northern beaches council

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 26 JUNE 2024

Ashleigh Sherry
Manager Business System and Administration

Agenda for a Meeting of the Development Determination Panel to be held on Wednesday 26 June 2024 via teleconference Commencing at 10:00 AM

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ACKNOWLEDGEMENT OF COUNTRY

As a sign of respect, the Northern Beaches Development Determination Panel acknowledges the traditional custodians of these lands on which we gather and 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 12 JUNE 2024

RECOMMENDATION

That the Panel note that the minutes of the Development Determination Panel held on 12 June 2024 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1 DA2023/0803 - 287 MONA VALE ROAD TERREY HILLS - ALTERATIONS AND ADDITIONS TO THE EXISTING HILLS FLOWER MARKET 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 DA2023/0803 for alterations and additions to the existing Hills Flower Market site on land at Lot 1 DP 845094, 287 Mona Vale Road TERREY HILLS, subject to the conditions set out in the Assessment Report.

Reporting manager	Steve Findlay
TRIM file ref	2024/433201
Attachments	⇩1 Assessment Report ⇩2 Site Plan and Elevations ⇩3 Supplementary Memo

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0803

Responsible Officer:	Kye Miles
Land to be developed (Address):	Part Lot 1 DP 845094, 287 Mona Vale Road TERREY HILLS NSW 2084
Proposed Development:	Alterations and additions to the existing Hills Flower Market site
Zoning:	Warringah LEP2011 - Land Zoned RU4 Primary Production Small Lots WLEP Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011
Development Permissible:	Yes
Existing Use Rights:	Yes
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Hills Marketplace Pty Limited
Applicant:	Hills Marketplace Pty Limited

Application Lodged:	28/06/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Mixed
Notified:	04/07/2023 to 18/07/2023
Advertised:	Not Advertised
Submissions Received:	7
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	$ 9,729,500.00

EXECUTIVE SUMMARY

This development application seeks consent for substantial alterations and additions to the existing Hills Flower Market (Garden Centre), including signage.

The application is referred to the Development Determination Panel (DDP) due to the receipt of more than five submissions objecting to the proposal. Of the seven submissions received, six were objections while one was in support. Concerns raised primarily pertain to traffic and amenity impacts,

particularly loss of acoustic privacy, as well as issues regarding permissibility, landscaped area, stormwater, and excavation.

The proposal does not result in any variations to principal development standards under Warringah Local Environmental Plan (WLEP) 2011. Critical assessment issues included those raised within the submissions and non-compliance with the Side Boundary Setbacks, Rear Boundary Setbacks, Main Roads Setback and Landscaped Open Space and Bushland Setting controls.

Variations to the abovementioned Development Control Plan (DCP) controls are considered acceptable within the context of the site, with vast improvements proposed across the site, including enhanced streetscape landscaping, rationalisation of buildings and signage, upgrades to environmental management, and compliant parking to accommodate additional floorspace/uses.

These issues have largely been resolved during the assessment process through the submission of amended plans. Concerns raised by Council regarding surplus parking spaces and inadequate landscaped area have been addressed by the removal of parking spaces and incorporation of additional deep soil landscaping across the site.

The proposal involves the expansion and reconfiguration of tenancies within the existing Hills Flower Market, resulting in a reduction of Gross Floor Area (GFA) from 2,606.4m^2 to 2,552.5m^2. However, the proposal includes a new detached restaurant of 467.6m^2, representing a 12.5% increase in food and drink premises uses on the site. Despite this increase, the proposed use of the site is deemed consistent with zone objectives and the wider locale, as discussed in detail within the report.

Additionally, the proposal seeks alterations to a shop, which is a prohibited use in the RU4 Primary Production Small Lots zone under WLEP 2011. However, this portion of the site benefits from Existing Use Rights for the purposes of a shop, as per Division 4.11 of the Environmental Planning and Assessment Act, 1979. Furthermore, the site benefits from the provisions of Schedule 1 Additional Permitted Uses (18) of WLEP 2011, allowing development for the purpose of a '*Garden Centre*'.

After a detailed assessment, the proposal is found to be consistent with the objectives of relevant standards and controls, with no issues warranting refusal of the proposed development.

Therefore, this report concludes with a recommendation that the DDP grant **APPROVAL** to the development application, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

Development Consent is sought for alterations and additions to the existing Hills Flower Market, including associated signage.

Specifically, the application seeks consent for the following elements:

- Demolition of various structures, including, the existing dwelling house and at grade parking
- Construction of a new restaurant with ancillary brewing equipment (see below for further details)
- Construction of new garden centre and rural supplies outlet
- Alterations and additions to existing building
- Ancillary plant cultivation area
- Installation of nine illuminated business identification signs
- Provision of 182 on site car parking spaces

- Construction on new paths and retaining walls
- Removal of 28 trees, (15 of which are exempt)
- Replanting of 15 trees and associated landscaping
- Bulk cut and fill earthworks
- Installation of a new stormwater drainage system

Operational details
The proposed operational details of the Hills Flower Market are listed within the submitted Statement of Environmental Effects, however, a brief overview is provided for the proposed new buildings, including an expanded garden centre with ancillary plant cultivation area, rural supplies outlet and a new restaurant that will include a small area for ancillary brewing equipment.

The specific uses are detailed below:

- Flower Shop – 473.6m^2
- Garden Centre (including shared amenities) – 1,042m^2
- Café/Restaurant - 244m^2
- Restaurant (including ancillary brewing equipment) – 467.6m^2
- Rural Supplies – 350.7m^2

No changes are proposed to the existing ancillary office space on the mezzanine level.

Hours of Operation
The businesses in the Hills Marketplace, both existing and proposed, will have designated trading hours, as displayed below:

- Existing commercial and retail tenancies: 7.00 am to 8:30 pm daily
- Existing café/restaurant: 7.00 am to 10.00 pm daily
- Proposed restaurant: 7.00 am to 10.00 pm Sunday-Wednesday, and 7.00 am to 12.00 am Thursday-Saturday

Traffic Management
The proposal will provide 182 off-street parking spaces (existing and proposed) throughout the site.

Existing vehicular access will remain unaltered.

AMENDED PLANS
Following a preliminary assessment of the application, Council issued an RFI to the applicant on 1 November 2023, outlining concerns with the application.

The concerns related to front setback, landscaped open space and referral issues (Environmental Health, Development Engineering, and Water Management).

The applicant lodged amended plans and additional information to address the concerns on 28 November 2023.

Revised civil engineering plans were lodged with Council on 7 December 2023.

The amended plans incorporated the following changes:

- Removal of 14 carparking spaces and convert to deep soil landscaping.
- Installation of a safety fence around the OSD bio-basin.

Additional amended plans (including updated landscaping and civil engineering plans) were lodged on 1 May 2024, which involved increasing the OSD bio-basin's side setback to 2.5m (+0.8m).

Community Participation Plan
The proposed amendments will have a reduced environmental impact on the adjoining properties when compared to the original proposal. Therefore, formal re-notification is not required in accordance with Northern Beaches Community Participation Plan.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 2.5 Additional permitted uses for particular land
Warringah Local Environmental Plan 2011 - Zone RU4 Primary Production Small Lots
Warringah Local Environmental Plan 2011 - 6.2 Earthworks
Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land
Warringah Development Control Plan - B5 Side Boundary Setbacks
Warringah Development Control Plan - B9 Rear Boundary Setbacks
Warringah Development Control Plan - B14 Main Roads Setback
Warringah Development Control Plan - C3 Parking Facilities
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D3 Noise
Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - D23 Signs

SITE DESCRIPTION

Property Description:	Part Lot 1 DP 845094 , 287 Mona Vale Road TERREY HILLS NSW 2084
Detailed Site Description:	The subject site is legally described as Lot 1 in Deposited Plan 845094 and is known as 287 Mona Vale Road, Terrey Hills. Colloquially the site is known by the business present at the site, being Hills The Flower Market . The site falls within the RU4 Primary Production Small Lots zone pursuant to the Warringah Local Environmental Plan 2011, and benefits from the provisions of Schedule 1 Additional Permitted Uses (18) of the same instrument. The site is rectangular in shape has a street frontage of 142.3m along Mona Vale Road Overall the site has a surveyed area of 2.0 hectares, or 20,000m^2. The site presently accommodates a garden centre with associated sub-uses (i.e., mower shop, pool supplies), growing areas, garden shop, restaurant, car parking, landscape supplies, detached dwelling house and ancillary components (i.e., small cafe, amenities). The site obtains vehicular access from Mona Vale Road and from Myoora Road into the patron car parks. **SURROUNDING DEVELOPMENT** The development is bound by different land uses on all four sides. • Immediately north-east of the site is a large parcel of land that appears to accommodate a small dwelling, sheds interspersed across the lot. • Immediately north-west of the site is a large parcel accommodating a place of public worship. • Immediately south-west of the site is a large parcel accommodating a function centre and motel, colloquially known as Miramare Gardens • South-east beyond the road is bound by bushland and the JJ Memorial Hill Reserve and Kimbriki Resource Recovery Centre. Myoora Road generally leads to large lot residential properties, educational establishments, landscape supply sites, and a private hospital that is under construction.

Map:

SITE HISTORY

The land has been used for commercial purposes since the 1920s. A search of Council's records has revealed the following relevant history:

On 2 December 1997, an application (97/311) for alterations and additions to the existing flower shop, including refreshment room, child care centre and three glass houses, with ancillary parking was approved by Warringah Shire Council.

On 14 December 1999, an application (1643DA) for alterations and additions to Hills Flower market shop to reposition entry and exit driveways, associated carparking and landscaped areas was approved by Warringah Shire Council.

On 31 January 2006, an application (DA2004/1012) for alterations and additions to existing flower market building with basement carparking, use of additions as a retail plant nursery, minor ancillary works, and demolition of one glasshouse was approved by the Land & Environment Court.

On 18 December 2006, an application (DA2005/1010) for change of use to include turf outlet, rainwater tank outlet & rural supplies outlet approved by the Land & Environment Court. In addition, modification (Mod2004/1012/1) of DA2005/1010, including, alterations to the configuration of on-site car parking provision was approved by the Land & Environment Court.

Recent Pre-Lodgement Meeting
On 11 August 2022, the applicant met with Council to discuss a proposal for alterations and additions of the Hills Flower Market site, under pre-lodgement meeting reference PLM2022/0156. In that meeting, a design was presented that was generally similar in architecture to that of the subject scheme. In its written minutes, Council advised that the application could be supported subject to increasing the quantum of landscaping and providing additional information regarding existing use rights, stormwater impacts, and appropriate traffic management.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	**Comments**
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. 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, revised engineering and water management details. 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. 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

- **Does the existing use satisfy the definition of "existing use" under the *Environmental Planning and Assessment Act 1979* (the ‘Act')?**

Section 4.65 of the Act defines an existing use as:

> *"(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for this Division, have the effect of prohibiting that use, and*
>
> *(b) the use of a building, work or land:*
> *(i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
> *(ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse."*

This necessarily requires the following questions to be answered:

1. Was the use of a building for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for this Division, have the effect of prohibiting that use?

<u>Comment:</u>

The Applicant has provided evidence in the form of historical building approvals (DA2004/1012), which reveals that the use of the shop commenced as a lawful purpose on 2 January 2009, prior to the coming into force of Warringah Local Environmental Plan 2011 on 9 December 2011.

2. Was the use of the building granted development consent before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use?

Comment:

The use of the building as a shop was lawfully approved by Council on 31 January 2006, prior to the coming into force of Warringah Local Environmental Plan 2011 on 9 December 2011.

3. Has the use of the building been carried out within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse?

Comment:

The Applicant has provided evidence in the form of historical building approvals, which reveals that the use of the building was carried out since its most recent approval in 2006, which is within one year from the date on which the provision having the effect of prohibiting the use commenced.

- **What is “the land on which the existing use was carried out" for the purposes of cl 162-167 of the Environmental Planning and Assessment Regulation 2021 (“the Regulation”)?**

Meagher JA in *Steedman v Baulkham Hills Shire Council [No. 1] (1991) 87 LGERA 26* stated (at 27) the rule to be applied as follows: *“if the land is rightly regarded as a unit and it is found that part of its area was physically used for the purpose in question it follows that the land was used for that purpose*”.

Comment:

Having regard to the above case law, it is noted that a part of the area of the land was physically used for the purpose in question and therefore, it is considered that the land was not used for that purpose and that existing use rights do not apply to the whole of the subject site.

- **What are the planning principles that should be adopted in dealing with an application to alter enlarge or rebuild and existing use?**

The judgement in *Fodor Investments v Hornsby Shire Council (2005) NSWLEC 71*, sets out the planning principles that should be applied in dealing with development applications seeking to carry out development on the basis of existing use rights. The principles of Fodor Investments v Hornsby Shire Council (2005) NSWLEC 71 however have been varied by more recent judgements of the Court to the extent described in Saffioti v Kiama Municipal Council [2019] NSWLEC 57 and Made property Group Pty Ltd v North Sydney Council [2020] NSWLEC 1332 in that the planning controls apply to the existing use provided they do not derogate, due to the planning controls within an EPI being 'incorporated provisions' and therefore matters for consideration as described within Clause 4.67 of the Environmental Planning and Assessment Act, 1979.

The following four principles adopted by the NSW Land and Environment Court in this case will have general application in dealing with development applications that rely on existing use rights:

1. How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?

While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessments.

Comment:

The flower market/shop is located in a ground floor space of the main building. The works largely relate to minor internal refinements and a slight expansion (17.6m^2). In this regard, the proposed changes to the existing flower market/shop will have an indiscernible impact on building bulk.

2. What is the relevance of the building in which the existing use takes place?

Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor space ratio, height or parking provision.

Comment:

The Hills Flower Market commenced operations since the 1920's. It is considered the proposal would not be out of character with the area and is an established use within the locality. The minor internal expansion will not have a discernible impact on building bulk, off-street parking or neighbouring amenity.

3. What are the impacts on adjoining land?

The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.

Comment:

As above, impacts to adjoining land will be inexistent given the internal nature of the works.

4. What is the internal amenity?

Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.

Comment:

Not applicable to the proposed development.

Conclusion

The use has been approved under a previous environmental planning instrument (WLEP 2000) and, therefore, is a lawful use. Subsequently, the use can be retained under the current environmental planning instrument (WLEP 2011).

BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application that included a certificate (prepared by Australian Bushfire Protection Planners, dated 20 October 2022) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 04/07/2023 to 18/07/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Debbie Gai Severino	58 Myoora Road TERREY HILLS NSW 2084
Mr Marc Collins	103 Booralie Road TERREY HILLS NSW 2084
Ms Lesley Dawn Nalbandian	47 / 0 Tooronga Road TERREY HILLS NSW 2084
Terrey Hills Progress Association	22 Myoora Road TERREY HILLS NSW 2084
Mr Alexander Armour	35 Myoora Road TERREY HILLS NSW 2084
Duffys Forest Residents Association	PO Box 567 TERREY HILLS NSW 2084
Tomasy Planning Pty Ltd	1 / 41 - 49 Darley Street East MONA VALE NSW 2103

Seven (7) submissions were received, one (1) is support and six (6) in objection to the application.

The following issues were raised in the submissions:

- **Traffic**
- **Noise**
- **Inconsistent with zone objectives**
- **Permissibility**
- **Landscaped area**
- **Stormwater**
- **Excavation**

The above issues are addressed as follows:

- **Traffic**

  The submissions raised concerns that the development will have a detrimental impact on the congestion of surrounding streets and will give rise to greater traffic hazards and risks, particularly upon students and parents of the nearby school.

  Comment:

  This issue is addressed in detail under Council's Traffic Referral Comments. In summary, the applicant submitted a Traffic Impact Assessment with the application, which assessed the likely traffic impacts of the proposal on the adjacent road network due to additional traffic and parking demand generated by the development.

  The assessment and information provided by the applicant is considered reasonable and adequate and Council's Traffic Section raises no concerns in relation to the proposed development on traffic grounds, recognising that the proposal will be acceptable in relation to traffic impacts. In addition, to ensure appropriate traffic management, a condition has been imposed. This condition mandates a thorough review and approval of the Construction Traffic Management Plan (CTMP) by Council's Traffic Section before a Construction Certificate can be issued.

  This matter does not warrant the refusal of the application.

- **Noise**

  The submissions raised concerns that that the proposal will result in unreasonable acoustic impacts from the new restaurant and additional traffic generation.

  Comment:

  The application is supported by an Acoustic Impact Assessment, prepared by Stantec, dated 1 June 2023. The assessment has predicted noise impacts at the most sensitive boundary positions. The measurements show that all the relevant criteria (as provided for in the WDCP 2011 and EPA NSW Industrial Noise Policy) for noise emissions will be met. In addition, the application has been referred to Council's Environmental Health (Industrial) Officer who supports the proposal, subject to recommended conditions of consent including additional certification of acoustic requirements.

  Overall, the predicted noise levels as detailed in the Acoustic Report indicate noise compliance is achievable with the list criteria at the location of the nearest noise sensitive residential receivers.

  This matter does not warrant the refusal of the application.

- **Inconsistent with zone objectives**

  The submissions raised concerns that the proposed use of the site is inconsistent with the zone objectives and the immediate locality.

Comment:

The subject site is zoned RU4 Primary Production Small Lots and contains an existing garden centre commonly known as 'Hills Flower Market'. Although, the proposal seeks substantial alterations and additions to the existing premises, the predominant use is retained, only intensified. The proposed works will be generously set back from the boundaries, while proposed perimeter planting will readily screen the premises from adjoining and surrounding residential sites. On balance, the proposal will reasonably maintain neighbourhood amenity, while remaining consistent with the zone's objectives and the desired future character of the Terrey Hills locality.

This matter does not warrant the refusal of the application.

- **Permissibility**

The submissions raised concerns with the permissibility of the proposed land uses, particularly, with the ancillary brewery and office spaces

Comment:

Matters relating to permissibility have been discussed throughout this report. In summary, the proposal's predominant use is appropriately defined as a *Garden Centre* and is therefore permitted with consent in the RU4 zone pursuant to Schedule 1 of WLEP 2011. Additionally, the proposal involves the construction of a new restaurant that seeks to include an area with ancillary brewing equipment. It is considered that this area constitutes an ancillary function to the restaurant, given its minimal size and scale. Furthermore, the applicant has satisfactorily demonstrated that portions of the central building have Existing Use Rights for the purposes of a *Shop*, as per Division 4.11 of the Environmental Planning and Assessment Act, 1979.

This matter does not warrant the refusal of the application.

- **Landscaped area**

The submissions raised concerns that the proposal provides inadequate landscaped area.

Comment:

This matter is discussed in detail under Part D1 Landscaped Open Space. In summary, the proposal has been amended to minimise excessive car parking and to provide additional deep soil areas across the site, particularly within the frontage. Additionally, the proposal involves a slight increase in deep soil landscaping by 6.7% (1,320.3 m^2). Overall, the landscape proposal incorporates a variety of treatments to the development area, including tree and mass planting in the front setback zone, aimed at softening the built form.

This matter does not warrant the refusal of the application.

- **Stormwater**

The submissions raised concerns that the proposal will impact upon existing drainage infrastructure and create unreasonable run-off.

Comment:

The application was reviewed by Council's Development Engineering section, with consideration given to stormwater aspects. The engineering team supports the proposal, subject to specific conditions attached to this report. Overall, the proposed development will not result in significant adverse impacts due to stormwater discharge from the development site.

This matter does not warrant the refusal of the application.

- **Excavation**

  The submissions raised concerns with the excavation and construction impacts associated with the proposed drainage infrastructure, and the potential impact on the nearby structures at No. 48 Myoora Road (Miramare Gardens).

  Comment:

  The application is supported by a detailed geotechnical assessment which provides information on the site's subsurface condition and demonstrates that the proposed excavation is satisfactory, subject to compliance with the recommendations made in the report. In relation to any potential damage to adjoining properties as a result of excavation on the site, conditions of consent are recommended which require a pre and post dilapidation survey be undertaken of the neighbouring properties to document the condition of these sites. Where damage is identified as a part of this process, remedial works is a civil matter between the respective parties.

  This matter does not warrant the refusal of the application.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	***Supported - subject to conditions*** 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.
Environmental Health (Contaminated Lands)	***Supported - subject to conditions*** Geo-Logix Pty Ltd (Detailed Site Investigation -Report reference: 2201064Rpt01FinalV02_8Nov22 Date: 8 November 2022) was commissioned by Hills Marketplace Pty Ltd (Hills Marketplace) to conduct a Detailed Site Investigation (DSI) of the property located at 287 Mona Vale Road, Terrey Hills NSW. In 2021, Geo-Logix completed a Preliminary Site Investigation (PSI) for the property. The PSI identified numerous potential contaminating activities having

Internal Referral Body	Comments
	occurred onsite including: • Demolition of structures potentially containing asbestos and lead based paint; • Historical market gardening; • Importation of fill of unknown origin as part of the site redevelopment and to fill a former farm dam; and • Minor mechanic repairs. While lower levels of petroleum hydrocarbons, PAHs, OCPs and heavy metals were reported in soil, COPCs were not identified in soil at concentrations in excess of assessment criteria in all samples analysed. The risk that past site activities have contaminated on-site soils is considered low and acceptable. As COPCs were not detected in on-site soil and all identified sources of potential contamination at the site are 'top down' processes expected to first affect surficial soils, it is considered that the risk of contamination to on-site groundwater and surface water is also low and acceptable. Based on the results of investigation, the site is considered suitable for the proposed commercial development. On this basis Environmental Health supports the proposal with conditions
Environmental Health (Industrial)	***Supported - subject to conditions*** **General Comments** The development the subject of this DA involves alterations and additions to the existing Hills Marketplace development located at No. 287 Mona Vale Road, Terrey Hills. The two proposed new buildings will accommodate an expanded garden centre and rural supplies outlet and a new restaurant that will include a small area for ancillary brewing equipment. In respect of the new restaurant, it is proposed that it includes a small area for ancillary brewing equipment where some craft beer will be produced on-site [quantities are discussed at page 22]. This type of community interaction in the production stage has become very popular with restaurants today. While a small area for ancillary brewing equipment is proposed within the new restaurant, the principal purpose of the new restaurant will remain as a licensed restaurant. The operation of the brewing equipment is to provide theatre/ambience within the restaurant that will be an ancillary feature of the overall operation of the new restaurant. And Development consent is also sought to undertake minor alterations and additions throughout the ground floor level of the existing building including to the area occupied by the existing Garden Centre, Taste Buds Café and the area formerly occupied by Piemonte Restaurant and to carry out minor reconfiguration and expansion of the existing flower shop. The proposal seeks consent to demolish various existing structures

Internal Referral Body	Comments
	and at-grade parking, to undertake preparatory bulk earthworks, to remove 28 site trees, to comprehensively upgrade the site landscaping including providing substantial compensatory planting, to provide additional at grade parking and to install new business identification signage. Development consent is sought to operate a mix of land uses from the Hills Marketplace site encompassing an expanded garden centre with ancillary plant cultivation area, a new restaurant (including ancillary brewing equipment), the existing café/restaurant and a new rural supplies outlet. The existing flower shop is also proposed to continue operating from the Hills Marketplace site. Our areas of interest are : <u>Noise</u> A Noise Impact Assessment by Stantec ref: 301351061, 1/6/2023 states that the development is not expected to generate excessive noise. We note a residential dwelling adjacent 285 Mona Vale Road as being the most likely impacted. The main noise sources generated by the development that may impact the local community and environment include: • Noise emissions from the operation of mechanical plant servicing the proposed development to the surrounding noise-sensitive receivers. • Traffic generated by the development, including, vehicle movements entering and exiting the car parking spaces provided. • Noise emissions from the operation of the licensed restaurant which is proposed to operate up to 12:00am. The proposed development has proposed the following hours of operation: The café is proposed to operate between the hours of 7:00am – 10:00pm (7 days a week). The proposed restaurant with ancillary brewing facilities on the south-western boundary will operate between 7:00am – 10:00pm (Sunday – Wednesday) and will extend its operation hours on Thursday – Saturday to midnight (12:00am). All other retail tenancies have their own specific trading hours, but will operate at any point between the hours of 7:00am – 8:30pm (7days a week). External Dinning and vehicles leaving site (eg 12.00am) are considered that main noise risk areas as other matters can be acoustically treated. Offensive noise from shouting or yelling will need robust management from the business operator. Details on managing theses issues needs addressing. Noise from equipment and plant is yet to be assessed but we consider that this can be managed during works.

Internal Referral Body	Comments
	A noise assessment under operating conditions is considered the best way of dealing with potential issues. Additionally the designated "Lawn-Landscaped Garden Common area for the enjoyment of visitors to the site and for consumption of food and beverages purchased on site "requires clarification as to whether this area will be open at night and if so what hours and if liquor is to be consumed? <u>Sewer</u> The site has a septic tank and macerator pump which pumps to the private sewer line off site (Council reference WW00620 approved 11 Feb 2021 for 5 years). Restaurants will most likely require a grease trap to Sydney water requirements. The pump to sewer agreement will have restrictions and requirements which we are not privy to at this time. The increased load on this pump to sewer system and its ability to cope without failure (eg rags or other items can easily jamb macerator systems) needs to be documented. A blockage and resulting overflow of a fully occupied site is likely to cause public health and water pollution issues. A fail safe back up plan is required. <u>Smoke/ odour /water pollution matters</u>. No issues anticipated. Environmental Health seeks further comment/detail from the applicant based on the above comments prior to any support being given to the proposal. ADDITIONAL INFORMATION RECEIVED AND OUR COMMENTS 21/11/2023 The applicant has also advised: *The existing site has a septic tank. Our preliminary design includes a new sewer pump station with emergency storage.* *Restaurants will most likely require grease to Sydney water requirements. 1 x 3,000 litres noted grease arrestor is proposed.* *The pump to sewer agreement will have restrictions and requirements which we are not privy to at this time. No comment.* *The increased load on this pump to sewer system and its ability to cope without failure (eg rags or other items can easily jamb macerator systems) needs to be documented. A blockage and resulting overflow of a fully occupied site is likely to cause public health and water pollution issues. A fail safe back up plan is required.*

Internal Referral Body	Comments
	Our fail-safe back up within the preliminary design includes a Muffin Monster preceding the new sewer pump station, plus an emergency storage tank. *So, the internal sewerage system will have three layers of redundancy-* *1. Essential Power Supply* *2. Muffin Monster* *3. Emergency Storage.* Henry & Hymas will develop the design on behalf of the Applicant and upload to the portal for Construction Certificate. To progress this matter conditions of approval may be added in lieu of further submissions and therefore Environmental Health will support the proposal. Further update additional information received by EH 28/11/23 clarifying a number of matters that proposed draft conditions were to address. The applicant has requested that these conditions be deleted to avoid any confusion. This has been done with exception of the Plan of Management condition.
Environmental Health (Food Premises, Skin Pen.)	***Supported - subject to conditions*** The provision of sanitary facilities we are advised is subject to final plans however we are concerned that as facilities are to be partly shared that we need to be satisfied that these will be adequate (including the need for urinals). Sites where facilities are not adequate or located at distance may be a potential issue. Therefore, we need to know what calculations have been done to ensure compliance with the BCA Part 4F Kitchen and food storage fit-out details compliance can be dealt with by way of conditions. Access to grease traps and sewer. This matter is dealt with under the industrial referral. Environmental Health cannot support the proposal at this time pending additional information. **ADDITIONAL INFORMATION 21/11/2023** The applicant has confirmed Sanitary Facilities complying to BCA as: *Existing* Garden Centre 1 & 2 Ground Floor • 1 pan • 1 basin Mezzanine • 4 pans

Internal Referral Body	Comments
	• 1 urinal • 4 basins Flower Shop / Café staff Mezzanine • 2 pans • 2 basins *New* Garden Centre Shared Amenity 2 (all tenancies have access) • 5 pans • 2 urinals • 5 basins Includes DDA compliant facilities *Total proposed (excluding Restaurant 1)* • 12 pans (5 male, 7 female) • 3 urinals • 12 basins (6 male, 6 female) The works proposed will result in a surplus of sanitary facilities, when Restaurant 1 is not operating. and advised also: *Total proposed exclusively for Restaurant 1 (indicative)** • 7 pans (incl DDA) (2 male, 5 Female) • 3 urinals • 6 basins (incl DDA) (2 male, 4 female) * Note restaurant patrons will also have access to the Garden Centre shared Amenity 2, immediately adjacent. *Total proposed for the development including Restaurant 1* • 18 pans • 7 urinals • 18 basins The works proposed will result in a surplus of sanitary facilities. Environmental Health therefore now supports the proposal with

Internal Referral Body	Comments
	conditions. Further update additional information received by EH 28/11/23 clarifying a number of matters that proposed draft conditions were to address. The applicant has requested that these conditions be deleted to avoid any confusion ie " It is noted that fit-out of restaurant 1 will be undertaken under a separate approval pathway. This has been done and conditions adjusted accordingly.
Landscape Officer	***Supported - subject to conditions*** <u>Additional Information Comment 28/11/23:</u> The amended plans are noted and the conditions have been updated accordingly. <u>Original Comment:</u> Landscape Referral raises concern that the proposed development does not achieve the 70% landscaped area under the WDCP requirement, and this matter shall be assessed and determined under merit consideration by the Assessing Planning Officer. Furthermore, it is noted that the calculations shown on drawing A100-20 DA-6 include permeable parking and walkways. Not including these non-compliant areas, the landscaped area (or landscape open space) is in fact 51%. The commentary from the Landscape Referral team in the PLM notes was "*...the use of permeable pavers is not accepted as being part of the LOS for the purpose of the LOS calculation and should only be used as a complimentary feature to further enhance the site*". Finally, some accessible carparking spaces are shown within permeable areas, and Landscape Referral questions the suitability of their location. The PLM notes stated "*It is advised that Landscape team will seek a landscape outcome to preserve / establish a boundary landscape buffer to the cultivation area boundaries*". Should the development application be approved, an amended Landscape Plan shall be submitted which includes a landscape buffer along the north-eastern boundary for the full extent of the cultivation area, and shall be a minimum width of 3 metres as measured perpendicular to that boundary. The Arboricultural Impact Assessment (AIA) identified 28 trees for removal, of which 15 trees (3, 8, 9, 11, 16, 22, 23, 24, 25, 27, 28, 29, 30, 31, and 32) are exempt by species or height and as such do not require consent for removal. Of the 13 remaining trees seven are exotic species and six are native. These remaining 13 trees can be supported for removal, and the landscape proposal shows 14 replacement native trees which will sufficiently offset any tree canopy loss. Landscape Referral supports the tree protection recommendations outlined in the AIA, and a Project Arborist shall be engaged to supervise the works in the tree protection zone of trees to be retained, subject to the imposed conditions.

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	***Supported - subject to conditions*** The proposal seeks approval for Alterations and additions to the existing Hills Flower Market site. The comments in this referral relate to the following applicable controls and provisions: • NSW Biodiversity Conservation Act 2016 • Planning for Bushfire Protection 2019 • Warringah DCP - Clause E2 Prescribed Vegetation The proposal has been submitted with an Arboricultural Impact Assessment (AIA) that has assessed a total of 47 trees and determined that a total of 3 high category trees (2, 4 and 5) and another 25 low category trees would have to be removed in order to facilitate the proposed alterations and additions (1, 3, 8, 9, 10, 11, 12, 14, 15, 16, 18, 20, 22, 23, 24, 25, 27, 28, 29, 30, 31, 21, 33, 34 and 35). Of these 28 trees a total of 7 trees are prescribed (4, 18, 20, 22, 33, 34 and 35). The submitted Tree management plan (pages 27 and 28 of the AIA) shows another 6 additional trees have been removed before the submission of the application. The submitted Bushfire report that has determined that the level of risk to be awarded to the site is BAL 12.5. The BF report has also determined that the existing Asset Protection Zones (APZ) are compliant with PBP 2019 requirements. Therefore, no additional vegetation removal will be required for the establishment of APZs. The proposed Landscape Proposal includes a total of 14 native trees and a range of native shrubs, groundcovers and climbers which are found to be adequate for the area. The development is designed, sited and will be managed to avoid any significant adverse environmental impact.
NECC (Development Engineering)	***Supported - subject to conditions*** The proposal includes the removal of the existing on-site stormwater detention (OSD) basin and replaces this with a new combined OSD/ Water Quality basin adjacent to the proposed restaurant on the south western boundary of the site. The submitted engineering plans have been reviewed and the following information must be submitted for further assessment. 1. The 'Drains' computer model for the design must be submitted by the applicant's engineer. 2. A summary table for the OSD design is to be provided on the drawings. 3. Hydraulic Grade Line Analysis for the connection into the existing easement pipe.

Internal Referral Body	Comments
	4. Dimensions of the basin to ensure required volume is achieved. 5. An overflow is to be provided above the Top Water Level in case of a blockage to the orifice. 6. The proposed detention basin exceeds 300mm in depth and as such must include a fence around the perimeter for safety. 7. It is unclear how access for maintenance of the basin is proposed. Details for access must be shown on the plans. The submitted Geotechnical report references the incorrect plans which detail a basement which does not appear to be included on the architectural plans. It is considered that the report be amended to reflect the correct plans and must also reference the civil engineering plans. The existing driveway access points are to remain which is acceptable. Development Engineering cannot support the proposal due to insufficient information to dress stormwater management in accordance with Clause C4 of the DCP. **Amended plans and documentation submitted 28/11/2023** The revised stormwater management plans and model have addressed the previous issues. The Geotechnical report has also been amended as requested. Development Engineering support the proposal, subject to conditions as recommended. **02/05/2024:** Amended stormwater plans reflecting boundary setback to 2.5m are provided, no objections to approval subject to conditions as recommended.
NECC (Water Management)	***Supported - subject to conditions*** 02/05/2024: Amended stormwater plans reflecting boundary setback to 2.5m are provided, no objections to approval subject to conditions as recommended. This application was assessed in consideration of: • Supplied plans and reports; • Relevant LEP and DCP clauses; and • Northern Beaches Water Management for Development Policy

Internal Referral Body	Comments
	The proposed stormwater management strategy is satisfactory.
Road Reserve	***Supported - without conditions*** There are no apparent works on the road reserve or impacts on existing road assets therefore no comments are provided.
Strategic and Place Planning (Urban Design)	***Supported - without conditions*** This advice is provided as an internal referral from the Urban Design Unit to the Development Assessment Officer for consideration and coordination with the overall assessment. The application DA2023/0803 seeks consent for alterations and additions to the existing Hills Marketplace development located at No. 287 Mona Vale Road, Terrey Hills. The following is proposed: • Demolition of some buildings, carparking and landscape; • Re-grading of part of the site; • Re-designed landscape; • Alteration to existing buildings; • Two new buildings to accommodate a larger garden centre.
Traffic Engineer	***Supported - subject to conditions*** <u>Additional comments on amended plans - 28/11/23</u> Amended plans have been received which slightly reduce the level of offstreet parking from 188 to 182 spaces. The proposed level of parking still exceeds the DCP requirements with the previous referral comments and conditions still valid <u>Original comments - 3/10/23</u> The development application is for alterations and additions to the existing Hills Marketplace garden. The existing development on the site is comprised of a Plant Nursery/Flower Shop (1685m2), Rural Supplies premises (570m2), a cafe/restaurant (seating capacity for 86 patrons), ancilliary offices, a house and offstreet parking to support the existing uses. The proposed development will have an expanded garden centre (1042m2) Flower Shop (473.6m2), Rural supplies (350.7m2), a second restaurant will be added with a total restaurant seating

Internal Referral Body	Comments
	capacity of 366 seats (711m2) and ancilliary offices (235.9m2). A total of 188 car spaces will be available to support the uses with 5 loading bays/servicing bays catering for small and medium rigid trucks. <u>Traffic Generation</u> The applicants traffic consultant has conducted surveys of traffic movements to and from the site to establish the existing traffic generation from the site, the traffic consultant has then revised these values to take account of traffic generated by the alterations and additions on the site to estimate the post development traffic generation. It has bene estimated that the peak projected traffic generation from the site of post development will be 201 vehicles per hour in the weekend midday period however the weekend peak will only increase by 2 vehicles per hour above existing volumes. The largest increase in traffic generation from the site post development is anticipated to occur in am peak period with 25 additional traffic movements per hour. SIDRA analysis conducted for a number of intersections surrounding the development has revealed little change to the level of service or delays at the intersections and on this basis the traffic generation from the site post development is not a matter of concern. <u>Parking</u> The development will be swerved by 188 car parking spaces including 39 in an existing basement level. Six of the 188 spaces are accessible parking spaces. There are also 3 motorcycle parking spaces, 2 medium rigid vehicle service bays and 3 Small Rigid Vehicle service bays. In terms of DCP requirements the development requires: 1 parking space for every 3 seats for the restaurant uses i.e 336/3 = 112 car spaces 6.1 spaces per 100m2 GLFA (retail) for the flower shop i.e 473.6*6.1/100= 29 spaces For the garden centre and rural supplies uses the Warringah DCP suggests that Landscape and Garden supplies developments should provide 15 spaces or 0.5 spaces per 100m2 of site area. These rates are considered likely to underestimate parking demands for this type of use which is more appropriately assessed as bulky goods retail. 1.9 spaces per 100m2 GFA (bulky goods retail) for the garden centre = 1042*1.9/100 = 20 spaces 1.9 spaces per 100m2 GFA (bulky goods retail) for the rural supplies = 350.7*1.9/100 = 7 spaces 1 space/40m2 for the ancilliary office uses = 235.9/40 = 6 spaces

Internal Referral Body	Comments
	Total parking requirement = 112 + 29 + 20 + 7 + 6 = 174 spaces. The parking provision of 188 spaces exceeds this requirement. The developer proposes that 6 of these spaces (3%) be accessible which is supported. The accessible parking spaces appear to be sized and marked in accordance with AS2890.6 however this will be conditioned. <u>Vehicle Access</u> No changes are proposed to the the existing vehicular access arrangements with separate entry and exit driveways to remain accessible from Mona Vale Road and a third vehicle ingress/egress driveway to remain available via a right of way to Myoora Road. The retention of the vehicle access points to Mona Vale Road, a State Road, has not been opposed by Transport for NSW (TfNSW) and as such their retention is supported. The swept path plots provided in the traffic report show trucks entering and exiting via the Mona Vale Road Entry driveway which is inadequately sized to allow for passing of an egressing medium rigid truck and entry of a B85 vehicle, permitting truck egress by this driveway would therefore be unsafe. The driveways to Mona vale Road should therefore be marked and signposted as Entry and Exit driveways to clarify any confusion. This will be conditioned. <u>Servicing</u> The RMS Guide to traffic generating developments encourages developers to provide separate driveways for truck access and passenger vehicle access. This development provides no separation of service vehicles from customer vehicle traffic which may result in vehicle to vehicle conflict and safety concerns particularly for movements involving reversing trucks in areas of high pedestrian activity such as customer carparking areas. The service/delivery bays are each sized to cater for movements only by small and medium rigid vehicles (MRVs) less than 8.8m in length. It is noted in the traffic report that some deliveries/servicing by trucks greater than 8.8m will occur but that these generally take place prior to 7am and after 4pm. The restaurant uses, which are proposed to occur into the evening will mean that customers will still be parking on site after hours. To minimise conflict between customer movements and deliveries by vehicles in excess of 8.8m in length it will be conditioned that vehicles larger than 8.8m MRV's access the site only via Myoora Road after 10pm and before 6am to minimise conflict with customer vehicles or pedestrians. In addition, to cater for afterhours turning by vehicles up to the size of 14.8m semi-trailers it will be conditioned that a No Parking zone applying 6pm to 7am to be signposted throughout the 15 bay 90 degree parking areas denoted Zone 13 & Zone 15 on the DA plan No. A100-20 DA-6

Internal Referral Body	Comments
	A revised Loading and Service Vehicle Management Plan will also be conditioned to ensure that the above requirements are captured.
Waste Officer	***Supported - subject to conditions*** Waste Management Assessment

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	***Supported - subject to conditions*** The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Roads and Maritime Service - SEPP (Transport and Infrastructure) 2021, s2.122 - Traffic generating development	***Supported - subject to conditions*** The proposal was referred to Transport for NSW (TfNSW) who provided a response stating that the proposal is acceptable subject to the following requirements: 1. *Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system that impact upon Mona Vale Road are to be submitted to TfNSW for approval, prior to the commencement of any works.* *A plan checking fee will be payable, and a performance bond may be required before TfNSW approval is issued.* 2. *A Road Occupancy Licence (ROL) should be obtained from Transport Management Centre for any works that may impact on traffic flows on the Mona Vale Road during construction activities.* 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.

Transport for NSW (TfNSW)

Section 2.118 - Development with frontage to classified road states:

The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—

(a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and

(b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—
(i) the design of the vehicular access to the land, or
(ii) the emission of smoke or dust from the development, or
(iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and

(c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.

Comment:

The application was referred to Transport for NSW who did not raise any objection to the proposal.

Section 2.121 and Schedule 3 of this Policy requires that the following development(s) are referred to the TfNSW as Traffic Generating Development:

Purpose of Development	Size or Capacity (Site with access to any road)	Size of Capacity (Site with access to classified road or to a road that connects to classified road if access is within 90m of connection, measured along alignment of connecting road)
Commercial premises	10,000m² in area	2,500m² in area
Shops and commercial premises	4,000m²	1,000m²

Note: Under Section 2.121(2) of Chapter 2, 'relevant size of capacity 'is defined as meaning:

"(2) (a) in relation to development on a site that has direct vehicular or pedestrian access to any road - the size or capacity specified opposite that development in Column 2 of the Table to Schedule 3, or

(b) in relation to development on a site that has direct vehicular or pedestrian access to a classified road or to a road that connects to a classified road where the access (measured along the alignment of the connecting road) is within 90m of the connection - the size or capacity specified opposite that development in Column 3 of the Table to Schedule 3."

Comment:
The site is accessed via Mona Vale Road, which is a classified road and has an area greater than 2,500m^2 and is therefore traffic generating development.

The application was referred to Transport for NSW who responded and did not raise any objection to the proposal.

SEPP (Industry and Employment) 2021

Section 3.6 and 3.11 of Chapter 3 require Council to determine consistency with the objectives stipulated under Subsection 3.1 (1)(a) of the aforementioned SEPP and to assess the proposal against the assessment criteria of Schedule 5.

The objectives of this chapter aim to ensure that the proposed signage is compatible with the desired amenity and visual character of the locality, provides effective communication and is of high quality having regards to both design and finishes.

The proposal comprises nine (9) illuminated business identification signs associated with the businesses to operate from Hills Marketplace. This includes the installation of eight (8) new wall signs, and one (1) freestanding sign. It is noted that that the new signage largely relates to upgrading internal wayfinding signs. Proposed signage that is street facing and/or visible from any public place consists of two signs listed below:

- S3 - Wall sign for new restaurant: 2.4m (L) x 2.4m (H). Painted with external illumination.
- S9 - Freestanding building identification sign: 2.4m (L) x 1.2m (H). Not illuminated.

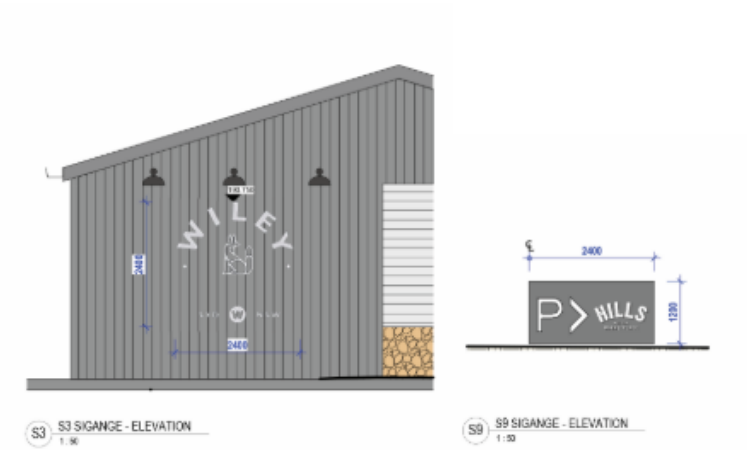


Figure 1. Signage details

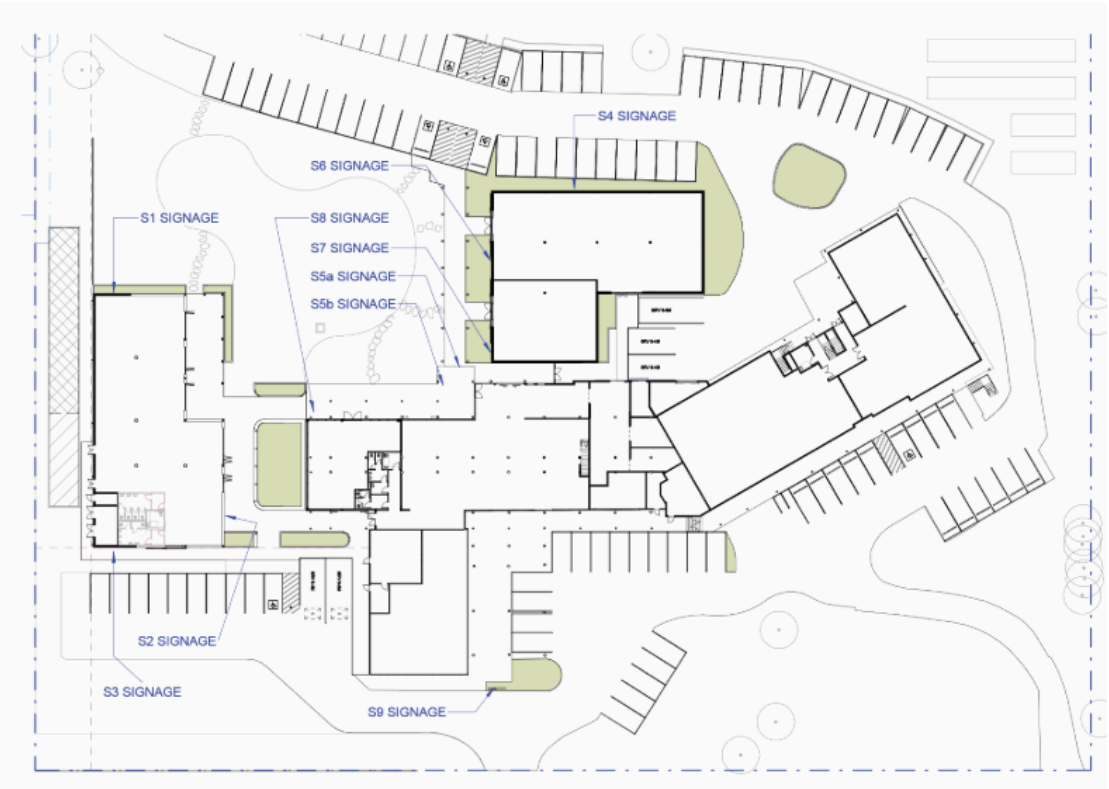


Figure 2. Signage Map

In accordance with the provisions stipulated under Schedule 5 of Chapter 3, the following assessment is provided:

Matters for Consideration	Comment	Complies
1. Character of the area Is the proposal compatible with the existing or	It is considered the proposed signage is compatible with the existing and	YES

desired future character of the area or locality in which it is proposed to be located?	desired future character of the locality.	
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	The proposed signage is consistent with the theme for the site, and the signage is to identify the nature of the businesses operating within Hills Marketplace.	YES
2. Special areas Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	The proposed signage is not likely to detract from the amenity, or visual quality of the site. The signage is located within the site boundaries, and is not considered to impact upon any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas.	YES
3. Views and vistas Does the proposal obscure or compromise important views?	The proposed signage will not obscure, or comprise important views.	YES
Does the proposal dominate the skyline and reduce the quality of vistas?	The proposed signage is not of a scale that will will dominate the skyline, or reduce the quality of vistas.	YES
Does the proposal respect the viewing rights of other advertisers?	The proposed signage will not impact upon any viewing rights of other advertisers.	YES
4. Streetscape, setting or landscape Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	The scale, proportion of form of the proposed signage is consistent with the streetscape, setting, and landscape of the site.	YES
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The proposed signage contribute to the visual interest of the setting, and landscape. The proposed signage is located within the subject site, and therefore will not impact upon the streetscape.	YES
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	The proposed signage upgrades are considered to simplify the existing signage.	YES
Does the proposal screen unsightliness?	The proposed signage is not used as a visual screen, and does not screen unsightliness.	YES
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	The proposed signage will not protrude above buildings, or above structures or tree canopies.	YES
Does the proposal require ongoing vegetation management?	The proposed signage does not require ongoing vegetation management.	YES
5. Site and building Is the proposal compatible with the scale,	The proposed signage is compatible with the scale, proportion, and	YES

proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	characteristics of the site and building on which the proposed signage is to be located.	
Does the proposal respect important features of the site or building, or both?	It is considered the proposed signage will not impact upon any important features of the site or building.	YES
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	The signage has been designed to respect the existing built form relationship, and complement its design by providing appropriate business identification.	YES
6. Associated devices and logos with advertisements and advertising structures Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	The proposed signage does not include any safety devices, or platforms.	YES
7. Illumination Would illumination result in unacceptable glare? Would illumination affect safety for pedestrians, vehicles or aircraft? Would illumination detract from the amenity of any residence or other form of accommodation?	The business identification signs will have a low level of illumination limited to the lettering, graphics and logos which will be controlled by a timer to turn on during the operating hours of the associated business.	YES
Can the intensity of the illumination be adjusted, if necessary?	The illumination of of the signage is low-level. In addition, given the significant distance from any residential accommodation it is not likely to result in adverse amenity impacts.	YES
Is the illumination subject to a curfew?	The signage will only be illuminated during the operating hours of the associated business.	YES
8. Safety Would the proposal reduce the safety for any public road, pedestrians or bicyclists?	The proposed signage would not reduce the safety for any public road, pedestrians or bicyclists given the signs are located within the site boundaries.	YES
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	The proposed signage would not reduce the safety for pedestrians including children, as there are no sightlines that are obscured as a result of the signage.	YES

Accordingly, the proposed signage is considered to be of a scale and design suitable for the locality. The proposal is therefore deemed to be consistent with the provisions of this chapter and its underlying objectives.

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.

In response to the above requirements of Chapter 4, the applicant has submitted a Preliminary Environmental Site Investigation dated 8 November 2022 and prepared by Geo-Logix Pty Ltd. In its conclusion, the investigation states:

The results of the assessment did not identify any conditions requiring the site to be remediated. The site is considered suitable for the proposed redevelopment.

In this regard, Council is satisfied that the land can be made suitable for the purpose for which the development is proposed to be carried out and the recommendations included in the investigation are included as conditions in the Recommendation of this report.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	8.5m	8.3m (Restaurant 1) 5.6m (Garden Centre 4) 4.0m (Rural Supplies) 3.9m (Garden Centre 3)	N/A	Yes

Permissibility

The proposal seeks consent for a variety of uses, while also expanding upon existing uses within the site. The proposed F*ood and Drink Premise* (restaurant 1), *Garden Centre* (garden centres 3 & 4), and *Landscaping Material Supplies* (rural supplies) are permissible uses pursuant to Schedule 1 of WLEP 2011, as discussed further in Section 2.5 of this report. Additionally, the proposal involves the minor expansion and reconfiguration of the existing flower shop. Since *Shops* are prohibited land use within the RU4 Primary Production Small Lots zone under WLEP 2011, this aspect has been elaborated upon in the 'Existing Use Rights' section of this report.

Compliance Assessment

Clause	Compliance with Requirements
2.5 Additional permitted uses for particular land	Yes
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	N/A
5.3 Development near zone boundaries	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

2.5 Additional permitted uses for particular land

The site falls within Schedule 1 Additional Permitted Uses - Area 18 pursuant to the WLEP 2011 which reads:

18 Use of certain land in the vicinity of Mona Vale and Myoora Roads, Terrey Hills

(1) This clause applies to land in the vicinity of Mona Vale and Myoora Roads, Terrey Hills, shown as "Area 18" on the Additional Permitted Uses Map.

(2) Development for the purposes of educational establishments, garden centres, hospitals, hotel or motel accommodation, places of public worship, recreation areas, recreation facilities (indoor), recreation facilities (outdoor), registered clubs and restaurants or cafes is permitted with consent.

A "Garden Centre" is defined as:
garden centre means a building or place the principal purpose of which is the retail sale of plants and landscaping and gardening supplies and equipment. It may include a restaurant or cafe and the sale of any of the following—

(a) outdoor furniture and furnishings, barbecues, shading and awnings, pools, spas and associated supplies, and items associated with the construction and maintenance of outdoor areas,

(b) pets and pet supplies,

(c) fresh produce.

Note: garden centres are a type of retail premises—see the definition of that term in this Dictionary.

Comment:

The proposal's predominant use is appropriately defined as a garden centre and is therefore permitted with consent in the RU4 zone pursuant to Schedule 1. Furthermore, the proposal includes a new restaurant that incorporates an area for ancillary brewing equipment. This brewing component is viewed as supplementary to the restaurant's main function, given its small size and scale, and therefore does not constitute a large-scale production operation.

Zone RU4 Primary Production Small Lots

Land use definition: WLEP 2011	Permitted or Prohibited
shop means premises that sell merchandise such as groceries, personal care products, clothing, music, homewares, stationery, electrical goods or the like or that hire any such merchandise, and includes a neighbourhood shop and neighbourhood supermarket, but does not include food and drink premises or restricted premises	Prohibited

The proposal involves the minor expansion and reconfiguration of the existing flower shop. Under WLEP 2011, shops are a prohibited land use within the RU4 Primary Production Small Lots zone.

However, the application relies on existing use rights, as the shop was approved (Development Consent: DA2004/1012, dated 31 January 2006) prior to WLEP 2011 coming into force.

Refer to the detailed discussion under 'Existing Use Rights'.

As existing use rights have been established to apply to the land and the development, the proposal is therefore permissible with consent, notwithstanding the prohibition that applies in the zone.

The underlying objectives of the RU4 Primary Production Small Lots zone

- *To enable sustainable primary industry and other compatible land uses.*

  Comment:

  The retention of the existing shop is supported, and the retention of this land use is not in considered inappropriate adjacent to residential properties.

- *To encourage and promote diversity and employment opportunities in relation to primary industry enterprises, particularly those that require smaller lots or that are more intensive in nature.*

  Comment:

  The development will necessitate the employment of persons in a variety of different roles which is supported.

- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*

  Comment:

  The presence of a garden centre adjacent to various land uses on adjoining sites is not considered to generate any unreasonable conflicts - particularly noting such a relationship has existed for more than 20 years.

- *To minimise the impact of development on long distance views of the area and on views to and from adjacent national parks and bushland.*

  Comment:

  It is not considered that the development will impact on long and short distance views.

- *To maintain and enhance the natural landscape including landform and vegetation.*

  Comment:

  The proposal's enhanced landscaping design will complement the natural landscape including landform and vegetation, particularly along the Mona Vale Road frontage.

- *To ensure low intensity of land use other than land uses that are primary industry enterprises.*

  Comment:

The predominate uses proposed on site all fall within the definition of a garden centre and are permitted with consent in the zone. The intensity of the uses are considered to be acceptable and compatible within the immediate locality.

- *To maintain the rural and scenic character of the land.*

  Comment:

  The proposal involves substantial landscaping works to enhance the it's scenic qualities and complement the surrounding rural character.

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.

6.2 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

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

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

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

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

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

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

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

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

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

(f) the likelihood of disturbing relics

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

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

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

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 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

Comment: The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective and therefore, Council is satisfied that the development has been assessed for the risk associated with landslides in relation to both property and life.

(b) the development will not cause significant detrimental impacts because of stormwater discharge from the development site, and

Comment: The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective. The application has also been assessed by Council's Development Engineers in relation to stormwater. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development will not cause significant detrimental impacts because of stormwater discharge from the development site.

(c) the development will not impact on or affect the existing subsurface flow conditions.

Comment: The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective. The application has also been assessed by Council's Development Engineers in relation to stormwater. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development will not result in adverse impacts or effects on the existing subsurface flow conditions.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	5.9m (Restaurant 1)	N/A	Yes
B4 Site Coverage	20% (4000m^2)	19% (3833.1m^2)	N/A	Yes
B5 Side Boundary Setbacks	7.5m - North	14.5m (Carpark)	N/A	Yes
	7.5m - South	2.5m (Underground bio-basin) 3.5m (Reversing bay) 7.5m (Restaurant 1)	66.7% 53.3% N/A	**No** **No** Yes
B9 Rear Boundary Setbacks	7.5m	5.0m (Carpark)	33.3%	**No**
B14 Main Roads Setback	30.0m (Buildings/signs)	30.0m (Restaurant 1) 10.8m (Signage)	N/A 64%	Yes **No**
	15.0m (Parking)	15.0m (Carpark)	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	70%	51.1% (10,216.7m^2)	27%	**No**

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B4 Site Coverage	Yes	Yes
B5 Side Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	No	Yes
B14 Main Roads Setback	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D18 Accessibility and Adaptability	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D23 Signs	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B5 Side Boundary Setbacks

Description of Non-compliance

Clause B5 requires development to provide a minimum side setback of 7.5m.

The development provides a minimum side setback of 2.5m to the southern boundary, which results in a variation of 66.7% (i.e. 5.8m). The non-compliant element is an underground bio-basin, which is largely below existing ground level.

In addition, the proposed at-grade reversing bay provides a minimum southern side setback of 3.5m.

The figure below indicates the areas of non-compliance.

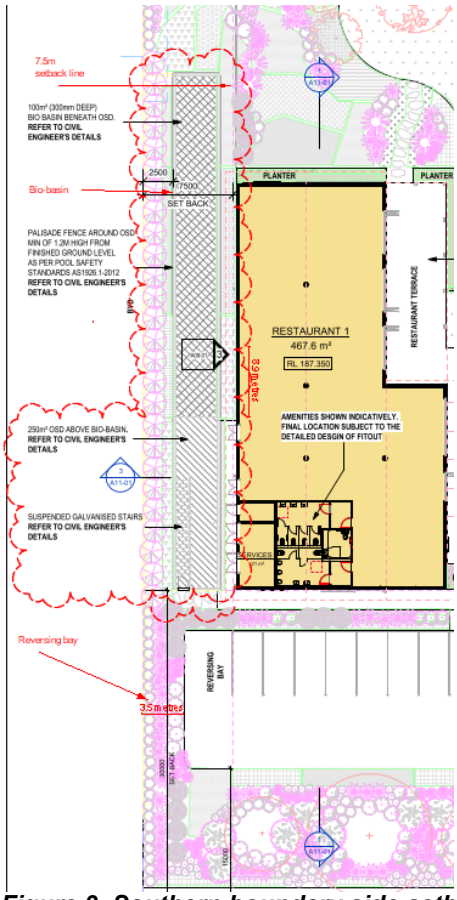


Figure 3. Southern boundary side setback non-compliance

<u>Merit Consideration</u>

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

- *To provide opportunities for deep soil landscape areas*

  <u>Comment</u>

  The proposal involves a slight increase of deep soil landscaping by 6.7% (1,320.3m^2).

  The reduced side setback as amended is landscaped by trees and shrubbery to provide suitable screening. Therefore, the reduced setback does not limit the provision of opportunities for deep soil landscape areas.

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

  <u>Comment</u>

  The proposed encroachments within the southern side setback are consistent with the existing

and nearby developments by virtue of their location within the subject site's southwest corner. The non-compliant elements low-lying and are situated at a significant distance from the frontage and adjacent buildings. Furthermore, the amended landscape plan seeks to heavily vegetate the intervening area between these setbacks. As such, the structure will not appear visually dominant when viewed from the street or surrounding properties.

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

  Comment

  The non-compliant elements are low-lying such that it would not add to the scale and bulk of the development.

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

  Comment

  The site is adjoined by a function centre on No.48 Myoora Road that also has a reduced landscaped buffer due to the existing driveway. Notwithstanding, suitable separation between buildings is provided and the nature of the structures proposed within the side setback are not considered to give rise to any unacceptable amenity impacts.

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

  Comment

  The non-compliant elements are low-lying and will not obstruct existing views from or to public and private properties.

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.

B9 Rear Boundary Setbacks

Description of Non-compliance

The proposed permeable parking area provides a minimum rear setback of 5.5m. The control requires a minimum rear setback 7.5m.

The non-compliance is diagrammatically displayed below:

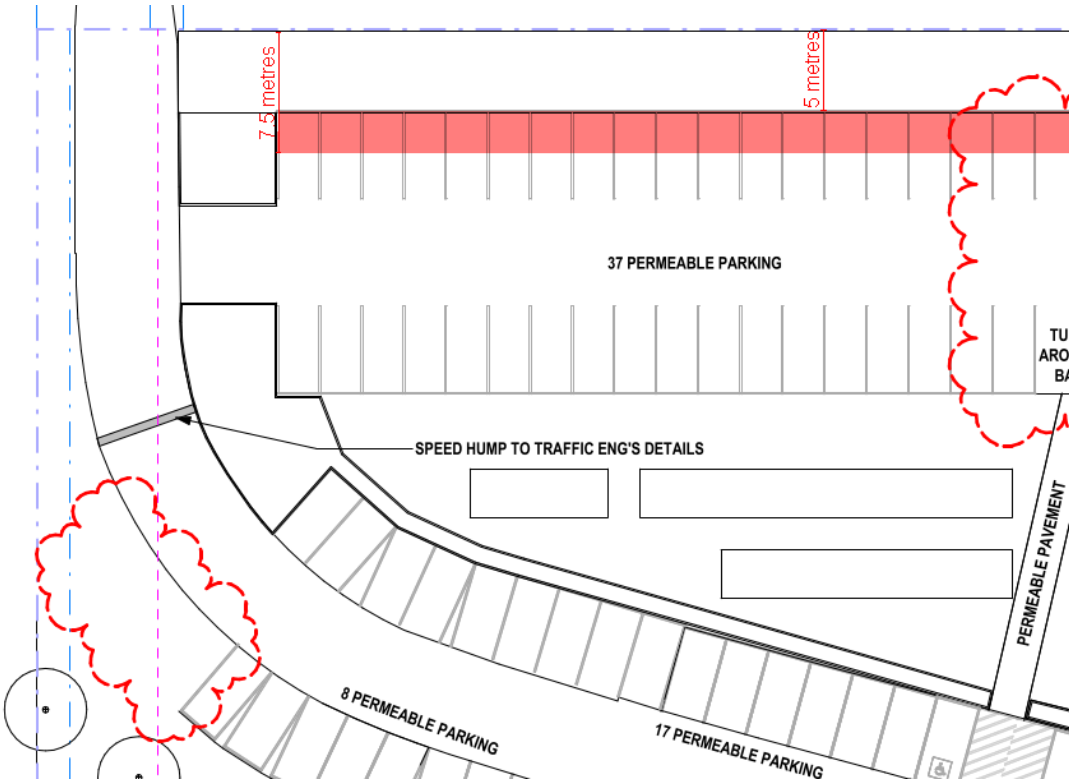


Figure 4. Rear setback non-compliance

Merit consideration:

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

- *To ensure opportunities for deep soil landscape areas are maintained.*

  Comment:

  The proposal provides a sufficient deep soil landscape area to the rear of the site.

- *To create a sense of openness in rear yards.*

  Comment:

  As above, the proposal being an at-grade uncovered car park represents a minor encroachment within the rear setback with the majority of areas being open and landscaped, which allows for a reasonable sense of openness within the rear yard.

- *To preserve the amenity of adjacent land, particularly relating to privacy between buildings.*

  Comment:

Adequate deep soil landscaping is proposed along the rear boundary, which will allow for suitable opportunities for the establishment of planting that is of a size and scale to screen the development from adjoining properties. In addition, the works are substantially set back from adjoining buildings, which mitigates any unacceptable visual and aural privacy impacts. Therefore, the proposal has been designed appropriately to preserve neighbourhood amenity.

- *To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.*

  Comment:

  The proposal will not disrupt or compromise the existing visual continuity and pattern of buildings, rear gardens or landscape elements due to its minimal elevation and minor encroachment within the rear setback.

- *To provide opportunities to maintain privacy between dwellings.*

  Comment:

  As above, the proposal has been adequately designed and sited to maintain privacy between dwellings.

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 section 1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is **supported**, in this particular circumstance.

B14 Main Roads Setback

Description of Non-compliance

Part B14 requires that development shall be setback 30m from the boundary perpendicular to Mona Vale Road. The clause also includes an exception provision which permits ground level car parking between 15m and 30m from the road boundary, provided that views of the car park from the main road are screened by landscaping. The control also requires that no signs are to be erected in the 30m front setback area.

The proposal fails to achieve compliance with the numerical requirements of the control. A freestanding sign is proposed approximately 10.8m from the boundary.

Car parking is proposed within the area 15m to 30m from the subject site's southeast corner. This represents a significant improvement over the current car park, which is located just 4.9m from the frontage. The increased setback enables the establishment of substantial plantings to effectively screen the proposed car park.

Merit Consideration

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

- *To provide a densely landscaped buffer between the development and the main road/s.*

  Comment:

  The proposal (as amended) has been designed to minimise carparking in the front setback to provide a densely landscaped buffer along the Mona Vale Road frontage. The proposed sign is located within an existing planter bed and will not require the removal of any significant vegetation. Overall, the proposal will maintain and enhance, through additional planting, the existing landscaped buffer provided between the development and Mona Vale Road.

- *To enhance the aesthetic quality of main roads.*

  Comment:

  As detailed above, the proposal will provide additional landscaping along the Mona Vale Road frontage which will enhance the aesthetic quality of Mona Vale Road.

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.

C3 Parking Facilities

An assessment of the car parking provisions, having regard to the requirements under WDCP 2011 and the TfNSW Guide to Traffic Generating Development has been undertaken (See Traffic Referral for further comments).

In summary, the proposed development provides on-site car parking for 182 vehicles, which exceeds the parking requirement of 174 spaces spaces for the proposed development.

D1 Landscaped Open Space and Bushland Setting

Description of Non-compliance

Clause D1 requires a Landscaped Open Space (LOS) area of 70%.

The control provides the following advice, when measuring these area:

a) Driveways, paved areas, roofed areas, tennis courts, car parking and stormwater structures, decks, etc, and any open space areas with a dimension of less than 2 metres are excluded from the calculation;
b) The water surface of swimming pools and impervious surfaces which occur naturally such as rock outcrops are included in the calculation;
c) Landscaped open space must be at ground level (finished); and
d) The minimum soil depth of land that can be included as landscaped open space is 1 metre.

In this regard, the proposed permeable car parking and any open space areas with a dimension of less than 2.0m are excluded from this calculation. Consequently, the calculable area amounts to 51.1% (10,216.7 m²) of the total site area.

The proposal will increase the site's deep soil landscaped area by approximately 6.7% (1,320.3 m²),

from 44.4% (8,896.4 m²) to 51.1%.

Merit Consideration

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

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

  Comment:

  Despite the breach of deep soil landscape open space requirements sufficient planting is retained and enhanced to enhance the streetscape along Mona Vale Road.

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

  Comment:

  The proposal will have no adverse impact on the topographical features and habitat for wildlife. Direct biodiversity impacts are limited to tree removal, involving the removal of 28 trees, of which 15 trees are exempt by species or height. The landscape plan proposes 15 replacement native trees, which will sufficiently offset any tree canopy loss. The proposal has also been reviewed by Council's Natural Environment departments, who raised no objections, subject to the recommended conditions of consent.

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

  Comment:

  The landscape proposal incorporates a variety of landscape treatments to the area of the development works, including tree and mass planting to the front setback zone of the property to soften the built form.

- *To enhance privacy between buildings.*

  Comment:

  The siting of the development will ensure there are no adverse visual and acoustic privacy impacts on neighbouring sites.

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

  Comment:

  The proposal will continue to provide appropriate outdoor areas that meet the needs of the patrons and staff.

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

  Comment:

  The proposal allows for sufficient space for the service function of the garden centre including equitable and safe access for patrons and staff.

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

  Comment:

  Council's Development Engineer has confirmed that there are no objections to the proposed water management subject to conditions.

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.

D3 Noise

An Acoustic Assessment (dated June, 2023) of the proposed development has been carried out by Stantec and accompanies the development application.

The assessment has predicted noise impacts at the most sensitive boundary positions. The calculations show that all the relevant criteria (as provided for in the WDCP 2011 and EPA NSW Industrial Noise Policy) for noise emissions will be met.

The assessment concludes that '*the development and its proposed site are not expected to generate or be exposed to excessive noise or vibration*'.

Council's Environmental Health Officer has also reviewed the Acoustic Report and has raised no objections to approval, subject to conditions.

D8 Privacy

Merit Consideration

The submission received raised privacy as a concern, particularly, with regard to the proposed restaurant located within the subject site's southeast corner.

Accordingly, 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 proposed restaurant is single storey located 7.5m from the southern side boundary and approximately 21.0m from the nearest building, commonly known as Miramare Gardens. The

proposed restaurant and outdoor seating areas are orientated to the north, with limited openings directed toward the southern side boundary. In addition, the southern side setback is landscaped by trees and shrubbery to provide suitable screening.

The Acoustic Report dated June 2023 that accompanies the application demonstrates that the proposal will preserve an acceptable level of acoustic privacy. Council's Environmental Health Officer has also reviewed the Acoustic report. The Environmental Health officer has raised no objections to approval, subject to conditions, including additional certification of acoustic requirements.

Overall, the proposal as conditioned will provide a high level of visual and acoustic privacy for occupants and neighbours.

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

  Comment:

  The proposal includes a comprehensive landscape design that will enhance the presentation of the subject site within the urban environment and will provide a more scenic frontage in keeping with the rural character character of Mona Vale Road.

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

  Comment:

  The proposal will ensure personal and property security will be maintained.

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.

D23 Signs

A detailed assessment of the proposed signage has been provided earlier in the report in relation to Chapter 3 of SEPP (Industry and Employment) 2021.

The assessment indicates that the signage is appropriate and consistent with the provisions under SEPP (Industry and Employment) 2021.

Similarly, it is considered that the proposed signage is consistent with the objectives of Part D23 of the Warringah DCP 2011.

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 $97,295 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $9,729,500.

CONCLUSION

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

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

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

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

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

PLANNING CONCLUSION

In conclusion, the development application under review seeks consent for substantial alterations and additions to the existing Hills Flower Market (Garden Centre), inclusive of signage enhancements.

The application's referral to the Development Determination Panel (DDP) arises from the receipt of more than five submissions, predominantly objections, with one submission in support among the total of seven received. Concerns voiced primarily revolve around traffic and amenity impacts, specifically citing the loss of acoustic privacy, alongside considerations regarding permissibility, landscaped area, stormwater, and excavation.

Importantly, the proposal does not necessitate variations to principal development standards under the Warringah Local Environmental Plan (WLEP) 2011. Critical assessment issues, encompassing

concerns from submissions and non-compliance with various setback and landscaped area controls, have been addressed satisfactorily through the submission of amended plans.

Variations to the Development Control Plan (DCP) controls are deemed acceptable within the site's context, with significant enhancements proposed, including streetscape landscaping, building rationalisation, environmental management upgrades, and compliant parking solutions to accommodate additional floorspace/uses.

Concerns raised by Council regarding surplus parking spaces and inadequate landscaped area have been successfully mitigated through amendments, including surplus parking removal and incorporation of additional deep soil landscaping across the site.

The proposal entails the expansion and reconfiguration of tenancies within the existing Hills Flower Market, resulting in a reduction of Gross Floor Area (GFA) alongside the inclusion of a new detached restaurant. Despite this increase, the proposed use of the site aligns with zone objectives and broader locale considerations, as extensively discussed in the report.

Furthermore, the proposal seeks alterations to a *shop*, prohibited under the WLEP 2011 zoning, however, benefits from Existing Use Rights.

Following a comprehensive assessment, the proposal demonstrates consistency with the objectives of relevant standards and controls, with no substantial issues warranting refusal. Hence, this report concludes with a recommendation for the DDP to grant **APPROVAL** to the development application, contingent upon specified conditions.

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2023/0803 for Alterations and additions to the existing Hills Flower Market site on land at Part Lot 1 DP 845094, 287 Mona Vale Road, TERREY HILLS, 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**

A01-01	3	Demolition Plan - Site Plan	BN Group	24 May 2023
A01-02	3	Demolition Plan - Ground Floor Plan	BN Group	24 May 2023
A01-10	3	Demolition Plan - Roof Plan	BN Group	24 May 2023
A01-30	3	Demolition Plan - Elevations	BN Group	24 May 2023
A01-40	3	Demolition Plan - Sections	BN Group	24 May 2023
A02-01	9	Proposed - Site Plan	BN Group	22 April 2024
A02-20	8	Proposed - Ground Floor Plan	BN Group	22 April 2024
A02-21	6	Proposed - Mezzanine Plan	BN Group	22 April 2024
A02-40	6	Proposed - Roof Plan	BN Group	22 April 2024
A09-01	6	Proposed - Elevations	BN Group	22 April 2024
A11-01	6	Proposed - Sections	BN Group	22 April 2024
A60-01	3	Proposed - Signage	BN Group	24 May 2023
A70-01	3	Proposed - Material Sample Board	BN Group	24 May 2023

Approved Reports and Documentation			
Document Title	**Version Number**	**Prepared By**	**Date of Document**
Access Report	3	Morris Goding Access Consulting	26 May 2023
Arboricultural Impact Appraisal and Method Statement	A	Naturally Trees Arboricultural Consulting	15 May 2023
BCA Assessment Report	R3.0	Steve Watson and Partners	29 May 2023
Bushfire Protection Assessment	B213699 - 1	Australian Bushfire Protection Planners	20 October 2022
Detailed Site Investigation Report	V01	Geo-Logix	8 November 2022
Geotechnical Report	V03	Geo-Logix	24 November 2023
Noise Impact Assessment	004	Stantec	1 June 2023
Transport Assessment	07	Ason Group	15 June 2023

Waste Management Plan	-	Mainbrace Constructions	-

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	5 June 2023
Transport for NSW	TfNSW Referral Response	17 July 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 proposed tenancies as detailed on the approved plans for any land use of the tenancy beyond the relevant definition, in accordance with the Dictionary of the Warringah Local Environmental Plan 2011, as follows:

- **Restaurant 1** - *restaurant or cafe means a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, take away meals and drinks or entertainment are also provided, but does not include the preparation and serving of food and drink to people that occurs as part of—*
(a) an artisan food and drink industry, or
(b) farm gate premises.
- **Garden Centre 3 & 4** - *garden centre means a building or place the principal purpose of which is the retail sale of plants and landscaping and gardening supplies and equipment. It may include a restaurant or cafe and the sale of any of the following—*
(a) outdoor furniture and furnishings, barbecues, shading and awnings, pools, spas and associated supplies, and items associated with the construction and maintenance of outdoor areas,
(b) pets and pet supplies,
(c) fresh produce.
- **Rural Supplies** - *rural supplies means a building or place used for the display, sale or hire of stockfeeds, grains, seed, fertilizers, veterinary supplies and other goods or materials used in farming and primary industry production.*

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 any Unauthorised Signage**
No approval is granted under this Development Consent for any unauthorised signs other than exempt or signs identified on the approved plan (A60-01 - Rev 3). Any unauthorised signs must be removed or obtain the relevant approval for the erection or display of any such signs.

Reason: Control of signage.

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) 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 Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. 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.

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

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

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

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

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

i) Building/s that are to be erected

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

iii) Building/s that are to be demolished

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

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

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

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

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

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

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

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

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

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

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

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

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

A monetary contribution of $97,295.00 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 $9,729,500.00.

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

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

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

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

8. **Security Bond**

A bond (determined from cost of works) of $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

9. **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:
a) a landscape buffer along the north-eastern boundary for the full extent of the cultivation area i.e. from the north-western boundary junction to at least 3 metres beyond the last cultivation bed to the south-east. The buffer shall be a minimum width of 3 metres as measured perpendicular to the north-eastern boundary and include a range of low lying shrubs, medium high shrubs and screen planting,
b) coordinate the plans with the planting schedule to capture all proposed species.

Certification shall be provided to the Certifier that these amendments have been documented.

Reason: Landscape amenity.

10. **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 Henry & Hymas,drawing number 21F99_DA_C000 Rev 03, Dated 19/12/2023, C100 Rev 10, C101 Rev 15, C102 Rev 13 Dated 22/04/2024 and C200 Rev 04, C202 Rev 03 Dated 27/03/2024 and C201 Rev 11 Dated 30/04/24.
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.

The drainage plans must address the following:
1. Scour protection details between overflow weir of OSD basin and southern boundary.
2. Openings in southern boundary fencing to permit flows from overflow weir from OSD basin..
3. Pool style fencing around perimeter of OSD basin.

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

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

11. **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.

12. **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 Henry and Hymas Civil Engineering plans 21F99_DA_C202, 21F99_DA_C201, 21F99_DA_C101, 21F99_DA_C101 rev 15 22.04.2024 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.

13. **Car Parking Standards**
The driveway/access ramp grades, access and car parking facilities must comply with the Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking. The dimensions of car parking bays and aisle widths in the car park are to comply with Australian/New Zealand Standard for Off-Street Parking AS/NZS 2890.1-2004.

Details demonstrating compliance with this condition are to be submitted to the Principal Certifier prior to the issue of a construction certificate.

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles.

14. **Construction Traffic Management Plan**
As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared by a TfNSW accredited person and

submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate.

Truck movements must be agreed with Council's Traffic Engineer prior to submission of the CTMP.

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 rates 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
- 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 the 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
- Specify that, due to the proximity of the site adjacent to Terrey Hills Public School, no heavy vehicle movements or construction activities effecting vehicle and pedestrian traffic on Myoora Road are permitted in school zone hours (8:00am-9:30am and 2:30pm-4:00pm weekdays)
- 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 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.

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

15. **Building Code of Australia Fire Safety Requirements**

The Building Code of Australia fire safety requirements for the building as detailed and recommended in the BCA Assessment Report prepared by Steve Watson and Partners, dated 29/5/2023, Report No. 2021/1055, R3.0, including any required Performance Reviews, are to be considered as part of the assessment for any Construction Certificate. Details demonstrating compliance are to be provided to the Certifying Authority, prior to the issue of a Construction Certificate.
Reason: To ensure adequate provision is made for Health, Amenity, access and Fire safety for building occupant health and safety.

16. **Access and Facilities for Persons with Disabilities**

Access and facilities to and within the building are to be provided as required for Persons with a Disability in accordance with the Building Code of Australia and AS1428. In particular the DA Access Review prepared by MGAC dated 26/5/2023 is to be taken into consideration as part of the Construction Certificate assessment. Details are to be provided to the Certifying Authority prior to the issue of the Construction Certificate and be implemented prior to occupation of the building.

Reason: To ensure adequate provision is made for access to and within the building for Persons with a disability.

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

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

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

18. **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 Certifying Authority prior to the issue of the Construction Certificate.

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

19. **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.

20. **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.

21. **Waste and Recycling Requirements**
Details demonstrating compliance with Northern Beaches Waste Management Guidelines, are to be submitted to and approved by the Certifier prior to the issue of any Construction Certificate.

If the proposal, when compliant with the Northern Beaches Waste Management Guidelines, causes inconsistencies with other parts of the approval i.e. architectural or landscaped plans, a modification(s) to the development may be required.

Reason: To ensure adequate and appropriate waste and recycling facilities are provided.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

22. **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.

a) The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, and in particular:
i) works and tree protection measures under section 4 Arboricultural Method Statement, Appendix 7, and Appendix 8.

b) 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.

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. **Tree Removal Within the Property**
This consent approves the removal of existing trees on the subject site as identified in the Arboricultural Impact Assessment, approved Plans, or as listed below:
a) tree 1 - *Acer palmatum*, trees 2 and 3 - *Nyssa sylvatica*, tree 5 - *Syzygium* sp., tree 10 *Betula pendula*, tree 12 - *Magnolia* sp., trees 14 and 15 - *Nyssa sylvatica*, tree 18 - *Hymenosporum flavum*, tree 20 - *Elaeocarpus reticulatus*, and trees 33, 34, and 35 - *Syzygium* sp.,
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.

24. **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 and a Roads and Maritime Services Work Zone Permit shall be obtained for State Roads.

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

25. **Road Occupancy Licence**
Prior to commencement of the associated works, the applicant shall obtain a Road Occupancy License from Transport Management Centre for any works that may impact on traffic flows on Mona Vale Road.

Reason: Requirement of TMC for any works that impact on traffic flow.

26. **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.
- Specify that, due to the proximity of the site adjacent to Terry Hills Public School, no heavy vehicle movements or construction activities effecting vehicle and pedestrian traffic on Myoora Road are permitted in school zone hours (8:00am-9:30am and 2:30pm-4:00pm weekdays).
- 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.

27. **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 structures within 5.0 metres of proposed excavation and earthworks associated with the property listed below.

Property: 48 Myoora Road, Terry Hills (Part Lot 128 DP 752017)

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

28. **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 to the Principal Certifier,
viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,
ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

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

Reason: Tree and vegetation protection.

29. **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 an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture during the works. In this regard all protected trees shall not exhibit:
a) a general decline in health and vigour,
b) damaged, crushed or dying roots due to poor pruning techniques,
c) more than 10% loss or dieback of roots, branches and foliage,
d) mechanical damage or bruising of bark and timber of roots, trunk and branches,
e) yellowing of foliage or a thinning of the canopy untypical of its species,
f) an increase in the amount of deadwood not associated with normal growth,
g) an increase in kino or gum exudation,
h) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
i) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist/Project 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.

30. **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.

31. **Protection of Habitat Features**
All natural landscape features, including any rock outcrops, native vegetation and/or watercourses, are to remain undisturbed during the construction works, except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

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

Reason: Public safety.

33. **Installation and Maintenance of Sediment and Erosion Controls**
Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan prepared 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.

34. **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.

35. **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.

36. **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.

37. **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.

38. **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.

39. **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.

40. **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.

41. **Requirement to Notify about New Contamination Evidence**
Any new information revealed during demolition works or excavation that has the potential to alter previous conclusions about site contamination or hazardous materials shall be immediately notified to the Council and the Principal Certifier.

Reason: To protect human health and the environment.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

42. **Fire Safety Matters**
At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and Fire and Rescue NSW.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of a part Occupation Certificate or Occupation Certificate. Each year the Owners must send to the Council and Fire and Rescue NSW, an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement under Parts 10, 11 & 12 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021.

43. **Hazardous Building Materials Survey**
A hazardous building materials survey is to be conducted by a suitably qualified and experienced person. The survey is to include a survey of hazardous building materials related to structures to be modified or demolished as part of this consent including but not limited to asbestos, lead, SMF and PCBs. Following the survey where hazardous materials or found, a Hazardous Building Materials Register is to be prepared for the premises providing recommendations for the safe management/removal of hazardous building material.

Reason: Protection of the environment, SEPP (Resilience and Hazards) 2021 compliance.

44. **Landscape Completion**
Landscape works are to be implemented in accordance with the approved amended

Landscape Plan(s), 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; 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 Plan(s) including the required amendments,
d) mass planting shall be installed in garden beds prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,
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 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.

45. **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.

46. **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.

47. **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 approved construction certificate plan. The certificate must confirm that stormwater treatment measures are completed, online, in good condition and are not impacted by sediment. Vegetated measures must exhibit an 80 percent survival rate of plantings.
Rainwater tank to be a minimum of 8KL.

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

Reason: Protection of the receiving environment.

48. **Positive Covenant, Restriction as to User and Registration of Encumbrances for Stormwater Treatment Measures**
A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the stormwater treatment measures in accordance with the standard requirements of Council, the manufacturer and as required by the Stormwater Treatment Measures Operation and Maintenance Plan.

A restriction as to user shall be created on the title over the stormwater treatment measures, restricting any alteration to the measures.

The terms of the positive covenant and restriction as to user are to be prepared to Council's standard requirements (available from Council) at the applicant's expense and endorsed by the Northern Beaches Council's delegate prior to lodgement with the Department of Lands. 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 as to user is to be submitted to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: To identify encumbrances on land, ensure ongoing maintenance, and ensure modification to the stormwater treatment measures is not carried out without Council's approval.

49. **Stormwater Treatment Measures Operation and Maintenance Plan**
An Operation and Maintenance Plan is to be prepared to ensure the proposed stormwater treatment measures remain effective.

The Plan must be attached to the Positive Covenant (and the community or strata management statement if applicable) and contain the following:

1. Detail on the stormwater treatment measures:
    a) Work as executed drawings
    b) Intent of the stormwater treatment measures including modelled pollutant removal rates
    c) Site detail showing catchment for each device
    d) Vegetation species list associated with each type of vegetated stormwater treatment measure
    e) Impervious area restrictions to maintain the water balance for the site
    f) Funding arrangements for the maintenance of all stormwater treatment measures
    g) Identification of maintenance and management responsibilities
    h) Maintenance and emergency contact information

2. Maintenance schedule and procedure - establishment period of one year following commissioning of the stormwater treatment measure:
   a) Activity description, and duration and frequency of visits

   Additionally for vegetated devices:
   b) Monitoring and assessment to achieve an 80 percent survival rate for plantings
   c) Management of weeds, pests and erosion, with weed and sediment cover limited to a maximum of 5 percent of the total area of the stormwater treatment measure

3. Maintenance schedule and procedure - ongoing
   a) Activity description, and duration and frequency of visits
   b) Routine maintenance requirements
   c) Work Health and Safety requirements
   d) Waste management and disposal
   e) Traffic control (if required)
   f) Renewal, decommissioning and replacement timelines and activities of all stormwater treatment measures (please note that a DA may be required if an alternative stormwater treatment measure is proposed)
   g) Requirements for inspection and maintenance records, noting that these records are required to be maintained and made available to Council upon request.

Details demonstrating compliance shall be submitted to the Principal Certifier prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.

50. **Works as Executed Drawings - Stormwater Treatment Measures**
Works as Executed Drawings for the stormwater treatment measures must be prepared in accordance with Council's Guideline for Preparing Works as Executed Data for Council Stormwater Assets.

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

Reason: Protection of the receiving environment.

51. **Signage and Linemarking - Internal**
A plan demonstrating:

1. appropriate signposting and linemarking of the entry and exit driveways to/from Mona Vale Road
2. Signposting of a No Parking restriction applying 6pm to 7pm Everyday throughout the 15 bay 90 degree parking areas denoted Zones 13 & 15 on Plan A100-20 DA-6
shall be submitted to Council's Traffic Engineer for endorsement with Council's approval provided to the Principal Certifier prior to the issue of any Occupation Certificate.

Reason: to prevent conflict between inbound and outbound traffic movements on the sites

Mona Vale Road frontage and ensure adequate space for trucks to turn on site.

52. **Loading and Service Vehicle Management Plan**
A Loading and Service Vehicle Management Plan shall be prepared by the applicant and submitted to Council's Traffic Engineer for review with an approval provided to the Principal Certifier prior to the issue of any Occupation Certificate.

The Plan will need to demonstrate how truck movements will be managed to ensure that ONLY deliveries/servicing by vehicles less than 8.8m in length will occur between the hours of 6am and 10pm with no truck movements by vehicles larger than 14.8m semi-trailers to occur at any time. The Plan to detail how the site will be managed to ensure that there will be no more than five small or medium rigid vehicles entering and exiting the site at any one time between the hours of 7am and 6pm and how safe servicing arrangements including waste collection will be undertaken without interrupting general traffic. Vehicle queuing on public road(s) is not permitted.

Reason: to ensure that truck movements are managed appropriately to minimise congestion and maximise safety for customers of the site.

53. **Disabled Parking Spaces**
Where disabled parking spaces are provided they must be in accordance with AS2890.6:2009.

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

Reason: To ensure compliance with Australian Standards.

54. **Shared Zone Bollard**
A bollard is to be provided at the shared zone between disabled spaces in accordance to Australian Standards AS2890.6:2009.

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

Reason: To ensure compliance with Australian Standards.

55. **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.

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

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 disposal structures within this development consent. The terms of the positive covenant and restriction as to user are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgment 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 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.

57. **Sanitary Facilities prior to Occupation Certificate (OC) or Part Occupation**
Sanitary Facilities, prior to issue of an Occupation Certificate (OC) or Part Occupation shall comply with BCA for any operating business.

Reason: To ensure adequate sanitary facilities for any operating business.

58. **Plan of Management**
Prior to the issue of an Occupation Certificate, a Plan of Management is to be submitted to Council (Environmental Health) for approval .
Such plan shall include:
A. Measures necessary to comply with the operational measures stated in the Acoustic Assessment by Stantec (Australia) Pty Ltd (rev 004 dated 1.6.2023)
B. Measures to be taken in dealing with noisy patrons (particularly in the external areas) or vehicles on or leaving site at night time.
C. Sound levels from and music or any amplification being set by Stantec (Australia) Pty Ltd and managed by staff.
D. Actions to be taken should there be a blockage or failure (including power) of the macerator/pump to sewer system to ensure that any discharge of effluent does not occur on site or to any adjoining premises or public place. Such action/plan shall include an alarm system on site and if a significant fault, how operations will temporarily cease until resolved.
E. A register of complaints and actions (if necessary) taken by Management being maintained on site.
Reason: To ensure that wastewater is disposed of in a manner that is not harmful to the environment.

59. **Acoustic Requirements before issue of (OC) Ocupation Certificate**
Certification of compliance with the assumptions, findings and recommendations Acoustic Assessment by Stantec (Australia) Pty Ltd (rev 004 dated 1.6.2023). The Plan of Management

is to incorporate measures to ensure noise nuisances are prevented.

Reason: To ensure acoustic measures are incorporated into the development.

60. **Removal of All Temporary Structures/Material and Construction Rubbish**
Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

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

Reason: To ensure bushland management.

61. **Garbage and Recycling Facilities**
All internal walls of the waste rooms shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.
Waste room floors shall be graded and drained to an approved Sydney Water drainage system.

Waste rooms shall be clear of any other services or utilities infrastructure such as gas, electricity air-conditioning, plumbing, piping ducting or equipment.

Reason: To prevent pollution of the environment, provide a safe workplace for contractors and residents and to protect the amenity of the area.

62. **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.

63. **Waste and Recycling Facilities Certificate of Compliance**
The proposal shall be constructed in accordance with the Northern Beaches Waste Management Guidelines.

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

Reason: To ensure waste and recycling facilities are provided.

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

64. **Acoustic Requirements - On-going**
Compliance with the recommendations within the Acoustic Assessment by Stantec (Australia) Pty Ltd (rev 004 dated 1.6.2023) and any additional requirements at OC review stage.

Reason: To prevent a noise nuisance to any neighbouring receiver.

65. **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 amended Landscape Plan(s) and any conditions of consent.

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

Reason: To maintain local environmental amenity.

66. **Maintenance of Stormwater Treatment Measures**
Stormwater treatment measures must be maintained at all times in accordance with the Stormwater Treatment Measure Operation and Maintenance Plan, manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

Vegetated stormwater treatment measures must maintain an 80 percent survival rate of plantings and limit weed cover to no more than 10 percent of the total area of the stormwater treatment measure.

Where replacement cartridges or other necessary components for the system become unavailable, an alternative system is required to be retrofitted into the development to achieve an equivalent pollutant reduction outcome. Evidence supporting the replacement must be retained on site and made available to Council as required.

Northern Beaches Council reserves the right to enter the property and carry out appropriate maintenance of the device at the cost of the property owner.

Reason: Protection of the receiving environment.

67. **Implementation of Loading & Service Vehicle Management Plan**
All loading and service vehicle ingress and/or egress activities are to be undertaken in accordance with the approved Loading and Service Vehicle Management Plan. Vehicle queuing on public road(s) is not permitted.

Reason: To allow for vehicular access.

68. **Plan of Management**
The approved Plan of Management is to be complied with on-going and updated as needed.

Reason: To ensure guidance for Staff and Management and to eliminate potential nuisances

69. **Hours of Operation**
The hours of operation of 'Restaurant 1' are to be restricted to:

- Sunday to Wednesday - 7am - 10pm
- Thursday to Saturday - 7am – 12am
- Public Holidays - 7am - 10pm

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

Reason: Information to ensure that amenity of the surrounding locality is maintained.

70. **Commercial Waste Collection**
Waste and recyclable material, generated by this premises, must not be collected between the hours of 10pm and 6am on any day.

Reason: To protect the acoustic amenity of surrounding properties.

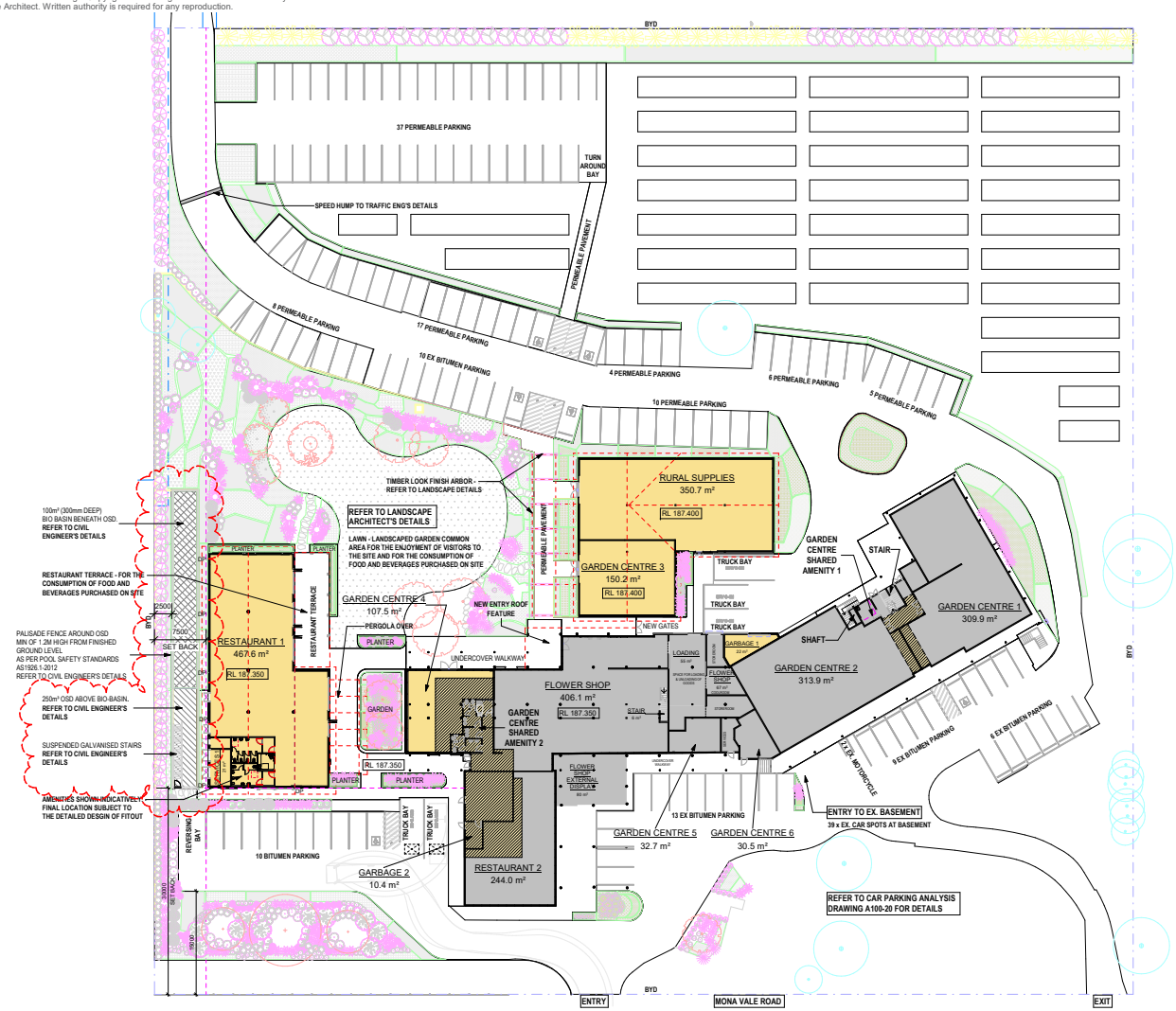
71. **Loading And Service Vehicle Access**
1. That trucks accessing the development site be limited to vehicles up to 8.8m in length between the hours of 6am and 10pm.

2. Trucks in excess of 8.8m in length but of no more than 14.8m in length are only permitted to access the site to/from Myoora Road and only between the hours of 10pm and 6am

Reason: to minimise conflict between trucks and passenger vehicles/pedestrians

DEVELOPMENT APPLICATION

All dimensions to be checked on site, written dimensions only to be used. Do not scale from drawings. Copyright of the design shown herein is retained by the Architect. Written authority is required for any reproduction.



1 PROPOSED GROUND LEVEL - OVERALL SITE
1 : 300

LEGEND

- PROPOSED NEW WORKS / EXTENSIONS
- PROPOSED NEW INTERNAL WORKS / ALTERATIONS
- EXISTING BUILDING

CAR PARKING	
MOTOCYCLE	3
STANDARD PARKING	168
DISABLED PARKING	6
TRUCK PARKING	5
TOTAL	182

HILLS MARKET PLACE
287 MONA VALE ROAD, TERREY HILLS, NSW 2084

ISSUE	DATE	DESCRIPTION
7	09.06.23	ISSUED FOR D.A
8	16.11.23	RFI RESPONSE
9	22.04.24	RFI RESPONSE

PROPOSED OVERALL SITE PLAN

A02-01 DA - 9
1:300 @ A1
1:600 @ A3

82 Alexander Street
Crows Nest, NSW 2065
ABN 43 092 960 499
T +61 2 9437 0511
www.bngrouponline.com
NSW Registered Architect No. 4435

BN Architecture Urban Design Masterplanning Graphics Interiors

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LEGEND

- Dining Room - **238 sqm**
- Kitchen & BOH - **131 sqm**
- Amenities - **44.6 sqm**
- Functional Brewing Equip. for Theatre/Ambience - **31 sqm**
- Kids Play Area - **23 sqm**

TOTAL **467.6 sqm**

- Exterior - TBC

SEAT COUNT

Interior	150 pax
Exterior	100pax
Total	**250 pax**

NOTE

- Any beer brewed within restaurant 1 will be for on-site consumption only

- Future fit-out of restaurant 1 to be subject of a seperate application/approval

1 Indicative Restaurant 1 Fit-Out Plan
Scale: 1:100

FiveFootOne

A: Suite 203/5 Alexander Street,
Crows Nest NSW 2065
T: 0422 757 883
E: kat@fivefootonedesign.com

2144

Wiley Farm

287 Mona Vale Road
Terrey Hills NSW 2084

Peter Macgregor

NOTES:

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- Do not scale drawings, used figured dimensions only, verify all dimensions on site.
- All works to be in accordance with the building code of australia BCA), Australian standards (AS), and relevent authorities' requirements.
- Any discrepancies, dimensional inconsistencies or the need for clarification must be reported to Five Foot One Design & relvant consultants immediately.
- This drawing is to be read with all associated Five Foot One Design project documentation, including specifications, schedules, drawings & reports.
- All areas yields & calculations are preliminary & indicative only and subject to detailed & further survey, design & client and consultant input & advice.

ISSUE	DATE	AMENDMENT
D	23/10/22	Issue for Council Review
E	19/11/22	Issue for Council Review
F	4/4/2023	Issue for Client Review
G	28/4/2023	Issue for Client Review
H	31/5/2024	Issue for Approval
I	3/6/2024	Issue for Approval
J	4/6/2024	Issue for Approval

DRAWING NO.

SK.001

Indicative Restaurant 1 Fit-Out Plan

DATE: 19/10/22

SCALE: 1:100

DRAWN: PL

REVISION

J

FOR DEVELOPEMENT APPLICATION ONLY

DEVELOPMENT APPLICATION

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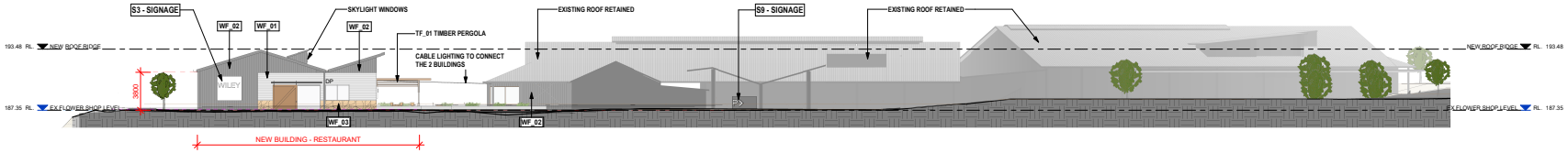
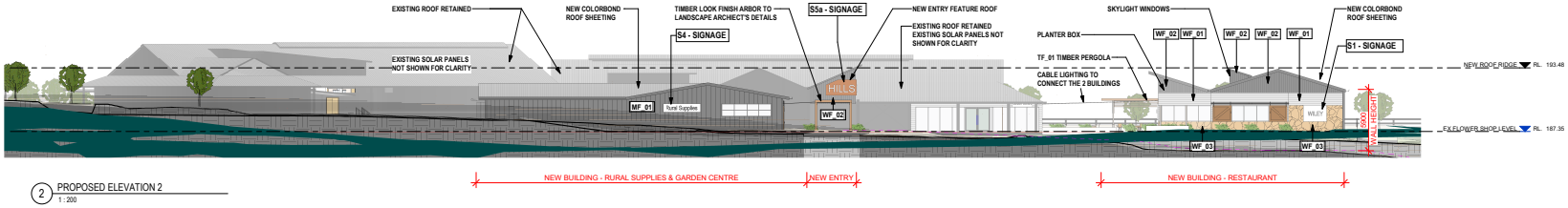
WALL FINISHES LEGEND

REFER ALSO TO MATERIAL SAMPLE BOARD - DRAWING A70.01

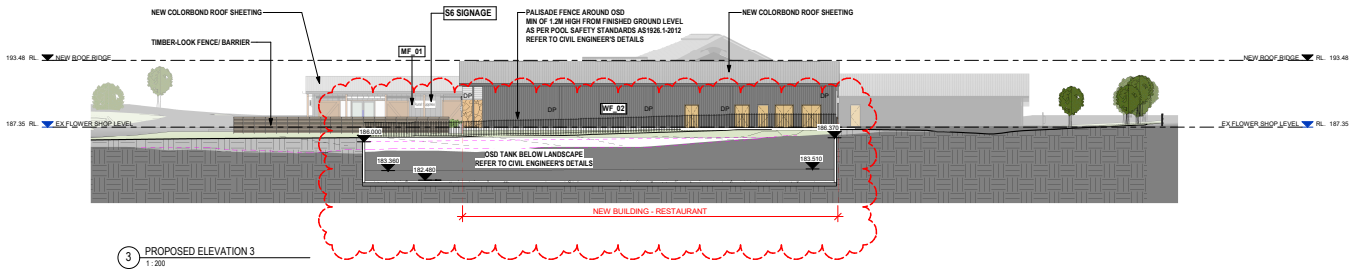
- MF_01 VERTICAL METAL CLADDING
- WF_01 HORIZONTAL WEATHERBOARD CLADDING
- WF_02 VERTICAL WEATHERBOARD CLADDING
- WF_03 STONE CLADDING
- WF_04 TIMBER



1 PROPOSED ELEVATION 1
1 : 200



2 PROPOSED ELEVATION 2
1 : 200



3 PROPOSED ELEVATION 3
1 : 200

HILLS MARKET PLACE
287 MONA VALE ROAD, TERREY HILLS, NSW 2084

ISSUE	DATE	DESCRIPTION
4	24.05.23	ISSUED FOR D.A
5	16.11.23	RFI RESPONSE
6	22.04.24	RFI RESPONSE

PROPOSED EXTERNAL ELEVATIONS

A09-01 DA - 6
1:200 @ A1
1:400 @ A3

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Crows Nest, NSW 2065
ABN 43 092 960 499
T +61 2 9437 0511
www.bngrouponline.com
NSW Registered Architect No. 4435

BN Architecture Urban Design Masterplanning Graphics Interiors

\\BNG\LOCAL\bngfs\Projects\S2123 Terrey Hills Production\Design\Revit\S2123_DA_R23_CTR.rvt
PRINTED: 22/04/2024 11:43:55 AM

MEMORANDUM

DATE: 6 June 2024

TO: Development Determination Panel

CC: Steven Findlay, Manager Development Assessment

FROM: Kye Miles, Planner

SUBJECT: Item 3.4 - DA2023/0803 - 287 Mona Vale Road, Terrey Hills

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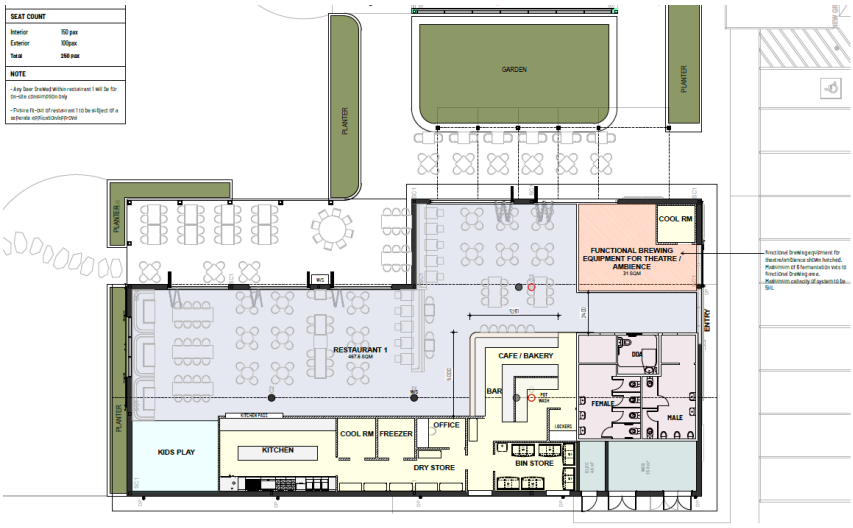
Council issued its Assessment Report to the Panel for Development Application DA2023/0803 relating to alterations and additions to the existing Hills Flower Market site, which was scheduled for determination at the Panel meeting on 22 May 2024. The matter was deferred for additional information to be provided.

This memo addresses matters arising out of the Panels consideration of the application at the meeting, including; the restaurant floor plan, updated conditions, and a response to a late submission.

Amended Restaurant Floor Plan

The applicant has submitted an amended floor plan for the proposed restaurant. An extract of this plan is provided below:



The plan specifies that the brewing component of the restaurant will be limited to the following:

- *5HL system maximum*
- *Maximum of 6 fermentation vats*
- *Have a maximum area within the Restaurant of 31sqm*
- *Any beer brewed within Restaurant 1 will be for on-site consumption only*

The concern raised by the Panel was that the maximum brewing capacity sought aligns with that of comparable artisan food and drink industries, raising concerns about the ancillary function of this component. Additionally, artisan food and drink industries are not permissible within the RU4 Primary Production Small Lots zone.

Therefore, a further operational condition is recommended to ensure that the brewing component remains **ancillary** to the restaurant:

Ancillary Use

The brewing component shown on the approved plans, constituting 6.6% (31 sqm) of the total floor area of the restaurant, must remain ancillary to the restaurant's use. The brewing operations must be limited to the following:

- *Brewing production must not exceed 100 litres per week and is to be limited to one type of beer.*
- *Any beer brewed within Restaurant 1 must be for on-site consumption only and served in glassware.*

Reason: To ensure consistency with the permissible uses of the RU4 Primary Production Small Lots zone.

In addition, it is also recommended that Condition 1 be updated to include the amended floor plan for the proposed restaurant:

Condition 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***
A01-01	*3*	*Demolition Plan - Site Plan*	*BN Group*	*24 May 2023*
A01-02	*3*	*Demolition Plan - Ground Floor Plan*	*BN Group*	*24 May 2023*
A01-10	*3*	*Demolition Plan - Roof Plan*	*BN Group*	*24 May 2023*
A01-30	*3*	*Demolition Plan - Elevations*	*BN Group*	*24 May 2023*
A01-40	*3*	*Demolition Plan - Sections*	*BN Group*	*24 May 2023*
A02-01	*9*	*Proposed - Site Plan*	*BN Group*	*22 April 2024*
A02-20	*8*	*Proposed - Ground Floor Plan*	*BN Group*	*22 April 2024*
A02-21	*6*	*Proposed - Mezzanine Plan*	*BN Group*	*22 April 2024*
A02-40	*6*	*Proposed - Roof Plan*	*BN Group*	*22 April 2024*
A09-01	*6*	*Proposed - Elevations*	*BN Group*	*22 April 2024*
A11-01	*6*	*Proposed - Sections*	*BN Group*	*22 April 2024*
A60-01	*3*	*Proposed - Signage*	*BN Group*	*24 May 2023*
A70-01	*3*	*Proposed - Material Sample Board*	*BN Group*	*24 May 2023*

SK.001	*J*	*Indicative Restaurant 1 Fit-Out Plan*	*Five Foot One*	*4 June 2024*
L400	*F*	*Planting Schedule*	*Arcadia*	*19 April 2024*
L401	*F*	*Softworks Plan*	*Arcadia*	*19 April 2024*
L402	*F*	*Softworks Plan*	*Arcadia*	*19 April 2024*
L403	*F*	*Softworks Plan*	*Arcadia*	*19 April 2024*
L404	*F*	*Softworks Plan*	*Arcadia*	*19 April 2024*
L405	*F*	*Softworks Plan*	*Arcadia*	*19 April 2024*
L406	*F*	*Softworks Plan*	*Arcadia*	*19 April 2024*
L601	*E*	*Typical details*	*Arcadia*	*21 November 2023*
L701	*E*	*Landscape Notes*	*Arcadia*	*21 November 2023*

Approved Reports and Documentation			
Document Title	***Version Number***	***Prepared By***	***Date of Document***
Access Report	*3*	*Morris Goding Access Consulting*	*26 May 2023*
Arboricultural Impact Appraisal and Method Statement	*A*	*Naturally Trees Arboricultural Consulting*	*15 May 2023*
BCA Assessment Report	*R3.0*	*Steve Watson and Partners*	*29 May 2023*
Bushfire Protection Assessment	*B213699 - 1*	*Australian Bushfire Protection Planners*	*20 October 2022*
Detailed Site Investigation Report	*V01*	*Geo-Logix*	*8 November 2022*
Geotechnical Report	*V03*	*Geo-Logix*	*24 November 2023*
Noise Impact Assessment	*004*	*Stantec*	*1 June 2023*
Transport Assessment	*07*	*Ason Group*	*15 June 2023*
Waste Management Plan	*-*	*Mainbrace Constructions*	*-*

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.

Amendment to Traffic Conditions

The Applicant has provided minor wording changes to the additional/revised traffic conditions (see changes marked in red). Traffic has reviewed the revised wording of the conditions and is generally satisfied, however, they have proposed a slight amendment for Point 3 of Condition 71:

Vehicle Access and Parking

All new internal driveways, vehicle turning areas, garages and vehicle parking space/ loading bay dimensions must be designed and constructed to comply with the relevant section of AS 2890 (Off-street Parking standards).

With respect to this, the following revision(s) must be undertaken;
The vehicle crossing at Myoora Road must be tested with swept path plots for the 14.8m semi-trailer to ensure that it is of sufficient width to cater for the right turn in and left turn out by this vehicle. If not plans for driveway widening shall be provided for Councils consideration and approval

All new internal driveways and vehicle access ramps must have ramp grades and transitions complying with AS 2890.1. To ensure the gradient requirements and height clearances are satisfied, a driveway profile must be prepared for all new internal ramps showing ramp lengths, grades, surface RL's and overhead clearances, taken from the crest of the ramp to the base. The driveway profile must be taken along the steepest grade of travel or sections having significant changes in grades, where scraping or height restrictions could potentially occur and is to demonstrate compliance with AS 2890 for the respective type of vehicle.

If it is determined by a qualified Traffic Engineer that changes are required, plans prepared by a suitably qualified Engineer shall be submitted to Council's Traffic Engineer for review and, once approved issued to the Principal Certifier prior to the issue of a Construction Certificate.

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles.

Amendment to Condition 71 - Loading and Service Vehicle Access

The following amendments (marked in red) are recommended to Condition 71 to ensure address the above-mentioned traffic concerns:

1. That trucks accessing the development site be limited to vehicles up to 8.8m in length between the hours of 6am and 10pm.
2. Trucks in excess of 8.8m in length but of no more than 14.8m in length are only permitted to access the site to/from Myoora Road and only between the hours of 10pm and 6am.
3. Trucks larger than a Small Rigid Vehicle (in excess of 6.4m in length and 3.5m in height) and accessing the site via Myoora Road shall only do so via a right turn in, and egressing the site to Myoora Road shall only be permitted via a left turn out.

Reason: to minimise conflict between trucks and passenger vehicles/pedestrians

Delete Condition 19 - External Finishes to Roof

It is recommended that Condition 19 be deleted as BASIX is not applicable to the proposed development.

Recommendation

Based on the above, it is maintained that the Panel should **approve** the application, subject to changes to the application, the plans and conditions described above.

ITEM 3.2 DA2024/0229 - 21 VISTA AVENUE BALGOWLAH HEIGHTS - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE

PURPOSE

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

RECOMMENDATION

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

THAT Council as the consent authority **approves** Development Consent to DA2024/0229 for demolition works and construction of a dwelling house on land at Lot 3 DP 20346, 21 Vista Avenue BALGOWLAH HEIGHTS, subject to the conditions set out in the Assessment Report.

Reporting manager	Rodney Piggott
TRIM file ref	2024/433258
Attachments	⇩1 Assessment Report ⇩2 Site Plan and Elevations ⇩3 Clause 4.6

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/0229

Responsible Officer:	Jordan Howard
Land to be developed (Address):	Lot 3 DP 20346, 21 Vista Avenue BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Demolition works and construction of a dwelling house
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	MMW Properties Pty Ltd
Applicant:	Watershed Design Pty Ltd

Application Lodged:	02/04/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	11/04/2024 to 25/04/2024
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	4.4 Floor space ratio: 23.8%
Recommendation:	Approval

Estimated Cost of Works:	$ 1,934,573.08

EXECUTIVE SUMMARY

This development application seeks consent for demolition works and construction of a dwelling house.

The application is referred to the Development Determination Panel (DDP) as the application requests a greater than 10% variation (23.8%) of the floor space ratio (FSR) development standard.

Concerns raised in the objections predominantly relate to privacy, FSR exceedance, and the perception of excessive height, bulk and scale resulting in undesirable visual impacts on the streetscape and properties adjacent to the subject site (on the other side of Vista Avenue).

Critical assessment issues included the assessment of the proposed variation of the FSR development standard, as well as assessment of potential privacy impacts and variations to MDCP built form controls, including side setbacks, rear setbacks and total open space.

The 4.6 request for the non-compliance with the FSR development standard arises as the subject site is an undersized allotment. The allotment exhibits a site area of 521.7sqm, and with a FSR development standard of 0.4:1 applying to the site, a gross floor area (GFA) limit of 208.68sqm applies. The proposal exhibits an FSR of 0.495:1, with a GFA of 258.4sqm. Notably, the minimum lot size applicable to the site is 750sqm, making the allotment undersized. In accordance with MDCP 4.1.3 Floor Space Ratio (FSR), which provides justification for FSR variations where an allotment is undersized, if calculating FSR against a site area of 750sqm, the FSR requirement of 0.4:1 equates to a GFA limit of 300sqm. If 300sqm of GFA was the limit, the proposed development, with a GFA of 258.4sqm, would be compliant. For this reason, as well as others outlined within the section of this report assessing the proposed variation pursuant to MLEP 2013 Clause 4.6, this variation request is supported.

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 works and construction of a dwelling house. Specifically,

demolition of existing site structures and the construction of a new two-storey dwelling comprising of the following is proposed:

Ground Floor:

- Double garage with panel lift door.
- Porch and entry foyer.
- Staircase to access the first floor.
- Rumpus.
- Guest bedroom with ensuite.
- Laundry.
- Powder room.
- Open plan living, dining and kitchen with walk in butler's pantry.

First Floor:

- Master bedroom with walk-in robe and ensuite, including balcony facing west.
- Bathroom.
- Bedrooms 2, 3 and 4 with built-in robes.
- Staircase to access the ground floor.
- Kids area.

Site:

- New inground swimming pool.
- New driveway and crossover.
- New site landscaping.

Additional information was requested in relation to Clause 4.4 Floor space ratio & Clause 4.6 Exceptions to development standards of the MLEP 2013, as well as in relation to Clause 3.4.2 Privacy and Security & Clause 4.1.4 Setbacks (front, side and rear) and Building Separation of the MDCP. Additional / amended information as provided, which did not require re-notification, in accordance with the Northern Beaches Community Participation Plan.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Development Control Plan - 3.4.2 Privacy and Security
Manly Development Control Plan - 3.4.4 Other Nuisance (Odour, Fumes etc.)
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 - 4.1.10 Fencing

SITE DESCRIPTION

Property Description:	Lot 3 DP 20346 , 21 Vista Avenue BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	The subject site consists of one (1) allotment located on the western side of Vista Avenue. The site is irregular in shape with a frontage of 16.46m along Vista Avenue and a maximum depth (along the southern side boundary) of 40.235m. The site has a surveyed area of 521.7sqm. The site is located within the R2 Low Density Residential zone and currently accommodates a dwelling house. The site is relatively flat. The site contains lawn areas, garden beds and vegetation. There are no details of threatened species at the site. **Detailed Description of Adjoining/Surrounding Development** 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	Manly 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 relation to Clause 4.4 Floor space ratio & Clause 4.6 Exceptions to development standards of the MLEP 2013, as well as in relation to Clause 3.4.2 Privacy and Security & Clause 4.1.4 Setbacks (front, side and rear) and Building Separation of the MDCP. 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 11/04/2024 to 25/04/2024 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 2 submission/s from:

Name:	Address:
Mr Cameron Alistair Murray	19 Vista Avenue BALGOWLAH HEIGHTS NSW 2093

Name:	Address:
Mrs Amanda Elizabeth Murray	
Withheld Withheld	BALGOWLAH HEIGHTS NSW 2093

The following issues were raised in the submissions:

- **Potential visual privacy impact of W1.6**

  The submissions raised concerns about the potential visual privacy impact of W1.6 (located off Bedroom 1 at the First Floor South Elevation) on the adjoining property to the south (19 Vista Avenue).

  Comment:
  Refer to the section of this report on MDCP Clause 3.4.2 Privacy and Security for discussion of visual privacy. Regarding this issue, visual privacy was raised with the Applicant during the assessment process. In response, amended plans were submitted which have removed W1.6 from the proposed development, resolving this issue.

  This issue does not warrant refusal of the application.

- **Potential visual privacy impact of W1.7**

  The submissions raised concerns about the potential visual privacy impact of W1.7 (located off a walk-in-robe at the First Floor South Elevation) on the adjoining property to the south (19 Vista Avenue).

  Comment:
  Refer to the section of this report on MDCP Clause 3.4.2 Privacy and Security for discussion of visual privacy. Regarding this issue, this room is of very low use (as prolonged periods of waking time are not spent in a WIR), and is approximately 8.4m away from the adjoining dwelling to the south. Given these factors, the visual privacy impact of this windows is not considered to be unreasonable, and adequate visual privacy between dwellings is considered to be maintained.

  This issue does not warrant refusal of the application.

- **Objection to FSR exceedance**

  The submissions raised objection to the proposed exceedance of the FSR development standard, considering that thee was opportunity for reduction of building floor space.

  Comment:
  Refer to the section of this report on MLEP 2013 Clause 4.6 Exceptions to development standards for a detailed assessment of the FSR variation request. In summary, Council is satisfied that the Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify variation of the development standard contained within Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:
  - Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
  - There are sufficient environmental planning grounds to justify the variation.

  Accordingly, this variation request is supported.

  It is noted that the size of this variation was reduced during the assessment process, as issue was raised with the variation request in conjunction with MDCP built form non-compliances, including with rear and side setbacks. In response, amended plans were submitted, reducing the setback non-compliances in number and scope, also reducing gross floor area, ultimately to an acceptable level.

  As is assessed throughout this report, there are not considered to be any unreasonable amenity impacts (such as overshadowing, view loss or privacy) on surrounding properties as a result of the proposed development, nor is the proposed development considered to be detrimental to the streetscape or excessively bulky. In considering a variation, an assessment is undertaken against the objectives of the control (i.e. what is trying to be achieved by having a limit on floor space) and against the impacts the proposal will cause. Council cannot simply recommend refusal of a development on the simple grounds that there is a variation requested.

  This issue does not warrant refusal of the application.

- **Request for southern garage wall to align with neighbouring garage wall at the western side.**

  The submissions raised concerns that the proposed development included a garage with nil setback to the boundary which did not align with the neighbouring garage on the property to the south, also with a nil setback, at the western side of the garage

wall.

Comment:
This issue was not raised with the Applicant during the assessment process. Nonetheless, the Applicant provided amended plans during the assessment process which have aligned the western edge of the southern garage wall with the neighbouring garage wall, resolving this issue.

This issue does not warrant refusal of the application.

- **Potential acoustic privacy / noise impact of the pool equipment / pump**

  The submissions raised concerns about the potential acoustic privacy / noise impact of the pool equipment / pump on the adjoining property to the south (19 Vista Avenue).

  Comment:
  Refer to the section of this report on Clause 3.4.2 Privacy and Security for discussion of acoustic privacy. Regarding this issue, a standard condition of consent concerning Swimming Pool/Spa Motor Noise will be imposed to ensure the acoustic privacy of adjoining and surrounding dwellings is maintained. As conditioned, and subject to generic noise protections, the acoustic impacts of a swimming pool are not considered to be unreasonable within a low density residential environment.

  This issue does not warrant refusal of the application.

- **Height / scale of the eastern front elevation and the southern side elevation**

  The submissions raised concerns that the eastern front elevation and the southern side elevation present excessive bulk, height and scale, which would impact the streetscape and the amenity of properties on the eastern side of Vista Avenue, oriented towards the subject site. Specific issue was raised with the high louvre windows facing the street, which a submission contended gave the appearance of a third-storey.

  Comment:
  The proposed development is compliant with the 8.5m height of buildings development standard established by MLEP 2013 Clause 4.3 Height of buildings, meaning that the proposed development is compliant with the core control limiting building height. Furthermore, the proposal complies with built form controls established by MDCP Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height) relating to wall height (including at the southern elevation) and number of storeys. Therefore, it is not considered that the proposal is excessively tall when measured against any quantitative planning control. Looking at the proposal qualitatively, the proposal is considered to be commensurate to that of surrounding built form, and not detrimental to the streetscape. The high louvre windows facing the street are a design choice that does not result in any numerical planning control breach, nor at they considered to create an unacceptable aesthetic impact. The section presents to the street as a pop-up extension of the roof form, and is not considered to give the appearance of a third-storey.

  Regarding concerns that the proposal will impact the amenity of properties on the eastern side of Vista Avenue, it is noted that these proprieties will not experience any significant overshadowing, view loss or privacy impacts, given the positioning of buildings, flat topography and large separation involved. It should also be noted that the area (both the subject site and properties across the street) is zoned R2 Low Density Residential, where it must be expected that some level of neighboring built form will be visible from ones own property when looking across the street. It is not a rurally zoned area, where one may expect not to see any surrounding built form other than their own property.

  This issue does not warrant refusal of the application.

- **Impact of light on properties on the eastern side of Vista Avenue and on the streetscape at night**

  The submissions raised concerns that the high louvre windows on the eastern front elevation would emanate and reflect light at night time and have a negative amenity impact on properties on the eastern side of Vista Avenue, oriented towards the subject site, as well as negatively impact the streetscape at night.

  Comment:
  Again, it must be noted the area is an R2 Low Density Residential zone. It is expected that some level of lighting from surrounding low density residential buildings will be visible from adjacent properties. The proposal does not intensify the use of the subject site, remaining a dwelling house within a low density residential environment. Adequate separation is maintained between proprieties (considering properties on the other side of Vista Avenue are, at minimum, over 20m away from the subject site) and there is an inverse relationship between distance and light intensity (i.e. as distance increases, light intensity decreases). Lighting from the proposed high louver windows is not expected to create a unreasonable impact on adjacent properties. Regarding the impact on the streetscape at night, again one must consider the zone. It is expected that buildings within a low density residential street, within a suburban area of a city, will emanate some level of light from its windows at night.

  This issue does not warrant refusal of the application.

- **Increased width of the driveway crossover**

  The submissions raised concerns that the increased width of the driveway crossover would reduce greenspace within the nature strip and would negatively impact the streetscape. The submission requested that only a single-car crossover be approved.

  Comment:
  Where a development application proposes parking structures and vehicle / driveway crossovers, referral is made to Council's Development Engineering team to assess if the proposed vehicular access meets relevant standards. The Development Engineering team has reviewed this proposal and raises no objection to approval, subject to condition of consent, including ones related to the proposed vehicle crossing. It is also noted that MDCP Clause 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities) requires dwelling houses to provide two (2) off-street parking spaces, which the proposal achieves within the proposed garage. This new garage necessitates winding of the existing driveway to provide adequate vehicular access. Whilst widening of the driveway will result in a reduction of grass on the road reserve, the proposed driveway is considered to be reasonable and adequate for its purpose, and is therefore acceptable. No significant vegetation or trees within the road reserve will be impacted by this proposed widening.

  This issue does not warrant refusal of the application.

- **Loss of landscaped area / green space at the subject site.**

  The submissions raised concerns that the proposed development minimises landscaped area / green space at the subject site.

  Comment:
  Refer to the section of this report on MDCP 4.1.5 Open Space and Landscaping for discussion of landscaped area. In summary, the proposal only exhibits a non-compliance with total open space. The proposed landscaped area is compliant with that required by this Clause. As such, the proposed landscaped area is considered to be satisfactory.

  This issue does not warrant refusal of the application.

- **Undesirable precedent / public interest**

  The submissions raised concerns that by approving a large house, in exceedance of the FSR development standard, there would be an undesirable precedent set for future development.

  Comment:
  As is assessed throughout this report, proposed variations to MLEP 2013 development standards and MDCP built form controls in this instance are all considered to be acceptable on merit. The proposal will not establish an undesirable precedent, as any future application will be assessed on its on merit, and must demonstrate that required of it (such as addressing that required of request to vary a development standard pursuant to Clause 4.6 of the MLEP 2013). No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

  This issue does not warrant refusal of the application.

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	***Supported, subject to conditions.*** The proposed development is in Zone 1 of Region 3. On-site detention is required. Vehicle crossing construction is proposed. A geotechnical report has been provided. Development engineering raises no objections to the proposed development, subject to conditions.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered

in the merit assessment of this application.

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

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

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

SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No. 1738101S_03, issued 7 June 2024).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.1m	-	Yes
Floor Space Ratio	FSR: 0.4:1 (208.68sqm)	FSR: 0.495:1 (258.4sqm)	23.8% (49.72sqm)	**No**

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 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: 0.4:1 (208.68sqm)
Proposed: 0.495:1 (258.4sqm)
Percentage of variation: 23.8% (49.72sqm)

With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is accompanied by a document that sets out the grounds on which the Applicant seeks to demonstrate the matters set out in Clause 4.6(3)(a) and (b) of the MLEP 2013 (the 'Clause 4.6 Request').

Subclause (1) of this clause provides that:

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

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

Subclause (2) of this clause provides that:

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

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

Subclause (3) of this clause provides that:

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

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

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

In 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* was considered by the Applicant. The Applicant relies on the 'First Way' test, arguing that the objectives of the standard are achieved notwithstanding non-compliance with the standard. The Applicant provides justification for the propose development against each objective of the FSR development standard, arguments that are generally concurred with, including:

- That the proposed development meets the provisions for FSR variation in the case of undersized allotments stipulated by MDCP Clause 4.1.3 Floor Space Ratio (FSR).

- *The dwelling easily complies with the building height for the site and the bulk and scale is consistent with surrounding properties.*
- *The development will not obscure any important landscape or townscape features and will not result in any view loss impacts.*
- *This section of Vista Avenue is characterised by 2 storey detached residential dwellings, of similar scale to the proposed development, with the eastern side of the street also elevated.*
- *The proposed dwelling has been designed to remain consistent with the character of the area, through design, architectural features and complimentary materials and colour choices.*
- *The proposed variation to floor space ratio does not result in any unreasonable environmental impacts to the amenity of adjoining dwellings.*

The Applicant has adequately demonstrated 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 FSR development standard.

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

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

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

The Clause 4.6 Request argues, in part:

- *The setting and context with similar FSR variations recently approved, demonstrates that a varied FSR is reasonable and that it is consistent with clause 1.3(c) and (d) of the EPA Act.*
- *The extent of the variation is considered to be in the public interest, as the proposal remains consistent with the objectives of the zone, allowing for additional residential floor space in a residential zone, with a bulk and scale consistent with the locality. Compliance with the FSR standard based on this would be unreasonable, with clause 1.3(c) demonstrated as fulfilled.*
- *The natural environment is unaffected by the departure to the development standard and it would be unreasonable for the development to be refused on this basis with Cl 1.3(b) satisfied.*

These arguments are generally concurred with. It is noted that MDCP Clause 4.1.3 Floor Space Ratio (FSR) stipulates what can be considered an environmental planning ground for variation of the FSR development standard in situations were allotments are under the minimum lot size. Refer to the section of this report on this MDCP Clause for assessment of the proposal against these provisions. In summary, the allotment as existing is undersized and meets those provisions. If calculating the FSR against a site area of 750sqm, the FSR requirement equates to 0.4:1 (300sqm). If 300sqm of GFA was to be the limit established by the FSR control, the proposed development, with a GFA of 258.4sqm, would be compliant.

The proposal demonstrates that from the street, the bulk of the building would appear no different to surrounding dwellings which do have rectangular lots of about 662sqm site area, and therefore have a greater FSR allowance. From the street, the subject site appears no different to these rectangular lots.

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

- The proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, thereby satisfying objects 1.3(c) and (g) of the EPA Act.
- The proposed development meets the provisions of MDCP Clause 4.1.3 Floor Space Ratio (FSR), which provides an environmental planning ground for variation of the FSR development standard in situations were allotments are under the minimum lot size. This also demonstrates design that promotes the orderly and economic use and development of land, and that will reasonably protect and improve the amenity of the surrounding built environment, thereby satisfying objects 1.3(c) and (g) of the EPA Act.

Public Interest:

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

Conclusion:

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

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

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 521.7sqm	**Requirement**	**Proposed**	**% Variation**	**Complies**
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling	1	-	Yes
	Dwelling Size: 129sqm (5 bedroom, 4 bathroom)	258.4sqm	-	Yes
4.1.2.1 Wall Height	North: 6.6m (based on gradient 1:60)	6.1m	-	Yes
	South: 6.7m (based on gradient 1:30)	6.6m	-	Yes
4.1.2.2 Number of Storeys	2	2	-	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.3m	-	Yes
	Pitch: maximum 35 degrees	15 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line	5m, consistent with prevailing setback	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	North: Ground Floor: 1.3m (based on wall height 4m) First Floor: 2m (based on wall height 6.1m)	Ground Floor: 1m First Floor: 2m	23.1% -	**No** Yes
	South: Ground Floor Garage: 1.3m (based on wall height 4m) Ground Floor Living: 1.4m (based on wall height 4.2m) First Floor Bed 2: 2.1m (based on wall height 6.4m) First Floor Ensuite: 2.2m (based on wall height 6.6m) First Floor Bed 1: 2.2m (based on wall height 6.6m)	Ground Floor Garage: Nil Ground Floor Living: 1.3m First Floor Bed 2: 2.1m First Floor Ensuite: 2.1m First Floor Bed 1: 2.9m	100% 7.1% - 4.5% -	**No** **No** Yes **No** Yes
	No windows within 3m of side boundaries	Ground Floor: 2 windows First Floor: 5 windows	N/A	**No**
4.1.4.4 Rear Setbacks	8m	Ground Floor: 4m First Floor: 7.1m	50% 11.3%	**No** **No**
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area (313.02sqm)	48% (250.3sqm)	20% (62.72sqm)	**No**
	No more than 25% of open space to be above ground (62.58sqm)	0% (0sqm)	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space (100.12qm)	66.1% (165.5sqm)	-	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	-	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum garage width: 6.2m	6.1m	-	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	0.3m	-	Yes
	1m curtilage setback to boundaries	South Side Boundary: 1.2m North-West Rear Boundary: 2.2m	- -	Yes Yes
	1.5m waterline setback to boundaries	South Side Boundary: 1.5m North-West Rear Boundary: 2.6m	- -	Yes Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	-	Yes

Compliance Assessment

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

Council received a submission from the adjoining property to the south (19 Vista Avenue) raising visual and acoustic privacy as an issue. Issue was raised in this submission with the following elements:

- The potential visual privacy impact of W1.6 (located off Bedroom 1 at the First Floor South Elevation) on the adjoining property to the south.
- The potential visual privacy impact of W1.7 (located off a walk-in-robe at the First Floor South Elevation) on the adjoining property to the south.
- The potential acoustic privacy / noise impact of the pool equipment / pump on the adjoining property to the south.

The below assessment considers these issues, as well as the proposal as a whole, in regards to the provisions outlined in this Clause. Furthermore, privacy Planning Principles established by the NSW Land and Environment Court in *Meriton v Sydney City Council [2004] NSWLEC 313* are also relevant. These principles hold that the density, separation, use and design must be considered when assessing privacy impacts.

Privacy impacts are assessed as follows:

Southern Elevation Windows

A submission raised issue with W1.6 and W1.7 at the upper level of the Southern Elevation. Visual privacy was raised with the Applicant during the assessment process. In response, amended plans were submitted which have removed W1.6 from the proposed development, resolving the issue related to this window. Regarding W1.7 (located off a walk-in-robe at the First Floor South Elevation), this room is of very low use (as prolonged periods of waking time are not spent in a WIR), and is approximately 8.4m away from the adjoining dwelling to the south. Considering separation, use and design (as per established Planning Principles), it is not considered that privacy mitigation measures are needed on this window, and this window is not considered to cause an unreasonable impact on visual privacy between dwellings. No issue is raised with other windows on the southern elevation, with proposed southern elevation windows, as amended, considered to be adequate from a visual privacy perspective.

Northern Elevation Windows

No submissions have been received raising visual privacy concerns in relation to the northern elevation or northern elevation windows. Considering the requirements of this Clause, and established Planning Principles, northern elevation windows are considered to be adequate from a visual privacy perspective, particularly given the design, separation and orientation of the proposed windows and surround development.

Rear First Floor Deck (located to the west of Bedroom 1)

No submissions have been received raising visual privacy concerns in relation to the rear first floor deck. Nonetheless, issue was raised with the Applicant as to the potential privacy impact of this deck, given its size and setback from the rear boundary (an issue raised in conjunction with rear setback non-compliance). In response, amended plans were submitted which have increased the rear setback of the proposal, decreased the size / width of the deck, and added a privacy screen along the southern face of the deck. There is also a rooftop garden / non-trafficable area around this balcony, furthering its distance from boundaries and adding visual separation / obstruction. Whilst the rear setback of the proposal remains non-compliant, this is assessed as supportable on merit within the section of this report on MDCP Clause 4.1.4 Setbacks (front, side and rear) and Building Separation. The privacy impacts of this upper balcony are considered to be adequately mitigated. The width and location of the deck (off a bedroom, a low waking use room) also lowers its use, and it is not considered to be a primary outdoor entertaining area. Considering the requirements of this Clause, and established Planning Principles, this deck, as amended, is considered to be adequate from a visual privacy perspective.

Swimming Pool

The swimming pool is set within the ground as part of the rear yard and rear primary outdoor entertaining area / private open space. No submissions have been received raising visual privacy concerns in relation to the swimming pool and is considered to be adequate from a visual privacy perspective.

A submission was received raising the potential acoustic privacy / noise impact of the pool equipment / pump on the adjoining property to the south. A standard condtion of consent will be applied relating to swimming pool noise requiring that the swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary. It is noted that low level pool motor noise would not be unreasonable within a R2 Low Density Residential environment, where some level of noise from neighboring proprieties may be audible due to the nature / density of residential areas. It is also noted that the *Protection of the Environment Operations Act 1997* provides generic regulatory instruments that can be applied to any context, should noise generated be determined to be 'offensive noise', allowing action to be taken by council or police officers. This would apply should a pool motor generate 'offensive noise', or if the use of a pool were to generate 'offensive noise' (such as if a residential party was to generate too much noise during late-night hours). As conditioned, and subject to the above discussed generic noise protections, the acoustic impacts of a swimming pool are not considered to be unreasonable within a low density residential environment.

Conclusion

The proposal has been considered in regards to Council controls and established Planning Principles. As amended in response to concerns raised during the assessment process, the proposed development is considered to comply with the requirements of this Clause, and is not considered to cause an unreasonable impact on visual or acoustic privacy.

Merit consideration

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

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

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

Comment:
As discussed above, the proposal, as amended, is considered to be designed adequality to ensure a reasonable level of privacy is maintained to surrounding dwellings.

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

Comment:
The proposal is expected to maintain a reasonable level of access to light and air, and provides an acceptable level of view sharing to public and private spaces.

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.

3.4.4 Other Nuisance (Odour, Fumes etc.)

The proposal includes a fireplace, depicted at the Ground Floor Level on the western internal wall of the Living / Dining Room. No associated chimney / flue can be seen in the submitted plans, with it presumed that this fireplace is to be a gas fireplace and not a solid fuel fireplace.

No assessment by Council's Environmental Health team in regards to solid fuel heaters has been undertaken.

Conditions of consent are included in the recommendation of this report specifying that no approval is granted or implied under this Development Consent for a solid fuel heater and that this fireplace is to be a gas fireplace.

It is noted that an application to install a solid fuel heater can be made with a Section 68 Application, sperate to a DA or modification application. See the link below for further information:

https://help.northernbeaches.nsw.gov.au/s/article/Approval-to-Install-a-Domestic-Oil-or-Solid-Fuel-Heater-Section-68-Approvals

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 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 521.7sqm and has an FSR requirement of 0.4:1 (208.68sqm) under the MLEP 2013. The proposed FSR is 0.495:1 (258.4sqm), which represents a variation of 23.8% (49.72sqm) to the control.

Under this MDCP Clause, the subject site is an 'undersized allotment', as it is located within Area R on the LEP LSZ map, which requires a minimum lot size of 750sqm. 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). If 300sqm of GFA was to be the limit established by the FSR control, the proposed development, with a GFA of 258.4sqm, would be compliant.

This demonstrates that if the allotment were to be of a sufficient size, the dwelling proposed would not be in exceedance of FSR. As an existing feature, the lot has an irregular rear, which is angled inward, and reduces lot size significantly. This is not apparent from the street, and therefore the dwelling will present to the street with the same bulk and scale of any other dwelling along this side of the street.

Nonetheless, the proposal has been assessed against the requirements and objectives of Clause 4.6 of the MLEP 2013 within this report, with compliance with this MDCP provision forming part of the justification for the proposed variation of the FSR development standard. The provisions of MLEP 2013 Clause 4.6 Exceptions to development standards operate independently from, and superior to, the MDCP. The variation is supported as the application has adequately addressed the merits required to be demonstrated by MLEP 2013 Clause 4.6.

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

Description of non-compliance

Clause 4.1.4.1 Street Front Setbacks stipulates that proposed front setbacks must relate to the front building line of neighbuoring properties and the prevailing building lines in the immediate vicinity. The proposed front setback of 5m is considered to be consistent with prevailing front setback, noting in particular that the setback proposed from Vista Avenue is greater than the two existing neighbouring properties to the north and south.

Clause 4.1.4.2 Side Setbacks and Secondary Street Frontages stipulates that the setbacks between any part of a building and the side boundary must not be less than one third of the wall height.

At the northern side boundary, the following setbacks are required and exhibited:

- Ground Floor: 1.3m (based on wall height 4m) - 1m exhibited, a 23.1% non-compliance.
- First Floor: 2m (based on wall height 6.1m) - 2m exhibited, complies.

The non-compliance with the northern side boundary setback control is limited to the ground floor.

At the southern side boundary, the following setbacks are required and exhibited:

- Ground Floor Garage: 1.3m (based on wall height 4m) - Nil exhibited, a 100% non-compliance.
- Ground Floor Living: 1.4m (based on wall height 4.2m) - 1.3m exhibited, a 7.1% non-compliance.
- First Floor Bed 2: 2.1m (based on wall height 6.4m) - 2.1m exhibited, complies.
- First Floor Ensuite: 2.2m (based on wall height 6.6m) - 2.1m exhibited, a 4.5% non-compliance.
- First Floor Bed 1: 2.2m (based on wall height 6.6m) - 2.9m exhibited, complies.

The non-compliance with the southern side boundary setback control is limited to the ground floor garage (which is nil to the boundary, matching the existing garage on the adjoining property to the south) and minor (<10%) non-compliances at the ground floor living room and first floor ensuite.

Clause 4.1.4.2 Side Setbacks and Secondary Street Frontages also requires that no new windows be located within 3m of side boundaries. The proposed development includes two (2) such windows at the Ground Floor and five (5) such windows at the First Floor, for a total of seven (7) such windows.

Clause 4.1.4.4 Rear Setbacks stipulates that the distance between any part of a building and the rear boundary must not be less than 8m. The site is unique and restricted in that the rear boundary is angled inwards. The proposed development exhibits a 4m rear setback to the ground floor, representing a 50% non-compliance. At the first floor, the rear setback is 7.1m to Bedroom 1, representing a 11.3% non-compliance.

It is noted that as originally submitted, the proposed development included more numerous and greater side and rear setback non-compliances. Issue was raised with these non-compliances during the assessment process. In response, the proposal was amended to reduce the number and scope of non-compliances, which in turn also reduced the GFA of the proposal.

Merit consideration

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

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

Comment:
The proposal is bounded to the north and south by dwellings which as existing exhibit nil setback from their respective side boundaries. The proposed development matches this nil setback at the southern ground floor garage, which is in keeping with the streetscape. Other southern side setback non-compliances are minor (<10%). On the northern side, despite the neighbouring development also having a nil setback, the proposal includes a 1m setback at the ground floor and a complaint setback of 2m at the first floor. The rear setback non-compliance is caused by the unique allotment shape. The proposal has been designed to accommodate this, by laying out the dwelling in an 'L' shape, and non-compliances are only generated at a few corner locations of this shape. The whole proposal is considered to be adequately stepped in at the first floor. The built form is similar to that of surrounding development. Two-storey dwelling houses of this size and scale are characteristic of the area. Overall, the proposal is considered consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality.

Objective 2) To ensure and enhance local amenity by:

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

Comment:
The proposal is considered to meet the requirements of relevant Clauses of the MDCP relating to amenity. The development is not considered to create unreasonable overshadowing on pubic or private spaces, or to unreasonably impact views from or to public or

private spaces. The proposal is also considered to maintain the existing streetscape characteristic and not to detrimentally impact on traffic conditions. The proposal is not considered to create an unreasonable privacy impact on neighbouring properties.

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

Comment:
The proposed development is not expected to result in any unreasonable amenity impacts on surrounding properties and has demonstrated it meets the underlying objectives of the control. Non-compliances are considered to be in keeping with the established streetscape or a result of a constrained allotment shape. As such, flexibility is warranted in this instance.

Objective 4) To enhance and maintain natural features by:

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

Comment:
The proposal is compliant with the landscape area provisions of the MDCP and maintains adequate landscaping and vegetation.

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

Comment:
The site is not classified as bush fire prone land.

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

4.1.5 Open Space and Landscaping

Description of non-compliance

The subject site is located within Residential Open Space Area OS4, which requires at least 60% (313.02sqm) of the site to be open space. In addition, at least 40% (100.12qm) of the proposed total open space is to be landscaped area. Additionally, no more than 25% (62.58sqm) of total open space can be provided above ground level.

The proposed development results in a numerically non-compliant total open space of 48% (250.3sqm), representing a variation of 20% (62.72sqm) to the requirement.

It is noted that the proposal achieves compliance with the landscaped area, exhibiting a total of 66.1% (165.5sqm), and no open space is provided above ground level. Furthermore, even if the proposal was compliant with total open space, it would still have a compliant portion of landscaped area (i.e. if total open space was 313.02sqm, rather than 250.3sqm, the proposed landscaped area of 165.5sqm would be still be in excess of 40% of this total open space). As such, the total open space deficiency does not contribute to undesirably low landscaped area.

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 landscaped area provided is compliant. No significant vegetation is proposed for removal and the proposal includes a detailed landscape plan. In this regard, the proposal retains and augments important landscape features and 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 proposal exhibits a compliant landscaped area, with dimensions capable of accommodating for any future plantings, and maximises open space at ground level.

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

Comment:
The proposal does not result in any unacceptable impacts to amenity, including to solar access, privacy, and views. Furthermore, the proposal is consistent with the surrounding area and streetscape character.

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

Comment:
An acceptable amount of soft landscaping is provided on site to minimise stormwater runoff and maximise water infiltration. The proposal complies with landscaped area.

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

Comment:
The proposed development is not likely to increase the spread of any weeds, or degradation of private or public open space.

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

Comment:
The proposed works are not expected to significantly affect wildlife habitat. Existing wildlife corridors will be retained.

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.

4.1.10 Fencing

Description of non-compliance

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

The proposal includes fencing along the front boundary to Vista Avenue. This fencing is proposed to be 1.9m - 1.3m high. The solid bottom portion of the fence is at most 0.8m high.

This fence design, which is mostly open at the top portion, should be no more than 1.5m high, in accordance with this control. The immediate streetscape is not characterised by high front fences and Vista Avenue is not a high traffic street (where a high front fence may be acceptable due to visual and acoustic privacy concerns). As such, it is considered appropriate to include a condtion of consent requiring that the front boundary fence be no more than 1.5m high.

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying objectives of the control. The control relies upon the objectives of Clause 3.1 - Streetscapes and Townscapes within the Manly DCP 2013.

Objective 1) To minimise any negative visual impact of walls, fences and carparking on the street frontage.

Comment:
The immediate streetscape is not characterised by high front fences and Vista Avenue is not a high traffic street (where a high front fence may be acceptable due to visual and acoustic privacy concerns). As such, it is considered appropriate to include a condtion of consent requiring that the front boundary fence be no more than 1.5m high. As conditioned, the front fence minimises negative visual impact of walls, fences and carparking on the street frontage.

Objective 2) To ensure development generally viewed from the street complements the identified streetscape.

Comment:
As conditioned, the proposed frontage fence will not be out-of-character with the locality and will complement the streetscape, whilst still providing a sense of privacy and security to the front yard of the subject site.

Objective 3) To encourage soft landscape alternatives when front fences and walls may not be appropriate.

Comment:
As conditioned, the proposed frontage fence is reasonable in this circumstance and therefore a soft landscape alternative is not required in this instance.

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 and as conditioned.

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 $19,346 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $1,934,573.

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 demolition works and construction of a dwelling house, has been referred to the Development Determination Panel (DDP) as the application requests a greater than 10% variation (23.8%) of the floor space ratio (FSR) development standard.

Concerns raised in the objections predominantly relate to privacy, FSR exceedance, and the perception of excessive height, bulk and scale resulting in undesirable visual impacts on the streetscape and properties adjacent to the subject site (on the other side of Vista Avenue). Visual privacy was one issue raised with the Applicant during the assessment process and in response amended plans were submitted. As amended, the proposed development is considered to comply with the requirements of MDCP Clause 3.4.2 Privacy and Security and maintain adequate visual and acoustic privacy between properties. Other objections have been addressed within the

section of this report on Notification & Submissions Received, with none warranting refusal of the application.

Critical assessment issues included the assessment of the proposed variation of the FSR development standard, as well as assessment of potential privacy impacts and variations to MDCP built form controls, including side setbacks, rear setbacks and total open space.

The 4.6 request for the non-compliance with the FSR development standard arises as the subject site is an undersized allotment. The allotment exhibits a site area of 521.7sqm, and with a FSR development standard of 0.4:1 applying to the site, a gross floor area (GFA) limit of 208.68sqm applies. The proposal exhibits an FSR of 0.495:1, with a GFA of 258.4sqm. Notably, the minimum lot size applicable to the site is 750sqm, making the allotment undersized. In accordance with MDCP 4.1.3 Floor Space Ratio (FSR), which provides justification for FSR variations where an allotment is undersized, if calculating FSR against a site area of 750sqm, the FSR requirement of 0.4:1 equates to a GFA limit of 300sqm. If 300sqm of GFA was the limit, the proposed development, with a GFA of 258.4sqm, would be compliant. For this reason, as well as others outlined within the section of this report assessing the proposed variation pursuant to MLEP 2013 Clause 4.6, this variation request is supported.

Overall, the development performs well against 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 DA2024/0229 for Demolition works and construction of a dwelling house on land at Lot 3 DP 20346, 21 Vista Avenue, BALGOWLAH HEIGHTS, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

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

Approved Plans				
Plan Number	**Revision Number**	**Plan Title**	**Drawn By**	**Date of Plan**
DA03	C	Demolition Plan	Watershed Architects	29 May 2024
DA04	C	Site & Roof Plan	Watershed Architects	29 May 2024
DA05	C	Ground Floor	Watershed Architects	29 May 2024
DA06	C	First Floor	Watershed Architects	29 May 2024
DA08	C	Section AA	Watershed Architects	29 May 2024
DA09	C	Section BB	Watershed Architects	29 May 2024
DA10	C	Section CC	Watershed Architects	29 May 2024
DA11	C	Elevation - East - Vista Ave	Watershed Architects	29 May 2024
DA12	C	Elevation - North	Watershed Architects	29 May 2024
DA13	C	Elevation - West	Watershed Architects	29 May 2024
DA14	C	Elevation - South	Watershed Architects	29 May 2024
DA17	C	Window Schedule	Watershed Architects	29 May 2024
DA18	C	Door Schedule	Watershed Architects	29 May 2024
DA19	C	Site & Roof Plan	Watershed Architects	29 May 2024
DA20	C	Drive Way	Watershed Architects	29 May 2024

DA21	C	Excavation & Fill Diagram	Watershed Architects	29 May 2024

Approved Reports and Documentation			
Document Title	**Version Number**	**Prepared By**	**Date of Document**
BASIX Certificate	1738101S_03	BONNEFIN CONSULTING PTY LTD	7 June 2024
NatHERS Certificate	0009208414-04	Certified Energy	7 June 2024
Preliminary Landslip Assessment for 21 Vista Avenue, Balgowlah Heights, NSW	2024-001	Crozier Geotechnical Consultants	30 January 2024
Waste Management Plan - 21 Vista Avenue, Balgowlah Heights	-	-	-
Stormwater Management Plan, Project No. 231203, Drawing No. D01	Rev. B	Istruct Consulting Engineers	4 June 2024
Landscape Plans, Job Ref. 2627/24, Drawing No. 1 & 2	Issue E	Paul Scrivener Landscape	5 June 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	22/04/2024 (on EDMS)

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

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

3. **Prescribed Conditions**
(a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
(b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
(c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
(i) showing the name, address and telephone number of the Principal Certifier for the work, and
(ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
(iii) stating that unauthorised entry to the work site is prohibited.
Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
(d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
(i) in the case of work for which a principal contractor is required to be appointed:
A. the name and licence number of the principal contractor, and
B. the name of the insurer by which the work is insured under Part 6 of that Act,
(ii) in the case of work to be done by an owner-builder:
A. the name of the owner-builder, and

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

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

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

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

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

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

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

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

Reason: Legislative requirement.

4. **General Requirements**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless

specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

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

i) Building/s that are to be erected

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

iii) Building/s that are to be demolished

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

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

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

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

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

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

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

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

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

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

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

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

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

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

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

5. **No Approval for Solid Fuel Heater**
No approval is granted or implied under this Development Consent for a solid fuel heater.

Reason: To ensure development minimises unreasonable impacts upon surrounding land and to ensure compliance with the terms of this consent.

FEES / CHARGES / CONTRIBUTIONS

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

A monetary contribution of $19,345.73 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 $1,934,573.08.

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. **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 istruct consulting engineers, project number 231203, dated 05.03.2024 Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering.

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

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

10. **Vehicle Crossings Application**
The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing 3.5 metres wide on the kerb line and 4.5 metres wide on the property boundary in accordance with Northern Beaches Council Standard Drawing A4 3330/1 N in accordance with Section 138 of the Roads Act 1993.

Note, driveways are to be in plain concrete only.

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

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

Reason: To facilitate suitable vehicular access to private property.

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

- The front fence (to Vista Avenue) is not to exceed 1.5m high above ground level at any point.

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.

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. **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.

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

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

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

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

16. **Fireplace**
The fireplace in the Ground Floor Living / Dining Room is to be a gas fireplace, not a solid fuel fireplace. No approval is granted or implied under this Development Consent for a solid fuel heater.

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.

DURING BUILDING WORK

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

Reason: Public safety.

18. **Removing, Handling and Disposing of Asbestos**
Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:
- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];

- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

20. **Survey Certificate**
A survey certificate prepared by a Registered Surveyor 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.

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

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

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

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

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

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

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

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

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

25. **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.

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

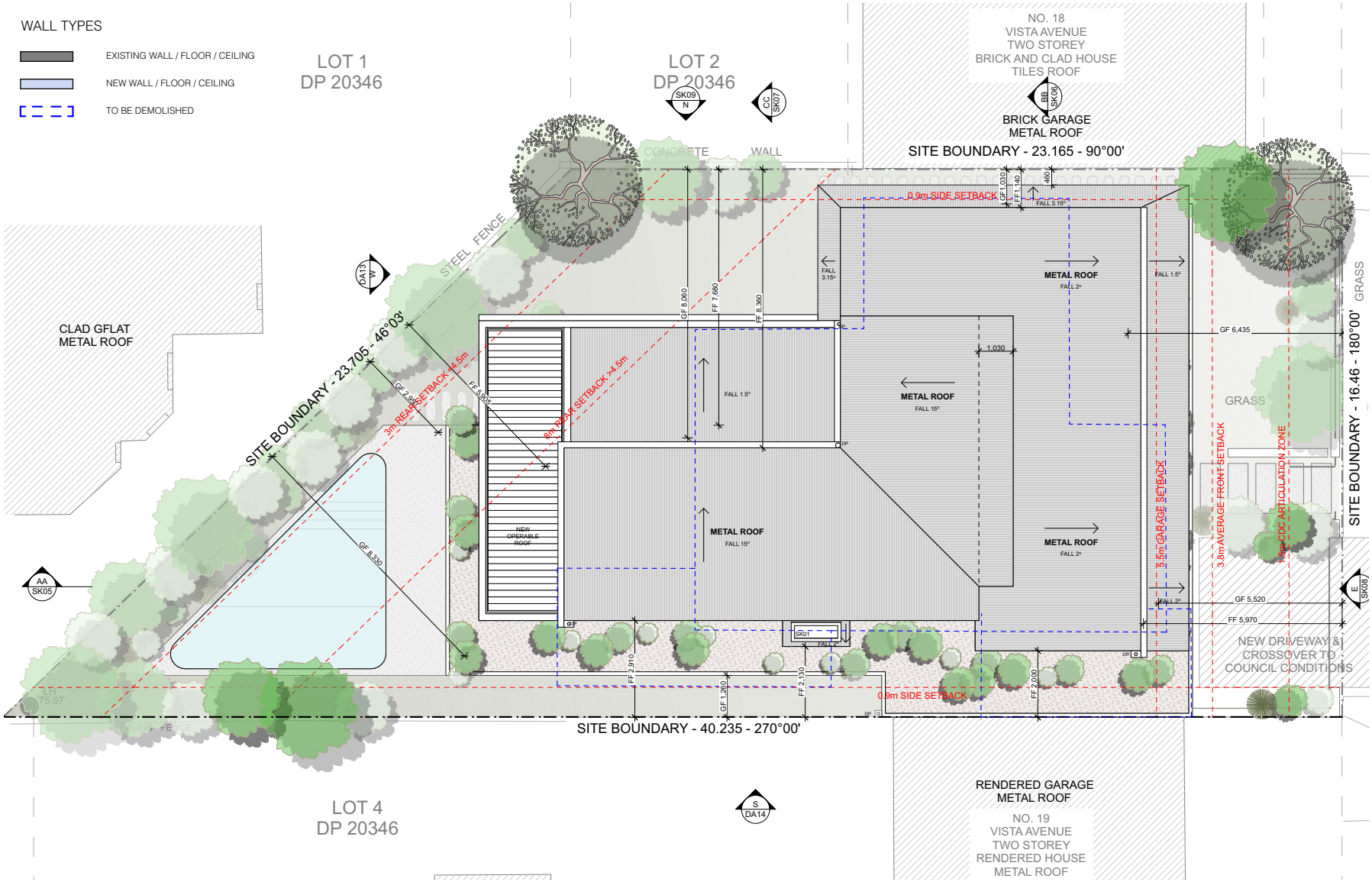
Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: Proper identification of buildings.

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

27. **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.



Watershed\/\Architects

Nominated Architect Mark Korgul No. 6221 **Studio** 9977 1076 **Address** Level 1, 167 Pittwater Road Manly NSW 2095

ISSUE	FOR	DATE
A	DA	5/3/2024

JOB NO: 23011
ADDRESS: 21 VISTA AVENUE BALGOWLAH HEIGHTS
CLIENT: MMW PROPERTIES PTY LTD
SCALE: 1:100 @ A3

SITE & ROOF PLAN
SHEET: DA04
ISSUE: A

Watershed\/\Architects

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ISSUE	FOR	DATE
A	DA	5/3/2024

JOB NO:	23011
ADDRESS:	21 VISTA AVENUE BALGOWLAH HEIGHTS
CLIENT:	MMW PROPERTIES PTY LTD
SCALE:	1:100 @ A3

ELEVATION - EAST - VISTA AVE

SHEET: DA11

ISSUE: A

Watershed\/\Architects

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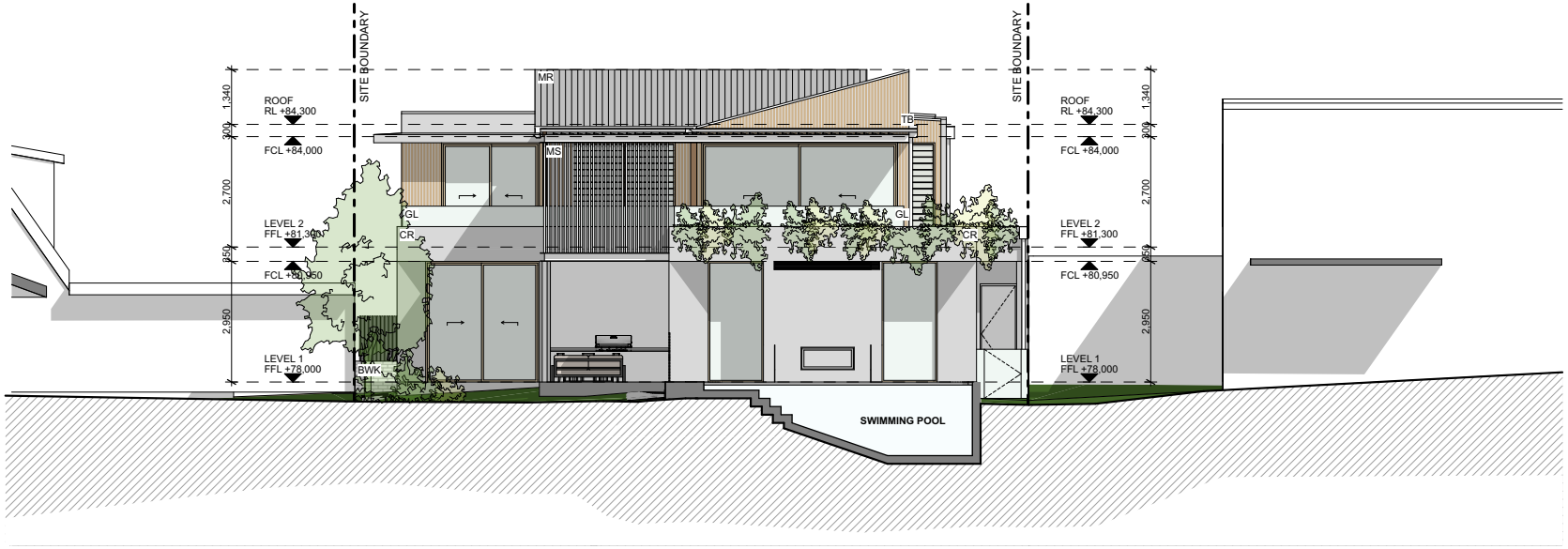
ISSUE	FOR	DATE
A	DA	5/3/2024

JOB NO: 23011
ADDRESS: 21 VISTA AVENUE BALGOWLAH HEIGHTS
CLIENT: MMW PROPERTIES PTY LTD
SCALE: 1:100 @ A3

ELEVATION - NORTH
SHEET: DA12
ISSUE: A



Watershed\/\Architects

Nominated Architect Mark Korgul No. 6221 **Studio** 9977 1076 **Address** Level 1, 167 Pittwater Road Manly NSW 2095

ISSUE	FOR	DATE
A	DA	5/3/2024

JOB NO: 23011
ADDRESS: 21 VISTA AVENUE BALGOWLAH HEIGHTS
CLIENT: MMW PROPERTIES PTY LTD
SCALE: 1:100 @ A3

ELEVATION - WEST
SHEET: DA13
ISSUE: A

Watershed\/\Architects

Nominated Architect Mark Korgul No. 6221 **Studio** 9977 1076 **Address** Level 1, 167 Pittwater Road Manly NSW 2095

ISSUE	FOR	DATE
A	DA	5/3/2024

JOB NO: 23011
ADDRESS: 21 VISTA AVENUE BALGOWLAH HEIGHTS
CLIENT: MMW PROPERTIES PTY LTD
SCALE: 1:100 @ A3

ELEVATION - SOUTH
SHEET: DA14
ISSUE: A

Appendix One - Clause 4.6 *Exceptions to Development Standards – Floor Space Ratio*
21 Vista Avenue, Balgowlah Heights

1. Introduction

Clause 4.6 of the Manly Local Environmental Plan 2013 (MLEP 2013) permits departures from development standards in certain circumstances. In this case, it is necessary to consider if compliance with the development standard is consistent with the aims of the policy and, in particular, does compliance with the development standard tend to hinder the attainment of the objects specified in section 1.3 of the *Environmental Planning and Assessment Act 1979 (EP&A Act) being:*

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

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

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

(d) to promote the delivery and maintenance of affordable housing,

(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,

(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),

(g) to promote good design and amenity of the built environment,

(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,

(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,

(j) to provide increased opportunity for community participation in environmental planning and assessment.

The aims and objectives of Manly LEP 2013 Clause 4.6 are as follows:

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Commencing on 1 November 2023 Clause 4.6(3) and (4) of the MLEP 2013, states that development consent, that contravenes a development standard, must not be granted 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*
>
> *(b) there are sufficient environmental planning grounds to justify the contravention of the development standard.*
>
> *(4) The consent authority must keep a record of its assessment carried out under subclause (3).*

These matters, along with case law judgements from the NSW Land and Environment Court, are addressed below.

2 Environmental Planning Instrument Details (Manly LEP 2013)

2.1 What is the name of the environmental planning instrument that applies to the land?

Manly Local Environmental Plan 2013

2.2 What is the zoning of the land?

R2 – Low Density Residential

2.3 What are the objectives of the zone?

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

2.4 What is the development standard being varied?

Cl 4.4 – Floor Space Ratio

2.5 Under what clause is the development standard listed in the environmental planning instrument?

Cl 4.4 of the Manly Local Environmental Plan 2013

2.6 What are the objectives of the development standard?

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

> *(a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*
> *(b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
> *(c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
> *(d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
> *(e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

2.7 What is the numeric value of the development standard in the environmental planning instrument?

The numeric value of the FSR development standard applicable to the subject site is 0.4:1, This equates to a maximum Gross Floor Area (GFA) of 208.68m^2 for the site area of 521.7m^2.

The Manly DCP permits a GFA, based on a lot size of 750m^2, for this undersized lot, which equates to a maximum GFA of 300m^2.

1.8 What is proposed numeric value of the development standard in your development application?

The development proposes a maximum floor area of 258.41m^2 or FSR of 0.49:1

1.9 What is the percentage variation (between your proposal and the environmental planning instrument)?

The percentage variation sought is +49.73m^2 or 23.8%.

The Manly DCP provides exceptions to floor space ratio for undersized lots. The subject site is an undersized lot, mapped with a minimum lot size of 750m^2 and comprising an area of 521.7m^2, as such it qualifies for consideration as an exception.

In this regard the DCP permits an FSR calculation based on a 750m^2 lot size, which equates to 300m^2 for the site. As noted above, the proposed gross floor area is 258.41m^2 and therefore complies with the provision of DCP Clause 4.1.3.

3. 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.

3.1 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).

3.2 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.

4. 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.*

5. 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.

4. Consideration

The following section addresses the provisions of clause 4.6 of the MLEP 2013 together with principles established in the NSW Land and Environment Court Case Law outlined above.

Clause 4.6(3)(A) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (and is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case)?

In order to demonstrate that compliance with the development standard is unreasonable or unnecessary, in the circumstances of the case, the Five (5) Part Test established in Winten v North Sydney Council and expanded by Justice Preston in Wehbe v Pittwater [2007] NSW LEC 827 is considered:

The five ways outlined in *Wehbe* include:

4.1 Five (5) Part Test - Wehbe v Pittwater

1. ***The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).***

The objectives of the standard are:

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

<u>Comment</u>

The proposed development is for a new dwelling to create with double garage on the site. The dwelling easily complies with the building height for the site and the bulk and scale is consistent with surrounding properties.

The proposed variation is 49.72m2 or 23.8% and is considered reasonable for the smaller lot.

However as the subject site is an existing undersized parcel, clause 4.1.3 of the DCP, permits an FSR calculation based on a 750m^2 lot size, which equates to 300m^2 for the site. As noted above, the proposed gross floor area is 258.41m2 and therefore complies with the provision of DCP Clause 4.1.3 having a GFA 41.59m^2 less than permitted.

It is considered this objective is met, despite the numerical variation.

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

Comment

The proposed built form and massing will be of a consistent scale to surrounding properties. The development proposes a compliant maximum building height and will not obscure any important landscape or townscape features and will not result in any view loss impacts.

It is therefore considered this objective is met, despite the numerical variation.

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

Comment

The subject site has frontage to and is visible from Vista Avenue. This section of Vista Avenue is characterised by 2 storey detached residential dwellings, of similar scale to the proposed development, with the eastern side of the street also elevated.

The proposed dwelling has been designed to remain consistent with the character of the area, through design, architectural features and complimentary materials and colour choices.

In this regard, the underlying intent of this objective has been satisfied despite the numerical departure.

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

Comment

The proposed variation to floor space ratio does not result in any unreasonable environmental impacts to the amenity of adjoining dwellings. Compliant levels of solar access are maintained despite the proposed variation and there will be no unreasonable impact on views, visual privacy or acoustic privacy.

In this regard, the underlying intent of this objective has been satisfied despite the numerical departure.

(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 relevant as the subject site is not located in a business zone.

2. ***The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).***

This exception to development standards request does not rely on this reason.

3. ***The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).***

This exception to development standards request does not rely on this reason.

4. ***The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Way).***

This exception to development standards request does not rely on this reason.

5. ***The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Way).***

This exception to development standards request does not rely on this reason.

This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the floor space ratio control pursuant to the First Way outlined in Wehbe.

Thus, it is considered that compliance with Clause 4.6(3)(a) is satisfied.

4.2 Clause 4.6(3)(B) – Are there sufficient environmental planning grounds to justify contravening the development standard?

There are sufficient grounds to permit the variation of the development standard. The development has been considered below with particular reference to the Objects of the Environmental Planning and Assessment Act 1979, which are accepted as the best gauge of *environmental planning grounds*. In particular:

Context

- The area surrounding the subject site is characterised by 1 and 2 storey detached residential dwellings, set within landscaped grounds with turfed form lawns. The

proposal fulfils this character.

- The dwelling proposes a compliant building height and has been designed to remain consistent with the character of the locality, despite the minor variation to FSR, through design, architectural features and complimentary materials and colour choices.

- Variation to the Manly LEP 2013 Cl. 4.4 FSR, control has been the subject of recent precedent for the following developments with undersized lots:

    - 2023/0472 – 64 Birkley Toad, Manly, FSR Variation of 24.11%
    - 2022/2280 – 47 Beatty Street, Balgowlah, FSR Variation of 17.5%
    - 2023/0085 – 49 Alexander Street Manly, FSR Variation of 28.36%
    - 2022/1675 – 57 Cutler Street, Clontarf, FSR variation of 29.25%
    - 2020/1487 – 89 Cutler Road Clontarf, FSR Variation of 48.8%
    - 2023/0176 – 8 Adelaide Street, Balgowlah Heights, FSR Variation of 31%
    - 2022/1216 – 69 Ernest Street, Balgowlah Heights, FSR Variation of 20%
    - 2022/1209 – 8 Allenby Street, Clontarf, FSR Variation of 29%

- The setting and context with similar FSR variations recently approved, demonstrates that a varied FSR is reasonable and that it is consistent with clause 1.3(c) and (d).

Future Development

- The proposed development will allow for the provision of a modern floor plan, with open plan living areas,
- This represents an efficient use of an existing site, with all services readily available.
- The built form proposed is consistent with other buildings in the locality and considerate of the heritage conservation area,
- The proposed works will not hinder any future development of the lot,
- The dwelling proposed demonstrate fulfillment of clause 1.3(a), (b), (c) and (g).

Consistent with Zone Objectives

- The extent of the variation is considered to be in the public interest, as the proposal remains consistent with the objectives of the zone, allowing for additional residential floor space in a residential zone, with a bulk and scale consistent with the locality. Compliance with the FSR standard based on this would be unreasonable, with clause 1.3(c) demonstrated as fulfilled.

Natural Environment

- The proposed development allows for the current and future housing needs of the

residents to be met, without developing a greenfield site, representing an efficient use of existing developed land.

- The development does not require the removal of any significant trees,
- The proposal allows for environmental impacts to be minimized, by locating works on an already disturbed residential lot.
- The natural environment is unaffected by the departure to the development standard and it would be unreasonable for the development to be refused on this basis with Cl 1.3(b) satisfied.

Social and Economic Welfare

- The variation to the FSR will have a positive social impact, as it will allow the housing needs of the residents to be met in their current local community, with a reasonable sized dwelling not including any excessive or unnecessary spaces. It utilizes existing services, satisfying Cl1.3(b). Accordingly, refusal of the development based on this reason would be unreasonable.

Appropriate Environmental Planning Outcome

- The development proposed is not an overdevelopment of the site and satisfies the objectives of the zone and the development standard as is detailed earlier in the report.

The variation to the FSR 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 and there is recent precedent of similar variations being accepted by Council.

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 FSR variation.

Clause 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*

Will the proposed development be in the public interest?

It is considered that alterations and additions to an existing dwelling house on the subject site, does not raise any matters contrary to the public interest.

How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Act.

Strict compliance with the standard would hinder the attainment of the objects specified in section 1.3 of the Act

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

Strict numerical compliance with the 0.4:1 FSR development standard would hinder the development for the purpose of *promoting the orderly and economic use and development of land, promoting good design and amenity of the built environment* and *promoting the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.*

The proposed development to reconfigure the ground floor plan and add a first-floor addition on land zoned R2 – Low Density Residential is appropriate and reasonable for the following reasons:

- There is recent precedent for similar variations to Cl 4.4 FSR of the Manly LEP 2013 being accepted by Council,
- The proposed FSR is compliant with the DCP control for undersized lots,
- The proposed development does not present with excessive bulk and is of a consistent scale to surrounding properties. The proposal will not result in any unreasonable impacts.
- The works proposed will allow the housing needs of the residents to be met, including an opportunity to work from home, in their current community,
- The objectives of the R2 zone can be met despite the numerical variation.

Strict numerical compliance is considered to be unnecessary and unreasonable given that the proposed variation sought is consistent with the underlying objectives of the control despite the numerical variation, of which have been reasonably satisfied under the provisions of Clause 4.6. The statement sufficiently demonstrates that compliance with the development standard is both unreasonable and unnecessary in this instance.

The sufficient environmental planning grounds stipulated within this request, demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the FSR variation.

The proposed variation satisfies the objectives of the zone, underlying intent of Clause 4.6 and Clause 4.4, and therefore the merits of the proposed variation are considered to be worthy of approval.

ITEM 3.3 DA2024/0012 - 78 GRANDVIEW DRIVE NEWPORT - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING CARPORT AND STUDIO

PURPOSE

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

RECOMMENDATION

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

THAT Council as the consent authority **approves** Development Consent to DA2024/0012 for alterations and additions to a dwelling house including carport and studio on land at Lot 62 DP 16029, 78 Grandview Drive NEWPORT, subject to the conditions set out in the Assessment Report.

Reporting manager	Steve Findlay
TRIM file ref	2024/433405
Attachments	⇩1 Assessment Report ⇩2 Site Plan and Elevations ⇩3 Clause 4.6

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/0012

Responsible Officer:	Simon Ferguson Tuor
Land to be developed (Address):	Lot 62 DP 16029, 78 Grandview Drive NEWPORT NSW 2106
Proposed Development:	Alterations and additions to a dwelling house including carport and studio
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:	Fengjuan Kang
Applicant:	Peter Downes

Application Lodged:	30/01/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	06/02/2024 to 20/02/2024
Advertised:	Not Advertised
Submissions Received:	4
Clause 4.6 Variation:	4.3 Height of buildings: 30%
Recommendation:	Approval

Estimated Cost of Works:	$ 493,000.00

EXECUTIVE SUMMARY

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

The application is referred to the DDP as the proposal involves a variation of more than 10% to Clause 4.3 Height of Buildings of Pittwater LEP 2014.

The proposed development was notified in accordance with the Community Participation Plan and four (4) submissions were made, raising concerns predominantly in relation to privacy impacts, which have been addressed and resolved through a redesign to the proposed studio and privacy measures including screens and glazed windows.

The proposal presents a height of 11.1m, that results in a variation of 30% to the required 8.5m height of buildings development standard. Notably, this height breach relates to the replacement of an existing roof structure, whereby design constraints require a minor raising of the roof. The proposal also includes minor height breaches of 0.3m above the 8.5m limit at the carport roof and studio balustrade.

The height breach for the dwelling itself has been supported by a detailed written Clause 4.6 variation request for the non-compliance with the height standard. The breach in height arises as a consequence of the steep topography of the site, prior excavation, design constraints and existing structures. For these reasons, the Clause 4.6 is assessed as being well founded and is supported.

The minor height breaches involved with the carport roof and studio balustrade are shown to be acceptable as they meet the tests under Clause 4.3(2D) of PLEP 2014.

The proposal includes variations to the built form controls under Pittwater 21 DCP; including front and side building line and building envelope. It is considered that these variations are acceptable, as the proposal meets the outcomes of the controls, and will not result in any unacceptable amenity or environmental impacts.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for alterations and additions to the existing dwelling as follows:

Level 4
• Construct new double carport
• New concrete driveway
• Stairs to level 3 below

Level 3
• Construct undercroft studio below carport
• Demolish existing staircase and construct new timber walkway

Level 2
• Demolish existing kitchen and internal walls and reconfigure floor space over existing decked area.
• Extend existing roof to accommodate new floor space

Level 1
• Reconfigure internal walls to enlarge existing bathroom
• Construct new bedroom over existing decked area
• Extend decked areas for access to subfloor storage

<u>Amended Plans</u>

- Following the preliminary assessment of the application, Council requested additional information in relation to engineering issues and privacy impacts. Amended plans were subsequently submitted which resolved Council's concerns. The amended plans constitute a reduced environmental impact and therefore, the application was not required to be re-notified,

in accordance with the Northern Beaches Community Participation Plan (CPP). An informal re-notification (via email) of the amended plans has been carried out to neighbours who submitted objections during the first notification period.

- Further amended plans were received 4 June 2024 in response to privacy concerns raised by Council. The amended plans obscured windows and erected privacy screens in locations that had been identified as having privacy impacts.

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 - 7.7 Geotechnical hazards
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - D10.7 Front building line (excluding Newport Commercial Centre)
Pittwater 21 Development Control Plan - D10.8 Side and rear building line (excluding Newport Commercial Centre)
Pittwater 21 Development Control Plan - D10.11 Building envelope (excluding Newport Commercial Centre)

SITE DESCRIPTION

Property Description:	Lot 62 DP 16029 , 78 Grandview Drive NEWPORT NSW 2106

Detailed Site Description:	The subject site consists of one (1) allotment located on the eastern side of Grandview Drive. The site is irregular in shape with a frontage of 12.215m along Grandview Drive and depths of 42.245m (northern boundary) and 40.89m (southern boundary). The site has a surveyed area of 499.5m². The site is located within the C4 Environmental Living zone and accommodates a two storey residence. The site is very steep, sloping down approximately 26m from the front (west) to the rear (east). The site is heavily vegetated at the front and the rear with numerous large canopy trees. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by multi storey residential dwellings on steeply sloping blocks.

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 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 privacy and engineering issue. 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 Matters for Consideration	Comments
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 06/02/2024 to 20/02/2024 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 4 submission/s from:

Name:	Address:
Mr Mark Andrew Mckie	76 Grandview Drive NEWPORT NSW 2106
Mr John Anthony Leonard Mrs Vivienne Marie Leonard	80 Grandview Drive NEWPORT NSW 2106
Sara Turner	52 Grandview Drive NEWPORT NSW 2106
John Leonard	80 Grandview Drive NEWPORT NSW 2106

The following issues were raised in the submissions:

- Inconsistencies on Plans
- Extension of deck
- Geotechnical Hazards
- Building Envelope
- Views
- Desired future character of the Locality
- Bulk
- Solar Access
- Stormwater
- Privacy
- Retention of trees

The above issues are addressed as follows:

- **Inconsistencies on Plans**

  The submissions raised concerns that the plans did not accurately depict the existing site conditions including encroachments onto 76 Grandview Drive.

  Comment:

  The amended plans have accurately shown the existing encroachments and the proposal includes the provision of a new roof which will be contained within the site boundaries.

- **Extension of deck**

  The submissions raised concerns that the proposed extension of the Level 1 deck would take the structure to a nil setback.

  Comment:

  The amended plans have removed the deck extension from the proposal.

- **Geotechnical Hazards**

  The submissions raised concerns that the proposal on a steeply sloping site presented a number of geotechnical hazards.

  Comment:

  The proposal was referred to Council's Engineering Department who are supportive of the proposal, subject to conditions. The proposal includes a Geotechnical report by AscentGeo Geotechnical Consultants, Ref: AG23791, Dated 13th Dec 2023 with form 1 and 1A provided. Conditions of consent require the recommendations within the Geotechnical Report to be adhered to and additional Geotechnical requirements have been imposed by Council. Subject

to conditions, the proposal has demonstrated compliance with Council's Geotechnical requirements.

- **Building Envelope**

  The submissions raised concerns that the proposed carport and studio breaches the allowable building envelope.

  Comment:

  A merit assessment against the Building Envelope control is found at Section D10.11 below. The proposed variation to the Building Envelope control is relativity minor when taking into account the steeply sloping side, the perceived impacts and the existing character of the area.

- **Views**

  The submissions raised concerns surrounding views from number 76 Grandview Drive towards the subject site.

  Comment:

  The views in question are from number 76 Grandview Drive facing north towards the subject site over the side boundary. Whilst it is noted that the outlook across the side boundary will be changed, it is not considered to be a significant view. The existing views towards the east (water views) will not be impacted by the proposal. No further consideration of view loss was undertaken in this assessment report.

- **Desired future character of the Locality**

  The submissions raised concerns that the proposal would result in a four storey development that would not be consistent with the desired future character of the area. Concern was raised that the proposed studio could be used as a short term rental and function as a secondary dwelling.

  Comment:

  The proposal includes a carport and studio in a different location to the existing dwelling house. The architectural plans submitted with the proposal demonstrate that no section of the proposal will present as a three storey structure. The originally proposed elevated deck has been reduced to a 1.2m walkway and conditions have been imposed to ensure the studio in not approved as a secondary dwelling.

- **Bulk**

  The submissions raised concerns that the carport and studio underneath will present significant bulk from the street and as viewed from neighbouring properties.

  Comment:

  Due to the steep topography of the site, the majority of the proposed works will not be visible from the street. There are numerous examples of carports within the front setback along Grandview drive, and the established character of the area includes parking structures in the front set back. The proposed carport is open and relatively lightweight in structure, and the

studio underneath is nested into the site beneath the carport footprint. The studio has been reduced in size from what was originally proposed by deleting the entertaining deck, and the bulk will not be significant when considering neighbouring development and the established building patterns in the area.

- **Solar Access**

  The submissions raised concerns that the proposal would result in overshadowing to adjoining neighbours.

  Comment:

  Shadow diagrams were submitted with the proposal that demonstrate a compliant level of solar access to adjoining residences.

- **Stormwater**

  The submissions raised concerns that stormwater runoff during construction may impact low lying properties.

  Comment:

  The proposed development is supported by a Geotechnical Report and Stormwater Plans that demonstrate waste water, stormwater and drainage are suitably managed on site. Suitable conditions have been recommended to ensure the proposed stormwater disposal is compliant with Council's Water Management for Development Policy.

- **Privacy**

  The submissions raised concerns that the originally proposed elevated deck, staircase and windows associated with the studio would have privacy impacts.

  Comment:

  A merit assessment against the Privacy control is found at Section C1.5 Visual Privacy below. It is considered that suitable privacy measures have been demonstrated in the amended design of the proposal, and in conjunction with the privacy measures, spatial separation and vegetation at the site, the proposal will adequately mitigate any visual privacy impacts.

- **Retention of trees**

  The submissions raised concerns that a number of trees are located between the site and the northern neighbour and wanted confirmation of their retention.

  Comment:

  The proposal was referred to Council's Landscaping Department who are supportive of the proposal, subject to imposed conditions for tree protection measures and for tree replacement planting. Apart from the trees annotated on the architectural plans for removal, no other trees along the side boundary are approved to be removed.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	**Supported with conditions** The application is to construct a carport with studio underneath, new access stairs, and minor additions to the existing dwelling. The proposal if approved requires the removal of one existing prescribed tree, identified as tree 4 Cheese Tree. Other existing native trees are preserved and not impacted by the proposed development works. It is noted that a further four exempt species trees will be removed under the exempt provisions of Pittwater DCP and these can be managed or removed without Council consent. Landscape Referral raise no concerns subject to imposed conditions for tree protection measures and for tree replacement planting.
NECC (Bushland and Biodiversity)	**Supported with conditions** The comments in this referral relate to the following applicable controls and provisions: • Pittwater LEP - Clause 7.6 Biodiversity Protection • Pittwater DCP - Clause B4.7 Pittwater Spotted Gum Forest Endangered Ecological Community The proposal has been submitted with an arborist report that has assessed the condition of a total of 9 trees and recommended the removal of a total of 5 trees (Trees 3, 4, 6, 8 and 9). No objections are raised in relation to the removal of trees 3, 6, 8 and 8 as these are exempt species. Tree 4 is a prescribed tree and its removal will be conditioned subject to like for like replacement. The proposed landscape plan is found to be consistent with PDCP B4.7 No other objections are raised, the development is designed, sited and will be managed to avoid any significant adverse environmental impact.
NECC (Development Engineering)	**Supported with conditions** **15/05/2024:** Amended plans are provided. Development Engineering have no objections to approval subject to conditions as recommended. **08/04/2024:** Development application is for construction of a carport with studio underneath, new access stairs, and minor additions to the existing

Internal Referral Body	Comments
	dwelling. **Access** No carparking is currently available on the site and vehicles are currently utilising the road reserve for parking. New driveway over existing timber wall is proposed, which is not supported, as this wall is supporting the road embankment. Proposed driveway to be designed as an independent structure, imposing no load on this existing timber wall. Applicant to provide engineering plans of proposed driveway showing • longitudinal sections of driveway showing site boundary, existing levels, proposed levels & gradients • Vehicle crossing to be designed as per Council's standard vehicle crossing profile. • Vehicle crossing to be at least 1m away from the existing power pole. • Plans to show that proposed driveway is at sufficient offset from existing street tree. • Details of new supporting structures underneath proposed driveway. • Survey plan shows private metal shed within public road reserve near the existing stairs, this shed to be removed as private use of public land is not permitted. **Stormwater** Site falls to rear and an OSD (on-site stormwater detention system) with level spreader is proposed. Volume of OSD seems to be short, Hydraulic Engineer to deign level spreader as per Appendix 4 of Council's Water Management for Development policy. A concurrence from Geotech Engineer regarding location of proposed level spreader with discharge rate is also required. **Geotech** Site is identified as Geotechnical hazard H1 & H2 on the Geotechnical Hazard Map. Geotechnical report by AscentGeo Geotechnical Consultants, Ref: AG23791, Dated 13th Dec 2023 with form 1 and 1A is provided. **For Planner:** Landscape plan(Internal Ref: TRIM 2024/ 027168) is for a different property in Belrose: 90 Ashworth Ave, Belrose

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. A1732059 dated 10 January 2024).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

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

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	11.1m	30%	**No (see comments)**

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone C4 Environmental Living

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

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

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

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

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

  Comment:
  The residential development will not have any adverse effects on the special ecological, scientific or aesthetic values.

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

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

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

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

4.6 Exceptions to development standards

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

Development standard: Clause 4.3 Height of buildings
Requirement: 8.5m
Proposed: 11.1m
Percentage of variation: 30%

The proposed variation sought is detailed in Figure 1. It is important to note, that the main variation sought is resultant of the existing roof form at the site and the breach is due to the roof being replaced.

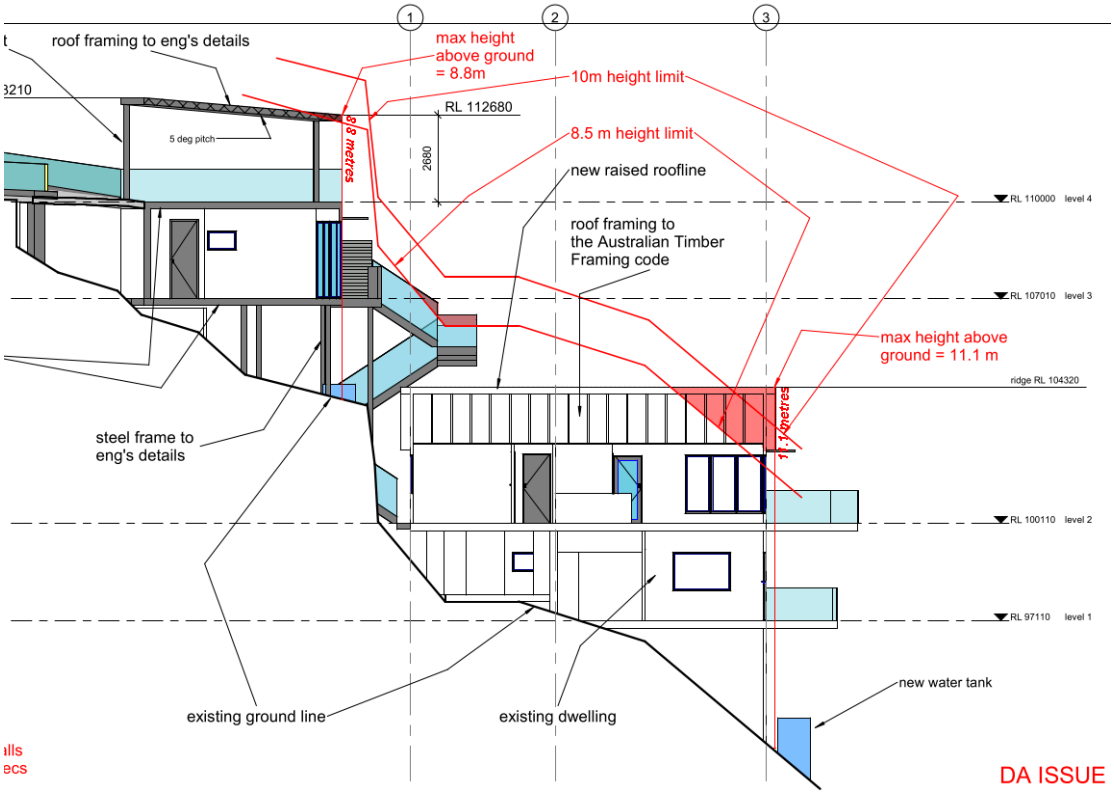


Figure 1. Extract of Section 1 (red highlighting height of buildings variation)

With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is accompanied by a document that sets out the grounds on which the Applicant seeks to demonstrate the matters set out in Clause 4.6(3)(a) and (b) of the PLEP 2014 (the 'Clause 4.6 Request').

Subclause (1) of this clause provides that:

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

<u>Comment</u>:

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

Subclause (2) of this clause provides that:

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

Comment:

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

Subclause (3) of this clause provides that:

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

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

Comment:

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

The variation sought is very minor and will have no discernable impacts. Strict compliance with the control would result in poorer amenity results.

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

Comment:

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

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

The Clause 4.6 Request argues, in part:

Ground 1 - Steep topography
• The steep topography of the site is such that the existing dwelling at No. 78 Grandview Drive projects to over 10m in height. This is despite its two storey presentation and is almost entirely due to the precipitous fall of land under this part of the footprint. All points of breach are considered negligible matters compared to the magnitude of the fall in the land underneath.

Ground 2 - Prior excavation of the site
• The height breach of the balustrade supporting the staircase is very minor in extent and occurs entirely because of its location directly above the excavated levels of the dwelling below.

Ground 3 - Constraint of working with existing structure and tree canopy.
• The proposed roof extension to form a gable end is designed to work with the existing roof structure which is largely to be retained. The physical constraints of constructing alterations to the dwelling on

such a steep slope dictate that existing structures remain in place where possible and the pitched gabled roof extension proposed allows this to occur.
• The location of the carport and access stair structure is a function of the setback of the existing dwelling and the location of a number of significant and native trees on the site and in the road reserve. These two considerations limit the carport and access stair location to that proposed, which in turn requires the structures to be suspended over the very sharp fall in the land and creation of the height variation.

Ground 4 - Minor breaches meet tests under Clause 4.3(2)(D) of PLEP 2014
• The new carport roof and balustrade to the access stair is also situated over a sharp fall in the land and the height exceeding is again a result of this constrained topography. Notwithstanding this, the exceedance of the carport and access stair balustrade is minor in magnitude and area, and this part of the height exceedance by itself readily achieves the criteria needed to comply with Clause 4.3(2)(D), which permits minor variations up to 10m in certain circumstances and therefore would not need to be justified under Clause 4.6.

Ground 5 - Need for carparking and pedestrian access on the site
• The site has a significant need to provide carparking given the context of Grandview Drive which has no on street parking and is in part steep and with challenging sight lines for vehicles and pedestrians. The current practice of parking on the road reserve is not appropriate and dangerous.

Assessment Officer's Comments:

The proposed carport and balustrade involve very minor breaches that would meet the exemption tests under Clause 4.3(2)(D) of PLEP 2014.

The proposed roof replacement for the dwelling largely retains the existing roof structure and the additional height breach is necessitated due to design constraints. The non-compliances would also be a direct result of the existing built form and slope of the land.

The Applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of Clause 4.3 Height of buildings for the following reasons:

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

Public Interest:

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

Conclusion:

Council is satisfied as to the matters set out in Clause 4.6 of the PLEP 2014.

It is considered on balance, that having regard to the particular circumstances of the minor Height of Building non compliance due to existing site constraints and topography, the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

7.7 Geotechnical hazards

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

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

Comment:
The proposed development is supported by a Geotechnical Report, Architectural Plans, and Stormwater Plans that demonstrate all geotechnical risks have been taken into account.

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

Comment:
The proposed development is supported by a Geotechnical Report, and Stormwater Plans that demonstrate waste water, stormwater and drainage are suitably managed on site. Suitable conditions have been recommended to ensure the proposed stormwater disposal is compliant with Council's Water Management for Development Policy.

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

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

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	0m	100%	**No (see comments)**
Rear building line	6.5m	25m	N/A	Yes
Side building line	2.5m (South)	1.5m	40%	**No (see comments)**
	1m (North)	0.1m (staircase)	90%	**No (see comments)**
Building envelope	3.5m (South)	Outside envelope	N/A	**No (see comments)**
	3.5m (North)	Outside envelope	N/A	**No (see comments)**

Landscaped area	60%	63%	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.10 Newport Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
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
B8.5 Construction and Demolition - Works in the Public Domain	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		
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
D10.1 Character as viewed from a public place	Yes	Yes
D10.4 Building colours and materials	Yes	Yes
D10.7 Front building line (excluding Newport Commercial Centre)	No	Yes
D10.8 Side and rear building line (excluding Newport Commercial Centre)		
D10.11 Building envelope (excluding Newport Commercial Centre)	Yes	Yes
D10.13 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D10.16 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D10.18 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

C1.5 Visual Privacy

Detailed Description of Non-compliance

Concern was raised from No.76 and 80 Grandview Drive (located to the south and north) in relation to the proposed carport/studio and visual privacy.

The submissions expressed concern in relation to the originally proposed elevated deck area attached to the studio entrance, proposed stairway and overlooking impacts.

The applicant submitted amended plans during the assessment of the application, that reduced the size of of the elevated studio deck to a 1.2m access walkway. Additionally, the proposed glass balustrades (in front of studio) were changed to solid materials, frosted glass is now proposed to the full length windows closest to the neighbours (north and south edge) and privacy screens are to be erected.

Under Clause C1.5 Visual Privacy of Pittwater 21 Development Control Plan, the controls stipulate the following:

Private open space areas including swimming pools and living rooms of proposed and any existing adjoining dwellings are to be protected from direct overlooking within 9 metres by building layout, landscaping, screening devices or greater spatial separation

Elevated decks and pools, verandahs and balconies should incorporate privacy screens where necessary and should be located at the front or rear of the building.

Direct views from an upper level dwelling shall be designed to prevent overlooking of more than 50% of the private open space of a lower level dwelling directly below.

Merit consideration

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

  Comment:
  The potential privacy impacts to the northern neighbour have been mitigated by providing full height frosted glass to the fixed panel of the northern window of the studio. In addition a fixed 1.8m privacy screen is located at the top of the access staircase to the studio which will prevent overlooking from 80 Grandview Drive. The proposed staircase is not considered to be a highly trafficable area, and is located in a similar position to the existing stairway along the northern elevation.

  The potential privacy impacts to the southern neighbour have been mitigated by providing full height frosted glass to the fixed panel of the southern window of the studio. In addition a fixed 1.8m privacy screen is located at the south eastern corner of the studio walkway which will reduce overlooking from 80 Grandview Drive. There is ample spatial separation from the windows at 76 Grandview Drive to the studio walkway and windows, with a minimum of 9m separating the dwelling and studio.

Both 76 and 80 Grandview drive will not have any additional privacy impacts in relation to their principle private open space areas and the privacy concerns related to side views. It is considered that suitable privacy measures have been demonstrated in the design of the proposal, and in conjunction with the privacy measures, spatial separation and vegetation at the site, the proposal will optimise visual privacy.

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

  Comment:
  It is assumed the sense of territory and safety will be provided for residents.

Having regard to the above assessment, it is considered that the proposed development is consistent with the relevant objectives of P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is **supported**, in this particular circumstance.

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

Description of Non-compliance

The proposed carport (with studio underneath) presents a nil setback to the front building line, presenting a variation of 100% to the required 6.5m control.

Under Clause D10.7 Front building line of Pittwater 21 Development Control Plan, the following variations are permitted:

Where carparking is to be provided on steeply sloping sites, reduced or nil setbacks for carparking structures and spaces may be considered, however all other structures on the site must satisfy or exceed the minimum building line applicable.

It is considered that the site is steeply sloping, and as such reduced setbacks for carparking structures are acceptable. It is noted that the existing front of the dwelling house is more than compliant with the front building line control.

Merit Consideration

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

- *Achieve the desired future character of the Locality. (S)*

  Comment:
  The proposal is consistent with the desired future character of the Newport Locality.

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

  Comment:
  The proposed development will not impact upon any significant views and vistas to and/or from public/private places.

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

  Comment:
  The proposal is not adjoining a main road. Therefore, this outcome is not relevant.

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

  Comment:
  The proposed carport requires the removal of of some existing vegetation in the the front setback area. It Council's Landscaping Officer has reviewed the application and has imposed conditions requiring replacement tree planting. Subject to conditions, it is considered the proposal will not present any unreasonable built form.

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

  Comment:
  Council's Development Engineer has reviewed the proposal, and is supportable subject to recommended conditions.

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

  Comment:
  The proposal will not detract from the existing streetscape, and will provide a scale and density that is keeping with the height of the natural environment.

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

  Comment:
  The proposal will present an attractive street frontage that is consistent with numerous other carports in the street.

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

  Comment:
  The proposal appropriately responds to the sensitive relationship to the existing urban environment that includes the steeply sloping topography of the site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is **supported**, in this particular circumstance.

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

Description of Non-compliance

Under Clause D10.8 of P21DCP, the minimum side building line is 2.5m to at least one side, and 1.0m for the other side.

For the purpose of this assessment, the 2.5m side building line has been applied to the southern side boundary, and the 1m side building line has been applied to the northern side boundary.

Along the northern side boundary, the proposal exhibits the following setbacks:

- 0.1m to the proposed staircase, representing a 90% variation to the 1m control.
- 0.1m to the proposed concrete landing, representing a 90% variation to the 1m control.

Along the southern side boundary, the proposal exhibits the following setbacks:

- 1.5m to the proposed dining room

Notably, the proposed dining room involves enclosing the existing roofed deck.

Furthermore, this Clause prescribes a 6.5m rear building line. The proposal exhibits a compliant rear setback.

Merit Consideration

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

- *To achieve the desired future character of the Locality. (S)*

  Comment:
  The proposal is consistent with the desired future character of the Newport Locality.

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

  Comment:
  The bulk and scale of the proposal has been designed to mitigate impacts. The carport structure is open and modest in height and scale. The studio underneath utilises the structure of the carport and the steep topography of the site, so as to be nestled beneath it. The side setback breaches discussed above will not contribute to additional bulk.

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

  Comment:
  The proposed development will not impact upon any significant views and vistas to and/or from public/private places.

- *To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.*

  Comment:
  As above, the proposal will not impact on any significant views and is considered to allow for view sharing.

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

  Comment:
  The proposal will ensure an appropriate level of privacy, amenity, and solar access is provided within the development site, and maintained surrounding to residential properties. The proposal includes privacy screening along the northern and southern edges of the studio walkway.

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

  Comment:
  The proposal has been reviewed and supported, subject to conditions, by Council's Landscape Officer. The proposal is compliant with the landscaped area required by P21DCP Clause D10.13 Landscaped Area - Environmentally Sensitive Land. Whilst tree removal is involved with the proposal, it is not exacerbated by the side setback variations, and conditions have been imposed to ensure replacement planting occurs at the site.

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

  Comment:
  Flexibility is provided in this circumstance as the development will not result in unacceptable streetscape or amenity impacts, nor will the development have an adverse impact on the natural environment.

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

  Comment:
  The proposal includes retained and enhanced vegetation that will visually reduce the built form. Conditions have been recommended in relation to replacement planting and tree protection measures.

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

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

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is **supported**, in this particular circumstance.

D10.11 Building envelope (excluding Newport Commercial Centre)

Description of Non-compliance

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

The northern elevation of the proposal sits outside of the building envelope.

The extent of the envelope breach is shown is the Figure 2 below.

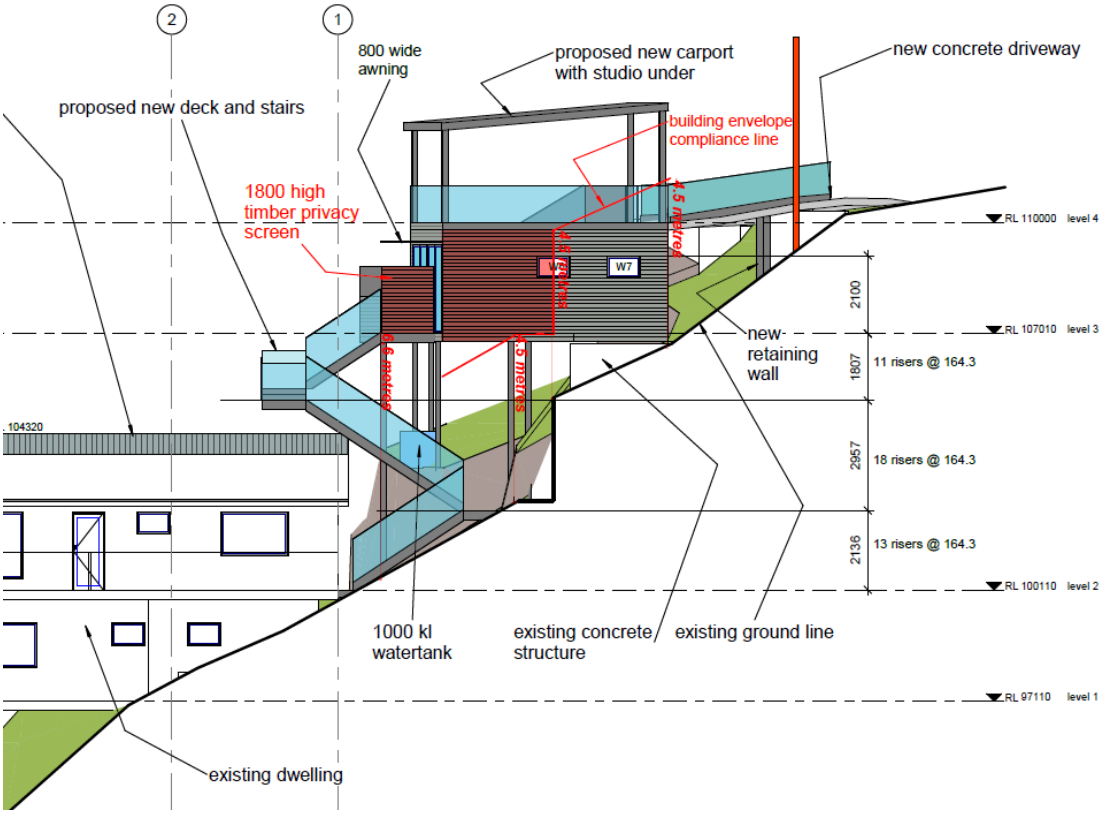


Figure 2. North Elevation (red shading highlighting numerical building envelope non-compliance)

Under Clause D10.11 Building envelope the following variations can be made:

Where the building footprint has a slope is situated on a slope over 16.7 degrees (i.e.; 30%), variation to this control will be considered on a merits basis.

Under the proposed footprint of the carport and studio, the slope is 37 degrees, meeting this criteria.

In this instance, the proposed variation has been assessed against the outcomes of the control. The proposal demonstrates compliance with the outcomes, and as such the variation is supportable in this circumstance.

<u>Merit Consideration</u>

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

- *To achieve the desired future character of the Locality. (S)*

  Comment:
  The proposal is consistent with the desired future character of the Newport Locality.

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

  Comment:
  The proposal is consistent with the height of the natural environment and is compatible with the existing streetscape. The proposal is of a design, height and scale commensurate with surrounding development, particularity surrounding parking structures.

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

  Comment:
  The proposal is considered to be an adequate response to the spatial characteristics of the existing natural environment.

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

  Comment:
  The bulk and scale of the proposal is acceptable, as it provides a new carport demonstrating compliance with minimum off-street parking requirements. The bulk and scale of the carport is minimised as the structure is open, and considered to be lightweight, presenting an acceptable scale of development. The studio below utilises the proposed carport and steep topography of the site to provide addition habitable space at the site and does not contribute to excessive bulk.

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

  Comment:
  There are no significant views and vistas to and/or from public/private places that will be obstructed as a result of the proposed development.

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

  Comment:
  To proposal retains and provides an acceptable level of privacy, amenity and solar access to the subject site and adjoining sites.

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

  Comment:
  The proposal retains a significant portion of the vegetation, and presents additional plantings to visually reduce the built form. The proposal involves the removal of one prescribed tree. It is noted that a further four exempt species trees will be removed under the exempt provisions of Pittwater DCP and these can be managed or removed without Council consent. The proposal was referred to Council's Landscape Officer who raised no concerns subject to imposed conditions for tree protection measures and for tree replacement planting.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is **supported**, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of $4,930 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $493,000.

CONCLUSION

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

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

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

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

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

Council is satisfied that the Applicant's written request under Clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking to justify variation of the development standard contained within Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

PLANNING CONCLUSION

This proposal, for alterations and additions to a dwelling house has been referred to the Development Determination Panel (DDP) due to a variation of more than 10% to Clause 4.3 Height of Buildings of Pittwater Local Environment Plan 2014.

The proposed development was notified and concerns raised were predominately in relation to privacy impacts, which have been addressed and resolved through a redesign to the proposed studio and privacy measures including screens and glazed windows.

The proposal seeks a variation to Clause 4.3 height of buildings of Pittwater Local Environmental Plan 2014, as a result of the proposed building height of the replacement roof on the main dwelling. The Clause 4.6 is well founded and is supported.

Furthermore, the proposal includes variations to the built form controls under Pittwater 21 DCP; including; front and side building line and building envelope. It is considered that variations are acceptable, as the proposal meets the outcomes of the controls, and will not result in any unacceptable amenity or environmental impacts.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment.

The proposal has therefore been recommended for approval.

REASON FOR DETERMINATION

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

RECOMMENDATION

That Northern Beaches Council, as the consent authority, vary the development standard contained within Clause 4.3 Height of Buildings, pursuant to Clause 4.6 of the Pittwater Local Environmental Plan 2014 because the Applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) of Clause 4.6.

Accordingly Council as the consent authority grant Development Consent to DA2024/0012 for Alterations and additions to a dwelling house including carport and studio on land at Lot 62 DP 16029, 78 Grandview Drive, NEWPORT, 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**
A3 2308 01 A	REV A	Site Plan	Peter Downes	17.04.2024
A3 2308 02 A	REV A	Level 4	Peter Downes	17.04.2024
A3 2308 03 A	REV A	Level 3	Peter Downes	17.04.2024
A3 2308 04 A	REV A	Level 2	Peter Downes	17.04.2024
A3 2308 05 A	REV A	Level 1	Peter Downes	17.04.2024
A3 2308 06 A	REV A	South Elevation	Peter Downes	17.04.2024
A3 2308 07 A	REV A	North Elevation	Peter Downes	17.04.2024
A3 2308 08 A	REV A	East Elevation	Peter Downes	17.04.2024
A3 2308 09 A	REV A	West Elevation, Windows and Doors, notes	Peter Downes	17.04.2024
A3 2308 10A	REV A	Section 1	Peter Downes	17.04.2024
A3 2308 11A	REV A	Section 2	Peter Downes	17.04.2024
A3 2308 14A	REV A	Demolition Details	Peter Downes	17.04.2024

Approved Reports and Documentation			
Document Title	**Version Number**	**Prepared By**	**Date of Document**

Geotechnical Assessment (Ref: AG 23791)	1	AscentGeo	01.05.2024
Modification Letter	-	AscentGeo	13.12.2023
Arboricultural Impact Assessment	B	Joanne Willis	15.12.2023
Waste Management Plan	-	Applicant	10.01.2024
Basix Certificate A1732059	-	Lin & Associates Pty Ltd	10.01.2024
Stormwater Management Plan	1A	Taylor Consulting	22.04.2024
Landscape Plan (48.24/115)	-	iScape	May 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	05.02.2024

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

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

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

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

completed.

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

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

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

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

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

A. the name of the owner-builder, and

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

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

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

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

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

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

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

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

Reason: Legislative requirement.

4. **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) 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

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

A monetary contribution of $4,930.00 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 $493,000.00.

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

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

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

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

7. **Security Bond**

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

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

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

Reason: To protect native vegetation.

9. **On-Site Stormwater 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 Taylor Consulting Civil & Structural Engineers, drawing number STORM-1/A, dated 22/04/2024. 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. Level spreader to be designed as per Appendix 4 of Council's Water Management for Development Policy.
ii. Detailed drainage plans, including engineering certification, are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

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

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by AscentGeo Geotechnical Consultants, Ref: AG23791, Dated 13th Dec 2023 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

11. **Boundary Identification Survey**
A boundary identification survey, prepared by a Registered Surveyor, shall be provided in respect of the subject site.

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

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

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

12. **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. **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 driveway and supporting retaining structure 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) Engineering details for the vehicle crossing and retaining structure to be prepared by a qualified practicing Structural Engineer with corporate membership of the Institute of Engineers Australia (M.I.E)and has appropriate experience and competence in the related field.
2) Vehicle crossing to be 4 metres wide at the kerb and the driveway profile to be in accordance with Northern Beaches Council's standard vehicle crossing profile.

3) Structural Engineers design certificate for design of the driveway and supporting retaining structure.

4) At a minimum, the drawings must show the works in plan view, longitudinal section, details at a relevant scale including all existing levels, any existing services/ infrastructure to be retained in the area of works.
5) Longitudinal section of driveway from street gutter invert to parking space within site with existing and proposed levels, chainage and grades.
6) All driveways gradients and safe sight distances etc. shall be designed comply with AS 2890.1:2004 (Off-street Parking Standards).
7) Existing services plan to be provided and any adjustment to existing services are to be approved by the relevant service authority with all costs associated borne by the applicant
8) Details of pedestrian stairs.
9) Incorporation of recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report by AscentGeo Geotechnical Consultants, Ref: AG23791, Dated 13th Dec 2023.
10) Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted.
11) Details of provisions of Physical controls as per Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5. Safery barrier to be installed at
12) Driveway gradients within the private property are not to exceed a gradient of 1 in 4 (25%) with a transition gradient of 1 in 10 (10%) for 1.5 metres prior to a level parking facility.
13) Reinstate all redundant laybacks and vehicular crossings to conventional kerb and gutter, footpath.

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 Certifying Authority prior to the issue of the Construction Certificate.

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

14. **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.

15. **Sydney Water "Tap In"**
The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets

and/or easements. The appropriately stamped plans must then be submitted to the Certifier demonstrating the works are in compliance with Sydney Water requirements.

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

16. **Tree Removal Within the Property**
This consent approves the removal of existing prescribed trees on the subject site as identified in the Arboricultural Impact Assessment, approved Plans, or as listed below:
a) tree 4 - Cheese Tree,
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.

17. **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:

- 76 Grandview Drive Newport
- 80 Grandview Drive Newport

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

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

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

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

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

DURING BUILDING WORK

18. **Protection of Existing Street Trees**
All existing street trees in the vicinity of the works shall be retained during all construction stages, and the street tree(s) fronting the development site shall be protected by tree protection fencing in accordance with Section 4 of AS4970-2009 Protection of trees on development sites. As a minimum the tree protection fencing for street trees fronting the development site 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 trees is prohibited. No excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of street trees.

Reason: Street tree protection.

19. **Tree and Vegetation Protection**
a) Existing trees and vegetation shall be retained and protected, including:
i) all trees within the site not 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.

20. **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.

21. **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.

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

Reason: Public safety.

23. **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.

24. **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.

25. **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

26. **Required Tree Planting**
One (1) Glochidion ferdinandi (Cheese Tree) shall be planted within the property, and in accordance with the following:
i) tree planting shall be a minimum pre-ordered planting size of 75 litres; planted into a prepared planting hole 1m x 1m x 600mm depth 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,
ii) 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.

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

Reason: To maintain environmental amenity.

27. **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.

28. **Replacement of Canopy Trees**
At least 1 Glochidion ferdinandi (Cheese tree) is to be planted on the site to replace protected trees approved for removal.

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.

29. **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.

30. **Certification of Civil Works and Works as Executed Data on Council Land**
The Applicant shall submit 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 plans. Works as Executed data certified by a registered surveyor prepared in accordance with Council's 'Guideline for preparing Works as Executed data (details overdrawn on a copy of the approved civil plans) for Council Assets' in an approved format shall be submitted to Council for approval prior to the release of any security deposits.

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

31. **Post-Construction Dilapidation Report**
Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

- Compare the post-construction report with the pre-construction report,
- Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- Should any damage have occurred, suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction

Dilapidation Report Condition. Copies must also be lodged with Council.

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

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

32. **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.

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

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

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

34. **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 by a registered surveyor 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.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

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

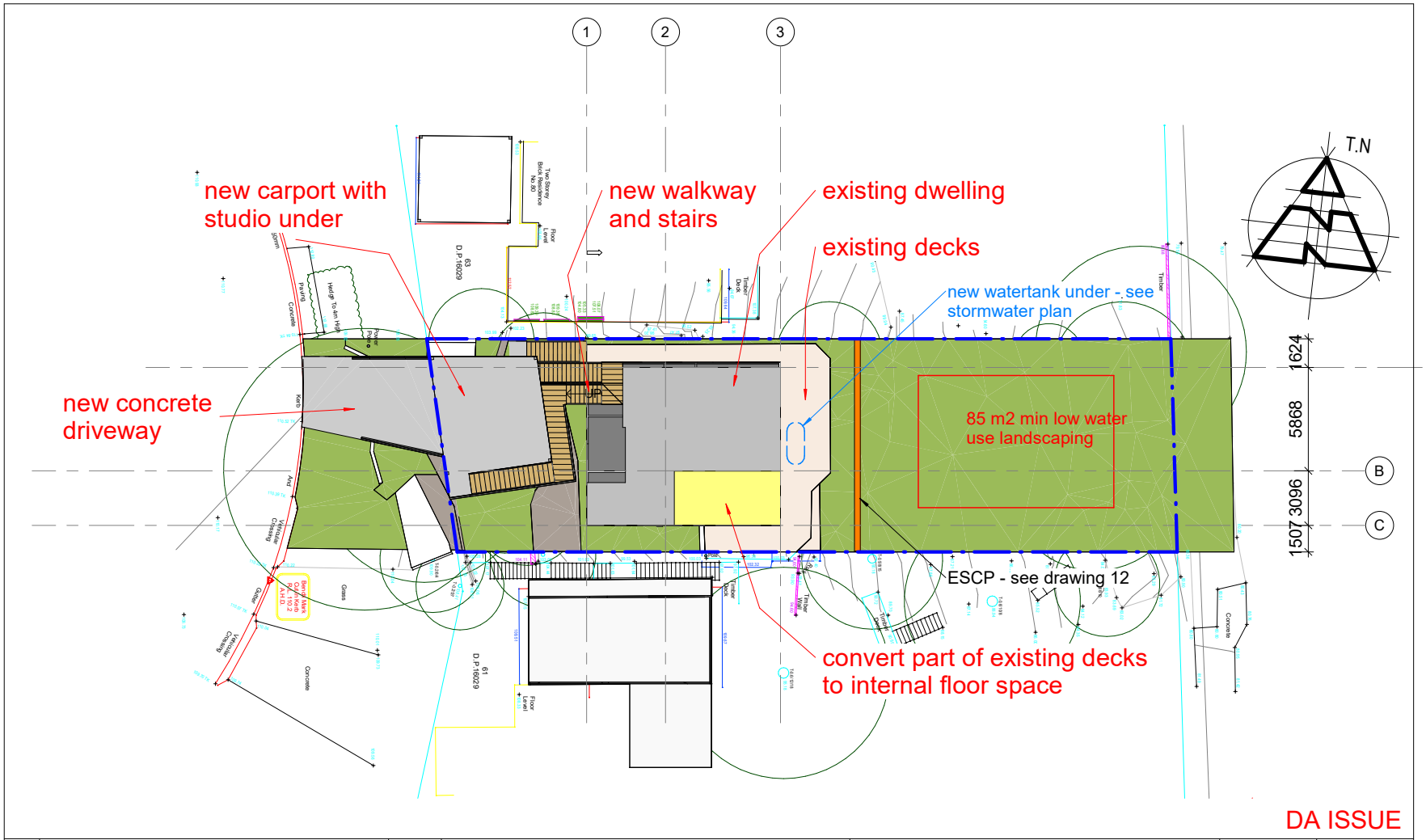
Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: Proper identification of buildings.

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.



REVISION

REV A 17.04.24

LEVEL 3 DECK REDUCED.
NEW RETAINING WALL
UNDER DRIVEWAY ADDED.
HEIGHT LIMIT LINES
ADJUSTE D IN SECTION 1.
SOLID PARAPET BARRIER
AND PRIVACY SCREENS
ADDED TO LEVEL 3.
FROSTED GLASS ADDED
TO D3 AND D4.

BUILDING DESIGNERS AUSTRALIA NSW

peterdownes
multi-award winner designs
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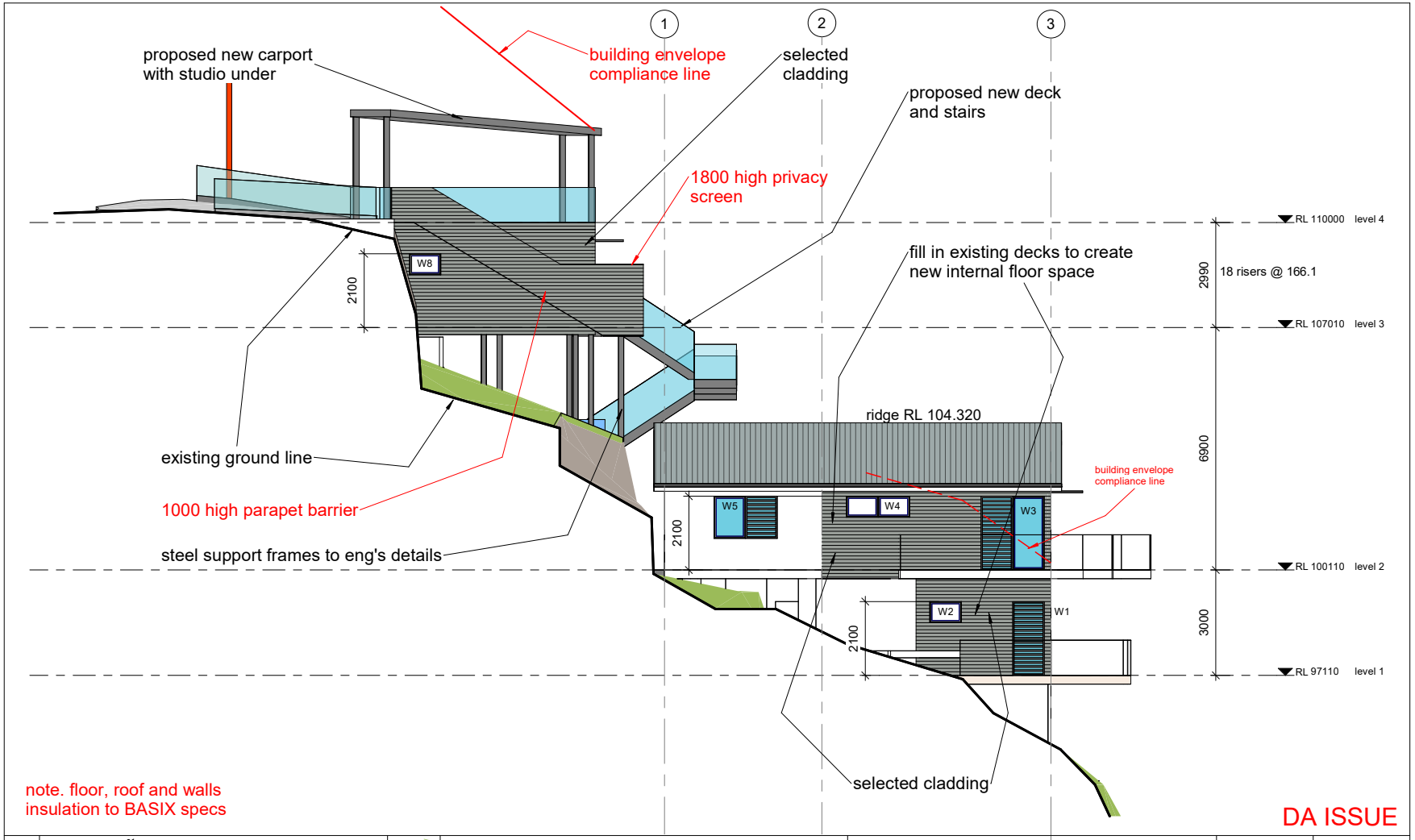
www.peterdownes.com.au

PROJECT
alterations and additions at 78 Grandview drive Newport

DRAWING
site plan

DRAWN	CHECKED
PD	PD
SCALE	DATE
1 : 200	01.12.23

DRG.
A3 2308 01 A



note. floor, roof and walls
insulation to BASIX specs

DA ISSUE

REVISION

REV A 17.04.24
LEVEL 3 DECK REDUCED.
NEW RETAINING WALL
UNDER DRIVEWAY ADDED.
HEIGHT LIMIT LINES
ADJUSTE D IN SECTION 1.
SOLID PARAPET BARRIER
AND PRIVACY SCREENS
ADDED TO LEVEL 3.
FROSTED GLASS ADDED
TO D3 AND D4.

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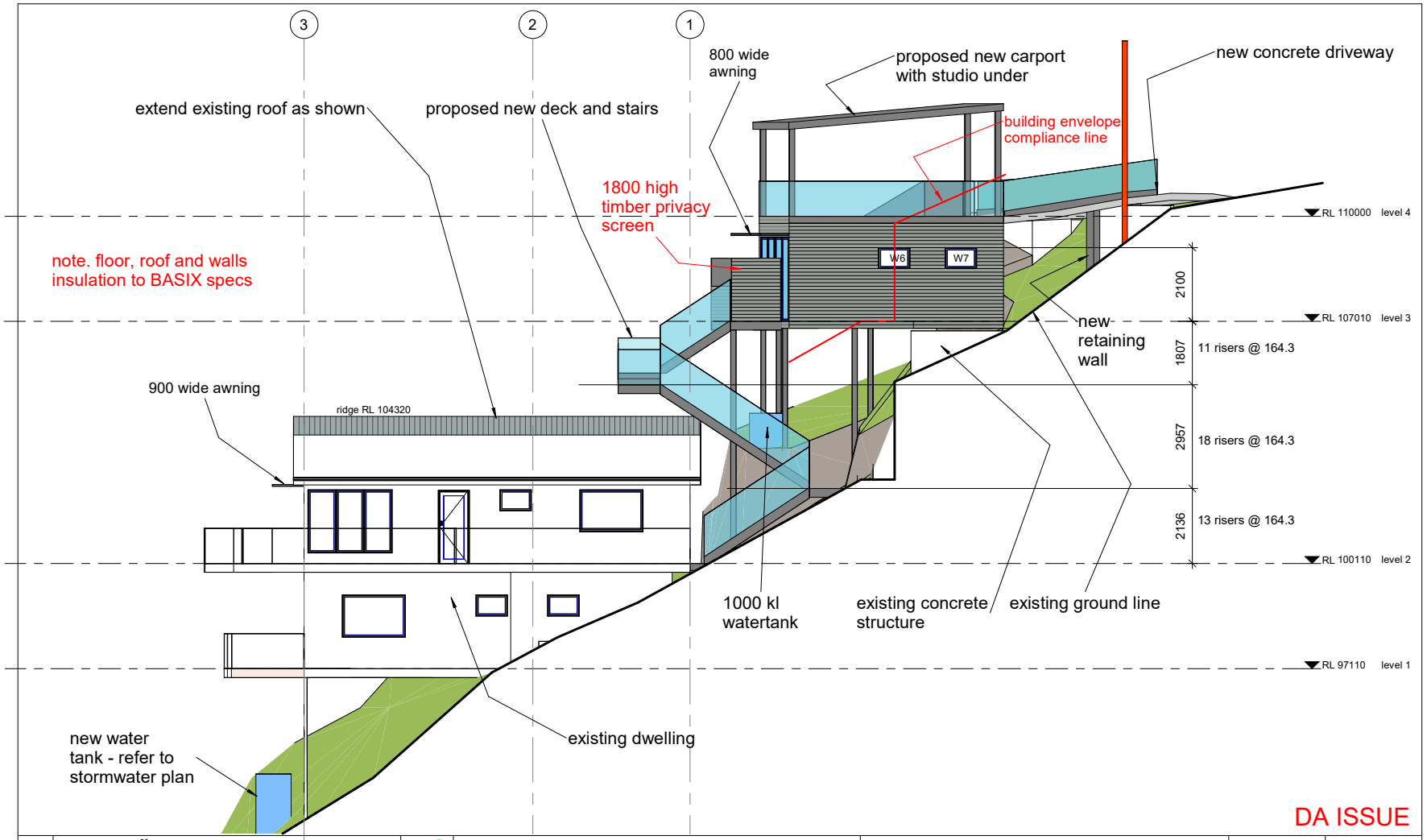
PROJECT
alterations and additions at 78 Grandview drive Newport

DRAWING
south elevation

DRAWN	CHECKED
PD	PD
SCALE	DATE
1 : 100	01.12.23

DRG.
A3 2308 06 A



DA ISSUE

REVISION

REV A 17.04.24

LEVEL 3 DECK REDUCED.
NEW RETAINING WALL
UNDER DRIVEWAY ADDED.
HEIGHT LIMIT LINES
ADJUSTE D IN SECTION 1.
SOLID PARAPET BARRIEER
AND PRIVACY SCREENS
ADDED TO LEVEL 3.
FROSTED GLASS ADDED
TO D3 AND D4.

BUILDING DESIGNERS AUSTRALIA NSW

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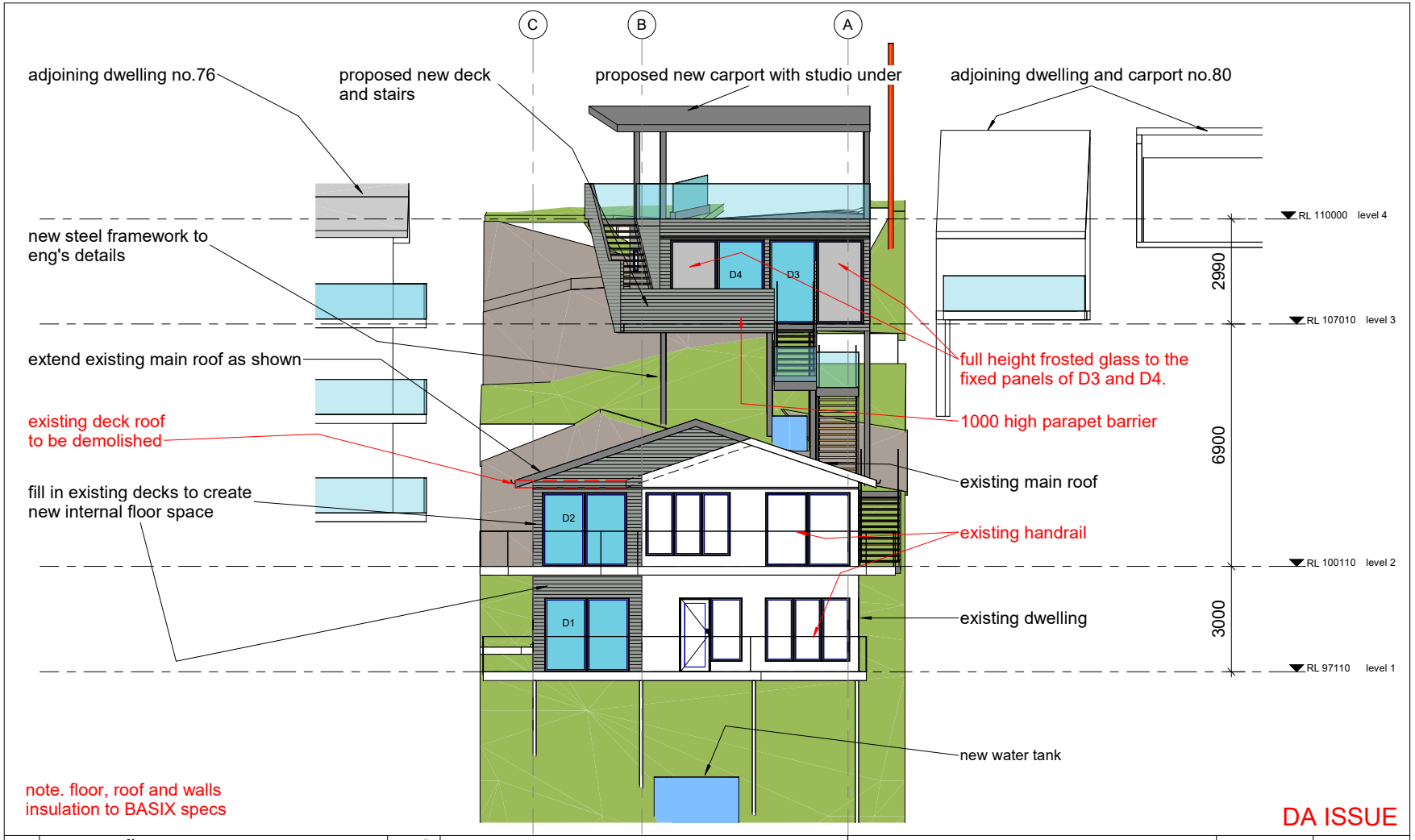
PROJECT
alterations and additions at 78 Grandview drive Newport

DRAWING
north elevation

DRAWN	CHECKED
PD	PD
SCALE	DATE
1 : 100	01.12.23

DRG.
A3 2308 07 A



note. floor, roof and walls insulation to BASIX specs

DA ISSUE

REVISION

REV A 17.04.24
LEVEL 3 DECK REDUCED.
NEW RETAINING WALL
UNDER DRIVEWAY ADDED.
HEIGHT LIMIT LINES
ADJUSTE D IN SECTION 1.
SOLID PARAPET BARRIER
AND PRIVACY SCREENS
ADDED TO LEVEL 3.
FROSTED GLASS ADDED
TO D3 AND D4.

BUILDING DESIGNERS AUSTRALIA NSW

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PROJECT
alterations and additions at 78 Grandview drive Newport

DRAWING
east elevation

DRAWN	CHECKED
PD	PD
SCALE	DATE
1 : 100	01.12.23

DRG.
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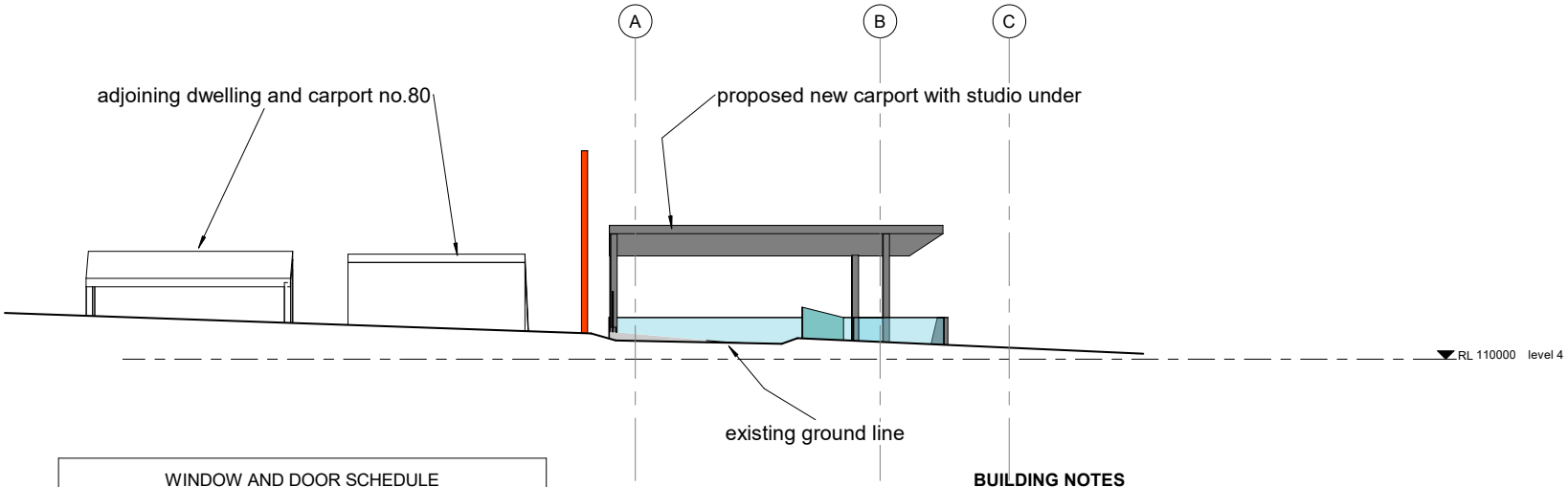

WINDOW AND DOOR SCHEDULE

Mark	Orientation	Width	Height	Description
W1	S	900	2100	1 louvre
W2	S	900	600	1 awning
W3	S	1800	2100	1 fixed, 1 louvre
W4	N	1800	600	2 awning
W5	N	1800	1200	1 fixed, 1 louvre
W6	N	900	600	1 awning
W7	N	900	600	1 awning
W8	S	900	600	1 awning
D1	E	2400	2100	2 panel slider
D2	E	2400	2100	2 panel slider
D3	E	2700	2400	2 panel slider
D4	E	2700	2400	2 panel slider

WINDOW AND DOOR NOTES

all windows and doors to be powdercoated aluminum

all windows and doors to be in accordance with the BASIX certificate

all dimensions to be confirmed by the builder

full height frosted glass to the fixed panels of D3 and D4

BUILDING NOTES

All work to be carried out by suitably licensed and qualified tradesmen, and to comply with all relevant standards and Councils requirements.

Main contractor to be responsible for obtaining all necessary inspection certificates.

An approved sedimentation control system is to be installed and maintained for the duration of the construction.

Smoke alarms are to be fitted in accordance with Building Code of Australia requirements.

Termite protection is to be in the form of a physical barrier (eg Termimesh or similar) - no chemical barriers to be used.

DA ISSUE

REVISION

REV A 17.04.24

LEVEL 3 DECK REDUCED.
NEW RETAINING WALL
UNDER DRIVEWAY ADDED.
HEIGHT LIMIT LINES
ADJUSTE D IN SECTION 1.
SOLID PARAPET BARRIER
AND PRIVACY SCREENS
ADDED TO LEVEL 3.
FROSTED GLASS ADDED
TO D3 AND D4.

BUILDING DESIGNERS AUSTRALIA NSW

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www.peterdownes.com.au

PROJECT
alterations and additions at 78 Grandview drive Newport

DRAWING
west elevation, windows and doors, notes

DRAWN	CHECKED
PD	PD
SCALE	DATE
1 : 100	01.12.23

DRG.
A3 2308 09 A

BLACKWATTLE
PLANNING

CLAUSE 4.6 Request for variation
PITTWATER LEP 2014
HEIGHT OF BUILDINGS

for alterations and additions to a dwelling at

78 Grandview Drive
Newport

Updated 3rd May 2024

Content

1.0 Introduction

2.0 Pittwater Local Environmental Plan 2014

3.0 Variation to Clause 4.3 Height of buildings

4.0 Clause 4.6 Exceptions to Development Standards

5.0 Conclusion

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1.0 **Introduction**

This Clause 4.6 Request for Variation to the Height of Buildings development standard under Pittwater Local Environmental Plan 2014 (PLEP 2014) is prepared by Blackwattle Planning in support of a Development Application for alterations and additions to a dwelling at 78 Grandview Drive Newport to be submitted to Northern Beaches Council.

The Development Application seeks consent to construct an open carport with studio within the undercroft, and to make minor alterations to the existing dwelling including to extend its existing roof.

The intent of the proposed works is to provide much needed carparking and pedestrian access to the steep site.

The works overall are minor in extent however the height of the structures above the ground level on this very steep site will breach the 8.5m height limit.

This document should be read in conjunction with the Statement of Environmental Effects prepared by Blackwattle Planning.

Through this document it is demonstrated that compliance with the Height of Buildings Development Standard of PLEP 2014 is unreasonable and unnecessary in the circumstances of this case and that there are sufficient environmental planning grounds to justify the contravention of the development standard.

This Clause 4.6 request for variation of a development standard has been updated to reflect the amended plans dated May 2024, prepared by Peter Downes Designs in response to Council's request for further information.

2.0 **Pittwater LEP 2014**

No. 78 Grandview Drive Newport (the site) is located within the area to which PLEP 2014 applies. The site has no vehicular access from Grandview Drive and its eastern boundary adjoins a narrow laneway. It contains an existing dwelling over two levels and has an area of 499.5sqm. The site is very steeply sloping and contains significant native canopy trees.

Under **Clause 2.2** of PLEP 2014, the site is zoned C4 Environmental Living as shown in Figure 1 below. The proposal to construct alterations and additions to the dwelling is permissible with consent in the C4 Zone

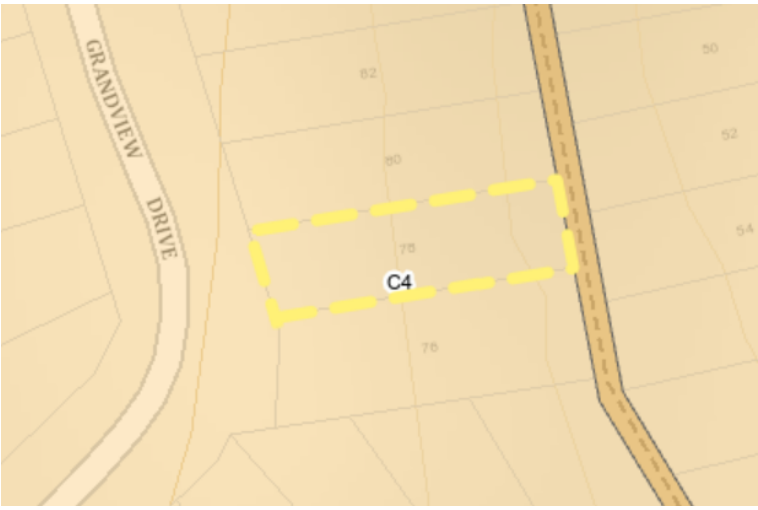


Figure 1: The site outlined yellow on the map indicating zone C4 Environmental Living, Source: **Planning NSW**

Clause 4.3 of PLEP 2014 restricts the height of development on the site in accordance with the Height of buildings Map (at Figure 2 below) to 8.5m. Clause 4.3 is a development standard.

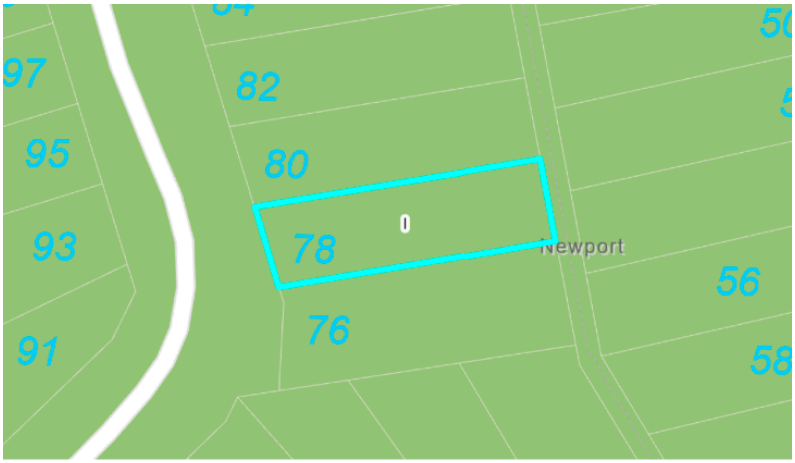


Figure 2: The site outlined in blue on the map indicating Category I, 8.5m Height limit, Source: **Northern Beaches Online Mapping**

Clause 4.6 of PLEP 2014 enables the consent authority to grant consent to development even though the development does not comply with a development standard. The purpose of the Clause is to allow flexibility in the application of certain development standards which may in turn result in better outcomes.

3.0 Variation to Clause 4.3 Height of buildings

This written request seeks to justify the variation to Clause 4.3 Height of buildings development standard in PLEP 2014.

PLEP 2014 defines building height as follows:

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.

The Section drawing included below (Figure 3) sets out the various points at which the proposed development breaches the 8.5m height limit. The ground line has been drawn as *ground level existing* as defined in PLEP 2014, which follows the existing ground lines on the site, and including the excavated ground level within the footprint of the existing dwelling.

The highest point of the proposed new roof of the proposed carport achieves a maximum height of 8.8m above the existing ground level - a 3.5% variation.

The highest point of the proposed extension to the existing roof of the dwelling is 11.1m - a 30% variation.

The balustrade of the access stairs which extend over the excavated footprint of the existing dwelling have variable height of between 8.7m - 9m above ground level existing - a 2.4 - 11% variation.

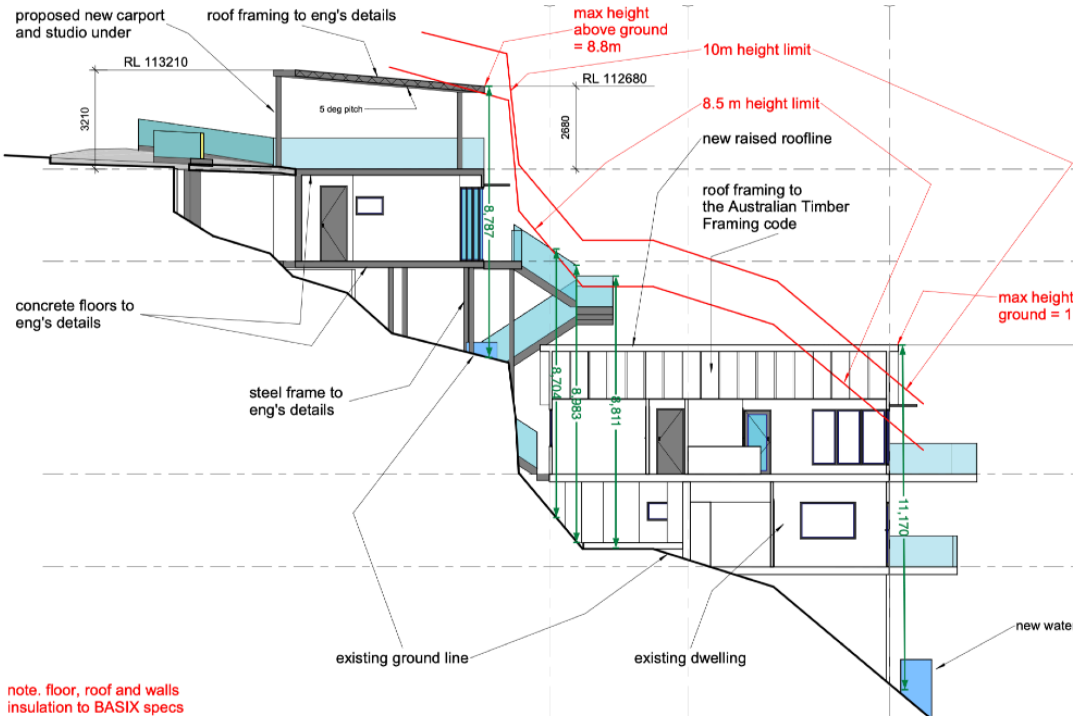


Figure 3: Section drawing showing extent of height breach. **Source**: Peter Downes Designs **Annotation in green:** Blackwattle Planning

4.0 Clause 4.6 Exceptions to Development standards

The objectives of Clause 4.6 are set out in subclause (1) 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.*

Decisions of the NSW Land and Environment Court have established that Clause 4.6(1) is not an operational clause.

Clause 4.6(2) is the enabling clause that permits development consent to be granted to a development that contravenes a development standard imposed by PLEP 2014. As the Height of Buildings is a development standard and is not expressly excluded from the operation of the clause, a variation may be granted, subject to the remaining subclauses of Clause 4.6 being satisfied.

4.1 Clause 4.6(3) of PLEP 2014 provides that:

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

This written request addresses these requirements in turn, having regard for relevant key decisions of the NSW Land and Environment Court that have informed the approach to the application of Clause 4.6

4.2 Clause 4.6(3)(a) demonstrating that *compliance with the development standard is unreasonable or unnecessary in the circumstances of the case*

The decision in *Wehbe v Pittwater Council 2007* establishes five ways that an applicant may commonly demonstrate that this clause is achieved. The decision also establishes that it may be sufficient to establish only one way.

The first of those pathways is to demonstrate that *the objectives of the development standard are achieved notwithstanding non-compliance with the standard.* This request relies on this pathway.

The objectives of the Height of Buildings development standard are set out below, together with a discussion of how the objectives are met by the proposal, notwithstanding the variation to the standard.

4.2.1 *(a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*

The site is located within the Newport Locality. Pittwater 21 DCP provides a locality statement setting out the desired character of the locality. Parts of the statement relevant to a single dwelling are as follows:

Desired Character

The Newport locality will remain primarily a low-density residential area with dwelling houses a maximum of two storeys in any one place in a natural landscaped setting, integrated with the landform and landscape.

…

Future development will maintain a building height limit below the tree canopy and minimise bulk and scale. Existing and new native vegetation, including canopy trees, will be integrated with the development. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards.

A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, to provide feed trees and undergrowth for koalas and other animals, and to enhance wildlife corridors.

…..

Comment:

The proposed alterations and additions comprise a very minimal change to the architecture of the existing dwelling and the addition of much needed parking and access for the site. The context will remain low density and integrated into the bushland setting in accordance with the locality statement. Development in this particular part of Grandview Drive is challenged by significantly steep topography, and the design of appropriate levels results in dwellings that typically breach the height limits of Pittwater LEP 2014.

In this instance, the surrounding tall canopy trees provide an appropriate context for the dwelling which already achieves heights over 10m due to the sharp fall of the land. The site, and adjoining sites contain substantial mature Pittwater Spotted Gum species, far taller than the dwellings, and with spreading canopy that successfully softens the view of development from the locality generally. The new carport, access stair structure, and the dwelling both as existing and with the proposed alterations, have no difficulty in remaining well below the tree canopy, with the scale of the structure proportionally small compared to the significant tree specimens surrounding it.
Additionally, the carport, access stairs, and dwelling both existing and as proposed sit substantially below the levels of the dwellings either side of it and relative to many of the dwellings within Grandview Drive to the north.

Overall, the minor addition to the proposed dwelling and the new studio will be wholly unobtrusive from the public domain and the proposed open carport ensures consistency with the many existing open carports sited at property frontages in this part of Grandview Drive and within the Newport Locality.

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

Comment: The height of the proposed carport is consistent with the many carports on the low side of Grandview Drive. Both the carport and the dwelling are substantially lesser in height and presence than the adjoining dwelling at No. 80 Grandview Drive, and others in the immediate vicinity. Additionally, dwellings on the opposite side of Grandview Drive display considerable scale, significantly exceeding that of the proposed carport and dwelling extension.

In relation to compatibility with surrounding development, we note that dwellings in this part of Grandview Drive regularly achieve significant scale due to the challenging topography. To this extent, the carport, studio, and proposed alterations to the dwelling are entirely consistent with the character of the immediate locality. The access stairs are obviously required to ensure access to the existing dwelling from the street via the carport and have been kept as low as possible in the design.

The minor additions work successfully with the scale and design of the existing dwelling and are insignificant in comparison to the much taller dwelling adjoining to the north.

4.2.3 (c) *to minimise any overshadowing of neighbouring properties,*

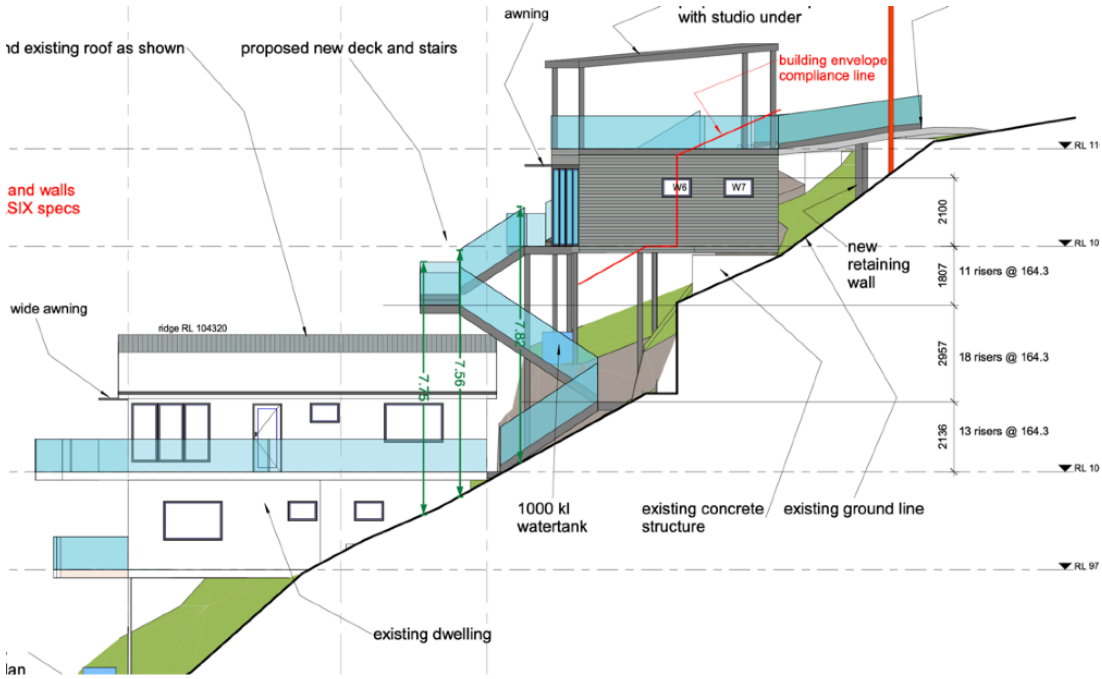
Comment: Shadow diagrams are provided demonstrating that the minor alterations and new carport proposed will have only a negligible impact upon the northern setback of No. 76 Grandview Drive, and that no windows or balconies in that dwelling will be further impacted by the very small additional shadow cast.

4.2.4 *(d) to allow for the reasonable sharing of views*

Comment: Alterations to No. 78 Grandview Drive will have no impact upon views from either adjoining neighbour or from the elevated dwellings on the opposite side of Grandview Drive. From the street, views to the ocean will remain available through the open construction of the carport.

4.2.5 (e) *to encourage buildings that are designed to respond sensitively to the natural topography,*

Comment: The sharp fall in the land under the footprint of the existing dwelling, the proposed access stairs, and the proposed carport is challenging for construction of appropriate levels for a dwelling. Nonetheless, the design makes the best use of the topography by utilising the fall of the land to accommodate the studio structure thereby avoiding further additional site disturbance elsewhere.



4.2.6 *(f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*

Comment: By successfully integrating with the existing design of the dwelling and roof form, the additions are visually negligible in the context of the much larger northern neighbour, and scale of the surrounding tree canopy. No heritage conservation areas or items will be affected. The open carport with minimal profile piers and roof line ensure its visual impact is minimal in the streetscape. Both the carport and the access stair structure remain open structures that minimise bulk and visual impact due to their unenclosed design.

4.2.7 Conclusion under Clause 4.6 (3)(a)

Having regard to the consistency of the proposed development with the objectives of the Height of Buildings development standard, compliance with the standard is found to be unreasonable and unnecessary in the circumstances.

4.3 Clause 4.6(3)(b) demonstrating that *there are sufficient environmental planning grounds to justify contravening the standard*

Clause 4.6(3)(b) requires that *sufficient environmental planning grounds* be demonstrated to justify contravening the development standard. As established in relevant caselaw, the sufficient grounds must relate to the circumstances of the proposed development and focus on the relevant aspect of the development that contravenes the standard.

The environmental planning grounds that justify the exceedance of the development standard are as follows:

Ground 1 - Steep topography

- The steep topography of the site is such that the existing dwelling at No. 78 Grandview Drive projects to over 10m in height. This is despite its two storey presentation and is almost entirely due to the precipitous fall of land under this part of the footprint. All points of breach are considered negligible matters compared to the magnitude of the fall in the land underneath.

Ground 2 - Prior excavation of the site

- The height breach of the balustrade supporting the staircase is very minor in extent and occurs entirely because of its location directly above the excavated levels of the dwelling below (See Figure 3 above). As is demonstrated by the below elevation, the ground levels of the site in the immediate northern curtilage of the dwelling where excavation has been more limited indicate that the balustrade would be compliant if considered against levels. See Figure 4 below.

Figure 4: Elevation drawing showing compliant height of the access stair balustrade when measured from natural ground lines. **Source**: Peter Downes Designs **Annotation in green:** Blackwattle Planning

- This analysis is consistent with the interpretation of ***building height*** as outlined in *Merman Investments Pty Ltd v Woollahra Municipal Council 2021.* O'Neill C found that:

> *"The prior excavation of the site within the footprint of the existing building, which distorts the height of buildings development standard plane overlaid above the site when compared to the topography of the hill, can properly be described as an environmental planning ground within the meaning of cl 4.6(3)(b)…"*

Ground 3 - Constraint of working with existing structure and tree canopy.

- The proposed roof extension to form a gable end is designed to work with the existing roof structure which is largely to be retained. The physical constraints of constructing alterations to the dwelling on such a steep slope dictate that existing structures remain in place where possible and the pitched gabled roof extension proposed allows this to occur.

- The location of the carport and access stair structure is a function of the setback of the existing dwelling and the location of a number of significant and native trees on the site and in the road reserve. These two considerations limit the carport and access stair location to that proposed, which in turn requires the structures to be suspended over the very sharp fall in the land and creation of the height variation.

Ground 4 - Minor breaches meet tests under Clause 4.3(2)(D) of PLEP 2014

- The new carport roof and balustrade to the access stair is also situated over a sharp fall in the land and the height exceeding is again a result of this constrained topography. Notwithstanding this, the exceedance of the carport and access stair balustrade is minor in magnitude and area, and this part of the height exceedance by itself readily achieves the criteria needed to comply with Clause 4.3(2)(D), which permits minor variations up to 10m in certain circumstances and therefore would not need to be justified under Clause 4.6.

Ground 5 - Need for carparking and pedestrian access on the site

- The site has a significant need to provide carparking given the context of Grandview Drive which has no on street parking and is in part steep and with challenging sight lines for vehicles and pedestrians. The current practice of parking on the road reserve is not appropriate and dangerous.

4.3.1 Objects of the Environmental Planning and Assessment Act

In demonstrating sufficient environmental planning grounds, it is noted that notwithstanding the contravention of the maximum height standard, the design fulfils the following objects of the Environmental Planning and Assessment Act 1979:

(g) to promote good design and amenity of the built environment,

The proposed alterations and additions are minimal in their extent and seek primarily to overcome the carparking issue arising from the location of the dwelling and the steep terrain. The architectural response integrates successfully with the open and vegetated nature of the streetscape, and the contemporary nature of dwellings in the immediate vicinity, whilst extending the life of the existing dwelling on the site.

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

Whilst primarily for provision of parking, the addition of the carport also provides an appropriate space within the undercroft for the addition of the studio, which provides additional floor space without additional ground disturbance or site coverage. This is a positive contribution to the overall sustainability performance of the dwelling and the most achievable method of extending the floor space of the existing dwelling beyond its current footprint with minimal impact.

4.3.2 Conclusion under Clause 4.6(3)(b)

We believe the above environmental planning grounds are sufficient to justify the exceedance of the height of buildings development standard in these specific circumstances.

4.4 **Clause 4.6(4) requires the consent authority to keep a record of its assessment carried out under subclause (3).**

Noted.

4.5 **Clause 4.6(6) requires that Development consent not be granted under this clause for a subdivision of land in certain zones**

Not applicable. No subdivision proposed.

4.6 **Clause 4.6(8) does not allow development consent to be granted for development that would contravene any of the following—**

(a) a development standard for complying development,

No development standards for complying development will be contravened

(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,

Nothing about the proposed development will contravene a development standard arising in connection with a commitment set out in the BASIX Certificate.

(c) clause 5.4,

The development does not include any of the uses referred to in Clause 5.4

(caa) clause 5.5,

This Clause is not applicable to the development.

5.0 **Conclusion**

This document demonstrates that the required tests contained in Clause 4.6 have been met by the proposed development. In particular, that:

- Compliance with the Height of Buildings development standard is unreasonable and unnecessary in the circumstances of the case given that the objectives of Clause 4.3 Height of Buildings have been met; and,

- Sufficient environmental planning grounds have been demonstrated to justify the contravention of the development standard; and,

In these circumstances the consent authority can be satisfied that it is appropriate to apply the flexibility permitted under Clause 4.6 of PLEP 2014 to vary the Height of Buildings development standard of PLEP 2014 to the extent proposed.

Anna Williams
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B Ec (Soc Sc) USYD

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ITEM 3.4 MOD2024/0027 - 233 HUDSON PARADE CLAREVILLE - MODIFICATION OF DEVELOPMENT CONSENT DA2021/1666 GRANTED FOR ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING SWIMMING POOL AND DETACHED POOL PAVILION/OUTBUILDING

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 **refuses** Development Consent to Mod2024/0027 for modification of Development Consent DA2021/1666 granted for alterations and additions to a dwelling house including swimming pool and detached pool pavilion/outbuilding on land at Lot 69 DP 13760, 233 Hudson Parade CLAREVILLE, for the reasons for refusal set out in the Assessment Report.

Reporting manager	Steve Findlay
TRIM file ref	2024/433343
Attachments	⇩1 Assessment Report ⇩2 Site Plan and Elevations

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2024/0027

Responsible Officer:	Kye Miles
Land to be developed (Address):	Lot 69 DP 13760, 233 Hudson Parade CLAREVILLE NSW 2107
Proposed Development:	Modification of Development Consent DA2021/1666 granted for alterations and additions to a dwelling house including swimming pool and detached pool pavilion/outbuilding
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:	Nicole Antoinette Stone Geoffrey Mark Bonus
Applicant:	Nicole Antoinette Stone

Application Lodged:	09/02/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	16/02/2024 to 01/03/2024
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 14.1%
Recommendation:	Refusal

EXECUTIVE SUMMARY

The application seeks to modify Development Consent No. DA2021/1666, originally granted for alterations and additions to a dwelling house, including a swimming pool and detached pool pavilion/outbuilding.

The application is referred to the Development Determination Panel (DDP) for determination because it proposes a variation of greater than 10% to Clause 4.3 (Height of Buildings) of the Pittwater Local

Environmental Plan 2014.

The notification of the application attracted one (1) objection relating to:

- Built form non-compliances
- Bulk and scale
- Amenity and visual impacts
- Desired Future Character

Following an initial assessment, Council raised concerns with the proposal. The applicant chose not to submit amended plans.

Critical assessment issues include; the proposal's excessive bulk and scale, building height variations, built-form non-compliances, inconsistency with the desired future character of the Bilgola Locality, and issues with solar access, privacy, and view loss.

The modified proposal seeks a variation of **14.1%** to the height of buildings development standard. Although the modification involves a reduction of the ridge height by 0.28m, the modified building height has been measured in accordance with the decision in *Merman Investments Pty Ltd v Woollahra Municipal Council.* This measurement, taken from the finished floor levels of the newly excavated lower ground floor, results in a technical height increase from 9.3m to 9.7m, however, there is no discernible change to the overall vertical profile of the building. Notwithstanding, the proposed modifications to enlarge the upper level would significantly increase the building's horizontal extent beyond the 8.5m height plane, resulting in excessive bulk and scale that is inconsistent with the desired local character.

Based on the detailed assessment contained in this report, the application is **not supported** and it is recommended that the Panel **REFUSE** the application for the reasons provided.

PROPOSED DEVELOPMENT IN DETAIL

Modification of Development Consent DA2021/1666.

Specifically, the modifications involve the following:

- Internal alterations to the ground floor to relocate the kitchen.
- Increased Level 1 floor area, including a 1.3-metre extension to both the east and west sides. This alteration will provide space for two bedrooms, a study, and a bathroom. The roof form will also be modified to accommodate these changes.
- Extension of the Level 1 balcony toward the south frontage.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living
Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings
Pittwater 21 Development Control Plan - A1.7 Considerations before consent is granted
Pittwater 21 Development Control Plan - A4.3 Bilgola Locality
Pittwater 21 Development Control Plan - C1.3 View Sharing
Pittwater 21 Development Control Plan - C1.4 Solar Access
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - D3.1 Character as viewed from a public place
Pittwater 21 Development Control Plan - D3.7 Side and rear building line
Pittwater 21 Development Control Plan - D3.9 Building envelope

SITE DESCRIPTION

Property Description:	Lot 69 DP 13760 , 233 Hudson Parade CLAREVILLE NSW 2107
Detailed Site Description:	The subject site consists of one allotment located on the northern side of Hudson Parade, Clareville. The site is elevated approximately 5.3m above the roadway, with access to the site being provided via pedestrian access stairs and a shared driveway. The site is irregular in shape with a frontage of 15.24m and respective depths of 48.95m and 55.205m along the western and eastern side boundaries. The site has a surveyed area of 793.7sqm. The site is located within the C4 Environmental Living zone pursuant to Pittwater LEP 2014 and accommodates a two storey dwelling house and detached outbuilding. There are well established native canopy trees of significant

	size on the site, including species representative of the endangered Pittwater Spotted Gum Forest, and areas of garden vegetation. The site slopes away from the north-eastern rear corner towards the southern front boundary, representing an approximate fall of 13.5m. The site is environmentally constrained with geotechnical hazards. **Detailed Description of Adjoining/Surrounding Development** The surrounding built environment is characterised by detached low density residential development (i.e. dwelling house) within bushland settings, ranging between 1-3 storeys in height.

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:

- **Mod2022/0687 -** Modification of Development Consent DA2022/1666 was approved by Northern Beaches Council under delegation on the 21 December 2022.
- **Mod2022/0240** - Modification of Development Consent DA2021/1666 was approved by Northern Beaches Council under delegation on the 20 October 2022. Of note, this application was approved with an amendment condition No.14 to include the following:
  d) The upper floor level (Identified as Level 1 on drawing DA11) is to be reinstated to as

approved in DA2021/1666. For the avoidance of doubt no works to the upper floor level are approved under Mod2022/0240.

- **DA2021/1666** - Development Application for alterations and additions to a dwelling house including swimming pool and detached pool pavilion/outbuilding was approved by Northern Beaches Council under delegation on the 14 March 2022.
- **DA2021/1706** - Development Application for alterations and additions to a dwelling house including structural rectification works was approved by Northern Beaches Council under delegation on the 8 November 2021.
- **PLM2021/0014** - Pre-lodgement meeting for alterations and additions to a dwelling house including swimming pool.

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 DA2021/1666, 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 DA2022/1666 for the following reasons: • The proposed works relate directly to approved additions to the dwelling

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 DA2021/1666 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 2000, 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 96 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(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 would be addressed via a condition of consent were the application recommended for approval. 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, however, the applicant did not submitted any changes. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. These matters would be addressed via a condition of consent were the application recommended for approval.. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. These matters would be addressed via a condition of consent were the application recommended for approval. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). These matters would be addressed via a condition of consent were the application recommended for approval.
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. In summary, the impacts are significant and warrant the refusal of the application.

Section 4.15 'Matters for Consideration'	Comments
	(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 **unsuitable** for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found that the proposal is contrary to numerous requirements of the applicable planning controls and would result in a development that causes unreasonable visual and amenity impacts to surrounding properties and the public domain. The extent of these impacts would undermine the desired future character of the locality and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 16/02/2024 to 01/03/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Withheld	CLAREVILLE NSW 2107

The issues raised in the submissions are addressed as follows:

- **Built form non-compliances and bulk and scale**

  The submissions raised concerns that the modification is non-compliant with the building height development standard and various DCP built form controls, and that these breaches will cause adverse bulk and scale impacts.

  Comment:

  This report includes an assessment of the development against the applicable PLEP 2014 and P21 DCP built form controls. The proposal seeks extensive variations to these controls and is recommended for refusal for the reasons detailed in this report.

  These matters are considered to warrant refusal of the application.

- **Amenity, visual and DFC impacts**

  The submissions raised concerns that the modification will give rise to adverse visual and character impacts on the Bilgola locality and will impact the amenity of surrounding properties, including overshadowing, privacy and views.

  Comment:

  The amenity, visual, and character impacts of the proposal are discussed in detail throughout this report. In summary, this assessment finds that, by virtue of the siting, scale, and design of the dwelling, the proposal will have an unacceptable level of impact on the character of the locality and the solar access of surrounding properties. However, as discussed in the report, the modification does not give rise to any unacceptable privacy or views impacts.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	**SUPPORTED** The application is for modification to development consent DA2021/1666 and Landscape Referral note that the proposed modifications do not impact upon prescribed trees, including the nearest tall trunked Spotted Gum identified as tree 5 in the arborist report associated with the development consent.
NECC (Bushland and Biodiversity)	**SUPPORTED** The comments in this referral relate to the following applicable controls and provisions: • Biodiversity Conservation Act 2016 • Biodiversity Conservation Regulation 2017 • Pittwater LEP cl. 7.6 Biodiversity Protection • Pittwater 21 DCP cl. B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community

Internal Referral Body	Comments
	• Coastal Management SEPP 2018 cl. 13 Development on land within the coastal environment area 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 proposed modifications will not require the removal of any trees or vegetation and are therefore unlikely to impact upon any native flora and fauna. No native vegetation or fauna habitat would be impacted, the development is designed, sited and will be managed to avoid any significant adverse environmental impact.
NECC (Coast and Catchments)	**SUPPORTED** The proposal seeks approval for modification of development consent DA2021/1666 and subsequent modification Mod 2022/0240 granted for for alterations and additions to a dwelling house including swimming pool and detached pool pavilion/outbuilding. The proposed modifications specifically relate to • Level 1 is contained wholly within the pitched roof form. As the further revised design pitches the level 1 roof from the existing external walls, Level 1 is integrated within the overall building envelope to a greater degree. • Reduction in the overall height of the roof from RL 49.53 as approved to 49.25, a reduction in overall height of 0.28m. • Reduction in overall roof slope from 11 degrees to 8 degrees. • Reduction in the slope of the east and west facing portions of the roof from 70 degrees to 46 degrees. • The combination of a reduced overall height and roof slope, when compared with the building envelope approved under DA2021/1666, provides a slight increase in solar access to the south facing balcony of 235 Hudson Parade.

Internal Referral Body	Comments
	• The reduced roof height and slope, pitched from line of the existing external walls, integrates the roof form with the existing dwelling and provides a more homogenous building envelope. The subject property is located within the 'Coastal Environment Area' and the 'Coastal Use Area' maps of the Coastal Zone. This application was assessed in consideration of: • Supplied plans and reports, including; ◦ Statement of Modifications prepared by Bonus + Associates dated 24 January 2024 • Coastal Management Act 2016 • State Environmental Planning Policy (Resilience & Hazards) 2021 • Relevant LEP and DCP Clauses The objectives and requirement of the CMA 2016, SEPP -R & H 2021 and relevant LEP and DCP Clauses have been met. The proposed modifications appear consistent with the design intent of the original proposal and fulfills the objectives and requirements of the relevant clauses of the Act, SEPP, LEP and DCP. No conditions in additions to those for the original development application are considered necessary
NECC (Development Engineering)	**SUPPORTED** The proposal is for the modification of Consent DA2021/1666. Modifications are proposed to Level 1 of the approved development. No objections to approval.
NECC (Water Management)	**SUPPORTED** This application was assessed in consideration of: • Supplied plans and reports; • Northern Beaches Water Management for Development Policy (WMD Policy); and • Relevant LEP and DCP clauses The proposed modifications are for a residential development and do

Internal Referral Body	Comments
	not significantly change the impervious surface area of the development. No objections regarding water management.

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 valid BASIX certificate has not been submitted with the modification application, which forms part of the refusal of this application.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

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

1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:
   a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
   b) coastal environmental values and natural coastal processes,
   c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
   d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,

e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,

f) Aboriginal cultural heritage, practices and places,

g) the use of the surf zone.

Comment:
The consent authority has considered the above and is satisfied the development is unlikely to have an adverse impact on the above.

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

a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or

b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or

c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:
The consent authority has considered the above and is satisfied the development is unlikely to have an adverse impact on the above.

Division 4 Coastal use area
2.11 Development on land within the coastal use area

1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:

a) has considered whether the proposed development is likely to cause an adverse impact on the following:

i) existing, safe access to and along the foreshore, beach, headland or rock
ii) platform for members of the public, including persons with a disability,
iii) overshadowing, wind funnelling and the loss of views from public places to
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 consent authority has considered the above and is satisfied the development is unlikely to have

an adverse impact on the 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 development is not likely to cause increased risk of coastal hazards on that land or other land.

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

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

Comment:

All provisions of any certified coastal management program that apply to the land have been taken into consideration 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.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings	8.5m	9.3m*	9.7m**	14.1%	**No**

*This measurement was based on interpolated ground levels for the site (pre-excavation).

** Although the modification involves a reduction of the ridge height by 0.28m, the modified building height has been measured in accordance with the decision in *Merman Investments Pty Ltd v Woollahra Municipal Council*, which in this case is taken to be the finished floor levels of the newly excavated lower ground floor of the dwelling, which results in a maximum building height of 9.7m.

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
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

Detailed Assessment

Zone C4 Environmental Living

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 extent of the modified building form does not constitute low-impact residential development. As assessed against the desired future character provisions under A4.3, the proposal is found to cause adverse impacts upon the surrounding land and the aesthetic values of the broader Bilgola locality.

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

  Comment:

  As discussed above, the modified development would have an adverse impact on the aesthetic values of the area.

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

  Comment:

  As assessed against the desired future character provisions under A4.3, the proposal is not considered to be low density and scale.

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

Comment:

The modifications are located above the approved footprint and do not require the removal of any significant vegetation.

Conclusion:

For the reasons detailed above, the proposal is assessed as **inconsistent** with the objectives of the C4 Environmental Living zone.

4.3 Height of buildings

Description of Non-compliance

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.7m
Percentage variation to requirement:	11.7%

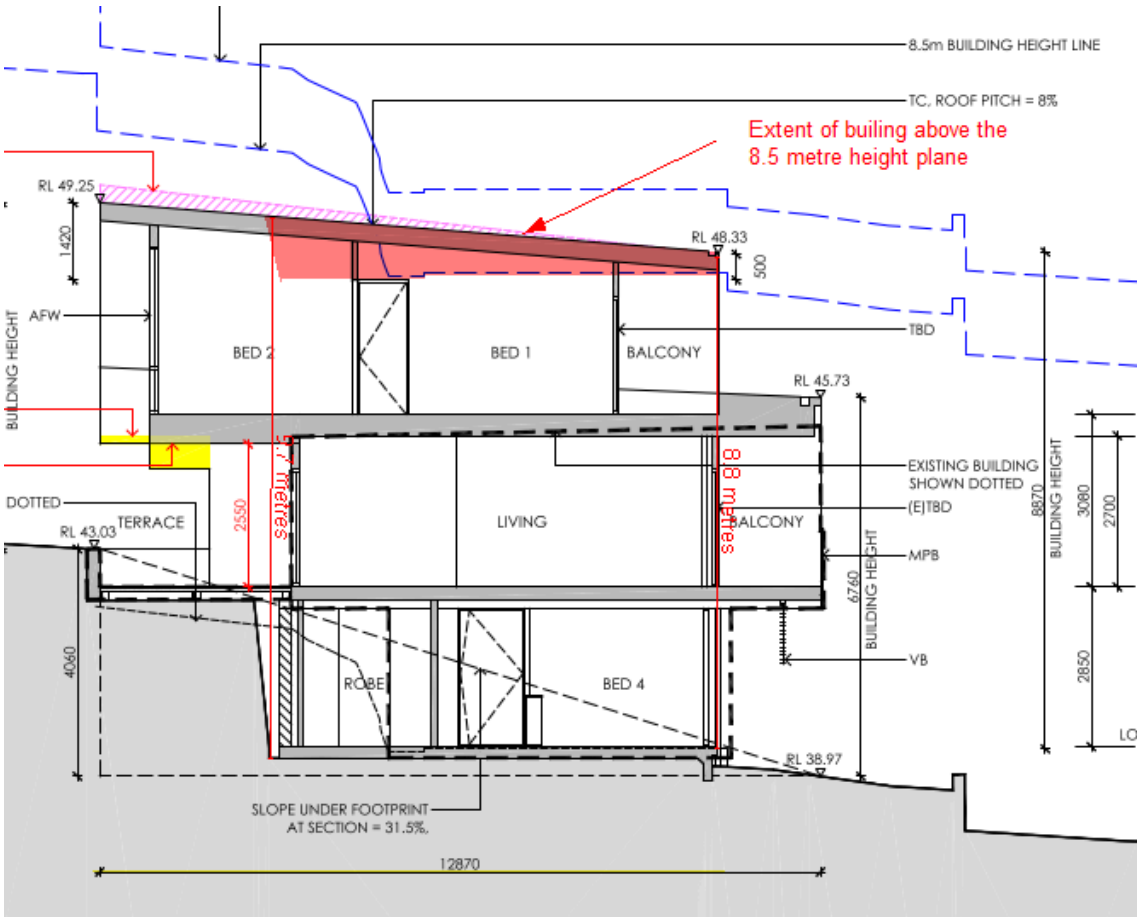


Figure 1. *Building height non-compliance.*

Clause 4.3 (2D) allows a concessional height up to 10.0m where the buildings footprint is situated on a slope that is in excess of 16.7 degrees (30%) and subject to the following:

(a) the consent authority is satisfied that the portion of the building above the maximum height shown for that land on the Height of Buildings Map is minor, and
(b) the objectives of this clause are achieved, and
(c) the building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%), and
(d) the buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.

The approved development is located on a slope of approximately 31%, with a maximum height of 9.3m. In the original assessment, the upper level was carefully designed to be consistent with these requirements and thus granted a concession for a height of up to 10m.

The proposed modification would increase the maximum height to 9.7m. As mentioned earlier in the report, this height increase is a technicality due to excavation carried out for the approved lower-ground floor. In fact, the modification involves a reduction in the ridge height to RL 49.25 (a decrease of 0.28m). Consequently, there is no discernible change to the overall vertical profile of the building.

However, the proposed modifications to Level 1 would significantly increase the building's horizontal extent beyond the 8.5m height plane, resulting in excessive bulk and scale that is inconsistent with the desired local character. This is illustrated diagrammatically below:

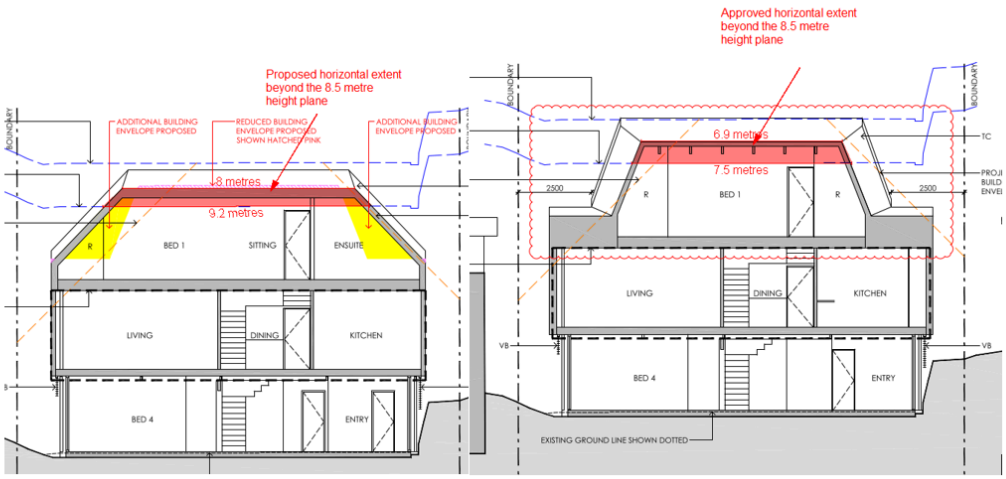


Figure 2. *Comparison of the proposed v approved building's planar/latitudinal extent beyond the 8.5m standard.*

Therefore, the portion of the modified building above the maximum height is not considered minor and does not meet the relevant criteria under subclause 2D of the height of buildings control within PLEP 2014. Consequently, for the purpose of this assessment, the modified proposal is evaluated against the 8.5m standard.

Assessment of Request to vary a Development Standard

Whilst the modification application will result in a building height that exceeds the maximum permitted by Clause 4.3 of the Pittwater LEP 2014, the application does not strictly need to address the requirements of Clause 4.6.

The application has been made under Section 4.55 of the Environmental Planning and Assessment (EPA) Act 1979, which is a free standing provision that in itself authorises the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own stand-alone tests (such as the substantially the same test and consideration of all relevant Section 4.15 matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application.

Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications. As such, the applicant is not required to submit a written request adequately addressing the matters required to be demonstrated by cl 4.6(3).

Notwithstanding that Clause 4.6 does not apply to Section 4.55 modification applications, the merits of the variation have been assessed with regard to the objectives of the height of buildings development standard and the underlying objectives of the C4 Environmental Living zone. Notwithstanding that Clause 4.6 does not strictly apply, the assessment has also taken into consideration the relevant tests of the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

Comment:

Council is **not satisfied** that the Applicant has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this application for the following reasons:

- The modified development will result in a bulk and scale that is not consistent with the desired future character of the surrounding area.
- Adverse amenity impacts on adjoining properties with respect to visual impact and overshadowing.
- The overall design of the proposal does not adequately respond to the constraints of the site and the pattern and configuration of adjoining land/development, and as such there is no justification for not meeting the applicable development standard.

There are sufficient environmental planning grounds to justify contravening the development standard

Comment:

The proposal's design is reasonably constrained by the slope of the land, however, this alone is not a valid reason to dispense with the requirements of the height of buildings development standard, particularly when the modified development has several non-compliances with the controls of the Pittwater 21 DCP, resulting in unacceptable amenity impacts. Taking all these matters into

consideration, the assessment finds that the applicant has **not demonstrated** that there are sufficient environmental planning grounds to justify the contravention of Clause 4.3 Height of Buildings.

4.3 Height of Buildings

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

a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,

Comment:

The proposed setback of the first floor was rejected in the original development application as it resulted in an undesired height and scale that did not comply with relevant side boundary setback controls and within close proximity to the neighbouring site. The modification to the dwelling generally presents a built form similar to that originally proposed and it is not considered to adequately minimise bulk and scale and to be consistent with the desired future character of the area.

The proposal does **not satisfy** this objective.

b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,

Comment:

The proposal is incompatible in height and bulk with surrounding and nearby development, which generally consists of two-storey dwellings within landscaped settings.

The proposal does **not satisfy** this objective.

c) to minimise any overshadowing of neighbouring properties,

Comment:

Given the proposed building height, setback and building envelope breaches, it cannot be said that the proposal minimises overshadowing of neighbouring properties.

The proposal does **not satisfy** this objective.

d) to allow for the reasonable sharing of views,

Comment:

With regards to view loss, a detailed assessment has been carried out within Part C1.3 View Sharing of this report, which has considered the proposals impacts on public and private views. In summary, it was determined that due to the location of the non-compliant roof areas there would be no adverse impacts on the maintenance of public and private views, while the proposal as a whole was considered to achieve a reasonable sharing of views.

The development satisfies this objective.

e) to encourage buildings that are designed to respond sensitively to the natural topography,

Comment:

The proposed changes do not result in additional excavation, ensuring that the proposal responds to the natural topography. The variation to the height control occurs as a result of the siting of the approved dwelling in conjunction with the sloping topography of the site.

The development satisfies this objective.

f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items,

Comment:

The proposal is considered to cause an unacceptable level of visual impact on the scenic quality and heritage value of the locality by way of the dwellings height, proportions,and siting.

The proposal does **not satisfy** this objective.

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.*
- *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.*

Comment:

As assessed earlier in this report, the modified development is found to be **inconsistent** with the objectives of the zone and the proposed building height variation contributes to this inconsistency.

Conclusion:

For the reasons detailed above, the proposal is considered to be **inconsistent** with the objectives of the C4 Environmental Living zone.

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.

To summarise, the proposed development is not consistent with the relevant objectives of the Height of Buildings development standard, being:

- *to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*
- *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- *to minimise any overshadowing of neighbouring properties,*
- *to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*

To elaborate, the proposed variation is found to result in a bulk and scale that is **inconsistent** with the existing and future desired character of the surrounding area, will result in a loss of solar access to the property east of the subject site and is likely to give rise to an adverse visual impact.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	6.5m	10m	10.0m (Upper level Balcony)	Yes
Rear building line	6.5m	2.6m (paving)	Unaltered	N/A
Side building line	2.5m (W)	1.4m (stairs) 1.2m (dwelling addition)	1.2m - 2.1m (Upper level)	**No**
	1m (E)	1.2m (dwelling addition)	1.2m - 2.1m (Upper level)	Yes
Building envelope	3.5m (W)	Outside envelope	Extent of non-compliance increased	**No**
	3.5m (E)	Outside envelope	Extent of non-compliance increased	**No**
Landscaped area	60% (476.22sqm)	56.1% (445.42sqm) including variation	Unaltered	N/A

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	No	No
A4.3 Bilgola Locality	No	No
B1.3 Heritage Conservation - General	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
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	No	Yes
C1.4 Solar Access	No	No
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.23 Eaves	Yes	Yes
D3.1 Character as viewed from a public place	No	No
D3.3 Building colours and materials	Yes	Yes
D3.6 Front building line	Yes	Yes
D3.7 Side and rear building line	No	No
D3.9 Building envelope	No	No
D3.11 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D3.15 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

A1.7 Considerations before consent is granted

Before granting development consent, Council must be satisfied that the development is consistent with:

- *Pittwater Local Environment Plan 2014*
- Desired Character of the Locality
- Development controls applicable to the development
- Relevant matters of consideration under Section 4.15 Evaluation of the Environmental Planning and Assessment Act (EPA) 1979

As detailed under the relevant sections of this report, the development is assessed as being **inconsistent** with the following planning controls:

- Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living
- Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings
- Pittwater 21 Development Control Plan - A4.3 Bilgola Locality
- Pittwater 21 Development Control Plan - C1.4 Solar Access
- Pittwater 21 Development Control Plan - D3.1 Character as viewed from a public place
- Pittwater 21 Development Control Plan - D3.7 Side and rear building line
- Pittwater 21 Development Control Plan - D3.9 Building envelope

Having regard to the above, the development is inconsistent with this clause and therefore **does not satisfy** the relevant matters of consideration of the EPA Act 1979 - Section 4.15 Evaluation and is recommended for **refusal** on this basis.

A4.3 Bilgola Locality

The Desired Future Character (DFC) of the locality is detailed within Clause A4.3 Bilgola Locality as follows:

The Bilgola locality will remain primarily a low-density residential area with dwelling houses a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape. *Secondary Dwellings can be established in conjunction with another dwelling to encourage additional opportunities for more compact and affordable housing with minimal environmental impact in appropriate locations. Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport.*

(Note: ***Bold*** emphasis added to the most relevant sections)

Comment:

The proposal is not a low-density development of two storeys, as the extensions to the approved third floor element significantly exceed the 8.5m building height control and would not preserve the character or visual quality of the surrounding built and natural environments.

The modified proposal is not considered to represent a site-responsive design and involves significant variations to the building height standard and DCP built form controls, which will result in unreasonable visual and amenity impacts.

Accordingly, the proposal is assessed as being **inconsistent** with the DFC of the Bilgola Locality.

C1.3 View Sharing

Merit Consideration

- *A reasonable sharing of views amongst dwellings. (S)*

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

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

Comment to Principle 1:

No.235 Hudson Parade: This property adjoins the site to the east. There is currently a two-storey dwelling house that enjoys views. The affected views are generally to the south-west and west of the property and include views of Pittwater waterway. The views are heavily obstructed by existing vegetation and existing buildings.

Figure 3. *Existing views from No.235 Hudson Parade to the south-west (taken from rear garden - observation deck)*

Figure 4. *Existing views from No.235 Hudson Parade to the south (taken from rear garden - observation deck)*

Figure 5. *Existing views from No.235 Hudson Parade to the west (taken from south facing, upper floor front balcony located off the living room)*

Figure 6. *Existing views from No.235 Hudson Parade to the south (taken from south facing, upper floor front balcony located off the living room) - Unobstructed by the proposal*

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

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

Comment to Principle 2:
This property enjoys views across the rear boundary to the south and the side boundary to the west. The views are obtained from both standing and seated positions within internal and external areas of the dwelling on the first floor, including the living areas and external balcony. In addition, views are also obtained from the rear garden.

3. Extent of impact

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

moderate, severe or devastating".

Comment to Principle 3:

As indicated in the figures above, various locations at No. 235 Hudson Parade offer views of the Pittwater waterway. The dwelling is a two-storey house, generally oriented to the south. As detailed in Figures 4 and 6, the views over the southern front boundary will not be impacted by the modified development. Views of the Pittwater waterway to the south-west of the proposed additions are also expected to be retained. The modified additions will not have an discernible impact on the views of vegetation and filtered views of the Pittwater waterway from No. 235 Hudson Parade, compared to the approved form. Considering the entirety of the views from No. 235 Hudson Parade, and the fact that the views of the Pittwater waterway from the principal living areas to the south are unaffected by the proposal, the extent of the impact is considered **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 to Principle 4:

Figure 7. *View analysis provided by applicant demonstrating view impact of height and envelope variations on views from No.235 Hudson Parade (*Note this photo montage is not certified, however the additions are generally in alignment with Council's calculations, and are presented in a more practical format. On that basis, the diagrams are included for illustrative purposes.)*

Figure 7 above is a view analysis provided by the applicant, demonstrating the proposed view loss compared to the approved outcome. As shown, the loss of views is primarily due to the previously approved works, with additional impacts occurring only to minor portions of vegetation and existing buildings. Overall, the view loss associated with the modified proposal is considered minor when viewed in the context of the entirety of views obtained from this property. The view loss associated with the development would primarily affect the rear garden over a side boundary.

As such, the proposal is not considered to result in an unreasonable view loss for the neighbouring dwelling at No. 235 Hudson Parade and will satisfy the provisions of this clause.

C1.4 Solar Access

<u>Description of Non-compliance</u>

The DCP control notes the following:

- *The main private open space of each dwelling and the main private open space of any adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st.*
- *Windows to the principal living area of the proposal, and windows to the principal living area of adjoining dwellings, are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st (that is, to at least 50% of the glazed area of those windows).*

The primary living room/kitchen windows of the dwelling at No. 235 Hudson Parade are oriented to the west and experience additional overshadowing during the afternoon. Consequently, the extent of sunlight retained is less than 3 hours, thus not complying with the control.

Merit Consideration

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

- *Residential development is sited and designed to maximise solar access during mid-winter.*
- *A reasonable level of solar access is maintained to existing residential properties, unhindered by adjoining development.*
- *Reduce usage and/dependence for artificial lighting.*

  Comment:

  Although the affected living room windows are susceptible to overshadowing due to the orientation of the lots, the extent of overshadowing is exacerbated by the significantly non-compliant upper level, noting variations in building height and envelope controls. Therefore, it cannot be said that the proposal is sited and designed to maximize solar access and thus does not maintain a reasonable level of solar access.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant outcomes of the control.

Accordingly, this assessment finds that the proposal is **not supported**, in this particular circumstance.

C1.5 Visual Privacy

Merit Consideration

Concern was raised by neighbours regarding the privacy impacts resulting from the proposed development.

Accordingly, an assessment against Clause C1.5 of the P21DCP is provided below.

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

- *Habitable rooms and outdoor living areas of dwellings optimise visual privacy through good design.*
- *A sense of territory and safety is provided for residents.*

Comment:

Privacy concerns have been raised by the adjoining neighbor to the east (No. 235 Hudson Parade) regarding the extension of the approved Level 1 deck. The deck will be accessed from a bedroom, which is not considered to be a highly used part of the dwelling, according to the planning principle in *Meriton v Sydney City Council* [2004] NSWLEC 313, where overlooking from a living area is more objectionable than from a bedroom, as people tend to spend less time there. In addition, the proposed balcony will be oriented towards the street and will be consistent with the established front building line. As such, a reasonable level of privacy will be maintained between buildings.

Privacy concerns have also been raised in relation to the modified north-facing windows of the upper floor addition and the privacy impacts on the adjoining south-facing windows of No. 235 Hudson Parade. The proposed north-facing windows would be oriented towards the north and the rear garden of the subject site. Given the orientation of these windows (from low-use rooms), the proposal is not considered to give rise to unacceptable privacy impacts on this neighbour.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant outcomes of the control.

Accordingly, this assessment finds that the proposal is **not supported**, in this particular circumstance.

D3.1 Character as viewed from a public place

Description of Non-Compliance

As demonstrated by the proposal's numerous and significant variations to the applicable built form controls, the proposal is considered to be non-compliant with the following provision of this control:

- *The bulk and scale of buildings must be minimised*

Merit Assessment

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

- *To achieve the desired future character of the Locality.*
- *To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing built and natural environment.*
- *To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.*
- *The visual impact of the built form is secondary to landscaping and vegetation, or in commercial areas and the like, is softened by landscaping and vegetation.*
- *High quality buildings designed and built for the natural context and any natural hazards.*
- *Buildings do not dominate the streetscape and are at 'human scale'. Within residential areas, buildings give the appearance of being two-storey maximum.*
- *To preserve and enhance district and local views which reinforce and protect the Pittwater's natural context.*

- *To enhance the bushland vista of Pittwater as the predominant feature of the landscape with built form, including parking structures, being a secondary component.*
- *To ensure that development adjacent to public domain elements such as waterways, streets, parks, bushland reserves and other public open spaces, compliments the landscape character, public use and enjoyment of that land.*

Comment:

As detailed earlier in this report, the modified development does not achieve the DFC of the Bilgola Locality, enhance the existing streetscape or maintain a 'human scale' and two-storey appearance.

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

Accordingly, this assessment finds that the proposal is **not supported**, in this particular circumstance.

D3.7 Side and rear building line

Description of Non-Compliance

The modification proposes reducing the minimum upper level side setbacks from 2.5m to 1.2m, which does not comply with the required 2.5m for one side.

No changes are proposed to the approved rear setback.

Merit Assessment

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

- *To achieve the desired future character of the Locality.*

  Comment:

  The proposal is found to be inconsistent with the DFC of the Bilgola Locality, as assessed under A4.3.

- *The bulk and scale of the built form is minimised.*

  Comment:

  As demonstrated by the setback, building envelope and building height breaches, it cannot be said that the bulk and scale of the built form has been minimised.

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

  Comment:

  This matter has been addressed elsewhere within the report (refer to Clause C1.3 View Sharing under P21DCP). In summary, the proposal is considered to equitably preserve the available views and vistas to and/or from public and private places.

- *To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.*

  Comment:

  As noted above, the proposal achieves reasonable view sharing.

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

  Comment:

  The proposed side setback non-compliance contributes to the unreasonable solar access impacts of the development.

- *Substantial landscaping, a mature tree canopy and an attractive streetscape.*

  Comment:

  The modifications will be carried out above the approved footprint and do not involve the removal of any significant vegetation.

- *Flexibility in the siting of buildings and access.*

  Comment:

  Given the resulting visual and amenity impacts to surrounding properties, the degree of flexibility sought in relation to siting of the upper level is not acceptable in this case.

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

  Comment:

  No significant vegetation is proposed for removal.

- *To ensure a landscaped buffer between commercial and residential zones is established.*

  Comment:

  N/A - the site is not in proximity to any commercial zone.

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

Accordingly, this assessment finds that the proposal is **not supported**, in this particular circumstance.

D3.9 Building envelope

Description of Non-Compliance

The control requires that structures are contained within a 3.5m high envelope measured at the side

boundaries before turning inwards at 45 degrees.

The modified breaches of the building envelope control at the eastern and western elevations are indicated on the below Figures.

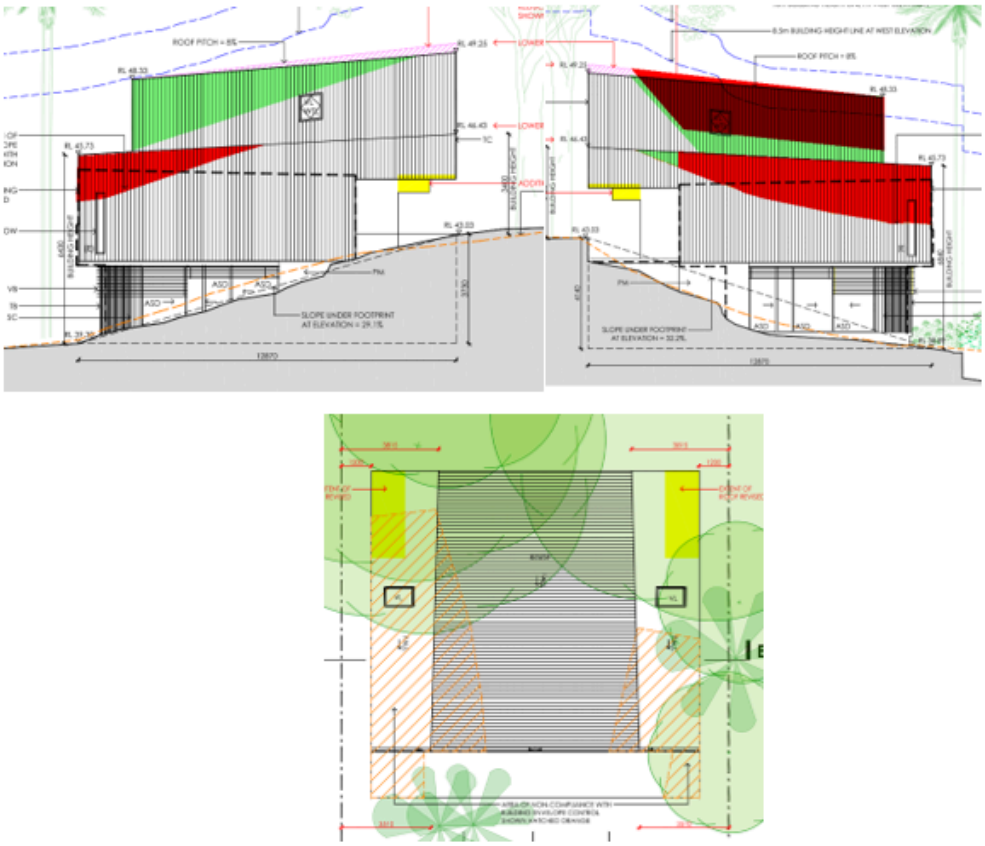


Figure 8. *Proposed envelope non-compliance. Additional envelope breach on the elevations shown in green, existing/approved envelope breach shown in red. Roof plan - Envelope breach shown in*

hatched orange.

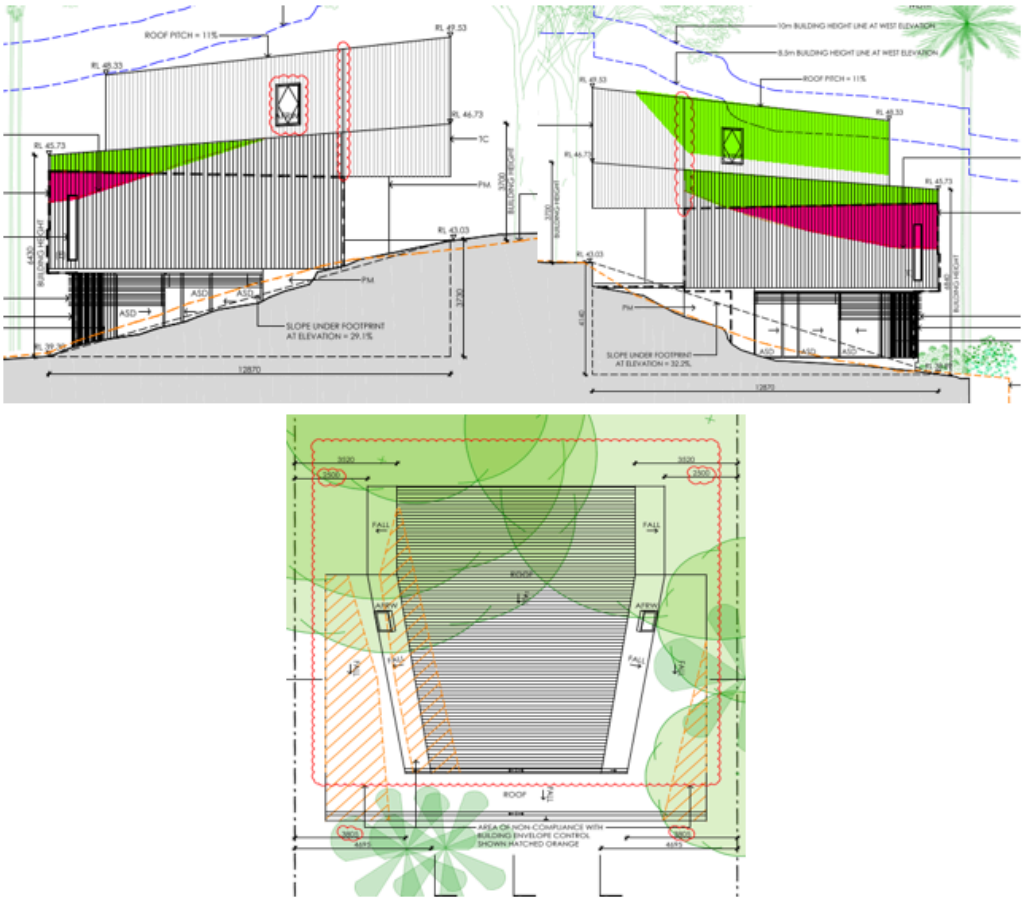


Figure 9. *Approved envelope non-compliance. Additional envelope breach on the elevations shown in green, existing envelope breach shown in pink. Roof plan - Envelope breach shown in hatched orange.*

<u>Merit Assessment</u>

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

- *To achieve the desired future character of the Locality.*

  <u>Comment</u>:

  The proposal is found to be inconsistent with the DFC of the Bilgola Locality, as assessed under A4.3.

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

Comment:

The modified development would not enhance the existing streetscape or result in a scale and density that is below the height of the tree canopy.

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

  Comment:

  Spatial characteristics are taken to refer to topography and vegetation. The extent of envelope encroachments, building height and side setback breaches are not reflective of a design that responds to the spatial characteristics of the existing natural environment.

- *The bulk and scale of the built form is minimised.*

  Comment:

  As demonstrated by the setback, building envelope and building height breaches, it cannot be said that the bulk and scale of the built form has been minimised.

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

  Comment:

  This matter has been addressed elsewhere within the report (refer to Clause C1.3 View Sharing under P21DCP). In summary, the proposal is considered to equitably preserve the available views and vistas to and/or from public and private places.

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

  Comment:

  The proposed building envelope non-compliances contribute to the unreasonable amenity and solar access impacts of the development.

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

  Comment:

  No significant vegetation is proposed for removal.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of the control. Accordingly, this assessment finds that the proposal is **not supported**, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

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

PLANNING CONCLUSION

This report finds that the proposed modifications to the approved scheme are significantly non-compliant and is inconsistent with the desired future character envisaged by the planning controls.

Despite attempts to improve compliance by reducing the ridge height, the modified proposal includes excessive upper-level extensions that are inappropriate and unsuitable for the site.

The proposal is particularly problematic due to its excessive bulk and scale, significant building height variations, and multiple built form non-compliances.

The desire for additional floor space on the upper level has resulted in a number of avoidable adverse consequences for adjoining properties and the area.

The modification departs significantly from the approved outcome, which was carefully designed to balance the site's constraints and ensure the height did not unduly impact the amenity of adjoining properties.

The modified built form is excessive in bulk and scale and involves significant non-compliances with both LEP and DCP controls, which are intended to limit the intensity and impact of development. The proposal does not appropriately respond to neighbouring developments and will result in an unacceptable level of visual and amenity impacts to adjoining properties and the surrounding locality.

The proposed variation to the building height development standard contributes to unreasonable visual and amenity impacts of the development.

The objections relating to built-form non-compliances, bulk and scale, amenity and visual impacts, desired future character, are relevant, concurred with, and form reasons for refusal of the application.

Accordingly, for the reasons set out in this report, the Panel should **not support** the modification application.
It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council , as the consent authority REFUSE Modification Application No. Mod2024/0027 for Modification of Development Consent DA2021/1666 granted for alterations and additions to a dwelling house including swimming pool and detached pool pavilion/outbuilding on land at Lot 69 DP 13760,233 Hudson Parade, CLAREVILLE, subject to the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Pittwater Local Environmental Plan 2014.

2.
    1. **Height of Buildings**
       Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Clause 4.3 Height of Buildings of the Pittwater Local Environmental Plan 2014.

       <u>Particulars:</u>

       i) The proposal is inconsistent with the underlying objectives of Clause 4.3 Height of Buildings of PLEP 2014, as the proposed variation is found to result in a bulk and scale that is inconsistent with the existing and future desired character of the surrounding area, will result in a loss of solar access to the property east of the subject site and is likely to give rise to an adverse visual impact.

    2. **Desired Future Character**
       Pursuant to Section 4.15(1)(a)(i) and (iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Clause A4.3 Bilgola Locality Locality of the Pittwater 21 Development Control Plan.

Particulars:

i) The proposal, due to its excessive bulk, its impact on the amenity of adjoining properties and users of the public domain, its poor relationship with the subject property is inconsistent with the objectives with the Desired Future Character provisions of the Bilgola Locality.

3. **Amenity**
Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Clause C1.4 Solar Access of the Pittwater 21 Development Control Plan.

Particulars:

i) The proposed building height, bulk, siting and design result in unacceptable impacts upon adjoining properties in overshadowing.

4. **Built form**
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 D3.1 Character as viewed from a public place, D3.7 Side and rear building line and D3.9 Building envelope of the Pittwater 21 Development Control Plan.

Particulars:

i) The modified built form would result in adverse amenity impacts upon adjoining properties and diminish the character of the surrounding locality.

5. **BASIX Certificate**

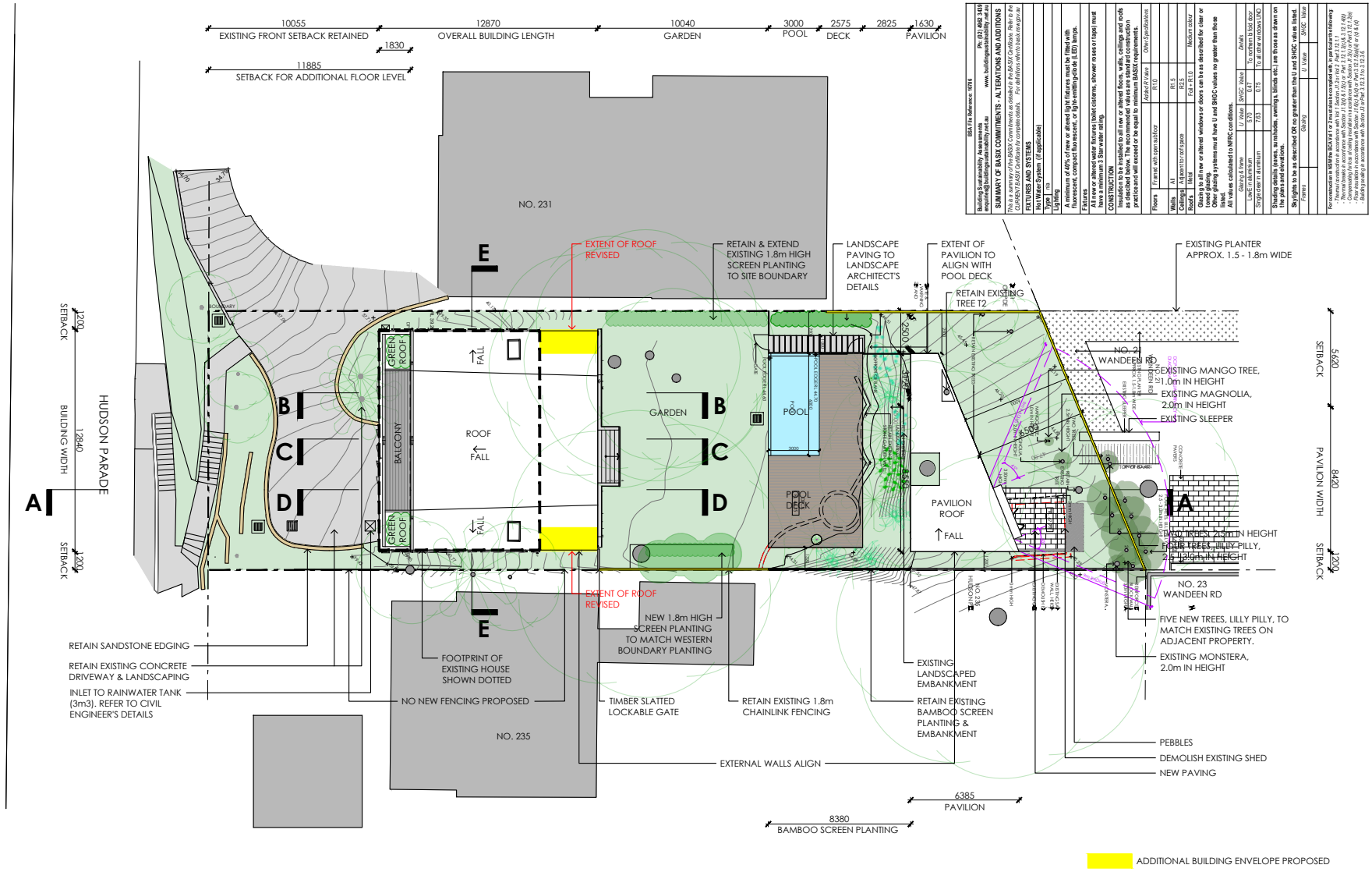
Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of State Environmental Planning Policy (Sustainable Buildings) 2022.
Particulars:

i) A valid BASIX certificate has not been submitted with the modification application.

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

Particulars:

i) The development is not in the public interest having regard to the matters set out in the submissions to the extent that the concerns raised are consistent with Council's assessment.



BASIX File Reference: 1076

Building Sustainability Assessments
enquiries@buildingsustainability.net.au
Ph: (02) 4628 3400
www.buildingsustainability.net.au

SUMMARY OF BASIX COMMITMENTS - ALTERATIONS AND ADDITIONS

This is a summary of the BASIX Commitments as detailed in the BASIX Certificate. Refer to the CURRENT BASIX Certificate for complete details. For definitions refer to basix.nsw.gov.au

FIXTURES AND SYSTEMS

Hot Water System (if applicable)
Type: Gas

Lighting
A minimum of 40% of new or altered light fixtures must be fitted with fluorescent, compact fluorescent, or light-emitting-diode (LED) lamps.

Fixtures
All new or altered water fixtures (toilet cisterns, shower roses or taps) must have a rating of 3 or more Blue water rating.

CONSTRUCTION
Insulation to be installed to all new or altered floors, walls, ceilings and roofs as described below. The recommended values are standard construction practice and will exceed or be equal to minimum BASIX requirements.

		Added R-Value	Other Specifications
Floors	Timber with open subfloor	R1.0	
Walls	All	R1.5	
Ceilings	Adjacent to roof space	R2.5	
Roofs	Metal	Foil + R1.0	Medium colour

Glazing
Glazing to all new or altered windows or doors can be as described for clear or Other glazing.
Other glazing systems must have U and SHGC values no greater than those listed.
All values calculated to NFRC conditions.

Glazing & Frame	U Value	SHGC Value	Details
Low-E in aluminium	5.70	0.47	To northern bed door
Single clear in aluminium	7.63	0.75	To all other windows UNO

Shading
Shading details (eaves, sunshades, awnings, blinds etc) are as as drawn on the plans and elevations.

Skylights
Skylights to be as described OR no greater than the U and SHGC values listed.

Skylight	U Value	SHGC Value
Frames		
Glazing		

For construction in NSW the BCA Vol 2 or 3 must be complied with, in particular following:
- Thermal construction in accordance with Vol 1 Section J1 for Vol 2 Part 3.12.1.1
- Thermal breaks in accordance with Section J1.3(b) & J1.5(b) or Part 3.12.1.2(a) & 3.12.1.4(b)
- Glazing in accordance with Section J1.5(a) & J1.5(c) or Part 3.12.1.2(b) & 3.12.1.4(a)
- Floor insulation in accordance with Section J1.6(c) & J1.6(e) or Part 3.12.1.5(b)(iii) or (v) & J1.6(f)
- Roof/ceiling insulation in accordance with Section J1.6(a) & J1.6(b) or Part 3.12.1.5(b)(i) or (ii) & J1.6(d)

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ALTERATIONS & ADDITIONS
clareville house
233 HUDSON PARADE CLAREVILLE NSW 2107
FOR
NICOLE STONE

1:200 @A3

REV	DATE	AMENDMENT
E	07.09.21	DA ISSUE REVISED
F	28.10.21	DA ISSUE REVISED 2
G	08.12.21	DA ISSUE REVISED 3
H	22.12.21	DA ISSUE REVISED 4
J	07.03.22	DA ISSUE REVISED 5
K	07.04.22	54.55 ISSUE
L	28.07.22	REVISED 54.55 ISSUE
M	18.10.22	ISSUE TO BASIX
N	25.01.24	54.55 ISSUE

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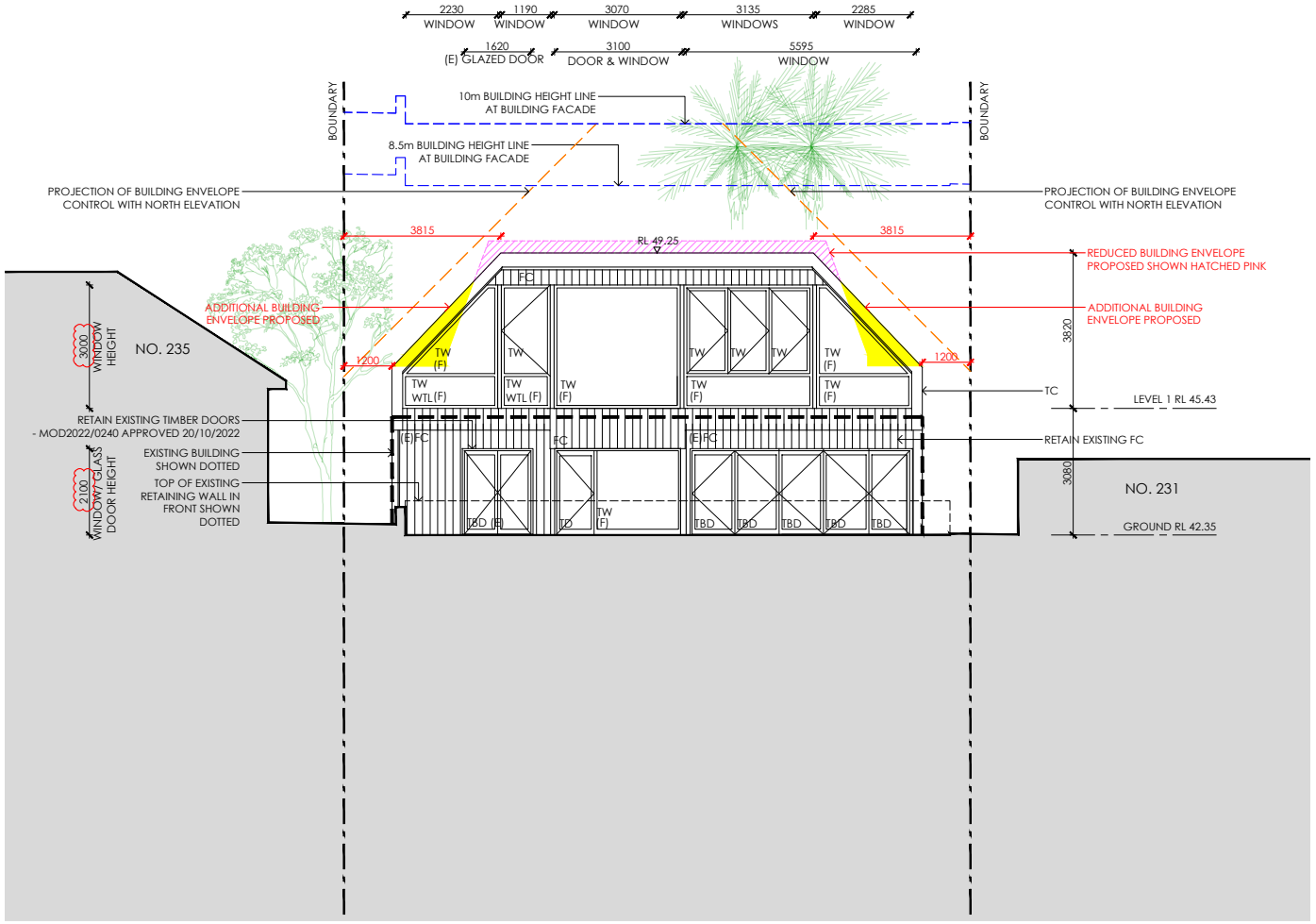
SITE PLAN

DRAWING NO.
DA04
ISSUE
N



EXTERNAL FINISHES LEGEND

(E)	EXISTING
(F)	FIXED WINDOW
AFRW	ALUMINIUM FRAMED ROOF WINDOW - SATIN ANODISED
AFW	ALUMINIUM FRAMED WINDOW - SATIN ANODISED
AFWWTL	ALUMINIUM FRAMED WINDOW, WHITE TRANSLUCENT LAMINATE - SATIN ANODISED
ASD	ALUMINIUM FRAMED SLIDING DOOR - SATIN ANODISED
ABD	ALUMINIUM FRAMED BIFOLD DOOR - SATIN ANODISED
AHD	ALUMINIUM FRAMED HINGED DOOR - SATIN ANODISED
APD	ALUMINIUM FRAMED PIVOT DOOR - SATIN ANODISED
BF	BRUSHWOOD FENCE
FC	FC CLADDING
GB	GLASS BALUSTRADE
MPB	METAL PALISADE BALUSTRADE
PM	PAINTED MASONRY - DULUX NATURAL WHITE B1
RWH,O,DP	RAIN WATER HEAD WITH OVERFLOW & DOWNPIPE
SC	STEEL COLUMN PAINT FINISH
TB	TIMBER BATTEN VERTICAL - CEDAR, NATURAL FINISH
TBD	TIMBER FRAMED BI FOLD DOOR
TC	TIMBER CLADDING VERTICAL - CEDAR, BLACK STAINED
TD	TIMBER FRAMED DOOR
TW	TIMBER FRAMED WINDOW
VB	ADJUSTABLE VENETIAN BLINDS
VL	VELUX ROOF WINDOW
WTL	WHITE TRANSLUCENT LAMINATE

ADDITIONAL BUILDING ENVELOPE PROPOSED

REDUCED BUILDING ENVELOPE PROPOSED

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ALTERATIONS & ADDITIONS

clareville house

233 HUDSON PARADE CLAREVILLE NSW 2107

FOR
NICOLE STONE

1:100@A3

0 1 2 3 4 5m

REV	DATE	AMENDMENT
A	17.02.21	DA ISSUE
B	20.04.21	DA ISSUE
C	27.08.21	DA ISSUE REVISED
D	08.12.21	DA ISSUE REVISED 3
E	08.03.22	DA ISSUE REVISED 5
K	27.04.22	S4.55 ISSUE
L	14.12.23	S4.55 ISSUE

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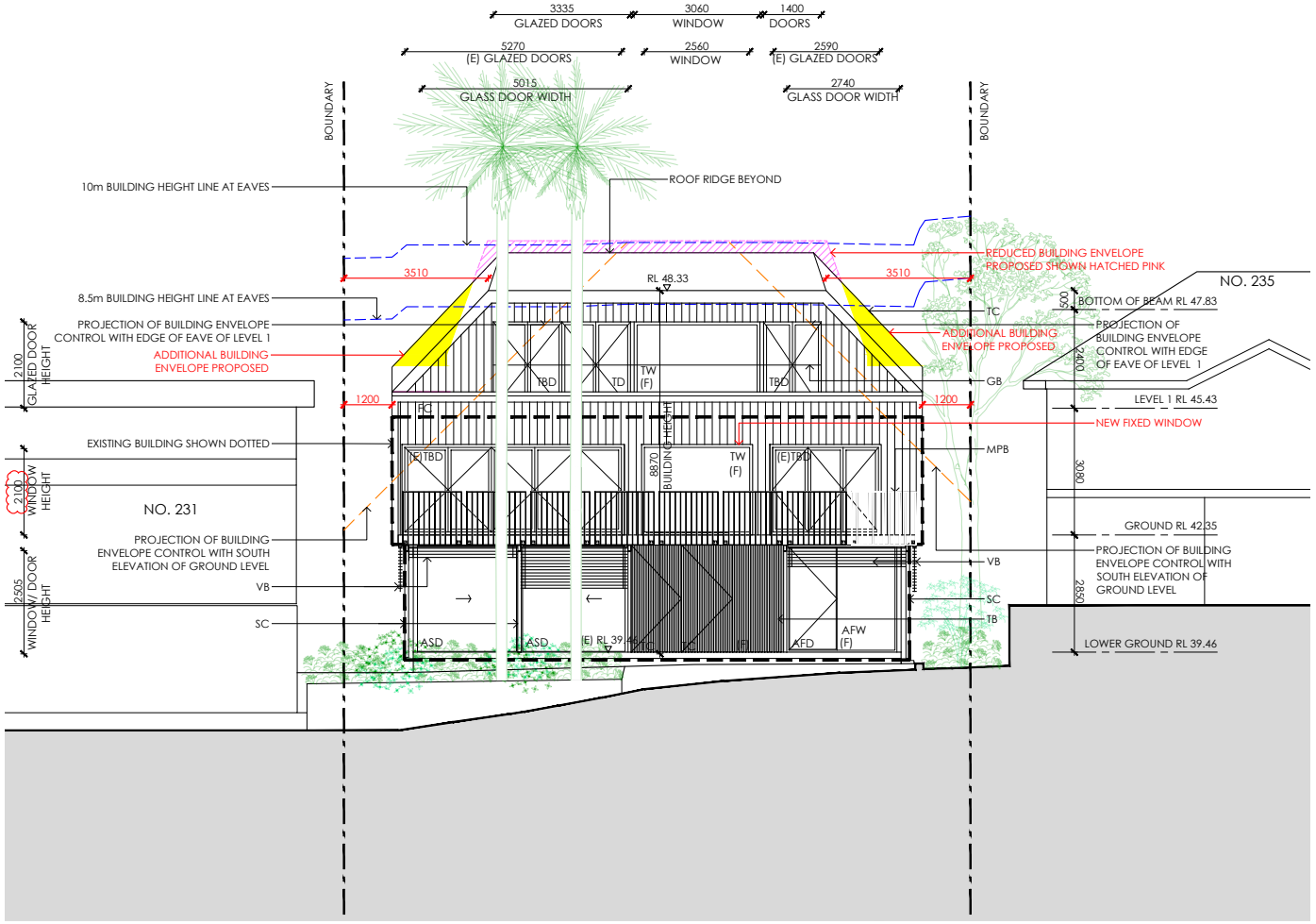
NORTH ELEVATION

DRAWING NO.
DA13
ISSUE
L



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AFWWTL	ALUMINIUM FRAMED WINDOW, WHITE TRANSLUCENT LAMINATE - SATIN ANODISED
ASD	ALUMINIUM FRAMED SLIDING DOOR - SATIN ANODISED
ABD	ALUMINIUM FRAMED BIFOLD DOOR - SATIN ANODISED
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VL	VELUX ROOF WINDOW
WTL	WHITE TRANSLUCENT LAMINATE

ADDITIONAL BUILDING ENVELOPE PROPOSED

REDUCED BUILDING ENVELOPE PROPOSED

ARCHITECT
BONUS + ASSOCIATES
LEVEL 1
597 DARLING STREET
ROZELLE NSW 2039
T 02 9818 6188
F 02 9818 6288
E info@bonusarch.com
B PLUS A PTY. LTD. ABN 40 115 655 450

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JOB NO
2017
PROJECT ARCHITECT
S KOO
ARCH REG.10834
DRAWN
SK

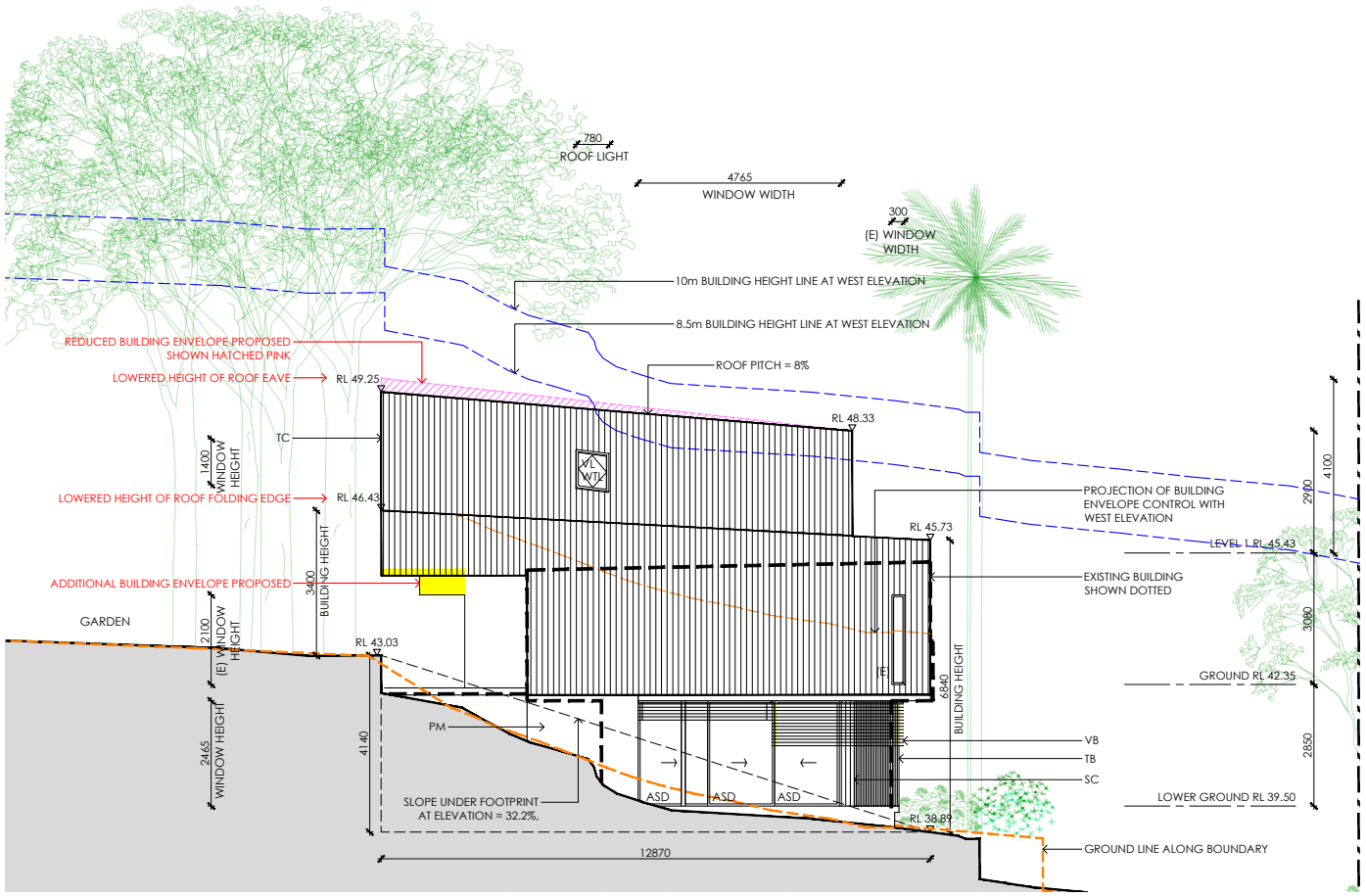
ALTERATIONS & ADDITIONS
clareville house
233 HUDSON PARADE CLAREVILLE NSW 2107
FOR
NICOLE STONE

1:100@A3
0 1 2 3 4 5m

REV	DATE	AMENDMENT
A	17.02.21	DA ISSUE
B	20.04.21	DA ISSUE
C	27.08.21	DA ISSUE REVISED
D	08.12.21	DA ISSUE REVISED 3
E	08.03.22	DA ISSUE REVISED 5
K	27.04.22	S4.55 ISSUE
L	25.01.24	S4.55 ISSUE

DRAWING TITLE
SOUTH ELEVATION

DRAWING NO.
DA14
ISSUE
L



EXTERNAL FINISHES LEGEND

(E)	EXISTING
(F)	FIXED WINDOW
AFRW	ALUMINIUM FRAMED ROOF WINDOW - SATIN ANODISED
AFW	ALUMINIUM FRAMED WINDOW - SATIN ANODISED
AFWWTL	ALUMINIUM FRAMED WINDOW, WHITE TRANSLUCENT LAMINATE - SATIN ANODISED
ASD	ALUMINIUM FRAMED SLIDING DOOR - SATIN ANODISED
ABD	ALUMINIUM FRAMED BIFOLD DOOR - SATIN ANODISED
AHD	ALUMINIUM FRAMED HINGED DOOR - SATIN ANODISED
APD	ALUMINIUM FRAMED PIVOT DOOR - SATIN ANODISED
BF	BRUSHWOOD FENCE
FC	FC CLADDING
GB	GLASS BALUSTRADE
MPB	METAL PALISADE BALUSTRADE
PM	PAINTED MASONRY - DULUX NATURAL WHITE B1
RWH,O,DP	RAIN WATER HEAD WITH OVERFLOW & DOWNPIPE
SC	STEEL COLUMN PAINT FINISH
TB	TIMBER BATTEN VERTICAL - CEDAR, NATURAL FINISH
TBD	TIMBER FRAMED BI FOLD DOOR
TC	TIMBER CLADDING VERTICAL - CEDAR, BLACK STAINED
TD	TIMBER FRAMED DOOR
TW	TIMBER FRAMED WINDOW
VB	ADJUSTABLE VENETIAN BLINDS
VL	VELUX ROOF WINDOW
WTL	WHITE TRANSLUCENT LAMINATE

ADDITIONAL BUILDING ENVELOPE PROPOSED

REDUCED BUILDING ENVELOPE PROPOSED

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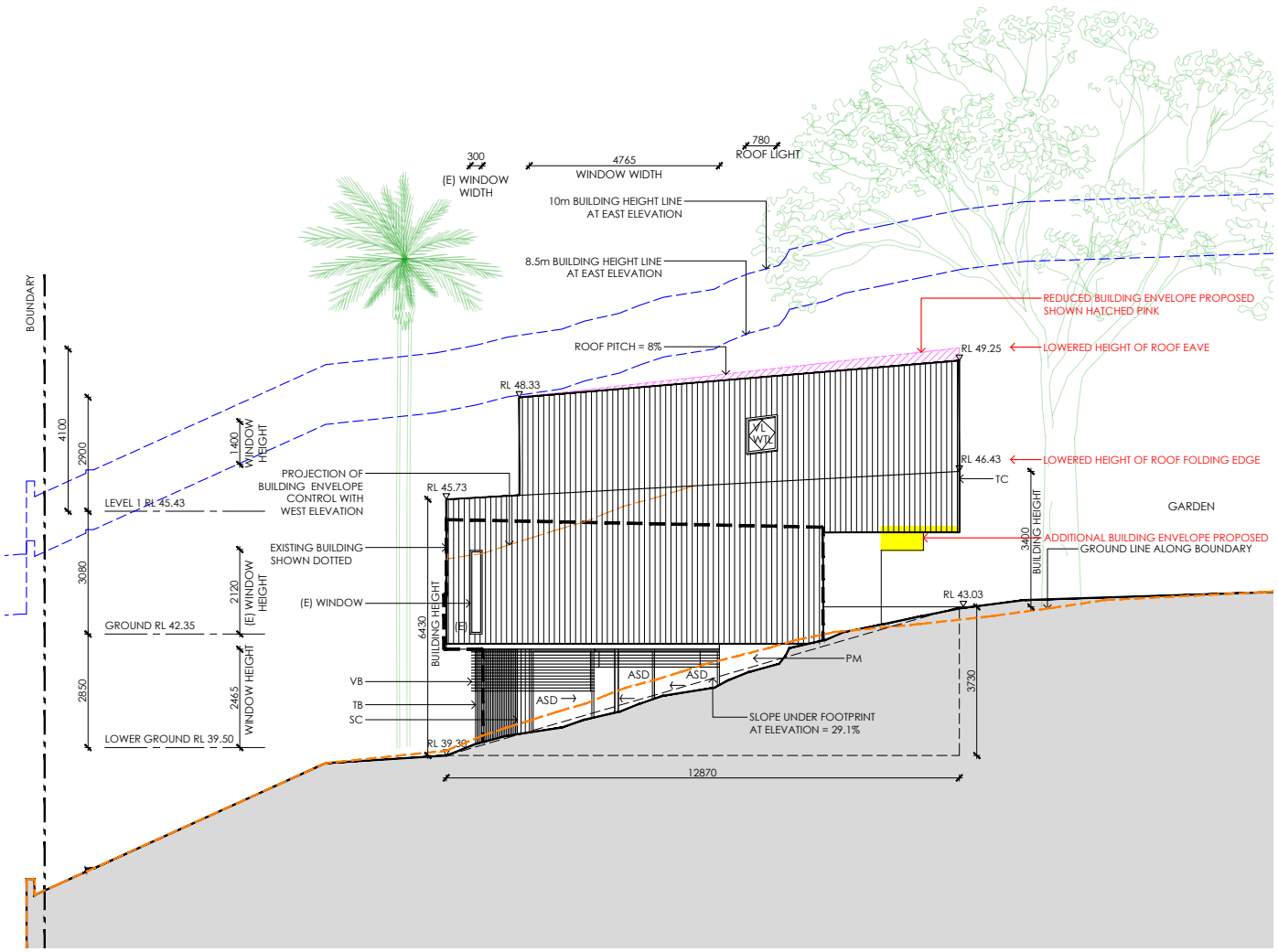
D	08.12.21	DA ISSUE REVISED 3
E	08.03.22	DA ISSUE REVISED 5
F	14.12.23	S4.55 ISSUE

DRAWING TITLE
WEST ELEVATION

DRAWING NO.
DA15
ISSUE
F



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F	14.12.23	S4.55 ISSUE

DRAWING TITLE
EAST ELEVATION

DRAWING NO.
DA16
ISSUE
F