

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 24 JULY 2024

Ashleigh Sherry
Manager Business System and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 24 July 2024
via teleconference
Commencing at 1:00 PM**

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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 10 JULY 2024

RECOMMENDATION

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

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1 DA2024/0661 - 14 DUKE STREET FORESTVILLE - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE

PURPOSE

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

RECOMMENDATION

That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of WLEP 2011 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

THAT Council as the consent authority **approves** Development Consent to DA2024/0661 for alterations and additions to a dwelling house on land at Lot 11 DP 515369, 14 Duke Street FORESTVILLE, subject to the conditions set out in the Assessment Report.

Reporting manager	Steve Findlay
TRIM file ref	2024/500960
Attachments	1 Assessment Report 2 Site Plan and Elevations 3 Clause 4.6

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/0661
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Responsible Officer:	Thomas Burns
Land to be developed (Address):	Lot 11 DP 515369, 14 Duke Street FORESTVILLE NSW 2087
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Tag Team Constructions Pty Ltd

Application Lodged:	28/05/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	05/06/2024 to 19/06/2024
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 11.76%
Recommendation:	Approval

Estimated Cost of Works:	\$ 331,500.00
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EXECUTIVE SUMMARY

Development Application DA2024/0661 is referred to the Development Determination Panel (DDP) for consideration of a development application involving alterations and additions to an existing dwelling house, largely comprising of an upper floor addition.

The application is referred to the DDP for determination as the maximum height of the development is 9.5 m above the existing ground level, which represents a 11.76% variation to clause 4.3 of the Warringah Local Environmental Plan 2011 (WLEP). Any variations to a development standard under the WLEP that are greater than 10% must be referred to the DDP for determination in accordance with Council's delegation protocols.

The applicant has submitted a written request under clause 4.6 of the WLEP to justify a variation to the development standard. The written request argues that the height non-compliance is a result of previous excavation on the site that has distorted the natural ground levels and resulting height plane on the site. The request argues that when extrapolating the ground levels around the existing building footprint, in accordance with the NSW Land and Environment Court Case of *Bettar v Council of City of Sydney* [2014] NSWLEC 1070, the maximum building height would be 8.3m, thereby compliant with the height standard. The request further argues that the height non-compliance does not result in any adverse residential amenity impacts and that the bulk and scale of the development will remain compatible with surrounding development along Duke Street.

The assessing officer concurs with the applicant's justification outlined within the written request and is satisfied that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to contravene the development standard. In particular, the assessing officer concurs that the height non-compliance is located at the rear of the roofline on the upper floor addition and is a result of previous excavation on the site that has distorted the height plane. The assessing officer considers that the development will present as a two storey building that is well under the 8.5m height limit when observed from Duke Street and that the height non-compliance will not give rise to adverse residential amenity impacts, specifically in relation to privacy, visual outlook, view sharing and solar access.

The upper floor addition includes partial variations to the Warringah Development Control Plan 2011 (WDCP) wall height and building envelope controls. The wall height non-compliance is a result of previous excavation on the site and the partial envelope non-compliance on the southern elevation of the upper floor addition is due to the slope of the land that falls steeply away to the south-eastern rear corner of the site. When assessing the merits of these non-compliances in accordance with the objectives of the WDCP wall height and building envelope controls, it is concluded that the development achieves these objectives. As such, flexibility to these numerical controls should be applied in accordance with section 4.15(3A)(b) of the Environmental Planning and Assessment Act 1979 (EP&A Act).

The application was publicly exhibited for 14 days and no submissions were received.

It is recommended that the DDP **approve** the application, subject to the recommended conditions attached to this report.

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for alterations and additions to an existing dwelling house. The alterations and additions comprise of minor alterations to the ground floor and the provision of a new upper storey entailing a master bedroom, walk-in-robe, two decks, an ensuite and a study.

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;

- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
 Warringah Local Environmental Plan 2011 - Zone R2 Low Density Residential
 Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land
 Warringah Development Control Plan - B1 Wall Heights
 Warringah Development Control Plan - B3 Side Boundary Envelope
 Warringah Development Control Plan - D8 Privacy

SITE DESCRIPTION

Property Description:	Lot 11 DP 515369 , 14 Duke Street FORESTVILLE NSW 2087
Detailed Site Description:	The subject site consists of one allotment located on the eastern side of Duke Street, Forestville. The site is legally described as Lot 11 DP 515369 and is commonly known as 14 Duke Street, Forestville. The site is irregular in shape with a frontage of 21.055 metres (m) and respective depths of 37.49m and 46.76m along the northern and southern side boundaries. The site has a surveyed area of 770.4 square metres (sqm). The site is located within the R2 Low Density Residential zone pursuant to the Warringah Local Environmental Plan 2011 (WLEP) and currently accommodates a part 1-2 storey dwelling house including an in-ground swimming pool within the rear yard. Landscaping on the site consists of lawn areas, gardens and three canopy trees ranging between 6m and 25m in height. The site slopes away from the north-western front corner towards the south-eastern rear corner with an average gradient of 15 degrees. Aside from the sloping topography, the site is not constrained by any other significant environmental constraints. The site is also not burdened by any restrictive covenants or easements. The surrounding built environment is largely characterised

	by detached low density residential development (i.e. dwelling houses) within landscaped settings. The site is located approximately 19m to the north of Ryrie Avenue Reserve.
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Map:



SITE HISTORY

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

- Complying Development Certificate CDC2015/0497 for a lower floor extension issued by a Private Certifier on 22 September 2015.
- Modified Complying Development Certificate CDC2015/0497 for a lower floor extension issued by a Private Certifier on 1 December 2015.
- Final Occupation Certificate FOC2016/0053 for the above-mentioned approvals issued by a Private Certifier on 5 February 2016.

APPLICATION HISTORY

A site inspection was carried out at the subject site on 3 July 2024.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any	See discussion on “Environmental Planning Instruments” in this report.

Section 4.15 Matters for Consideration	Comments
environmental planning instrument	
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	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. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
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 2011 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	No submissions were received following the public exhibition period.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 05/06/2024 to 19/06/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	Ausgrid has no objection to this development application , however the design submission must comply with relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice for construction works near existing electrical assets. The “as constructed ”minimum clearances to Ausgrid ’s infrastructure must not be encroached by the building development . It also remains the responsibility of the developer and relevant contractors to verify and maintain these clearances onsite.

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

The application is supported by a valid BASIX Certificate to satisfy the requirements of State Environmental Planning Policy (Sustainable Buildings) 2022.

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Biodiversity and Conservation) 2021

Chapter 2 - Vegetation in non-rural areas

Chapter 2 of State Environmental Planning Policy (Biodiversity and Conservation) 2021 (BC SEPP) applies to the development pursuant to clause 2.3 and aims to protect the biodiversity and amenity values of trees within non-rural areas of the State.

Part 2.3 has been considered and the development does not propose the removal of any vegetation in order to facilitate the development. However, as the first floor addition is located in close proximity to an existing canopy tree within the front yard, a condition is recommended to require tree protection measures to be in place during construction works to ensure the on-going retention of this tree. As no ground disturbance works within the tree protection zone of this tree will occur, the ongoing retention of this tree will be viable with the recommended tree protection measures.

The development satisfies Chapter 2 of the BC SEPP.

Chapter 6 – Water catchments

The subject property is located within the Sydney Harbour Catchment and therefore, the provisions of Chapter 6 Water catchments of the BC SEPP apply to this development. Accordingly, an assessment under Chapter 6 has been carried out as follows:

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

6.6 Water quality and quantity

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

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

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

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

Comment:

Stormwater captured from the first floor addition will be conveyed into the existing stormwater management system, whereby stormwater is discharged downslope into Council's stormwater infrastructure via an approved inter-allotment drainage easement. As no additional hard surfaces are proposed across the site, noting that the works are confined to the existing building footprint, it is considered that the existing stormwater management system will be satisfactory and that the development will not create any adverse off-site impacts as a result of stormwater.

6.7 Aquatic ecology

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

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

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

- (a) the direct, indirect or cumulative adverse impact on terrestrial, aquatic or migratory animals or vegetation will be kept to the minimum necessary for the carrying out of the development,*
- (b) the development will not have a direct, indirect or cumulative adverse impact on aquatic reserves,*
- (c) if a controlled activity approval under the Water Management Act 2000 or a permit under the Fisheries*

Management Act 1994 is required in relation to the clearing of riparian vegetation—the approval or permit has been obtained,

(d) the erosion of land abutting a natural waterbody or the sedimentation of a natural waterbody will be minimised,

(e) the adverse impact on wetlands that are not in the coastal wetlands and littoral rainforests area will be minimised.

Comment:

The development does not require any approvals from State agencies under the Water Management Act 2000 or Fisheries Management Act 1994.

6.8 Flooding

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

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

(a) if there is a flood, result in a release of pollutants that may have an adverse impact on the water quality of a natural waterbody, or

(b) have an adverse impact on the natural recession of floodwaters into wetlands and other riverine ecosystems

Comment:

The site is not located within a flood prone area.

6.9 Recreation and public access

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

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

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

(a) the development will maintain or improve public access to and from natural waterbodies for recreational purposes, including fishing, swimming and boating, without adverse impact on natural waterbodies, watercourses, wetlands or riparian vegetation,

(b) new or existing points of public access between natural waterbodies and the site of the development will be stable and safe,

(c) if land forming part of the foreshore of a natural waterbody will be made available for public access as a result of the development but is not in public ownership—public access to and use of the land will be safeguarded.

Comment:

The development is for an upper floor addition to an existing dwelling house and will not have any adverse impacts upon recreational land.

6.10 Total catchment management

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

Comment:

Consultation with adjoining local government areas is not required, noting that the scope of works are minor and will not have any adverse environmental impacts upon the Sydney water catchment.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.5m	11.76%	No

Note: Maximum building height has been calculated in accordance with the NSW Land and Environment Court Case of *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582*, whereby the 'existing ground level' is taken to be the excavated level below the pre-existing natural ground levels of the site. When extrapolating the ground levels around the existing building footprint, in accordance with the NSW Land and Environment Court Case of *Bettar v Council of City of Sydney [2014] NSWLEC 1070*, the maximum building height would be 8.3m, thereby compliant with the height standard.

Compliance Assessment

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

Detailed Assessment

Zone R2 Low Density Residential

The development involves alterations and additions to an existing dwelling house. Dwelling houses are permissible land uses within the R2 Low Density Residential zone. Then development is consistent with the objectives of the R2 zone, insofar as the development will continue to provide for the housing needs of the community within a low density residential environment.

4.6 Exceptions to development standards

Clause 4.3 of the WLEP stipulates that the maximum height of buildings on the subject site must not exceed 8.5m, when measured from the existing ground level.

For the purpose of this assessment, the maximum building height has been calculated in accordance with the NSW Land and Environment Court Case of *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582*, whereby the 'existing ground level' is taken to be the excavated level below the pre-existing natural ground levels of the site. It is noted that the natural ground levels on the site have been distorted by previous excavated works that have been undertaken to provide the existing low ground floor to the existing dwelling house.

As such, the 'existing ground level' is taken to be the excavated point of the site on the lower ground floor. The new upper floor addition is located 9.5m above the existing ground level, which represents a 11.76% variation to the development standard. The extent of the contravention is depicted in **Figure 1** below.

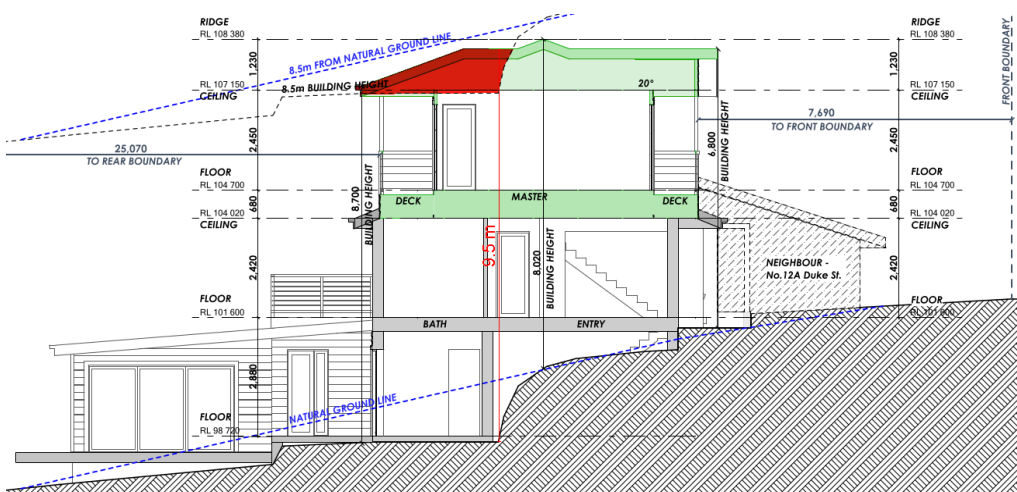


Figure 1: Building Height Contravention (non-compliance highlighted in red)

It is important to note that when extrapolating the ground levels around the existing building footprint, in accordance with the NSW Land and Environment Court Case of *Bettar v Council of City of Sydney [2014] NSWLEC 1070*, the maximum building height would be 8.3m, thereby compliant with the height standard.

The applicant has submitted a written request under clause 4.6 of the WLEP to justify a variation to clause 4.3. Council's assessment of the variation and the applicant's written request is provided below.

Assessment of Request to vary a Development Standard

The following assessment of the variation to the height of buildings development standard has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Wehbe v Pittwater Council [2007] NSWLEC 827*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

Clause 4.6 Exceptions to development standards

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

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

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

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

Comment:

The height of buildings development standard is not expressly excluded from the operation of clause 4.6 of the WLEP.

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the

matters required to be demonstrated by clause 4.6(3). There are two separate matters for consideration contained within clause 4.6(3) and these are addressed as follows:

Clause 4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

Comment:

As outlined within the matter of *Wehbe v Pittwater Council* [2007] NSWLEC 827, it was established that in order to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, an applicant must demonstrate either of the following:

- the objectives of the development standard are achieved notwithstanding non-compliance with the standard; or
- the underlying objective or purpose of the standard is not relevant to the development; or
- the underlying objective or purpose would be defeated or thwarted if compliance was required; or
- the standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard; or
- the zoning of land was unreasonable or inappropriate, such that the standards for that zoning are also unreasonable or unnecessary.

The applicant's written request seeks to satisfy this requirement by demonstrating that the objectives of the development standard are achieved, notwithstanding the non-compliance.

The applicant's justification can be summarised as follows:

- *The height and scale of the development is consistent with the existing streetscape character, in that the dwelling house will present as a two storey building when observed from Duke Street.*
- *The height contravention does not give rise to adverse residential amenity impacts, particularly in relation to overshadowing, privacy impacts or visual amenity.*
- *The development is located within the existing building footprint and will not impact upon existing trees or vegetation.*
- *The development will remain below the established tree canopy.*

Council concurs with the applicant's justification and is satisfied that the objectives of clause 4.3 of the WLEP are achieved, notwithstanding the contravention. Council's assessment against the objectives of clause 4.3 is provided below.

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

Comment:

The existing streetscape character is defined by detached low density residential development that presents to Duke Street with either a single storey or two storey built form. The development will remain consistent with the height and scale of surrounding development, noting that the development will present as a two storey dwelling house to Duke Street. The portion of the building that presents to Duke Street sits comfortably below the 8.5m height limit and will therefore appear as a compliant building. The non-compliance is also created by pre-existing excavation on the site that has distorted the height plane and the non-compliant elements of the development are located below the apex of the roofline at the rear of the building and will not be discernible from Duke Street. For these reasons, it is considered that this objective is achieved.

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

Comment:

A site inspection has been carried out, which has confirmed that the height non-compliance will not result in adverse view loss from private or public properties. The non-compliant portions of the building are also confined to the roofline and will not give rise to privacy impacts. Moreover, the adjoining private open space on the southern property (12A Duke Street), which is located within the rear third of this property due to the middle third (i.e. behind the building) being occupied by a driveway and hardstand parking area, will continue to receive the requires 3 hours of sunlight to 50% of the area on June 21 in accordance with the Warringah Development Control Plan 2011 (WDCP). The proposed upper floor is also sufficiently articulated and separated from the side boundaries to mitigate the bulk and scale of the development as perceived from adjoining properties. For these reasons, it is considered that this objective is achieved.

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

Comment:

The development is located well below the established tree canopy and will not adversely impact upon the scenic quality of the area. As such, this objective is achieved.

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

Comment:

The upper floor addition is located approximately 23m to the north of Ryrie Avenue Reserve and will have an acceptable impact when observed from the nearby Public Reserve. As such, this objective is achieved.

Given the above, it has been demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

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

Comment:

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

"As to the second matter required by clause 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 section 1.3 of the EPA Act".*

Section 1.3 of the Environmental Planning and Assessment Act 1979 (EP&A Act) reads as follows:

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

The applicant has advanced the following site-specific environmental planning grounds to justify the variation to the height of buildings development standard:

Ground 1 – Existing excavation for the lower level the cause of the breach

Sufficient environmental planning grounds exist to justify the height of buildings variation includes the artificially modified topography of the land which makes strict compliance difficult to achieve whilst

distributing height and floor space in a contextually appropriate manner on this particular site. In this regard, I note that the prior disturbed levels of the site within the lower level distorts the height of buildings development standard plane overlaid above the site when compared to the natural undisturbed topography of the land. When the original undisturbed levels of the site are interpolated across the building footprint the proposed development would comply with the 8.5 metre height standard. This is demonstrated on the section drawing provided below which includes both the extrapolated 8.5m from natural undisturbed levels and the current method established by Merman.

Ground 2 - Topography and Existing Development

The sloping topography contributes to the height breach. The existing development has been cut into the slope which has modified the ground levels which now forms existing ground level, as detailed above.

Ground 3 – Design Outcome and Amenity Impacts

The dwelling will present as 2 storey to the street with the front façade reaching a height of 6.8m. In this regard, the offending breaching areas are not readily visible when viewed from the public domain.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments, most observers would not find the proposed development offensive, jarring or unsympathetic as seen from adjoining properties or the street. The proposed development is compatible with other development in the visual catchment of the site, and the character of the wider locality.

The breach does not raise any adverse amenity impacts with regard to views, privacy or solar access. The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- *The proposal promotes the orderly and economic use and development of land (1.3(c)).*
- *Approval of the variation would promote good design and amenity of the built environment (1.3(g)).*
- *The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (1.3(h)).*

Overall, there are sufficient environmental planning grounds to justify contravening the development standard.

Council concurs with the environmental planning grounds advanced by the applicant to justify the contravention to clause 4.3 of the WLEP. In particular, Council agrees that:

- The existing ground contours of the site have been distorted by previous excavation on the site, which in turn has resulted in the non-compliance. When extrapolating the ground levels around the existing building footprint, in accordance with the NSW Land and Environment Court Case of *Bettar v Council of City of Sydney [2014] NSWLEC 1070*, the maximum building height would be 8.3m, thereby compliant with the height standard.
- The development will present to the street with a height of 6.8m and a two storey built form, which corresponds with established development on Duke Street.
- The elements of the building that exceed the 8.5m height plane will not give rise to adverse residential amenity impacts, specifically with regard to visual amenity, solar access, view sharing and privacy.

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

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

Conclusion

As demonstrated above, the proposed development satisfies the relevant considerations under clause 4.6 of the WLEP.

As the extent of the height variation exceeds 10%, the application is reported to the DDP for determination.

6.4 Development on sloping land

The site is located within 'Area B' on the WLEP Landslip Risk Map. Hence, clause 6.4 of the WLEP is applicable.

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 Preliminary 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:

As noted earlier within this report, stormwater will be conveyed into the existing approved system. Conditions are recommended to ensure this. As such, the development will not cause detrimental impacts as a result of stormwater discharge from the development site.

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

Comment:

The development is for a first floor addition to the existing dwelling house and will not affect existing subsurface flow conditions.

Based on the above assessment, the development satisfies the relevant considerations under clause 6.4 of the WLEP.

Warringah Development Control PlanBuilt Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	8.43m	17.08%	No
B3 Side Boundary Envelope	4m x 45 degrees (north)	Outside Envelope	12.34%	No
	4m x 45 degrees (south)	Within Envelope	-	Yes
B5 Side Boundary Setbacks	0.9m (north)	2.1m - 3.73m	-	Yes
	0.9m (south)	4.01m - 5.65m	-	Yes
B7 Front Boundary Setbacks	6.5m	7.08m	-	Yes
B9 Rear Boundary Setbacks	6m	24.85m	-	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	no change	N/A	N/A

Note: The maximum wall height has been calculated in accordance with the NSW Land and Environment Court Case of *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582*, whereby the 'existing ground level' is taken to be the excavated level below the pre-existing natural ground levels of the site.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of Non-compliance

The maximum wall height of the development, when measured from the underside of the ceiling on the upper floor to the excavated ground level, is 8.43m. This does not comply with the numeric requirement of 7.2m.

Merit Consideration

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

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

Comment:

As discussed earlier in this report, the development will present as a compliant two storey dwelling house when observed from Duke Street. The upper floor addition is also sufficiently articulated and separated approximately 23m from the nearby Public Reserve, which is a sufficient distance to minimise the visual impact of the development as perceived from the reserve.

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

Comment:

The development is located well below the established tree canopy.

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

Comment:

As discussed earlier within this report, the development will not obstruct any significant view corridors to and from public and private properties.

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

Comment:

The upper floor addition is sufficiently articulated and setback from the side boundaries to negate unreasonable visual impacts when observed from adjoining properties. The adjoining property to the south (12A Duke Street) will also receive the required 3 hours of sunlight to the private open space and the wall height non-compliance will not give rise to any adverse privacy impacts. As such, the development reasonably minimises impacts to adjoining properties, notwithstanding the wall height technical non-compliance.

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

Comment:

The upper floor is stepped back from the lower floors to ensure the building height sufficiently steps down in height with the slope of the land.

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

Comment:

The partial hipped / gable roof form is a suitable design for the development.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the objectives of section B1 of the WDCP.

Therefore, flexibility has been afforded to the numerical wall height control, consistent with section 4.15(3A)(b) of the EP&A Act.

B3 Side Boundary Envelope

Description of Non-compliance

The control requires development to be located within a prescribed side building envelope that is determined by projecting planes at 45 degrees from a height of 4m above the existing ground level at side boundaries.

The upper floor addition includes a partial breach to the side building envelope control, occurring for a horizontal distance of 2.46m to a maximum height of 0.99m (see **Figure 2**).

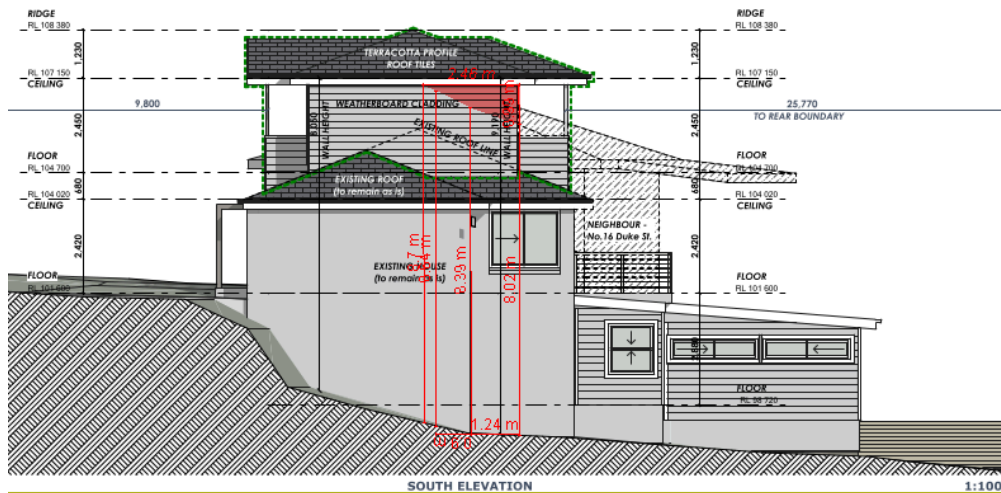


Figure 2: Side building envelope breach on southern elevation

Merit Consideration

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

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

Comment:

The existing streetscape character is defined by detached low density residential development that presents to Duke Street with either a single storey or two storey built form. The development will remain consistent with the height and scale of surrounding development, noting that the development will present as a two storey dwelling house to Duke Avenue. The non-compliance to the envelope control is largely attributed to the sloping topography that falls steeply away from the street and the non-compliance is located at the rear of the southern elevation and will not be apparent when observed from Duke Street.

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

Comment:

As detailed earlier within this report, the development will not result in adverse residential amenity impacts, specifically with regards to visual outlook, privacy and solar access.

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

Comment:

The upper floor addition is stepped back from the lower floors to ensure the built form steps down in height with the slope of the land.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the objectives of section B3 of the WDCP.

Therefore, flexibility has been afforded to the numerical side building envelope control, consistent with section 4.15(3A)(b) of the EP&A Act.

D8 Privacy

The proposed upper floor addition includes two small balconies on the front and rear elevations with respective areas of 4.1sqm and 4.8sqm.

The privacy impacts are considered to be reasonable for the following reasons:

- The balconies are significantly setback from the side boundaries to alleviate direct overlooking into adjoining properties.
- The balconies are narrow in width and area and are not conducive for accommodating large groups of people, thereby mitigating adverse acoustical privacy impacts.
- The balconies adjoin a master bedroom, which will receive lower volumes of use when compared to the living areas on the ground floor. As such, the balconies are not likely to be frequently used.

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 \$3,315 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$331,500.

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

PLANNING CONCLUSION

The proposed development involves alterations and additions to an existing dwelling house, largely to provide an upper floor addition.

The proposed development involves an 11.76% variation to clause 4.3 height of buildings of the WLEP. The applicant's written request submitted under clause 4.6 of the WLEP has adequately justified that compliance with clause 4.3 is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to contravene the development standard.

The partial variations to the WDCP wall height and side building envelope controls have been

assessed on merit and are deemed to be acceptable due to previous excavation on the site and the topography of the land that falls away steeply to the south-eastern rear corner of the site. These non-compliances do not preclude the development from achieving the objectives of the WDCP built form controls.

The application was publicly notified to surrounding properties for 14 days and no submissions were received.

It is recommended that the DDP **approve** the application, subject to the recommended conditions attached to this report.

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

RECOMMENDATION

That Northern Beaches Council as the consent authority permits a contravention of clause 4.3 height of buildings development standard pursuant to clause 4.6 of the WLEP 2011 as the applicant’s written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2024/0661 for Alterations and additions to a dwelling house on land at Lot 11 DP 515369, 14 Duke Street, FORESTVILLE, 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
Drawing 3	N/A	Site Plan	Your Style	16 May 2024
Drawing 6	N/A	Lower Level Plan	Your Style	16 May 2024
Drawing 7	N/A	Ground Floor Plan	Your Style	16 May 2024

Drawing 8	N/A	First Floor Plan	Your Style	16 May 2024
Drawing 9	N/A	Elevations	Your Style	16 May 2024
Drawing 10	N/A	Elevations	Your Style	16 May 2024
Drawing 11	N/A	Sections	Your Style	16 May 2024
Drawing 12	N/A	Sections	Your Style	16 May 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate	A1747843	Your Style Designer Home Additions	16 May 2024
Waste Management Plan	N/A	N/A	N/A
Preliminary Geotechnical Assessment	AG 24121	Ascent Geo	12 April 2024

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

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

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

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	not dated

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

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

3. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon

- plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- (i) showing the name, address and telephone number of the Principal Certifier for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.
- Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

4. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
- 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday,
 - No work on Sundays and Public Holidays.
- Demolition and excavation works are restricted to:
- 8.00 am to 5.00 pm Monday to Friday only.
- (Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).
- (b) Construction certificate plans are to be in accordance with all finished levels identified on approved plans. Notes attached to plans indicating tolerances to levels are not approved.
- (c) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (d) At all times after the submission of the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (e) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (f) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (g) Prior to the release of the Construction Certificate, payment of the following is required:
- i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
 - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
 - iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The

amount payable is subject to indexation at the time of payment.

- (h) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (i) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (j) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (k) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (l) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (m) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (n) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (o) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

5. **Policy Controls**

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$3,315.00 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 \$331,500.00.

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

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

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

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

6. **Security Bond**

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

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

All bonds and fees shall be deposited with Council prior to Construction Certificate or

demolition work commencing, and details demonstrating payment are to be submitted to the Certifier prior to the issue of the Construction Certificate.

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

7. 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.

8. 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.

DURING BUILDING WORK

9. 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.

10. 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.

11. **Survey Certificate**

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

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

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

12. **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.

13. **Tree 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
 - 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 or Arboricultural Impact Assessment,
 - ii) existing ground levels shall be maintained within the tree protection zone of tree with minimum AQF Level 5 in arboriculture,
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without Level 5 in arboriculture,
 - iv) no excavated material, building material storage, site facilities, nor landscape or other vegetation required to be retained,
 - v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by arboriculture on site,
 - vi) excavation for stormwater lines and all other utility services is not permitted without Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including a
 - vii) should either or all of v) or vi) occur during site establishment and construction arboriculture shall provide recommendations for tree protection measures. Details submitted by the Arborist/Project Arborist to the Principal Certifier,
 - viii) any temporary access to, or location of scaffolding within the tree protection zone construction works is to be undertaken using the protection measures specified development sites,
 - ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development 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 Pruning of amenity trees,
- xi) the tree protection measures specified in this clause must: i) be in place before condition during the construction period, and iii) remain in place for the duration

The Principal Certifier must ensure that:

- c) The arboricultural works listed in a) and b) are undertaken and certified by an Arborist/F development sites, and any recommendations of an approved Arboricultural Impact As:

Reason: Tree and vegetation protection.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

14. Geotechnical Certification Prior to Occupation Certificate

A Geotechnical Engineer or Engineering Geologist is to provide written confirmation that they have inspected the site during construction or reviewed information relating to the construction and that they are satisfied that development referred to in the development consent has been constructed in accordance with the intent of the Geotechnical Report referenced in Condition 1 of this consent.

Written certification is to be provided to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

15. 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.

Note: The following Standards and Codes applied at the time of determination:

- (a) Australian/New Zealand Standard **AS/NZS 3500.3** - 2003 - Plumbing and drainage - Stormwater drainage
- (b) Australian/New Zealand Standard **AS/NZS 3500.3** - 2003/Amdt 1 - 2006 - Plumbing and drainage - Stormwater drainage
- (c) National Plumbing and Drainage Code.

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

16. 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.

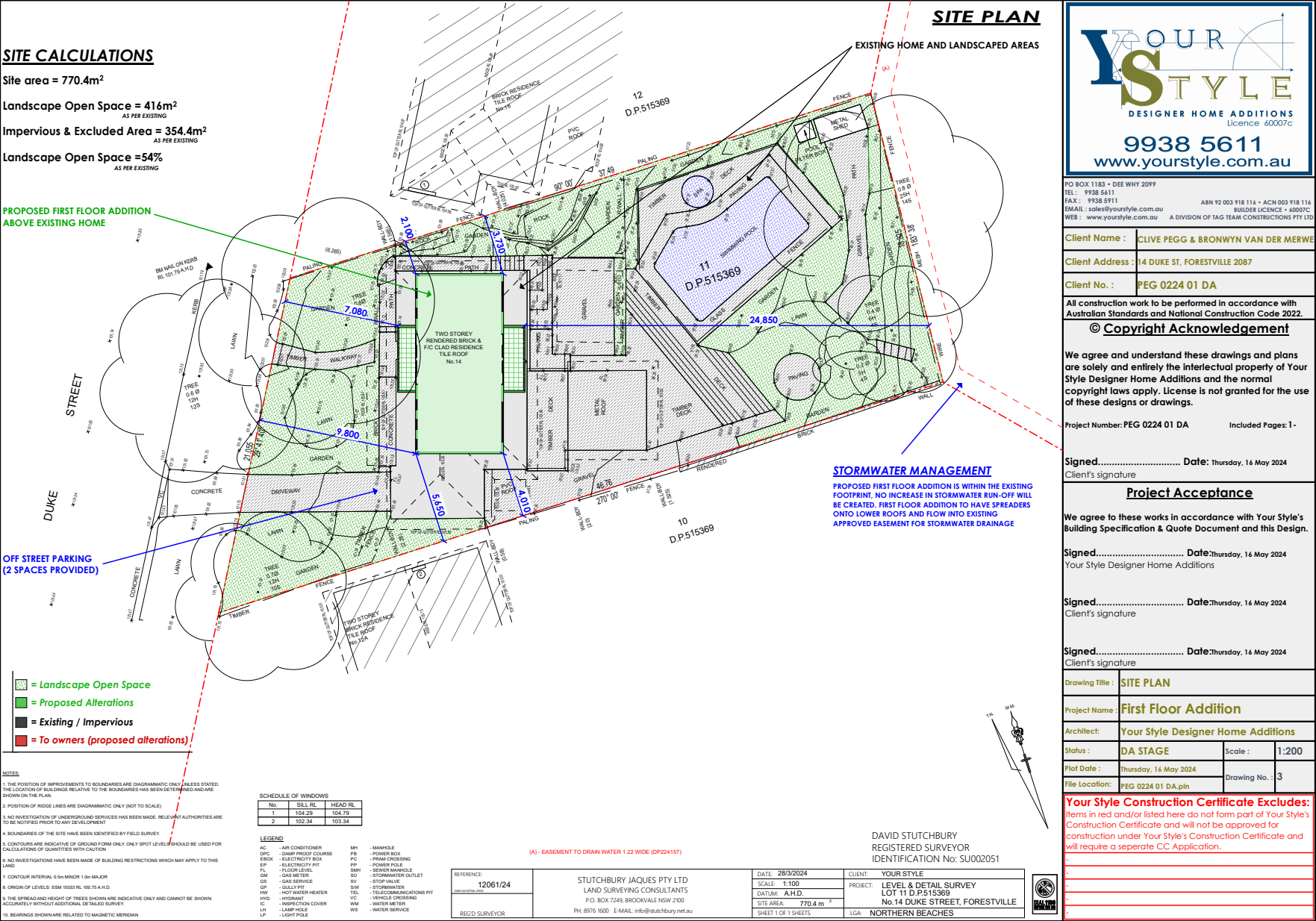
Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure bushland management.

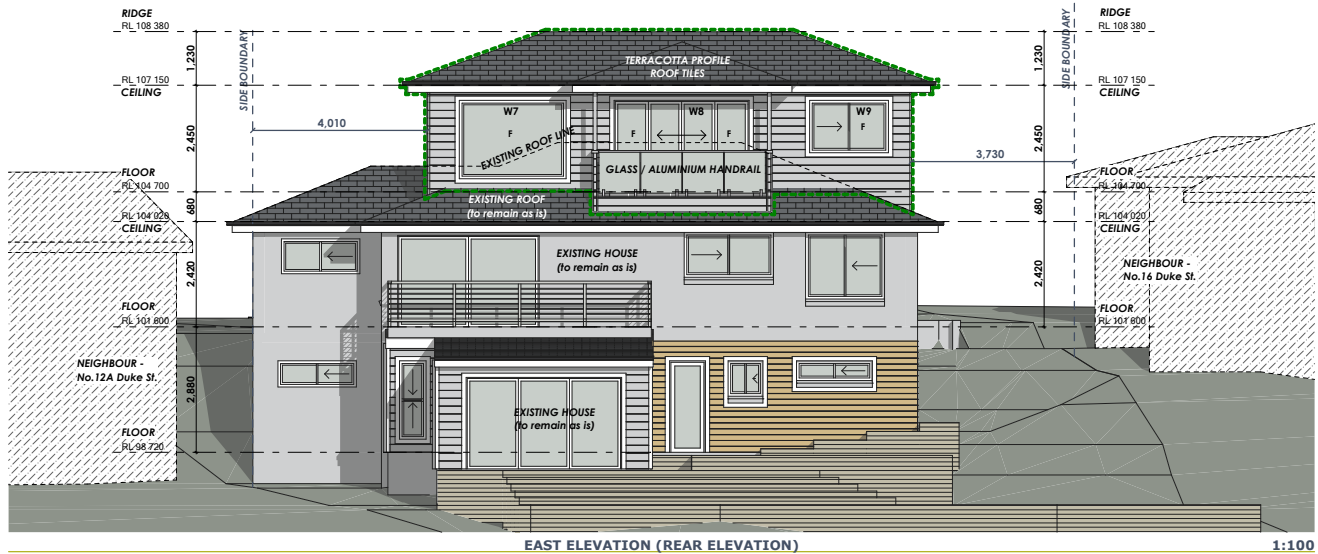
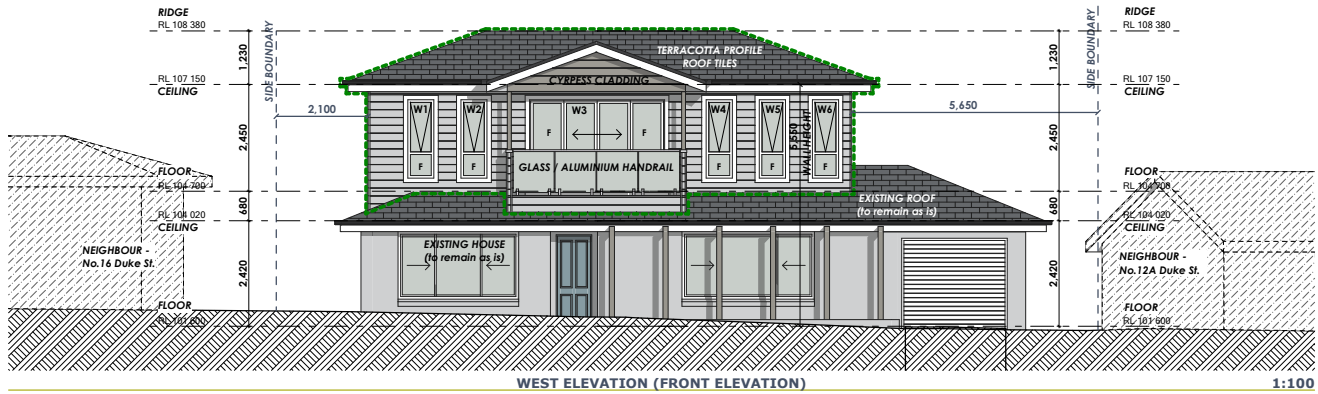
17. **Waste Management Confirmation**

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.



ELEVATIONS (EAST & WEST)



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A DIVISION OF TAG TEAM CONSTRUCTIONS PTY LTD

Client Name : CLIVE PEGG & BRONWYN VAN DER MERWE

Client Address : 14 DUKE ST, FORESTVILLE 2087

Client No. : PEG 0224 01 DA

All construction work to be performed in accordance with Australian Standards and National Construction Code 2022.

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Project Number: PEG 0224 01 DA Included Pages: 1 -

Signed..... Date: Thursday, 16 May 2024
Client's signature

Project Acceptance

We agree to these works in accordance with Your Style's Building Specification & Quote Document and this Design.

Signed..... Date: Thursday, 16 May 2024
Your Style Designer Home Additions

Signed..... Date: Thursday, 16 May 2024
Client's signature

Signed..... Date: Thursday, 16 May 2024
Client's signature

Drawing Title : ELEVATIONS

Project Name : First Floor Addition

Architect : Your Style Designer Home Additions

Status : DA STAGE

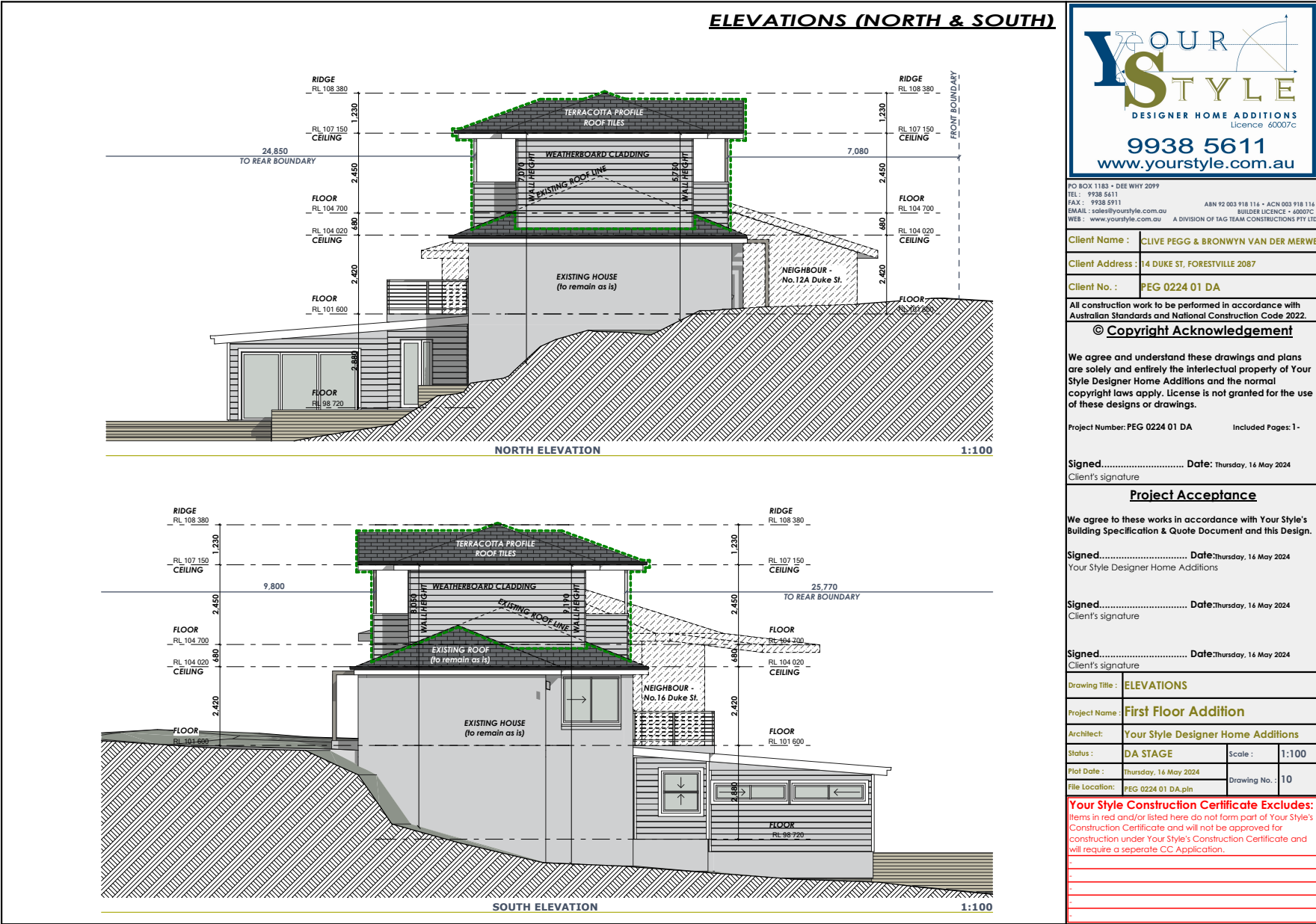
Scale : 1:100

Plot Date : Thursday, 16 May 2024

Drawing No. : 9

File Location : PEG 0224 01 DA.pln

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CLAUSE 4.6 REQUEST TO VARY THE HEIGHT OF BUILDINGS DEVELOPMENT STANDARD

14 Duke Street, Forestville

1. Introduction

This clause 4.6 variation has been prepared having regard to the Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

2. Warringah Local Environmental Plan 2011

2.1. Clause 4.3: Height of Buildings

Pursuant to Clause 4.3 of the LEP the height of any building on the land shall not exceed a height of 8.5 metres. The objectives of this clause are:

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

Building height is defined as follows:

building height (or height of building) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

We note that Council has adopted the interpretation of ground level (existing) established in the matter of *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582* where at paragraphs 73 and 74 O'Neill C found:

73. The existing level of the site at a point beneath the existing building is the level of the land at that point. I agree with Mr McIntyre that the ground level (existing) within the footprint of the existing building is the extant excavated ground level on the site and the proposal exceeds the height of buildings development standard in those locations where the vertical distance, measured from the excavated ground level within the footprint of the existing building, to the highest point of the proposal directly above, is greater than 10.5m. The maximum exceedance is 2.01m at the north-eastern corner of the Level 3 balcony awning.

74. 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) of LEP 2014.

This request seeks a variation to the 8.5m height limit standard. The nature and extent of the variation is 1m which equates to a max building height of 9.5m. The breach represents an 11.76% variation to the development standard. The extent of the breach is shown on the elevation drawing extracts below.

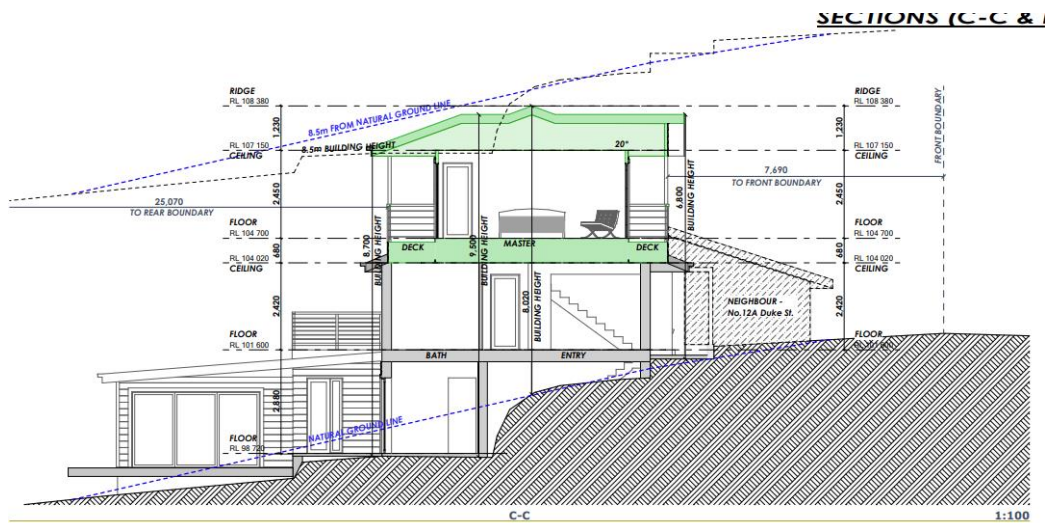


Figure 1: Section showing the extent of the breach

2.2. Clause 4.6 – Exceptions to Development Standards

Clause 4.6 of LEP provides a mechanism by which a development standard can be varied. The objectives of this clause are:

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

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (*Initial Action*) provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant's written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

“In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve

better outcomes for and from development”. If objective (b) was the source of the Commissioner’s test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test.”

The legal consequence of the decision in Initial Action is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Pursuant to clause 4.6(2) consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

This Clause applies to the Clause 4.3 Height of Buildings Development Standard.

Clause 4.6(3) states that consent must not be granted for development that contravenes a development standard unless the consent authority has considered a request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

The proposed development does not comply with the height of buildings provision at 4.3 of LEP which specifies a maximum building height however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

The relevant arguments are set out later in this written request.

3. Relevant Case Law

In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827* continue to apply as follows:

- 17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the*

objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].

18. A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].

19. A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].

20. A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47]. Australian Company Number 121 577 768 Alterations and Additions 10 Aiken Avenue, Queenscliff | Page 40

21. A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.

22. These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 4.3A of WLEP a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and

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

3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.3 and the objectives for development for in the zone?
4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.3 of the LEP?

Clause 4.6 of LEP provides a mechanism by which a development standard can be varied. The objectives of this clause are:

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

Pursuant to clause 4.6(2) 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.

4. Request for variation

4.1. Is clause 4.3 of WLEP a development standard?

The definition of “development standard” at clause 1.4 of the EP&A Act includes a provision of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- (c) *the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*

Clause 4.3 of WLEP prescribes a height provision that seeks to control the height of certain development. Accordingly, clause 4.3 of WLEP is a development standard.

4.2. Clause 4.6(3)(a) – Whether compliance with the development standard is unreasonable or unnecessary

The common approach for an applicant to demonstrate that compliance with a development standard is unreasonable or unnecessary are set out in *Wehbe v Pittwater Council [2007] NSWLEC 827*.

The first option, which has been adopted in this case, is to establish that compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Height of Buildings Standard and Objectives

Pursuant to Clause 4.3 WLEP the height of any building on the land shall not exceed a height of 8.5 metres. The objectives of this clause are:

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

Comment: The height and scale of the development is consistent with surrounding development and with the existing streetscape character. The dwelling is largely 2 storeys and will present as 2 storeys to the street. The height breach is a result of the existing excavated lower level and when extrapolating a height plane from natural surface levels the proposal will sit below the 8.5m height standard.

In this context, consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council (2005) NSW LEC 191*, I am of the opinion that most observers would not find the height of the breaching elements offensive, jarring or unsympathetic in a streetscape context having regard to the built form characteristics of development within the sites visual catchment. Accordingly, it can be reasonably concluded that the proposal is compatible with its surroundings.

The proposal achieves this objective notwithstanding the non-compliant building height elements.

- b) *To minimise visual impact, disruption of views, loss of privacy and loss of solar access,*

Comment: The height breach will not contribute to any unreasonable visual impact with the built form being predominately 2 storeys and 2 storeys when viewed from the street. As mentioned above with regard to *Project Venture Developments v Pittwater Council (2005) NSW LEC 191* the breach would not be seen as offensive or jarring within the context of the streetscape. The first floor additions is also reduced in scale from the ground floor and provides generally spatial separation from adjoining dwellings. The spatial separation and articulated from minimise any visual impact.

No adverse view impacts, privacy or solar access will occur due to the height breach. Shadow diagrams have been provided which demonstrate compliant levels of solar access to the adjoining property. No privacy impacts would result from the area above the 8.5m which comprises only the roof form.

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

Comment: The works are within the existing building footprint and there is no impact to existing trees or vegetation. The dwelling will continue to comfortably sit below the tree canopy.

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

Comment: No visual impacts arise when being viewed from the public domain.

The proposal achieves these objectives notwithstanding the non-compliant building height elements.

4.3. Clause 4.6(4)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

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

24. The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.

The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under

cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].

Sufficient environment planning grounds

Sufficient environmental planning grounds exist to justify the height of buildings variation as outlined below.

Ground 1 – Existing excavation for the lower level the cause of the breach

Sufficient environmental planning grounds exist to justify the height of buildings variation includes the artificially modified topography of the land which makes strict compliance difficult to achieve whilst distributing height and floor space in a contextually appropriate manner on this particular site.

In this regard, I note that the prior disturbed levels of the site within the lower level distorts the height of buildings development standard plane overlaid above the site when compared to the natural undisturbed topography of the land. When the original undisturbed levels of the site are interpolated across the building footprint the proposed development would comply with the 8.5 metre height standard. This is demonstrated on the section drawing provided below which includes both the extrapolated 8.5m from natural undisturbed levels and the current method established by *Merman*.

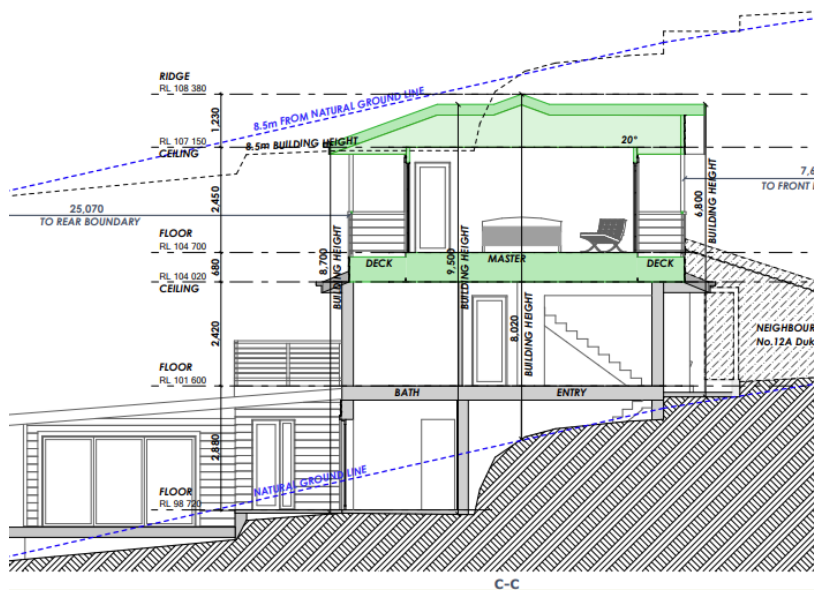


Figure 2: Section showing both the extrapolated 8.5m plane and the 8.5m plane from existing disturbed ground levels

Consistent with the finding of O'Neill C at paragraph 73 of *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582* such circumstance can properly be described as an environmental planning ground within the meaning of cl 4.6(3)(b) of LEP 2014.

Ground 2 – Topography and Existing Development

The sloping topography contributes to the height breach. The existing development has been cut into the slope which has modified the ground levels which now forms existing ground level, as detailed above.

Ground 3 – Design Outcome and Amenity Impacts

The dwelling will present as 2 storey to the street with the front façade reaching a height of 6.8m. In this regard, the offending breaching areas are not readily visible when viewed from the public domain.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments*, most observers would not find the proposed development offensive, jarring or unsympathetic as seen from adjoining properties or the street. The proposed development is compatible with other development in the visual catchment of the site, and the character of the wider locality.

The breach does not raise any adverse amenity impacts with regard to views, privacy or solar access.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposal promotes the orderly and economic use and development of land (1.3(c)).
- Approval of the variation would promote good design and amenity of the built environment (1.3(g)).
- The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (1.3(h)).

Overall, there are sufficient environmental planning grounds to justify contravening the development standard.

It is noted that in Initial Action, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

It is noted that in Initial Action, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

There are sufficient environmental planning grounds to justify contravening the development standard.

5. Conclusion

Pursuant to clause 4.6(4)(a), the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

- a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

As such, I have formed the considered opinion that there is no statutory or environmental planning impediment to the granting of a height of buildings variation in this instance.

William Fleming
Boston Blyth Fleming Pty Ltd
Director
21.3.24

ITEM 3.2	DA2024/0549 - 11 GRAYLIND CLOSE COLLAROY - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL AND STUDIO
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PURPOSE

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

RECOMMENDATION

That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of WLEP 2011 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

THAT Council as the consent authority **approves** Development Consent to DA2024/0549 for Alterations and additions to a dwelling house including a swimming pool and studio on land at Lot 111 DP 588335, 11 Graylind Close COLLAROY, subject to the conditions set out in the Assessment Report.

Reporting manager	Steve Findlay
TRIM file ref	2024/500983
Attachments	1 Assessment Report 2 Site Plan and Elevations 3 Clause 4.6

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/0549
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Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot 111 DP 588335, 11 Graylind Close COLLAROY NSW 2097
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool and studio
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential Warringah LEP2011 - Land zoned C2 Environmental Conservation
Development Permissible:	Yes - Zone R2 Low Density Residential Yes - Zone C2 Environmental Conservation
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Sheralee Patricia Hogan

Application Lodged:	09/05/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	17/05/2024 to 31/05/2024
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 43.5%
Recommendation:	Approval

Estimated Cost of Works:	\$ 1,221,000.00
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EXECUTIVE SUMMARY

This proposal, for alterations and additions to the existing dwelling-house is referred to the Development Determination Panel (DDP) due to the proposal seeking a variation (of greater than 10%) to the Building Height development standard under WLEP 2011.

Specifically, the building height variation relates to the addition of a pergola to an existing terrace at the rear of the dwelling.

No objections were made in response to the notification of the application.

A critical assessment issue of assessment includes building height with the consideration of context of the area, including existing development, character and topography.

An assessment has found the height of the pergola to provide an appropriate response to the steeply sloping site, and the existing the prior excavation of the site within the in the location of the existing dwelling distorts the height of building development standard plane when compared to the topography of the site and area.

The Clause 4.6 variation in relation to building height is well founded and is supported, and the other DCP variations are supported.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal is for alterations and additions to the existing dwelling-house. In detail, this involves the following:

Garage Level

- Partial demolition and excavation of the existing garage
- New lift,
- Storage area and new entry with internal access.

Ground Floor

- Reconfiguration of ground floor access
- Internal alterations

First Floor

- Construction of new pantry and toilet to the first floor along with the replacement of the kitchen and external doors and windows.
- Rear wall extended in stairwell with new higher roof
- New pergola to front

Second Floor

- Alterations to existing bedrooms and bathrooms floor addition over the existing deck, along with new external doors and windows.

External

- New plunge pool and pergola to the existing roof terrace level, along with new landscaping.

Studio

- New loft bedroom proposed to existing Studio.

Amended Plans

Amended plans were provided on 5 June 2024 to change the proposed bedroom above the studio to be a storage space.

Conditions have been imposed to ensure this studio is not used as or converted to a Secondary dwelling.

The amended plans did not require re-notification in accordance with the 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 - 4.3 Height of buildings
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - B7 Front Boundary Setbacks

SITE DESCRIPTION

Property Description:	Lot 111 DP 588335 , 11 Graylind Close COLLAROY NSW 2097
Detailed Site Description:	The subject site consists of an allotment located on the western side of Graylind Close.

The site is irregular in shape with a frontage of approximately 25m along Graylind Close and an approximate depth of 64m. The site has a surveyed area of 1197m².

The site is located within the R2 Low Density residential zone as well as the C2 Environmental Conservation zone (at the rear of the site). The Low Density zone section of the site accommodates a dwelling house.

The site has a large slope from the rear to the front of the site (having a crossfall of approximately 15m across the developed part of the site). To the rear of the site, in the C2 Environmental Conservation zone, a heavily vegetated escarpment exists.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by residential development.

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:

- DA2007/492 approved for Alterations and additions to the existing dwelling including a roof deck approved on 8 November 2007.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in	See discussion on “Notification & Submissions Received” in this report.

Section 4.15 Matters for Consideration	Comments
accordance with the EPA Act or EPA Regs	
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application (prepared by Bush Fire Planning Solutions, dated 5/12/2023). The report stated that the bushfire attack level of the site is “Flame Zone” and BAL-40.

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

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 17/05/2024 to 31/05/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Landscape Officer	Supported (with conditions) The application seeks consent for: Alterations and additions to a dwelling house including a swimming pool and studio. The Landscape Plans prepared by Jamie King are noted. The proposed works are indicated to be over already disturbed land. Existing rock outcrops and cliff-line are indicated to be retained, which is supported. The landscape plans indicate that no trees are to be removed with new planting proposed to integrate the works into the site.

Internal Referral Body	Comments
	No objections are raised with regard to landscape issues subject to conditions. The site is noted to be a sensitive bushland and biodiversity area. I would defer to comment from Council's Bushland and Biodiversity section for issues relating to biodiversity impacts.
NECC (Bushland and Biodiversity)	Supported (with conditions) Council's Biodiversity referrals team have assessed the Development Application for compliance against the following applicable provisions: • Warringah DCP cl. E2 Prescribed Vegetation • Warringah DCP cl. E3 Threatened Species, Populations, Ecological Communities listed under State or Commonwealth Legislation or High Conservation Habitat • Warringah DCP cl. E4 Wildlife Corridors • Warringah DCP cl. E5 Native Vegetation • Warringah DCP cl. E6 Retaining Unique Environmental Features • Planning for Bushfire Protection 2019 The Statement of Environmental Effects (Sheralee Hogan, January 2024) has stated that "The proposal keeps the new work within the existing building footprint and hard surface areas on the site". This is supported by the Landscape Plan (Jamie King Landscape Architect, 26/04/24) and Architectural Designs (Site Specific Designs, 15/04/2024). As such, the proposal does not require the removal of any native prescribed vegetation, nor will it impact upon native fauna habitat. Existing rock outcrops will be retained and protected. No objections from a biodiversity perspective, subject to conditions.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Rural Fire Service - Local Branch - EP&A Act, s4.14	The NSW RFS provided a letter on 17 May 2024 which has been included in the conditions of consent.
Aboriginal Heritage Office	Council's Aboriginal Heritage officer provided the following comments: <i>"Reference is made to the proposed development at the above area and Aboriginal heritage.</i> <i>No sites are recorded in the current development area and the area</i>

External Referral Body	Comments
	<i>has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</i> <i>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</i> <i>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted."</i>

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. A1743792).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.

- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	8.5m	12.2m	43.5%	No (see comments)

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
5.3 Development near zone boundaries	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

4.6 Exceptions to development standards**Description of Non-compliance**

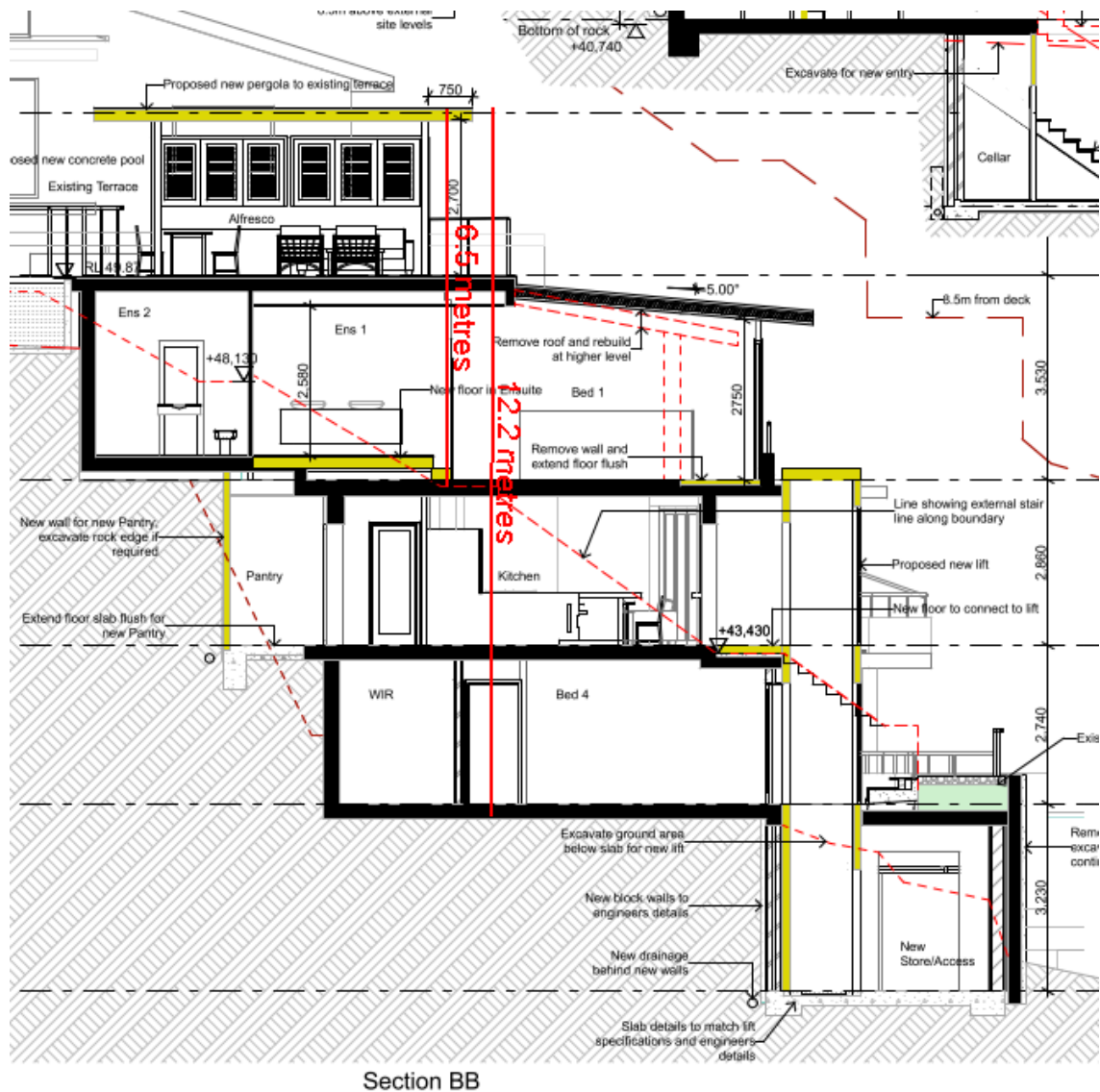
Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	12.2m
Percentage variation to requirement:	43.5%

Assessment of Request to vary a Development Standard

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

A representation of the building height measurement is provided below.

The measurement is taken from the level prior to the historical excavation (6.5m), as well as the measurement of Building Height in accordance with *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582 (12.2m).



Clause 4.6 Exceptions to Development Standards

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

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

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

Comment:

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

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

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

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

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

(b) the concurrence of the Secretary has been obtained.

Clause 4.6 (4)(a)(i) (Justification) Assessment

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3).

There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

Applicants Written Request

The applicants written request argues, in part:

The existing dwelling is situated on a large slope, and contains an existing lower ground floor that is subterranean (below natural ground level). The proposed pergola is to be situated above the subterranean lower ground floor. As such, measuring the building height to the existing excavated level would result in a numerical non-compliance. However, the proposed pergola is less than 8.5m above the natural ground level of the site.

It is agreed that the pergola is less than 8.5m above natural ground level and less than 8.5m above the previous existing ground level prior to the excavation of the site. It is also agreed that the steeply sloping site and historical excavation form the basis behind the non-compliance. This is despite the fact that the pergola presents as a two storey element, that maintains appropriate stepping of the proposal with the topography of the site.

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

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

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

Clause 4.6 (4)(a)(ii) (Public Interest) Assessment

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

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

Comment:

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

Objectives of Development Standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the WLEP 2011 are:

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

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

Comment:

The proposed pergola is lower in height than the maximum height (RL) of the two neighbouring dwellings. The pergola is also open in nature and is well setback from the street. As such, the pergola will not present as an overly dominate or incompatible feature in the street by virtue of its height and scale.

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

Comment:

The proposed pergola is open in nature, well setback from the street, and well separated from neighbouring properties. This ensures that suitable open corridors are maintained for views, and that there will not be addition of building bulk that causes any other unreasonable amenity impact.

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

Comment:

The proposal is for an open structure that is well setback from all boundaries, and generally appears as a second storey element (in considering naturel ground level and setback from the

street). As such, the proposal will not have an adverse impact on scenic quality.

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

Comment:

The proposed pergola is well stepped down from the ground level of the existing vegetated escarpment at the rear, and is well setback from the street. This provides a circumstance in which visual impact is suitably minimised.

Zone Objectives

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

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Comment:

The proposal provides for additions to a dwelling that contributes to providing for housing needs. The bulk and scale of the additions including the pergola are of a suitable extent to ensure the development does not have any adverse impact on the surrounding landscaped setting.

Conclusion on Zone Objectives

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

Exception to Development Standards Conclusion

The submitted written Clause 4.6 variation request is considered to be well founded having regard to the circumstances of the development steeply sloping site, existing excavation, appearance as a two storey element and lack of unreasonable impact, and it is therefore considered appropriate that in this instance, flexibility in the application of the development standard Building height be applied. In this context the proposal meets the Objects of the Environmental Planning and Assessment Act 1979, contained in Section 1.3, having considered the relevant provisions under s.4.15 of the Act. Consequently, the development is considered to be in the public interest, subject to conditions.

Clause 4.6 (4)(b) (Concurrence of the Secretary) Assessment

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

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

Warringah Development Control PlanBuilt Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	Studio: 6.4m Lift to dwelling: 6.4m	N/A	Yes
B3 Side Boundary Envelope	4m	North: Within	N/A	Yes
	4m	South: Outside	N/A	No (see comments)
B5 Side Boundary Setbacks	0.9m	0.9m	N/A	Yes
	0.9m	0.9m	N/A	Yes
B7 Front Boundary Setbacks	6.5m	2.4m (lift) 2.5m-2.5m (pergola) Existing terrace: 2.4m Existing dwelling: 5m-7m	N/A	No (see comments)
B9 Rear Boundary Setbacks	6m	30m	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	72%	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D16 Swimming Pools and Spa Pools	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E3 Threatened species, populations, ecological communities listed under State or Commonwealth legislation, or High Conservation Habitat	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E5 Native Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E10 Landslip Risk	Yes	Yes

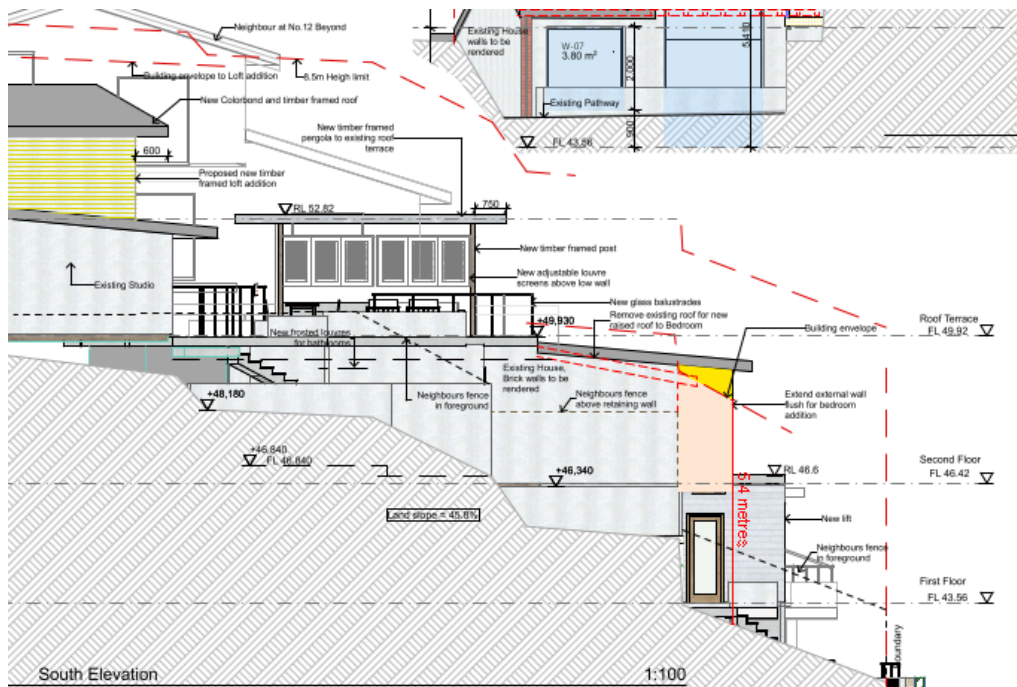
Detailed Assessment

B3 Side Boundary Envelope

Description of Non-compliance

The proposal does not comply with the control for side boundary envelope at the southern elevation.

A representation of the non-compliance with the side boundary envelope at the southern elevation is as follows:



Merit Consideration

With regard to the consideration for a variation, the development remains consistent with the underlying Objectives of the Control as follows:

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

Comment:

The proposed development will not be visually dominant by virtue of its height and scale due to compliant building height, appropriate setbacks, and appropriate articulation of built form. The proposal complies with the front and side setback controls, and is well separated from the street and neighbours. As such, the proposal will not become visually dominant by virtue of its height and bulk.

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

Comment:

The proposal provides a good separation between the proposed works and neighboring living spaces. This ensures there will be no unreasonable impact on solar access or privacy.

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

Comment:

The proposed built form steps-down with the topography of the site, and does not involve any extensive excavation. As such, the dwelling responds appropriately to the topography of the land.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979.

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

B7 Front Boundary Setbacks

Description of Non-compliance

The proposal does not comply with the control for front setback (6.5m). The existing terrace is setback 2.4m, and a new lift and new pergola is proposed in the area of this existing terrace.

Merit Consideration

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

To create a sense of openness.

Comment:

The existing terrace remains open in nature, and the lift and front pergola will not add substantial building bulk. As such, the area terrace area will remain open in nature. This height of the front additions are also well stepped down with topography and compliant with the maximum height allowable under the development standard. As such, an appropriate sense of openness is maintained.

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

Comment:

The proposal generally maintains the existing building footprint and deep soil landscaping. The proposed additions do not provide a height, bulk or scale that would interrupt existing visual continuity or pattern of buildings.

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

Comment:

The maintained articulation and stepping of the building at the frontage, ensures that the presentation of building bulk is appropriately minimised. As such, the visual quality of the streetscape and public space will be sufficiently maintained.

To achieve reasonable view sharing.

Comment:

The proposal maintains suitable open corridors through the front of the site to provide for reasonable view sharing.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the

Environmental Planning and Assessment Act, 1979.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$12,210 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,221,000.

CONCLUSION

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

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

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

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

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

Council is satisfied that the Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify variation of the development standard contained within

Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

PLANNING CONCLUSION

This proposal, for alterations and additions to the existing dwelling-house has been referred to the Development Determination Panel (DDP) due to seeking a variation (of greater than 10%) to the Building Height development standard.

No submissions were made in response to the public notification period.

The critical assessment issues assessment of the building height with the consideration of context of the area, including existing development, character and topography.

The Clause 4.6 variation in relation to building height is well founded and is supported, and the other DCP variations are supported.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment.

The proposal has therefore been recommended for **approval**.

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

RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2024/0549 for Alterations and additions to a dwelling house including a swimming pool and studio on land at Lot 111 DP 588335, 11 Graylind Close, COLLAROY, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA01	B	Site and Roof Plan	Site Specific Designs	5 June 2024
DA02	B	Ground Floor/ Garage Level	Site Specific Designs	5 June 2024
DA03	B	First Floor	Site Specific Designs	5 June 2024
DA04	B	Second Floor	Site Specific Designs	5 June 2024
DA05	B	Roof Terrace	Site Specific Designs	5 June 2024
DA06	B	Section BB	Site Specific Designs	5 June 2024
DA07	B	East (Street) Elevation	Site Specific Designs	5 June 2024
DA08	B	North Elevation	Site Specific Designs	5 June 2024
DA09	B	South/West Elevation	Site Specific Designs	5 June 2024
-	B	External Finishes Schedule	Site Specific Designs	April 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Geotechnical Investigation	-	White Geotechnical Group	7 December 2023
Bushfire Risk Assessment	-	Bushfire Planning Services	5 December 2023
Waste Management Plan	-	Applicant	18-4-2024

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
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Ausgrid	Ausgrid Referral Response	15/05/2024
NSW RFS	RFS Referral Response	17/05/2024

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

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

3. Approved Land Use

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a dwelling, in accordance with the Dictionary of the Warringah Local Environmental Plan 2011.

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

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

4. No Approval for Secondary Dwelling

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

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

5. Prescribed Conditions

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

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:

- A. the name and licence number of the principal contractor, and
- B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

Reason: Legislative requirement.

6. **No 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.

7. **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

8. **Policy Controls**

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$12,210.00 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 \$1,221,000.00.

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.

9. **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

10. **No Clearing of Vegetation**

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

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

Reason: To protect native vegetation.

11. **Stormwater Drainage Disposal**

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

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

When the proposed discharge point for the development in this consent cannot strictly comply with the Water Management for Development Policy, the Applicant must apply to verify the proposed discharge point by gaining Council approval via a Stormwater Drainage Application. Council approval must be provided to the Certifier prior to the issue of a Construction Certificate when a Stormwater Drainage Application is required. The Stormwater Drainage Application form can be found on Council's website.

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

Reason: To ensure satisfactory management of stormwater.

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. **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.

14. Waste Management Plan

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

15. Pre-Construction Dilapidation Report

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

Property: 10A Graylind Close, Collaroy.

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 arising 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

16. Protection of Landscape Features and Sites of Significance

All natural landscape features including natural rock outcrops, natural vegetation, soil and

watercourses are to remain undisturbed during demolition, excavation and construction works except where affected by works detailed on approved plans.

Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office contacted to assess the finds.

Under Section 89a of the NPW Act should the objects be found to be Aboriginal, NSW Biodiversity and Conservation Division, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

Reason: Preservation of significant environmental features.

17. Tree and Vegetation Protection

- a) Existing trees and vegetation shall be retained and protected, including:
 - i) all trees within the site not indicated for removal on the approved Plans,
 - ii) all trees and vegetation located on adjoining properties,
 - iii) all trees and vegetation within the road reserve.
- b) Tree protection shall be undertaken as follows:
 - i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites,
 - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
 - iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
 - v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
 - vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
 - vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,
 - viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,
 - ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree

- on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

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

Reason: Tree and vegetation protection.

18. **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.

19. **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.

20. **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.

21. **Survey Certificate**

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

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

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

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.

23. **Aboriginal Heritage**

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

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

Reason: Aboriginal Heritage Protection.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

24. **Landscape Completion**

Landscape works are to be implemented in accordance with the approved Landscape Plans, inclusive of the following conditions:

- a) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone,
- b) where the property is certified Bush Fire Prone Land, any new planting may be managed in accordance with Planning for Bushfire Protection 2019.

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

Reason: Environmental amenity.

25. **Protection of Habitat Features**

All natural landscape features, including any rock outcrops, native vegetation and/or watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

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

Reason: To protect wildlife habitat.

26. **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.

27. **Post-Construction Dilapidation Report**

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

- Compare the post-construction report with the pre-construction report,
- Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- Should any damage have occurred, suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

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

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

28. **Geotechnical Certification Prior to Occupation Certificate**

A Geotechnical Engineer or Engineering Geologist is to provide written confirmation that they have inspected the site during construction or reviewed information relating to the construction and that they are satisfied that development referred to in the development consent has been constructed in accordance with the intent of the Geotechnical Report referenced in Condition 1 of this consent.

Written certification is to be provided to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

29. **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.

30. **Swimming Pool Requirements**

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

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

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2009;
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools

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

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in

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

(d) A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.

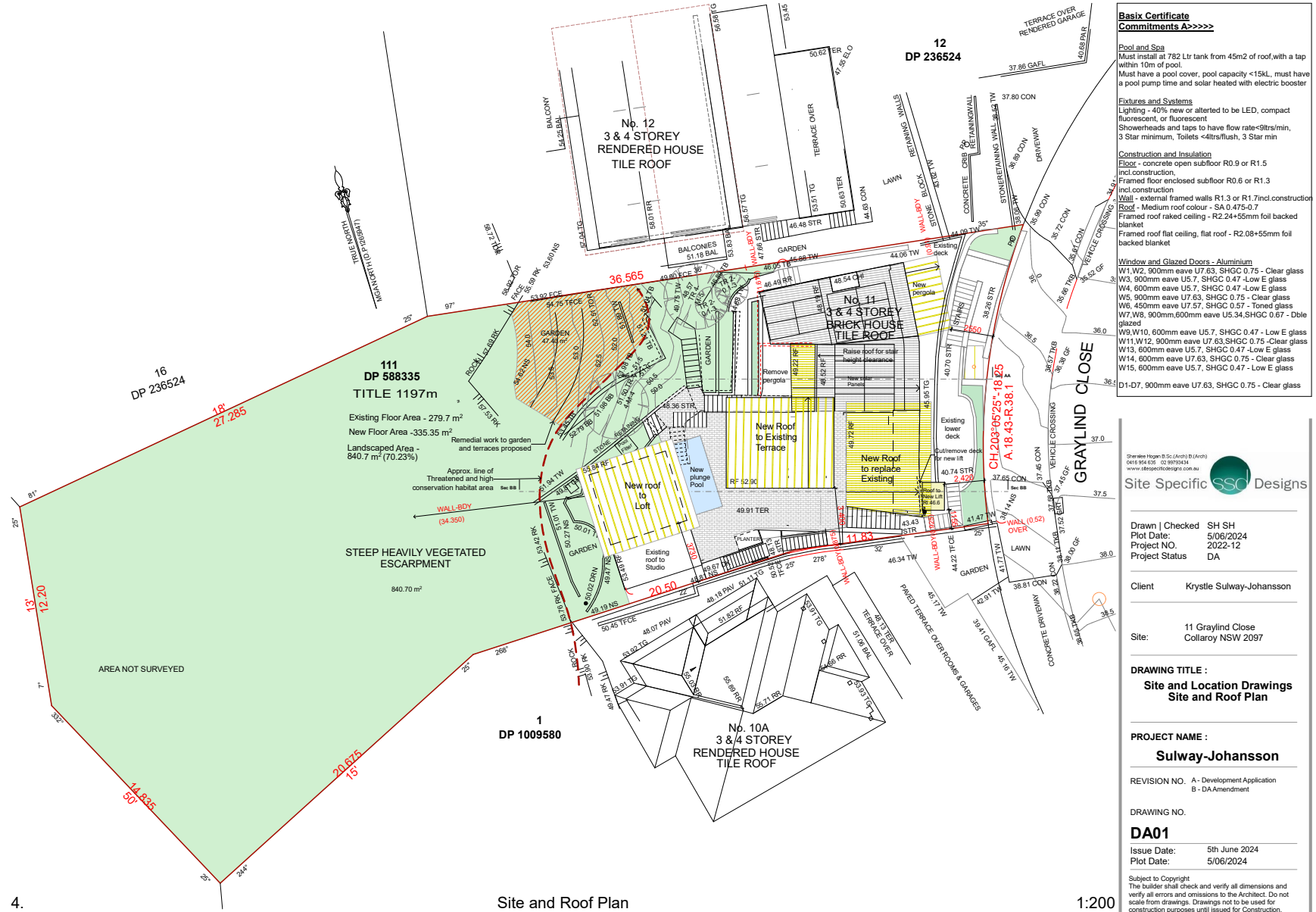
(e) Signage showing resuscitation methods and emergency contact

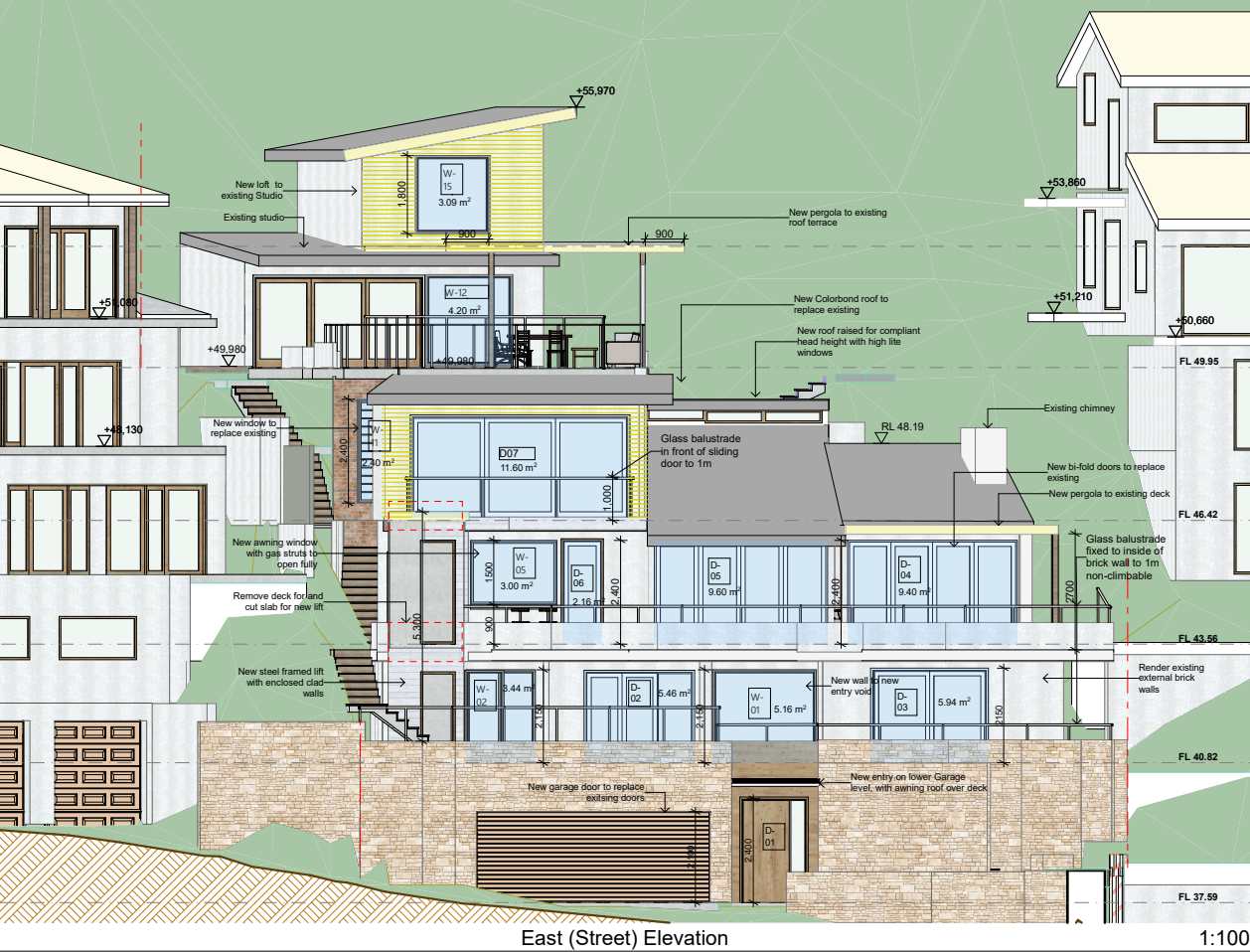
(f) All signage shall be located in a prominent position within the pool area.

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

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

Reason: To protect human life.





Basix Certificate
Commitments A>>>>
Pool and Spa
Must install at 782 Ltr tank from 45m2 of roof, with a tap within 10m of pool.
Must have a pool cover, pool capacity <15kl, must have a pool pump time and solar heated with electric booster
Fixtures and Systems
Lighting - 40% new or altered to be LED, compact fluorescent, or fluorescent
Showerheads and taps to have flow rate <9lts/min, 3 Star minimum, Toilets <4lts/flush, 3 Star min
Construction and Insulation
Floor - concrete open subfloor R0.9 or R1.5
incl. construction,
Framed floor enclosed subfloor R0.6 or R1.3
incl. construction
Wall - external framed walls R1.3 or R1.7 incl. construction
Roof - Medium roof colour - SA 0.475-0.7
Framed roof raked ceiling - R2.24+55mm foil backed blanket
Framed roof flat ceiling, flat roof - R2.08+55mm foil backed blanket
Window and Glazed Doors - Aluminium
W1,W2, 900mm eave U7.63, SHGC 0.75 - Clear glass
W3, 900mm eave U5.7, SHGC 0.47 - Low E glass
W4, 600mm eave U5.7, SHGC 0.47 - Low E glass
W5, 900mm eave U7.63, SHGC 0.75 - Clear glass
W6, 450mm eave U7.57, SHGC 0.57 - Toned glass
W7,W8, 900mm, 600mm eave U5.34, SHGC 0.67 - Dble glazed
W9,W10, 600mm eave U5.7, SHGC 0.47 - Low E glass
W11,W12, 900mm eave U7.63, SHGC 0.75 - Clear glass
W13, 600mm eave U5.7, SHGC 0.47 - Low E glass
W14, 600mm eave U7.63, SHGC 0.75 - Clear glass
W15, 600mm eave U5.7, SHGC 0.47 - Low E glass
D1-D7, 900mm eave U7.63, SHGC 0.75 - Clear glass

Sheree Hoger B.Sc. (Arch) B.(Arch)
0415 954 625 02 3970454
www.sitespecificdesigns.com.au

Site Specific  Designs

Drawn | Checked SH SH
Plot Date: 5/06/2024
Project NO. 2022-12
Project Status DA

Client Krystie Sulway-Johansson

Site: 11 Graylind Close
Collaroy NSW 2097

DRAWING TITLE :
Elevations
East Elevation

PROJECT NAME :
Sulway-Johansson

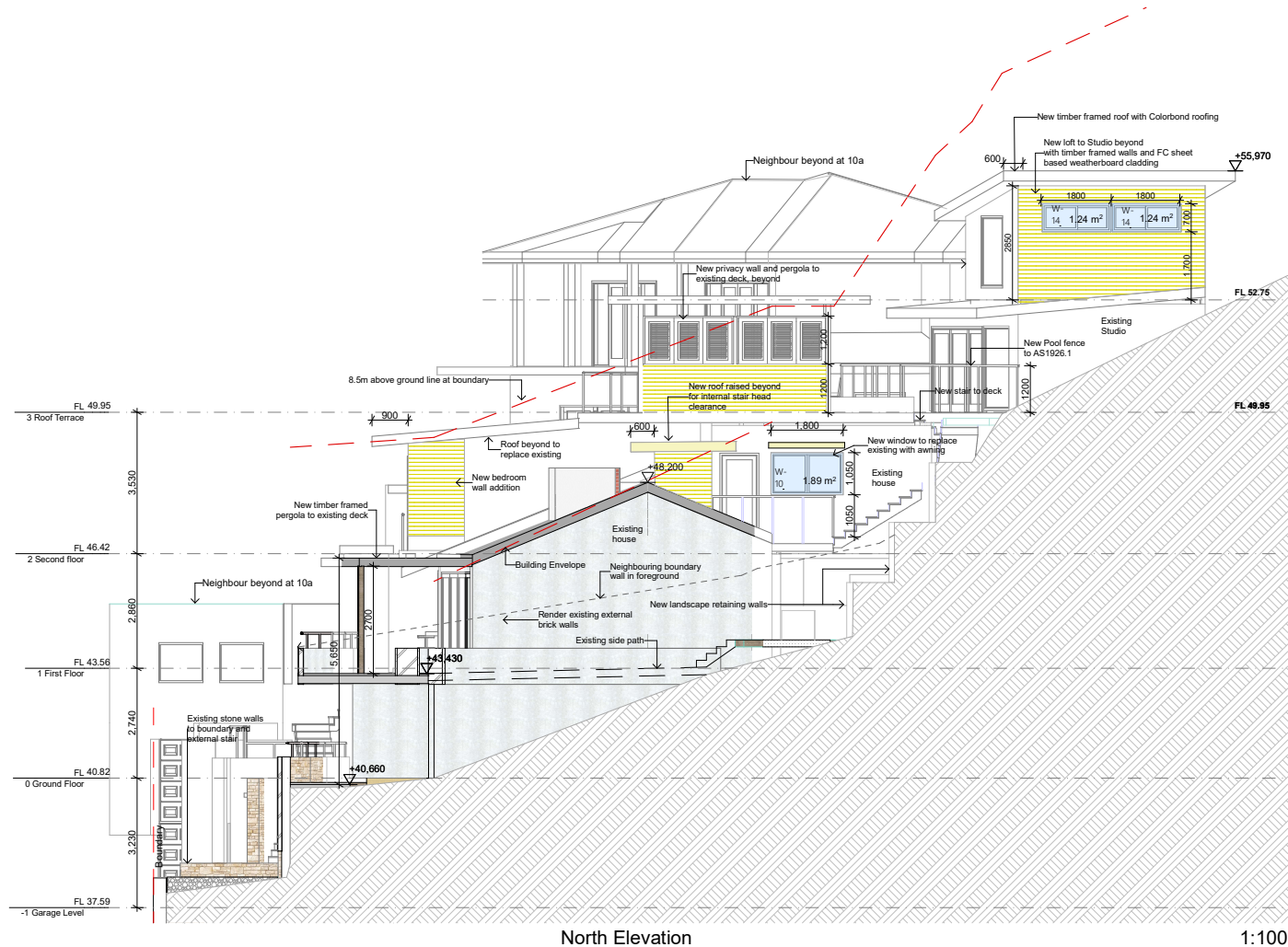
REVISION NO. A - Development Application
B - DA Amendment

DRAWING NO.

DA07

Issue Date: 5th June 2024
Plot Date: 5/06/2024

Subject to Copyright
The builder shall check and verify all dimensions and verify all errors and omissions to the Architect. Do not scale from drawings. Drawings not to be used for construction purposes until issued for Construction.

**Basix Certificate****Commitments A>>>>****Pool and Spa**

Must install at 782 Ltr tank from 45m² of roof, with a tap within 10m of pool.
Must have a pool cover, pool capacity <15kL, must have a pool pump time and solar heated with electric booster

Fixtures and Systems

Lighting - 40% new or altered to be LED, compact fluorescent, or fluorescent
Showerheads and taps to have flow rate <9Ltrs/min, 3 Star minimum. Toilets <4Ltrs/flush, 3 Star min

Construction and Insulation

Floor - concrete open subfloor R0.9 or R1.5
incl. construction,
Framed floor enclosed subfloor R0.6 or R1.3
incl. construction
Wall - external framed walls R1.3 or R1.7 incl. construction
Roof - Medium roof colour - SA 0.475-0.7
Framed roof raked ceiling - R2.24+55mm foil backed blanket
Framed roof flat ceiling, flat roof - R2.08+55mm foil backed blanket

Window and Glazed Doors - Aluminium

W1,W2, 900mm eave U7.63, SHGC 0.75 - Clear glass
W3, 900mm eave U5.7, SHGC 0.47 - Low E glass
W4, 600mm eave U5.7, SHGC 0.47 - Low E glass
W5, 900mm eave U7.63, SHGC 0.75 - Clear glass
W6, 450mm eave U7.57, SHGC 0.57 - Toned glass
W7,W8, 900mm, 600mm eave U5.34, SHGC 0.67 - Dble glazed
W9,W10, 600mm eave U5.7, SHGC 0.47 - Low E glass
W11,W12, 900mm eave U7.63, SHGC 0.75 - Clear glass
W13, 600mm eave U5.7, SHGC 0.47 - Low E glass
W14, 600mm eave U7.63, SHGC 0.75 - Clear glass
W15, 600mm eave U5.7, SHGC 0.47 - Low E glass

D1-D7, 900mm eave U7.63, SHGC 0.75 - Clear glass

Sheree Hogan B.Sc. (Arch) B.(Arch)
0418 954 825 / 02 99704544
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Site Specific  Designs

Drawn | Checked SH SH
Plot Date: 5/06/2024
Project NO. 2022-12
Project Status DA

Client Krystie Sulway-Johansson

Site: 11 Graylind Close
Collaroy NSW 2097

DRAWING TITLE :
Elevations
Elevations

PROJECT NAME :
Sulway-Johansson

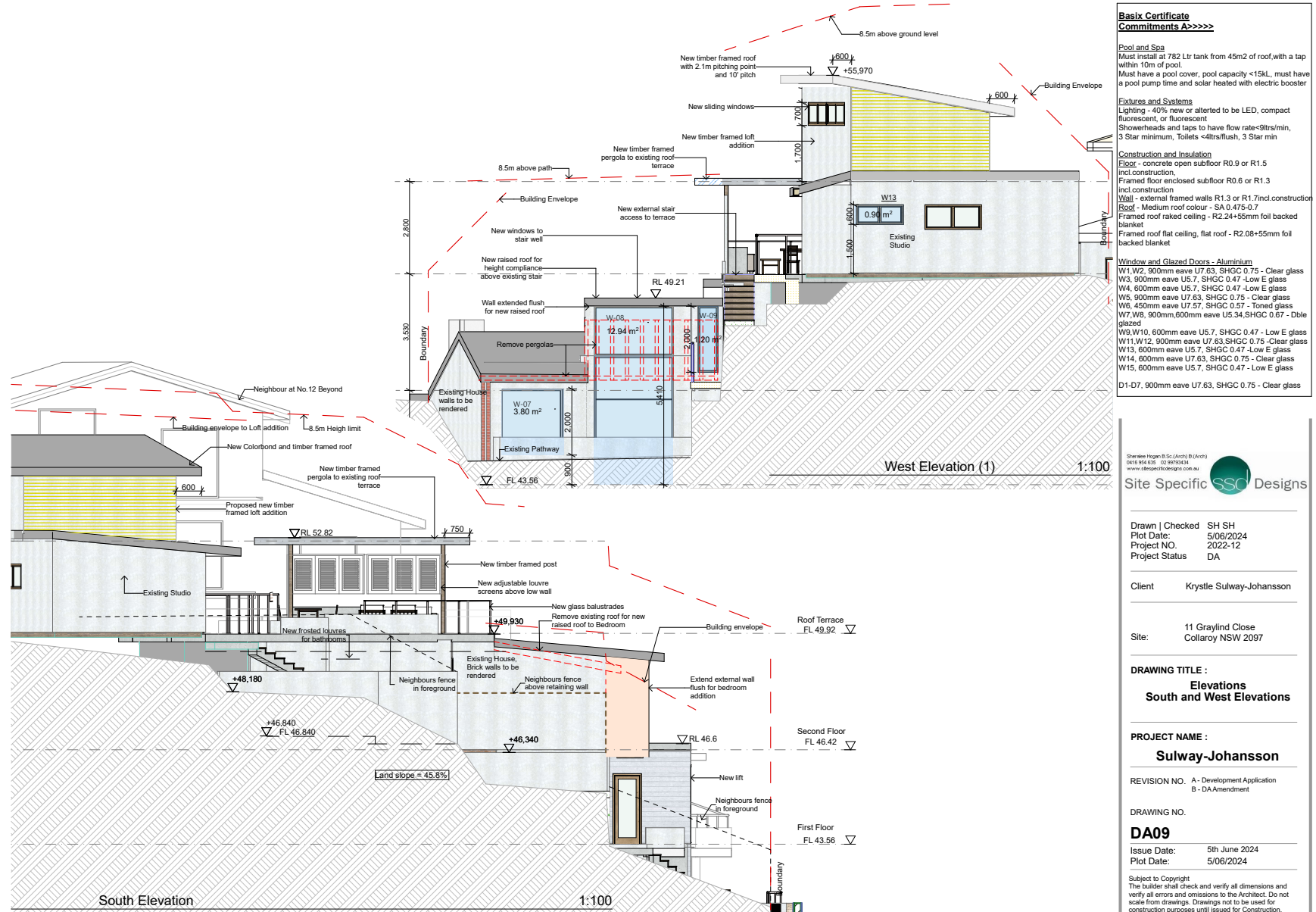
REVISION NO. A - Development Application
B - DA Amendment

DRAWING NO.

DA08

Issue Date: 5th June 2024
Plot Date: 5/06/2024

Subject to Copyright
The builder shall check and verify all dimensions and verify all errors and omissions to the Architect. Do not scale from drawings. Drawings not to be used for construction purposes until issued for Construction.



Northern Beaches Council
275 Pittwater Road,
Dee Why NSW 2099

13th June 2024

CLAUSE 4.6 – VARIATION

11 Graylind Close, Collaroy

Lot 111 DP 588335

Site Description

The site is located on the Western, high side of the street and is zoned R2 Residential and C2 Environmental Conservation.

The block is an unusual shape with a width of 18.43m at the street, and with a generous depth of 63.85, creating a site area of 1197m². It is an extremely steep site with the garage on the front boundary, rising up 3m to the house and another 5m to the rear of the house. The Studio is located 3m above the second floor of the house and the backyard rises 7m within 5m of the back of the studio to a rock edge. The rest of the yard is in the 'Threatened and High Conservation Area' and is steep and inaccessible, although currently does not contain threatened species records on the NSW Bionet wildlife atlas database or vegetation listed as threatened.

The house is positioned on the centre of the site at the front of the property, with a landscaped terraced entry area and access stair to the rear studio along the southern side boundary. There is an existing roof terrace that sits above the house in front of the studio, and this has an existing spa on it.

Proposed Development

Additions and alterations are proposed to the existing 3-4 storey home with the works including:

- Partial demolition and excavation of the existing garage to accommodate a new lift, storage area and new entry with internal access.
- Modification to the ground floor for access to the lift along with internal alterations due to the proposed new lower level entry and internal access.
- Construction of new pantry and toilet to the first floor along with the replacement of the kitchen and external doors and windows.
- Rear wall extended in stairwell with new higher roof to accommodate compliant head height above existing stair.
- Alterations to the second floor including remodelling of the existing bedrooms and bathrooms, floor addition over the existing deck, along with new external doors and windows.
- New plunge pool and pergola to the existing roof terrace level, along with new landscaping.
- New loft proposed to existing Studio.

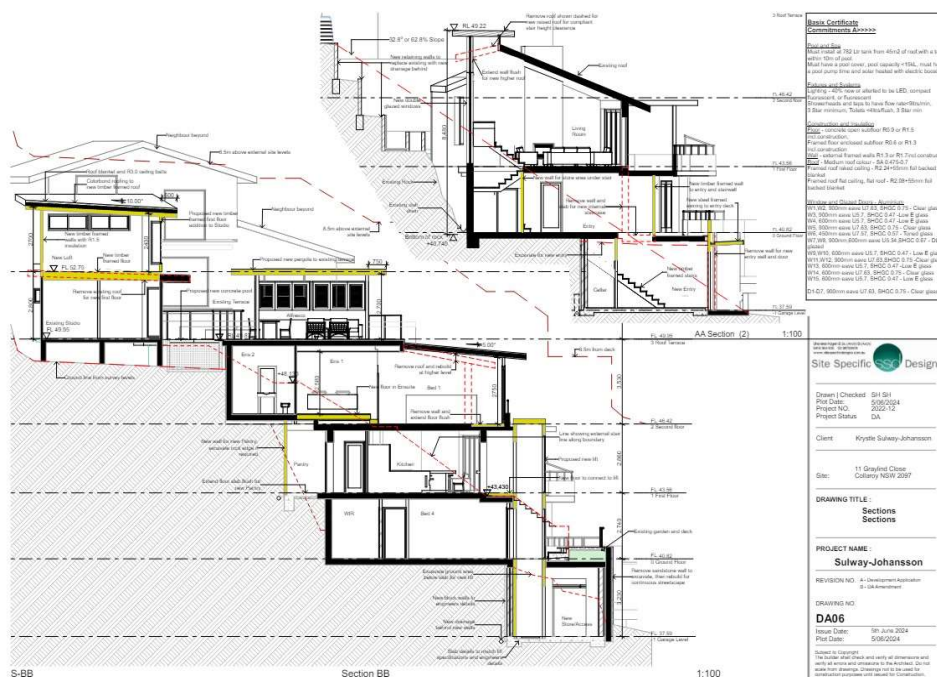
The proposed additions and alterations produce a home that accommodates four Bedrooms, home Office/media room, 4.5 Bathrooms, a Laundry, Kitchen, Living/Dining room and a garage. The existing separate Studio will accommodate a loft, a bathroom and office space.

The proposal creates a refurbished development that is complimentary in bulk and scale to the existing structures on site, whilst enhancing the landscaping to the front and rear of the site, as well as along the side boundaries for privacy.

Existing development and proposed non-compliance

The existing built structure of the house has the garage situated at the natural ground line on the Eastern side of the site facing the street, with a three storey house above that is sub terranean on the side boundary walls. The existing lower ground floor of the house is also sub terranean on the North, West and Southern sides due to the steep 45.8% to 62.8% slope of the site and the main house has a roof terrace level that is 9.1m high above this floor level due to this steep topography.

With such a steeply sloping site, and due to the existing location of the house and terrace, the new proposed pergola on this roof terrace will exceed the height requirement of 8.5m. The pergola is proposed to be located 3.45m from the southern boundary, 7.6m from the northern boundary and 9.1m from the front boundary but at the highest point is 12.1m above this existing excavated lower ground floor. This is a 42% variation for the front 40% of the proposed pergola. However, if you look at the section BB on DA06 and the North elevation DA08 and Southern Elevation DA09, the proposal sits below the maximum 8.5m height above the natural ground line for the bulk of the proposed additions.



CLAUSE 4.6 VARIATION

2

Detailed Assessment

Clause 4.6, Exceptions to Development standards for the variation to Clause 4.3 – Height of Building development standard WLEP 2011.

The prescribed height of Buildings Clause 4.3 of the WLEP 2011 is a Development Standard.

The required height is 8.5m, the proposed is 12.1m, seeking a 42% variation to a numerical performance at 11 Graylind Close, Collaroy.

Using NSW Caselaw established in Winten Property Group Ltd v's North Sydney Council (2001)



Underlying Objectives to Clause 4.3 Height of Buildings;

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

The two adjacent neighbours have an additional floor above the roof terrace where the proposed pergola is to be located. You can see in the photograph above that the proposed new pergola structure will be compatible in height with the neighbouring dwellings.

The neighbouring dwellings are also in a similar situation with the steep terrain, have excavated and stepped developments to accommodate the numerous four to five storey homes. (As seen in the photograph above). Down the street there are large apartment blocks which are even taller in height. The proposal is compatible with the height and scale of surrounding properties.

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

In response the primary views are the east towards the ocean, and due to the steep topography can be seen over multiple levels. As the views are to the East and not across the site, there is no impact to neighbouring views from the proposed new pergola. (refer to the photograph below).

The shadow diagrams submitted show compliance with the requirement of natural daylight to neighbouring dwellings.

The predominant glazed areas also face the front and rear of the dwelling, minimizing any overlooking, and loss of privacy.



Existing Roof Terrace, 11 Graylind Close

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

In response the proposal has located all new built structures over existing hard surface areas, and has no hard works proposed in the sensitive conservation zone at the back of the property.

There has been some weed clearing and erosion damage in the back garden and the landscape works proposed is to remedy this adding new native vegetation and enhancing the scenic quality of Warringah's coastal environment.

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

In response the proposal has excavated under an existing slab for the new lift and store area in the garage to create accessible level access from the street, similar to neighbouring properties. The house steps up the site with terraced gardens and decks, complimenting the neighbouring dwellings within the street, as seen in the photograph on page 3. The proposed height and scale of the pergola and its generous 9.1m street front setback are in keeping with the neighbouring dwellings and with the introduced landscaping will create a humanscale when viewed from the street.

R2 Low Density Development

The proposal is for a four bedroom home, with a home office and associated living spaces which meets the objectives of the low density area. It is proposed to be a single detached dwelling within a landscaped setting which is in keeping with the surrounding developments, and so satisfies the objectives of the zoning.

Underlying Objectives to Clause 4.6 Variation;

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

In response the proposal seeks a 42% variation to the numerical height compliance of 8.5m which is only for a small proportion of the development (less than 10%) and for an open structure being a pergola over an existing terraced deck that forms part of the roof to the home. The pergola is centered and towards the rear of the built structures sitting just in front of the office studio and within a steeply sloping (45.8%) part of the site.

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

In response the existing home has a roof terrace that is rarely used due to its exposure to the elements. This roof terrace represents the only large flat area available to meet the requirements for private open space within the site due to the steep terrain. (see photograph page 6). Having a shade structure on this space will greatly improve the quality of the space and its usability during all seasons. The location of this addition will not impact the amenity of neighbouring dwellings and will not create unreasonable environmental impacts on neighbouring sites.

- (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.*



Backyard 11 Graylind Close

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

In response the site itself slopes more than 45.8% up and away from the street, and has an existing four storey brick and tile home centred on it. It is reasonable to allow for a pergola addition above the deck that forms part of the roof to this dwelling, however due to the existing circumstances of the site and built form, it is unreasonable to require strict compliance with the code for maximum height due to the existing excavated levels of the home.

Conclusion

We request a variation to the development standard in respect to the maximum height as we believe it unreasonable due to the nature of the sloping site and existing dwelling and excavated levels.

The proposal is in keeping with the aims and objectives of the R2 Low Density zoning and C2 Environmental Conservation in Warringah LEP 2011, compatible with surrounding developments, and does not cause an unreasonable impact on views, solar access, or amenity of neighbouring properties.

The pergola roof location creating a new height of 12.1m towards the back of the house footprint is consistent with councils general principles by:

- being an ancillary addition to an existing dwelling
- promotes a building scale and density that is below the height of the trees of the natural environment in the backyard.
 - responds to, reinforces and sensitively relates to the spatial characteristics of the environment being located in the centre away from boundaries.
 - equitable preservation of views and vistas which are not found across the site.
 - A reasonable level of privacy, amenity, and solar access provided within the site and to neighbouring properties
 - responds to the topography and existing landscape features

As the proposal satisfies all the requirements of Clause 4.6 WLEP 2011, we believe the exception to the development standard is reasonable and appropriate in this circumstance.

Sheralee Hogan

Sheralee Hogan B.Sc(Arch)B.(Arch)U.Syd

SITE SPECIFIC DESIGNS

sheralee.ssd@bigpond.com

**ITEM 3.3 DA2024/0381 - 14/22 CENTRAL AVENUE MANLY - CHANGE OF
OPERATING HOURS FOR TENANCY TWO**

PURPOSE

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

RECOMMENDATION

THAT Council as the consent authority **approves** Development Consent to DA2024/0381 for change of operating hours for tenancy two on land at Lot 172 SP 13245, 14 / 22 Central Avenue MANLY, subject to the conditions set out in the Assessment Report.

Reporting manager	Rodney Piggott
TRIM file ref	2024/500947
Attachments	1 Assessment Report 2 Plan of Management

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/0381
----------------------------	-------------

Responsible Officer:	Nick Keeler
Land to be developed (Address):	Lot 172 SP 13245, 14 / 22 Central Avenue MANLY NSW 2095
Proposed Development:	Change of operating hours for tenancy two
Zoning:	Manly LEP2013 - Land zoned E1 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Nasus (NO 1) Pty Ltd

Application Lodged:	11/04/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	18/04/2024 to 02/05/2024
Advertised:	Not Advertised
Submissions Received:	7
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 0.00
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EXECUTIVE SUMMARY

This development application seeks consent for the change of operating hours for tenancy two (Plus Fitness). This involves the change of the approved operating hours under Mod2023/0698 (Monday to Sunday – 5:30am to 9:00pm) to permit 24 hour, 7 day operation of the existing indoor recreation facility.

The application is referred to the Development Determination Panel (DDP) due to seven (7) objections being received.

Concerns raised in the objections predominantly relate to noise impacts upon nearby residences associated with the proposed 24/7 operation and other impacts including safety and security and operational management of the tenancy.

Critical assessment issues included the impact the proposed 24/7 operation of the indoor recreation facility upon nearby residences. An Operational Noise Emission Assessment and Plan of Management have been submitted with several recommendations and operational management details to mitigate unreasonable acoustic impact of the facility, especially during the night. A condition is recommended to prohibit the use of amplified music between 10pm and 6am to ensure such noise does not disrupt residences during the night.

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

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent to change the operating hours of tenancy two (Plus Fitness) in Strata Lot 172 SP 13245 from Monday to Sunday – 5:30am to 9:00pm to 24 hours, 7 days per week.

The proposal does not involve any physical works, change to the existing building envelope or change of the recreation facility (indoor) use approved under DA2023/0597 (as modified).

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Development Control Plan - 3.4.2 Privacy and Security

SITE DESCRIPTION

Property Description:	Lot 172 SP 13245 , 14 / 22 Central Avenue MANLY NSW 2095
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Detailed Site Description:	The subject site consists of strata one (1) allotment located at the ground floor fronting the western side of Central Avenue. The site is irregular in shape with a frontage of 33.9m along Central Avenue and a surveyed area of 572m². The site is located within the E1 Local Centre zone and accommodates a 24 storey mixed use building with residential and commercial tenancies. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by mixed use developments of varying density and architectural style.
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Map:



SITE HISTORY

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

Application **CDC2023/0073** for Works associated to the make good of the existing Australia Post tenancy was approved on 27/01/2023 by a private certifier.

Application **DA2023/0597** for Alterations and Additions to Existing Mixed-Use Development was approved on 19/07/2023 by Council staff.

Application **Mod2023/0698** for Modification of Development Consent DA2023/0597 granted for Alterations and Additions to Existing Mixed-Use Development was approved on 15/03/2024 by Council

staff.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent

Section 4.15 Matters for Consideration	Comments
	authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the 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 18/04/2024 to 02/05/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Alice Helen Glachan	482 Wilson Street ALBURY NSW 2640
Ms Anne Maria Nicholson	610 / 9 - 15 Central Avenue MANLY NSW 2095
Gerald Gregory Richard Santucci	19 Banvard Place CHAPMAN NSW 2611
Mr Nicholas Little	Address Unknown

Name:	Address:
Mrs Samantha Barbara Stow	505 / 9 - 15 Central Avenue MANLY NSW 2095
Mr Gregory Ernest Brown	8 Macquarie Road PYMBLE NSW 2073
DM Planning Pty Ltd	33 Robertson Road NORTH CURL CURL NSW 2099

The following issues were raised in the submissions:

- Noise impacts
- Safety and security
- Operational management

The above issues are addressed as follows:

- **Noise impacts**

The submissions raised concerns that the proposed 24/7 operation of the gym will cause unreasonable noise impacts upon nearby residences.

Comment:

The applicant has provided an Operational Noise Emission Assessment and Plan of Management which includes several recommendations to mitigate acoustic impacts. Council's Environmental Health team has reviewed the proposal and does not raise objection, subject to conditions including prohibiting the use of amplified music between 10pm and 6am and requiring the recommendations of the Operational Noise Emission Assessment and Plan of Management to be implemented during operation. Refer to detailed assessment under Part 3.4.2 of MDCP.

- **Safety and security**

The submissions raised concerns that the proposed 24 hour operation may present a safety risk for staff and customers of the gym.

Comment:

Appropriate security measures are to be implemented to protect the safety and security of staff, patrons and the community. Refer to detailed assessment under Part 3.4.2 of MDCP.

- **Operational management**

The submissions raised concerns that operational details to facilitate the 24 hour operation have not been provided.

Comment:

The applicant has provided a Plan of Management outlining the operational details of the gym, including access and security, noise management, emergency management, property and

waste management, complaint handling and dispute resolution. Conditions are recommended to ensure compliance with the Plan of Management.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<i>Supported without conditions</i> The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.
Environmental Health (Industrial)	<i>Supported with conditions</i> This application is seeking consent to operate the gym facility 24hours 7 days a week. Residential units are located at 9-15 Central Avenue, Manly. Entry into the gym will be from Central Avenue. Environmental Health does not support the playing of music 24hours a day 7 days a week from the Gym. The playing of background music from the gym is to be restricted from 6:00am - 10:00pm 7 days a week. The behaviour of patrons in regards to talking, shouting, etc cannot be controlled by conditions of consent however a plan of management will need to be prepared by the operator. All entry and exit doors to the premises must be fitted with automatic closing mechanisms. Environmental Health recommends approval subject to conditions. UPDATED REFERRAL COMMENTS A Plan of Management dated June 2024 has been prepared and submitted to Council for review. Environmental Health does not support the use of the gym playing background music between the hours of 10:00pm and 6:00am. The Plan of Management is to be amended to elaborate on the times of use of 'background music' provided by the gym. The following sentence is stated without details on the times of use. <i>The gym will provide low level background music played through speakers.</i> The Plan of Management can be updated to allow patrons to use headphones if required but not speakers.

Internal Referral Body	Comments
	The Plan of Management is to be amended to include: <i>All doors to the Gym will be fitted with self-closing mechanisms and will remain closed while the gym is in operation except to allow the entry and exit of patrons and staff.</i> The Plan of Management states: <i>There is a service known as 'Classes on Demand' where preloaded fitness classes (including yoga, spin and general fitness) are provided on a hard drive and shown on a screen for patrons to follow. There are no set times and patrons can access the classes at any time.</i> How is noise volume from the tv screen going to be managed if this is allowed to be accessed 24hours, especially during the night-time period? Will the classes be played out through speakers onsite? Who has access to the volume? Environmental Health recommends refusal at this time. UPDATED COMMENTS An amended plan of management has been provided. No mention has been made to the Classes on Demand as in previous Plan of Management. Environmental recommends approval subject to conditions.

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)

Nil

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

The development application does not involve any physical works or changes to the existing building envelope. As such, the principal development standards do not apply to the development.

Manly Development Control Plan

Built Form Controls

The development application does not involve any physical works or changes to the existing building envelope. As such, the MDCP built form controls do not apply to the development.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
4.2.5 Manly Town Centre and Surrounds	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

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:

The applicant has provided an Operational Noise Emission Assessment and Plan of Management which includes several recommendations to mitigate acoustic impacts. An average of three patrons are expected to use the gym between the hours of 10pm and 5am per day. As the expected patronage during these hours is very low, unreasonable noise impacts are not expected.

Council's Environmental Health team has reviewed the proposal and does not raise objection, subject to conditions including prohibiting the use of amplified music between 10pm and 6am and requiring the recommendations of the Operational Noise Emission Assessment and Plan of Management to be implemented during operation. A condition is also recommended to prohibit group classes and

organised training between 9:30pm and 6am which will reduce large group patronage during the night.

In conjunction with the low nighttime patronage, implementation of the recommendations of the Operational Noise Emission Assessment and Plan of Management, and consent conditions, the overall acoustic impact of the proposal upon nearby residences is considered to be acceptable in the context of the site and surrounds.

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 does not alter the existing built form and will not impact upon existing access to light and air. No views will be affected.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The gym will be staffed between 8:30am and 10pm and unstaffed all other hours. The gym can only be accessed using a personal access card issued to staff and members. All non-members are not able to access the gym. The proposal implements several security measures, such as CCTV, 24/7 on-call security and duress alarms which will assist in enhancing neighbourhood security and the security of staff and patrons.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;

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

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

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

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

PLANNING CONCLUSION

This proposal, for the change of operating hours for tenancy two has been referred to the Development Determination Panel (DDP) due to seven (7) objections being received.

The concerns raised in the objections have been addressed and resolved by conditions requiring implementation of the Operational Noise Emission Assessment recommendations and to ensure the operation of the tenancy is in accordance with the submitted Plan of Management.

The critical assessment issues have been addressed as outlined above.

Overall, the development will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.

REASON FOR DETERMINATION

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2024/0381 for Change of operating hours for tenancy two on land at Lot 172 SP 13245, 14 / 22 Central Avenue, MANLY, subject to the conditions printed below:

Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all

conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
A002	F	Proposed Tenancy Plan	Khadijah Tahir	07/02/2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Operational Noise Emission Assessment	6198R002.LB.231208	Acoustic Dynamics	13/12/2023
Plan of Management	1.1	Plus Fitness	July 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. Operation of consent in conjunction with Development Consent DA2023/0597

This development consent operates in conjunction with the use of "Tenancy 2" granted under development consent DA2023/0597 (as modified).

Reason: To ensure the operation of this consent is in conjunction with the existing land use approval at the subject site.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

3. Acoustic Certification

An Acoustic Consultant is to provide written confirmation that they have inspected the site or reviewed information relating to the development and that they are satisfied that development referred to in the development consent can operate in accordance with the intent of the Acoustic Report referenced in Condition 1 of this consent.

Written certification is to be provided to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: To ensure acoustic impact is mitigated appropriately.

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

4. **Acoustic Requirements**

Compliance with the recommendations within the Acoustic Report prepared by Acoustic Dynamics dated 13 December 2023 and any additional requirements at OC review stage.

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

5. **Hours of Operation**

The hours of operation of Tenancy 2, as identified on the approved plans, are to be 24 hours, 7 days per week.

Reason: To control business operating hours.

6. **Plan of Management**

Compliance with the Plan of Management dated July 2024 at all times during operations.

Reason: To ensure acoustic compliance in an operational situation.

7. **Music Noise**

The use of music and speakers from within the gym is limited to operate from 6:00am - 10:00pm only seven (7) days a week.

Reason: To ensure noise amenity of the area for neighboring residential occupants.

8. **Classes/Organised Training**

Group classes and organised training is not permitted between 9:30pm and 6am.

Reason: To limit amenity impacts upon nearby residences during the night.

PLAN OF MANAGEMENT

Plus Fitness 24/7 Fitness Studio

Tenancy 2 - 14/22 Central Avenue, Manly NSW 2095

July 2024

Version: 1.1

**PLUS
FITNESS**

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1 Introduction

This Plan of Management (POM) has been prepared by Plus Fitness Pty Ltd to accompany a development application for a Plus Fitness 24/7 fitness studio at 14/22 Central Avenue, Manly.

1.1 Purpose of this Plan

The purpose of this POM is to describe the operational, security, parking and management details of the business and outline measures that will be taken to minimise crime, antisocial behavior and impacts on surrounding properties.

Details in this plan include the type and number of staff that will be employed on the premises at any one time, security and access arrangements as well as noise and patron management.

1.2 Aims and Objectives of this Plan

The main aim and objective of the PoM is to provide a safe and friendly environment for patrons and staff by providing an environmentally friendly premises and preventing illegal or undesirable activity within and around the fitness studio.

1.3 Business Operation Overview

A Plus Fitness 24/7 Fitness Studio is designed to operate differently to a traditional gym whereby it does not offer services such as group fitness classes, child minding, pool facilities, steam or sauna rooms or any other services typically associated with a traditional gym.

Using state of the art security systems, members are able to come and go whenever they please. Members simply let themselves in with a Personal Access Card with the peace of mind that outside of standard staffed hours, a 24 hour audio and visual remote guard monitoring and communication system is there for their safety and security.

1.4 Hours of Operation

The proposed use is for a fitness studio that will operate 24 hours, 7 days.

No services such as group fitness classes, child minding, pool facilities, steam or sauna rooms are provided.

1.5 Attendance and Staffing Arrangements

It is anticipated that a maximum of 20 people at any one time will utilise the studio during the peak times of 5am - 8am and 6pm - 9pm. The usage levels outside these peak times will be significantly less at approximately 3 users per day between 10pm - 5am.

The premise will generally operate with 1 staff member/manager and 1 personal fitness trainer at any one time during regular business hours and will otherwise be unstaffed. The gym will typically be staffed between the hours of 8:30am to 1pm and then 4pm-10pm Monday to Thursday and between 7:30am and 11:30am Friday and Saturday.

2 The site

The ground floor currently contains numerous commercial and recreational uses including a martial arts studio and an F45 premises.

Plus fitness has existing approval through Mod2023/0698 with approved hours of operation 5:30am to 9pm. The proposal is for 24/7 operation which is consistent with the plus fitness model and other premises in the Manly LGA.

3 Access Control and Security

3.1 Personal Access Cards

Access to a Plus Fitness 24/7 is gained by way of using a Personal Access Card. A unique Personal Access Card is issued to each member and has a unique identity that allows the business to track the attendance of each member and prevents access to all non members.

- The security and access control system includes:
- Concept 4000 main panel code pad for manual programming for technician;
- Plus Fitness Gold Card security reader;
- Electric strike fire rated IP board for connection to head office; and
- Remote kit for wireless help buttons including two help buttons and three pendants

A card reader/swipe will be located at the main entrances to the premises. No other access will be provided to the tenancy.

Any member providing access to the gym for a non-member or member who has lost their member card, will have their membership cancelled immediately and be charged a penalty of \$250 which will be automatically debited from their account or credit card. This policy applies to all persons whether exercising or not. The admittance of uniformed emergency personnel are the exception.

Access outside of staffed hours will be monitored via daily attendance summaries and video footage.

3.2 Closed Circuit Television Cameras

Cutting edge hemispheric CCTV with remote viewing capabilities is installed in all Plus Fitness 24/7 fitness studios. As well as continually recording, these CCTV cameras are managed by a Remote Guard Monitoring Service control centre during any unstaffed hours. The name of the centre is Remote Guard Data Centre and they are located in Wetherill Park. In addition to this, the franchisee and franchisor are also able to view these CCTV cameras remotely at all times.

The CCTV cameras are backed by a two way audio communication system. This system enables the control centre to communicate with members, and vice versa, through highly sensitive microphones and speakers located in the fitness studio.

Security cameras will be located strategically in order to capture all areas of the tenancy. CCTV will capture patrons in all areas of the fitness studio (except for bathroom and change room areas) as entry points and will result in increased security for all neighbouring tenants in the complex.

3.3 Personal Safety and Security

The security system includes 'Help Buttons' and pendants. The emergency help buttons will provide direct back-to-base assistance to the 24 hour security monitoring system. The pendants will allow members to wear an emergency help button should they feel the need for extra safety.

The emergency help buttons will be fixed to either side of the gym interior and be clearly identifiable and accessible.

PLAN OF MANAGEMENT

The pendants will be located close to the entrance of the premises and will be made available for patrons who wish to use them. The use of the pendants will provide individuals with security and assurance that assistance can be obtained in areas where it is forbidden to install CCTV cameras (i.e. bathrooms and change rooms).

Once a duress or pendant panic button has been pressed, an alert will be sent to the Remote Guard Monitoring Service who can then remotely view and communicate with patrons at the premises. Remote Guard can then call for police/ambulance/fire assistance and unlock the doors to the premises, providing access to emergency services.

3.4 24/7 Security

The security systems are provided by ELK Security.

ELK Security are the leaders in 24/7 Gyms and have been installing security into Gyms for the last 8 years and have over 300 current gyms online and monitored.

ELK Security provides 24/7 Video monitoring by the award winning RemoteGUARD system that allows some of the following features to be either installed or upgraded later if needed.

- A single synchronised database. Program members through the gym software and automatically the member database will be synchronised with the Access Control database
- Powerful reporting. Door Access events can be reported back to the gym membership software. Know who has accessed what doors at what times, who has been denied access and even know how many members are in your gym at any one time
- Less training required for your staff. The gym management software can manage all members and their access control permissions, therefore staff only need to learn the gym membership software package
- Gym owners are empowered to easily track unauthorised or illegal door access (e.g. members sharing access cards with non-members)
- Remote Door release and access for emergency services
- Two-way voice communication from the gym to the control room
- Duress systems both hard wired and wireless
- Hosting services for software
- Remote 24/7 support

3.5 Video and Alarm/Duress Monitoring

RemoteGUARD is the most innovative IP monitoring and surveillance product in Australia.

High-Res Video Alarm Verification RemoteGUARD & MOBOTIX cameras can detect activity via Passive Infrared Sensor – Integrated PIR in MOBOTIX cameras Audio Alarm Detection.

The system:

- Monitors decibel thresholds Video Motion Zones
- Monitor strategic areas within the camera view Event Logic Processing
- Alarm Monitoring
- Duress Monitoring

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The system uses logic to combine any of the above detection methods to detect directional motion.

When an alarm is received via the RemoteGUARD system, the monitoring centre immediately sees the camera scene at which the alarm occurred, allowing for instant alarm verification.

3.6 Lockers and Storage

The premise includes an open locker system where all bags and belongings can be viewed at all times. This reduces the opportunity and acts as a deterrent to crime. The extensive CCTV system continually films the locker area as well as all parts of the premises. Appropriate security signage will be located throughout the gym.

3.7 Security Training and Maintenance

Staff training will be carried out upon the completion of the installation of the security systems following which ongoing training will be made available by the security firm on request.

There will be ongoing technical support provided for any security system requirements as well as ongoing maintenance carried out twice per year.

The list of maintenance to be completed includes:

- Test all alarm devices to control room.
- Test battery in main panel.
- Test back to base system is functioning correctly.
- Test hard wired Help Buttons.
- Test IP interface is working and connecting to head office.
- Test Remote Guard and two-way audio connection is working correctly.
- Change any setting on Remote Guard system if required.

3.8 Warning Signs

Detailed signage will be provided on the outside of the building as well inside the tenancy advising of the CCTV systems in place.

3.9 Gym Doors

All doors to the Gym will be fitted with self-closing mechanisms and will remain closed while the gym is in operation except to allow the entry and exit of patrons and staff

4 Noise Management

4.1 Management Measure

The following noise mitigation and management measures will be implemented:

- Gym members shall be made aware of potential impact/structure-borne noise generated by dropping of heavy weights, explained and requested to take into consideration of other adjoining occupants.
- Gym members shall be provided with proper training prior to using heavy weight equipment and requested to use/release equipment properly.
- Signs should be displayed in the weight exercise areas requesting gym members not to drop exercise equipment.
- When the fitness centre is staffed, management should observe, monitor and if necessary, instruct gym members to use exercise equipment correctly/properly.
- When the fitness centre is not staffed, video recordings and security passes should be reviewed in the event of receiving feedback from adjoining occupants/Council to identify noise sources and gym members causing the noise sources.
- Considering termination of membership for repeated offenders who do not follow management's request/instruction to use equipment properly.
- Continual monitoring by staff/management and if dropping of free weight exercise equipment is identified in untreated area(s), control measures shall be undertaken promptly

4.2 Operational

The gym will provide low level background music played through speakers between 6am to 10pm only. The music will then automatically shut off and can only be operated by staff.

Out side of regular trading hours the air-conditioning is activated by the patrons as required. On activation, if the temperature is warmer than that depicted by the thermostat (of which members do not have access to), the air-conditioning will start and run for 20 minutes.

4.3 Patron Behaviour

The size of the premises is relatively small and is not anticipated to generate large volumes of patronage at any one time and the use is considered to be a low intensity use that will not attract or result in unruly or noisy patrons nor result in any antisocial behaviour.

Nonetheless, all members will be advised upon joining the gym to ensure that noise levels are kept to a minimum when entering and leaving the premises. Furthermore, the premises will have signs at each exit requesting patrons to leave quietly.

4.4 Signage

Prominent signage is provided around the free weights area stating:

- No weight is allowed to be dropped more than knee high from platform.
- No weight more than 50Kg is allowed to be dropped within the free weight zone.
- Minimise the noise at any time.

5 Emergency Procedures and Management

5.1 Rules of Conduct

Upon joining the gym, each member will receive a New Member Information Pack that will describe the behavioural codes of conduct required to be maintained whilst using the premises. This literature will focus on member safety and the necessary measures to ensure that noise levels are kept to a minimum when entering and leaving the premises. Furthermore, the premises will have signs at each exit requesting patrons to leave quietly in order to discourage any loitering outside of the gym.

The information pack will also provide details to assist patrons with access to public transport in relation to the use of the facility

5.2 Drugs and Alcohol

In the interest of health and safety Plus Fitness 24/7 will actively promote, encourage and support strategies to minimise harm from alcohol and other drugs.

The use of elicits or performance-enhancing drugs will not be allowed under any circumstances. Those found using or trading in illicit drugs will have their membership terminated immediately.

5.3 Crisis Management

In the event the help button is engaged, the protocol is such that the CCTV control room operator will assess the situation and contact both an ambulance and the police should it be deemed necessary. At such time the franchisee will also be notified to help assist with the investigation in any way deemed necessary by the emergency crews.

The Remote Guard Monitoring Service will be able to monitor and record all incidents as well as provide remote access to emergency service crews.

5.4 Cash Handling Procedures

There will no cash handling on the premises as all the monetary transactions will take place in the form of an eftpos transaction.

5.5 Plan of Management and Emergency Procedure Review Process

The POM will be reviewed on an annual basis with input from both management and staff regarding the validity of all the noted points. In addition, this forum will be utilised to discuss the addition of any relevant operational matters not previously documented on the POM.

6 Property and Waste Management

6.1 Property Damage

In the event of property damage, the franchisee will immediately get into contact with the property manager and arrange to have the damage assessed and contained within a 24 hour period to ensure the safety of the public and the members of the gym. Upon assessment, immediate measures will take place by the property manager to engage the services of a suitable tradesperson to address the situation.

6.2 Graffiti Management

In the event of graffiti, the franchisee will endeavour to address the situation within 24 hours by any means possible. If the franchisee is unable to personally fix the problem, then the services of a graffiti removal company will be engaged to ensure the graffiti is removed within 3-5 days.

6.3 Rubbish Removal

Dumped rubbish outside the premises will be viewed as detriment to the franchisee and as such will be disposed of by that person.

6.4 Waste Management

The amount of waste/garbage generated will be minimal and would likely require emptying by staff approximately two times a week. There will be no food based waste generated at the premises. Bins will be provided within the premises and adjacent the entry.

All wastes will be stored in approved containers placed inside the premises before being removed for disposal by Council or appropriate contractors

6.5 Cleaning

Cleaning of the premises will be carried out on a daily basis and include cleaning of all cardio machines, weight machines, showers and toilets and general gym area.

7 Complaint Handling and Dispute Resolution

This Complaint Handling and Dispute Resolution Policy aims to provide a structured approach to resolving complaints and disputes that is fair and equitable, and that will lead to solutions that are acceptable to all parties.

The purpose of this Policy is to outline a set of procedures to effectively and fairly respond to complaints and disputes in a professional and timely manner. This Policy provides a process for handling and resolution of complaints and disputes between Plus Fitness 24/7 and its members, employees and surrounding residents and businesses.

The objectives of this Policy are to establish a process to:

- Record, action and resolve complaints and disputes;
- Review and monitor performance against the procedures outlined in this Policy.

7.1 Dealing with Client Disputes

To maximise the chance of a successful resolution the franchisee of the club will:

- Listen to what the complainant has to say;
- Request documentary evidence if required to verify the facts;
- Negotiate face-to-face in a calm and professional manner;
- Provide accurate information on the options available to the complainant for resolution of the issue

7.2 Communication

The contact details including a phone number of the manager/owner will be made available 24 hours, 7 days on the outside of the premises.

7.3 Procedures for Receiving Complaints

If a complaint is submitted, the franchisee:

- Must, if the complaint is verbal, either resolve it “on the spot”;
- Must, if the complaint is in writing, acknowledge in writing receipt of the complaint as soon as practicable and in any event within 14 days from receipt, and enclose a copy of this Policy for the complainant’s information;
- Must ensure that the complaint receives proper consideration resulting in a determination;
- Must act in good faith in dealing with and resolving the complaint;
- Must investigate the complaint including by:
 - Seeking all relevant information from the complainant; and
 - Obtaining all relevant information from employees.
- Must keep the complainants informed of progress towards resolving the complaint.

PLAN OF MANAGEMENT

- Must communicate to the complainant in relation to the complaint as soon as practicable and in any event not more than 45 days after receipt by the club of the complaint: - The determination in relation to the complaint;
 - The remedies (if any) available to the complainant; and
 - Information regarding any further avenue for complaint.
- No action will be taken on anonymous complaints except in exceptional circumstances.

7.4 When a Complaint will be Treated as Resolved by the Fitness Studio

- Where the complainant has been notified in writing of a decision and no response has been received, the complaint will be treated as resolved by the club.
- Where the complaint has been resolved to the complainants satisfaction “on the spot”; or
- Where the complainant has been notified of a decision about a complaint and no response has been received.

7.5 Recording the Complaint – Complaints and Disputes Register

A Complaints and Disputes Register will be established, maintained and kept up-to-date. The Register will be comprised of a copy of each Complaint Report.

The Register includes the following information about every complaint that is received:

- Date complaint is made;
- Nature of complaint / issue;
- Action taken to investigate the complaint;
- Date resolved; and
- How resolved.

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**ITEM 3.4 MOD2024/0320 - 135 A SEAFORTH CRESCENT SEAFORTH -
MODIFICATION OF DEVELOPMENT CONSENT DA2022/1879
GRANTED FOR ALTERATIONS AND ADDITIONS TO A DWELLING
HOUSE INCLUDING CONSTRUCTION OF AN INCLINATOR, STAIRS
AND FENCING**

PURPOSE

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

RECOMMENDATION

THAT Council as the consent authority **approves** Development Consent to Mod2024/0320 for Modification of Development Consent DA2022/1879 granted for Alterations and additions to a dwelling house including construction of an inclinator, stairs and fencing on land at Lot 1 DP 236331, 135 A Seaforth Crescent SEAFORTH, subject to the conditions set out in the Assessment Report.

Reporting manager	Rodney Pigott
TRIM file ref	2024/508490
Attachments	1 Assessment Report 2 Site Plan and Elevations

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2024/0320
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Responsible Officer:	Nick Keeler
Land to be developed (Address):	Lot 1 DP 236331, 135 A Seaforth Crescent SEAFORTH NSW 2092
Proposed Development:	Modification of Development Consent DA2022/1879 granted for Alterations and additions to a dwelling house including construction of an inclinator, stairs and fencing
Zoning:	Manly LEP2013 - Land zoned C3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Peter Downes Designs Pty Ltd

Application Lodged:	18/06/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	28/06/2024 to 12/07/2024
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval

EXECUTIVE SUMMARY

This modification application seeks to modify Development Consent DA2022/1879 granted for Alterations and additions to a dwelling house including construction of an inclinator, stairs and fencing.

The application is referred to the Development Determination Panel (DDP) due to the application being a modification being made under Section 4.55(2) involving amendment to a condition of development consent recommended in the council assessment report but which was amended by the DDP in consideration of the original development application (Condition No. 8). The condition, in part, requires the inclinator motor to be setback at least 2.0m from all property boundaries.

One (1) submission was received. Concerns relate to the acoustic verification as required by Condition

No. 26 and seeks for the sharing of test results to Council and adjoining properties. The sharing of the acoustic verification test results to Council is not considered unreasonable and the condition is recommended to be amended accordingly. Concern is raised regarding the operation of the inclinator during the night between 10pm and 7am and requests that alternative site access be utilised during these hours. It is considered to be unreasonable to prohibit use of the inclinator during the night as it limits the safe access to the subject site and the likely acoustic amenity impact use during these hours will be minimal due to the very low use of the inclinator during the night. Prohibition of the operation of the inclinator during 10pm and 7am is not recommended.

The critical assessment issue includes the acoustic impact of the inclinator motor upon adjacent properties. The applicant has provided an alternative solution to acoustically treat the inclinator motor housing so that it can be within 2m of the property boundary and not cause unreasonable acoustic impact.

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

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks to modify Development Consent DA2022/1879 granted for Alterations and additions to a dwelling house including construction of an inclinator, stairs and fencing.

The modification involves the following elements:

- Detail the location of the inclinator winch motor on the plans and outline acoustic treatments to limit acoustic impact to adjacent properties.
- Modify Condition No. 8 to delete reference to the requirement to locate the inclinator winch motor at least 2.0m from the property boundaries.

Condition No 8 reads as follows:

Amendments to the approved plans

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

- *A privacy screen 1.8m in height is to be provided along the extent of the northern, southern and eastern sides of the rail car. The privacy screen shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.*
- *Any side boundary fencing shown on the plans is to be deleted and does not form part of this consent.*
- *The motor for the inclinator must be detailed on the Construction Certificate plans, must be located a minimum of 2.0m from any property boundary and must be acoustically treated so that it does not produce noise, measured from the nearest property boundary, of more than 5dBA above normal background levels.*

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

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

The modification proposes to modify the condition to read as follows:

Amendments to the approved plans

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

- A privacy screen 1.8m in height is to be provided along the extent of the northern, southern and eastern sides of the rail car. The privacy screen shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.
- Any side boundary fencing shown on the plans is to be deleted and does not form part of this consent.
- The motor for the inclinator must be detailed on the Construction Certificate plans and must be acoustically treated so that it does not produce noise, measured from the nearest property boundary, of more than 5dBA above normal background levels.

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

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Development Control Plan - 3.9 Mechanical Plant Equipment

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

SITE DESCRIPTION

Property Description:	Lot 1 DP 236331 , 135 A Seaforth Crescent SEAFORTH NSW 2092
Detailed Site Description:	The subject site consists of an allotment located on the western side of Seaforth Crescent.

The site is irregular in shape with with a battle-axe handle providing connecting Seaforth Crescent to the existing dwelling at the foreshore. The site has a surveyed area of 1107m².

The site is located within the C3 Environmental Management zone and accommodates a dwelling house.

The site has a slope from the front of the property down to the rear, with a crossfall of approximately 60m.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by residential development.

Map:



SITE HISTORY

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

Application **DA2022/1879** for Alterations and additions to a dwelling house including construction of an inclinator, stairs and fencing was approved on 28/06/2023 by the Development Determination Panel.

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 DA2022/1879, 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 DA2022/1879 for the following reasons: • the modification is generally consistent with the approved alterations and additions to the existing dwelling • the modification does not alter the low density residential land use of the site • all expected outcomes of the original assessment are maintained under the modification
(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 DA2022/1879 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with:	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental

Section 4.55 (2) - Other Modifications	Comments
(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	Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 (2) the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

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

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

Section 4.15 'Matters for Consideration'	Comments
Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	development consent. These matters have been addressed via a condition of consent. <u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 2001: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
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	See discussion on “Notification & Submissions Received” in this report.

Section 4.15 'Matters for Consideration'	Comments
accordance with the EPA Act or EPA Regs	
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 28/06/2024 to 12/07/2024 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:
BBF Town Planners	1 / 9 Narabang Way BELROSE NSW 2085

The following issues were raised in the submissions:

- Sharing of acoustic test results
- Restricting use of inclinometer

The above issues are addressed as follows:

- **Sharing of acoustic test results**

The submission requests that Condition No. 26 be amended to ensure acoustic verification results are shared with Council and adjoining properties.

Comment:

It is considered the sharing of acoustic verification results with Council is not unreasonable and provides transparency in the development process. Any person with an interest in viewing the results may request them from Council via the information access provisions under GIPA. As such, Condition No. 26 is recommended to be amended to require the acoustic verification results to be provided to Council prior to the issue of an occupation certificate.

- **Restricting use of inclinator**

The submissions requests that a new condition be imposed to restrict the use of the inclinator between 7am and 10pm and alternative site access used between 10pm and 7am.

Comment:

It is not expected that restricting the use of the inclinator during the night will have a significant amenity benefit to adjacent properties. Due to the length and slope of the access handle and with no other formalised or practical pedestrian access, prohibiting the use of the inclinator during the night poses a significant access and safety impacts to occupants of the subject site. The use of the inclinator during the night is expected to be minimal and noise associated with the inclinator motor will be mitigated through acoustic treatment of the motor housing beneath the carport. The inclinator car itself does not produce much noise during operation and is unlikely to impact upon the acoustic amenity of adjacent properties.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Industrial)	<i>Supported with conditions</i> This application is seeking consent for modifications to DA2022/1879. The modifications propose to locate the inclinator motor within the existing subfloor space. An acoustic report prepared by Noise and Sound Services dated February 2024 has concluded that the noise from the inclinator is not expected to exceed 60 dBA when measures at the nearest residential boundary. The acoustic report has provided recommendations for further acoustic treatment which will be conditioned as part of the DA. Environmental Health recommends approval subject to conditions. <u>Planner Note:</u> The recommendations of the acoustic report including locating the inclinator motor in the subfloor space beneath the carport and addition of acoustic foam to the surrounding walls to reduce reverberation will assist in reducing the maximum potential motor noise of 60 dBA to within 5 dBA of normal background noise when measured from the nearest property boundary.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many

provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

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

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

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

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

Comment:

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

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

Comment:

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

Division 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 platform for members of the public, including persons with a disability,
 - ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
 - iv) foreshores,
 - v) the visual amenity and scenic qualities of the coast, including coastal headlands, Aboriginal cultural heritage, practices and places, cultural and built environment heritage, and
 - b) is satisfied that:
 - i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
 - ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
 - c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

Council is satisfied the proposed development is appropriately designed and sited in a manner that avoids adverse impact to the coastal use area.

Division 5 General

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

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

Comment:

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

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

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

management program that applies to the land.

Comment:

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

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

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	10.3m	Unaltered	N/A	As approved
Special height provisions:	Ridge of road: RL62.88 (10.2m from ground level)	RL62.98 (10.3m from ground level)	Unaltered	N/A	As approved

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.3A Special height provisions	Yes
4.4 Floor space ratio	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes

Clause	Compliance with Requirements
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 1,107m ²	Requirement	Approved	Proposed	Complies
4.1.2.3 Roof Height	Height: 2.5m	0.25m	Unaltered	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Prevailing setback	Unaltered	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	3.2m (for stair structure)	North: 1.5m	Unaltered	As approved
		South: Nil	Unaltered	As approved
4.1.4.5 Foreshore Building Lines and Foreshore Area	FBL	Within	Unaltered	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area (664.2m ²)	71.8% (795m ²)	Unaltered	Yes
4.1.5.2 Landscaped Area	Landscaped area X% of open space	90.5% (720m ²)	Unaltered	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

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.9 Mechanical Plant Equipment

Description of non-compliance

3.9.3 Noise from Mechanical Plant

The control requires that external mechanical plant systems are to be acoustically enclosed and located centrally and away from neighbours living areas of neighbouring properties and side and rear boundaries.

To address this control, the DDP imposed a condition requiring the inclinor motor to be located a minimum of 2.0m from any property boundary and must be acoustically treated so that it does not produce noise, measured from the nearest property boundary, of more than 5dBA above normal background levels.

Merit consideration

Upon investigation by the applicant to comply with the condition requirement, it has been determined that it is not physically possible to locate the inclinor winch motor more than 2m from the boundaries. A minimum cable span distance of 3.5m is required between the winch motor and the nearest cable sheath (a wheel used to change the direction or angle of the cable), which the access handle area is not able to support.

As an alternative solution, the applicant has provided acoustic advice confirming that siting the inclinor winch motor in an acoustically treated area in the undercroft of the existing carport and within 2m of the property boundary will not cause unreasonable acoustic impacts upon adjacent properties.

As such, with the acoustic report recommendations implemented, the condition requiring the inclinor motor to be setback at least 2.0m from any property boundary can be deleted. The condition requiring the motor to be acoustically treated so that it does not produce noise, measured from the nearest property boundary, of more than 5dBA above normal background levels is recommended to be retained.

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

The proposed modification maintains the non-compliant building setbacks approved under the original development application. Therefore, the outcomes of the original consent are maintained under this modification application and a detailed merit assessment is not required in this instance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

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

PLANNING CONCLUSION

This proposal, for modification of Development Consent DA2022/1879 granted for Alterations and additions to a dwelling house including construction of an inclinator, stairs and fencing has been referred to the Development Determination Panel (DDP) due to amendment to a condition of development consent recommended in the council assessment report but which was amended by the DDP in consideration of the original development application.

Concerns raised have been considered and addressed by conditions. The requested prohibition of use of the inclinator between 10pm and 7am is not recommended as it would limit safe access to the subject site during the night.

The critical assessment issue has been addressed with an acoustic report including modelling and recommendations to ensure noise caused by the inclinator motor is appropriately managed through acoustic treatments so as to not cause unreasonable amenity impact upon adjacent properties.

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

REASON FOR DETERMINATION

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2024/0320 for Modification of Development Consent DA2022/1879 granted for Alterations and additions to a dwelling house including construction of an inclinator, stairs and fencing on land at Lot 1 DP 236331, 135 A Seaforth Crescent, SEAFORTH, subject to the conditions printed below:

Modification Summary

The development consent is modified as follows:

MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
PAN-442572 - Mod2024/0320	The date of this notice of determination	Modification of Development Consent DA2022/1879 granted for Alterations and additions to a dwelling house including construction of an inclinator, stairs and fencing - Add Condition No. 1A - Modification of Consent - Approved Plans and supporting documentation - Modify Condition No. 8 - Amendments to the approved plans - Add Condition No. 10A - Modification of Consent - Acoustic Treatment - Modify Condition No. 26 - Acoustic expert to verify noise

Modified conditions

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

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
A1 2235 01	C	Site Plan / Landings Arrangement	Peter Downes Designs	19/12/2023
A1 2235 02	C	Section 1 / Access Structure Elevations	Peter Downes Designs	19/12/2023
A1 2235 03	C	Site Access Plan	Peter Downes Designs	19/12/2023
A1 2235 05	C	Access Structure - Plans	Peter Downes Designs	19/12/2023
A1 2235 06	C	Access Structure - Elevations	Peter Downes Designs	19/12/2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Acoustic Design Report – Mechanical Plant	nss24115 – Final	Noise and Sound Services	February 2024

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

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

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

B. Modify Condition No. 8 - Amendments to the approved plans to read as follows:

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

- A privacy screen 1.8m in height is to be provided along the extent of the northern, southern and eastern sides of the rail car. The privacy screen shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.
- Any side boundary fencing shown on the plans is to be deleted and does not form part of this consent.
- The motor for the inclinator must be detailed on the Construction Certificate plans and must be acoustically treated so that it does not produce noise, measured from the nearest property boundary, of more than 5dBA above normal background levels.

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

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

C. Add Condition No. 10A - Modification of Consent - Acoustic Treatment to read as follows:

Detailed plans are to be updated demonstrating compliance with the acoustic consultant's recommendations within the report dated February 2024, Report No. nss24115 – Final.

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

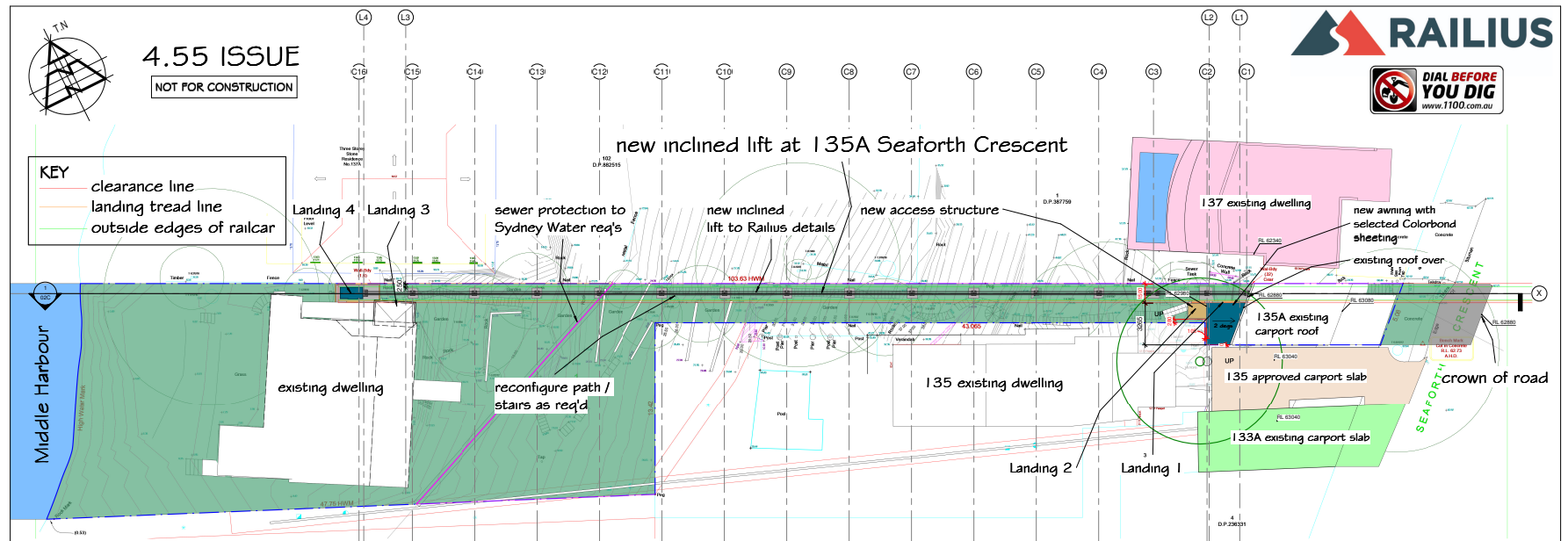
Reason: To ensure acoustic measures have been implemented into the design.

D. Modify Condition No. 26 - Acoustic expert to verify noise to read as follows:

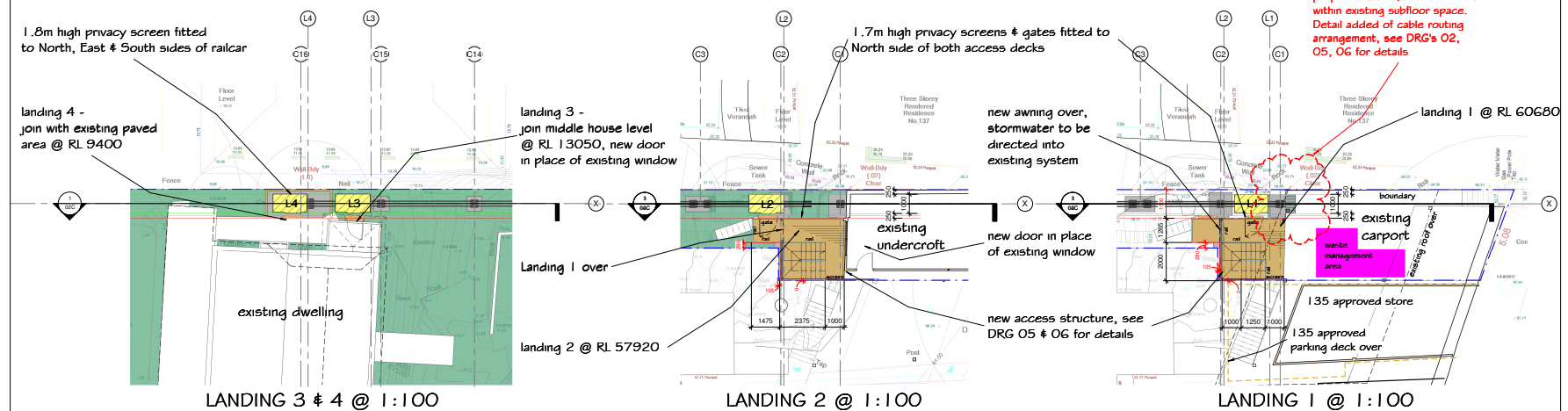
A qualified acoustic expert is to ensure the inclinator and motor does not exceed noise levels of 5dBA above the background noise when measured from the nearest property boundary.

The acoustic test results and verification is to be submitted to Council and Certifier prior to the issue of the Occupation Certificate.

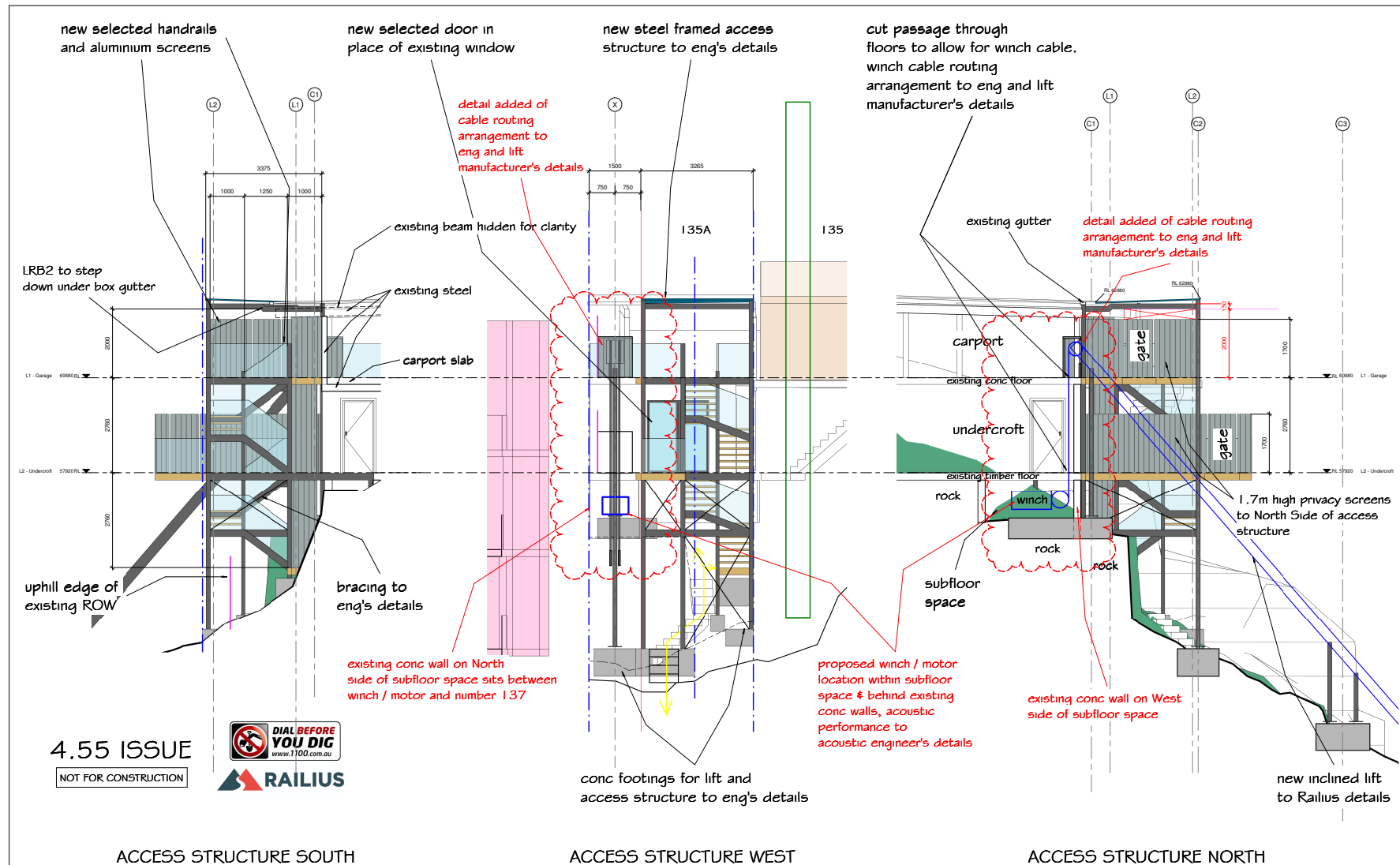
Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.



SITE PLAN @ 1:150



REVISION	REV B 2.6, 10.23	DRAWING SET UPDATED TO CC	DRAWINGS 05 & 06 ADDED	REV C 1.9, 12.23	SECTION 4.55 DETAILS ADDED	WINCH / MOTOR PROPOSED TO BE REMOVED FROM AREA OF BOUNDARY	DETAIL ADDED OF WINCH AND CABLE ROUTING	STRUCTURAL DETAILS ADDED	bdca BRIDGES DESIGNED AND CONSTRUCTED AUSTRALIA	peterdownes multi-award winner designs 77 Riviera Ave, Avalon 2107 0468 662 445 www.peterdownes.com.au	PROJECT 135A Seaforth Crescent	DRAWN SD	CHECKED PD
	DRAWING	Site Plan / Landings Arrangement			SCALE As indicated	DATE 13.4.22							
			DRG. No.		AI 2235 OIC								



4.55 ISSUE

NOT FOR CONSTRUCTION



REVISION	
REV B 04.10.23	- DRAWING SET - UPDATED TO CC - DRAWINGS 05 & 06 ADDED
REV C 19.12.23	- SECTION 4.55 - DETAILS ADDED - WINCH / MOTOR - PROPOSED TO BE - LOCATED WITHIN - 2M OF BOUNDARY - DETAIL ADDED OF - WINCH AND CABLE - ROUTING - STRUCTURAL - DETAILS ADDED



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www.peterdownes.com.au

PROJECT	I 35A Sealforth Crescent	DRAWN	SD	CHECKED	SD
DRAWING	Access Structure - Elevations	SCALE	1 : 50	DATE	26.10.23
DWG. No.	AI 2235	O6C			

ITEM 3.5 MOD2024/0252 - 1955 PITTWATER ROAD BAYVIEW - MODIFICATION OF DEVELOPMENT CONSENT DA2019/0154 GRANTED FOR DEMOLITION WORKS AND CONSTRUCTION OF A SENIORS HOUSING DEVELOPMENT

PURPOSE

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

RECOMMENDATION

THAT Council as the consent authority **approves** Development Consent to Mod2024/0252 for Modification of Development Consent DA2019/0154 granted for Demolition works and construction of a seniors housing development on land at Lot 1 DP 373531 & Lot 1 DP 1047205, 1955 Pittwater Road BAYVIEW, subject to the conditions set out in the Assessment Report.

Reporting manager	Adam Richardson
TRIM file ref	2024/500988
Attachments	1 Assessment Report 2 Site Plan and Elevations

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2024/0252
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Responsible Officer:	Stephanie Gelder
Land to be developed (Address):	Lot 1 DP 373531, 1955 Pittwater Road BAYVIEW NSW 2104 Lot 1 DP 1047205, 1955 Pittwater Road BAYVIEW NSW 2104
Proposed Development:	Modification of Development Consent DA2019/0154 granted for Demolition works and construction of a seniors housing development
Zoning:	R2 Low Density Residential RE1 Public Recreation
Development Permissible:	Yes, under SEPP (Housing for Seniors or People with a Disability) 2004
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	Yes
Applicant:	Dylan Hamman

Application Lodged:	21/05/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	29/05/2024 to 12/06/2024
Advertised:	29/05/2024
Submissions Received:	5
Clause 4.6 Variation:	Nil
Recommendation:	Approval

EXECUTIVE SUMMARY

This modification application seeks consent for modification of Development Consent DA2019/0154 which granted consent for demolition works and construction of a seniors housing development. The modifications primarily relate to converting the approved storage area of Unit 1 to a bedroom, ensuite and bathroom, changes to windows in Unit 2 terrace area between the terrace and void area, and internal changes to Unit 4 to create a larger bathroom and relocation of the laundry.

The application is referred to the Development Determination Panel (DDP) due to five (5) objections

received.

Concerns raised in the objections predominantly relate to the increase of gross floor area, conversion of the storage area to a bedroom, disabled access, previous conditions of consent, incremental approvals, and whether the works are substantially the same.

The modifications propose an increase in FSR under Clause 50 of the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP (HSPD)), which is the applicable planning instrument, given the savings provisions of SEPP Housing. The increase in FSR has been found to be acceptable as the modifications do not propose any increase in building bulk nor does it increase the footprint of the dwelling.

Overall, it is considered that the proposed works that are located wholly within the approved building footprint are acceptable, and will not result in any unacceptable environmental or amenity impacts.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposed modification works to DA2019/0154 comprise of the following:

Lower Ground Floor

- Reconfiguration of Unit 1 to create a new bedroom, WIR and ensuite in the existing storage area, along with a new bathroom and laundry area. The reconfiguration results in a new window servicing the new laundry;

Ground Floor

- Glazing adjustment on Unit 2 terrace area between the terrace and void area; and

First Floor

- Reconfiguration of Unit 4 to create a larger bathroom and relocate the laundry to the void area.

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and

- relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 4.56 - Environmental Planning and Assessment Act 1979 - Section 4.56 - with S4.15 Assessment
Pittwater 21 Development Control Plan - C1.15 Storage Facilities

SITE DESCRIPTION

Property Description:	Lot 1 DP 373531 , 1955 Pittwater Road BAYVIEW NSW 2104 Lot 1 DP 1047205 , 1955 Pittwater Road BAYVIEW NSW 2104
Detailed Site Description:	The subject site consists of one (1) allotment located on the south-western side of Pittwater Road. The site is irregular in shape with a frontage of 32.64m along Pittwater Road and a depth of 43m. The site has an area of 1296.5m². The site is located within the R2 Low Density Residential zone and is currently under construction pursuant to DA2019/0154 approved for a seniors housing development. The site falls approximately 12m from the south towards the north. The site is generally free of any vegetation due to ongoing construction works. Three canopy trees are located in the street verge along with ground-cover vegetation. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by predominantly 1-3 storey dwelling houses. St Luke's Primary School is located nearby to the west and Bayview Anchorage Marina nearby to the east.

Map:



SITE HISTORY

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

DA2019/0154

Development Application for Demolition works and construction of a seniors housing development was refused on 16/10/2019 by the Northern Beaches Local Planning Panel. The determination was appealed to the NSW Land and Environment Court which upheld the appeal with amended plans on 28/07/2020 after a conciliation conference between Council and the applicant.

Mod2021/0101

Modification Application for Modification of Development Consent DA2019/0154 granted for demolition works and construction of a seniors housing development. Approved on 12/05/2021 by Council staff.

Mod2021/0343

Modification Application for Modification of Development Consent DA2019/0154 granted for demolition works and construction of a seniors housing development. Approved on 27/07/2021 by Council staff.

BC2023/0102

Building Information Certificate (149D Unauthorised) - Shotcrete retaining walls and their associated capping beams carried out in relation to the approved residential flat building and its accompanying carparking facilities. Approved on 14/08/2023.

Mod2022/0471

Modification Application for Modification of Development Consent DA2019/0154 granted for demolition works and construction of a seniors housing development. Approved on 13/09/2023 by Development Determination Panel.

APPLICATION HISTORY

Following the preliminary assessment of the application, Council requested additional information in relation to the request for an Access Report, and an assessment against the *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*. Amended plans and an Access Report were subsequently submitted by the applicant. The changes to the plans included the switching of the location of the proposed Laundry and Bathroom on the Lower Ground Floor Plan, and minor amendments to the door circulation area within Units 1 & 4 as requested by the Access Consultant.

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

Notwithstanding the provisions of the CPP, the objectors were informed of the amended plans via written email correspondence.

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 DA2019/0154, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.56 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.56- Other Modifications	Comments
(1) 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	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2019/0154. • The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2019/0154.

Section 4.56- Other Modifications	Comments
modified (if at all), and	- The proposed changes are limited to internal changes and as such will not result in any change in visual appearance from the adjoining sites or streetscape. - It is considered that in terms of both a qualitative and quantitative comparison, the modified development remains substantially the same as that which was approved by DA2019/0154. - As such, it is considered that the internal changes are consistent with characterisation and fundamental outcome of the development as approved under the Development Consent.
(b) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.
(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and	Written notices of this application have been sent to the last address known to Council of the objectors or other persons who made a submission in respect of DA2019/0154.
(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 4.56 of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application.

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 29 of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to an Access Report, and an amended Statement of Modification addressing the <i>State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004</i>. 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

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 29/05/2024 to 12/06/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Mr Gavin Alan Arthur Rea	1961 Pittwater Road BAYVIEW NSW 2104
Mr Peter William Gorian	60 Alexandra Crescent BAYVIEW NSW 2104
Mr Leonard William Baillie	58 Alexandra Crescent BAYVIEW NSW 2104
Mr Geoffrey Michael Ross Kathryn Anne Wheeler	83 Alexandra Crescent BAYVIEW NSW 2104

Name:	Address:
Mr Richard Pearse	52 Alexandra Crescent BAYVIEW NSW 2104

The following issues were raised in the submissions:

- **GFA Increase**
- **Conversion of a Store Room to a Bedroom**
- **Additional Bedroom**
- **Proper Disabled Access**
- **Noise Concerns**
- **Water Problem**
- **Condition 28A (Access and Facilities for Persons with Disabilities)**
- **Condition 28C (Amendments to the approved plans)**
- **Condition 72 (Plant Noise)**
- **Condition 74 (Use of "Lower Ground Floor storage areas")**
- **Plans are Inconsistent with Construction**
- **Substantially the Same Test**
- **Incremental Approvals**
- **Plans are Inconsistent with Construction**

The above issues are addressed as follows:

- **GFA Increase**

The submissions raised concerns that it appears the Mod plans show an increase in GFA beyond the L&E Court approval.

Comment:

The proposal seeks to increase the GFA as detailed throughout the report. The increase of GFA has been considered under Clause 50 Standards that cannot be used to refuse development consent for self-contained dwellings of the *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*. As such, the increase of FSR is considered acceptable, as the building footprint remains unaltered and therefore will not present any unacceptable environmental or amenity impact, despite the numerical non-compliance that results.

- **Conversion of a Store Room to a Bedroom**

The submissions raised concerns surrounding the conversion of a Store room to a bedroom in Unit 1.

Comment:

The application is accompanied by an Access Report detailing the acceptability of converting the storage room to a bedroom in Unit 1. As such, there are no concerns raised surrounding the conversion of this space, as the modified development remains consistent with the requirements of Schedule 1.

- **Additional Bedroom**

The submissions raised concerns that the plans provided do not include a floor plan or a section through this additional bedroom to allow the solar and fresh air access or overlooking to be reviewed and the Lower Ground Floor plan showing the change from Store to bedroom show solid walls, from this it could be assumed no solar or fresh air access is provided.

Comment:

Drawing No.DA.405 prepared by A Plus Design Group details Unit 1 Internal Elevations/Sections that depicts the proposed sliding door to the additional bedroom in Unit 1 that allows for fresh air and solar access. Furthermore, Drawing No. DA.203 details the Lower Ground Floor Plan and shows the location of the sliding door in the additional bedroom in Unit 1.

- **Proper Disabled Access**

The submissions raised concerns surrounding the proper disabled access.

Comment:

The proposal is accompanied by an Access Report (prepared by Cheung Access Pty Ltd Trading As Inclusive Places dated 25 June 2024). As such, the Access Report confirms the plans are compliant with the Performance Requirements of the Disability (Access to Premises-Buildings) Standards 2010 and Part D3 and E3.6 of the Building Code of Australia (BCA) (2019 Amendment 1) and the requirements of Schedule 1 of the SEPP being satisfied.

- **Noise Concerns**

The submissions raised concerns that the adjustments to the plans may result in ongoing noise concerns.

Comment:

The proposal as amended includes internal configuration to the approved building footprint. It is considered these changes will not result in any unacceptable noise impacts.

- **Water Problem**

The submissions raised concerns that there is a water problem at the base of the project.

Comment:

It is noted that the site is currently under construction. If there are any concerns regarding the construction of the development, the Certifier should be contacted to raise any concerns surrounding the build. Notwithstanding, the original Development Consent includes appropriate conditions for Stormwater Disposal that are to be complied with.

- **Condition 28A (Access and Facilities for Persons with Disabilities)**

The submissions raised concerns with Condition 28A and how access to the storage areas complies with these requirements in the condition.

Comment:

As part of this current application an Access Report (prepared by Cheung Access Pty Ltd Trading As Inclusive Places dated 25 June 2024) has been submitted. As such as part of the recommended conditions, Condition 28A that was added under Mod2022/0471 will be modified

to be updated to reflect the Access Report submitted with this application. The Access Report concludes, *"On the basis of our assessment, we confirm that the S4.56 plans for the Seniors Housing development at 1955 Pittwater Road Bayview meets the Performance Requirements of the Disability (Access to Premises-Buildings) Standards 2010 and Part D3 and E3.6 of the Building Code of Australia (BCA) (2019 Amendment 1) through the deemed-to-satisfy provisions."* Therefore, Council is satisfied that the modification plans satisfy the requirements for Persons with a Disability.

- **Condition 28C (Amendments to the approved plans)**

The submissions raised concerns that it is from the submitted design information if the development complies with the requirements of Condition 28C.

Comment:

Condition 28C was added under Mod2022/0471 and is retained, and it is noted that this condition is to be complied with Prior to the Issuance of a Construction Certificate. As such, this contained remains, and is required to be complied with prior to the Issuance of a Construction Certificate.

- **Condition 72 (Plant Noise)**

The submissions raised concerns that it is unclear from the submitted design information if the development complies with the requirements of Condition 72. Please clarify and provide more detail on the location of the equipment and design steps to ensure compliance. Has an appropriate acoustics study been completed? This is particularly relevant in that part of the proposed design modifications call for the removal of a storage/equipment plant area. How and where has the associated plant equipment been relocated/housed?

Comment:

Condition 72 was added under Mod2022/0471 is to be retained. It is noted that the condition relates to any plant equipment, and this condition was added to ensure that no unacceptable acoustic impacts occur as a result of the passenger lift, or air conditioning units. Condition 72 is an on-going condition and as such the applicant will be required to demonstrate to the Certifier that the noise level will not exceed 5dBA above background noise when measured from the nearest property boundary, as defined by the Protection of the Environments Operation Act 1997. It is noted that the deletion of the plant room in Unit 1 was undertaken as there was no longer a requirement for a plant room on this level.

- **Condition 74 (Use of "Lower Ground Floor storage areas")**

The submissions raised concerns that the current modification would appear to be in violation of this determination and the original L&E court ruling that the building is restricted to a 2-storey front facing development and 1-storey rear facing development and associated GFA restrictions.

Comment:

Condition 74 is recommended to be modified to delete the reference to Unit 1 as there is no longer a storage area for this unit. There are no changes to the external appearance of the development under this application. The GFA has been discussed under the *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* of this report as outlined above. As such, the variation to the FSR requirements is acceptable, as the proposal will not result in any unacceptable amenity, or environmental impact as the

modification works are located within the approved building footprint.

- **Condition 75 (Roof top screening & AC Units)**

The submissions raised concerns that the supplied design drawings indicate that this restriction has not been implemented or incorrectly interpreted. Please clarify.

Comment:

Condition 75 was added under Mod2022/0471, and as such this existing on-going condition is retained and will require compliance by the applicant for the life of the development.

- **Substantially the Same Test**

The submissions raised concerns surrounding Council's position regarding the DA modifications compliance to the Moto test. It would appear that the requested modification does not meet this test in terms of the concerns primarily stated.

Comment:

Council has considered the proposed modification works against *Environmental Planning and Assessment Act 1979 - Section 4.56* contained within this report. As such, it is considered that the proposed development is consistent with the relevant legal tests, and overall the proposal as modified is substantially the same as the originally approved development.

- **Incremental Approvals**

The submissions raised concerns surrounding Council's review on the incremental DA approvals granted to date and previous submissions made. These, in our opinion, imply a desire to affectively expand the approved development to include a habitable 3rd floor. Please note our previous submission to the council in the formulation of the 26 September determination which expressly restricted the storage floor from habitable use. In particular our concerns expressed at that time; that the last DA sort an increase in the storage floor height to habitable levels and that this would potentially lead to subsequent requests such as this latest DA Modification. It would also appear that if the conclusions above are accepted then further DA modifications could be sort to incrementally expand habitable use of the remaining storage areas.

Comment:

Each application is assessed when lodged with Council, and the previous modification applications were considered and assessed accordingly. Any future applications will be assessed independently with consideration against the relevant environmental planning instruments.

- **Plans are Inconsistent with Construction**

The submissions raised concerns surrounding the plans are inconsistent with the construction on site.

Comment:

This is a separate matter, to be pursued with the Certifier.

Concluding Comments:

In summary, the concerns raised have been addressed and do not warrant the refusal of the proposed

modification application.

REFERRALS

No referrals were sent in relation to this application

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.991214M_07 dated 10 May 2024).

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

SEPP (Housing for Seniors or People with a Disability) 2004

The development application has been lodged pursuant to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP (HSPD)) as the development is for in-fill self-care housing.

Chapter 1 – Preliminary

The aims of the Policy are set out in Clause 2 and are as follows;

This Policy aims to encourage the provision of housing (including residential care facilities) that will:

- (a) increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and
- (b) make efficient use of existing infrastructure and services, and
- (c) be of good design.

Comment: The proposal as modified is consistent with (a) of the Policy, as the proposal as modified will provide an increase supply of accommodation to meet the needs of seniors or people with a disability. The proposal as modified is consistent with (b) as it will utilise the existing infrastructure including sewer, water, electricity, and telecommunication services. The Development Application DA2019/0154 (subject of this modification) was approved through the NSW Land and Environment Court. The proposed changes subject of this modification represent

internal changes to the approved building footprint, and as such is considered to be a suitable design as detailed in this report.

Chapter 2 – Key Concepts

Comment: The proposal satisfies this element of the SEPP HSPD in that the development is for purpose built self-contained dwellings that are for self-care accommodation of seniors or persons with a disability.

Chapter 3 – Development for seniors housing

Chapter 3 of SEPP HSPD contains a number of development standards applicable to development applications made pursuant to SEPP HSPD. Clause 18 of SEPP HSPD outlines the restrictions on the occupation of seniors housing and requires a condition to be included in the consent if the application is approved to restrict the kinds of people which can occupy the development. A condition to this effect already exists on the approval. The following is an assessment of the proposal against the requirements of Chapter 3 of SEPP (HSPD).

Development Criteria			
Clause	Requirement	Proposal	Complies
PART 2 - Site Related Requirements			
26(1)	Satisfactory access to: (a) shops, banks and other retail and commercial services that residents may reasonably require, and (b) community services and recreation facilities, and (c) the practice of a general medical practitioner	The proposal as modified will continue to obtain satisfactory access to shops, banks and other retail and commercial services, community services, recreation facilities, and general medical practitioners.	Yes
26(2)	Access complies with this clause if: (a) the facilities and services referred are located at a distance of not more than 400 metres from the site or (b) there is a public transport service available to the residents not more than 400 metres away.	The proposal as modified will continue to access public transport services that are no more than 400 metres away.	Yes
27	If located on bush fire prone land, consideration has been given to the relevant bushfire guidelines.	N/A - not located on bush fire prone land.	N/A
28	Consideration is given to the suitability of the site with regard to the availability of reticulated water and sewerage infrastructure.	The availability of reticulated water and sewerage infrastructure is maintained as per the requirements of the Development Consent.	Yes
29	Consideration must be given to whether the	Development Application DA2019/0154 (subject of this modification) was	Yes

Development Criteria			
Clause	Requirement	Proposal	Complies
	proposal is compatible with the surrounding land uses having regard to the following criteria specified in Clauses 25(5)(b)(i), 25(5)(b)(iii), and 25(5)(b)(v): i) the natural environment and the existing uses and approved uses of land in the vicinity of the proposed development iii) the services and infrastructure that are or will be available to meet the demands arising from the proposed development and any proposed financial arrangements for infrastructure provision, v) the impact that the bulk, scale, built form and character of the proposed development is likely to have on the existing uses, approved uses and future uses of land in the vicinity of the development.	approved through the NSW Land and Environment Court. The proposed changes subject of this modification represent a relatively modest internal changes to the approved building footprint and the amended scheme is considered to maintain compliance with this requirement.	
PART 3 - Design Requirements – Division 1			
30	A site analysis is provided.	A detailed Site Analysis Plan was prepared with Development Application DA2019/0154 (subject of this modification). The works that are the subject of this application are wholly internal and do not alter the external outcome of the approved development which is under construction.	Yes

Clause 31 Design of in-fill self-care housing

Pursuant to Cause 31 in determining a development application to carry out development for the purpose of in-fill self-care housing, a consent authority must take into consideration the provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development* published by the former NSW Department of Infrastructure, Planning and Natural Resources dated March 2004.

The provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development* have been taken into consideration in the assessment of the application against the design principles set out in Division 2, Part 3 of SEPP HSPD. A detailed assessment of the proposals inconsistencies with regards to the requirements of SLP is undertaken hereunder.

Section	Requirements	Comment
1. Responding to context	Built Environment – New development is to follow the patterns of the existing residential neighbourhood in terms of built form. Policy environment – Consideration must be given to Councils own LEP and/or DCPs where they may describe the character and key elements of an area that contribute to its unique character.	Complies Development Application DA2019/0154 (subject of this modification) was approved through the NSW Land and Environment Court. The proposed changes subject of this modification represent a relatively modest change to the internal configuration, and as such are considered to be compliant with the context of the site. The non-compliances with the Pittwater LEP and P21 DCP have been addressed in this report.
2. Site Planning and design	Objectives of this section are to: -Minimise the impact of new development on neighbourhood character -Minimise the physical and visual dominance of car parking, garaging and vehicular circulation.	Complies The proposed changes will not altered any external aspects of the approved development. As such, there are no external changes to the character, physical, or visual appearance.
3. Impacts on streetscape	Objectives of this section are to: -Minimise impacts on the existing streetscape and enhance its desirable characteristics -Minimise dominance of driveways and car park entries in streetscape.	Complies There are no changes to the development as viewed from the existing streetscape. There are no changes to the driveway or car park entries.
4. Impacts on neighbours	The proposal is generally in accordance with the requirements of this section.	Complies The proposed modification works are wholly internal and as such will not result in any unacceptable impacts to neighbours. This has been addressed throughout this report.
5. Internal site amenity	Objectives of this section are to: -Provide safe and distinct pedestrian routes to all dwellings and communal facilities.	Complies The site layout provides appropriate and safe access to each unit.

Clause 32 Design of residential development

In accordance with Clause 32 of SEPP HSPD a consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied that the proposed development demonstrates that adequate regard has been given to the principles set out in Division 2 of Part 2.

The following table outlines compliance with the principles set out in Division 2, Part 3 of SEPP HSPD.

Control	Requirement	Proposed	Compliance
CL33 Neighbourhood amenity and streetscape	a. Recognise the desirable elements of the location's current character so that new buildings contribute to the quality and identity of the area.	There are no external changes to the approved development under this application, and as such there are no changes to the character of the development.	Yes
	b. Retain, complement and sensitively harmonise with any heritage conservation area in the vicinity and any relevant heritage items that are identified in a local environmental plan.	The proposal will not result in any unacceptable impacts to heritage items.	Yes
	c. Maintain reasonable neighbour amenity and appropriate residential character by; (i) providing building setbacks to reduce bulk and overshadowing (ii) using building form and siting that relates to the site's land form, and (iii) adopting building heights at the street frontage that are compatible in scale with adjacent development, (iv) and considering, where buildings are located on the boundary, the impact of the boundary walls on neighbors.	There proposed changes are wholly internal, and as such there are no changes to the approved setbacks, building form and siting, building height or boundary walls.	Yes

Control	Requirement	Proposed	Compliance
	d. Be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line, e. embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape. f. retain , wherever reasonable, major existing trees, and g. be designed so that no building is constructed in a riparian zone.	There are no changes to the front building setback. There are no changes to the approved planting under this application. There are no changes to any major existing trees under this application. The proposal is not located within a riparian zone.	Yes Yes Yes Yes
CL 34 Visual and acoustic privacy	The proposed development should consider the visual and acoustic privacy of neighbours in the vicinity and residents by: (a) Appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, and (b) Ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.	The proposed works include internal changes, and as such it is not considered the changes will result in any unacceptable visual or acoustic privacy impacts.	Yes
CL35 Solar access and design for climate	The proposed development should: (a) ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space,	There are no changes to the approved solar access under this application, as the works are isolated to internal changes.	Yes

Control	Requirement	Proposed	Compliance
	and (b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation solar heating and lighting by locating the windows of living and dining areas in a northerly direction.		
CL 36 Stormwater	Control and minimise the disturbance and impacts of stormwater runoff and where practical include on-site detention and water re-use.	There are no changes to the approved stormwater management under this application.	Yes
CL 37 Crime prevention	The proposed development should provide personal property security for residents and visitors and encourage crime prevention by: (a) site planning that allows observation of the approaches to a dwelling entry from inside each dwelling and general observation of public areas, driveways and streets from a dwelling that adjoins any such area, driveway or street, and (b) where shared entries are required, providing shared entries that serve a small number of dwellings that are able to be locked, and (c) providing dwellings designed to allow residents to see who approaches their dwellings without the	The proposal will allow for observation of public areas, driveways and streets.	Yes

Control	Requirement	Proposed	Compliance
	need to open the front door.		
CL 38 Accessibility	The proposed development should: (a) have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities, and (b) provide attractive, yet safe environments for pedestrians and motorists with convenient access and parking for residents and visitors.	There are no changes to the approved pedestrian access under this application.	Yes
CL 39 Waste management	The proposed development should be provided with waste facilities that maximise recycling by the provision of appropriate facilities.	There are no changes to the approved waste management arrangements.	Yes

Part 4 - Development standards to be complied with

Clause 40 – Development standards – minimum sizes and building height

Pursuant to Clause 40(1) of SEPP HSPD a consent authority must not consent to a development application made pursuant to Chapter 3 unless the proposed development complies with the standards specified in the Clause.

The following table outlines compliance with standards specified in Clause 40 of SEPP HSPD.

Control	Required	Proposed	Compliance
Site Size	1000 sqm	1,296.5sqm	Yes
Site frontage	20 metres	32.6sqm	Yes
Building Height	8m or less (Measured vertically from ceiling of topmost floor to ground level immediately below)	Unaltered - Approved as 9.3m under Mod2022/0471	N/A
	A building that is adjacent to a boundary of the site must not be more than 2 storeys in height.	There are no changes to the approved storeys under this application.	N/A
	A building located in the rear 25% of the site must not exceed 1 storey in height	There are no changes to the approved building footprint under this application.	N/A

Control	Required	Proposed	Compliance
	(development within 15.51 metres of the rear boundary).		

Clause 41 Standards for hostels and self contained dwellings

In accordance with Clause 41 a consent authority must not consent to a development application made pursuant to Chapter 3 unless the development complies with the standards specified in Schedule 3 for such development. The following table outlines compliance with the principles set out in Schedule 3 of SEPP HSPD.

Control	Required	Proposed	Compliance
Wheelchair Access	If the whole site has a gradient less than 1:10, 100% of the dwellings must have wheelchair access by a continuous path of travel to an adjoining public road. If the whole of the site does not have a gradient less than 1:10 the percentage of dwellings that must have wheelchair access must equal the proportion of the site that has a gradient of less than 1:10 or 50% whichever is the greater.	The whole of the site adjoins a public road and wheelchair access via a continuous accessible path of travel (incorporating lifts) is provided to all dwellings, as confirmed by the Access Report (dated 25 June 2024 prepared by by Cheung Access Pty Ltd T/A Inclusive Places).	Yes
Security	Pathway lighting (a) must be designed and located so as to avoid glare for pedestrians and adjacent dwellings, and (b) Must provide at least 20 lux at ground level	Capable of compliance as confirmed by the Access Report (dated 25 June 2024 prepared by by Cheung Access Pty Ltd T/A Inclusive Places).	Yes
Letterboxes	Letterboxes: (a) must be situated on a hard standing area and have wheelchair access and circulation by a continuous accessible path of travel, and (b) must be lockable, and (c) must be located together in a central	Capable of compliance as confirmed by the Access Report (dated 25 June 2024 prepared by by Cheung Access Pty Ltd T/A Inclusive Places).	Yes

Control	Required	Proposed	Compliance
	location adjacent to the street entry.		
Private car accommodation	(a) Carparking space must comply with AS2890 (b)One space must be designed to enable the width of the spaces to be increased to 3.8 metres, and (c)any garage must have a power operated door or there must be a power point and an area for motor or control rods to enable a power operated door to be installed at a later date.	Capable of compliance as confirmed by the Access Report (dated 25 June 2024 prepared by by Cheung Access Pty Ltd T/A Inclusive Places).	Yes
Accessible entry	Every entry to a dwelling must comply with Clause 4.3.1 and 4.3.2 of AS4299	Complies as confirmed by the Access Report (dated 25 June 2024 prepared by by Cheung Access Pty Ltd T/A Inclusive Places).	Yes
Interior general	Widths of internal corridors and circulation at internal doorways must comply with AS1428.1.	Complies as confirmed by the Access Report (dated 25 June 2024 prepared by by Cheung Access Pty Ltd T/A Inclusive Places).	Yes
Bedroom	At least one bedroom within each dwelling must have: (a) An area sufficient to accommodate a wardrobe and a queen size bed (b) A clear area for the bed of at least 1200 mm wide at the foot of the bed and 1000mm wide beside the bed between it and the wall, wardrobe or any other obstruction. (c) Power and telephone outlets and wiring described in Clause 8 of Schedule 3.	Capable of compliance as confirmed by the Access Report (dated 25 June 2024 prepared by by Cheung Access Pty Ltd T/A Inclusive Places).	Yes
Bathroom	The bathroom is to comply with the requirements described	Capable of compliance as confirmed by the Access Report (dated 25 June 2024	Yes

Control	Required	Proposed	Compliance
	in Clause 9 of Schedule 3.	prepared by by Cheung Access Pty Ltd T/A Inclusive Places).	
Toilet	The toilet is to comply with the requirements described in Clause 9 of Schedule 3.	Complies as confirmed by the Access Report (dated 25 June 2024 prepared by by Cheung Access Pty Ltd T/A Inclusive Places).	Yes
Surface finishes	Balconies and external paved areas must have slip resistant surfaces.	Capable of compliance as confirmed by the Access Report (dated 25 June 2024 prepared by by Cheung Access Pty Ltd T/A Inclusive Places).	Yes
Door hardware	Door handles and hardware for all doors must be provided in accordance with AS4299.	Capable of compliance as confirmed by the Access Report (dated 25 June 2024 prepared by by Cheung Access Pty Ltd T/A Inclusive Places).	Yes
Ancillary items	Switches and power points must be provided in accordance with AS4299.	Capable of compliance as confirmed by the Access Report (dated 25 June 2024 prepared by by Cheung Access Pty Ltd T/A Inclusive Places).	Yes
Living & dining room	A living room must have a circulation space in accordance with Clause 4.7.1 of AS4299, and a telephone adjacent to a general power outlet. Also a living and dining room must have a potential illumination level of at least 300 lux.	Capable of compliance as confirmed by the Access Report (dated 25 June 2024 prepared by by Cheung Access Pty Ltd T/A Inclusive Places).	Yes
Kitchen	The kitchen must comply with the requirements of Clause 16 of Schedule 3	Capable of compliance as confirmed by the Access Report (dated 25 June 2024 prepared by by Cheung Access Pty Ltd T/A Inclusive Places).	Yes
Access to kitchen, main bedroom, bathroom & toilet	The kitchen, main bedroom, bathroom and toilet must be located on the entry level.	Complies as confirmed by the Access Report (dated 25 June 2024 prepared by by Cheung Access Pty Ltd T/A Inclusive Places).	Yes
Laundry	The laundry must comply with the	Capable of compliance as confirmed by the Access Report (dated 25 June 2024	Yes

Control	Required	Proposed	Compliance
	requirements of Clause 19 of Schedule 3.	prepared by by Cheung Access Pty Ltd T/A Inclusive Places).	
Storage	A self-contained dwelling must be provided with a linen storage in accordance with Clause 4.11.5 of AS4299	Capable of compliance as confirmed by the Access Report (dated 25 June 2024 prepared by by Cheung Access Pty Ltd T/A Inclusive Places).	Yes
Garbage	A garbage storage area must be provided in an accessible location.	A communal bin room is located on the car park level consistent with the original approval.	Yes

Clause 50 Standards that cannot be used to refuse development consent for self-contained dwellings

In accordance with Clause 50 of SEPP HSPD a consent authority must not refuse consent to a development application made pursuant to Chapter 3 for the carrying out of development for the purpose of a self contained dwelling on any of the grounds listed in Clause 50.

The following table outlines compliance with standards specified in Clause 50 of SEPP HSPD.

Control	Required	Proposed	Compliance
Building height	8m or less (Measured vertically from ceiling of topmost floor to ground level immediately below)	Unaltered - Approved as 9.3m under Mod2022/0471	N/A
Density and scale	0.5:1 (648.25sqm)	0.544:1 or 705.9sqm (additional 64.1sqm)	No The proposal presents a variation to the FSR as a result of the conversion of the Unit 1 storage to a bedroom and ensuite and the conversion of the plant area in Unit 1 to a bathroom and laundry. Furthermore, the conversion of the void to a laundry in Unit 4 increases the FSR. It is considered that as the works are all internal there is no unacceptable environmental or amenity impact as a

Control	Required	Proposed	Compliance
			result of the additional floor space. It is noted that Unit 1 will no longer obtain any storage area, however it is considered future residents can optimise storage within the confines of Unit 1.
Landscaped area	30% of the site area is to be landscaped	Unaltered - Approved as 45.5% under Mod2022/0471	Yes
Deep soil zone	15% of the site area Two thirds of the deep soil zone should be located at the rear of the site. Each area forming part of the zone should have a minimum dimension of 3 metres.	Unaltered - Approved as 34% under Mod2022/0471	Yes
Solar access	Living rooms and private open spaces for a minimum of 70% of the dwellings of the development receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid winter	Unaltered - The location of the living room windows and private open space (in particular the north east facing balconies) would remain consistent with the original approval.	Yes
Private open space	(i) in the case of a single storey dwelling or a dwelling that is located, wholly or in part, on the ground floor of a multi-storey building, not less than 15 square metres of private open space per dwelling is provided and, of this open space, one area is not less than 3 metres wide and 3	Unaltered - The proposal will not alter the previously approved private open space.	Yes

Control	Required	Proposed	Compliance
	metres long and is accessible from a living area located on the ground floor, and (ii) in the case of any other dwelling, there is a balcony with an area of not less than 10 square metres (or 6 square metres for a 1 bedroom dwelling), that is not less than 2 metres in either length or depth and that is accessible from a living area		
Parking	0.5 car spaces for each bedroom (12 bedrooms proposed – 6 carparking spaces required)	Unaltered - 9 spaces provided	Yes
Visitor parking	None required if less than 8 dwellings	Unaltered - 1 visitor space provided	Yes

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 1 Coastal Wetlands and littoral rainforest area**2.8 Development on land in proximity to coastal wetlands or littoral rainforest**

- 1) Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:
 - a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or
 - b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.

Comment:

The proposal as modified is located in land identified as "proximity area for coastal wetlands". The proposed modified development will not significantly impact on the biophysical, hydrological or ecological integrity of the adjacent coastal wetland, or the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland.

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

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

Comment:

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

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

Comment:

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

Division 4 Coastal use area

2.11 Development on land within the coastal use area

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

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

Comment:

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

Division 5 General

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

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

Comment:

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

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

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

Comment:

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

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

Chapter 4 – Remediation of Land

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

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

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.1m (Roof RL 19.142) 9.3m (Lift and servicing equipment RL 19.973)	unaltered	-	N/A

Compliance Assessment

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

Detailed Assessment

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	10m	12m	unaltered	N/A
Rear building line	3m (Where wall height is less than 3m) (Based on wall height above 3m)	Carpark: 4.8m - 5.5m Lower ground: 4.8m - 5.5m GF Terrace: 5.2m -	unaltered	N/A

		6m GF: 8.8m - 10.4m FF: 8.8m-10.2m		
Side building line	NW - 3m (Where wall height is less than 3m) 4m - 4.4m (Based on wall height above 3m)	1.5m (Lower floor) 2.5m (Carpark) 3m (GF & FF)	unaltered	N/A
	SE - 3m (Where wall height is less than 3m) 3.7m - 4.2m (Based on wall height above 3m)	1.6m (Lower floor terrace) 3m (Lower floor, GF, FF)	unaltered	N/A
Building envelope	3.5m (NW)	Within envelope	unaltered	N/A
	3.5m (SE)	Outside envelope	unaltered	N/A
Landscaped area	50% (648.25sqm)*	45.5% 590sqm* 51.5% (with variation)	unaltered	N/A

**Note: SEPP (Housing for Seniors or People with a Disability) 2004 requires 30% Landscaped Area, and 15% Deep Soil Zone (inclusive)*

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.4 Church Point and Bayview Locality	Yes	Yes
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B4.14 Development in the Vicinity of Wetlands	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.10 Building Facades	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.15 Storage Facilities	No	Yes
C1.20 Undergrounding of Utility Services	Yes	Yes
C1.21 Seniors Housing	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D4.1 Character as viewed from a public place	Yes	Yes
D4.2 Scenic protection - General	Yes	Yes
D4.3 Building colours and materials	Yes	Yes
D4.5 Front building line	N/A	N/A
D4.6 Side and rear building line	N/A	N/A
D4.8 Building envelope	N/A	N/A
D4.9 Landscaped Area - General	N/A	N/A
D4.11 Fences - General	N/A	N/A
D4.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D4.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

C1.15 Storage Facilities

Description of non-compliance

Clause C1.15 Storage Facilities of Pittwater 21 Development Control Plan stipulates the following:
A lockable storage area of minimum 8 cubic metres per dwelling shall be provided. This may form part of a carport or garage.

The proposed modification works seeks to convert the Unit 1 storage area to a bedroom, wir, and

ensuite. As such, Unit 1 will not longer have a dedicated storage area, however it has access to generous walk-in robes and a service area which facilitates internal storage. It is noted, that the remaining Units, being Unit 2, Unit 3, and Unit 4 retain the nominated storage areas.

It is considered that Unit 1 will be able to achieve within the Unit, and as such the conversion of the storage area to an additional bedroom is considered acceptable.

Merit consideration

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

- ***Provision of convenient storage with the development. (S)***

Comment:

It is considered that Unit 1 will facilitate appropriate storage within Unit 1, and as such the conversion of the storage area to a bedroom is acceptable. Two of the bedrooms within Unit 1 contain WIR that will assist with storage, as well as ample spaces within the unit for storage as required.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental

Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

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

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

PLANNING CONCLUSION

This proposal, for modification of Development Consent DA2019/0154 granted for demolition works and construction of a seniors housing development has been referred to the Development Determination Panel (DDP) due to five (5) objections received.

The concerns raised in the objections have been addressed and considered in the submissions section of this report.

The critical assessment issues include the increased FSR under Clause 50 of the *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP (HSPD))*, however it is noted that Clause 50 of the SEPP HSPD are standards that cannot be used to refuse development consent for self-contained dwellings

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

REASON FOR DETERMINATION

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2024/0252 for Modification of Development Consent DA2019/0154 granted for Demolition works and construction of a seniors housing development on land at Lot 1 DP 373531, 1955 Pittwater Road, BAYVIEW, Lot 1 DP 1047205, 1955 Pittwater Road, BAYVIEW, subject to the conditions printed below:

Modification Summary

The development consent is modified as follows:

MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
PAN-435217 Mod2024/0252	The date of this notice of determination	Modification of Development Consent DA2019/0154 granted for demolition works and construction of a seniors housing development Add Condition 1D - Modification of Consent - Approved Plans and supporting documentation Modify Condition 28A (Access and Facilities for Persons with Disabilities) Modify Condition 74 (Use of "Lower Ground Floor storage areas")
PAN-254758 MOD2022/0471	13 September 2023	Modification of Development Consent DA2019/0154 granted for demolition works and construction of a seniors housing development Add Condition No.1C - Modification of Consent - Approved Plans and supporting Documentation Modify Condition 2 (Compliance with Other Department, Authority or Service Requirements) Modify Condition 46 (Removal of trees within the road reserve) Modify Condition 49 (Tree and vegetation protection) Modify Condition 56 (Landscape Works) Modify Condition 57 (Condition of Retained Vegetation) Add Condition 28A (Access and Facilities for Persons with Disabilities) Add Condition 28B (Submission Roads Act Application for Civil Works in the Public Road (Retaining Wall Works)) Add Condition 28C (Amendments to the approved plans) Add Condition 51A (Impacts to Protected Native Wildlife) Add Condition 51B (Wildlife Protection) Add Condition 57A (No Weeds Imported On To The Site) Add Condition 57B (Priority Weed Removal and Management) Add Condition 71 (Replacement of Canopy Trees) Add Condition 72 (Plant Noise) Add Condition 73 (Use of the Roof Terrace) Add Condition 74 (Use of "Lower Ground Floor storage areas") Add Condition 28D (Services and Fire Hydrant Enclosure) Add Condition 75 (Roof top screening & AC Units)
PAN-106400 Mod2021/0343	27 July 2021	Modification of Development Consent DA2019/0154 granted for demolition works and construction of a seniors housing development

		Add Condition No. 1B - Modification of Consent - Approved Plans and supporting Documentation
PAN-78870 Mod2021/0101	12 May 2021	Modification of Development Consent DA2019/0154 granted for demolition works and construction of a seniors housing development Add Condition No. 1A - Modification of Consent - Approved Plans and supporting Documentation

Modified conditions

A. Add Condition 1D - Modification of Consent - Approved Plans and supporting documentation, to read as follows:

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA.101	G	Site Plan	Aplus Design Group	19 April 2024
DA.203	H	Lower Ground Floor Plan	Aplus Design Group	24 June 2024
DA.204	D	Ground Floor Plan	Aplus Design Group	19 April 2024
DA.205	E	First Floor Plan	Aplus Design Group	24 June 2024
DA.301	F	Section AA	Aplus Design Group	19 April 2024
DA.302	F	Section BB	Aplus Design Group	19 April 2024
DA.303	B	Section CC	Aplus Design Group	19 April 2024
DA.405	B	Unit 1 Internal Elevation/Sections	Aplus Design Group	24 June 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Access Report	P000737	Cheung Access Pty Ltd Trading As Inclusive Places	25 June 2024
BASIX Certificate (No.991214M_07)	-	Efficient Living Pty Ltd	10 May 2024
Geotechnical Report	2023-223	Crozier Geotechnical Consultants	23 April 2024
NatHERS Certificate (No.0005395090)	F	Efficient Living Pty Ltd	10 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 with the approved plans and a condition of this consent, the condition prevails.

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

B. Modify Condition 28A (Access and Facilities for Persons with Disabilities), to read as follows:

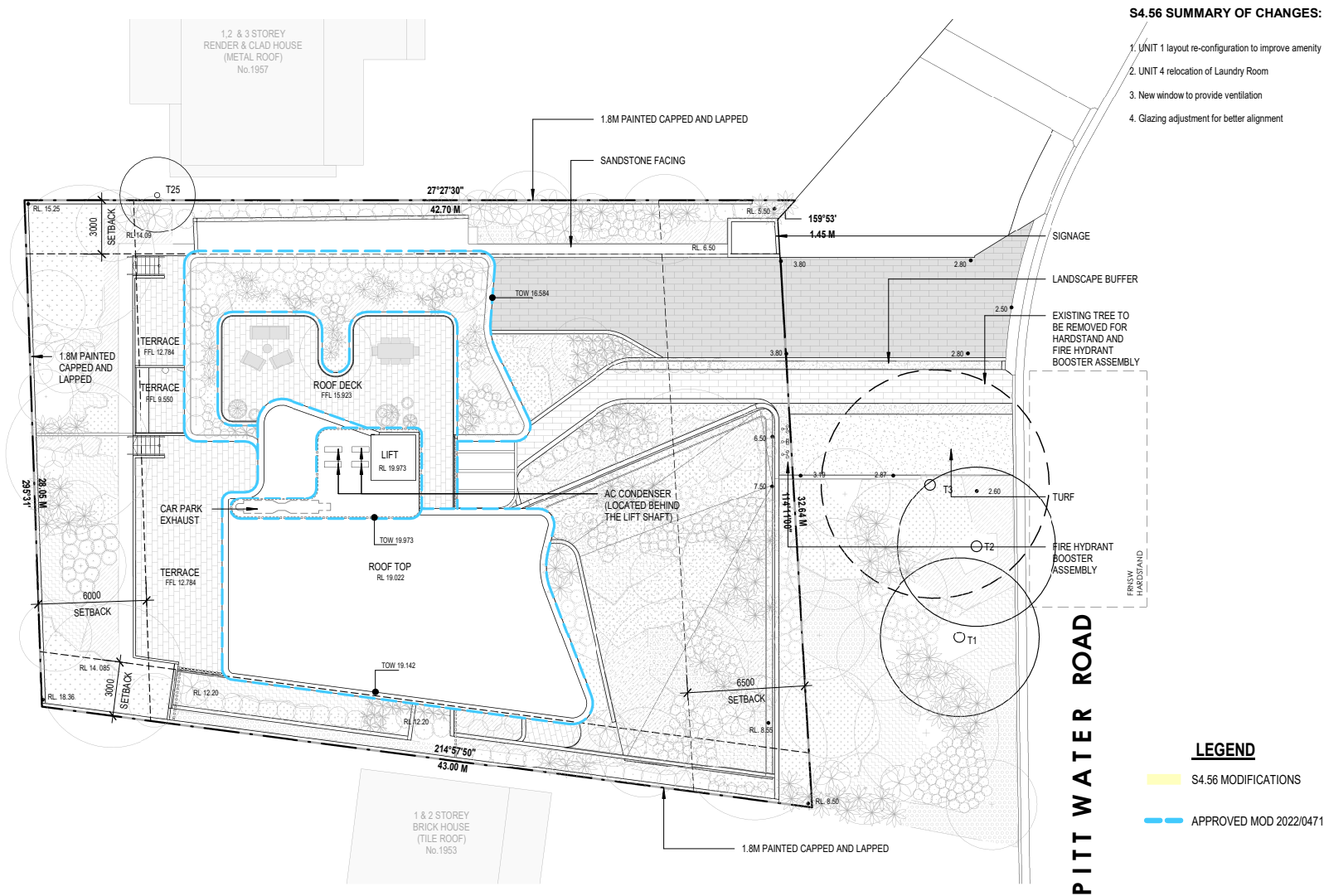
Access and facilities to and within the building are to be provided as required for Persons with a Disability in accordance with the Building Code of Australia and AS1428. In this regard the recommendations contained in the Access Report prepared by Cheung Access Pty Ltd Trading As Inclusive Places, Reference No.P000737, dated 25 June 2024 are to be taken into consideration as part of the assessment of the Construction Certificate. Details are to be provided to the Certifier 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.

C. Modify Condition 74 (Use of "Lower Ground Floor storage areas"), to read as follows:

The "lower ground floor level" unit storage areas, labelled UNIT 2 ST"; "UNIT 3 ST"; "UNIT 4 ST"; shall not to be used for habitable purposes and shall not to contain any cooking, bathroom/toilet or laundry facilities. The storage areas despite notation on the plan shall have not external openings or ventilation louvers.

Reason: To ensure that the storage areas are used for their intended purpose.



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LEVEL 3, 9 BARACK STREET
SYDNEY, NSW 2000
NOMINATED ARCHITECT-KAICHI LEUNG NSW 7133

Rev	Description	Date
A	S4.55 Submission	8/9/22
B	S4.55 Response	20/10/22
C	S4.55 Amended Plans	28/01/23
D	S4.55 Amended Plans	28/02/23
E	S4.55 Amended Plans	08/03/23
F	S4.55 Amended Plans	29/03/23
G	S4.56 Amended Plans	19/04/24

Project Name
1955 Pittwater Rd., Bayview



Drawing Title
Site Plan

SCALE 1 : 200 @ A3

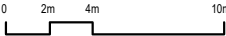
Drawing no:
DA.101

Project No.
A22039

ISSUE
G

S4.56 SUMMARY OF CHANGES:

- 1. UNIT 1 layout re-configuration to improve amenity
- 2. UNIT 4 relocation of Laundry Room
- 3. New window to provide ventilation
- 4. Glazing adjustment for better alignment



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NOMINATED ARCHITECT-KAICHI LEUNG NSW 7133

Rev	Description	Date
A	S4.55 Submission	8/8/22
B	S4.55 Response	20/10/22
C	S4.55 Amended Plans	28/01/23
D	S4.55 Amended Plans	29/03/23
E	S4.55 Amended Plans	17/05/23
F	S4.56 Amended Plans	19/04/24

Project Name
1955 Pittwater Rd., Bayview

Drawing Title
North Elevation

Project No.
A22039

SCALE 1 : 200 @ A3 Drawing no:
DA.401

ISSUE
F

S4.56 SUMMARY OF CHANGES:

1. UNIT 1 layout re-configuration to improve amenity
2. UNIT 4 relocation of Laundry Room
3. New window to provide ventilation
4. Glazing adjustment for better alignment



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NOMINATED ARCHITECT-KAICHI LEUNG NSW 7133

Rev	Description	Date
B	S4.55 Response	20/10/22
C	S4.55 Amended Plans	28/01/23
D	S4.55 Amended Plans	29/03/23
E	Additional Information	21/04/23
F	S4.55 Amended Plans	17/05/23
G	S4.55 Amended Plans	14/06/23
H	S4.56 Amended Plans	19/04/24

Project Name
1955 Pittwater Rd., Bayview

Drawing Title
West Elevation

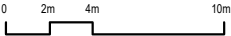
SCALE 1 : 200 @ A3 Drawing no:
DA.402

Project No.
A22039

ISSUE
H

S4.56 SUMMARY OF CHANGES:

1. UNIT 1 layout re-configuration to improve amenity
2. UNIT 4 relocation of Laundry Room
3. New window to provide ventilation
4. Glazing adjustment for better alignment



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Rev	Description	Date
A	S4.55 Submission	8/8/22
B	S4.55 Response	20/10/22
C	S4.55 Amended Plans	28/01/23
D	S4.55 Amended Plans	17/05/23
E	S4.56 Amended Plans	19/04/24

Project Name
1955 Pittwater Rd., Bayview

Drawing Title
South Elevation

Project No.
A22039

SCALE 1 : 200 @ A3 Drawing no:
DA.403

ISSUE
E

S4.56 SUMMARY OF CHANGES:

1. UNIT 1 layout re-configuration to improve amenity
2. UNIT 4 relocation of Laundry Room
3. New window to provide ventilation
4. Glazing adjustment for better alignment



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NOMINATED ARCHITECT-KAICHI LEUNG NSW 7133

Rev	Description	Date
B	S4.55 Response	20/10/22
C	S4.55 Amended Plans	28/01/23
D	Additional Information	21/04/23
E	S4.55 Amended Plans	17/05/23
F	S4.55 Amended Plans	12/06/23
G	S4.55 Amended Plans	14/06/23
H	S4.56 Amended Plans	19/04/24

Project Name
1955 Pittwater Rd., Bayview

Drawing Title
East Elevation

SCALE 1 : 200 @ A3 Drawing no: DA.404

Project No.
A22039

ISSUE
H



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Rev	Description	Date
A	S4.56 Amended Plans	19/04/24
B	S4.56 Amended Plans	24/06/24

Project Name
1955 Pittwater Rd., Bayview

Drawing Title
UNIT 1 Internal Elevations/Sections

SCALE 1 : 100 @ A3 Drawing no: DA.405

Project No.
A22039

ISSUE
B

**ITEM 3.6 DA2024/0269 - POR 1068/ SPICER ROAD OXFORD FALLS -
DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING
HOUSE INCLUDING SWIMMING POOL, TENNIS COURT, DETACHED
GARAGE, DRIVEWAY AND ADDITIONAL STRUCTURES**

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 20 variation to the building height standard.

RECOMMENDATION

That Council as the consent authority, vary the Built Form Controls (Building height and Rear building setback) pursuant to clause 20 of WLEP 2000 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 DA2024/0269 for demolition works and construction of a dwelling house including swimming pool, tennis court, detached garage, driveway and additional structures on land at Lot 1068 DP 752038, Por 1068/ Spicer Road OXFORD FALLS, subject to the conditions set out in the Assessment Report.

Reporting manager	Adam Richardson
TRIM file ref	2024/500996
Attachments	↓1 Assessment Report ↓2 Site Plan and Elevations



DEVELOPMENT ASSESSMENT REPORT

Application Number:	DA2024/0269
Responsible Officer:	Stephanie Gelder
Land to be developed (Address):	Lot 1068 DP 752038 Por 1068/ Spicer Road OXFORD FALLS
Proposed Development:	Demolition works and construction of a dwelling house including swimming pool, tennis court, detached garage, driveway and additional structures
Locality:	Warringah LEP2000 - B2 Oxford Falls Valley
Category:	Category 2 – Housing
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	J Gao, C C Lim
Applicant:	Calvin Chee-Chung Lim
Application Lodged:	26/03/2024
Integrated Development:	Yes
Designated Development:	No
State Reporting Category:	Residential – Single dwelling detached dwelling
Notified:	9 April 2024 to 7 May 2024
Advertised:	Yes
Submissions Received:	1
Clause 20 Variation:	Yes
Recommendation:	Approval
Estimated Cost of Works:	\$7,272,012.57

EXECUTIVE SUMMARY

This development application seeks consent for demolition works and construction of a dwelling house including swimming pool, tennis court, detached garage, driveway and additional structures.

The property is subject to Clause 1.3(1A) of the Warringah Local Environmental Plan 2011 and is classified as "Deferred Matter". The development is therefore guided by the provisions of the Warringah Local Environment Plan 2000 (WLEP 2000) and is located within the B2 Oxford Falls Valley locality.

DA2024/0269

The application is referred to the Development Determination Panel (DDP) due to the variations to the building height and rear building setback control that are considered development standards under WLEP 2000. The proposal presents a building height of 9.333m presenting a variation of 9.8% (0.833m) to the required 8.5m and a floor to ceiling building height of 8.98m presenting a variation of 24.72% (1.78m) to the required 7.2m floor to ceiling height. Furthermore, the proposal presents a rear building line to the proposed tennis court of 4.02m resulting in a variation of 59.8% (5.98m) to the rear setback control.

An assessment against Clause 20(1) of WLEP 2000 has been undertaken that concludes the variations are acceptable as the proposal is consistent with the general principles of development control, the desired future character of the locality.

The application was notified in accordance with the Community Participation Plan in the one (1) objection relate to the proposed tree removal. Amended plans were submitted during the assessment of the application that resulted in retention of trees that were previously sought to be removed.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposed development comprises of the following works:

- Demolition of the majority of existing structures;
- Tree removal;
- Excavation works; and
- Construction of a two storey dwelling, badminton/basketball shed, swimming pool and garage.

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.

SITE DESCRIPTION

The subject site consists of one (1) allotment located on the western side of Spicer Road.

The site is regular in shape with a frontage of 121.315m along Spicer Road and a depth of 229.60m. The site has a surveyed area of 26,300m².

The site is located within the B2 Oxford Falls Valley Locality under the provisions of the Warringah Local Environmental Plan 2000, and accommodates two single storey brick residences, multiple metal sheds, and a timber & metal carport.

The site topography slopes from front eastern boundary upwards to the western rear boundary over approximately 14.0m.

The property consists of large lawn areas, and substantive number of trees.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by a mix of low density and rural residential dwellings, low density commercial use, bushland and public reserves.

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.

DA2024/0269

APPLICATION HISTORY

Following the preliminary assessment of the application, Council requested additional information in relation to Building height of Warringah Local Environmental Plan 2000 (WLEP 2000), Wall height of WLEP 2000, Rear and side building setback of WLEP 2000, and Landscaped open space of WLEP 2000. Further information was requested from Council's Landscape Officer, Council's Bushland and Biodiversity Officer, Council's Development Engineer, and the Aboriginal Heritage Office.

Amended plans were subsequently submitted which retained more trees on site, reduced the proposed building height by 200mm, reduced the proposed wall height, and internal alterations to the northern wing including additional windows.

Upon review of the amended plans, it was noted that the amended plans included additional windows along the northern elevation, and as such an amended BASIX Certificate and NatHERS Certificate was requested and subsequently submitted by the applicant.

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).

Department of Planning and Environment – Water

The application was referred to Department of Planning and Environment – Water as the application appeared to be Nominated Integrated and was referred to the Department of Planning and Environment - Water under the Water Management Act 2000, s91 - Controlled Activity Approval for works within 40m of watercourse. However, the referral response from Department of Planning and Environment – Water (Ref No. IDAS-2024-10235 dated 29 April 2024) confirmed the application was exempt from the need to obtain a controlled activity approval.

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 Local Environmental Plan 2000 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

Section 4.15 Matters for Consideration	Comments
	been addressed via a condition of consent. <u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to Building height of Warringah Local Environmental Plan 2000 (WLEP 2000), Wall height of WLEP 2000, Rear and side building setback of WLEP 2000, and Landscaped open space of WLEP 2000. Further information was requested from Council's Landscape Officer, Council's Bushland and Biodiversity Officer, Council's Development Engineer, and the Aboriginal Heritage Office. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been

Section 4.15 Matters for Consideration	Comments
	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) The environmental impacts of the proposal on the natural and built environment are addressed under the General Principles of Development Control in this report. In summary, the proposal is satisfactory with conditions, having regard to environmental impacts. (ii) The proposal will not have a detrimental social impact in the locality considering the character of the proposal. (iii) The proposal 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 that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application that included a certificate (prepared by Building Code & Bushfire Hazards Solutions Pty Ltd, dated 6 March 2024) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent. It is considered that the proposed development satisfies the requirements of Section 4.14 of the Act.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 09/04/2024 to 07/05/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address
Mr Terrence William Moss	1066 / 0 Spicer Road OXFORD FALLS NSW 2100

The following issues were raised in the submissions:

- **Tree Removal**

The submissions raised concerns surrounding the number of proposed trees to be removed.

Comment:

Council's Landscape Officer, and Council's Bushland and Biodiversity Officer raised similar concerns surrounding the proposed tree removal. Subsequently, the applicant submitted amended plans that reduced the number of trees to be removed. The objector was informally notified by email the proposed changes, however no further correspondence was submitted. Council's Landscape Officer, and Council's Bushland and Biodiversity reviewed the amended plans, and provided amended comments in the Internal Referrals section of this report. In summary, the proposed retention and removal of trees is supportable, subject to recommended conditions.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<i>Supported – subject to conditions</i> The application is assessed by Landscape Referral against Warringah Local Environmental Plan 2000 - Locality B2 Oxford Falls Valley. The Desired Future Character under Locality B2 includes various objectives as listed including: The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. <u>Updated Comments:</u> Updated plans and reports are submitted in response to matters raised. The proposal includes modification of the proposed driveway to preserve existing trees 22 and

Internal Referral Body	Comments
	23. The amended Arboricultural Impact Assessment (AIA) recommends tree sensitive construction near nominated trees and conditions shall be imposed should the application be approved. The AIA report as amended includes the recommendations to remove a total of twenty trees with eight of these being exempt species not requiring Council consent for management or removal. The removal of sixteen prescribed trees, three of which are high retention value trees (identified as trees 14, 24 and 25) impacted by development works raises no concern as this is unavoidable should the application be approved. Within the amended Landscape Plans all proposed tree planting to the front setback are updated to be native species as requested by Landscape Referral. No further concerns are raised subject to conditions including compliance with Planning for Bush Fire Protection 2019. It is noted that the property is identified as Bush Fire Prone Land and the land is recommended in the Bush Fire Report to be managed as an Inner Protection Zone under Planning for Bush Fire Protection 2019. The advent of Planning for Bush Fire Protection in 2006 including guideline provisions following on from the WLEP 2000 planning instrument are subsequently recognised. Furthermore it is advised that the Asset Protection Zone shall be within the boundaries and not rely on adjoining properties. The recommendations of the Flora and Fauna Impact Assessment report are noted including section 6 Impact Mitigation Measures, and any conditions relative to required works shall be deferred to Council's Bushland and Biodiversity Referral team. <u>Previous comments:</u> Landscape Referral notes Bushland and Biodiversity's comments and will continue their assessment upon receipt of further information. It is considered alternate design solutions are available for the driveway loop in the front setback which would allow the retention of at least trees 22 and 23. These trees shall be retained and supported by arboricultural comment. The driveway loop width is questioned and is measured at approximately 4 metres on the Landscape Plan; a reduction in width could help mitigate some impact to existing trees.

Internal Referral Body	Comments
	The landscape proposal is generally supported, however, to satisfy the WLEP2000 Locality B2 Oxford Falls Valley 'Front building setback' and to maintain the streetscape character, all tree planting in the front setback shall be native.
NECC (Bushland and Biodiversity)	<i>Supported – subject to conditions</i> <u>Updated Comments</u> A flora and fauna assessment has been prepared and submitted with the application (Land Eco Consulting, June 2024) and concluded that the application does not trigger entry into the BOS. No objections are raised in this regard. Additionally, tests of significance (5 part tests) have been conducted to determine whether significant impacts are to take place on threatened flora and fauna. The report has concluded that regardless of the removal of 22 trees including two prescribed trees considered representative of the Duffys Forest Endangered Ecological Community (EEC), it not considered likely that these impacts will be significant to the local occurrence of the EEC. Furthermore, the report has provided tests of significance for threatened fauna that are likely to use the site as habitat at some stage of their lifecycle. The report concludes that the proposed development (including the removal of vegetation) is unlikely to have a significant impact upon the local native fauna populations and further adds that some habitat will remain. A range of Impact mitigation measures have been recommended and will be conditioned. As the land has been identified on the bushfire prone land map a bushfire report has been submitted with the application and awarded the site a BAL 29 level of risk. The existing asset protection zones which are self contained in the site have been considered to be compliant with PBP 2019 requirements. However, all areas not built upon have been recommended to be treated as Inner Protection Areas. No objections are raised in relation to these recommendations. Amended plans have been submitted and the retention of two trees originally proposed for removal (T22 and T23) is now supported and confirmed by an amended Arborist report (Urban Arbor, June 2024).

Internal Referral Body	Comments
	The development is designed, sited and will be managed to avoid any significant adverse environmental impact. <u>Original comments</u> The comments in this referral relate to the following applicable controls and provisions: • NSW Biodiversity Conservation Act 2016 (Bc Act) • NSW Biodiversity Conservation Regulation 2017 (BC Reg) • SEPP (Biodiversity and Conservation) 2021 - Chapter 4 Koala Habitat Protection • Planning for Bushfire Protection 2019 • Warringah LEP 2000 • Clause 56 Retaining unique environmental features on site • Clause 58 Protection of existing flora • Clause 59 Koala Habitat Protection Portions of the site are identified on the Department of Climate Change, Energy, the Environment and Water (DCCEE) 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. As the land has been identified on the bushfire prone land map a bushfire report has been submitted with the application and awarded the site a BAL 29 level of risk. The existing asset protection zones have been considered to be compliant with PBP 2019 requirements. However, all areas not built upon have been recommended to be treated as Inner Protection Areas. No objections are raised in relation to these recommendations. The proposal has been submitted with an arboricultural impact assessment (Urban Arbor Pty Ltd, February 2024) that has recommended the removal of 22 trees

Internal Referral Body	Comments
	after assessing the condition of a total of 61 trees. The removal of dead trees (5, 6, 16, 20 and 21) is not objected to but a number of trees are proposed for removal due to alignment with the new driveway (4, 10, 11, 12, 14, 22, 23, 26, 28, 32, 36, 41 and 47) which should be further investigated in order to avoid and minimise impacts to the natural environment in line with requirements of the BC Act. Additionally, a site inspection has revealed that trees proposed for removal are providing habitat in the form of hollows. Therefore, as per the Biodiversity Guidelines for Development Applications available on Council's website (https://files-preprod-d9.northernbeaches.nsw.gov.au/nbc-prod-files/documents/general-information/environmental-and-community-protections/biodiversity-requirements-development-applications.pdf), a Flora and Fauna Assessment will be required before the biodiversity referral can be completed. The Biodiversity Referral will recommence upon reception of a Flora and Fauna Assessment report prepared by a suitably qualified ecologist.
NECC (Development Engineering)	<i>Supported – subject to conditions</i> The proposed development leads to a large increase in impervious fraction of the site. The impervious percentage is however under 40% and hence OSD is not required in accordance with the Water Management for Development Policy. The Water Management for Development Policy, however stipulates that the maximum allowable concentrated discharge onto the verge is 20 l/s. Revised stormwater management plans are required to show, concentrated discharge to the verge reduced to a maximum of 20 l/s, by one of the following methods: 1. Provision of on-site detention for the site (provide calculations) 2. Provision of additional outlets (provide calculations) 3. Provision of a minimum 6 metre long level spreader on private property near the boundary of site in lieu of the twin 200*100*6 mm RHS outlets. Engineering Comments 28.06.24 Amended stormwater management plans have been provided showing an on-site stormwater dispersal

Internal Referral Body	Comments
	system as a method of stormwater discharge for impervious surfaces on the site. This is supported. Development engineering raises no further objections to the proposed development, subject to conditions.
NECC (Flooding)	<i>Supported – without conditions</i> The proposal is for a knock-down-rebuild project on the property. The works include the construction of a two storey residential dwelling, tennis court and garage. All the works are outside the flood planning area. As such, there are no flood related development controls.
NECC (Riparian Lands and Creeks)	<i>Supported – subject to conditions</i> This application was assessed in consideration of: - Supplied plans and reports; - Coastal Management Act 2016; - State Environmental Planning Policy (Resilience and Hazards) 2021; - Relevant LEP and DCP clauses; and - Northern Beaches Council Water management for development policy. This proposal is supported. Details below. Riparian Middle Creek runs within the site and then crosses over the northern property boundary and as such proposed development must not significantly impact on the biophysical, hydrological or ecological integrity of Middle Creek or the quantity and quality of surface and ground water flows that it receives. Sediment Management Sediment and erosion controls must be installed prior to any disturbance of soil on site and maintained until all work is complete and groundcover re-established.
NECC (Water Management)	<i>Supported – subject to conditions</i> 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

Internal Referral Body	Comments
	The water management team has no objections to the amended stormwater plan. The proposal is for demolition, tree removal, construction of a two-storey dwelling plus shed, pool and garage. Water Management chain includes onsite dispersal, two 50000 litre rainwater tanks, and silt arrestor pits. Section 4.0 of the WMD Policy applies. Water sensitive urban design, water reuse and infiltration into the soil, and the resulting quality of stormwater leaving the site are interconnected concepts that guide a merit-based assessment under the section. The proposed stormwater plan includes features to retain water and encourage infiltration. No objections regarding water management.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<i>Supported – subject to conditions</i> The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	<i>Supported – subject to conditions</i> <u>Updated Comments – 4 July 2024</u> Development Application No. DA2024/0269 Description: Demolition works and construction of a dwelling house including swimming pool, tennis court, detached garage, driveway and additional structures Address: Por 1068/ Spicer Road OXFORD FALLS Reference is made to the proposed development at the above area and Aboriginal heritage. Artefact Heritage completed an Aboriginal Due Diligence Assessment in June 2024. The Aboriginal Heritage Office agrees with the conclusions made in the report:

External Referral Body	Comments
	Due to the historical ground disturbance within the study area, the study area does not contain and is not likely to contain any Aboriginal objects. It is recommended that no further Aboriginal heritage assessment or investigations are required, and the proposed works can proceed with caution. Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted. <u>Original Comments – 27 May 2024</u> Development Application No. DA2024/0269 Description: Demolition works and construction of a dwelling house including swimming pool, tennis court, detached garage, driveway and additional structures Address: Por 1068/ Spicer Road OXFORD FALLS Reference is made to the proposed development at the above area and Aboriginal heritage. There are known Aboriginal sites in the area. No sites are recorded in the current development area, however, the area of the proposed development is identified as having high potential for unrecorded Aboriginal sites. The Aboriginal Heritage Office recommends a preliminary inspection ('due diligence' under the National Parks and Wildlife Act 1974) by a qualified Aboriginal heritage professional. The assessment would provide information on what potential Aboriginal heritage issues exist on the land and recommendations for any further action if required. Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be

External Referral Body	Comments
	contacted.
Nominated Integrated Development - DCCEEW - Water - Water Management Act 2000, s90(2) - Water management works approval to construct and use a specified water supply/drainage/flood work at a specified location	Supported – without conditions The proposal was referred to Department of Planning and Environment - Water who provided a response on 29 April 2024 stating the following: <i>The Department of Planning and Environment-Water has reviewed documents for the above development application and considers that, for the purposes of the Water Management Act 2000 (WMAAct), the proposed works are exempt from the need to obtain a controlled activity approval and no further assessment by this agency is necessary.</i> Therefore, no conditions are recommended or required.

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)

SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No. 1739356S_02 dated 09 July 2024).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Warringah Local Environmental Plan 2011 (WLEP 2011)

The WLEP 2000, B2 Oxford Falls Valley (which cover the land subject to this application) and C8 Belrose North Localities were proposed to be zoned E3 Environmental Management in the draft 2009 version of Warringah's standard instrument. This was based on a detailed translation methodology that was applied to all land within the former Warringah LGA. In December 2011, the Minister for Planning and Infrastructure deferred land in the Oxford Falls Valley and Belrose North areas from WLEP 2011 in response to stakeholder concern regarding the adequacy of consultation during the preparation of WLEP 2011. Accordingly, WLEP 2011 and the current Warringah Development Control Plan 2011 do not apply to this application.

Warringah Local Environment Plan 2000 (WLEP 2000)

The property is subject to Clause 1.3(1A) of the Warringah Local Environmental Plan 2011 and is classified as 'Deferred Land'. The development is therefore guided by the provisions of the Warringah Local Environment Plan 2000 and is located within the B2 Oxford Falls Valley locality.

B2 Oxford Falls Valley

The Desired Future Character (DFC) Statement for Locality B2 states:

"The present character of the Oxford Falls Valley locality will remain unchanged except in circumstances specifically addressed as follows.

Future development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses. There will

be no new development on ridgetops or in places that will disrupt the skyline when viewed from Narrabeen Lagoon and the Wakehurst Parkway.

The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be located and grouped in areas that will minimise disturbance of vegetation and landforms whether as a result of the buildings themselves or the associated works including access roads and services. Buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.

A dense bushland buffer will be retained or established along Forest Way and Wakehurst Parkway. Fencing is not to detract from the landscaped vista of the streetscape.

Development in the locality will not create siltation or pollution of Narrabeen Lagoon and its catchment and will ensure that ecological values of natural watercourses are maintained."

The proposed development is defined as "housing" under the WLEP 2000 dictionary. "Housing" is identified as Category 2 development in this locality.

Clause 12(3)(b) of WLEP 2000 requires the consent authority to be satisfied that the proposed development is consistent with the Locality's DFC statement.

Consideration of the development against the Desired Future Character statement (DFC)

Before granting consent, Clause 12(3)(b) of WLEP 2000 requires that the consent authority must consider the DFC described in the locality statement and the proposal being Category 2, must demonstrate consistency with the DFC statement. As such, the following provides consideration of the development against the various parts of the above DFC statement:

"The present character of the Oxford Falls Valley locality will remain unchanged except in circumstances specifically addressed as follows."

Comment:

The proposal will retain the existing character of the Oxford Falls Valley Locality and immediate area. The development is considered to be consistent with this requirement.

"Future development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses. There will be no new development on ridgetops or in places that will disrupt the skyline when viewed from Narrabeen Lagoon and the Wakehurst Parkway".

Comment:

The proposed development relates to the demolition works and construction of a new dwelling house. It is considered that the proposal is consistent with the desired future character of the Oxford Falls Valley and is an acceptable development given the large-

scale allotment. The proposed development is not located on ridgetops or any place that will disrupt the skyline when viewed from Narrabeen Lagoon or the Wakehurst Parkway.

“The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be located and grouped in areas that will minimise disturbance of vegetation and landforms whether as a result of the buildings themselves or the associated works including access roads and services. Buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged”.

Comment:

The proposal has been reviewed by Council’s Landscape Officer, Council’s Bushland and Biodiversity Officer, and Council’s Riparian Lands and Creeks Officer who are all supportable, subject to conditions. The proposal is considered to be integrated into the landform, and will not result in the removal of significant vegetation. The proposed building will appropriately blend with the colours and textures of the natural landscape.

“A dense bushland buffer will be retained or established along Forest Way and Wakehurst Parkway. Fencing is not to detract from the landscaped vista of the streetscape”.

Comment:

The subject site is not located along Forest Way or Wakehurst Parkway. Furthermore, the proposal does not include any fencing.

“Development in the locality will not create siltation or pollution of Narrabeen Lagoon and its catchment and will ensure that ecological values of natural watercourses are maintained”.

Comment:

Council’s Riparian Lands and Creek Officer has reviewed the proposal and is supportable subject to recommended conditions. As such, it is considered that the proposal will not create siltation or pollution to Narrabeen Lagoon and its catchment, and will ensure the ecological values of natural watercourses are maintained.

As such, the proposed development is considered to be consistent with the Locality’s DFC statement.

Built Form Controls (Development Standards)

The following table outlines compliance with the Built form Controls of the above locality statement:

Built Form Control	Required	Proposed	Complies
Housing density	1 dwelling per 20 hectares	1 dwelling	Yes
Building height	8.5 metres	9.333m	No

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Built Form Control	Required	Proposed	Complies
	7.2m (floor to ceiling)	8.98m	No
Front building setback	20m (East)	21.35m	Yes
Side building setback	10m (North)	1.88m (Existing)	N/A
	10m (South)	10m	Yes
Rear building setback	10m (West)	4.02m (Tennis Court)	No
		24.55m (Dwelling House)	Yes
Landscaped open space	30% (7,080m ²)	74.31% (17,538.3m ²)	Yes

The proposed development fails to satisfy the Locality's Building height and Rear building setback controls. Accordingly, further assessment is considered against the applicability of Clause 20(1).

Clause 20(1) stipulates:

“Notwithstanding clause 12 (2) (b), consent may be granted to proposed development even if the development does not comply with one or more development standards, provided the resulting development is consistent with the general principles of development control, the desired future character of the locality and any relevant State environmental planning policy.”

In determining whether the proposal qualifies for a variation under Clause 20(1) of WLEP 2000, consideration must be given to the following:

(i) General Principles of Development Control

The proposal is generally consistent with the General Principles of Development Control and accordingly, qualifies to be considered for a variation to the development standards, under the provisions of Clause 20(1) (See discussion on “General Principles of Development Control” in this report for a detailed assessment of consistency).

(ii) Desired Future Character of the Locality

The proposal is consistent with the B2 Oxford Falls Locality's Desired Future Character Statement and accordingly, qualifies to be considered for a variation to the development standards, under the provisions of Clause 20(1) (See discussion on “Desired Future Character” in this report for a detailed assessment of consistency).

(iii) Relevant State Environmental Planning Policies

The proposal has been considered to be consistent with all applicable State Environmental Planning Policies. (Refer to earlier discussion under ‘State Environmental Planning Policies’). Accordingly the proposal qualifies to be considered for a variation to the development standards, under the provisions of Clause 20(1).

In order to fully consider the application, the following provides an assessment of the non-compliances to the Building height and rear building setback controls.

Building height Built Form Control

Built Form Control	Required	Proposed	Complies
Building height	8.5 metres	9.333m	No
	7.2m (floor to ceiling)	8.98m	No

Merit consideration of non-compliance

Building height under B2 Oxford Falls Locality stipulates the following:

Buildings are not to exceed 8.5 metres in height, where height is the distance measured vertically between the topmost point of the building (not being a vent or chimney or the like) and the natural ground level below.

Buildings are not to exceed 7.2 metres from natural ground level to the underside of the ceiling on the uppermost floor of the building (excluding habitable areas located wholly within a roof space), but this standard may be relaxed on sites with slopes greater than 20 per cent within the building platform (measured at the base of the walls of the building), provided the building does not exceed the 8.5 metre height standard, is designed and located to minimise the bulk of the building and has minimal visual impact when viewed from the downslope sides of the land.

The proposed dwelling houses present a maximum building height of 9.333m (see Figure 1). Therefore, the proposal presents a variation of 9.8% (0.833m) to the required 8.5m control. Furthermore, the proposed dwelling house presents 8.98m floor to ceiling heights, presenting a variation of 24.72% (1.78m).

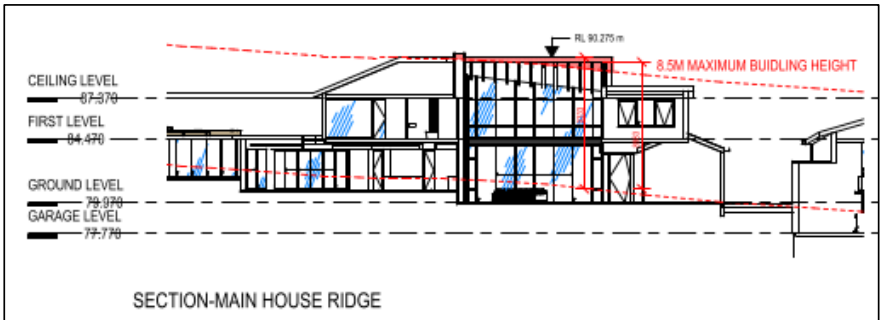


Figure 1. Extract of Section 1 showing Building height (red highlighting variation)

The applicant has lodged a request to vary Clause 20 of the WLEP 200 which presents the following arguments to justify the departure from the building height control:

The dwelling is a high-quality design and is of an appropriate bulk and scale. The dwelling has been broken into a number of wings and the height varies across these various components from one to two storeys. As shown on Figure 10 below, the height exceedance is minor and located within the main/central component of the proposed dwelling. The contravention of the maximum building height is largely a result of the slope in this section of the site and the desire to retain the existing ground levels, avoid significant excavation of the site and provide a dwelling which avoids significant changes in levels across the floor plan. The proposal is compliant with the maximum

height limit across the remainder of the proposed building. The variation to the height control does not result in a development that will give rise to significant adverse overshadowing, privacy impacts, or view loss.

It is considered that the variation to the building height, and floor to ceiling heights are acceptable, given the location of the development on the site that is suitably setback from adjoining sites. It is considered that the variation will not result in any unacceptable amenity or environmental impacts. Furthermore, it is considered that the design limits the excavation on site, and as such has been designed to integrated with the sloping topography of the land.

As detailed above the proposed development is considered to satisfy the requirements to qualify for consideration under Clause 20(1), in addition the proposal is considered to be consistent with the underlying objectives of the building height Built Form Control. It is for these reasons that the variation to the building height Built Form Control (Development Standard) pursuant to Clause 20(1) is Supported.

Side building setback Built Form Control

Built Form Control	Required	Proposed	Complies
Side building setback	10m (North)	1.88m (Existing)	N/A
	10m (South)	10m	Yes

The proposal seeks to retain the existing non-compliant setback that is 1.88m from the northern side building line.

As the proposed northern wing external wall is to be retained, it is considered that the existing variation is acceptable.

Rear building setback Built Form Control

Built Form Control	Required	Proposed	Complies
Rear building setback	10m (West)	4.02m (Tennis Court) 24.55m (Dwelling House)	No Yes

Merit consideration of non-compliance

Rear building setback under B2 Oxford Falls Locality stipulates the following:

Development is to maintain minimum rear and side building setbacks.

The minimum rear and side building setback is 10 metres.

The rear and side setback areas are to be landscaped and free of any structures, carparking or site facilities other than driveways and fences.

The proposal includes a tennis court that is setback 4.02m from the rear boundary line, resulting in a variation of 59.8% (5.98m).

It is considered that the location of the Tennis Court is acceptable as it is a low-level open structure, that will not result in any unacceptable amenity or environmental impacts to adjoining sites. It is noted that the dwelling house is more than compliant with the rear building setback control.

As detailed above the proposed development is considered to satisfy the requirements to qualify for consideration under Clause 20(1), in addition the proposal is considered to be consistent with the underlying objectives of the rear building setback Built Form Control. It is for these reasons that the variation to the rear building setback Built Form Control (Development Standard) pursuant to Clause 20(1) is supported.

General Principles of Development Control

The following General Principles of Development Control as contained in Part 4 of Warringah Local Environmental Plan 2000 are applicable to the proposed application:

General Principles	Applies	Comments	Complies
CL38 Glare and reflections	Yes	Satisfactory Suitable conditions have been recommended for the proposed roof finish to ensure solar reflections are minimised.	Yes
CL42 Construction Sites	Yes	Satisfactory Conditions are included to mitigate impacts of construction sites.	Yes
CL43 Noise	Yes	Satisfactory No adverse noise impacts shall occur.	Yes
CL44 Pollutants	Yes	Satisfactory No adverse pollutant impacts shall occur.	Yes
CL47 Flood Affected Land	Yes	Satisfactory Council's Flood Officer has reviewed the proposal and is supportable.	Yes
CL48 Potentially Contaminated Land and CL49 Remediation of Contaminated Land	Yes	Satisfactory The site has been used for residential purposes for a significant period of time and it is therefore considered that the site poses no risk of contamination.	Yes
CL50 Safety and Security	Yes	Satisfactory Development will maintain the safety and security of the locality.	Yes
CL54 Provision and Location of Utility Services	Yes	Satisfactory The subject site is currently provided with sewer, water, electricity, and telecommunication services.	Yes
CL56 Retaining Unique Environmental Features on Site	Yes	Satisfactory The proposal has been reviewed by Council's Bushland & Biodiversity, Landscaping and Riparian Lands Teams who have raised no objections, subject to conditions.	Yes
CL57 Development on Sloping Land	Yes	Satisfactory No excessive landfill or excavation will occur on site to accommodate the dwelling house construction.	Yes
CL58 Protection of	Yes	Satisfactory	Yes

General Principles	Applies	Comments	Complies
Existing Flora		Council's Landscaping and Biodiversity Officers have reviewed the proposal and are supportive, subject to conditions.	
CL60 Watercourses and Aquatic Habitats	Yes	Satisfactory The proposed development will not impact on the watercourse subject to appropriate conditions of consent that require sediment and erosion control measures to be implemented prior and during construction.	Yes
CL61 Views	Yes	Satisfactory The dwelling house is unlikely to disrupt any significant views in the area.	Yes
CL62 Access to sunlight	Yes	Satisfactory The works will not result in any unacceptable overshadowing.	Yes
CL63 Landscaped Open Space	Yes	Satisfactory The proposal is more than compliant with the landscaped open space requirements.	Yes
CL63A Rear Building Setback	Yes	Satisfactory, despite the numerical variation to the rear building setback.	Yes
CL64 Private open space	Yes	Satisfactory The proposal provides sufficient private open space.	Yes
CL65 Privacy	Yes	Satisfactory The proposal presents appropriate setbacks to ensure adequate privacy.	Yes
CL66 Building bulk	Yes	Satisfactory The proposal presents an articulated development that reduces any unacceptable building bulk.	Yes
CL67 Roofs	Yes	Satisfactory The proposed roof form is acceptable.	Yes
CL70 Site facilities	Yes	Satisfactory The proposal includes appropriate site facilities for the purposes of garage, mailboxes, and clothes drying.	Yes
CL71 Parking facilities (visual impact)	Yes	Satisfactory The proposal includes parking facilities including a garage that is setback from the street frontage.	Yes
CL72 Traffic access and safety	Yes	Satisfactory The proposal will not generate any unacceptable traffic.	Yes
CL74 Provision of Carparking	Yes	Satisfactory The proposal presents off-street parking.	Yes
CL75 Design of Carparking Areas	Yes	Satisfactory The proposal presents a garage structure that will provide suitable parking for the residents.	Yes
CL76 Management of Stormwater	Yes	Satisfactory Council's Development Engineer has reviewed the proposal and is supportable, subject to recommended conditions.	Yes
CL77 Landfill	Yes	Satisfactory The proposal will not present any significant	Yes

General Principles	Applies	Comments	Complies
		landfill.	
CL78 Erosion and Sedimentation	Yes	Satisfactory Suitable conditions have been recommended for erosion and sediment control.	Yes

Schedules

Schedule	Applies	Complies
Schedule 5 State policies	Yes	Yes
Schedule 6 Preservation of bushland	Yes	Yes
Schedule 7 Matters for consideration in a subdivision of land	No	N/A
Schedule 8 Site analysis	Yes	Yes
Schedule 9 Notification requirements for remediation work	No	N/A
Schedule 10 Traffic generating development	No	N/A
Schedule 11 Koala feed tree species and plans of management	No	N/A
Schedule 12 Requirements for complying development	No	N/A
Schedule 13 Development guidelines for Collaroy/Narrabeen Beach	No	N/A
Schedule 14 Guiding principles for development near Middle Harbour	No	N/A
Schedule 15 Statement of environmental effects	Yes	Yes
Schedule 16 Principles and standards for housing for older people or people with disabilities	No	N/A
Schedule 17 Carparking provision	N/A	N/A

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 \$72,720 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$7,272,013.

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;
- 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 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

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

PLANNING CONCLUSION

This proposal, for demolition works and construction of a dwelling house including swimming pool, tennis court, detached garage, driveway and additional structures has been referred to the Development Determination Panel (DDP) due to variations to the building height and rear building setback control that are considered development standards under WLEP 2000.

The concerns raised in the objections have been addressed and resolved by retention of trees that were previously sought to be removed.

The critical assessment issues included variations to the building height and rear building setback. However, an assessment against Clause 20(1) of WLEP 2000 has been undertaken that concludes the variations are acceptable as the proposal is consistent with the general principles of development control, the desired future character of the locality and relevant State Environmental Planning Policies.

Concerns raised in the one (1) objection relate to the proposed tree removal. Amended plans were submitted during the assessment of the application that resulted in retention of trees that were previously sought to be removed.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby

properties, or the natural environment. The proposal has therefore been recommended for approval.

REASON FOR DETERMINATION

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2024/0269 for demolition works and construction of a dwelling house including swimming pool, tennis court, detached garage, driveway and additional structures on land at Lot 1068 DP 752038, 1068 / 0 Spicer Road, OXFORD FALLS, 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
A 02-20	02	Demolition Plan	Kyearn Architecture	13 June 2024
A 02-21	02	North Wing Demolition Plan	Kyearn Architecture	13 June 2024
A 02-30	02	Site Plan	Kyearn Architecture	13 June 2024
A 02-41	02	Plan - Ground Floor	Kyearn Architecture	13 June 2024
A 02-42	02	Plan - First Floor	Kyearn Architecture	13 June 2024
A 02-49	02	Plan - Roof	Kyearn Architecture	13 June 2024
A 02-50	02	Elevation	Kyearn Architecture	13 June 2024
A 02-51	02	Elevation	Kyearn Architecture	13 June 2024
A 02-60	02	Section 1	Kyearn Architecture	13 June 2024
A 02-61	02	Section 2	Kyearn Architecture	13 June 2024
A 02-62	02	Section 3	Kyearn Architecture	13 June 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Arboricultural Report	2	Urban Arbor Pty Ltd	19 June 2024
Aboriginal Heritage Due Diligence	-	Artefact	21 June 2024
BASIX Certificate	1739356S_02	Frys Building Consultancy Pty Ltd	09 July 2024
Bushfire Report	1	Building Code & Bushfire Hazard Solutions Pty Limited	6 March 2024
Flora and Fauna Report	Final 1.0	Land Eco Consulting	25 June 2024
Hardscape Plan - 1	F	Conzept Landscape Architects	24 June 2024
Landscape Master Plan - 2	F	Conzept Landscape Architects	24 June 2024
Detail Plan 1 - 3	F	Conzept Landscape Architects	24 June 2024
Detail Plan 2 - 4	F	Conzept Landscape Architects	24 June 2024
Specifications & Details - 5	F	Conzept Landscape Architects	24 June 2024

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Planting Palettes - 6	F	Conzept Landscape Architects	24 June 2024
NatHERS Certificate	0009244468-02	Frys Energywise	09 July 2024
General Notes & Locality Plan - C1.00	B	Cates Consulting Engineers	28 February 2024
Ground Floor Stormwater Drainage Plan - C2.00	C	Cates Consulting Engineers	19 June 2024
Catchment Plan - C2.10	B	Cates Consulting Engineers	28 February 2024
First Floor Stormwater Drainage Plan - C3.00	C	Cates Consulting Engineers	19 June 2024
Stormwater Drainage Details - C4.00	B	Cates Consulting Engineers	28 February 2024
Stormwater Drainage Plan - Roof - C5.00	C	Cates Consulting Engineers	19 June 2024
Erosion and Sediment Control Plan - C6.00	B	Cates Consulting Engineers	28 February 2024
Waste Management Plan	-	No Author	n.d.

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

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

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

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	5 April 2024
NSW Department of Planning and Environment-Water	NSW Department of Planning and Environment-Water Referral Response (Ref No.IDAS-2024-10235)	29 April 2024

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

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



3. Prescribed Conditions

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

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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.



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

Reason: Legislative requirement.

4. General Requirements

(a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) 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 sewerred areas or managed on-site in unsewerred areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

5. No Approval for Secondary Dwelling

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

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

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$72,720.13 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 \$7,272,012.50.

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. Compliance with Ecologist's Recommendations – Pre-construction

All impact mitigation measures specified in the approved Flora and Fauna Assessment Report/Biodiversity Development Assessment Report are to be implemented at the appropriate stage of development.

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

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

9. No Clearing of Vegetation

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

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

Reason: To protect native vegetation.

10. Installation of Nest Boxes

All hollow-bearing limbs must be soft-felled, salvaged and re-erected within the Subject Property to continue to provide shelter for hollow-dwelling fauna. If any removed hollows could not be salvaged, they must be replaced with nest boxes at a ratio of 3:1 (three nest boxes for every one hollow).

Written certification of compliance is to be prepared by the Project Ecologist and submitted to the Principal Certifier prior to issue of the Construction Certificate.

Reason: To maintain wildlife habitat

11. Fencing for Wildlife Passage – Ecologist Certification

Any new permanent fencing (with the exception of swimming pool fencing) is to be made passable to native fauna through the provision of access gaps or raised fencing to provide appropriate ground clearance. Any access gaps are to be a minimum of 150mm wide x 100mm high at ground level and spaced at a minimum of 6m intervals.

The Project Ecologist is to provide written certification of compliance to the Certifier prior to issue of any Construction Certificate.



Reason: To preserve wildlife corridors.

12. Amendment of Landscape Plans

The submitted Landscape Plan is to be amended in accordance with the following:

- It is recommended that locally indigenous flora representative of S_DSFO4 or S_DSFI4 as per OEH (2016) comprise at least 80% of the proposed landscape plantings associated with the proposed development.

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

Reason: To maintain and replace habitat on the site.

13. On-Site Stormwater Detention Details

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater dispersal in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by Cates Consulting Engineers, drawing number: 23141 C1.00 rev B dated 28.02.2024, 23141 C2.00 rev C dated 19.06.2024, 23141 C2.10 rev B dated 28.02.2024, 23141 C3.00 rev C dated 19.06.2024, 23141 C4.00 rev B dated 28.02.2024, 23141 C5.00 rev C dated 19.06.2024, 23141 C6.00 rev B dated 28.02.2024. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

- i. Provision of a minimum 5 metre long stormwater dispersal/ level spreader system.

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

14. Erosion and Sediment Control Plan

An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:

- Site Boundaries and contours
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities)
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls that must include sediment fences, stabilised site access, materials and waste stockpiles locations, location of any stormwater pits on the site and how they are going to be protected.
- North point and scale.

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

Reason: To protect the receiving environment.



15. Water Quality Management

The applicant must install a filtration device (such as a sediment control pit or absorption trench) that captures organic matter and coarse sediments prior to discharge of stormwater from the land. All stormwater treatment measures must make provision for convenient and safe regular inspection, periodic cleaning, and maintenance.

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

Reason: Protection of the receiving environment.

16. Stormwater Treatment Measures

The applicant must install a filtration device (such as a sediment control pit or absorption trench) that captures organic matter and coarse sediments prior to discharge of stormwater from the land. All stormwater treatment measures must make provision for convenient and safe regular inspection, periodic cleaning, and maintenance.

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

Reason: Protection of the receiving environment.

17. 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.

18. Engagement of Project Ecologist

A Project Ecologist is to be employed for the duration of the approved works to ensure all biodiversity protection measures are carried out in accordance with the Flora and Fauna (prepared by Land Eco Consulting dated 25 June 2024).

The Project Ecologist must have one of the following memberships / accreditation:

- Practising member of the NSW Ecological Consultants Association (<https://www.ecansw.org.au/find-a-consultant/>) OR
- Biodiversity Assessment Method Accredited Assessor under the relevant legislation (<https://customer.lmbc.nsw.gov.au/assessment/AccreditedAssessor>)

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

Reason: To protect native vegetation and wildlife.



19. Compliance with Standards

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

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

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

20. 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.

21. Sydney Water "Tap In"

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

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

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

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

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

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. The Project Arborist shall be in attendance and supervise works as nominated in the Arboricultural Impact Assessment, including in particular:

- a) tree sensitive construction for the following trees: 8, 10, 11, 13, 15, 23, 31, 37, 38, 39,
- b) works under sections 9.2, 9.2.1, 9.2.2, 11.5, 11.6, 12,
- c) any other on site directions and recommendations.

All tree protection measures specified must: be in place before work commences on the site; be maintained in good condition during the construction period; and remain in place for the duration of the construction works. The Project Arborist shall provide certification to the Certifier that all tree protection measures under AS4970-2009 have been satisfied, and the recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of



the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

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

Reason: Tree protection.

23. Tree Removal Within the Property

This consent approves the removal of existing prescribed trees on the subject site as identified in the approved Arboricultural Impact Assessment. A qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised development works.

DURING BUILDING WORK

24. Tree and Vegetation Protection

- a) Existing trees and vegetation shall be retained and protected, including:
 - i) all trees within the site not approved for removal, including trees and vegetation nominated for retention on the approved Plans and Reports,
 - 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

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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 compliant to AS4970-2009

Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment and/or Project Arborist as applicable.

Reason: Tree and vegetation protection.

25. Compliance with Ecologist's Recommendations – During Construction

All impact mitigation measures specified in the approved Flora and Fauna Assessment Report/Biodiversity Development Assessment Report are to be implemented at the appropriate stage of development.

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

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

26. Pre-clearance Survey - Certified by Project Ecologist

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

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

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

Reason: To protect native wildlife.

27. 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.

28. 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.

29. Installation and Maintenance of Sediment and Erosion Controls

Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan prior to commencement of any other works on site.



Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: To protect the receiving environment.

30. 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.

31. 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.

32. 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

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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.

33. 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.

34. Waste Management During Development

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

35. Aboriginal Heritage

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

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

Reason: Aboriginal Heritage Protection.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

36. Landscape Completion

Landscape works are to be implemented in accordance with the approved Landscape Plans, and inclusive of the following conditions:

- a) landscape works are to be contained within the legal property boundaries,
- b) tree, shrub and groundcover planting shall be installed as indicated on the approved Landscape Plans, unless otherwise imposed by conditions,
- c) all tree planting shall be a minimum pre-ordered planting size as nominated on the approved Landscape Plans; meet the requirements of Australian Standard AS2303 - Tree Stock for Landscape Use; planted into a prepared planting hole 1m x 1m x 600mm depth generally, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,
- d) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone,
- e) where the property is certified Bush Fire Prone Land, any new planting may be managed in accordance with Planning for Bushfire Protection 2019.



Prior to the issue of an Occupation Certificate, details (from a 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.

37. 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 approved 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.

38. Compliance with Ecologist's Recommendations – Post Construction

All impact mitigation measures specified in the approved Flora and Fauna Assessment Report/Biodiversity Development Assessment Report are to be implemented at the appropriate stage of development.

Written and photographic evidence of compliance is to be prepared by the Project Ecologist and provided to the Principal Certifier prior to issue of any Occupation Certificate.

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

39. Protection of Habitat Features – Certified by Ecologist

All natural landscape features, including any rock outcrops, native vegetation, soil and/or watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

Written details demonstrating compliance are to be certified by the Project Ecologist and provided to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To protect wildlife habitat.

40. No Weeds Imported On To The Site

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan) are to be imported on to the site prior to or during construction works.

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

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

41. Priority Weed Removal and Management

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



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

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

42. Stormwater Disposal

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

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

43. 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 dispersal/ level spreader as to user is to be submitted.

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

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

44. 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.

45. 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.



46. **Swimming Pool Requirements**

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

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

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2009;
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools

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

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

(d) A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.

(e) Signage showing resuscitation methods and emergency contact

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

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

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

Reason: To protect human life.

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

47. **Landscape Maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting. If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plans and any conditions of consent.

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

Reason: To maintain local environmental amenity.



48. **Compliance with Ecologist's Recommendations – Ongoing**

All impact mitigation measures specified in the approved Flora and Fauna Assessment Report/Biodiversity Development Assessment Report are to be implemented at the appropriate stage of development.

Successful establishment/initiation of ongoing biodiversity measures is to be certified by the Project Ecologist in writing to the Principal Certifier prior to issue of any Occupation Certificate.

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

49. **Protection of Habitat Features**

All natural landscape features, including any rock outcrops, native vegetation, soil and/or watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

50. **Maintenance of Asset Protection Zones**

Vegetation clearing for ongoing APZ maintenance must only occur within the surveyed and marked APZ boundaries. No clearing is to be undertaken outside of the APZ boundaries.

Reason: To protect native vegetation and wildlife.

51. **Control of Domestic Dogs/Cats**

Domestic dogs and cats are to be kept from entering wildlife habitat areas at all times.

Dogs and cats are to be kept in an enclosed area and/or inside the dwelling, or on a leash such that they cannot enter areas of wildlife habitat, bushland or foreshore unrestrained, on the site or on surrounding properties or reserves.

Reason: To protect native wildlife and habitat.

52. **Maintenance of Stormwater Treatment Measures**

Stormwater treatment measures must be maintained at all times in accordance with manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

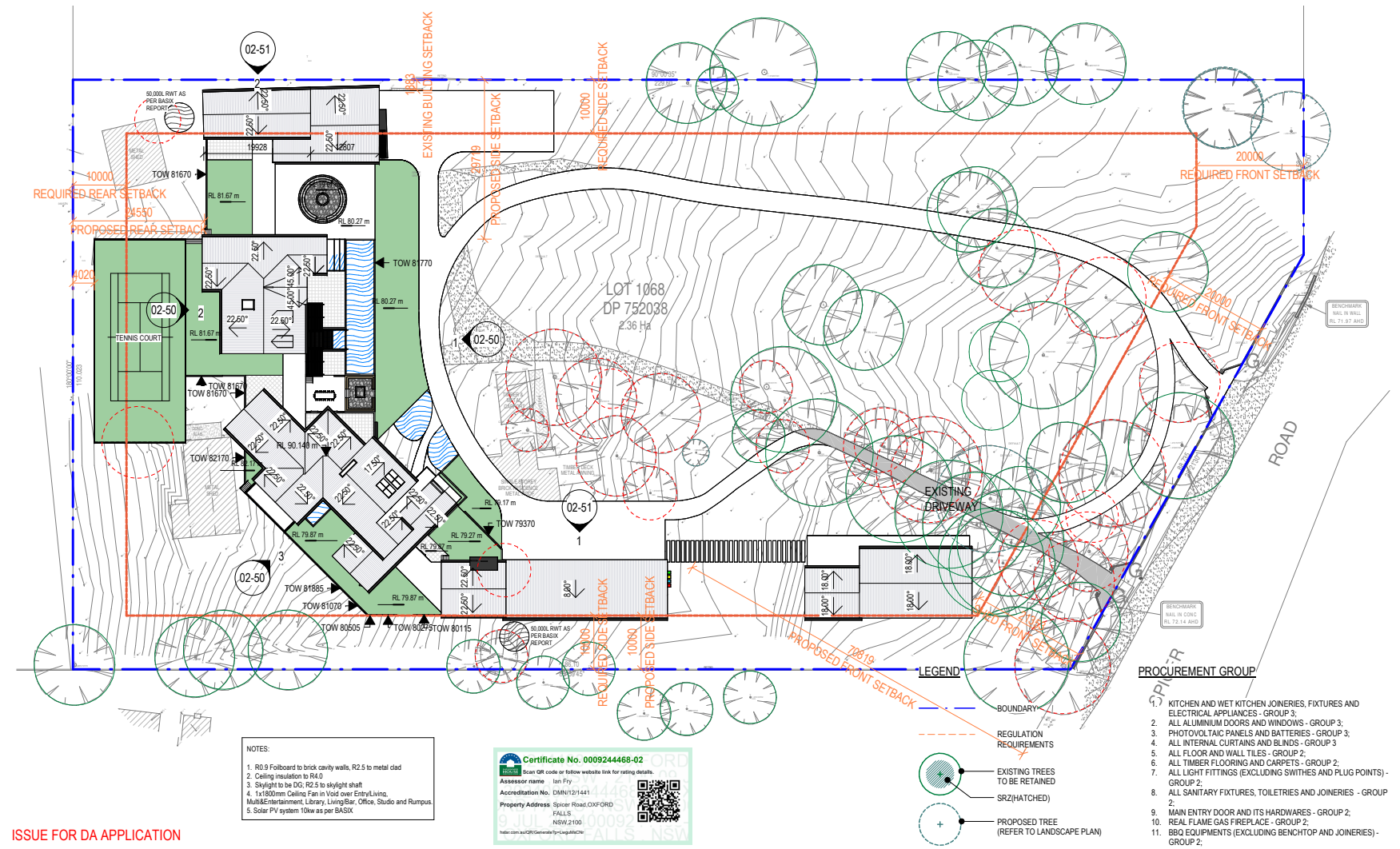
Northern Beaches Council reserves the right to enter the property and carry out appropriate maintenance of the device at the cost of the property owner.

Reason: To protect the receiving environment.

53. **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.



ISSUE FOR DA APPLICATION

#	Issued Date	Description	By	#	Issued Date	Description	By
00	16.10.2023	CONCEPT DESIGN	CC				
01	23.01.2024	DESIGN DOCUMENTATION	CC				
02	13.06.2024	RFI	KA				

OXFORD FALLS HOUSE

1068 Spicer Road, Oxford Falls NSW 2100

Calvin & Jessica

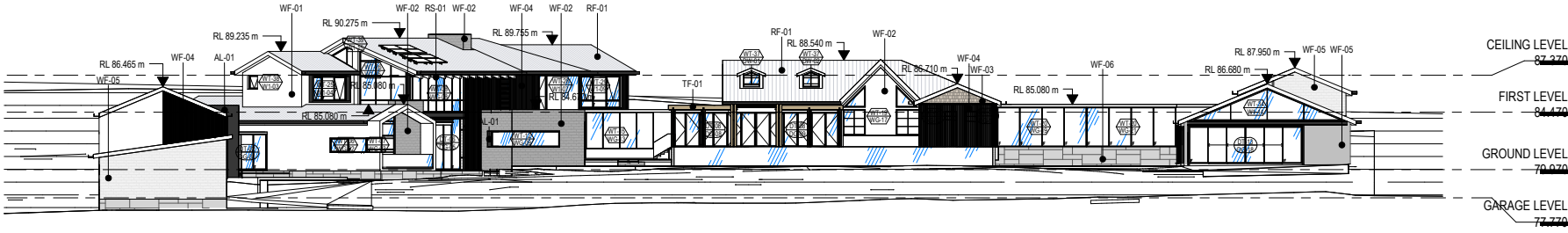
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KYEAM ARCHITECTURE

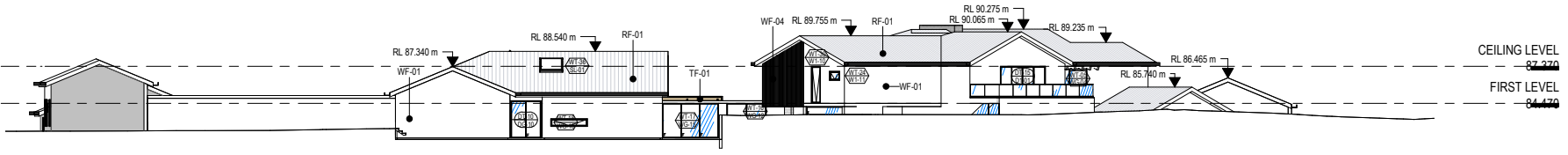
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SITE PLAN

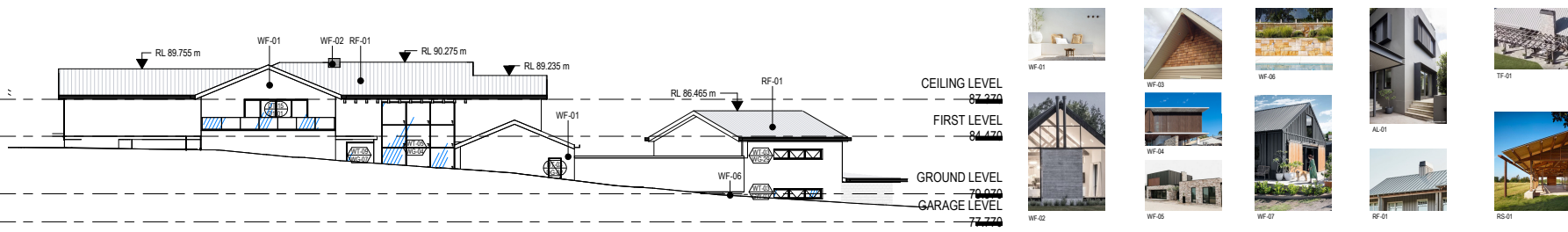
Author
13/06/2024
rev.
02



EAST ELEVATION



WEST ELEVATION



WEST SOUTH ELEVATION

ISSUE FOR DA APPLICATION

- NOTES:
- 1. R10.9 Foilboard to brick cavity walls, R2.5 to metal clad
 - 2. Ceiling insulation to R4.0
 - 3. Skylight to be DG, R2.5 to skylight shaft
 - 4. 1x1800mm Ceiling Fan in Void over Entry/Living, Multi-Entertainment, Library, Living/Bar, Office, Studio and Rumpus
 - 5. Solar PV system 10kw as per BASIX

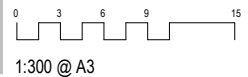
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00	16.10.2023	CONCEPT DESIGN	CC				
01	23.01.2024	DESIGN DOCUMENTATION	CC				
02	13.06.2024	RF1	KA				

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Calvin & Jessica

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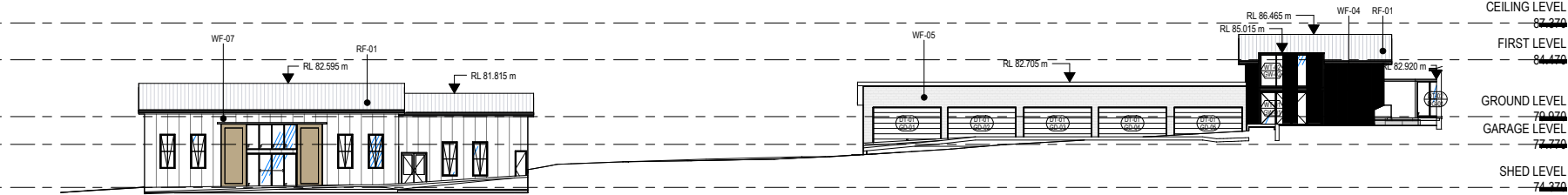
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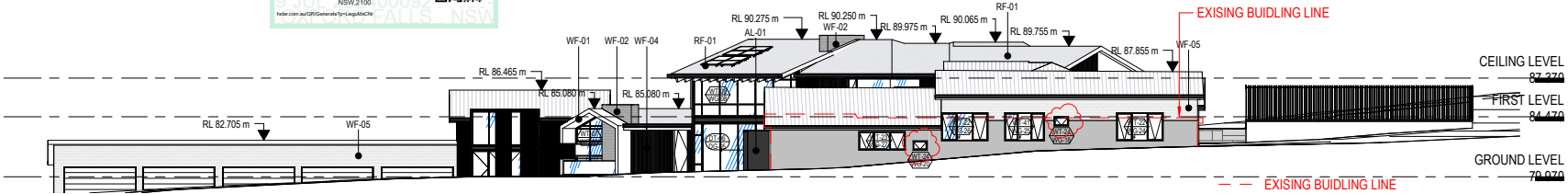


drawn date 13/06/2024
A 02-50
rev. 02





GARAGE ELEVATION



NORTH ELEVATION



MATERIAL SCHEDULE

Material: Keynote	Material: Description	Material: Comments
AL-01	WINDOW AWNING	ALUMINIUM POWDER COATED BLACK
RF-01	COLORBOND ROOF	IRONSTONE ROOF
RS-01	EXPOSED ROOF STRUCTURE	TIMBER RAFTER
TF-01	DECOWOOD	DECO BATTEN DRIFTWOOD
WF-01	DULUX ACRYLIC RENDER	WHITE POLAR QUARTER
WF-02	STONINI LIGHTWEIGHT PANELS	INDUSTRIAL CONCRETE
WF-03	MODINEX	WESTERN RED CEDAR SHINGLE WALL CLADDING
WF-04	COVET	EVER ART WOOD BURAUN EBONI
WF-05	THE BRICK PIT	RECYLED BRICK
WF-06	ARTISAN EXTERIOR	AREIA LINEAR STONE WALL CLADDING
WF-07	METAL CLADDING SYSTEMS	COLORBOND NAILSRIP

ISSUE FOR DA APPLICATION

#	Issued Date	Description	By	#	Issued Date	Description	By
00	16.10.2023	CONCEPT DESIGN	CC				
01	23.01.2024	DESIGN DOCUMENTATION	CC				
02	13/06/2024	RFI	KA				

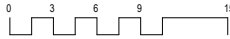
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Author

13/06/2024

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02

ELEVATION

**ITEM 3.7 DA2024/0624 - 324 WHALE BEACH ROAD PALM BEACH -
ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
INCLUDING A DETACHED 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 DA2024/0624 for alterations and additions to a dwelling house including a detached studio on land at Lot 316 DP 16362, 324 Whale Beach Road PALM BEACH, subject to the conditions set out in the Assessment Report.

Reporting manager	Adam Richardson
TRIM file ref	2024/501004
Attachments	↓1 Assessment Report ↓2 Site Plan and Elevations ↓3 Clause 4.6

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/0624
----------------------------	-------------

Responsible Officer:	Megan Surtees
Land to be developed (Address):	Lot 316 DP 16362, 324 Whale Beach Road PALM BEACH NSW 2108
Proposed Development:	Alterations and additions to a dwelling house including a detached 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
Applicant:	Rachel Mary O'Brien

Application Lodged:	22/05/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	30/05/2024 to 13/06/2024
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 36.1%
Recommendation:	Approval

Estimated Cost of Works:	\$ 977,255.00
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EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) as the proposal results in a variation of more than 10.0% to Clause 4.3 Height of Buildings of the *Pittwater Local Environmental Plan 2014* (PLEP 2014).

The maximum permitted building height under the PLEP 2014 is 8.5 metres. The proposed building height is 11.57 metres, resulting in a variation of 36.1%. In support of the variation is a detailed written Clause 4.6 written request which provides that compliance with the Clause 4.3 development standard is considered unreasonable, in this particular circumstance. The variation arises from the proposed enclosure of the existing balcony and replacement of windows on the upper level, as well as replacement roof sheeting. The overall height of the building is not increasing as a consequence of the proposed works.

The proposal does however result in variations to the built form controls under the Pittwater 21 Development Control Plan (P21DCP), these being; D12.5 Front building line, D12.6 Side and rear building line, and D12.10

Landscaped Area - Environmentally Sensitive Land. The proposal, in regard to these variations, does not result in unacceptable environment and/or amenity impacts, with the development achieving the relevant objectives of these controls.

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

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

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

PROPOSED DEVELOPMENT IN DETAIL

The proposed development seeks consent for alterations and additions to the existing dwelling house and construction of a detached studio, specifically:

Dwelling House

Ground Floor

- Pergola over the existing garage and dwelling entrance

Level 1

- Balcony along the northern and eastern elevation of the existing study
- Balcony along the eastern elevation of the guest bedroom
- New bathroom

Level 2

- Internal reconfiguration to create:
 - Entry display
 - New entry to master bedroom through the new master robe
- Retiling of existing balconies - one located off a bedroom, and the other located off the master bedroom - and addition of awnings overtop
- New windows and doors
- New roof over existing garage

Level 3

- Enclosure of existing balcony located on the eastern elevation

External

- Landscaping
- New stairs along the southern elevation, meandering toward to the north to gain access to the proposed studio

Detached Studio

Level 3

- Comprising one (1) bedroom with en-suite, studio space with sink.

Amended plans were provided which removed the proposed bedroom and sink in the detached studio.

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 21 Development Control Plan - C1.23 Eaves
 Pittwater 21 Development Control Plan - D12.5 Front building line
 Pittwater 21 Development Control Plan - D12.6 Side and rear building line
 Pittwater 21 Development Control Plan - D12.10 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 316 DP 16362 , 324 Whale Beach Road PALM BEACH NSW 2108
Detailed Site Description:	The subject site consists of one (1) allotment located on the western side of Whale Beach Road. The site is regular in shape with a frontage of 15.26m along Whale Beach Road and a depth of 37.145m. The site has a surveyed area of 564.3m². The site is located within the C4 Environmental Living zone within the <i>Pittwater Local Environmental Plan 2014</i> (PLEP 2014) and accommodates a two (2) to three (3) storey residential dwelling within a landscaped setting. The site has an easterly orientation and is located on a significant slope, falling from the rear western boundary toward the front eastern boundary, of approximately, 25.77 metres (or 83.2%). The site is not known to have any threatened species. Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by residential development of a similar bulk and scale.

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)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.

Section 4.15 Matters for Consideration	Comments
	<u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to the provision of amended plans and a Clause 4.6 request to address the proposed maximum building height. This information was detailed within a Request for Further Information (RFI) letter, dated 27 June 2024. This letter was sent to the Applicant via email, as well as uploaded to the NSW Planning Portal on 27 June 2024. Additional information was provided to Council on 8 July 2024. This additional information results in a lesser or reduced environmental impact and, in accordance with Council's Community Participation Plan (CPP), the application is not required to be re-notified. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 30/05/2024 to 13/06/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	<i>Supported, subject to recommended conditions.</i> The comments in this referral relate to the following applicable controls and provisions: • SEPP (Resilience and Hazards) 2021 - Coastal Use Area • Pittwater LEP Clause 7.6 Biodiversity Protection • Pittwater DCP Clause B4.17 - Littoral Rainforest - Endangered Ecological Community The proposed works would take place in previously disturbed areas of the site and are unlikely to impact upon native flora and fauna. No trees are proposed to be removed as part of the proposal and only landscape gardens will be removed. The proposal includes a landscaping schedule that will have to be amended to include an 80% of native vegetation. The development is designed, sited and will be managed to avoid any significant impact on the ecological integrity of the rainforest.
NECC (Coast and Catchments)	<i>Supported, subject to recommended conditions.</i> This application was assessed in consideration of: • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Resilience and Hazards) 2021 (section 2.11 & 2.12); • Relevant LEP and DCP clauses. State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021. Hence, Clauses 2.11 and 2.12 of the CM (R & H) apply for this DA. <u>Comment:</u> On internal assessment, the DA satisfies requirements under clauses 2.11 and 2.12 of the SEPP. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021. Pittwater LEP 2014 and Pittwater 21 DCP No other coastal related issues identified.

Internal Referral Body	Comments
	As such, it is considered that the application does comply with the requirements of the coastal relevant clauses of the Pittwater LEP 2014 and Pittwater 21 DCP.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<i>Supported, subject to recommended conditions.</i> 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. A1743706, dated 15 April 2024).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

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

Comment:

This Clause is relevant to the subject site. The proposed works are generally sited to the existing building footprint, notwithstanding the proposed detached studio. Council's Coast and Catchments Officer has reviewed the proposed development and no issues were identified. In this instance, Council, as the consent authority, has considered the matters as prescribed above and is satisfied the proposal does not have an adverse impact upon these matters.

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

Comment:

This Clause is relevant to the subject site. The proposed works are generally sited to the existing building footprint, notwithstanding the proposed detached studio. Council's Coast and Catchments Officer has reviewed the proposed development and no issues were identified. In this instance, Council, as the consent authority, is satisfied that the proposed development has been designed, sited and will be managed appropriately to avoid an adverse impact upon the matters as prescribed in subclause (1).

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 platform for
 - ii) members of the public, including persons with a disability,
 - iii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
 - iv) the visual amenity and scenic qualities of the coast, including coastal headlands,
 - v) 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 adverse impact
 - ii) 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:

This Clause is relevant to the subject site. The proposed works are generally sited to the existing building footprint, notwithstanding the proposed detached studio. Council's Coast and Catchments Officer has reviewed the proposed development and no issues were identified. In this instance, Council, as the consent authority, has considered the matters as prescribed above and is satisfied the proposal does not have an adverse impact upon these matters.

Division 5 General

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

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

Comment:

The proposed development is unlikely to increase the risk of coastal hazards.

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

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

Comment:

The proposed development does not require the need for a coastal management program.

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

Chapter 4 – Remediation of Land

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

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.50m	Dwelling: 11.57m Studio: 4.06m	36.1% N/A	No Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment**Zone C4 Environmental Living****Zone Objectives**

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

Comment:

The proposed works to the existing dwelling will retain the building's built form, and the proposed studio is appropriately sited on the property over the existing deck. In this instance, no substantial vegetation is required for removal to facilitate the proposed works. Therefore, the proposal provides for low-impact residential development on a site that may have special ecological, scientific or aesthetic values.

This objective is achieved.

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

Comment:

For the reasons as detailed above, the proposed development does not have an adverse effect upon any special ecological, scientific or aesthetic values on the site.

This objective is achieved.

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

Comment:

The proposed works to the dwelling are appropriately integrated into the existing built form, providing a low density and scale that is commensurate with the existing built form and the surrounding developments. Further, as detailed above, the proposed studio will generally be sited over the existing deck and does not require extensive excavation or removal of vegetation. In this circumstance, the proposed studio is an appropriate ancillary structure in the context of the subject site that is appropriately integrated into the existing landform and landscape.

This objective is achieved.

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

Comment:

The subject site is not located in a riparian or foreshore area. As has been detailed above, and elsewhere in this report, the proposal does not require the removal of substantial vegetation and thus the retained vegetation and trees will continue to provide wildlife corridors.

This objective is achieved.

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: 11.57m (dwelling)

Percentage of variation: 36.1%

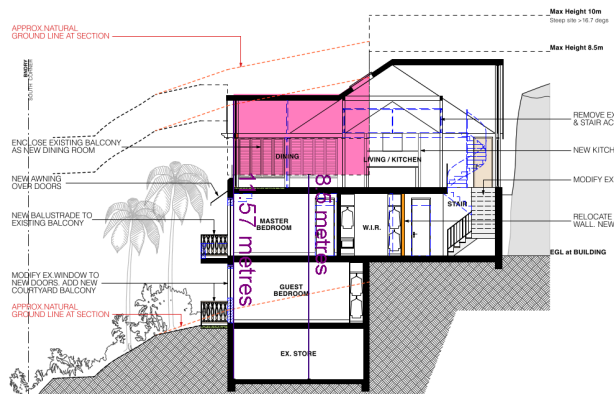


Figure 1. Proposed maximum building height, extent of breach indicated in pink.

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

Subclause (1) of this clause provides that:

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

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

Comment:

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

Subclause (2) of this clause provides that:

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

Comment:

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

Subclause (3) of this clause provides that:

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

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

Comment:

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

- Steep topography of the land
- Existing excavation of the site to accommodate the garage and storage level, and the location of the upper levels sited over the existing excavated garage and storage level.

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

Comment:

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

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

The Clause 4.6 Request argues, in part:

- *'The existing dwelling house is sited on a slope that exceeds 30%. While there is no increase in the building height or change to the existing building envelope, there are proposed alterations to the building that are above the height plane. These works include the enclosure of the balcony, additional windows and the replacement of roof sheeting.*

- *The proposed alterations are within the existing building envelope and maintain the existing building's height, setbacks and bulk. The proposed alterations will not be visually prominent within the Palm Beach locality.*
- *The proposal retains the existing dwelling height and building envelope which is consistent with surrounding development. In line with the findings of Senior Commissioner Roseth in Project Venture Developments v Pittwater Council (2005) NSW LEC 191, the majority of observers would not perceive the proposed development, especially the elements with non-compliant Building heights, as offensive, discordant, or out of place in the streetscape. This opinion considers both the context of the streetscape and the built form characteristics of development within the visual area of the site...It can be reasonably concluded that the proposal is compatible with its surroundings when viewed from the public domain and surrounding residential properties.*
- *The alterations to the building elements will not give rise to unacceptable/ non-compliant shadowing impacts as depicted on the accompanying shadow diagrams with a minimum 3 hours of direct solar access maintained to the north-facing living room windows and adjacent open space areas of the southern adjoining property between 9 am and 3 pm on 21st of June.*
- *The proposed works to the dwelling house are within the existing building envelope and therefore will not give rise to any impacts on existing views enjoyed by neighbouring properties.*
- *...a view sharing scenario is maintained between adjoining development consistent with the view sharing principles established at section 4.3 MRDCP and those established by the Land and Environment Court in the matter of Tenacity Consulting v Warringah [2004] NSWLEC 140.*
- *There are no changes proposed to the existing site topography.*
- *As the proposal maintains the existing dwelling height and building envelope, there will be no adverse visual impacts on the natural environment. The non-compliant component of the building will achieve the objectives of the standard to at least an equal degree as would be the case with a development that complied with the building height standard. Given the development's consistency with the objectives of the standard strict compliance is both unreasonable and unnecessary under the circumstances.*
- *The proposal promotes the orderly and economic use and development of land (1.3(c)) noting that the proposal does not exacerbate the existing non-compliance with the Building height standard.*
- *The proposed alterations and minor additions represents good contextually appropriate design affording exceptional levels of amenity whilst maintaining appropriate streetscape and environmental outcomes in particular, existing view sharing is maintained surrounding development.*
- *The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (1.3(h)).'*

It is considered the Applicant's written request to vary development standard Clause 4.3 Height of buildings of the Pittwater Local Environmental Plan 2014 (PLEP 2014) is acceptable given the proposed resultant built form of the dwelling will not change from what is existing. In this instance, the existing dwelling will continue to be commensurate with surrounding and nearby residential developments.

The extent of previous excavation on the site, which has altered the existing ground level, means that existing site constraints makes strict compliance with the requirement of Clause 4.3 difficult. The building footprint is located on a slope that exceeds 30% (with a maximum slope of 46.4%). As indicated in Figure 1 above, the extent of breach is sited to the upper level where the proposal seeks to enclose the existing balcony, replace windows, and replace existing roof sheeting, none of which creates additional bulk to the existing built form.

Based on the existing excavation of the site, the maximum building height has been measured in accordance with *Merman Investments Pty Ltd Woollahra v Municipal Council* [2021] NSWLEC 1582, which is to the existing ground level. Due to the steep topography of the site, even from an extrapolated level (in accordance with *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070), the proposal would not achieve compliance with the maximum height requirement of Clause 4.3 of the PLEP 2014. This confirms that the existing site constraints makes compliance with Clause 4.3 challenging in that strict compliance with the development standard, having regard to the sites characteristics, would be such that the built form is disjointed.

As is evidenced throughout this assessment report, the extent of non-compliance to Clause 4.3 does not cause any unreasonable environmental and/or amenity impacts upon adjoining properties, noting that (as has been detailed above and throughout this report), the proposed alterations and additions to the existing dwelling do not

increase the maximum building height, nor does it add to the existing bulk of the dwelling. Furthermore, no unreasonable privacy impacts arise from the proposed works above the 8.5 metre height limit. The shadow diagrams provided indicate that the proposal complies with the requirements as stipulated under control C1.4 Solar Access of the P21DCP.

The subject site, adjoining and nearby properties are sited on steeply sloping sites surrounded by dense vegetation and large canopy trees. When viewed from adjoining properties and the existing streetscape and nearby public places, the proposed works to the dwelling will be visually commensurate with the existing built form, as well as to the adjoining and nearby dwellings.

In this instance, and notwithstanding the extent of non-compliance to this control, the proposed development is acceptable.

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

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

Public Interest:

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

Conclusion:

Council is satisfied as to the matters set out in Clause 4.6 of the PLEP 2014.

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

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	Ground Floor Pergola: Nil - 3.93m	100% max.	No
		Level 1 Balcony off Study: 0.75m - 5.36m Balcony off Guest Bedroom: 8.24m	88.46% max. N/A	No Yes
		Level 2 Balcony off Master Bedroom: 6.4m - 8.06m Balcony off Bedroom: 6.45m - 8.12m	1.5% max. 0.7% max.	No No
		Level 3 Enclosure of Existing Balcony: 6.4m - 9.65m Balustrade to existing Balcony: 6.45m - 9.65m	1.5% max. 0.7% max.	No No
Rear building line	6.5m	Studio 6.6m - 6.95m	N/A	Yes
Side building line	Northern Boundary 2.5m	Ground Floor Pergola: 3.57m	N/A	Yes
		Level 1 Balcony off Study: 4.78m	N/A	Yes

		Level 2 Balcony off Master Bedroom: 11.8m Balcony off Bedroom: 0.7m - 2.25m	N/A 72% max.	Yes No
		Level 3 Balcony: 0.83m - 3.81m	66.85% max.	No
		Studio 5.5m	N/A	Yes
	Southern Boundary 1m	Ground Floor Pergola: 7.45m	N/A	Yes
		Level 1 Balcony off Study: 2.11m Balcony off Guest Bedroom: 1.4m	N/A N/A	Yes Yes
		Level 2 Balcony off Master Bedroom: 1.75m	N/A	Yes
		Level 3 Enclosure of Existing Balcony: 1.75m	N/A	Yes
		Studio 1.48m	N/A	Yes
Building envelope	Northern Elevation 3.5m	Within envelope	N/A	Yes
	Southern Elevation 3.5m	Within envelope	N/A	Yes
Landscaped area	60% (338.4m ²)	Existing 40.0% (226.2m ²)	33.3%	No
		Proposed without variation 31.5% (178.2m ²)	47.5%	No
		Proposed with variation 40.9% (231.05m ²)	31.8%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.17 Littoral Rainforest - Endangered Ecological Community	Yes	Yes
B5.15 Stormwater	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.23 Eaves	No	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	No	Yes
D12.6 Side and rear building line	No	Yes
D12.8 Building envelope	Yes	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	No	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

C1.23 Eaves

Detailed description of non-compliance

This control requires development to provide eaves on all elevations with a minimum width of 450mm.

The proposed development includes eaves with a maximum width of 350mm to the dwelling house. This presents a variation of 22.2%. The proposed studio achieves compliance with the requirements of this control.

An assessment of the proposal against the underlying outcomes of this control is undertaken below.

Merit consideration

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

- *Housing that reflects the coastal heritage and character of Pittwater. (S)*
- *Optimise roof forms. (S)*
- *Appropriate solar access and shading is achieved. (En)*

Comment:

The proposed development provides an overall design that is commensurate with the existing dwelling, and surrounding locality, and reflects the coastal character of Palm Beach. The proposed design also achieves a reasonable level of solar access and shading, noting that the proposal is accompanied by a BASIX Certificate. Finally, the proposed development does not create unreasonable amenity impacts upon adjoining properties or the existing streetscape.

D12.5 Front building line

Detailed description of non-compliance

This control requires development be setback 6.5 metres from the front boundary line. Due to the steep topography of the site, the existing dwelling does not achieve compliance with this requirement.

As such, there are elements of the proposed development that extend into the front setback area, as follows:

Ground Floor

Pergola: Nil - 3.93 metres, which presents a variation of 100%.

Level 1

Balcony off Study: 0.75 metres - 5.36 metres, which presents a maximum variation of 88.46%.

Balcony off Guest Bedroom: 8.24 metres

Level 2

Balcony off Master Bedroom: 6.4 metres - 8.06 metres, which presents a maximum variation of 1.5%.

Balcony off Bedroom: 6.45 metres - 8.12 metres, which presents a maximum variation of 0.7%.

Level 3

Enclosure of Existing Balcony: 6.4 metres - 9.65 metres, which presents a maximum variation of 1.5%.

Balustrade to existing Balcony: 6.45 metres - 9.65 metres, which presents a maximum variation of 0.7%.

As such, a merit assessment of the proposal against the outcomes of this control has been undertaken below.

Merit consideration

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

- *Achieve the desired future character of the Locality.*

Comment:

The areas of non-compliance are existing, save for the proposed pergola over the existing garage. The proposal does not worsen these non-compliances. The proposed pergola over the existing garage is minor and does not cause any unreasonable impacts upon the existing streetscape. In this instance, the proposal does not adversely impact upon the desired future character of the Palm Beach locality.

This outcome is achieved.

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

Comment:

The extent of non-compliance to this control does not give to any unreasonable impacts upon the equitable preservation of views and vistas to and/or from public/private places.

This outcome is achieved.

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

Comment:

Whale Beach Road is not considered to be a main road. Notwithstanding, the extent of non-compliance to this control does not create unreasonable impacts upon the existing streetscape.

This outcome is achieved.

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

Comment:

The non-compliances are sited to the existing built form. As such, the existing vegetation on the site is not required to be removed. Furthermore, the proposed works do not increase the built form. In this instance, the existing built form of the dwelling will be maintained.

This outcome is achieved.

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

Comment:

The proposed works do not alter the existing garage or vehicle ingress and egress.

This outcome is achieved.

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

Comment:

The Whale Beach locality is not considered to be rural or bushland. However, as detailed above, the extent of non-compliance to this control does not require the removal of vegetation.

This outcome is achieved.

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

Comment:

As has been detailed above, the proposed works do not increase the built form. As such, the extent of non-compliance to this control does not give rise to any unreasonable impacts upon the existing streetscape. The proposal continues to promote a scale and density that is in keeping with the height of the surrounding natural environment.

This outcome is achieved.

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

Comment:

As has been detailed above, the proposed works do not have an unreasonable impact upon the existing streetscape of Whale Beach Road. Furthermore, due to the steep topography of the site and surrounds, the extent of non-compliance to this control does not cause an unreasonable or adverse impact upon pedestrian amenity.

This outcome is achieved.

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

Comment:

Notwithstanding the extent of proposed non-compliance to this control, the proposal appropriately responds to, reinforces and sensitively relates to the spatial characteristics of the urban environment, noting that (due to the steep topography of the subject site and surrounds), adjoining and nearby properties extend into the front setback area.

This outcome is achieved.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D12.6 Side and rear building line

Detailed description of non-compliance

This control requires development to be setback 2.5 metres on one side and 1.0 metres on the other side. This control also requires development to be setback 6.5 metres from the rear boundary line.

The proposed works to the dwelling house and the proposed studio achieve compliance with the rear setback requirement. Additionally, the proposed studio achieves compliance with the side setback requirements.

However, the proposed works to the dwelling house result in numeric non-compliances to Level 2 and Level 3 to the northern boundary, as follows:

- **Level 2**
 - Balcony off Bedroom: 0.7m - 2.25m, which presents a maximum variation of 72%.
- **Level 3**
 - Balcony off Living area: 0.83m - 3.81m, which presents a maximum variation of 66.85%.

These balconies, however, are existing and the proposed development does not change the extent of the existing non-compliance. As such, a detailed merit assessment of the existing non-compliances is not required, in this particular circumstance.

D12.10 Landscaped Area - Environmentally Sensitive LandDetailed description of non-compliance

The subject site is located within Area 1 of the Landscaped Area Map of the P21DCP. As such, the site is required to provide at least 60% (338.4m²) landscaping. The site, as existing, has a landscaped area of 40.0% (226.2m²), which presents a variation of 33.3%.

The proposed development reduces the landscaped area to 31.5% (178.2m²), which presents a variation of 47.5%. This control stipulates that, provided the underlying outcomes of this control can be achieved, a variation may be permitted that allows for up to 6% of the total site area to be provided as impervious landscape surfaces (so long as these are used for recreational purposes only), and pathways of less than 1.0 metre in width. When including the variation, the landscaped area is increased to 40.9% (231.05m²).

The landscape plans provided by Bates Landscape appears to have included the large rocky outcrop at the rear of the site as landscaped area. However, in accordance with the definition of Landscaped Area in the PLEP 2014, a rocky outcrop cannot be included.

Merit consideration

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

- *Achieve the desired future character of the locality (S)*

Comment:

Notwithstanding the extent of non-compliance to this control, the proposed development continues to achieve the desired future character of the Palm Beach locality, noting that the proposal does not require the removal of substantial vegetation.

This outcome is achieved.

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

Comment:

The extent of non-compliance to this control does not create an unreasonable bulk and scale of the built form, noting that the proposed alterations and additions to the dwelling house are minor and maintain the existing built form. The proposed detached studio at the rear of the property is generally sited over the existing deck and does not require the removal of substantial vegetation.

This outcome is achieved.

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

Comment:

The extent of non-compliance does not give rise to any unreasonable amenity impacts upon adjoining properties. The shadow diagrams provided indicate compliance with the requirements of solar access as detailed under control C1.4 Solar Access of the P21DCP.

This outcome is achieved.

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

Comment:

As detailed above, the proposed studio is sited over the existing deck and, therefore, does not require the removal of substantial vegetation. Additionally, the proposed alterations and additions to the dwelling house are minor and maintain the existing built form.

This outcome is achieved.

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

Comment:

As has been detailed above and elsewhere in this report, the proposed development does not require the removal of substantial vegetation to facilitate the proposed works. In this instance, the natural vegetation and biodiversity on the site is maintained.

This outcome is achieved.

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

Comment:

Stormwater management plans have been provided with this application, and will be included as a recommended condition should this application be approved. In this instance, any stormwater runoff will be managed and reduced, preventing soil erosion and siltation of nearby natural drainage channels.

This outcome is achieved.

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

Comment:

The Whale Beach locality is not considered to be rural or bushland. However, as detailed above, the extent of non-compliance to this control does not require the removal of vegetation.

This outcome is achieved.

- *Soft surface is maximised to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management. (En, S)*

Comment:

Notwithstanding the extent of non-compliance to this control, there remains ample soft surfaces throughout the site that will continue to allow for infiltration of water into the water table, to minimise runoff and to assist with stormwater management.

This outcome is achieved.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of PLEP 2014, Pittwater 21 DCP and the objectives specified in s.1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$9,773 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$977,255.

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 EPs
- 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 development application seeks consent for alterations and additions to a dwelling house including a detached studio. The application is referred to the Development Determination Panel (DDP) as the proposal results in a variation of more than 10.0% to Clause 4.3 Height of Buildings of the *Pittwater Local Environmental Plan 2014* (PLEP 2014).

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

The proposal includes several variations to the built form controls under the Pittwater 21 Development Control Plan (P21DCP), these being; D12.5 Front building line, D12.6 Side and rear building line, and D12.10 Landscaped Area - Environmentally Sensitive Land.

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

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

RECOMMENDATION

That Northern Beaches Council, as the consent authority, vary the development standard contained within Clause 4.3 Height of Buildings, pursuant to Clause 4.6 of the *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 DA2024/0624 for Alterations and additions to a dwelling house including a detached studio. on land at Lot 316 DP 16362, 324 Whale Beach Road, PALM BEACH, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. No Approval for Secondary Dwelling

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

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

2. **Approved Plans and Supporting Documentation**

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA00	A	Site Analysis / Roof Plan / Erosion & Sediment Control Plan + Demolition	Hampton Architecture	February 2024
DA01	A	Proposed Plan - Ground Floor	Hampton Architecture	February 2024
DA02	A	Proposed Plan - Level One Media	Hampton Architecture	February 2024
DA03	A	Proposed Plan - Level Two Bedrooms	Hampton Architecture	February 2024
DA04	B	Proposed Plan - Level Three Living	Hampton Architecture	July 2024
DA05	B	Proposed Elevations - North + East	Hampton Architecture	July 2024
DA06	B	Proposed Elevations - South, West + Studio	Hampton Architecture	May 2024
DA07	B	Proposed Sections	Hampton Architecture	July 2024
C002	B	Site Plan	Bates Landscape	20 February 2024
C004	B	Second Floor	Bates Landscape	20 February 2024
C005	B	Third Floor	Bates Landscape	20 February 2024
C006	B	Planting Plan	Bates Landscape	20 February 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Cliff Face Stability Assessment (Reference: R.001.Rev.0)	-	Douglas Partners	14 March 2024
Geotechnical Risk Management Policy for Pittwater - Form No. 1(a)	-	Douglas Partners	26 February 2024
Geotechnical Risk Management Policy for Pittwater - Form No. 1	-	Douglas Partners	3 April 2024
Waste Management Plan	-	Not dated	Not signed
BASIX Certificate A1743706	-	BASIX Certificate Centre	15 April 2024
D01 Stormwater Drainage General Notes	A	NB Consulting Engineers	5 February 2024
D02 - D04 Site/Ground Floor Stormwater Drainage Plan, level 1 & Level 2 Stormwater Drainage Plan, Level 3 & Roof Stormwater Drainage Plan	A	NB Consulting Engineers	5 February 2024
D10 Stormwater Drainage Details and Sections Sheet 1	A	NB Consulting Engineers	5 February 2024

D20 Roof Catchment Plan	A	NB Consulting Engineers	5 February 2024

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

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

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

3. **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	27 May 2024

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

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

4. **Prescribed Conditions**

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

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

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

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

unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

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

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

Reason: Legislative requirement.

5. General Requirements

- (a) Unless authorised by Council:
- Building construction and delivery of material hours are restricted to:
- 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday,
 - No work on Sundays and Public Holidays.
- Demolition and excavation works are restricted to:
- 8.00 am to 5.00 pm Monday to Friday only.
- (Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).
- (b) 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 \$9,772.55 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 \$977,255.00.

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 Certifier prior to issue of Construction Certificate.

Reason: To protect native vegetation.

9. **Amendment of Landscape Plans**

The submitted Landscape Plan is to be amended in accordance with the following:

- Development shall ensure that at least 80% of any new planting incorporates native vegetation (as per species found on the site or listed in Littoral Rainforest Endangered Ecological Community).

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

Reason: To maintain and replace habitat on the site.

10. **Stormwater Drainage Disposal**

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

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

When the proposed discharge point for the development in this consent cannot strictly comply with the Water Management for Development Policy, the Applicant must apply to verify the proposed discharge point by gaining Council approval via a Stormwater Drainage Application. Council approval must be provided to the Certifier prior to the issue of a Construction Certificate when a Stormwater Drainage Application is required. The Stormwater Drainage Application form can be found on Council's website.

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

Reason: To ensure satisfactory management of stormwater.

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Certifier.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

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. Construction Traffic Management Plan

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

The CTMP must address following:

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

- surface is capable of supporting up to 24 tonnes, otherwise the weight limit should be reduced in the CTMP). If consent is obtained, a copy must be included in the CTMP.
- No construction vehicles, materials or plant are to be located or parked in the private road/driveway, community title road or right of way.
 - How any disruption to other users of the private road/driveway, community title road or right of way will be minimised and all users kept informed of likely disruption where the access will be closed or blocked for any given time.
 - If trees are located within or overhang the access route, a tree protection plan prepared by an Arborist with minimum AQF Level 5 in arboriculture demonstrating how any trees within the Right of Carriageway will be protected from damage by construction vehicles. Should any tree protection measures be required on private land in accordance with AS4970-2009 Protection of trees on development sites, owner's consent must be obtained.
 - A Dilapidation report, including photographic surveys, of the private road/driveway/right of way must be included prior to any works commencing on the site. The report must detail the physical condition of the private road/driveway/right of way, and any other adjacent private property assets (including trees) or adjacent public property that may be adversely affected by vehicles servicing the development site to undertake works or activity during site works.
 - A requirement for Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, to be submitted after the completion of works and prior to the Occupation certificate. The report must:
 - Compare the post-construction report with the pre-construction report,
 - Clearly identify any recent damage or change to the private road/driveway/right of way and whether or not it is likely to be the result of the development works,
 - Should any damage have occurred, identify remediation actions taken.
 - Be submitted to Council with the Occupation Certificate.
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site.
 - Make provision for parking onsite. All Staff and Contractors are to use any basement parking once available.
 - Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior.
 - Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety.
 - The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure.
 - Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees.
 - Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site.
 - The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site.
 - Specify that the public roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council.
 - The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent.
 - Proposed protection for Council and adjoining properties.
 - The location and operation of any on site crane.

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

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

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

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

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

15. 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.

16. 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.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

17. Installation and Maintenance of Sediment and Erosion Control

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

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

DURING BUILDING WORK

18. 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.

19. **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.

20. **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.

21. **Geotechnical Requirements**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

22. **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.

23. **Survey Certificate**

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

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

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

24. **Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

25. **Native Landscaping**

Any new landscaping is to incorporate a minimum 80% locally native vegetation species as a proportion of the total number of plants. Locally native species are to be consistent with the relevant section of the Native Planting Guide available on Council's website.

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

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

26. **Stormwater Drainage Disposal Certification**

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

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

The application is to include the completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification. A guide to the process and associated Legal Document Authorisation Application form can be found on Council's website

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater detention system within this development consent.

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

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

Reason: To ensure satisfactory management of stormwater.

27. **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.

28. **Waste Management Confirmation**

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

the approved Waste Management Plan.

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

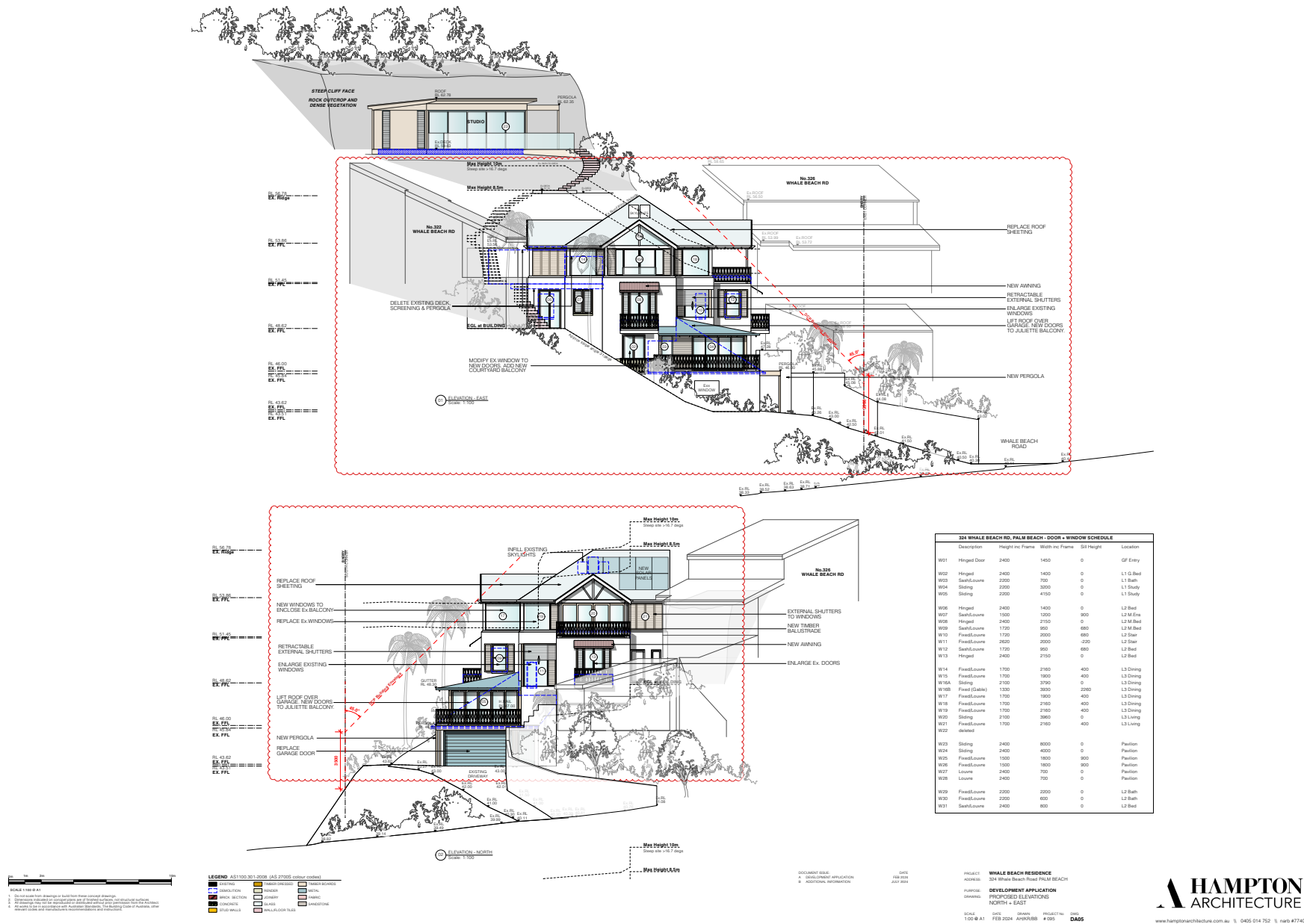
ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

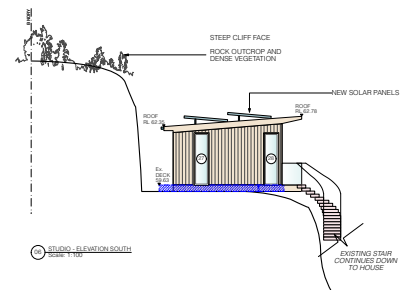
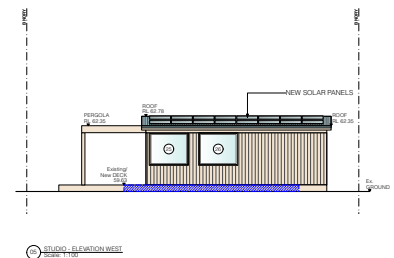
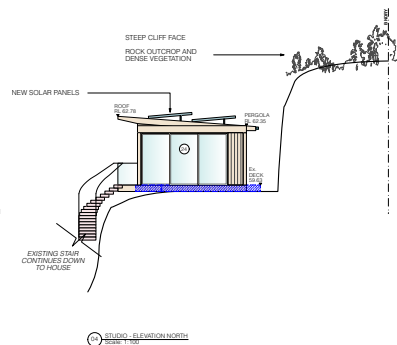
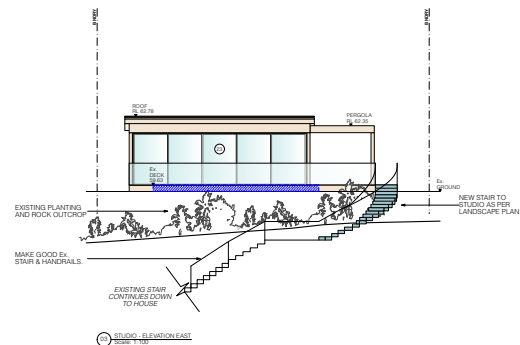
29. **Geotechnical Recommendations**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

ATTACHMENT 2 : SITE PLAN AND ELEVATIONS - ITEM 3.7 - DEVELOPMENT DETERMINATION PANEL - 24 JULY 2024





LEGEND AS1100.301-2006 (AS 2700S colour codes)

		
EXISTING	TIMBER DRESSED	TIMBER BOARDS
		
DEMOLITION	PAINTER	METAL
		
BRICK SECTION	JOINER	FAIRFAC
		
CONCRETE	GLASS	SANDSTONE
		
STUD WALLS	WALL/FLOOR TILES	

1. Do not scale from drawings or build from these concept drawings.
2. Dimensions indicated on concept plans are of finished surfaces, not structural surfaces.
3. All drawings may not be reproduced or distributed without prior permission from the Architect.
4. All works to be in accordance with Australian Standards, The Building Code of Australia, other relevant codes and manufacturers recommendations and instructions.

DOCUMENT TYPE:
A DEVELOPMENT APPLICATION

DATE
FEB 2023
0 0 0000 0000

MAY 2024

PROJECT: **WHALE BEACH RESIDENCE**
ADDRESS: 324 Whale Beach Road PALM BEACH

PURPOSE

PROPOSED ELEVATIONS
SOUTH WEST & STUDIO

SOUTH, WEST & STUDIO

SCALE	DATE	DRAWN	PROJECT NO.
1:00 @ A1	FEB 2024	AM/KR/BB	# 025

250



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324 WHALE BEACH ROAD, PALM BEACH

CLAUSE 4.6 – EXCEPTION TO DEVELOPMENT STANDARDS VARIATION TO CLAUSE 4.3 - HEIGHT OF BUILDINGS

Height of Buildings

1. INTRODUCTION

This clause 4.6 variation has been prepared having regard to the Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

1.1. The Proposal

This Clause 4.6 variation request has been prepared in support of a Development Application ('DA') for alterations and additions to a dwelling house at 324 Whale Beach Road, Palm Beach ('the site'). All relevant aspects of the proposal are described and assessed in the Statement of Environmental Effects ("SEE") and its attachments.

Pursuant to Clause 4.3 of Pittwater Local Environmental Plan 2014 ("PLEP"), the site has a maximum Building height limit of 8.5m.

2. PITTWATER LOCAL ENVIRONMENTAL PLAN 2014 (PLEP)

2.1. Clause 4.3 Height of buildings

Pursuant to Clause 4.3 of PLEP the following provisions apply:

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

....

(2D) *Despite subclause (2), development on land that has a maximum building height of 8.5 metres shown for that land on the Height of Buildings Map may exceed a height of 8.5 metres, but not be more than 10.0 metres if—*

(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 objectives of the control are as follows:



- (a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,
- (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,
- (c) to minimise any overshadowing of neighbouring properties,
- (d) to allow for the reasonable sharing of views,
- (e) to encourage buildings that are designed to respond sensitively to the natural topography,
- (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

Building height is defined in PLEP 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 existing dwelling house is sited on a slope that exceeds 30%. While there is no increase in the building height or change to the existing building envelope, there are proposed alterations to the building that are above the height plane. These works include the enclosure of the balcony, additional windows and the replacement of roof sheeting.

As such, a Clause 4.6 written request to vary the building height development standard is submitted in support of the development application.

We note that the proposed breaches to building height represent existing non-compliances.

The breach to building height is depicted on the elevations in Figures 1 and 2 below.

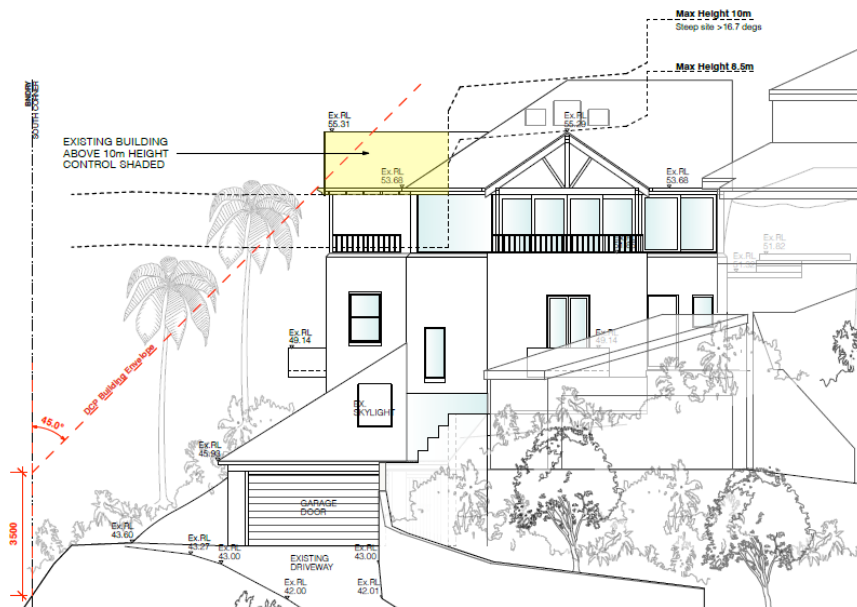


Figure 1 – North elevation (source: Hampton Architecture).

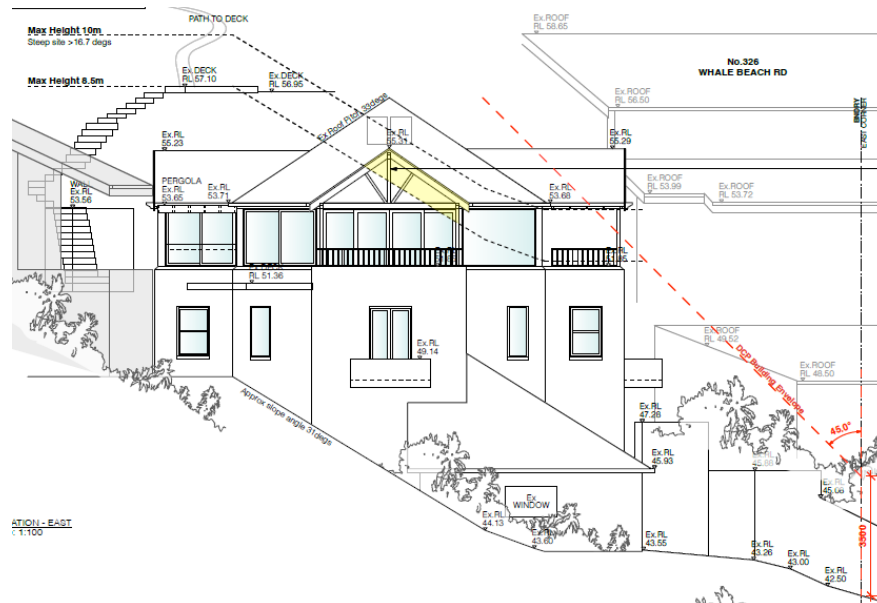


Figure 2 – East elevation (source: Hampton Architecture).



2.2. Clause 4.6 – Exceptions to Development Standards

Clause 4.6 of PLEP permits consent to be granted for a development application even though the development proposed in the development application would contravene a development standard imposed by PLEP 2014.

Clause 4.6(1) of PLEP provides:

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

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

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“Initial Action”) provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant’s written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

“In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”. If objective (b) was the source of the Commissioner’s test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test.”

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of PLEP provides:

- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not*



apply to a development standard that is expressly excluded from the operation of this clause.

This clause applies to clause 4.3 Height of Buildings Development Standard.

Clause 4.6(3) of PLEP provides:

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

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

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

The proposed development does not comply with the height of buildings provisions in clause 4.3 of PLEP which specifies a maximum Building height, however, strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

The relevant arguments are set out later in this written request.

Clause 4.6(4) of PLEP requires that the consent authority keep a record of its assessment carried out under subclause (3).

3. RELEVANT CASE LAW

In *Initial Action*, the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular, the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 continue to apply as follows:

17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*



20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*
22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 4.3 of PLEP a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard.



4. REQUEST FOR A VARIATION

4.1 Is clause 4.3 of PLEP a development standard?

The clause 4.3 height of building standard is a development standard to which clause 4.6 PLEP applies.

4.2 Clause 4.6(3)(a) – Whether compliance with the development standard is unreasonable or unnecessary.

The common approach for an applicant to demonstrate that compliance with a development standard is unreasonable or unnecessary is set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827.

The first option, which has been adopted in this case, is to establish that compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Consistency with objectives of the height of buildings standard

An assessment as to the consistency of the proposal when assessed against the objectives of the standard is as follows:

- (a) *to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*

Response:

The proposal is consistent with the desired character of the Palm Beach Locality. The proposed alterations are within the existing building envelope and maintain the existing building's height, setbacks and bulk. The proposed alterations will not be visually prominent within the Palm Beach locality.

Notwithstanding the non-compliant building height elements, the proposal achieves this objective.

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

Response: The proposal retains the existing dwelling height and building envelope which is consistent with surrounding development.

In line with the findings of Senior Commissioner Roseth in *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191, the majority of observers would not perceive the proposed development, especially the elements with non-compliant Building heights, as offensive, discordant, or out of place in the streetscape. This opinion considers both the context of the streetscape and the built form characteristics of development within the visual area of the site.



Accordingly, it can be reasonably concluded that the proposal is compatible with its surroundings when viewed from the public domain and surrounding residential properties. Referring to *Veloshin v Randwick City Council [2007] NSWLEC 428*, it's evident that the variance between compliance and non-compliance doesn't signify a distinction between good and poor design in this instance.

Notwithstanding the building height breaching elements, the development has been designed to minimise the adverse effects of bulk and scale of buildings and accordingly is consistent with this objective.

(c) *to minimise any overshadowing of neighbouring properties,*

Response: The proposal retains the existing dwelling height which is consistent with surrounding development. The alterations to the building elements will not give rise to unacceptable/ non-compliant shadowing impacts as depicted on the accompanying shadow diagrams with a minimum 3 hours of direct solar access maintained to the north-facing living room windows and adjacent open space areas of the southern adjoining property between 9 am and 3 pm on 21st of June.

Notwithstanding the Building height breaching elements, the development has been designed to minimise the adverse effects of bulk and scale of buildings and accordingly is consistent with this objective.

(d) *to allow for the reasonable sharing of views,*

Response: The proposed works to the dwelling house are within the existing building envelope and therefore will not give rise to any impacts on existing views enjoyed by neighbouring properties.

Accordingly, notwithstanding the breaching Building height elements proposed, the consent authority can be satisfied that a view sharing scenario is maintained between adjoining development consistent with the view sharing principles established at section 4.3 MRDCP and those established by the Land and Environment Court in the matter of *Tenacity Consulting v Warringah [2004] NSWLEC 140*. The proposal is therefore consistent with objective 4.3(1)(a)(i). The proposal is consistent with this objective.

(e) *to encourage buildings that are designed to respond sensitively to the natural topography,*

Response: The proposed works to the dwelling house are within the existing building envelope. There are no changes proposed to the existing site topography. The proposal is consistent with this objective.

(f) *to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*

Response: The property is not a heritage item or in a heritage conservation area. As the proposal maintains the existing dwelling height and building envelope, there will be no adverse visual impacts on the natural environment. The proposal is consistent with this objective.



The non-compliant component of the building will achieve the objectives of the standard to at least an equal degree as would be the case with a development that complied with the building height standard. Given the development's consistency with the objectives of the standard strict compliance is both unreasonable and unnecessary under the circumstances.

4.3 Clause 4.6(4)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be “environmental planning grounds” by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.*

The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].

Sufficient environmental planning grounds

The proposed development, notwithstanding the alterations to the existing building above the height plane, the proposal achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposal promotes the orderly and economic use and development of land (1.3(c)) noting that the proposal does not exacerbate the existing non-compliance with the Building height standard.
- The proposed alterations and minor additions represents good contextually appropriate design affording exceptional levels of amenity whilst maintaining appropriate streetscape and environmental outcomes in particular, existing view sharing is maintained surrounding development.



- The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (1.3(h)).

5. CONCLUSION

Pursuant to clause 4.6(4)(a), the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3):

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

As such, I have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a height of buildings – Building height variation in this instance.

A handwritten signature in blue ink, appearing to read 'D Deegan'.

Danielle Deegan
Director
D.M Planning Pty Ltd

4 July 2024

ITEM 3.8 REV2024/0017 - 4 FOAM STREET FRESHWATER - REVIEW OF DETERMINATION OF APPLICATION DA2023/1189 FOR ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE

PURPOSE

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

RECOMMENDATION

THAT Council as the consent authority **approves** Development Consent to REV2024/0017 for Review of Determination of Application DA2023/1189 for alterations and additions to a dwelling house on land at Lot 66 DP 5302, 4 Foam Street FRESHWATER, subject to the conditions set out in the Assessment Report.

Reporting manager	Rodney Piggott
TRIM file ref	2024/500911
Attachments	↓1 Assessment Report ↓2 Site Plan and Elevations

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2024/0017
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Responsible Officer:	Lachlan Rose
Land to be developed (Address):	Lot 66 DP 5302, 4 Foam Street FRESHWATER NSW 2096
Proposed Development:	Review of Determination of Application DA2023/1189 for alterations and additions to a dwelling house
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Sam Lee Vincent

Application Lodged:	28/05/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	07/06/2024 to 21/06/2024
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Deferred Commencement Approval

Estimated Cost of Works:	\$ 509,300.00
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Executive Summary

This Review of Determination application seeks to review the determination of DA2023/1189, which was lodged for alterations and additions to a dwelling house, and subsequently refused under delegated authority on 13 February 2024.

This application is referred to the Development Determination Panel (DDP), as it is a Review of Determination of an application previously determined under delegated authority.

Critical assessment issues which made up the reasons for refusal of DA2023/1189 included unacceptable stormwater plans which were not designed in accordance with Council's 'Water Management for Development Policy'.

This assessment finds that the applicant has attempted to make amendments to the proposed development, while it still constitutes substantially the same development. This has included amended stormwater plans, whereby the Council's Development Engineer has recommended a Deferred Commencement Condition prior to activation of the consent.

The merits of the revised design have been reviewed and the reasons for refusal of DA2023/1189 have been satisfactorily addressed subject to the satisfaction of the Deferred Commencement Condition.

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

PROPOSED DEVELOPMENT IN DETAIL

This Review of Determination seeks to review the determination of DA2023/1189 for alterations and additions to a dwelling house. This application was refused under delegated authority on 13 February 2024.

Under the s8.2A Review Application, the proposal remains substantially the same as the original proposal, with the following differences:

- Amendments to the Stormwater Drainage Plans

There are no architectural changes proposed from the final Architectural Plans provided under DA2023/1189. The changes to the plans during DA2023/1189 included:

- A reduction of the upper floor plan with the Master bed and WIR reduced to increase southern side setback
- The deletion of the carport

AMENDED PLANS

Following a preliminary assessment of the application and site inspection of the subject site and adjoining properties Council wrote to the applicant for a new BASIX Certificate as the certificate uploaded was out of date at lodgement. Additionally, the Council's Development Engineer requested additional details relating to the Stormwater Plans. The applicant lodged amended plans BASIX Certificate with the Certificate included in the Architectural Plans on 25/06/2024. Subject to issues with the stormwater plans, correspondence was provided back and forth between the applicants stormwater engineer and Councils Development Engineer to attempt to resolve the issues. Due to the time restraints of the application, Councils Development Engineer has provided a Deferred Commencement Condition for Stormwater drainage plans to be submitted to Council for approval.

The proposed amendments will have a reduced environmental impact on the adjoining properties and public open space than the original proposal. Therefore, re-notification was not required in accordance with Northern Beaches Community Participation Plan.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

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

Warringah Development Control Plan - B3 Side Boundary Envelope

Warringah Development Control Plan - B5 Side Boundary Setbacks
Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - C3 Parking Facilities
Warringah Development Control Plan - C4 Stormwater
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D6 Access to Sunlight

SITE DESCRIPTION

Property Description:	Lot 66 DP 5302 , 4 Foam Street FRESHWATER NSW 2096
Detailed Site Description:	The subject site consists of one (1) allotment located on the western side of Foam Street. The subject site is legally identified as Lot 66 in Deposited Plan 5302. No. 4 Foam Street, Freshwater. The site is regular in shape with a street frontage of 10.65m and a depth of 40.235m. The site has a surveyed area of 404.9m². The site is located within the R2 Low Density Residential zone and accommodates a single storey dwelling house, swimming pool and inground trampoline. The site topography slopes downward from north to south. The site includes a lawn area to the front and year with garden beds. There are no known threatened species on the subject site. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by both low density and medium density residential development of various architectural designs.

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:

CDC2016/0280

Complying Development Certificate for a rear single storey extension and deck and internal alterations to existing dwelling.
Completed on 10 May 2016 by Private Certifier.

CDC2022/0415

Complying Development Certificate for the construction of a swimming pool and related landscaping.
Completed on 6 May 2022.

DA2023/1189

Development Application for Alterations and additions to a dwelling house.
Refused on 13 February 2024.

Site History as prepared by Council's Development Engineer based on Council's records:

CDC2016/0280

A Geotechnical Report (Internal Ref: 2016/171893) prepared by White Geotechnical Group, dated 26 April 2016 was prepared for the proposed infiltration trench. It was concluded in the report that based on the design infiltration rate (long term) the site was not suitable for infiltration. Despite this recommendation, a stormwater plan (Internal Ref: pg. 11-12 of 2016/171883) prepared by LMW Design Group, drawing no. D1 - D2, rev B, dated 24.02.16, included an absorption trench.

FOC2017/0484

Council's records do not show any WAE plans of the system however stormwater certification (Internal Ref: pg. 7 of 2017/259316) was provided by John Ribot Plumbing dated 14 December 2016.

The transfer history of the land then indicate a transfer date of 19 January 2021 to the current owners. Council's records indicate between October 4 2021 and December 21 2021, an inground trampoline was constructed in the location of the CDC approved absorption trench.

CDC2022/0415

A pool and other landscaping works were approved over the location of the drainage lines which connected the roof to the absorption trench.

There was a note on the approved plans which indicated that "all proposed stormwater to connect with existing". To conclude, it is highly likely that the CDC approved absorption has been removed or compromised, and adjacent downstream properties may be affected during storm events.

Previous DA2023/1189 Application History

The development application was notified for a period of fourteen (14) days, as stated within Council's Community Participation Plan (CPP) and resulted in one (1) formal submission.

Council requested amended plans and additional information on 24 October 2023 to address the following concerns:

- *Clause B3 Side Boundary Envelope of the WDCP 2011;*
- *Clause B5 Side Boundary Setbacks of the WDCP 2011;*
- *Clause B7 Front Boundary Setbacks of the WDCP 2011;*
- *Amended shadow diagrams are to be submitted that include the following which is in line with*
- *Council's lodgement requirements. Concern was raised in regard to the extent of solar access*
- *impact to the southern adjoining properties, in particular to No. 53 Wyndora Avenue as a result*
- *of the proposed development; and*
- *Development engineering concerns in regard to stormwater.*

Stormwater Correspondence - Refer to 'Referrals' section under DA2023/1189 for Development Engineer response.

The first Council Development Engineer response (dated 20 September 2023) was provided to the applicant on 24 October 2023 (as above) in a Further Request for Information Letter. The request noted the following:

1. *A stormwater design prepared by a civil engineer who is currently registered on the National Engineering Register*

(NER) in accordance with clause 5.5.1.2 of the Water Management for Development Policy.

2. Council is to be satisfied that all avenues of Stage 1 (Section 5.5.1.2) have been exhaustively investigated and these avenues considered impractical or unviable, prior to Council consenting to the property owner or developer progressing to the next stage. The same process must be followed as applicants proceed sequentially through the stages before finding an appropriate discharge solution.

3. Council's records indicate the property may be affected by overland flow for major storm events. A risk assessment is required by a civil engineer to ensure there is a safe transmission of overland flow paths and no runoff will enter the habitable floor areas. The storage sheds under the carport may block overland flow paths. Overland flow paths shall be shown on the stormwater plans. In accordance with clause 11 of the Water Management for Development Policy, overland flow paths are to be kept free of obstruction and must not be landscaped with loose material that could be removed during a storm event, such as wood chip or pine bark.

A letter (dated 6 November 2023) was provided by email to respond to Council's Engineer referral, this letter included a Charged Stormwater System Plan. The information provided was insufficient, with the stormwater concerns remaining. It was noted in a second referral response the direction in which the application should take i.e. liaise with the downstream neighbouring property regarding a potential level spreader system. A 7-day extension (Due Date: 24 November 2023) was afforded to the applicant to provide the additional information that was required.

Additional information was provided on 22 November 2023 via the NSW Planning Portal. Council's Engineer provided a third response (dated 8 December 2023) which stated: "Based on the correspondence provided by the applicant it appears that negotiations regarding an interallotment easement were not successful and as such other methods of stormwater disposal can be considered. The Geotechnical Report by White Geotechnical Group indicates that absorption is not viable for the site."

It was requested that a level spreader option remained the likely solution, and should be prepared by suitably qualified civil engineer in accordance with Appendix 4 of Water Management for Development Policy. No plan had been provided at this time. Correspondence via email occurred which advised the applicant to present a stormwater design that was in accordance with Appendix 4 of Water Management for Development Policy on various occasions.

An additional Further Request for Information Letter (dated 11 December 2023) was sent to the applicant which still raised concerns with solar access diagrams (request for Certification of Shadow Diagrams Form) and issues with proposed stormwater design. The amendments were due 13 January 2024. An extension was granted for the 24 January 2024, due to the Applicant's Engineer being absent.

The Applicant sent through stormwater plans via email correspondence in response to Council's additional Further Request for Information Letter (dated 11 December 2023), however, these plans were not uploaded onto the NSW Planning Portal. These plans were sent to Council's Engineer for review. It was requested that these stormwater plans be uploaded on the Portal on 6 February 2024. The amended stormwater plans have not been uploaded to date onto the NSW Planning Portal. As such, they do not form part of the application.

Council's Development Engineer noted that the stormwater plans were still unsatisfactory and lacked detail. The Applicant wished to provide further plans and consult with Council's Engineer, and that more time would be needed.

It was advised to the Applicant that the issues were communicated well through the assessment process, and that Council would not be accepting further amendments under this application. It is apparent that the stormwater system may need to be completely reviewed/redesigned to address the engineering issues. More than sufficient time and opportunity has been provided to address these matters. Hence, the application will be determined in its current form, which do not consist of acceptable stormwater plans.

REV2024/0017 Application History/ Correspondence

The Council Development Engineer response (dated 18 June 2024) stating:

18/06/2024:

Review of Determination of Application DA2023/1189 for alterations and additions to a dwelling house

Access

Proposal is to re-construct the existing driveway with slight altered levels.

Stormwater

Site falls to rear. Total site area is 404sqm and stormwater plans catering roof area by Peninsula Consulting Engineers, Job No 24-0401, Drawing No H01 and H02, Issue A, Dated 13/05/2024 by onsite stormwater detention system (OSD) with level spreader are satisfactory.

No objections to approval subject to conditions as recommended.

The proposal is therefore supported.

A email was sent on 21 June 2024 to the applicant to provide a updated BASIX Certificate as the one provided was out of date. An updated BASIX Certificate was submitted to the Planning Portal on 25 June 2024.

The Council Development Engineer requested additional information relating to the stormwater plans after a email raising concerns from an adjacent property at 57 Wyndora Avenue, Freshwater was send to the Planner. Although, the email requested that it not be lodged as a formal submission. The email addressed that teh engineering calculations may be incorrect and therefore, the Council Development Engineer requested:

- *DRAINS model from Consultant Engineer and that;*
- *The PSD must be calculated on the considered hard area i.e. the roof in this case*

This information was requested through an email to the applicant on 24 June 2024.

There was correspondence between the Council Development Engineer and the Applicants Stormwater Engineer through emails and calls whereby the Applicants engineer had provided a DRAINS model (on 1 July 2024). A response by email was provided with the Council Engineer's response stating (on 3 July 2024):

I have reviewed the DRAINS model and would request the following:

- *Consultant engineer to use ARR2019 Storm data rather than ARR87*
- *Assumed time of concentration (Tc) for grass is 5min which is too low, site is quite flat, referring table from Council's Water Management for Development Policy, Council suggest Tc to be around 10 min.*
- *Our PSD is coming around 3-4 l/sec, Consultant Engineer review his calculations and bring down the PSD.*

Amended DRAINS model is requested.

The applicants Engineer provided a response on 8 July 2024 raising questions with what is required. Correspondence from the Council Engineer was provided on 8 July 2024 to address what is required in the new Stormwater Model. The Council Development Engineer provided a Deferred Commencement Condition and a response to the owner was sent informing of the condition to be met.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:
In accordance with Section 8.3 of the Act, an applicant may request Council to review a determination of a development application, other than for a complying development, integrated development, designated development or a determination made by Council in respect to an application by the Crown. The development application does not fall into any of these categories, therefore the applicant may request a review.

In accordance with Section 8.3 (2) of the Act, the request for the review must be made and determined within 6 months after the date of determination of the development application. The application was determined on 13 February 2024 and the notice of determination was issued on the same day. The review was lodged on 28 May 2024 and is to be considered by Northern Beaches Council on 13 August 2024, which is within 6 months of the date of determination.

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

The amendments to the proposal are outlined in the "Detailed Description of Development" section of this report.

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

DA2023/1189 was refused under delegated authority on 13 February 2024. The following is a list of the reasons for refusal and how each have been addressed in the amended scheme proposed in this review:

1. Pursuant to Section 4.15(1)(a)(i) & (iii) Environmental Planning and Assessment Act 1979 the proposed

development is inconsistent with Clause 1.2 Aims of the Plan of the Warringah Local Environmental Plan 2011; Clause C4 Stormwater; Clause D1 Landscaped Open Space and Bushland Setting of the Warringah Development Control Plan 2011.

Particulars

i) In the absence of an acceptable Stormwater Plan prepared in accordance with Council's 'Water Management for Development Policy', this assessment of the application is not satisfied that the objectives of Clause 1.2 Aims of the plan of the Warringah Local Environmental Plan 2011 can be achieved. Additionally, the proposal does not meet the objectives, as considered under Clause C4 Stormwater and Clause D1 Landscaped Open Space and Bushland Setting of the Warringah Development Control Plan 2011.

Comment

The amended proposal includes revised Stormwater Plans which, subject to the Deferred Commencement Condition, must be re-submitted to Council for approval addressing the disposal of stormwater accordance with Councils requirements. As such, the amended proposal now complies with the objectives of Clause 1.2 Aims of the plan of the Warringah Local Environmental Plan 2011 and Clause's C4 Stormwater and D1 Landscaped Open Space and Bushland Setting of the Warringah Development Control Plan 2011 subject to the deferred commencement condition.

2. Pursuant to Section 4.15(1)(a)(iv) of the Environmental Planning and Assessment Act 1979, insufficient information has been submitted in support of the application.

Particulars

i) The Stormwater Plan prepared by Tonkin Consulting has not been designed in accordance with Council's 'Water Management for Development Policy'.

ii) The proposed charged stormwater system to Foam Street which outlets directly to the kerb is not acceptable, as the required gravity fall cannot be achieved.

iii) An acceptable stormwater system will require the provision of an on-site stormwater detention system. Stormwater flows from the whole site are to be restricted for all storm events up to and including the 1% AEP storm event. Details of the OSD system including levels, volume and orifice size are to be shown on plan and sections.

Comment

Amended Stormwater Plans have been submitted with this application and referred to the Council's Development Engineer, which has included a Deferred Commencement Condition addressing the disposal of stormwater from the site to comply with Council's requirements. Therefore, the Deferred Commencement Condition is to be completed to demonstrate compliance with Council's 'Water Management for Development Policy' and provide an acceptable stormwater system.

This assessment finds that the applicant has made substantive amendments to the proposed development, while still constituting substantially the same development. The reasons for refusal of DA2023/1189 have been satisfactorily addressed and, therefore, this report concludes with a recommendation that the DDP grant approval to the review application, subject to conditions.

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 07/06/2024 to 21/06/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Landscape Officer	Review of Determination of Application DA2023/1189 for alterations and additions to a dwelling house. The previous application assessed raised no objections with regard to landscape issues subject to conditions. The Review of Determination includes some minor amendments that do not further impact on landscape features. No objections are raised with regard to landscape issues subject to conditions.
NECC (Development Engineering)	18/06/2024: Review of Determination of Application DA2023/1189 for alterations and additions to a dwelling house Access Proposal is to re-construct the existing driveway with slight altered levels. Stormwater Site falls to rear. Total site area is 404sqm and stormwater plans catering roof area by Peninsula Consulting Engineers, Job No 24-0401, Drawing No H01 and H02, Issue A, Dated 13/05/2024 by on-site stormwater detention system (OSD) with level spreader are satisfactory. No objections to approval subject to conditions as recommended.
External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

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. A493017_04 dated 25 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.

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	Dwelling: 7.3m	N/A	Yes

Compliance Assessment

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

Warringah Development Control PlanBuilt Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
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B1 Wall height	7.2m	<7.2m	-	Yes
B3 Side Boundary Envelope	5m Northern Boundary	Outside Envelope	NE: 6.25% (0.4m) NW: 4.76% (0.3m)	No
	5m Southern Boundary	Outside Envelope	SE: 1.5% (0.1m) SW: 10.6% (0.7m)	No
B5 Side Boundary Setbacks	0.9m Northern Boundary	Ground Floor: 0.96m - 0.98m First Floor: 0.96m - 0.97m	-	Yes
	0.9m Southern Boundary	Ground Floor+ BBQ Area: 0.94m First Floor: 0.94m - 1.5m	-	Yes
B7 Front Boundary Setbacks	6.5m	Dwelling: 7.9m Hardstand: 0m (nil)	- 100%	Yes No
B9 Rear Boundary Setbacks	6m	Proposed Works: 10.8m	-	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (161.96m ²)	27.8% (112.6m ²)	30.48% (49.36m ²)	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	No	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	No	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B3 Side Boundary Envelope

Description of non-compliance

Clause B3 Side Boundary Envelope requires development to be sited within a 5m building envelope to ensure the bulk and scale of the built form is minimised.

The proposed development encroaches the side building envelope on the northern elevation and southern elevation. The variations to the side building envelope are stated below:

Northern elevation: 4.76% (0.3m) to 6.25% (0.4m)

Southern elevation: 1.5% (0.1m) to 10.6% (0.7m)

See the visual depictions of the side boundary envelope non-compliance below:

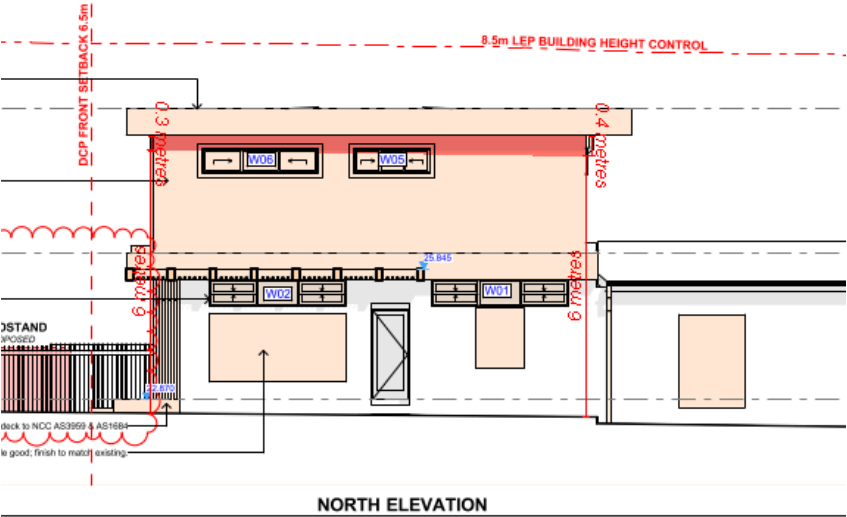


Figure 1: Northern side boundary envelope non-compliance.

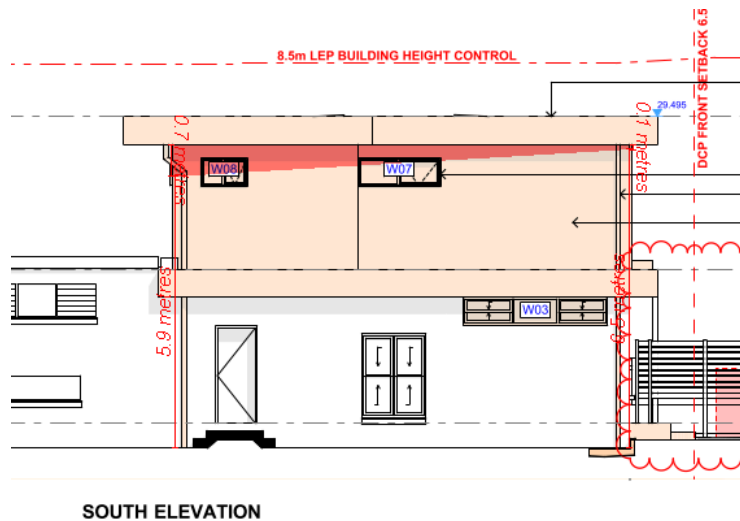


Figure 2: Southern side boundary envelope non-compliance.

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

Merit consideration

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

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

Comment:

The proposed design is consistent with the height of the natural environment by being situated below tree canopy level and providing a compliant Building Height Standard of under 8.5m. The bulk and scale of the building is relative with the prevailing dwellings along Foam Street and will not result in a visually dominant virtue of its height and bulk.

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

Comment:

The dwelling house presents compliance with the side setback requirements and provides acceptable privacy levels within a residential environment. Refer to 'Clause D6 Access to Sunlight', elsewhere in this report for further detail.

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

Comment:

The proposal does not include any significant excavation that requires the development to respond to the topography of the site.

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

objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

B5 Side Boundary Setbacks

The Planning Officer stated under DA2023/1189:

The proposed development exhibits compliance with the 0.9 metres side setback requirement, in exception of a proposed privacy screen that adjoins the southern side boundary line.

If the development was to be approved, this non-conforming element would be deleted via a recommended condition to ensure complete compliance with this control. It is also noted that no adjoining land owners consent (No. 53 Wyndora Avenue) was provided for works to be located on the southern common boundary.

No further assessment is required, in this instance.

The plans submitted with this application have not resulted in the removal of the proposed privacy screen to the southern side boundary which represent the non-compliance to the control (see figure below). Therefore, a condition of consent to remove the privacy screen will apply to this application. The deletion of the privacy screen will result in compliance with the control and no further assessment is required.

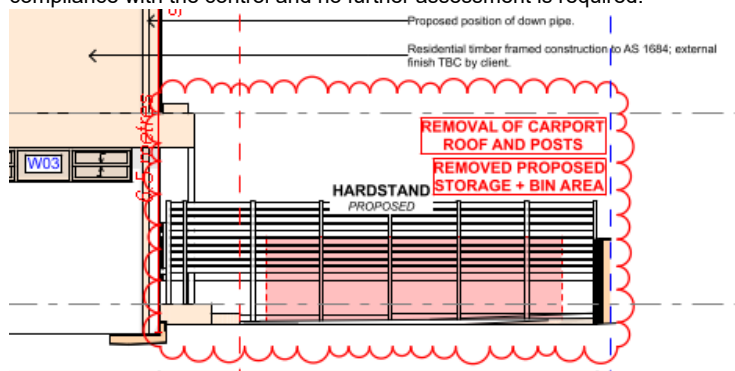


Figure 3: Proposed privacy screen on the south elevation plan.

B7 Front Boundary Setbacks

Description of non-compliance

The Planning Officer provided a description under this control in DA2023/1189 stating:

The proposed development exhibits compliance with the 6.5 metres front setback requirement, in exception of a proposed privacy screen that adjoins the southern side boundary line.

If the development was to be approved, this non-conforming element would be deleted via a recommended condition to ensure complete compliance with this control. It is also noted that no adjoining land owners consent (No. 53 Wyndora Avenue) was provided for works to be located on the southern common boundary.

The plans submitted with this application have not resulted in the removal of the proposed privacy screen to the southern side boundary which represent the non-compliance to B7 Front Boundary Setbacks. Therefore, a condition of consent to remove the privacy screen will still apply to this application. The deletion of the privacy screen will result in compliance with the control and no further assessment is required.

Additionally, the proposal represents a nil setback the hardstand space. This represents a non-compliance of 100% and is detailed in a merit assessment below.

Merit consideration:

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

- *To create a sense of openness.*

Comment:

The hardstand space is a open structure which does not have a roof or posts. Additionally, the hardstand space is a low lying structure which will not detract from the sense of openness.

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

Comment:

There are multiple hardstand car spaces located within the immediate streetscape and thus, the proposed hardstand will maintain the visual continuity and pattern of buildings. The proposal includes landscaped area to the adjacent area of the hardstand space in the front setback.

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

Comment:

As depicted above, there are multiple hardstand spaces within the front setback in the immediate streetscape and therefore, the proposal will not detract from the existing visual quality of the streetscapes and public spaces.

- *To achieve reasonable view sharing.*

Comment:

The hardstand space will not lead to view sharing impacts.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

C3 Parking Facilities

Merit Consideration

Clause C3 Parking Facilities, requires two (2) off-street parking spaces for a dwelling house. The site as existing has one (1) formal parking space in relation to the dwelling.

The proposal is to provide a new hardstand parking space for one (1) vehicle in a similar location. This amendment will not change the existing carparking arrangement. Whilst two car spaces would normally be required, the use of the dwelling house will not be intensified and the narrow width of the site does not warrant the provision of two spaces where it will impact the presentation of the site to the streetfront. Therefore, the parking design is acceptable in this instance, and no further assessment is required.

C4 Stormwater

Councils Development Engineer has reviewed the provided stormwater plans and included a Deferred Commencement Condition where Stormwater drainage plans are to be submitted to Council for approval addressing the disposal of stormwater from the site in accordance with the deferred commencement points in order to activate the consent.

D1 Landscaped Open Space and Bushland SettingDescription of non-compliance

Clause D1 Landscape Open Space and Bushland Setting requires a minimum of 40.0% of the subject site to be landscaped open space, which equates to 161.96m². Any open space areas with a dimension of less than 2.0 metres are excluded from this calculation.

The proposed development provides a landscaped area of 112.6m² or 27.8%, therefore presenting a variation of 30.48% or 49.36m² to the numerical requirements of this clause. The current proposal represents a slight decrease from DA2023/1189 of 1.2% due to a rainwater tank to the north-western corner.

Despite the above non-compliance, the proposal provides for additional landscaping when compared to that of the existing landscaped open space being 23.0% or 92.51m². In this instance, the proposed amount of landscaping is considered to be an improvement.

It is noted that under DA2023/1189, the Planning Officer stated:

"Whilst in isolation the amount of landscaped area is acceptable given the increase, it is however considered that additional landscaped area maybe necessary to mitigate the issues with stormwater."

This application has resulted in a Deferred Commencement Condition, requiring stormwater drainage plans are to be submitted to Council for approval addressing the disposal of stormwater from the site in accordance with the points in the described condition to activate the consent.

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

Merit consideration

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

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

Comment:

The landscaping elements will remain generally consistent with the existing streetscape with the driveway located to the south of the front boundary and landscaped area to the north. The lawn area to the north is of dimensions capable for providing future planting opportunities.

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

Comment:

No indigenous vegetation and topographical features for wildlife habitats are identified on site.

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

Comment:

The additional landscaped areas will provide opportunities for the planting of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.

- *To enhance privacy between buildings.*

Comment:

The proposed privacy of the development is considered to be acceptable in the context of the proposal.

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

Comment:

The existing and proposed open space areas will accommodate for appropriate outdoor recreational opportunities that meet the needs of the occupants.

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

Comment:

The site provides space for service functions, including clothes drying.

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

Comment:

A Deferred Commencement Condition applies to this application by Council's Development Engineer to facilitate acceptable water management, including on-site detention and infiltration of stormwater.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D6 Access to Sunlight

Merit consideration

Clause D6 Access to Sunlight requires the following:

At least 50% of the required area of private open space of each dwelling and at least 50% of the required area of private open space of adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21.

The solar access impacts in this application has not changed from the detailed assessment under DA2023/1189. Therefore, the Solar Access Impacts still stand:

- The proposed works will overshadow existing roof areas at No. 53, 57 and 59 Wyndora Avenue at 9am, The proposed works do not cast any additional shadow onto any adjoining private openspace area.
- At 12pm the proposed works will overshadow a small portion of the open space area at No. 57 and No. 53 Wyndora Avenue including existing roof areas, however the majority of open space area will obtain solar access at this time, particularly the western portion of those sites. The proposed works will overshadow the western portion of the open space area of No. 55 Wyndora Avenue. The majority of their open space area will be in shadow, mostly as a result of existing shadows cast. The proposed works do not at this time result in more than 3 hours of solar access being lost, as the existing situation at 55 Wyndora does not benefit from at least 3 hours of solar access at mid-winter to 50% of the private open space area.
- The proposed works will not overshadow No. 57 Wyndora Avenue at 3pm. No. 53 Wyndora Avenue will be overshadowed on existing roof areas, and a small portion of open space area to the west, the majority of their open space area will be in shadow, mostly as a result of existing shadows. The northern portion of No. 55 Wyndora Avenue will be in shadow, with the majority the open space area being in shadow at this time. The proposed shadows are not considered to fall in a way which impacts the private open space area of that property in an unacceptable manner.

Council may consider a variation to this control in the particular circumstances of a proposal, where an applicant can demonstrate, to the satisfaction of Council that:

- the slope or topography of the site or adjoining property makes compliance impractical; and*
- other design options have been investigated which would comply but would unreasonably constrain the development*

of an otherwise compliant building.

The proposed works were amended under DA2023/1189 to increase the side setbacks to the first floor addition and delete the carport element. It was considered that the first floor addition will create overshadowing regardless of the location atop the ground floor. Given the topography and orientation of the subject site and surrounds, the southern adjoining properties are vulnerable to overshadowing. It must be noted that due to the relative heights that the shadows cast by the first floor fall upon the roof areas of the southern adjoining properties. The minor increase in overshadowing to the adjoining open space area is as a consequence of the rear single storey addition that has a low pitched skillion roof. It is considered on balance that the design arrangement with regard to its context presents an acceptable solar access outcome.

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

- *To ensure that reasonable access to sunlight is maintained.*

Comment:

The nature of the land and orientation of the subject site to the southern properties restricts the ability for compliance to this control. As mentioned above, the southern adjoining properties are under-sized allotments and are vulnerable to overshadowing where most of the shadows between 9am - 3pm are as a result of existing shadows. Therefore, the proposed works within this application impact a minor areas of the adjoining sites and will not result in an unreasonable increase in overshadowing with regards to the scope of works.

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

Comment:

Under DA2023/1189, the side setbacks to majority of the first floor (southern elevation) had been increased, with the carport element of the proposal being deleted. This in turn had reduced the extent of solar access impact to the below properties and resulted in amended design solutions to improve the urban environment.

- *To promote passive solar design and the use of solar energy.*

Comment:

The proposed works do not overshadow all of the roof area to No. 53, 55 and 57 Wyndora Avenue and therefore, allow for the use of solar energy.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$5,093 is required for the provision of new and augmented public infrastructure. The

contribution is calculated as 1% of the total development cost of \$509,300.

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

This Review of Determination application, which seeks to gain an approval in response to the refusal of DA2023/1189 for alterations and additions to a dwelling house, has been referred to the Development Determination Panel (DDP), due to it being a review application under section 8.2 of the Environmental Planning and Assessment Act 1979, requiring determination by the DDP.

Critical assessment issues which made up the reasons for refusal of DA2023/1189 included the absence of an acceptable Stormwater Plan.

This assessment finds that the applicant has attempted to amend the proposed stormwater plans, while it still constitutes substantially the same development. This has included revised stormwater plans which have been reviewed by the Council Development Engineer. The Council Development Engineer has recommended a Deferred Commencement Condition which requires stormwater drainage plans are to be submitted to Council for approval addressing the disposal of stormwater from the site.

Overall, the development is of quality design and is not expected to result in unreasonable impacts (subject to conditions) on adjoining or nearby properties or the natural environment.

The proposal has therefore been recommended for approval, subject to conditions.

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

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

RECOMMENDATION

DEFERRED COMMENCEMENT APPROVAL

A. THAT Council as the consent authority grant a Deferred Commencement Development Consent being subject to a two (2) year time frame for Deferred Commencement Consents detailed within Clause 76 of the Environmental Planning and Assessment Regulation 2021 to REV2024/0017 for Review of Determination of Application DA2023/1189 for alterations and additions to a dwelling house on land at Lot 66 DP 5302,4 Foam Street, FRESHWATER, subject to

the conditions printed below:

B. THAT once the matters detailed within the Deferred Commencement Development Consent conditions are satisfactorily addressed then an operational development consent be issued subject to the time frames detailed within Part A of this recommendation.

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.

DEFERRED COMMENCEMENT CONDITIONS

1. Stormwater Drainage Design

As the natural fall of the land is towards the rear of the site the disposal of stormwater drainage is to be generally in accordance with the concept drainage plans prepared by Peninsula Consulting Engineers, Job No 24-0401, Drawing No H01 and H02, Issue A, Dated 13/05/2024. The drainage plans must address the following:

- 1. Site area for the design calculations is to be based on the considered impervious area only.
- 2. Total discharge for the considered impervious area through the level spreader must not exceed the 20% AEP state of nature storm event for all storm events up to and including 1% AEP.
- 3. Details of the drainage for the proposed parking hardstand area are to be shown on plan.

Stormwater drainage plans are to be submitted to Council for approval addressing the disposal of stormwater from the site in accordance with the above points in order to activate the consent.

Reason: To ensure adequate provision is made for stormwater drainage from the site in a proper manner that protects adjoining properties.

Evidence required to satisfy these conditions must be submitted to Council (through the NSW Planning Portal) within two (2) years of the date of this consent, or the consent will lapse in accordance with the Environmental Planning and Assessment Regulation.

Applicants must submit a request for operational consent to Council via the NSW Planning Portal and upload all relevant documentation. This can be completed through accessing the relevant portal application ID and navigating to 'Request for Operational Consent' in the Actions dropdown menu.

Upon satisfaction of the deferred commencement condition/s, the following conditions apply:

GENERAL CONDITIONS

2. 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
DA04	B	SITE / ROOF / SEDIMENT EROSION / WASTE MANAGEMENT /	Action Plans	25 June 2024

		STORMWATER CONCEPT PLAN		
DA06	B	PROPOSED GROUND FLOOR PLAN	Action Plans	25 June 2024
DA07	B	PROPOSED FIRST FLOOR PLAN	Action Plans	25 June 2024
DA08	B	NORTH / EAST ELEVATION	Action Plans	25 June 2024
DA09	B	SOUTH / WEST ELEVATION	Action Plans	25 June 2024
DA10	B	LONG / CROSS / DRIVEWAY SECTION	Action Plans	25 June 2024
DA12	B	SAMPLE BOARD	Action Plans	25 June 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate (A493017_04)	-	ACTION PLANS PTY LTD	25 June 2024
Waste Management Plan	-	Applicant	21/08/2023
Stormwater Management Plan (Drawing No. H01, H02)	A	Peninsula Consulting Engineers	13/05/2024

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.

3. 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:

04/06/2024

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	04/06/2024

(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.

4. Approved Land Use

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

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

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

5. Prescribed Conditions

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

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

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

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

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

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

Reason: Legislative requirement.

6. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock

- breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).
- (b) Construction certificate plans are to be in accordance with all finished levels identified on approved plans. Notes attached to plans indicating tolerances to levels are not approved.
 - (c) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
 - (d) At all times after the submission of the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
 - (e) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
 - (f) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
 - (g) Prior to the release of the Construction Certificate, payment of the following is required:
 - i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
 - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
 - iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.
 - (h) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
 - (i) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
 - (j) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
 - (k) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
 - (l) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
 - (m) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all

- public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (n) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
 - (o) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

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

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

FEES / CHARGES / CONTRIBUTIONS

7. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$5,093.00 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 \$509,300.00.

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

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

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

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

8. Security Bond

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

9. **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 Peninsula Consulting Engineers, Job No 24-0401, Drawing No H01 and H02, Issue A, Dated 13/05/2024. 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 at least 3 away from any site boundary
- ii. To avoid street stormwater entering property, a grated drain at driveway to be provided. Grated drain to be wholly within front property boundary.

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

10. **Vehicle Crossings Application**

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing 3 metres wide in accordance with Northern Beaches Council Standard normal low vehicle crossing profile and 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:

- Removal of the proposed 2.1m privacy screen to the southern elevation.

The privacy screen to the southern side boundary in the front setback is to be removed to comply with the front and side setback controls.

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. **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.

16. **Sydney Water "Tap In"**

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

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

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

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

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

DURING BUILDING WORK

17. Tree and Vegetation Protection

- a) Existing trees and vegetation shall be retained and protected, including:
 - i) all trees within the site,
 - ii) all trees and vegetation located on adjoining properties,
 - iii) all trees and vegetation within the road reserve.
- b) Tree protection shall be undertaken as follows:
 - i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
 - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
 - iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
 - v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
 - vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
 - vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,
 - viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,
 - ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
 - x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
 - xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

- c) The arboricultural works listed in a) and b) are undertaken and complaint to AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

Reason: Tree and vegetation protection.

18. 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 with minimum AQF

Level 5 in arboriculture during the works.

In this regard all protected trees shall not exhibit:

- i) a general decline in health and vigour,
- ii) damaged, crushed or dying roots due to poor pruning techniques,
- iii) more than 10% loss or dieback of roots, branches and foliage,
- iv) mechanical damage or bruising of bark and timber of roots, trunk and branches,
- v) yellowing of foliage or a thinning of the canopy untypical of its species,
- vi) an increase in the amount of deadwood not associated with normal growth,
- vii) an increase in kino or gum exudation,
- viii) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
- ix) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist are to be implemented.

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

Reason: Protection of trees.

19. Road Reserve

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

Reason: Public safety.

20. Removing, Handling and Disposing of Asbestos

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- o Work Health and Safety Act;
- o Work Health and Safety Regulation;
- o Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- o Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- o Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- o 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.

21. Survey Certificate

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

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

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

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. Required Tree Planting

Trees shall be planted in accordance with the following:

- a) Minimum 1 x locally native tree shall be planted within the property to achieve at least 5 metres height at maturity.
 - i) tree planting shall be a minimum pre-ordered planting size of 25 litres; may be selected from Northern Beaches Council's Native Plant Species Guide, or Council's Tree Guide; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and located either within garden bed or within a prepared bed within lawn,
 - 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,
- b) Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of any Occupation Certificate.

Reason: To maintain environmental amenity.

24. Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures

The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn by 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.

25. Waste Management Confirmation

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

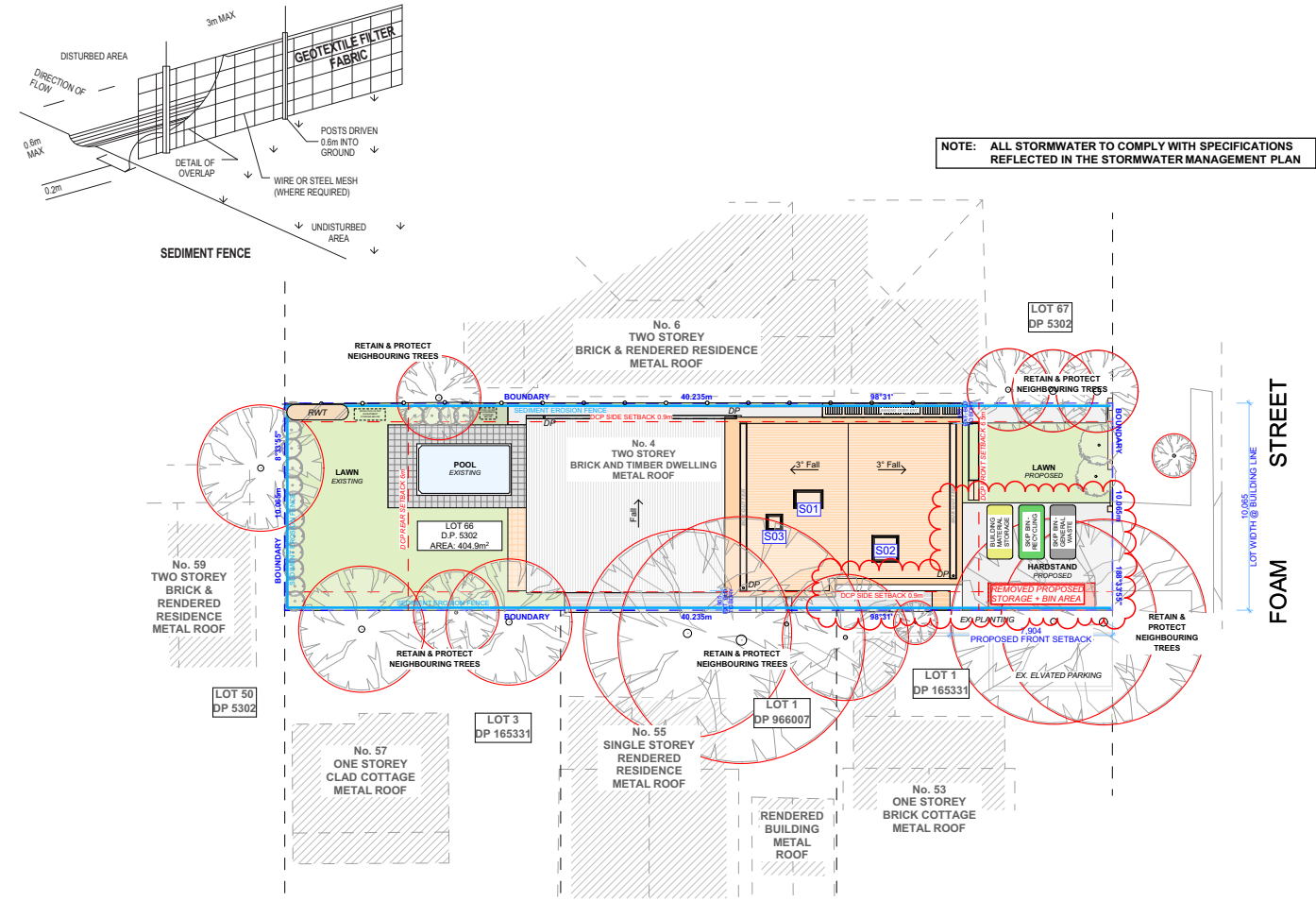
Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

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

26. 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.



NOTES REGARDING BOUNDARY
THE INFORMATION SHOWN ON THIS PLAN IS FOR DESIGN PURPOSES ONLY. THE POSITION OF BOUNDARY LINES HAVE BEEN ESTABLISHED BY A SURVEY TO MEET THE IDENTIFICATION REQUIREMENTS FOR COUNCIL AND NOT FOR REGISTRATION WITH THE LAND REGISTRATION SERVICES NSW NOR MAY THIS PLAN BE USED FOR ANY OTHER PURPOSE. SUBSEQUENT REGISTERED OR OTHER SURVEYS MAY AFFECT THE DEFINED BOUNDARY POSITIONS IN THIS AREA. ANY DIFFERENCES OF THIS NATURE ARE BEYOND THE PURPOSES OF THIS PLAN. THIS PLAN IS FOR THE ABOVE STATED PURPOSES ONLY. RESTRICTIONS ON THE TITLE HAVE NOT BEEN INVESTIGATED. IF FURTHER DEVELOPMENT IS CONTEMPLATED OR CONSTRUCTION INTENDED THEN IT IS IMPORTANT THAT A SURVEY SET OUT IS CARRIED OUT.

DUST CONTROL :
TO REDUCE DUST GENERATED BY WIND ACTION, THE REMOVAL OF THE TOP SOIL IS TO BE MINIMISED. TO PREVENT DUST GENERATION, WATERING DOWN OF THE SITE, ESPECIALLY DURING THE MOVEMENT OF MACHINERY IS REQUIRED. WHERE EXCAVATING INTO ROCK, KEEP THE SURFACE MOIST TO MINIMISE DUST. CONSTRUCT A GRAVEL ENTRY/EXIT POINT USING BLUE METAL AND RESTRICT ALL VEHICLE MOVEMENTS WITHIN THE SITE TO A MINIMUM. ENSURE WIND BREAKS, SUCH AS EXISTING FENCES ARE MAINTAINED DURING THE CONSTRUCTION PHASE UNTIL NEW LANDSCAPING IS PROVIDED OR REINSTATED. PREVENT DUST BY COVERING STOCKPILES.

SEDIMENT NOTE :
1. ALL EROSION AND SEDIMENT CONTROL MEASURES TO BE INSPECTED AND MAINTAINED DAILY BY THE SITE MANAGER.
2. MINIMISE DISTURBED AREAS, REMOVE EXCESS SOIL FROM EXCAVATED AREA AS SOON AS POSSIBLE.
3. ALL MATERIAL STOCKPILE TO BE CLEAR FROM DRAINS, GUTTERS AND FOOTPATHS, OR WITHIN SEDIMENT FENCE AREA.
4. DRAINAGE TO BE CONNECTED TO STORMWATER AS SOON AS POSSIBLE. IF STORED ON SITE, IT MUST BE FILTERED BEFORE RELEASING INTO STORMWATER SYSTEM OR WATERWAYS.
5. ROADS AND FOOTPATHS TO BE SWEEP DAILY.

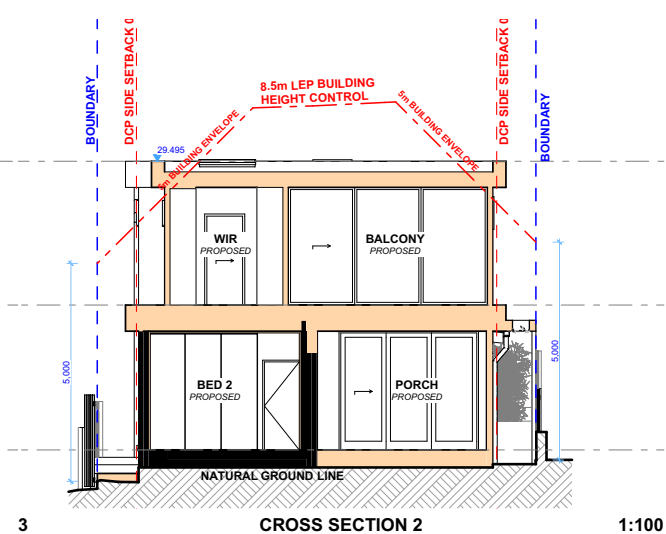
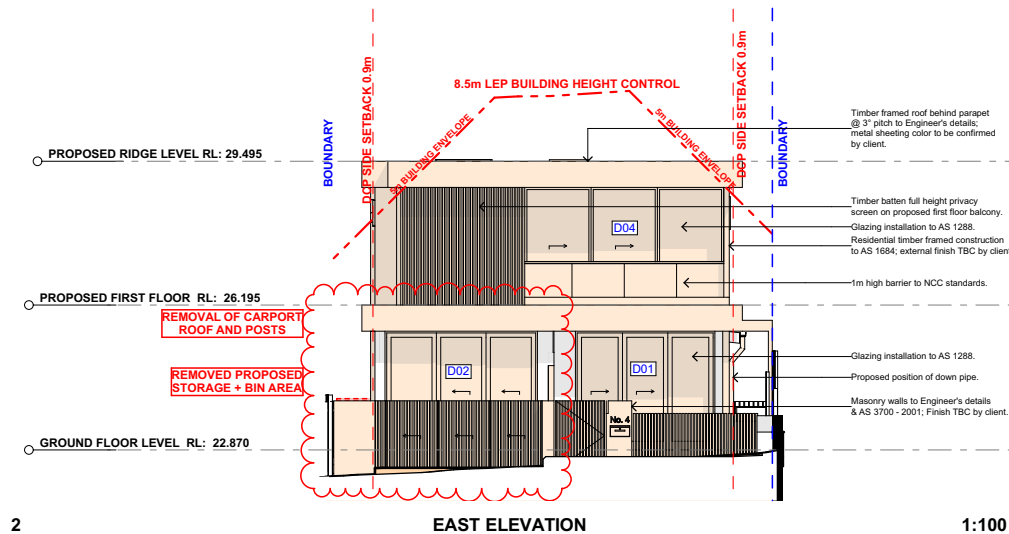
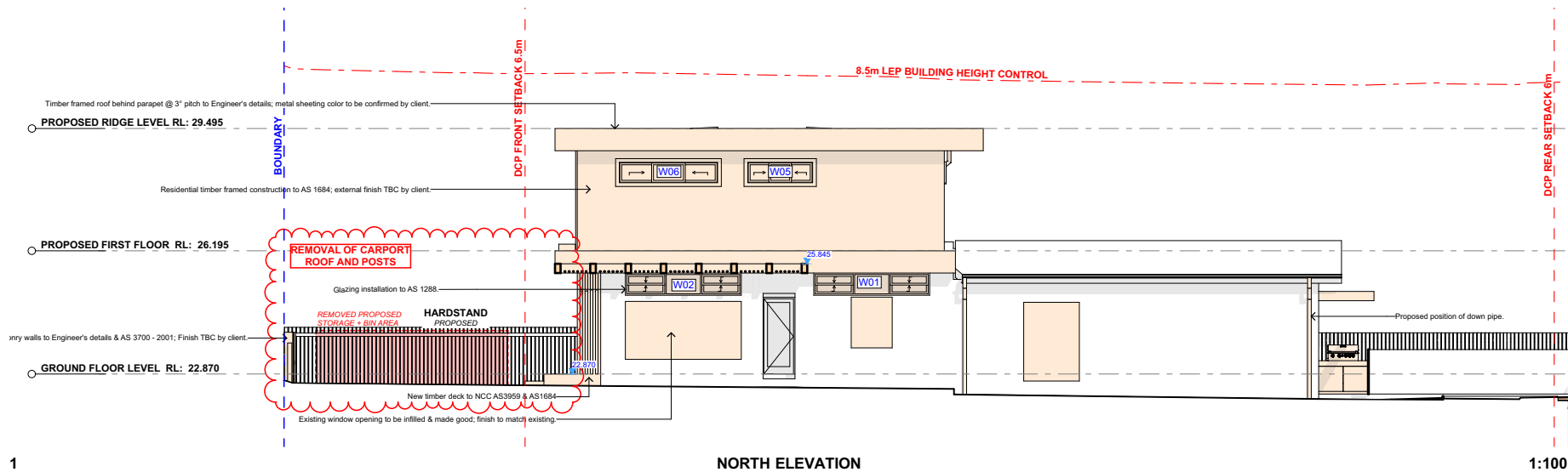
STOCKPILES :
ALL STOCKPILES ARE TO BE KEPT ON-SITE WHERE POSSIBLE. ANY MATERIALS PLACED ON THE FOOTPATHS OR NATURE STRIPS REQUIRE COUNCIL'S PERMISSION.
ALL STOCKPILES ARE TO BE PLACED AWAY FROM THE DRAINAGE LINES AND STREET GUTTERS. IT IS BEST TO LOCATE THESE ON THE HIGHEST PART OF THE SITE IF POSSIBLE. PLACE WATERPROOF COVERING OVER STOCKPILES.
IF REQUIRED PROVIDE DIVERSION DRAIN & BANK AROUND STOCKPILES.

GUTTER PROTECTION :
PROVIDE PROTECTION TO DOWNHILL GRATE IN GUTTER BY MEANS OF SAND BAGS OR BLUE METAL WRAPPED IN GEOTEXTILE FABRIC. WHEN SOIL OR SAND BUILDS UP AROUND THIS SEDIMENT BARRIER, THE MATERIAL SHOULD BE RELOCATED BACK TO THE SITE FOR DISPOSAL.

NOTE: ALL PROPOSED STORMWATER TO CONNECT WITH EXISTING

1 SITE / ROOF / SEDIMENT EROSION / WASTE MANAGEMENT PLAN 1:200

 ACTION PLANS m: 0426 957 518 e: operations@actionplans.com.au w: www.actionplans.com.au	REV.	DATE	COMMENTS	DRWN	NOTES This drawing is the copyright of Action Plans and not be altered, reproduced or transmitted in any form or by any means in part or in whole with the written permission of Action Plans. Do not scale measure from drawings. Figured dimensions are to be used only. The Builder/Contractor/owner is to ensure that the approved boundary setbacks and approved levels are confirmed and set out by a registered Surveyor prior to construction, the boundary setbacks take precedence over all other dimensions. The Builder/Contractor shall check and verify ALL dimensions on site prior to commencement of any work, creation of shop drawings, or fabrication of components. All errors and omissions are to be verified by the Builder/Contractor/client and referred to the designer prior to the commencement of works.	LEGEND EXISTING PROPOSED DEMOLISHED	CLIENT RACHEL & SAM VINCENT PROJECT ADDRESS 4 FOAM STREET FRESHWATER NSW 2096	DRAWING NO. DA04 DATE Tuesday, 25 June 2024	DRAWING NAME SITE / ROOF / SEDIMENT EROSION / WASTE MANAGEMENT / STORMWATER CONCEPT PLAN SCALE 1:200 @A3	
	A	20.04.2023	DEVELOPMENT APPLICATION	CR						
	B	23.05.2024	REV A	RNA						



ACTION PLANS

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REV.	DATE	COMMENTS	DRWN
A	20.04.2023	DEVELOPMENT APPLICATION	CR
B	23.05.2024	REV A	RNA

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All errors and omissions are to be verified by the Builder/Contractor/client and referred to the designer prior to the commencement of works.

LEGEND
 EXISTING
 PROPOSED
 DEMOLISHED

CLIENT
RACHEL & SAM
VINCENT

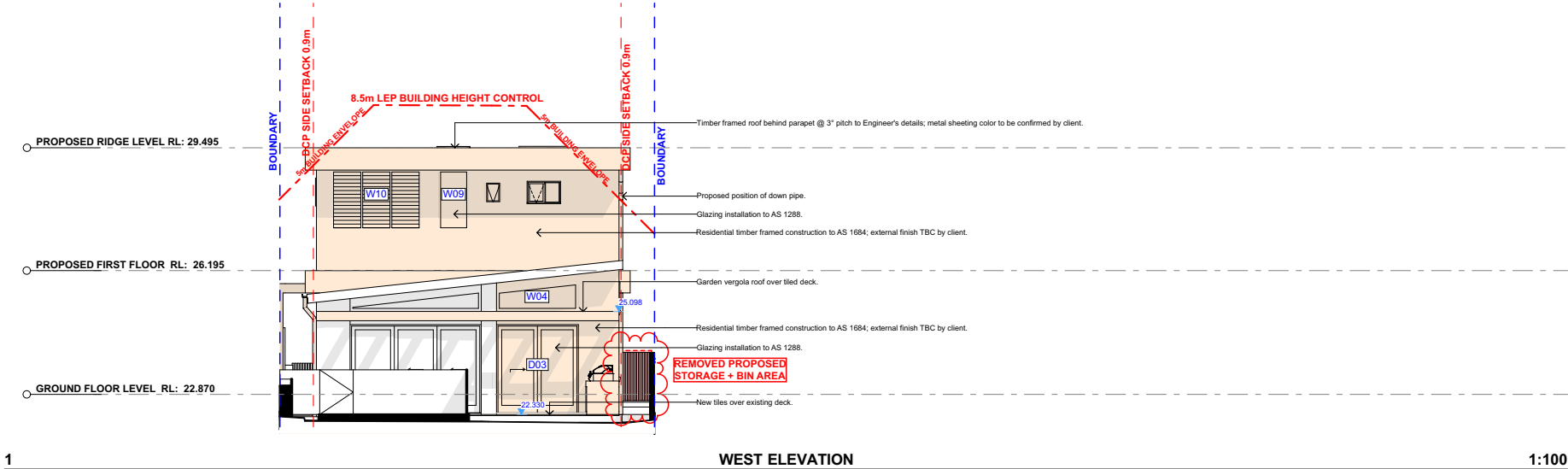
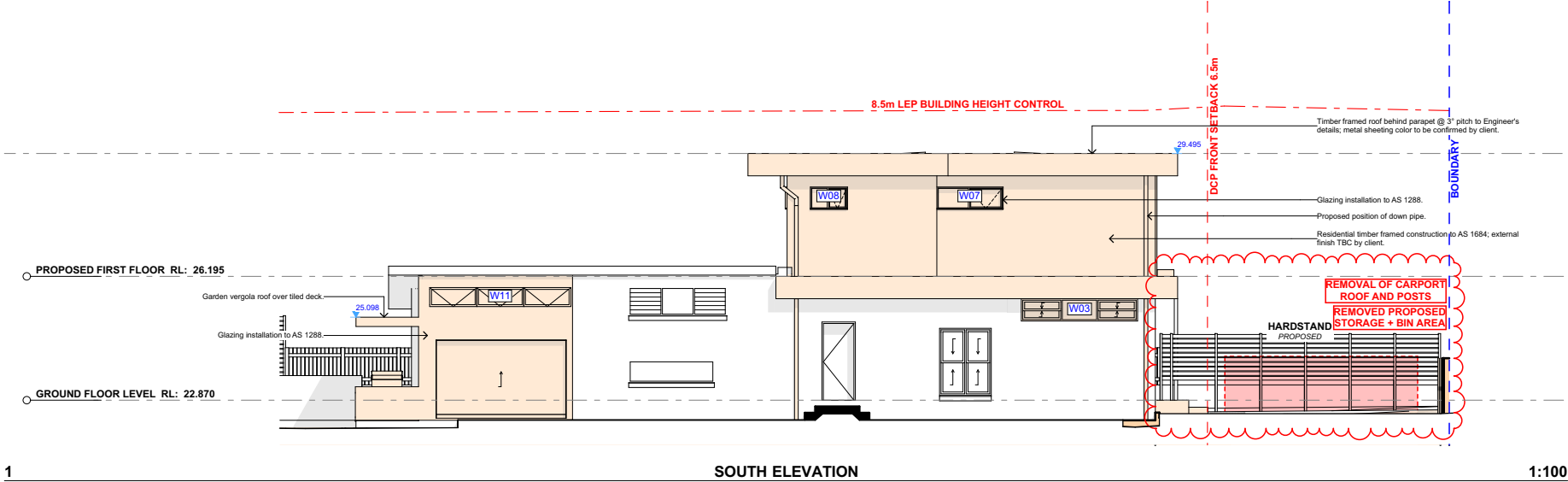
PROJECT ADDRESS
4 FOAM STREET
FRESHWATER NSW
2096

DRAWING NO.
DA08

DATE
Tuesday, 25 June 2024

DRAWING NAME
NORTH / EAST ELEVATION

SCALE
1:100 @A3



ACTION PLANS
m: 0426 957 518
e: operations@actionplans.com.au
w: www.actionplans.com.au

REV.	DATE	COMMENTS	DRWN
A	20.04.2023	DEVELOPMENT APPLICATION	CR
B	23.05.2024	REV A	RNA

NOTES
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Do not scale measure from drawings. Figured dimensions are to be used only.
The Builder/Contractor/owner is to ensure that the approved boundary setbacks and approved levels are confirmed and set out by a registered Surveyor prior to construction, the boundary setbacks take precedence over all other dimensions.
The Builder/Contractor shall check and verify ALL dimensions on site prior to commencement of any work, creation of shop drawings, or fabrication of components.
All errors and omissions are to be verified by the Builder/Contractor/client and referred to the designer prior to the commencement of works.

LEGEND
EXISTING
PROPOSED
DEMOLISHED

CLIENT
RACHEL & SAM
VINCENT

PROJECT ADDRESS
4 FOAM STREET
FRESHWATER NSW
2096

DRAWING NO.
DA09

DATE
Tuesday, 25 June 2024

DRAWING NAME
SOUTH / WEST ELEVATION

SCALE
1:100 @A3

ITEM 3.9 REV2024/0008 - 26 THORNTON STREET FAIRLIGHT - REVIEW OF DETERMINATION OF APPLICATION DA2023/0735 FOR ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL

PURPOSE

- 1) To refer the attached application for determination as required under adopted delegations of the Charter.
- 2) 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 REV2024/0008 for Review of Determination of Application DA2023/0735 for Alterations and additions to a semi-detached dwelling including a swimming pool on land at Lot A DP 442510, 26 Thornton Street FAIRLIGHT, subject to the conditions set out in the Assessment Report.

Reporting manager	Rodney Piggott
TRIM file ref	2024/500930
Attachments	↓1 Assessment Report ↓2 Site Plan and Elevations ↓3 Clause 4.6

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2024/0008
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Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot A DP 442510, 26 Thornton Street FAIRLIGHT NSW 2094
Proposed Development:	Review of Determination of Application DA2023/0735 for Alterations and additions to a semi-detached dwelling including a swimming pool
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Peter James Hunter Sarah Elizabeth Hunter

Application Lodged:	19/04/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	26/04/2024 to 10/05/2024
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.4 Floor space ratio: 54%
Recommendation:	Approval

Estimated Cost of Works:	\$ 1,161,360.00
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EXECUTIVE SUMMARY

This review application seeks to review the determination of Development Application DA2023/0735 which was determined by way of refusal on 18 March 2024, pursuant to Section 8.2 of the *Environmental Planning and Assessment Act (EPA Act) 1979*.

DA2023/0735 was refused by Council for the following reason, detailed below:

1. Pursuant to Section 4.15(1)(a)(iv) of the of the Environmental Planning and Assessment Act 1979, the application has not been accompanied by the required information for a

Development Application.

Particulars:

The application has not been accompanied by sufficient information to demonstrate that the development will:

- i. be able to be undertaken entirely within the subject site,*
- ii. not increase any structural load on the party wall, the party wall footings or affect the structural stability of the adjoining dwelling on 24 Thornton Street*
- iii. be able to be carried out in a way that maintains the structural stability of the roof form within 24 Thornton Street and does not require any works within the 24 Thornton Street to achieve this, and*
- iv. ensure all necessary waterproofing works can be carried out within the subject site, including roof drainage.*

As such, the development application does not contain all the information and documents required by Clause 24(1)(b) of the Environmental Planning and Assessment Regulation 2021.

The applicant has sought to address the reasons for refusal through the provision of amended design, with the first floor addition being setback from the party wall and sited wholly within the subject site.

The application is referred to the Development Determination Panel (DDP) due to an exceedance of the Floor Space Ratio (FSR) development standard of more than 10%. The Manly Local Environmental Plan (**MLEP**) 2013 prescribes a maximum FSR 0.6:1 for the site and the application proposes 0.923:1 (189.4sqm) a departure of 54% (66.5sqm) from the control. The application is accompanied by a written Clause 4.6 variation request which explains that the variation to the FSR standard arises due to the site being undersized. Additionally, the application is referred to the Development Determination Panel (DDP) as the previous application (DA2023/0735) was referred to the equivalent panel (DDP).

The application was notified in accordance with Council's Community Participation Plan (CPP) and received one (1) submission. The concerns raised in the objection relate to structural suitability, noise and overshadowing.

Critical assessment issues relate to structural stability and FSR non-compliance, each of these are addressed within the report in detail.

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

PROPOSED DEVELOPMENT IN DETAIL

This Review Application is for the review of determination of Development Application No. DA2023/0735 which sought consent for alterations and additions to a semi-detached dwelling including a swimming pool, pursuant to Section 8.3 of the EPA Act 1979.

Specifically, the works proposed include the following:

- First floor addition.
- Ground floor extension and alterations.
- Lower ground floor extension.
- At grade parking space.

- Swimming pool alterations.
- Associated landscaping, and
- Demolition works.

In order to address the reason for refusal under DA2023/0735, the plans have been revised to ensure the first floor addition is sited entirely within the subject site, with no works proposed to the party wall.



Image 1 - Existing subject site.



Image 2- Rear of the subject dwelling with existing shared chimney to the top of the building

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

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

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Local Environmental Plan 2013 - 6.2 Earthworks

Manly Local Environmental Plan 2013 - 6.4 Stormwater management

Manly Local Environmental Plan 2013 - 6.12 Essential services

Manly Development Control Plan - 3.7 Stormwater Management

Manly Development Control Plan - 3.9 Mechanical Plant Equipment

Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)

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

Manly Development Control Plan - 4.1.5 Open Space and Landscaping

Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features

Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

SITE DESCRIPTION

Property Description:	Lot A DP 442510 , 26 Thornton Street FAIRLIGHT NSW 2094
Detailed Site Description:	The subject site consists of one (1) allotment located on the eastern side of Thornton Street. The site is generally regular in shape with a frontage of

6.135m along Thornton Street and a depth of 33.475m.
The site has a surveyed area of 204.9sqm.

The site is located within the R1 General Residential zone of the MLEP 2013 and accommodates a semi-detached dwelling and shares a party wall and roof structure with 24 Thornton Street located to the south of the subject site.

The site slopes from the front (east) up to the rear (west), with an approximate slope of 8% grade.

The site contains a garden bed and grass at the front of the property, and some vegetation in the rear. There are no details of any threatened species on the subject site.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by semi-detached dwellings, dwelling houses and residential flat buildings.

Map:



SITE HISTORY

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

DA2023/0735

Alterations and additions to a dwelling house including a swimming pool. A report recommending refusal was referred to the Development Determination on 28 February 2024. The panel determined the application by way of Refusal on 18 March 2024. This application seeks a review on that

determination.

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)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to gross floor area calculations. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent

Section 4.15 Matters for Consideration	Comments
	authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the 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.

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

In accordance with Section 8.3 (2) of the Act, the request for the review must be made and determined within 6 months after the date of determination of the development application. The application was determined on 18 March 2024 and the notice of determination was issued on 21 March 2024. The review was lodged on 7 June 2024 and is to be considered by the Development Determination Panel (Council) on 24 July 2024, which is within 6 months of the date of determination.

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

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

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

of Section 8.3 (3) of the Act.

Assessment of Reasons for Refusal DA2022/1030

How has the 8.2 Application Responded to The Reasons for Refusal?

The applicant has amended the proposal and has provided additional information. Consequently, the Reasons for Refusal of DA2022/1030 that are stipulated in the Notice of Determination are examined below to determine if they remain applicable or should be overturned:

1. Pursuant to Section 4.15(1)(a)(iv) of the of the Environmental Planning and Assessment Act 1979, the application has not been accompanied by the required information for a Development Application.

Particulars:

The application has not been accompanied by sufficient information to demonstrate that the development will:

- i. be able to be undertaken entirely within the subject site,***
- ii. not increase any structural load on the party wall, the party wall footings or affect the structural stability of the adjoining dwelling on 24 Thornton Street***
- iii. be able to be carried out in a way that maintains the structural stability of the roof form within 24 Thornton Street and does not require any works within the 24 Thornton Street to achieve this, and***
- iv. ensure all necessary waterproofing works can be carried out within the subject site, including roof drainage.***

As such, the development application does not contain all the information and documents required by Clause 24(1)(b) of the Environmental Planning and Assessment Regulation 2021.

Comment:

The works seeking consent are proposed entirely within the subject site. A structural report (prepared by PeEng Consultant Engineers, dated 4 April 2024) lodged with the application, states that provided proper construction and that the recommendations within the structural report are complied with, all works can be undertaken without compromising the structural integrity of the adjoining dwelling at No. 24 Thornton Street, Fairlight. The proposed development has sufficiently addressed to the reasons for refusal.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 26/04/2024 to 10/05/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Mr David Johnson	24 Thornton Street FAIRLIGHT NSW 2094

The following issues were raised in the submissions:

- **Structural Integrity**
- **Waterproofing**
- **New front stairs**
- **Acoustic Impacts**
- **Shared chimney**
- **Overshadowing**

The above issues are addressed as follows:

- **Structural Integrity**

The submissions raised concerns about the structural and geotechnical suitability of the proposed works.

Comment:

A structural report and geotechnical report has been submitted by the applicant to address concerns raised by Council. In summary, the reports confirm that the proposed new first floor addition and the other proposed works would be structurally geotechnically stable. These matters have been considered in detail throughout the report. Further, the recommendations proposed under the Structural Report (prepared by PelEng, dated 4 April 2024 and Geotechnical report (prepared by White Geotechnical group, dated 23 February 2024) are imposed as part of this report/recommendation.

- **Waterproofing**

The submission has raised concern that the proposed development will cause waterproofing issues for the subject site and adjoining semi-detached dwelling.

Comment:

A condition of consent has been imposed by Council's Development Engineer to ensure adequate management of stormwater. Details demonstrating compliance are to be provided prior to the issue of a Construction Certificate if the application is to be approved.

- **New front stairs**

The submissions raised concerns over the new front stairs.

Comment:

The new stairs provide access to the dwelling. The stairs are not expected to have a unreasonable impact upon the streetscape of Thornton Street.

- **Acoustic Impact**

The submissions raised concerns over the potential acoustic impacts that may result from the proposed dwelling and swimming pool.

Comment:

A condition has been imposed to ensure that the proposed swimming pool and any associated plant room and air-conditioning machinery does not exceed *5dba* at the nearest residential receiver.

- **Shared Chimney**

Concern has been raised about the demolition/removal of the existing chimney.

Comment:

The proposed level 1 notes that the chimney is proposed for removal. A condition of consent has been imposed to ensure that all works are limited to the subject site. This will ensure that any of chimney which extends over the boundary between the subject site and No. 24 Thornton Street is retained.

- **Overshadowing**

Concerns have been raised in relation to the potential overshadowing created by the proposed development.

Comment:

The development does not unreasonably overshadow adjoining properties living room windows and private open space of adjoining properties. The proposal complies with the requisite provisions of CI 3.4.1 of the Manly DCP.

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	Supported, subject to conditions This application seeks a review of the determination of DA2023/0735, for alterations and additions to existing dwelling including construction of a swimming pool. The proposal does not require On-site Stormwater Detention System (OSD) and site stormwater to be discharged to street gutter in Thornton Street. Development Engineering have no objections to approval subject to conditions as recommended.
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. A484357_03 dated 15 April 2024).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.82m	-	Yes
Floor Space Ratio	FSR: 0.6:1 (122.9sqm)	FSR: 0.923:1 (189.4sqm)	54% (66.5qm)	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
5.8 Conversion of fire alarms	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	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: 0.6:1 (122.9sqm)

Proposed: 0.923:1 (189.4sqm)

Percentage of variation: 54% (66.5qm)

With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is/is not accompanied by a document that sets out the grounds on which the Applicant seeks to demonstrate the matters set out in Clause 4.6(3)(a) and (b) of the MLEP 2013 (the 'Clause 4.6 Request').

Subclause (1) of this clause provides that:

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

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

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

Comment:

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

Subclause (2) of this clause provides that:

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

Comment:

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

Subclause (3) of this clause provides that:

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

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

Comment:

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

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 proposed 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.
- No important landscape features within the close vicinity of the subject site will be unreasonably impacted by the proposed works, as the footprint of the proposed dwelling remains largely consistent with the existing building.
- The development overall is found to enhance the visual continuity of the existing character of the area and improve the aesthetics of the development on site. The proposed development will sit appropriately within the residential setting in a manner that is consistent with the character and landscape of the area.
- The proposal is consistent with the numeric control under clause 3.4.1 Sunlight Access and Overshadowing and 3.4.2 Privacy and Security of the Manly DCP. With regards to views, there will be no unreasonable impact to neighbouring private open space or the public realm.
- 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 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 low pitch roof form further introduces modulation and architectural relief to the building's facade, which further distributes any sense of visual bulk.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- *The proposed alterations and additions introduce modulation and architectural relief to the building's facade, without seeing any substantial change to the building's bulk, which promotes good design and improves the amenity of the built environment (1.3(g)).*
- *The proposed addition will maintain the general bulk and scale of the existing surrounding dwellings and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).*

- *Similarly, the proposed additional floor area will provide for improved amenity within a built form which is compatible with the streetscape of Thornton Street which also promotes the orderly and economic use of the land (cl 1.3(c)).*
- *The proposed new works which exceed the gross floor area control and FSR standard of 0.6:1 is considered to promote good design and enhance the residential amenity of the buildings' occupants and the immediate area, which is consistent with the Objective 1.3 (g) of the EPA Act.*
- *The alterations demonstrate good design and improves the amenity of the built environment by creating improved and functional living area and also maintains the amenity of the existing dwelling house and neighbours in terms of views by maintaining a consistent ridge height, together with providing for internal lift access to improve the ability for the occupants to access the levels within the dwelling. (cl 1.3(g)).*

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of a building that provides sufficient floor area for future occupants and manages the bulk and scale and maintains views over and past the building from the public and private domain."

Planner comment:

The applicant has satisfactorily demonstrated that the works are consistent with the objects of the EP&A Act, specifically the following objects of the EP&A Act:

- The development promotes the orderly and economic use and development of the land, in so far as the proposed development upgrades the useability of the existing dwelling and such building is an orderly response to the development of the site, thereby satisfying objects 1.3(c) of the EPA Act.
- The development promotes good design and amenity of the built environment, noting that the works will not contribute to any unreasonable impact on amenity considerations (i.e solar access, privacy and view loss) to neighbouring properties, thereby satisfying objects 1.3(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.

6.2 Earthworks

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

(a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or

features of the surrounding land, and

(b) to allow earthworks of a minor nature without requiring separate development consent.

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

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

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

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

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

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

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

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

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

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

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

(f) the likelihood of disturbing relics

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

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

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

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

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

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the

proposal is supported, in this particular circumstance.

6.4 Stormwater management

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

6.12 Essential services

Under this clause, development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

- (a) the supply of water,*
- (b) the supply of electricity,*
- (c) the disposal and management of sewage,*
- (d) stormwater drainage or on-site conservation,*
- (e) suitable vehicular access.*

Comment:

The subject site is supplied with the above essential services. The proposed development retains and relies upon these existing services.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 204.9m ²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	N: 6.8m (based on gradient 1:20)	7.5m (northern elevation)	10.3%	No

4.1.2.2 Number of Storeys	2	3	50%	No
4.1.2.3 Roof Height	Height: 2.5m	0.4m	-	Yes
	Pitch: maximum 35 degrees	3 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	0m - Parking Space 10.084m- First floor	100% -	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	N: 2.5m (based on wall height 7.5m)	0.15m - 1.159m (Ground Floor) 1.4m - 1.8 (First Floor)	53.6% - 94% (1.341m -2.35m) 28% - 44% (0.7m - 1.1m)	No No
	No new windows within 3m of a side boundary	9 new windows proposed within 3m of a side boundary, closest 1.009m	66.4% (1.991m)	No
4.1.4.4 Rear Setbacks	8m	9.8m (dwelling) 6.7m (Awning over patio)	- 16.25% (1.3m)	Yes No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% (112.7m ²) of site area	33.7% (69m ²)	42.9% (43.7m ²)	No
	No more than 25% (28.2m ²) total open space above ground	(Nil)	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% (39.4m ²) of open space	29.3% (33m ²)	16.2% (6.4m ²)	No
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	-	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	1 space	50%	No

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
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	No
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	No	Yes

Detailed Assessment

3.7 Stormwater Management

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

3.9 Mechanical Plant Equipment

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

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

Description of non-compliance

Wall Height

The maximum wall height of the proposed development is as follows:

Northern elevation: 7.5m does not comply with numeric requirement of 6.8 metres. 10.3% variation to the numeric control.

Number of storeys

Clause 4.1.2.2 Number of Storeys states that buildings must not exceed two (2) storeys. The proposed development incorporates 3 storeys, when including the lower ground floor.

Merit consideration

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

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

Comment:

The development is wholly within the maximum permissible height limit as evident on the architectural plans, and overall achieves a building height that is consistent with other residential dwelling on the eastern side of Thornton Street, Fairlight. The proposed development has generous side setbacks to reduce apparent building mass. The development responds appropriately to the constraints of the site.

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

Comment:

The bulk and scale of the development is consistent with nearby development and will not result in any unreasonable impacts within the locality. The proposed bulk and scale is satisfactory in this circumstance. The predominant compliance achieved by the building demonstrating a considered built form that is compatible with any future development on surroundings lands.

(c) to minimise disruption to the following—

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

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

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

Comment:

The proposed development will not give rise to any unreasonable view impacts.

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

Comment:

The solar impacts of this aspect of the development are minimal and acceptable in terms of the impacts on habitable rooms of the adjoining properties and public open spaces.

(e) to ensure the height and bulk of any proposed building or structure in a recreation or

environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

Comment:

Not applicable.

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

4.1.3 Floor Space Ratio (FSR)

The proposal is non-compliant with the Floor Space Ratio prescribed in Clause 4.4 of the MLEP 2012. An assessment of the proposal and its numerical non-compliance with this clause is address else where within this report (see Section 4.6 Variation to the Development Standard). The matters contained to Part 4.1.3 Floor Space Ratio (including consideration given to undersized lots) is addressed in Section 4.6 of this report.

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

Description of non-compliance

Clause 4.1.4.1 of the MDCP requires development to be setback 6.0 metres from the front boundary line or maintain the prevailing building line. The development proposes a hardstand a parking space with a nil setback to the front property boundary, non compliant with the numeric control.

Side boundary setbacks must be one third of the wall height. The wall height is 7.5m and therefore a setback of 2.5m is required along the northern elevation.

The proposed works are setback 1.4m - 1.8m from the northern side boundary at first floor level and therefore present a 28% - 44% variation to the required control.

The existing windows and proposed new windows do not comply with the required minimum setback of 3m. A minimum window setback of 1m is proposed, which is a 66.4% variation to the control.

Merit consideration:

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

Objective 1) To 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 nil (0m) front setback is deemed to be reasonable given the prevailing setback of the street and as it allows for increased off-street parking.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposed alterations and additions are of a modest first floor addition, well under the height limit and as such are not expected to result in any unreasonable privacy, solar access or view loss. The existing traffic conditions will remain unchanged.

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

Comment:

Flexibility is required given the site is a undersized allotment and is limited by the existing development on site. The location of the alterations and additions will ensure the open space and soft landscaping is maximised whilst not impeding on the amenity of the subject site and adjoining sites.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposal does not seek to remove any significant trees and vegetation and comprises of a compliant soft landscaped area.

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

Comment:

N/A - the site is not located within a bushfire prone zone.

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 site is located within OS3 and therefore minimum required open space is 55% of the total area and of this open space 35% is required to be soft landscaped area.

The proposal comprises of 33.7% (69m²) of the total site area as open space. This is a 42.9% variation to the required minimum open space.

Further, 29.3% (33sqm) of the site is landscaped open space, non-compliant with the numeric control. This represents a 16.2% variation to the numeric control.

The proposal readily complies with the minimum required soft 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 proposal does not seek to remove any significant landscaping and will retain all landscaping within the primary frontage.

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:

All of the proposed open space and soft landscaping is provided at ground level. Ample opportunity will also be provided on site for future planting.

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 is not expected to have any unreasonable amenity impacts on the site, streetscape and surrounding area due to its modest footprint. The works are considered to appropriately respond to the site constraints of the allotment and existing development.

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

Comment:

The proposed development provides ample soft open spaces for the purpose of onsite water infiltration to minimise stormwater runoff.

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 lead to the significant spread of weeds, or degradation of private open space.

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

Comment:

The proposed development is not likely to affect any existing wildlife habitat and potential for wildlife corridors.

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

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

Description of non-compliance

For a dwelling houses, semi-detached and secondary dwellings, the control requires the provision of two off-street parking spaces.

The existing site contains no off-street parking spaces. The proposal seeks to add a single hardstand carspace to the front of the dwelling.

Merit consideration:

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

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

Comment:

The proposed development increases the number of off-street parking spaces. As detailed the proposal provides accessible and adequate parking on site relative to the residential development and the locality for all users.

The provision of two on site car parking spaces on the small allotment would result in the unreasonable removal of open space and landscaping.

Objective 2) To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances.

Comment:

The proposed works are not expected to place any unreasonable demand on parking within the immediate vicinity.

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

Comment:

The provision of two on site car parking spaces on the small site would result in an undesirable outcome when viewed from the streetscape. The proposed car parking space is considered to be appropriate for the subject site and the low density residential nature of the works.

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

Comment:

The proposed works will not lead to unreasonable site instability and the interruption to ground water flows.

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

Comment:

N/A - existing vehicle crossing remains unchanged.

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

Comment:

The existing on site car parking remains unchanged.

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

Comment:

The existing on site car parking remains unchanged.

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

4.1.9 Swimming Pools, Spas and Water Features

Description of non-compliance

Clause 4.1.9 of the Manly DCP requires swimming pool be setback 1m from the pool curtilage and 1.5m from the waters edge. The proposed swimming pool is setback 0.3m from the swimming pool

coping and 1m from the water edge, non-compliant with the numeric control.

Merit consideration

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

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

Comment:

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

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

Comment:

The swimming pool will not be readily visible from the street. The resulting impact on the streetscape is negligible.

Objective 3) To integrate landscaping.

Comment:

Adequate landscaping is proposed to the south off the pool to help offset the visual impact of the swimming pool.

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

Comment:

The subject site is not located in a bush fire asset protection zone, however the pool may be a viable water resource during bushfire emergencies.

Conclusion

Based on the above assessment, it is concluded that the objectives of the control are achieved. Therefore, the application is supported on merit in this particular circumstance.

4.4.5 Earthworks (Excavation and Filling)

Description of non-compliance

Under Clause 4.4.5.1 Excavation is generally limited to 1m below natural ground level with the exception of basement parking areas (which will be contained within the footprint of the building) and swimming pools;

Merit consideration

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

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

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

Comment:

The application has been accompanied by a Geotechnical Report (prepared by White Geotechnical Group, dated 23 February 2023) and structural report (prepared by PelEng, dated 4 April 2024), which stipulates that the proposed development will achieve an acceptable level of risk to neighbouring properties, subject to compliance with certain recommendations during construction and remediation works. It is noted that the earthworks proposed are not likely to create any adverse environmental impacts. Suitable conditions are included with this consent requiring dilapidation reports for adjoining semi-detached dwelling to be prepared prior to the commencement of works.

Conclusion

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS**Northern Beaches Section 7.12 Contributions Plan 2022**

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

A monetary contribution of \$11,614 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,161,360.

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.

Conclusion

This review application, for alterations and additions to a semi-detached dwelling and swimming pool is referred to the DDP due to the previous Development Application (DA2023/0735), having been referred to the panel. This is due to the requirement under Clause 8.3 of the EPA Act requiring a determination by a delegate "who is not subordinate to the delegate who made the determination or decision". Additionally, the gross floor area exceeds the FSR development standard by more than 10% (in this case 80%).

One (1) submission raised concern regarding structural suitability, waterproofing, acoustic and design impacts. An assessment of the proposal reveals that proposed alterations and additions are structurally adequate

A detailed clause 4.6 request was lodged with the application, which provides adequate planning ground to justify the variation to the FSR development standard.

The critical assessment issues relating acoustic and streetscape impacts have been resolved to the satisfaction of Council and are detailed within this assessment report.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment.

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

RECOMMENDATION

That Northern Beaches Council, as the consent authority, vary the development standard contained within Clause 4.4 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 REV2024/0008 for Review of Determination of Application DA2023/0735 for Alterations and additions to a semi-detached dwelling including a swimming pool on land at Lot A DP 442510, 26 Thornton Street, FAIRLIGHT, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
02	C	Site Plan	Paul Carrick	March 2024
03	C	Floor Plan - Level 0 Street Entry	Paul Carrick	March 2024
04	C	Floor Plan - Level 1 Living	Paul Carrick	March 2024
05	C	Floor Plan - Level 2 Bedrooms	Paul Carrick	March 2024
06	C	Roof Plan	Paul Carrick	March 2024
07	C	Elevations Front - West + Rear - East	Paul Carrick	March 2024
08	C	Elevations Side - North	Paul Carrick	March 2024

09	C	Elevations Side - South	Paul Carrick	March 2024
10	C	Section- Sheet 1 - Long Section	Paul Carrick	March 2024
11	C	Section - Sheet 2 at Annexe - Stairs	Paul Carrick	March 2024
12	C	Driveway Conceptual Layout	Paul Carrick	March 2024
13	C	Landscape	Paul Carrick	March 2024
14	C	Window and Door Schedule	Paul Carrick	March 2024
16	C	Waste Management and Erosion Plan	Paul Carrick	March 2024
17	C	Drainage and Sewer Plan	Paul Carrick	March 2024
20	C	Part Wall interface/ Southern wall detail	Paul Carrick	March 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate No. A484357_03	3	Paul Carrick	15 April 2024
Structural engineering Review	-	PelEng	4 April 2024
White Geotechnical Group	-	White Geotechnical Group	23 February 2023
Waste Management Plan	-	-	-

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

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

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

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	N/A

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

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

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

3. Approved Land Use

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a semi-detached dwelling, in accordance with the Dictionary of the Manly Local Environmental Plan 2013, as follows:

semi-detached dwelling means a dwelling that is on its own lot of land and is attached to only one other dwelling.

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

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

4. Prescribed Conditions

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

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

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

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

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

Reason: Legislative requirement.

5. 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 \$11,613.60 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$1,161,360.00.

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

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

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

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

7. **Security Bond**

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

8. **Traffic Management and Control**

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

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

9. **Stormwater Disposal**

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent in accordance with AS/NZS 3500 and Council's Water Management for Development Policy, prepared by an appropriately qualified and practicing Civil Engineer who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG), indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to the existing kerb outlet in Thornton Street.

Details demonstrating compliance are to be submitted to the Certifier for approval prior to the

issue of the Construction Certificate.

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

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

11. **Vehicle Crossings Application**

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing 3 metres wide in accordance with Northern Beaches Council Standard Drawing Normal Vehicle Crossing Profile in accordance with Section 138 of the Roads Act 1993.

Note, driveways are to be in plain concrete only.

Concurrence from the relevant service authority is to be obtained for any reconstruction or relocation of the existing service pit located within the proposed crossing. Details are to be submitted with the application.

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

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

Reason: To facilitate suitable vehicular access to private property.

12. **Off Street Parking Design**

The Applicant shall submit a design for the parking facility in accordance with the relevant provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking.

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

Reason: Compliance with this consent.

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Certifier.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

14. **Boundary fencing**

No approval is given for the proposed boundary fence. No consent has been provided by the owners of the common boundary.

Reason: To ensure compliance with the Dividing Fences Act 1991

15. **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.

16. **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.

17. **Extent of Consent**

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

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

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

18. **Sydney Water "Tap In"**

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

19. **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 No. 24 Thornton Street, Fairlight

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

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

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

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

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

DURING BUILDING WORK

20. **Road Reserve**

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

Reason: Public safety.

21. **Geotechnical Requirements**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

22. **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.

23. Survey Certificate

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

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

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

24. Traffic Control During Road Works

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with TfNSW Traffic Control At Work Sites Manual and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

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. Stormwater Disposal

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified Civil Engineer.

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

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

development.

27. Post-Construction Dilapidation Report

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

- Compare the post-construction report with the pre-construction report,
- Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- Should any damage have occurred, suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

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

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

28. Geotechnical Certification Prior to Occupation Certificate

A Geotechnical Engineer or Engineering Geologist is to provide written confirmation that they have inspected the site during construction or reviewed information relating to the construction and that they are satisfied that development referred to in the development consent has been constructed in accordance with the intent of the Geotechnical Report referenced in Condition 1 of this consent.

Written certification is to be provided to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

29. Certification of Off Street Parking Works

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

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

Reason: Compliance with this consent.

30. Swimming Pool Requirements

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

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

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

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

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

(d) A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.

(e) Signage showing resuscitation methods and emergency contact

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

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

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

Reason: To protect human life (DACPLF09)

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

31. **Geotechnical Recommendations**

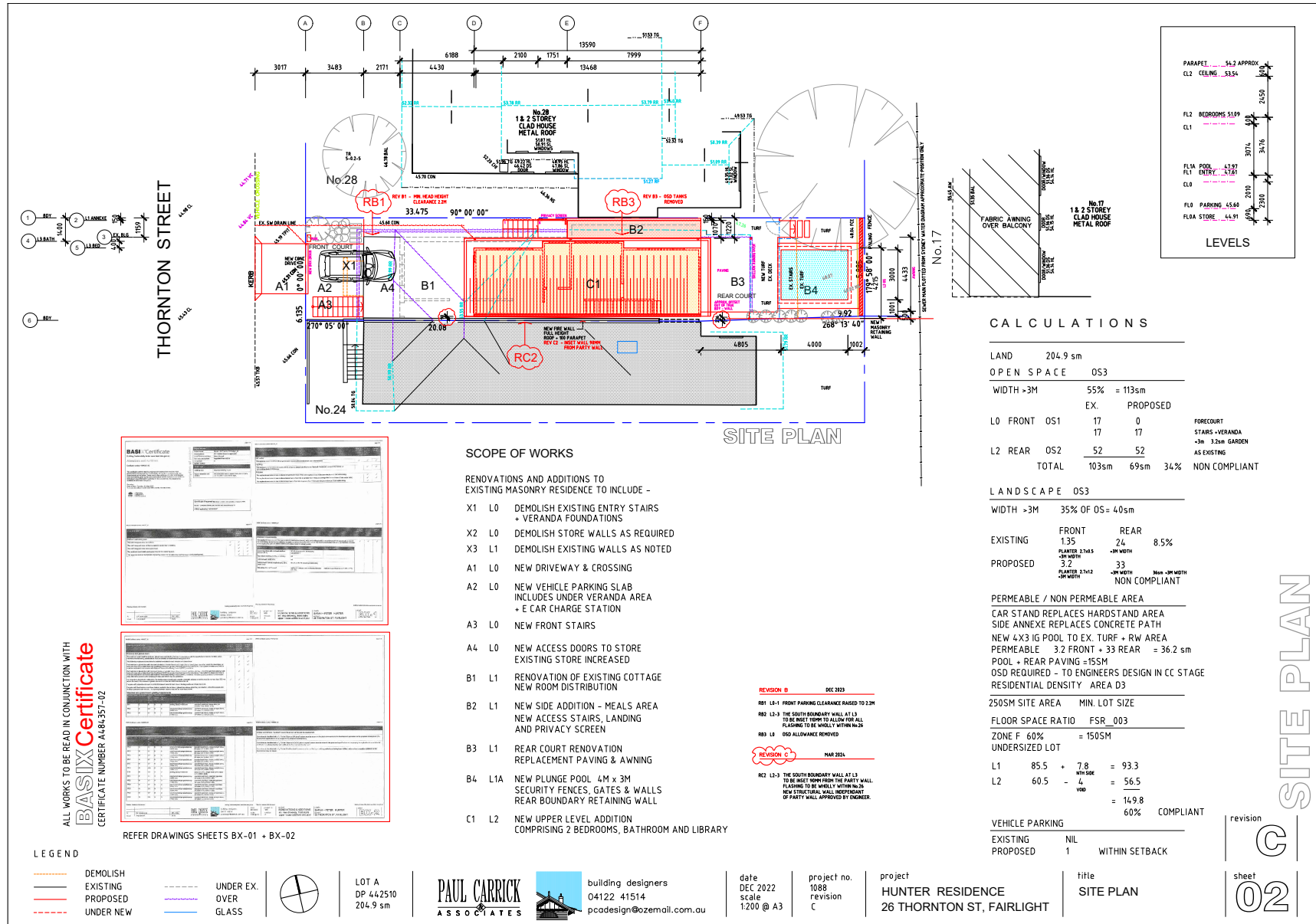
Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

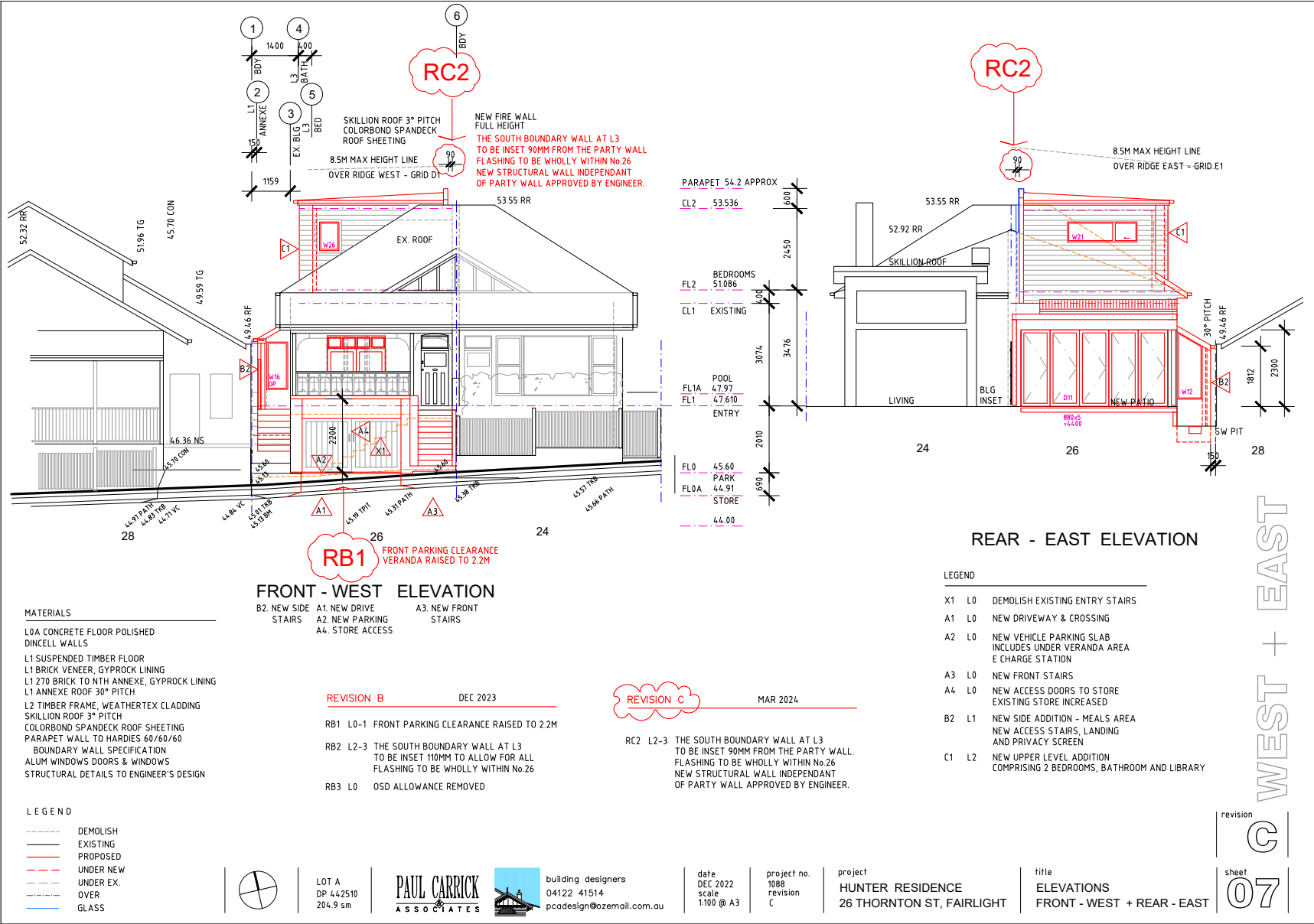
Reason: To ensure geotechnical risk is mitigated appropriately.

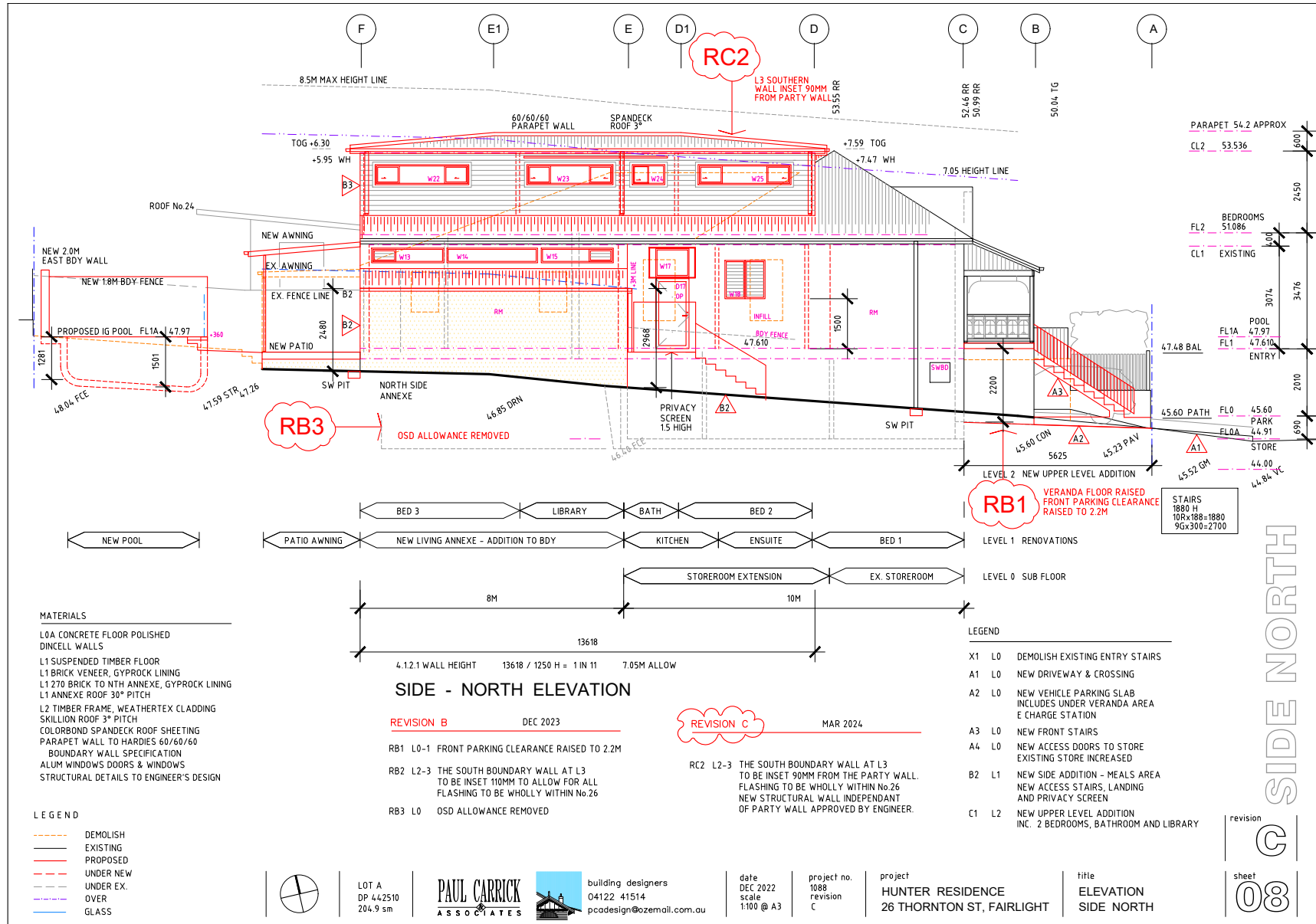
32. **Swimming Pool/Spa Motor Noise**

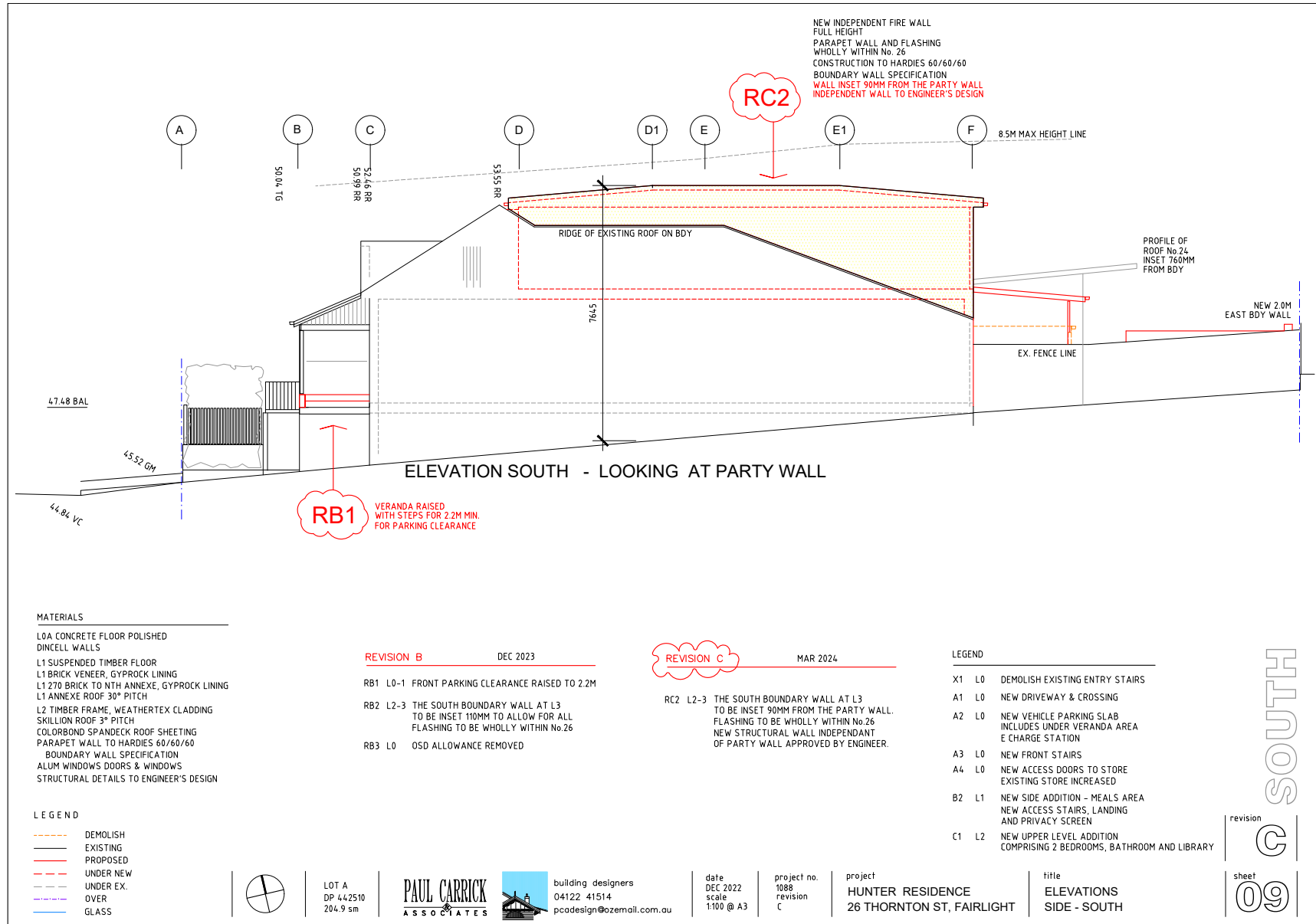
All sound producing plant, equipment including the swimming pool motor and air-conditioning units shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

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









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APPENDIX 1
CLAUSE 4.6 – FLOOR SPACE RATIO
(As revised July 2024)

Vaughan Milligan Development Consulting Pty Ltd

**WRITTEN SUBMISSION PURSUANT TO CLAUSE 4.6 OF
MANLY LOCAL ENVIRONMENTAL PLAN 2013**

26 THORNTON STREET, FAIRLIGHT

**FOR THE PROPOSED CONSTRUCTION OF ALTERATIONS AND ADDITIONS TO
AN EXISTING DWELLING INCLUDING NEW SWIMMING POOL**

**VARIATION OF A DEVELOPMENT STANDARD REGARDING THE MAXIMUM FLOOR SPACE RATIO
AS DETAILED IN CLAUSE 4.4 OF THE MANLY LOCAL ENVIRONMENTAL PLAN 2013**

For: Proposed construction of alterations and additions to an existing dwelling
including new swimming pool
At: 26 Thornton Street, Fairlight
Owner: Sarah & Peter Hunter
Applicant: Sarah & Peter Hunter

1.0 Introduction

This written request is made pursuant to the provisions of Clause 4.6 of Manly Local Environmental Plan 2013. In this regard, it is requested Council support a variation with respect to compliance with the maximum floor space ratio development standard as described in Clause 4.4 of the Manly Local Environmental Plan 2013 (MLEP 2013).

This revised submission considers revised architectural plans, Issue C dated March 2024.

2.0 Authority to vary a Development Standard

In September 2023, the NSW Government published amendments to Clause 4.6 of the Standard Instrument which change the operation of the clause across all local environmental plans, including the Pittwater LEP. The changes came into force on 1 November 2023.

The principal change is the omission of subclauses 4.6(3)-(5) and (7) in the Standard Instrument Principal Local Environmental Plan.

The following changes have been made as a result of this:

- Clause 4.6(3) was amended such that the requirement to 'consider' a written request has been changed with an express requirement that the consent authority 'be satisfied that the applicant has demonstrated' that compliance with the development standard is unreasonable or unnecessary.

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- Clause 4.6(4)(a)(ii) was amended such that the requirement that the consent authority must be satisfied that the proposed development in the public interest has been removed.
- Clause 4.6(4)(b) & 5 amended such that the requirement for concurrence from the Planning Secretary has been removed.

The objectives of clause 4.6 of the LEP, as amended, seek to recognise that in the particular circumstances of this case strict application of development standards may be unreasonable or unnecessary. The clause provides objectives and a means by which a variation to the development standard can be achieved as outlined below:

Clause 4.6 Exception to development standard

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

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

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

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

- (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
- (b) there are sufficient environmental planning grounds to justify the contravention of the development standard.*

Note—

The [Environmental Planning and Assessment Regulation 2021](#) requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).

(4) The consent authority must keep a record of its assessment carried out under subclause (3).

(5) (Repealed)

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—

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- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note—

When this Plan was made it did not include all of these zones.

(7) (Repealed)

(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

- (a) a development standard for complying development,
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which [State Environmental Planning Policy \(Building Sustainability Index: BASIX\) 2004](#) applies or for the land on which such a building is situated,
- (c) clause 5.4,
- (caa) clause 5.5.

3.0 Background

Clause 4.4 restricts the maximum floor space area control within this area of the Clontarf locality and refers to the floor space ratio noted within the “Floor Space Ratio Map.”

The relevant maximum floor space control in this locality is 0.6:1 or for this site with an area of 204.9m², the maximum gross floor area is 122.94m² and is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The proposed development will see additions and alterations to the existing dwelling, which will result in an increase to the total gross floor area to 189.2m² or 0.923:1, and therefore the extent of the variation from the control will be 66.26m² or 53.8%.

The form of the proposed additions and alterations to the existing dwelling, is consistent with the architectural design previously considered under DA2023/0735pall .

The controls of Clause 4.4 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

It is noted that the Council’s Manly Development Control Plan 2013 Amendment 14 and in particular Clause 4.1.3.1 provides exceptions to the FSR control where the lot is less than minimum required lot size under Council’s LEP Lot Size Map and the development satisfied the LEP Objectives and the DCP provisions.

In this instance the required minimum lot size in the locality is 250m², with the DCP permitting a variation to a minimum lot size of 250m² and when calculated against this required lot size, the permissible floor area is 150m². The proposed development will present a total floor area of 189.4m² or an FSR of 0.757:1, which exceeds the prescribed FSR control of 0.6:1 when assessed against the minimum lot size in the locality.

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Is clause 4.4 of MLEP a development standard?

- (a) The definition of “development standard” in clause 1.4 of the EP&A Act means standard is fixed in respect of an aspect of a development and include:

“(d) the cubic content of floor space of a building.”

- (b) Clause 4.4 relates to floor space of a building. Accordingly, clause 4.4 is a development standard.

4.0 Purpose of Clause 4.6

The Manly Local Environmental Plan 2013 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the Standard Instrument is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the Standard Instrument should be assessed. These cases are taken into consideration in this request for variation.

In particular, the principles identified by Preston CJ in *Initial Action Pty Ltd vs Woollahra Municipal Council* [2018] NSWLEC 118 have been relied on in this request for a variation to the development standard.

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5.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

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

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“Initial Action”) provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in ***RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51]** where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant’s written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

“In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”. If objective (b) was the source of the Commissioner’s test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test.”

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of MLEP provides:

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

Clause 4.4 (the FSR development standard) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of MLEP.

Clause 4.6(3) of MLEP provides:

- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

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

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

The proposed development does not comply with the FSR development standard pursuant to clause 4.4 of MLEP which specifies an FSR of 0.6:1, however as the lot is undersized and with the proposed first floor level and other alterations to the dwelling, which contributes to additional GFA presenting an external form which is not unreasonable in bulk and scale, achieving compliance is considered impracticable, therefore strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

Clause 4.6(4) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation

Clause 4.6(6) relates to subdivision and is not relevant to the development.

Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.4 of MLEP from the operation of clause 4.6.

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The specific objectives of Clause 4.6 are as follows:

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

The development will achieve a better outcome in this instance as the site will provide for the construction of alterations and additions to an existing dwelling, which is consistent with the stated Objectives of the R1 General Residential Zone, which are noted as:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposal will provide for the construction of alterations and additions to an existing dwelling to provide for increased amenity for the site's occupants, together with a swimming pool to further improve the residential amenity.

The new works maintain a bulk and scale which is in keeping with the extent of surrounding development, with a consistent palette of materials and finishes, in order to provide for high quality development that will enhance and complement the locality.

The proposal will not exceed the maximum permitted building height control and remain consistent with the surrounding building height.

Notwithstanding the non-compliance with the maximum floor space ratio, the new works will provide attractive alterations and additions to a residential development that will add positively to the character and function of the local residential neighbourhood. It is noted that the proposal will maintain a consistent character with the built form of nearby properties.

The proposed alterations and additions will not see any adverse impacts on the views enjoyed by neighbouring properties.

The works will not see any adverse impacts on the solar access enjoyed by adjoining dwellings.

The general bulk and scale of the dwelling as viewed from the public areas in Thornton Street from the surrounding private properties will be largely maintained.

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6.0 The Nature and Extent of the Variation

- 6.1 This request seeks a variation to the FSR development standard contained in clause 4.4 of MLEP.
- 6.2 Clause 4.4 of MLEP specifies an allowable gross floor area for a site in this part of Fairlight of 0.6:1 or for this site, the allowable gross floor area is 122.64m².
- 6.3 The subject site has an area of 204.9m².
- 6.4 The proposal has a calculable gross floor area of 189.4m² or FSR of 0.923:1.
- 6.5 The total non-compliance with the FSR control is 66.26m² or 53.8%, which is a breach to the control.
- 6.6 When assessed against a minimum lot area of 250m², the proposal presents an FSR of 0.757:1, which represents a reduced non-compliance with the control.

7.0 Relevant Caselaw

- 7.1 In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827* continue to apply as follows:
 - 17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
 - 18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
 - 19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
 - 20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*

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21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*
 22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*
- 7.2 The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:
1. Is clause 4.4 of MLEP a development standard?
 2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
 3. Is the consent authority satisfied that the proposed development will be consistent with the objectives of clause 4.4 and the objectives for development for in the R1 zone?
 4. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.4 of MLEP?

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8.0. Request for Variation

8.1 Is compliance with clause 4.4 unreasonable or unnecessary?

- (a) This request relies upon the 1st way identified by Preston CJ in Wehbe.
- (b) The first way in Wehbe is to establish that the objectives of the standard are achieved.
- (c) Each objective of the FSR standard and reasoning why compliance is unreasonable or unnecessary is set out below:

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

The objective of Clause 4.4(1)(a) seeks to ensure buildings, by virtue of their height and scale are consistent with the desired future streetscape character of the locality.

The proposal provides for alterations and additions to an existing dwelling which are intended to provide for a development outcome that benefits the surrounding neighbours by maintaining existing view sharing opportunities.

The contemporary building form with a low profile roof and earthy external finishes are considered to suitably reduce the visual bulk of the dwelling.

Further, the modulation of the front façade, together with the retention of the existing side setbacks and complementary external finishes will ensure the development minimises the visual impact when viewed from the surrounding public and private areas.

It is notable that a major contributor to the non-compliance with the floor gross floor area is as a result of the existing storage area in the lower ground floor level and the proposed additional storage at that level, which combined contribute to an area of 39.4 m² without any external addition to the bulk and scale of building.

The proposal will be consistent with and complement the existing style of single dwelling housing within the locality and as such, will not be a visually dominant element in the area.

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

The proposal will not see the loss of any significant vegetation. The built footprint of the existing dwelling remains largely unchanged other than a slight increase at the ground floor level, and is therefore not considered to result in any adverse effects on the scenic qualities of the foreshore.

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

The site is considered to be sufficient to provide for the proposed works, with the dimensions of the lot to be unchanged.

The proposal will retain an appropriate area of soft landscaping, and the site will maintain an appropriate balance between the landscaping and the built form.

On the basis that the proposal maintains an acceptable level of landscaped area, the site is considered to maintain an appropriate balance between the site's landscaping and the built form.

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

The proposed works are wholly contained within the site and will not result in any adverse impacts for any adjoining land.

(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.

The site is not located within a business zone and by providing for the construction of alterations and additions to an existing dwelling, is not contrary to the viability of any local business activity.

8.2 Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the*

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development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31]

There are sufficient environmental planning grounds to justify contravening the development standard.

The low pitch roof form further introduces modulation and architectural relief to the building's facade, which further distributes any sense of visual bulk.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposed alterations and additions introduce modulation and architectural relief to the building's facade, without seeing any substantial change to the building's bulk, which promotes good design and improves the amenity of the built environment (1.3(g)).
- The proposed addition will maintain the general bulk and scale of the existing surrounding dwellings and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).
- Similarly, the proposed additional floor area will provide for improved amenity within a built form which is compatible with the streetscape of Thornton Street which also promotes the orderly and economic use of the land (cl 1.3(c)).
- The proposed new works which exceed the gross floor area control and FSR standard of 0.6:1 is considered to promote good design and enhance the residential amenity of the buildings' occupants and the immediate area, which is consistent with the Objective 1.3 (g) of the EPA Act.
- The alterations demonstrate good design and improves the amenity of the built environment by creating improved and functional living area and also maintains the amenity of the existing dwelling house and neighbours in terms of views by maintaining a consistent ridge height, together with providing for internal lift access to improve the ability for the occupants to access the levels within the dwelling. (cl 1.3(g)).

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of a building that provides sufficient floor area for future occupants and manages the bulk and scale and maintains views over and past the building from the public and private domain.

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These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the floor space ratio control.

It is noted that in *Initial Action*, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

7.3 Is the proposed development in the public interest because it is consistent with the objectives of clause 4.4 and the objectives of the R1 General Residential zone?

- (a) Section 4.2 of this written request suggests the 1st test in *Wehbe* is made good by the development.
- (b) Each of the objectives of the R1 General Residential Zone and the reasons why the proposed development is consistent with each objective is set out below.

I have had regard for the principles established by Preston CJ in *Nessdee Pty Limited v Orange City Council* [2017] NSWLEC 158 where it was found at paragraph 18 that the first objective of the zone established the range of principal values to be considered in the zone.

Preston CJ found also that "*The second objective is declaratory: the limited range of development that is permitted without or with consent in the Land Use Table is taken to be development that does not have an adverse effect on the values, including the aesthetic values, of the area. That is to say, the limited range of development specified is not inherently incompatible with the objectives of the zone*".

In response to *Nessdee*, I have provided the following review of the zone objectives:

It is considered that notwithstanding the compatible form of the proposed additions which see a minor reduction in the total gross floor area, the proposed alterations and additions to the existing dwelling will be consistent with the

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individual Objectives of the R1 General Residential Zone for the following reasons:

- ***To provide for the housing needs of the community***

As found in *Nessdee*, this objective is considered to establish the principal values to be considered in the zone.

Dwelling houses are a permissible form within the Land Use table and is considered to be specified development that is not inherently incompatible with the objectives of the zone.

The R1 General Residential Zone contemplates low density residential uses on the land. The housing needs of the community are appropriately provided for in this instance through the proposed alterations and additions to an existing dwelling which will provide for an appropriate level of amenity and in a form, and respect the predominant bulk and scale of the surrounding dwellings.

The development will observe Council's overall building height of 8m.

The proposal will improve the amenity for the buildings' owners by providing new living spaces and bedrooms in a form which complements the architectural style and scale of the surrounding development.

The compatible form and scale of the alterations and additions will meet the housing needs of the community within a single dwelling house which is a permissible use in this residential zone.

- ***To provide for a variety of housing types and densities.***

The subject proposal continues to provide for a semi-detached dwelling that is consistent with the dominant housing typology in the area and along Thornton Street. The density is no inconsistent with the Fairlight locality.

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

The proposal will continue to provide a dwelling that will meet the day to day needs of the occupants by providing greater space and an increased level of amenity.

8.4 Has the Council considered the matters in clause 4.6(5) of MLEP?

- (a) The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed additions to the dwelling house for the particular site and this design is not readily transferrable to any other site in the immediate locality, wider region of the State and the scale or nature of the proposed

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development does not trigger requirements for a higher level of assessment.

- (b) As the proposed development complies with the objectives of the development standard and the objectives of the zone there is no significant public benefit in maintaining the development standard.

8.0 Conclusion

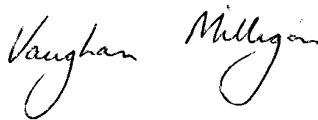
This development proposes a departure from the maximum floor space ratio control for this locality of 0.6:1, with the proposed additions to the existing dwelling to provide a maximum floor space ratio of 0.923:1.

As discussed, it is noted that the Council's Manly Development Control Plan 2013 Amendment 14 and in particular Clause 4.1.3.1 provides exceptions to the FSR control where the lot is undersized and is less than minimum required lot size under Council's LEP Lot Size Map and the development satisfied the LEP Objectives and the DCP provisions.

In this instance the required minimum lot size in the locality is 250m² and when calculated against this required lot size, the development prescribes a FSR of 0.757:1, which represents a reduced non-compliance when considered against the FSR control.

Accordingly, we are of the view that the proposal is consistent with the objectives of the development standard.

In summary, the proposal satisfies all of the requirements of clause 4.6 of MLEP 2013 and the exception to the development standard is reasonable and appropriate in the circumstances of the case.



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