0696 - 60 CASTLE CIRCUIT SEAFORTH - CONSTRUCTION OF A DWELLING HOUSE INCLUDING 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 and floor space ratio.

RECOMMENDATION

That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 and Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

THAT Council as the consent authority **approves** Development Consent to DA2023/0696 for construction of a dwelling house including swimming pool on land at Lot 16 DP 200638, 60 Castle Circuit SEAFORTH, subject to the conditions set out in the Assessment Report.

Reporting manager	Rodney Piggott
TRIM file ref	2024/398328
Attachments	⇩1 Assessment Report ⇩2 Site Plan and Elevations ⇩3 Clause 4.6 - BHR ⇩4 Clause 4.6 - FSR

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0696

Responsible Officer:	Gareth David
Land to be developed (Address):	Lot 16 DP 200638, 60 Castle Circuit SEAFORTH NSW 2092
Proposed Development:	Construction of a dwelling house including 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:	Paul Andrew Volck Linda Ann Lea
Applicant:	Cadence & Co Pty Ltd

Application Lodged:	09/06/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	17/01/2024 to 31/01/2024
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 42.4% 4.4 Floor space ratio: 29.8%
Recommendation:	Approval

Estimated Cost of Works:	$ 3,335,000.00

EXECUTIVE SUMMARY

This development application seeks consent for the construction of a new dwelling-house and swimming pool on a vacant site.

The application is referred to the Northern Beaches Development Determination Panel (DDP) due to the development breaching the Height of Buildings and Floor Space Ratio (FSR) development standard and by more than 10%

Following notification and preliminary assessment of the application, concerns with the proposal were raised with the applicant, primarily in relation to height, FSR, earthworks and excavation, bulk and scale, insufficient documentation and internal referral issues. Amended plans and additional information were submitted to address these concerns. The assessment of the application is based on the amended plans.

One (1) submission was received in response to the notification. The submission raised concern that the development (and new landscaping) would result additional bushfire risks, views loss and construction and noise impacts. The issues raised in the public submissions are considered to be addressed by way of the general and special conditions of consent.

The subject site is constrained by its steep topography, bushfire hazard risk, and an unusual lot configuration. A previous development consent for a four level dwelling and swimming pool (DA2020/1585) was also approved on the site in 2021. This consent is still valid, however, works have not yet commenced.

The application does not comply Cl 4.3 Height of buildings of MLEP 2013, which requires that building height does not exceed 8.5m. The extent of the height non-compliance, equates to 12.1m or 42.4%. The height breach is largely a result of the topography of the land and relates to the portion of the dwelling where the land falls away steeply. The application also does not comply Clause 4.4 Floor Space Ratio of MLEP 2013, which requires a FSR of 0.4:1. The proposed development provides a FSR of 0.519:1 presenting a variation of 29.8% to the MLEP requirement. However, the subject site is considered an "undersized lot" and when based off MDCP exceptions to FSR for undersized lots, the FSR breach would represent a minor variation of 8.5%. The bulk, scale and form of the development will be generally consistent with the approved development on the site (DA2020/1585) and the proposal reflects the established built form of newer dwellings in the vicinity. The submitted written Clause 4.6 variation requests are considered to be well founded having regard to the circumstances of the development is considered appropriate that flexibility in the application of the development standard Clause 4.3 – 'Height of buildings' and Clause 4.4 – 'Floor space ratio' be applied in this instance.

Potential amenity issues to surrounding neighbours have been reviewed under Council's Policies and have been determined to be reasonable within the context and setting of the residential environment (subject to recommended conditions).

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

Accordingly, it is recommended that the application be approved subject to the attached conditions.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development is for the construction of a new four (4) level dwelling-house, including a swimming pool on a vacant site.

The proposal consists of:

Level 1

- Three bedrooms
- Bathroom and ensuite
- Lift and stair access
- Storage and plant room
- Terrace

Level 2

- Kitchen/living/ dining room
- Bathroom
- Lift and stair access
- Storage
- Terrace

Level 3

- Master Bed
- Ensuite
- WIR
- Lift and stair access
- Terrace/balcony

Level 4

- Garage
- Bin storage
- Study
- Entry
- Laundry
- Lift and stair access
- Terrace/balcony

Ancillary site works include a swimming pool, site excavation, drainage, landscaping clearing and ancillary site works (including structures within the road reserve).

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 1.9A Suspension of covenants, agreements and instruments
Manly Local Environmental Plan 2013 - 4.3 Height of buildings
Manly Local Environmental Plan 2013 - 4.4 Floor space ratio

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Local Environmental Plan 2013 - 6.2 Earthworks
Manly Local Environmental Plan 2013 - 6.4 Stormwater management
Manly Local Environmental Plan 2013 - 6.5 Terrestrial biodiversity
Manly Local Environmental Plan 2013 - 6.8 Landslide risk
Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)
Manly Development Control Plan - 3.3.2 Preservation of Trees or Bushland Vegetation
Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
Manly Development Control Plan - 3.4.2 Privacy and Security
Manly Development Control Plan - 3.4.3 Maintenance of Views
Manly Development Control Plan - 3.9 Mechanical Plant Equipment
Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
Manly Development Control Plan - 4.1.5 Open Space and Landscaping
Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
Manly Development Control Plan - 4.1.8 Development on Sloping Sites
Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features
Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)
Manly Development Control Plan - 5.4.1 Foreshore Scenic Protection Area

SITE DESCRIPTION

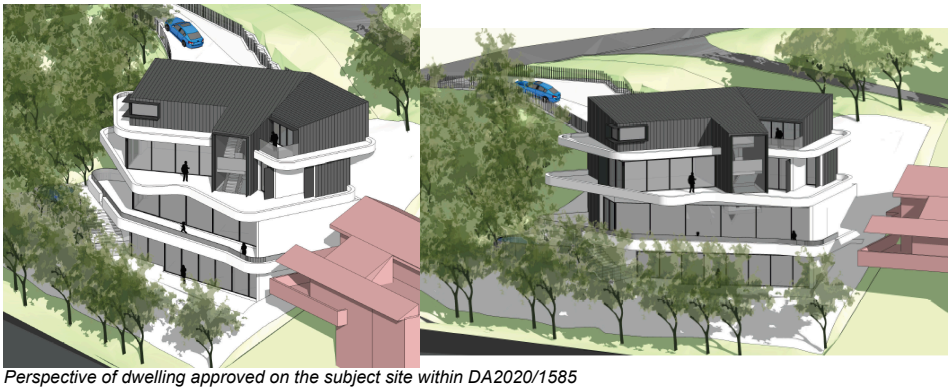
Property Description:	Lot 16 DP 200638 , 60 Castle Circuit SEAFORTH NSW 2092
Detailed Site Description:	The subject site consists of one (1) allotment located on the south-western side of Castle Circuit. The site is irregular in shape with a frontage of 38.445m along Castle Circuit and a depth of 24.73m. The site has a surveyed area of 626.8m². The site is located within the R2 Low Density Residential zone and is currently undeveloped land. A four level dwelling house was approved on the site in 2021 (DA2020/1585), However, this has not been constructed. The site has a steep topography, with a cross fall of approximately 14.5m from the east to west (front to rear), with a average gradient of approximately 59% or 31 degrees. The site is located in a foreshore scenic area in Manly Middle Harbour and has been classified as having biodiversity significance. Numerous native and non-native trees are located on the site. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by 2, 3 and 4 level dwellings of varying architectural styles, on steeply sloping land oriented towards views of the Harbour to the west. The land is subject to bushfire hazard and is with a "flame zone" and adjoins a private access (right of way) road. Houses to the north east are 10m to 15m higher than the site. To the west is Castle Circuit Reserve, an public area of remnant native vegetation, which is zoned C2 Environmental Conservation under Manly LEP 2013.

Map:

SITE HISTORY

The land has is an undeveloped lot, subdivided for residential purposes. A search of Council's records has revealed the following relevant history:

- **PLM2020/0086** - Pre-lodgement meeting for the construction of a dwelling house including a swimming pool - meeting held on 19 May 2020
- **DA2020/1585** - Construction of a dwelling house and swimming pool - Approved 26 May 2021 (not yet constructed)



Perspective of dwelling approved on the subject site within DA2020/1585

APPLICATION HISTORY

11 September 2023
Council wrote to the applicant, primarily raising concerns in relation to:

- Height
- Floor Space Ratio
- Earthworks and excavation
- Bulk, scale and setbacks
- Insufficient documentation
- Internal referral issues

11 January 2024
Amended plans and additional information were submitted to address Council's concerns. This included a reduction in height, reduction in excavation and reduction in floor area.

11 January 2024
Amended plans were re-notified.

09 May 2024
Further amended plans were received which reduced the extent of structures of Council's Road Reserve.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration	Comments
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. 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 (prepared by Bushfire Hazard Solutions, dated 28 April 2023). The report stated that the bushfire attack level of the site is “Flame Zone”.

The application was referred to the NSW Rural Fire Service for further assessment. The NSW RFS raised no objections to approval, subject to conditions. The recommendations of the Bush Fire Report , along with the conditions from the NSW RFS have been included as part of the recommended conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 17/01/2024 to 31/01/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Mr Daniel John Chesson	51 Castle Circuit SEAFORTH NSW 2092

The following issues were raised in the submissions:

- Bushfire risks
- View loss
- Construction impacts and noise

The above issues are addressed as follows:

- **Bushfire risks**

  The submissions raised concerns that development and associated landscaping would result additional bushfire risks.

  Comment:
  A Bush Fire Report was submitted with the application and the application. The application was referred to the NSW Rural Fire Service for further assessment. The NSW RFS raised no objections to approval, subject to conditions. The recommendations of the Bush Fire Report, along with the conditions from the NSW RFS have been included as part of the recommended conditions of consent. Such conditions include the management of the property as an inner protection area.

- **View loss**

  The submissions raised concerns the development and proposed replacement tree planting will result in unreasonable view loss

  Comment:
  The proposed development is acceptable in relation to view loss for the reasons detailed in the section of this report relating to Section *3.4.3 Maintenance of Views* of the Manly DCP. The requirements of this clause and the view sharing principles of *Tenacity Consulting vs Warringah Council 2004* have been addressed and the issues raised within the residents submissions in relation to view loss do not warrant further amendment or refusal of the application.

  Concern was also in relation to tree planting and potential view impacts. In consideration of the location of existing canopy trees within the existing view corridor (on the subject site, adjoining road reserve and neighboring sites); the relative elevation of No.51 Castle Circuit above the subject site, the replacement tree planting is supported and any associated view loss is considered reasonable in this instance.

- **Construction impacts and noise**

  The submissions raised concerns that the works would result in disruption during construction, particularly in relation to noise.

  Comment:
  In order to mitigate the impacts associated with construction, the following conditions have been included within the consent::
  - Preparation and implementation of a Construction Traffic Management Plan
  - Preparation and implementation of a Noise and Vibration Management Plan
  - Preparation and implementation of a Construction Site Management Plan
  - Ensure structural adequacy of landfill and excavation work
  - Require dilapidation reports for adjoining proprieties and Council's Road Reserve
  - Ensure the recommendations of the Geotechnical report is adhered to;

REFERRALS

Internal Referral Body	Comments
Landscape Officer	**Supported, with conditions recommended.** The proposal is supported with regard to landscape issues. Additional Information Comment 04/03/24: The neighbouring tree removal consent and amended plans are noted. The Arboricultural Impact Assessment identified 24 trees for removal. Trees 2, 3, 4, 5, 6, 7, 8, 14, 15, 16, 17, 18, 19, 20, and 21 are exempt or dead trees and as such may be managed or removed at the discretion of the applicant without consent. Trees 9, 10, and 12 are 75% dead and as such can be supported for removal. Trees 11, 13, 22, 24, 25, and 26 are in locations that would limit development potential and can be supported for removal subject to native tree replacement. Tree 1 is a weed species located in a neighbouring property and owners consent has been received so its removal is supported. The landscape proposal is generally supported; however, amended Landscape Plans shall be submitted prior to issuing a Construction Certificate outlining all species quantities and locations. All on slab landscape planters must meet Council's minimum soil depth requirements. The landscape works under the development application are permitted only within the legal property boundaries,

Internal Referral Body	Comments
	and the proposed landscape works within the road verge shall be part of a section 138 and 139 (of the Roads Act) application, for approval or otherwise. Original Comment: The Arboricultural Impact Assessment (AIA) assessed 32 trees of which eight trees (trees 1, 23, and 27-32) are located outside the property boundary. Trees 27-32 are located on public land, and as such must be retained and protected during works. Trees 1 and 23 are located on private land, and also must be retained and protected during works. It is noted tree 1 is a weed species proposed for removal and Landscape Referral raises no concerns with its removal; however, as it is located on the neighbouring private property written consent must be received from the neighbouring property owner and provided to Council before it can be removed.
NECC (Bushland and Biodiversity)	**Supported, with conditions recommended.** AMENDED COMMENTS 15/01/2024 Amended plans and documentation have been submitted with the application and Trees 5 and 14 which were to be retained are now shown to be removed. No objections are raised based on the findings of the amended arboricultural report which states that the trees are either dead or in severe decline. The submitted landscape plan still includes a number of exotic species including Raphiolepis indica which will have to be replaced with a suitable alternative. A total of 8 canopy trees are being proposed for planting (5 Angophora costata, 2 Acmena smithii and 1 Ceratopetalum apetalum). The proposed works in the road reserve are deferred to the landscape referral team. No additional biodiversity related conditions are recommended. ORIGINAL COMMENTS The proposal seeks approval for the construction of a dwelling house including a swimming pool. The comments in this referral relate to the following applicable controls: • Planning for Bushfire Protection 2019 • Manly LEP Clause 6.5 (Terrestrial Biodiversity) • SEPP (Coastal Management) – Coastal Environment Area The site presents a 13 metre drop from the frontage of the site to the back of the site (East to West). The steep slope makes the retention of trees and vegetation complex within the context of a new development. The proposal has been submitted with an accompanying Arboricultural Impact Assessment that has identified a total of 32 trees. A total of seven trees identified on the AIA are found outside of the site boundary (Trees 14, 23, 27, 28, 29, 30, 31 and 32). These will not be considered as part of the Biodiversity assessment. Trees 5 and 14 have been identified as the only trees to be retained on the site, however, tree 5 is a Pittosproum undulatum under 8 metres and is therefore exempt under current Northern Beaches tree exemption rules and could be removed without consent. Tree 14, has been identified as a dead tree. The proposal has been submitted with an Ecological Impact Assessment which has concluded that no significant impacts to native flora and fauna would take place. The Biodiversity team generally concurs. The report has indicated "in its current form, the vegetation on site is not representative of Coastal Sandstone Foreshore Forest or any other ecological community. The vegetation on the site is very weedy and there is no discernible native vegetation type existing on the site." However, a total of 6 hollows have been identified on the site and would be lost under the current proposal. Their retention and installation in the neighbouring reserve will be conditioned as well as the inclusion of complimentary nest boxes of similar characteristics. The proposal has also been submitted with a Bushfire Report that has determined that the property will have to be treated as an Asset Protection Zone in perpetuity as the property has been awarded a bushfire risk level of Flame Zone. No objections are raised but conditions will apply to ensure that APZs are limited to the property boundary.
NECC (Coast and Catchments)	**Supported, with conditions recommended.** The application has been assessed in consideration of the *Coastal Management Act 2016*, State Environmental Planning Policy (Resilience & Hazards) 2021, Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity & Conservation) 2021 and Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005. It has also been assessed against requirements of the Manly LEP and DCP. ***Coastal Management Act 2016*** The subject site has been identified as being within the coastal zone and therefore *Coastal Management Act 2016* is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the *Coastal Management Act 2016.*

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. Clauses 2.10 (coastal environment area) and 2.11 (coastal use area) do not apply as the site is also located within the Sydney Harbour catchment area. Hence, only Clause 2.12 of the SEPP R & H apply for this DA. Comment: On internal assessment, the DA satisfies requirements under clause 2.12 of the SEPP R&H. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021. **Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity & Conservation) 2021** **Foreshores & Waterways Area** The subject site is located within the Sydney Harbour Catchment and is identified as being within the Foreshores and Waterways Area. Hence Part 6.3 of the Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity & Conservation) 2021 will apply in assessing this DA. Development consent, among others, must consider clause 6.28. On internal assessment, it is determined that the relevant clauses of the Part 6.3 including the clause 6.28 have been followed. **Zoning of Foreshores & Waterways Area** The subject site is located within/adjacent to the Zone 2 (Environment Protection). On internal assessment , it is determined that the objectives and assessment criteria of the zone have been met. **Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005** - The subject site is located within a foreshore area identified on the map and therefore the DCP applies to the proposed development. On internal assessment, it is determined that the proposed development satisfies the requirements of the DCP. -
NECC (Development Engineering)	**Supported, with conditions recommended.** The development is in Region 3, Zone 3 and is therefore subject to scour and erosion control treatment. Vehicle crossing construction is proposed. The proposed development is on a site with a gradient well in excess of 1:4. Manly DCP 2013 and LEP 2013 stipulate maximum wall heights for sloping sites. Based on Figure 26 of Manly DCP, the maximum permissible wall height is 8 metres. The development proposes a wall height in excess of 15 metres, which is not supported. **Driveway profiles on drawing no. C4-01**. The maximum gradient of 35% is in excess of the permissible 1V : 4H slope. The vehicle crossing (external) and driveway needs to be amended to comply with Councils Standard Drawing No. A4-3330/7 ML. All internal driveway gradients must comply with Section 2.6.2 of AS/NZS 2890.1:2004 which stipulate a maximum gradient of 25% for domestic driveways (internal). There appear to be some anomalies on the chainage information. Please check for accuracy. **Engineering Comments 09.02.24** Amended driveway longitudinal sections have been submitted. I have no further objections to the proposed development subject to the inclusion of the recommended engineering conditions of consent.

Internal Referral Body	Comments
	Engineering Comments 26.02.24 Development Engineering has become aware of the serious concerns regarding the project from Council's *Transport & Civil Infrastructure Assets* section. These comments are reproduced below. In light of these concerns, I cannot support the proposal until they are satisfactorily addressed. **DRIVEWAY AND STEPS ON COUNCIL LAND** The proposed driveway and staircase is too large and exceeds a reasonable required amount of m2 for the proposed need (ie access to the boundary of the property across Council land from the carriageway). The previous DA approval design is lesser in scope and approved and Council would approve a reduced scope similar to the approved DA footprint with both driveway and stairs. No general carparking spaces are approved on Council land. Only the area required to turn the cars around is required. Normally in these situations on these difficult sites turntables are used. Council will not accede land due to land owners seeking to reduce costs. **OUTSTANDING ADVICE** Geotechnical Cut inside the property and how it affects public land on the easement. • My advice is that NO permanent anchor or retaining structure is approved on Council land. All retaining structures are to be wholly on the private property. • Temporary Anchors will be allowed via formal application with fees and charges applied and de-stressing to occur in line with the Development Engineer's requirements. **SWALE DRAIN** The swale drain is an encroachment and has no benefit to Council. Conditional approval for the swale drain via s139 is required including ongoing maintenance requirements. The swale drain is to be designed to prevent erosion and landslip of Council land immediately uphill of the drain. **Engineering Comments 23.05.24** Amended architectural plans have been submitted which show less intrusion from private development onto Council's road reserve. Development engineering raises no objections to the proposed development, subject to conditions.
NECC (Riparian Lands and Creeks)	**Supported, with conditions recommended.** 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. No objection to the application, subject to conditions
NECC (Water Management)	**Supported, with conditions recommended.** This application was assessed in consideration of:

Internal Referral Body	Comments
	• Supplied plans and reports; • Northern Beaches Water Management for Development Policy (WM Policy); and • Relevant LEP and DCP clauses The proposed stormwater strategy is satisfactory.
Parks, reserves, beaches, foreshore	**Supported, with conditions recommended.** The property adjoins a public reserve downslope. 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.
Property Management and Commercial	**Supported, with conditions recommended.** The proposal is for the construction of a new dwelling house including swimming pool. The proposal incorporates an elevated slab on the Council road reserve and as such the applicant will be required to enter into a Road Reserve Consent with Council. A condition to this effect will be included on any consent granted.
Road Reserve	**Supported, with conditions recommended (Supported by Council's Development Engineering department now takes responsibility for Road Reserve Referrals)** <u>Planner Comments</u> Following the comments below, amended plans were received which reduced the scope of works within the road reserve. Council's Development Engineering department now takes responsibility for Road Reserve Referrals. These amended plans were reviewed by Council's Development Engineer who raised no objections subject to conditions. <u>AMENDED Comments - 12/01/2024</u> Council's Development Engineering Team to review in further detail to ensure conditions that protect Council's interests as outlined below. There are no apparent changes in response to the stormwater concerns. This is a matter for Parks, Development Engineering and Stormwater Teams to assess the impacts on their assets, conduct a site inspection to ensure the discharge locations are acceptable and do not increase risks of landslip on council owned land. Elements of the stormwater drainage system may be considered Poor Engineering Practice as outlined in the geotech report. The Stormwater team may wish to consider who is responsible for the swale drain on Council's public road reserve and whether a Road Act consent is required for the property owner to maintain this structure in perpetuity. Further, there are no apparent changes which address the concerns regarding support of the road reserve and addressing the easement for support. It is noted the issue raised in the PLM Notes has not been addressed. Referral - Transport & Civil infrastructure Assets The subject site is burdened by an easement of support. Any application must provide an appropriate report to substantiate that the proposal is satisfactory or complies with conditions of easement (confirmed by title search) and that any proposal must demonstrate that structurally engineered retaining will be erected to support the road base immediately following any excavation. Support for suspended driveway must be independent of dwelling. <u>Previous comments:</u> The proposed driveway access and pedestrian walkway/stairway does not impact existing road infrastructure. Development Engineering to require Road Act application for civil works including structural details for elevated driveway and associated retaining walls. There are no details located in relation to the excavation to the road reserve boundary and/or details of proposed methods of retaining the excavation. Soil anchors and/or rock bolts into the road reserve (as suggested being possibly required by the geotechnical report) will not be permitted on a permanent basis. It is thought something more than permission from adjoining property owners will be required The PLM notes the existence of an easement for support however the application appears to give no consideration to the impact of this restriction. The proposed swale drain (engineering plans) across the property frontage appears to concentrate discharge towards Council's public reserve into steep terrain. This may increase the risk of future landslips/ instability or erosion. Council's Stormwater and Parks team should review this proposal - it is this writers view that any runoff

<table>
<tr><th>Internal Referral Body</th><th>Comments</th></tr>
<tr><td></td><td>collected by the development should be piped to an approved disposal point.

DA to be referred to Property Team in relation to lease for road reserve structures (wall and suspended driveway) .</td></tr>
<tr><td>Strategic and Place Planning (Heritage Officer)</td><td>
HERITAGE COMMENTS
Discussion of reason for referral

This application has been referred to Heritage, as the site is in the vicinity of a heritage item and located adjacent to a Heritage item, listed in Schedule 5 of Manly LEP 2013:

Item I1 - Harbour foreshores - Manly municipal area boundary adjacent to the Harbour

Item I268 - Bantry Bluff - Bantry Bay/Seaforth entrance Middle Harbour, Garigal National Park, Wakehurst Parkway

Details of heritage items affected

Item I1 - Harbour foreshores
Statement of significance
Natural landscape type - Aesthetic.
Physical description
Length of foreshore including natural and built elements of the landscape. Rocky sandstone ledgers, beaches, mud flats and sandstone retaining walls and timber structures.

Item I268 - Bantry Bluff
Statement of significance
Recognised natural landform and landscape. Significant visual backdrop to Middle Harbour.
Physical description
Natural landscape type. Steep slopes with indigenous vegetation in good condition. Scrubland to woodland with localised wet gully flora.

Other relevant heritage listings
<table>
<tr><td>SEPP (Biodiversity and Conservation) 2021</td><td>No</td><td></td></tr>
<tr><td>Australian Heritage Register</td><td>No</td><td></td></tr>
<tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr>
<tr><td>National Trust of Aust (NSW) Register</td><td>No</td><td></td></tr>
<tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td><td></td></tr>
<tr><td>Other</td><td>No</td><td></td></tr>
</table>
Consideration of Application
The proposal seeks consent for the construction of new four-storey dwelling house with swimming pool, and off-street car parking. The site is subject to an approved consent - DA2020/1585 for a similar size development. The subject site adjoins the heritage listed Bantry Bluff - Castle Circuit Reserve and is currently vacant, heavily vegetated, with no structures onsite. The proposed works involve the removal of a number of trees including a few which located within the heritage listed reserve. Given the new construction is physically separated from the heritage items, the impact of the proposal is considered manageable except the proposed removal of three trees located within the heritage reserve. It is noted that Landscape raised concerns regarding the removal of these trees: "Trees 27-32 are located on public land, and as such must be retained and protected during works"

Therefore, no objections are raised on heritage grounds subject to the retention and protection of these trees.

Consider against the provisions of CL5.10 of Manly LEP 2013.
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, with conditions recommended.** The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Rural Fire Service - Local Branch - EP&A Act, s4.14	**Supported, with conditions recommended.**

External Referral Body	Comments
	The application was referred to the NSW Rural Fire Service pursuant to Section 4.14 of the EP&A Act 1979. A referral response was provided on 22.06.2023 with recommended conditions to address RFS approval requirements for asset protection zones, construction standards, water and utility services, and general advice. These conditions will be included within the development consent.
Aboriginal Heritage Office	**Supported, with conditions recommended.** Reference is made to the proposed development at the above area and Aboriginal heritage. An Aboriginal Cultural Heritage and Archaeological Advice (Due diligence) was completed by Associates Archaeology and Heritage in November 2023. The following recommendations were made: 1. There is considered to be no risk of harm to Aboriginal objects through the proposed work. This includes an insignificant potential for harm to unidentified material. 2. No further Aboriginal cultural heritage archaeological assessment is warranted. 3. This documentation should be retained for five years following any development work and can form the basis of a defence against prosecution in the event of unanticipated harm. It may also be re-used as due diligence for future proposals as long as it applies to the same area, is updated with a new AHIMS search. 4. A copy of this report should be submitted to AHIMS (ahims@environment.nsw.gov.au). 5. In the event that any unanticipated Aboriginal cultural heritage sites are revealed during work, or any bones that many be human, work should stop immediately. An archaeologist and MLALC Sites Officer should inspect the find. Contractors on site should be informed of this requirement. Initial unanticipated harm would be considered to have been done 'unknowingly' and may be subject to a due diligence defence; however, any harm after failing to stop work would be a 'knowing offence' and subject to prosecution and harsh penalties1. The Aboriginal Heritage Office agrees with the recommendations made in this report and Given the above, considers that there are no Aboriginal heritage issues for the proposed development. 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.1369756S_02 dated 11 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 (Biodiversity and Conservation) 2021

Chapter 6 – Water catchments

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

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

6.6 Water quality and quantity

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

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

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

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

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

6.7 Aquatic ecology

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

(a) whether the development will have a direct, indirect or cumulative adverse impact on terrestrial, aquatic or migratory animals or vegetation,
(b) whether the development involves the clearing of riparian vegetation and, if so, whether the development will require—
(i) a controlled activity approval under the Water Management Act 2000, or
(ii) a permit under the Fisheries Management Act 1994,
(c) whether the development will minimise or avoid—
(i) the erosion of land abutting a natural waterbody, or
(ii) the sedimentation of a natural waterbody,
(d) whether the development will have an adverse impact on wetlands that are not in the coastal wetlands and littoral rainforests area,
(e) whether the development includes adequate safeguards and rehabilitation measures to protect aquatic ecology,
(f) if the development site adjoins a natural waterbody—whether additional measures are required to ensure a neutral or beneficial effect on the water quality of the waterbody.

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

(a) the direct, indirect or cumulative adverse impact on terrestrial, aquatic or migratory animals or vegetation will be kept to the minimum necessary for the carrying out of the development,
(b) the development will not have a direct, indirect or cumulative adverse impact on aquatic reserves,
(c) if a controlled activity approval under the Water Management Act 2000 or a permit under the Fisheries Management Act 1994 is required in relation to the clearing of riparian vegetation—the approval or permit has been obtained,
(d) the erosion of land abutting a natural waterbody or the sedimentation of a natural waterbody will be minimised,
(e) the adverse impact on wetlands that are not in the coastal wetlands and littoral rainforests area will be minimised.

Comment:

The proposal has been reviewed by Council's Coastal Officer, Riparian Lands Officer, Water Management, Heritage Officer and Bushland & Biodiversity Officer who have raised no objection to the works and their impacts to the surrounding natural environment. The site is separated from the waterfront by approximately 50m by Castle Circuit Reserve

6.8 Flooding

(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the likely impact of the development on periodic flooding that benefits wetlands and other riverine ecosystems.

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

(a) if there is a flood, result in a release of pollutants that may have an adverse impact on the water quality of a natural waterbody, or
(b) have an adverse impact on the natural recession of floodwaters into wetlands and other riverine ecosystems

Comment:
The site is not located within a flood prone area.

6.9 Recreation and public access

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

(a) the likely impact of the development on recreational land uses in the regulated catchment, and
(b) whether the development will maintain or improve public access to and around foreshores without adverse impact on natural waterbodies, watercourses, wetlands or riparian vegetation.

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

(a) the development will maintain or improve public access to and from natural waterbodies for recreational purposes, including fishing, swimming and boating, without adverse impact on natural waterbodies, watercourses, wetlands or riparian vegetation,
(b) new or existing points of public access between natural waterbodies and the site of the development will be stable and safe,
(c) if land forming part of the foreshore of a natural waterbody will be made available for public access as a result of the development but is not in public ownership—public access to and use of the land will be safeguarded.

Comment:
The proposal has been reviewed by Council's Parks and Reserves Officer and Coastal Officer, who has raised no objections. The development retains a landscaped buffer to the adjoining foreshore reserve and will not impede public access to the foreshore.

6.10 Total catchment management

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

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

Division 3 Controls on development in specific areas

6.11 Land within 100m of natural waterbody

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

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

Comment:
The proposed works will meet these requirements.

6.13 Hawkesbury-Nepean conservation area sub-catchments

(2) In deciding whether to grant development consent to development in a Hawkesbury-Nepean conservation area sub-catchment, the consent authority must consider the following—

(a) whether the development will minimise human interference with the condition of the sub-catchment,
(b) whether the development will maintain and enhance the structure and floristics of native vegetation in the sub-catchment,
(c) whether the development will maintain or enhance the scenic quality of the locality,
(d) whether development has previously been carried out on the development site.

Comment:
The proposal has been reviewed by Council's Coastal Officer, Riparian Lands Officer, Water Management, Heritage Officer and Bushland & Biodiversity Officer who have raised no objection to the works and their impacts to the surrounding natural environment. The site is separated from the waterfront by approximately 50m by Castle Circuit Reserve

Division 4 Controls on development for specific purposes

6.15 Aquaculture

In deciding whether to grant development consent to development for the purposes of aquaculture on land in a regulated catchment, the consent authority must consider the following—
(a) the likely direct, indirect and cumulative environmental impacts of related activities, including—
(i) the coating of fishing accessories with protective finishes, and
(ii) the transport and cleaning of cages, racks and other accessories,
(b) whether the development includes adequate measures for the disposal of waste,
(c) potential adverse environmental impacts from damage to facilities or equipment associated with the development that is caused by flooding, stormwater or erosion.

Comment:
N/A

6.16 Artificial waterbodies

(1) In deciding whether to grant development consent to development for the purposes of artificial waterbodies on land in a regulated catchment, the consent authority must consider the following—
(a) the likely impact of the development on other downstream land uses in the regulated catchment,
(b) whether the development will enhance the recreational and environmental amenity of the regulated catchment,
(c) whether the development will contribute to a propagation zone for noxious aquatic weeds in the regulated catchment,
(d) whether the development includes measures to minimise the risk of an increase in algal blooms in the regulated catchment.
(2) Development consent must not be granted to development for the purposes of artificial waterbodies on land in a regulated catchment if—
(a) a rehabilitation plan is required to be prepared for the development under State Environmental Planning Policy (Resources and Energy) 2021, section 2.23, and
(b) the consent authority is not satisfied the development is consistent with the rehabilitation plan.

Comment:
N/A

6.17 Heavy and hazardous industries

(2) In deciding whether to grant development consent to development to which this section applies, the consent authority must consider the need for bush fire hazard reduction work on the site.
(3) Development consent must not be granted to development to which this section applies unless the consent authority is satisfied—
(a) the development includes adequate measures to contain water that is at risk of contamination as a result of the development, and
(b) approvals have been obtained, or are obtainable, to undertake bush fire hazard reduction work required on the site.
(4) Development for the purposes of heavy industrial storage establishments or heavy industries is prohibited on land in a regulated catchment if the development is carried out—
(a) on flood liable land, or
(b) within 40m of a natural waterbody or watercourse, or
(c) on a floodway.

Comment:
N/A

6.18 Marinas

In deciding whether to grant development consent to development for the purposes of marinas on land in a regulated catchment, the consent authority must consider the following—
(a) whether the development includes adequate measures in relation to the collection, storage, treatment and disposal of sewage and other waste,
(b) whether the development complies with the document entitled Environmental Guidelines: Best Management Practice for Marinas and Slipways, published in 1998 by the Environment Protection Authority,
(c) whether adequate depth of water exists for the development and related foreshore facilities,
(d) whether the development is likely to affect the stability of land adjoining a natural waterbody,
(e) whether the development will have an adverse impact on the foreshore or the bed of a natural waterbody.

Comment:
N/A

6.19 Moorings

(2) In deciding whether to grant development consent to development for the purposes of moorings on land in a regulated catchment, the consent authority must consider the following—
(a) the type and size of vessels that will be moored,
(b) whether adequate depth of water exists for the development,
(c) whether dredging will be needed to carry out the development,
(d) whether the development will provide public facilities or promote the shared use of private facilities.

Comment:
N/A

6.20 On-site domestic sewerage systems

(2) In deciding whether to grant development consent, the consent authority must consider the following—
(a) whether the development will be capable of connecting to a sewerage reticulation system,
(b) the suitability of the site for on-site disposal of effluent,
(c) the capacity of the development to operate without significant adverse long-term impacts on adjoining land.
(3) Development consent must not be granted unless the consent authority is satisfied that the development includes adequate measures—
(a) to prevent the spread of disease, and
(b) to reuse treated resources, and
(c) to facilitate the recycling and reuse of treated effluent, and
(d) to minimise adverse impacts on the amenity of the development site and other nearby land, and
(e) to maintain storage and treatment capacity in wet weather, and
(f) to monitor the relevant sewerage system on an ongoing basis.
(4) Development consent must not be granted to single household development that is not connected to a sewage reticulation system unless the consent authority is also satisfied that the development complies with the relevant guidelines.

Comment:
N/A - No on-site domestic sewerage systems is proposed. Conditions will be imposed to ensure the development is connected to Sydney water sewerage system.

6.21 Stormwater management

(1) This section applies to development for the purposes of works, including water recycling facilities, water reticulation systems and water storage facilities, that are designed to collect, channel, store, treat or disperse stormwater runoff.

(2) Development to which this section applies may be carried out on land in a regulated catchment—

(a) by or on behalf of a public authority—without development consent, or

(b) otherwise—with development consent.

(3) Despite subsection (2), development to which this section applies is prohibited on land in a regulated catchment if the works will cause untreated stormwater to be disposed of into a natural waterbody.

Comment:
The proposal and associated stormwater management has been reviewed by Council's Coastal Officer, Riparian Lands Officer, Water Management, and Development Engineer who have raised no objection (subject to conditons).

6.22 Waste or resource management facilities

(2) Development consent must not be granted to development for the purposes of waste or resource management facilities on land in a regulated catchment unless the consent authority is satisfied of the following—
(a) an adequate site management plan has been prepared in relation to the development,
(b) the development includes adequate leachate surface controls,
(c) the final landform of the development on the site will be stable in the long term.

Comment:
N/A

Part 6.3 Foreshores and Waterways Area

Division 1 Preliminary

6.25 Consent authority

(1) The Minister administering the Ports and Maritime Administration Act 1995 is the consent authority for the following development—
(a) development comprising the subdivision of land owned by TfNSW in or abutting the Foreshores and Waterways Area,
(b) development carried out in the Foreshores and Waterways Area wholly below the mean high water mark,
(c) development carried out in the Foreshores and Waterways Area for one or more of the following purposes, including development carried out wholly or partly inside a local government area—
Above-water boat lifts; Advertisements; Advertising structures; Aids to navigation; Aviation facilities; Boat lifts; Charter and tourism boating facilities; Commercial port facilities; Dredging; Floating boat platforms; Flora and fauna enclosures; Houseboats; Maintenance dredging; Mooring pens; Private landing facilities; Private landing steps; Private marinas; Private swimming enclosures; Public boardwalks; Public water transport facilities; Single moorings; Skids; Slipways

(2) Despite subsection (1), the Minister administering the Environmental Planning and Assessment Act 1979 is the consent authority for the following development carried out in the Foreshores and Waterways Area—
(a) development carried out partly above and partly below the mean high water mark,
(b) development carried out below the mean high water mark for the purposes of one or more of the following—
Boat building and repair facilities; Boat launching ramps; Boat sheds; Marinas; Reclamation works; Swimming pools; Water-based restaurants and entertainment facilities; Waterfront access stairs; Water recreation structures; Wharf or boating facilities that are sea walls
(c) development carried out wholly or partly inside the zoned waterway, including development carried out below the mean high water mark, for the purposes of one or more of the following—
Car parks; Commercial premises; Recreational or club facilities; Residential accommodation; Restaurants or cafes; Retail premises; Tourist facilities
(3) Subsections (1) and (2) do not apply if another environmental planning instrument specifies a different public authority, other than the council, as the consent authority for the development.

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

Division 3 Development in Foreshores and Waterways Area

6.28 General

(1) In deciding whether to grant development consent to development in the Foreshores and Waterways Area, the consent authority must consider the following—
(a) whether the development is consistent with the following principles—
(i) Sydney Harbour is a public resource, owned by the public, to be protected for the public good,
(ii) the public good has precedence over the private good,
(iii) the protection of the natural assets of Sydney Harbour has precedence over all other interests,
(b) whether the development will promote the equitable use of the Foreshores and Waterways Area, including use by passive recreation craft,
(c) whether the development will have an adverse impact on the Foreshores and Waterways Area, including on commercial and recreational uses of the Foreshores and Waterways Area,
(d) whether the development promotes water-dependent land uses over other land uses,
(e) whether the development will minimise risk to the development from rising sea levels or changing flood patterns as a result of climate change,
(f) whether the development will protect or reinstate natural intertidal foreshore areas, natural landforms and native vegetation,
(g) whether the development protects or enhances terrestrial and aquatic species, populations and ecological communities, including by avoiding physical damage to or shading of aquatic vegetation,
(h) whether the development will protect, maintain or rehabilitate watercourses, wetlands, riparian lands, remnant vegetation and ecological connectivity.
(2) Development consent must not be granted to development in the Foreshores and Waterways Area unless the consent authority is satisfied of the following—
(a) having regard to both current and future demand, the character and functions of a working harbour will be retained on foreshore sites,
(b) if the development site adjoins land used for industrial or commercial maritime purposes—the development will be compatible with the use of the adjoining land,
(c) if the development is for or in relation to industrial or commercial maritime purposes—public access that does not interfere with the purposes will be provided and maintained to and along the foreshore,
(d) if the development site is on the foreshore—excessive traffic congestion will be minimised in the zoned waterway and along the foreshore,
(e) the unique visual qualities of the Foreshores and Waterways Area and its islands, foreshores and tributaries will be enhanced, protected or maintained, including views and vistas to and from—
(i) the Foreshores and Waterways Area, and
(ii) public places, landmarks and heritage items.

Comment:
The proposal has been reviewed by Council's Coastal Officer, Riparian Lands Officer, Water Management, Development Engineer, Bushland & Biodiversity Officer, Parks and Reserves Officer and Hertage Officer who have raised no objection to the works and their impacts to the adjoining foreshore and waterway (subject to conditions).

The proposal will be generally consistent with surrounding residential development and that already approved onsite within (DA2020/1585). The development will be separated by the foreshore by wide foreshore reserve which will assist to mitigate the visual impact of the proposal from the waterway and earthy colours and materials (stone and timber tone cladding) will be utilsied. Conditions of consent recommended will ensure the proposal is consistent with the established low density residential area and will not have an unreasonable impact on the Sydney harbour catchment area.

6.29 Areas of outstanding biodiversity value

(2) Development consent must not be granted to development on land to which this section applies unless the consent authority is satisfied the development will not have a significant adverse impact on the land.

Comment:
The proposal has been reviewed by Council's Coastal Officer, Riparian Lands Officer, Water Management, Heritage Officer and Bushland & Biodiversity Officer who have raised no objection to the works and their impacts to the surrounding natural environment and biodiversity value.

6.30 National parks

(1) Development consent must not be granted to development in the Foreshores and Waterways Area unless the consent authority is satisfied that the development—

(a) is not likely to affect land that is reserved under the National Parks and Wildlife Act 1974, and
(b) is consistent with the document entitled Developments adjacent to National Parks and Wildlife Service lands: Guidelines for consent and planning authorities, published by the Department in 2020.
(2) Despite any other provision of this Chapter, development on land in the Foreshores and Waterways Area is permitted without development consent if—
(a) the development site abuts land reserved under the National Parks and Wildlife Act 1974 (reserved land), and
(b) the development spans the mean high water mark and is part of other development being carried out on the reserved land, and
(c) the development is for a purpose for which development is authorised to be carried out under the National Parks and Wildlife Act 1974.

Comment:
N/A - the site does not adjoin a National Park

6.31 Dredging

(2) Development consent must not be granted to development for the purposes of dredging or maintenance dredging in the Foreshores and Waterways Area unless the consent authority has considered—
(a) the adequacy of an acid sulfate soils management plan prepared for the development in accordance with the Acid Sulfate Soils Assessment Guidelines, and
(b) the likelihood of the development resulting in the discharge of acid water.

Comment:
N/A

6.32 Rocky foreshores and significant seagrasses

(3) Development consent must not be granted to development on land to which this section applies unless the consent authority is satisfied the development—
(a) will preserve and enhance the health and integrity of seagrasses, areas containing seagrasses and ecological communities in rocky foreshore areas, and
(b) will maintain or increase the connectivity of seagrass vegetation and natural landforms, and
(c) will prevent, or will not contribute to, the fragmentation of aquatic ecology, and
(d) will not cause physical damage to aquatic ecology.

Comment:
The proposal has been reviewed by Council's Coastal Officer, Riparian Lands Officer, Water Management, Heritage Officer and Bushland & Biodiversity Officer who have raised no objection to the works and their impacts to the surrounding natural environment. The site is separated from the waterfront by approximately 50m by Castle Circuit Reserve

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

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

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

Comment:
The application has been reviewed by Council's Coastal Engineer and Development Engineer who are satisfied that the development is not likely to cause increased risk of coastal hazards on other land subject to conditions.

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 (zoned residential with no previous uses) 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	12.1m (Ridge RL46.720)	42.4%	**No**
Floor Space Ratio	FSR: 0.4:1 (250.72sqm) *	0.519:1 (325.5sqm)	29.8%	**No**

***Note on FSR:**
Under Clause 4.1.3.1 of the Manly DCP 2013, exceptions to FSR for undersized lots are provided. In this case, the subject site is in Area 'U' for subzones on the LEP lot size map. The clause provides that calculation for FSR on this 'undersized lot' can be base on '750sqm lot size/site area'. This would permit up to 300sqm of Gross Floor Area.

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

1.9A Suspension of covenants, agreements and instruments

The subject site is burdened by an easement of support, for the Castle Circuit roadway.

The proposed works are partially located within this easement for support. The application and supporting Geotechcnical Assessment Report has been reviewed by Council's Development Engineer who has raised no objections subject to conditions. The application is also supported by a Structural Sufficiency Certificate prepared by Cantilever Consulting Engineers Pty Ltd which certify that:
"The structure will be designed such that the suspended driveway and pedestrian walkway/ stairway will be independent of the dwelling and will not impact existing road infrastructure, and that excavation and retaining works will be designed and sequenced to avoid impact on neighbouring properties, including the road reserve, without the need for permanent soil anchors or rock bolts."

In order to ensure that there are no adverse impacts on the adjoining road reserve, conditions have been imposed which:

- Ensure structural adequacy of landfill and excavation work;
- Require dilapidation reports for adjoining proprieties and Council's Road Reserve;
- Ensure the adherence of a Waste Management Plan;
- Ensure the recommendations of the Geotechnical report is adhered to;
- Require the submission of a Roads Act Application which includes specific design information including the certification from a NER or RPENG registered geotechnical and structural engineer
- Require certification that the development will not impact the easement for support.

4.3 Height of buildings

Clause 4.3 (2) stipulates that 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 subject site is located within Area 'I' of the Height of Buildings Map which has a maximum height of 8.5m.

The height of the proposed development has been measured at maximum height of 12.1m from existing ground level. This represents a variation of 42.4%. The non-compliance is demonstrated on the figures below.

It should be noted that the subject site is extremely steep with a average gradient of approximately 59% or 31 degrees.

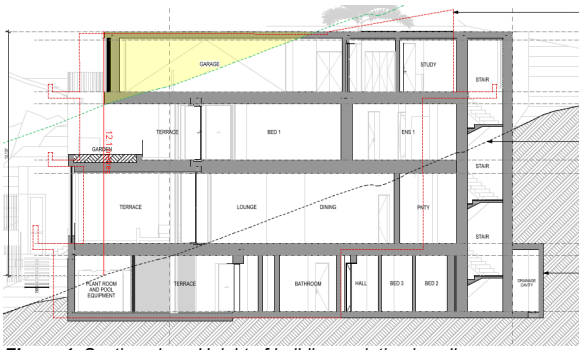


***Figure 1**: Section plan - Height of building variation in yellow*

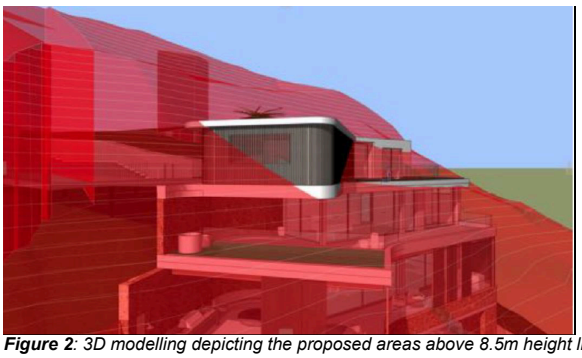


***Figure 2**: 3D modelling depicting the proposed areas above 8.5m height limit (as viewed from the north)*

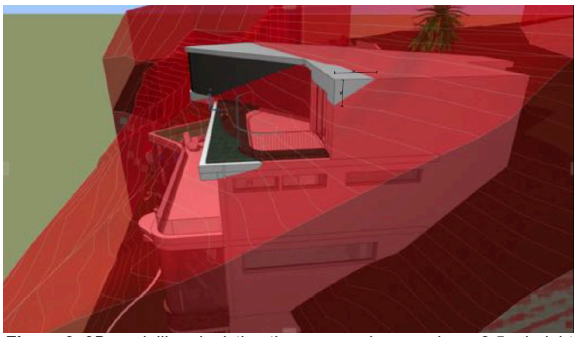


***Figure 3**: 3D modelling depicting the proposed areas above 8.5m height limit (as viewed from the south)*

4.4 Floor space ratio

Clause 4.4 (2) stipulates that 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. The subject site is located within Area 'B' of the Floor Space Ratio Map which has a maximum permitted FSR of 0.4:1

The proposed development provides a floor space ratio of 0.519:1 (325.5sqm) presenting a variation of 29.8% to the required floor space ratio of 0.4:1.

It should be noted that, under Clause 4.1.3.1 of the Manly DCP 2013, exceptions to FSR for undersized lots are provided. In this case, the subject site is in Area 'U' for subzones on the LEP lot size map. The clause provides that calculation for FSR on this 'undersized lot' can be base on '750sqm lot size/site area'. This would permit up to 300sqm of Gross Floor Area. When based on this 300sqm variation, the proposal would represent an variation of 25.5sqm or 8.5% .

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Clause 4.3 – Height of Buildings Clause 4.4 - Floor Space Ratio

Requirement:	8.5m (HOB) 0.4:1 (FSR)
Proposed:	12.1m (HOB) 0.519:1 (FSR)
Percentage variation to requirement:	42.4% (HOB) 29.8% (FSR)

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 – Height of Buildings and Clause 4.4 - Floor space ratio development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61,* and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

Clause 4.6 Exceptions to development standards:

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

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

Comment:
Clause 4.3 – Height of Buildings and Clause 4.4 - Floor space ratio development standard is not expressly excluded from the operation of this clause.

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

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

1. Clause 4.3 – Height of Buildings

The applicants written request argues, in part:

- *The steeply sloping nature of the site is considered to be the primary environmental ground. The 3D height plane diagrams confirm that it is the extreme dips in the existing ground level which cause the greatest extent of height variation*
- *The generous separation distance between the proposed development and the neighbouring dwelling to the south, plus significant separation to the dwellings across Castle Circuit, along with deep soil planting further mitigates potential visual and acoustic privacy impacts from the additional height.*
- *The proposal has been designed to reduce bulk and scale, with the single-storey presentation to the street frontage is compatible and subservient with surrounding properties opposite on Castle Circuit, with the additional height being not visually dominant in the streetscape.*
- *The proposed height variation is not considered to be responsible for any unreasonable bulk or scale impacts, noting that a significant proportion of the building is excavated into the hillside, whilst the stepped built form of the dwelling is compatible with the sloping nature of the topography and surrounding properties.*
- *The proposed development is of a bulk and scale that contextually sits well within the public domain and is accommodated by the site conditions. In this regard, the proposed single-storey height presentation to the street, building separation, plus the orientation of lots and surrounding topography, in addition to the proposed flat roof form ensures that outlook is maintained for adjoining properties and the public domain.*
- *The proposed height variation will not be perceptible from the harbour to the west as the built form will be viewed against the steep hillside backdrop which includes more prominent dwellings above.*
- *The height variation maintains a high level of internal amenity as demonstrated by compliance with the key amenity criteria including outperformance of the deep soil landscaping (46.18%) and total open space, and above ground open space. The proposed 289.47m2 of deep soil area allow for a sympathetic landscape planting which integrates with the adjacent C2 zone, whilst softening the visual bulk appearance of the development.*
- *The height variation is well integrated with the architectural design and contributes to a high-quality dwelling house which reinforces the desired streetscape character in the locality.*

Planner comments
Council's Planning Assessment Officer generally concurs with the applicant's justification. The height breach relates to a portion of the dwelling the land falls away steeply. The vast majority of the proposed dwelling will be under the 8.5m requirement. It is also agreed that the slope and usual configuration of the land, means that the location and design of the dwelling and garage is not unreasonable in this instance. Furthermore, it is agreed, that the area of greatest height variation is suitably setback from adjoining residential properties. The development will appear as single storey as viewed from the street, due to the steep cross fall of the site away from the frontage. The slope of the site means that the dwelling would be below average eye level when viewed from the street and would appear "human scale". Furthermore, this section of Castle Circuit has a 15m wide, landscaped road reserve which will soften the built from as viewed from the street. When viewed from the adjoining property to the south and reserve and Harbour to the west, the proposed development is well articulated and modulated such that the visual dominance of the built form is broken up as a result. The dwelling is well setback from the southern and western boundary and incorporates landscaping to minimise bulk. Additionally, the densely landscaped reserve will assist it mitigating the bulk and scale as viewed from the water. It is also agreed that the height breach will not have any unreasonable amenity impact to surrounding properties as a result of the height non-compliance.

2. Clause 4.4 - Floor Space Ratio

The applicants written request argues, in part:

- *In accordance with Section 4.1.3.1 of the Manly DCP 2013, exceptions to FSR may be considered for undersized lots. In this regard, the calculation of FSR for the subject site within the subzone "U" on the LEP Minimum Lot Size Map is based on a 750m2 lot size, and consequently allows for a maximum GFA of 300m. In this regard, the proposed FSR of 0.43:1 (323.33sqm) is a minor 23.33m2 variation from the DCP control.*
- *Notwithstanding the numeric departure, the proposed dwelling house will have a height, bulk and scale compatible with the scale of the existing built form (that has been approved and on neighbouring sites) and that of the broader surrounding local area. Furthermore, the*

FSR non-compliance will not have an adverse impact to surrounding properties, the streetscape or adjoining Environmental Conservation zoned land.

- *The proposed FSR variation is not considered to be responsible for any unreasonable bulk or scale impacts, noting that a significant proportion of the building is excavated into the hillside, whilst the stepped built form of the dwelling is compatible with the sloping nature of the topography of the site and surrounding properties. When viewed from the waterways, the dwelling will be viewed against the backdrop of dwellings higher up-slope and therefore, the FSR variation will not generate a built form that is prominent nor out of character with the established pattern of development in this foreshore location. The above-ground FSR is well below the FSR standard as a considerable extent of the FSR is below existing ground level.*
- *The FSR variation maintains a high level of internal amenity as demonstrated by compliance with the key amenity criteria including outperformance of the deep soil landscaped area and total open space, plus above ground open space. The proposed 289.47m2 of deep soil area allow for a sympathetic landscape planting which integrates with the adjacent C2 zone, whilst softening the visual bulk appearance of the development.*
- *The bulk and scale of the proposed dwelling house sits comfortably in its context presenting a single storey to the street frontage. The single-storey presentation allows for retention of water views and is compatible with the sensitive nature of the locality. Notably, the proposed bulk and scale of the development is consistent with the existing and desired streetscape character.*
- *The proposed additional FSR can be suitably accommodated on the subject site without generating any adverse or unreasonable impacts on the adjoining residences and public domain.*
- *The additional FSR beyond the standard is not responsible for any greater shadow, privacy or view impacts beyond that of a dwelling with a compliant FSR.*
- *It is noted that the variation is only 23sqm beyond the 0.4:1 permitted and that such area is almost equivalent to the 3rd car space/circulation (24.38sqm) beyond the double garage area of 6m x 6m/36sqm exclusion from GFA..If the additional car space is considered to be allocated as the additional GFA, such GFA is a positive outcome for the site as it provides for an additional car space for the site which is detached from the street frontage. The high-quality presentation of the garage.*
- *The additional FSR beyond the approved dwelling on the site is only 23sqm greater. Notwithstanding, the proposed overall bulk and scale is subservient to that approved as noted by the outline of the approved dwelling on the section diagrams above. In this regard, the approved dwelling extended beyond the footprint of the proposed dwelling. Given that the proposed dwelling is more articulated and includes above-ground landscaping, the proposed FSR variation is considered to be indiscernible when compared with the approved dwelling.*

Planner comments

Council's Planning Assessment Officer generally concurs with the applicant's justification. The FSR breach would represent a minor variation from the DCP control for undersized lots. The bulk, scale and form of the development will be generally consistent with the approved development on the site (DA2020/1585). The proposal reflects the established built form of newer dwellings in the vicinity where multi-level, variably stepped houses are prevalent. The development will appear as single storey as viewed from the street, due to the steep cross fall of the site away from the frontage. The slope of the site means that the dwelling would be below average eye level when viewed from the street. Furthermore, this section of Castle Circuit has a 15m wide, landscaped road reserve which will soften the built form as viewed from the street. When viewed from the adjoining property to the south and reserve and Harbour to the west, the proposed development is well articulated and modulated such that the visual dominance of the built form is broken up as a result. The dwelling is well setback from the southern and western boundary and incorporates landscaping to minimise bulk. Additionally, the densely landscaped reserve will assist it mitigating the bulk and scale as viewed from the water. It is also agreed that the FSR breach will not have any unreasonable amenity impact to surrounding properties as a result of the FSR non-compliance.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Building and Floor Space Ratio development standards and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

Clause 4.3 – Height of Buildings

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

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

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

Comment:
The proposed building height and roof form are consistent with the topography and prevailing building heights, approved development on the site (DA2020/1585) and streetscape character. The vast majority of the proposed dwelling will be under the 8.5m requirement and the areas of height non-compliance predominately relate to centrally sited sections of the building as the land falls away steeply. The roof form will be generally consistent with surrounding, more modern development in the vicinity, and will have a flat, low profile as viewed from the street. The development will appear as single storey as viewed from the street, due to the steep cross fall of the site away from the frontage. The slope of the site means that the dwelling would be below average eye level when viewed from the street and would appear "human scale". Furthermore, this section of Castle Circuit has a 15m wide, landscaped road reserve which will soften the built from as viewed from the street. The dwelling is appropriately articulated using recessed and modulated walls, fenestration, balconies, eaves, planters and changes in materials to break up built form. Furthermore, the development incorporates a terraced style design that steps down with the slope of the land, which provides further visual relief.

b) to control the bulk and scale of buildings,

Comment:
As above, the development will appear as single storey as viewed from the street, due to the steep cross fall of the site away from the frontage. The slope of the site means that the dwelling would be below average eye level when viewed from the street. Furthermore, this section of Castle Circuit has a 15m wide, landscaped road reserve which will soften the built from as viewed from the street.

When viewed from the adjoining property to the south and reserve and Harbour to the west, the proposed development is well articulated and modulated such that the visual dominance of the built form is broken up as a result. The dwelling is well setback from the southern and western boundary and incorporates landscaping to minimise bulk. Additionally, the densely landscaped reserve will assist it mitigating the bulk and scale as viewed from the water.

As above, the dwelling is appropriately articulated using recessed and modulated walls, fenestration, balconies, eaves, planters and changes in materials to break up built form. Furthermore, the development incorporates a terraced style design that steps down with the slope of the land, which provides further visual relief. The proposal will also maintain sufficient open space landscape treatment, which in turn will contribute to the softening and screening of the development.

It is also of note that the bulk, scale and form of the development will be generally consistent with the approved development on the site (DA2020/1585) and will have a lower overall ridge height of this approved development

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

Comment:
The proposed breaches will not unreasonably impact views to, from or between nearby residential development and public spaces, including the harbour and foreshores. A detailed assessment of the view loss impacts of the development is completed under 3.4.3 of this report.

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

Comment:
The proposal will not cause excessive overshadowing of adjoining properties or the public domain. A further assessment overshadowing impacts is completed under 3.4.1 of this report.

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

Comment:
Not applicable, as the subject site is zoned R2 Low Density Residential.

Nevertheless, the variation in height control occurs as a result of the siting of the dwelling in conjunction with the steep sloping topography of the site. The proposal reflects the established built form of newer dwellings in the vicinity where multi-level, variably stepped houses are prevalent, due to the steep topography of the land. The development incorporates a terraced style design that steps down with the slope of the land. The proposal has also been assessed by Council's Bushland and Biodiversity; Development Engineer; Landscape Officer; Parks and Reserves Officer; Water Management Officer and Coast & Catchment Officer who have raised no objection to the proposal in relation to the natural environment and interface with the adjoining reserve, subject to recommended conditions. The design of the proposal is suitable in that it maintains the character of the area and consistency with surrounding development and approved built form on the site

Clause 4.4 - Floor Space Ratio

The underlying objectives of the standard, pursuant to Clause 4.4 – 'Floor space ratio' of the MLEP 2013 are:

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

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

Comment:
The development will appear as single storey as viewed from the street, due to the steep cross fall of the site away from the frontage. The slope of the site means that the dwelling would be below average eye level when viewed from the street and would appear "human scale". Furthermore, this section of Castle Circuit has a 15m wide, landscaped road reserve which will soften the built from as viewed from the street. It is also of note that the bulk, scale and form of the development will be generally consistent with the approved development on the site (DA2020/1585) and will have a lower overall ridge height of this approved development. As such the bulk and scale of development is consistent with the existing and desired streetscape character.

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

Comment:
The development does not obscure any important townscape or landscape features.

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

Comment:
The development will appear as single storey as viewed from the street, due to the steep cross fall of the site away from the frontage. The slope of the site means that the dwelling would be below average eye level when viewed from the street. Furthermore, this section of Castle Circuit has a 15m wide, landscaped road reserve which will soften the built from as viewed from the street.

When viewed from the adjoining property to the south and reserve and Harbour to the west, the proposed development is well articulated and modulated such that the visual dominance of the built form is broken up as a result. The dwelling is well setback from the southern and western boundary and incorporates landscaping to minimise bulk. Additionally, the densely landscaped reserve will assist it mitigating the bulk and scale as viewed from the water.

The dwelling is appropriately articulated using recessed and modulated walls, fenestration, balconies, eaves, planters and changes in materials to break up built form. Furthermore, the development incorporates a terraced style design that steps down with the slope of the land, which provides further visual relief. The proposal will also maintain sufficient open space landscape treatment, which in turn will contribute to the softening and screening of the development.

It is also of note that the bulk, scale and form of the development will be generally consistent with the approved development on the site (DA2020/1585).

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

Comment:
Despite its variation of the floor space ratio development standard, the proposed development does not unreasonably impact upon the use or enjoyment of adjoining land or the public domain, as detailed throughout the assessment in this report.

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

Comment:
The subject site is not within a business zone.

Zone objectives

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

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

  Comment:
  The proposal provides a single dwelling house with a density, scale and pattern of surrounding development.

  It is considered that the development satisfies this objective.

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

  Comment:
  The proposal involves a residential land use which is appropriate for the zone.

  It is considered that the development satisfies this objective.

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

It is considered on balance, that having regard to the particular circumstances the proposed departure from the Height of buildings and Floor Space Ratio development standards are acceptable and it is reasonable that flexibility to the standard be applied.

Exception to Development Standards conclusion

The submitted written Clause 4.6 variation requests are considered to be well founded having regard to the circumstances of the development is considered appropriate that flexibility in the application of the development standard Clause 4.3 – 'Height of buildings' and Clause 4.4 – 'Floor space ratio' be applied. In this context the proposal meets the Objects of the Environmental Planning and Assessment Act 1979, contained in Section 1.3, having considered the relevant provisions under s.4.15 of the Act. Consequently, the development is considered to be in the public interest, subject to conditions.

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

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

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

6.2 Earthworks

The objectives of Clause 6.2 - 'Earthworks' require development:

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

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

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

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

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

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

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

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

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

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

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

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

(f) the likelihood of disturbing relics

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

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

Comment: The proposal has been reviewed by Council's Coastal Officer, Riparian Lands Officer, Development Engineer and Bushland & Biodiversity Officer who have raised no objection to the works and its impact to the surrounding natural environment.

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

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

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

6.4 Stormwater management

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

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

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

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

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

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

Comment: The proposal has been assessed by Council's Development Engineers, Coastal Officer, Water Management and Riparian Officer, Biodiversity Officer and Parks and Reserves Officer who have raised no objections to approval, subject to conditions. In this regard, Council is satisfied that the development will minimise any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters.

6.5 Terrestrial biodiversity

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

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

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

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

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

Comment:
The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. The application is also supported by a Flora & Fauna Assessment Report which concludes that "*The proposal will not have a significant impact to terrestrial biodiversity and meets the requirement of clause 6.5 of the MLEP 2013."*

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.

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

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

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

6.8 Landslide risk

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

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

In this regard, before determining a development application for development on land to which this clause applies, the consent authority must consider the following matters to decide whether or not the development takes into account the risk of landslide—

(a) site layout, including access,
(b) the development's design and construction methods,
(c) the amount of cut and fill that will be required for the development,
(d) waste water management, stormwater and drainage across the land,
(e) the geotechnical constraints of the site,

(f) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.
Comment:
The proposed development is supported by a geotechnical risk assessment that demonstrate all geotechnical risks have been taken into account. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

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

(a) the development is designed, sited and will be managed to avoid any landslide risk or significant adverse impact on the development and the land surrounding the development, or
(b) if that risk or impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that risk or impact, or
*(c) if that risk or impact cannot be minimised—the development will be managed to mitigate that risk or impac*t.
Comment:
The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent. As such, Council can be satisfied that the proposed development has been designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development.

6.9 Foreshore scenic protection area

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

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

Comment:

- The scale of development is generally commensurate with surrounding development along the foreshore area near the site.
- The site is separated from the waterfront by approximately 50m by Castle Circuit Reserve which contains dense landscaping which will assist to mitigate the built form as viewed from the waterway.
- The proposal will not unreasonably overshadow the foreshore
- The proposal does not result in unreasonable view loss from a public place to the foreshore. Existing views to the foreshore from the street are limited due to existing vegetation. As detailed within *Cl3.4.3 Maintenance of Views* of this report, no unreasonable view loss from private property is expected to arise as a result of the proposal.
- The bulk and scale of development is responsive to the contemporary design of the building and consistent within the visual catchment of the site and the previously approved development on the site (DA2020/1585 - not yet constructed)
- The proposed dwelling maintains a residential outlook toward the bushland reserve and the overall height of the building, use of materials and colours is consistent with existing development along the foreshore and will not result in an unreasonable visual impact when viewed from public places along the foreshore or the harbour.
- The proposal will include tree removal and modification of the site to facilitate the development and bushfire protection requirements. However, the site is zoned R2 low density residential and is currently vacant. As discussed within the landscape referral response, a large number of trees to be removed are exempt or dead trees and other trees would are in locations that would unreasonably limit development potential (particularly due to bush fire requirements). The application is accompanied by an Aboricultural Impact Assessment and Flora & Fauna Assessment Report to address the proposed tree removal and impact on biodiversity. Each report has been reviewed by Council's Landscape Officer and Biodiversity Team, with each referral team satisfied the proposal will not have an unacceptable impact, subject to conditions and adherence to each report as required by the recommended conditions of consent and replacement planting.
- The development complies with the required quantum of landscaped open space and application is supported by a landscape plans which retains suitable areas of deep soil planting to accommodate new planting. The landscape plan has been supported by Council's Landscape Officer and Bushland and Biodiversity Officer.
- The proposal does not result in conflict between land-based and water-based coastal activities.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 626.8sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 1150sqm of site area	1 dwelling	N/A	Yes
	Dwelling Size: Minimum 117sqm (incl. additional rooms)	>117sqm	N/A	Yes
4.1.2.1 Wall Height	North Elevation: 8.0m (based on site gradient >1:4)	10.5m (Max)	31% (Max)	**No**
	South Elevation (based on site gradient >1:4): 8.0m	9m (Max)	12.5% (Max)	**No**
	West Elevation: (based on site gradient >1:4): 8.0m	10.2m (Max)	27.5% (Max)	**No**

4.1.2.2 Number of Storeys	2	3 (excluding basement level)	50%	**No**
4.1.2.3 Roof Height	Height: 2.5m	Flat roof	N/A	Yes
	Parapet Height: 0.6m	N/A	N/A	Yes
	Pitch: maximum 35 degrees	Flat roof	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	<u>Level 1</u> 0.4m - Lift 0.9 - Drainage 3m - Plant/storage room 1.5m - 5.7m - dwelling <u>Level 2</u> Nil - Pool deck and terrace 0.4m - Lift 2m - Pool 1m -3.3m - Dwelling <u>Level 3</u> Nil -Balcony 0.4m - Lift 1m - Drainage cavity 2.8m - 6.9m - Dwelling <u>Level 4</u> Nil - Roof 0.4m - Lift 0.9m - Garage	100% (Max)	**No**
4.1.4.2 Side Setbacks and Secondary Street Frontages	<u>South</u> 3m <u>East</u> 1.5m	<u>South</u> 4.6m <u>East</u> 0.4m (Lift) 2.9m (dwelling)	 73.4% (Max)	Yes **No**
	Windows: 3m	>3m	N/A	Yes
4.1.4.4 Rear Setbacks 4.1.4.6 Setback for development adjacent to LEP Zones C2	8m (West*) * Given the unusual lot configuration the western -most boundary presents as a rear boundary rather than a side boundary in this instance, particularly in the context of surrounding properties. Rear setbacks must relate to the prevailing pattern of setbacks in the immediate vicinity Clause 4.1.4.6 requires a 6m Setback for development adjacent to LEP Zones C2	<u>Level 1</u> 2.3m - 8.9m: Terrace 4m - 11.5m: Plant/storage room <u>Level 2</u> 0.9m Pool deck 2,5m - 5.6m: Pool 4.2m - 7m: Terrace <u>Level 3</u> 4.1m: Roof garden 6.8m: Balcony 10m: Dwelling <u>Level 4</u> 7.5m (Garage)	88.8% (Max)	**No**
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area (376sqm)	78.3% (491sqm)	N/A	Yes
	Open space above ground 25% of total open space (123sqm)	31% (154sqm)		
			25%	**No**

4.1.5.2 Landscaped Area	Landscaped area 40% of open space (196sqm)	49.2% (241.5sqm)	N/A	Yes
	3 native trees	>3 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	9m	45%	**No**
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground (RL35.630)	4m	N/A	**No**
	1m curtilage/1.5m water side/rear setback	2.5m	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	3 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)	No	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	No	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 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)	No	Yes
4.1.8 Development on Sloping Sites	No	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.4.5 Earthworks (Excavation and Filling)	No	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	No	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

Control 3.1.1.4 states that garages, carports and hardstand areas must be designed and sited in a manner that does not dominate the street frontage by being compatible with the streetscape and the location in relation to front setback criteria.

The proposed garage would be within the front setback and therefore does not comply with the requirements of the control. The breach of the control can be considered acceptable on merit for the following reasons:

- The location of this garage is a result of the site's topography, site constraints and access gradients that limit the siting opportunities of such structure.
- The development will appear as single storey as viewed from the street, due to the steep cross fall of the site away from the frontage. The slope of the site means that the garage would be below average eye level when viewed from the street and would appear "human scale".

- The garage has a flat roof and low profile to minimal visual impact from the street
- The ridge height of the garage (RL46.72) will be below the approved garage on the site (however not yet constructed), as approved within DA2020/1585. Furthermore, the location of the proposed garage will be generally consistent with the garage approved within DA2020/1585.
- Castle Circuit has examples of garages within the front setback, given the steep topography of the land. This is a common arrangement in the Manly area for properties on steep foreshore locations below road level to have garages at the top level of the house
- This section of Castle Circuit has a 15m wide, landscaped road reserve which will soften the built form as viewed from the street.

Accordingly, this assessment finds that the proposal is supported, in this particular circumstance

3.3.2 Preservation of Trees or Bushland Vegetation

The application is accompanied by an Aboricultural Impact Assessment and Flora & Fauna Assessment Report to address the proposed tree removal and impact on biodiversity. Each report has been reviewed by Council's Landscape Officer and Biodiversity Team, with each referral team satisfied the proposal will not have an unacceptable impact, subject to conditions and adherence to each report as required by the recommended conditions of consent. Refer to Council's Landscape Officer and NECC Bushland and Biodiversity division comments under the'Referral' section of this report for further discussion.

Subject to compliance with recommended tree planting conditions, the application is seen to meet the outcomes of this clause and is supported on merit.

3.4.1 Sunlight Access and Overshadowing

The submitted shadow diagrams demonstrate that the adjoining neighbour to the south (No. 58 Castle Circuit) will retain adequate solar to west facing living room windows and areas of private open space (balconies) from 12pm to 3pm on June 21st. The proposal will result in additional overshadowing to the northern elevation of No. 58 Castle Circuit in the morning hours, however, the primary living room windows and areas of private open space orient west to capture views of the Harbour. The overshadowing is also exacerbated by the steep topography of the land. The development has been suitably setback from the southern side boundary (by 4.7m) and western rear boundary to retain adequate solar access in the afternoon hours. It is also noted that no submission from No. 58 Castle Circuit has been received in relation to solar access.

Overall, the proposal is considered to be supportable on merit and equitable access to light will be retained.

3.4.2 Privacy and Security

Merit consideration:
The proposed development directly adjoins only one (1) property to the south (No.58 Castle Circuit). Privacy considerations to this property is discussed below:

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

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

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

Southern Elevation:

Windows
The proposed southern facing windows have been appropriately positioned and designed with high sils as to not result in unreasonable privacy impacts. Additionally, no objection in relation to privacy has been received.

Terrace/Balconies
The proposal seeks to construct a "Level 4" Terrace located off the study. The terrace would be 5.6m from the southern boundary. This terrace would be offset from the adjoining neighbours private open space and would be elevated well above the adjoining side facing windows. Additionally, a planter box is proposed on the southern elevation of this terrace, and screen planting will be facilitated along the southern side setback to mitagte from real and perceived downward overlooking. Additionally, the terrace will be located off a study which is not considered a high use room and no objection in relation to privacy has been received.

A "Level 3" elevated balcony is proposed on the western (rear) elevation located off the master bedroom. This balcony would be within 9m of adjoining southern neighbour's (No.58 Castle Circuit) private open space (balcony). As such, to ensure a reasonable level of visual privacy is maintained, a suitable condition has been included with this consent requiring the southern elevation of this balcony to be affixed with a screening device of louver screening with a maximum spacing of 20mm. The screening device must be to a height of 1.6m above the finished floor level.

Other terraces and balconies have been appropriately screened or offset as to not result in unreasonable privacy impacts.

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 will achieve this objective (subject to conditions) .

Objective 3) To encourage awareness of neighbourhood security.

Comment:
Existing levels of neighbourhood security are maintained.

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
One (1) submissions was received from the following property which included concerns regarding view loss:

- No. 51 Castle Circuit

A site inspection was conducted from this property and the photos taken from the inspections will be referenced in this assessment. Height poles were not considered necessary as a satisfactory amount of information was available to determine the extent of impact.

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
The views from No.51 Castle Circuit that are the concern are to the west and include views of Middle Harbour and land and water interface. This is demonstrated in the photos below.

***Photo 1**: Existing views from No.51 Castle Circuit (upper floor dining room)*

***Photo 2**: Existing views from No.51 Castle Circuit (upper floor terrace)*

***Photo 3:** Existing views from No.51 Castle Circuit (upper floor living room)*

***Photo 4**: Existing views from No.51 Castle Circuit (lower floor terrace)*

***Photo 5**: Existing views from No.51 Castle Circuit (lower floor bedroom)*

***Photo 6**: Existing views from No.51 Castle Circuit (upper floor terrace)*

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
Views are primarily obtained from the upper ground living room, dining room and kitchen and terraces located of these rooms. Views are also obtained from lower ground level bedrooms and terrace. The view which is of concern is obtained from both a sitting and standing position over the rear boundary. This can bee seen in the photos above.

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
No.51 Castle Circuit is elevated approximately 15m above the subject site. As such, and as seen in the photos above, the vast majority of expansive view corridors are expected to be retained over the proposed development. The proposed development may result in a small loss of filtered water views from certain vantage points, however, the overall view loss is expected to be negligible when considering the proportion of view lost in comparison to views retained. Furthermore, tree removal to facilitate the development is expected to increase view corridors of the

water.

In consideration of the proportion of view lost in comparison to views retained, the filtered nature views and that views from the primary upper floor living area is largely retained, the collective impact upon views obtained from No.51 Castle Circuit is therefore considered to be **negligible to minor**.

4. Reasonableness of the proposal that is causing the impact.

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

Comment
Overall, the view loss associated with the proposal is considered negligible to minor when put in context of the entirety of views obtained from adjoining properties and the location of existing vegetation. As such, the proposal is not considered to result in an unreasonable view loss. The built form noncompliance's associated with the proposal have been addressed within this report and are considered to meet the objectives of the control. The building height variation will not contribute to unreasonable view loss and a compliant building height is not anticipated to result in a significant retention of views.

Concern was raised by this nieghbour in relation to tree planting and potential view impacts. In consideration of the location of existing canopy trees within the existing view corridor (on the subject site, adjoining road reserve and neighboring sites); the relative elevation of No.No.51 Castle Circuit above the subject site, the replacement tree planting is supported and any associated view loss is considered reasonable in this instance.

3.9 Mechanical Plant Equipment

The proposed development includes multiple plant and storage rooms. Consideration has been given to the requirements of Clause 3.9.1 of MDCP 2013 in relation to the provision of plant rooms for low density residential development. Whilst the proposed plant room is larger than permitted under this control, it is considered to be of acceptable dimensions and details of the plant equipment have been shown on the plans.

The plant rooms has been excluded from the calculation of the gross floor area of the building for the calculation of the floor space ratio, consistent with the definition of 'gross floor area' within the Dictionary of MLEP 2013, which states that plant rooms are to be excluded.

A condition has been included to ensure that the plant and storage rooms are not used for habitable purposes.

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

Description of non-compliance

Clause 4.1.2 stipulates that walls are not to exceed 8.0m (based on the slope of land).

The northern elevation has a maximum wall height of 10.5m which contravenes the 8.0m control by up to 24% (2.5m). It should be noted that this maximum variation is sited centrally on side and does not adjoin any residential land (it will adjoin a densely vegetated reserve).

The southern elevation has a maximum wall height of 9.0m which contravenes the 8.0m control by up to 11.2% (1m). It should be noted that this maximum variation is sited 4.7m from the southern side boundary and complies with the side setback control.

Furthermore, in accordance with Clause 4.1.2.2 of the MDCP, buildings are restricted to a maximum of two storeys. The proposed development would result in four levels. Given the steep sloping topography of the area it is not unusual for sites to have more than two storeys. The lowest level of the dwelling is classified a basement according to the MLEP and is therefore not counted as a storey, as such the dwelling is only technically 3 storeys.

Merit consideration

Clause 4.1.2 Height of Buildings of the MDCP 2013 relies on the objectives of Clause 4.3 Height of Buildings of MLEP 2013. With regard to the consideration for a variation, the development is considered against the relevant objectives of Clause 4.3 as follows:

- *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 building height and roof form are consistent with the topography and prevailing building heights, approved development on the site (DA2020/1585) and streetscape character. The vast majority of the proposed dwelling will be under the 8.5m requirement and the areas of height and wall non-compliance predominately relate to centrally sited sections of the building as the land falls away steeply. The roof form will be generally consistent with surrounding, more modern development in the vicinity, and will have a flat, low profile as viewed from the street. The development will appear as single storey as viewed from the street, due to the steep cross fall of the site away from the frontage. The slope of the site means that the garage would be below average eye level when viewed from the street and would appear "human scale". Furthermore, this section of Castle Circuit has a 15m wide, landscaped road reserve which will soften the built from as viewed from the street. The dwelling is appropriately articulated using recessed and modulated walls, fenestration, balconies, eaves, planters and changes in materials to break up built form. Furthermore, the development incorporates a terraced style design that steps down with the slope of the land, which provides further visual relief.

- *To control the bulk and scale of buildings.*

  Comment:
  As above, the development will appear as single storey as viewed from the street, due to the steep cross fall of the site away from the frontage. The slope of the site means that the garage would be below average eye level when viewed from the street. Furthermore, this section of Castle Circuit has a 15m wide, landscaped road reserve which will soften the built from as viewed from the street.

  When viewed from the adjoining property to the south and reserve and Harbour to the west, the proposed development is well articulated and modulated such that the visual dominance of the built form is broken up as a result. The dwelling is well setback from the southern and western boundary and incorporates landscaping to minimise bulk. Additionally, the densely landscaped reserve will assist it mitigating the bulk and scale as viewed form the water.

  As above, the dwelling is appropriately articulated using recessed and modulated walls, fenestration, balconies, eaves, planters and changes in materials to break up built form. Furthermore, the development incorporates a terraced style design that steps down with the slope of the land, which provides further visual relief. The proposal will also maintain sufficient open space landscape treatment, which in turn will contribute to the softening and screening of the development.

  It is also of note that the bulk, scale and form of the development will be generally consistent with the approved development on the site (DA2020/1585) and will have a lower overall ridge height of this approved development.

- *To minimise disruption to the following:*

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

  Comment:
  The proposed breaches will not unreasonably impact views to, from or between nearby residential development and public spaces, including the harbour and foreshores. A detailed assessment of the view loss impacts of the development is completed under 3.4.3 of this report.

- *To provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings.*

  Comment:
  The proposal will not cause excessive overshadowing of adjoining properties or the public domain. A further assessment overshadowing impacts is completed under 3.4.1 of this report.

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

  Comment:
  Not applicable, as the subject site is zoned R2 Low Density Residential.

  Nevertheless, the variation to the control occurs as a result of the siting of the dwelling in conjunction with the steep sloping topography of the site. The proposal reflects the established built form of newer dwellings in the vicinity where multi-level, variably stepped houses are prevalent, due to the steep topography of the land. The development incorporates a terraced style design that steps down with the slope of the land. The proposal has also been assessed by Council's Bushland and Biodiversity; Development Engineer; Landscape Officer; Parks and Reserves Officer; Water Management Officer and Coast & Catchment Officer who have raised no objection to the proposal in relation to the natural environment and interface with the adjoining reserve, subject to recommended conditions. The design of the proposal is suitable in that it maintains the character of the area and consistency with surrounding development and approved built form on the site.

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)

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 626.8sqm and has an FSR requirement of 0.4:1 (250.72sqm) under the MLEP 2013. The proposed FSR is 0.519:1 (325.5sqm), which represents a variation of 29.8% 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 8.5% (25.5sqm).

Notwithstanding, the proposal has been assessed against the requirements and objectives of Clause 4.6 of the MLEP 2013 within this report.

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

Description of Non-compliance

Front Setbacks
Clause 4.1.4.1 (Street Front setbacks) requires development to relate to the front building line of neighbouring properties and the prevailing building lines in the immediate vicinity or 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 has the following non-compliance front setbacks

Level 1
0.4m - Lift
0.9 - Drainage
3m - Plant/storage room
1.5m - 5.7m - dwelling

Level 2
Nil - Pool deck and terrace
0.4m - Lift
2m - Pool
1m -3.3m - Dwelling

Level 3
Nil -Balcony
0.4m - Lift
1m - Drainage cavity
2.8m - 6.9m - Dwelling

Level 4
Nil - Roof
0.4m - Lift
0.9m - Garage

As seen in figure 1 below, the site has an irregular shape, with large front boundary. The shape of the site, combined with the extremely steep topography, restricts the developable area and compliance with the front and rear boundary would leave an impracticable building envelope. It is of note that the section of Castle Circuit adjoining the site has a 15m wide, landscaped road reserve and the site sits well below street level. The non-compliance with the front setback seeks to maximise the buffer to the adjacent harbour reserve for bushfire protection. Furthermore, the front setback non-compliance will be generally consistent with the approved dwelling on the site (not yet constructed) as approved within DA2020/1585.

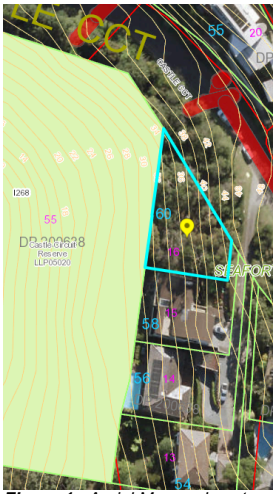


Figure 1 *- Aerial Map and contours of site and adjoining sites to the south.*

Side Setback
Clause 4.1.4.2 requires the side setback distance to be one third of the wall height. Given the topography of the site, this creates highly variable side setback requirements.

Given the unusual lot configuration the southern and eastern boundaries present as side boundary in this instance, particularly in the context of surrounding properties.

The development proposes the following side setbacks:

South:

- Dwelling: 4.6m - **Complies**
- Drainage cavity: 3.4m - **Complies**

East:

- Lift shaft: 0.4m - **Non-compliant with 0.9m requirement**
- Dwelling: 2.5m - 2.8m - **Complies**

Rear Setback / Setback for development adjacent to LEP Zone C2
Clause 4.1.4.6 of the DCP stipulates that distance between any part of a building and the rear boundary must not be less than 8m
Clause 4.1.4.6 of the DCP stipulates that buildings on sites with a common boundary to land zoned in the LEP as Zoned C2 Environmental Conservation must be set back at least 6m from this common boundary.

Given the unusual lot configuration the western-most boundary presents as a rear boundary rather than a side boundary in this instance, particularly in the context of adjoining properties which have development oriented (with rear setbacks) to the west to capture water views. The western-most boundary would also adjoin land zoned C2 Environmental Conservation (Castle Circuit Reserve)

The development proposes the following rear setbacks:

Level 1
2.3m - 8.9m: Terrace
4m - 11.5m: Plant/storage room

Level 2
0.9m Pool deck
2.5m - 5.6m: Pool
4.2m - 7m: Terrace

Level 3
4.1m: Roof garden
6.8m: Balcony
10m: Dwelling

Level 4
7.5m (Garage)

It is of note that the rear setback non-compliance will be generally consistent with the approved dwelling on the site (not yet constructed) as approved within DA2020/1585.

Merit Assessment

With regard to the consideration for a variation, the proposed 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:
As discussed in C*lause 3.1.1 Streetscape*, the development will appear as single storey as viewed from the street, due to the steep cross fall of the site away from the frontage. As seen in figure 2 below, given the steep topography of the land, the majority of the dwelling and pool will not be visible form the street. The slope of the site means that the dwelling would be below average eye level when viewed from the street and would appear "human scale". The dwelling has been designed with a flat roof and low profile to minimal visual impact from the street and the ridge height of the dwelling (RL46.72) will be below the approved dwelling on the site (however not yet constructed), as approved within DA2020/1585. Furthermore, this section of Castle Circuit has a 15m wide, landscaped road reserve which will soften the built form as viewed form the street and maintain the landscaped character of the street. Castle Circuit has examples of structures within the front setback, given the steep topography of the land.

Figure 2 *- Streetscape Perspective*

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 and at the street intersection.*

Comment:

The separation of the built form enables the development to satisfactorily respond to this objective as follows:

- As detailed within *Cl 3.4.2 Privacy* of this report, the proposed building windows and building design does not result in unreasonable privacy impacts (subject to condtions).
- As detailed within *Cl 3.4.1 Sunlight Access and Overshadowing* of this report, the proposal is considered to maintain equitable access to light.
- As detailed within *Cl3.4.3 Maintenance of Views* of this report, no unreasonable view loss is expected to arise as a result of the proposal.
- The proposed side and rear building lines predominately adhere to the established setbacks approved on the site and on surrounding properties.
- As above, the proposal would be consistent with the desired spatial proportions of the street and surrounding properties and it is not considered to unreasonably impact upon the streetscape. The development will appear as single storey as viewed from the street, due to the steep cross fall of the site away from the frontage.
- The proposed development would not impact upon traffic conditions

The development satisfies this objective.

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

Comment:
Flexibility is provided in this circumstance as the location of the new development will retain suitable separation from adjoining buildings and will not significantly detract from the amenity of adjoining properties. The development is constrained by the steep topography of the site and the proposed setback breaches are acceptable on merit.

Objective 4) To enhance and maintain natural features by:

- *accommodating planting, including deep soil zones, vegetation consolidated across the sites, native vegetation and native trees;*
- *ensuring 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; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Comment:
The proposal has also been assessed by Council's Bushland and Biodiversity; Landscape Officer and Parks and Reserves Officer who have raised no objection to the proposal in relation to the natural environment and interface with the adjoining reserve, subject to recommended conditions. The application is supported by a landscape plan which demonstrates the retention of deep soil planting buffer between the dwelling and Castle Circuit Reserve.

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

Comment:
The application is supported by a detailed bushfire assessment report and has been referred to NSW RFS for comment. The NSW RFS has responded confirming support of the proposal subject to conditions. Tree removal and clearing for bush fire asset protection zone has been reviewed by Council's Landscape Officer and NECC Bushland and Biodiversity division who have raised no objections, subject to conditions.

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

4.1.5 Open Space and Landscaping

The proposed development will comply with open space and landscaped area requirements, providing 78.3% (491sqm) of open space and 49.2% (241.5sqm) of landscaped area.

However, the proposal provides 31% (154sqm) of total open space above ground level, which exceeds the 25% maximum specified by Clause 4.1.5 of MDCP.

Given the steep topography of the land this is considered acceptable in this instance. Furthermore, subject to conditions, the elevated areas of open space will not result in unreasonable amenity impacts to the adjoining neighbour.

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

The proposed development includes a parking structure to the front boundary with a maximum width of 9 metres, where the control allows for up to 6.2 metres.

The underlying objectives of the control are addressed as follows:

- *Objective 1) To provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees).*
- *Objective 2) To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances.*

Comment:
The proposed development provides three car parking spaces on the site, in excess of the minimum two required by Schedule 3 Part A1 of the Manly DCP. The parking spaces fronting Castle Circuit are in an accessible location by the front boundary. This is sufficient in supporting the vehicular access needs of the occupants of the site. In this way, the proposed development does not result in reliance on street parking.

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

Comment:
The proposed development provides a driveway and parking structure in a similar location to that approved under DA2020/1585, to which this application relates. The structure provides for safe, efficient and convenient access on a site that is burdened by significant topographical constraints. The development will appear as single storey as viewed from the street, due to the steep cross fall of the site away from the frontage. The slope of the site means that the garage would be below average eye level when viewed from the street and would appear "human scale". The garage also has a flat roof and low profile to minimal visual impact from the street. Furthermore, this section of Castle Circuit has a 15m wide, landscaped road reserve which will soften the built from as viewed from the street.

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

Comment:
The proposed new garage does not rely on significant earthworks as it is located on the upper floor of the development.

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

Comment:
The proposed location and design of the driveway and parking space has been reviewed by Council's Development Engineer Officer who has raised no objection. The proposed development provides a driveway and parking structure in a similar location to that approved under DA2020/1585.

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

Comment:
As above, the development will appear as single storey as viewed from the street, due to the steep cross fall of the site away from the frontage

and this section of Castle Circuit has a 15m wide, landscaped road reserve which will soften the built from as viewed form the street.

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

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

4.1.8 Development on Sloping Sites

A geotechnical report has been submitted with the application, assessing the potential impact of the steep topography of the site and any excavation of the site. The development responds appropriately to the sloping site, stepping down at each level to reduce the visual bulk and scale of the development. The recommendations included as part of this report have been included as part of the final conditions of consent. It should be noted, that during the assessment of this application, amended plans were received which reduced the overall extent of excavation.

4.1.9 Swimming Pools, Spas and Water Features

Description of non-compliance

Clause 4.1.9 of the Manly DCP 2013 states that swimming pools cannot be located within the front setback. The proposed pool is located 2m from the front boundary (adjoining Castle Circuit). The proposed pool deck has a nil setback from the front boundary.

Clause 4.1.9.1 specifies that swimming pools are not to be elevated more than 1.0m above natural ground level. This clause specifies that exceptions to this requirement may be considered if the swimming pool does not detract from neighbouring amenity and is a minimum distance from any side boundary equivalent to the height of the pool above ground level. The proposed swimming pool has a maximum height of 4m above natural ground level and would be setback 2.5m - 5.6m from the western rear boundary

The proposal thereby contravenes the requirements of the Control.

Merit consideration:

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

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

Comment:
The proposed swimming pool is located on the northern side of the property and does not directly adjoin residential land. As such, the pool will not unreasonable impact upon the amenity of adjoining residential land. In addition, imposed conditions will require suitable acoustical treatment to the proposed pool's filtration system. Overall, the proposal is appropriately designed and located to maintain privacy between buildings.

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

Comment:
The proposed pool is positioned low down the site due to the slope and therefore will not adversely impact on the streetscape or the established character of the locality. Given the wide and densely vegetated road reserve, and steep slope of the site, the pool will not be readily visible from the street.

- *Objective 3) To integrate landscaping; and*

Comment:
The proposal provides a compliant landscape setting and adequate screen planting, which will help offset the visual impact of the swimming pool as viewed from the adjoining reserve and harbour. The pool will adjoin a wide and densely vegetated road reserve, which will screen the pool from the street.

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

Comment:
The proposed pool may be used as an emergency water resource in the event of a bush fire.

Given the above it is considered that the relevant open space objectives outlined in Clause 4.1.9 have been achieved, and is therefore considered acceptable on merit.

4.4.5 Earthworks (Excavation and Filling)

Detailed description of non-compliance

Clause 4.4.5 of the MDCP 2013 limits excavation to generally 1m below the natural ground level and fill to 1m above natural ground level. This clause also limits excavation within 0.9m of side and rear boundary.

The proposed development includes excavation which exceeds 1m below the natural ground level to facilitate Level 1 and Level 2. The area of greatest excavation relates to the proposed lift shaft requires excavation up to 11m. The lift would also be within 0.9m of the side boundary.

The proposal also includes areas of fill measuring 1.6m to facilitate a lawn area.

Merit consideration

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

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

Comment:
Due to the slope of the land, the proposal includes excavation to facilitate Level 1 and Level 2. The extent of excavation extends beyond 1.0 metre below the natural ground level, as indicated on the proposed plans. Due to the triangular shape and extremely steep nature of the site, the use of excavation is required to reduce non-compliance with the building height and step the building up the slope of the land away from the (rear setback) foreshore reserve. Council's Development Engineers have reviewed the proposal and submitted Geotechnical Report and have raised no objection subject to recommended conditions.

In order to ensure that there are no adverse impacts on the adjoining neighbours, conditions have been imposed which:

- Ensure structural adequacy of landfill and excavation work;
- Require dilapidation reports for adjoining proprieties and Council's Road Reserve;
- Ensure the adherence of a Waste Management Plan;
- Ensure the recommendations of the Geotechnical report is adhered to;
- Ensure the proper installation and maintenance of sediment and erosion control;
- Ensure topsoil is stockpiled on site and stabilised during construction works;

The area of greatest excavation for the lift shaft on the eastern boundary would adjoin a landscaped access handle of No.58 Castle Circuit and would not directly adjoin the dwelling which is located to the south. Other proposed excavation is located over 3m from the southern boundary. During the assessment of the application, amended plans were received which reduced the extent of excavation within the front setback. The application is also supported by a Structural Sufficiency Certificate prepared by Cantilever Consulting Engineers Pty Ltd which certify that:
"The structure will be designed such that the suspended driveway and pedestrian walkway/ stairway will be independent of the dwelling and will not impact existing road infrastructure, and that excavation and retaining works will be designed and sequenced to avoid impact on neighbouring properties, including the road reserve, without the need for permanent soil anchors or rock bolts."

The proposal has also been assessed by Council's Bushland and Biodiversity; Development Engineer; Landscape Officer; Water Management Officer and Coast & Catchment Officer who have raised no objection to the proposal in relation to the natural environment, subject to recommended conditions. The application is also supported with a detailed landscape plan which further illustrates how the development will visually integrate with the site.

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.

5.4.1 Foreshore Scenic Protection Area

Merit Assessment

Development in the Foreshore Scenic Protection Area must not detrimentally affect the 'visual or aesthetic amenity of land in the foreshore scenic area nor must the development similarly effect the views of that land, including ridgelines, tree lines and other natural features viewed from the Harbour or Ocean from any road, park or land in the LEP for any open space purpose or any other public place.

Any adverse impacts considered in this paragraph will be mitigated. In accordance with these LEP objectives Council seeks to conserve and preserve tree canopies and street trees, wildlife corridors and habitat and minimise cumulative impacts on escarpment, rock shelves and other natural landscape features.

Comment:

- The scale of development is generally commensurate with surrounding development along the foreshore area near the site.

- The bulk and scale of development is responsive to the contemporary design of the building and consistent within the visual catchment of the site and the previously approved development on the site (DA2020/1585 - not yet constructed)

- The proposed dwelling maintains a residential outlook toward the bushland reserve and the overall height of the building, use of materials and colours is consistent with existing development along the foreshore and will not result in an unreasonable visual impact when viewed from public places along the foreshore or the harbour.

- The site is separated from the waterfront by approximately 50m by Castle Circuit Reserve which contains dense landscaping which will assist to mitigate the built form as viewed from the waterway.

- The proposal will include tree removal and modification of the site to facilitate the development and bushfire protection requirements. However, the site is zoned R2 low density residential and is currently vacant. As discussed within the landscape referral response, a large number of trees to be removed are exempt or dead trees and other trees would are in locations that would unreasonably limit development potential (particularly due to bush fire requirements). The application is accompanied by an Aboricultural Impact Assessment and Flora & Fauna Assessment Report to address the proposed tree removal and impact on biodiversity. Each report has been reviewed by Council's Landscape Officer and Biodiversity Team, with each referral team satisfied the proposal will not have an unacceptable impact, subject to conditions and adherence to each report as required by the recommended conditions of consent and replacement planting.

- The development complies with the required quantum of landscaped open space and application is supported by a landscape plans which retains suitable areas of deep soil planting to accommodate new planting. The landscape plan has been supported by Council's Landscape Officer and Bushland and Biodiversity Officer.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of $33,350 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $3,335,000.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

1) The Applicant’s written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

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

PLANNING CONCLUSION

This development application seeks consent for the construction of a new four (4) level dwelling-house and swimming pool on a vacant site.

The application is referred to the Northern Beaches Development Determination Panel due to the development breaching the Height of Buildings and Floor Space Ratio (FSR) development standard and by more than 10%

In summary, the application has been assessed with regard to the relevant Manly LEP and DCP controls which guide the future desired character of the site and locality, along with the public submission received during the notification period. The issues raised in the public submissions are considered to be addressed by way of the general and special conditions of consent.

The Clause 4.6 Variation requests to height and FRS is assessed as being well founded and is supported, and the variations to the DCP controls are justified based on the topography or the site, its irregular shape, the site responsiveness of the design and the relationship of the proposed development to the street and adjoining properties.

Subject to the recommended conditions of consent, it is considered that the amended proposal will result in a development that exhibits a reasonable size, scale and intensity, which is compatible with the existing consent on the site (DA2020/1585) and surrounding development and will not result in unreasonable amenity impacts to surrounding properties or impacts to the natural environment. Overall, the proposal is considered an acceptable response to site constraints and relevant planning controls.

Therefore, the proposal is recommended for approval.
It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

That Northern Beaches Council as the consent authority permits a contravention of clause 4.3 Height of Building and 4.4 Floor Space Ratio development standards pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2023/0696 for Construction of a dwelling house including swimming pool on land at Lot 16 DP 200638, 60 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**
DA02	C	Site Plan + SCP	CADENCE & CO PTY LTD	21/12/2023
DA03	C	Excavation and Fill Plan	CADENCE & CO PTY LTD	21/12/2023
DA05	D	Roof plan	CADENCE & CO PTY LTD	06/05/2024
DA06	C	Floor Plans Level 1 + 2	CADENCE & CO PTY LTD	21/12/2023
DA07	D	Floor Plans Level 3 + 4	CADENCE & CO PTY LTD	06/05/2024
DA08	C	Elevations North & South	CADENCE & CO PTY LTD	21/12/2023
DA09	C	Elevations East + West	CADENCE & CO PTY LTD	21/12/2023
DA10	C	Section A + B	CADENCE & CO PTY LTD	21/12/2023
DA11	C	Section C + D	CADENCE & CO PTY LTD	21/12/2023
DA14	B	Section E + F	CADENCE & CO PTY LTD	21/12/2023
DA16	B	Pool Sections	CADENCE & CO PTY LTD	21/12/2023

Approved Reports and Documentation	

Document Title	Version Number	Prepared By	Date of Document
Structural Sufficiency Certificate		Cantilever Consulting Engineers Pty Lt	23/01/2024
Flora & Fauna Assessment Report		GIS Environmental Consultants	21/12/2023
BASIX Certificate (1369756S_02)		Efficient Living Pty Ltd	11/12/2023
Arboricultural Impact Assessment (AIA) & Tree Protection Plan (TPP)		Tree Survey Pty Limited	04/12/2023
Aboriginal Cultural Heritage and Archaeological Advice (Due Diligence)		Associates Archaeology and Heritage	November 2023
Geotechnical Assessment Report	32757RE2rpt Rev1	JK Geotechnics	03/05.2023
Bushfire Assessment Report	230669	Building Code & Bushfire Hazard Solutions Pty Limited	28/04/2023
Waste Management Plan		CADENCE & CO PTY LTD	17/05/2023
NatHERS Certificate (#HR-9NV8EA-02)		Efficient Living Pty Ltd	05/12/2023

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. **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 June 2023
NSW Rural Fire Service	RFS Referral Response (DA20230614002558-Original-1)	22 June 2023
Aboriginal Heritage Office	Referral - Aboriginal Heritage Office	11 January 2024

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

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

3. **Approved Land Use**
Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a dwelling house, in accordance with the Dictionary of the Manly Local Environmental Plan 2013, as follows:

"dwelling house means a building containing only one dwelling."

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

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

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

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

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

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

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

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

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

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

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

A. the name of the owner-builder, and

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

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

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

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

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

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

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

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

Reason: Legislative requirement.

6. **No Works on Adjoining Land**
All approved works are to be located entirely within the subject site. No Approval is granted under this consent for any works within or on the property boundaries of adjoining privately owned land.

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

7. **Rural Fire Service Conditions/Requirements**
The development shall be carried out in accordance with all conditions and requirements raised by NSW RFS in their correspondence (Ref.CNR-56387 DA20230614002558-Original-1) dated 22 June 2023.

Details demonstrating compliance with this condition are to be submitted to the Principal Certifying Authority prior to the issuing of the Construction Certificate and final Occupation Certificate.

Reason: To ensure the development is carried out with the requirements of RFS.

8. **General Requirements**

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

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

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

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

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

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

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

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

i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less

than $250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

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

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

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

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

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

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

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

i) Building/s that are to be erected

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

iii) Building/s that are to be demolished

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

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

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

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

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

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

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

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

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

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

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

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

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

A monetary contribution of $33,350.00 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 $3,335,000.00.

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.

10. **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.

11. **Construction, Excavation and Associated Works Security Bond(s)**
The applicant is to lodge a bond with Council for the following:

Crossing / Kerb & Gutter / Footpath Works
As security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter, any footpath works and removal of any redundant driveways required as part of this consent a bond of $20,000.00.

Security Bond
As security against damage to Council's roads fronting the site caused by the transport and disposal of materials and equipment to and from the site a bond of $20,000.00.

Maintenance for Civil Works
A maintenance bond of $50,000.00 for Council's road reserve including, but not limited to road pavement, kerb & gutter and stormwater infrastructure. The maintenance bond will only be refunded upon completion of the six month maintenance period, if work has been completed in accordance with the approved plans and to the satisfaction of Council. The maintenance bond is to be paid prior to Council prior to issuing of practical completion.

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

12. **Amended Landscape Plan**
a) amended Landscape Plan(s) shall be issued to the Certifier prior to the issue of a Construction Certificate to include the following details:
i) include quantities and locations for all plant species,
ii) selected planting to the north and west of the elevated pool and deck must be suitable species capable of attaining a mature height of at least RL 35.60 to ensure all undercroft areas are adequately screened,
iii) all canopy tree planting must be installed lower than RL 37.00,
iv) delete 1 x *Phoenix canariensis* in the south-eastern corner.

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

Reason: Landscape amenity.

13. **On Slab Landscape Planters**
a) details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided. Landscape treatment details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, and services connections. The following soil depths are required to support landscaping: 300mm for groundcovers, perennials, and grasses; 600mm for shrubs; and 1m for small trees.

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

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

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

- 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.
- Deletion and replacement of Raphiolepis indica with a native alternative.

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.

15. **Traffic Management and Control**
The Applicant is to submit an application for Traffic Management Plan to Council for approval prior to issue of the Construction Certificate. The Traffic Management Plan shall be prepared to TfNSW standards by an appropriately certified person.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process.

16. **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 an outlet with scour protection.

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.

17. **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.

18. **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.

19. **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.

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 Certifier for approval prior to the issue of the Construction Certificate.

Reason: Protection of the receiving environment.

21. **Detailed Design of Stormwater Treatment Measures - Major**
A certificate from a Civil Engineer, stating that the stormwater treatment measures have been designed in accordance with the STORMWATER
MANAGEMENT PLAN PLANS rev C 19.12.2023 from TRIAXIAL CONSULTING and Council's Water Management for Development Policy.

The certificate shall be submitted to the Certifier prior to the release of the Construction Certificate.

Reason: Protection of the receiving environment.

22. **Amendments to the approved plans**
The following amendments are to be made to the approved plans:

- **Privacy Screen (Level 3 Balcony)** - A privacy screen with a height of 1.6 metres (measured from finished floor level) is to be erected for the entire length of the outermost southern edge of the "Level 3" rear (western) balcony located off the "BED 1 and ENS 01". The privacy screen shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.

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.

23. **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.

24. **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.

25. **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.

26. **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 vehicle crossing, driveway, drainage swale and all other works on Council's road reserve, 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:

1. Be compliant with AS/NZS 2890.1:2004, including vehicle crossing and driveway gradients. Provide vehicle crossing longitudinal sections at extremes of crossing.
2. The vehicle crossing shall be located a minimum distance of 1 metre from any power poles, trees, stormwater lintels and other obstructions.
3. The existing level of pedestrian access on Council's verge shall be maintained. Unobstructed pedestrian access, the greater of 1.5 metres or existing width shall be retained. The vehicle crossing profile shall match the existing earth surface profile as required.
4. Utilities services must be identified on the site plan.
5. Provide structural details of vehicle crossing, driveway and associated structures.
6. Provide design of swale.
7. Be generally in accordance with Civil Engineering drawings by Triaxial Consulting, project number TX17260.00 dated 19.12.2023.
8. Provision of adequate protection from road stormwater ingress.
9. The construction of the dwelling on the easement for support will require certification from a NER or RPENG registered geotechnical and structural engineer.
10. The extent and scope of works on Council's road reserve shall be limited to that shown on architectural plans by Cadence & Co, drawing no. DA05, rev D, dated 06.05.2024.

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.

27. **Shoring of Council's Road Reserve (Temporary road anchors)**
Should the proposal require shoring to support an adjoining property or Council land, the Applicant shall provide the adjoining properties with engineering drawings, detailing the proposed shoring works for their consideration and approval.

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

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

28. **Retention of trees in heritage reserve**
The proposed removal of the trees located within the heritage listed reserve is not supported, these trees must be retained.

Details demonstrating compliance with this condition must be submitted to the Council's Heritage Advisor prior to the issue of a Construction Certificate

Reason: To preserve the significance of the heritage item.

29. **Road Reserve Consent**
Prior to issue of the Construction Certificate, the applicant must enter into an approval for the driveway that is located on Council's road reserve. The relevant form "Use of a Portion of a Road Reserve Application" can be found on Council's website.

Reason: To ensure compliance with the Roads Act 1993.

30. **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.pdf

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.

31. **Pre-Commencement Dilapidation Report**
The applicant must prepare and submit a dilapidation report providing an accurate record of the existing condition of adjoining public property and public infrastructure (including roads, gutter, footpaths, etc). A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties.

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

Reason: Protection of Council's infrastructure during construction.

32. **Engagement of Project Ecologist**
A Project Ecologist is to be employed for the duration of the approved works to ensure all biodiversity protection measures are carried out in accordance with the Ecological Impact Assessment Report (GIS Environmental Consultants, November 2020).

The Project Ecologist must have one of the following memberships / accreditation:
- Practising member of the NSW Ecological Consultants Association (https://www.ecansw.org.au/find-a-consultant/) OR
- Biodiversity Assessment Method Accredited Assessor under the relevant legislation (https://customer.lmbc.nsw.gov.au/assessment/AccreditedAssessor)

Evidence of engagement of the Project Ecologist is to be provided to the Principal Certifier prior to issue of Construction Certificate.

Reason: To protect native vegetation and wildlife.

33. **Biodiversity Management Plan**
A Biodiversity Management Plan must be prepared to the satisfaction of Council's Bushland and Biodiversity team and submitted to the Certifying Authority.
The BMP is to encompass the entire subject lot and the road reserve to the north of the lot. The BMP must include the following management actions:
- control of priority and environmental weeds within the site and road reserve
- revegetation of the site and road reserve in accordance with the landscape plan
- installation of a minimum of six (6) nest boxes within the site in accordance with these conditions of consent
- relocation of all removed hollows to Castle Circuit Bushland Reserve
- implementation of all other biodiversity-related measures outlined in these conditions of consent

Management activities associated with the BMP for both the subject lot and road reserve are to be funded by the owner of 60 Castle Circuit Close.
The BMP is to be provided to Council's Bushland and Biodiversity team for approval, and evidence of approval provided to the Certifying Authority prior to the Construction Certificate.

Reason: To protect native vegetation and wildlife

34. **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.

35. **Surrender of Consent**
The applicant shall surrender to Council Development Consent No:DA2020/1585 in accordance with the requirements of the Environmental Planning and Assessment Act 1979.

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

Reason: To prevent inconsistencies between consents applying to the site (ref 4.17 & 4.63 EPAA & cl68 EPA Regulation 2021).

36. **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.

37. **Structural Certification for Easement for Support**
Prior to the issue of a Construction Certificate, the applicant is to submit a structural report and construction methodology statement from a NER or RPENG registered structural engineer to certify that the works will maintain the terms of and not unreasonably impact the easement for support which burdens the site.

The structural report and methodology statement 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 and to maintain the Easement of Support

38. **Pedestrian sight distance at property boundary**
A pedestrian sight triangle of 2.0 metres by 2.5m metres, in accordance with AS2890.1:2004 is to be provided at the vehicular access to the property and where internal circulation roadways intersect with footpaths or other pedestrian access areas. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To maintain pedestrian safety.

39. **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.

40. **Certification of Bushfire Requirements**
A suitably qualified bushfire consultant is to provide written certification that the recommendations of the NSW Rural Fire Service referenced in Condition 2 of this consent have been incorporated into the Construction Certificate plans.

Documented evidence is to be provided to the Certifying Authority prior to the issuance of the Construction Certificate.

Reason: To ensure compliance with Planning for Bushfire Protection 2019.

41. **Construction Site Management Plan**
Before the issue of a construction certificate, the applicant must ensure a construction site management plan is prepared before it is provided to and approved by the certifier. The plan must include the following matters:
- location and materials for protective fencing and hoardings to the perimeter on the site provisions for public safety
- pedestrian and vehicular site access points and construction activity zones
- details of construction traffic management, including proposed truck movements to and from the site and estimated frequency of those movements, and measures to preserve
- pedestrian safety in the vicinity of the site
- protective measures for on-site tree preservation (including in accordance with AS 4970- 2009 Protection of trees on development sites and Council's DCP, if applicable) and trees in adjoining public domain (if applicable)
- details of any bulk earthworks to be carried out
- location of site storage areas and sheds
- equipment used to carry out all works
- a garbage container with a tight-fitting lid
- dust, noise and vibration control measures
- location of temporary toilets.

The applicant must ensure a copy of the approved construction site management plan is kept on-site at all times during construction.

Reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.

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

The CTMP must address following:

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

(v) No construction vehicles, materials or plant are to be located or parked in the private road/driveway, community title road or right of way.

(vi) How any disruption to other users of the private road/driveway, community title road or right of way will be minimised and all users kept informed of likely disruption where the access will be closed or blocked for any given time.

(vii) If trees are located within or overhang the access route, a tree protection plan prepared by an Arborist with minimum AQF Level 5 in arboriculture demonstrating how any trees within the Right of Carriageway will be protected from damage by construction vehicles. Should any tree protection measures be required on private land in accordance with AS4970-2009 Protection of trees on development sites, owner's consent must be obtained.

(viii) A Dilapidation report, including photographic surveys, of the private road/driveway/right of way must be included prior to any works commencing on the site. The report must detail the physical condition of the private road/driveway/right of way, and any other adjacent private property assets (including trees) or adjacent public property that may be adversely affected by vehicles servicing the development site to undertake works or activity during site works.

(ix) A requirement for Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, to be submitted after the completion of works and prior to the Occupation certificate. The report must:

(i) Compare the post-construction report with the pre-construction report,

(ii) Clearly identify any recent damage or change to the private road/driveway/right of way and whether or not it is likely to be the result of the development works,

(iii) Should any damage have occurred, identify remediation actions taken.

(iv) Be submitted to Council with the Occupation Certificate.

(g) The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site.

(h) Make provision for parking onsite. All Staff and Contractors are to use any basement parking once available.

(i) Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior.

(j) Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety.

(k) The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure.

(l) Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees.

(m) Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site.

(n) The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site.

(o) Specify that the public roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council.

(p) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent.

(q) Proposed protection for Council and adjoining properties.

(r) The location and operation of any on site crane.

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

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

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

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

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

43. **Traffic Management and Control**
The Applicant is to submit an application for Traffic Management Plan to Council for approval prior to issue of the Construction Certificate. The Traffic Management Plan shall be prepared to RMS standards by an appropriately certified person.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process.

44. **Structural Adequacy and Excavation Work**
Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services,

structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:
(a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
(b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: To provide public and private safety.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

45. **Tree Removal Within the Property**
a) this consent approves the removal of existing prescribed trees on the subject site as listed below:
i) tree 9 - *Angophora costata*, trees 10 and 11 - *Casuarina cunninghamiana*, tree 12 - *Glochidion ferdinandi*, tree 13 - *Casuarina cunninghamiana*, tree 22 - *Eucalyptus piperita*, tree 24, 25 and 26 - *Angophora costata*.

b) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised development works.

46. **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:
- No.58 Castle Circuit, Seaforth

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

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

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

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

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

47. **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

48. **Work Zones and Permits**
Prior to commencement of the associated works, the applicant shall obtain a Work Zone Permit where it is proposed to reserve an area of road pavement for the parking of vehicles associated with a construction site.

Reason: To ensure Work zones are monitored and installed correctly.

DURING BUILDING WORK

49. **Protection of Rock and Sites of Significance**
a) all rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition, excavation and construction works.

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

Reason: Preservation of significant environmental features.

50. **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.

51. **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.

52. **Compliance with Ecologist's Recommendations – During Construction**
All impact mitigation measures specified in the approved Flora and Fauna Assessment Report/Biodiversity Development Assessment Report are to be implemented at the appropriate stage of development.

Compliance with these measures is to be certified by the Project Ecologist in writing to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures.

53. **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.

54. **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.

55. **Clearing for Asset Protection Zones**
Clearing of vegetation during works for APZ establishment must only occur within the surveyed and marked APZ boundaries. No clearing is to be undertaken outside of the APZ boundaries.

Written certification of compliance is to be submitted to the Principal Certifier.

Reason: To protect native vegetation and wildlife.

56. **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.

57. **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.

58. **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: Protection of the receiving environment.

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

Reason: Public safety, landscape amenity and tree protection.

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

Reason: Public safety and environmental protection.

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

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

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

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

62. **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.

63. **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.

64. **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 and debris is to be removed off site and disposed of as frequently as required in accordance with the Waste Management Plan and applicable regulations.

Reason: To protect the surrounding environment, and ensure that pollutants and building associated waste do not enter receiving waters.

65. **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.

66. **Control of Construction Noise (Noise and Vibration Management Plan)**
During any demolition, excavation or building works, noise generated from the site shall be controlled in accordance with the recommendations of the approved noise and vibration management plan.

Reason: To ensure reasonable standards of amenity to neighbouring properties.

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

Reason: Public Safety.

68. **Site filling - Virgin Excavated Natural Material (VENM)**
Where site fill material is necessary, fill materials must:

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

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

Reason: To ensure protection of the natural environment.

69. **Ancillary Site Works**
a) Tree removal is not permitted on adjacent land without owners consent and appropriate prior approval where required, including works within the public road reserve. No tree clearing is permitted within the public Foreshore Reserve area.
b) This consent does not authorize any ancillary site works within the adjacent private right of carriage way, including construction access, material delivery and the like.

70. **Protection of trees in heritage reserve**
The trees which are located within the heritage listed Bantry Bluff - Castle Circuit Reserve adjacent to the subject site and in close proximity to the proposed works, are to be protected at all times during construction.

Reason: To ensure that the health of the trees in the heritage listed reserve are not adversely affected by construction works.

71. **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.

72. **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.

73. **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.

74. **Noise and Vibration Management Plan**
Prior to the commencement of any works, a Noise and Vibration Management Plan is to be prepared by a suitably qualified expert addressing the likely noise and vibration from demolition, excavation and construction of the proposed development and provided to the Principal Certifier. The management plan is to identify amelioration measures to achieve the best practice objectives of Australian Standard 2436-2010 - Guide to noise and vibration control on construction, demolition and maintenance sites and NSW Department of Environment and Climate Change Interim Construction Noise Guidelines. The report shall be prepared in consultation with any geotechnical report that itemises equipment to be used for excavation works.

The management plan shall address, but not be limited to, the following matters:
i. identification of the specific activities that will be carried out and associated noise sources
ii. identification of all potentially affected sensitive receivers, including residences
iii. the construction noise objective specified in the conditions of this consent
iv. the construction vibration criteria specified in the conditions of this consent
v. determination of appropriate noise and vibration objectives for each identified sensitive receiver
vi. noise and vibration monitoring, reporting and response procedures
vii. assessment of potential noise and vibration from the proposed demolition, excavation and construction activities, including noise from construction vehicles and any traffic diversions
viii. description of specific mitigation treatments, management methods and procedures that will be implemented to control noise and vibration during construction
ix. construction timetabling to minimise noise impacts including time and duration restrictions, respite periods and frequency
x. procedures for notifying residents of construction activities that are likely to affect their amenity through noise and vibration
xi. contingency plans to be implemented in the event of non-compliances and/or noise complaints

Reason: To protect the amenity of surrounding residents during construction.

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

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

76. **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.

77. **Stockpiling of Topsoil**
During site excavation, topsoil which is to be used in later landscape works is to be stockpiled on site and stabilised during construction works. Stockpiles are to be stored outside of hazard areas and not located within the dripline of existing trees which are to be retained.

Reason: To ensure protection and retention of the Urban Forest/Natural Environment.

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

Reason: Public Safety.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

79. **Landscape Completion**
a) landscape works are to be implemented in accordance with the approved amended Landscape Plan(s), and inclusive of the following conditions:
i) landscape works are to be contained within the legal property boundaries,
ii) planting shall be installed as indicated on the approved Landscape Plan(s) unless otherwise imposed by any conditions,
iii) all tree planting shall be a minimum pre-ordered planting size of 75 litres or as otherwise scheduled if greater in size; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth generally, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings and other trees or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,
iv) mass planting shall be installed at minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,
v) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces,
vi) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone,
vii) where the property is certified Bush Fire Prone Land, any new planting may be managed in accordance with Planning for Bushfire Protection 2019.

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

Reason: Environmental amenity.

80. **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.

81. **Priority Weed Removal and Management**
All Priority weeds (as specified in the Northern Beaches Local Weed Management Plan) within the development footprint are to be removed using an appropriate control method.

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

Reason: To reduce the risk of site works contributing to spread of Priority weeds.

82. **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 Certifying Authority prior to the issue of the Occupation Certificate.

Reason: Protection of Council's infrastructure.

83. **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.

84. **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.

85. **Certification for the Installation of Stormwater Treatment Measures**
A certificate from a Civil Engineer, who has membership to Engineers Australia and the National Engineers Register must be provided, stating that the stormwater treatment measures have been installed in accordance with the construction certificate approved plan. The certificate must confirm that stormwater treatment measures are completed, online, in good condition and are not impacted by sediment.

The certificate shall be submitted to the Principal Certifier prior to the release of an Occupation Certificate.

Reason: Protection of the receiving environment.

86. **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.

87. **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.

88. **Damage to the right of way**
Any damage to the right of way, caused by the construction of the development, is to be repaired prior to the issue of the occupation certificate.

Reason: To ensure the site is left in an acceptable state and that access is maintained for adjoining neighbours.

89. **Certification of Bushfire Requirements**
A suitably qualified bushfire consultant is to provide written certification that the recommendations of the NSW Rural Fire Service referenced in Condition 2 of this consent have been incorporated into the as-built development.

Documented evidence is to be provided to the Certifying Authority prior to the issuance of the Occupation Certificate.

Reason: To ensure compliance with Planning for Bushfire Protection 2019.

90. **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 Certifying Authority prior to issue of any Occupation Certificate.

Reason: To protect wildlife habitat.

91. **Passenger Lift Noise Control**
Prior to the issue of an Occupation Certificate, certification by a suitably qualified person shall be provided to the Principle Certifying Authority demonstrating that the noise level from the passenger lift will not exceed 5dBA above background noise when measured from the nearest property boundary.

Reason: To ensure an appropriate level of residential amenity is maintained.

92. **Retaining wall**
The retaining wall works shall be certified as compliant with all relevant Australian Standards and Codes by a Structural Engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any final Occupation Certificate.

Reason: Public and Private Safety

93. **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 Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure bushland management.

94. **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 headwall and associated scour protection structures 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.

95. **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.

96. **Post-Construction Dilapidation Report**
The applicant must bear the cost of all restoration works to Council's road, footpath and drainage assets damaged during the course of this development.

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

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

97. **Environmental Reports Certification**
Written certification from a suitably qualified person(s) shall submit to the Principal Certifier and Northern Beaches Council, stating that all the works/methods/procedures/control measures/recommendations approved by Council in the following reports have been completed:

(a) Flora & Fauna Assessment Report, dated 21/12/2023 , prepared by GIS Environmental Consultants
(b) Arboricultural Impact Assessment (AIA) & Tree Protection Plan (TPP) dated 04/12/2023 prepared by Tree Survey Pty Limited
(c) Aboriginal Cultural Heritage and Archaeological Advice (Due Diligence) dated November 2023 prepared by Associates Archaeology and Heritage
(d) Geotechnical Assessment Report , dated 03/05.2023 prepared by JK Geotechnics
(e) Bushfire Assessment Report, dated 28/04/2023, prepared by Building Code & Bushfire Hazard Solutions Pty Limited
(f) Structural Sufficiency Certificate, dated 23/01/2024 , prepared by Cantilever Consulting Engineers Pty Lt

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

Reason: To ensure compliance with standards.

98. **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.

99. **Structural Certification for Easement for Support**
Written certification from from a NER or RPENG registered structural and geotechnical engineer shall submit to the Principal Certifier and

Northern Beaches Council, stating that all the works/methods/procedures/control measures/recommendations have been implement to maintain the terms of the easement for support which burdens the site.

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

Reason: To ensure compliance with standards.

100. **Sydney Water**
A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au <http://www.sydneywater.com.au> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

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

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

101. **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.

102. **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

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

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

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

d) a maintenance activity schedule for on-going maintenance of planters on slab shall be incorporated to monitor and replenish soil levels

as a result of soil shrinkage over time.

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

Reason: To maintain local environmental amenity.

104. **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.

105. **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.

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

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

107. **Maintenance of vehicle crossing, drainage swale and all ancillary works on Council land**
The proprietor of the land is required to maintain all structures including but not limited to the vehicle crossing, drainage swale and all ancillary structures on Council land subject to this consent in perpetuity. All maintenance works on the aforementioned structures shall be at the owners expense. Council reserves the right to request maintenance and/ or remediation works on the aforementioned works at owners expense.

Reason: Protection of Council's road reserve

108. **Implementation of a Biodiversity Management Plan (BMP)**
The development is to be undertaken in accordance with the Biodiversity Management Plan as approved by Council's Bushland and Biodiversity team and submitted to the Certifying Authority prior to the Construction Certification.

The BMP is to be implemented for a minimum of 5 years. Should the management actions remain incomplete at the end of the 5 year period, the BMP will be reinstated for a further 5 years, or until the management actions are complete.

Reason: To ensure compliance with Manly LEP Clause 6.5 Terrestrial Biodiversity

109. **Use of Plant and Storage Rooms**
The plant, storage and sub-floor rooms of the dwelling house shall not to be used for habitable purposes. These rooms shall be used exclusive to accommodate plant systems and equipment as detailed on the approved floor plans.

Reason: To ensure that the plant room does not contribute to the gross floor area of the dwelling house.

110. **Maintenance of Easement Provisions**
This consent does not override any legal agreement or provisions associated with the subject site.

Reason: To ensure compliance with the imposed legal agreements

111. **Use of "Level 1"**
The proposed "Level 1" is not to be used for the purpose of separate habitation (including a secondary dwelling or dual occupancy) and is not to contain any cooking facilities.

Reason: To ensure that the lower ground floor remains ancillary to the dwelling house.

112. **Retention of Natural Features**
All natural landscape features, including natural rock outcrops, natural vegetation, soil and watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

Reason: To ensure the retention of natural features.

113. **Use of Turning Bay and Council Road Reserve**
The turning bay and access driveway located within Council's Road Reserve is not to be used as off street car parking space and to be used only for the vehicles being able to exit the site in a forward direction.

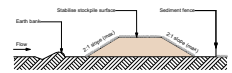
Reason: To ensure vehicles are able to exit the site in a forward direction and that parking is located within the property boundaries.

114. **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.

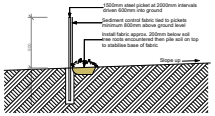
Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.

115. **Lift noise control**
The passenger lift must be installed and operated at times so as not to cause ‘offensive noise’. It must be demonstrated that the noise level will not exceed 5dBA above background noise when measured from the nearest property boundary, as defined by the Protection of the Environments Operation Act 1997.

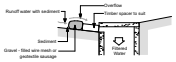
Reason: To ensure compliance with legislation and to protect the acoustic amenity of neighbouring properties.



2 Soil Stockpile Detail (TYP)
Scale 1:100



3 Sediment Control Fence (TYP)
Scale 1:100



4 Mesh & Gravel Inlet filter (TYP)
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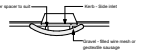
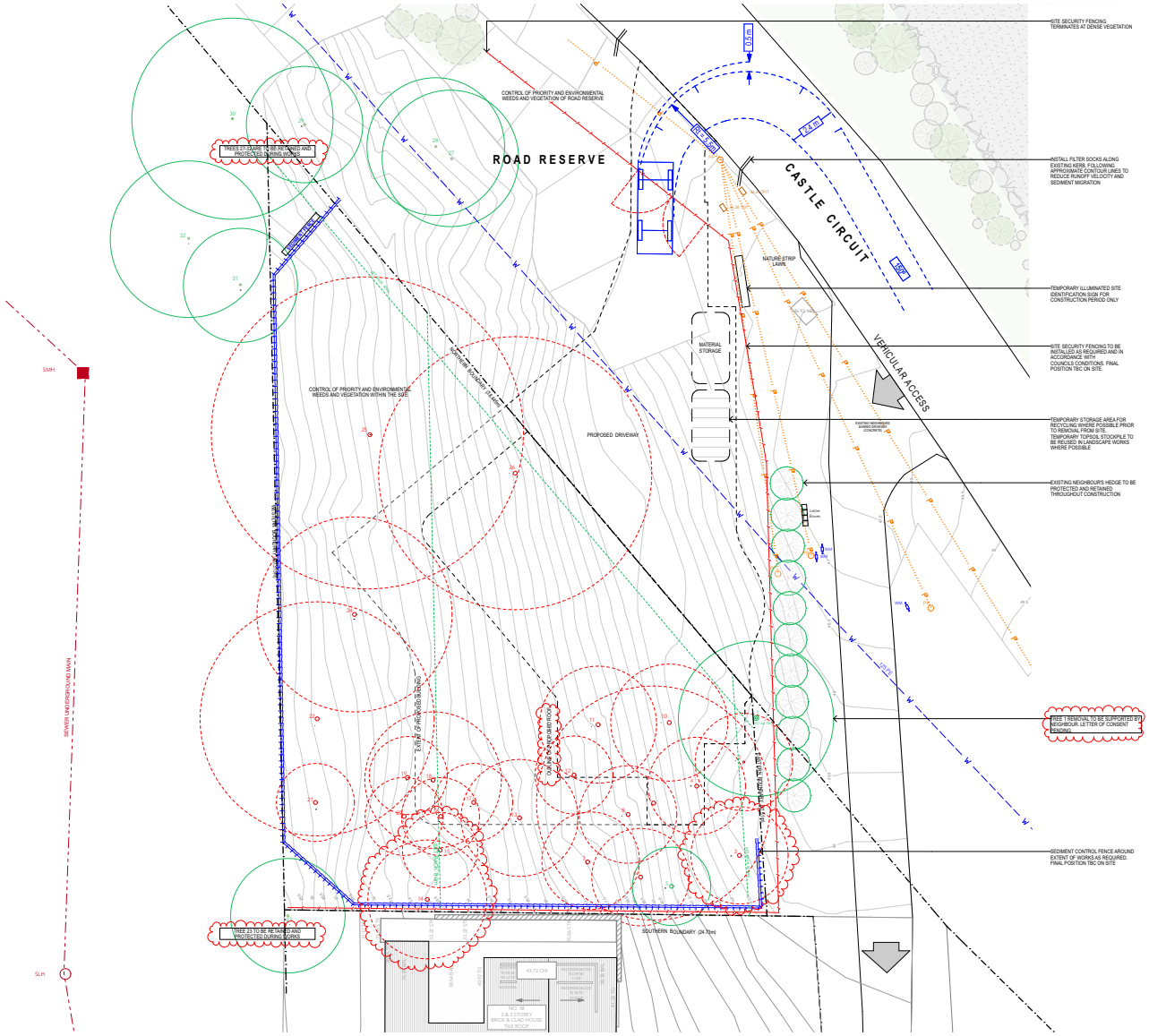
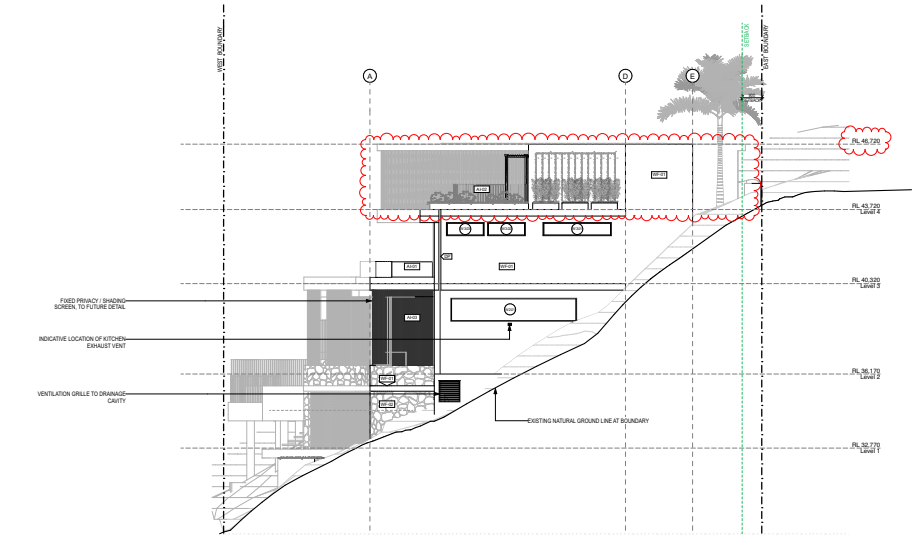


4 Soil Stockpile Detail (TYP)
Scale 1:100

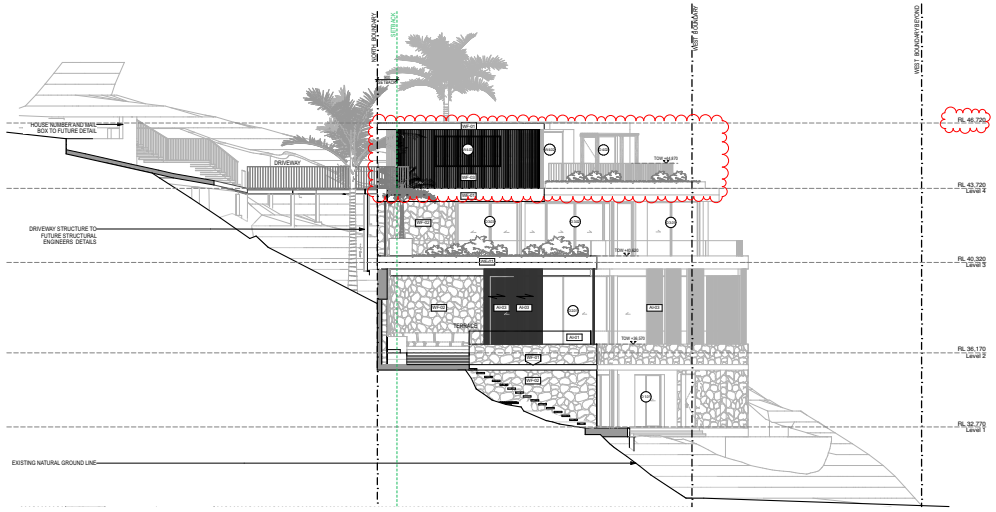


1 Site Plan +SCP
Scale 1:100

General Notes
- All erosion and sedimentation control plan in accordance with the NSW Governments policy Managing Urban Stormwater: Soils and Construction (also known as The Blue Book).
- All measures to be installed to meet the requirements of Northern Beaches Council. Install temporary sediment control fences as shown.
- Install temporary sediment control fences as shown.
- Install mesh and drainage inlet protection on stormwater inlets down slope of site
- All stormwater requirements and specifications to Stormwater/ Hydraulic Engineer's details
- Tree protection measures in accordance with the Arborist reports



1 South Elevation
Scale 1:100



2 North Elevation
Scale 1:100

Legend:
- Area of non-compliance
- RF01 Render
- RF02 Stone Cladding
- RF03 Vertical Cladding (aluminium)
- AG01 Balustrade Glass
- AG02 Balustrade Steel
- AG03 Shading/Privacy screen (aluminium)

Abbreviations:

BAL	balustrade	SHW	shower	RL	reduced level	SWP	sewer pit		
CR	cement render	DP	down pipe	SPO	spoonbrick	WIR	walk in robe		
ENS	ensuite bathroom	GU	gutter	ST	stone	PWDR	powder room		
FCL	finished ceiling level	LIN	linen	TOW	top of wall	WAT	rain water tank		
FFL	finished floor level	LV	louvre	TOS	top of stair				
NGL	natural ground level	MR	metal roof	WC	water closet				

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General Notes:
The highest Bushfire Attack Level to the proposed works was determined from Table A1.12.5 of PBP – 2019 to be 'Flame Zone' and construction requirements within NSW are therefore outside the scope of AS 3959 – 2018. The proposed works will be constructed to section 9 (BAL FZ) under AS 3959 – 2018 and the National construction requirements detailed in section 7.5 of PBP 2019.
The existing water supply and access provisions are considered adequate for this development.

- All stormwater requirements and specifications to Stormwater/Hydraulic Engineer's details.
- Tree protection measures in accordance with the Arborist report
- Tree removal to Landscape Designers details
- New services and service trench connected to site provisions as necessary

Issue:	Date:	For:
C	21/12/2022	DA Amendments
B	16/11/2022	DA Amendments
A	4/5/2023	DA Submission

Project: New House, Swimming Pool and Associated External Works
Client: Paul Vicick and Linda Lea
Address: 60 Castle Circuit Seaforth LOT 16 Sec DP 200638

Drawing Title: Elevations North & South
Stage: DEVELOPMENT APPLICATION
Scale: 1:100 @A1 | Drawn: GC | Chkd: NG
Drawing No: DA06 | Rev: C
North:

2023.11.10_Post DA_60 Castle Circuit, Seaforth.pln

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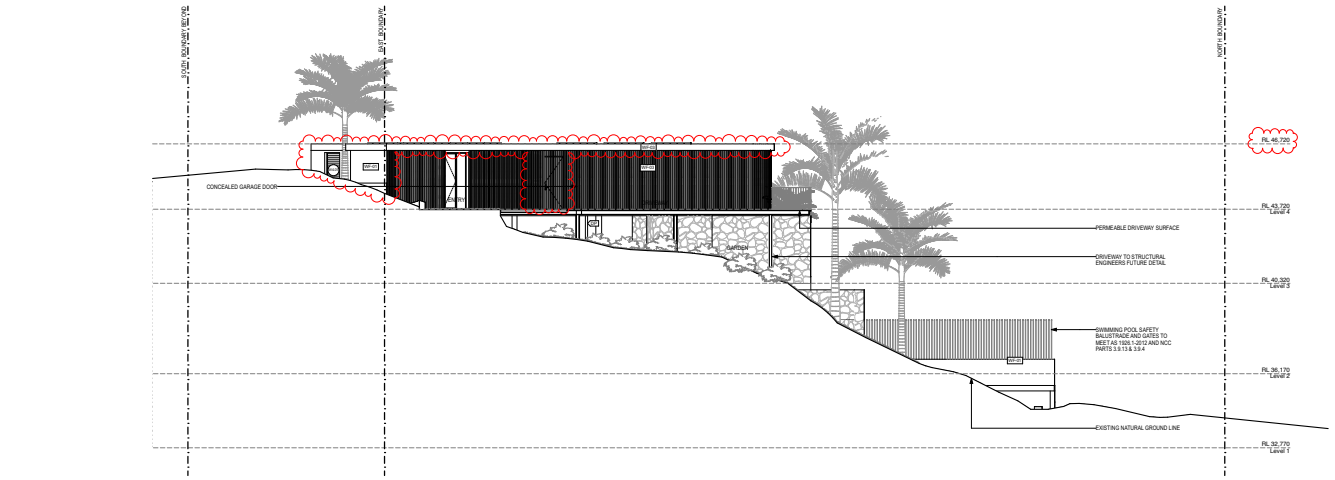
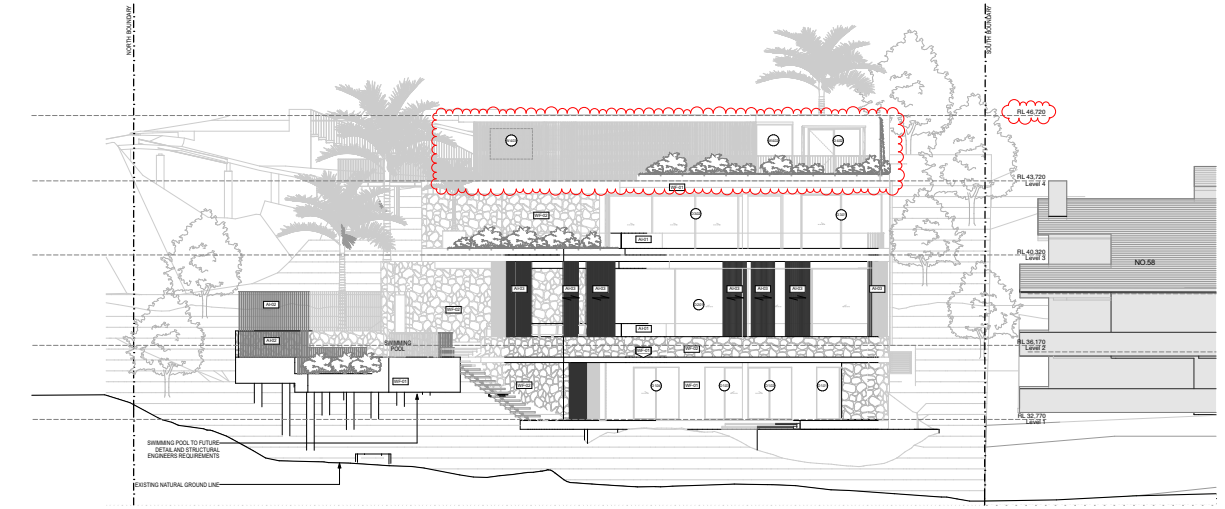


1 East Elevation
Scale 1:100



2 West Elevation
Scale 1:100

Legend:

RF01	Render	Bal01	Balustrade Glass
RF02	Stone Cladding	Bal02	Balustrade Steel
RF03	Vertical Cladding (aluminium)	Aw01	Shading/Privacy screen (aluminium)

Abbrev:

BAL	balustrade	SHW	shower	RL	reduced level	SWP	sewer pit
CR	cement render	DP	down pipe	SPO	spoondrain	WIR	walls in robe
ENS	ensuite bathroom	GU	gutter	ST	stone	PWDR	powder room
FCL	finished ceiling level	LIN	linen	TOW	top of wall	WAT	rain water tank
FFL	finished floor level	LV	louvre	TOS	top of slab		
NGL	natural ground level	MR	metal roof	WC	water closet		

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General Notes:
The highest Bushfire Attack Level to the proposed works was determined from Table A1.12.5 of PBP – 2019 to be 'Flame Zone' and construction requirements within NSW are therefore outside the scope of AS 3959 – 2018. The proposed works will be constructed to section 9 (BAL FZ) under AS 3959 – 2018 and the National construction requirements detailed in section 7.5 of PBP 2019.
The existing water supply and access provisions are considered adequate for this development.

- All stormwater requirements and specifications to Stormwater/Hydraulic Engineer's details.
- Tree protection measures in accordance with the Arborist report
- Tree removal to Landscape Designers details
- New services and service trench connected to site provisions as necessary

Issue:	Date:	For:
C	21/12/2022	DA Amendments
B	16/11/2022	DA Amendments
A	4/5/2022	DA Submission

Project: New House, Swimming Pool and Associated External Works
Client: Paul Vicick and Linda Lea
Address: 60 Castle Circuit Seaforth LOT 16 Sec DP 200638

Drawing Title: Elevations East & West
Stage: DEVELOPMENT APPLICATION
Scale: 1:100 @A1 | Drawn: GC | Chkd: NG
North:
Drawing No: DA09 | Rev: C

2023.11.10_Post DA_60 Castle Circuit, Seaforth.pln

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UPDATED CLAUSE 4.6 TO CLAUSE 4.3 OF MANLY LEP 2013

EXCEPTIONS TO DEVELOPMENT STANDARDS – **HEIGHT VARIATION**

Construction of new four-storey dwelling house with swimming pool, and off-street car parking

at

60 CASTLE CIRCUIT SEAFORTH

PREPARED BY

ABC PLANNING PTY LTD

December 2023

MANLY LEP 2013 - CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARDS

This updated Clause 4.6 variation request has been prepared to accompany the development application that seeks construction of new four-storey dwelling house with swimming pool, and off-street car parking, at Lot 16 in DP 200638, commonly known as No. 60 Castle Circuit, Seaforth.

Clause 4.6 of the *Manly Local Environmental Plan 2013* (MLEP2013) allows the consent authority to grant consent for development even though the development contravenes a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards.

This Clause 4.6 variation request takes into account the relevant aspects of the Land and Environment Court judgement from *Initial Action Pty Ltd v Woollahra Council [2017] NSWLEC 1734,* as revised by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130.*

Clause 4.6 Exceptions to development standards

(1) The objectives of this clause are as follows:
(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
(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 Director-General has been obtained.
(5) In deciding whether to grant concurrence, the Director-General must consider:
(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
(b) the public benefit of maintaining the development standard, and
(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.

Development Standard to be Varied

The proposal seeks a variation to the development standard contained within Clause 4.3 of the MLEP2013 – maximum height 8.5m, as demonstrated on the LEP map in **Figure 1** below.

The proposed height is 3.6m over the 8.5m height limit as the overall height is 12.1m. the maximum height variation is shown on Section F below:

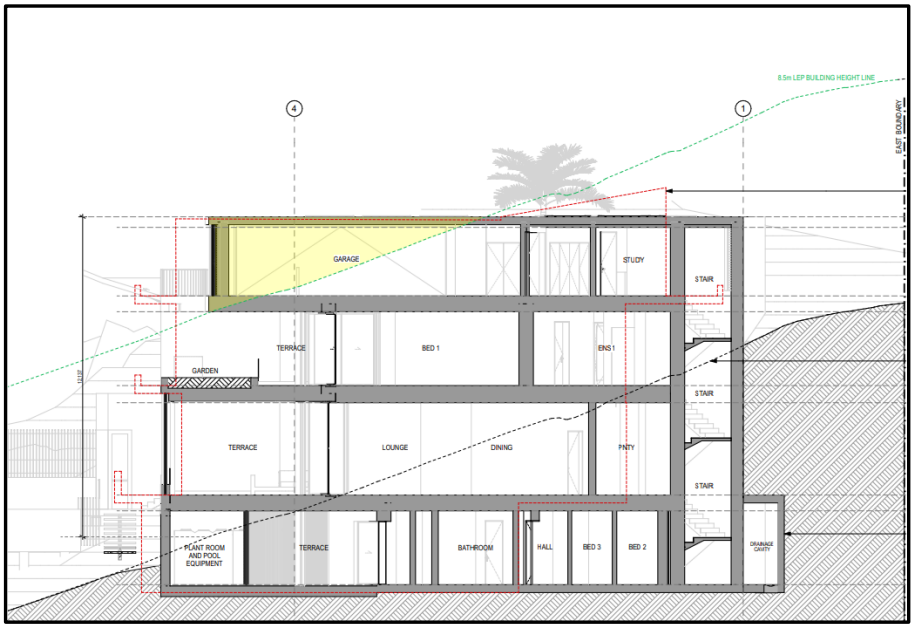


Figure 1: Excerpt of Section F which includes the greatest height variation of 3.6m

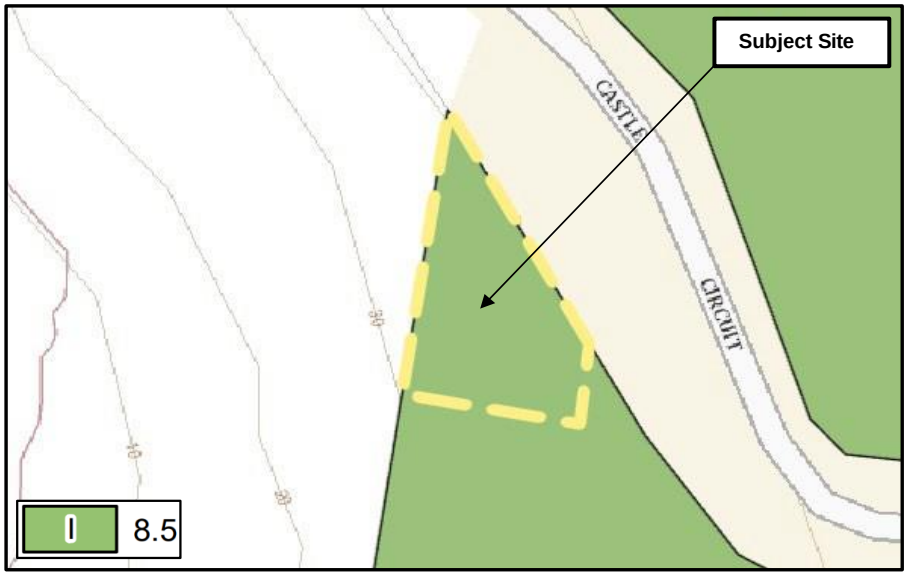


Figure 2: Excerpt of Building Height Maps

Justification for Contravention of the Development Standard

This written request is considered to justify the contravention of the development standard and addresses the matters required to be demonstrated by Clause 4.6(3), of which there are two aspects. Both aspects are addressed below:

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

Assessment: It is considered that strict compliance with the development standard for height on the site is unreasonable and unnecessary in the circumstances for the following reasons:

- The proposal complies with the objectives of the development standard and the R2 Low-Density Residential zone, indicated in the assessment in **Table 1** below. Furthermore, compliance with the development standard is unreasonable and unnecessary as it is in the public interest, given it is consistent with the objectives for the development within the zone.

- The proposed height has been reduced from that submitted with the DA, as shown in the comparison between that submitted and amended. It is apparent that the built form and height has been reduced in accordance with Council's comments in the correspondence. The following 3D images confirm that the height variations are confined to components of the uppermost level.

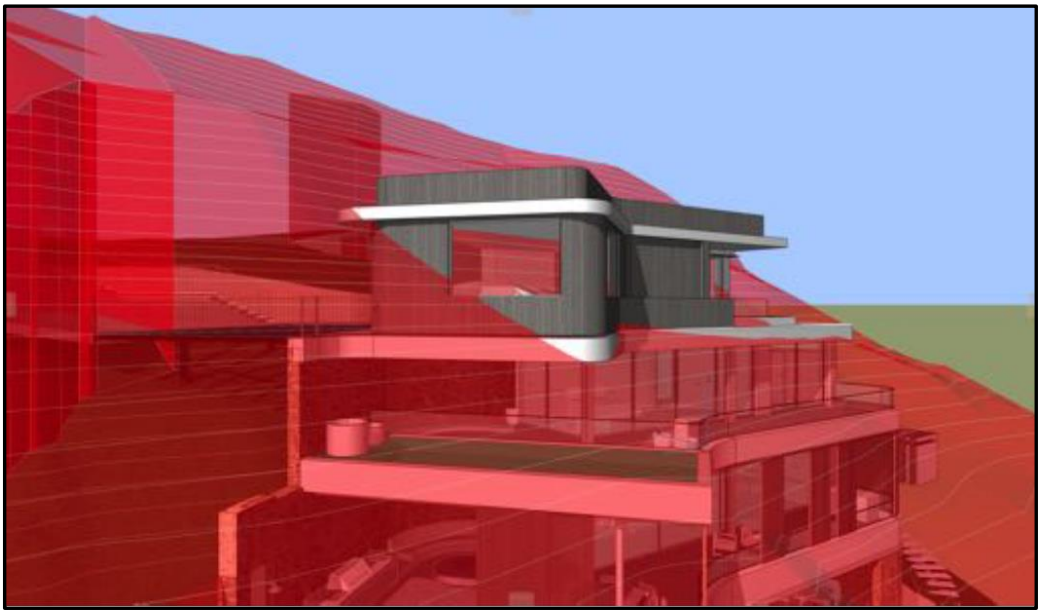


Figure 3: Height as submitted as viewed from north.

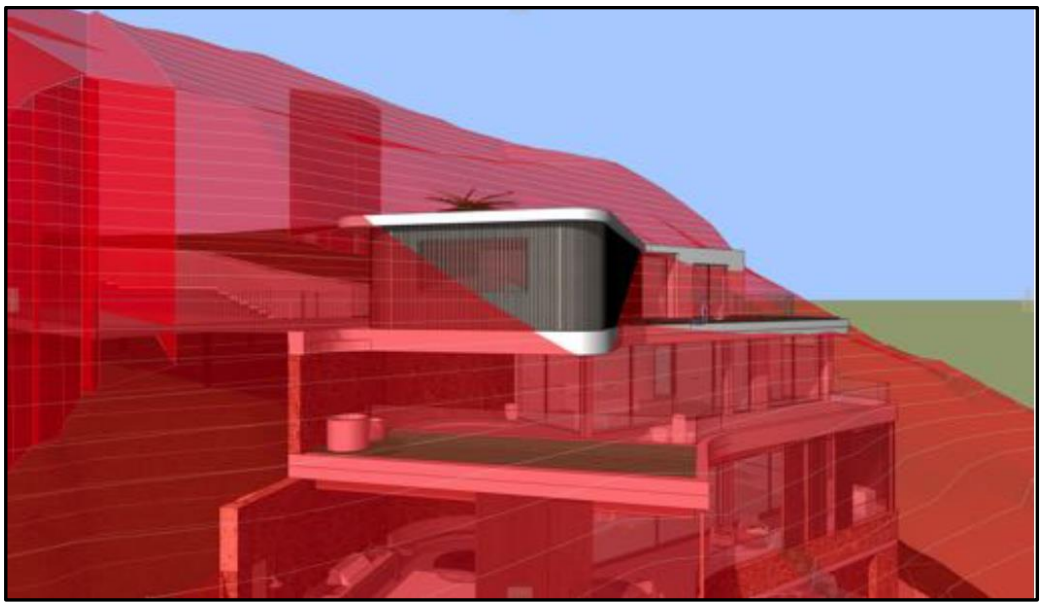


Figure 4: Height as amended as viewed from north.

- The above images are taken from an elevated location and do not represent the view of the building that would be available having regard to the sloping nature of Castle Circuit to the south of the site as well as the dense bushland to the south of the site. It is therefore considered that the above height variation would not be evident from any public vantage point along Castle Circuit. It is acknowledged that the overall height will be visible from the harbour to the west of the site, however, the proposed built form will be perceived against the backdrop of the sloping topography which includes substantially larger and more prominent dwellings higher upslope. The subject site represents the northernmost site in this section of Castle Circuit whilst the land to the west and north-west is zoned C2 which prohibits dwelling houses. This confirms that the bushland to the north, north-west and west of the site is likely to remain and maintain an effective landscape buffer. On this basis, the proposed height will not generate any visual bulk concerns from either public vantage points (i.e. Castle Circuit or the harbour).

Figure 5: 3D aerial view which shows that the built form will be screened from the north and north-west from Castle Circuit by the established bushland which extends north of the subject site.

Figure 6: Elevated nature of the dwellings higher upslope which consist of 3 or more storeys elevated above the public domain

Figure 7: Elevated nature of the dwellings higher upslope which consist of 3 or more storeys elevated above the public domain.

- The 3D images from the south (58 Castle Circuit) show that only a minor portion of the built form above the height limit will be visible. In this regard, it is noted that the primary orientation of the adjoining dwelling is to the west, south-west and north-west towards the expansive harbour views, not sideways southwards to the subject property.

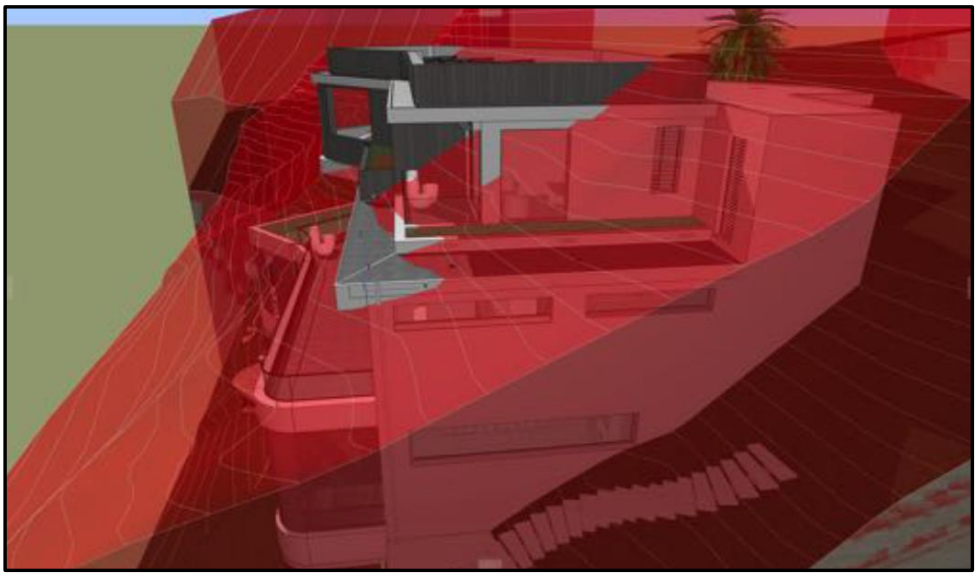


Figure 8: Height as submitted- as viewed from south.

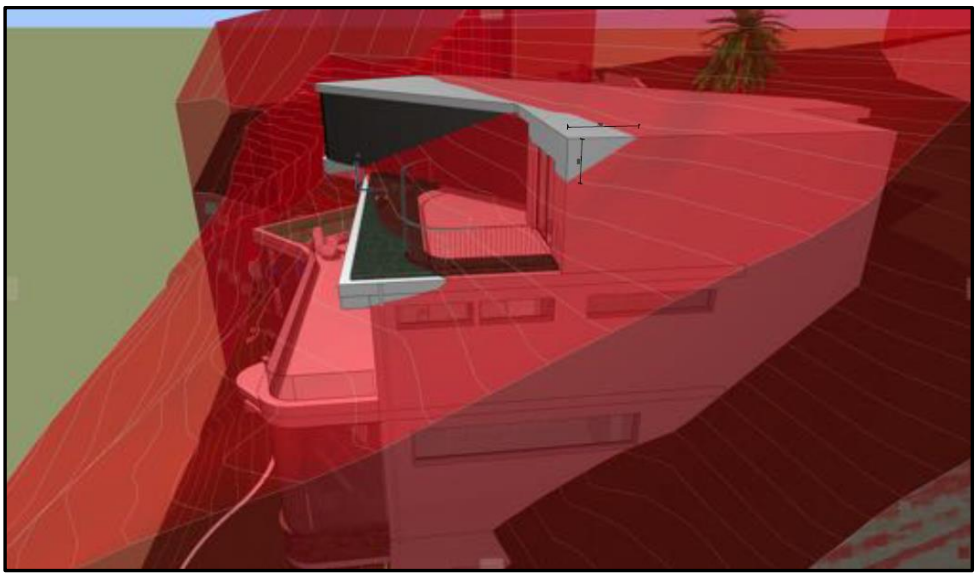


Figure 9: Height as amended as viewed from south

- It is reiterated that the proposed height variation will be imperceptible from Castle Circuit due to the steep slope of the site downwards from the site frontage towards the harbour. On this basis, it is confirmed that the height variation will not be responsible for any adverse streetscape impacts, as shown below:

Figure 10: View of existing and proposed views of the streetscape and site in general which shows that the single storey garage/entry form will not generate any adverse streetscape impacts whilst the proposed replacement plantings will actually improve views to the harbour from the public domain.

- Furthermore, the height variation will not be apparent from the properties higher upslope as shown in the image below:

Figure 11: View from higher up slope showing the single storey of the built form.

The proposed height variation will also not generate any adverse shadow impacts as the shadows to 58 Castle Circuit are generated by the built form which is compliant with the height limit. In any event, the property to the south will maintain in excess of 3 hours solar access between noon and 3pm to the primary living and private open space areas of that property, as shown below:

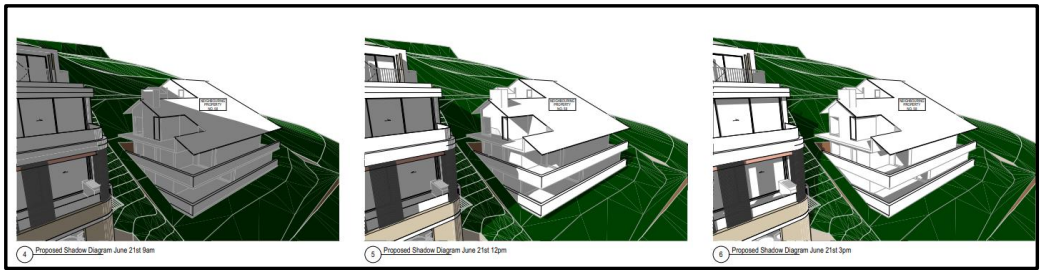


Figure 12: 3d solar access diagrams which show that the primary north and east-facing living room will continue to receive in excess of 3 hours between 9am and 3pm on June 21

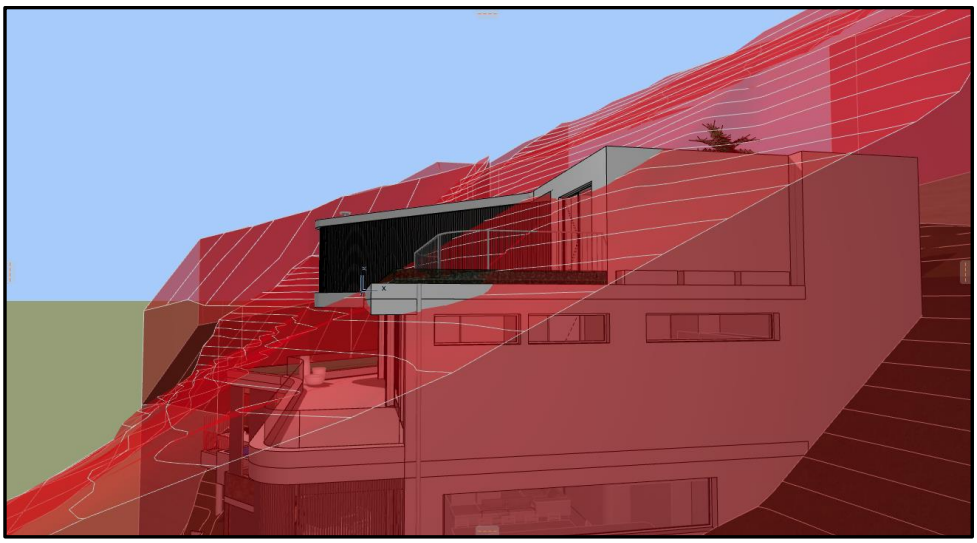


Figure 13: 3d view from the south which shows that the built form is below the height limit at the southern end (which is where the shadows are generated)

- The proposed height variation is not responsible for any privacy impacts as the primary elements associated with the height variation are associated with the garage. The other component over the height limit is the projecting eave along the western side which provides much needed shade protection. The 3rd component is the upper south-west corner of the upper-level study wall. Neither of these elements generate any privacy impacts.

- 180-degree views from the southern neighbouring dwelling at 58 Castle Circuit to harbour views will be maintained with no impact from the height variation.

- The above assessment confirms that the proposed height is appropriate for the site as there are no adverse streetscape, visual bulk, shadow, view or privacy impacts associated with the height variation.

- The proposed height variation will not be perceptible from the Harbour. Given the heritage landscape area at the rear of the site, the residence will be screened by existing trees on the steep hillside, which combined with the expansive separation distance from publicly accessible areas from across Middle Harbour, will ensure that there will be limited visibility of the proposed dwelling house with additional height from waterways or foreshores (**Figure 14**).

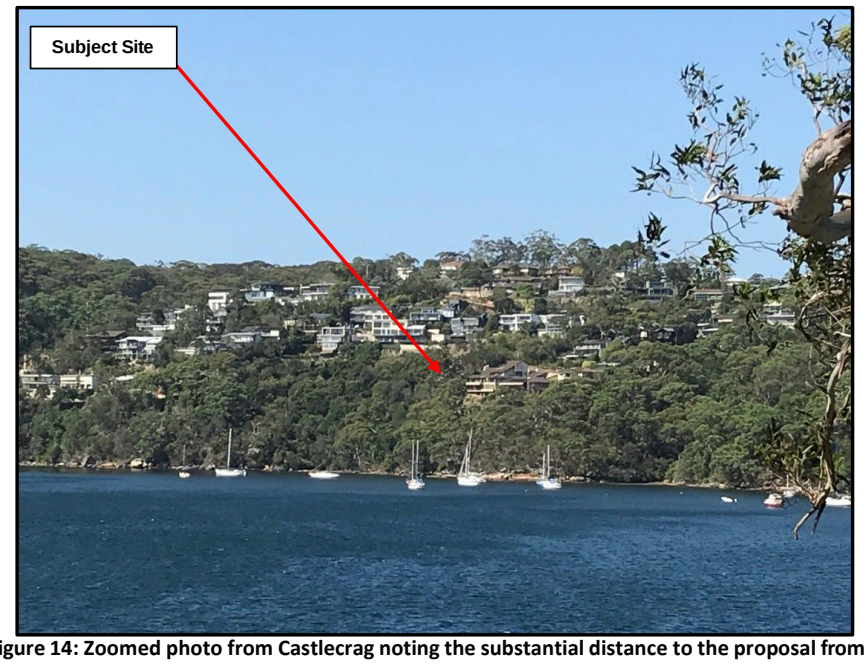


Figure 14: Zoomed photo from Castlecrag noting the substantial distance to the proposal from the public view access

Amenity

The height variation maintains a high level of internal amenity as demonstrated by compliance with the key amenity criteria including outperformance of the deep soil landscaping (46.18%) and total open space (72.8%, plus above ground open space. The proposed 289.47m^2 of deep soil area allow for a sympathetic landscape planting which integrates with the adjacent C2 zone, whilst softening the visual bulk appearance of the development.

Despite the non-compliance, the proposal achieves the objectives of the development standard and the zoning, as demonstrated in the following table:

Table 1: Assessment against the Objectives of the Development Standard and Land Use zone.

Consistency with the objectives of the height standard in the LEP	
Objectives	**Assessment**
4.3(a) to provide for building heights and roof forms that are consistent with the topography landscape, prevailing building heights and desired future streetscape character in the locality	The proposed flat roof is consistent with existing dwellings with flat roofs along Castle Circuit. The proposed dwelling has single-storey presentation to the streetscape and a stepped built form, which respects the topography and sensitive character of the foreshore area and is consistent with the size, bulk and scale of surrounding properties. The height variation is well integrated with the architectural design and contributes to a high-quality dwelling house which reinforces the desired streetscape character in the locality.

4.3(b) to control the bulk and scale of buildings	The majority of the building envelope is compliant with the height limit, and the minor encroachments are related to the non-trafficable roof and the upper floor level facing the foreshore. Therefore, these portions above the height limit are lightweight elements, and do not create a building which dominates the hillside or streetscape.
	The height protrusions beyond the height limit do not preclude the proposed development to achieve a bulk and scale that are suitable to the site and compatible with surrounding properties. The non-compliant height responds to the sloping nature of the site and is not related to excessive bulk, mass, or inappropriate scale. Therefore, the proposed development and additional height is considered to be suitable to the site and context of the locality.
4.3(c) to minimise disruption to the following: *(i) views to nearby residential developments from public spaces (including the harbour and foreshores)* *(ii) views from nearby residential developments to public spaces (including the harbour and foreshores)* *(iii) views between public spaces (including the harbour and foreshores)*	The proposed height, setbacks, plus the orientation of lots and surrounding topography, ensures that outlook is maintained for adjoining properties and the public domain. The proposed height variation is confined towards the rear/western side of the site. The proposal has been carefully designed to mitigate any potential loss of view by maintaining the front elevation well below the permissible height presentation. The proposed separation distances, including a generous southern side setback, ensures the height non-compliance maintains outlook for the only adjoining neighbour to the south. The southern neighbouring property will maintain 180-degree views of the harbour and the height variation will not be responsible for any view impacts.
4.3(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	In accordance with the submitted Shadow Diagrams significant additional overshadowing impacts are not expected. The corner nature of the site combined with the solar orientation and generous side setback from the only immediate adjoining neighbour to the south ensures that the proposed development will provide compliant solar access to the public domain and surrounding properties. In this regard, The adjoining southerly neighbour has its primary windows and balconies orientated to the west to enjoy ocean views. The living and private open space areas of No. 58 will continue to receive more than 3 hours solar access between 9am and 3pm on June 21. Furthermore, the above assessment confirms that the additional height beyond the 8.5m height limit is not responsible for any shadow impacts.

4.3(e) to ensure the height and bulk of any proposed building or structure in a recreational or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses	The subject site is located within the R2 Low Density Residential zone but is adjacent to a C2 zone and therefore provides a range of architectural design measures to ensure that any potential environmental impacts are mitigated. The bushland to the west and north of the site will maintain a vegetated buffer, noting that such vegetation is protected and likely to remain. Such landscaping screens the built form including the height variation. Furthermore, the height variation will be perceived against the backdrop of vegetation and housing higher upslope when viewed from distant vantage points. The proposal provides for a generous 46.18% (289.47m^2) (6.18% outperformance) of the site to be deep soil zone, which contributes to an extensive landscaped setting. The provision of landscape plantings in the front setback provides for a suitable streetscape outcome which is compatible with the character of Castle Circuit. The proposal also provides for abundant landscaping with the private open space, in addition to landscape planters and green roof.
Consistency with the objectives of the R2 Low Density Residential	
Objectives	**Assessment**
• *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 height variation does not raise any inconsistency with the R2 Low-Density Residential zone objectives. The height is associated with a high-quality contemporary dwelling house which provides for the needs of the community and presents a compatible height, bulk and scale with the dwellings in the vicinity of the site. The limited building footprint and envelope retain the low-density nature of the area whilst responding adequately to the sensitive adjacent Environmental Conservation zone to the west, which is within a foreshore area and classified as bushfire prone zone. The topography of the site associated with the stepped built form mitigates any adverse or significant view, overshadowing, or privacy impacts to adjoining neighbours or the public domain. The proposal will maintain the low-density residential environment, thereby confirming that the variation does not raise any inconsistency with the objectives of the zone.

Based on the above assessment, it is considered that strict compliance with the LEP height standard is unreasonable and unnecessary in this instance.

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

Assessment: The assessment under the unreasonable and unnecessary section of this Clause 4.6 variation demonstrates that there are sufficient environmental grounds to permit the variation in this instance, which include the following:

- The steeply sloping nature of the site is considered to be the primary environmental ground. The 3D height plane diagrams confirm that it is the extreme dips in the existing ground level which cause the greatest extent of height variation.

- In accordance with the submitted Shadow Diagrams solar access will be maintained to the primary living and private open space areas of the adjoining dwelling to the south at 58 Castle Circuit.

- The proposed dwelling house has been designed to respect and enhance the water views whilst ensuring suitability of the development on the coastal foreshore and will not have a detrimental impact on the visual amenity of the harbour or coastal foreshore. In this regard, the dwelling will be partially screened by the heritage landscape along the foreshore. The proposed development is considered to be suitable given its type, location and design and its relationship with and impact on the foreshore. The proposal provides for private open space and total landscaped area which outperform the control whilst combining with high-quality landscaping to ensure acceptable relationship between the development and the foreshore scenic protection area, and mitigation of visual bulk and scale impacts from the height variation.

- The generous separation distance between the proposed development and the neighbouring dwelling to the south, plus significant separation to the dwellings across Castle Circuit, along with deep soil planting further mitigates potential visual and acoustic privacy impacts from the additional height.

- The proposal has been designed to reduce bulk and scale, with the single-storey presentation to the street frontage is compatible and subservient with surrounding properties opposite on Castle Circuit, with the additional height being not visually dominant in the streetscape.

- The proposed height variation is not considered to be responsible for any unreasonable bulk or scale impacts, noting that a significant proportion of the building is excavated into the hillside, whilst the stepped built form of the dwelling is compatible with the sloping nature of the topography and surrounding properties.

- The proposed development is of a bulk and scale that contextually sits well within the public domain and is accommodated by the site conditions. In this regard, the proposed single-storey height presentation to the street, building separation, plus the orientation of lots and surrounding topography, in addition to the proposed flat roof form ensures that outlook is maintained for adjoining properties and the public domain.

- The proposed height variation will not be perceptible from the harbour to the west as the built form will be viewed against the steep hillside backdrop which includes more prominent dwellings above.

- The height variation maintains a high level of internal amenity as demonstrated by compliance with the key amenity criteria including outperformance of the deep soil landscaping (46.18%) and total open space, and above ground open space. The proposed 289.47m^2 of deep soil area allow for a sympathetic landscape planting which integrates with the adjacent C2 zone, whilst softening the visual bulk appearance of the development.

Based on the above points, it is considered that there are sufficient environmental planning grounds to permit the height in this instance.

Other Matters for Consideration

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

Assessment: The above assessment demonstrates that the proposed height satisfies the objectives of the height standard and the R2 Low-Density Residential zone

Furthermore, it is considered that the variation does not raise any matters of public interest as there are no public views or detrimental streetscape outcomes associated with the height variation.

Given that the proposal is consistent with the desired future character for the area nominated by the specific controls in the LEP and DCP, and that there are no adverse or unreasonable impacts to the broader community, it is considered that there are no public interest matters which would prevent a variation to the height control.

(5) In deciding whether to grant concurrence, the Director-General must consider:
(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning

Assessment: The proposed height variation allows for the orderly and economic use of land as envisaged by the *Environmental Planning and Assessment Act, 1979*.

The proposed height allows for the achievement of a compatible building envelope without creating a development with overbearing height, bulk, or scale and without compromising the desired future character of the area.

The proposed height is therefore consistent with the State and Regional Policies, particularly urban consolidation principles, which seek to provide additional height and density near transport and established services.

(b) the public benefit of maintaining the development standard

Assessment: There is no public benefit in maintaining the height standard given the limited amenity impacts associated with the development, which provides a high level of internal amenity, and the positive streetscape outcome that would arise from the development of the

subject site, while being sympathetic to the environmental constraints of the surrounding local area.

(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.

Assessment: There are not considered to be any additional matters to consider beyond those discussed above

Conclusion

For reasons mentioned herein, this Clause 4.6 variation is forwarded in support of the development proposal at No. 60 Castle Circuit, Seaforth and is requested to be looked upon favourably by the consent authority.

UPDATED CLAUSE 4.6 TO CLAUSE 4.4 OF MANLY LEP 2013

EXCEPTIONS TO DEVELOPMENT STANDARDS – **FSR VARIATION**

Construction of new four-storey dwelling house with swimming pool, and off-street car parking

at

60 CASTLE CIRCUIT SEAFORTH

PREPARED BY

ABC PLANNING PTY LTD

December 2023

MANLY LEP 2013 - CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARDS

This Clause 4.6 variation request has been prepared to accompany the development application that seeks construction of new four-storey dwelling house with swimming pool, and off-street car parking, at Lot 16 in DP 200638, commonly known as No. 60 Castle Circuit, Seaforth.

Clause 4.6 of the *Manly Local Environmental Plan 201*3 (MLEP2013) allows the consent authority to grant consent for development even though the development contravenes a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards.

This Clause 4.6 variation request takes into account the relevant aspects of the Land and Environment Court judgement from *Initial Action Pty Ltd v Woollahra Council [2017] NSWLEC 1734,* as revised by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130.*

Clause 4.6 Exceptions to development standards

(1) The objectives of this clause are as follows:
(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
(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 Director-General has been obtained.
(5) In deciding whether to grant concurrence, the Director-General must consider:
(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
(b) the public benefit of maintaining the development standard, and
(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.

Development Standard to be Varied

The proposal seeks a variation to the development standard contained within Clause 4.4 of the MLEP2013 - maximum FSR of 0.4:1, as demonstrated on the LEP map in **Figure 1** below.

Pursuant to Clause 4.4 of MLEP2013, the site is subject to a maximum FSR of 0.4:1 (GFA 251.52m^2), with the proposal for 0.43:1 (323.33m^2 GFA). However, in accordance with Section 4.1.3.1 of the Manly DCP 2013, exceptions to FSR may be considered for undersized lots. In this regard, the calculation of FSR for the subject site within the subzone "U" on the LEP Minimum Lot Size Map is based on a 750m^2 lot size, and consequently allows for a maximum GFA of 300m

In this regard, the proposed FSR of 0.43:1 (323.33sqm) is a minor 23.33m^2 variation from the DCP control.

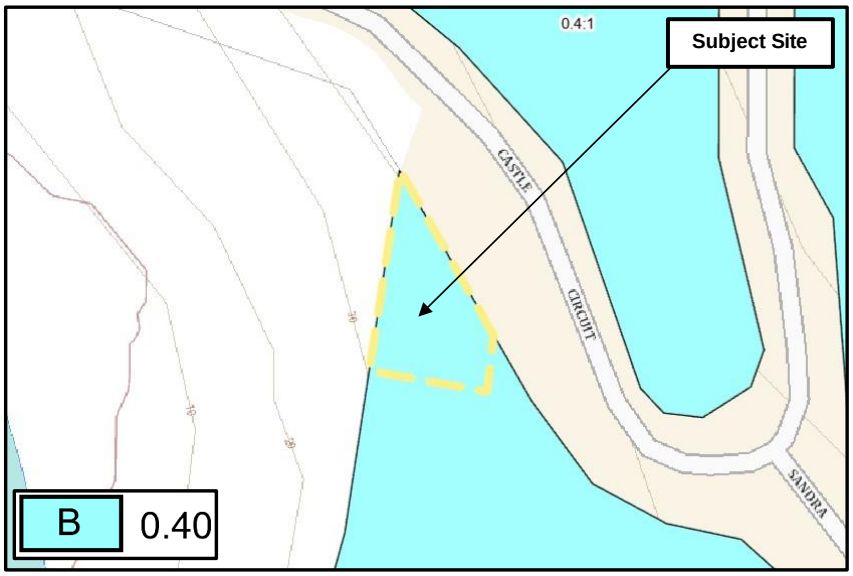


Figure 1: Floor Space Ratio Map

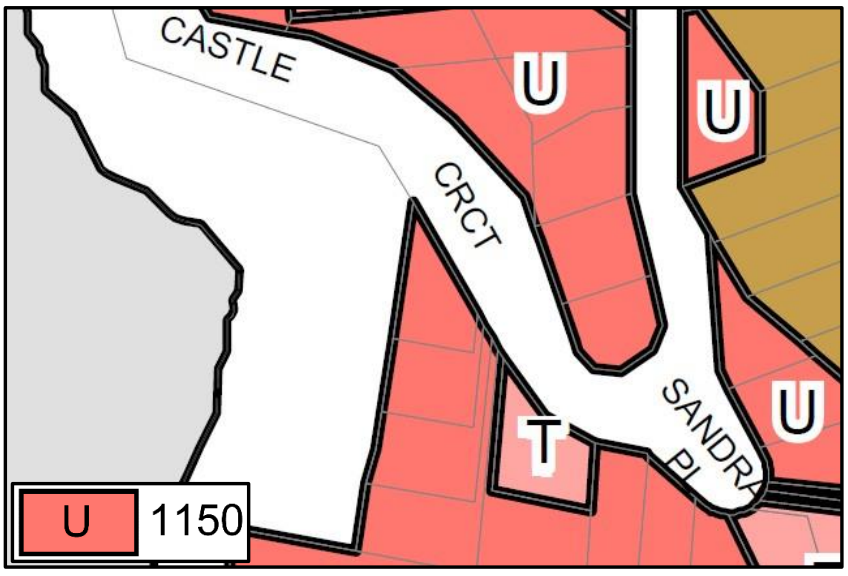


Figure 2: Minimum Lot Size Map

Justification for Contravention of the Development Standard

This written request is considered to justify the contravention of the development standard and addresses the matters required to be demonstrated by Clause 4.6(3), of which there are two aspects. Both aspects are addressed below:

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

Assessment: It is considered that strict compliance with the development standard for FSR on the site is unreasonable and unnecessary in the circumstances for the following reasons:

- The proposal complies with the objectives of the development standard and the R2 Low-Density Residential zone, indicated in the assessment in **Table 1** below. Furthermore, compliance with the development standard is unreasonable and unnecessary as it is in the public interest, given it is consistent with the objectives for the development within the zone.

- Notwithstanding the numeric departure, the proposed dwelling house will have a height, bulk and scale compatible with the scale of the existing built form (that has been approved (0.4:1) and on neighbouring sites) and that of the broader surrounding local area. Furthermore, the FSR non-compliance will not have an adverse impact to surrounding properties, the streetscape or adjoining Environmental Conservation zoned land.

Overshadowing

- The proposed FSR variation will also not generate any adverse shadow impacts as the shadows to 58 Castle Circuit are generated by the built form which is compliant with the height limit. In any event, the property to the south will maintain in excess of 3 hours solar access between noon and 3pm to the primary living and private open space areas of that property, as shown below:

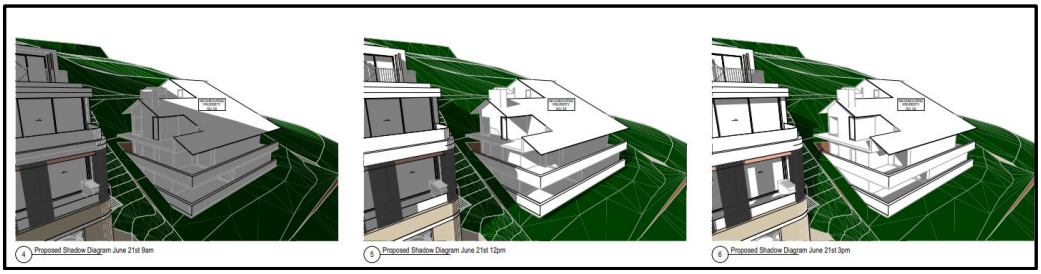


Figure 3: 3d solar access diagrams which show that the primary north and east-facing living room will continue to receive in excess of 3 hours between 9am and 3pm on June 21

Visual and Acoustic Privacy

- Visual and acoustic privacy impacts to adjoining neighbours from the additional FSR has also been carefully considered, with primary living areas oriented to the rear of the dwelling, which ensures that visual privacy is maintained to the southern adjoining neighbour.

Visual Impact from Bulk and Scale

- The proposal has been designed to reduce bulk and scale, with the single-storey presentation to the street frontage is compatible and subservient with surrounding properties opposite on Castle Circuit, being not visually dominant in the streetscape. The FSR is unapparent from the streetscape and from neighbouring properties.

Figure 4: View from across Castle Circuit to the proposed development noting the modest single-storey scale addressing the streetscape.

- The proposed FSR variation is not considered to be responsible for any unreasonable bulk or scale impacts, noting that a significant proportion of the building is excavated into the hillside, whilst the stepped built form of the dwelling is compatible with the sloping nature of the topography of the site and surrounding properties. When viewed from the waterways, the dwelling will be viewed against the backdrop of dwellings higher up-slope and therefore, the FSR variation will not generate a built form that is prominent nor out of character with the established pattern of development in this foreshore location. The above-ground FSR is well below the FSR standard as a considerable extent of the FSR is

below existing ground level.

- Notwithstanding the exception to FSR for undersized lots, the proposed FSR is compatible with the site and context of the locality whilst the proposed built form is considered to be reasonable when compared with substantially larger homes, including those opposite the subject site which have a greater presence in the streetscape.

Figure 5: Photo looking north and opposite subject site to dwellings along Caste Circuit, illustrating bulk and scale streetscape impacts associated with the nearby dwellings.

- The substantial distance to the proposal from public view access confirms that the dwelling, including the additional FSR, will be viewed against the backdrop of dwellings higher up-slope, as shown above.

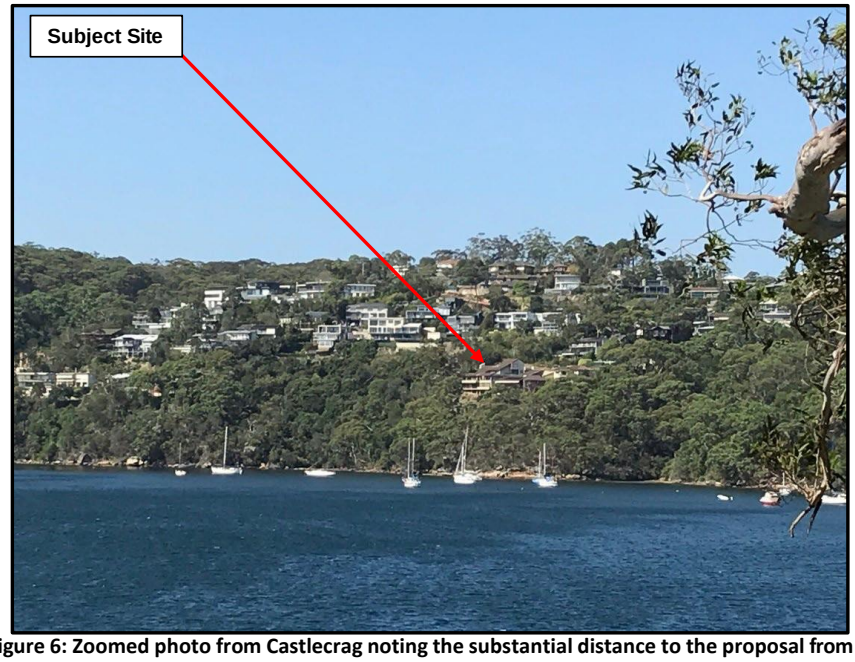


Figure 6: Zoomed photo from Castlecrag noting the substantial distance to the proposal from

the public view access which confirms that the dwelling (including the additional FSR) will be viewed against the backdrop of dwellings higher up-slope, as shown above.

View Impacts

- The additional FSR will not be responsible for any adverse view impacts from the public domain nor from private residences. The dwellings higher upslope will continue to look out and over the built form whilst the sole adjoining residence to the south will also retain 180 degree views, notwithstanding the FSR variation.

Figure 7: View from higher up slope showing the single storey of the built form and that the FSR variation would be indiscernible.

Amenity

- The FSR variation maintains a high level of internal amenity as demonstrated by compliance with the key amenity criteria including outperformance of the deep soil landscaped area (46.18%) and total open space (72.8%), plus above ground open space. The proposed 289.47m^2 of deep soil area allow for a sympathetic landscape planting which integrates with the adjacent C2 zone, whilst softening the visual bulk appearance of the development.

Despite the non-compliance, the proposal achieves the objectives of the development standard and the zoning, as demonstrated in the following table:

Table 1: Assessment against the Objectives of the Development Standard and Land Use zone.

1 Consistency with the objectives of the FSR standard in the LEP	
Objectives	**Assessment**
4.4(a) to ensure that the bulk and scale of development is consistent with the existing and desired streetscape character	The bulk and scale of the proposed dwelling house sits comfortably in its context presenting a single storey to the street frontage**.** The single-storey presentation allows for retention of water views and is compatible with the sensitive nature of the locality. Notably, the proposed bulk and scale of the development is consistent with the existing and desired streetscape character. The proposal outperforms the deep soil landscaped area and total open space controls, ensuring that the dwelling house is integrated into the surrounding bushland and sympathetic with the character of the locality. The high-quality architectural design and proposed landscaping achieves a desirable outcome to the locality which is consistent with the objectives and controls. On this basis, the FSR variation does not generate any inconsistency with this objective.
4.4(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	The proposed architectural design is considered to address the site constraints. The proposed density, intensity and bulk of the dwelling will be compatible with the site and context. The proposed FSR does not preclude the development to be sympathetic with the existing bushland and harbour scenic protection area within the locality. The proposed density and bulk do not dominate the subject site and allow for integrated landscaping, whilst protecting water views from surrounding properties and public areas. The modest single-storey presentation to the streetscape combined with an acceptable building envelope and footprint. ensures there will be no unreasonable adverse impacts in regard to landscape and townscape features. Retained bushland to the north and west will ensure that the built form will be sited in a landscaped setting, notwithstanding the FSR variation. The FSR variation is associated with a 4-bedroom dwelling house which is not considered to be excessive. On this basis, the FSR variation does not generate any inconsistency with this objective.
4.4(c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area	The additional FSR is associated with a development which presents a highly articulated built form and includes balconies and non-trafficable roof, plus landscape planters. Additionally, the proposal includes high-quality landscaping which ensures a positive visual relationship between the dwelling house and existing character and landscape of the foreshore area. As stated above, the retained bushland to the north and west

	will ensure that the built form will be sited in a landscaped setting, notwithstanding the FSR variation.
4.4(d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain	The proposed FSR variation will not be responsible for any unreasonable loss of privacy, loss of water views or depreciation of amenity beyond that of a compliant development. The proposed dwelling will retain a compliant level of solar access to the southern neighbour. As demonstrated above, the proposed additional FSR can be suitably accommodated on the subject site without generating any adverse or unreasonable impacts on the adjoining residences and public domain. On this basis, the FSR variation does not generate any inconsistency with this objective.
Consistency with the objectives of the R2 Low Density Residential	
Objectives	**Assessment**
• *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 FSR variation does not raise any inconsistency with the R2 Low-Density Residential zone objectives. The FSR is associated with a high-quality contemporary dwelling house which provides for the needs of the community and presents a compatible height, bulk and scale with the dwellings in the vicinity of the site. The limited building footprint and envelope retain the low-density nature of the area whilst responding adequately to the sensitive adjacent C2 zone to the west, which is within a foreshore area and classified as bushfire prone zone. The topography of the site associated with the stepped built form mitigates any adverse or significant view, overshadowing, or privacy impacts to adjoining neighbours or the public domain. The proposal will maintain the low-density residential environment, thereby confirming that the variation does not raise any inconsistency with the objectives of the zone.

Based on the above assessment, it is considered that strict compliance with the LEP FSR standard is unreasonable and unnecessary in this instance.

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

Assessment: The assessment under the unreasonable and unnecessary section of this Clause 4.6 variation demonstrates that there are sufficient environmental grounds to permit the variation in this instance, which include the following:

- It is noted that the variation is only 23sqm beyond the 0.4:1 permitted and that such area is almost equivalent to the 3rd car space/circulation (24.38sqm) beyond the double garage area of 6m x 6m/36sqm exclusion from GFA..

- If the additional car space is considered to be allocated as the additional GFA, such GFA is a positive outcome for the site as it provides for an additional car space for the site which is detached from the street frontage. The high-quality presentation of the garage as shown

in the streetscape images demonstrates that the additional GFA would not be responsible for any adverse streetscape impacts. Furthermore, the additional GFA would not be responsible for any adverse view, shadow, privacy or shadow impacts.

- If the additional GFA is located elsewhere, it could be within Level 1 (the lowest level). GFA in this level is concealed from the public domain, from the sole adjoining neighbour to the south and from the harbour. The GFA is also below existing ground level as confirmed on the series of section diagrams, as shown below. On this basis, the above-ground level FSR would be compliant.

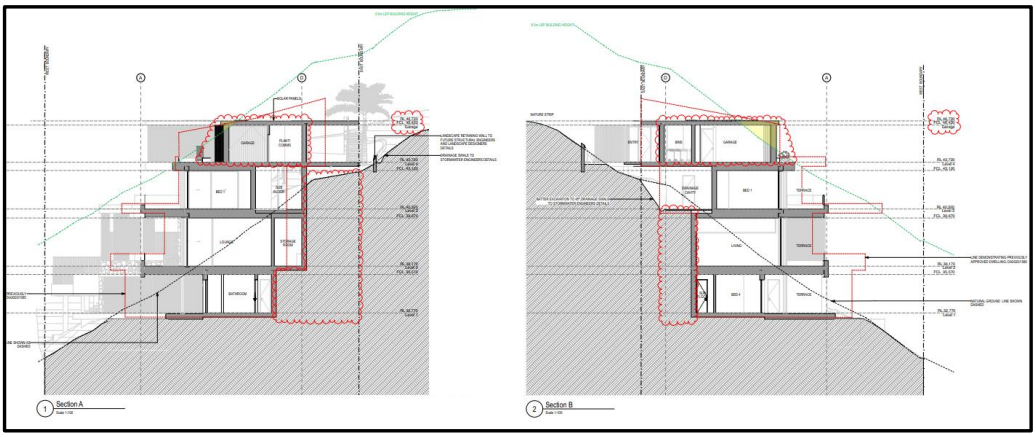


Figure 8: Excerpt of sections A and B which show that the excess FSR could be attributed to the lowest level which is below existing ground level

- It is reiterated that the additional FSR beyond the standard is not responsible for any greater shadow, privacy or view impacts beyond that of a dwelling with a compliant FSR.

- The additional FSR beyond the approved dwelling on the site is only 23sqm greater. Notwithstanding, the proposed overall bulk and scale is subservient to that approved as noted by the outline of the approved dwelling on the section diagrams above. In this regard, the approved dwelling extended beyond the footprint of the proposed dwelling. Given that the proposed dwelling is more articulated and includes above-ground landscaping, the proposed FSR variation is considered to be indiscernible when compared with the approved dwelling.

Based on the above points, it is considered that there are sufficient environmental planning grounds to permit the FSR in this instance.

Other Matters for Consideration

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

Assessment: The above assessment demonstrates that the proposed FSR satisfies the objectives of the FSR standard and the R2 Low-Density Residential zone.

Furthermore, it is considered that the variation does not raise any matters of public interest as there are no public views or detrimental streetscape outcomes associated with the FSR variation.

Given that the proposal is consistent with the desired future character for the area nominated by the specific controls in the LEP and DCP, and that there are no adverse or unreasonable impacts to the broader community, it is considered that there are no public interest matters which would prevent a variation to the FSR control.

(5) In deciding whether to grant concurrence, the Director-General must consider:
(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning

Assessment: The proposed height variation allows for the orderly and economic use of land as envisaged by the *Environmental Planning and Assessment Act, 1979*.

The proposed FSR allows for the achievement of a compatible building envelope without creating a development with overbearing height, bulk, or scale and without compromising the desired future character of the area.

The proposed FSR is therefore consistent with the State and Regional Policies, particularly urban consolidation principles, which seek to provide additional height and density near transport and established services.

(b) the public benefit of maintaining the development standard

Assessment: There is no public benefit in maintaining the FSR standard given the limited amenity impacts associated with the development, which provides a high level of internal amenity, and the positive streetscape outcome that would arise from the development of the subject site, while being sympathetic to the environmental constraints of the surrounding local area.

(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.

Assessment: There are not considered to be any additional matters to consider beyond those discussed above

Conclusion

For reasons mentioned herein, this Clause 4.6 variation is forwarded in support of the development proposal at No. 60 Castle Circuit, Seaforth and is requested to be looked upon favourably by the consent authority.

ITEM 3.3 DA2024/0230 - 27 PERONNE AVENUE CLONTARF - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE INCLUDING GARAGE, SWIMMING POOL AND ASSOCIATED LANDSCAPING WORKS

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 DA2024/0230 for demolition works and construction of a dwelling house including garage, swimming pool and associated landscaping works on land at Lot 2 DP 534829, 27 Peronne Avenue CLONTARF, subject to the conditions set out in the Assessment Report .

Reporting manager	Rodney Piggott
TRIM file ref	2024/398202
Attachments	⇩1 Assessment Report ⇩2 Site Plan and Elevations ⇩3 Clause 4.6

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/0230

Responsible Officer:	Jordan Davies
Land to be developed (Address):	Lot 2 DP 534829, 27 Peronne Avenue CLONTARF NSW 2093
Proposed Development:	Demolition works and construction of a dwelling house including garage, swimming pool and associated landscaping works
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:	Laekin Elizabeth Rose
Applicant:	Chris Rose

Application Lodged:	13/03/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	19/03/2024 to 02/04/2024
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	4.3 Height of buildings: 16.74%
Recommendation:	Approval

Estimated Cost of Works:	$ 4,130,653.00

EXECUTIVE SUMMARY

This development application seeks consent for demolition of an existing dwelling and construction of a new dwelling and swimming pool.

The application is referred to the Development Determination Panel (DDP) due to exceeding the 8.5m maximum building height in excess of 10%. In this case, there is a point encroachment of the north-western corner of the building which has a maximum height of 9.923m and a departure of 16.74% from the control. The remainder of the building is beneath the maximum height limit.

Three submissions were raised during the notification period. Concerns raised in the objections predominantly relate to impact upon views as a result of the landscape plan, the building height and the building setback to the northern façade. Amended plans were received which reduced the height of the building and increased the setback of the upper level to the northern boundary. Conditions of consent are recommended to address the height of the landscape planting in order to assist with view preservation.

Critical assessment issues included the building height and side setbacks. The development does not meet the numerical requirements of each of these controls and this is addressed in detail within the assessment report. The height and setback non-compliances are comparable to the existing building on the site to be demolished and this is demonstrated by the existing building outline shown on the plans. There are no direct impacts as a result of the non-compliances with regards to overshadowing or views and privacy has been mitigated through setbacks and screens to windows and balconies where necessary.

The 4.6 request for the non-compliance with height standard arises due to the site topography, with the north-western corner of the site dropping away sharply beneath the building footprint. Whilst there is an exceedance of the building height control, the proposed building is lower than the existing building on the site and the upper level has a greater setback to the northern boundary to minimise the extent of non-compliance.

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

PROPOSED DEVELOPMENT IN DETAIL

The application seeks to demolish the existing house on the site and construction of a new dwelling house and swimming pool. Specifically, the proposal consists of the following:

Basement Floor Plan

- New basement floor to provide for rumpus, bathroom, plant room, internal access stairs, lift shaft and rear terrace.

Lower Ground Floor Plan

- New lower ground floor to provide for three bedrooms with ensuite, primary bedroom with ensuite and walk in robe, laundry, plant room, rear terrace, lift shaft, internal access stairs

Ground Floor Plan

- New ground floor to provide for porch, entry, outdoor dining, internal access stairs, powder, lift shaft, pantry, open plan kitchen, dining and living, double garage and study with attached terrace.

External Works

- New driveway
- Pedestrian bridge
- New inground swimming pool and spa
- Associated 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

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 Local Environmental Plan 2013 - 6.4 Stormwater management
Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
Manly Development Control Plan - 3.4.2 Privacy and Security
Manly Development Control Plan - 3.4.3 Maintenance of Views
Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features

SITE DESCRIPTION

Property Description:	Lot 2 DP 534829 , 27 Peronne Avenue CLONTARF NSW 2093
Detailed Site Description:	The site is located on the western, lower side of Peronne Avenue with a general fall to the rear, western boundary of the site. The site has a total fall of approximately 16m over its length from the north-eastern corner to the west. The site is rectangular in shape with an angled front boundary of 18.76m, northern and southern boundaries measuring 58.7m and 47.755m respectively and a rear boundary of 15.24m. The total area of the site is 811.1m^2. The site is currently developed with a one and two storey elevated, clad dwelling with metal roof. Vehicular access is currently available from Peronne Avenue via a concrete driveway to an existing carport within the site. The land is zoned R2 Low Density Residential and adjoins low-density residential dwellings on all sides. To the north is a single storey dwelling and to the south is a two storey dwelling with a pool. Across the road to the east are a mix of 2 and 3 storey 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.

History of Application

- On 7 May 2024 Council wrote to the applicant requesting additional information and amendments. This included a request to reduce the extent of the building height breach and setback breach at the north-western corner, clarify the maximum building height based on site levels, clarify the floor space ratio calculation and address privacy for the northern elevation of the upper floor terrace. In relation to view sharing, Council requested the applicant either demonstrate the upper level pergola is compliant with the 8.5m height limit or erect a height pole.
- In response, the applicant submitted amended plans and an amended Clause 4.6 report on 13 May 2024. The upper floor setback to the northern boundary increased from 2m to 3m (including the setback of the terrace), the clearstory roof was further setback from the northern boundary and the pergola was brought into compliance with the 8.5m building height.
- On 15 May 2024, Council advised the resident objectors of the amended plans and allowed opportunity to provide any further comments. As the amended plans reduced the scope of the development, formal re-notification of the proposal was not required (and this is consistent with Council's CPP). No new issues were raised in response to the amended plans.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 29 of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to the building height and design. Amended plans were provided addressing the building height issue and an updated clause 4.6. 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.

Section 4.15 Matters for Consideration	Comments
	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 19/03/2024 to 02/04/2024 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 3 submission/s from:

Name:	Address:
Bill Tulloch	Po Box 440 MONA VALE NSW 1660
Ya Ping Shi	20 John Street CONCORD NSW 2137
Jeanette Linda Taylor	29 Peronne Avenue CLONTARF NSW 2093

The following issues were raised in the submissions:

- Potential impact on private views from 36 and 38 Peronne Avenue.
- Impact on public views from Peronne Avenue.
- Impact upon views for 36, 38 and 29 Peronne Avenue due to the proposed Angophoras. Potential impact upon looking south-west from 29 Peronne due the proposed landscape planting.
- Concerns with exceedance of building height and resulting in visual impact. Issue with how building height has been calculated on the originally submitted plans.
- Non-compliance with the side setback control along the northern boundary resulting in a visual impact.
- Request for fixed privacy screening along the northern sections of the three terraces which form part of the Western extension along our common boundary.
- Impact to streetscape character.
- Inadequate Clause 4.6 request.

The above issues are addressed as follows:

- **Potential impact on private views from 36 and 38 Peronne Avenue.**

  The submissions raised concerns that the proposed building could have view impacts for 36 and 38 Peronne Avenue (across the road). The submission from 38 Peronne Avenue raised that height poles should be erected to assess the impact upon views from this property.

  Comment: A view sharing assessment is undertaken later within this report for both properties. In summary, the proposal retains views from the adjoining sites.

- **Impact on public views from Peronne Avenue.**

  The submissions raised concerns that the proposal will impact views from the footpath that contain the Spit Bridge, Foreshore area and the Harbour.

  Comment: There will be a partial loss of water views from the street level/footpath which is caused by the new garage design. The garage is required to be a higher level to allow suitable driveway gradients and is well below the maximum building height, presenting as a single storey building from the street. The view at present is largely obscured by the vegetation and the existing building. The view impact is considered minor and is caused by a compliant part of the building. As such, this is not considered to be a reason to require redesign of the garage or refusal of the application for this issue.

- **Impact upon views for 36, 38 and 29 Peronne Avenue due to the proposed Angophoras. Potential impact upon looking south-west from 29 Peronne due the proposed landscape planting.**

  Each submission raised concerns that the Angophoras could reach a height of 30m and impact views for the surrounding properties, including the dwellings across the road and beside the site.

  Comment: The adjoining property to the north and properties across the road to the east have raised concern about the impact from the proposed landscape planting which includes 6 Angophora's which are capable of reaching 15-25m (5 in the rear setback and 1 in the front setback). A condition of consent will be imposed to required to delete the Angophora within the eastern (front) setback and replace with species having a maximum 6m height. This should allow views to be maintained, whilst enhancing landscape character. The remaining planting in the front setback is to be a maximum 3m in height as a condition. There are a number of trees within the road reserve which are maintained via the development and this will assist screening the development from the street.

  The condition also requires that the proposal is only limited to one Angophora to the west of the pool, with the remaining trees be of a species not capable of reaching more than 10m (as to be lower than the proposed building and allow views from the surrounding properties).

  Any impact to views from 29 Peronne due to the single remaining Angophora within the rear setback will be across a side boundary. Views to the west will be unimpacted.

  The character of the locality is leafy and whilst views are important, there is a balance to be struck between the planting of canopy trees and retaining views. Dense hedge planting is not proposed as part of the landscape plan. The landscape planting, subject to the condition, is not considered excessive for the site and responds to the leafy character of the area through new canopy trees of moderate height (subject to condition).

- **Concerns with exceedance of building height and resulting in visual impact. Issue with how building height has been calculated on the originally submitted plans.**

  Comment: Amended plans have been received which reduce the extent of building height breach and the plans show the ground levels directly beneath the building, allowing Council to make an accurate assessment of the maximum building height. The Clause 4.6 variation request has been updated to reflect the building height from the existing ground levels. The area of the building which breaches the height has been setback an additional 1m to the northern boundary (now 3m setback) to reduce the visual impact. The building height issue is addressed in detail later in this report under the Clause 4.6 assessment.

- **Non-compliance with the side setback control along the northern boundary resulting in a visual impact.**

  Comment: Amended plans have been received increasing the upper level setback from 2m to 3m for the western half of the building in order to respond better to the control. The remaining side setback non-compliance is assessed in detail later within this report.

- **Request for fixed privacy screening along the northern sections of the three terraces which form part of the Western extension along our common boundary.**

Comment: The upper level terrace has been setback an additional 1m from the northern boundary to further assist with privacy. The privacy outcome is discussed in further detail later in this assessment report. A privacy screen is proposed along the northern facade of the lower ground floor terrace. A condition of consent has been recommended for the northern elevation of the basement level terrace.

- **Impact to streetscape character.**

  Comment: The proposal, as viewed from the street, has a single storey presentation with a landscaped garden, consistent with the street character. The variations to the side setback control or building height do not impact upon the streetscape and the garage at the front elevation is compliant with the side setback control. The proposal is consistent with the streetscape the building façade appropriately setback.

- **Inadequate Clause 4.6 request.**

  Comment: The Clause 4.6 variation request has been updated to reflect the amended plans and maximum height from the existing ground level. A detailed assessment of the Clause 4.6 request is undertaken later in this report.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	**Supported with conditions** The application seeks consent for: Demolition works and construction of a dwelling house including garage, swimming pool and associated landscaping works. The Arborist's Report prepared by Michael Shaw and Landscape Plans prepared by John Lock & Associates are noted. The Arborist's Report identifies that only exempt trees under Manly DCP are to be removed. No objections are raised to removal of the exempt trees. The Landscape Plans indicate replanting of a range of trees, shrubs and groundcovers, including native canopy trees, which is supported. No objections are raised with regard to landscape issues subject to conditions.
NECC (Bushland and Biodiversity)	**Supported with conditions** It is noted that no Biodiversity controls apply to the site. An arborist report has been submitted with the application. A total of 24 trees have been included in the assessment and the report concludes that only trees 16, 17 and 24 are to be retained on site. Trees 8, 9 and 10 are proposed for removal due to encroachment into the Tree Protection Zone and owner's consent should be obtained if the application is to be approved in its current form. A landscape plan has been included with proposal and species selection has not included any environmental weeds. Conditions are recommended if the application is to be approved in its current form. The development is designed, sited and will be managed to avoid any significant adverse environmental impact.
NECC (Development Engineering)	**Supported with conditions** The proposal is for the construction of a new dwelling. The submitted stormwater plan is acceptable subject to conditions as recommended.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	Reference is made to the proposed development at the above area and Aboriginal heritage. No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development. Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No. 1729652S_02 dated 19 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	9.923m	16.74%	**No**
Floor Space Ratio	FSR: 0.4:1 (324.4m^2)	FSR: 0.397:1 (322.4m^2)	N/A	Yes

Compliance Assessment

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

Clause	Compliance with Requirements
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

Zone R2 Low Density Residential

The proposal is considered against the R2 zone objectives below:

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

  Comment: The proposal to replace the existing aged dwelling in a similar position and height on the site, with a new dwelling of similar scale and spatial proportions, provides new housing in a low density context.

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

  Comment: Not applicable.

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: Maximum 9.923m
Percentage of variation: 16.74%

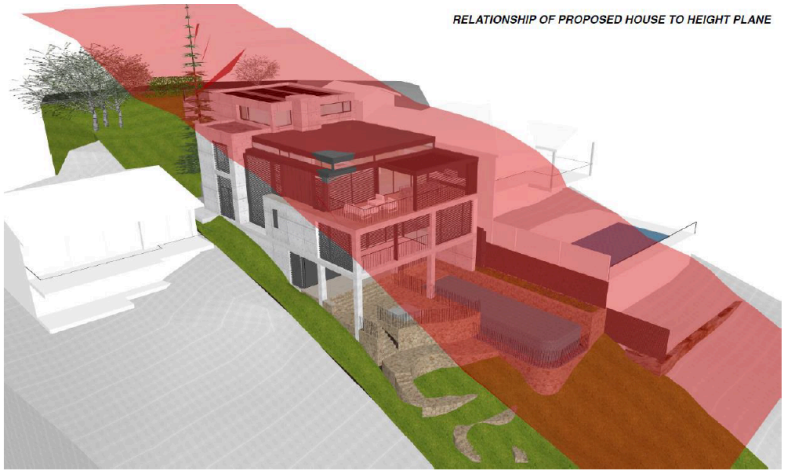


Figure 1 - 3D Height blanket of 8.5m height limit.

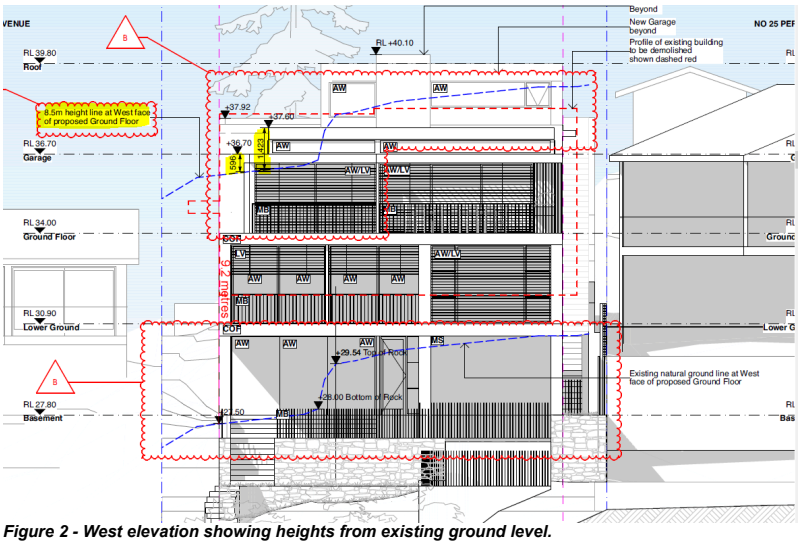


Figure 2 - West elevation showing heights from existing ground level.

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 Building Height is unreasonable or unnecessary in the circumstances of this application for the following reasons as outlined within the written request which is replicated below:

(a) This request relies upon the 1st way identified by Preston CJ in Wehbe.
(b) The first way in Wehbe is to establish that the objectives of the standard are achieved.
(c) Each objective of the maximum building height standard and reasoning why compliance is unreasonable or unnecessary is set out 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 surrounding area is predominantly characterised by two – three storey development, which is heavily influenced by the sloping terrain within the locality.
Surrounding the properties are a number of other similar dwellings of between two and three stories and in this regard, the proposal is compatible with the prevailing character of development in the vicinity.
This objective is achieved.

(b) to control the bulk and scale of buildings,
The proposed new works to the existing dwelling will not result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing.

Consistent with the decision of Roseth SC in Project Ventures Developments v Pittwater Council [2005] NSWLEC 191, it is my opinion that "most observers would not find the proposed building offensive, jarring or unsympathetic".
Further, the modulation of the front façade and building elevations where visible from the public domain minimises the visual impact of the development.
The proposal presents a compatible height and scale to the surrounding development and the articulation to the building facades and the fact the proposal follows the sloping topography of the site will suitably distribute the bulk of the new floor area.
The extent of the landscaping area surrounding the development will ensure that the bulk and scale of the proposal is appropriately ameliorated.
This objective is achieved.

(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),
The proposal will provide for view corridors above and beside the ground floor level will be maintained for the uphill properties towards the waterway.
Views from the surrounding public spaces are not adversely affected.

(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,
The shadow analysis prepared by Corben Architects comprises plan views of the proposed shadow impacts.
The assessment confirms that the primary living areas of the adjoining property to the south, No. 25 Peronne Avenue, will maintain suitable solar access throughout the day.

(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.
The works will respect the height, scale and form of the existing vegetation, topography and surrounding residential development and the existing development on the site.
The proposal will not require the removal of any significant vegetation, with only exempt species to be removed, and will see the retention of the extensive landscaped area surrounding the dwelling.
Despite the variation to the building height control which occurs as a result of the existing slope of the land, the proposal is generally consistent with the height and scale of newer development in the locality.

Council's comment on the above assessment

The applicant's assessment of the proposal against the objectives of the control is agreed with. The proposal is of a comparable bulk and scale of the existing building on the site and as shown on the architectural plans and height blanket provided within the Clause 4.6 request, the new building is of a lesser height than the existing building on the land. Furthermore, view corridors are maintained for the adjoining dwellings and the non-compliant portion of the building does not result in additional view impacts, when compared to the existing situation. Solar access is maintained for the adjoining properties in accordance with the DCP and the building reasonably protects significant vegetation on the site as it is in the general footprint of the existing building.

As such, Council is satisfied the Clause 4.6 has demonstrated the compliance is unreasonable and unnecessary as the objectives of the development standard are achieved.

(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:

Compliance with this control is constrained by the sloping topography of the site and as noted in the architectural submission, particularly Drawing No's DA08 & DA09, the proposed dwelling will result in some reduction in height at various areas when compared to the existing building within the site. Figures 2, 3 & 4 provide a comparison of the existing and proposed development relative to the height control.

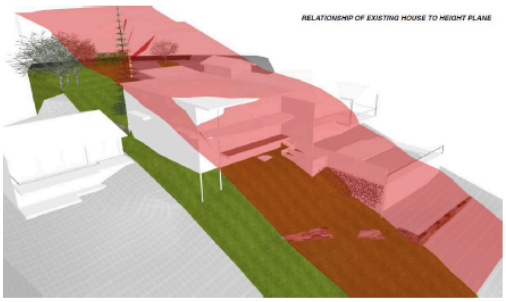


Fig 2: Architectural Extract – Relationship of existing dwelling to 8.5m height control

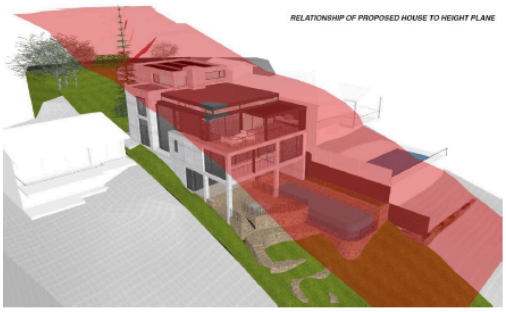


Fig 3: Architectural Extract – Relationship of proposed dwelling to 8.5m height control

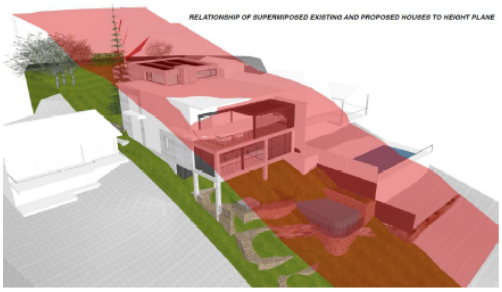


Fig 4: Architectural Extract – Relationship of existing and proposed dwelling to 8.5m height control

Consistent with this objective, the particular element of the development which breaches the height development standard, is constrained by the sloping topography which provides a constraint in constructing new first floor level which observes the height standard.

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

- *The proposed new dwelling will maintain the general bulk and scale of the existing surrounding newer dwellings and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).*
- *Similarly, the proposed development will provide for improved amenity through the inclusion of more functional floor space within a built form which is compatible with development in the surrounding area, which promotes the orderly and economic use of the land (cl 1.3(c)).*
- *The proposed new development is considered to promote good design and enhance the residential amenity of the building's occupants and the immediate area, which is consistent with the Objective 1.3 (g).*
- *The proposed development improves the amenity of the occupants of the subject site and respects surrounding properties by locating the development where it will not unreasonably obstruct views across the site and will maintain the views from the site (1.3(g)).*

Council's Comment on Environmental Planning Grounds

Council agree with the environmental planning grounds as identified within the Clause 4.6. In particular, that the new building has a lesser overall building height than the existing building on the land to be replaced and as such, this demonstrates good design having regard to the sloping nature of the site. Upon review of the survey plans and a site inspection, it is evident that the north-western corner of the site has topography that sharply drops away which results in a localised breach of the height limit. Given the breach is at the northern side of the building, the non-compliance does not contribute to overshadowing of the adjoining properties. View corridors are maintained for the properties across the road to the east given the proposal will not be higher than the existing building on the land.

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.

Council is satisfied that the Applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of Clause 4.3.

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 which relate to the new building being lower than the existing building and the topography of the site at the north-western corner of the building, 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 development was referred to the Aboriginal Heritage Office who provided comments and conditions that have been included in the consent.

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

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

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

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

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.

6.4 Stormwater management

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

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

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

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

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

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

Comment: The proposal has been assessed by Council's Development Engineers who have raised no objections to approval, subject to conditions. In this regard, Council is satisfied that the development will minimise any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters.

6.9 Foreshore scenic protection area

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

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

Comment: The proposed building is of a similar height and scale to the building on the site when viewed from the Harbour. The proposal has been designed in a way to avoid impacts to the foreshore area and is of a similar scale to the surrounding properties.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 811.1m^2	**Requirement**	**Proposed**	**% Variation***	**Complies**
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwellings	1	N/A	Yes
4.1.2.1 Wall Height	N: 8m (based on gradient 1 in 4+)	6.7m to 9.2m	15%	**No**
	S: 8m (based on gradient 1 in 4+)	3.3m to 6.5m (from existing ground level)	N/A	Yes
4.1.2.2 Number of Storeys	2	3	N/A	**No**
4.1.2.3 Roof Height	Height: 2.5m	0.8m	N/A	Yes
	Parapet Height: 0.6m	0.8m	N/A	Yes
	Pitch: maximum 35 degrees	0 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line = Nil to 7.3m	2.1m to 6.9m	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	North: 2m - 3.1m (based on wall height) South: 1.1m - 2.1m (based on wall height)	North: 1.95m-3m South: 1.5m	33%* 40%* *Max	**No**
	Windows: 3m	North -1.95m South 1.5m	50%	**No**
4.1.4.4 Rear Setbacks	8m	23m	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area (486m^2)	62% (504m^2)	N/A	Yes
	Open space above ground 25% of total open space	12% (60m^2)	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space (201m^2)	70% of open space (354m^2)	N/A	Yes
	3 native trees	3 trees	N/A	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	>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	33% or 5.2m	N/A	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	2m* **However setback >2m*	100%	**No**
	1m curtilage/1.5m water side/rear setback	1.5m side 12m rear	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

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	Yes	Yes
4.4.1 Demolition	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

The proposal has been designed with the retention of reasonable privacy in mind, whilst balancing the significant and valuable view that is available to the west and north-west. It is noted that the existing house and surrounding houses have elevated balconies orientated towards the rear (western) boundary, some of which do not have privacy screens.

The new terrace 1 on the ground floor (upper most level) has been setback 3m from the side boundary (increased over the current situation). A privacy screen has not been included to reduce the bulk and scale of the development and minimise the height breach. However, given the 3m setback (1m more than existing) and fact the balcony is not directly adjacent to the balcony of No.29 Peronne Avenue, the design is supported and reasonable privacy is retained for the adjoining site.

The southern elevation of the building has a privacy screen due to its proximity to the adjoining building's balcony at 25 Peronne Avenue.

The northern elevation of the terrace on the lower ground floor is treated with a privacy screen. Louvre screens are provided to the northern elevation which allow light into the building, whilst providing privacy to the 29 Peronne Avenue.

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:

36 Peronne Avenue

The view that has the potential to be impacted are water views and views of the foreshore area at Clontarf Beach. The view is largely whole, however, parts of the water are heavily obscured by vegetation.

Figure 1- View from living room, looking west, standing position.

Figure 2 - Upper floor master bedroom, looking west, standing position.

Figure 3 - Terrace adjoining living and kitchen area, standing, looking west.

38 Peronne Avenue

The view that has the potential to be impacted are water views and views of the foreshore area at Clontarf Beach. The view is largely whole, however, parts of the water are heavily obscured by vegetation.

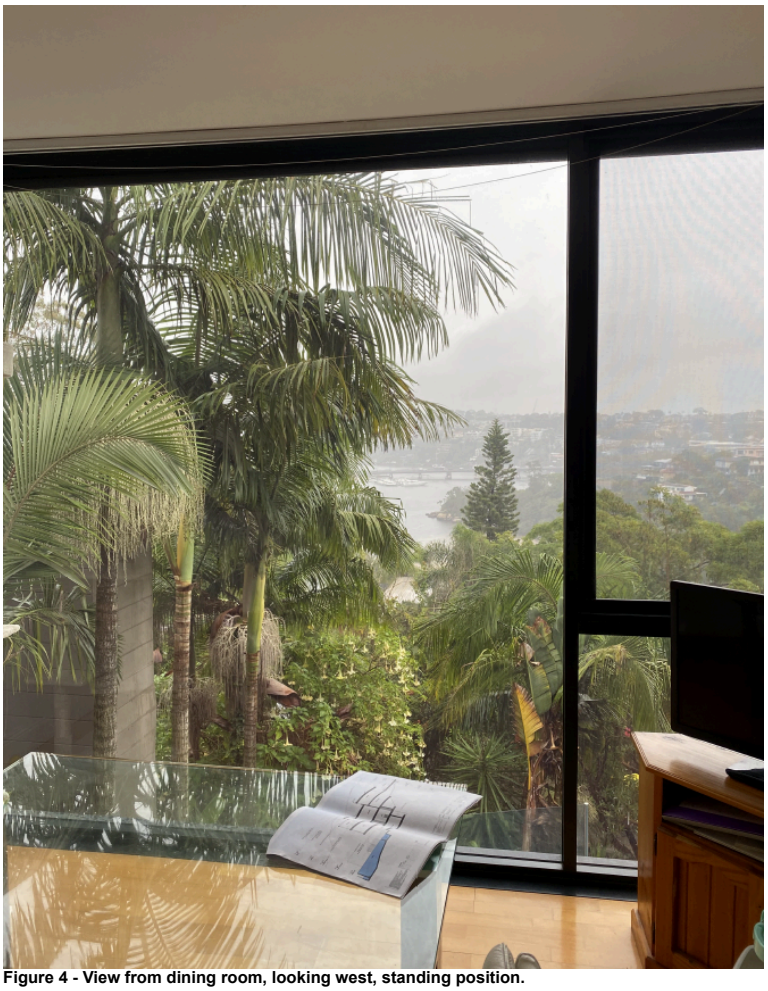


Figure 4 - View from dining room, looking west, standing position.

Figure 5 - View from inside living room, looking west, standing position.

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:

36 Peronne Avenue

The views are obtained from lower ground floor bedrooms, middle level living area and terrace and upper level bedroom. All views are obtained over the front boundary of the site. Views are obtained from both seated and standing positions. The property has also raised concern about the impact from the proposed landscape planting which includes Angophora's which are capable of reaching 30m. A condition of consent will be imposed to require no plantings of this scale within the eastern (front) setback and that the proposal is only limited to plant species in the rear setback not capable of reaching more than 10m (as to be lower than the proposed building).

38 Peronne Avenue

The views are obtained from the upper level dining room (and kitchen behind it) and the living room. All views are obtained over the front boundary of the site. Views are obtained from both seated and standing positions. A condition of consent will be imposed to require no plantings of this scale within the eastern (front) setback and that the proposal is only limited to plant species in the rear setback not capable of reaching more than 10m (as to be lower than the proposed building).

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:

36 Peronne Avenue and 38 Peronne Avenue

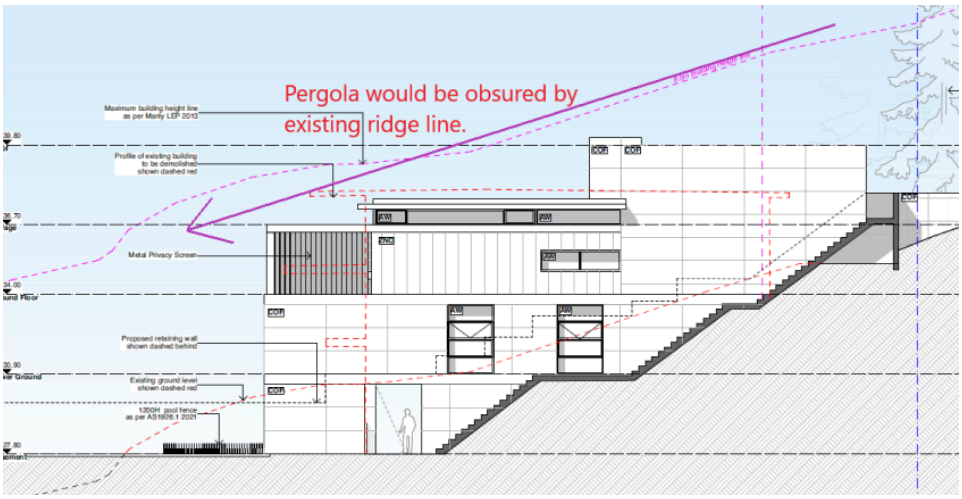
The extent of impact from the proposed building, from both 36 and 38 Peronne Avenue, is considered negligible. The western projection of the new proposed roof is lower than the existing building on the site. The view outcome from both properties will be maintained. The north-western portion of the proposed pergola is setback from the northern boundary and the proposed roof is lower than the existing building.

The view over the north-western corner of the development will be an improvement from the existing situation, particularly for the master bedroom of 36 Peronne Avenue (i.e views will be gained over the north-western corner of the building).

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:

Although the proposal has a breach to the building height at the north-western corner, the breach is less than the existing situation on the site. The upper floor has a greater setback to the northern boundary than the existing situation. The pergola would be obscured by the existing western projection of the roof and in any event, the pergola is compliant with the 8.5m building height and any impact generated would be minor and acceptable given compliance with the development standard. The below figure explains how the pergola would be hidden by the existing roof form.



Overall, the building has demonstrated sufficiently skillful design by maintaining the general form and bulk of the existing building projecting west and a reduction of the north-western corner increasing view sharing.

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

The DCP control specifies a maximum wall height of 8m based on the site gradient.

The northern elevation has a wall height of between 6.7m to 9.2m (non-compliant). The southern elevation has a wall height of between 3.3m to 6.5m (compliant).

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 building is of a similar height to the existing building on the land and the upper level has provided a 1m greater setback to the northern boundary, when compared to the existing situation. The site has a very steep topography and generally the building is stepped to respond to the topography of the land.

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

Comment: The site has a very steep topography and generally the building is stepped to respond to the topography of the land, with a small localised

encroachment on the north-western elevation. The building is of a similar size and scale to the existing and surrounding 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),

Comment: View sharing is addressed elsewhere within this report and the proposal has been found to result in an acceptable view sharing outcome. The increased setback and lower height of the building means that views are improved over the north-western corner of the building (the area of non-compliance).

(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 non-compliance is on the northern side and does directly contribute to overshadowing impacts for the adjoining sites or public land.

(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.

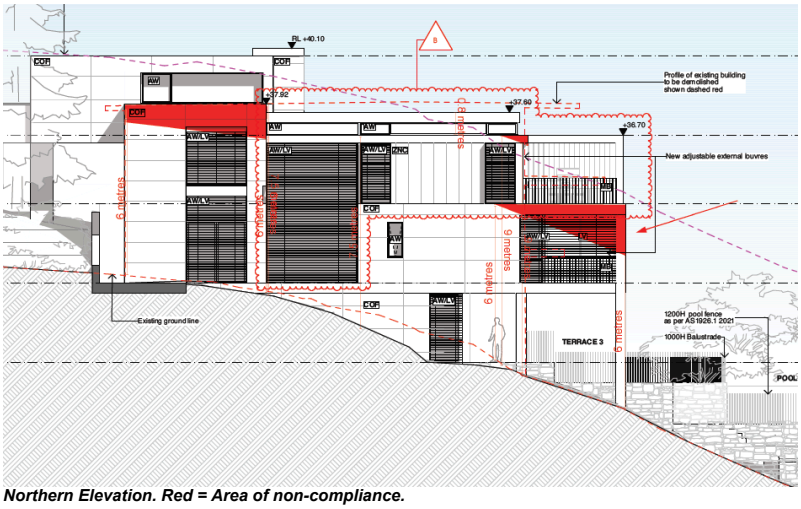
Comment: The building is stepped with the topography of the land and setback in order to respect the site topography. No significant trees are impacted.

Overall, the proposal meets the objectives of the control and therefore the variation to the DCP is supported in this particular circumstance.

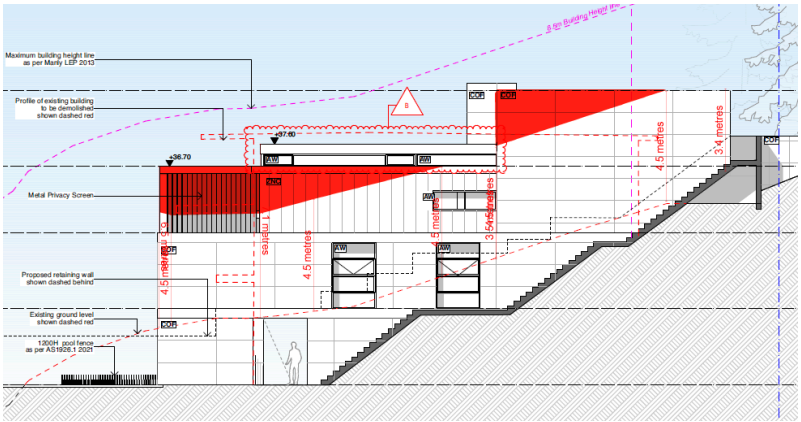
4.1.4 Setbacks (front, side and rear) and Building Separation

Description of non-compliance

The proposal exceeds the side setback control on the northern and southern elevation. The side setback control requires a setback to be provided equivalent to 1/3 of the wall height. The below diagram shows the portions of the building that are non-compliant:



Northern Elevation. Red = Area of non-compliance.



Southern Elevation. Red = Area of non-compliance.

It is notable to mention that large portions of the building have the same setback and scale as the existing building on the site as viewed from the southern elevation and northern elevation.
As viewed from the northern elevation, the proposal has an overall lower height and increase to the upper floor setback when compared to the existing situation (existing 2m, proposed 3m). The lower ground floor projection is limited to a terrace and has been setback 2m.
The southern elevation has included a privacy screen to resolve privacy between the two sites. The adjoining building at 25 Peronne is a similar height and has a lesser setback, as such, the proposal will not be out of context.

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, as viewed from the street, has a single storey presentation with a landscaped garden, consistent with the street. The variations to the side setback do not impact upon the streetscape and the garage at the front elevation is compliant with the side setback control.

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:

View sharing is discussed in detail earlier within this report and the proposal is considered to be acceptable. The building overall has been designed to maintain privacy through spatial separation of the northern ground floor terrace and privacy screening on the lower ground floor terrace. The building presenting to the south includes privacy screening and limited windows. Part of the non-compliance to the southern elevation is due to a privacy screen, however, deletion of the screen would be a poor outcome and the height of the balcony is comparable to the adjoining site (which also has a screen).

The solar access outcome for the adjoining property to the south is maintained, with the elevated balcony and pool area continuing to receive afternoon sunlight, as per the existing situation. The proposed upper floor and terrace has been designed to align with the building to the south as to minimise solar impacts. There are not main living room windows on the northern elevation of 25 Peronne Avenue which will suffer overshadowing as a direct result of the non-compliance.

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

Comment:

The building uses the existing site setbacks to maintain the existing spatial proportions of the site. Flexibility should be applied in this circumstance due to the site gradient.

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:

Sufficient room has been provided along the northern boundary, front boundary and rear boundary for deep soil landscaping. The southern side passage is used as stair access, which is consistent with the existing situation.

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

Comment:

Not applicable to this site.

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

4.1.9 Swimming Pools, Spas and Water Features

The swimming pool has a height that exceeds 1m above the ground level. The pool has a maximum height of 2m above the ground level at the most western extent. Council's controls provide the following exception:

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

i) would not detract from the amenity or character of the neighbourhood; and
ii) is a minimum distance from any side boundary equivalent to the height of the swimming pools and/or spa and their curtilage and/or concourse at any point above existing ground level.

Comment: The swimming pool has a setback of over 10m to the rear boundary and 1.5m to the side boundary. Whilst the pool has less than a 2m setback, there is an equivalent pool on the adjoining site at 25 Peronne Avenue and as such, the spatial relationship is consistent with the adjoining site. The pool has a planter box within the 1.5m setback to promote the landscape character of the area. The pool is not dissimilar to the pool on the adjoining site to the south and will sit lower than the adjoining pool. Due to the site topography, any pool will have a similar outcome unless further excavation would occur. On balance the pool design is acceptable.

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 $41,307 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $4,130,653.

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

The application is referred to the Development Determination Panel (DDP) due to exceeding the 8.5m maximum building height in excess of 10%. In this case, there is a point encroachment of the north-western corner of the building which has a maximum height of 9.923m and a departure of 16.74% from the control. The remainder of the building is beneath the maximum height limit.

Three submissions were raised during the notification period. Concerns raised in the objections predominantly relate to impact upon views as a result of the landscape plan, the building height and the building setback to the northern façade. Amended plans were received which reduced the height of the building and increased the setback of the upper level to the northern boundary. Conditions of consent are recommended to address the height of the landscape planting in order to assist with view preservation.

Critical assessment issues included the building height and side setbacks. The development does not meet the numerical requirements of each of these controls and this is addressed in detail within the assessment report. The non-compliances comparable to the existing building on the site to be demolished and this is demonstrated by the existing building outline shown on the plans. There are no direct impacts as a result of the non-compliances with regards to overshadowing or views and privacy has been mitigated through setbacks and screens to windows and balconies where necessary.

The 4.6 request for the non-compliance with height standard arises due to the site topography, with the north-western corner of the site dropping away

sharply beneath the building footprint. Whilst there is an exceedance of the building height control, the proposed building is lower than the existing building on the site and the upper level has a greater setback to the northern boundary to minimise the extent of non-compliance.

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 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 DA2024/0230 for Demolition works and construction of a dwelling house including garage, swimming pool and associated landscaping works on land at Lot 2 DP 534829, 27 Peronne Avenue, 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**
DA00	B	Cover Page	Corben Architects	10/05/2024
DA02	B	Demolition and Excavation Plan	Corben Architects	10/05/2024
DA03	B	Site Plan	Corben Architects	10/05/2024
DA04	B	Basement Plan	Corben Architects	10/05/2024
DA05	B	Lower Ground Plan	Corben Architects	10/05/2024
DA06	B	Ground Floor Plan	Corben Architects	10/05/2024
DA07	B	Roof Plan	Corben Architects	10/05/2024
DA08	B	North Elevation	Corben Architects	10/05/2024
DA09	B	South Elevation	Corben Architects	10/05/2024
DA10	B	West Elevation	Corben Architects	10/05/2024
DA11	B	East Elevation	Corben Architects	10/05/2024
DA12	B	Section AA	Corben Architects	10/05/2024
DA13	B	Section BB	Corben Architects	10/05/2024
DA21	B	Materials and Fixtures Schedule	Corben Architects	10/05/2024
LP-00	C	Landscape Site Plan	JLA Landscape Architecture	12/01/2024
LP-01	C	Landscape Plan - Pool Terrace	JLA Landscape Architecture	12/01/2024
LP-02	C	Landscape Plan - Ground Level	JLA Landscape Architecture	12/01/2024
LP-20	C	Landscape Site Section	JLA Landscape Architecture	12/01/2024
LP-21	C	Landscape Entry Level	JLA Landscape Architecture	12/01/2024
LP-22	C	Landscape Section Pool Level	JLA Landscape Architecture	12/01/2024
H-DA-00	A	Legend, Catchment, Cals and Sed Control	ITM Design	31/01/2024
H-DA-01	A	Basement & Lower Ground Floor Stormwater	ITM Design	31/01/2024
H-DA-02	A	Ground Floor and Roof Stormwater	ITM Design	31/01/2024

Approved Reports and Documentation			
Document Title	**Version Number**	**Prepared By**	**Date of Document**
BASIX Certificate No 1729652S-02	-	Efficient Living Pty Ltd	19/02/2024
Waste Management Plan	-	-	-
Arboricultural Impact Assessment	-	Michael Shaw	20/02/2024
Geotechnical Assessment GG11296.001	-	Green Geotechnics	2/12/2023

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. **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	15/03/2024

(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) Construction certificate plans are to be in accordance with all finished levels identified on approved plans. Notes attached to plans indicating tolerances to levels are not approved.

(c) 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.

(d) At all times after the submission of 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.

(e) 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.

(f) 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.

(g) 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.

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

(i) 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.

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

(k) 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.

(l) 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.

(m) 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.

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

(o) 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 $41,306.53 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 $4,130,653.00.

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

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

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

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

6. **Security Bond**

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

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

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

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

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

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. **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 ITM Design, job number 23/131, drawing number H-DA-00, H- DA-01, H-DA-02, dated 1/1/2024. 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.

The drainage plans must address the following:
i. Stormwater discharge shall be to the interallotment drainage easement benefitting the site.

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

9. **Traffic Management and Control**
The Applicant is to submit an application for Traffic Management Plan to Council for approval prior to issue of the Construction Certificate. The Traffic Management Plan shall be prepared to TfNSW standards by an appropriately certified person.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process.

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

11. **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.

12. **Amendments to the approved plans**
The following amendments are to be made to the approved plans:

- A fixed privacy screen with a minimum height of 1.7m above the finished floor level shall be provided along the entire northern edge of the terrace on the basement 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.

13. **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.

14. **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.

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

The application is to include Civil Engineering plans for the design of elevated vehicle crossing, access stairs and associated works in the road reserve 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:

1. A vehicular crossing 3.9meters wide to be constructed in accordance with Council's standard drawing Extra Low.
2. Structural details for the suspended driveway. The first 1.5m of the driveway crossing to be similar to existing ground levels without a barrier kerb to maintain pedestrian access along the road reserve.
3. The suspended driveway be designed such that there is no load imposed on the existing batter supporting the road.
4. Structural details for any retaining walls supporting the driveway.
5. Safety barriers and sight distances are to be in accordance with AS/NZS 2890.1:2004.
6. Structural details for the construction of the pedestrian access stairs and walkway.
7. Cross sections at the boundary and along the road reserve for the driveway and stairs shall be provided.
8. Structural Engineer's certification of the design of all retaining walls, access stair, suspended driveway and safety barriers.
9. A services plan indicating all services in the road reserve. Where any services are to be adjusted as a result of the works, approval from the relevant service authority is to be provided.

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.

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

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

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

17. **Amended Landscape Plan**
An Amended Landscape Plan shall be issued to the Certifier prior to the issue of a Construction Certificate to include the following details:

i) The Angophora located in the road reserve deleted and replaced with a locally native tree capable of reaching a mature height of 6m.

ii) Specify that any planting to the east of the building footprint (within the front setback) consist of species capable of reaching a mature height of 3m.

iii) One Angophora is to be planted to the west of the pool. All other Angophoras are to be deleted from the plans and replaced with a species that is capable of reaching a maximum mature height of 10m.

Certification shall be provided to the Certifier that these amendments have been documented.

Reason: Landscape amenity.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

18. **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 the Arboricultural Impact Assessment dated 20 February 2024 prepared by Michael Shaw and AS4970-2009 Protection of trees on development sites.

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

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.

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

Properties: 25 and 29 Peronne Avenue Clontarf

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

20. **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.

21. **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,in the Arboricultural Impact Assessment dated 20 February 2024 prepared by Michael Shaw and,
    ii) all trees and vegetation located on adjoining properties,
    iii) all trees and vegetation within the road reserve not indicated for removal.

b) Tree protection shall be undertaken as follows:
    i) tree protection shall be in accordance with the Arboricultural Impact Assessment dated 20 February 2024 prepared by Michael Shaw and 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,
    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.

22. **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.

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. **Road Reserve**

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

Reason: Public safety.

26. **Removing, Handling and Disposing of Asbestos**

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

- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

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

27. **Geotechnical Requirements**

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

works.

Reason: To ensure geotechnical risk is mitigated appropriately.

28. **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.

29. **Traffic Control During Road Works**
Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with TfNSW Traffic Control At Work Sites Manual and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

30. **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

31. **Landscape Completion**
Landscape works are to be implemented in accordance with the approved Landscape Plans prepared by John Lock and Associates, and inclusive of the following conditions:
   a) landscape works are to be contained within the legal property boundaries,
   b) all tree planting shall be a minimum pre-ordered planting size of 75 litres or as otherwise scheduled if greater in size; generally selected from Northern Beaches Council's Native Plant Species Guide, or Council's Tree Guide; to achieve at least (insert) metres height at maturity; 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 shall be located at least 3.0 metres from buildings or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,
   c) tree, shrub and groundcover planting shall be installed as indicated on the approved Landscape Plans,
   d) mass planting shall be installed at minimum 1metre intervals for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch,
   e) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces,
   f) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone,
   g) where the property is certified Bush Fire Prone Land, any new planting may be managed in accordance with Planning for Bushfire Protection 2019.

Prior to the issue of an Occupation Certificate, details (from a 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.

32. **Condition of Retained Vegetation**
Prior to the issue of an Occupation Certificate, a report prepared bt he Project Arborist 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.

33. **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.

34. **Priority Weed Removal and Management**
All Priority weeds (as specified in the Northern Beaches Local Weed Management Plan) within the development footprint are to be removed using an appropriate control method.

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

Reason: To reduce the risk of site works contributing to spread of Priority weeds.

35. **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.

36. **Post-Construction Dilapidation Report**
Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

- Compare the post-construction report with the pre-construction report,
- Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- Should any damage have occurred, suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

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

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

37. **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.

38. **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.

39. **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.

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

40. **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.

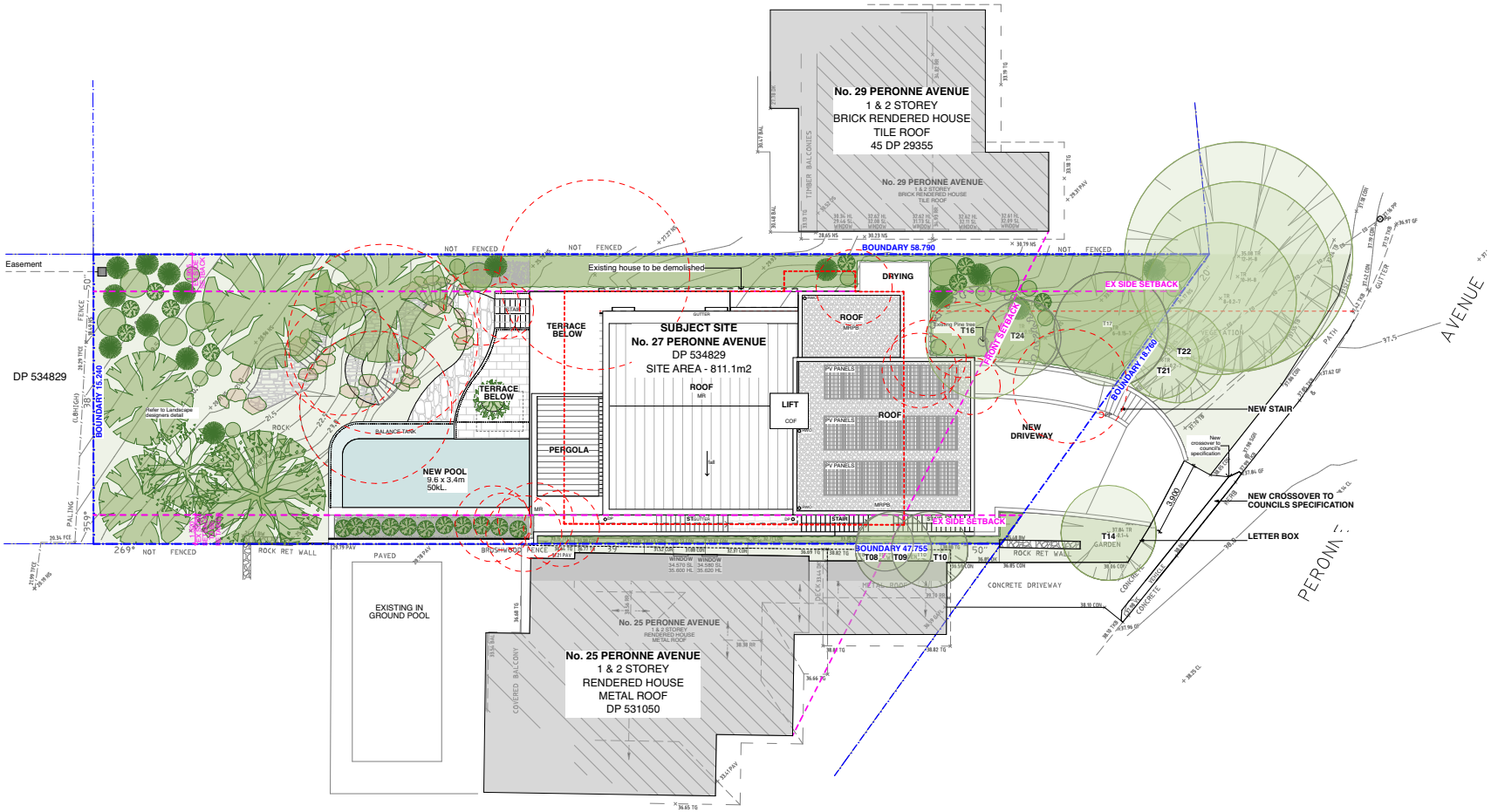
Reason: To protect native wildlife and habitat.

41. **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.

42. **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.



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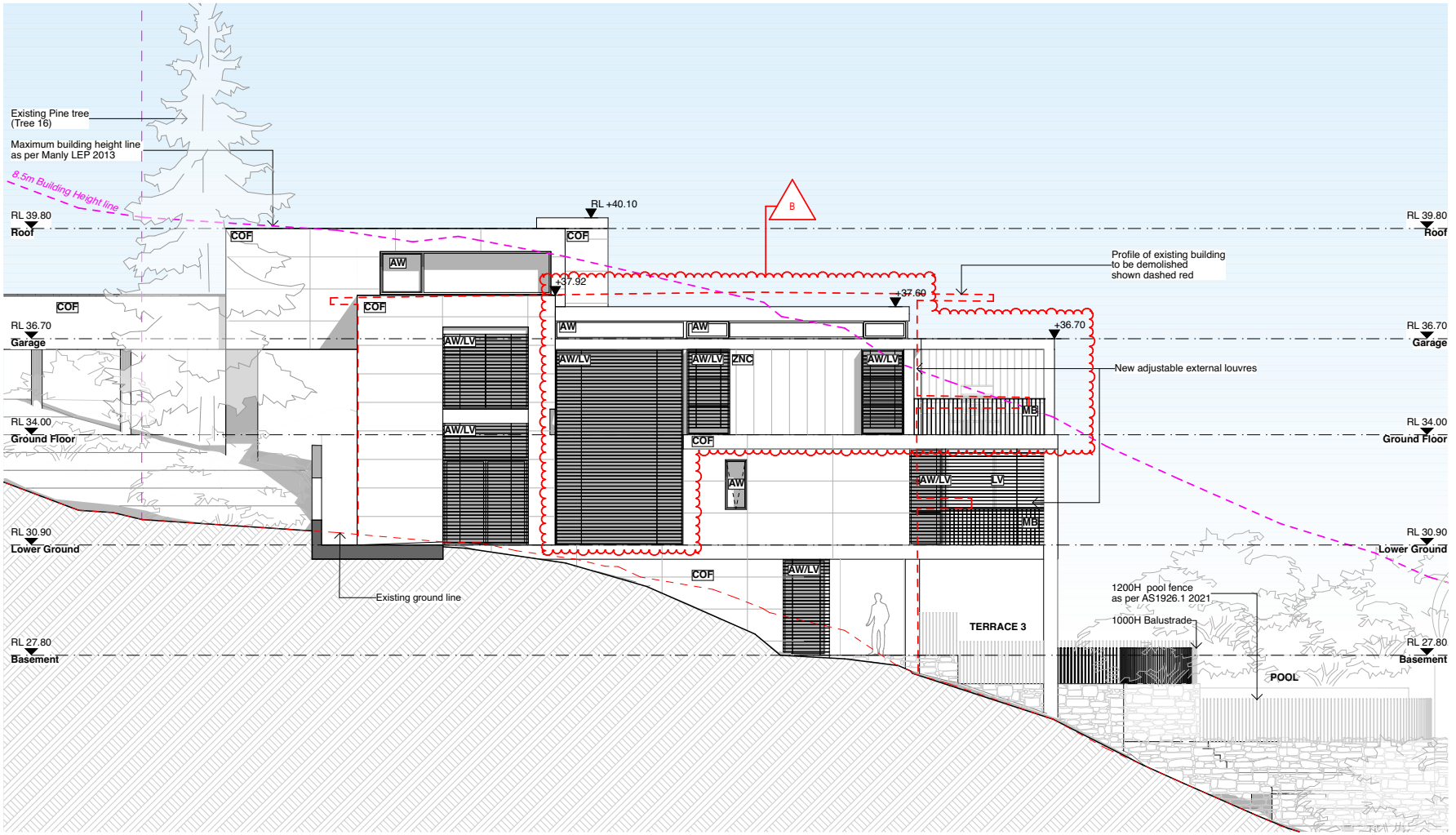
REV	DATE	ISSUE
B	10/5/2024	Amended DA Issue

notes

ROSE - Master File

CORBEN ARCHITECTS
PO Box 1021 Neutral Bay NSW 2089 Australia
02 9904 1844
mail@corben.com.au
corben.com.au
Nominated Architect: Philip Corben (Reg No.4616)

project	New Residence, Pool & Landscape Works	**title**	Site Plan	**job no.**	ROSE	**dwg no.**
address	27 Peronne Avenue Clontarf NSW 2 DP 534829			**drawn**	BF	DA03
				checked	AV	**revision**
client	Nola & Peter Rose	**issue**	Development Application	**scale**	1:200	B



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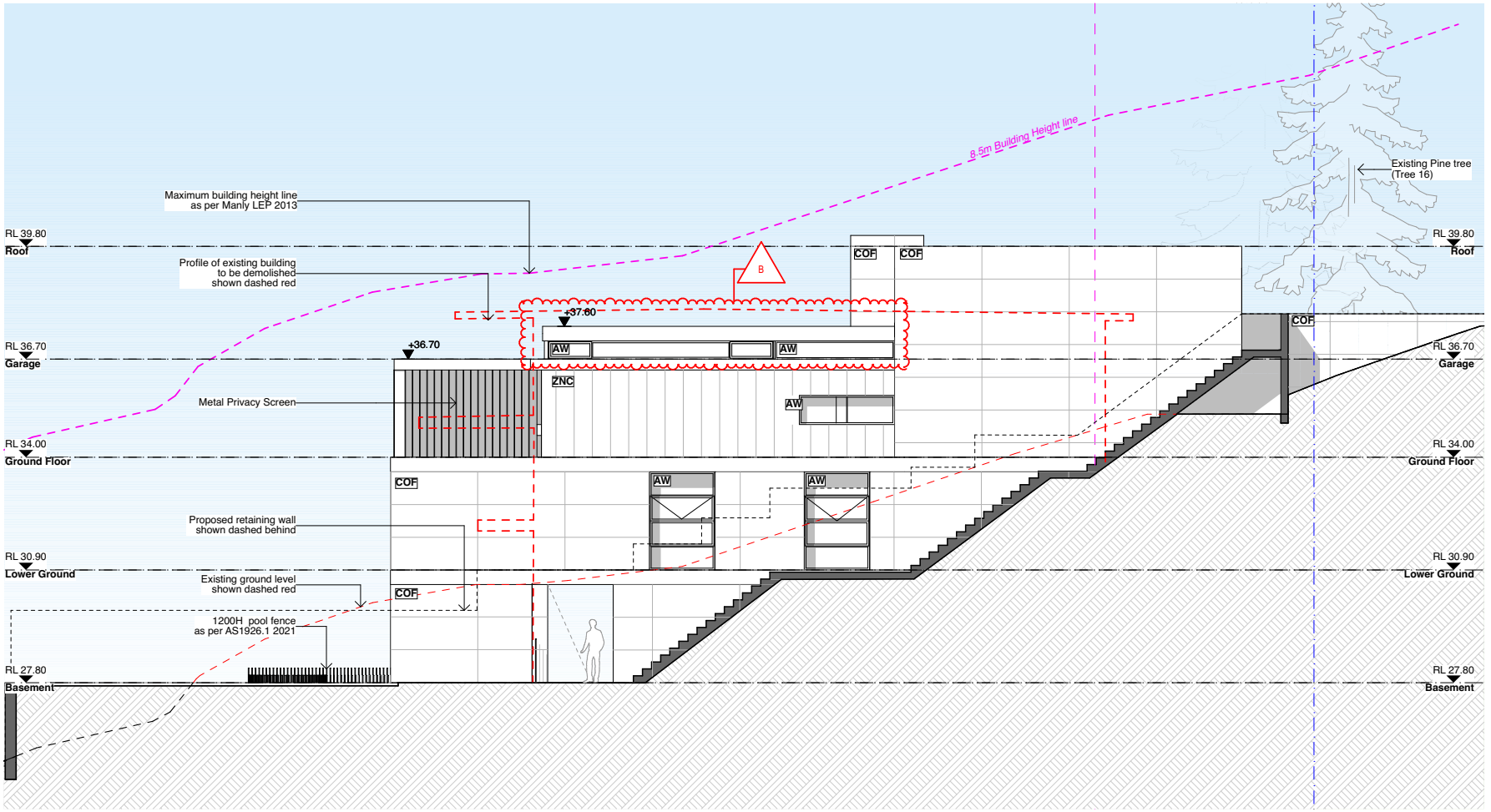
corben.com.au
Nominated Architect: Philip Corben (Reg. No. 4616)

project	New Residence, Pool & Landscape Works	**title**	North Elevation	**job no.**	ROSE	**dwg no.**	DA08
address	27 Peronne Avenue Clontarf NSW 2 DP 534829			**drawn**	BF		
				checked	AV	**revision**	B
client	Nola & Peter Rose	**issue**	Development Application	**scale**	1:100		



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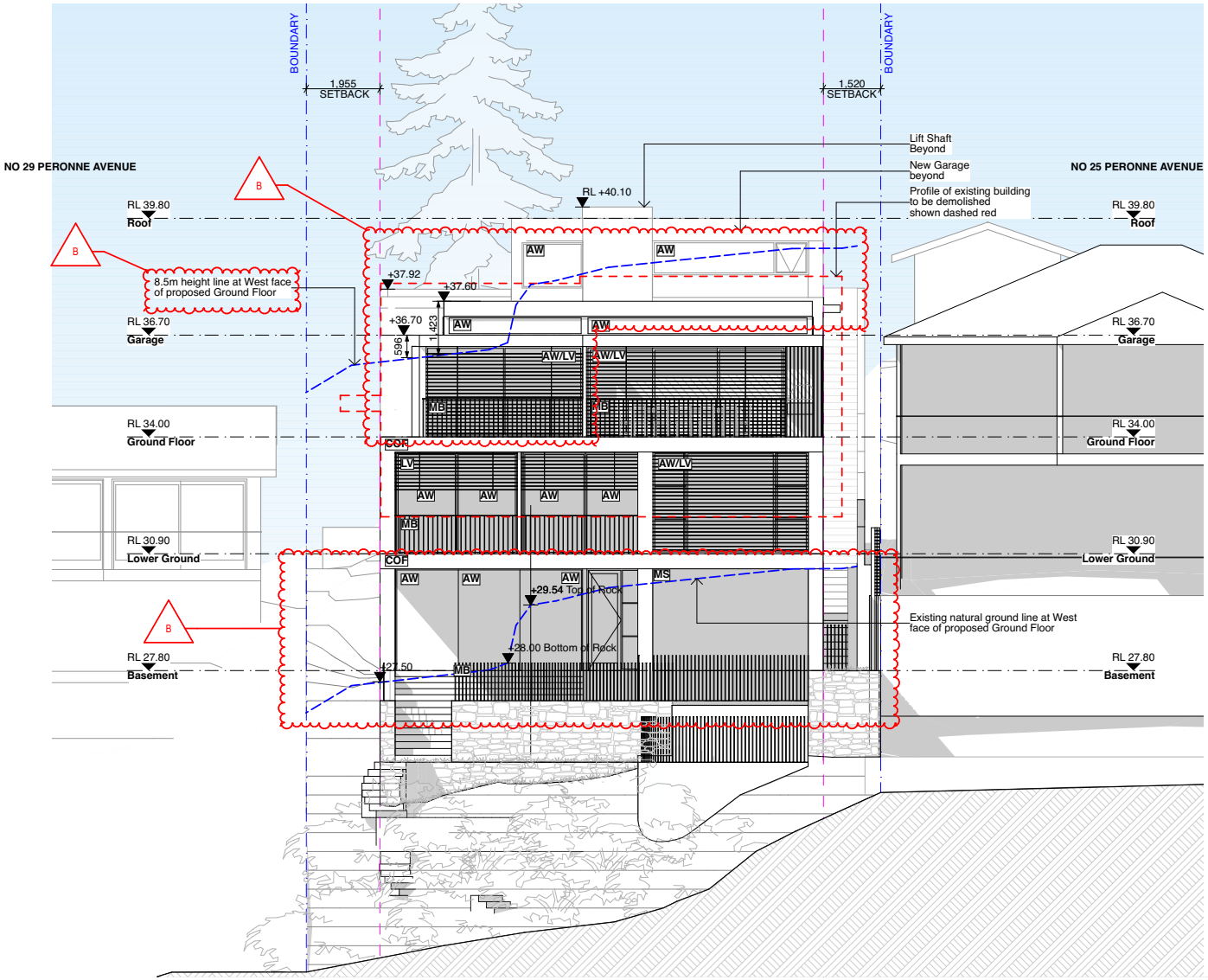
Nominated Architect: Philip Corben (Reg. No. 4616)

project	New Residence, Pool & Landscape Works	**title**	South Elevation	**job no.**	ROSE
address	27 Peronne Avenue Clontarf NSW 2 DP 534829			**drawn**	BF
				checked	AV
client	Nola & Peter Rose	**issue**	Development Application	**scale**	1:100

dwg no. DA09

revision B



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CORBEN ARCHITECTS
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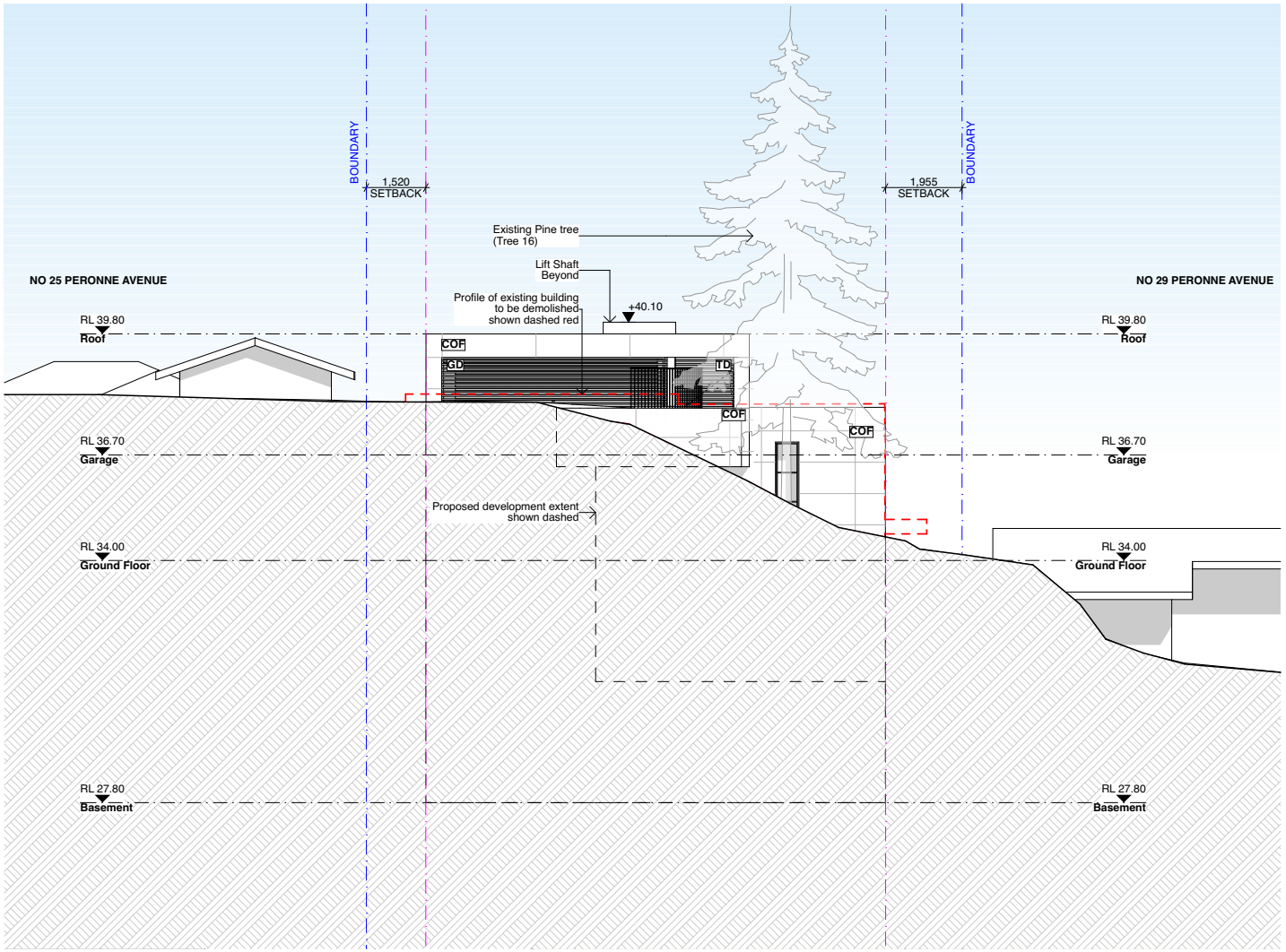
corben.com.au
Nominated Architect Philip Corben (Reg No. 4616)

project	New Residence, Pool & Landscape Works	**title**	West Elevation	**job no.**	ROSE	**dwg no.**
address	27 Peronne Avenue Clontarf NSW 2 DP 534829			**drawn**	BF	DA10
				checked	AV	**revision**
client	Nola & Peter Rose	**issue**	Development Application	**scale**	1:100	B



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CORBEN ARCHITECTS

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mail@corben.com.au
corben.com.au

Nominated Architect: Philip Corben (Reg. No. 4616)

project	New Residence, Pool & Landscape Works	**title**	East Elevation	**job no.**	ROSE	**dwg no.**	DA11
address	27 Peronne Avenue Clontarf NSW 2 DP 534829			**drawn**	BF		
				checked	AV	**revision**	B
client	Nola & Peter Rose	**issue**	Development Application	**scale**	1:100		

APPENDIX
CLAUSE 4.6 – MLEP 2013 – HEIGHT OF BUILDINGS

Prepared January 2024
(As revised May 2024)

WRITTEN REQUEST PURSUANT TO CLAUSE 4.6 OF MANLY LOCAL ENVIRONMENTAL PLAN 2013

27 PERONNE AVENUE, CLONTARF

PROPOSED DEMOLITION OF THE EXISTING STRUCTURES AND THE CONSTRUCTION OF A NEW TWO DWELLING, DOUBLE GARAGE, DRIVEWAY, SWIMMING POOL/SPA AND ASSOCIATED LANDSCAPING

VARIATION OF A DEVELOPMENT STANDARD REGARDING COUNCIL'S HEIGHT OF BUILDINGS CONTROL AS DETAILED IN CLAUSE 4.3 OF THE MANLY LOCAL ENVIRONMENTAL PLAN 2013

For:	Proposed demolition of the existing structures and the construction of a new dwelling, double garage, driveway, swimming pool, spa and associated landscaping
At:	27 Peronne Avenue, Clontarf
Owner:	Nola and Peter Rose
Applicant:	Nola and Peter Rose C/- Vaughan Milligan Development Consulting

1.0 Introduction

This revised written request is made pursuant to the provisions of Clause 4.6 of Manly Local Environmental Plan 2013. In this regard, it is requested Council support a variation with respect to compliance with the Height of Buildings control as described in Clause 4.3 of the Manly Local Environmental Plan 2013 (MLEP 2013).

This revised request accompanies amended architectural plans prepared by Corben Architects in response to Northern Beaches Council's correspondence of 7 May 2024 outlining issues raised in the assessment of DA 2024/0230.

The amended architectural information is included within the revised plans, Job No ROSE, Drawings DA01 – DA21, Revision B dated 10 May 2024.

The relevant maximum height of the building in this locality is 8.5m and is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The proposal new dwelling will have a maximum height of up to 9.923m which exceeds the height control by 1.423m or 16.74%, as noted in Figure 1.

Compliance with this control is constrained by the sloping topography of the site and as noted in the architectural submission, particularly Drawing No's DA08 & DA09, the proposed dwelling will

result in some reduction in height at various areas when compared to the existing building within the site. Figures 2, 3 & 4 provide a comparison of the existing and proposed development relative to the height control.

1.1 Manly Local Environmental Plan 2013 ("MLEP")

1.1.1 Clause 2.2 and the Land Use Table

Clause 2.2 and the Land Zoning Map provide that the subject site is zoned R2 – Low Density Residential (the R2 zone) and the Land Use Table in Part 2 of MLEP 2013 specifies the following objectives for the R2 zone:

- *To provide for the housing needs of the community within a R2 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 for the purpose of a new dwelling house which is a permissible use in the R2 Low Density Residential zone.

1.1.2 Clause 4.3 – Height of buildings

Clause 4.3 of MLEP sets out the maximum height of a building 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 environmental protection 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.

The Height of Buildings Map specifies a maximum building height of 8.5m.

1.1.3 The Dictionary to MLEP operates via clause 1.4 of MLEP. The Dictionary defines "building height" as:

> ***building height*** *(or* ***height of building****) means—*
>
> *(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
>
> *(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,*
>
> *including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.*

Is clause 4.3 of MLEP 2013 a development standard?

(a) The definition of "development standard" in clause 1.4 of the EP&A Act means standards fixed in respect of an aspect of a development and includes:

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

(b) Clause 4.3 relates to the maximum building height of a building. Accordingly, clause 4.3 is a development standard as defined in the Environmental Planning and Assessment Act, 1979.

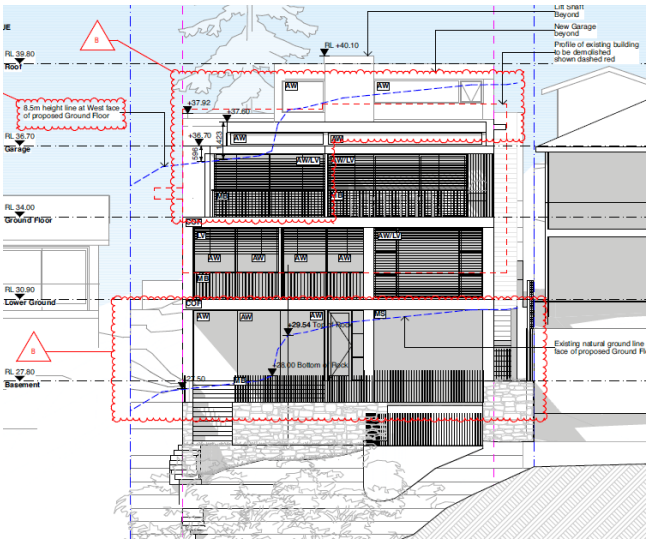


Fig 1: Architectural Extract – Height of Buildings control noted at north-eastern corner

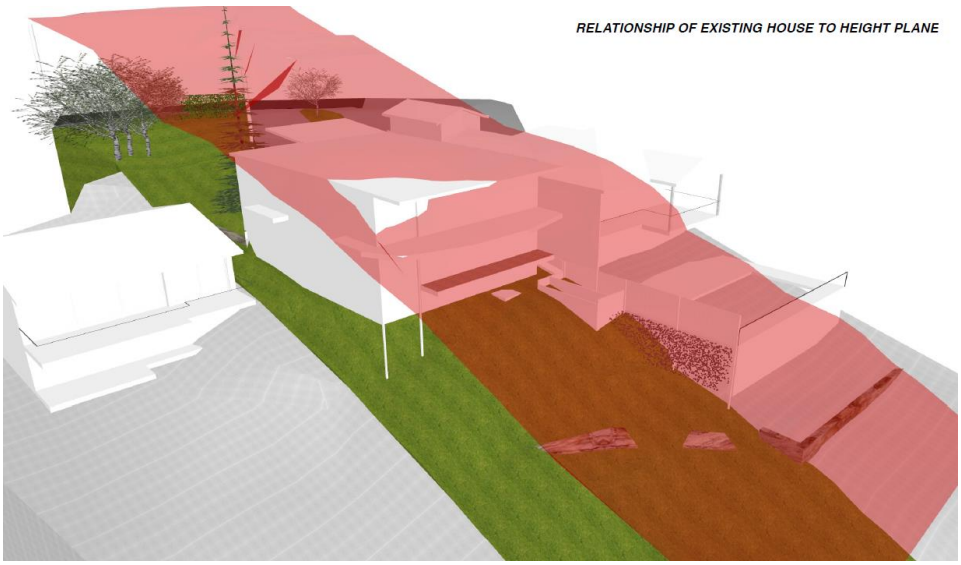


Fig 2: Architectural Extract – Relationship of existing dwelling to 8.5m height control

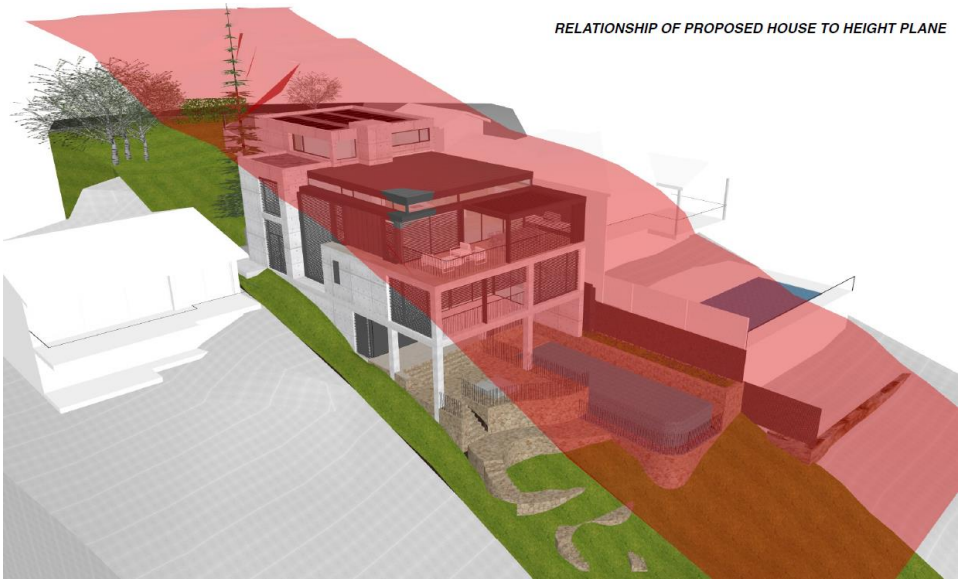


Fig 3: Architectural Extract – Relationship of proposed dwelling to 8.5m height control

Fig 4: Architectural Extract – Relationship of existing and proposed dwelling to 8.5m height control

2.0 Authority to vary a Development Standard

In September 2023, the NSW Government published amendments to Clause 4.6 of the Standard Instrument which change the operation of the clause across all local environmental plans, including the Pittwater LEP. The changes came into force on 1 November 2023.

The principal change is the omission of subclauses 4.6(3)-(5) and (7) in the Standard Instrument Principal Local Environmental Plan.

The following changes have been made as a result of this:

- Clause 4.6(3) was amended such that the requirement to 'consider' a written request has been changed with an express requirement that the consent authority 'be satisfied that the applicant has demonstrated' that compliance with the development standard is unreasonable or unnecessary.

- Clause 4.6(4)(a)(ii) was amended such that the requirement that the consent authority must be satisfied that the proposed development in the public interest has been removed.

- Clause 4.6(4)(b) & 5 amended such that the requirement for concurrence from the Planning Secretary has been removed.

The objectives of clause 4.6 of the LEP, as amended, seek to recognise that in the particular circumstances of this case strict application of development standards may be unreasonable or unnecessary. The clause provides objectives and a means by which a variation to the development standard can be achieved as outlined below:

Clause 4.6 Exception to development standard

> *(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.*

Note—
The Environmental Planning and Assessment Regulation 2021 requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).

(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.

Note—
When this Plan was made it did not include all of these zones.

(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,

(c) clause 5.4,

(caa) clause 5.5.

3.0 Purpose of Clause 4.6

The Manly Local Environmental Plan 2013 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the LEP should be assessed. These cases are taken into consideration in this request for variation.

In particular, the principles identified by Preston CJ in *Initial Action Pty Ltd vs Woollahra Municipal Council [2018] NSWLEC 118* have been considered in this request for a variation to the development standard.

4.0 Objectives of Clause 4.6

Clause 4.6(1) of MLEP provides:

> *(c) The objectives of this clause are as follows:*
>
> *(d) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
>
> *(e) 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 the LEP provides:

> *(f) 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.*

Clause 4.3 (the Height of Buildings control) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of the LEP.

Clause 4.6(3) of MLEP provides:

> *(g) 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:*
>
> *(h) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
>
> *(i) that there are sufficient environmental planning grounds to justify contravening the development standard.*

The proposed development does not comply with the maximum building height control development standard pursuant to clause 4.3 of MLEP which specifies a maximum building height of 8.5m in this area of Clontarf. The new dwelling will result in a maximum building height of 9.923m or exceed the height control by 1.423m or 16.74%.

Strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

Clause 4.6(4) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation

Clause 4.6(6) relates to subdivision and is not relevant to the development.

Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.3 of MLEP from the operation of clause 4.6.

5.0 The Nature and Extent of the Variation

5.1 This request seeks a variation to the maximum building height standard contained in clause 4.3 of MLEP.

5.2 Clause 4.3 of MLEP specifies a maximum building height of 8.5m in this area of Clontarf.

5.3 The proposed new dwelling will provide for a maximum height of 9.923m, which exceeds Council's maximum building height by 1.423m or 16.74% and therefore does not comply with this control.

As previously discussed, a major contributor to the breach of the height control is sloping topography of the site. The proposal presents only a minor variation to the control, with the majority of the development readily meeting Council's height control.

As discussed in this submission, it is considered that the proposal is reasonable notwithstanding the breach the height control and this will be discussed further within this submission.

6.0 Relevant Caselaw

6.1 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.

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

1. Is clause 4.3 of MLEP a development standard?

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

   (a) compliance is unreasonable or unnecessary; and

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

3. Is the consent authority satisfied that the proposed development will be consistent with the objectives of clause 4.3 and the objectives for development for in the R2 zone?

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

7.0. Request for Variation

7.1 Is compliance with clause 4.3 unreasonable or unnecessary?

(a) This request relies upon the 1st way identified by Preston CJ in Wehbe.

(b) The first way in Wehbe is to establish that the objectives of the standard are achieved.

(c) Each objective of the maximum building height standard and reasoning why compliance is unreasonable or unnecessary is set out 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 surrounding area is predominantly characterised by two – three storey development, which is heavily influenced by the sloping terrain within the locality.

Surrounding the properties are a number of other similar dwellings of between two and three stories and in this regard, the proposal is compatible with the prevailing character of development in the vicinity.

This objective is achieved.

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

The proposed new works to the existing dwelling will not result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing.

Consistent with the decision of Roseth SC in *Project Ventures Developments v Pittwater Council [2005] NSWLEC 191*, it is my opinion that "*most observers would not find the proposed building offensive, jarring or unsympathetic*".

Further, the modulation of the front façade and building elevations where visible from the public domain minimises the visual impact of the development.

The proposal presents a compatible height and scale to the surrounding development and the articulation to the building facades and the fact the proposal follows the sloping topography of the site will suitably distribute the bulk of the new floor area.

The extent of the landscaping area surrounding the development will ensure that the bulk and scale of the proposal is appropriately ameliorated.

This objective is achieved.

(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),***

The proposal will provide for view corridors above and beside the ground floor level will be maintained for the uphill properties towards the waterway.

Views from the surrounding public spaces are not adversely affected.

(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,

The shadow analysis prepared by Corben Architects comprises plan views of the proposed shadow impacts.

The assessment confirms that the primary living areas of the adjoining property to the south, No. 25 Peronne Avenue, will maintain suitable solar access throughout the day.

(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.

The works will respect the height, scale and form of the existing vegetation, topography and surrounding residential development and the existing development on the site.

The proposal will not require the removal of any significant vegetation, with only exempt species to be removed, and will see the retention of the extensive landscaped area surrounding the dwelling.

Despite the variation to the building height control which occurs as a result of the existing slope of the land, the proposal is generally consistent with the height and scale of newer development in the locality.

7.2 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].*

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

The requirements of clause 4.4.2 of Manly DCP 2013 "*promote the retention and adaptation of existing buildings rather than their demolition and replacement with new structures".*

Consistent with this objective, the particular element of the development which breaches the height development standard, is constrained by the sloping topography which provides a constraint in constructing new first floor level which observes the height standard.

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

- The proposed new dwelling will maintain the general bulk and scale of the existing surrounding newer dwellings and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).

- Similarly, the proposed development will provide for improved amenity through the inclusion of more functional floor space within a built form which is compatible with development in the surrounding area, which promotes the orderly and economic use of the land (cl 1.3(c)).

- The proposed new development is considered to promote good design and enhance the residential amenity of the building's occupants and the immediate area, which is consistent with the Objective 1.3 (g).

- The proposed development improves the amenity of the occupants of the subject site and respects surrounding properties by locating the development where it

will not unreasonably obstruct views across the site and will maintain the views from the site (1.3(g)).

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development.

These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the maximum building height control.

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.

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

7.3 Is the proposed development consistent with the objectives of clause 4.3 and the objectives of the R2 Low Density Residential Zone?

(a) Section 4.2 of this written request suggests the 1st test in Wehbe is made good by the development.

(b) Each of the objectives of the R2 Low Density Residential Zone and the reasons why the proposed development is consistent with each objective is set out below.

I have had regard for the principles established by Preston CJ in *Nessdee Pty Limited v Orange City Council [2017] NSWLEC 158* where it was found at paragraph 18 that the first objective of the zone established the range of principal values to be considered in the zone.

Preston CJ found also that "*The second objective is declaratory: the limited range of development that is permitted without or with consent in the Land Use Table is taken to be development that does not have an adverse effect on the values, including the aesthetic values, of the area. That is to say, the limited range of development specified is not inherently incompatible with the objectives of the zone".*

In response to *Nessdee,* I have provided the following review of the zone objectives:

It is considered that notwithstanding the modest breach of the maximum building height by 1.423m for only a portion of the proposed ground floor level comprising the roof over the terrace, the proposed new dwelling will be consistent with the individual Objectives of the R2 Low Density Residential Zone for the following reasons:

- ***To provide for the housing needs of the community within a R2 Low Density Residential environment.***

  The proposal provides for the housing needs of the community by constructing a new dwelling house on the site, with improved residential amenity for the dwelling's occupants.

  The proposed dwelling presents a compatible form to newer development in the locality, which is commonly of a 2 to 3 storey scale.

  The proposal will be consistent with and complement the existing detached style single dwelling housing within the locality and as such, will not be a visually dominant element in the area. The development does not have any unreasonable amenity impacts on its adjoining neighbours.

  Accordingly, it is considered that the site may be further developed with a variation to the prescribed maximum building height control whilst maintaining consistency with the objectives of the R2 Low Density Residential Zone.

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

  This does not apply to the subject residential development.

7.4 Has the Council considered the matters in clause 4.6(5) of MLEP?

(a) The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed new dwelling house for the particular site and this design is not readily transferrable to any other site in the immediate locality, wider region of the State and the scale or nature of the proposed development does not trigger requirements for a higher level of assessment.

(b) As the proposed development complies with the objectives of the development standard and the objectives of the zone there is no significant public benefit in maintaining the development standard.

8.0 Conclusion

This development proposes a departure from the maximum height of a building control, with the proposed new dwelling to provide a maximum overall height of 9.923m above existing ground level.

As discussed, the height breach can be largely attributed to the sloping topography of the site, which presents a constraint to designing for a new upper floor level which fully maintains the maximum building height control.

Notably, the proposed development will see a reduction in the overall height of the building when considering the comparison between the existing building and the proposed dwelling.

This written request to vary to the maximum building height specified in Clause 4.3 of the Manly LEP 2013 adequately demonstrates that that the objectives of the standard will be met.

The bulk and scale of the proposed development is appropriate for the site and locality.

In summary, the proposal satisfies all of the requirements of clause 4.6 of MLEP 2013 and the exception to the development standard is reasonable and appropriate in the circumstances of the case.

VAUGHAN MILLIGAN
Town Planner

ITEM 3.4 DA2023/1317 - 76 CONDAMINE STREET BALGOWLAH -DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE INCLUDING 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 DA2023/1317 for Demolition works and construction of a dwelling house including swimming pool on land at Lot 1 DP 1194202, 76 Condamine Street BALGOWLAH, subject to the conditions set out in the Assessment Report.

Reporting manager	Rodney Piggott
TRIM file ref	2024/398048
Attachments	⇩1 Assessment Report ⇩2 Site Plan and Elevations ⇩3 Clause 4.6

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/1317

Responsible Officer:	Nick Keeler
Land to be developed (Address):	Lot 1 DP 1194202, 76 Condamine Street BALGOWLAH NSW 2093
Proposed Development:	Demolition works and construction of a dwelling house including swimming pool
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:	Catherine Louise Hamer Damian Bruce Hamer
Applicant:	Catherine Louise Hamer

Application Lodged:	20/09/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	26/09/2023 to 10/10/2023
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	4.3 Height of buildings: 21.8%
Recommendation:	Approval

Estimated Cost of Works:	$ 1,730,449.00

EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) due to a breach of the height of building development standard by more than 10% and involves a Class 1 dwelling. The height of the proposed development has been measured at 10.35m which represents a variation of 21.8% to the maximum prescribed building height of 8.5m.

The Clause 4.6 request for the non-compliance with height of building development standard arises from the site being partially excavated underneath the existing building creating a 21.8% variation for the rear portion of the building and the need to elevate new development due to the site being subject to a flood planning level of 2.92 AHD (0.92m above the natural ground level). Based on extrapolated natural ground levels the height would only be measured at a maximum of 9m. The remainder of the building is under the 8.5m height.

The proposed development was notified in accordance with the Northern Beaches Community Participation Plan (CPP) for fourteen (14) days, which received three (3) submissions objecting to the proposal. Concerns raised in the objections predominantly relate to the proposed building height and building bulk of the development that cause amenity impacts to the surrounding properties, including view loss.

Critical assessment issues include the proposed variations to the building height and wall height and the resultant impact upon building bulk and view sharing, flood planning and potential heritage impacts.

Overall, it is considered that the proposal has been designed appropriately to remain compatible with the prevailing built form of the locality and will not cause unreasonable impact to the amenity of adjacent and nearby properties, including solar access, privacy and view sharing. The proposed dwelling retains the low density residential character and not resulting in the removal of any significant vegetation or require significant alteration to the landform.

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

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for demolition of the existing site structures and construction of a new three-storey residential dwelling house with a swimming pool. The proposal also incorporates the existing carport and undercroft storage area under construction which were approved under DA2020/1730, as modified.

Specifically, the works proposed are as follows:

Lower Ground Level (RL 2.92)

- Laundry, plant room, entertaining area, guest bedroom and bathroom. The entertaining space and bedroom will open out to the rear private open space area.

Ground Floor (RL 5.64)

- Open plan kitchen/living/dining which opens out to the rear deck
- 2 bedrooms
- Bathroom and powder room
- Pedestrian access via raised boardwalk to the entry foyer

First Floor (RL 8.76)

- Master suite including ensuite and WIR. The bedroom will open out to a balcony
- Bedroom 2 with ensuite
- Study

External

- Double carport (RL 7.62) with undercroft storage (RL 4.50)
- Swimming pool and cabana (RL 2.00)
- Landscaping
- Stormwater drainage infrastructure

AMENDED PLANS

During assessment, Council raised concern regarding the non-compliant FSR of the proposed development and the heritage potential of the existing dwelling. To address these concerns, the applicant deleted the media room at the Lower Ground Level and provided an external materials and finishes schedule and additional heritage details. The proposal as amended complies with the FSR development standard and has appropriately addressed the heritage concerns.

In accordance with the provisions of the Northern Beaches Community Participation Plan, re-notification of the application was not required. The amendments are considered to be minor and will result in a lesser environmental impact on nearby properties and the public domain.

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 - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features

SITE DESCRIPTION

Property Description:	Lot 1 DP 1194202 , 76 Condamine Street BALGOWLAH NSW 2093

Detailed Site Description:	The subject site consists of one (1) allotment located on the eastern side of Condamine Street. The site is mostly regular in shape with a frontage of 15.85m along Condamine Street and a depth of 36.7m. The site has a surveyed area of 580.3m². The site is located within the R1 General Residential zone and accommodates two-storey residential dwelling house. The site falls approx. 6m from the northwest towards the southeast. The front portion of the site contains the steepest slope and the rear portion of the site is generally flat. The site contains two canopy trees at the front of the dwelling and a grassed area at the rear. Several small trees and garden areas are found throughout the site. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by predominantly low density residential dwellings with some medium density residential flat buildings. North Harbour Reserve adjoins the site to the east.

Map:

SITE HISTORY

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

Application **DA255/2013** for Alterations and additions to an existing dwelling including rear addition to lower ground floor level with terrace, ground floor side and rear addition with decks, new upper floor level with elevated double carport, new crossover and landscaping was approved on 21/08/2014 by the former Manly Independent Assessment Panel.

Application **Mod2018/0665** for Modification of Development Consent DA255/2013 granted for alterations and additions to an existing dwelling was approved on 03/04/2019 by Council staff.

Application **DA2020/1730** for Alterations and additions to a dwelling house was approved on 26/04/2021 by Council staff.

Application **Mod2021/0467** for Modification of Development Consent DA2020/1730 for Alterations and additions to a dwelling house was approved on 26/07/2021 by Council staff.

Application **Mod2022/0668** for Modification of Development Consent DA2020/1730 granted for Alterations and additions to a dwelling house was approved on 16/03/2023 by Council staff.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	**Comments**
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 29 of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended architectural plans, clause 4.6 request, flood report and heritage information.

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 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 26/09/2023 to 10/10/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 3 submission/s from:

Name:	Address:
Vaughan Architects Pty Ltd	80 A Condamine Street BALGOWLAH NSW 2093
North Harbour Residents Group	24 Wanganella Street BALGOWLAH NSW 2093
Mrs Merilyn Patricia Buckley	155 Condamine Street BALGOWLAH NSW 2093

The following issues were raised in the submissions:

- Height, bulk and scale
- Setbacks
- View loss
- Tree impacts

The above issues are addressed as follows:

- **Height, bulk and scale**

  The submissions raised concerns that the height bulk and scale of the proposed development is excessive and is inconsistent with the character of the streetscape.

  Comment:

  A detailed assessment of the height, bulk and scale of the proposed development has found that no unreasonable built form or amenity impact upon adjacent or nearby properties is expected. Refer to assessment made under Clause 4.6 of MLEP 2013 and Part 4.1.2 of MDCP for details.

- **Setbacks**

  The submissions raised concerns that the setbacks of the proposed development cause unreasonable built form and amenity impacts upon adjacent and nearby properties.

  Comment:

  The setbacks of the proposed development generally comply with the control requirements under Part 4.1.4 of MDCP. The control has an 8m minimum rear setback requirement, which the dwelling exceeds at 9.5m. While the rear setback of the proposed dwelling is less than the adjacent dwellings, the imposition of a greater setback requirement would unreasonably restrict

the development potential of the site in accordance with the current planning controls. Both adjacent properties have potential for future development is consistent with the current planning controls.

- **View loss**

  The submissions raised concerns that the proposed development causes unreasonable view loss upon adjacent and nearby properties.

  Comment:

  A detailed view impact analysis of the proposed development has found that the extent of impact of existing views by the development is reasonable in the context of the site and surrounds. Refer to assessment made under Part 3.4.3 of MDCP for details.

- **Tree impacts**

  The submissions raised concerns that the proposed development may cause adverse impact upon trees on adjacent properties near the site boundaries.

  Comment:

  Council's Landscape and Bushland and Biodiversity Officers have reviewed the proposed development and do not raise concern regarding the potential impact of the development upon trees on adjacent properties.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Solid Fuel/Oil Heater)	**General Comments** This application is seeking consent for a proposed new dwelling with a swimming pool. A fireplace is proposed for the new dwelling. Environmental Health recommends approval subject to conditions.
Landscape Officer	Council's Landscape Referral section have considered the application against the Manly Local Environment Plan (MLEP), and the following Manly DCP 2013 (MDCP) controls (but not limited to): • 3.3.1 Landscaping Design • 3.3.2 Preservation of Trees or Bushland Vegetation • 4.1.5 Open Space and Landscaping, including 4.1.5.2 (c) Minimum Tree Plantings where applicable A Landscape Plan and an Arboricultural Impact Assessment are submitted with the application and are assessed as part of the Landscape Referral. It is noted that the Arboricultural Impact Assessment (AIA) report has been prepared on the basis and review of existing approved works in the vicinity of two existing Angophora trees in proximity to construction works, as well as the proposed development works under this development application.

Internal Referral Body	Comments
	The AIA report determines that the existing two Angophora's (tree 1 within the property and tree 2 within the Council road reserve) are able to be viably retained under the proposed works of this development application, subject to specific works undertaken as recommended and arboricultural supervision, and conditions of consent shall be imposed. The Landscape Plans propose hard and soft landscape treatments that generally satisfy MDCP control 3.3.1 and 4.15. The Landscape Plans include no native tree planting to satisfy 4.1.5.2 (c) and instead propose exempt palm species as transition to the recreational Reserve land adjoining at the rear, and conditions shall be imposed to require two native trees at the rear of the property to enhance a natural landscape transition. Additionally conditions shall be imposed to replace identified self-spreading species with non-invasive substitutes. Proposed landscape works including new retaining walling within the public road reserve are not supported under this development application and shall be considered under either a Minor Encroachment application or a Roads Act section 138 road reserve works application, as determined by the relevant Council business unit, for approval or otherwise.
NECC (Bushland and Biodiversity)	The Development Application seeks consent for demolition works and construction of a dwelling house including swimming pool. Council's Biodiversity Referrals team have assessed the Development Application for compliance against State Environmental Planning Policy (Resilience and Hazards) 2021 cl. 2.10 Development on land within the coastal environment area. The Arborist Report submitted with the application confirms retention of the two *Angophora costata t*rees within the front yard of the proposed development. As the development does not impact upon native vegetation, the development is designed, sited and will be managed to minimise that impact. No objections in relation to biodiversity, subject to conditions.
NECC (Coast and Catchments)	The application has been assessed in consideration of the *Coastal Management Act 2016*, State Environmental Planning Policy (Resilience & Hazards) 2021, Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity & Conservation) 2021 and Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005. It has also been assessed against requirements of the Manly LEP and DCP.

Internal Referral Body	Comments
	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. Clauses 2.10 (coastal environment area) and 2.11 (coastal use area) do not apply as the site is also located within the Sydney Harbour catchment area. Hence, only Clause 2.12 of the SEPP R & H apply for this DA. Comment: On internal assessment, the DA satisfies requirements under clause 2.12 of the SEPP R&H. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021. **Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity & Conservation) 2021** **Foreshores & Waterways Area** The subject site is located within the Sydney Harbour Catchment and is identified as being within the Foreshores and Waterways Area. Hence Part 6.3 of the Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity & Conservation) 2021 will apply in assessing this DA. Development consent, among others, must consider clause 6.28. On internal assessment, it is determined that the relevant clauses of the Part 6.3 including the clause 6.28 have been followed.

Internal Referral Body	Comments
	Manly LEP 2013 and Manly DCP **Foreshores Scenic Protection Area Management** The subject site is also shown to be as "Manly Foreshores Scenic Protection Area" on Council's Foreshores Scenic Protection Area in Manly LEP 2013. As such, Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013 will apply to proposed development on the site. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by BBF Pty. Ltd. dated July 2023, the DA satisfies requirements under Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013. As such, it is considered that the application does comply with the requirements of the Manly DCP 2013.
NECC (Development Engineering)	The stormwater management plans show stormwater disposal from the site using an infiltration system. The design needs to comply with the requirements of Appendix 3 of the *Water Management for Development Policy Version 2 26 February 2021*: Appendix 3 On-site Absorption Design Guideline a) A consulting geotechnical engineer must submit a geotechnical report providing the following details (where applicable) for the proposed location of the absorption/dispersal trench: i) Depth to rock ii) Depth to the water table iii) Measured infiltration rate (in litres/square metres/second) iv) Infiltration rate that can be maintained in the long term v) Minimum distance any infiltration system should be located clear of property boundaries vi) Whether the use of infiltration is likely to cause seepage problems to the proposed structure or to any adjoining properties vii) The use of any waterproofing to protect underground areas viii) Any special requirements for the design of walls or footings on the site. The above information must be submitted to Council to determine whether any absorption system is permitted for the site. b) The absorption pit is to be designed for a 2% AEP storm using DRAINS computer software based on the infiltration rate that can be maintained in the long term. An overflow mechanism in the form of a

Internal Referral Body	Comments
	level spreader must be provided for all storms greater than the 2% AEP storm, up to and including the 1% AEP storm. The overflow mechanism is required to minimise overland flow disturbance to the lower property. c) The roof guttering and downpipe system should be designed to collect the 2% AEP design rainfall and pipe it to the absorption system, or alternatively provide for surface collection of guttering overflows into the absorption system. d) A site plan showing the location of absorption pit(s) relative to fences and to the buildings on-site and on neighbouring properties must be provided. The pipe layout with sizes and grades is also to be shown. Drainage calculations must be submitted with the plans. e) Where a high water table is encountered and a gravel filled trench design is proposed, the base of the trench should be at least 500mm above the water table to accommodate fluctuations of the groundwater. f) When considering available storage volumes for the storage design methods, a maximum of 20% voids in the base aggregate may be used. Volumes in the end pits and the Everglas Trench systems may also be used. g) The absorption pit should not be located within three metres of the side or rear boundary, or three metres from any on-site building or neighbouring buildings. **Engineering Comments 19.02.24** A geotechnical report with infiltration data has been provided. I have no further objections to the proposed development subject to the inclusion of the recommended engineering conditions of consent.
NECC (Flooding)	The rear of the property is flood affected with the following associated flood information from the Manly to Seaforth Flood Study 2019 (Cardno): • 1% AEP flood level: 2.42m AHD (entire rear yard) • Flood Planning Level (FPL): 2.92m AHD • Probable Maximum Flood (PMF) level: 2.94m AHD The proposal has been assessed against Clause 5.21 of the Manly LEP (2013) and the Controls set out in Clause 5.4.3 of the Manly DCP (2013). The proposed works include: filling of the rear yard to 2.0m AHD; construction of a new dwelling house; and construction of a pool and cabana. The site grades down from the west to the east, with the backyard being at approximately RL 1.6 mAHD. North Harbour Reserve, located to the east of the site between the site and North Harbour Reserve, is understood to have been reclaimed by filling the area in 1943. A bowling green was also constructed in 1955 and is at a higher level than the backyard of the site (at approximately RL 2.2 mAHD). This filling has resulted in a trapped low point within the

Internal Referral Body	Comments
	property. The site is affected by overland flow from Burton Street, which flows south past the North Harbour Pre-School and into the back yards of no. 78, 76 and 74 Condamine Street, where it ponds. The water is trapped in this area due to higher ground levels in North Harbour Reserve until it reaches a level of approximately RL 2.0 mAHD, where it discharges to the south into the reserve and then the North Harbour waterway. The comprehensive flood assessment undertaken by WMAwater using TUFLOW modelling indicates that the proposed development would not result in adverse impacts on neighbouring properties. Ie flood impacts in the 20% AEP, 5% AEP and 1% AEP events would be less than 20 mm, and flood impacts in the PMF event would be less than 50 mm. It is noted that in all flood events modelled, floodwaters would still be allowed to flow into the site, since peak flood levels are higher than the proposed ground level of RL 2.0 mAHD. The flood life hazard category would be reduced to H2, so emergency response controls do not need to be addressed. Other aspects of the proposed development have also been addressed in the Flood Risk Management Plan by Taylor Consulting. Whilst the filling of the yard would result in a net loss of flood storage, there would be no adverse impacts and given the unique circumstances and flood behaviour in the vicinity, it is considered that Controls A1 and A2 have been satisfied. The modelling has represented the proposed building footprint including the terrace as a solid obstruction to flow, as per the standard approach. However whilst filling of the land to 2.0m AHD is considered permissible, the terrace should be open underneath up to the 1% AEP flood level, to satisfy Control C3. The pool decking and coping at 2.15m AHD are considered permissible. They would occupy less volume than the space under the terrace, and so are considered to be covered by the modelling. The proposed ground floor level of the dwelling is at 2.92m AHD, which satisfies Control C1. The pool is proposed to be flush with the proposed ground level, which satisfies Control H1. The proposed development generally complies and meets the objectives of Clause 5.21 of the Manly LEP (2013) and the Controls set out in Clause 5.4.3 of the Manly DCP (2013), with conditions.
Parks, reserves, beaches, foreshore	The development site adjoins North Harbour Reserve that is located downslope of the property. All development works must ensure that surface sediment runoff and/or erosion is controlled, managed and contained within the site boundaries and prevented from travelling across the boundary and

<table>
<tr><th>Internal Referral Body</th><th>Comments</th></tr>
<tr><td></td><td>into the Reserve.

No physical encroachments over the site boundaries are permitted, and structures and built elements are not permitted beyond the site boundaries. Public access within the Reserve is not impacted by the proposed development, and the development is not detrimental to the landscape character of the adjoining Reserve. The landscape proposal adjoining the Reserve is considered as part of this assessment and the response from Landscape Referral considers an adjoining 'natural landscape/ transition to the Reserve, and as such Parks, Reserves and Foreshores raise no concerns with the development proposal.</td></tr>
<tr><td>Road Reserve</td><td>No comments on this DA are provided. No works proposed on road reserve impacting existing road infstructure assets. Driveway and associated works addressed in earlier DA as noted on the plans</td></tr>
<tr><td>Strategic and Place Planning (Heritage Officer)</td><td>
HERITAGE COMMENTS
Discussion of reason for referral

The proposal has been referred to Heritage as it is within the vicinity of a local heritage item, listed in Schedule 5 of Manly LEP 2013:

Item I9 - House - 155 Condamine Street, Balgowlah

Details of heritage items affected

Item I9 - House
<u>Statement of Significance</u>
This is an example of an interesting weatherboard Inter-War California Bungalow.
<u>Physical Description</u>
c.1915-1920 timber building with terra-cotta roof constructed in typical California Bungalow style.
Walls are ship lap cladding. Significant elements include stone columns to either side of Bay window; shingle under gable ends and bays. Reasonably intact and in reasonable condition.

Other relevant heritage listings
<table>
<tr><td>SEPP (Biodiversity and Conservation) 2021</td><td>No</td><td></td></tr>
<tr><td>Australian Heritage Register</td><td>No</td><td></td></tr>
<tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr>
<tr><td>National Trust of Aust (NSW) Register</td><td>No</td><td></td></tr>
<tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td><td></td></tr>
</table>
</td></tr>
</table>

Internal Referral Body	Comments
	Other | No | Consideration of Application The proposal seeks consent for the demolition of the existing site structures and construction of a new dwelling with a swimming pool and associated landscaping works. The site is located adjacent to North Harbour Reserve and in the Manly Foreshore Scenic Protection Area. The existing building is not heritage listed, however it is considered to have heritage values as an example of an intact Inter-war bungalow, dating back to 1920s. Therefore, Heritage require a photographic archival recording of the all existing structures and landscaping including the stone retaining walls on the site. The proposed bulk and scale involve a substantial increase from the approved DA as a result of the increased height and floor area of the proposed building. The approved DA was for alterations and additions to the existing building, involving partial retention of the existing building and the entry porch with sandstone columns. Heritage recommends the retention of the featured elements of the existing building where possible. The streetscape presentation can be improved by setting the proposed carport back by reducing the dimensions from 7m to be 6m which would increase the setback to be approximately 2.5m from the road. Currently the views from the foreshore is consistent with the neighbouring dwellings as they are one to two storey buildings, however the proposed 3 storey building is considered to be impacting views from the foreshore and views to the heritage item across the road, and also setting a precedence for neighbouring properties. Therefore, Heritage require amendments to the proposal to increase the setback to the carport and reduce the bulk and scale of the proposal and use the existing elements/structures on site such as the sandstone walls where possible. **Revised comments - 08 April 2024** The applicant has provided amended plans and a supporting letter, stating that the carport has been constructed as part of the previously approved DA. It is noted that the outlines of the previously approved DA are shown in dotted lines on the current drawings, however, the report (additional information response) states that: "..... previously approved are not relevant to the current proposal". This statement is not considered to be a sufficient justification for the proposed increase to the bulk and scale, which is considered to be excessive within the context and character of the area. The report confirms the proposed reuse of the stones from the demolished stone walls on the subject site, which is supported by Heritage. The report also states that: "The heritage item at No. 155 is already obscured by existing development and trees when viewed from the foreshore area and abuts a 4 storey

Internal Referral Body	Comments
	apartment building which sits much higher in the landscape and dominates the dwelling at No. 155." This statement is not agreed with as the building at no 159 Condamine Street was approved prior to the current controls of Manly DCP and also its top level is well setback from the heritage item.It is considered that the proposed excessive height should be reduced (recommended ridge level is the average of the adjacent buildings at 74 and 78 Condamine Street) and the setbacks from the side boundaries at the top level should be improved in order to reduce the proposed bulk and scale and to respect the significance of the heritage item, neighbouring buildings and the character of the area and be compatible within the context. Considerations should be given to the relevant controls of Manly DCP 2013: ***3.2 Heritage Considerations*** *Relevant DCP objectives in relation to heritage in this plan include the following:* *Objective 1) To retain and conserve environmental heritage and cultural significance of Manly including:* *significant fabric, setting, relics and view associated with heritage items and conservation areas;* *the foreshore, including its setting and associated views; and potential archaeological sites, places of Aboriginal significance and places of natural significance.* *Objective 2) To ensure any modification to heritage items, potential heritage items or buildings within conservation areas is of an appropriate design that does not adversely impact on the significance of the item or the locality.* *Objective 3) To ensure that development in the vicinity of heritage items, potential heritage item and/ or conservation areas, is of an appropriate form and design so as not to detract from the significance of those items.* *Objective 4) To provide infrastructure that is visually compatible with surrounding character and locality/visual context with particular regard to heritage buildings/areas and cultural icons.* *Objective 5) To integrate heritage management and conservation into the planning development process including incentives for good heritage management, adaptive reuse, sustainability and innovative approaches to heritage conservation*. **Revised comments - 24 May 2024** It is noted in the additional information from applicant that the excessive bulk and scale is mainly due to the raised floor level in accordance with the required Flood Planning Level. Given the physical separation between the heritage item and the subject site afforded by the road and the nature of the topography the adverse impact of the proposal upon the significance of the heritage item is considered tolerable. Therefore, no objections are raised on heritage grounds and no conditions required.

Internal Referral Body	Comments
	Consider against the provisions of CL5.10 of Manly LEP 2013. Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. According to the Due Diligence Code of Practice, any land within 200m of water is considered to have Aboriginal heritage sensitivity and the potential to contain Aboriginal sites. Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should anything thought to be Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office be contacted. In line with our normal advice for sandy areas, the Aboriginal Heritage Office recommends that the development conditions should provide for stop work provisions (unexpected discovery protocol) in the unlikely event that human remains are uncovered. Should human remains be uncovered, works must cease and the NSW Police must be contacted.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1373462S, dated 04/08/2023). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. 0008813446-01, dated 04/08/2023).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	57

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who raised no objections.

SEPP (Biodiversity and Conservation) 2021

Chapter 6 – Water catchments

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

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

6.6 Water quality and quantity

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

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

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

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

Comment:

The proposal has been reviewed by Council's Coastal Officer, Development Engineer and Bushland & Biodiversity Officer who have raised no objection to the works and their impacts to the adjoining waterway (subject to conditions).

6.7 Aquatic ecology

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

(a) whether the development will have a direct, indirect or cumulative adverse impact on terrestrial, aquatic or migratory animals or vegetation,
(b) whether the development involves the clearing of riparian vegetation and, if so, whether the development will require—
(i) a controlled activity approval under the Water Management Act 2000, or
(ii) a permit under the Fisheries Management Act 1994,
(c) whether the development will minimise or avoid—
(i) the erosion of land abutting a natural waterbody, or
(ii) the sedimentation of a natural waterbody,
(d) whether the development will have an adverse impact on wetlands that are not in the coastal wetlands and littoral rainforests area,
(e) whether the development includes adequate safeguards and rehabilitation measures to protect aquatic ecology,
(f) if the development site adjoins a natural waterbody—whether additional measures are required to ensure a neutral or beneficial effect on the water quality of the waterbody.

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

(a) the direct, indirect or cumulative adverse impact on terrestrial, aquatic or migratory animals or vegetation will be kept to the minimum necessary for the carrying out of the development,
(b) the development will not have a direct, indirect or cumulative adverse impact on aquatic reserves,

(c) if a controlled activity approval under the Water Management Act 2000 or a permit under the Fisheries Management Act 1994 is required in relation to the clearing of riparian vegetation—the approval or permit has been obtained,
(d) the erosion of land abutting a natural waterbody or the sedimentation of a natural waterbody will be minimised,
(e) the adverse impact on wetlands that are not in the coastal wetlands and littoral rainforests area will be minimised.

Comment:

The proposal has been reviewed by Council's Coastal Officer and Bushland & Biodiversity Officer who have raised no objection to the works and their impacts to the surrounding natural environment.

6.8 Flooding

(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the likely impact of the development on periodic flooding that benefits wetlands and other riverine ecosystems.

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

(a) if there is a flood, result in a release of pollutants that may have an adverse impact on the water quality of a natural waterbody, or
(b) have an adverse impact on the natural recession of floodwaters into wetlands and other riverine ecosystems

Comment:

The proposal has been reviewed by Council's Flooding Engineer who have raised no objection to the works and their impacts upon the flood prone land (subject to conditions).

6.9 Recreation and public access

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

(a) the likely impact of the development on recreational land uses in the regulated catchment, and
(b) whether the development will maintain or improve public access to and around foreshores without adverse impact on natural waterbodies, watercourses, wetlands or riparian vegetation.

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

(a) the development will maintain or improve public access to and from natural waterbodies for recreational purposes, including fishing, swimming and boating, without adverse impact on natural waterbodies, watercourses, wetlands or riparian vegetation,
(b) new or existing points of public access between natural waterbodies and the site of the development will be stable and safe,
(c) if land forming part of the foreshore of a natural waterbody will be made available for public access as a result of the development but is not in public ownership—public access to and use of the land will be safeguarded.

Comment:

The proposed development will not affect existing foreshore recreation areas or public access to the waterway.

6.10 Total catchment management

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

Comment:

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

Division 3 Controls on development in specific areas

6.11 Land within 100m of natural waterbody

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

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

Comment:

The proposed works will meet these requirements.

6.13 Hawkesbury-Nepean conservation area sub-catchments

(2) In deciding whether to grant development consent to development in a Hawkesbury-Nepean conservation area sub-catchment, the consent authority must consider the following—

(a) whether the development will minimise human interference with the condition of the sub-catchment,
(b) whether the development will maintain and enhance the structure and floristics of native vegetation in the sub-catchment,
(c) whether the development will maintain or enhance the scenic quality of the locality,
(d) whether development has previously been carried out on the development site.

Comment:

N/A

6.14 Temporary use of land in Sydney Harbour Catchment

(3) Development consent may be granted to development on land in the Sydney Harbour Catchment for a temporary use for a maximum period of 52 days, whether or not consecutive, in a period of 12 months, even if the development would otherwise be prohibited by this Chapter.

(4) Development consent must not be granted unless the consent authority is satisfied of the following:

(a) the temporary use will not prejudice the subsequent carrying out of development on the land in accordance with this Chapter and any other applicable environmental planning instrument,
(b) the temporary use will not have an adverse impact on adjoining land or the amenity of the neighbourhood,
(c) the temporary use and location of structures related to the use will not have an adverse impact on environmental attributes or features of the land or increase the risk of natural hazards that may affect the land,
(d) at the end of the temporary use period the land will, as far as is practicable, be restored to the condition in which it was before the commencement of the use.

(5) Development consent may be granted to development for the temporary use of a dwelling as a sales office for a new release area or a new housing estate for a period exceeding the maximum period specified in subsection (3).

Comment:

Temporary use of land is not proposed

Part 6.3 Foreshores and Waterways Area

Division 1 Preliminary

6.25 Consent authority

(1) The Minister administering the Ports and Maritime Administration Act 1995 is the consent authority for the following development—
(a) development comprising the subdivision of land owned by TfNSW in or abutting the Foreshores and Waterways Area,
(b) development carried out in the Foreshores and Waterways Area wholly below the mean high water mark,
(c) development carried out in the Foreshores and Waterways Area for one or more of the following purposes, including development carried out wholly or partly inside a local government area—
Above-water boat lifts; Advertisements; Advertising structures; Aids to navigation; Aviation facilities; Boat lifts; Charter and tourism boating facilities; Commercial port facilities; Dredging; Floating boat platforms; Flora and fauna enclosures; Houseboats; Maintenance dredging; Mooring pens; Private landing facilities; Private landing steps; Private marinas; Private swimming enclosures; Public boardwalks; Public water transport facilities; Single moorings; Skids; Slipways
(2) Despite subsection (1), the Minister administering the Environmental Planning and Assessment Act 1979 is the consent authority for the following development carried out in the Foreshores and Waterways Area—
(a) development carried out partly above and partly below the mean high water mark,
(b) development carried out below the mean high water mark for the purposes of one or more of the following—
Boat building and repair facilities; Boat launching ramps; Boat sheds; Marinas; Reclamation works; Swimming pools; Water-based restaurants and entertainment facilities; Waterfront access stairs; Water recreation structures; Wharf or boating facilities that are sea walls

(c) development carried out wholly or partly inside the zoned waterway, including development carried out below the mean high water mark, for the purposes of one or more of the following—
Car parks; Commercial premises; Recreational or club facilities; Residential accommodation; Restaurants or cafes; Retail premises; Tourist facilities
(3) Subsections (1) and (2) do not apply if another environmental planning instrument specifies a different public authority, other than the council, as the consent authority for the development.

Comment:

The proposed development is wholly above the mean high water mark, meaning Northern Beaches Council is the consent authority.

Division 3 Development in Foreshores and Waterways Area

6.28 General

(1) In deciding whether to grant development consent to development in the Foreshores and Waterways Area, the consent authority must consider the following—
(a) whether the development is consistent with the following principles—
(i) Sydney Harbour is a public resource, owned by the public, to be protected for the public good,
(ii) the public good has precedence over the private good,
(iii) the protection of the natural assets of Sydney Harbour has precedence over all other interests,
(b) whether the development will promote the equitable use of the Foreshores and Waterways Area, including use by passive recreation craft,
(c) whether the development will have an adverse impact on the Foreshores and Waterways Area, including on commercial and recreational uses of the Foreshores and Waterways Area,
(d) whether the development promotes water-dependent land uses over other land uses,
(e) whether the development will minimise risk to the development from rising sea levels or changing flood patterns as a result of climate change,
(f) whether the development will protect or reinstate natural intertidal foreshore areas, natural landforms and native vegetation,
(g) whether the development protects or enhances terrestrial and aquatic species, populations and ecological communities, including by avoiding physical damage to or shading of aquatic vegetation,
(h) whether the development will protect, maintain or rehabilitate watercourses, wetlands, riparian lands, remnant vegetation and ecological connectivity.
(2) Development consent must not be granted to development in the Foreshores and Waterways Area unless the consent authority is satisfied of the following—
(a) having regard to both current and future demand, the character and functions of a working harbour will be retained on foreshore sites,
(b) if the development site adjoins land used for industrial or commercial maritime purposes—the development will be compatible with the use of the adjoining land,
(c) if the development is for or in relation to industrial or commercial maritime purposes—public access that does not interfere with the purposes will be provided and maintained to and along the foreshore,
(d) if the development site is on the foreshore—excessive traffic congestion will be minimised in the zoned waterway and along the foreshore,
(e) the unique visual qualities of the Foreshores and Waterways Area and its islands, foreshores and tributaries will be enhanced, protected or maintained, including views and vistas to and from—
(i) the Foreshores and Waterways Area, and
(ii) public places, landmarks and heritage items.

Comment:

The proposed development is consistent with the prevailing low density residential character of the North Harbour foreshore and waterway area. The development will not cause adverse impact to the natural features, processes and qualities of the foreshore and waterway.

6.29 Areas of outstanding biodiversity value

(2) Development consent must not be granted to development on land to which this section applies unless the consent authority is satisfied the development will not have a significant adverse impact on the land.

Comment:

Council is satisfied that the proposed development will not have a significant adverse impact upon the foreshore and waterway area.

6.30 National parks

(1) Development consent must not be granted to development in the Foreshores and Waterways Area unless the consent authority is satisfied that the development—
(a) is not likely to affect land that is reserved under the National Parks and Wildlife Act 1974, and
(b) is consistent with the document entitled Developments adjacent to National Parks and Wildlife Service lands: Guidelines for consent and planning authorities, published by the Department in 2020.
(2) Despite any other provision of this Chapter, development on land in the Foreshores and Waterways Area is permitted without development consent if—
(a) the development site abuts land reserved under the National Parks and Wildlife Act 1974 (reserved land), and
(b) the development spans the mean high water mark and is part of other development being carried out on the reserved land, and
(c) the development is for a purpose for which development is authorised to be carried out under the National Parks and Wildlife Act 1974.

Comment:

The subject site is not located in proximity to a national park.

6.32 Rocky foreshores and significant seagrasses

(3) Development consent must not be granted to development on land to which this section applies unless the consent authority is satisfied the development—
(a) will preserve and enhance the health and integrity of seagrasses, areas containing seagrasses and ecological communities in rocky foreshore areas, and
(b) will maintain or increase the connectivity of seagrass vegetation and natural landforms, and
(c) will prevent, or will not contribute to, the fragmentation of aquatic ecology, and
(d) will not cause physical damage to aquatic ecology.

Comment:

The proposed development will not cause unreasonable impact upon the natural landforms of the foreshore area. No impact upon seagrass is expected.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

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

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

Comment:

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

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

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

Comment:

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

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

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	10.35m	21.8%	No
Floor Space Ratio:	0.5:1 (290.2m^2)	0.493:1 (286.2m^2)	N/A	Yes

Compliance Assessment

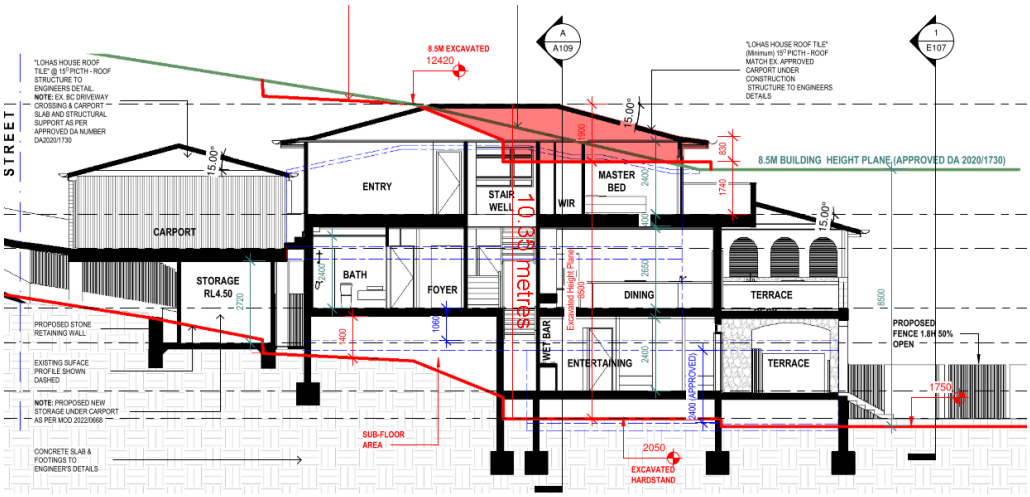
Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	Yes
5.21 Flood planning	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12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

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	10.35m
Percentage variation to requirement:	21.8%



Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

Comment:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)
The objects of this Act are as follows:
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,

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

The applicants written request argues, in part:

- *The site is flood affected and includes a flood planning level which makes strict compliance with the 8.5m control challenging in this instance. The ground floor has been elevated to meet the flood planning level.*
- *When extrapolating the 8.5m height plane from natural surface levels the proposal is 1m above the 8.5m control and is compliant at the front façade interface. The flood planning level is prescribed at RL2.92. The existing ground level taken beneath the highest point of the dwelling is RL2.05. If no flood planning level applied the height of the dwelling when using the extrapolated method would minorly non-compliant by 130mm towards the rear of the dwelling where the land slopes away with the vast majority of the dwelling being compliant.*
- *The site slopes down from street level with the front façade of the dwelling, as it presents to the street, being compliant with the 8.5m control. As the land slopes away to the rear the roof becomes non-compliant with the control. The design has had responded to the topography appropriately.*
- *The first floor level has been reduced in scale from the lower and ground floor levels with generous side setbacks to minimise its visual impact. The proposal is compliant with the FSR standard which is the main driver of controlling bulk and scale and reflects its reasonableness in that regard despite the height breach. The dwelling will present as 2 storeys to Condamine Street.*
- *The roof pitch has been amended to reduce the pitch. The roof form is provided at its lowest profile before it would compromise the architectural integrity of the dwelling. A tiled and pitched roof has been chosen to reflect the predominant character of the area. The roof tiles cannot be incorporated into a flat roof design.*
- *As assessed against the objectives of the height control, the pitched roof design does not contribute to any loss of water views to the dwellings opposite Condamine Street.*
- *The height non-compliance does not give rise to any unreasonable privacy, overshadowing or view impacts.*

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

- New development on the site is subject to a flood planning level of 2.92m AHD which, based on an existing ground level of RL 2.05, effectively reduces the permitted building height of the site by 0.87m. The building height measured from the FPL is 9.48m.
- The building height is artificially accentuated due to the existing area of excavation relative to the prevailing slope of the site and surrounds. Based on an extrapolated ground level, the height of the building is 9m.

- The ceiling heights are at levels that appropriately balance the need to minimise bulk and scale of the building while ensuring reasonable a level of amenity for the internal primary living areas is achieved.
- The proposed development generally maintains the pattern of the neighbourhood including predominant heights, is designed to step down with the site topography and presents as a two-storey building to the street.
- The proposed development does not contribute to an unreasonable bulk and scale of the development and is not expected to result in adverse amenity outcomes for adjacent properties or the public domain.
- The proposed development promotes good design and amenity of the built environment, noting that the dwelling house integrates and works with the sloping topography of the property while maintaining suitable amenity for adjoining properties.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R1 General Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

The overall height, bulk and scale of the proposal is consistent with similar development in the locality. The proposed roof form is consistent with surrounding development. While the proposal incorporates some variations to DCP controls, it is considered the development is generally consistent with the topographic landscape of the site and existing and desired streetscape character. The visual character between the new development and existing locality landscape will not fundamentally be altered.

b) to control the bulk and scale of buildings,

Comment:

The proposed building density and bulk is consistent with that of other dwellings in the locality. The development will not obscure important landscape or townscape features.

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

Comment:

The existing view corridor from the street frontage towards North Harbour reserve and waterway will be marginally impacted by the new dwelling, however a reasonable view is maintained. While the proposed dwelling will be larger than the existing dwelling, existing canopy trees in the street verge and new landscaping will still dominate the visual character of the public domain. The dwelling will be perceived as a two storey building from the public domain as it is positioned lower than the street level.

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

Comment:

The proposal is not expected to cause unreasonable environmental impact to adjoining land and public domain. The overall development is generally consistent with the prevailing scale of development around the site. No fundamental change to the existing environmental impact to adjoining land is expected.

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

Comment:

Not applicable.

Zone objectives

The underlying objectives of the R1 General Residential zone are:

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

  Comment:

  The proposal does not alter the existing residential use on the site.

  It is considered that the development satisfies this objective.

- *To provide for a variety of housing types and densities.*

  Comment:

  The proposal promotes a low density style of residential development that is generally in keeping with the prevailing character of the locality.

  It is considered that the development satisfies this objective.

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

  Comment:

  The proposed development maintains the existing residential land use.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R1 General Residential zone.

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

Exception to Development Standards conclusion

The submitted written Clause 4.6 variation request is considered to be well founded having regard to the circumstances of the development, those being the artificial accentuation of building height due to the existing area of excavation beneath the dwelling, the requirement to build new development above the FPL and compatibility of the proposal with the surrounding locality. It is therefore considered appropriate that in this instance, flexibility in the application of the development standard Height of Buildings be applied. In this context the proposal meets the Objects of the Environmental Planning and Assessment Act 1979, contained in Section 1.3, having considered the relevant provisions under s.4.15 of the Act. Consequently, the development is considered to be in the public interest, subject to conditions.

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development

standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the Local Planning Panel.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 580.3m^2	**Requirement**	**Proposed**	**% Variation**	**Complies**
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 300m^2	1 dwelling	N/A	Yes
	Dwelling Size: 134m^2	286.2m^2	N/A	Yes
4.1.2.1 Wall Height	N: 7.5m (based on gradient 1:6)	GF - 6.2m	N/A	Yes
		FF - 9m	20%	No
	S: 7.5m (based on gradient 1:6)	GF - 6.2m	N/A	Yes
		FF - 9.2m	22.7%	No
		Cabana - 2.1m	N/A	Yes
4.1.2.2 Number of Storeys	2	3	50%	No
4.1.2.3 Roof Height	Height: 2.5m	1.2m	N/A	Yes
	Pitch: maximum 35 degrees	15 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line	Dwelling - 9.1m, consistent with prevailing setback	N/A	Yes
		Carport - 1.3m, consistent with existing approval	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	N: GF - 2.05m (based on wall height)	2.1m	N/A	Yes
	N: FF - 2.97m (based on wall height)	3.99m	N/A	Yes
	S: GF - 2.05m (based on wall height)	2.21m	N/A	Yes
	S: FF - 3.04m (based on wall height)	3.46m	N/A	Yes
	S: Cabana - 0.7m (based on wall height)	0.7m	N/A	Yes
	Windows: 3m	2.1m	30%	No
4.1.4.6 Setback for development adjacent to LEP Zones RE1, RE2, E1 and E2	8m (rear boundary)	9.5m	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements	Open space 55% of site area (319.2m^2)	59.3% (344.3m^2)	N/A	Yes

Residential Open Space Area: OS3	Open space above ground 25% of total open space (86.1m^2)	14.1% (48.7m^2)	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (120.5m^2)	52% (179m^2)	N/A	Yes
	3 native trees	5 trees	N/A	Yes
4.1.5.3 Private Open Space	18m^2	266m^2	N/A	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	Nil	N/A	Yes
	1m curtilage side/rear setback	N: 8.7m	N/A	Yes
		S: 2.6m	N/A	Yes
		Rear: 1.1m	N/A	Yes
	1.5m water edge side/rear setback	N: 9m	N/A	Yes
		S: 2.9m	N/A	Yes
		Rear: 1.4m	6.7%	No
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes

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

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:

78 Condamine St

The view corridor of concern obtained by this site is achieved towards the east and southeast and consists of partial views of North Harbour Reserve and the land/water interface and Wellings Reserve.

The view corridor is partially obstructed by the existing dwelling, vegetation and trees.

155 Condamine St

The view corridor of concern obtained by this site is achieved towards the east across the subject site. The corridor consists of partial views of North Harbour Reserve, the land/water interface and distant views of North Head. The view corridor is partially obstructed by existing vegetation and trees.

Image 1: View from 155 Condamine St towards the east (Source: Supplied by owner)

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:

78 Condamine St

The views outlined under Principal 1 are obtained from the rear living areas, kitchen and balcony of the dwelling. The corridor is obtained across the side and rear boundaries of the subject site.

155 Condamine St

The views outlined under Principal 1 are obtained from the front living areas of the dwelling. The corridor is obtained across the front and rear boundaries of the subject site. Views are also obtained across the southern adjacent property at 74 Condamine Street.

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:

78 Condamine St

The view of North Harbour Reserve and the land/water interface and Wellings Reserve from the rear living areas and balcony of this dwelling is expected to be significantly impacted by the proposed development, especially on the southern side of the dwelling. Views from the northern side of the rear balcony will not be as greatly impacted, however this corridor is partially filtered by existing trees and vegetation at the rear of the site.

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

155 Condamine St

The view of North Harbour Reserve and the land/water interface from the front living areas of this dwelling is expected to be impacted by the proposed development. However, distant water views and views towards North Head are not expected to be impacted by the development.

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

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

Comment:

Despite partial non-compliance with the building height and wall height at the rear of the proposed dwelling, the extent of view impact upon adjacent and nearby dwellings is considered to be reasonable, as outlined below.

78 Condamine St

While the proposed development is expected to have severe impact upon existing views from this dwelling, the approximate 20m rear setback of the dwelling is inconsistent with the prevailing rear setbacks of existing and the proposed development. It would be unreasonable to expect an increased rear setback of the proposed development to reduce the view impact from this site. Such a requirement would significantly restrict the development potential of the subject site and surrounding sites. This site has significant potential for future development to be built closer to the rear boundary and regain substantial portions of the view corridor impacted by the proposal.

155 Condamine St

The proposed development is expected to have a minor impact upon the views obtained from this dwelling. The existing view corridor is highly vulnerable due to the underdeveloped nature of the subject site. While the proposed development will obscure parts of North Harbour Reserve and the foreground coastal interface, distant views of the water and North Head will not be impacted by the proposal. The proposal demonstrates a compliant building height at the western-most point of the upper roof ridge and the non-compliant portion towards the rear will not significantly contribute to additional view loss. The increased setbacks of the first floor relative to the lower floors ensures appropriate corridors to obtain views

between buildings is provided.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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

Description of non-compliance

4.1.2.1 Wall Height

Based on a gradient of 1:6, the control permits a maximum wall height of 7.5m.

The proposed dwelling is to have a maximum wall height of 9.2m, representing a 22.7% variation.

4.1.2.2 Number of Storeys

The control requires buildings not to exceed 2 storeys.

The proposed dwelling is to partially incorporate 3 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 surrounding are contains a mix of roof forms including many examples of hipped gables. The proposal also provide a hipped gable form to complement with this character. The proposed development also steps down the site with the topography and this reduces the presentation of bulk to provide a desirable outcome for the locality.

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

Comment:

The proposed dwelling is generally sited in a similar location to the existing dwelling. The height of the proposed dwelling is generally compatible with the height of prevailing development in the locality. As such, the bulk and scale of the proposed dwelling is considered to be appropriate in the context of the site and surrounds.

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

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

Comment:

The proposal will not have an unreasonable impact on views, and provide viewing corridors through the site as a result of reasonable setbacks and appropriate modulation.

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

Comment:

The proposal provides sufficient modulation and stepping toward the rear of the site to allow for corridors for sunlight. The proposal also complies with the numerical requirements for sunlight under Clause 3.4.1 of the Manly DCP.

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

Comment:

Not applicable.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.9 Swimming Pools, Spas and Water Features

Description of non-compliance

4.1.9.2 Location and Setbacks

The control requires swimming pools be have a minimum setback to the side and rear boundaries of 1m to the curtilage and 1.5m to the water edge.

The proposed curtilage is setback 1.1m to the rear boundary and water edge is setback 1.4m to the rear boundary, representing a variation of 6.7% to the water edge.

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

Comment:

The swimming pool is adequately setback from the side boundaries which will mitigate visual and

acoustic amenity impacts of the swimming pool on the adjacent dwellings.

A condition is recommended to limit the pool filter noise to be no higher than 5dBA above background level at the nearest property boundary.

It is considered the siting of the pool will not cause any unreasonable amenity impact upon adjacent dwellings or the public domain.

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

Comment:

The swimming pool is located behind the dwelling and will not be visible from the primary street frontage. As such, no impact on the streetscape character is expected.

Objective 3) To integrate landscaping; and

Comment:

Landscaping is to be integrated into the proposal to improve the natural amenity of the site and reduce amenity impact upon adjacent properties.

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

Comment:

Not applicable.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of $17,304 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $1,730,449.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

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

PLANNING CONCLUSION

This proposal, for demolition works and construction of a dwelling house including a swimming pool has been referred to the Development Determination Panel (DDP) due to a breach of the height of building development standard by more than 10%.

The concerns raised in the objections have been addressed and the impacts of the proposed development are not considered to be significant enough to require design amendments.

The critical assessment issues include the proposed variations to the building height and wall height and the resultant impact upon building bulk and view sharing, flood planning and potential heritage 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 permits a contravention of clause 4.3 Height of Building development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2023/1317 for Demolition works and construction of a dwelling house including swimming pool on land at Lot 1 DP 1194202, 76 Condamine Street, BALGOWLAH, 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**
22-87 A101	H	Site Analysis Plan	Cad Draft	01/05/2024
22-87 A102	H	Roof Plan	Cad Draft	01/05/2024
22-87 A103A	H	Lower Ground Floor Plan	Cad Draft	01/05/2024

22-87 A104A	H	Ground Floor Plan	Cad Draft	01/05/2024
22-87 A105A	H	First Floor Plan	Cad Draft	01/05/2024
22-87 A106	H	Northern Elevation	Cad Draft	01/05/2024
22-87 A107	H	Southern Elevation	Cad Draft	01/05/2024
22-87 A108	H	Eastern + Western Elevations	Cad Draft	01/05/2024
22-87 A109	H	Sections A + B	Cad Draft	01/05/2024
22-87 A110	H	Section C	Cad Draft	01/05/2024
22-87 A111	H	Pool Details	Cad Draft	01/05/2024
22-87 A112	H	Carport Detail	Cad Draft	01/05/2024
22-87 A115	H	Storage Detail	Cad Draft	01/05/2024
22-87 A129	H	Waste Management Plan	Cad Draft	01/05/2024
22-87 A130	H	Sediment & Erosion Control Plan	Cad Draft	01/05/2024
22-87 D102	H	Materials & Finishes	Cad Draft	01/05/2024
L001	C	Landscape Plan	Landsberg Garden Design	25/08/2023

Approved Reports and Documentation			
Document Title	**Version Number**	**Prepared By**	**Date of Document**
Arboricultural Impact Assessment Report	A	Joanne Willis	07/09/2023
BASIX Certificate	1373462S	Chapman Environmental Services	04/08/2023
Flood Assessment	L231214	WMA Water	14/12/2023
Geotechnical Investigation	J5113	White Geotechnical Group	08/09/2023
Infiltration Testing	J3444	White Geotechnical Group	20/05/2021
NatHERS Certificate	0008813446-01	Chapman Environmental Services	04/08/2023

Stormwater Management Plan	STORM-1/D	Taylor Consulting	October 2023
Stormwater Management Details	STORM-2/C	Taylor Consulting	October 2023
Waste Management Plan	-	Damien Harmer	18/08/2023

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

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

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	22/09/2023

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

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

3. **Approved Land Use**
Nothing in this consent shall authorise the use of the site beyond the definition of a *dwelling house*, in accordance with the Dictionary of the Manly Local Environmental Plan 2013.

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

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

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

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

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

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

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

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

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

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

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

A. the name of the owner-builder, and

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

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

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

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

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

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

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

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

Reason: Legislative requirement.

5. **General Requirements**

(a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,

- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

i) Building/s that are to be erected

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

iii) Building/s that are to be demolished

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

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

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

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

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

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

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

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

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

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

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

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

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

A monetary contribution of $17,304.49 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 $1,730,449.00.

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

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

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

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

7. **Security Bond**

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

8. **Flood effects caused by development**
Apart from filling of the land up to 2.0m AHD, and the pool deck and coping to be at 2.15m AHD, there is to be no other filling or any other reduction of the available flood storage which results in a net loss of storage below the 1% AEP flood level of 2.42m AHD.
The area under the terrace (which has a floor level of 2.85m AHD) is to be designed and constructed to allow the clear passage of floodwaters underneath, with at least 50% of the underfloor area to be of an open design from the ground level up to the 1% AEP flood level.
The cabana is not to be enclosed.

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.

9. **Building components and structural soundness**
B1 - All new development below the Flood Planning Level of 2.92m AHD shall be designed and constructed from flood compatible materials.

B2 - All new development must be designed to ensure structural integrity up to the Flood Planning Level of 2.92m AHD, taking into account the forces of floodwater, debris load, wave action, buoyancy and immersion.

B3 - All electrical equipment (including the pool pump), power points, wiring and connections must be located above the Flood Planning Level of 2.92m AHD, protected from flood water or have residual current devices installed to cut electricity supply during flood events.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

10. **Floor levels**
C1 - New floor levels within the development shall be set at or above the Flood Planning Level of 2.92m AHD.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

11. **Fencing**
F1 - 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 of 2.42m AHD.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

12. **Storage of Goods**
G1 - Storage areas for hazardous or potentially polluting materials (including pool chemicals) shall not be located below the Flood Planning Level of 2.92m 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.

13. **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.

14. **On-Site Stormwater Disposal Details**
The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater disposal structures in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by Taylor Consulting, drawing number Storm-1/D, Storm-2/C, dated October 2023. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering.

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

15. **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 an absorption trench.

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.

16. **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.

17. **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.

18. **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.

19. **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.

20. **Surrender of Consent**
The applicant shall surrender to Council Development Consent No. DA2020/1730 in accordance with the requirements of the Environmental Planning and Assessment Act 1979.

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

Reason: To prevent inconsistencies between consents applying to the site (ref 4.17 & 4.63 EPAA & cl68 EPA Regulation 2021).

21. **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

22. **Project Arborist Supervision**
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 excavation works near existing trees 1 and 2 as nominated in the Arboricultural Impact Assessment, and in particular:
a) section 4.4 and section 4.5,
b) section 5.1 to 5.4 inclusive.

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 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.

23. **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.

24. **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 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 as complaint to AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment and/or Project Arborist as applicable.

Reason: Tree and vegetation protection.

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. **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.

27. **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.

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

Reason: Public safety, landscape amenity and tree protection.

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

Reason: Public safety and environmental protection.

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

Council's public assets include, but is not limited to, the following: road, kerb and gutters, crossovers, crossings, paths, grass verge, open space and associated elements such as furniture, recreational facilities and the like, within the meaning of the Local Government Act 1993. Existing trees shall be protected in accordance with AS4970-2009 Protection of Trees on Development Sites, with particular reference to Section 4, with no ground intrusion into the tree protection zone and no trunk, branch nor canopy disturbance.

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

31. **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.

32. **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.

33. **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.

34. **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.

35. **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

36. **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.

37. **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,
b) any landscape works within Council road reserve must gain the relevant approvals,
c) at least two (2) native trees shall be installed at the rear of the property as selected from Manly DCP Schedule 4 - Part B - Native Tree Selection, to achieve a mature height of 10 metres, at a minimum pre-ordered planting size of 75 litres or as otherwise scheduled if greater in size; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth generally, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,
d) the following species shall not be planted and shall be substituted with non self-seeding or spreading species of similar form and size: Rhapiolepis and Monstera,
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.

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. **Condition of Retained Vegetation**
Prior to the issue of an Occupation Certificate, a report prepared by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Principal Certifier, assessing the health and impact on all existing trees required to be retained 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.

39. **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. Ground floor levels for the dwelling are at or above 2.92m AHD.
2. There has been no filling on the land other than what has been approved.
3. 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.

40. **Building Components and Structural Soundness**
B2 - A suitably qualified structural engineer is to certify the structural integrity of the new development up to the Flood Planning Level of 2.92m AHD. The depth, velocity, debris load, wave action, buoyancy and immersion must all be considered.

B3 - A suitably qualified electrician or contractor is to certify that all electrical equipment, power points, wiring and connections are located above the Flood Planning Level of 2.92m AHD, are 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 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. **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.

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

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

43. **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.

44. **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 absorption and level spreader 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.

45. **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.

46. **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.

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 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

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

The approved landscape planted areas 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.

50. **Flood Management**
Flood Effects Caused by Development (A2)
There shall be no filling of the land below the 1% AEP flood level of 2.42m AHD, blocking of areas required by DA consent to be left open, or any other obstruction of flow paths through the property. The area under the terrace and the cabana are not to be enclosed.

Storage of Goods (G1)
Pool chemicals shall not be stored below the Flood Planning Level of 2.92m AHD unless adequately protected from floodwaters in accordance with industry standards.

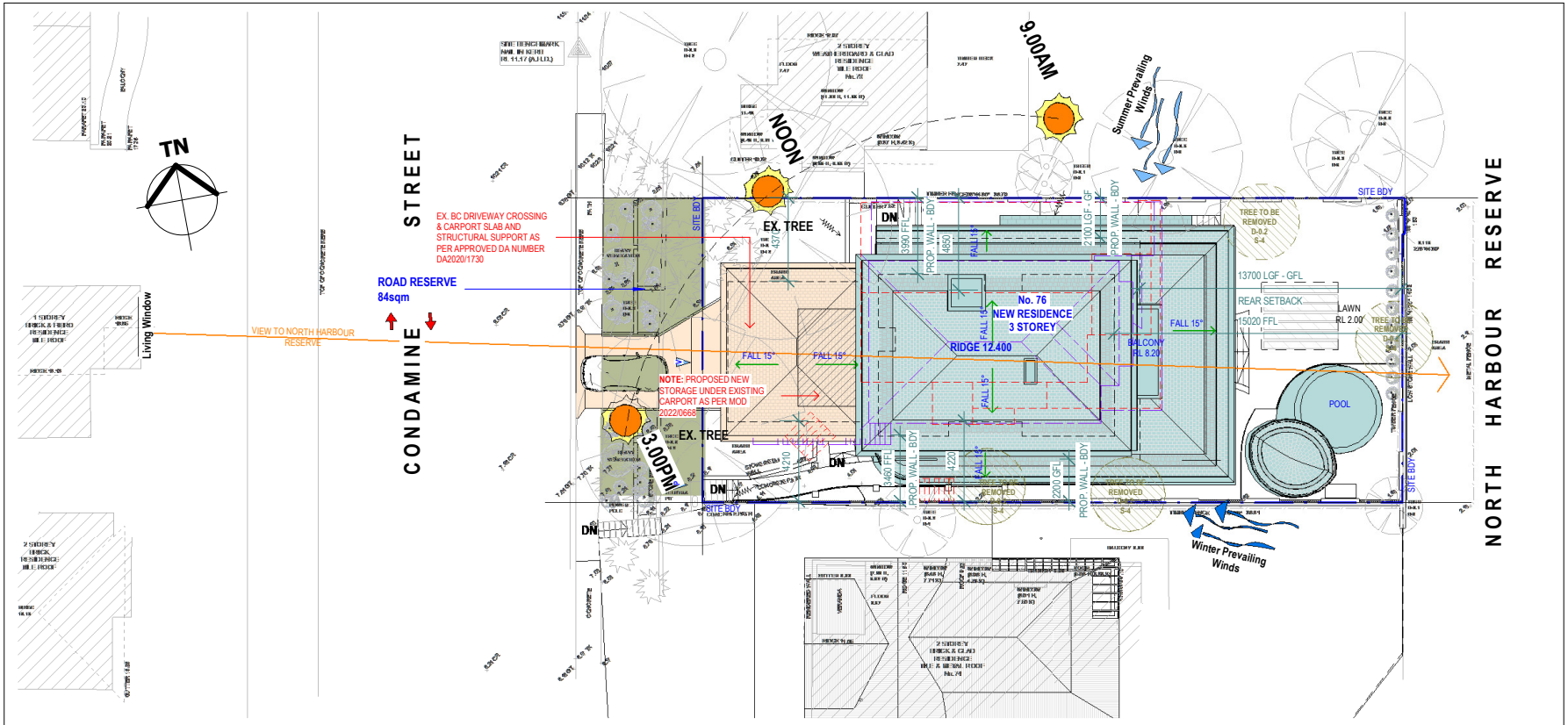
Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

51. **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.

52. **Swimming Pool/Spa Motor Noise**
The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

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



1 Site Analysis Plan

1 : 200

LEGEND:

- DENOTES AREA OF PROPOSED ADDITIONS & ALTERATIONS
- DENOTES AREA OF APPROVED DA NUMBER 2020-1730 UNDER CONSTRUCTION
- DENOTES OUTLINE OF EXISTING RESIDENCE TO BE DEMOLISH
- DENOTES OUTLINE OF APPROVED DA NUMBER 2020/1730
- MIDDAY SUN
- SOLAR ACCESS
- VEHICULAR TRAFFIC
- PEDESTRIAN ACCESS
- VEHICULAR ACCESS

NOTE SEWER UPGRADE - UPGRADE SYSTEM
REFER TO STORMWATER MANAGEMENT PLANS

RECOMMENDATION

- INSTALL A 1200L TO 2000L POLY TANK IN A SUITABLE LOCATION
- INSTALL A DUAL PUMP CONTROL PANEL WITH PUMP OVERLOADS, MANUAL OFF AUTO FUNCTIONS, HIGH LEVEL ALARM WITH MUTE CAPABILITY
- INSTALL 2 X 240V 1.1KW OR 1.5KW SEWER GRINDER PUMPS
- INSTALL 3 X FLOAT SWITCHES – LOW LEVEL, MEDIUM LEVEL & HIGH LEVEL ALARM
- INSTALL DUAL PUMP DISCHARGE PIPEWORK INCLUDING 2 X BRASS 50MM NON-RETURN VALVES, 2 V PVC 50MM UNIONS, PVC 50MM FITTINGS AND PIPE TO CONNECT INTO 50MM DISCHARGE EXTERNAL PIPE TO SEWER.

REQUIREMENTS

- INLET SEWER PIPE FROM HOUSE TO PIT – PLUMBER OR ENGINEER TO PROVIDE SPEC
- 50MM DISCHARGE PIPE FROM MAIN SEWER LINE TO PIT – THIS NEEDS TO BE TERMINATED INSIDE THE PIT FOR ACCESS
- 2 X 40MM ORANGE CONDUITS FROM CONTROL PANEL TO PIT OR JUNCTION BOX NEAR PIT FOR 5 CABLES
- 240V ISOLATION SWITCH NEAR CONTROL PANEL IF NEAR THE HOUSE PREFERABLE

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No.	Description	Date
A	PLANNING REVIEW	30-06-23
B -C	REVIEW	04-8-23
D	REVIEW	18-8-23
E	LANDSCAPE REVIEW	23-8-23
F	DA SUBMISSION	23-8-23
G	AMDENDED DA SUBMISSION RFI	14-12-23
H	AMDENDED DA SUBMISSION RFI	01-05-24

DA APPLICATION - NEW DWELLING
No. 76 CONDAMINE STREET
BALGOWLAH

CLIENT: CATHERINE & DAMIAN HAMER

Site Analysis Plan

Project number	22-87	A101	
Date	28-06-23		
Drawn by	AB		
Checked by	JD	Scale	As indicated

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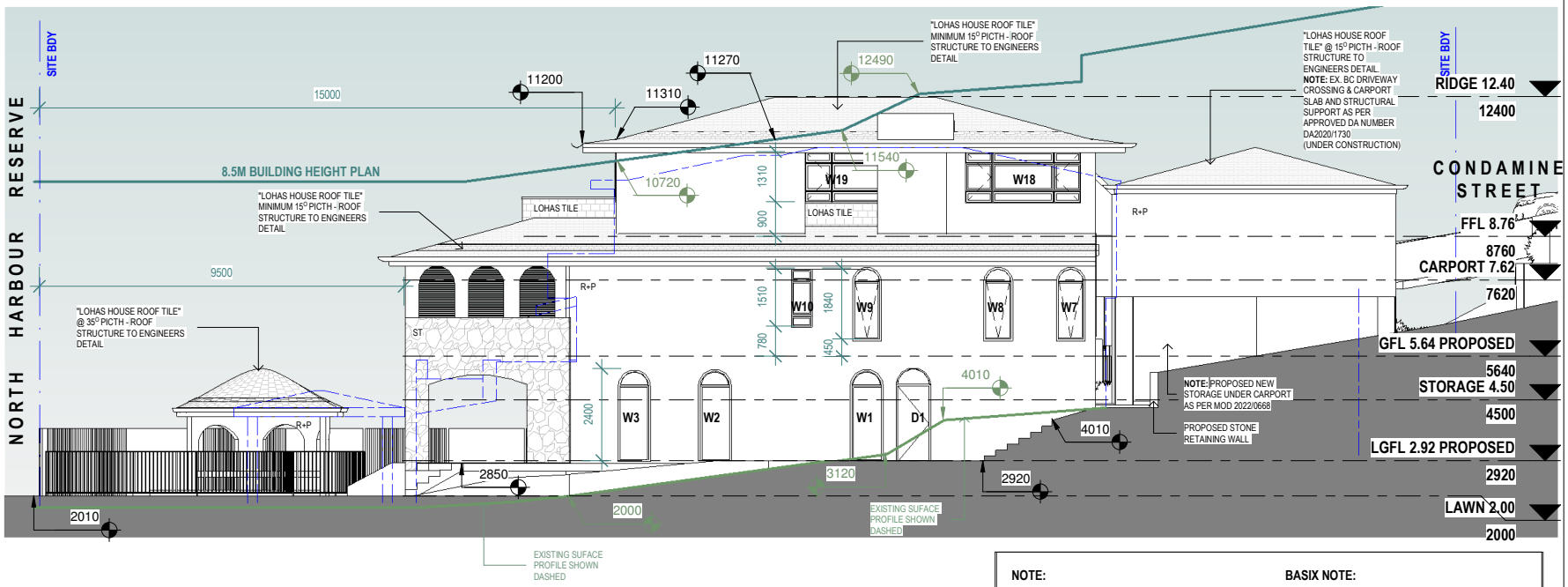

1 Northern Elevation

1 : 100

NOTE:

ALL CONSTRUCTION TO BE IN COMPLIANCE WITH REQUIREMENTS OF BASIX ASSESSMENT, THE BUILDING CODE OF AUSTRALIA, RELEVANT AUSTRALIAN STANDARDS, AND LOCAL PLANNING CODES & MANUFACTURERS SPECIFICATIONS

ARCHITECTURAL DRAWINGS TO BE READ IN CONJUNCTION WITH STRUCTURAL DRAWINGS & BASIX ASSESSMENT

LEGEND:

DENOTES APPROVED DA 2020/1730

BASIX NOTE:

GENERAL NOTE:

REFER TO BASIX CERTIFICATE FOR PROJECT REQUIREMENTS.
FOR INSULATION REQUIREMENTS, REFER BASIX CERTIFICATE.
FOR DETAILS OF FIXTURE AND FITTINGS REQUIREMENTS, REFER BASIX CERTIFICATE.
FOR DETAILS OF WINDOWS AND SHADING, REFER BASIX CERTIFICATE.

"REFER TO GENERAL NOTES SHEET A000"

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DA APPLICATION - NEW DWELLING
No. 76 CONDAMINE STREET
BALGOWLAH

CLIENT: CATHERINE & DAMIAN HAMER

Northern Elevation

Project number	22-87
Date	28-06-23
Drawn by	AB
Checked by	JD
Scale	1 : 100

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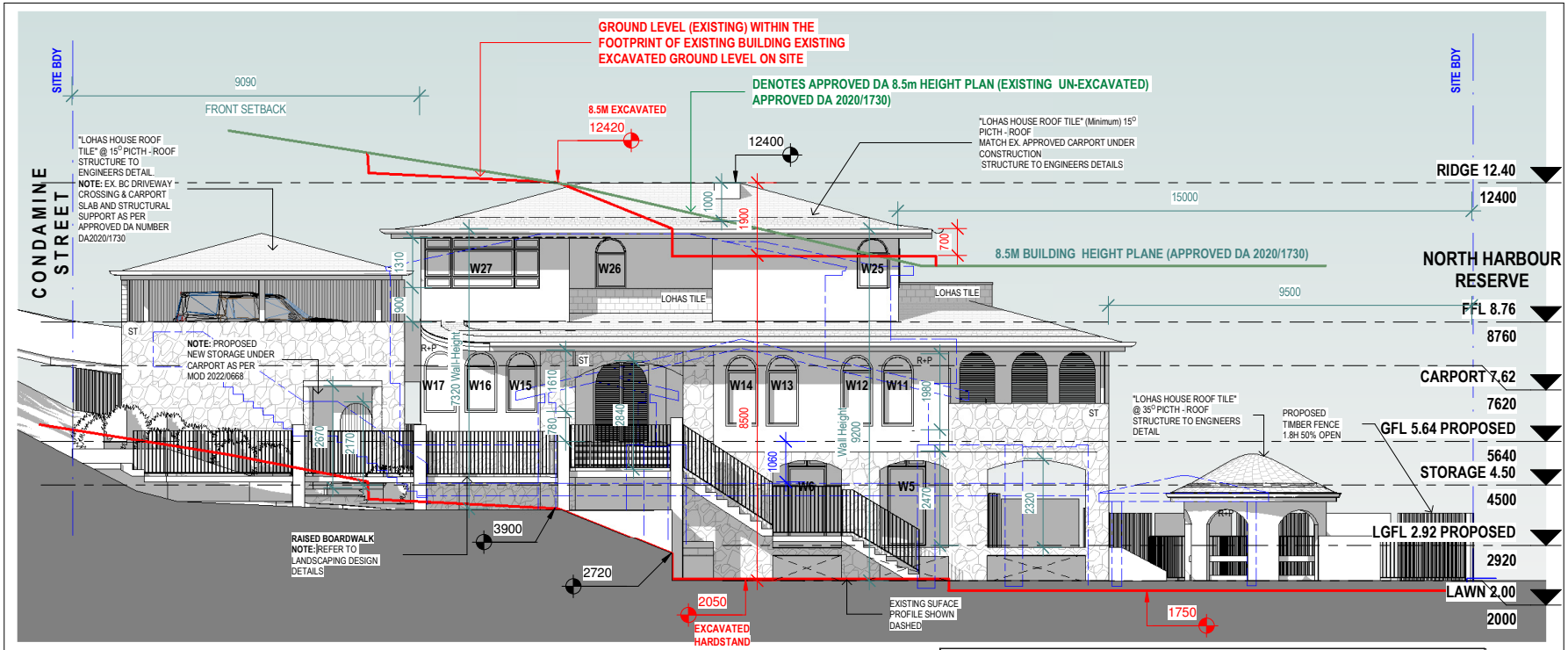

1 Southern Elevation

1 : 100

NOTE:

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"REFER TO GENERAL NOTES SHEET A000"

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DA APPLICATION - NEW DWELLING
No. 76 CONDAMINE STREET
BALGOWLAH

CLIENT: CATHERINE & DAMIAN HAMER

Southern Elevation

Project number	22-87
Date	28-06-23
Drawn by	AB
Checked by	JD
Scale	1 : 100

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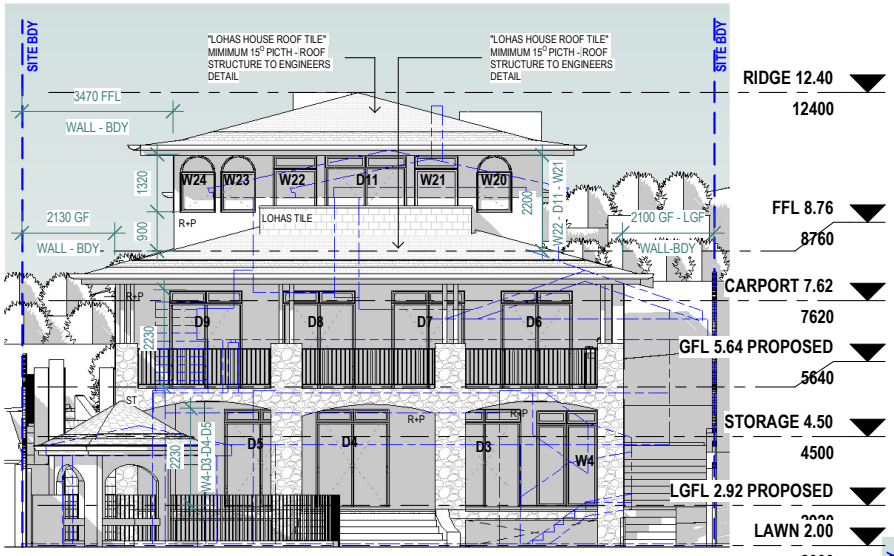

1 Eastern Elevation

1 : 100

NOTE:

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ARCHITECTURAL DRAWINGS TO BE READ IN CONJUNCTION WITH STRUCTURAL DRAWINGS & BASIX ASSESSMENT

LEGEND:

DENOTES APPROVED DA 2020/1730

BASIX NOTE:

GENERAL NOTE:

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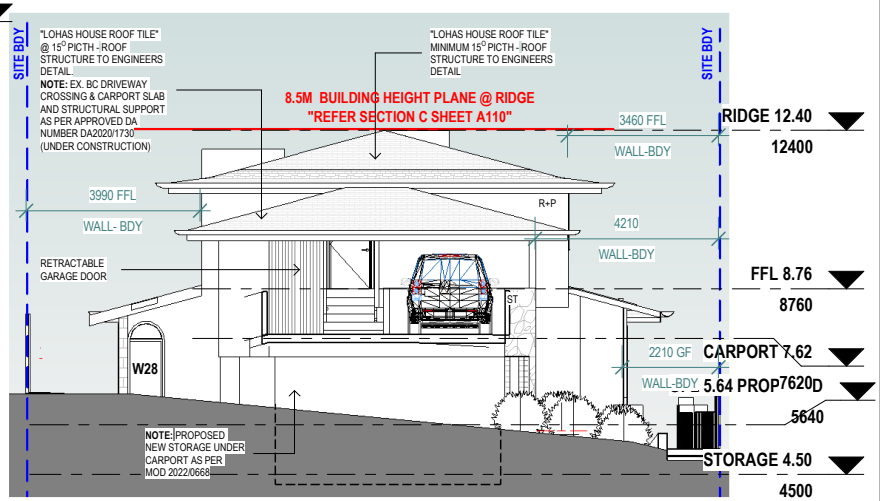
FOR DETAILS OF WINDOWS AND SHADING, REFER BASIX CERTIFICATE.

"REFER TO GENERAL NOTES SHEET A000"



2 Western Elevation

1 : 100

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DA APPLICATION - NEW DWELLING
No. 76 CONDAMINE STREET
BALGOWLAH

CLIENT: CATHERINE & DAMIAN HAMER

Eastern + Western Elevations

Project number	22-87
Date	28-06-23
Drawn by	AB
Checked by	JD
Scale	1 : 100

A108

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TOWN PLANNERS

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

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 4.3 - Height of buildings

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

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

Building height is defined as follows:

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

Ground level existing is defined as follows:

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

It has been determined that the proposal has a maximum building height of 10.4m measured to the top of the roof ridge. The building exceeds the maximum building height by 1.9m or 22.35%.

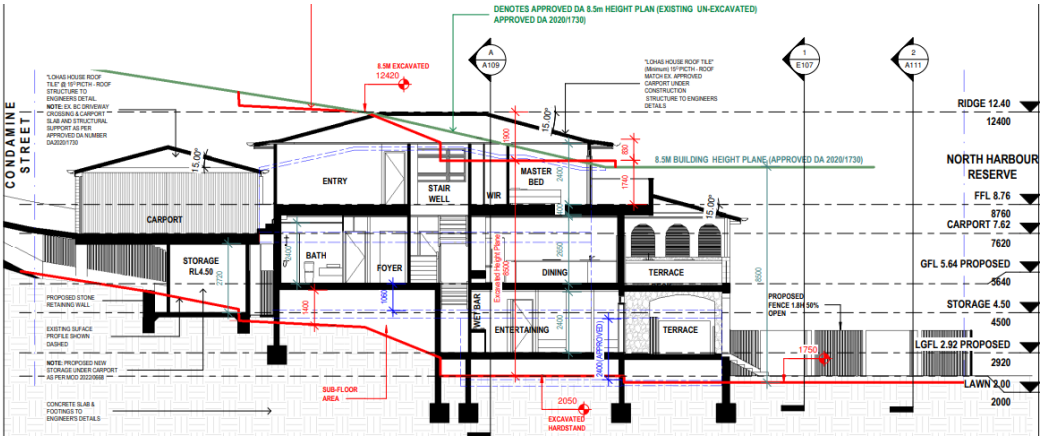

Figure 1 – Extent of 8.5 metre height of building breach located centrally on the site

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of MLEP provides:

(1) The objectives of this clause are:

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

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

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

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

Clause 4.6(2) of 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 4.3 Height of Buildings 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 height of buildings provision at 4.3 of MLEP which specifies a maximum building height however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

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

Clause 4.6(4) of MLEP provides:

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

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]).

The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest ***because*** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under the *Environmental Planning and Assessment Regulation 2021*, the Secretary has given written notice dated 5 May 2020 PS 20-002, attached to the Planning Circular PS 20-002, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of MLEP provides:

> *(5) In deciding whether to grant concurrence, the Director-General must consider:*
>
> *(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
> *(b) the public benefit of maintaining the development standard, and*

(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.3A of MLEP from the operation of clause 4.6.

3.0 Relevant Case Law

In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827* continue to apply as follows:

17. The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].

18. A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].

19. A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].

20. A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].

21. A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.

> *22. These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

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

1. Is clause 4.3 of 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

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

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

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

4.0 Request for variation

4.1 Is clause 4.3 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 4.3 MLEP prescribes a height provision that relates to certain development. Accordingly, clause 4.3 MLEP is a development standard.

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

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

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

Consistency with objectives of the height of buildings standard

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

> *(a) to 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,*

Response: The building height proposed is consistent with the built form characteristics established by surrounding development and development generally within the site's visual catchment. The dwelling will present as 2 storey dwelling within the streetscape and is considered consistent with the desired future character of the area. The topography of the site slopes down from street level and the dwelling will be 3 storeys when viewed from the Harbour foreshore area. 3D view images showing the previously approved dwelling associated with DA2020/1730 and the proposed scheme are shown below:

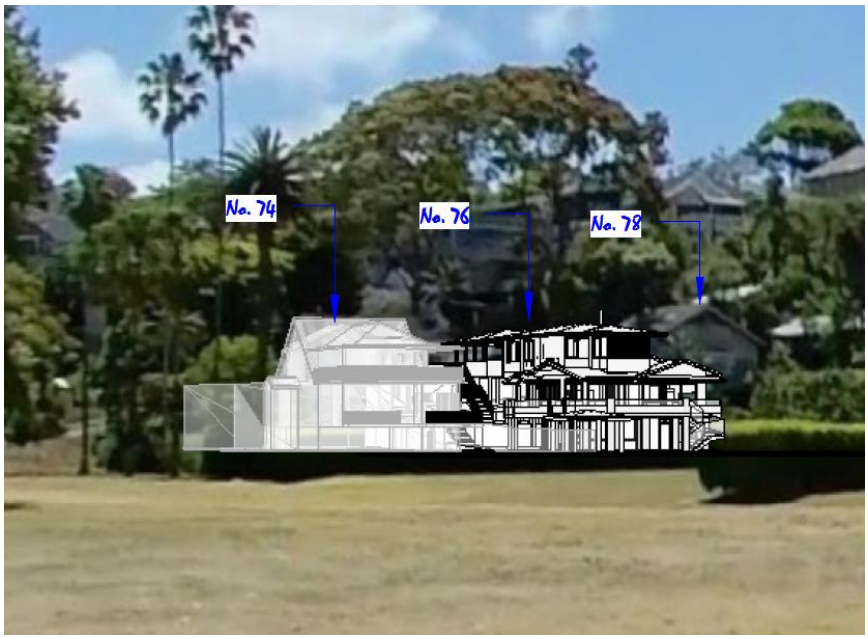

Figure 2: Rear elevation with approved DA2020/1730

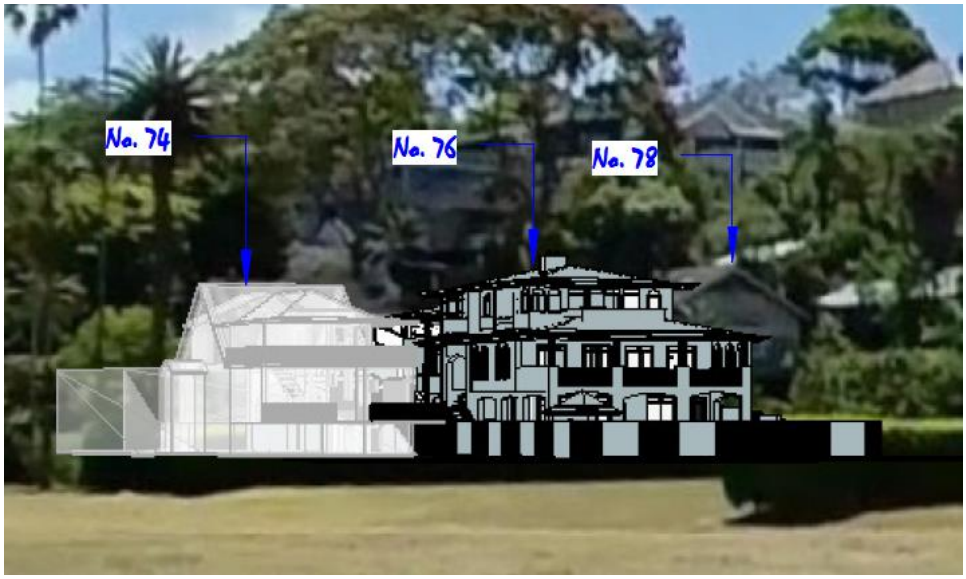

Figure 3: Proposed rear elevation

The 3D overlays show that the dwelling is consistent with the scale of dwelling in the area and largely similar in scale with the previously approved DA.

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 roof form and building height offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the sites visual catchment. In forming this opinion, I note that the street facing façade is comfortably below the 8.5 metre height standard.

The development achieves this objective as it displays a building height and roof form 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,*

Response: This objective is explanatory of the purpose of the height of building standard. The objective is not an end in itself. The objective is explanatory of the central purpose of the standard. By fixing different upper limits for the height of buildings on land in different areas by means of the building height map the clause does seek to control bulk and scale of buildings. The establishment of upper limit for height is not the end to be achieved by the clause rather it is a means to achieve the other objectives of the standard that are dealt with above and below (*Baron Corporation Pty Limited –v- the City of Sydney Council [2019]* NSWLEC 61 at [48]-[49]).

In any event, for the reasons outlined in relation to objective (a) above I have formed the opinion that the bulk and scale of the building, having regard to the elements of the building exceeding the 8.5 metre height standard, is contextually appropriate with the floor space being compliant and appropriately distributed across the site to achieve acceptable streetscape 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 bulk and scale offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the sites visual catchment.

The proposal achieves this objective.

(c) *to minimise disruption to the following:*

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

Response: The buildings compliance with the height standard where it adjoins Condamine Street minimises the disruption of views to nearby residential development from the adjoining public spaces with the significant distance between the harbour and its

foreshores and the subject site ensuring no discernible disruption of views to nearby residential development as a consequence of the building height breach.

The proposal achieves this objective.

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

Response: The proposal has been assessed against the view sharing planning principle and found to be reasonable. View obtained over the site from the dwelling directly opposite Condamine Street will still achieve views over the subject site with a negligible impact to the existing view. This is demonstrated below with the proposed dwelling overlayed on the existing view from 155 Condamine Street:

Figure 4: Proposed and Existing Views from 155 Condamine Street

Whilst it is acknowledged that the proposed works will impact on views available across the rear of the property in a south-easterly direction from No. 78 Condamine Street that such views are obtained directly across the side boundary and accordingly are particularly vulnerable to view impact.

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 clause 3.4.3 MDCP control and the principles established in the matter of Tenacity Consulting Pty Ltd v Warringah Council [2004] NSWLEC140 and Davies v Penrith City Council [2013] NSWLEC 1141.

The proposal achieves the objective of minimising view impact as demonstrated by the view sharing outcome achieved.

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

Response: The building form and height has been appropriately distributed across the site to minimise disruption of views between public spaces with a compliant building height achieved where the development adjoins Condamine Street.

The proposal achieves 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,*

Response: The shadow diagrams provided within the architectural set demonstrate that the building height breaching portion of the development will not give rise to any unacceptable shadowing impact to adjoining properties.

The proposal achieves 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.*

Response: This objective is not applicable.

Having regard to the above, the non-compliant component of the building 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 building height standard. Given the developments consistency with the objectives of the height of buildings standard strict compliance has been found to be both unreasonable and unnecessary under the circumstances.

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

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

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

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

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

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

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

- The site is flood affected and includes a flood planning level which makes strict compliance with the 8.5m control challenging in this instance. The ground floor has been elevated to meet the flood planning level.

- When extrapolating the 8.5m height plane from natural surface levels the proposal is 1m above the 8.5m control and is compliant at the front façade interface. The flood planning level is prescribed at RL2.92. The existing ground level taken beneath the highest point of the dwelling is RL2.05. If no flood planning level applied the height of the dwelling when using the extrapolated method would minorly non-compliant by 130mm towards the rear of the dwelling where the land slopes away with the vast majority of the dwelling being compliant.

- The site slopes down from street level with the front façade of the dwelling, as it presents to the street, being compliant with the 8.5m control. As the land slopes away to the rear the roof becomes non-compliant with the control. The design has had responded to the topography appropriately. This is demonstrated with the building envelope overlay drawing below:

Figure 5: *3D height plane showing the areas breaching the 8.5m control*

- The first floor level has been reduced in scale from the lower and ground floor levels with generous side setbacks to minimise its visual impact. The proposal is compliant with the FSR standard which is the main driver of controlling bulk and scale and reflects its reasonableness in that regard despite the height breach. The dwelling will present as 2 storeys to Condamine Street.

- The roof pitch has been amended to reduce the pitch. The roof form is provided at its lowest profile before it would compromise the architectural integrity of the dwelling. A tiled and pitched roof has been chosen to reflect the predominant character of the area. The roof tiles cannot be incorporated into a flat roof design.

- As assessed against the objectives of the height control, the pitched roof design does not contribute to any loss of water views to the dwellings opposite Condamine Street.

- The height non-compliance does not give rise to any unreasonable privacy, overshadowing or view impacts.

In this regard, I consider the proposal to be of a skilful design which responds appropriately and effectively to the above constraints by appropriately distributing floor space, building mass and building height across the site in a manner which provides for appropriate streetscape and residential amenity outcomes including a view sharing scenario.

Such outcome is achieved whilst realising the reasonable development potential of the land.

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

- The proposal promotes the orderly and economic use and development of land (1.3(c)).
- The development represents good design (1.3(g)).
- The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (1.3(h)).

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

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

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

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

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

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

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

standard and the objectives of the zone that make the proposed development in the public interest.

If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).”

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

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

4.4 Secretary’s concurrence

The Secretary of the Department of Planning & Environment advised that consent authorities can assume the concurrence to clause 4.6 request except in the circumstances set out below:

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

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

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

5.0 Conclusion

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

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

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

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

Yours Sincerely

William Fleming
BS, MPLAN
Boston Blyth Fleming Pty Ltd
Planner

ITEM 3.5 DA2024/0065 - 7 LOWER BEACH STREET BALGOWLAH - ALTERATIONS AND ADDITIONS TO A SEMI-DETACHED DWELLING INCLUDING 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 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 DA2024/0065 for alterations and additions to a semi-detached dwelling including swimming pool on land at Lot B DP 106732, 7 Lower Beach Street BALGOWLAH, subject to the conditions set out in the Assessment Report.

Reporting manager	Rodney Piggott
TRIM file ref	2024/397993
Attachments	⇩1 Assessment Report ⇩2 Site Plan and Elevations ⇩3 Clause 4.6

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/0065

Responsible Officer:	Nick Keeler
Land to be developed (Address):	Lot B DP 106732, 7 Lower Beach Street BALGOWLAH NSW 2093
Proposed Development:	Alterations and additions to a semi-detached dwelling including 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:	Geoffrey William Webster Kiani Webster
Applicant:	Geoffrey William Webster

Application Lodged:	02/02/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	12/02/2024 to 26/02/2024
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.4 Floor space ratio: 28.1%
Recommendation:	Approval

Estimated Cost of Works:	$ 979,000.00

EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to a semi-detached dwelling including swimming pool.

The application is referred to the Development Determination Panel (DDP) due to a variation of more than 10% to Clause 4.4 Floor space ratio (FSR) of Manly Local Environmental Plan 2013. The required FSR is 0.45:1 (169.1m^2), and the proposed FSR is 0.576:1 (216.6m^2) , presenting a variation of 28.1%.

The Clause 4.6 request for the non-compliance with FSR standard arises from a 48.4m^2 increase in floorspace. However, it is of note that the he proposed FSR would comply with the development standard under the exceptions to FSR for undersized lots. Notwithstanding, the proposal has been assessed under Clause 4.6 within the report and in summary the proposed deviation from Clause 4.4 of MLEP 2013 is supportable.

The proposed development was notified in accordance with Northern Beaches Community Participation Plan (CPP) with one (1) submission received. The submission did not raise any planning matters relevant to the proposed development.

Critical assessment issues include the Floor Space Ratio variation and subsequent Clause 4.6 variation request. The proposal also seeks variations to the window setbacks, total open space and off street parking controls. Notwithstanding, the variations to the controls have been assessed against the objectives of the controls and are supportable in this circumstance.

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 appropriate development for the subject site, for the reasons outlined in this report.

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

PROPOSED DEVELOPMENT IN DETAIL

The application seeks development consent for alterations and additions to an existing semi-detached dwelling including construction of a first floor addition and a swimming pool. Specifically the proposed works consist of the following:

- Demolition works to part of the roof and internal structures
- Reconfiguration of ground floor level including new windows
- Construction of a rear alfresco at the ground floor level
- Construction of a first floor addition
- Construction of a swimming pool and associated curtilage

ASSESSMENT INTRODUCTION

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

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

- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
Manly Development Control Plan - 4.1.5 Open Space and Landscaping
Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

SITE DESCRIPTION

Property Description:	Lot B DP 106732 , 7 Lower Beach Street BALGOWLAH NSW 2093
Detailed Site Description:	The subject site consists of one (1) allotment located on the southern side of Lower Beach Street. The site is generally regular in shape with a frontage of 7.575m along Lower Beach Street and a depth of 49.68m. The site has a surveyed area of 375.9m². The site is located within the R2 Low Density Residential zone and accommodates a part one and two storey semi-detached dwelling with a common wall with the other semi to the west. The site falls approx. 10m from the south towards the north. The site contains a small front setback area with gardens and a landscaped rear setback area with grass and gardens. A large canopy tree is located in the southwest corner of the site. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by low density residential buildings, predominantly dwelling houses. North Harbour Reserve is located opposite the site to the north.

Map:

SITE HISTORY

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

Application **DA273/2002** for Alteration and Additions to an existing dwelling was approved on 17/06/2003 by the former Manly Development Assessment Unit.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration	Comments
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 addressing heritage matters. 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 Matters for Consideration	Comments
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 12/02/2024 to 26/02/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Mr Michael Alexander Peters	79 Condamine Street BALGOWLAH HEIGHTS NSW 2093

The submission relates to an incorrect street view image of the subject site on an external planning alerts website. This website is not administered by Council and is not relevant planning matter for consideration.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The application has been investigated with respects to aspects relevant the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below. Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.
Landscape Officer	The application seeks consent for alterations and additions to a semi-detached dwelling including swimming pool. The Arborist's Report prepared by Hugh the Arborist is noted. The Report indicates minor encroachment to 4 trees adjacent to the

Internal Referral Body	Comments
	site and one tree on the site. The Report concludes that all trees can be retained with an acceptable level of impact, subject to tree management and Arboricultural supervision. No trees are to be removed. No objections are raised with regard to landscape issues subject to conditions.
NECC (Bushland and Biodiversity)	It is noted that no Biodiversity Controls apply to the site. No trees are being proposed for removal and an arboricultural impact assessment has confirmed that all trees on site and offsite can be retained. The development 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.
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS Discussion of reason for referral The application has been referred to as the property is in the vicinity of a number of Local Heritage items listed in Schedule 5 of Manly LEP 2013: **Item I21 - Moreton Bay Fig tree (Ficus Macrophylla)-** North Harbour Reserve **Item I35 - Electricity Substation No 15151** - Condamine Street, North Harbour Reserve Details of heritage items affected Details of the heritage items as contained within the heritage inventory are as follows: **Item I21 - Moreton Bay Fig tree (Ficus Macrophylla)** Statement of Significance Listed for its aesthetic importance is the Moreton Bay Fig. Physical Description Large, mature Moreton Bay Fig tree appears to mark the line of natural (original) shoreline to the head of North Harbour. **Item I35 - Electricity Substation No 15151** Statement of Significance An unusual example of a combined electricity substation and public toilet block, located in a public park. The building was originally constructed by the Municipal Council of Manly c1940 as a part of the council-operated electricity network. Physical Description A 1.5 storey tuck pointed building constructed in liver brick with a terracotta tile roof. The base courses of the building are dressed sandstone. The building is a dual purpose structure, with one half

<table>
<tr><th>Internal Referral Body</th><th>Comments</th></tr>
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operating as a distribution substation and the other half as a public toilet. The substation portion is accessed via a roller door with a double hung timber window adjacent. The male and female toilet sections have separate entrances on the park side of the building, with small, high set glass brick windows.

<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 is for alterations and additions to an existing semi-detached dwelling including a swimming pool and associated works at 7 Lower Beach Street, Balgowlah. The existing building is not a heritage listed property, however it is a Federation style semi dating back to the early 1900s, and retains its original built form, roof form, chimneys and internal layout with original ceiling decorations and fire places. The proposal retains the front portion of the main building and one chimney at the front, converting the existing bed 3 into a bathroom, replacing the existing window in existing bed 2 with a projecting bay window and removing the front wall with French doors between the existing sunroom and bed 1 to create a new living area.

The proposed first floor addition is appropriately located at the rear portion of the existing semi, however, its height and built form is considered inappropriate in relation to the adjoining semi. The impact of the first floor addition can be reduced by changing the proposed roof form and reducing the overall height, which can be achieved by using a 2.1m springing height for a gabled roof form and using the roof volume for spatial generosity. It is also considered that a reconfiguration to the first floor layout may allow the retention of the rear chimney. The proposed colour scheme is also required to be submitted for approval.

Therefore, the following controls and guidelines of Manly DCP 2013 should be taken into considerations:

• "3.2.1.1 Development in the vicinity of heritage items, or conservation areas,"
</td></tr>
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Internal Referral Body	Comments
	• *"4.1.7 First Floor and Roof Additions"* **Revised Comments - 13 May 2023** Further to reviewing the applicant's additional documents, including the external colour schedule and the Heritage report by Four Town Planning, which draws the attention to the adjoining semi, with an approved DA that removes the symmetrical design aspect of the original semi detached building. It is noted that the same report states that the front portion of the existing semi will be retained as existing to retain the original built form at the street elevation, however, the architectural drawings are showing a new gable above the front balcony, which needs to be clarified prior to approval. The proposed colour scheme is considered appropriate for the character of the area. Given the physical separation between the heritage items and the proposed works the impact of the proposal upon the significance of the heritage items is considered manageable. **Therefore, no objections are raised on heritage grounds and no conditions required.** <u>Considered against the provisions of CL5.10 of Manly LEP 2013.</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? N/A Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No

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

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. A1372065_04, dated 24/05/2024). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who raised no objections.

SEPP (Resilience and Hazards) 2021

Chapter 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	8.2m	N/A	Yes
Floor Space Ratio:	0.45:1 (169.1m^2)	0.576:1 (216.6m^2)	28.1% (47.5m^2)	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

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

Development standard: Clause 4.4 Floor Space Ratio
Requirement: 0.45:1 (169.1m^2)
Proposed: 0.576:1 (216.6m^2)
Percentage of variation: 28.1%

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 Applicant's request has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard and that the development standard in this area has been abandoned by virtue of the recent approval of a similar development (DA2022/1289) at the adjacent semi-detached dwelling.

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

(b) 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:

From a planning perspective, there is sufficient grounds to justify the variation to the FSR development standard for the following reasons:

- *The objectives of the development standard are achieved, notwithstanding the non-compliance with the standard in the circumstances described in this variation report and summarised as follows:*
    - *The proposal is consistent with the bulk and scale of the existing and desired streetscape character of the area.*
    - *The proposal provides articulation and modulation of the facades which assist in maintaining an appropriate visual relationship between the proposal and existing developments in the area.*
    - *The proposal enhances open space to the site and does not reduce existing total open space.*
    - *The proposal has been strategically designed by the project designers who have worked with relevant consultants and the clients to achieve a design which meets the needs of the project while maintaining the streetscape, the privacy and amenity of adjoining properties.*
    - *The design proposed represents an increase in GFA which is minor and complies with the building height and relevant setbacks for the site. The GFA variation relates to a small site which does not meet the expected lot size of 500sqm for the area. On this basis, the allowances under MDCP Clause 4.1.3.1 allow a variation. This is consistent with the approval granted for the adjoining dwelling at 9 Lower Beach Street, which was approved with a 28.2% variation.*
    - *The variation has been reviewed against relevant LEC court principles in regards to FSR, and the proposal is considered suitable in the context of the site and the merit analysis required given the existing scale, adjoining developments and the proposed development.*
    - *The desired future character of the locality is not jeopardised by the proposal and is consistent with Council's objectives for this precinct in regards to the R2 zone.*
    - *The area of non-compliance does not give rise to any adverse environmental impacts to the amenity of the neighbouring properties. The area of non compliance does not contribute to any adverse overshadowing impacts to adjoining developments.*
- *Having regard to Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, and further to the proposal's consistency with the above strategic and statutory environmental planning provisions, the proposal is consistent with the following objectives under Section 1.3 of the Environmental Planning and Assessment Act 1979 (the Act):*
  (c) to promote the orderly and economic use and development of land; and
  (g) to promote good design and amenity of the built environment,

  1. In response to (c), the proposal will facilitate the orderly and economic use and development of the land, in a highly appropriate location, in a manner that is desired by the planning controls because it will facilitate a newly renovated dwelling for the needs of the occupants. In considering the contrary (refusal of the DA), retention of the building in its current form would not promote the orderly and economic use and development of land in the manner that council's strategic and statutory planning provisions seek. Retention of the building in its current form makes no advancement towards achieving the goal of creating functional development opportunities of run-down sites.

  2. In response to (g) the proposal has been designed to promote good design and amenity of the built environment, noting compliance with the maximum building height control of MLEP 2013.

The above environmental planning grounds are not general propositions, they are unique circumstances to the proposed development. These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the floor space ratio.

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

Based on the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed floor space ratio non-compliance in this instance.

Council Response:

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.

It is agreed that the proposal is subject to Clause 4.1.3.1 Exceptions to FSR for Undersized Lots under MDCP. As outlined under Clause 4.1.3.1 of MDCP, 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). It is considered the written request has demonstrated consistency with the objectives of the FSR development standard objectives. It is considered that the applicant has demonstrated that proposal has incorporated good design that responds appropriately to the amenity of the built environment and is appropriate within the low density residential zoning.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b). Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

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 site being an undersized allotment and the recent approval of a similar development on the adjacent semi-detached dwelling, the proposed departure from the Floor Space Ratio 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: 375.9m^2	Requirement	Proposed	% Variation	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 500m^2	1 dwelling	N/A	Yes
	Dwelling Size: 95m^2	216.6m^2	N/A	Yes
4.1.2.1 Wall Height	E: GF - 7.4m (based on gradient 1:6.8)	3m	N/A	Yes
	E: FF - 7.4m (based on gradient 1:6.8)	7.4m	N/A	Yes
4.1.2.2 Number of Storeys	2	2	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	0.7m	N/A	Yes
	Pitch: maximum 35 degrees	8 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line	4.6m, consistent with prevailing setback	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	E: GF - 2m (based on wall height)	1.6m	20%	Acceptable, as existing
		Bay window - 1.2m	40%	No
	E: FF - 2.4m (based on wall height)	2.7m	N/A	Yes
	Windows: 3m	1.2m	60%	No
4.1.4.4 Rear Setbacks	8m	13.8m	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (206.7m^2)	45.4% (170.6m^2)	17.5% (36.1m^2)	Acceptable, as existing
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (59.7m^2)	46.7% (79.6m^2)	N/A	Yes
4.1.5.3 Private Open Space	18m^2	135.5m^2	N/A	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	Nil	N/A	Yes
	1m curtilage side/rear setback	E - 1.5m	N/A	Yes
		W - 2.3m	N/A	Yes
		Rear - 8.3m	N/A	Yes
	1.5m water side/rear setback	E - 1.7m	N/A	Yes
		W - 2.5m	N/A	Yes
		Rear - 8.5m	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	No spaces	100%	Acceptable, as existing

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	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)	No	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	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

4.1.3 Floor Space Ratio (FSR)

The proposed development has a floor space ratio of 0.576:1 (216.6m^2), which represents a variation of 28.1% to the prescribed 0.45:1 (169.1m^2) FSR requirement.

Refer to Clause 4.6 Exceptions to Development Standards of MLEP 2013 for a detailed assessment.

MDCP provides guidance in assessing the floor space ratio of undersized allotments.

The site is located in 'Area I' on the MLEP 2013 Lot Size Map, meaning that, based on an actual lot size of 375.9m^2, calculation of the floor space ratio can be made as if the lot size were 500m^2.

As such, the floor space ratio of the proposed development is 0.433:1, which complies with the maximum permitted 0.45:1 floor space ratio.

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

Description of non-compliance

4.1.4.2 Side setbacks and secondary street frontages

This control requires side setbacks to be one third of the wall height.

In this instance, the side boundary setback for the dwelling is to be 2.9m from the northern and southern side boundaries. The side boundary setbacks for the garage are to be 2.6m from the northern boundary and 2.4m from the southern boundary.

The proposed development has a setback of 1.6m to the eastern side boundary at the ground floor, with the bay window having a setback of 1.2m, resulting in a variation of between 20% and 40%.

This clause also requires windows to be setback a minimum of 3m from a side boundary, which is subsequently not achieved.

It is noted the proposal does not alter the existing predominant setback of the ground floor level.

The setbacks of the proposed first floor addition demonstrate compliance with the control requirement.

Merit consideration:

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

Objective 1) To 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 is consistent with the bulk and scale of the existing building and surrounding development. No adverse impact to adjacent properties or the streetscape is expected.

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:

The proposed development is considered to be appropriately sited and integrates well into the existing building.

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 provides sufficient deep soil areas and planting on the site.

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

Comment:

Not applicable.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.5 Open Space and Landscaping

Description of non-compliance

4.1.5.1 Minimum Residential Total Open Space Requirements

The site is located in the OS3 area, which requires a minimum 55% of site area (206.7m^2) to be classified as Total Open Space (TOS).

The proposed development incorporates 45.4% site area (170.6m^2) as TOS, representing a variation of 17.5% (36.1m^2).

It is noted the proposed development does not alter the existing amount of TOS provided on the site.

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 proposed development does not result in the removal of any significant or native vegetation.

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 site is compliant in terms of landscaped 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 proposed development is not expected to result in unreasonable amenity impact to adjacent properties by way of solar access, privacy and view loss.

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

Comment:

The proposed landscaped area is sufficient and will assist in water infiltration, thereby decreasing stormwater runoff.

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

Comment:

The proposal will not lead to a spread of weeds.

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

Comment:

The proposal will not compromise potential wildlife habitat within the locality.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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

Description of non-compliance

For a dwelling houses, semi-detached and secondary dwellings, the control requires the provision of two off-street parking spaces.

The existing site contains no off-street parking spaces. The proposal does not seek to alter the existing arrangement.

Merit consideration:

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

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

Comment:

The proposed development does not alter the existing parking conditions.

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

Comment:

The proposed development does not alter the demand for on-street parking. The site is significantly constrained in its ability to provide off-street parking due to the siting of the existing dwelling.

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

Comment:

N/A

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

Comment:

N/A

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

Comment:

N/A

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

Comment:

N/A

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

Comment:

N/A

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of $9,790 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $979,000.

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 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

PLANNING CONCLUSION

This proposal, for alterations and additions to a semi-detached dwelling including swimming pool has been referred to the Development Determination Panel (DDP) due to a Clause 4.6 variation greater than 10% to Clause 4.4 Floor space ratio development standard under Manly Local Environmental Plan 2013.

Critical assessment issues include the Floor Space Ratio variation and subsequent Clause 4.6 variation request. The proposal also seeks variations to the window setbacks, total open space and off street parking controls. Notwithstanding, the variations to the controls have been assessed against the objectives of the controls and are supportable in this circumstance.

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 DA2024/0065 for Alterations and additions to a semi-detached dwelling including swimming pool on land at Lot B DP 106732, 7 Lower Beach Street, BALGOWLAH, 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**
DA03	C	Site Analysis	Action Plans	24/05/2024
DA04	C	Site / Roof / Sediment Erosion / Waste Management / Stormwater Concept Plan	Action Plans	24/05/2024
DA06	C	Existing Lower Ground Floor Plan	Action Plans	24/05/2024
DA07	C	Existing Ground Floor Plan	Action Plans	24/05/2024
DA08	C	Proposed Ground Floor Plan	Action Plans	24/05/2024
DA09	C	Proposed Pool Plan	Action Plans	24/05/2024
DA10	C	Proposed First Floor Plan	Action Plans	24/05/2024
DA11	C	North / South Elevation	Action Plans	24/05/2024
DA12	C	East Elevation	Action Plans	24/05/2024
DA13	C	West Elevation	Action Plans	24/05/2024
DA14	C	Long / Cross Section	Action Plans	24/05/2024

Approved Reports and Documentation			
Document Title	**Version Number**	**Prepared By**	**Date of Document**
BASIX Certificate No. A1372065_04	-	Action Plans	24/05/2024
Arboricultural Impact Assessment	-	Hugh The Arborist	20/11/2023
Preliminary Geotechnical Assessment (Ref: AG 23780)	1	AscentGeo	24/11/2023
Waste Management Plan	-	Unnamed	Undated

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

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

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	12/02/2024

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

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

3. **Approved Land Use**
Nothing in this consent shall authorise the use of the site beyond the definition of a *semi-detached dwelling*, in accordance with the Dictionary of the Manly Local Environmental Plan 2013.

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

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

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

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

5. **Prescribed Conditions**

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

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

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

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

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

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

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

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

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

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

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

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

A. the name of the owner-builder, and

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

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

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

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

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

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

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

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

Reason: Legislative requirement.

6. **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) Construction certificate plans are to be in accordance with all finished levels identified on approved plans. Notes attached to plans indicating tolerances to levels are not approved.

(c) 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.

(d) At all times after the submission of 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.

(e) 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.

(f) 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.

(g) 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.

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

(i) 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.

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

(k) 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.

(l) 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.

(m) 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.

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

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

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

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

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

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

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

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

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

A monetary contribution of $9,790.00 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 $979,000.00.

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.

8. **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

9. **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.

10. **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.

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

12. **Boundary Identification Survey**
A boundary identification survey, prepared by a Registered Surveyor, 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.

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

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

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

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

14. **Fire Separation - Separating walls**
A separating wall between Class 1 buildings is required to comply with Part 9.3 of the ABCB Housing Provisions - "Fire Protection of Separating Walls and Floors" - National Construction Code.

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

Reason: To ensure adequate provision is made for fire safety and for building occupant safety.

15. **Sound Insulation**
The building that is required to comply with Part 10.7 of ABCB Housing Provisions - National Construction Code –'Sound Insulation'.

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

Reason: To ensure adequate provision is made for building occupant health and amenity.

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

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

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

18. **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 the Arboricultural Impact Assessment dated 20 November 2023 prepared by Hugh the Arborist and 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.

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 the Arboricultural Impact Assessment dated 20 November 2023 prepared by Hugh the Arborist and AS4970-2009 have been satisfied, and the recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

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

Reason: Tree protection.

DURING BUILDING WORK

19. **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.

20. **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 the Arboricultural Impact Assessment dated 20 November 2023 prepared by Hugh the Arborist and AS4970-2009 Protection of trees on development sites,
   ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by the Project Arborist,
   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 Arboriste shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,

viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,

ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,

x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,

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

The Principal Certifier must ensure that:

c) The arboricultural works listed in a) and b) are undertaken and certified by 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.

21. **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.

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

Reason: To protect native wildlife.

23. **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.

24. **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.

25. **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.

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. **Condition of Retained Vegetation**
Prior to the issue of an Occupation Certificate, a report prepared by the Project Arborist 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.

28. **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.

29. **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.

30. **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.

31. **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.

32. **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.

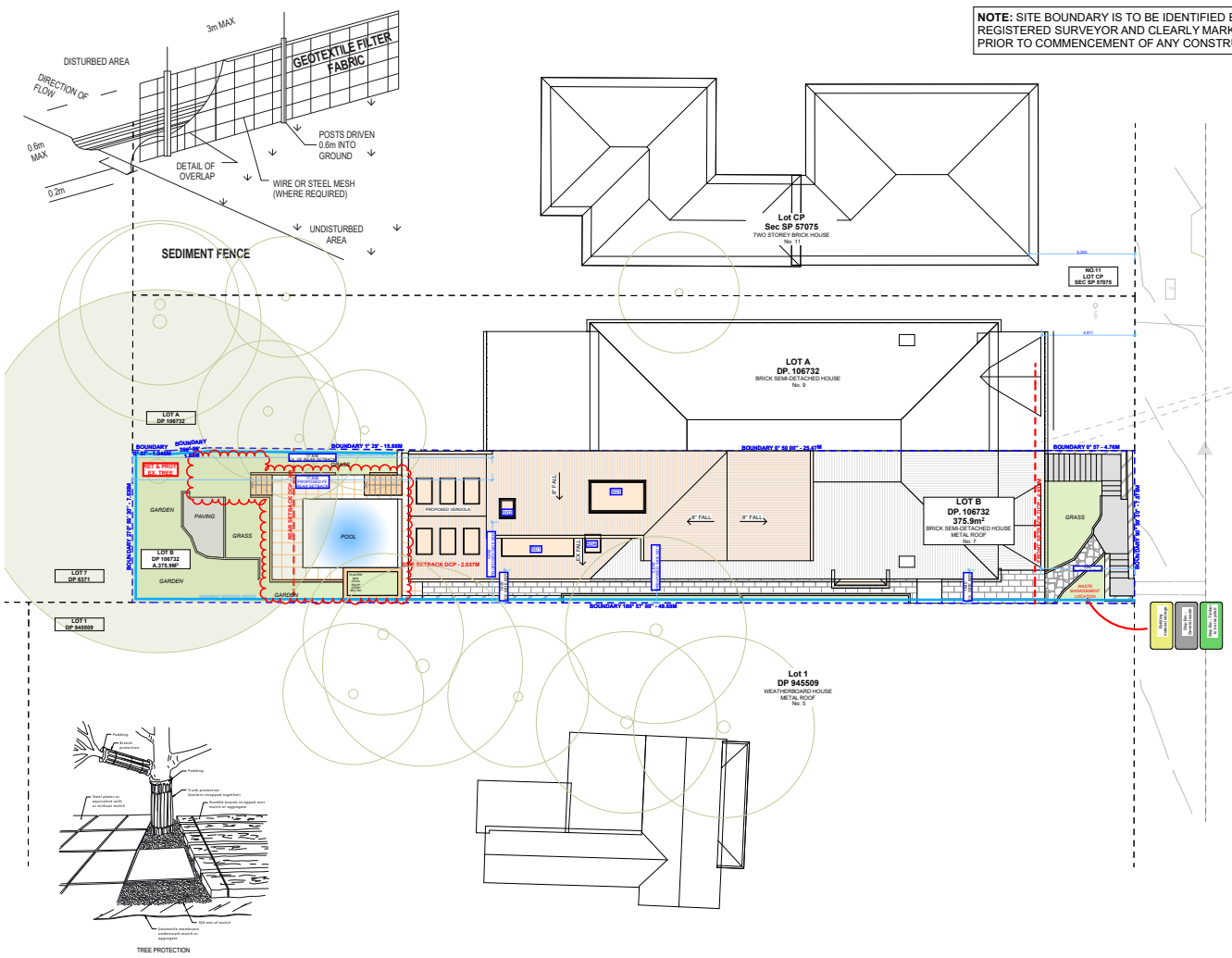
ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

33. **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.

34. **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.



NOTE: SITE BOUNDARY IS TO BE IDENTIFIED BY A REGISTERED SURVEYOR AND CLEARLY MARKED ON SITE PRIOR TO COMMENCEMENT OF ANY CONSTRUCTION WORKS.

NOTES REGARDING BOUNDARY
THE INFORMATION SHOWN ON THIS PLAN IS FOR DESIGN PURPOSES ONLY. THE POSITION OF BOUNDARY LINES HAVE BEEN ESTABLISHED BY A SURVEY TO MEET THE IDENTIFICATION REQUIREMENTS FOR COUNCIL AND NOT FOR REGISTRATION WITH THE LAND REGISTRATION SERVICES NSW NOR MAY THIS PLAN BE USED FOR ANY OTHER PURPOSE. SUBSEQUENT REGISTERED OR OTHER SURVEYS MAY AFFECT THE DEFINED BOUNDARY POSITIONS IN THIS AREA. ANY DIFFERENCES OF THIS NATURE ARE BEYOND THE PURPOSES OF THIS PLAN. THIS PLAN IS FOR THE ABOVE STATED PURPOSES ONLY. RESTRICTIONS ON THE TITLE HAVE NOT BEEN INVESTIGATED. IF FURTHER DEVELOPMENT IS CONTEMPLATED OR CONSTRUCTION INTENDED THEN IT IS IMPORTANT THAT A SURVEY SET OUT IS CARRIED OUT.

DUST CONTROL :
TO REDUCE DUST GENERATED BY WIND ACTION, THE REMOVAL OF THE TOP SOIL IS TO BE MINIMISED. TO PREVENT DUST GENERATION, WATERING DOWN OF THE SITE, ESPECIALLY DURING THE MOVEMENT OF MACHINERY IS REQUIRED. WHERE EXCAVATING INTO ROCK, KEEP THE SURFACE MOIST TO MINIMISE DUST. CONSTRUCT A GRAVEL ENTRY/EXIT POINT USING BLUE METAL AND RESTRICT ALL VEHICLE MOVEMENTS WITHIN THE SITE TO A MINIMUM. ENSURE WIND BREAKS, SUCH AS EXISTING FENCES ARE MAINTAINED DURING THE CONSTRUCTION PHASE UNTIL NEW LANDSCAPING IS PROVIDED OR REINSTATED. PREVENT DUST BY COVERING STOCKPILES

SEDIMENT NOTE :
1. ALL EROSION AND SEDIMENT CONTROL MEASURES TO BE INSPECTED AND MAINTAINED DAILY BY THE SITE MANAGER.
2. MINIMISE DISTURBED AREAS, REMOVE EXCESS SOIL FROM EXCAVATED AREA AS SOON AS POSSIBLE.
3. ALL MATERIAL STOCKPILE TO BE CLEAR FROM DRAINS, GUTTERS AND FOOTPATHS, OR WITHIN SEDIMENT FENCE AREA.
4. DRAINAGE TO BE CONNECTED TO STORMWATER AS SOON AS POSSIBLE. IF STORED ON SITE, IT MUST BE FILTERED BEFORE RELEASING INTO STORMWATER SYSTEM OR WATERWAYS.
5. ROADS AND FOOTPATHS TO BE SWEPT DAILY.

STOCKPILES :
ALL STOCKPILES ARE TO BE KEPT ON-SITE WHERE POSSIBLE. ANY MATERIALS PLACED ON THE FOOTPATHS OR NATURE STRIPS REQUIRE COUNCIL'S PERMISSION.
ALL STOCKPILES ARE TO BE PLACED AWAY FROM THE DRAINAGE LINES AND STREET GUTTERS. IT IS BEST TO LOCATE THESE ON THE HIGHEST PART OF THE SITE IF POSSIBLE. PLACE WATERPROOF COVERING OVER STOCKPILES.
IF REQUIRED PROVIDE DIVERSION DRAIN & BANK AROUND STOCKPILES.

GUTTER PROTECTION :
PROVIDE PROTECTION TO DOWNHILL GRATE IN GUTTER BY MEANS OF SAND BAGS OR BLUE METAL WRAPPED IN GEOTEXTILE FABRIC. WHEN SOIL OR SAND BUILDS UP AROUND THIS SEDIMENT BARRIER, THE MATERIAL SHOULD BE RELOCATED BACK TO THE SITE FOR DISPOSAL.

NOTE: ALL PROPOSED STORMWATER TO CONNECT WITH EXISTING

1 SITE / ROOF / SEDIMENT EROSION / WASTE MANAGEMENT / STORMWATER CONCEPT PLAN

ACTION PLANS
m: 0426 957 518
e:operations@actionplans.com.au
w: www.actionplans.com.au

REV.	DATE	COMMENTS	DRWN
A	17-11-2023	DA APPLICATION	CR
B	23-02-2024	REV. B	RNA
C	24-05-2024	REV. C	SC

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The Builder/Contractor shall check and verify ALL dimensions on site prior to commencement of any work, creation of shop drawings, or fabrication of components.
All errors and omissions are to be verified by the Builder/Contractor/client and referred to the designer prior to the commencement of works.

LEGEND
- EXISTING
- DEMOLISHED
- METAL ROOFING
- TILED ROOFING
- TIMBER STUD
- TILED FLOOR
- TIMBER FLOOR
- BRICKWORK

CLIENT
Kiani & Geoff Webster

PROJECT ADDRESS
7 Lower Beach Street, Balgowlah NSW 2093

DRAWING NO.
DA04

DATE
Friday, 24 May 2024

DRAWING NAME
SITE / ROOF / SEDIMENT EROSION / WASTE MANAGEMENT / STORMWATER CONCEPT PLAN

SCALE
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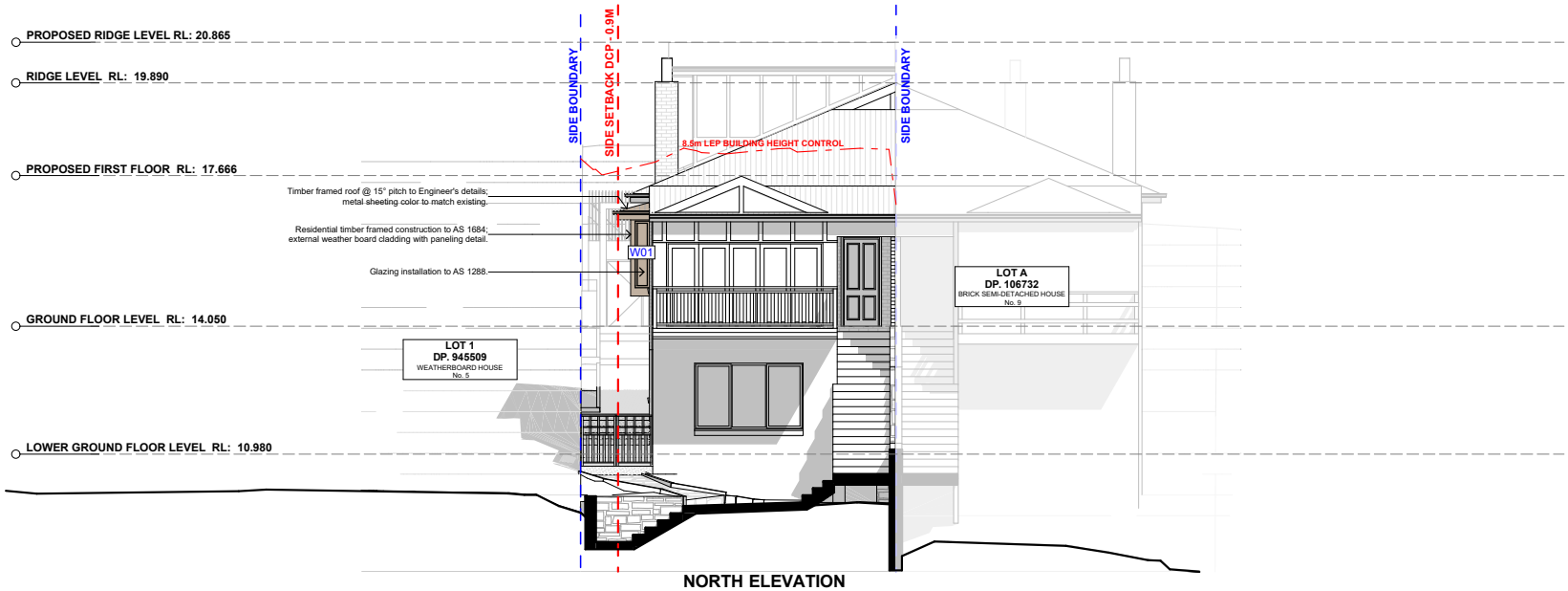
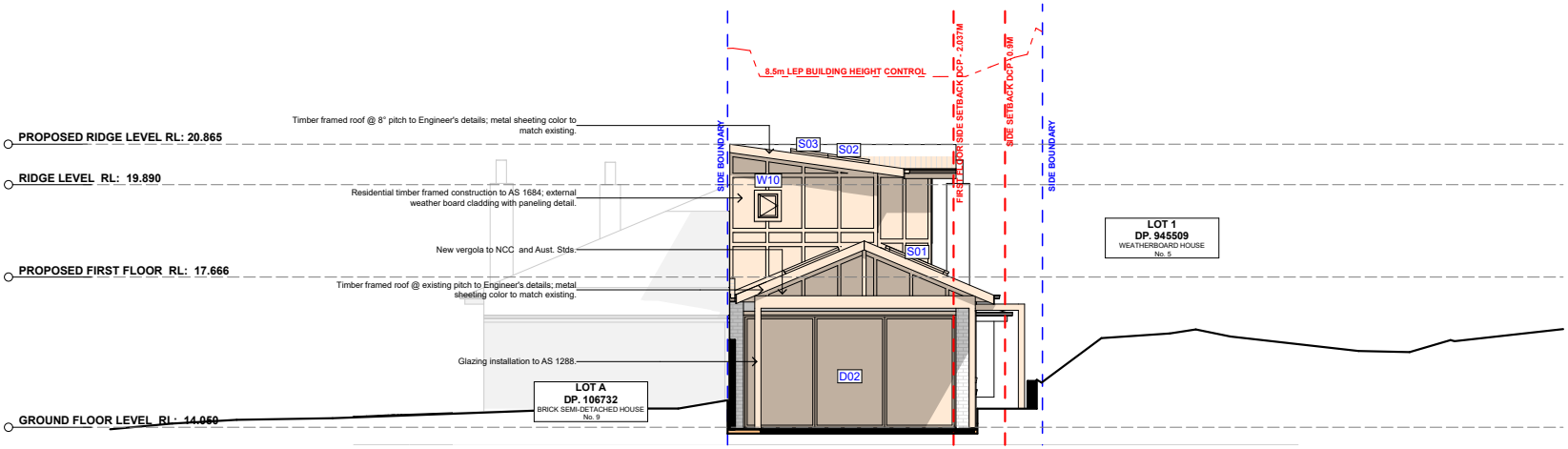


2 **NORTH ELEVATION**



1 **SOUTH ELEVATION**

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REV.	DATE	COMMENTS	DRWN
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All errors and omissions are to be verified by the Builder/Contractor/client and referred to the designer prior to the commencement of works.

LEGEND

- METAL ROOFING
- TILED ROOFING
- TIMBER CLAD
- BRICKWORK
- CONCRETE
- EXISTING

CLIENT
Kiani & Geoff Webster

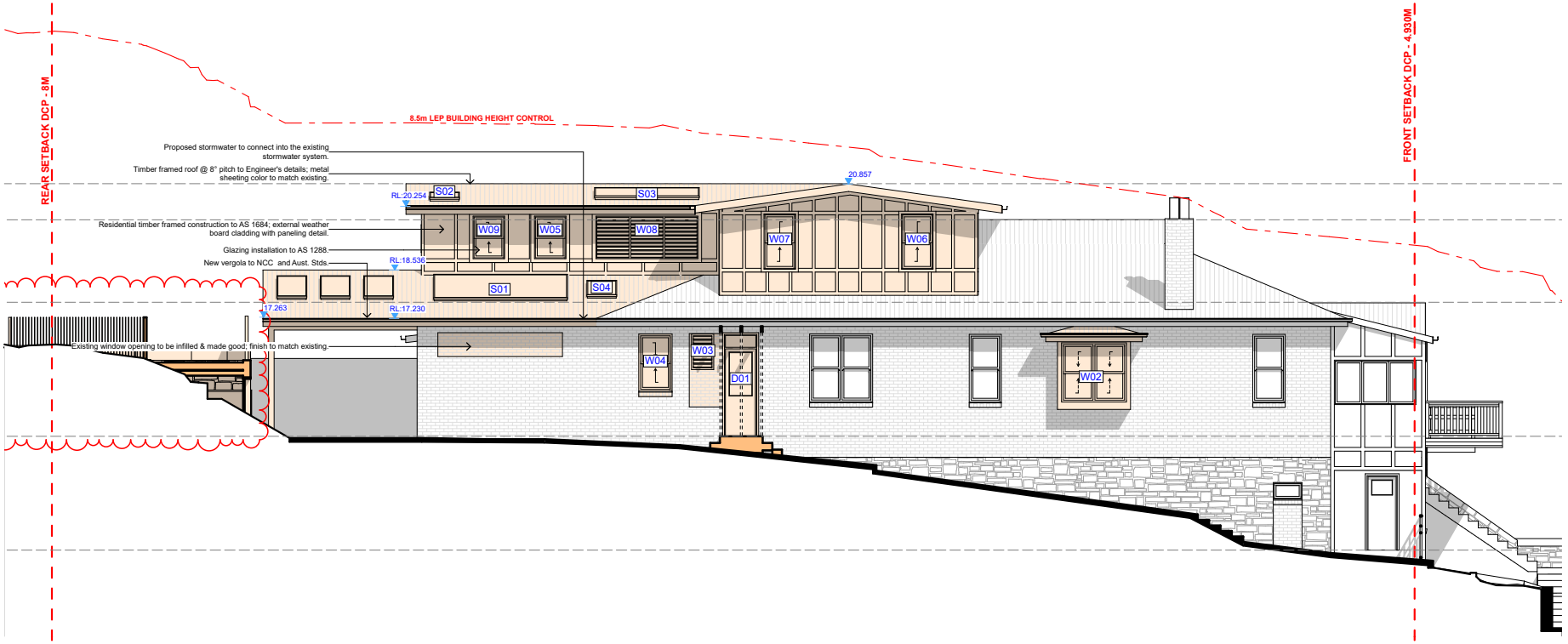
PROJECT ADDRESS
7 Lower Beach Street, Balgowlah NSW 2093

DRAWING NO.
DA11

DATE
Friday, 24 May 2024

DRAWING NAME
NORTH / SOUTH ELEVATION

SCALE
1:100 @A3



1 **EAST ELEVATION**

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REV.	DATE	COMMENTS	DRWN
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The Builder/Contractor shall check and verify ALL dimensions on site prior to commencement of any work, creation of shop drawings, or fabrication of components.
All errors and omissions are to be verified by the Builder/Contractor/client and referred to the designer prior to the commencement of works.

LEGEND

- METAL ROOFING
- TILED ROOFING
- TIMBER CLAD
- BRICKWORK
- CONCRETE
- EXISTING

CLIENT
Kiani & Geoff Webster

PROJECT ADDRESS
7 Lower Beach Street, Balgowlah NSW 2093

DRAWING NO.
DA12

DATE
Friday, 24 May 2024

DRAWING NAME
EAST ELEVATION

SCALE
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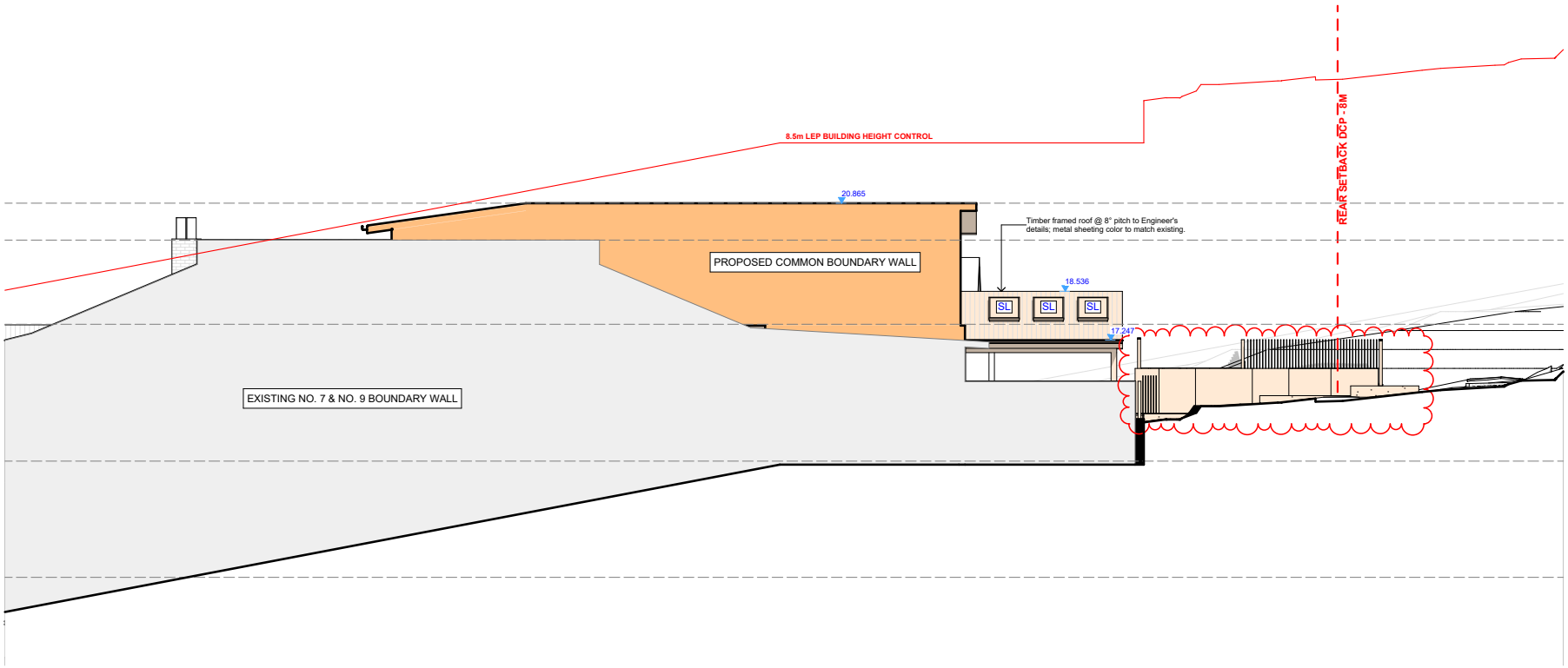

1 **WEST ELEVATION (COMMON BOUNDARY)**

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The Builder/contractor/owner is to ensure that the approved boundary setbacks and approved levels are confirmed and set out by a registered Surveyor prior to construction, the boundary setbacks take precedence over all other dimensions.
The Builder/Contractor shall check and verify ALL dimensions on site prior to commencement of any work, creation of shop drawings, or fabrication of components.
All errors and omissions are to be verified by the Builder/Contractor/client and referred to the designer prior to the commencement of works.

LEGEND
- METAL ROOFING
- TILED ROOFING
- TIMBER CLAD
- BRICKWORK
- CONCRETE
- EXISTING

CLIENT
Kiani & Geoff Webster

PROJECT ADDRESS
7 Lower Beach Street, Balgowlah NSW 2093

DRAWING NO.
DA13

DATE
Friday, 24 May 2024

DRAWING NAME
WEST ELEVATION

SCALE
1:100 @A3

Four Towns Planning

Planning and property consultant

WRITTEN REQUEST PURSUANT TO CLAUSE 4.6 OF MANLY LOCAL ENVIRONMENTAL PLAN 2013

VARIATION OF A DEVELOPMENT STANDARD REGARDING THE MAXIMUM FLOOR SPACE RATIO AS DETAILED IN CLAUSE 4.4 OF MANLY LOCAL ENVIRONMENTAL PLAN 2013

Alterations and Additions to an Existing Semi-Detached Dwelling including a Swimming Pool and Associated Works

7 Lower Beach Street, Balgowlah NSW 2093

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PO Box 361, Balgowlah NSW 2093

Alterations and Additions to an Existing Semi-Detached Dwelling including a Swimming Pool and Associated Works

This report has been prepared to support a Development Application under the *Environmental Planning and Assessment Act 1979*.

Report prepared by:
Mathew Quattroville
Director – Four Towns Pty Ltd

Report prepared for:
Geoff and Kiani Webster

16 January 2024

Disclaimer
This report has been prepared with due care and thoroughness by Four Towns Pty Ltd. The statements and opinions are given in good faith and in confidence that they are accurate and not misleading. In preparing this document, Four Towns Pty Ltd has relied upon information and documents provided by the Client or prepared by other Consultants. Four Towns Pty Ltd does not accept responsibility for any errors or omissions in any of the material provided by other parties.

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Introduction

This written request has been prepared to support a Development Application relating to proposed alterations and additions to an existing semi-detached dwelling including a swimming pool and associated works at 7 Lower Beach Street, Balgowlah, being Lot B in Deposited Plan 106732.

The nature and extent of the contravention is as follows:

Requirement	0.45:1 169.115sqm (DCP Allowance – 225sqm)
Proposed	0.576:1 216.64sqm
Is the planning control in question a development standard?	Yes
Is the non-compliance with to the clause requirement a numerical/or performance based variation?	Numerical
If numerical enter a % variation to requirement	28.1%

Manly Local Environmental Plan 2013 ("MLEP")

2.1 Clause 2.2 and the Land Use Table

Clause 2.2 and the Land Zoning Map provide that the subject site is zoned R2 – Low Density Residential (the R2 zone) and the Land Use Table in Part 2 of MLEP 2013 specifies the following objectives for the R2 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.*

The proposed development is for the purpose of alterations and additions to an existing semi-detached dwelling including a swimming pool and associated works. A semi-detached dwelling is a permissible land use under the R2 zone.

2.2 Clause 4.4 Floor Space Ratio

Clause 4.4 Floor Space Ratio is set out below:

(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.

The maximum floor space ratio for the site is 0.45:1.

Development standards' is defined in section 1.4 of the EP&A Act 1979 as:

development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which ***requirements are specified or standards are fixed*** *in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:*

(d) the cubic content or floor space of a building,

2.3 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of MLEP provides:

(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.

The latest authority in relation to the operation of clause 4.6 is the decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 ("*Initial Action*"). *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.

Clause 4.4 is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of MLEP.

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 standard pursuant to clause 4.4 of the Manly Local Environmental Plan 2013 which specifies a floor space ratio of 0.45:1, however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

Clause 4.6(4) of MLEP provides:

(4) The consent authority must keep a record of its assessment carried out under subclause (3).

Clause 4.6(5) of MLEP has been repealed.

Clause 4.6(6) relates to subdivision and is not relevant to the development.

Clause 4.6(7) has been repealed.

Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.4 of the MLEP2013 from the operation of clause 4.6.

3. Relevant Caselaw

The grounds of objection are based upon the various tests of the recent judgements in the *NSW Land and Environment Court Case Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827, 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*.

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 MLEP2013 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. Request for Variation

4.1 Is clause 4.4 of MLEP2013 a development standard?

(a) The definition of "development standard" in clause 1.4 of the EP&A Act includes:

"(d) the cubic content or floor space of a building"

(b) Clause 4.4 relates to the floor space ratio or floor space of a building. Accordingly, clause 4.4 is a development standard.

4.2 Is compliance with clause 4.4 unreasonable or unnecessary?

(a) This request relies upon the 1st, 2nd and 4th ways identified by Preston CJ in *Wehbe*.

(b) The first way in *Wehbe* is to establish that the objectives of the standard are achieved. The second way in *Wehbe* is to establish that an objective is not relevant to the development. The fourth way in *Wehbe* is to establish that the development standard has been abandoned by Council's own actions in approving development that does not comply with the standard.

(c) Each objective of the standard and reasoning why compliance is unreasonable or unnecessary is set out below. Firstly, an analysis of the objectives is provided:

In determining a merits based assessment for the floor space ratio of the development due consideration has been given to the above objectives and the planning principles set by the Land and Environment Court of NSW, Planning Principle – floor space ratio (Salanitro-Chafei V Ashfield Council (2005) NSWLEC 366) and Project Venture Developments v Pittwater Council (2005) NSW LEC 91).

It is acknowledged that the purpose of Clause 4.6 is to provide an appropriate degree of flexibility in applying certain development standards. In this regard the FSR of the site should be assessed on a greater numerical figure, noting the sites constraints and the unique nature of the locality in a varying degree of development types. Given the proposed application is minor and consistent with similar approvals granted in the area, Council's assessment should be focused on this numerical allowance as opposed to the variation to the specific standard. By providing flexibility in this regard, the subject proposal is capable of achieving a better development and design outcome which

adequately caters for new housing options for the residential needs within the Northern Beaches LGA in particular the Balgowlah precinct.

Clause 4.1.3.1 of the Manly DCP allows for exceptions to FSR for undersized lots. The subject site has an area of 375.9sqm where the minimum allotment size for the site is defined as 500sqm. This clause provides: 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. This variation would allow a floor area of 225m2. The proposal provides for a floor area of 216.64m2 which complies with this clause. The site is a significantly undersized allotment and the DCP provides variations to FSR for such allotments to ensure dwellings compatible with the locality.

The proposal is consistent with the objectives of Clause 4.4 and has a bulk and scale that is consistent with similar rear extensions approved for the adjoining property at 9 Lower Beach Street, with a 28.2% variation. It is noted that the same merits were applied as proposed with this application.

An assessment of the objectives of Clause 4.4 is provided below which justifies the proposed variation:

(a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,
Comment: The proposal has been strategically designed by the project designers to be sympathetic to the existing built form and streetscape character of Lower Beach Street. The proposal provides modulation and articulation to soften the streetscape appearance of the proposal. The proposal is consistent with the variation granted at 9 Lower Beach Street, which assists in determining the existing and desired bulk and scale of the streetscape. This objective is satisfied.

(b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,
Comment: The proposal is of a density and bulk applicable to the site and retains the existing landscaping within the road reserve at the front of the site, therefore retaining the important landscape features. The proposal therefore meets this objective.

(c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,
Comment: The proposal has been designed to blend the new alterations and additions with the existing parts of the dwelling and adjoining development. Through this strategic design visual continuity is achieved in the area. The proposal therefore meets this objective.

(d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,
Comment: The proposal has been strategically designed by the project designers who have worked with relevant consultants and the clients to achieve a design which meets the needs of the project while maintaining the streetscape, the privacy and amenity of adjoining properties. The proposal will have no adverse impacts on the use or enjoyment of adjoining land and the public domain, therefore the proposal meets this objective.

(e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.
Comment: Not applicable.

On the basis of the above, the proposal meets the objectives of Clause 4.4 and a variation can be supported, as submitted.

As outlined above, the proposed development is consistent with the underlying objectives of the FSR standard, notwithstanding the proposed variation.

4.3 Are there sufficient environmental planning grounds to justify contravening the development standard?

There are sufficient environmental planning grounds to justify contravening the development standard. Whilst there is no requirement that the development comply with the objectives set out in clause 4.6(1) it is relevant to note that objective (b) provides:

*"to achieve better outcomes **for and from** development by allowing flexibility in particular circumstances."*

It should be noted at the outset that in *Initial Action* the Court held that it is incorrect to hold that the lack of adverse impact on adjoining properties is not a sufficient ground justifying the development contravening the development standard when one way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse impacts.

There is an absence of environmental harm arising from the contravention and positive planning benefits arising from the proposed development as outlined in detail above. From a planning perspective, there is sufficient grounds to justify the variation to the FSR development standard for the following reasons:

- The objectives of the development standard are achieved, notwithstanding the non-compliance with the standard in the circumstances described in this variation report and summarised as follows:
  - The proposal is consistent with the bulk and scale of the existing and desired streetscape character of the area.
  - The proposal provides articulation and modulation of the facades which assist in maintaining an appropriate visual relationship between the proposal and existing developments in the area.
  - The proposal enhances open space to the site and does not reduce existing total open space.
  - The proposal has been strategically designed by the project designers who have worked with relevant consultants and the clients to achieve a design which meets the needs of the project while maintaining the streetscape, the privacy and amenity of adjoining properties.
  - The design proposed represents an increase in GFA which is minor and complies with the building height and relevant setbacks for the site. The GFA variation relates to a small site which does not meet the expected lot size of 500sqm for the area. On this basis, the allowances under MDCP Clause 4.1.3.1 allow a variation. This is consistent

with the approval granted for the adjoining dwelling at 9 Lower Beach Street, which was approved with a 28.2% variation.
- The variation has been reviewed against relevant LEC court principles in regards to FSR, and the proposal is considered suitable in the context of the site and the merit analysis required given the existing scale, adjoining developments and the proposed development.
- The desired future character of the locality is not jeopardised by the proposal and is consistent with Council's objectives for this precinct in regards to the R2 zone.
- The area of non-compliance does not give rise to any adverse environmental impacts to the amenity of the neighbouring properties. The area of non-compliance does not contribute to any adverse overshadowing impacts to adjoining developments.

- Having regard to Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, and further to the proposal's consistency with the above strategic and statutory environmental planning provisions, the proposal is consistent with the following objectives under Section 1.3 of the Environmental Planning and Assessment Act 1979 (the Act):

  (c) to promote the orderly and economic use and development of land; and
  (g) to promote good design and amenity of the built environment,

  1. In response to (c), the proposal will facilitate the orderly and economic use and development of the land, in a highly appropriate location, in a manner that is desired by the planning controls because it will facilitate a newly renovated dwelling for the needs of the occupants. In considering the contrary (refusal of the DA), retention of the building in its current form would not promote the orderly and economic use and development of land in the manner that council's strategic and statutory planning provisions seek. Retention of the building in its current form makes no advancement towards achieving the goal of creating functional development opportunities of run-down sites.

  2. In response to (g) the proposal has been designed to promote good design and amenity of the built environment, noting compliance with the maximum building height control of MLEP2013.

The above environmental planning grounds are not general propositions, they are unique circumstances to the proposed development. These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the floor space ratio.

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

Based on the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed floor space ratio non-compliance in this instance.

Summary

In summary, the proposal satisfies all of the requirements of clause 4.6 of MLEP 2013 and exception to the development standard is reasonable and appropriate in the circumstances of the case.

ITEM 3.6 DA2023/1484 - 2013 PITTWATER ROAD BAYVIEW - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE AND 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 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 DA2023/1484 for alterations and additions to a dwelling house and swimming pool on land at Lot 3 DP 231194, 2013 Pittwater Road BAYVIEW, subject to the conditions set out in the Assessment Report.

Reporting manager	Adam Richardson
TRIM file ref	2024/398419
Attachments	⇩1 Assessment Report ⇩2 Site Plan and Elevations ⇩3 Clause 4.6

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/1484

Responsible Officer:	Nick England
Land to be developed (Address):	Lot 3 DP 231194, 2013 Pittwater Road BAYVIEW NSW 2104
Proposed Development:	Alterations and additions to a dwelling house and swimming pool
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Marvin Noel Slocombe Marie Louise Slocombe
Applicant:	Marie Louise Slocombe

Application Lodged:	24/10/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	31/10/2023 to 14/11/2023
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 11.8%
Recommendation:	Approval

Estimated Cost of Works:	$ 2,228,302.00

EXECUTIVE SUMMARY

This development application seeks consent for the alterations and additions to an existing dwelling house and swimming pool. The works comprise of substantial additions, including; a new 1st floor; re-shaping of existing swimming pool; upgraded outdoor areas and a new gazebo and carport.

The application is referred to the Development Determination Panel (DDP) due works associated with the development exceeding the Height of Buildings development standard of Pittwater Local Environmental Plan 2014 (PLEP 2014), by more than 10%. A variation to the maximum building height of 11.8% is proposed.

The applicant has provided a written request seeking a variation to the standard pursuant to Clause 4.6 of the PLEP 2014. The written Clause 4.6 request for the non-compliance with height standard argue that the site has been partially excavated underneath the existing building which causes the11.8% variation for a small section of the building at the north-eastern corner breaching the height standard.

The application was notified for a period of 14 days in accordance with the Northern Beaches Community Participation Plan (CPP). One (1) submission was received during the notification period which raised concerns for the potential of construction related damage to adjoining properties. This concern has been addressed within the report and with 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 application consists of the alterations and additions to the existing dwelling house and swimming pool. In detail, the works consist of:

- alterations to existing ground floor, for extensions to rear and north front corner of dwelling;
- addition of new 1st floor;
- extended deck / verandah around perimeter of existing building, partially roofed;
- revised internal access (excavated) from garage to dwelling;
- additional double vehicle carport;
- revised driveway adjacent dwelling;
- re-shaping of existing swimming pool;
- pool cabana outbuilding; and
- removal of two (2) trees to accommodate the proposed works.

Upon initial assessment of the application, it was found that the applicant had provided insufficient information with respect to: stormwater management; biodiversity; and landscape / tree protection. The applicant was advised of this via correspondence dated 12 March 2024.

In response, the following information: stormwater plans; and flora and fauna impact assessment, were received on 19 April and 29 April 2024, respectively. A revised Clause 4.6 written request was provided on 2 May 2024.

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

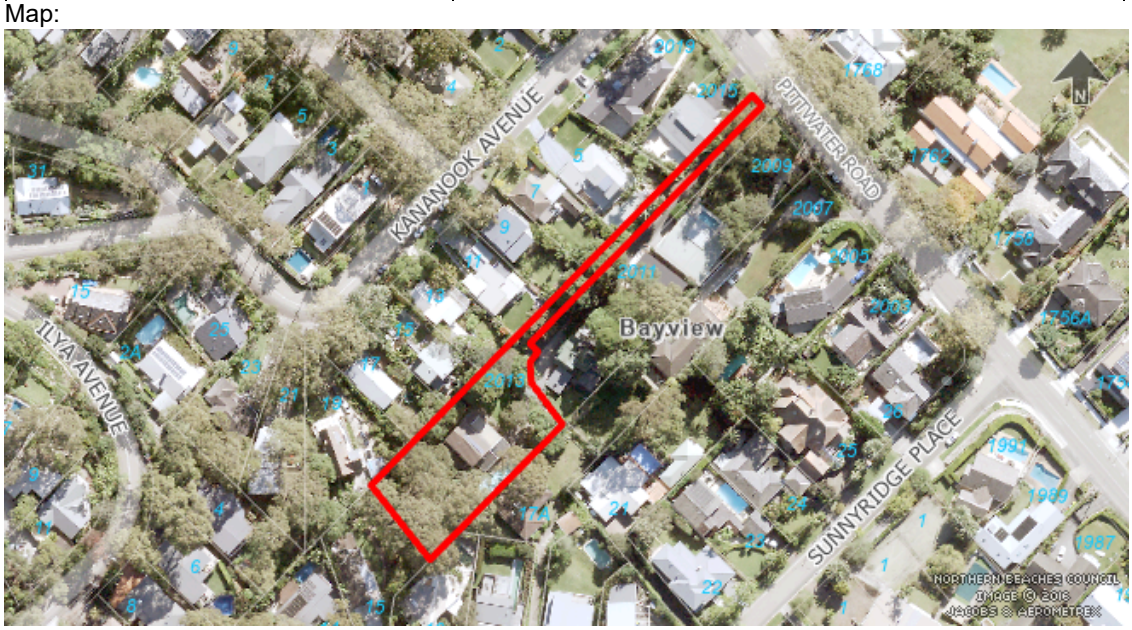
Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living
Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
Pittwater Local Environmental Plan 2014 - 7.10 Essential services

SITE DESCRIPTION

Property Description:	Lot 3 DP 231194 , 2013 Pittwater Road BAYVIEW NSW 2104
Detailed Site Description:	The subject site consists of one (1) allotment located on the south-western side of Pittwater Road, Bayview. The site is irregular in shape with a surveyed area of 2,327m². Access from Pittwater Road is provided from an access handle, 104m in length and 3m in width, with the rear portion of the site accommodating all existing structures. The site also has the benefit of a right-of-carriageway over the adjoining property at No.2011 Pittwater Road, which accommodates the majority of the driveway to the site. The site is located within the C4 Environmental Living zone and accommodates a residential dwelling and swimming pool. Biodiversity communities identified on the site include: Pittwater Spotted Gum Forest EEC (NSW DPE mapping); and Flora & Fauna Category 1 and 2 Areas (Council mapping). The site has a north-east aspect with a moderate slope falling down from the rear boundary to the frontage with Pittwater Road. The site has significant vegetation, particularly to the rear of the dwelling.

	Adjoining and surrounding development is characterised by dwelling houses.

Map:



SITE HISTORY

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

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning	None applicable.

Section 4.15 Matters for Consideration	Comments
agreement	
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	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 correspondence dated 12 March 2024, relation to: stormwater management; biodiversity; and landscape / tree management. 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 Matters for Consideration	Comments
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 31/10/2023 to 14/11/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Ms Vanessa Louise Orr	2011 Pittwater Road BAYVIEW NSW 2104

The following issue were raised in the submission, which is summarised and discussed below:

- ***The application should be properly assessed so that the adjoining property at No.2011 Pittwater Road is not damaged during construction.***

  Comment: The adjoining property to the north (No.2011) shares a right-of-carriageway to access Pittwater Road. The application does not propose to amend any part of the existing right-of-carriageway. There is no aspect of the proposed development which in its design is likely to result in any damage to adjoining properties, and recommended conditions of consent will apply which will mitigate any temporary effect as a result of construction works. In this regard, the matter raised in this submission is considered adequately, as requested.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The proposal is supported with regard to landscape issues. Additional Information Comment 02/05/24: The amended reports and plans are noted. Landscape Referral notes

Internal Referral Body	Comments
	Council's Bushland and Biodiversity response. The Arboricultural Impact Assessment (AIA) outlines that four trees will require removal, trees 6, 9, 15 and 16. The AIA identifies 20 trees for retention of which 15 are located within the property boundaries. No concerns are raised with the removal of prescribed trees 6, 15 and 16 subject to tree replacement. Tree 4 is exempt by species and height, therefore can be managed or removed at the discretion of the applicant without consent. All trees to be retained must be protected during construction, and as recommended in the AIA a Project Arborist shall be engaged to supervise works in tree protection zones. <u>Original Comment:</u> The site is located in the C4 Environmental Living zone, requiring development to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment, including the retention of natural landscape features and existing trees, to satisfy the landscape objectives of the C4 Environmental Living zone. It is noted Council's Bushland and Biodiversity team have requested further information. Landscape Referral can continue their assessment upon receipt of further information and comment from Bushland and Biodiversity.
NECC (Bushland and Biodiversity)	AMENDED COMMENTS A Flora and Fauna Report has been submitted with the application and concluded that a total of 0.02 Hectares of Pittwater Spotted Gum Forest Endangered Ecological Community (PSGF EEC) will need to be removed for the proposed works to take place. A test of significance (5 part test) has been conducted and concluded that no significant impacts to PSGF EEC would take place if the proposal is approved in its current form. No landscape plan has been submitted with the application in order to compensate for the proposed removal of trees 6, 15 and 16 and therefore, tree replacement planting will be conditioned. The development is designed, sited and will be managed to avoid any significant adverse environmental impact. ORIGINAL COMMENTS The proposal seeks approval for alterations and additions to a dwelling. The comments in this referral relate to the following applicable controls and provisions: • SEPP (Resilience and Hazards) 2021 - Coastal Environment Area • Pittwater LEP 2014 - Clause 7.6 Biodiversity Protection

Internal Referral Body	Comments
	• Pittwater 21 DCP - Clause B4.7 Pittwater Spotted Gum Forest Endangered Ecological Community The proposal has been submitted with an arboricultural impact assessment that has assessed the condition of a total of 24 trees and recommended the removal of trees 6 (Callistemon viminalis), Tree 9 (Phoenix canariensis), Tree 15 (Corymbia maculata) and Tree 16 (Eucalyptus crebra). Additionally trees 1 (Syzigium paniculatum), tree 2 (Lophostemon confertus) and tree 11 (Eucalyptus punctata) have been identified as trees impacted by the proposed works with major encroachments (17%, 18% and 17% respectively). It is important to note that Tree 1 is currently listed as an Endangered species under the NSW Biodiversity Conservation Act 2016. Trees 1 and 2 have been awarded a Medium retention value whereas trees 11 and 15 have been given a High retention value. No Flora and Fauna Assessment report has been supplied with the application. As per the Biodiversity Guidelines available on Council's website (https://files-preprod-d9.northernbeaches.nsw.gov.au/nbc-prod-files/documents/general-information/environmental-and-community-protections/biodiversity-requirements-development-applications.pdf) a FFA will be required as impacts to more than 4 prescribed trees have been identified. Lastly, no landscape proposal has been submitted with the application, therefore failing to adequately address the requirements of PDCP B4.7 where "Development shall result in no significant onsite loss of canopy cover or a net loss in native canopy trees." Although the proposed alterations and additions would largely take place within the existing footprint, the Biodiversity Referral cannot be completed at this stage. In order for the Biodiversity Referral to be completed a Flora and Fauna Assessment as well as a Landscape plan including like for like replacement planting for prescribed trees being proposed for removal will have to be included with the application. Alternatively, avoidance and minimisation of impacts is encouraged via retention of trees on site.
NECC (Development Engineering)	The Stormwater Management plans state that on-site detention is not required due to the fact that the site is situated low in the catchment. The proposed development however results in substantial increase in impervious area and the site is not listed as flood affected. On-site detention is thus required in accordance with Table 7 of Section 9.3.1 of the Water Management for Development Policy. On-site detention is required as a minimum to attenuate flows from additional impervious areas. It is at the consulting Engineers discretion to attenuate flows from existing impervious areas if this is more economical. The impervious area connected to an on-site detention system however needs to be equal to or greater than the additional impervious area.

Internal Referral Body	Comments
	Engineering Comments 08.05.24 The revised Stormwater Management plans have addressed Development engineering concerns. The proposed development is supported, 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.
Aboriginal Heritage Office	Reference is made to the proposed development at the above area and Aboriginal heritage. No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development. Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.A503421 dated 16 August 2023).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

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

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The site is partially subject to Chapter 2 of the SEPP, being approximately 33m of the access handle to Pittwater Road. However, the proposed works are not located within the area subject to the SEPP. Nonetheless, an assessment under Chapter 2 has been carried out as follows:

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

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

f) Aboriginal cultural heritage, practices and places,
g) the use of the surf zone.

Comment: The proposed works will not be contrary to the achievement of the objectives of Clause 2.10 (1).

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

Comment: There will be no adverse impact on the coastal environment area as a result of the proposed development.

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 application will not be adverse to the matters listed in Clause 2.11 nor result in any adverse impact generally to the surrounding coastal and 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: There is unlikely to be any increase in coastal risk as a result of the proposed development.

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: No coastal management plans applies to 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.

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	9.5m	11.8%	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
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes

Clause	Compliance with Requirements
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone C4 Environmental Living

A consideration of the application against the objectives of the C4 Environmental Living zone is provided below:

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

Comment: The application has been considered with specific reference to the particular ecological values of the site, including seeking the advice from Council Landscape and Biodiversity Officers, who have no objection to the proposed development. As such, this objective is considered to have been achieved.

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

Comment: The proposed alterations and additions are not considered to have an adverse impact on the existing natural values of the site and are, in turn, are consistent with this objective.

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

Comment: The proposed works will have no increase in the existing residential density on the site. The variation to the Height of Buildings development standard is considered in detail elsewhere in this report - in summary, the objectives of the standard are still able to be achieved. As such, the proposed works are considered to be of an adequate scale with the surrounding landform and landscape. Hence, the application is consistent with this objective.

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

Comment: This objective is not relevant to the subject site.

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.5m
Percentage variation to requirement:	11.8%

Figure 1 below, is an extract from the working plans (Section E-E) demonstrates where the height variation occurs:

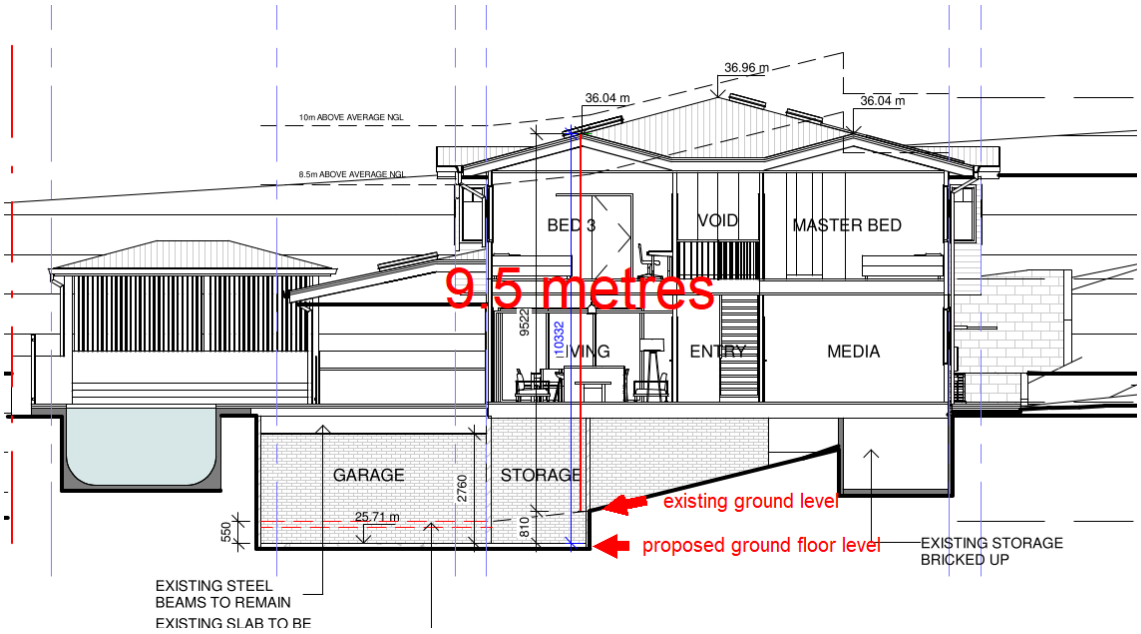


Figure 1 - cross section of building detailing the extent of height breach.

The variation is located on the eastern upper corner of the dwelling (bedroom 3) and only located on this point of the proposed works with the remainder of the works consistent with the standard. An estimate of the area of the breach, as viewed from the roof is shown below:

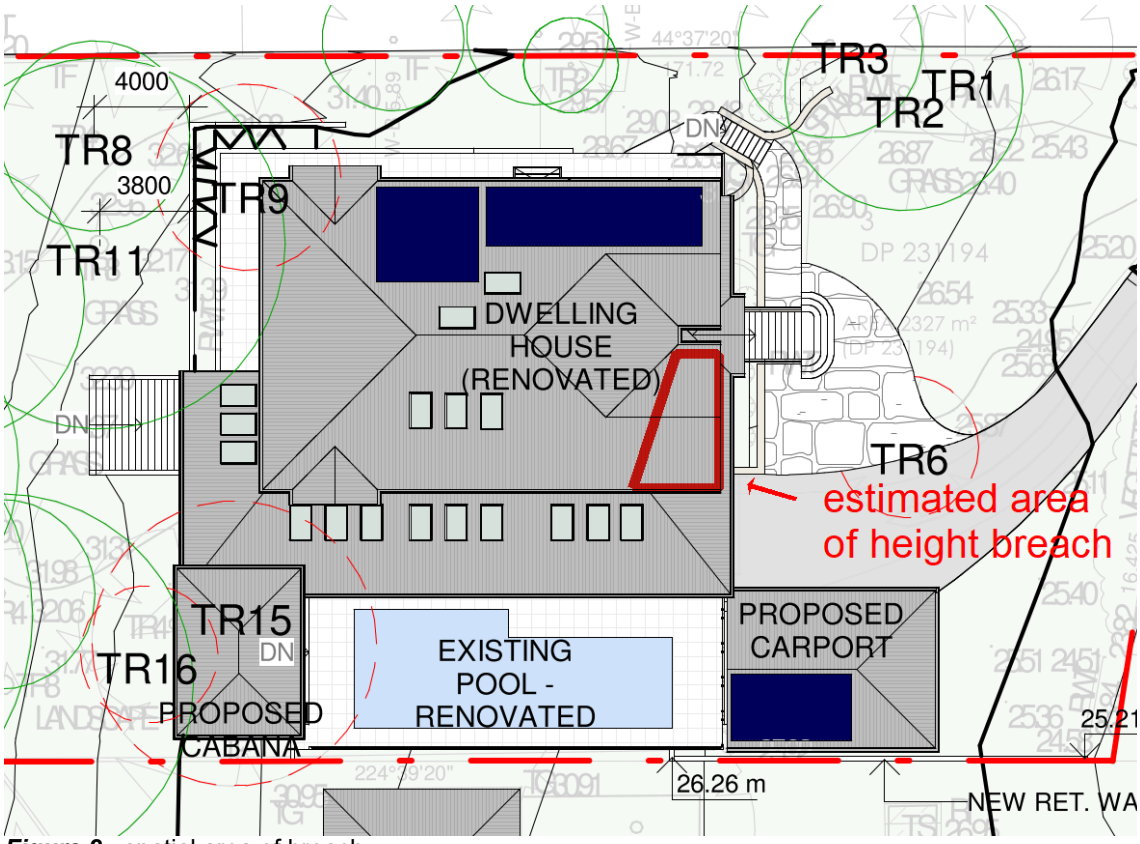


Figure 2 - spatial area of breach

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

Comment:

Clause 4.3 - Height of Buildings development standard is not expressly excluded from the operation of

this clause.

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

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

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

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

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

Comment:

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

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

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

Comment:

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

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not

defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

s 1.3 of the EPA Act reads as follows:

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

The applicants written request argues, as summarised below:

- *the maximum height of the proposed building is a result of the existing subfloor directly beneath, which accentuates the proposed height at a minor point of the building;*
- *the presentation of the proposed works is as a two-storey dwelling;*
- *The scale of the development remains consistent with neighbouring dwellings and the battle-axe lot means the development will not be highly visible from Pittwater Road;*
- *amendments to achieve compliance would result in unnecessary demolition and additional building costs, with no gain for the site, neighbours or the streetscape;*
- *the objectives of the C4 zone can be met despite the numerical variation; and*
- *there will be no unreasonable amenity or environmental impacts as a result of the non-compliance.*

The reasons offered by the applicant are considered to be adequate and relevant under the required tests, to justify the proposed departure with the development standard.

Elaborating further upon these reasons, the relatively large size of the allotment (in excess of 2,000m^2) and the significant distance of the proposed works from the public frontage of the site (125m) would make the impact of the proposal on adjoining properties and the public domain negligible, from a visual impact perspective.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the C4 Environmental Living zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment: The desired character of the locality under Council policies emphasises the retention of the natural landscape and making any new development subservient to this character. The proposed works will not result in any significant loss of existing landscaped open space on the site and as discussed elsewhere, will have a limited visual impact when viewed from the adjoining public domain and from other adjacent properties. Hence, the proposed height and scale is considered appropriate and this objective has been achieved.

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

Comment: Surrounding existing development is typified by a range of height and built scale. In the context of the varied building heights in the surrounding areas, this objective can be achieved.

c) to minimise any overshadowing of neighbouring properties,

Comment: The shadow diagrams provided with the application demonstrate that the application will not have an adverse impact on adjoining properties in regard to solar access and that the relevant solar access standards of Council can be achieved. Critically, the area of the proposal which is subject to the proposed height variation will not result in shadow that falls over any adjoining property. Hence, this objective is achieved.

d) to allow for the reasonable sharing of views,

Comment: The proposed works (and variation to the height standard) will not result in any adverse loss of views from adjoining properties. As such, this objective is achieved.

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

Comment: The proposed variation is mostly a result in a localised anomaly in topography on the north-eastern corner of the proposed works, where an existing semi-basement garage transitions upwards to higher ground to the rear (south) of the site. In total, the works will respond adequately to the existing topography of the site and is consistent with this objective.

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

Comment: The application has been referred to the Aboriginal Heritage office, Council's Landscape Officer and Biodiversity Officer. No objection was received from these referral agencies and as such it can be assumed that the proposed variation will have no adverse impact n the natural environment or any item of heritage.

Zone objectives

The underlying objectives of the C4 Environmental Living zone are:

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

  Comment: The proposed variation will not have an adverse impact on the specific ecological, scientific or aesthetic values of the site and the surrounding area. In this context, the proposal can be considered reasonably as low-impact development. As such, the proposed variation will not be adverse to this objective.

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

  Comment: As stated previously, the proposed variation will not have an adverse impact on the specific ecological, scientific or aesthetic values of the site and the surrounding area. As such, the proposed variation will not be adverse to this objective.

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

  Comment: The proposed works have demonstrated through their design to be of an adequate scale, which in turn is properly integrated with the surrounding landform and landscape. Hence the application is consistent with this objective.

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

  Comment: The site is not located on, or adjacent to, a foreshore or riparian environment. The proposed variation will not be adverse to the identified wildlife corridor on the site. As such, this objective is not adversely compromised.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the C4 Environmental Living zone.

It is considered on balance, that having regard to the particular circumstances, that the proposed variation to the Height of Buildings development standard is acceptable based generally on: the large size of the site; the distance of the works from the public domain; the lack of visibility when viewed from adjoining properties; and the negligible amenity impact on adjoining properties. As such, the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

Exception to Development Standards conclusion

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

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

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

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

7.2 Earthworks

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

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

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

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

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

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

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

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

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

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

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

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

(f) the likelihood of disturbing relics

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

(g) the proximity to, and potential for adverse impacts on, any 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.1.3 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 Biodiversity Team, who raised no objections to approval. It is considered that the development will not have any adverse impact on the condition, ecological value and significance of the fauna and flora on the land; the importance of the vegetation on the land to the habitat and survival of native fauna; or the habitat elements providing connectivity on the land. 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 Biodiversity Team, who raised no objections to approval. It is considered 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 Biodiversity Team, who raised no objections to approval. It is considered that the development is designed, sited and will be managed to any significant adverse environmental impact.

7.7 Geotechnical hazards

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

(a) site layout, including access,
(b) the development's design and construction methods,
(c) the amount of cut and fill that will be required for the development,
(d) waste water management, stormwater and drainage across the land,
(e) the geotechnical constraints of the site,

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

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

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

Comment:
The proposed development is supported by a geotechnical risk assessment and stormwater management plans that demonstrate waste water, stormwater and drainage are suitably managed on site. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

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

Comment:
The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to recommended conditions of consent. As such, it is considered that the proposed development has been designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development.

7.10 Essential services

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

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

Comment:
The site is adequately serviced by utilities.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies

Front building line	10m	125m (carport)	N/A	Yes
Rear building line	6.5m	19.1m (pool cabana)	N/A	Yes
Side building line	2.5m (west)	5.9m	N/A	Yes
	1m (east)	1 - 1.3m (carport / pool cabana)	N/A	Yes
Building envelope	3.5m (west)	Within envelope	N/A	Yes
	3.5m (east)	Within envelope	N/A	Yes
Landscaped area	60%	1,509m^2 or 65%	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.4 Church Point and Bayview Locality	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.23 Eaves	Yes	Yes
D4.1 Character as viewed from a public place	Yes	Yes
D4.2 Scenic protection - General	Yes	Yes
D4.3 Building colours and materials	Yes	Yes
D4.5 Front building line	Yes	Yes
D4.6 Side and rear building line	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D4.8 Building envelope	Yes	Yes
D4.10 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D4.12 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D4.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

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 $22,283 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $2,228,302.

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 to the existing dwelling house and swimming pool has been referred to the Development Determination Panel (DDP) due to a variation with the Height of Buildings development standard (maximum 8.5m) of PLEP 2014, that exceeds 10% (9.5m, or 11.8% variation).

The written request to vary the standard under Clause 4.6 of PLEP 2014 is considered adequate and well-founded, with full assessment of the application demonstrating that it would be both unnecessary and unreasonable to expect full compliance with this development standard.

The proposed variation relates to minor aspect of the proposed works, on its north-eastern corner, with the majority of the upper level being consistent with the 8.5m standard. The site is relatively large (>2,000m^2) and the proposed works will be a significant distance from the frontage of the site (125m from Pittwater Road). No adverse amenity impact on adjoining properties is likely.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.
It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

That Northern Beaches Council as the consent authority permits a contravention of clause 4.3 Height of Buildings development standard pursuant to clause 4.6 of the PLEP 2014 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2023/1484 for Alterations and additions to a dwelling house and swimming pool on land at Lot 3 DP 231194, 2013 Pittwater Road, BAYVIEW, 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**
A100	2	Notes	Blue Sky Building Designs	27 July 2023
A101	2	SITE PLAN & ANALYSIS	Blue Sky Building Designs	27 July 2023
A102	2	DEMOLITION PLAN	Blue Sky Building Designs	27 July 2023
A103	2	DEMOLITION PLAN	Blue Sky Building Designs	27 July 2023
A104	2	GARAGE PLAN & DRIVEWAY GRADIENTS	Blue Sky Building Designs	27 July 2023
A105	2	GROUND FLOOR PLAN	Blue Sky Building Designs	27 July 2023
A106	2	FIRST FLOOR PLAN	Blue Sky Building Designs	27 July 2023
A107	2	ROOF	Blue Sky Building Designs	27 July 2023
A108	2	ELEVATIONS	Blue Sky Building Designs	27 July 2023
A109	2	ELEVATIONS	Blue Sky Building Designs	27 July 2023
A110	2	ELEVATIONS	Blue Sky Building Designs	27 July 2023
A111	2	ELEVATIONS	Blue Sky Building Designs	27 July 2023
A112	2	SECTIONS	Blue Sky Building Designs	27 July 2023
A113	2	SECTIONS	Blue Sky Building Designs	27 July 2023
A114	2	SECTIONS	Blue Sky Building Designs	27 July 2023
A115	2	SECTIONS	Blue Sky Building Designs	27 July 2023

Approved Reports and Documentation			
Document Title / No	**Version Number**	**Prepared By**	**Date of Document**
BASIX Certificate No.A503421	-	Blue Sky Building Designs	16 August 2023
Geotechnical Investigation J5057	-	White Geotechnical Group	3 August 2023
Arboricultural Impact Assessment (AIA) & Tree Protection Plan (TPP)	1	Tree Survey Pty Limited	22 June 2023
Flora and Fauna Assessment Report BSBD1	1.0	Narla Environment	April 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	8 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.

FEES / CHARGES / CONTRIBUTIONS

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

A monetary contribution of $22,283.02 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of $2,228,302.00.

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

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

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

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

6. **Security Bond**

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

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

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

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

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

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 Amuna Civil Engineering, project number ACE23085, dated 12.04.24. 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 of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by White Geotechnical Group dated 27.09.2023 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

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

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

Reason: Compliance with this consent.

10. **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. **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. **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.

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.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

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

b) the Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, and in particular:
i) tree protection measures and works under section 5 Tree Protection Plan,
ii) additionally, locating the OSD tank if it is to be installed in any tree protection zone.

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.

15. **Tree Removal Within the Property**
a) this consent approves the removal of existing prescribed trees on the subject site as listed below:
i) tree 6 - *Callistemon viminalis*, tree 15 - *Corymbia maculata*, and tree 16 - *Eucalyptus crebra*.

b) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised development works.

DURING BUILDING WORK

16. **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.

17. **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.

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

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

Written evidence of compliance (including records of inspections and any wildlife incidents) is

to be provided to the Principal Certifier prior to any Occupation Certificate.

Reason: To protect native wildlife.

19. **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.

20. **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.

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. **Landscape Completion**
a) 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) all tree planting shall be a minimum pre-ordered planting size of 75 litres; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth generally, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings and other trees or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,
iii) 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,
iv) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone.

b) prior to the issue of an Occupation Certificate, details 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.

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

Reason: Tree and vegetation protection.

29. **Native Landscaping**
Any new landscaping is to incorporate a minimum 80% locally native vegetation species as a proportion of the total number of plants. Locally native species are to be consistent with the Pittwater Spotted Gum Forest Endangered Ecological Community 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.

30. **Replacement of Canopy Trees**
At least 3 (three) locally native canopy trees are to be planted on the site to replace protected trees approved for removal including at least 1 (one) Corymbia maculata. Species are to have a minimum mature height of 8.5m and be consistent with the Pittwater Spotted Gum Forest Endangered Ecological Community.

Tree plantings are to be retained for the life of the development and/or for their safe natural life. Trees that die or are removed must be replaced with another locally native canopy tree.

Replacement plantings are to be certified as being completed in accordance with these conditions of consent by a qualified landscape architect, and details submitted to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To establish appropriate native landscaping.

31. **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.

32. **Priority Weed Removal and Management**
All Priority weeds (as specified in the Northern Beaches Local Weed Management Plan) within the development footprint are to be removed using an appropriate control method.

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

Reason: To reduce the risk of site works contributing to spread of Priority weeds.

33. **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.

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

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

35. **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.

36. **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.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

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

38. **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 required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

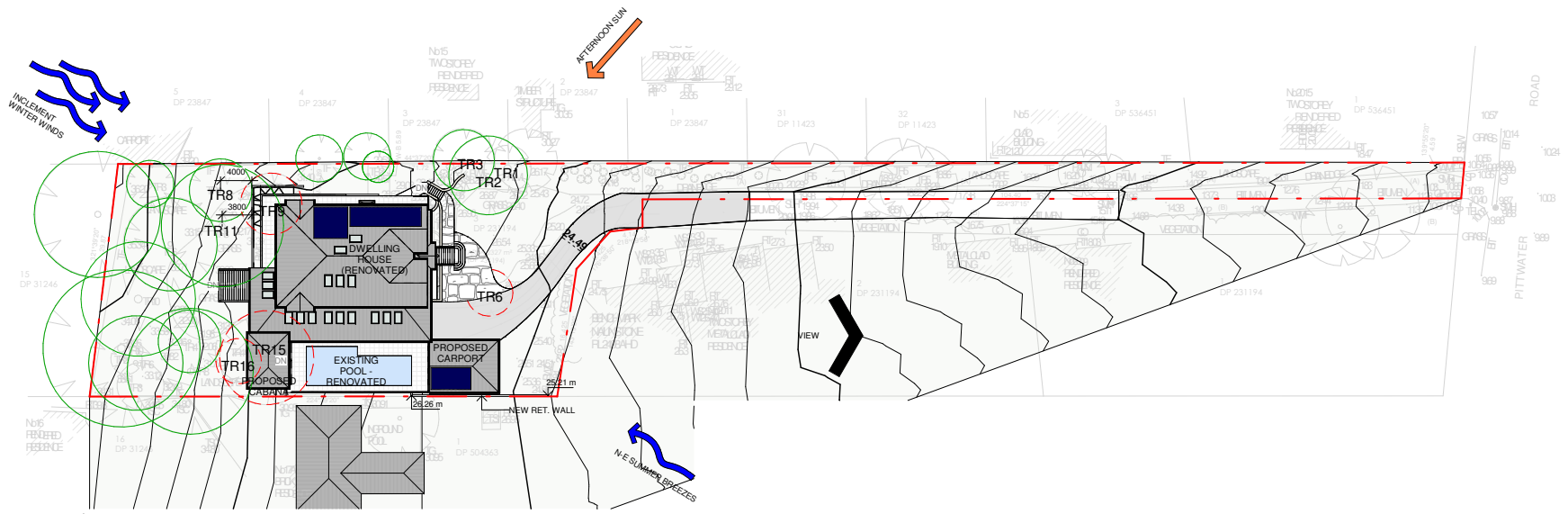
c) if any tree required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with any conditions of consent.

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.

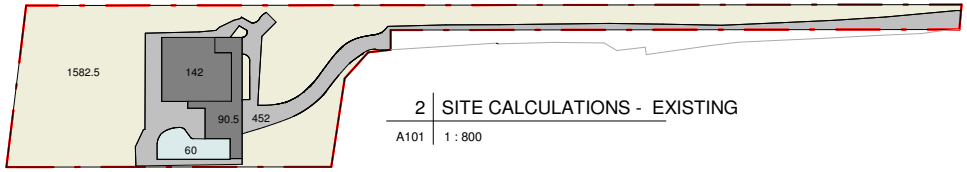
39. **Swimming Pool/Spa Motor Noise**
The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

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



1 | SITE PLAN
A101 | 1 : 500

CALCULATION TABLE		
TITLE:	LOT 3 DP 231194	
ZONE	C4 ENVIRONMENTAL LIVING	
HAZARDS	-	
SITE AREA	2327 m²	
MAX. BUILDING HEIGHT	Hmax = 8.5 m	
	EXISTING	PROPOSED
GROSS FLOOR AREA	134.7+76.6 = 211.3m²	18+185+159=362m²
SITE COVERAGE	232.5m² / 10%	373m² / 16%
HARD SURFACE	452m² / 19.5%	555m² / 24%
POOL SURFACE	60m² / 2.5%	60m² / 2.5%
SOFT LANDSCAPING	1582.5m² / 68%	1339m² / 57.5%



2 | SITE CALCULATIONS - EXISTING
A101 | 1 : 800

LANDSCAPED AREA
HARD SURFACE
SITE COVERAGE
POOL

5 | SITE CALCULATIONS - PROPOSED
A101 | 1 : 800

Do not scale from plans. All dimensions and levels shown on plan are subject to confirmation on site.

ISSUE	DATE	DESCRIPTION	DRWN	CHKD
	07.09.2022	MEASURED DRAWINGS	TM	KM
	26.06.2023	CONCEPT 6	KM	
2	27.07.2023	DA ISSUE	KM	

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PROJECT TITLE:	ALTERATION & ADDITION
PROJECT NO.:	2022-011
AT:	2013 PITTWATER ROAD, BAYVIEW, NSW 2104
FOR:	MARVIN & MARIE SLOCOMBE
SHEET TITLE:	SITE PLAN & ANALYSIS
SHEET NO:	A101
SCALE A3:	As indicated

N

1 NE ELEVATION - EXISTING
A108 1 : 100

2 NE ELEVATION - PROPOSED
A108 1 : 100

Do not scale from plans. All dimensions and levels shown on plan are subject to confirmation on site.

ISSUE	DATE	DESCRIPTION	DRWN	CHKD
	07.09.2022	MEASURED DRAWINGS	TM	KM
	26.06.2023	CONCEPT 6	KM	
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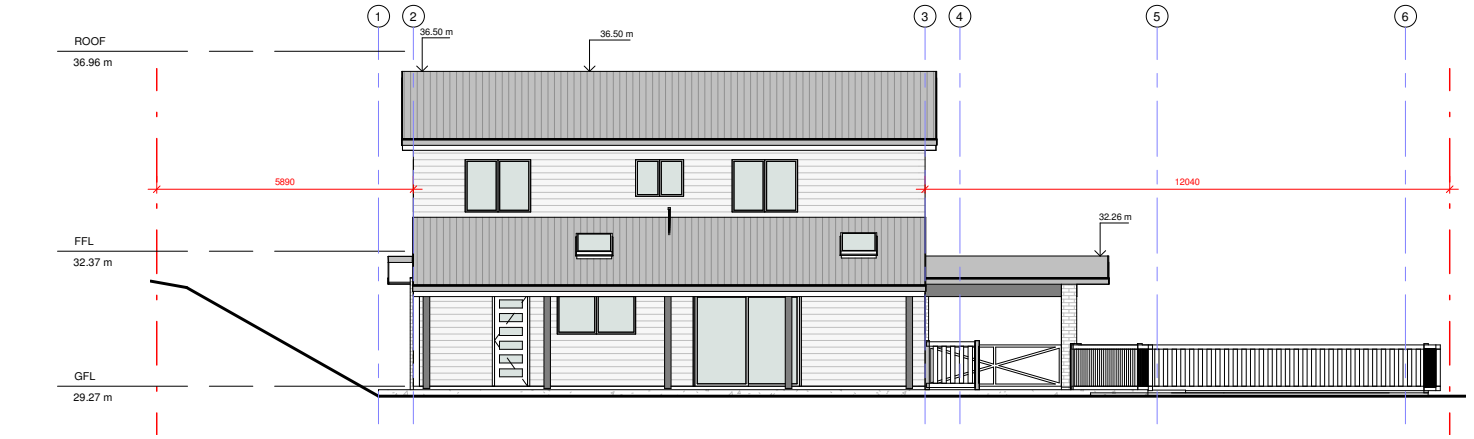
PROJECT TITLE:	ALTERATION & ADDITION
PROJECT NO.:	2022-011
AT:	2013 PITTWATER ROAD, BAYVIEW, NSW 2104
FOR:	MARVIN & MARIE SLOCOMBE
SHEET TITLE:	ELEVATIONS
SHEET NO:	A108
SCALE A3:	1 : 100



1 SW ELEVATION - EXISTING

A109 1 : 100

2 SW ELEVATION - PROPOSED

A109 1 : 100

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ISSUE	DATE	DESCRIPTION	DRWN	CHKD
	07.09.2022	MEASURED DRAWINGS	TM	KM
	26.06.2023	CONCEPT 6	KM	
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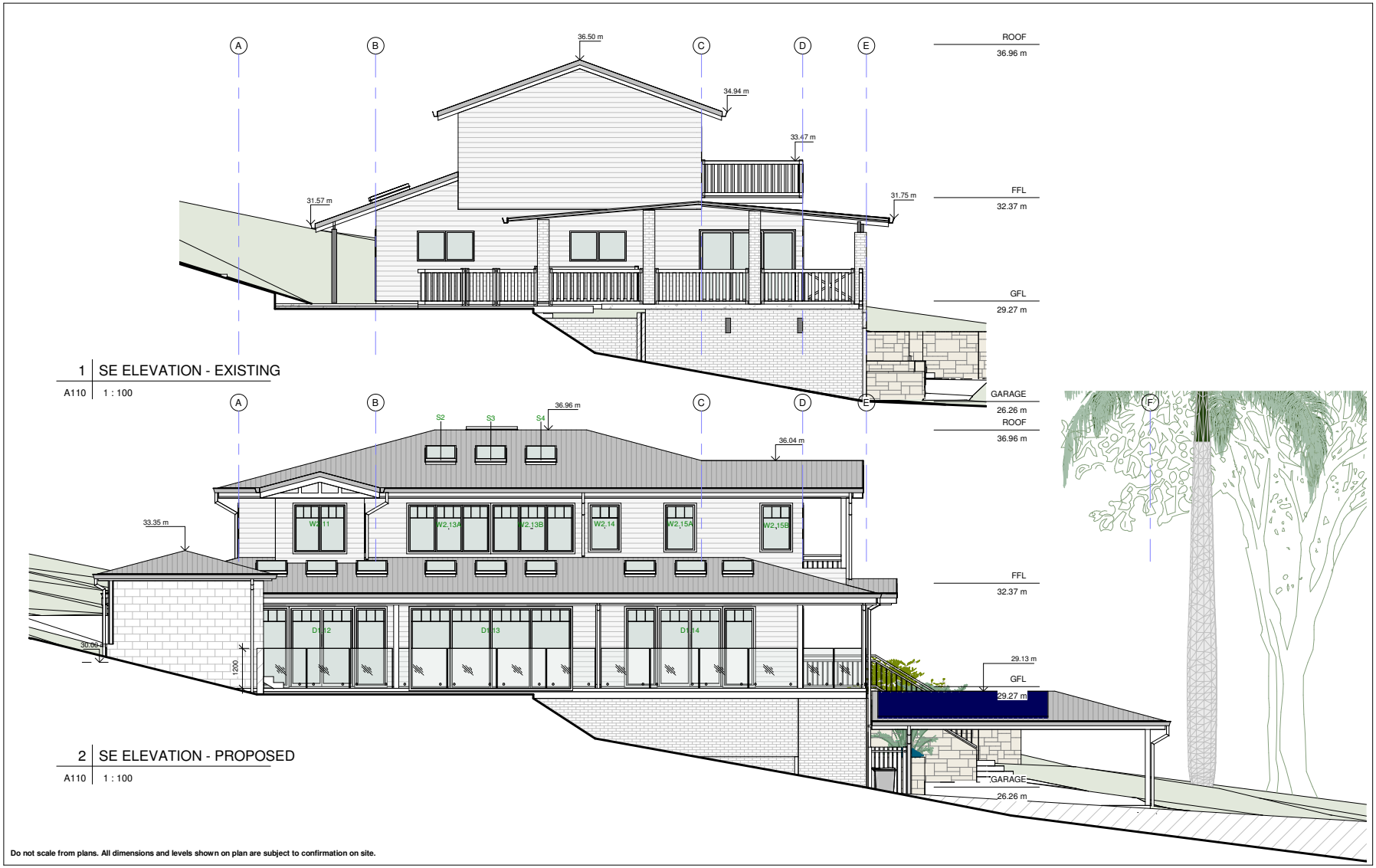
FOR:	MARVIN & MARIE SLOCOMBE
SHEET TITLE:	ELEVATIONS
SHEET NO:	A109
SCALE A3:	1 : 100



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PROJECT TITLE:	ALTERATION & ADDITION
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FOR:	MARVIN & MARIE SLOCOMBE
SHEET TITLE:	ELEVATIONS
SHEET NO:	A110
SCALE A3:	1 : 100

Do not scale from plans. All dimensions and levels shown on plan are subject to confirmation on site.

ISSUE	DATE	DESCRIPTION	DRWN	CHKD
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	26.06.2023	CONCEPT 6	KM	
2	27.07.2023	DA ISSUE	KM	

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PROJECT TITLE:	ALTERATION & ADDITION
PROJECT NO.:	2022-011
AT:	2013 PITTWATER ROAD, BAYVIEW, NSW 2104
FOR:	MARVIN & MARIE SLOCOMBE
SHEET TITLE:	ELEVATIONS
SHEET NO:	A111
SCALE A3:	1 : 100

Clause 4.6 *Exceptions to Development Standards – Height of Buildings*

2013 Pittwater Road Bayview
V2 2 May 20224

Clause 4.6 of the Pittwater Local Environmental Plan 2014 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 the Pittwater LEP 2014 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 LEP 2014, 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

1.1 What is the name of the environmental planning instrument that applies to the land?

Pittwater Local Environmental Plan 2014

1.2 What is the zoning of the land?

C4 – Environmental Living

1.3 What are the objectives of the zone?

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

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

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 Pittwater Local Environmental Plan 2014

1.6 What are the objectives of the development standard?

(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.

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 maximum building height of 9.5 metres.

The dwelling presents with a largely compliant height when considered against an interpolated height plane, as illustrated below.

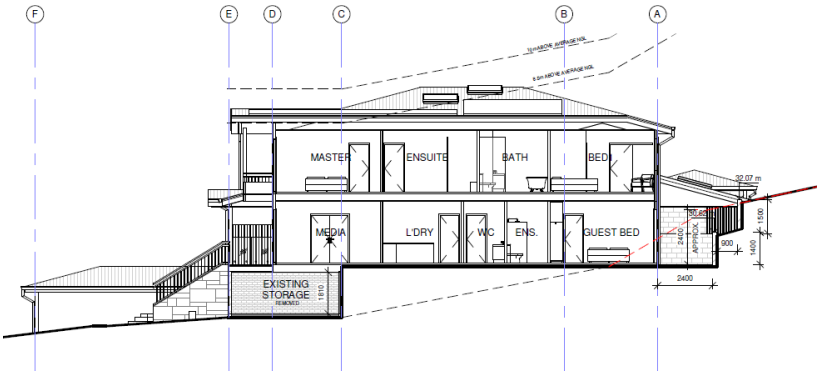


Figure 1: Plan Extract – Section D-D

1.9 What is the percentage variation (between your proposal and the environmental planning instrument)?

The percentage variation sought is 9.5 metres (+1m or 11.75%)

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.

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.

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.

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 LEP 2014 together with principles established in the NSW Land and Environment Court Case Law outlined above.

Clause 4.6(3)(A) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (and is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case)?

In order to demonstrate that compliance with the development standard is unreasonable or

unnecessary, in the circumstances of the case, the Five (5) Part Test established in Winten v North Sydney Council and expanded by Justice Preston in Wehbe v Pittwater [2007] NSW LEC 827 is considered:

The five ways outlined in *Wehbe* include:

3.1 Five (5) Part Test - Wehbe v Pittwater

1. ***The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).***

The objectives of the standard are:

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

Comment

The proposed height variation is largely the result of taking into account the existing subfloor and garage. The retained garage and ground floor levels limit the ability to bring the dwelling height into numerical compliance.

The dwelling presents with an appropriate two storey scale and remains of a similar bulk and scale to neighbouring dwellings.

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

Surrounding development is characterised by one, two and three storey dwellings. Properties enjoy water views across Pittwater to the north-east and are set within landscaped surrounds.

It is considered the proposed development remains compatible with the height and scale of surrounding development. The resulting dwelling will present with a two storey, plus basement scale, of a consistent or lesser scale than surrounding dwellings.

(c) *to minimise any overshadowing of neighbouring properties,*

The proposed variation to height will not result in any unreasonable solar access impacts to neighbouring properties. The shadow diagrams provided with this application demonstrate the subject site and surrounding properties retain compliant solar access, despite the proposed height variation.

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

A site visit has been undertaken and it is concluded the proposed development will not result in any view loss impacts, due to the surrounding topography and siting of dwellings. A view loss assessment is provided with this application.

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

The development proposes basement and ground floor additions (retaining the existing floor levels) and the replacement of the existing first floor.

The works are largely located within the existing building footprint, ensuring impacts on the natural topography are minimised.

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

The works remain consistent with surrounding dwellings and will not create any visual impacts when viewed from the public domain. The site is not a heritage item, is not located within a heritage conservation area and is not located in close proximity to any heritage items.

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 variation is the result of taking into account the existing garage and subfloor floor levels,
- The dwelling presents with a two storey, plus basement scale, consistent with the scale of the existing dwelling,
- The scale of the development remains consistent with neighbouring dwellings and the battle-axe lot means the development will not be highly visible from Pittwater Road,
- As such, the varied building height is considered to be reasonable and is consistent with clause 1.3(c), (d) and (g).

Future Development

- The built form proposed is consistent with other buildings in the locality,
- Amendments to achieve compliance would result in unnecessary demolition and additional building costs, with no gain for the site or neighbours,
- The alterations and additions proposed demonstrates 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 redevelopment of the existing dwelling, of a bulk and scale consistent with the locality.

- Compliance with the building height standard based on this would be unreasonable, with clause 1.3(c) demonstrated as fulfilled.

Natural Environment

- The natural environment is not significantly affected 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 building height will have a positive social impact, as it will allow the housing needs of the residents to be met in their current local community.
- All services are existing, satisfying Cl1.3(b) and accordingly refusal of the development based on this reason would be unreasonable.

Appropriate Environmental Planning Outcome

- The works proposed will not result in an overdevelopment of the site and satisfies the objectives of the zone and the objectives of the development standard, as detailed within this report,
- The variation does not result in a dwelling with excessive bulk.
- The variation will have no unreasonable amenity impacts to neighbours and the surrounds.

The variation to the building height and the discussion above reflects the unique circumstances for the subject site and proposed development. The proposed development will not present with excessive bulk from the public domain. By supporting this variation, in its current form, it is considered that an appropriate degree of flexibility be applied, which results in a reasonable built form, consistent with developments within the locality.

The sufficient environmental planning grounds stipulated above demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the building height variation.

3.3 Clause 4.6(4)(A)(ii) – Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and objectives for development within the zone which the development is proposed to be carried out.

The proposed development is consistent with the objectives of the standard (see Cl 4.6(3)(A). An assessment of consistency with the objectives of the Zone is provided below:

Zone – C4 Environmental Living

Objectives of zone

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

  Consistent. The proposal is for substantial alterations and additions to an existing dwelling, retaining the existing single dwelling density. Mature trees on the site will be retained, allowing for the ecological and aesthetic values of the site to be maintained.

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

  Consistent. The development will have no impact on any special ecological, scientific or aesthetic values.

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

  Consistent. The development retains the existing single dwelling density and proposes the redevelopment of the existing 2 storey, plus basement dwelling on the site. The proposed height remains below the tree canopy in the locality and is of a consistent or lesser scale than surrounding properties.

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

  Consistent. There will be no impact on riparian and foreshore vegetation and wildlife corridors.

Despite the proposal seeking an exception to the building height clause, the bulk and scale of the building will have minimal effects as the works will result in an appropriate 2 storey (plus basement) scale, with the variation resulting from subfloor excavation and the retention of existing floor levels.

The proposed development is not contrary to the public interest, because it is consistent with the objectives of the standard (see Cl 4.6(3)(A)) and objectives for development within the zone.

Clause 4.6(5)(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning,

The non-compliance will not raise any matter of State or Regional Significance.

Clause 4.6(5)(b) the public benefit of maintaining the development standard,

The proposed development is not contrary to the public interest, accordingly there can be no quantifiable or perceived public benefit in maintaining the standard.

Clause 4.6(5)(c) any other matters required to be taken into consideration by the Secretary before granting concurrence

How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Act.

Strict compliance with the standard would hinder the attainment of the objects specified in section 1.3 of the Act

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

Strict numerical compliance with the 8.5 metre 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 for alterations and additions to an existing dwelling on land zoned C4 – Environmental Living, is appropriate and reasonable for the following reasons:

- The variation proposed is the result of taking into account the existing garage and subfloor levels,
- The resulting dwelling will present with an appropriate two storey, plus basement scale, consistent with other buildings in the locality,
- The site is a battle-axe lot meaning the dwelling is barely visible from Pittwater Road and the surrounding mature trees means the dwellings sits comfortable in the landscape,
- Amendments to achieve compliance would result in unnecessary demolition and additional building costs, with no gain for the site, neighbours or the streetscape.
- The objectives of the C4 zone can be met despite the numerical variation,
- There will be no unreasonable amenity or environmental impacts as a result of the non-compliance.

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.

ITEM 3.7 MOD2024/0032 - 11 CURL CURL PARADE CURL CURL - MODIFICATION OF DEVELOPMENT CONSENT DA2001/1116 GRANTED FOR ALTERATIONS AND ADDITIONS EXTEND FIRST FLOOR AND ADD NEW ATTIC LEVEL

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 Mod2024/0032 for Modification of Development Consent DA2001/1116 granted for Alterations and Additions Extend First Floor and ADD New Attic Level on land at Lot 78 DP 5539, 11 Curl Curl Parade CURL CURL, subject to the conditions set out in the Assessment Report.

Reporting manager	Adam Richardson
TRIM file ref	2024/398476
Attachments	⇩1 Assessment Report ⇩2 Site Plan and Elevations

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2024/0032

Responsible Officer:	Megan Surtees
Land to be developed (Address):	Lot 78 DP 5539, 11 Curl Curl Parade CURL CURL NSW 2096
Proposed Development:	Modification of Development Consent DA2001/1116 granted for Alterations and Additions Extend First Floor and ADD New Attic Level
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:	Laura Josefina Mitre-Flower
Applicant:	Andrew Seller

Application Lodged:	06/03/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	11/03/2024 to 25/03/2024
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	4.3 Height of buildings: 23.5%
Recommendation:	Approval

EXECUTIVE SUMMARY

This modification application seeks consent to modify Development Consent DA2001/1116 which granted consent for alterations and additions to extend first floor and to add new attic level.

The application is referred to the Development Determination Panel (DDP) as consent is sought under a section 4.55(2) Modification Application and the proposed modification to the works involve a building height that results in a variation of more than 10.0% pursuant to Clause 4.3 Height of Buildings of the *Warringah Local Environmental Plan 2011* (WLEP 2011).

The maximum permitted building height under the WLEP 2011 is 8.5 metres. The proposed modified building height is 10.5 metres resulting in a variation of 23.5% to the development standard. As has been discussed within this report, a departure from a development standard within a modification application does not need to be strictly addressed under a Clause 4.6 written request. However and despite this, the merits of the proposed departure have beento be acceptable due to the fact that the modified development's maximum building height is less than that originally approved in 2001.

This modification application was notified in accordance with the Northern Beaches Community Participation Plan (CPP) for fourteen (14) days. Two (2) submission were received. These submissions are addressed within the report, with the concerns raised not being issues that would warrant refusal of the application.

It is important to note that evidence has been provided to Council which demonstrates that the consent was activated within the consent period and despite its age, is able to be deleted.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that, on balance the proposed modified works are a suitable and acceptable development for the subject site for the reasons outlined in this report.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposed modification application seeks consent to modify DA2001/1116 in the following ways:

Basement Level:

- No change

Ground Floor Level:

- No change

First Floor Level:

- Enclosure of existing pathway to comprise new entry and internal hallway to the new family room
- Family room
- Walk-in pantry to the existing kitchen
- Minor extension to the existing living and dining room to the east
- New balcony located off the open-plan kitchen, dining and living room
- New timber staircase i the family room to the second floor level
- New timber staircase in the garage to the second floor level

Second Floor Level:

- Hallway from both internal staircases

- Master bedroom with walk-in robe and two (2) separate wardrobes, en-suite and access to a new balcony
- Office space with wetbar and access to 'trafficable flat roof' (which presents as a balcony)
- Planter box sited along the eastern, southern and western elevations of the 'trafficable flat roof'

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

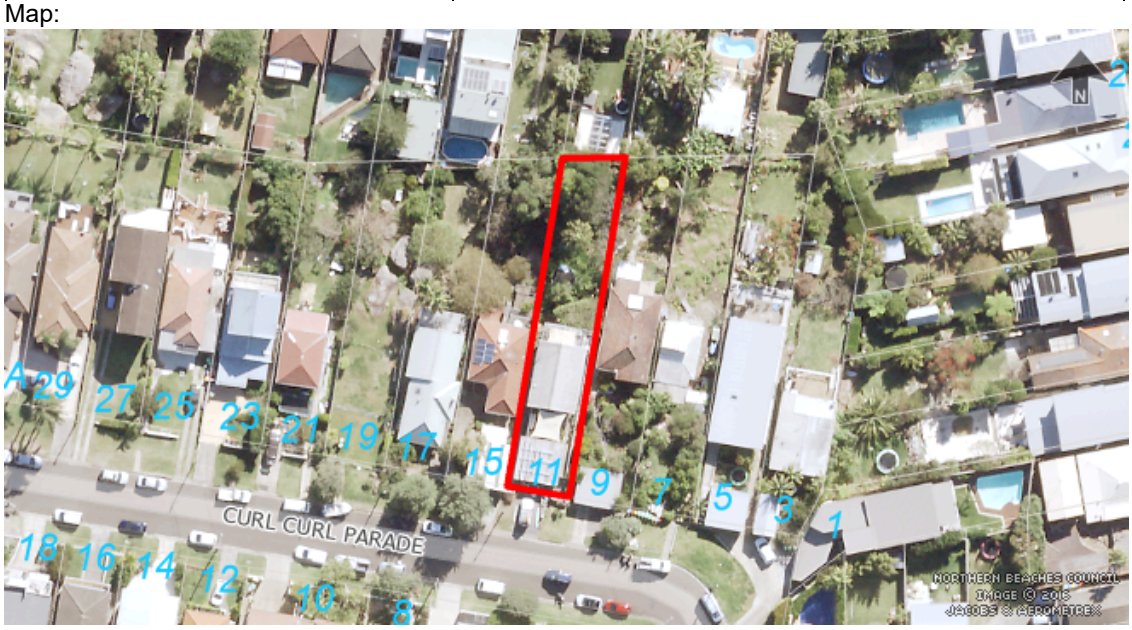
Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - B5 Side Boundary Setbacks
Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - D9 Building Bulk
Warringah Development Control Plan - D10 Building Colours and Materials

SITE DESCRIPTION

Property Description:	Lot 78 DP 5539 , 11 Curl Curl Parade CURL CURL NSW 2096
Detailed Site Description:	The subject site consists of one (1) allotment located on the northern side of Curl Curl Parade. The site is regular in shape with a frontage of 10.06m along Curl Curl Parade and a depth of 55.05m. The site has a surveyed area of 543.8m². The site is located within the R2 Low Density Residential

	zone within the *Warringah Local Environmental Plan 2011* and accommodates a two (2) and three (3) storey residential dwelling within a landscaped setting. The site has a southerly orientation and falls steeply from the front boundary line toward the rear boundary line of approximately 11.3 metres (or 21.4%). The site is not known to have any threatened species. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by residential dwellings of similar bulk and scale within a landscaped setting.

Map:



SITE HISTORY

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

- **DA2001/1116.** This development application sought consent for alterations and additions to the existing dwelling. This application was approved, subject to conditions, on 6 December 2006. This development application was determined in accordance with the *Warringah Local Environmental Plan 2000*. A Construction Certificate (CC No. 2005/887) was provided to Council on 11 October 2005. A Building Inspection Report was undertaken and signed off by an accredited building survey on 16 January 2006, confirming that this development application has been activated.
- **Mod2001/1116/1.** This modification application sought consent to modify DA2001/1116 by modifying Condition No 1, and adding multiple new conditions. This application was approved,

subject to conditions, on 5 May 2006.

- **Mod2001/1116/2.** This modification application sought consent to modify DA2001/1116 by modifying Condition No 1 and adding one new condition. This application was approved, subject to conditions, on 6 April 2006. A Construction Certificate (CC No. 2005/887A) was provided to Council on 20 April 2006.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:
The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2001/1116, Mod2001/1116/1 and Mod2001/1116/2, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - Other Modifications	**Comments**
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2001/1116, Mod2001/1116/1 and Mod2001/1116/2 for the following reasons: The original development application sought consent for alterations and additions to a residential dwelling, including an additional storey. The proposed modified works seek consent for further alterations and additions to the existing dwelling. In this instance, the proposed modified works are considered to be substantially the same to that which was previously approved.

Section 4.55 (2) - Other Modifications	Comments
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA2001/1116, Mod2001/1116/1 and Mod2001/1116/2 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on “Notification & Submissions Received” in this report.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 (2) the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	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. Additional information was requested in relation to the provision of amended plans to address Council's concerns regarding the proposed maximum building height, side boundary envelope and building bulk, in addition to an issue raised by Council's Development Engineer. This information was detailed within a Request for Further Information (RFI) letter, dated 5 April 2024. The RFI was also uploaded to the NSW Planning Portal. Amended plans, an updated BASIX and a response to Council's RFI was provided to Council on 14 May 2024 via the NSW Planning Portal. As the amendments resulted in a lesser or reduced environmental impact, in accordance with Council's Community Participation Plan, the amended plans were not renotified. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 2001: The Demolition of Structures. This clause is not relevant to this application. 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

Section 4.15 'Matters for Consideration'	Comments
	authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan 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 11/03/2024 to 25/03/2024 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 2 submission/s from:

Name:	Address:
Ms Nerida Aileen Farrow	9 Curl Curl Parade CURL CURL NSW 2096

Name:	Address:
Thelma Nicholson Hobday	15 Curl Curl Parade CURL CURL NSW 2096

The following issues were raised in the submissions:

- **Non-compliant maximum building height (request for height poles)**
- **Non-compliant maximum wall height along the eastern elevation**
- **Solar access impacts**
- **Privacy impacts**
- **Increase to garage and excessive bulk**

The above issues are addressed as follows:

- **Non-compliant maximum building height**

  The submissions raised concerns that the proposed modified works exceed the required 8.5 metre height requirement. One (1) submission has requested height poles be erected to assess the impact.

  Comment:

  Amended plans were provided with this modification application which reduced the proposed maximum height from 11.737 metres to 10.5 metres. While this is still numerically non-compliant with Clause 4.3 of the *Warringah Local Environmental Plan 2011* (WLEP 2011), it is a lesser height to what was previous approved under DA2001/1116 (which was 10.892 metres when measured from the ridgeline to the basement level). In this instance, as the proposal offers a reduced height to what was previously approved, height poles are not considered necessary in this instance.

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

- **Non-compliant maximum wall height along the eastern elevation**

  The submissions raised concerns that the proposed development results in a non-compliant wall height along the eastern elevation, thus adversely impacting upon 9 Curl Curl Parade.

  Comment:

  The proposed development results in a numerically non-compliant wall height along both the eastern and western elevations, sited at the rear of the second storey. A detailed assessment has been undertaken within this report under section B1 Wall Heights, which shows that, while still technically numerically non-compliant, the proposed modified works provide an improvement along the eastern elevation, and will maintain the same breach along the western elevation to what was previously approved. In this instance, the assessment has found that the proposed modified works are reasonable in the context of the site with no unreasonable amenity impacts upon adjoining properties.

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

- **Solar access impacts**

  The submissions raised concerns that the proposed development, as a result of the breach to the maximum building height and wall heights, will cause unreasonable solar access impacts upon adjoining properties.

  Comment:

  The subject site, and adjoining properties, have a northerly aspect. In this instance, there is no unreasonable solar access impacts to adjoining properties as the proposal achieves compliance with the requirements for solar access in accordance with D6 Access to Sunlight within the Warringah Development Control Plan (WDCP).

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

- **Privacy impacts**

  The submissions raised concerns that the proposal includes increasing the size of the balconies on the both first and second levels, noting that these balconies do not include privacy screens, thus causing unreasonable privacy impacts to adjoining properties.

  Comment:

  The proposed development has been assessed against the requirements of D8 Privacy of the WDCP. The assessment found that the proposal provides a reasonable level of privacy between properties, subject to recommended conditions.

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

- **Increase to garage and excessive bulk**

  The submissions raised concerns that the proposed modified works increases the garage walls, and this coupled with the additional roof height increases the bulk of the building, particularly when viewed from the western elevation.

  Comment:

  Amended plans have been received and there are no changes to the existing garage dimensions. The proposed trafficable roof above the garage will not have a roof, thus remaining open. Regardless, a detailed discussion of the proposal against the requirements of D9 Building Bulk has been undertaken within this report. The assessment found that the proposed modified works provide a reasonable building bulk that is commensurate with surrounding developments.

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

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The modification application includes a submitted Landscape Plan and as described in reports and illustrated on plans, no existing prescribed trees are to be impacted by the proposed works and landscape landscape features such as the existing rock outcrop is retained. The Landscape Plan under this modification shall be included in the condition for Approved Plans. Landscape Referral raise no concerns subject to compliance with the Landscape Plan and the protection of existing trees and vegetation as shown.
NECC (Development Engineering)	The proposed modification includes the provision of an internal set of stairs within the garage which will not permit two vehicles to park which is not acceptable. If these stairs are either deleted or amended to ensure two vehicles can park then the proposal could be supported. Development Engineering cannot support the proposed modification due to insufficient information to assess parking in accordance with clause C3 of the DCP. **Review 16/5/2024** The plans have been amended to remove the internal stairs within the garage which addresses the concerns above. No objections to approval.

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. A1375593_02, dated 22 November 2023).

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

SEPP (Resilience and Hazards) 2021

Chapter 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:
This Clause applies to the subject site. The subject site is located such a substantial distance from Curl Curl Beach and Curl Curl Lagoon that the proposed modified works will not impact upon the matters as prescribed above. Further, the subject site is not located within, or in proximity to, Aboriginal heritage areas.

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 considered against subclause (a) and the assessment is satisfied that the proposal has been designed, sited and managed to avoid a adverse impact upon the matters prescribed within Clause 1 above.

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

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

Comment:
The proposed development will not cause an increased risk of coastal hazards.

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

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	10.96m	10.5m	23.5%	No

Compliance Assessment

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

Detailed Assessment

4.6 Exceptions to development standards

Whilst the modification will result in a building height that contravenes the maximum permitted by

Clause 4.3 of the WLEP 2011 (as indicated in the figure below), the application does not strictly need to address the requirements of Clause 4.6.

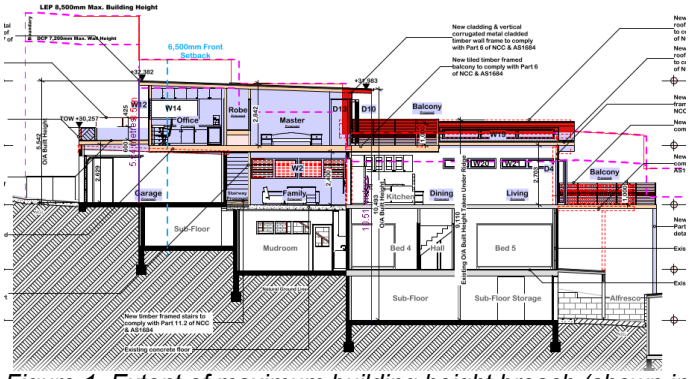


Figure 1. Extent of maximum building height breach (shown in red shading).

The application has been made under Section 4.55 of the *Environmental Planning and Assessment Act 1979*, which authorises the development for which consent was granted to be modified, notwithstanding any breach of development standards. As such, no document pursuant to Section 35B of the *Environmental Planning and Assessment Regulation 2021* or Clause 4.6 is required.

The height of the modified building is reduced from that originally approved. As such it is considered that overall, the modified development in the case of height has a lesser of an impact than originally approved.

The matters set out in Section 4.55(3) are addressed in the relevant sections of this report.

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
B1 Wall height	7.2m	Not applicable at the time of approval	**Eastern Elevation** 8.85m	No, 22.9% max. variation
			Western Elevation 8.09	No, 12.3% max. variation
B3 Side Boundary Envelope	5m	Outside	**Eastern Elevation** Encroachment	No
	5m	Outside	**Western Elevation** Encroachment	No
B5 Side Boundary Setbacks	900mm	900mm	**Eastern Boundary** *Basement level* 0.8m	No, existing & unchanged
			Ground floor level 0.8m - 3.0m	No, existing & unchanged

			First floor level 943mm	Yes
			Second floor level 2.01m	Yes
	675mm Requirement is now 900mm to both side boundaries	675mm	**Western Boundary** *Basement level* 1.3m	Yes, existing & unchanged
			Ground floor level 1.3m - 1.9m	Yes, existing & unchanged
			First floor level Dwelling: 1.6m Balcony: 1.3m	Yes Yes
			Second floor level Dwelling: 978mm - 1.6m Planter box: 0.82m	Yes No
B7 Front Boundary Setbacks	Average of adjoining Requirement is now: 6.5m	2.36m	*First floor level* 3.95m	No, 39.2% variation
			Second floor level Planter box: 2.47m Trafficable roof: 3.22m Dwelling: 5.66m	No, 62% variation No, 50.4% variation No, 12.9% variation
B9 Rear Boundary Setbacks	6m	>6.0m	No change	Yes
D1 Landscaped Open Space and Bushland Setting	40% (217.52m^2)	50.6%	42.8%	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	No	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes
Appendix 1 Car Parking Requirements	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of non-compliance

This control requires development to result in wall heights no greater than 7.2 metres. Due to the slope of the land, the proposed development extends beyond the maximum wall height along both the eastern and western elevations, as indicated in the figures below.

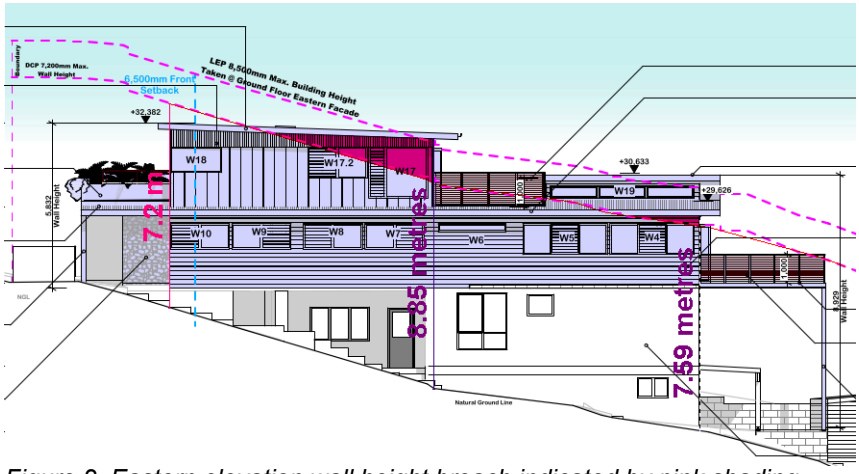


Figure 2. Eastern elevation wall height breach indicated by pink shading.

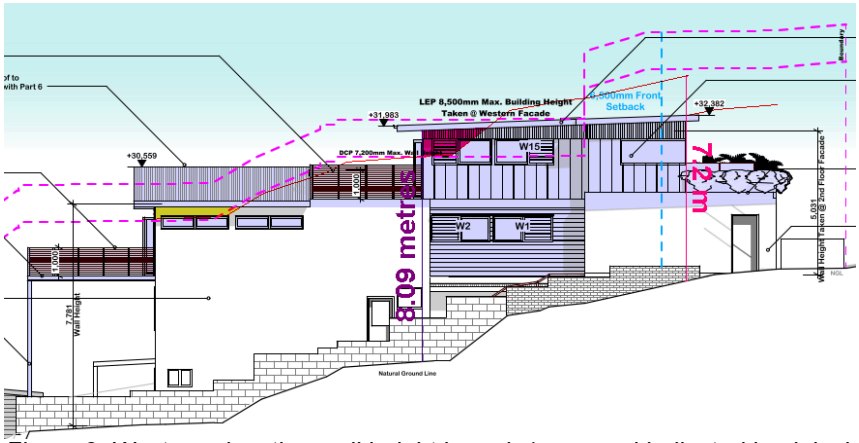


Figure 3. Western elevation wall height breach (proposed indicated in pink shading, existing indicated in yellow shading).

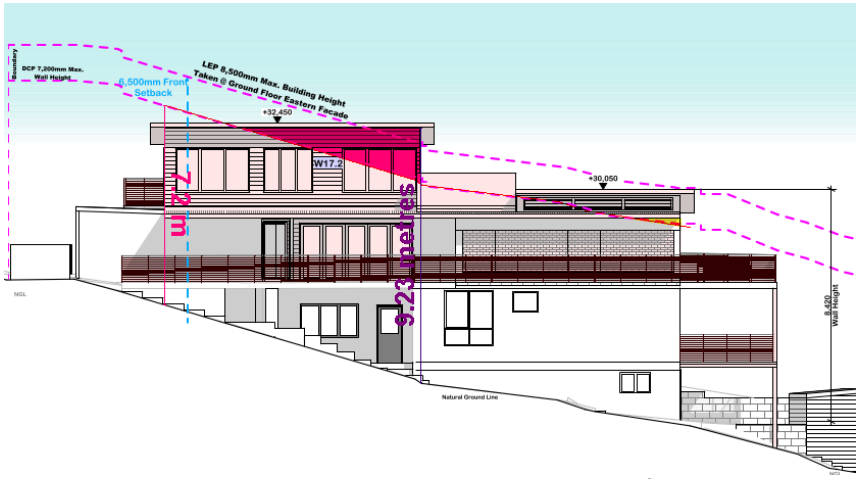


Figure 4. Approved eastern elevation wall height (extent of approved breach shown in pink shading, and existing breach shown in yellow).

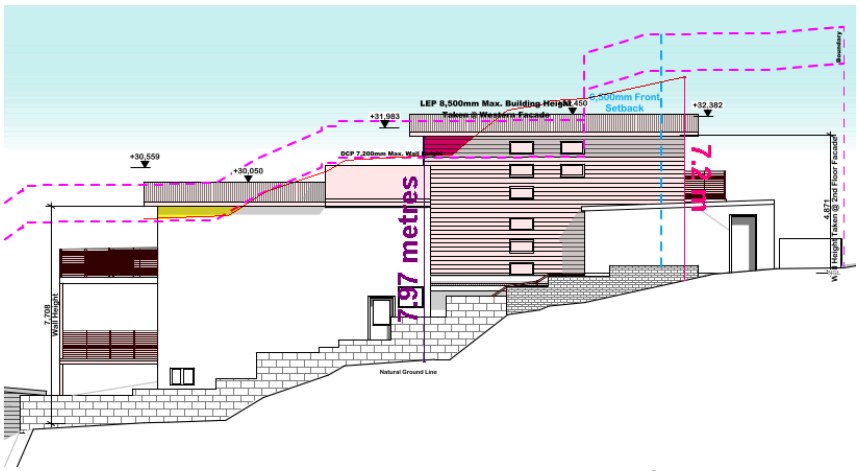


Figure 5. Approved western elevation wall height (extent of approved breach shown in pink shading, and existing breach shown in yellow).

An exception may be permitted which allows the requirements of this control to be varied on sites with slopes greater than 20% below the building footprint, provided that the building does not exceed 8.5 metres, is designed and located to minimise the bulk and scale and has a minimal visual impact when viewed from the downslope sides of the land. As the proposed maximum height exceeds 8.5 metres, the exception cannot be applied, notwithstanding the fact the building footprint is sited on a slope of approximately 30% along the western elevation and 23.8% along the eastern elevation.

Merit consideration:

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

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

  Comment:

  The extent of non-compliance to both the eastern and western elevations is sited at the rear of the second floor addition, where the land slopes at its steepest. The existing site constraints and the siting of the dwelling means that strict compliance with this control is difficult. Due to the slope of the land, the proposed non-compliance along both the eastern and western elevations will not be easily discernible when viewed from the street frontage. Thus not causing any unreasonable visual impact upon Curl Curl Parade. The dwelling to the east, being 9 Curl Curl Parade, is sited further down slope, with the front of this dwelling generally aligning with the rear of the dwelling on the subject site. The dwelling at 15 Curl Curl Parade, being the property to the west, has a similar building footprint to what is existing on the subject site. The visual impact of the built form of the dwelling is consistent with other nearby single residential dwellings on nearby properties. The extent of impact upon the neighbouring properties is minor and the non-compliance, therefore, does not give rise to any unreasonable amenity impacts.

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

  Comment:

  The rear portion of the site has multiple canopy trees. However, due to the narrowness of the site, the siting of the existing dwelling restricts any canopy trees within the front setback area of the site. In this instance, the proposed modified works cannot be sited beneath canopy trees on the site. It should be noted, however, that there is a large tree sited within the Council reserve to the west of the subject site. The proposed modified works will be below this tree.

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

  Comment:

  The extent of non-compliance does not give rise to any unreasonable impact upon the sites ability to continue to share views to and from public and private properties. The submissions received have not raised concern regarding view loss.

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

  Comment:

  The shadow diagrams provided with this application shows compliance with the solar access requirements as stipulated under D6 Access to Sunlight, notwithstanding the extent of non-compliance to this control. In this instance, a reasonable level of solar access is provided to the private open space of the subject site and adjoining properties notwithstanding the extent of non-compliance to this control.

  The extent of encroachment along the eastern elevation includes a portion of W17, which is sited to the master bedroom suite. W17 has a sill height of 300 millimetres when measured from the finished floor level of the second floor. Due to the location of the dwelling at 9 Curl Curl Parade and the infrequent use of a bedroom, W17 does not cause any unreasonable privacy impacts upon 9 Curl Curl Parade. Similarly, W15 on the western elevation is sited to a hallway and a portion of this window extends beyond the maximum wall height. W15 has a sill height of 1.3 metres when measured from the finished floor level. No privacy impacts arise from W15.

  Based on the above, the proposed modified works do not cause unreasonable impact upon adjoining and nearby properties.

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

  Comment:

  The proposed modified works are sited to the existing building footprint with no works proposed on the basement level. In this instance, the existing natural landform will be retained and the proposed modified works appropriately responds to the existing site topography.

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

  Comment:

  The proposed roof provides a design that is architecturally interesting and visually consistent with existing dwelling, as well as those on adjoining and nearby properties.

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 s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

B3 Side Boundary Envelope

Description of non-compliance

This control requires development to be sited within a side boundary envelope, determined by projecting planes at 45 degrees from a height of 5.0 metres above the existing ground level at the side boundaries. The proposed modified works extend beyond the side boundary envelopes along the eastern and western elevations, as indicated in the figures below. The approved development provided for a breach to the side boundary envelopes which is similar to that proposed in the modified development.

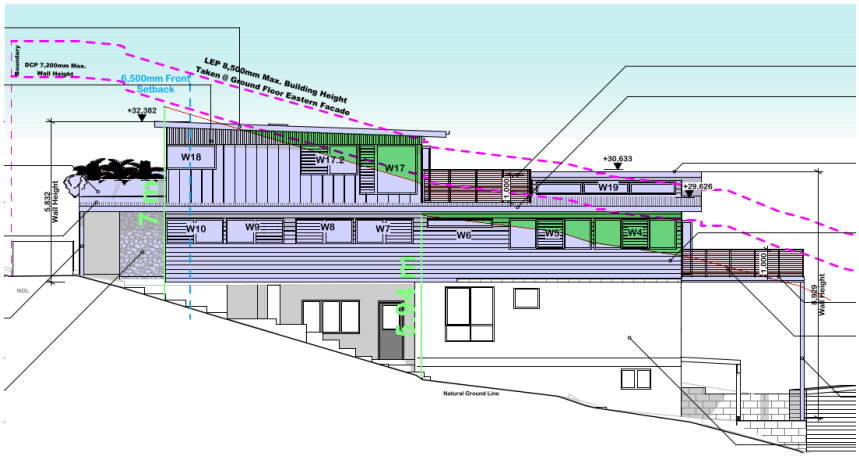


Figure 6. Eastern elevation side boundary envelope breach (extent shown in green shading).

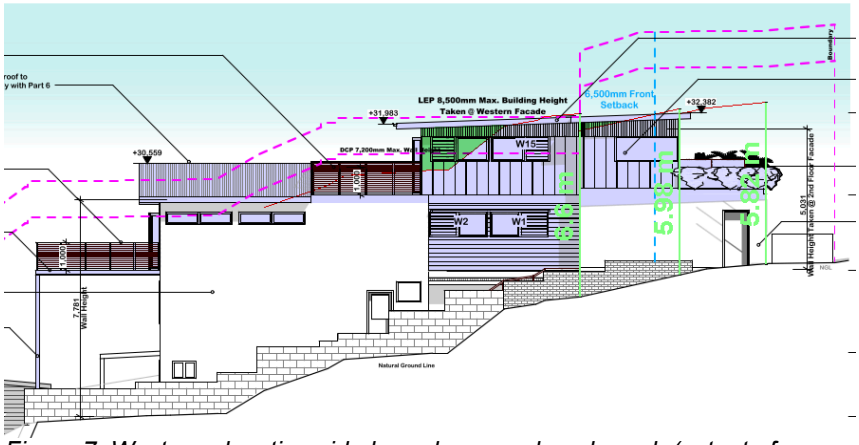


Figure 7. Western elevation side boundary envelope breach (extent of proposed breach shown in green shading).

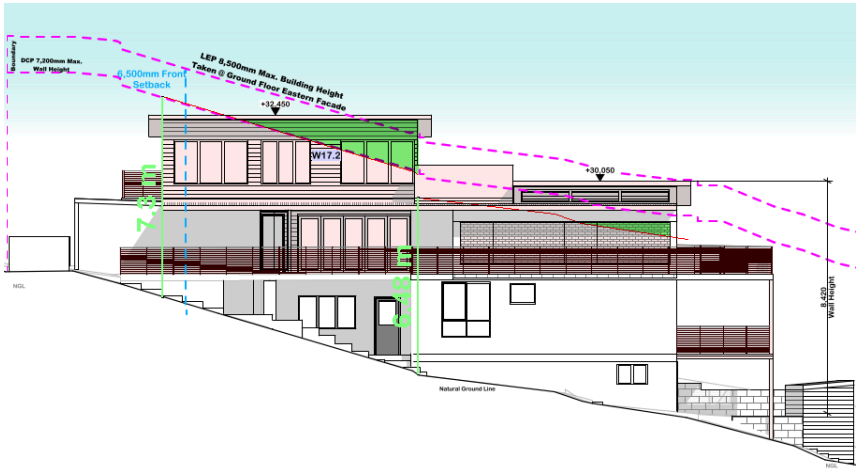


Figure 8. Approved eastern elevation side boundary envelope breach (extent of breach indicated by green shading).

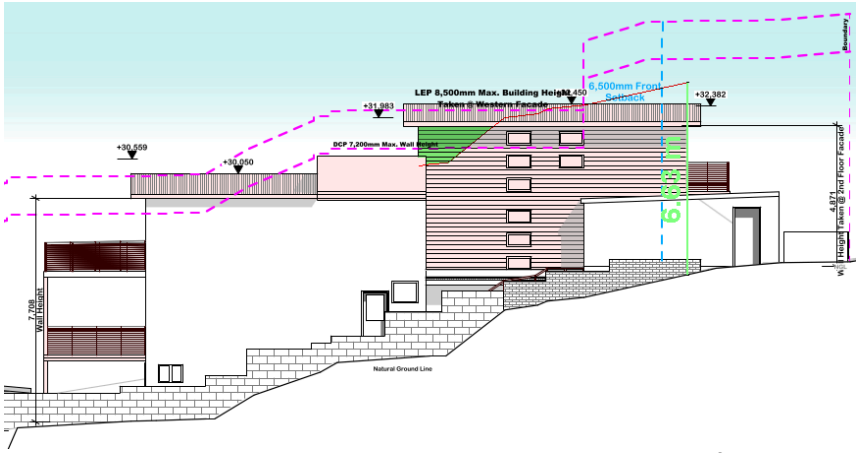


Figure 9. Approved western elevation envelope breach (extent of breach indicated by green shading).

This control permits an exception where consent may be granted for the addition of a secondary storey to an existing dwelling house that to a minor extent does not comply with the requirement of this control. The encroachment along the western elevation is minor. However, the encroachment along the eastern elevation is not considered minor and the exception cannot be applied for the eastern elevation breach.

A detailed merit consideration has been undertaken below.

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:

  As a direct result of the steep topography of the site, the proposed modified works along the eastern elevation results in non-compliances to the requirement of this control, as evidenced in the figures above. Amended plans were provided which showed a reduced encroachment to the eastern elevation. The proposed modified works, particularly on the first and second floor levels, achieve compliance with the requirement for the side setbacks (as stipulated under B5 of the Warringah Development Control Plan [WDCP]). Notwithstanding, the extent of non-compliance will not be easily discernible when viewed from the street frontage.

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

  Comment:

  The proposed modified works achieves compliance with the side setback requirement. Notwithstanding the numeric non-compliance to this control, the proposed shadow diagrams that accompany this application shows compliance with the requirements of D6 Access to Sunlight.

  The extent of encroachment along the eastern elevation includes windows, with the potential for privacy impacts arising from W17 and W4. W17 is sited to the master bedroom, and W4 is sited to the existing living area. As the room sited to W4 is not changing to what is existing, there is no intensification of the use and, therefore, there is no material impact upon the privacy of the adjoining property. W17 has a sill height of 300 millimetres. However, this window is sited directly adjacent to the front garden of 9 Curl Curl Parade. This front garden is heavily vegetated, with no lawn areas and would not generally be used as private open space, rather it serves as an entrance to the dwelling, which is sited further down hill from the dwelling on the subject site. Furthermore, a bedroom is not a frequently used habitable room within a dwelling. In this instance, W17 does not pose unreasonable privacy impacts upon 9 Curl Curl Parade.

  In this instance, the proposal, notwithstanding the extent of non-compliance, provides adequate light, solar access and privacy through adequate spatial separation between buildings.

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

  Comment:

  The proposed modified works are sited to the existing building footprint with no works proposed on the basement level. In this instance, the existing natural landform will be retained and the proposed modified works appropriately responds to the existing site topography.

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

This control requires development to be setback 900 millimetres to both side boundaries. The proposed development generally achieves compliance with this requirement. The proposed planter box does, however, marginally extend into the western side setback area, at a distance of 0.83 metres, which presents a variation of 7%. As shown on drawing no. DA308 'Second Floor - Proposed' shows that the extent of encroachment is sited only to the edge of the planter box. In this instance, such a non-compliance does not give rise to an unreasonable built form that adversely impacts upon the adjoining property to the west, or to the existing streetscape.

In this particular instance, a merit consideration of such a minor variation against the objectives of this control is not warranted.

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.

B7 Front Boundary Setbacks

Description of non-compliance

This control requires development to be setback 6.5 metres from the front setback line.

The existing dwelling has a front setback of 2.47 metres to the garage, which presents a variation of 62%. Previous consent granted approval for a front setback distance of 4.2 metres to the second floor level balcony (located off a study).

The proposed modified works under this application seek a front setback distance of 2.47 metres to a planter box (which presents a variation of 62%), 3.22 metres to a trafficable roof which will, in effect, operate as a balcony (which presents a variation of 50.4%), and 5.65 metres to the dwelling wall (which presents a variation of 12.9%).

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying

Objectives of the Control as follows:

- *To create a sense of openness.*

  Comment:

  The proposed trafficable roof, i.e. balcony, is not roofed and thus creating a sense of openness, notwithstanding the extent of non-compliance to this control. Further, the proposed second floor addition is well articulated in that it does not align with the front of the garage, or the eastern elevation of the lower levels, thus allowing for a sense of openness when viewed from the street frontage and adjoining properties.

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

  Comment:

  As proposed, the dwelling will present as a two (2) storey structure when viewed from the streetscape, which is visually consistent with surrounding developments.

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

  Comment:

  As detailed above, the proposed works are visually consistent with surrounding developments and will present as a two (2) storey structure when viewed from the street frontage. In this instance, the visual quality of the existing streetscape is appropriately protected and enhanced.

- *To achieve reasonable view sharing.*

  Comment:

  The extent of non-compliance does not give rise to any unreasonable impact upon the sites ability to continue to share views to and from public and private properties. The submissions received have not raised concern regarding view loss.

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.

D8 Privacy

Merit consideration

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

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

  Comment:

  The previously approved balconies on the first and second floor levels are proposed to be increased in depth by 500 millimetres. No privacy screens were approved previously, nor are privacy screens proposed under this modification application. Notwithstanding, to ensure a reasonable level of privacy is maintained, a condition shall be recommended to ensure a privacy screen of 1.65 metres is erected along the western elevation of the first floor and second floor balconies due to the overlooking into the main private open space of 15 Curl Curl Parade. A privacy screen was considered to be erected along the eastern elevation, however, there is no unreasonable privacy impact upon 9 Curl Curl Parade as the subject site looks over the roof of the dwelling at 9 Curl Curl Parade, as indicated in the figures below.

Figure 10. Standing view from the first floor level balcony, facing east.

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

  Comment:

  The proposed development results in an overall contemporary building design that will successfully improve the existing urban environment.

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

  Comment:

  The proposed development ensures an appropriate level of person and property security is maintained for the occupants of the subject site and any visitors to 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.

D9 Building Bulk

Detailed description

This control requires the following:

1. Side and rear setbacks are to be progressively increased as wall height increases.
2. Large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief.
3. On sloping land, the height and bulk of development (particularly on the downhill side) is to be minimised, and the need for cut and fill reduced by designs which minimise the building footprint and allow the building mass to step down the slope. In particular:
The amount of fill is not to exceed one metre in depth.
Fill is not to spread beyond the footprint of the building.
Excavation of the landform is to be minimised.
4. Building height and scale needs to relate to topography and site conditions.
5. Orientate development to address the street.
6. Use colour, materials and surface treatment to reduce building bulk.
7. Landscape plantings are to be provided to reduce the visual bulk of new building and works.
8. Articulate walls to reduce building mass.

Comment:
Amended plans were received which increased the eastern side setback to the second floor level so as to create articulation to the built form and to avoid continuous wall planes. No works are proposed on the basement levels, therefore the existing topography and site conditions will be retained. The proposal is appropriately orientated towards the street frontage. Due to the siting of the existing dwelling, and the narrowness of the site, landscape plantings to visually reduce the bulk and scale of the building cannot be undertaken. However, the proposal includes a planter box to the roof of the garage, which will visually enhance the built form.

Merit consideration

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

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

  Comment:

  The bulk and scale of the proposal is consistent with the type of development that can be reasonably expected on the site. In addition, the proposed works (as amended) is articulated and utilises contrasting materials to provide a good design that will improve the urban environment.

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

Comment:

The development is adequately separated from property boundaries and incorporates an appropriate design, which minimises the visual impact of the development when viewed from the public domain or adjoining properties. As detailed above, landscaping cannot be included within the front setback area. However, the proposed planter box on the garage enhances the natural amenity of the streetscape and will contribute to softening the built form.

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.

D10 Building Colours and Materials

A colour and finishes schedule has not been provided with this modification application. However, the 3D Perspectives (as shown on drawings no. DA605, DA606, DA607 and DA608) show a colour scheme of black paneling to the second floor addition, light masonry to the front entry way and khaki rendering to the garage. These colours are appropriate for the context of the subject site. However, to ensure compliance with the 3D perspectives, a condition will be recommended that ensures a colour and finishes schedule is prepared and provided for the satisfaction of the Certifier.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

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

PLANNING CONCLUSION

This modification application seeks consent to modify Development Consent DA2001/1116 which granted consent for alterations and additions to extend first floor and to add new attic level.

The concerns raised in the objections have been addressed within the assessment report. The issues raised did not warrant amended plans or specific recommended conditions.

The critical assessment issues include Clause 4.3 of the WLEP 2011; and B1 Wall Heights, B3 Side Boundary Envelope, B5 Side Boundary Setbacks, B7 Front Boundary Setbacks, D8 Privacy, D9 Building Bulk and D10 Building Colours and Materials.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for **approval**.
It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2024/0032 for Modification of Development Consent DA2001/1116 granted for Alterations and Additions Extend First Floor and ADD New Attic Level on land at Lot 78 DP 5539,11 Curl Curl Parade, CURL CURL, subject to the conditions printed below:

Modification Summary

The development consent is modified as follows:

MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
Mod2024/0032 PAN-408197	The date of this notice of determination	Modification of Development Consent DA2001/1116 granted for alterations and additions to extend the first floor and add new attic level **Amended Conditions** Condition 1. Add Condition 28. Privacy Screen
2001/1116 MOD 2	6 April 2006	Modification of Development Consent No. 2001/1116DA **Amended Conditions** Condition 1. **Added Conditions** Condition 1b.
2001/1116 MOD 1	5 May 2005	Modification of Development Consent DA (Mod1) for 2001/1116DA for alterations and additions to existing dwelling. **Amended Conditions** Condition No. 1 **Added Conditions** Condition 17 Copy of plans on site Condition 18 Work Cover Condition 19 Toilet Facilities Condition 20 Waste Containers or "skips" Condition 21 Demolition Condition 22 House of demolition Condition 23 Demolition and asbestos Condition 24 Installation of air conditioning Condition 25 Roofing Materials - Reflectivity Condition 26 Stormwater Disposal Condition 27 Screening of subfloor

Modified conditions

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

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

Approved Plans				
Plan Number	**Revision Number**	**Plan Title**	**Drawn By**	**Date of Plan**

DA102	DA-RFI 2	Site Plan, Analysis & Roof Plan	Andy's Home Design Pty Ltd	14 May 2024
DA203	DA - RFI 2	Exist/Demo First Floor	Andy's Home Design Pty Ltd	14 May 2024
DA204	DA - RFI 2	Exist/Demo Roof	Andy's Home Design Pty Ltd	14 May 2024
DA304	DA - RFI 2	Ground Floor - Proposed	Andy's Home Design Pty Ltd	14 May 2024
DA306	DA - RFI 2	First Floor - Proposed	Andy's Home Design Pty Ltd	14 May 2024
DA308	DA - RFI 2	Second Floor - Proposed	Andy's Home Design Pty Ltd	14 May 2024
DA310	DA - RFI 2	Roof Plan - Proposed	Andy's Home Design Pty Ltd	14 May 2024
DA400	DA - RFI 2	Section 1	Andy's Home Design Pty Ltd	14 May 2024
DA401	DA - RFI 2	Section 2	Andy's Home Design Pty Ltd	14 May 2024
DA500	DA - RFI 2	North Elevations Existing/Demo	Andy's Home Design Pty Ltd	14 May 2024
DA502	DA - RFI 2	North Elevation - Proposed	Andy's Home Design Pty Ltd	14 May 2024
DA503	DA - RFI 2	East Elevation Existing/Demo	Andy's Home Design Pty Ltd	14 May 2024
DA505	DA - RFI 2	East Elevation - Proposed	Andy's Home Design Pty Ltd	14 May 2024
DA506	DA - RFI 2	South Elevations	Andy's Home Design Pty Ltd	14 May 2024
DA507	DA - RFI 2	West Elevation Existing/Demo	Andy's Home Design Pty Ltd	14 May 2024
DA509	DA - RFI 2	West Elevation - Proposed	Andy's Home Design Pty Ltd	14 May 2024
DA610	DA - RFI 2	Material Selection	Andy's Home Design Pty Ltd	14 May 2024

Approved Reports and Documentation			
Document Title	**Version Number**	**Prepared By**	**Date of Document**
DA105 - Site Management & Stormwater Concept Plan	DA - RFI 2	Andy's Home Design Pty Ltd	14 May 2024
Preliminary Geotechnical Assessment (reference: J5296)	-	White Geotechnical Group	31 January 2024
BASIX Certificate A1375593_02	-	Andy's Home Design Pty Ltd	22 November 2023

Waste Management Plan	-	Andy Seller	24 January 2024

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

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

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

B. Add Condition 28. Privacy Screen to read as follows:

A 1.65 metre privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost western edge of the balcony on the first floor level located off the living area as shown on the approved plans, and another 1.65 metre high privacy screen (measured from the finished floor level) is to be erected for the entire length of the outermost western edge of the balcony on the second floor level located off the master bedroom as shown on the approved plans. The privacy screens shall be of fixed panels or louver style construction (with a minimum spacing of 10mm, but no more than 20mm), in materials that complement the design of the approved development.

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

Reason: In order to maintain privacy to the adjoining / nearby property.

A3

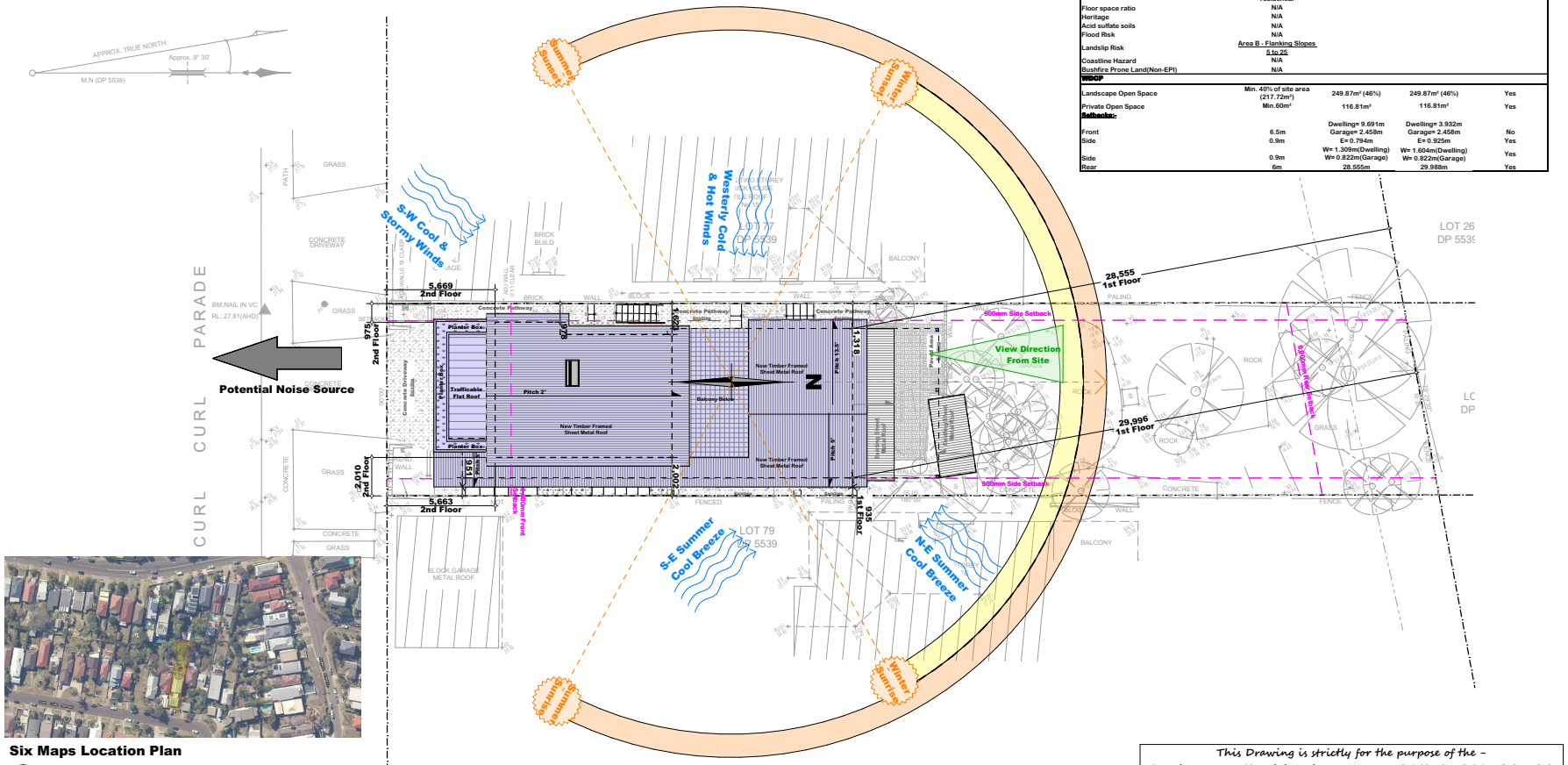
NOTE
-The Builder shall check all dimensions and levels on site prior to construction. Notify any errors, discrepancies or omissions to the building designer. Refer to written dimensions only. Do not scale drawings. Drawings shall not be used for construction purposes until issued for construction. This drawing reflects a design by Andy's Home Design and is to be used only for work when authorised in writing by Andy's Home Design.
-All boundaries and contours are subject to survey drawing DA102. All levels to Australian Height Data. It is the contractors responsibility to confirm all measurements on site and locations of any services prior to work on site.
-All documents here within are subject to Australian Copyright Laws.

Development Application - Project Curl Curl - Alterations & Additions

11 Curl Curl Parade, Curl Curl 2096 , NSW
Northern Beaches Council

Site Area = 544.3m² — **Lot 78 - DP 5539**

Planning Controls	Applied/Required	Existing	Proposed	Compliance
WLEP				
Min. Lot Size	450m²	544.3m²	Remains as is	Yes
Height of buildings	8.5m	9.13m	11.737m	No
Land Zone	R2- Low density residential	R2	Remains as is	Yes
Floor space ratio	N/A			
Heritage	N/A			
Acid sulfate soils	N/A			
Flood Risk	N/A			
Landslip Risk	Area B - Flanking Slopes 5 to 25			
Coastline Hazard	N/A			
Bushfire Prone Land(Non-EPI)	N/A			
WDCP				
Landscape Open Space	Min. 40% of site area (217.72m²)	249.87m² (46%)	249.87m² (46%)	Yes
Private Open Space	Min.60m²	116.81m²	116.81m²	Yes
Setbacks:-				
Front	6.5m	Dwelling= 9.691m Garage= 2.458m	Dwelling= 3.932m Garage= 2.458m	No
Side	0.9m	E= 0.794m	E= 0.925m	Yes
Side	0.9m	W= 1.309m(Dwelling) W= 0.822m(Garage)	W= 1.604m(Dwelling) W= 0.822m(Garage)	Yes
Rear	6m	28.555m	29.988m	Yes



Six Maps Location Plan

Site Plan, Analysis & Roof Plan

1:200

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This Drawing is strictly for the purpose of the -
Section 4.55 Modification to DEVELOPMENT APPLICATION 2001/116DA Dated:06-12-2001
NOT FOR CONSTRUCTION

LEGEND

DA Approved	Proposed Modification Work	Demolition	Existing/ Remains as is
Existing	Masonry	Concrete	Roof Above
Demolished	Timber	Concrete Block	Strutcure Above/ Below

PROJECT NORTH

Andy's Home Design PTY LTD
Director: Andy Seller
ABN: 32 624 682 024
0430-592-043
info@andyshome.design

PRAWING TITLE : SITE PLANS
Site Plan, Analysis & Roof Plan

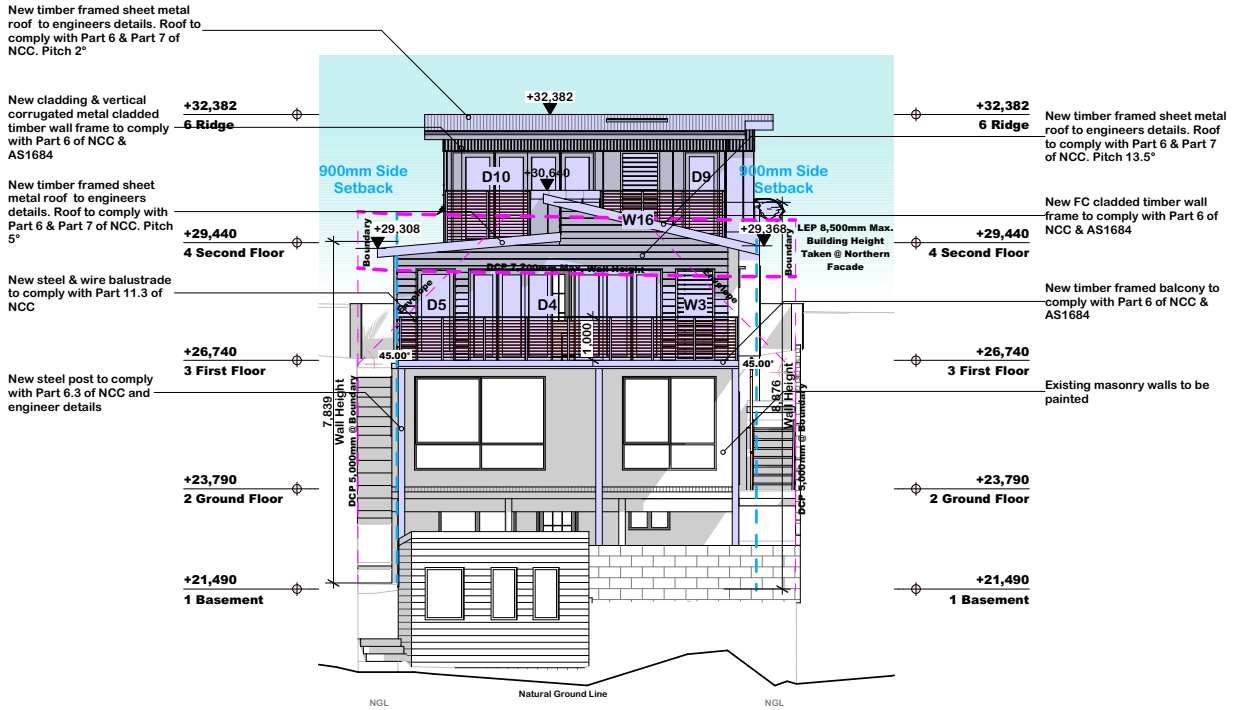
SITE : LOT 78 D.P. 5539
11 CURL CURL PARADE CURL CURL NSW 2096

Drawn. | Checked	Andy Seller |
Publish Date:	14/05/2024
Project Status	Section 4.55 Development Application
Client	LAURA MITRE-FLOWER
Project NO.	11AHD0623
Revision NO.	DA - RFI 2

ANDY'S HOME DESIGN

PROJECT NAME : Project Curl Curl
DRAWING NO. DA102

A3



E-01 **North Elevation - Proposed**
1:100

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Section 4.55 Modification to DEVELOPMENT APPLICATION 2001/116DA Dated:06-12-2001
NOT FOR CONSTRUCTION

LEGEND

DA Approved	Proposed Modification Work	Demolition	Existing/ Remains as is
Existing	Masonry	Concrete	Roof Above
Demolished	Timber	Concrete Block	Strutcure Above/ Below

PROJECT NORTH

Andy's Home Design PTY LTD
Director: Andy Seller
ABN: 32 624 682 024
0430-592-043
info@andyshome.design

PRAWING TITLE : ELEVATIONS
North Elevation - Proposed

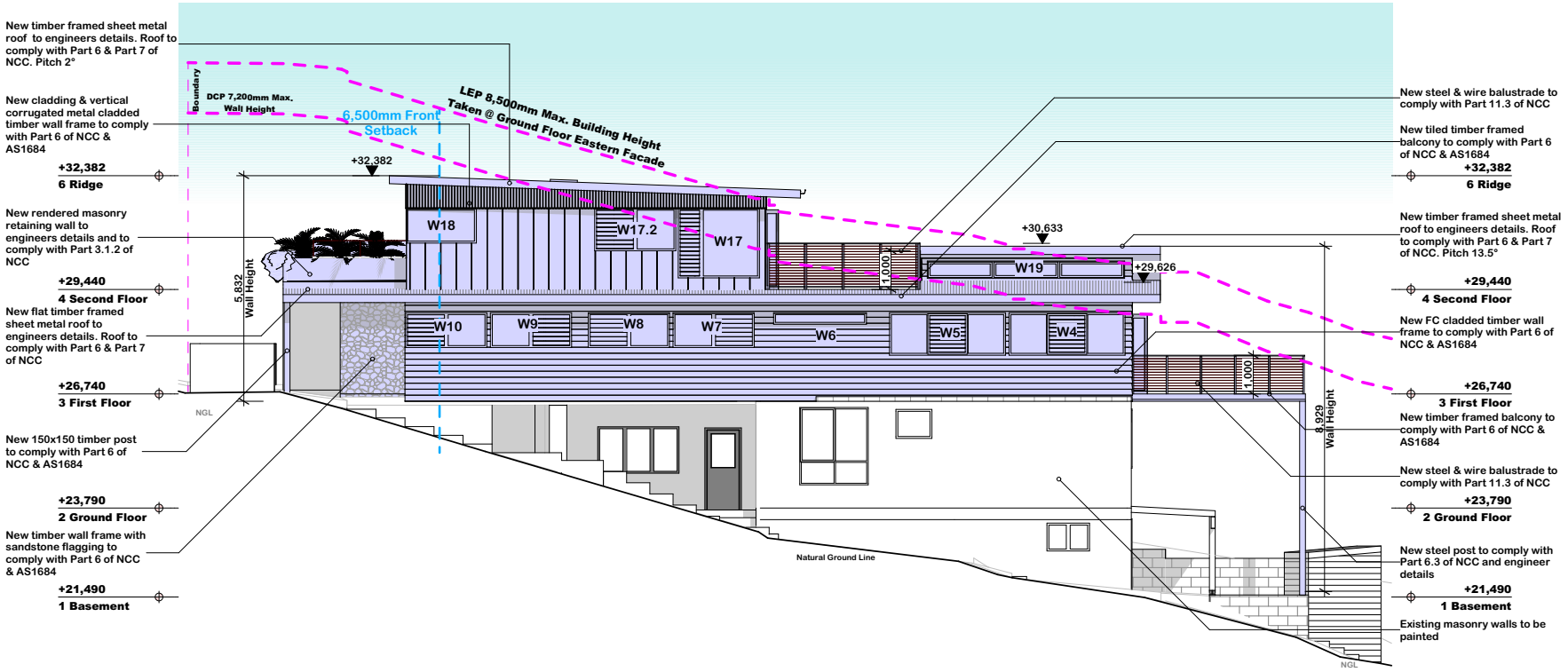
SITE : LOT 78 D.P. 5519
11 CURL CURL PARADE CURL CURL NSW 2096

Drawn | Checked	Andy Seller |
Publish Date:	14/05/2024
Project Status	Section 4.55 Development Application
Client	LAURA MITRE-FLOWER
Project NO.	11AHD0623
Revision NO.	DA - RFI 2

ANDY'S HOME DESIGN

PROJECT NAME : Project Curl Curl
DRAWING NO. DA502

A3



E-02 **East Elevation - Proposed**

1:100

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Section 4.55 Modification to DEVELOPMENT APPLICATION 2001/116DA Dated:06-12-2001

NOT FOR CONSTRUCTION

LEGEND

DA Approved	Proposed Modification Work	Demolition	Existing/ Remains as is
Existing	Masonry	Concrete	Roof Above
Demolished	Timber	Concrete Block	Strutcure Above/ Below

PROJECT NORTH

Andy's Home Design PTY LTD
Director: Andy Seller
ABN: 32 624 682 024
0430-592-043
info@andyshome.design

PRAWING TITLE : ELEVATIONS
East Elevations - Proposed

SITE : LOT 78 D.P. 5519
11 CURL CURL PARADE CURL CURL NSW 2096

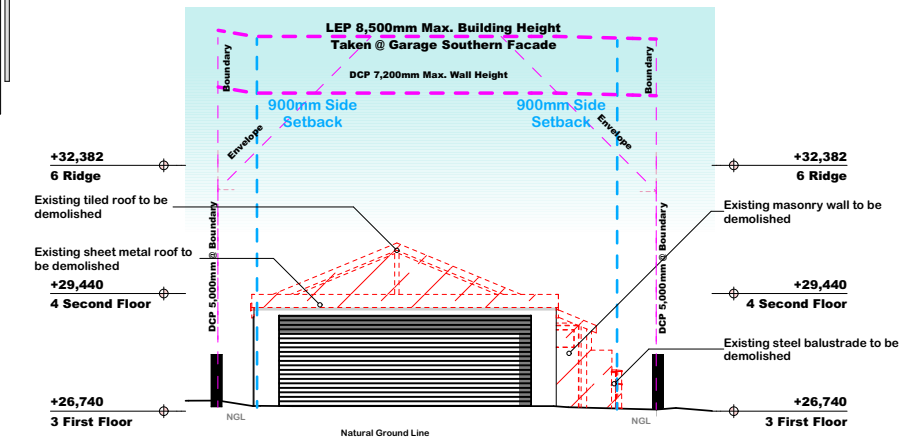
Drawn. | Checked	Andy Seller |
Publish Date:	14/05/2024
Project Status	Section 4.55 Development Application
Client	LAURA MITRE-FLOWER
Project NO.	11AHD0623
Revision NO.	DA - RFI 2

ANDY'S HOME DESIGN

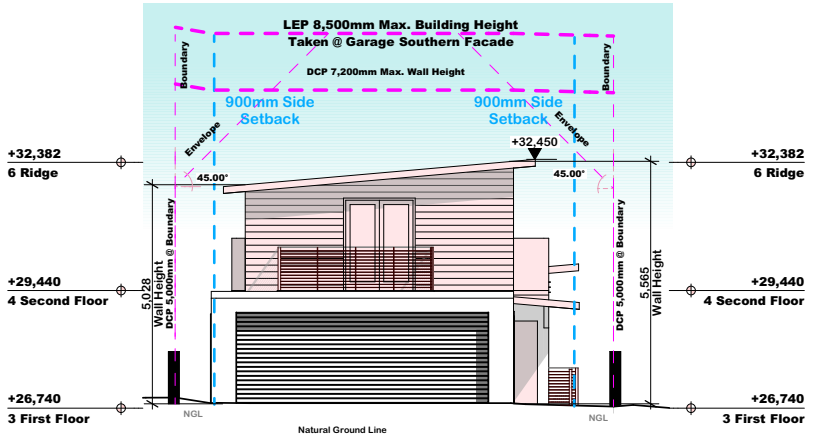
PROJECT NAME : Project Curl Curl

DRAWING NO. DA505

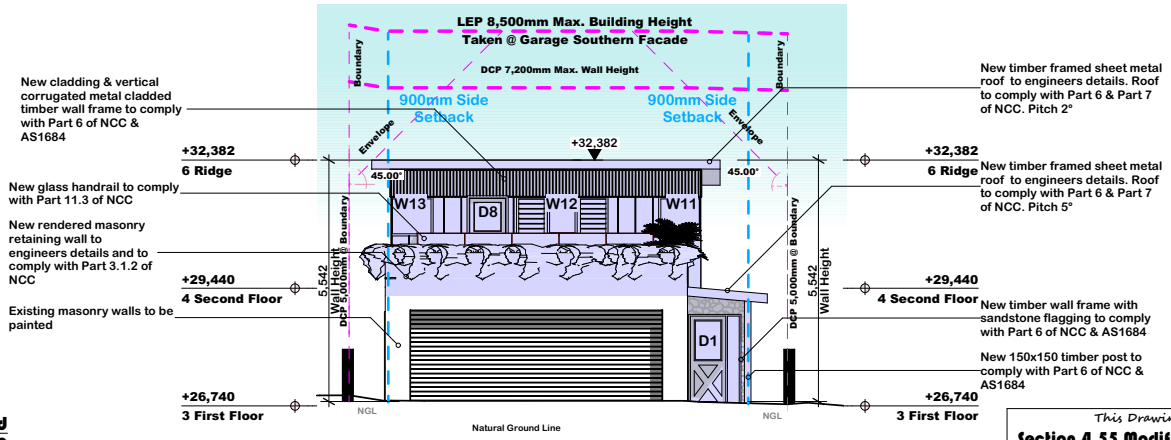
A3



E-03 **South Elevation - Existing/Demo**
1:100



E-03 **South Elevation - Approved**
1:100



E-03 **South Elevation - Proposed**
1:100

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Section 4.55 Modification to DEVELOPMENT APPLICATION 2001/116DA Dated:06-12-2001
NOT FOR CONSTRUCTION

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LEGEND

DA Approved	Proposed Modification Work	Demolition	Existing/ Remains as is
Existing	Masonry	Concrete	Roof Above
Demolished	Timber	Concrete Block	Strutcure Above/ Below

PROJECT NORTH

Andy's Home Design PTY LTD
Director: Andy Seller
ABN: 32 624 682 024
0430-592-043
info@andyshome.design

PRAWING TITLE : ELEVATIONS
South Elevations

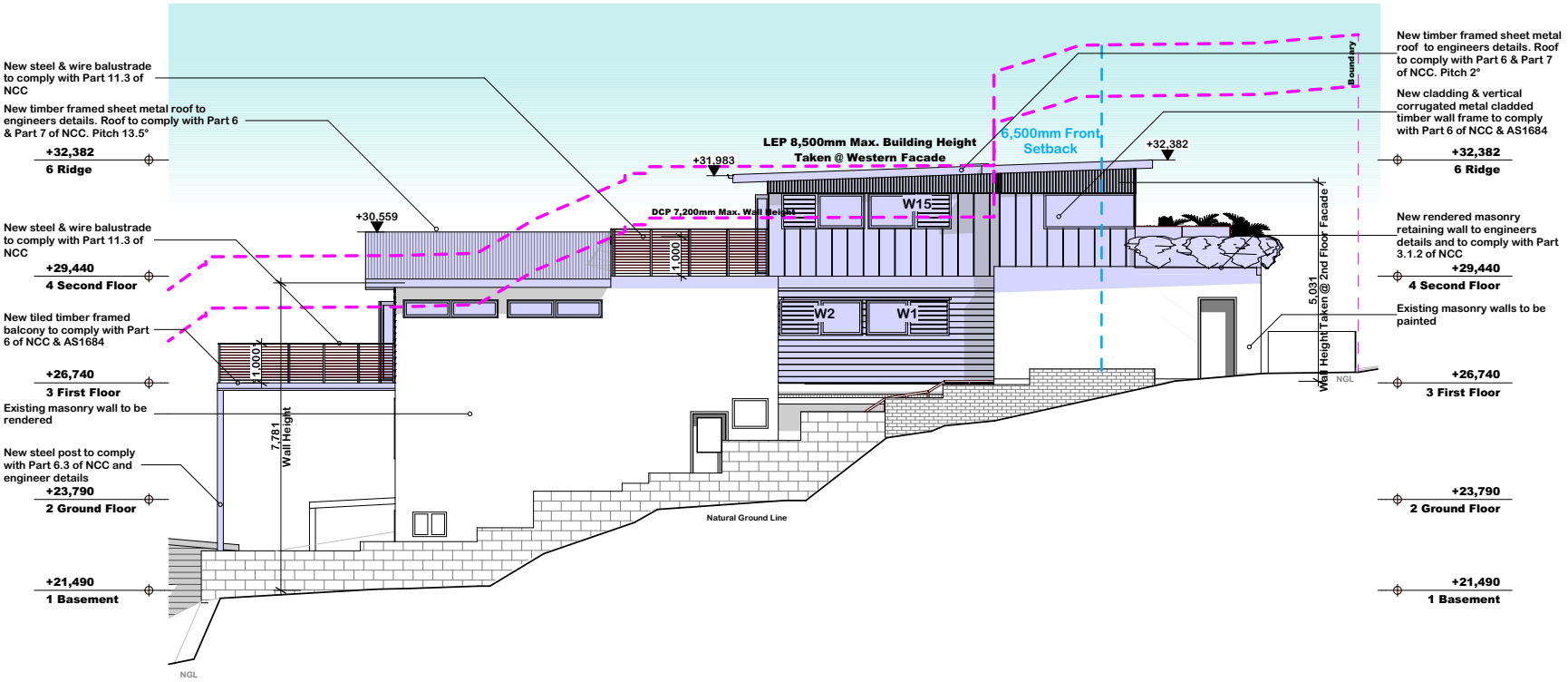
SITE : LOT 78 D.P. 5519
11 CURL CURL PARADE CURL CURL NSW 2096

Drawn | Checked	Andy Seller |
Publish Date:	14/05/2024
Project Status	Section 4.55 Development Application
Client	LAURA MITRE-FLOWER
Project NO.	11ANHD0623
Revision NO.	DA - RFI 2

ANDY'S HOME DESIGN

PROJECT NAME : **Project Curl Curl**
DRAWING NO. **DA506**

A3



E-04 **West Elevation - Proposed**

1:100

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Section 4.55 Modification to DEVELOPMENT APPLICATION 2001/116DA Dated:06-12-2001

NOT FOR CONSTRUCTION

LEGEND

DA Approved	Proposed Modification Work	Demolition	Existing/ Remains as is
Existing	Masonry	Concrete	Roof Above
Demolished	Timber	Concrete Block	Strutcure Above/ Below

PROJECT NORTH

Andy's Home Design PTY LTD
Director: Andy Seller
ABN: 32 624 682 024
0430-592-043
info@andyshome.design

PRAWING TITLE : ELEVATIONS
West Elevations - Proposed

SITE : LOT 78 D.P. 5519
11 CURL CURL PARADE CURL CURL NSW 2096

Drawn | Checked	Andy Seller |
Publish Date:	14/05/2024
Project Status	Section 4.55 Development Application
Client	LAURA MITRE-FLOWER
Project NO.	11AHD0623
Revision NO.	DA - RFI 2

ANDY'S HOME DESIGN

PROJECT NAME : Project Curl Curl

DRAWING NO. DA509

ITEM 3.8 REV2024/0011 - 11 WEARDEN ROAD BELROSE - REVIEW OF DETERMINATION OF APPLICATION DA2023/1442 CONSTRUCTION OF A RETAINING WALL

PURPOSE

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

RECOMMENDATION

THAT Council as the consent authority **approves** Development Consent to REV2024/0011 for Review of Determination of Application DA2023/1442 Construction of a retaining wall on land at Lot 12 DP 865697, 11 Wearden Road BELROSE, subject to the conditions set out in the Assessment Report.

Reporting manager	Steve Findlay
TRIM file ref	2024/398534
Attachments	⇩1 Assessment Report ⇩2 Site Plan and Elevations

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2024/0011

Responsible Officer:	Dean Pattalis
Land to be developed (Address):	Lot 12 DP 865697, 11 Wearden Road BELROSE NSW 2085
Proposed Development:	Review of Determination of Application DA2023/1442 Construction of a retaining wall
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:	Aadam Shalla
Applicant:	Joobin Hooshmand

Application Lodged:	19/04/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	26/04/2024 to 10/05/2024
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	$ 57,000.00

EXECUTIVE SUMMARY

This is a review of determination of a development application, which was refused for the construction of boundary retaining walls and fencing.

This application is a 'Review of Determination' pursuant to Division 8.2 of the EP&A Act 1979. The application being reviewed is DA2023/1442 which was refused by Council on 23 February 2024.

The application is referred to the Development Determination Panel (DDP) in accordance with Council's adopted charter which requires any Review of Determination under Section 8.2 for a

development application previously determined by the DDP, its previous equivalent panel, or by a Manager, to be referred to the DDP.

The applicant has provided amendments to the application as part of the review application in order to address the original reasons for refusal, which primarily related to insufficient plan details to be able to complete a proper assessment. These changes include updated site, elevation and section plans which are clearly labelled, scaled and contain RL levels as well as existing ground levels.

Critical assessment issues include compliance with the relevant WDCP 2011 controls for Front, Side and Rear Fences which are addressed within this report and considered acceptable on merit.

One (1) submission was received during the community notification period which has been addressed within the relevant section of this report and which raised concerns regarding an existing and ongoing Council compliance investigation.

This report concludes with a recommendation that the DDP should alter the original decision to refuse the development application to approval, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

This application is a 'Review of Determination' pursuant to Division 8.2 of the EP&A Act 1979.

The application being reviewed is DA2023/1442, which was refused by Council on 23 February 2024.

Proposal

The development application seeks consent for the construction of a boundary retaining wall and fence between No.11 Wearden Road and No.6 The Glade, Belrose.

The wall and fence replaces a previously existing wall and fence which recently collapsed.

An additional wall and fence is also proposed which offshoots from the main wall and separates No.11 Wearden Road and No.13 Towarri Place.

No change is proposed to any existing dwellings, buildings or built form.

Changes from original DA2023/1442

This application is a review of determination of DA2023/1442 and the following changes have been made from the previous proposal:

- *New site, elevation and section plans have been provided which are scaled, clearly labelled and illustrate the existing/proposed RL levels of the fencing and existing ground level.*

- *An Arborist Report and Structural Engineering Design Certificate were also provided under the original application to satisfy the Landscape Referral and Geotechnical Reporting requirements of the original RFI.*

Further Information

Further information was requested during the assessment process and provided by the applicant which illustrated the outline of the existing (collapsed) boundary fence on the western elevation plan in comparison to the proposed fence.

A new south elevation plan was also provided which illustrated the wall between No.11 Wearden/No.13 Towarri and reduced the size of the wall to 1.8m.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 8.3 - Environmental Planning and Assessment Act 1979 - Section 8.3
Warringah Development Control Plan - D13 Front Fences and Front Walls
Warringah Development Control Plan - D15 Side and Rear Fences

SITE DESCRIPTION

Property Description:	Lot 12 DP 865697 , 11 Wearden Road BELROSE NSW 2085
Detailed Site Description:	The proposed retaining wall is to be located along the boundaries of the following properties: • 6 The Glade, Belrose • 11 Wearden Rd, Belrose • 13 Towarri Place, Belrose. All three properties are located within the R2 Low Density Residential Zone under the Warringah Local Environmental Plan 2011.

Map:

SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

DA2023/1442 for Construction of a retaining wall was refused under delegation on 23/02/2024

The application for construction of retaining wall and fencing was refused by Council as a result of insufficient information being provided.

The Reasons for Refusal were as follows:

1. Pur*suant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 6.2 Earthworks of the Warringah Local Environmental Plan 2011.*

2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 6.4 Development on Sloping Land of the Warringah Local Environmental Plan 2011.

3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D7 Views of the Warringah Development Control Plan.

4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D15 Side and Rear Fences of the Warringah Development Control Plan.

5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause E10 Landslip Risk of the Warringah Development Control Plan.

Request for Information (DA2023/1442)

A Request for Further Information was submitted to the applicant advising insufficient detail had been provided on the proposed architectural plans and therefore Council was not able to proceed with their assessment. These details included appropriate scaling, labelling, as well as RL levels of the proposed fencing and existing ground level.

The applicant provided amended documentation which was not considered to respond adequately to the above concerns. The assessment officer was therefore not able to properly determine the impacts of the proposal or its compliance with the provisions of the WLEP 2011 or WDCP 2011.

However, as per correspondence provided to the applicant, additional concerns in the RFI in relation to Geotechnical Reporting and Landscape Referral requirements, were suitably addressed in the amended response to Council's satisfaction.

The review application has now been subsequently lodged with improved plan details.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:
In accordance with Section 8.3 of the Act, an applicant may request Council to review a determination of a development application, other than for a complying development, integrated development, designated development or a determination made by Council in respect to an application by the Crown.

The development application does not fall into any of these categories, therefore the applicant may request a review.

In accordance with Section 8.3 (2) of the Act, the request for the review must be made and determined within **6 months** after the date of determination of the development application. The application was determined on 23 February 2024 and the notice of determination was issued on 26 February 2024. The review was lodged on 17 April 2024 and is to be considered by 23 August 2024, which is within 6 months of the date of determination.

Section 8.3 (3) provides that the Council may review a determination if in the event that the applicant has made amendments to the development described in the original application, the consent authority is satisfied that the development, as amended, is substantially the same as the development described in the original application.

The amendments to the proposal are outlined in the "*Detailed Description of Works*" section of this report.

A review of the original and amended plans has found that there are fundamental similarities between the original and the amended design (being subject of the 8.3 review) and the nature of the intended land use remains the same.

Therefore, it is concluded that the amended scheme is substantially the same as the original proposal.

Accordingly, it is considered that the proposal satisfies the requirement of Section 8.3 (3) of the Act.
EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 26/04/2024 to 10/05/2024 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:
Mrs Patricia Frances Shearer	5 The Glade BELROSE NSW 2085

One (1) submission was made during the community notification period and the following concerns were raised:

- **Existing Compliance Action**

Comment:

Concern was raised regarding an existing Council compliance investigation in relation to a boundary retaining wall and fence between No.6 The Glade and No.5 The Glade, Belrose (EPA2023/0040). It is advised this investigation is ongoing, and that application is not specifically relevant to this development application. The customer is advised to contact Council's Customer Service Team regarding the status of the investigation.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	**Supported** The Landscape Referral Response is assessed by an Alternate Officer for this review application. The proposal includes retaining walling along the boundary in proximity to a existing endemic Swamp Mahogany tree that is located within adjoining property at 13 Towarri Place, and aa Arboricultural impact Assessment (AIA) is submitted advising that the proposed works are calculated at an encroachment of approximately 3%, which is considered to be minor and manageable with supervision of any excavation works by a Project Arborist. The AIA report provides recommendations including works under a Tree Protection Plan and tree protection measures, and conditions shall be imposed.

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.

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

Compliance Assessment

Clause	Compliance with Requirements
6.2 Earthworks	Yes

Warringah Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D8 Privacy	Yes	Yes
D13 Front Fences and Front Walls	Yes	Yes
D15 Side and Rear Fences	No	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

D13 Front Fences and Front Walls

The control requires fences, including side fences, located within the street setback area are to be compatible with the existing streetscape character.

As per the proposed western elevation plan (Drawing No. DA.2.100 Revision 03), the portion of the fence which is located inside the front setback area is consistent with the height of the previous fence prior to collapse. The top of the fence shall also match with the top of the existing front boundary brush fence of No.11 Wearden Road which connects to the proposed fence. This is confirmed via the street

view image below which illustrates the fence prior to collapse.

Given the front portion of the fence shall maintain visual consistency with the prior collapsed fence as well as the existing front boundary fence of No.11, the proposal is considered to be compatible with the existing streetscape character.

Figure 1: Boundary fence prior to collapse of the fence as viewed from street. No.6 The Glade located to the left and No.11 Wearden located up-slope to the right.

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 fencing, terracing and retaining walls are compatible with the existing streetscape character while creating visual interest in the public domain.*

  Comment:

  The fence is considered compatible with the existing streetscape character and will provide for a high visual quality within the public domain.

- *To encourage innovative design solutions to improve the urban environment.*

  Comment:

  The design of the fence is appropriate and of high-quality and that will improve the urban environment.

- *To avoid a 'walled in' streetscape.*

  Comment:

The front fence will avoid a 'walled in' streetscape.

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.

D15 Side and Rear Fences

The control states that generally, side and rear boundary fences are to be no higher than 1.8m on level sites, or 1.8m measured from the low side where there is a difference in either side of the boundary. The proposed boundary wall separating No.11 Wearden Road and No.6 The Glade proposes a maximum height of up to 4.0m, which does not comply with the control.

The proposed boundary fence between No.11 Wearden Road and No.13 Tolwarri Place complies numerically with the control.

Merit Consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

To encourage innovative design solutions to improve the urban environment.

Comment:

As per the western elevation plan, the proposed boundary fence exceeds the maximum height of the collapsed wall by 400mm and results in a maximum height of 4.0m. The non-compliance is a result of the significant easterly slope between the two properties, and therefore whole compliance with the control would result in an unreasonable visual privacy outcome and overlooking opportunities from No.11 Wearden Road into No. 6 The Glade.

The proposed retaining wall and fencing has adopted the geotechnical recommendations of the report prepared by JK Geotechnics which has resulted in a minor increase to the height of the wall to protect against a future wall failure as has already occurred. In addition, the height of the fencing is considered to provide adequate visual privacy protection due to the sloping topography of the respective allotments.

Furthermore, the portion of the fence which exceeds the height of the collapsed fence, is located at the central area of the boundary which is not readily visible from the streetscape and will not create an unreasonable visual impact. As discussed under Clause D13, the presentation of the proposed fence to the streetscape is considered reasonable.

Therefore, the proposed fence is considered to upgrade the prior side boundary arrangement, and allows for increased privacy to the respective allotments.

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.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

As the estimated cost of works is less than $100,001.00 the policy is not applicable to the assessment of this application.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

PLANNING CONCLUSION

This is a review of determination of the refusal of DA2023/1442 for the construction of boundary retaining walls and fencing and has been referred to the Development Determination Panel (DDP) for determination due to the delegations for a Review of Determination lodged pursuant to Section 8.2 for a development application, which was previously determined by the DDP, its previous equivalent panel, or by a Manager, to be referred to the DDP.

The main assessment issue is concerning compliance with the WDCP 2011 provisions for front, side

and rear fencing have been addressed within this report.

The concerns raised in the objection in regards to an ongoing compliance matter have been addressed.

The proposal has satisfactorily addressed the Reasons for Refusal as outlined in this report and the original decision to refuse the application should be altered to an approval.

Therefore, the application is recommended for approval.
It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to REV2024/0011 for Review of Determination of Application DA2023/1442 Construction of a retaining wall on land at Lot 12 DP 865697, 11 Wearden Road, BELROSE, 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.1.100	3	Site Plan	Daniel Beatty	21 May 2024
DA.2.100	3	West Elevation	Daniel Beatty	21 May 2024
DA.2.101	0	South Elevation	Daniel Beatty	21 May 2024
DA.3.100	3	Section A	Daniel Beatty	21 May 2024
DA.3.101	3	Section B & C	Daniel Beatty	21 May 2024

Approved Reports and Documentation			
Document Title	**Version Number**	**Prepared By**	**Date of Document**
Arboricultural Impact Assessment	2	Heartwood Tree Consulting	16 April 2024

Site Report	-	JK Geotechnics	16 June 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	15 May 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) Construction certificate plans are to be in accordance with all finished levels identified on approved plans. Notes attached to plans indicating tolerances to levels are not approved.

(c) 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.

(d) At all times after the submission of 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.

(e) 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.

(f) 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.

(g) 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.

(h) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

(i) 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.

(j) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(k) 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.

(l) 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.

(m) 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.

(n) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

(o) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

(1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools

(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

(2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

(3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

(4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

FEES / CHARGES / CONTRIBUTIONS

5. **Security Bond**

A bond (determined from cost of works) of $2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve

adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the Certifier prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at www.northernbeaches.nsw.gov.au).

Reason: To ensure adequate protection of Council's infrastructure.

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

6. **Stormwater 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.

7. **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.

8. **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.

9. **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.

10. **Compliance with Standards**
The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

11. **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 near tree 1 as nominated in the Arboricultural Impact Assessment, and in particular:
a) works under section 4 - Specifications,
b) works under Appendix 2 - Tree Protection Plan, including tree protection fencing, excavations, site inspections and schedule of work.

All tree protection measures specified 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. The Project Arborist shall provide certification to the Certifier that all tree protection measures under AS4970-2009 have been satisfied, and the recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

Note:
Any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

Reason: Tree protection.

DURING BUILDING WORK

12. **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 arboricultural works listed in a) and b) are undertaken as complaint to AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment and/or Project Arborist as applicable.

Reason: Tree and vegetation protection.

13. **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.

14. **Survey Certificate**
A survey certificate prepared by a Registered Surveyor is to be provided demonstrating the boundary wall and fence are in accordance with the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier when the structure is complete.

Reason: To demonstrate the proposal complies with the approved plans.

15. **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

16. **Condition of Retained Vegetation**
Prior to the issue of an Occupation Certificate, a report prepared by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Principal Certifier, assessing the health and impact on all existing trees required to be retained 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.

17. **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.

18. **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.

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.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

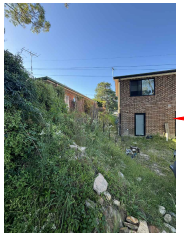
20. **Geotechnical Recommendations**
Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be

maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

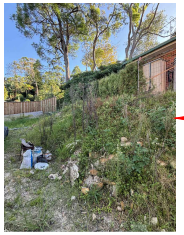
NOTE* EXISTING SITE CONDITIONS IS THE RESULT OF BACKFILLING TO CONTROL FURTHER DAMAGE AND SLIPPAGE OF LAND

IMAGE 1
EXISTING SITE CONDITIONS



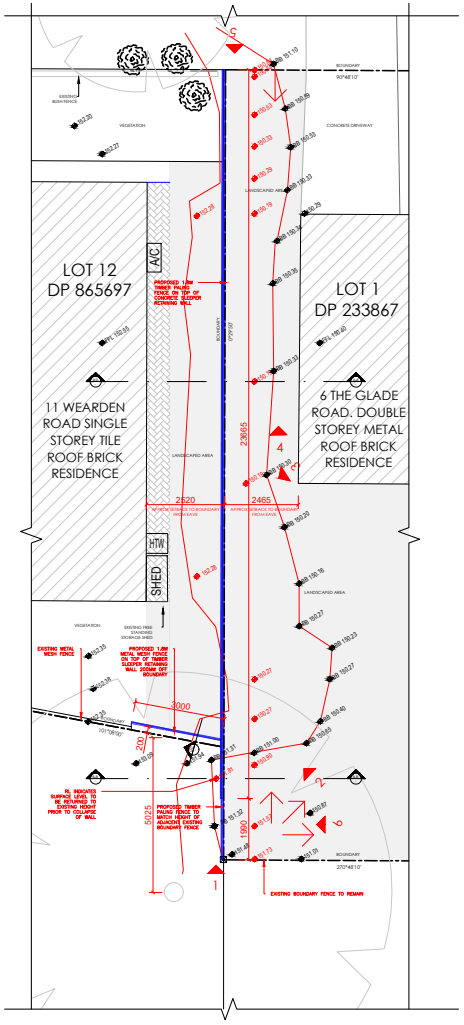
NOTE* EXISTING SITE CONDITIONS IS THE RESULT OF BACKFILLING TO CONTROL FURTHER DAMAGE AND SLIPPAGE OF LAND

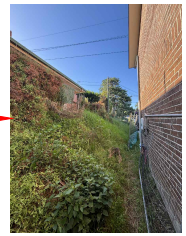
IMAGE 2
EXISTING SITE CONDITIONS



NOTE* EXISTING SITE CONDITIONS IS THE RESULT OF BACKFILLING TO CONTROL FURTHER DAMAGE AND SLIPPAGE OF LAND

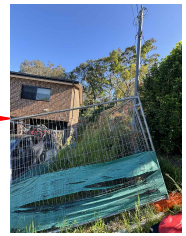
IMAGE 3
EXISTING SITE CONDITIONS





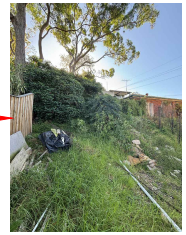
NOTE* EXISTING SITE CONDITIONS IS THE RESULT OF BACKFILLING TO CONTROL FURTHER DAMAGE AND SLIPPAGE OF LAND

IMAGE 4
EXISTING SITE CONDITIONS



NOTE* EXISTING SITE CONDITIONS IS THE RESULT OF BACKFILLING TO CONTROL FURTHER DAMAGE AND SLIPPAGE OF LAND

IMAGE 5
EXISTING SITE CONDITIONS



NOTE* EXISTING SITE CONDITIONS IS THE RESULT OF BACKFILLING TO CONTROL FURTHER DAMAGE AND SLIPPAGE OF LAND

IMAGE 6
EXISTING SITE CONDITIONS

0 1 2 3 4

NOTES:

- PROPOSED EXTENSION OF PAVING
- EXISTING PAVED AREA
- LANDSCAPED AREA
- BOUNDARY
- EXISTING TOPOGRAPHY OUTLINE
- EXTENT OF PROPOSED FENCE
- CAMERA POSITION
- EXISTING RL
- PROPOSED RL
- BB BOTTOM OF BANK
- SLOPE OF LAND

- BOUNDARIES ARE TO BE IDENTIFIED BY A REGISTERED SURVEYOR PRIOR TO CONSTRUCTION.
- DEVELOPMENT APPLICATION PLANS ARE NOT TO BE USED TO BUILD FROM.
- ALL PLANS ARE INTENDED TO BE READ IN CONJUNCTION WITH ONE ANOTHER, INCLUDING STRUCTURAL, SURVEY AND ARCHITECTURAL.
- ALL CONSTRUCTION IS TO COMPLY WITH THE LATEST NATION CONSTRUCTION CODE AND ALL RELEVANT PLANNING CONSENTS.
- ANY DISCREPANCIES IN DRAWINGS NOTED MUST MAKE THE RELEVANT PARTIES AWARE OF THE INACCURACIES.
- ALL LEVELS AND DATUMS ARE TO BE CONFIRMED ON SITE PRIOR TO CONSTRUCTION

NOTE:
ALL DIMENSIONS TO BE CONFIRMED ON SITE, DO NOT SCALE FROM DRAWING USE FIGURED DIMENSIONS. DOCUMENTATION AND DESIGN IS PROTECT BY COPYRIGHT AND NOT TO BE REPRODUCED WITHOUT CONSENT.

REV.	DESCRIPTION:	BY:	DATE:
03	ISSUE FOR DEVELOPMENT APPLICATION	DB	21.05.24
02	ISSUE FOR DEVELOPMENT APPLICATION	DB	07.04.24
01	ISSUE FOR COMMENT	DB	03.04.24

STATUS: DEVELOPMENT APPLICATION

CLIENT: AADAM SHALLA & JOOBIN HOOSHMAND

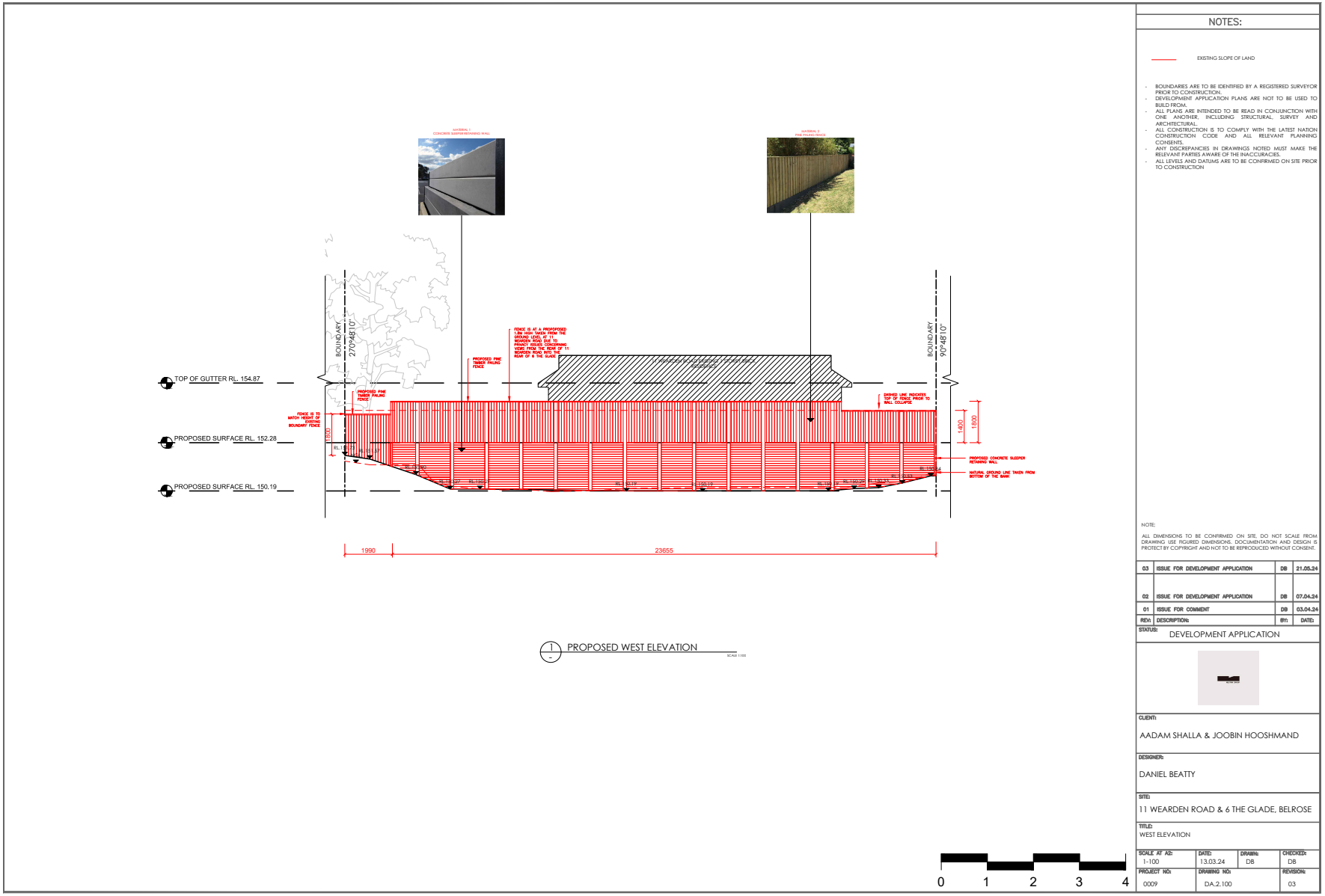
DESIGNER: DANIEL BEATTY

SITE: 11 WEARDEN ROAD & 6 THE GLADE, BELROSE

TITLE: PART SITE PLAN

SCALE AT A2:	DATE:	DRAWN:	CHECKED:
1:100	13.03.24	DB	DB

PROJECT NO:	DRAWING NO:	REVISION:
0009	DA.1.100	03



1 PROPOSED WEST ELEVATION
SCALE 1:100

0 1 2 3 4

NOTES:

EXISTING SLOPE OF LAND

- BOUNDARIES ARE TO BE IDENTIFIED BY A REGISTERED SURVEYOR PRIOR TO CONSTRUCTION.
- DEVELOPMENT APPLICATION PLANS ARE NOT TO BE USED TO BUILD FROM.
- ALL PLANS ARE INTENDED TO BE READ IN CONJUNCTION WITH ONE ANOTHER, INCLUDING STRUCTURAL, SURVEY AND ARCHITECTURAL.
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01	ISSUE FOR COMMENT	DB	03.04.24

STATUS: DEVELOPMENT APPLICATION

CLIENT: AADAM SHALLA & JOOBIN HOOSHMAND

DESIGNER: DANIEL BEATTY

SITE: 11 WEARDEN ROAD & 6 THE GLADE, BELROSE

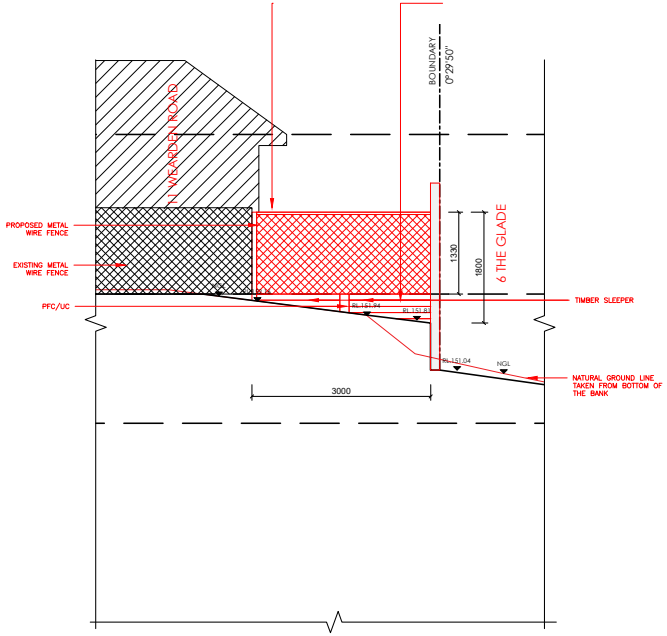
TITLE: WEST ELEVATION

SCALE AT A2:	DATE:	DRAWN:	CHECKED:
1:100	13.03.24	DB	DB
PROJECT NO:	DRAWING NO:		REVISION:
0009	DA.2.100		03

TOP OF GUTTER RL. 154.87

PROPOSED SURFACE RL. 152.28

PROPOSED SURFACE RL. 150.19



1 SOUTH ELEVATION - PROPOSED FENCE BETWEEN 13 TOWARRI & 11 WEARDEN

SCALE 1:50

0 1 2 3 4

NOTES:

EXISTING SLOPE OF LAND

- BOUNDARIES ARE TO BE IDENTIFIED BY A REGISTERED SURVEYOR PRIOR TO CONSTRUCTION.
- DEVELOPMENT APPLICATION PLANS ARE NOT TO BE USED TO BUILD FROM.
- ALL PLANS ARE INTENDED TO BE READ IN CONJUNCTION WITH ONE ANOTHER, INCLUDING STRUCTURAL, SURVEY AND ARCHITECTURAL.
- ALL CONSTRUCTION IS TO COMPLY WITH THE LATEST NATION CONSTRUCTION CODE AND ALL RELEVANT PLANNING CONSENTS.
- ANY DISCREPANCIES IN DRAWINGS NOTED MUST MAKE THE RELEVANT PARTIES AWARE OF THE INACCURACIES.
- ALL LEVELS AND DATUMS ARE TO BE CONFIRMED ON SITE PRIOR TO CONSTRUCTION

NOTE:

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REV:	DESCRIPTION:	BY:	DATE:

STATUS: DEVELOPMENT APPLICATION

CLIENT:
AADAM SHALLA & JOOBIN HOOSHMAND

DESIGNER:
DANIEL BEATTY

SITE:
11 WEARDEN ROAD & 6 THE GLADE, BELROSE

TITLE:
SOUTH ELEVATION

SCALE AT A2:	DATE:	DRAWN:	CHECKED:
1:50	21.05.24	DB	DB
PROJECT NO:	DRAWING NO:		REVISION:
0009	DA.2.101		00

ITEM 3.9 DA2024/0171 - 37 CABARITA ROAD AVALON BEACH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL AND ASSOCIATED LANDSCAPING

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 DA2024/0171 for alterations and additions to a dwelling house including a swimming pool and associated landscaping on land at Lot 37 DP 24563, 37 Cabarita Road AVALON BEACH, subject to the conditions set out in the Assessment Report.

Reporting manager	Steve Findlay
TRIM file ref	2024/398623
Attachments	⇩1 Assessment Report ⇩2 Site Plan and Elevations

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/0171

Responsible Officer:	Nick Keeler
Land to be developed (Address):	Lot 37 DP 24563, 37 Cabarita Road AVALON BEACH NSW 2107
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool and associated landscaping
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:	Matthew John Barbuto Kara Lucia Barbuto
Applicant:	Boston Blyth Fleming Pty Ltd

Application Lodged:	08/03/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	15/03/2024 to 29/03/2024
Advertised:	Not Advertised
Submissions Received:	8
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	$ 614,064.21

EXECUTIVE SUMMARY

This application seeks consent for alterations and additions to a dwelling house including a swimming pool and associated landscaping.

The application is referred to the Development Determination Panel (DDP) due to the receipt of eight (8) objections, which triggers a DDP determination.

Concerns raised in the objections predominantly relate to the potential impact the construction of the proposed development may have upon the Trappers Way private road easement. The applicant

submitted a Construction Traffic Management Plan during the assessment of the application, which was reviewed and a condition requiring the plan to be fully in accordance with Council's requirements has been imposed.

The proposed development generally complies with all development control requirements and no critical assessment issues have been identified.

This report concludes with a recommendation that the DDP should grant **approval** to the development application, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for alterations and additions to the existing dwelling including the construction of a swimming pool and pergola.

The proposed development involves the following works:

Basement Floor

- Internal reconfiguration to create a rumpus room with wet bar, bathroom and bedroom.
- This level will open out to a new terrace with access to the new pool with pergola which will be located further down the slope.
- Pool store area proposed under the studio balcony above

Ground Floor

- Internal reconfiguration to create 3 bedrooms and a studio
- Bathroom
- Laundry

First Floor

- The primary living level will include kitchen, lounge, dining and living area.
- Study
- Bathroom

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

SITE DESCRIPTION

Property Description:	Lot 37 DP 24563 , 37 Cabarita Road AVALON BEACH NSW 2107
Detailed Site Description:	The subject site consists of one (1) allotment located on the western side of Cabarita Road. The site is accessed from the rear via the Trappers Way private road. The site is irregular in shape with a frontage of 20.115m along Cabarita Road and a maximum depth of 66.295m. The site has a surveyed area of 1,190m². The site is located within the C4 Environmental Living zone and accommodates a three-storey residential dwelling house and attached carport. The site falls approx. 19.5m from the west towards the east with the slope steepest to the east of the dwelling. The site contains a large landscaped curtilage with several canopy trees, gardens and grassed areas. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by low density residential dwellings, many with ancillary structures and/or outbuildings.

Map:

SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

Application **CDC2023/0891** for Demolition and rebuilding of failed retaining wall, which runs across the property, directly below the front porch was approved on 23/11/2023 by a private certifier.

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 Matters for Consideration	Comments
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 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	See discussion on “Notification & Submissions Received” in this report.

Section 4.15 Matters for Consideration	Comments
accordance with the EPA Act or EPA Regs	
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 15/03/2024 to 29/03/2024 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 8 submission/s from:

Name:	Address:
Mr Warren Kenneth Cross	36 Trappers Way AVALON BEACH NSW 2107
Mr Anthony Craig Boaden	34 Trappers Way AVALON BEACH NSW 2107
Mr Paul Anthony Whittingham Ms Rebekah Dorter	40 Trappers Way AVALON BEACH NSW 2107
Mary Jean Morel	130 Riverview Road AVALON BEACH NSW 2107
Mr S Dibbs	6 / 58 Darley Road MANLY NSW 2095
Ms Matilda Blakeney Heppel	146 Riverview Road AVALON BEACH NSW 2107
Trappers Way Road Fund Incorporated	54 Trappers Way AVALON BEACH NSW 2107
Mr Geoffrey Martin Hosking	38 Trappers Way AVALON BEACH NSW 2107

The following issues were raised in the submissions:

- *Construction Impact on Trappers Way*
- *Southern boundary stairs*

The above issues are addressed as follows:

- **Construction Impact on Trappers Way**

The submissions raised concerns that construction of the proposed development may damage and impact upon the Trappers Way private road easement. The submissions request the applicant prepare a Construction Traffic Management Plan.

Comment:

A condition is recommended to require the applicant prepare a comprehensive Construction Traffic Management Plan (CTMP) and Dilapidation Reports for the private roadway. The CTMP must be implemented in accordance with its recommendations during construction work. This is considered to adequately address this concern.

- **Southern boundary stairs**

A submission raised concern that the proposed stairs along the southern elevation of the dwelling may encroach into the adjacent property and that privacy may be impacted due to the lack of a boundary fence.

Comment:

A condition is recommended to require the stairway along the southern boundary to be constructed so as to not encroach beyond the boundaries of the subject site. A 1.8m high privacy screen/fence is also conditioned to be installed along the outside of the stairs to improve privacy between dwellings.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Solid Fuel/Oil Heater)	**SUPPORTED WITH CONDITIONS** This application is seeking consent for alterations and additions to an existing dwelling. A fireplace is proposed in the living room. A review of mapping indicates the location of the flue can comply with the relevant Australian Standards therefore Environmental Health recommends approval subject to conditions.
Landscape Officer	**SUPPORTED WITH CONDITIONS** The application seeks consent for: Alterations and additions to a dwelling house including a swimming pool and associated landscaping. The Arborist's Report prepared by Blues Bros Arboriculture is noted. The Report indicates that one tree, T10 *Ficus macrophylla* of Low retention value, is required to be removed to accommodate the works. The Report addresses impacts on other trees on and adjacent to the site and concludes that all can be retained subject to Arboricultural supervision during works. It is noted that the site is mapped on DPI Biodiversity Values Map. As

Internal Referral Body	Comments
	such, I would defer to comments from Council's Biodiversity Section for Biodiversity impacts of the proposal. No objections are raised to the removal of the *F. macrophylla* from a landscape perspective, however comments from Bushland and Biodiversity need to be considered. Recommended conditions have been provided if the proposal is to be approved.
NECC (Bushland and Biodiversity)	**SUPPORTED WITH CONDITIONS** The comments in this referral relate to the following applicable controls and provisions: • NSW Biodiversity Conservation Act 2016 • NSW Biodiversity Conservation Regulation 2017 • Pittwater LEP - Clause 7.6 Biodiversity Protection • Pittwater DCP - Clause B4.7 Pittwater Spotted Gum Forest Endangered Ecological Community Portions of the site are identified on the Department of Climate Change, Energy, the Environment and Water (DCCEEW) Biodiversity Values Map (BV Map). Under the NSW Biodiversity Conservation Act 2016, any removal of native vegetation from within mapped areas will trigger the Biodiversity Offsets Scheme (BOS) and the requirement for a Biodiversity Development Assessment Report (BDAR). However, the submitted plans and documentation indicate that the proposed works are located outside of the BV Map area and therefore will not trigger entry into the BOS. The proposal has been submitted with an arboricultural impact assessment that has recommended the removal of a single tree identified as T10 (Ficus macrophylla) because of impacts from proposed works and is already found to be in a declining state. A planting schedule has also been submitted with the application and has not included a tree replacement to compensate for the removal of T10, therefore amendments to the landscape plan will be required for the application to be compliant with the objectives set out in PDCP B4.7 where "Development shall result in no significant onsite loss of canopy cover or a net loss in native canopy trees." A tree replacement will therefore be conditioned. The development is designed, sited and will be managed to avoid any significant adverse environmental impact.

Internal Referral Body	Comments
Traffic Engineer	**SUPPORTED WITH CONDITIONS** Additional comments - 10/5/24 It is noted that a construction traffic management plan has now been prepared by the applicant. This document is noted however it is required that it be re-lodged and amended as necessary following any consent being granted, via an application for a permit to implement traffic control. This has been detailed in the recommended consent condition. Original comments - 20/3/24 The development application is for alterations and additions to an existing dwelling at 37 Cabarita Road. In terms of traffic and parking impacts the development will maintain two offstreet parking spaces in a tandem configuration and is therefore compliant with DCP requirements in terms of parking. The development will be accessed off Trappers Way, a private road of narrow width with limited ability for turning of construction vehicles. Construction is also likely to impact on access to adjacent premises. Given the steep fall to Cabarita Road the undertaking of deliveries of materials or concrete pours from that road will be difficult to achieve. A detailed Construction Management Plan will therefore be required prior to release of a construction certificate.

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.

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. A1736635 & A1736636, dated 20/02/2024).

A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid who raised no objections.

SEPP (Resilience and Hazards) 2021

Chapter 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	Dwelling - Unaltered	N/A	Yes
		Pool pergola - 4.0m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation	Complies
Front building line	6.5m	13.2m	N/A	Yes
Rear building line	6.5m	In front of dwelling	N/A	Yes
Side building line	N - 2.5m	Dwelling - Nil	Existing	As existing
		Pool - 4.4m	N/A	Yes
	S - 1m	Dwelling - 0.7m	Existing	As existing
		Pool - 5.6m	N/A	Yes
Building envelope	3.5m	Within envelope	N/A	Yes
	3.5m	Within envelope	N/A	Yes
Landscaped area	60% (714m^2)	63.3% (753.3m^2)	N/A	Yes

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

Clause	Compliance with Requirements	Consistency Aims/Objectives
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.7 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
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	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	Yes	Yes
D1.11 Building envelope	Yes	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D1.17 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D1.20 Scenic Protection Category One Areas	Yes	Yes

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of $6,141 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $614,064.

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 is for alterations and additions to a dwelling house including a swimming pool and associated landscaping has been referred to the Development Determination Panel (DDP) due to the receipt of eight (8) objections, which triggers a DDP determination of the application.

The concerns raised in the objections have been addressed and resolved by conditions requiring the preparation of a comprehensive Construction Traffic Management Plan (CTMP) and Dilapidation Report of the roadway, noting that the applicant lodged a CTMP for Council's consideration during the assessment of the application. This plan will need to be updated to fully address Council's requirements.

The proposal complies with the applicable build form controls under the PLEP 2014 and P21DCP.

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 DA2024/0171 for Alterations and additions to a dwelling house including a swimming pool and associated landscaping on land at Lot 37 DP 24563, 37 Cabarita 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**
DA102	A	Site Plan	SLAB Arch	15/02/2024
DA2.1	A	Demolition - First Floor Plan	SLAB Arch	15/02/2024
DA2.2	A	Demolition - Ground Floor Plan	SLAB Arch	15/02/2024
DA2.3	A	Demolition - Basement Floor Plan	SLAB Arch	15/02/2024
DA300	A	First Floor Plan	SLAB Arch	15/02/2024
DA301	A	Ground Floor Plan	SLAB Arch	15/02/2024
DA302	A	Basement Floor Plan	SLAB Arch	15/02/2024
DA303	A	Roof Plan	SLAB Arch	15/02/2024
DA400	A	N elevation	SLAB Arch	15/02/2024
DA401	A	E Elevation	SLAB Arch	15/02/2024
DA402	A	S Elevation	SLAB Arch	15/02/2024

DA403	A	W Elevation	SLAB Arch	15/02/2024
DA404	A	Section A-A	SLAB Arch	15/02/2024
DA503	A	Landscape Plan	SLAB Arch	15/02/2024

Approved Reports and Documentation			
Document Title	**Version Number**	**Prepared By**	**Date of Document**
Arboricultural Impact Assessment Report	1	Blues Bros Arboriculture	30/11/2023
BASIX Certificate	A1736635	Building Sustainability Assessments	20/02/2024
BASIX Certificate	A1736636	Building Sustainability Assessments	20/02/2024
Geotechnical Investigation	J5092A	White Geotechnical Group	04/03/2024
Waste Management Plan	-	William Fleming	20/02/2024

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	05/04/2024

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

3. **Approved Land Use**
Nothing in this consent shall authorise the use of the site beyond the definition of a *dwelling house*, in accordance with the Dictionary of the Pittwater Local Environmental Plan 2014.

Any variation to the approved land use beyond the scope of the above definition will require the submission to Council of a new development application.

Reason: To ensure compliance with the terms of this consent.

4. **No Approval for Secondary Dwelling**
No approval is granted or implied under this Development Consent for the use of any part of the dwelling house for the purpose of a secondary dwelling or separate occupancy. Built in cooking facilities are not permitted to be installed, other than those shown in the designated kitchen area.

Reason: To ensure compliance with the terms of this consent.

5. **General Requirements**

(a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:
- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

(b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.

(c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

(d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

(e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

(f) Prior to the release of the Construction Certificate, payment of the following is required:

i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than $250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development

is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.

iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.

(g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

(h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

(k) Prior to the commencement of any development onsite for:

i) Building/s that are to be erected

ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place

iii) Building/s that are to be demolished

iv) For any work/s that is to be carried out

v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

(l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

(m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

(n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

(1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools

(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

(2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

(3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

(4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

6. **Parking Enclosure**
No parking spaces, or access thereto, shall be constrained or enclosed by any form of structure such as fencing, cages, walls, storage space, or the like, without prior consent from Council.

Reason: To ensure accessibility is maintained.

FEES / CHARGES / CONTRIBUTIONS

7. **Policy Controls**
Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of $6,140.64 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 $614,064.21.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council’s website at Northern Beaches Council - Development Contributions.

Reason: To provide for contributions in accordance with the Contribution Plan to fund the

provision of new or augmented local infrastructure and services.

8. **Security Bond**

A bond (determined from cost of works) of $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

9. **Footing Design Near Trees to be Retained**
    1. Footing structural layout plans for the works as indicated in the Arboricultural Impact Assessment dated 30 November 2023 prepared by Blues Bros Arboriculture shall be developed in co-ordination with an Arborist with AQF minimum Level 5 qualifications in arboriculture, and a qualified Structural Engineer, following a tree root mapping investigation near existing tree(s) (insert tree numbers if available), to locate critical tree roots and recommend footing design and locations for the construction works.
    2. The Arborist shall review, comment, recommend design revision as required and approve the footing layout, to ensure the locations of footings will be manageable in terms of tree protection measures.
    3. The Arborist shall submit certification to the Certifier, that the locations of the footings are accepted.
    4. The agreed footing structural layout plans shall be submitted to the Certifier for approval prior to the issue of a Construction Certificate.

Reason: Tree protection.

10. **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.

11. **Construction Traffic Management Plan**

A Construction Traffic Management Plan (CTMP) and report shall be prepared by a Transport for NSW accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase.
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken.
- Make provision for all construction materials to be stored on site, at all times.
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period.
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed.
- Where access is required across private property not in the direct ownership of the proponent, such as a private road/driveway, community title road or right of way, the CTMP is to include:
    - Evidence of the legal right and terms to use the access route or provide owners consent from the owners/strata/community association.
    - Demonstrate that direct access from a public space/road is not viable for each stage of works.
    - An assessment to be carried out of the physical constraints of the Right of Carriageway to determine the maximum size of vehicle that may access the site via the Right of Carriageway during construction.
    - Unless owner/strata/community associations consent is obtained, vehicles are not to exceed 24 tonnes or 7.5 metres in length (an assessment must be undertaken that the surface is capable of supporting up to 24 tonnes, otherwise the weight limit should be reduced in the CTMP). If consent is obtained, a copy must be included in the CTMP.
    - No construction vehicles, materials or plant are to be located or parked in the private road/driveway, community title road or right of way.
    - How any disruption to other users of the private road/driveway, community title road or right of way will be minimised and all users kept informed of likely disruption where the access will be closed or blocked for any given time.
    - If trees are located within or overhang the access route, a tree protection plan prepared by an Arborist with minimum AQF Level 5 in arboriculture demonstrating how any trees within the Right of Carriageway will be protected from damage by construction vehicles. Should any tree protection measures be required on private land in accordance with AS4970-2009 Protection of trees on development sites, owner’s consent must be obtained.
    - A Dilapidation report, including photographic surveys, of the private road/driveway/right of way must be included prior to any works commencing on the site. The report must detail the physical condition of the private road/driveway/right of way, and any other adjacent private property assets (including trees) or adjacent public property that may be adversely affected by vehicles servicing the development site to undertake works or activity during site works.
    - A requirement for Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, to be submitted after the

completion of works and prior to the Occupation certificate. The report must:
    - Compare the post-construction report with the pre-construction report,
    - Clearly identify any recent damage or change to the private road/driveway/right of way and whether or not it is likely to be the result of the development works,
    - Should any damage have occurred, identify remediation actions taken.
    - Be submitted to Council with the Occupation Certificate.
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site.
- Make provision for parking onsite. All Staff and Contractors are to use any basement parking once available.
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior.
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety.
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees.
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site.
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site.
- Specify that the public roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council.
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent.
- Proposed protection for Council and adjoining properties.
- The location and operation of any on site crane.

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted for review via an application for a permit to implement traffic control.

A copy of the approved CTMP must be kept on-site at all times while work is being carried out.

The development is to be undertaken in accordance with the Construction Traffic Management Plan approved by Northern Beaches Council Traffic Team.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

12. **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.

13. **Amendments to the approved plans**
The following amendments are to be made to the approved plans:

- The stairs on the southern side of the dwelling must be shown as not encroaching beyond the lot boundary.
- A 1.8m high privacy screen/fence shall be built along the outer edge of the stairs on the southern side of the dwelling.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development.

14. **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.

15. **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.

16. **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.

17. **Compliance with Standards**
The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards.

18. **Sydney Water "Tap In"**
The approved plans must be submitted to the Sydney Water Tap in service, prior to works

commencing, to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifier demonstrating the works are in compliance with Sydney Water requirements.

Please refer to the website www.sydneywater.com.au for:

- "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

19. **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 the Arboricultural Impact Assessment dated 30 November 2023 prepared by Blues Bros Arboriculture and AS4970-2009 Protection of trees on development sites.

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment.

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 trees have been carried out satisfactorily to ensure no impact to the health of the trees. Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

Note: Any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

Reason: Tree protection.

20. **Tree Removal Within the Property**
This consent approves the removal of existing trees on the subject site as identified in the Arboricultural Impact Assessment dated 30 November 2023 prepared by Blues Bros Arboriculture as listed below:

i) Tree 10 *Ficus macrophylla*

ii) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised building works.

21. **Work Zones and Permits**
Prior to commencement of the associated works, the applicant shall obtain a Work Zone Permit where it is proposed to reserve an area of road pavement for the parking of vehicles associated with a construction site.

A separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane

Reason: To ensure Work zones are monitored and installed correctly.

DURING BUILDING WORK

22. **Protection of Landscape Features and Sites of Significance**
All natural landscape features including natural rock outcrops, natural vegetation, soil and watercourses are to remain undisturbed during demolition, excavation and construction works except where affected by works detailed on approved plans.

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.

23. **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 the Arboricultural Impact Assessment dated 30 November 2023 prepared by Blues Bros Arboriculture and AS4970-2009 Protection of trees on development sites,
   ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by the Project Arborist ,
   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 the approved Arboricultural Impact Assessment.

Reason: Tree and vegetation protection.

24. **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.

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. **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.

27. **Implementation of Construction Traffic Management Plan**
All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate TfNSW accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to Council on request.

Reason: To ensure compliance of the developer/builder in adhering to the Construction Traffic Management procedures agreed and are held liable to the conditions of consent.

28. **Ongoing Management**
The applicant shall be responsible in ensuring that the road reserve remains in a serviceable state during the course of the demolition and building works.

Reason: To ensure public safety.

29. **Removing, Handling and Disposing of Asbestos**
Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:
- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

30. **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.

31. **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.

32. **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

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. **Landscape Completion**
Landscape works are to be implemented in accordance with the approved Landscape Plans and as follows.

a) landscape works are to be contained within the legal property boundaries,

b) tree, shrub and groundcover planting shall be installed as indicated on the approved Landscape Plan(s),

c) 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,

d) 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,

e) 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.

35. **Condition of Retained Vegetation**
Prior to the issue of an Occupation Certificate, a report prepared by the Project Arborist shall be submitted to the Principal Certifier, assessing the health and impact on all existing trees required to be retained, including the following information:

a) compliance with 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.

36. **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.

37. **Replacement of Canopy Trees**
At least 1 (one) locally native canopy trees is to be planted on the site to replace protected trees approved for removal. Species are to have a minimum mature height of 8.5m and be consistent with the Pittwater Spotted Gum Forest Endangered Ecological Community.

Tree plantings are to be retained for the life of the development and/or for their safe natural life. Trees that die or are removed must be replaced with another locally native canopy tree.

Replacement plantings are to be certified as being completed in accordance with these conditions of consent by a qualified landscape architect, and details submitted to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To establish appropriate native landscaping.

38. **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.

39. **Priority Weed Removal and Management**
All Priority weeds (as specified in the Northern Beaches Local Weed Management Plan) within the development footprint are to be removed using an appropriate control method.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To reduce the risk of site works contributing to spread of Priority weeds.

40. **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.

41. **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.

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. **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.

44. **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

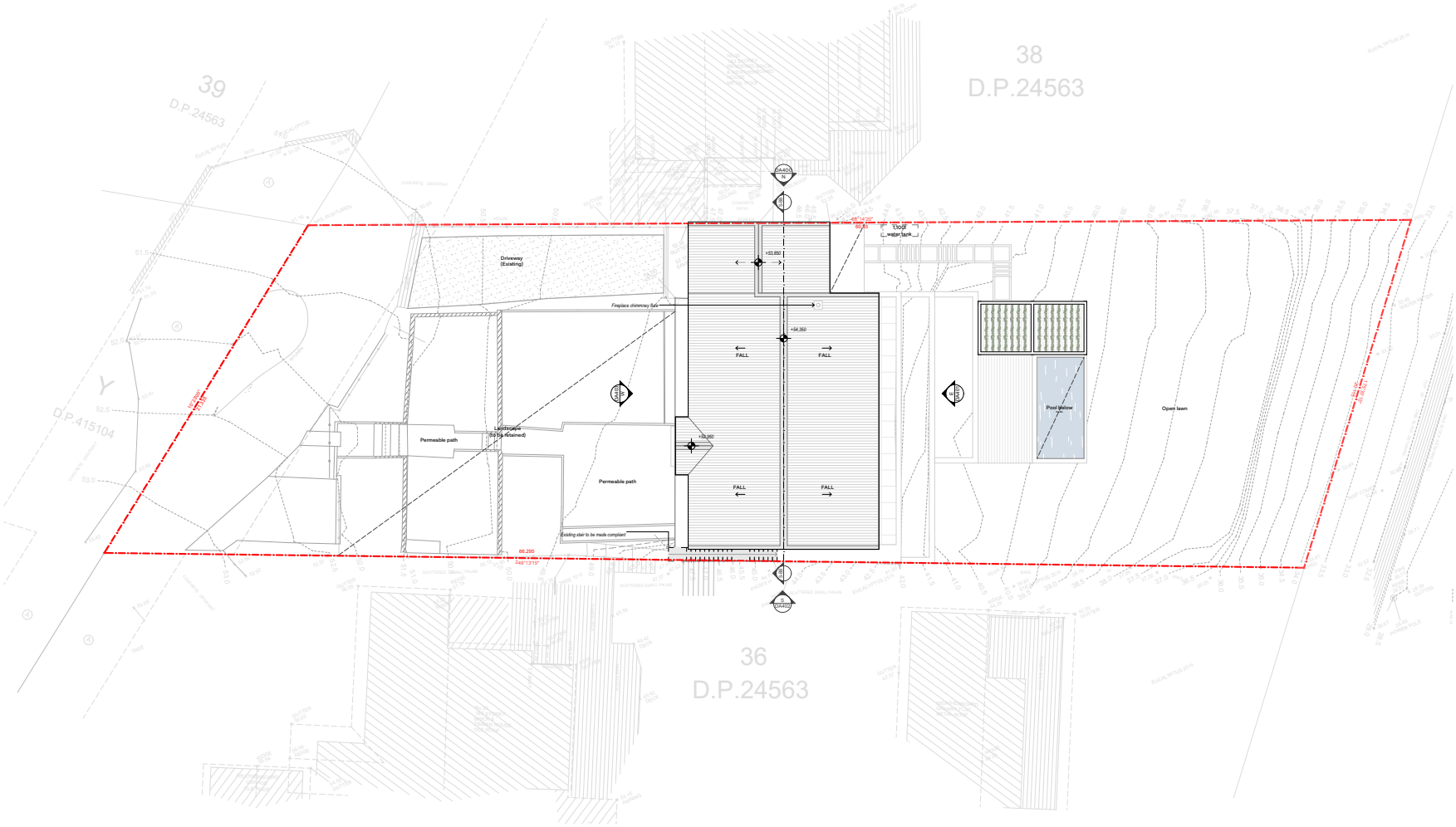
45. **Geotechnical Recommendations**
Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be

maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

46. **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.



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Rev	Description	Drawn	Checked	Date
A	Complying Development Application	DT	SL	15/02/2024

Project
Cabarita 37

Address
37 Cabarita Rd, Avalon Beach NSW 2107

Client
Matthew & Kara Barbuto

Scale
1:200

Drawing No.
DA102

Date
15/02/2024

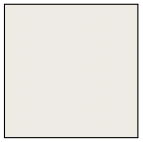
Drawing Name
Site Plan

North

Stage
CDA

Rev
A

EF-01
Light stucco and/or similar



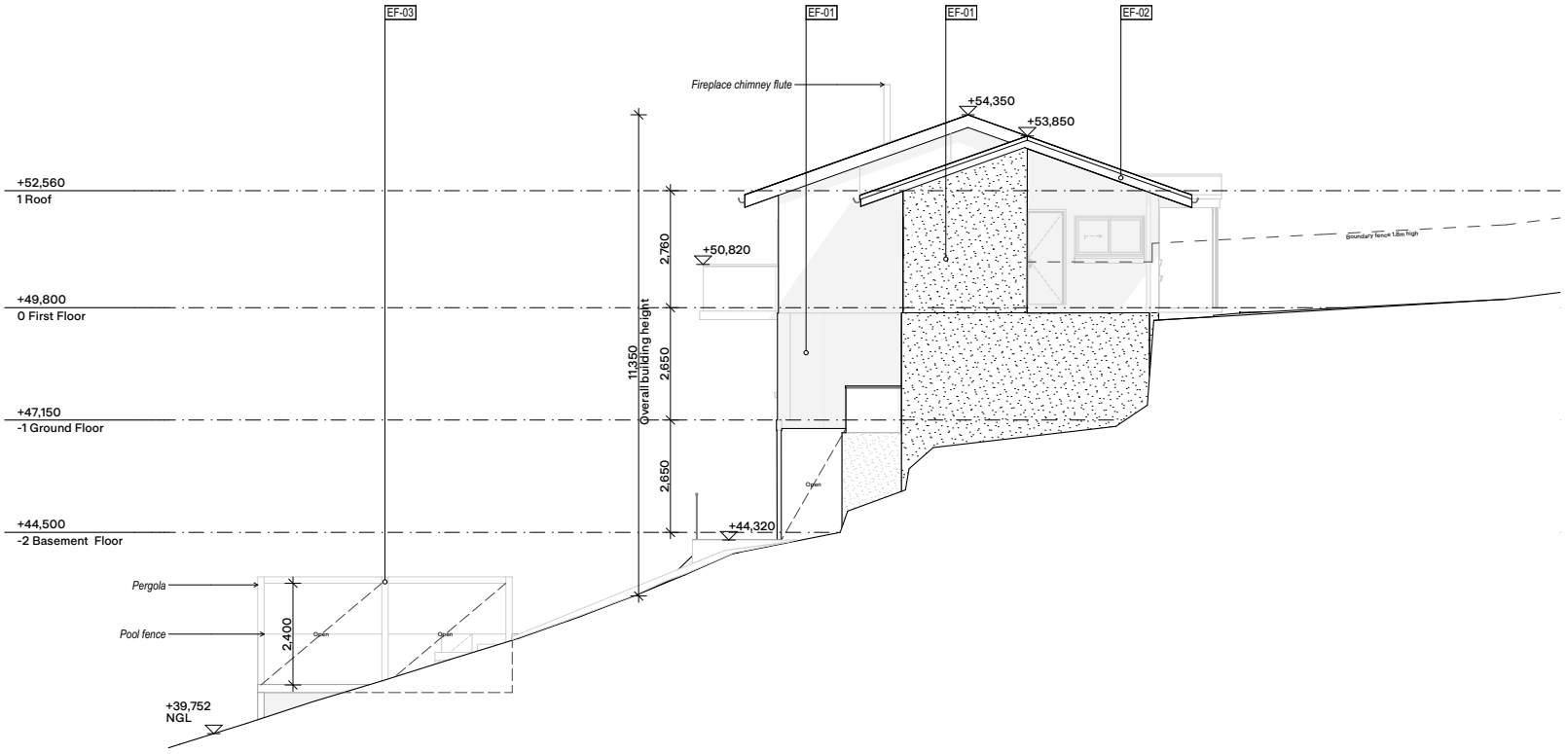
EF-02
Light paint finish and/or similar

EF-03
"Not wood" timber and/or similar

EF-04
Brass window/door frame finish and/or similar

NOTE

ALL EXTERNAL WINDOWS AND DOORS TO BE REPLACED IN A LIKE FOR LIKE INSTANCE



North Elevation
1:100

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Project
Cabarita 37

Address
37 Cabarita Rd, Avalon Beach NSW 2107

Client
Matthew & Kara Barbuto

Scale
1:100

Drawing No.
DA400

Date
15/02/2024

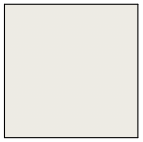
Drawing Name
N Elevation

North

Stage
CDA

Rev
A

EF-01
Light stucco and/or similar



EF-02
Light paint finish and/or similar

EF-03
"Not wood" timber and/or similar

EF-04
Brass window/door frame finish and/or similar

NOTE

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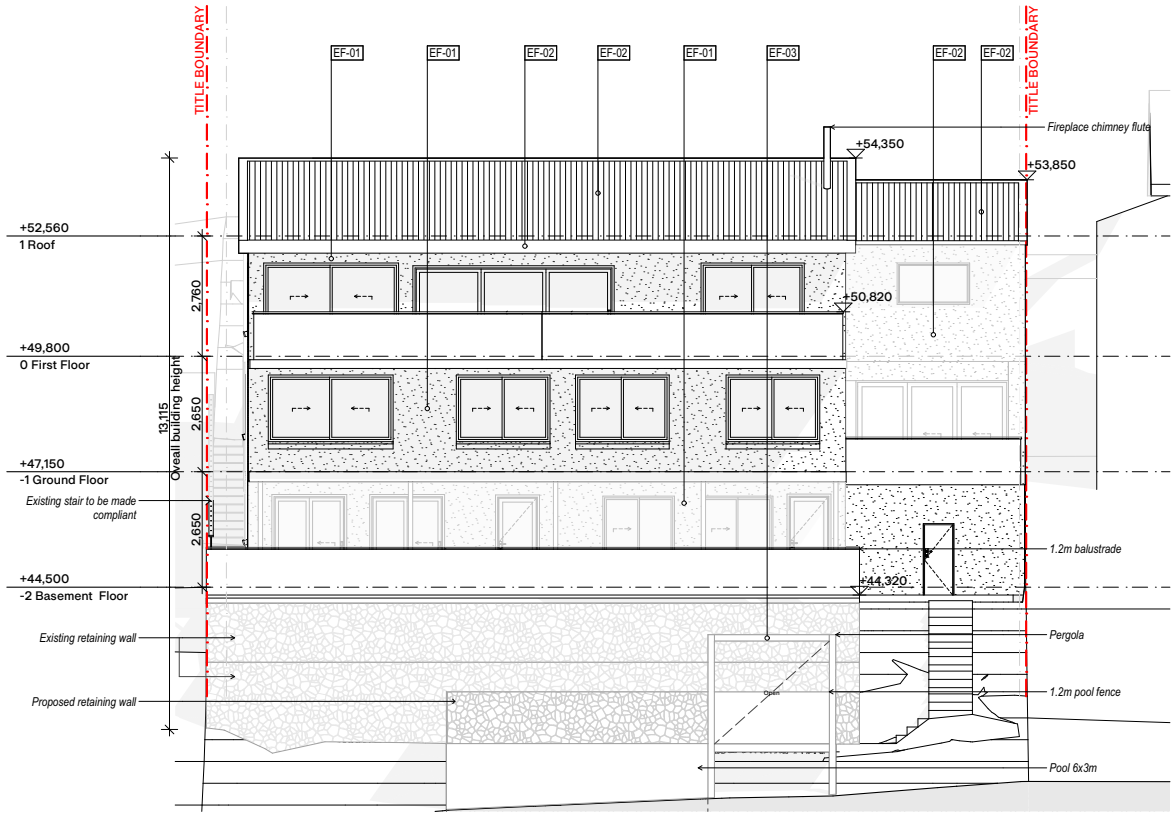

East Elevation
1:100

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Project
Cabarita 37

Address
37 Cabarita Rd, Avalon Beach NSW 2107

Client
Matthew & Kara Barbuto

Scale
1:100

Drawing No.
DA401

Date
15/02/2024

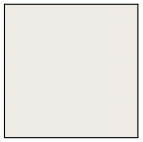
Drawing Name
E Elevation

North

Stage
CDA

Rev
A

EF-01
Light stucco and/or similar



EF-02
Light paint finish and/or similar

EF-03
"Not wood" timber and/or similar

EF-04
Brass window/door frame finish and/or similar

NOTE

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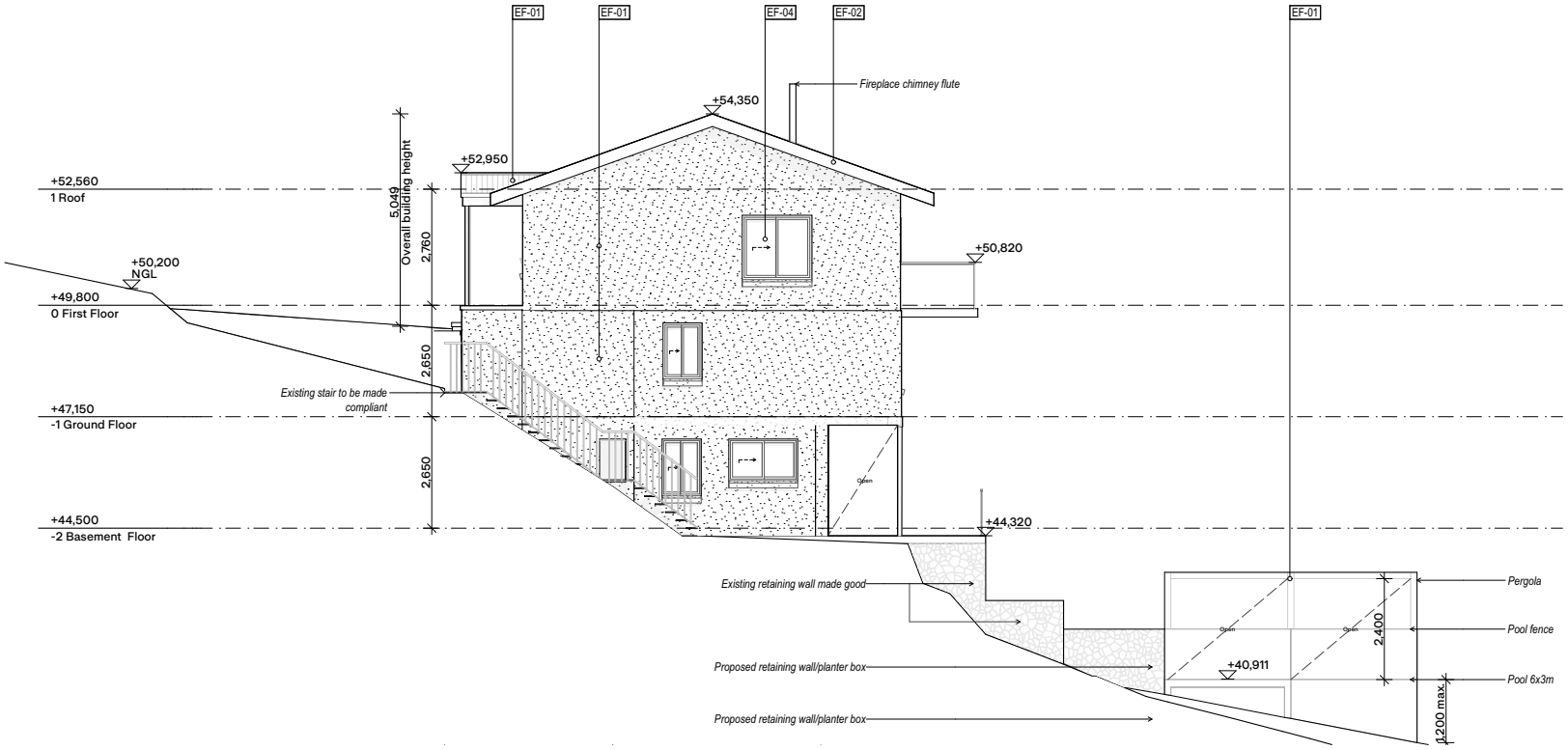

South Elevation
1:100

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Project
Cabarita 37

Address
37 Cabarita Rd, Avalon Beach NSW 2107

Client
Matthew & Kara Barbuto

Scale
1:100

Drawing No.
DA402

Date
15/02/2024

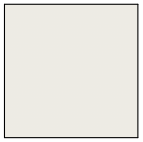
Drawing Name
S Elevation

North

Stage
CDA

Rev
A

EF-01
Light stucco and/or similar



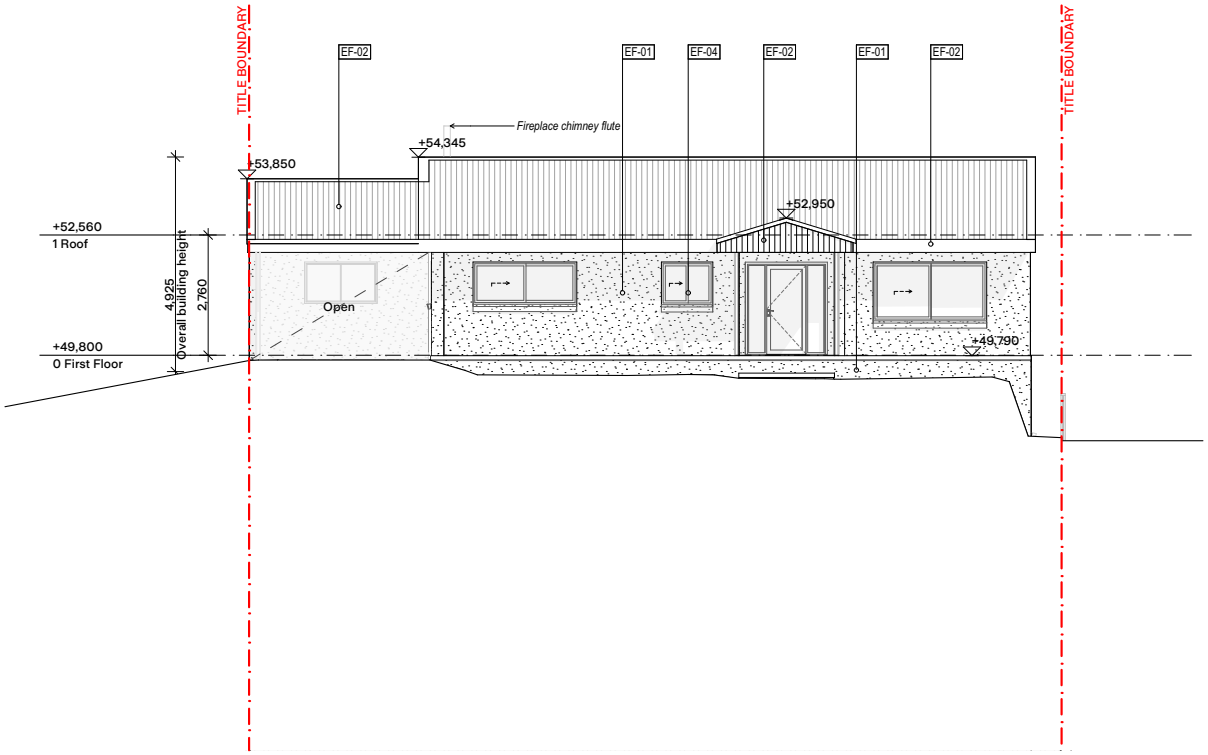
EF-02
Light paint finish and/or similar

EF-03
"Not wood" timber and/or similar

EF-04
Brass window/door frame finish and/or similar

NOTE

ALL EXTERNAL WINDOWS AND DOORS TO BE REPLACED IN A LIKE FOR LIKE INSTANCE



West Elevation
1:100

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Project
Cabarita 37

Address
37 Cabarita Rd, Avalon Beach NSW 2107

Client
Matthew & Kara Barbuto

Scale
1:100

Drawing No.
DA403

Date
15/02/2024

Drawing Name
W Elevation

North

Stage
CDA

Rev
A