AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 28 AUGUST 2024

Ashleigh Sherry
Manager Business System and Administration

Agenda for a Meeting of the Development Determination Panel to be held on Wednesday 28 August 2024 via teleconference Commencing at 10:00 AM

1.0 APOLOGIES & DECLARATIONS OF INTEREST

2.0 MINUTES OF PREVIOUS MEETING

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3.2 DA2024/0190 - 32 Golf Avenue MONA VALE - Demolition works and construction of a residential flat building 78

3.3 DA2023/1850 - 50 Peronne Avenue CLONTARF - Alterations and additions to a dwelling house including a swimming pool 156

3.4 DA2024/0683 - 130 Prince Alfred Parade NEWPORT - Construction of a boat shed, deck, waterway access stairs and boat ramp 229

3.5 DA2023/1427 - 1 Lovering Place NEWPORT - Alterations and additions to a dwelling house 317

3.6 DA2024/0530 - 77 Bassett Street MONA VALE - Installation of 6 business identification signs to existing building façade 377

3.7 REV2024/0021 - 77 Bassett Street MONA VALE - Review of Determination of Application DA2023/1841 for Use of premises as a hardware and building supplies facility and associated internal alterations 407

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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 THE DEVELOPMENT DETERMINATION PANEL MEETING HELD ON 14 AUGUST 2024

RECOMMENDATION

That the Panel note that the minutes of the Development Determination Panel Meeting held on 14 August 2024 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1 DA2024/0119 - 10 NORMA ROAD PALM BEACH - DEMOLITION WORK FOR ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A STUDIO

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 building height standard.

RECOMMENDATION

A. 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.

B. THAT Council as the consent authority **approves** Development Consent to DA2024/0119 for demolition work for alterations and additions to a dwelling house including a studio on land at Lot 434 DP 653277, 10 Norma Road PALM BEACH, subject to the conditions set out in the Assessment Report.

Reporting manager	Thomas Prosser
TRIM file ref	2024/590773
Attachments	⇩1 Assessment Report ⇩2 Site Plan and Elevations ⇩3 Clause 4.6

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/0119

Responsible Officer:	Jordan Davies
Land to be developed (Address):	Lot 434 DP 653277, 10 Norma Road PALM BEACH NSW 2108
Proposed Development:	Demolition work for alterations and additions to a dwelling house including a 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:	Christopher Ian Plater

Application Lodged:	05/03/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	08/03/2024 to 22/03/2024
Advertised:	Not Advertised
Submissions Received:	9
Clause 4.6 Variation:	4.3 Height of buildings: 7%
Recommendation:	Approval

Estimated Cost of Works:	$ 2,255,300.00

EXECUTIVE SUMMARY

This development application seeks consent for Alterations and additions to a dwelling house including a studio.

The application is referred to the Development Determination Panel (DDP) due to receiving more than 5 submissions (in this case, 9 submissions).

Concerns raised in the objections predominantly relate to privacy from an elevated balcony, view impacts and overshadowing for 8 Norma Road, breach of the building height, bulk and scale, landscaping and potential commercial use of the studio. During the course of the assessment, amended plans were submitted in response to Council's request for changes as a result of the public

submissions. The amended plans have addressed Council's concerns in a satisfactory way, including a reduction of the overall building size and height, amendments to improve solar access and privacy, along with further supporting documentation including montages to demonstrate view sharing and solar access outcomes.

Critical assessment issues included the building height breach which consists of the upper level roof exceeding the height limit by 7% for a minor portion. Critical assessment issues also include privacy, views and overshadowing which were concerns raised through the public submissions.

The breach of the building height standard arises from the prior alteration to the original site levels beneath the building footprint which results in a minor section of the upper roof level breaching the height limit by 7%. Based on extrapolated natural ground levels the height would be within the 8.5m height plane. The remainder of the building is under the 8.5m height.

The building has demonstrated a sufficient skillful design and allows a high level of solar access to be retained to the adjoining southern property. View sharing has been resolved to a high degree (including maintaining some of the view corridors over the side boundary) and a reasonable solution put forward to resolve the privacy issues by minimising the size of the decking and including a planter box along the north-eastern edge of the L1 Deck. The planter box allows highly valuable views to be obtained from within the house, whist minimising the cone of vision available into the adjoining properties to mitigate privacy impacts.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal consists of 'Alterations and additions to a dwelling house including a studio'. Specifically, the proposal consists of:

- Alterations to Level 0 to consist of a study, bedroom, bathroom, entrance and deck
- Alterations to Level 1 to consist of a combined living and dining, kitchen area, bathroom, laundry and alterations to an existing deck. The existing bedrooms central to Level 1 remain unchanged.
- Alterations to Level 2 to consist of a bedroom, bathroom and walk in robe. A small deck facing the street is also proposed.
- Proposed new two storey art studio with a link from the main dwelling.
- Removal of three (3) prescribed trees within the site being T17 Leopard Tree (5.5m high), T20 Cabbage Tree Palm (4m high) and T21 Cabbage Tree Palm (4.5m high).
- Associated landscaping works which include replacement planting as required to compensate for the above tree removal.

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act

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

SUMMARY OF ASSESSMENT ISSUES

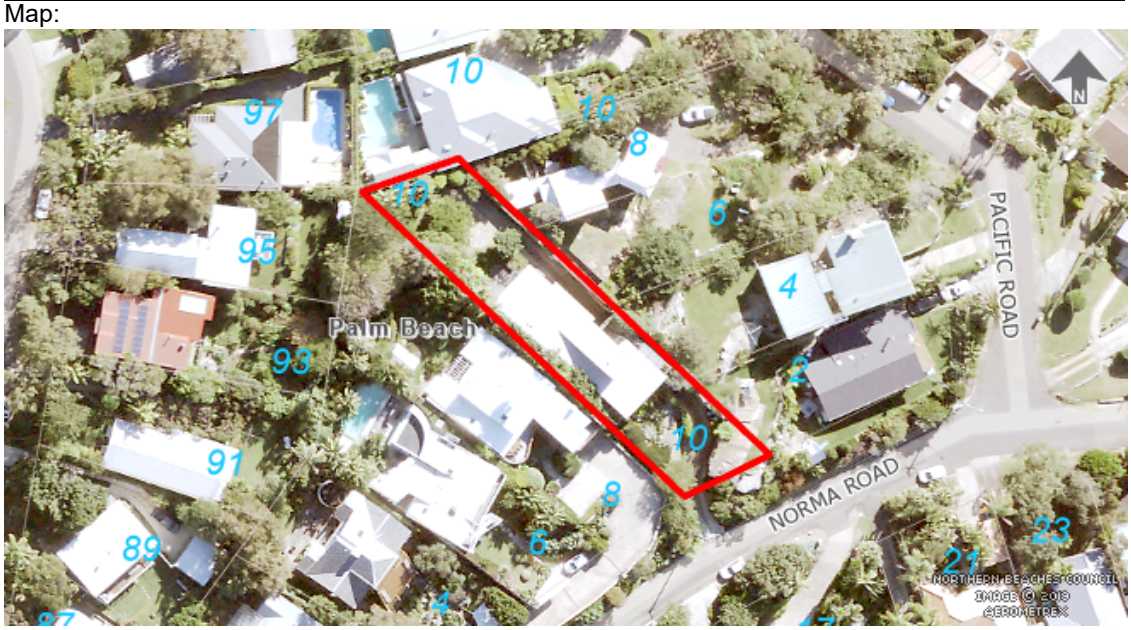
Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living
Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
Pittwater 21 Development Control Plan - C1.3 View Sharing
Pittwater 21 Development Control Plan - C1.4 Solar Access
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - C1.14 Separately Accessible Structures
Pittwater 21 Development Control Plan - D12.6 Side and rear building line
Pittwater 21 Development Control Plan - D12.8 Building envelope
Pittwater 21 Development Control Plan - D12.10 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 434 DP 653277 , 10 Norma Road PALM BEACH NSW 2108
Detailed Site Description:	The subject site consists of one (1) allotment located on the northern-western side of Norma Road. The site is irregular in shape with a frontage of 15.24m along Norma Road and a depth of 71.49m. The site has a surveyed area of 1012m². The site is located within the C4 Environmental Living zone and accommodates an existing two storey dwelling house. The site has a moderately steep topography across the front half of the site, adjoining the road. The slope is approximately 25% across the front half of the building footprint. The site has a number of natural sandstone outcrops and which sit beside the driveway. The front yard is characterised by informal gardens. The site has a mixture of local trees and some exempt/exotic species at the rear of the site. These trees are identified within the arboricultural report submitted with

	the application. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by mixture of houses being one, two and some three storey buildings of varying ages. Immediately to the south-west is a two storey building. To the north-east are one and tow storey dwellings, and a vacant block. To the north-western (rear boundary) is one and two story dwelling.

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 recent history:

- Building Certificate No 0078/13 - Issued by Pittwater Council - Building certificate for the whole of the building issued on 12/08/2013.

History of Application

- On 10 April 2024, Council wrote to the applicant requesting further information and amendments in relation to view sharing, solar access, building bulk and envelope, privacy and landscaping.
- On 24 May 2024, the applicant submitted amended plans and additional further supporting information in response to Council's RFI.
- On 27 May 2024, Council forwarded the amended plans to the residents who had raised concerns with the proposal inviting comment. A formal re-notification was not required as the

proposal was overall reduced in scale.
- Following the amended plans being sent on 27 May, further submissions were received regarding the proposal.
- On 5 June 2024, Council wrote again to the applicant requesting further changes and information to respond to the issues raised in the second set of submissions.
- On 7 August 2024, amended plans, an updated Clause 4.6, further survey information of the adjoining site windows and a further RFI response was submitted to Council. As the amended plans further reduced the proposal, re-notification of the amended plans was not required which is in accordance with the Northern Beaches Community Consultation Plan.
- An assessment was then made of the amended plans, taking into consideration all submissions received to date.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	**Comments**
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 29 of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to the building height, building envelope, quantum of landscaping, information regarding view sharing and solar access. Additional information and amended plans were submitted as part of the application and have been considered as part of the assessment. Clause 61 of the EP&A Regulation 2021 requires the consent

Section 4.15 Matters for Consideration	Comments
	authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 08/03/2024 to 22/03/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 9 submission/s from:

Name:	Address:
Mr Michael Wilson Ewart	55 Old Barrenjoey Road AVALON BEACH NSW 2107
Ms Virginia Kim Hoggard Jeff McMullen	8 Norma Road PALM BEACH NSW 2108
Ms Deborah Susan Kelton	Po Box 685 MULLUMBIMBY NSW 2482
Mr Robert Donald Mackinnon	16 Norma Road PALM BEACH NSW 2108
Ms Camille Louise Peach	10 Pacific Road PALM BEACH NSW 2108
Ms Esther Kaye Strain	4 Norma Road PALM BEACH NSW 2108
Justine Bradley	4 Pacific Road PALM BEACH NSW 2108
The Trocadero Building & Investment Co Pty LTD	PO Box 420 LANE COVE NSW 1595
Doyle Consulting Group	3a Kendall Road CASTLE COVE NSW 2069

The following issues were raised in the submissions:

- Visual privacy for 2-8 Pacific Parade and 8 Norma Road. Request for a full height privacy screen for the length of the north-eastern deck elevation.
- Overshadowing impact for 8 Norma Road
- Visual bulk and scale of the proposal. The proposal exceeds the height limit.
- Lack of landscaping and removal of trees
- View impacts for 8 Norma Road
- Concerns about the commercial use of the art studio
- Query where parking is on the site.

The above issues are addressed as follows:

- **Visual privacy for 2-8 Pacific Parade and 8 Norma Road. Request for a full height privacy screen for the length of the north-eastern deck elevation.**

  Comment: Visual privacy is discussed in detail later within this report under Control C1.5. As a result of amendments to the application, Council is satisfied a reasonable balance has been struck between privacy and obtaining views/outlook from the site.

- **Overshadowing impact for 8 Norma Road**

  Comment: Solar access and overshadowing is discussed in detail later in this report under Control C1.4. The application is accompanied by detailed view from sun diagrams and the proposal has been amended to ensure a high level of solar access is maintained to the living room windows and private open space of 8 Norma Road. For the reasons discussed later in

the report, the proposal is acceptable.

- **Visual bulk and scale of the proposal. The proposal exceeds the height limit.**

  Comment: The building height exceedance is addressed within the Clause 4.6 Assessment later in this report. Through the building articulation, setbacks and material selection the proposal will have an acceptable bulk and visual appearance. The studio at the rear is compliant with all the planning controls and as such, presents an acceptable bulk and scale.

  The main dwelling is altered at the front half of the building to create a contemporary addition, whilst leaving the centre of the site as a single storey building which affords a high level of solar access and privacy to the rear of the adjoining sites. Despite the technical breaches to the numerical controls (which are discussed in detail later in this report) the proposal is acceptable on merit.

  The front setback landscape treatment and character of the site is left unchanged, with natural rock outcrops and landscape planting retained. As such, the proposal will not have a significant impact on the streetscape given the building setback and retention of the established gardens. The balcony elements are lightweight and the upper level roof follows the slope of the land to minimise bulk and scale. Overall, the proposal presents an acceptable bulk and scale to the street and surrounding properties.

- **Lack of landscaping and removal of trees**

  Comment: The proposal increases the quantum of landscaping on the site by removal of excess concrete driveways and replacement with turf and landscaping. The removal of three small native trees will be offset by replacement planting and is supported by Council's Landscape Officer. The other trees proposed to be removed are 'exempt' species and new landscaping will be implemented, as per the landscape plan.

- **View impacts for 8 Norma Road**

  Comment: View impacts and a view sharing assessment is undertaken in detail under Clause C1.3 PDCP. The proposal results in an acceptable view sharing outcome and significant views are maintained from the adjoining property.

- **Concerns about the commercial use of the art studio**

  Comment: This is discussed under Clause C1.14 PDCP. The art studio is considered an ancillary component of the dwelling and a home business is permitted without development consent. A condition has also been applied to ensure the studio is not used as a secondary dwelling, without prior written approval from Council. There is nothing in the application submitted, or will be approved as part of this application, that implies or permits a commercial use anything behind a home business (if that is what is pursued by the resident).

- **Query where parking is on the site.**

  Comment: The proposal maintains the existing parking arrangements for the site, with cars to be parked along the north-eastern side of the dwelling which is consistent with the existing situation.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	**Supported Subject to Conditions** Council's Landscape Referral is assessed against the Pittwater Local Environment Plan (PLEP) clause C4 zone Environmental Living, and the following Pittwater 21 Development Control Plan (PDCP) controls (but not limited to): B4.22 Preservation of Trees and Bushland Vegetation; C1.1 Landscaping; D12 Palm Beach Locality. The site is located in the C4 Environmental Living zone, requiring development to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment with ecological, scientific or aesthetic values, including the retention of natural landscape features and existing trees, to satisfy the landscape objectives of the C4 Environmental Living zone. It is noted that the proposed development does not achieve the 60% landscape area under the PDCP requirement, and this matter shall be assessed and determined under merit consideration by the Assessing Planning Officer. A Arboricultural Impact Assessment (AIA) and Landscape Plans are submitted with the development application for consideration by Landscape Referral. The property includes both prescribed trees (protected under the PDCP) and exempt trees. All existing trees and vegetation within adjoining properties and within the road reserve shall be protected. Within the property three prescribed trees are impacted by the proposed works and should the application be approved will require removal as recommended by the AIA report, and these are trees 17, 20 and 21. A total of six prescribed trees within the property are proposed for retention and protection, and these are trees 2, 4, 5, 6. 23 and 24. Landscape Referral raise no concerns with the recommendations of the AIA report. Existing natural rock outcrops shall be preserved and conditions shall be imposed. The Landscape Plans include additional tree planting as canopy offset as well as other planting to satisfy the landscape intent of clause C4 zone Environmental Living and PDCP control C1.1.
NECC (Bushland and Biodiversity)	**Supported Subject to Conditions** The comments in this referral relate to the following applicable controls and provisions: • Planning for Bushfire Protection 2019 • Pittwater LEP - Clause 7.6 Biodiversity Protection

Internal Referral Body	Comments
	• Pittwater DCP - Clause B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land The proposal has been submitted with an arborist report that has assessed the condition of a total of 37 trees and recommended the removal of a total of 16 trees (7, 8, 9, 16, 17, 19, 20, 21, 30, 31, 32, 33, 34, 35, 36 and 37). Out of these proposed tree removals only trees 20 and 21 are considered prescribed. All other trees proposed to be removed are considered exempt or can be removed without Council's consent. The submitted landscape plan includes a total of 14 replacement trees and a range of additional shrubs and groundcovers. The landscape plan is found to be consistent with PLEP Clause 7.6 and PDCP B4.5 and includes a majority of native species including a range of canopy trees to replace the proposed removals. The application has been submitted with a bushfire report as the site is located on land identified on the Bushfire Prone Land Map. The bushfire report has awarded the lowest bushfire rating to the site and therefore no Asset Protection Zone measures have been recommended. The development is designed, sited and will be managed to avoid any significant adverse environmental impact.
NECC (Development Engineering)	**Supported Subject to Conditions** The proposed development is in Region 1. On-site detention is required. A geotechnical report has been provided. Vehicle crossing construction is not proposed. Development engineering raises no objections to the proposed development, subject to conditions.
NECC (Flooding)	**Supported without Conditions** The proposal is for major alterations and additions to the existing dwelling. A small area in the front of the property is within the Medium Risk Flood Planning Precinct. All the proposed works are outside this area. The proposal complies with Section B3.11 of the Pittwater DCP and Clause 5.21 of the Pittwater LEP. There are no flood related development controls.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021,	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is

External Referral Body	Comments
s2.48	assumed that no objections are raised and no conditions are recommended.

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. A1733634 dated 26 January 2024).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	Max 9.1m	7%	**No**

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone C4 Environmental Living

The C4 zone objectives are considered below:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
  Comment: The proposal has demonstrated it will retain reasonable amenity for surrounding areas. The proposal has adopted a minimal approach to site disturbance, particularly at the front of the site which is left in the current state and this contributes to the aesthetic value of the

area.

- *To ensure that residential development does not have an adverse effect on those values.*
  Comment: The proposal does not have an adverse impact on the scenic value of the area with a presentation from the public domain that is consistent with the surrounding lands, with the height having only a minor breach of the height control due to the slope of the land.

- *To provide for residential development of a low density and scale integrated with the landform and landscape.*
  Comment: The proposal is low density consisting of a dwelling house only. The proposal steps down the site with the slope of the land and integrates landscaping around the building footprint to allow landscaping to soften the building,

- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors*
  Comment: The proposal does not require the removal of any significant trees and will provide new landscape planting within the site to offset the loss of three small native trees.

The proposal is permissible in the zone and meets the zone objectives.

4.6 Exceptions to development standards

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

Development standard: Clause 4.3 Height of Buildings
Requirement: 8.5m
Proposed: 9.1m
Percentage of variation: 7%

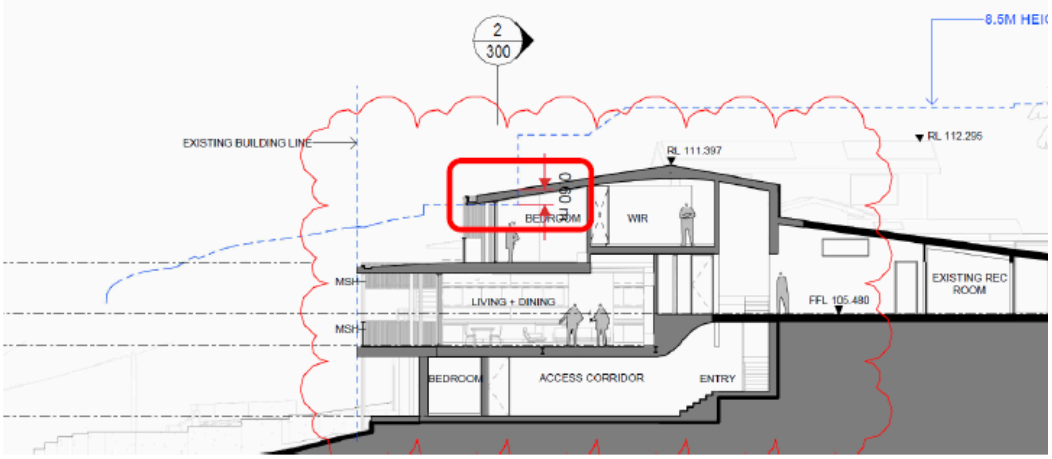


Figure 1 Proposed section (1) showing height plane (height non-compliance clouded in red)

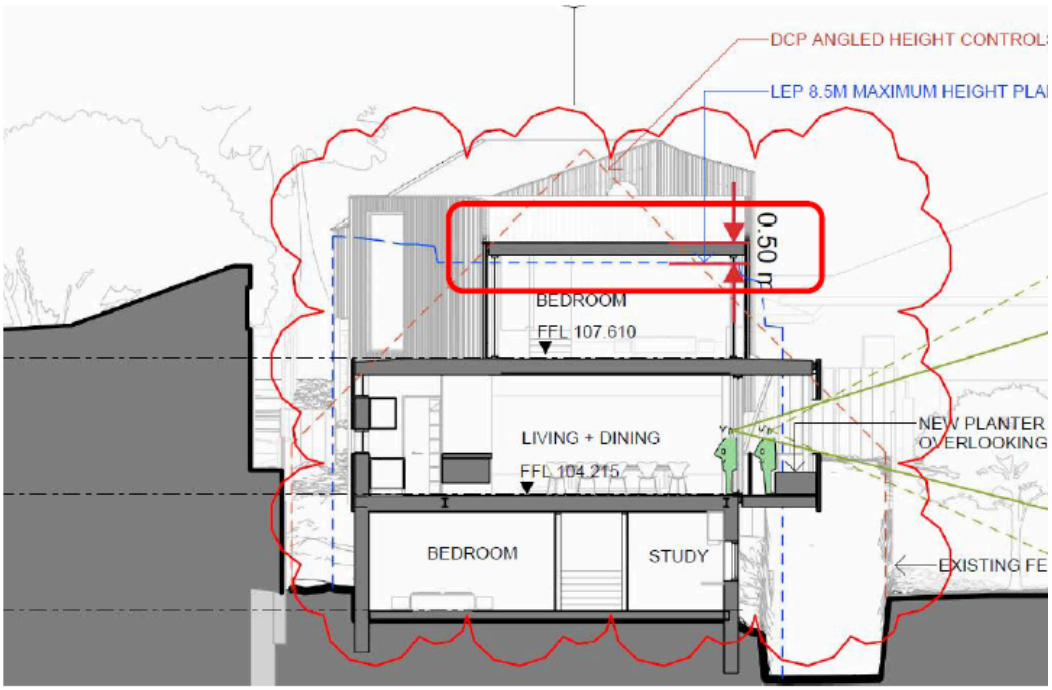


Figure 2 Proposed section (2) showing height plane (height non-compliance clouded in red)

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

Subclause (1) of this clause provides that:

(1) The objectives of this clause are as follows:
(a) to provide an appropriate degree of flexibility in applying certain development standards to

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

Comment:

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

Subclause (2) of this clause provides that:

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

Comment:

Clause 4.3 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 is unreasonable or unnecessary in the circumstances of this application which are outlined within the applications written request. On pages 7-12 of the written request, the applicant has set out how the proposal is consistent with the objectives of the height of building control, therefore establishing compliance is unreasonable and unnecessary by 'The First Way' as outlined in Wehbe V Pittwater Council (2007) NSW LEC 827.

For completeness, Council's Assessment of the proposal against the objectives of the development 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,

Comment: The minor encroachment to the height does not render the entire development out of character with the locality. There are numerous examples of 2-3 storey buildings with minor encroachments to the building height plane which form both the immediate and wider locality of Palm Beach and Whale Beach. The proposal is well articulated to mitigate the building bulk and scale.

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

Comment: The adjoining building at 8 Norma Road has a central roof RL of 112.30 and an RL of 109.74 to the forward extension of the building towards the street. The proposal has a highest RL of

111.4, which is less than the maximum height of the adjoining building. The building has been sloped down towards the street to minimise the height at the front of the site and relate to the adjoining site towards the street. The proposal, despite the minor encroachment, is of comparable scale to the surrounding buildings.

(c) to minimise any overshadowing of neighbouring properties,

Comment: Detailed shadow diagrams have been provided which demonstrate a high level of solar access to be retained to the adjoining property at 8 Norma Road for the living room windows and private open space areas. The proposal is largely below the maximum height and maintains a single storey height through the centre of the site which affords a high level of solar access to the adjoining property, despite the minor height breach which does not detract from the ability for high levels of solar access to be provided.

(d) to allow for the reasonable sharing of views,

Comment: The proposal allows for view sharing as detailed later within this assessment and the breaching element does not cause an adverse view impact.

(e) to encourage buildings that are designed to respond sensitively to the natural topography,

Comment: The proposal is appropriately stepped with the site topography and the height breach is a consequence of some prior site excavation. The proposal maintains the natural site features at the front of the site which further respects the site topography.

(f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

Comment: The proposal is a comparable scale and size to the surrounding properties in Palm Beach and Whale beach and does not result in impacts to any heritage items.

Conclusion on "unreasonable or unnecessary"

Council is satisfied that the proposal meets the objectives of the standard and the applicant has also demonstrated within the written request that the proposal meets the objectives of the standard. Therefore, it is concluded that 'The First Way' as outlined in Wehbe V Pittwater Council (2007) NSW LEC 827 is achieved and strict compliance is considered unreasonable and unnecessary.

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

Comment:

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

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

The Clause 4.6 Request argues, in part:

1. The height breach is a result of the site topography, which has a fall of approximately 3m over the length of the dwelling. This is a specific condition that the LEP height limit does not contemplate, in that the height limit applies equally to a vast area of the LGA with distinctly different topography. The proposed dwelling has been designed to respond to the topography of the site, stepping the built form and incorporating simple roof forms to limit the physical bulk or scale of the development. Furthermore, the development has provided increased setbacks to the side boundaries and also reduces the extent of non-compliance. Therefore, the height non-compliance is a result of the steep and undulating topography.

2. In addition to the above, it is only where the topography falls suddenly, due to the previously modified landform, that results in a non-compliance. This is attributed to the roof form of the upper level, which has been designed as a simple roof that slopes down with the topography of the site, in order to reduce the scale of the top level and limit the visual bulk of the overall development. Further to this, the uppermost level, where the non-compliance is present, is recessed beyond the floor levels below to ensure it responds to the topography and minimises visual and physical impact.

3. Following the above, the maximum extent of variation sought is 0.6m or 7% and relates to a minor roof form which improves the articulation of the building. It has been held in Eather v Randwick City Council [2021] NSWLEC 1075 that a particularly small departure from the actual numerical standard which lacks any material impacts consequential of the departure will be a sufficient environmental planning ground to justify contravening the development standard. The amenity impacts of the non-compliance are discussed in further detail within these planning grounds and the objectives of the standard.

4. When viewed from the streetscape, the height breach will not be visually jarring when compared to the bulk and scale of residential dwellings surrounding the site, which often present as two and three storeys, including the existing dwelling on the site.

5. The social benefits of providing improved dwelling stock within a highly sought after location should be given weight in the consideration of the variation request. The proposed works will significantly improve the visual qualities of the proposed dwelling (over the existing dwelling) and it would be a loss to the future occupants (and contrary to the public interest) to deny the variation and require alterations to the design that seek to ultimately improve residential amenity and building aesthetics.

6. It is considered that there is an absence of any significant material impacts of the proposed non-compliance on the amenity of the environmental values of the locality, the amenity of future building occupants and on area character. Specifically:
a. The extent of the non-compliance creates no additional adverse overshadowing to adjoining properties as demonstrated in the submitted shadow diagrams. This is also discussed in detail under Objective (c), where it is demonstrated that the impact created by the non-compliance is insignificant
b. The height breach does not result in any additional privacy impacts, since the areas which extend above the height limit relate to a non-habitable roof form, and ceiling space of the master bedroom which does not create any adverse privacy issues. The non-compliance pertaining to the ceiling space is limited where any impact is created by a compliant form from a low trafficable bedroom, ensuring that there will not be any adverse aural or visual privacy impacts. The height variation will have no greater impact on the privacy of adjoining properties when compared to the complying elements of the building; and
c. The proposed development will not result in any material loss of views or outlook when compared to a building with a compliant height, given the topography of the land. The height non-compliance is located where the site slopes down, and as such, for properties at the rear, the height compliant

building elements sit higher than the non-compliant elements. Therefore, any views over the rear boundary of the site that would be impacted by the proposal would be impacted by height compliant elements.

As discussed under Objective (d), the views of No. 8 Norma Road will be protected, particularly from the front deck, where the non-compliance has been designed to avoid any adverse view loss impact with prominent land and water interface views maintained. Overall, when considering the extent of view sharing against the backdrop of the applicable planning controls, the extent of view loss caused by the non-compliant element would be insignificant or nil.

7. The height breach allows for a master bedroom which will provide a higher level of amenity to occupants of the development. The minor, non-invasive additional height also permits the provision of a contemporary roof form which is considered to appropriately relate to the character of the area and will improve the overall articulation of the building when viewed form the waterway.

8. The proposed building envelope has been carefully considered and is reflective of the topographical features of the site and compatible with the neighbouring dwellings and views afforded toward the waterway. The proposed dwelling will comfortably relate to the residential character of the locality and has a compatible built form when compared to its neighbours with regards height and is therefore considered to be appropriate in the locality, particularly in relation to bulk and scale.

9. The proposal provides for an appropriate scale and form that reflects the desired future character for development in the area. From the streetscape, the proposed development will be perceived as a compatibly scaled residential dwelling which responds to the topography of the locality and has incorporated high quality architectural elements and represents a significant improvement over the existing dwelling, ensuring that the non-compliance will not be perceivable by the casual observer and will not alter the overall bulk, scale and character of the development.

10. The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:
a. The proposal promotes the orderly and economic use and development of land through the redevelopment of an underutilised site for residential uses (1.3(c));
b. The proposed developed promotes good design and amenity of the built environment through a well-considered design which is responsive to its setting and context (1.3(g)).

Comment on Planning Grounds

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

- The departure from the development standard is due to the change in the site topography which is caused by prior disturbance of the site and altered the natural slope of the land, creating an anomaly in the landform.
- The applicant has detailed, in points 1 to 10 above, the environmental planning grounds that are generally agreed with. Namely, there is an absence of any impact, the scale and character will remain compatible with the surrounding locality and the non-compliance is a result of the site topography and previous alteration to the nature landform.

Public Interest:

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

Conclusion:

Council is satisfied as to the matters set out in Clause 4.6 of the PLEP 2014.

It is considered on balance, that having regard to the particular circumstances due to the change in the site topography which is caused by prior disturbance of the site and has altered the natural slope of the land and created an anomaly in the landform, the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

7.2 Earthworks

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

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 waterway, drinking water catchment or environmentally sensitive area

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

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

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

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

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

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

7.7 Geotechnical hazards

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

(a) site layout, including access,
(b) the development's design and construction methods,
(c) the amount of cut and fill that will be required for the development,
(d) waste water management, stormwater and drainage across the land,
(e) the geotechnical constraints of the site,
(f) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Comment:
The proposed development is supported by a geotechnical risk assessment, architectural plans, an excavation plan, and stormwater management plans that demonstrate all geotechnical risks have been taken into account. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

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

Comment:
The proposed development is supported by a geotechnical risk assessment and stormwater management plans that demonstrate waste water, stormwater and drainage are suitably managed on site. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

(b) the consent authority is satisfied that:
(i) the development is designed, sited, and will be managed to avoid any geotechnical risk and

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

Comment:
The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent. As such, Council can be satisfied that the proposed development has been designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m or consistent with prevailing	Maintains existing building line	N/A	Yes
Rear building line	6.5m	6.5m	N/A	Yes
Side building line	2.5m (North-east)	Building - 3.5m Deck 1.7m	N/A	Yes **No**
	1m (South-west)	1.43m	N/A	Yes
Building envelope	3.5m	Outside envelope	N/A	**No**
	3.5m	Outside envelope	N/A	**No**
Landscaped area	60%	Existing - 47.2% Proposed - 49.9%	N/A	**No - However increase from existing**

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
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 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

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.2 Scenic protection - General	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	Yes	Yes
D12.6 Side and rear building line	No	Yes
D12.8 Building envelope	No	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	No	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

C1.3 View Sharing

Merit consideration

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

- *A reasonable sharing of views amongst dwellings.*

  Comment:

  In determining the extent of potential view loss to adjoining and nearby properties, the four (4)

planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, are applied to the proposal.

1. Nature of the views affected

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

Comment to Principle 1: The views to be impacted are from No 8 Norma Road. The views to be impacted are of the ocean horizon and from one room, a small part of land water interface which consists of distant headlands to the central coast. Views of the sky are also impacted.

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

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

Comment to Principle 2: The views to be impacted are all across the side boundary of the site. The views are both from a standing and sitting position. The views across the front boundary are not affected.

3. Extent of impact

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

Comment to Principle 3: There are three rooms which are considered to have a view impacted. The front deck is also considered

Room 1 - Upper floor bedroom. This room has a view over the side boundary and a potion of the view consisting of the ocean horizon and a portion of the distant headland will be impacted by the proposal. See below extract from the visual impact assessment:



Figure 1 - Existing view from Room 1.

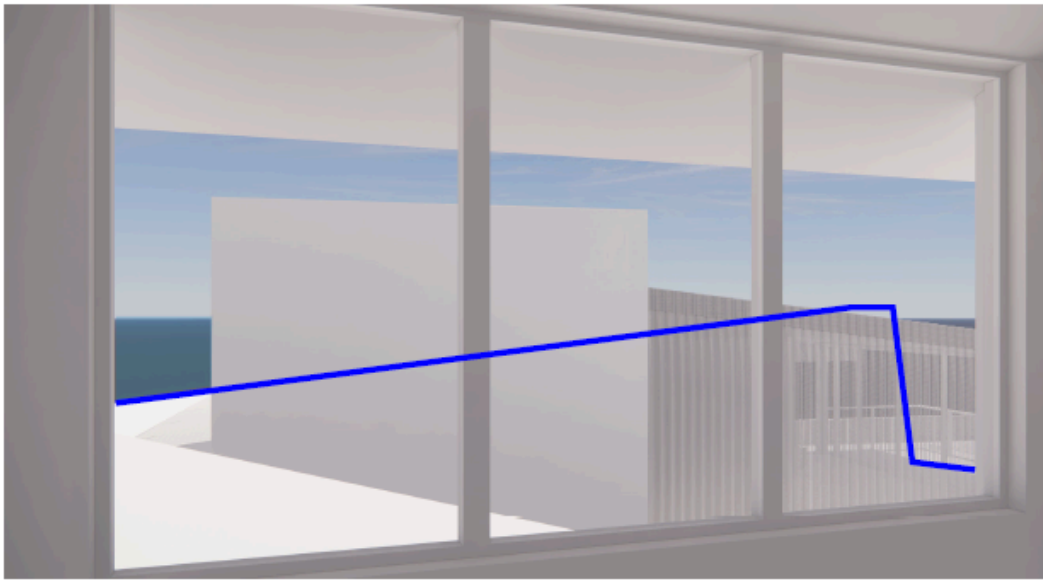


Figure 2 - Montage of proposal and portion of view to be impacted.

It is relevant to note that there is also a view from this bedroom looking south-east which will not be affected. This view contains the ocean horizon and Whale Beach and surrounding headland. See below:



The applicant has provided a detail of a 'compliant' scheme and this demonstrates that there would be the same level of impact in a proposal which fully complied with the building height and envelope:

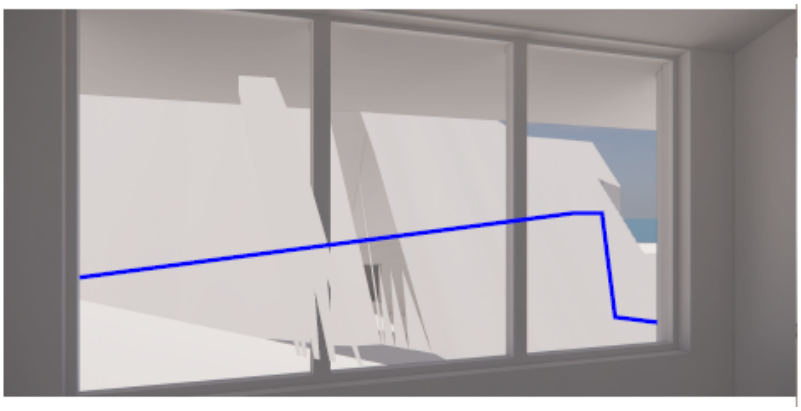


Figure 4 - Montage of permissible height and envelope looking out of the side window of Room 1.

Room 2 - Upper floor Study - This room has a view over the side boundary, the view consisting of the ocean horizon and a portion of the distant headland. A portion of the ocean horizon will be impacted, however, the headland retained. See below extract from the visual impact assessment.



Figure 5 - View from the study looking north-east over the side boundary.



Figure 6 - Montage of the development from the study window looking north-east.

Room 3 - Kitchen - There is a central window to the kitchen over the side boundary which currently has a view of the ocean horizon. This will be obscured by the proposal. However, the view over the front balcony from the kitchen will be retained.



Figure 7 - Photo taken from the kitchen, looking south-east, standing position.

Front Balcony - The front balcony, adjoining the living room, will have a minor impact to the skyline, with the ocean horizon maintained between the balustrade and the architectural mesh screen above at the gutter line. It is noted that the proposal was further amended from the below image, with the balcony pulled back another 1.3m away from the street to align with the existing balcony alignment, thus reducing further the protrusion into the view corridor.

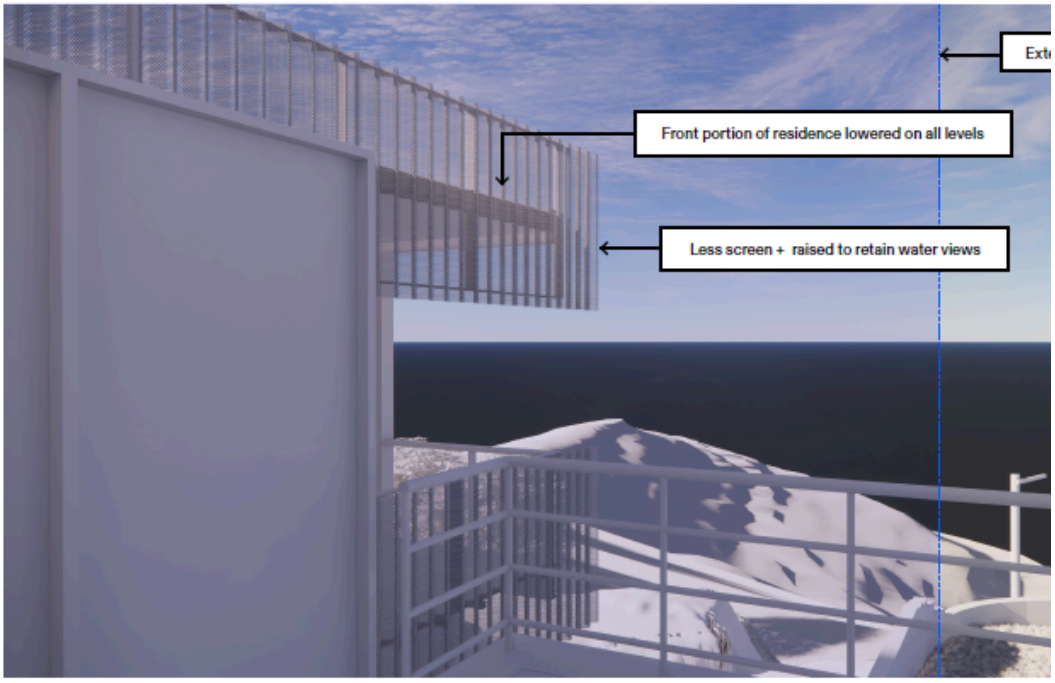


Figure 8 - Montage of the development looking south-east from the front balcony adjoining the living room.

The extent of impact is considered to be minor. There are significant views of Whale Beach and the ocean horizon looking towards the south-east from the living room, bedroom, kitchen and outdoor decks which are not impacted by the proposal. The impact to the ocean horizon and a small portion of a distant headland is over a side boundary, however, each room will retain significant views. The view impact from the kitchen side window would be experienced in a fully complying scenario.

Overall, the impact is considered to be minor.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

The applicant has provided a view impact assessment with photomontages showing the proposed scenario in comparison to a complying scenario. It is evident that these view impacts would be experienced in a complying scenario and the non-compliance with the building height

and envelope do not contribute to water view impacts.

The proposal has demonstrated skillful design by concentrating the upper level addition at the front of the site which maintains a cross boundary views from the study towards the north-east. The side boundary view from the study is highly vulnerable to a view impact, however, has been skillfully retained by the gap between the front addition and the studio. The side view from the front boundary is retained through a gap in the balustrade/gutter and this shows a skillful level of design. Overall, the proposal has demonstrated a sufficiently skillful design.

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

  Comment:

  There is no unreasonable impact to Public views.

- *Canopy trees take priority over views.*

  Comment:

  The proposal does not seek to remove canopy trees to obtain views.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

C1.4 Solar Access

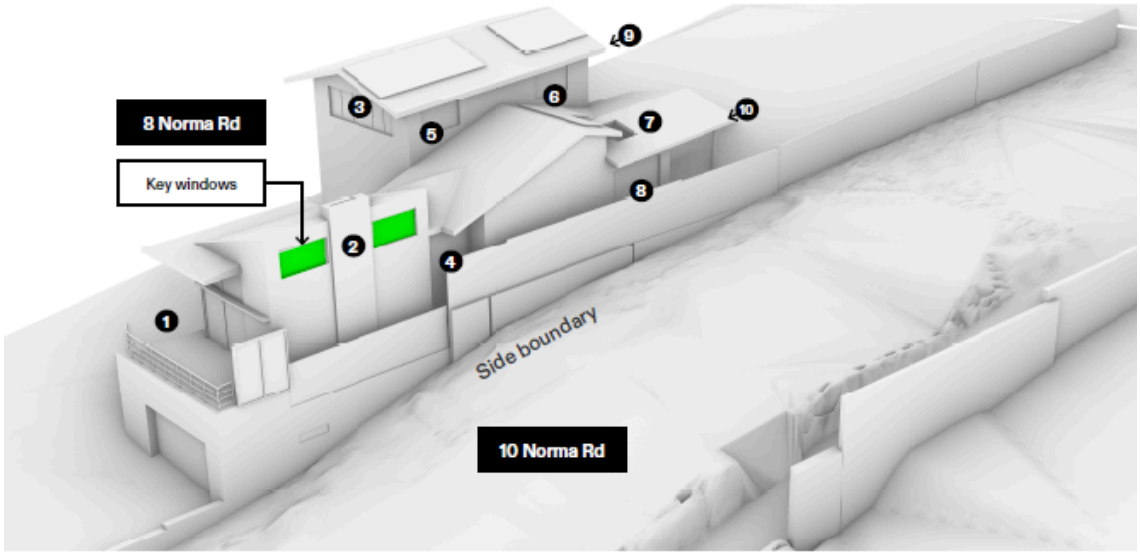
The DCP contains the following solar access controls:

The main private open space of each dwelling and the main private open space of any adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st.

Comment: The application is accompanied by diagrams showing the 'view from sun' which demonstrate how a high level of solar access will be obtained to the POS located in the rear yard of the adjoining dwelling at 8 Norma Road. The area adjoining the rear sun room will continually receive solar access between 9am and 3pm. The south-east facing deck at the front of the property will also continued to receive sun between 9am and 1pm, when it then becomes self-shadowed. Overall, the adjoining property maintains a high level of solar access to multiple POS areas.

Windows to the principal living area of the proposal, and windows to the principal living area of adjoining dwellings, are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st (that is, to at least 50% of the glazed area of those windows).

Comment: There is one centrally located window to the kitchen/living room that will be impacted by the proposal, numbered window 4 on the below diagram:



Updated survey data:

1	Main living room windows	Surveyed
2	Living room clerestory windows	Surveyed
3	Main bedroom windows	Surveyed
4	Kitchen/Living window	Surveyed
5	Side bedroom window	Surveyed
6	Side study window	Surveyed
7	Sunroom Skylight	Surveyed
8	Side sunroom window	Surveyed
9	(Unseen) North study window	Surveyed
10	(Unseen) North sun room window	Surveyed

The applicant has undertaken a solar study and demonstrated that due to the location of the window, central to the site, it is highly susceptible to overshadowing and would still be overshadowed in a fully compliant scheme. Therefore, the impact to window 4 is reasonable. It is also not caused by any non-compliant element.

Window 2 (two clearstory windows) to the living room will receive solar access between 9am and 3pm (6 hours), with the upper floor being setback from the southern boundary to afford high levels of solar access to the clearstory windows. At least 50% of the clearstory windows are in sunlight at all times. The shadow diagrams show that even in a fully compliant scenario, there would be some impact to the clearstory windows due to their location. Furthermore, Window 8 to the sunroom will not be impacted and will receive sunlight all day.

The applicant has provided a number of diagrams comparing the proposal to a complying envelope and the difference between the sunlight access. Council is satisfied that the non-compliant elements (height and envelope) do not result in unreasonable solar access impacts and a high level of solar amenity is afforded to the property on the southern side.

C1.5 Visual Privacy

The proposal has been designed with the reasonable retention of privacy in mind, whilst obtaining the

significant views available from the site given the elevated position of the site.

Studio
The studio at the rear has been designed with minimal window openings to maintain privacy for the adjoining sites.

Proposed Level 1
The deck off level 1 has been designed in a way that allows the reasonable retention of privacy for the adjoining properties to the north-east, whilst allowing distant ocean and headland views towards Palm Beach and the Central Coast to be obtained. The proposed front balcony does not protrude any further towards the existing front boundary as to maintain the existing privacy outcomes for the adjoining properties.

The house at present has an elevated balcony at a nil setback adjoining the north-eastern boundary. Upon review of the previous (historic) consent issued for this balcony, a privacy screen was required as a condition along the north-eastern elevation. It is evident that this was not constructed or has since been removed, however, this has been a long standing situation. Therefore, this is not considered to be a precedent and the proposed balcony is considered on its own merit (and not measured against the existing situation, although, it is an improvement over this situation).

The proposed balcony includes a 1.7m setback to the north-eastern boundary. Furthermore, the entire length along the north-eastern side will consist of a 1m wide landscape planter box which will ensure views are directed outwards and will reduce the cone of vision from inside the house. The views are promoted outwards, rather than downwards over the side boundary and into the rear gardens of the adjoining properties to the north-east. The planter box also means that the north-eastern area of the balcony is not usable for entertaining or a dimension suitable to place chairs/tables on this part of the balcony. Council is satisfied the design of the planter will promote views outwards and restrict views downwards, importantly from within the living room and the narrow section of the deck along the north-east.



Figure 1 - Extract from the applicants documentation showing narrowed cone of vision due to the planter box. Note, the side facing window on the upper level has since been deleted and metal screen extended along the upper level balcony, as such, no overlooking from the upper level balcony from the last set of plans.

The rear façade of the dwelling at 4 Pacific Road is approximately 20m from the boundary and balcony, therefore, this is sufficient spatial separation to mitigate views into the house (the DCP requiring 9m separation). There is currently no house on No.6 Pacific Road, however, the balcony is off-set from the rear boundary of this lot. No 8 is a significant distance away (excess of 9m, compliant with the DCP) and therefore there is sufficient spatial separation to mitigate direct overlooking.

Therefore, the proposed balcony design off Level 1 has struck a reasonable balance between retaining significant views towards the north-east and retaining reasonable privacy to the adjoining site by use of a planter box and spatial separation.

Proposed Level 2

The upper level contains full height metal mesh screens along the side elevations to mitigate privacy. The original proposal had a window looking north-east without a screen. The application was amended to include the full height screening to mitigate privacy from the upper level. Similarly, the balcony has been amended to reduce in size and extend the metal screening along the side elevations, therefore,

promoting views over the front boundary only from the upper level. The upper floor has been designed to retain reasonable privacy for the adjoining properties.

Privacy for No 8 Norma Road

The proposal has been amended to further pull the L1 balcony back in line with the existing balcony alignment, which will assist further with privacy. There is an existing privacy screen on the south east facing deck off No 8, which sufficiently mitigates views between the properties. A further screen along the south-western edge of the L1 balcony would close off ocean horizon views which have been maintained through balcony design. Given the balcony is at the street frontage, it is already exposed and further screening is not considered necessary.

The studio design has included no windows facing No 8 Norma Road to ensure privacy is maintained.

The proposed kitchen window is off-set from the level of the clearstory windows on No. 8 and is kept to a narrow form to minimise privacy impacts.

C1.14 Separately Accessible Structures

The DCP allows the following in relation to studios/separate structures:

A separately accessible structure may be permitted for use as a studio, home office, workshop area, rumpus room and the like, provided that:

i) it is ancillary to a dwelling;
ii) it is not designed for separate habitation and does not contain any cooking facilities.

Council is satisfied that the studio at the rear of the site is not designed to be used for separate habitation and is ancillary to the dwelling house.

It is noted the land uses of 'home office, home business or home occupation' are permitted without any consent from Council. As such, the use of the art studio for any of these purposes is permitted without any consent from Council and is permitted in the C4 Zone.

A condition will be applied to ensure no cooking facilities are installed in the studio to ensure it is not capable of being used for separate habitation.

D12.6 Side and rear building line

DCP Control

The DCP requires a 2.5m side setback to one side boundary and a 1m setback to the other side boundary.

The building façade has a minimum setback of 1.43m to the south-western side and a minimum setback of 3.5m to the north-eastern side of the building. However, the balcony on the north-eastern side has a setback of 1.7m, which is non-compliant with the 2.5m control.

The DCP contains a variation clause which allows a variation to the side setback to be considered when the proposal is for alterations and additions to an existing dwelling, if the outcomes of the control are achieved. The proposal makes use of the existing building footprint and provides alterations which

result in numerical breaches of the setbacks, however, are considered on merit below.

Merit Consideration

In reviewing the variation, the proposal is considered against the outcomes of the control as follows:

To achieve the desired future character of the Locality. (S)

Comment: The proposal presents as a part two/part three storey dwelling surrounded by a landscape setting, which is consistent with the surrounding locality. The vast majority of the building sits below the height limit and is a scale that is compatible with the surrounding buildings.

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

Comment: The encroaching deck is an open structure that does not contribute to significant bulk and scale, with the façade of the building setback in accordance with the control and the upper level stepped in from the side boundaries to minimise building bulk.

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

Comment: The portion of encroaching deck does not directly impact views and view sharing is achieved.

To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.

Comment: Views are discussed elsewhere within this report. The portion of encroaching deck does not directly impact views and view sharing is achieved.

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

Comment: The solar access outcomes and privacy outcomes are discussed in detail later in this report. The proposal maintains reasonable amenity for the adjoining sites. In particular, a high level of solar access is achieved for the adjoining site to the south. The full length of the deck has a planter box to ensure views are directed outwards, rather than downwards into the rear setback area of the adjoining site to the north-east. There is a balance to be struck between obtaining significant views towards the north-east and the maintenance of privacy. The planter box ensures that this balance is achieved. There is more than 9m spatial separation between the deck and any habitable room of the adjoining property.

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

Comment: New landscape planting is proposed to compliment the existing building. Council's landscape officer supports the proposal. The landscaping presenting to the street is unchanged.

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

Comment: Access is provided around the building.

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

Comment: The proposal does not result in any significant trees being removed and landscape planting

is proposed which is supported by Council's landscape officer.

To ensure a landscaped buffer between commercial and residential zones is established.

Comment: Not applicable to the development.

The proposed development is not considered to give rise to any unreasonable impacts and is consistent with the outcomes of the control.

Therefore, a variation to the control is supported in this particular circumstance.

D12.8 Building envelope

Description of Non-Compliance

Clause D12.8 Building envelope of the P21DCP prescribes a 3.5m envelope to side boundaries of the property.

The proposal has encroachments to the building envelope which are shown in the below drawing:

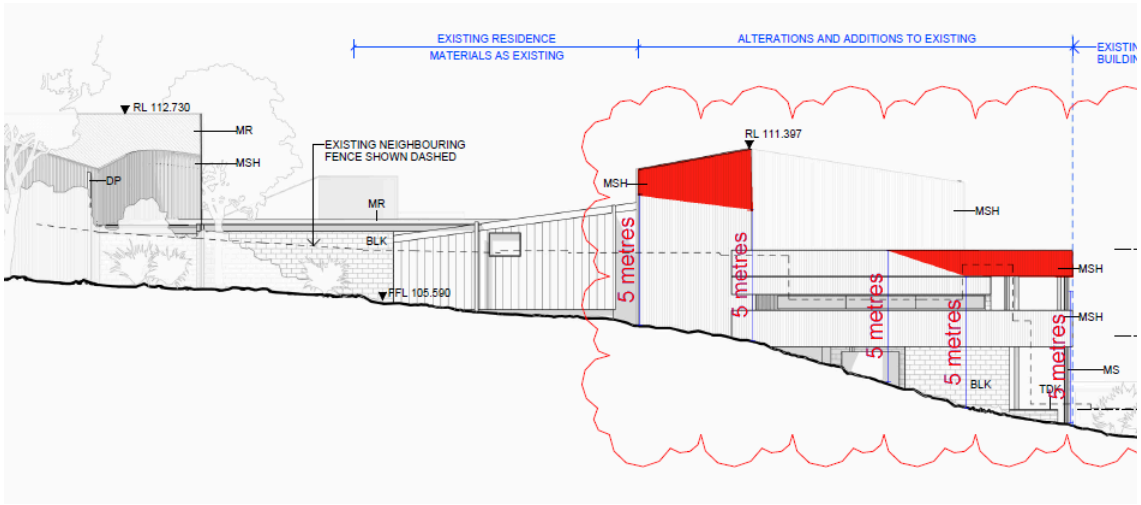


Figure 1 - South-western elevation - Red shows areas of encroachment.

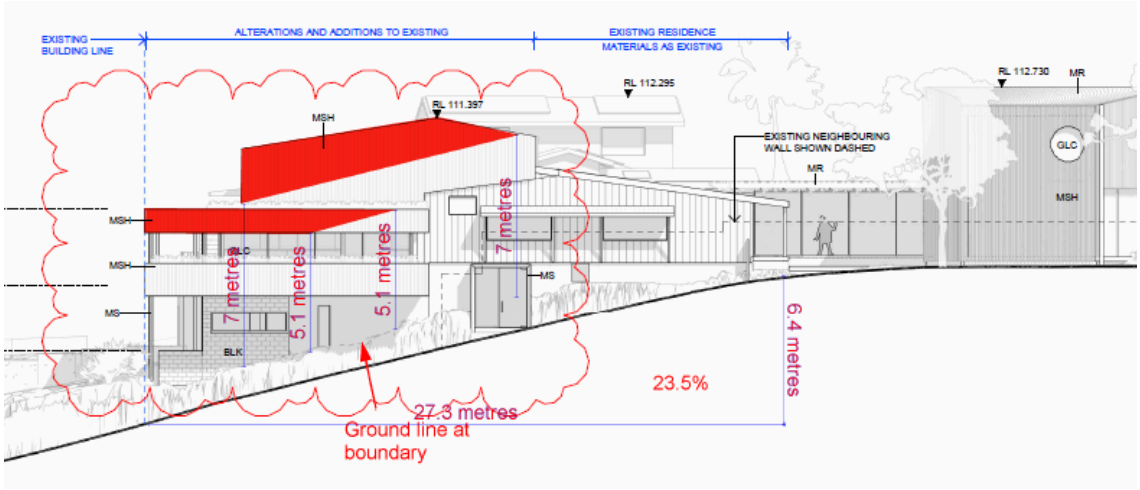


Figure 2 - North-eastern elevation - Red shows areas of encroachment.

It is noted that the DCP contains the following provision for alterations and additions:

"Council may consider a variation for the addition of a second storey where the existing dwelling is retained".

The building envelope encroachments is caused by the proposed alterations to the upper level, which sits above the existing building footprint. The slope of the land is also a contributing factor to the breach.

The location of the upper level, although having a non-compliance, has been positioned in such a way to afford solar access to the front and rear of the adjoining southern property. Despite the technical breach, the application has demonstrated that high levels of solar access will be afforded to the adjoining property and view sharing outcomes are maintained. The side elevations of the upper level have metal mesh screen treatment to mitigate privacy impacts and only a small balcony facing the street. Despite the breach, the upper level is stepped in from the side boundaries and the roof form responds to the slope of the land. The upper level is a comparable maximum RL to the adjoining building on 8 Norma Road and as such responds to the scale and context of the surrounding buildings. The non-compliant elements are placed in locations that do not result in amenity impacts, such as views and overshadowing.

Merit Consideration

With regard to the request for a variation, the development is considered against the underlying outcomes of the control as follows:

To achieve the desired future character of the Locality.

Comment: The proposal sits largely below the 8.5m height limit and is within a landscape setting. The retention of the established gardens and large front setback mean that the proposal will not have any significant impact on the streetscape or change the street character.

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

Comment: The are no significant canopy trees on the site, however, the landscaping in the front setback is retained and will soften the development as viewed from the street.

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

Comment: The proposal maintains the existing spatial characteristics to the street through retaining the existing front setback alignment and landscape treatment within the front setback. This is a significant factor in maintaining street character and the existing natural environment. The encroaching portions of the building are not considered to have an detrimental impact to the streetscape given the position of the building setback a fair way from the street and the landscape road reserve and front setback which creates a landscape buffer between the building and public domain.

The bulk and scale of the built form is minimised.

Comment: The upper level is stepped in from the side boundaries and the roof form responds to the slope of the land. The upper level is a comparable maximum RL to the adjoining building on 8 Norma Road and as such responds to the scale and context of the surrounding buildings.

Equitable preservation of views and vistas to and/or from public/private places.

Comment: View sharing is discussed in detail elsewhere within this report. There are no significant view impacts generated by the non-compliant portions of the buildings.

To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.

Comment: Solar access is discussed in detail elsewhere within this report. The location of the upper level, although having a non-compliance, has been positioned in such a way to afford a high level of solar access to the front and rear of the adjoining southern property.

The areas of encroaching building do not result in adverse overlooking as they have mesh screens for the entire length of the side facing facade. The balcony is a small, forward facing balcony which is not a of a size that could be used for entertaining.

Vegetation is retained and enhanced to visually reduce the built form.

Comment: The proposal does not result in the removal of any significant canopy trees and replacement planting will be required to off-set the loss of three small locally native trees.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant outcomes of the P 21 DCP 2014 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.

D12.10 Landscaped Area - Environmentally Sensitive Land

The DCP requires that 60% of the site area be landscaped area.

The site, at present, comprises of 47.2% landscaping (479.4m^2).

The proposal for alterations and additions will result in an increase to the amount of landscaping to the site through the removal of existing hard stand areas, reduction of the paving at the rear and side of the property. The proposal will consist of 49.9% landscaping (505.1m^2).

As the amount of landscaping has been increased from the existing scenario, the proposal is supported.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of $22,553 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $2,255,300.

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

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

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

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

Council is satisfied that the Applicant's written request under Clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking to justify variation of the development standard contained within Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

PLANNING CONCLUSION

This proposal, for alterations and additions to a dwelling house and studio has been referred to the Development Determination Panel (DDP) due to the application receiving nine submissions.

The concerns raised in the objections have been addressed and resolved by a reduction in built form which has improved view sharing and solar access for the adjoining property to the south. The amendments to the size of the balconies, screening to the upper floor windows and inclusion of a planter box along the north-eastern edge of the deck have resolved privacy to a reasonable degrees, whilst maintaining highly valued views for the development.

The critical assessment issues are the issues raised in the submissions in relation to privacy, views and overshadowing. The assessment of the building height encroachment and the building envelope encroachment are also critical issues which are discussed in detail within the report and found to be acceptable on merit. The proposal has demonstrated a high level of amenity will be maintained for the adjoining properties and the upper levels are well articulated to reduce the overall bulk and scale, despite the numerical breaches.

Overall, the development is reasonable design solution 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 DA2024/0119 for Demolition work for alterations and additions to a dwelling house including a studio on land at Lot 434 DP 653277, 10 Norma 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. **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**
000	H	Cover Sheet	EMBECE	29/07/2024
002	C	Material Palette	EMBECE	25/01/2024
050	F	Demolition L0	EMBECE	29/07/2024
051	E	Demolition L1	EMBECE	29/07/2024
052	E	Demolition L2	EMBECE	29/07/2024
100	E	Proposed Site Plan	EMBECE	29/07/2024
110	I	Proposed L0	EMBECE	29/07/2024
111	I	Proposed L1	EMBECE	29/07/2024
112	H	Proposed L2	EMBECE	29/07/2024
113	B	Roof Plan	EMBECE	29/07/2024
200	H	Proposed Elevations	EMBECE	29/07/2024
201	H	Proposed Long Elevations	EMBECE	29/07/2024
300	I	Proposed Sections	EMBECE	29/07/2024
DA01	B	Landscape Concept Plan	Studio U.C	20/05/2024
DA02	B	Landscape Concept Plan - Site	Studio U.C	20/50/2024
DA03	B	Landscape Concept Plan - Studio Alternative	Studio U.C	20/05/2024
DA04	B	Planting Plan	Studio U.C	20/05/2024
C01	B	Cover Sheet	Civille	06/02/2024
C02	B	Existing Stormwater Plan	Civille	06/02/2024
C03	B	Proposed Stormwater Plan	Civille	06/02/2024
C04	B	Erosion and Sediment Control	Civille	06/02/2024
C05	B	Sediment and Erosion Details	Civille	06/02/2024
C06	B	Typical Details	Civille	06/02/2024

Approved Reports and Documentation			
Document Title	**Version Number**	**Prepared By**	**Date of Document**
BASIX Certificate No A1748363	-	Integreco Consulting Pty Ltd	21/05/2024
Stormwater Management Report	B	Civille	06/02/2024
Geotechnical Assessment Ref 36336BFrpt	-	JK Geotechnics	9/01/2024
Bush Fire Assessment Report J23/0624	1	Bushfire Consulting Services Pty Ltd	5/10/2023
Arboricultural Impact Assessment Report	-	Earthscape Horticultural Services	January 2024
Waste Management Plan	-	Applicant	Undated

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

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

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	05/03/2024

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

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

3. **Prescribed Conditions**

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

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

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

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

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

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

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

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

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

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

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

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

A. the name of the owner-builder, and

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

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

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

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

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

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

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

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

Reason: Legislative requirement.

4. **General Requirements**

(a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,

- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

(b) Construction certificate plans are to be in accordance with all finished levels identified on approved plans. Notes attached to plans indicating tolerances to levels are not approved.

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

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

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

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

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

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

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

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

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

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

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

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

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

i) Building/s that are to be erected

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

iii) Building/s that are to be demolished

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

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

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

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

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

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

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

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

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

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

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

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

(3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the

irrigation area for any wastewater system and is separate from any onsite stormwater management system.

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

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

FEES / CHARGES / CONTRIBUTIONS

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

A monetary contribution of $22,553.00 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 $2,255,300.00.

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.

6. **Security Bond**

A bond (determined from cost of works) of $10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

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

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

Reason: To protect native vegetation.

8. **On-Site Stormwater Detention Details**
The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by Civille, project number 2360, dated 06.02.2024. 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 4,500 litre on-site detention tank.
ii. Determination of an orifice size to limit flows from the on-site detention system to 2 l/s in the 1% AEP event.

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

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by JK Geotechnics dated 09.01.2024 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

11. **Tree Removal Within the Property**
This consent approves the removal of existing prescribed trees on the subject site as identified in the Arboricultural Impact Assessment. 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

12. **Protection of Rock and Sites of Significance**
All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works. Should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council (MLALC) are to be contacted.

Reason: Preservation of significant environmental features.

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

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

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

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

Reason: Tree and vegetation protection.

14. **Pre-clearance Survey - Certified by Project Ecologist**
Any habitat for for native wildlife (including tree hollows) approved for removal is to be inspected for native wildlife by a 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.

15. **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.

16. **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.

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

Reason: Public safety.

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

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

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

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

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

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

21. **Landscape Completion**
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 of 75 litres or as otherwise scheduled if greater in size; planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,
d) mass planting shall be in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,
e) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces.

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

Reason: Environmental amenity.

22. **Condition of Retained Vegetation**
Prior to the issue of an Occupation Certificate, a report prepared by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Principal Certifier, assessing the health and impact on all existing trees required to be retained on the approved Plans or as listed in the Arboricultural Impact Assessment, including the following information:
a) compliance to any Arborist recommendations for tree protection generally and during excavation works,
b) extent of damage sustained by vegetation as a result of the construction works,
c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree and vegetation protection.

23. **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.

24. **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.

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.

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

The Applicant shall create on the Title a restriction on the use of land and a positive covenant

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

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

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

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.

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

28. **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.

29. **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.

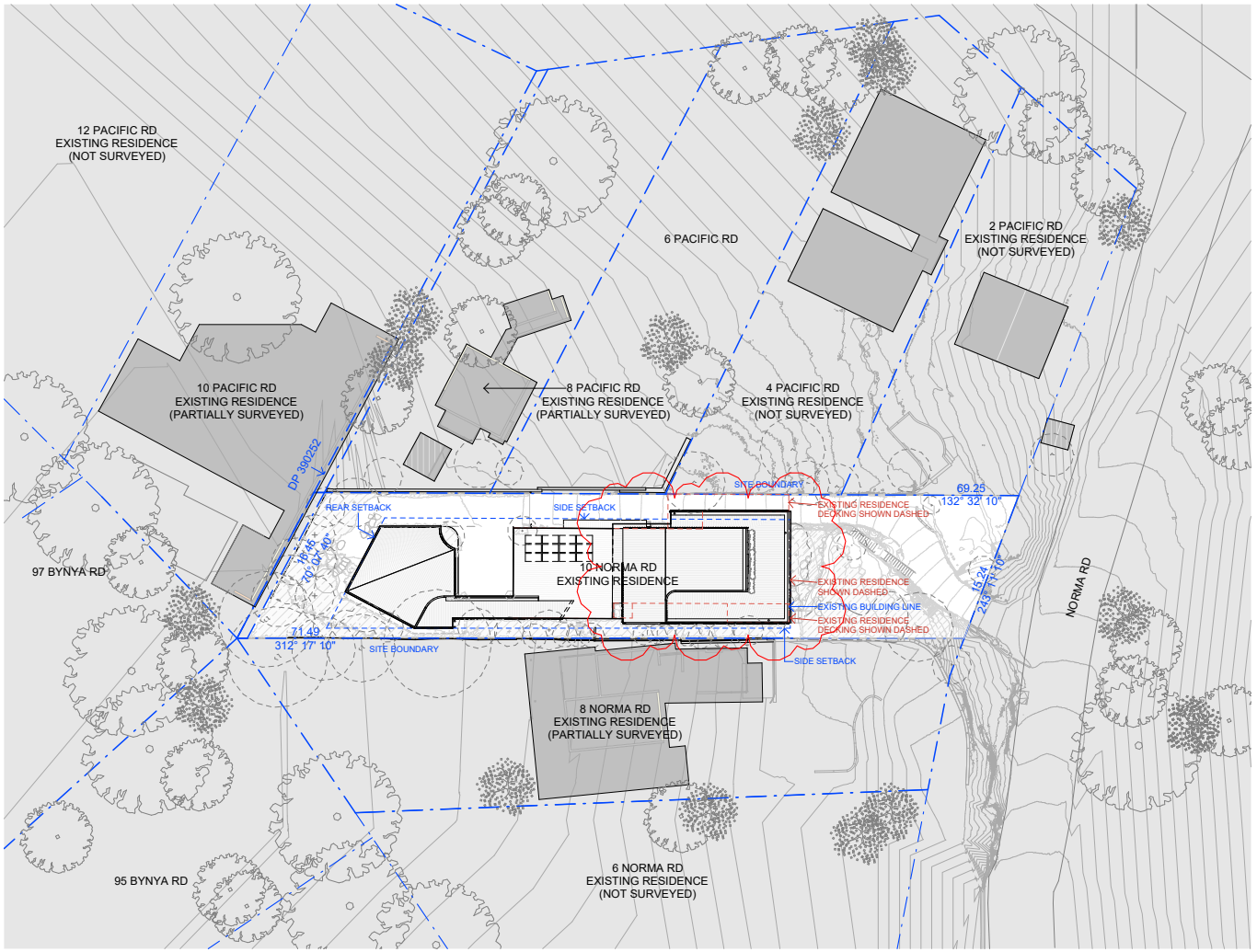
30. **Spa Motor Noise**
The spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.

31. **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 or studio 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.



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Ben Green 7066
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Acknowledgement of Country
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B	09.01.2024	Draft DA
C	25.01.2024	Development Application
D	16.05.2024	DA RFI
E	29.07.2024	DA RFI

Legend

BLK	Blockwork
CONC	Concrete
DP	Downpipe
GLC	Clear Glass
MR	Metal Roofing
MS	Mild Steel
MSH	Metal Mesh
PB	Plasterboard
TDK	Timber Decking
TMF	Timber Floorboards

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Project
Whale Beach Residence

Drawing
Proposed Site Plan

Scale
As indicated at A3

North

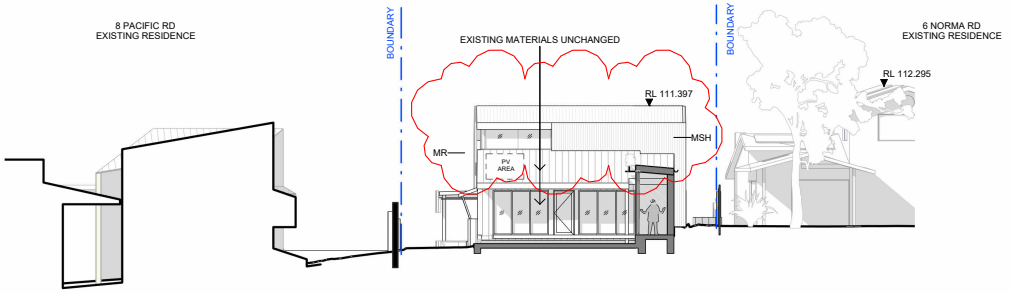
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10 Norma Rd, Whale Beach

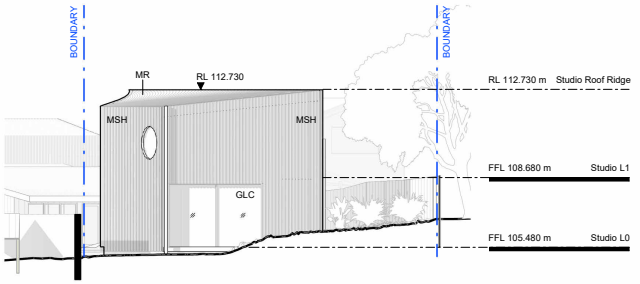
Drawn HJK
Authorised BG/MP
First Issued 25/08/2023
Project No. 21010

Status
FOR DA

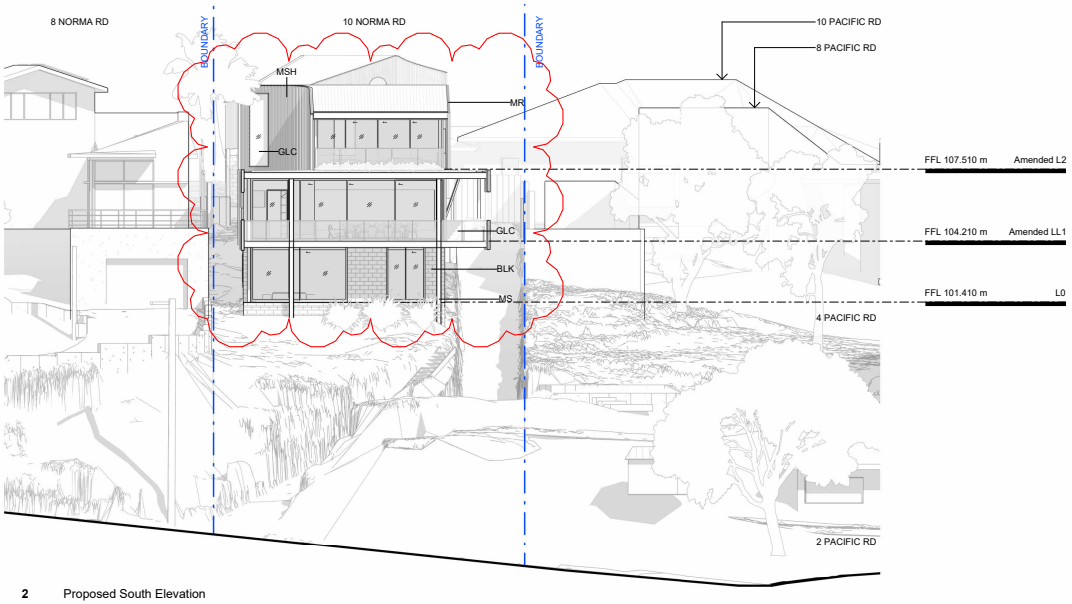
Drawing No. 100
Revision E



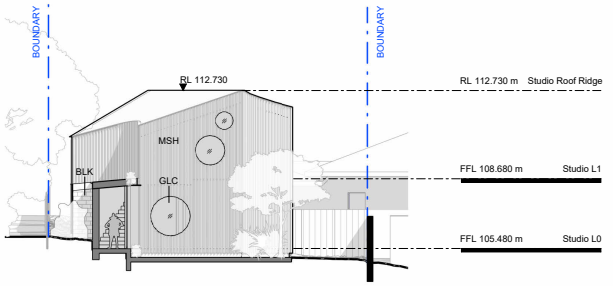
1 Proposed North Elevation
052 1 : 200



3 Studio North Elevation
111 1 : 200



2 Proposed South Elevation
1 : 200



5 Studio South Elevation
111 1 : 200

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Scale
1 : 200 at A3

0 2 4 6 m

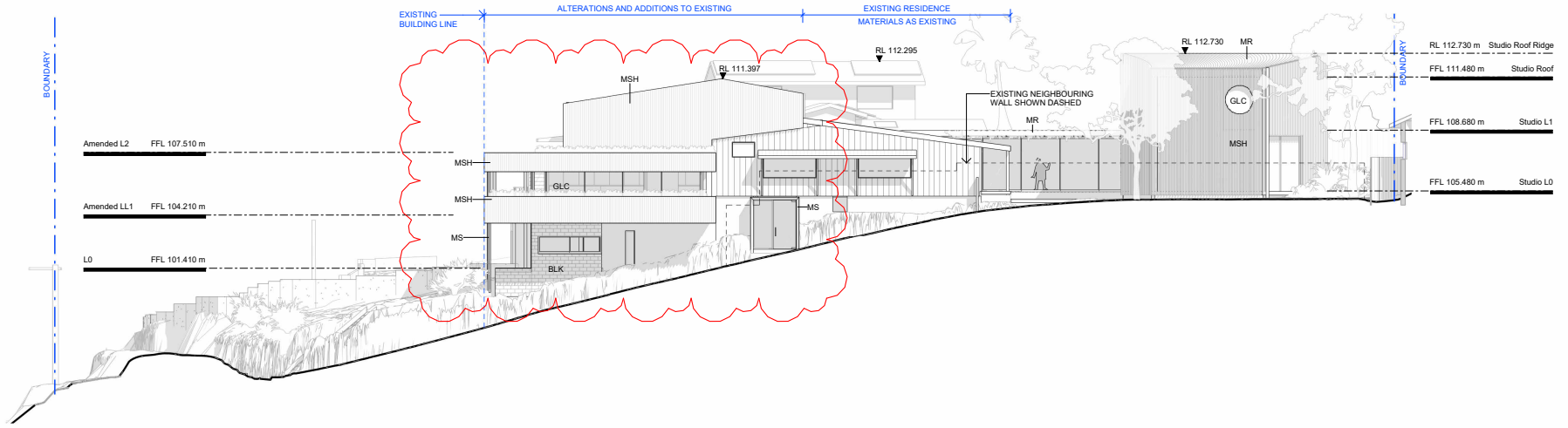
Project
Whale Beach Residence

Address
10 Norma Rd, Whale Beach

Status
FOR DA

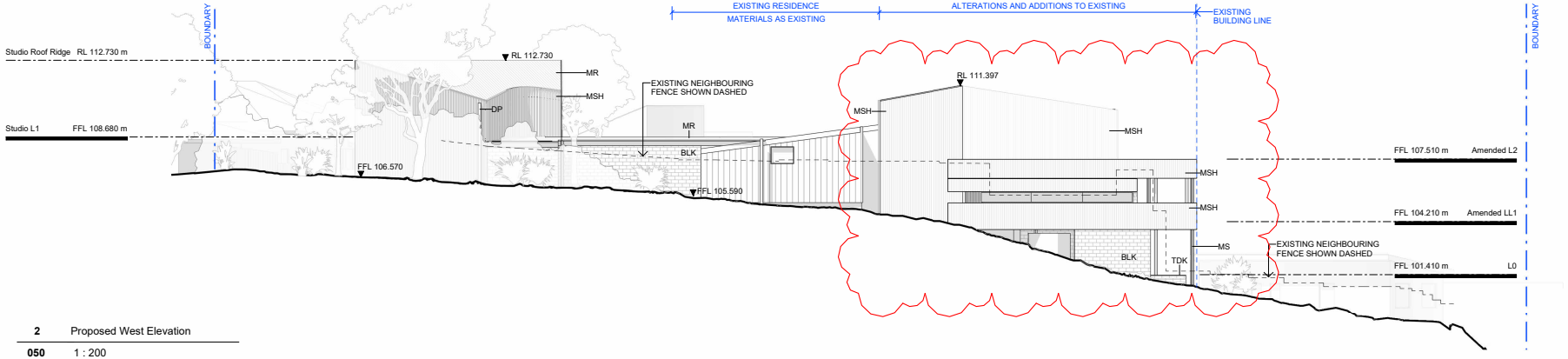
Drawing
Proposed Elevations

Drawn HJK
Authorised BG/MP
First Issued 25/08/2023
Project No. 21010
Drawing No. 200
Revision H



1 Proposed East Elevation

050 1 : 200



2 Proposed West Elevation

050 1 : 200

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Scale
1 : 200 at A3

0 2 4 6 m

Project
Whale Beach Residence

Address
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Status
FOR DA

Drawing
Proposed Long Elevations

Drawn HJK
Authorised BG/MP
First Issued 25/08/2023
Project No. 21010
Drawing No. 201
Revision H

PLANNING
INGENUITY

AMENDED CLAUSE 4.6 – HEIGHT OF BUILDINGS

Alterations and additions to an existing dwelling.

10 Norma Road,
Palm Beach

Prepared for: Del Kathryn Barton & Chris Plater

REF: M230215
DATE: 2 August 2024



PLANNING
INGENUITY

Clause 4.6 Variation Request –
Height of Buildings



Clause 4.6 Variation Statement – Height of Buildings (Clause 4.3)

1. Introduction

This Variation Statement has been prepared in accordance with Clause 4.6 of Pittwater Local Environmental Plan 2014 (PLEP 2014) to accompany an application for alterations and additions to an existing dwelling at No. 10 Norma Road, Whale Beach ('the site').

This Clause 4.6 Written Request for Exception to a Development Standard has been prepared in accordance with the NSW Department of Planning and Environment's "Guide to Varying Development Standards" (November 2023) and relevant decisions in the New South Wales Land and Environment Court (the Court). In particular it is noted that the requirements of Clause 4.6(4) have been deleted which remove the need for the consent authority to be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the zone.

The following two Court judgments provide a clear outline of the matters required to be addressed under Clause 4.6, including the structure of such requests:

- *Brigham v Canterbury-Bankstown Council* [2018] NSWLEC 1406; and
- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

The Court has established principles that are to be addressed in relation to whether a variation to a development standard should be approved by a consent authority. The relevant tests to be considered are set out in the judgement of Justice Lloyd in *Winten Property Group Ltd v North Sydney Council [2001] 130 LGERA 79*. The relevant tests were revisited by Chief Justice Preston in the decision of *Wehbe v Pittwater Council [2007] NSW LEC 827 (Wehbe)*. Although the Winton Property Group and Wehbe judgment refer to variations to development standards submitted under State Environmental Planning Policy 1 – Development Standards (SEPP 1) the principles and tests contained therein remain applicable to a variation request under Clause 4.6 in the NSW Standard Instrument as confirmed by the Court in the following judgments:

- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (Four2Five);
- *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386;
- *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245;
- *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61;
- *Rebel MH Neutral Bay Pty Ltd v North Sydney Council* [2018] NSWLEC 191;
- *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112;
- *Woollahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115.

It is important to note at the outset that clause 4.6 of the LEP "is as much a part of [the LEP] as the clauses with development standards. Planning is not other than orderly simply because there is reliance on cl 4.6 for an appropriate planning outcome." (*SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [73]).

In our opinion, the variation achieves the objectives of the development standard and has demonstrated there are sufficient environmental planning grounds to justify contravening the development standard.

2. Proposed Variation

Clause 4.3 of PLEP 2014 relates to the maximum height requirements and refers to the Height of Buildings Map. Building height is defined as:

> ***building height*** *(or* ***height of building****) means—*
>
> *(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
>
> *(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,*
>
> *including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.*

The relevant map [sheet HOB_15] indicates that the maximum building height permitted at the subject site is 8.5m.

The proposed alterations and additions have a maximum height of 9.1m and will result in a maximum variation of 0.6m or 7%. The extent of the height non-compliance is limited to the roof form above the new master bedroom, with some ceiling space also located above the building height limit, as shown in **Figures 1** and **2** below. The maximum building height is measured from the previously excavated land, from the underside of the existing slab, in accordance with the definition of building height.

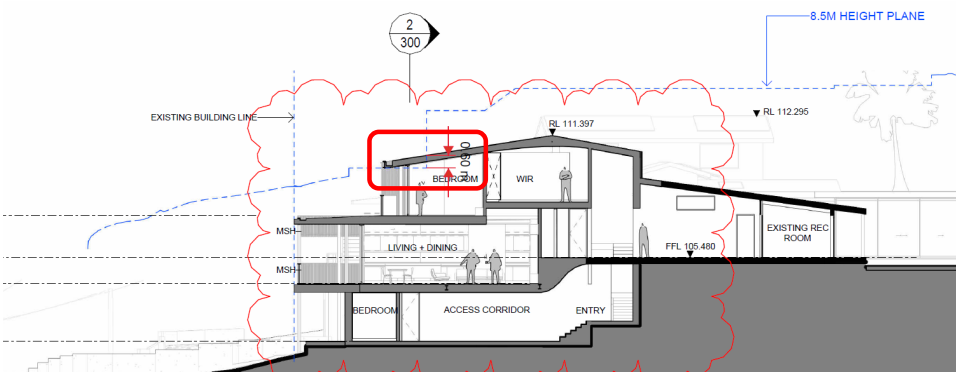


Figure 1 Proposed section (1) showing height plane (height non-compliance clouded in red)

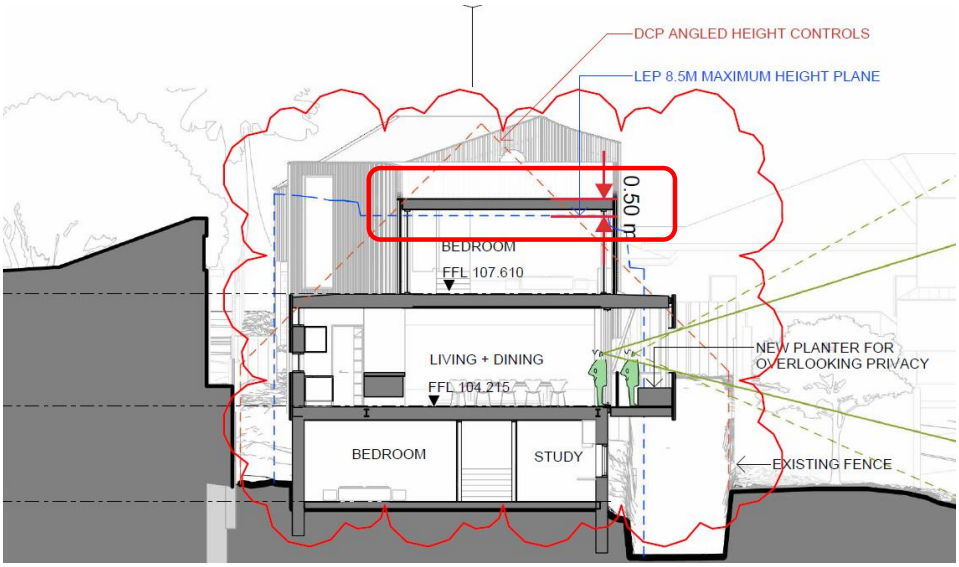


Figure 2 Proposed section (2) showing height plane (height non-compliance clouded in red)

All other alterations and additions proposed, including the two storey rear addition, sit entirely below the maximum building height limit for the site, and there is no habitable floor space or private open space above the height limit.

It is hereby requested that a variation to this development standard be granted pursuant to Clause 4.6 so as to permit a maximum building height of 9.1m which equates to a numerical variation of 0.6m and a percentage variation of 7%. It is noted that the extent of variation is less than 10% and therefore Council is the delegated consent authority.

The maximum height control is a “development standard” to which exceptions can be granted pursuant to Clause 4.6 of the LEP.

3. Objectives and Provisions of Clause 4.6

The objectives and provisions of clause 4.6 are as follows:

4.6 Exceptions to development standards

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

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

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

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

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

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

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

Note—

The Environmental Planning and Assessment Regulation 2021 requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).

(4) The consent authority must keep a record of its assessment carried out under subclause (3).

(5) (Repealed)

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note—

When this Plan was made it did not include all of these zones.

(7) (Repealed)

(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

(a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,

(c) clause 5.4,

(caa) clause 5.5

The development standards in Clause 4.3 (2) are not "expressly excluded" from the operation of Clause 4.6.

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

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

However, it is still useful to provide a preliminary assessment against the objectives of the Clause.

Objective 1(a) of Clause 4.6 is satisfied by the discretion granted to a consent authority by virtue of Subclause 4.6(2) and the limitations to that discretion contained in subclauses (3) to (8). This submission will address the requirements of Subclauses 4.6(3) & (4) in order to demonstrate to the consent authority that the exception sought is consistent with the exercise of "an appropriate degree of flexibility" in applying the development standard, and is therefore consistent with objective 1(a). In this regard, the extent of the discretion afforded by Subclause 4.6(2) is not numerically limited, in contrast with the development standards referred to in, Subclause 4.6(6).

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

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

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

4. Compliance is unreasonable or unnecessary in the circumstances of the case (Clause 4.6(3)(a))

Of relevance to Clause 4.6(3)(a), in *Wehbe V Pittwater Council (2007) NSW LEC 827* Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. It states, inter alia:

> *" An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The 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."*

The judgement goes on to state that:

> *" The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served)."*

Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation [our underline]):

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

Relevantly, in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* (paragraph 16), Preston CJ makes reference to Wehbe and states:

> *"…Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary."*

Compliance with the maximum building height development standard is considered to be unreasonable and unnecessary as the objectives of that standard are achieved for the reasons set out in the assessment below.

> *(1) The objectives of this clause are as follows—*
>
> *(a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*
>
> *(b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*

(c) to minimise any overshadowing of neighbouring properties,

(d) to allow for the reasonable sharing of views,

(e) to encourage buildings that are designed to respond sensitively to the natural topography,

(f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items

In order to address the requirements of subclause 4.6(4)(a)(ii), the objectives of clause 4.3 are addressed in turn below.

Objective (a): to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality

This objective refers to a building being consistent with the desired character of the locality. The subject site is located within an area with a defined character of one to three storey residential dwellings and is identified within the Palm Beach Locality. This contains a number of requirements with regards to *Desired Character* under *Section A4.12 Palm Beach Locality* in the PDCP. These are summarised, as follows:

'…The Palm Beach locality will remain primarily a low-density residential area with dwelling houses in maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape.

Future development will maintain a building height limit below the tree canopy and minimise bulk and scale whilst ensuring that future development respects the horizontal massing of the existing built form. Existing and new native vegetation, including canopy trees, will be integrated with the development. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like.

Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance.

A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land…'

In accordance with the above objectives, the proposal is considered to be consistent with the desired character of the locality. Specifically, the proposal has limited the extent of non-compliance and is nestled within the topography, with appropriate architectural elements and materiality to ensure compatibility with the desired low-density character of the locality. In this regard, the variation will not result in the provision of a bulk and scale which is greater than what is anticipated in the zone.

Further to the above, the variations, as they pertain to the roof form and ceiling space, are a result of the previously modified landform and steeply sloping topography. The roof form is designed so that it follows the sloping topography of the site and ensures that these will not be visually obtrusive or alarming from the streetscape and integrate with the topography and landscaped character of the locality.

When considering architectural design and materiality, the proposal is designed with a stepped built form, with recessive uppermost level, which is a response to the topography. The proposal utilises a simplified architectural design, including vertical and horizontal articulation, clear balustrades, fenestration and vegetation, with a neutral colour scheme. Not only will this ensure the provision of a low density, contemporary development, however, will maintain compatibility with the surrounding properties as outlined in objective (b) below.

As such and despite non-compliance with the development standard, the proposal will be compatible with the desired future character of the locality without any adverse impacts to the amenity of neighbouring properties. The proposal therefore satisfies objective (a).

Objective (b): to ensure that buildings are compatible with the height and scale of surrounding and nearby development

It is noted that objectives (b) refer to being 'compatible and consistent' with the locality in terms of height and scale. It is considered that "compatible" does not promote "sameness" in built form but rather requires that development fits comfortably with its urban context. Of relevance to this assessment are the comments of Roseth SC in Project Venture Developments Pty Ltd v Pittwater Council [2005] NSWLEC 191:

> *"22 There are many dictionary definitions of compatible. The most apposite meaning in an urban design context is capable of existing together in harmony. Compatibility is thus different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve."*

The variation to the height of buildings development standard is limited to a maximum 9.1m variation to a portion of the roof and ceiling space of the master bedroom. This variation is minor and will not be alarming to the visual aesthetic of the desired streetscape character, as detailed in objective (a) above.

With regards to the established neighbouring properties, these range in building heights and are situated along the rock outcrop fronting Norma Road. This rock outcrop conceals the majority of the dwellings as viewed from the streetscape given its considerable height and the constrained nature of streetscape. In this instance, the non-compliant portion of the roof form has been adequately setback from the street frontage, boundaries shared with the neighbouring properties and is also setback from the lower levels. As a result of these upper-level setbacks and the topography of the land, the height non-compliant portion of the development will predominantly concealed from street level, and the dwelling will largely appear two storeys in height. Also, given the variation only pertains to minor elements of the proposed contemporary roof form, they will not be visually intrusive from the neighbouring properties as they are limited in extent and are a result of the steep topography of the site and its surrounds.

Further, the non-compliant ceiling space of the master bedroom will not give rise to any visual issues as it is setback from the boundary, provided with well-considered screening and limited in size. Given the proposal is generally compliant with other standards and retains the residential amenity of surrounding developments, this ensures that the height variation is compatible to the scale of neighbouring properties and consistent with the desired character of the locality.

As outlined, only where the site slopes towards the front of the site and landform previously modified, will a height breach be present. The proposed development has been designed as a high-quality contemporary form which is consistent with the current and desired streetscape character of the locality. When viewed from the street, the additional height breach is limited to minor roof elements and will not be readily apparent as it is setback from the envelope below to provide a recessive form and integrated into the overall dwelling.

It is noted that the height non-compliance does not in any way compromise the landscaped area provided and is therefore acceptable. Importantly, the proposal will significantly improve the character and rationalisation of landscaping on the site as identified in the Landscape Plan. The additional height is not visually obtrusive when viewed from Norma Road, and the landscaped design and natural features of the site will maintain compatibility with the character of the area.

Ultimately, the design of the proposal, location of the height breach and setbacks provided to the non-compliant elements ensure that the development will nestle comfortably between the immediately adjoining neighbours and

reflect the height and scale of the buildings within the streetscape. As such, it is considered that this non-compliance will not be visually jarring when viewed from the public domain, and the proposal will be compatible with the scale and character of its adjoining properties and is therefore consistent with objectives (b), despite the height breach.

Objective (c): to minimise any overshadowing of neighbouring properties

As indicated in the shadow diagrams submitted with this application, the rear private open space of the neighbouring development at No. 8 Norma Road will be impacted by a minor degree of overshadowing created by the proposal. Importantly, the extent of overshadowing is a result of the proposed rear addition, which achieves full height compliance. Nevertheless, the extent of shadowing caused by the rear addition falls entirely within the shadow that would be cast by a maximum permissible envelope. Furthermore, after 12pm, the rear addition will not cast any significant shadowing to No. 8 Norma Road, and the rear private open space of No. 8 will receive direct solar access for the remainder of the day.

The proposal will also result in minor additional of overshadowing to the dwelling at No. 8 Norma Road, however, the additional shadowing does not fall over the south-eastern facing windows, which are the primary living room windows given their orientation to Whale Beach. Furthermore and as shown in the Figure below, the non-compliant building height will not result in any adverse impact to the north-eastern living area clerestory openings opposing the subject site. That is, the proposal will achieve solar access to 50% of these openings from 9am, and at 10am full solar access, despite non-compliance with the maximum building height and is therefore considered acceptable.

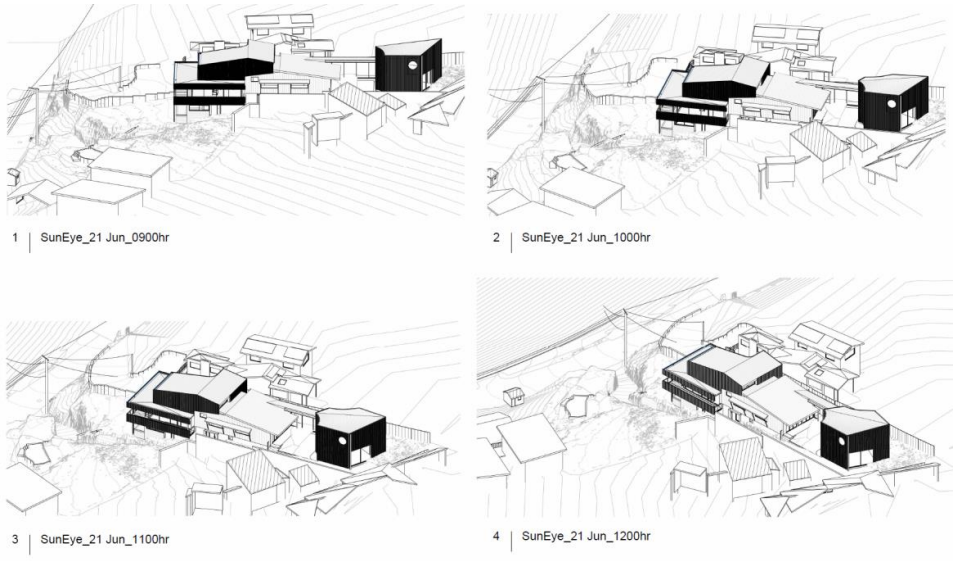


Figure 3 Solar access of north facing openings of No. 8 Norma Road

As such, the proposal, despite the height non-compliance, will allow adequate daylight access to all neighbouring properties and achieve objective (c).

Objective (d): to allow for the reasonable sharing of views

The proposed development has been designed to minimise, as far as practicable, view impacts to neighbouring properties and the public domain. The development provides compliant building setbacks, in excess of the DCP requirements, ensuring that any view corridors along the side boundaries of the site are protected.

With regards to the height non-compliance, this is relatively minor and given the topography of the site and surrounding properties, the height non-compliance will not result in any view impacts above a compliant built form, due the topography of the land, and is therefore considered to satisfy the relevant Tenacity Principles. The height non-compliance is located where the site slopes down, and as such, for properties at the rear of the site, the height compliant building elements sit higher than the non-compliant elements. Therefore, views over the rear boundary of the site, if any, would be impacted by height compliant elements.

When considering the property to the south of the subject site, at No. 8 Norma Road, the amended proposal has been modified to retain land and water interface views from the front deck. The height non-compliance will not obscure any additional views as a result of the non-compliance, as shown in the Figure below and is therefore acceptable despite non-compliance.

Additionally, it is also noted the height non-compliance does not result in any adverse view loss from other parts of No. 8 Norma Road.

Overall, given predominant compliance with the majority of LEP and DCP requirements for residential dwellings, and that the proposal has been designed to respond to the topography of the land, the views enjoyed from the surrounding properties and public domain will be retained as anticipated by the controls.

Therefore, the proposal is consistent with objective (d), despite the minor height breach.

Objective (e): to encourage buildings that are designed to respond sensitively to the natural topography

The proposed development has been designed to respond to the topography of the site, stepping the built form and incorporating a simple, sloped roof forms to limit the physical bulk or scale of the development. In this regard, it is noted that the minor non-compliance is a result of the previously modified landform and steep topography. To limit the impact as a result of this modified land forms, as described, the alterations and additions are designed to step according to the topography of the subject site with a recessed uppermost level to reduce the impact. It should also be noted that the propsoal will retain existing floor levels where practicable, as to minimise the extent for additional earthworks on the site and protect the natural landform of the site.

Therefore, the proposal is consistent with objective (e), despite the minor height breach.

Objective (f): to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items

The subject site is not located within close proximity of any heritage conservation areas or heritage items and will not be visible from Whale Beach to an extent that it would have visual impacts. Furthermore, the visual impact as it relates to the non-compliance has been managed through the provision of appropriate building setbacks, consistent with the existing dwelling, the provision of a roof form which falls according to the topography of the land and provision of new vegetation across the site, which will enhance the landscape character and soften the built form, minimising visual impact of the development.

Therefore, the proposal is consistent with objective (f), despite the minor height breach.

5. Sufficient environmental planning grounds (Clause 4.6(3)(b))

Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard. Specifically, Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* (paragraph 24) states:

> *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].*

The assessment of this numerical non-compliance is also guided by the decisions of the NSW LEC in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 whereby Justice Pain ratified the decision of Commissioner Pearson and in *Moskovich v Waverley Council* [2016] NSWLEC 1015.

The decision in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 indicates that merely showing that the development achieves the objectives of the development standard will be insufficient to justify that a development is unreasonable or unnecessary in the circumstances of the case for the purposes of an objection under Clause 4.6. The case also demonstrates that the requirement in Clause 4.6(3)(b) of LEP to justify there are sufficient environmental planning grounds for the variation, requires identification of grounds particular to the circumstances of the proposed development and not simply grounds that apply to any similar development on the site or in the vicinity. In the Four2Five case, the Court found that the environmental planning grounds presented by the applicant in a Clause 4.6 written request must be specific to the circumstances of the proposed development on that site.

Furthermore, it is noted that whilst *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [24] indicated that the focus of consideration of environmental planning grounds should be on the aspect or element of the development that contravenes the development standard and not on the development as a whole, in this case, it is the design of the building as a whole that results in the contravention of the development standard and not necessarily an identified aspect of the development. In this context the proposed development must be considered holistically.

In this instance, there are sufficient environmental planning and design grounds to justify the proposed contravention of the building height development standard as follows:

1. The height breach is a result of the site topography, which has a fall of approximately 3m over the length of the dwelling. This is a specific condition that the LEP height limit does not contemplate, in that the height limit applies equally to a vast area of the LGA with distinctly different topography. The proposed dwelling has been designed to respond to the topography of the site, stepping the built form and incorporating simple roof forms to limit the physical bulk or scale of the development. Furthermore, the development has provided increased setbacks to the side boundaries and also reduces the extent of non-compliance. Therefore, the height non-compliance is a result of the steep and undulating topography.

2. In addition to the above, it is only where the topography falls suddenly, due to the previously modified landform, that results in a non-compliance. This is attributed to the roof form of the upper level, which has been designed as a simple roof that slopes down with the topography of the site, in order to reduce the scale of the top level and limit the visual bulk of the overall development. Further to this,

the uppermost level, where the non-compliance is present, is recessed beyond the floor levels below to ensure it responds to the topography and minimises visual and physical impact.

3. Following the above, the maximum extent of variation sought is 0.6m or 7% and relates to a minor roof form which improves the articulation of the building. It has been held in *Eather v Randwick City Council [2021] NSWLEC 1075* that a particularly small departure from the actual numerical standard which lacks any material impacts consequesntial of the departure will be a sufficient environmental planning ground to justify contravening the development standard. The amenity impacts of the non-compliance are discussed in further detail within these planning grounds and the objectives of the standard.

4. When viewed from the streetscape, the height breach will not be visually jarring when compared to the bulk and scale of residential dwellings surrounding the site, which often present as two and three storeys, including the existing dwelling on the site.

5. The social benefits of providing improved dwelling stock within a highly sought after location should be given weight in the consideration of the variation request. The proposed works will significantly improve the visual qualities of the proposed dwelling (over the existing dwelling) and it would be a loss to the future occupants (and contrary to the public interest) to deny the variation and require alterations to the design that seek to ultimately improve residential amenity and building aesthetics.

6. It is considered that there is an absence of any significant material impacts of the proposed non-compliance on the amenity of the environmental values of the locality, the amenity of future building occupants and on area character. Specifically:

    a. The extent of the non-compliance creates no additional adverse overshadowing to adjoining properties as demonstrated in the submitted shadow diagrams. This is also discussed in detail under Objective (c), where it is demonstrated that the impact created by the non-compliance is insignificant;

    b. The height breach does not result in any additional privacy impacts, since the areas which extend above the height limit relate to a non-habitable roof form, and ceiling space of the master bedroom which does not create any adverse privacy issues. The non-compliance pertaining to the ceiling space is limited where any impact is created by a compliant form from a low trafficable bedroom, ensuring that there will not be any adverse aural or visual privacy impacts. The height variation will have no greater impact on the privacy of adjoining properties when compared to the complying elements of the building; and

    c. The proposed development will not result in any material loss of views or outlook when compared to a building with a compliant height, given the topography of the land. The height non-compliance is located where the site slopes down, and as such, for properties at the rear, the height compliant building elements sit higher than the non-compliant

elements. Therefore, any views over the rear boundary of the site that would be impacted by the proposal would be impacted by height compliant elements.

As discussed under Objective (d), the views of No. 8 Norma Road will be protected, particularly from the front deck, where the non-compliance has been designed to avoid any adverse view loss impact with prominent land and water interface views maintained. Overall, when considering the extent of view sharing against the backdrop of the applicable planning controls, the extent of view loss caused by the non-compliant element would be insignificant or nil.

7. The height breach allows for a master bedroom which will provide a higher level of amenity to occupants of the development. The minor, non-invasive additional height also permits the provision of a contemporary roof form which is considered to appropriately relate to the character of the area and will improve the overall articulation of the building when viewed form the waterway.

8. The proposed building envelope has been carefully considered and is reflective of the topographical features of the site and compatible with the neighbouring dwellings and views afforded toward the waterway. The proposed dwelling will comfortably relate to the residential character of the locality and has a compatible built form when compared to its neighbours with regards height and is therefore considered to be appropriate in the locality, particularly in relation to bulk and scale.

9. The proposal provides for an appropriate scale and form that reflects the desired future character for development in the area. From the streetscape, the proposed development will be perceived as a compatibly scaled residential dwelling which responds to the topography of the locality and has incorporated high quality architectural elements and represents a significant improvement over the existing dwelling, ensuring that the non-compliance will not be perceivable by the casual observer and will not alter the overall bulk, scale and character of the development.

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

    a. The proposal promotes the orderly and economic use and development of land through the redevelopment of an underutilised site for residential uses (1.3(c));

    b. The proposed developed promotes good design and amenity of the built environment through a well-considered design which is responsive to its setting and context (1.3(g)).

The above environmental planning grounds are not general propositions and are unique circumstances to the proposed development, particularly given the minor extent of variation, undulating and steep topographical incline of the site, limited site width, location of the dwelling and impacts created by the neighbouring properties. The additional height does not significantly impact the amenity of the neighbouring properties (when compared to a compliant development) and has been designed in such a way to ensure the additional height is not visually jarring from the public domain.

It is noted that in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, Preston CJ 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:

> *86. The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 4.3(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. It is not necessary, contrary to what the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development.*
>
> *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.

6. Conclusion

This written request has been prepared in relation to the proposed variation to the height of buildings development standard contained in PLEP 2014.

Despite the non-compliance with the height of buildings development standard, the proposed built form is compatible with the character of surrounding properties as anticipated by the planning controls under the PLEP and PDCP.

The proposed variation is largely associated with minor roof elements and contains limited habitable space. It has been demonstrated that the proposed development sits comfortably amongst surrounding dwellings as viewed from the streetscape. The proposal provides an appropriate built form that is compatible with the building heights within the locality and is predominately compliant with the 8.5m development standard. Furthermore, the proposed development will not have an adverse impact on the amenity of adjoining properties.

The request explains that, with the proposed variation, the development satisfies the objective of the standard. It further explains why it is therefore unreasonable and unnecessary to require strict compliance with the height of buildings development standard. In addition, this request demonstrates that there are sufficient site specific environmental planning grounds to justify the variation, and therefore the request to vary Clause 4.3 of PLEP 2014 should be upheld.

ITEM 3.2 DA2024/0190 - 32 GOLF AVENUE MONA VALE - DEMOLITION WORKS AND CONSTRUCTION OF A RESIDENTIAL FLAT BUILDING

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 DA2024/0190 for Demolition works and construction of a residential flat building on land at Lot 2 SP 57603, Lot 4 SP 57603, Lot 1 SP 57603, Lot 3 SP 57603, Lot CP SP 57603, 32 Golf Avenue MONA VALE, 1 / 32 Golf Avenue MONA VALE, 2 / 32 Golf Avenue MONA VALE, 3 / 32 Golf Avenue MONA VALE and 4 / 32 Golf Avenue MONA VALE, subject to the conditions set out in the Assessment Report.

Reporting manager	Thomas Prosser
TRIM file ref	2024/591251
Attachments	⇩1 Assessment Report ⇩2 Site Plan and Elevations

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/0190

Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 2 SP 57603, 2 / 32 Golf Avenue MONA VALE NSW 2103 Lot 2 SP 57603, 2 / 32 Golf Avenue MONA VALE NSW 2103 Lot 4 SP 57603, 4 / 32 Golf Avenue MONA VALE NSW 2103 Lot 4 SP 57603, 4 / 32 Golf Avenue MONA VALE NSW 2103 Lot 1 SP 57603, 1 / 32 Golf Avenue MONA VALE NSW 2103 Lot 1 SP 57603, 1 / 32 Golf Avenue MONA VALE NSW 2103 Lot 3 SP 57603, 3 / 32 Golf Avenue MONA VALE NSW 2103 Lot 3 SP 57603, 3 / 32 Golf Avenue MONA VALE NSW 2103 Lot CP SP 57603, 32 Golf Avenue MONA VALE NSW 2103
Proposed Development:	Demolition works and construction of a residential flat building
Zoning:	R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	The Trustee For Laxdtx 2 Unit Trust

Application Lodged:	08/03/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New multi unit
Notified:	15/03/2024 to 05/04/2024
Advertised:	15/03/2024
Submissions Received:	9
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	$ 4,129,446.80

EXECUTIVE SUMMARY

The application seeks consent for demolition works and construction of a two-storey residential flat building comprising 6 units with basement car parking.

The application is reported to the Development Determination Panel (DDP) as it attracted more than 5 submissions in objection to the proposal.

The proposal does not rely on any Clause 4.6 variation request as it complies with the 8.5m height of buildings standard and is not subject to a floor space ratio standard pursuant to the Pittwater Local Environmental Plan (PLEP).

The proposal exhibits a high level of compliance with the applicable built form controls contained in the Pittwater 21 DCP (P21 DCP), with relatively minor non-compliances with the front setback, side setback, building envelope and landscaped area controls, as described further in this report. Notwithstanding the departures from these controls, the proposal is generally consistent with the development outcomes anticipated by the medium-density controls and is found to achieve the desired future character of the Mona Vale locality.

The application was referred to Council's Design and Sustainability Advisory Panel for review. The Panel provided written advice concluding that, *"the Panel is supportive of many aspects of the proposal, however, significant improvements to several aspects of the scheme require refinement as detailed in the recommendations herewith".* The amended proposal incorporates the majority of the recommendations made by the DSAP as detailed in this report. The amendments made are considered to adequately resolve the concerns raised by the Panel in that they achieve substantial improvements in relation to the overall design outcome, the amenity of the development and minimisation of impacts to surrounding properties and the public domain.

The application was also referred to Council's Landscape, Bushland and Biodiversity, Development Engineering, Water Management, Traffic, Waste, Environmental Health and Building Assessment sections for review. None of these internal referral bodies raised objection to the proposed development, subject to the conditions of consent included in the recommendation of this report.

The application was publicly exhibited in accordance with Council's Community Participation Plan, whereby the proposal was notified to 143 surrounding residents/owners. In response to Council's exhibition a total of 9 submissions were received, all of which were in objection to the proposal. The issues raised in the submissions are addressed in this report and are broadly categorised as follows:

- Dwelling density
- Amenity impacts, including solar access, privacy, views/outlook and light spill
- Streetscape impacts
- Excavation and construction impacts
- Landscaping and tree impacts

The issues raised in the submissions are sufficiently addressed where necessary by the amendments made to the proposal (described below) and the conditions of consent included in the recommendation of this report. An assessment of each of the concerns raised in the submissions is undertaken in this report and none of the matters raised are found to justify the refusal of the application in the public interest.

The proposal is considered to satisfy the relevant planning controls and has sufficient merit to be recommended for **approval** by the Development Determination Panel, subject to the conditions listed in the recommendation.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for demolition works and construction of a two-storey residential flat building with basement car parking.

Specifically, the development comprises:

- Demolition of all existing structures;
- Tree removal, excavation and site preparation works;
- New driveway and crossover;
- Lower basement level comprising a battery/services room and wine cellar;
- Basement car parking accommodating 12 residential spaces, 2 visitor spaces and storage areas;
- 6 x three bedroom apartments over two levels; and
- Landscaping works and entry structure accommodating letterboxes and bin storage.

The below image illustrates the general character, design and external appearance of the proposal.



Figure 1. 3D render of the proposed development as viewed from Golf Avenue.

<u>Amendment of Application</u>

On 4 July 2024, amended plans were lodged including the following amendments to the proposed development:

- Increased front setback to entry and bin store structure and inclusion of parcel locker;
- Relocated fire hydrant booster provision;
- Revised driveway gradient and increased unit 1 living room front setback;
- Increased rear setbacks to basement and ground floor, reduced overall excavation;
- Reduced floor levels and overall height of rear pavilion by 200mm;
- Minor reconfigurations of units 1, 2, 5 and 6 to provide paved private open space areas;
- Replace body corporate meeting room with wine cellar;
- Revised landscape design to suit the above amendments.

On 11 July 2024, a further set of amended plans were lodged. These plans did not involve any change to the proposed development; the amendments were limited to the revision of the ground levels depicted on the plans to reflect the existing surveyed levels of the site.

As the amendments result in a reduction in environmental impacts relative to the submitted proposal the application was not re-notified, in accordance with the Council's Community Participation Plan. Residents that made submissions in relation to the development application were informally notified of the amended proposal on 10 July 2024 and provided an opportunity to make further submissions. No additional submissions were received in response to the informal re-notification of the amended proposal.

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

Assessment - Housing and Productivity Contribution
Pittwater Local Environmental Plan 2014 - Zone R3 Medium Density Residential
Pittwater Local Environmental Plan 2014 - 5.10 Heritage conservation

Pittwater Local Environmental Plan 2014 - 5.21 Flood planning
Pittwater Local Environmental Plan 2014 - 7.1 Acid sulfate soils
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
Pittwater 21 Development Control Plan - A4.9 Mona Vale Locality
Pittwater 21 Development Control Plan - B2.5 Dwelling Density and Subdivision - Medium Density Residential
Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements
Pittwater 21 Development Control Plan - B8.6 Construction and Demolition - Traffic Management Plan
Pittwater 21 Development Control Plan - C1.3 View Sharing
Pittwater 21 Development Control Plan - C1.4 Solar Access
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - C1.6 Acoustic Privacy
Pittwater 21 Development Control Plan - C1.7 Private Open Space
Pittwater 21 Development Control Plan - C1.9 Adaptable Housing and Accessibility
Pittwater 21 Development Control Plan - D9.6 Front building line
Pittwater 21 Development Control Plan - D9.7 Side and rear building line
Pittwater 21 Development Control Plan - D9.9 Building envelope
Pittwater 21 Development Control Plan - D9.10 Landscaped Area - General
Pittwater 21 Development Control Plan - D9.12 Fences - General

SITE DESCRIPTION

Property Description:	Lot 2 SP 57603 , 2 / 32 Golf Avenue MONA VALE NSW 2103 Lot 2 SP 57603 , 2 / 32 Golf Avenue MONA VALE NSW 2103 Lot 4 SP 57603 , 4 / 32 Golf Avenue MONA VALE NSW 2103 Lot 4 SP 57603 , 4 / 32 Golf Avenue MONA VALE NSW 2103 Lot 1 SP 57603 , 1 / 32 Golf Avenue MONA VALE NSW 2103 Lot 1 SP 57603 , 1 / 32 Golf Avenue MONA VALE NSW 2103 Lot 3 SP 57603 , 3 / 32 Golf Avenue MONA VALE NSW 2103 Lot 3 SP 57603 , 3 / 32 Golf Avenue MONA VALE NSW 2103 Lot CP SP 57603 , 32 Golf Avenue MONA VALE NSW 2103
Detailed Site Description:	The subject site consists of one allotment located on the northern side of Golf Avenue. The site is regular in shape with a frontage of 19.81m along Golf Avenue and a depth of 70.41m. The site has a surveyed area of 1395.5m². The site is located within the R3 Medium Density Residential zone and accommodates a one and two-storey multi-dwelling housing development comprising four units. The site slopes approximately 3.3m from front to rear.

	The majority of the site is occupied by the existing dwellings, paved surrounds and driveway. Landscaping is generally limited to areas adjoining the site boundaries and comprises 12 trees in addition to hedging and small plants. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development within the R3 zone predominantly consists of residential flat buildings. Land to the south-west of Golf Avenue is zoned RE1 and accommodates Mona Vale Golf Club. Mona Vale Beach is located to the east of the site and the Mona Vale town centre is located to the west across Barrenjoey Road.

Map:



SITE HISTORY

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

Development Application No. 86/194 - 4x2 bedroom townhouses with associated landscaping and carparking - Approved 12 June 1986.

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	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 the form of amended plans to address concerns raised by Council. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact

Section 4.15 Matters for Consideration	Comments
	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 15/03/2024 to 05/04/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 9 submission/s from:

Name:	Address:
Mr Ross William Fleming	1 / 9 Narabang Way BELROSE NSW 2085
Mr Paul Frederick Stead	4 / 28 - 30 Golf Avenue MONA VALE NSW 2103
Calvin Wallis Fawle	12 / 34 - 36 Golf Avenue MONA VALE NSW 2103
Mr Lance Robin Barnes	Po Box 340 MONA VALE NSW 1660
Mr Robert Neil McNamara	1 / 34 - 36 Golf Avenue MONA VALE NSW 2103
Mr Grahame Robert Clinton	15 / 34 - 36 Golf Avenue MONA VALE NSW 2103
Mr Geoffrey John Harper	30 Mudies Road ST IVES NSW 2075
Linda Mary Dadic	13 / 28 - 30 Golf Avenue MONA VALE NSW 2103
Mr Peter Crawford Mrs Susan Barbara Crawford	8 / 28 - 30 Golf Avenue MONA VALE NSW 2103

A total of 10 submissions were received in response to Council's notification of the application. One

submission solely relating to the proposed entry and bin store structure was withdrawn on 7 July 2024 following lodgement of the amended design.

The issues raised in the submissions are addressed as follows:

- **Dwelling density & subdivision**

  The submissions raised concerns that the proposal does not comply with P21 DCP control B2.5 with regard to the dimensions of lots to be development for medium density housing.

  Comment:

  The proposal has been assessed against the provisions of control B2.5 in this report. The control states that variations may be permitted where the outcomes are achieved and where development *"on an isolated lot that would otherwise be prohibited only because of non-compliance with the street frontage controls"*. In this case, the single-width allotment is isolated and there is no opportunity for amalgamation with adjoining properties, which have previously been amalgamated and developed for medium density housing. The proposed development is a reasonable in-fill response to the site context and results in a comparable built form outcome to the development 33 Darley Street (consent N0124/13) to the rear.

- **Amenity**

  The submissions raised concerns that the proposed development will adversely impact the privacy of, and solar access to, surrounding dwellings. Concerns were also raised in relation to view impacts and light spill.

  Comment:

  The privacy and solar access impacts of the development are addressed in detail against the provisions of P21 DCP C1.4 and C1.5 in this report and are found to be acceptable. In summary, the proposal maintains a compliant level of solar access and reasonable privacy for adjoining dwellings as anticipated by the controls. Similarly, the level of compliance demonstrated by the proposal ensures that reasonable outlook is retained from surrounding properties. The proposed bin store is not of a height or bulk that would unreasonably impact views or outlook from neighbouring dwellings. The proposed density and dwelling typology is compatible with the surrounding locality and is not anticipated to cause significant light spill, glare or noise impacts in the context of the medium density zone.

- **Streetscape and bin store**

  The submissions raised concerns that the proposed entry and bin store will adversely impact the streetscape due to the associated front setback breach.

  Comment:

  The proposed entry and bin store structure has been amended to provide an increased front setback and enable the provision of landscaping at the street frontage. Council's Waste Management Guidelines require that bin store areas are a maximum distance of 6.5m from the front boundary. The proposed location satisfies the Waste Guideline location requirement and

is adjacent to the driveway of the neighbouring property, so will not cause unreasonable impacts to residents of that development. The front setback variation is assessed against the outcomes of the control and is satisfactory.

- **Excavation and construction impacts**

  The submissions raised concerns regarding the proposed excavation volume and associated construction impacts. Concern was also raised in relation to the accuracy of the ground levels illustrated on the plans.

  Comment:

  The amended proposal reduces the footprint of the basement excavation by approximately 29m² at the rear of the site and complies with the front and rear setback requirements. The proposed excavation is adequately set back from the site boundaries and will not unreasonably impact adjoining properties or the natural environment. Conditions are recommended requiring the preparation of dilapidation surveys of the adjoining properties to identify any damage caused by excavation and construction works. Standard conditions are recommended in relation to construction traffic management and to minimise disturbance caused to nearby residents during works. The amended plans include both the existing and proposed ground levels within the site and demonstrate that the existing ground levels are generally maintained beyond the proposed building footprint.

- **Landscaping**

  The submissions raised concerns regarding the proposed removal of and impacts to trees and vegetation on the site and adjoining properties. Concern was also raised in relation to the height of the proposed planting.

  Comment:

  The submitted plans and Arborist Report have been reviewed by Council's Landscape and Biodiversity sections with no concerns raised, subject to the recommended conditions in relation to the protection/condition of retained trees on the subject site and adjoining properties and provision of compensatory planting. A condition is also included to restrict the height of any new tree species within 4m of the southeastern side boundary to a maximum of 4m.

- **Rainwater tanks**

  The submissions raised concerns regarding the details and locations of the proposed water tanks.

  Comment:

  A condition is recommended requiring the relocation of the proposed water tanks and the provision of landscape screening adjacent to the tanks.

REFERRALS

Internal Referral Body	Comments
Design and Sustainability Advisory Panel	**Not supported (based on DA as lodged - amended plans and conditions satisfactorily address issues)** The application was referred to the DSAP for consideration and comment. The Panel concluded that there were *"supportive of many aspects of the proposal, however, significant improvements to several aspects of the scheme require refinement as detailed in the recommendations herewith."* The DSAP made a total of 15 recommendations in relation to Scale, built form and articulation, Access, vehicular movement and car parking, Landscape, Amenity, Facade treatment/aesthetics and Sustainability. The applicant has sought to respond to the DSAP recommendations through the amended proposal (including the submission of an itemised written response). Each of the Panel's recommendations are listed below with commentary from the assessing planner. **Scale, built form and articulation** 1. ***Further consideration should be given to street interface. Booster assembly should be positioned and enclosed such that appearance does not detract from the quality of the landscape and such that planting along street interface is maximised.*** Comment: The proposed entry structure and bin store has been set back by 1.6m-2m to enable additional landscaping at the street frontage. The booster assembly location has been nominated at the northwestern side of the frontage to provide continuous landscaping adjacent to the entry. The design response to this recommendation is considered **acceptable**. 2. ***Provide well integrated paved and covered private open space for all dwellings to avoid future piecemeal approach to same.*** Comment: Each of the proposed ground floor dwellings has been provided with paved and covered or partially covered terraces. The design response to this recommendation is considered **acceptable**.

Internal Referral Body	Comments
	Access, vehicular movement and car parking 3. ***Integrate parcel locker and mail boxes into entry structure.*** Comment: A parcel locker is incorporated into the letter box area of the entry structure. The design response to this recommendation is considered **acceptable**. 4. ***Reduce extent of basement to reduce excavation and increase deep soil.*** Comment: The extent of the basement excavation has been reduced by approximately 29m² at the rear of the site and the deep soil area of the amended proposal is sufficient. The design response to this recommendation is considered **acceptable**. 5. ***Explore potential to reduce width of driveway and increase landscape area across front setback zone.*** Comment: The proposed driveway width is unable to be reduced and therefore this recommendation has not been taken up. The landscaped area within the front setback is considered **acceptable**. **Landscape** 6. ***Prepare a tree Protection Plan to manage building construction stage.*** Comment: A tree protection plan is provided within the original and amended arboricultural reports submitted with the application. Council's Landscape section have also recommended conditions in relation to tree and vegetation protection. The submitted documentation is **acceptable**. 7. ***Redesign all outdoor spaces to include at least one outdoor sitting space of adequate size.*** Comment: As noted in response to recommendation 2, all dwellings now incorporate paved outdoor areas. The design response to this recommendation is considered **acceptable**. **Amenity** 8. ***Consider altering the planning of units No.1 and No.2 so that they are similar in configuration to units No.3 and No.4 respectively, making sure to avoid creating***

Internal Referral Body	Comments
	habitable rooms that depend on obscure glazing for privacy. Comment: This recommendation has not been taken up. The design of units 1 and 2 in relation to privacy and solar access are considered **acceptable**. 9. ***Remove or relocate Body Corporate Meeting Room to avoid unnecessary excavation.*** Comment: This recommendation has not been taken up. The body corporate room has been replaced with a wine cellar. Given that the lower basement level is necessary to accommodate the battery/services room and that the wine cellar is centrally located and limited to 20m², the retention of this space is not likely to cause adverse impacts to adjoining properties or constitute excessive excavation. The proposed excavation volume is considered acceptable. **Façade treatment/Aesthetics** 10. ***Provide more specific detail on finishes and materials.*** 11. ***Promote finishes which will have inherent material characteristic and that will stand up to and compliment the marine environment. Avoid 'faux' finishes.*** Comment: Sufficient detail of the proposed finishes and materials is provided on the elevation plans and perspective drawings. The proposed finishes and materials are appropriate for the site context and are considered acceptable. **Sustainability** 12. ***Consider relocating the on-site battery storage. Determine whether a battery could be efficiently located outside the building envelope at much reduced cost, but requiring further design to achieve a good fit with the landscape and surrounds.*** Comment: The applicant has advised that the on-site battery storage is unable to be located elsewhere on site. 13. ***Should the installation of the PV array breach the height limit in order to optimise performance it is the Panel's view that this is a justifiable breach although it appears that this is achievable within the height limit.*** Comment: The proposed building is located well below the height limit and a breach of the standard for the purpose of the PV array does not appear necessary.

Internal Referral Body	Comments
	14. ***Provide EV charging points for each unit (Min 15 amp) to suit level 1 charging.*** Comment: The applicant has advised that this recommendation is accepted. A condition is recommended in this regard. 15. ***The commitment to 5kW of PV per unit needs to be a condition of consent as it is not recognised or formalised on the BASIX certificate due to the inadequacies of the current BASIX online tool.*** Comment: The applicant has advised that this recommendation is accepted. A condition is recommended in this regard. **Conclusion** The comments and recommendations provided by the DSAP were based on the original design of the proposal at the time of lodgement of the DA, which has since been amended to respond directly to the majority of the recommendations. The amendments made improve the development's overall level of compliance and reduce impacts to the surrounding properties and public domain. The building is assessed as exhibiting a high level of design and amenity for future residents. Whilst the design and amenity of development could almost always be improved, the quality of the revised proposal achieves that which is envisaged by the provisions of the Pittwater LEP and DCP and SEPP BASIX, as detailed in this report.
Building Assessment - Fire and Disability upgrades	**Supported with conditions.** The application has been investigated with respects to aspects relevant the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below. Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.
Environmental Health (Industrial)	**Supported with conditions.** **General Comments** This application is seeking consent for demolition of existing townhouses and construction of a residential flat building containing a total of 6 apartments over 2 levels with basement car parking for 14 vehicles including 2 visitor spaces.

Internal Referral Body	Comments
	Environmental Health has reviewed the master plans and note the majority of the bedrooms have been placed away from the road frontage and not in direct line of sight to the Golf Club therefore reducing noise from its operations however the operation of the Club has recently received approval to extend operating hours and provide one function a week operating until 12 midnight (not precluding the number of ancillary functions/events held within the 8:00am-9:00pm hours of operation). Prior to Construction, an acoustic engineer is to be engaged to provide advice to ensure effective construction materials are used to reduce any potential noise impacts to the occupants within the Apartments facing Golf Avenue and the apartments facing 34-36 Golf Avenue. The proposed location of air conditioning units is to be discussed with the acoustic engineer and any acoustic controls provided to reduce noise impacts on neighboring residential occupants. A Demolition and Construction Operational Management Plan will need to be prepared detailing how air, noise and dust pollution is to be effectively controlled so as not to create a potential pollution event. Environmental Health recommends approval subject to conditions.
Landscape Officer	**Supported with conditions.** <u>Amended Plans Comment 10/07/2024</u> Amended Landscape plans and Arborist's Report provided are noted. The amended information indicates that no additional landscape impacts are proposed and improved landscape outcome to the Golf Ave frontage is achieved. Minor amendment to the recommended conditions have been included to update reference to the updated plans and report. <u>Original Comment</u> The application seeks consent for: Demolition works and construction of a residential flat building. The Arborist's Report prepared by Selena Hannan and Landscape Plans prepared by Plot are noted. The Arborist's Report assesses 23 trees on or adjacent to the site. 15 trees are indicated to be able to be retained with an acceptable level of impact. Some trees on adjoining land will require pruning as they overhang the site in the location of the proposed buildings. The Report details the required pruning, which is considered acceptable

Internal Referral Body	Comments
	in terms of impacts on the trees. 8 trees within the site are indicated for removal. 6 of theses are rated as Low retention value and two Medium retention value. The trees indicated for removal are not considered significant and no objections are raised to removal, subject to replacement planting. The Landscape Plans indicate replanting of 31 trees capable of attaining a minimum height of 5m, 16 of which range in height from 8-30m, which is supported. No objections are raised with regard to landscape issues subject to conditions as recommended.
NECC (Bushland and Biodiversity)	**Supported with conditions.** AMENDED COMMENTS An amended landscape plan has been submitted to address matters raised. No environmental weeds or exempt species are included in the amended landscape plan and the condition for the Amendment of Landscape Plans (Pre-CC) will be removed. The development is designed, sited and will be managed to avoid any significant adverse environmental impact. ORIGINAL COMMENTS The comments in this referral relate to the following applicable controls and provisions: • Pittwater DCP - Clause B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land The application has been submitted with an arborist report that has recommended the removal of a of trees 11, 16, 19a, 19b, 20, 21, 22, 23 and 24. Trees 19a, 19b, 20, 22 and 23 are prescribed trees that would be directly impacted by the proposed works and have a low retention value. Their removal will not be objected to subject to like for like replacement. The proposed landscape plan includes a number of replacement trees consistent with PDCP B4.5 but will have to be amended to avoid inclusion of environmental weeds such as Lagerstroemia and include a total of 60% or more native vegetation. The development is designed, sited and will be managed to avoid any significant adverse environmental impact.
NECC (Development Engineering)	**Supported with conditions.** The submitted stormwater plan including the connection of stormwater from the site via the existing easement benefiting the site

Internal Referral Body	Comments
	and extension of the Council drainage system in Darley St is acceptable subject to conditions. The proposed driveway crossing is acceptable using Council's Normal profile. The existing crossing is to be reinstated to kerb, footpath and turf. The submitted Geotechnical report addresses the relevant DCP controls. Development Engineering support the proposal, subject to conditions as recommended.
NECC (Water Management)	**Supported with conditions.** This application was assessed in consideration of: • Supplied plans and reports; • Northern Beaches Water Management for Development Policy (WMD Policy); and • Relevant LEP and DCP clauses The proposal is for demolition of existing townhouses and construction of new residential flat building. Section 4.1 of the WMD Policy applies and as such the proposal is required to meet Table 5 – General Storwmater Quality Requirements. The proposed water management chain includes rainwater tanks, filter pits, and infiltration system. A MUSIC model has been provided, and the output from the model provided in the stormwater report and stormwater plans. On review, the proposed water management chain includes measures that encourage on-site water reuse and infiltration. The output from the MUSIC model indicates that the proposal meets the water quality requirements. No objections regarding water management.
Traffic Engineer	**Supported with conditions.** **Further Comments - dated 2/08/2024** The applicant has provided additional information addressing the concerns except for bicycle parking. The amended traffic report prepared by Genesis Traffic, dated 27 June 2024 states that, "all the parking spaces will be oversized and there will be sufficient area within each parking module to accomodate bicycle spaces". While this is acceptable, these bicycle spaces must be shown on the plans and designed as per AS2890.3:2015. The DA can now be supported subject to conditions. **Original Comments - dated 27/05/2024** **Proposal description:** Proposed demolition works and construction of Residential Flat Building at 32 Golf Avenue, Mona Vale • The traffic team has reviewed the following documents:

Internal Referral Body	Comments
	• Plans (Master set) – Revision A, designed by Walsh Architects, dated 19/01/2024. • Traffic Impact Assessment, prepared by Genesis Traffic, dated 23 February 2024 (Reference No. GT24001) • The *Statement of Environmental Effects* prepared by Boston Blyth Fleming Town Planners, dated February 2024 **Comments** • It is noted that the proposed development is for a Residential Flat Building consisting of 6 x 3-bedroom dwellings served by 14 parking spaces. • Vehicular access is provided off Golf Avenue, via a new double width driveway. • The development is required to provide 12 residential parking spaces (2 per dwelling) and 2 visitor spaces (one for each 3 units). Accessible parking is not required as only 3% of spaces are required to be accessible (0.42 of a space) and there is no requirement for adaptable parking spaces to be provided for the proposed silver level development. • The traffic report states that the access driveway width is 5.8 metres and has 300mm kerb on both sides. However, these dimensions are not annotated on the plans. Furthermore, a two-way crossover is minimum 5.5metres wide between kerbs as per AS 2890.1:2004 clause 2.5.2 i.e. the total width of the driveway is 6.1metres (5.5m + 2x300mm) if the ramp is bordered by kerbs on either side in excess of 150m in height. The above is to be clarified and the relevant dimensions must be shown on the plans. • On the ground floor, RL, ramp widths, lengths and grades must be shown. • It is noted that driveway longitudinal sections have been provided along with ground clearances checked for B85 and B99 vehicles. The longitudinal section 1 shows transition grade of 14% at 1.929 metres from the boundary and transition of 15% at the bottom of 25% ramp. Similarly, the longitudinal section 2 shows transition grade of 17.5% at 1.758 metres from the boundary and transition of 15% at the bottom of 25% ramp. Although no scraping is apparent on the ground clearance checks, these ramp transitions are not compliant with AS2890.1 Clause 2.5.3 and should be amended for compliance. • Traffic report on page 16 states, “the proposed ramp is substandard as the grade of first 6m of the ramp exceeds 5% (12.5%)”. The applicant's traffic consultant then justifies this steeper grade by saying that the the footpath gradient is flat so the driver will have adequate sight lines. The Australian Standard only allows a gradient steeper than 5% within the property where the driveway slopes down to street level. In this case the driveway slopes up to street level and, as the Golf Avenue footpath is well used by pedestrians carries high volumes of traffic and having high levels of parking activity, it

Internal Referral Body	Comments
	is considered that there a significant reasons to require compliance with the standard. The driveway grades approaching the property boundary should be designed for compliance with the standard i.e sloping at no more than 5% for the first 6m inside the property. • It is noted that there are RLs and grades provided in the basement level, although no RL is provided on ground floor. There is a note on the ground floor driveway that states, “driveway to basement as per Civil Engineer’s drawing”. However, it is noted that some RLs do not match on the Civil and Architectural plans. Consistent plans showing the same RLs must be provided. • It is noted that a sight triangle is shown on the exit side of the driveway in the architectural plan. The dimensions of this sight triangle must be annotated on the plans. The sight triangle must be clear of any visibility obstructions in accordance with AS2890.1: 2004. Furthermore, the location of sight triangle in the driveway as shown in the architectural plan is not correct. The sight triangle should be placed along the edge of the driveway wall/kerb. • It is noted that the Traffic report mentions loading and deliveries activities are to be carried out on on-street using the kerbside parking. Given the small size of proposed development and the development being only residential development, this provision is acceptable. • It is noted that the traffic report states that a minimum of 45m of SSD is achieved for sight distance. A sight distance diagram is also provided in Attachment 2, page 29. However, the distance of 45m is not shown in the diagram. Hence, a complete diagram must be presented. • The passing swept paths at the entry must be updated to show B99 entering and B85 exiting. Furthermore, the proposed driveway width and wings must be shown in order to see if the vehicle maneouvres are accommodated within the driveway. • It is noted that swept paths are provided for some of the parking spaces. It is required that a swept path plot be provided for a B85 vehicle entering and exiting the first parking space east of the ramp, as this is a critically located space. • A car turntable is provided in the northeast corner to assist with access to/from the four residential parking spaces located in the northeast corner. Swept paths are shown to demonstrate forwards entry and exit. The swept path plots for the vehicle entering the space in the north eastern corner should be replotted to show a continuous path of travel avoiding the break in the manoeuvre and avoiding encroachment into the adjacent parking space. • the plans doe not show any bicycle parking spaces. The Pittwater DCP requires one secure bicycle rack for each 3

Internal Referral Body	Comments
	dwellings. The development therefore requires at least 2 bicycle parking spaces. These should be shown on the plans **Conclusion** The application is not supported at this stage with further information as outlined above required prior to further consideration of the proposal.
Waste Officer	**Supported with conditions.** Waste Management Assessment Supported - Subject to conditions.

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

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)

Housing and Productivity Contribution

Part 2 Development for which contribution is require and determination of contribution, Division 2 Housing and productivity contribution amounts, Clause 7 Base component.

This Clause details the base component amounts that apply to the calculation of the housing and productivity contribution, as set out in the following table:

Region	HPC class of development	Amount	HPC unit
Greater Sydney	Residential subdivision	$12,000	new dwelling lot
	Residential strata subdivision	$10,000	new strata dwelling lot
	Non-strata multi-dwelling development	$10,000	new non-strata dwelling
	Commercial development	$30	square metre of new GFA
	Industrial development	$15	square metre of new GFA

Comment:
The subject site is located within the Greater Sydney region and currently comprises four multi-dwelling housing dwellings. The proposed development is for a residential flat building containing six dwellings, resulting in an increase of two dwellings relative to the existing development. As such, the contribution required for the additional two dwellings is $20,986.22.

SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No. 1737016M_02 dated 27 June 2024).

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

SEPP (Housing) 2021

Application of Chapter

Clause 144 of State Environmental Planning Policy Housing 2021 (SEPP Housing) stipulates that:

(1) This chapter applies to development only if:

(a) the development consists of:

(i) the erection of a new building,
(ii) the substantial redevelopment or the substantial refurbishment of an existing building, or
(iii) the conversion of an existing building, and

(b) the building concerned is at least 3 or more storeys, not including underground car parking storeys, and
(c) the building contains at least 4 dwellings.

As previously outlined the proposed development is for the erection of a two-storey residential apartment development plus basement car parking. In accordance with the provisions of Clause 144 above, the provisions of Chapter 4 SEPP Housing are **not** applicable to the assessment of the proposed development.

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.7m	N/A	Yes
Density controls for certain residential accommodation	1 dwelling per 200m²	1 dwelling per 232.6m²	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
4.5A Density controls for certain residential accomodation	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes

Clause	Compliance with Requirements
7.2 Earthworks	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone R3 Medium Density Residential

The proposal is assessed against the objectives of the R3 Medium Density Residential Zone as follows:

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

  Comment:

  The proposed development provides increased housing supply that is consistent with the medium density zoning of the site.

- *To provide a variety of housing types within a medium density residential environment.*

  Comment:

  The proposed residential flat building use is permitted with consent in the zone and is compatible with surrounding housing types.

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

  Comment:

  N/A - The proposal is for residential development.

- *To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.*

  Comment:

  N/A - The proposal is for residential development.

Conclusion

Based on the above assessment, the proposed development is found to be consistent with the objectives of the zone.

5.10 Heritage conservation

The subject site is not located in proximity to any listed heritage items, nor is it identified as having a high potential for Aboriginal sites.

5.21 Flood planning

The site is not identified as flood affected land.

7.1 Acid sulfate soils

The site is mapped as Class 5 Acid Sulfate Soils. The submitted geotechnical report advises that no evidence of Acid Sulphate Soils was identified on the site and that the watertable will not be intersected by the proposed works.

7.2 Earthworks

The proposed excavation works are sufficiently set back from all property boundaries and will not adversely impact surrounding properties or the natural environment.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement		Proposed	% Variation*	Complies
Front building line	6.5m or streetscape		Bin store: 1.6m-2m	75.4%	**No**
			Basement: 6.5m	N/A	Yes
			GF: 11.99m	N/A	Yes
			FF: 6.5m-10.99m	N/A	Yes
Rear building line	GF: 2.65m		5.4m-7m	N/A	Yes
	FF: 4.45m		5.4m-6m	N/A	Yes
Side building line	Northwest	GF Unit 1&2: 3.7m	3m-4.1m	19%	**No**
		GF Unit 5&6: 3.6m	3.5m	2.8%	**No**
		FF Unit 1&2: 4.5m	3m-4.5m	33.3%	**No**
		FF Unit 5&6: 4.5m	3.5m-4.5m	22.2%	**No**
	Southeast	GF Unit 1&2: 3.4m	3.5m-4.5m	N/A	Yes
		GF Unit 5&6: 3.3m	3.5m	N/A	Yes
		FF Unit 1&2: 4.2m	3.5m-4.5m	16.7%	**No**
		FF Unit 5&6: 4.1m	3.5m-4.5m	14.6%	**No**
		Bin store: 3.3m	Nil	100%	**No**
Building envelope	Northwest: 4.2m		2 breaches: - length 800mm, up to 350mm	N/A	**No**

		- length 1.2m, up to 350mm		
	Southeast: 4.2m	Within envelope	N/A	Yes
Landscaped area	50% 697.75m² (site area 1395.5m²)	Deep Soil / LEP: 32.1% 447.8m²	35.8%	**No**
		DCP C1.1: 45.8% 639m²	8.4%	
		DCP D9.10: 37.6% 524.8m²	24.8%	

Note: The criteria for *Landscaped Area* varies between the PLEP definitions and Pittwater DCP C1.1 and D9.10 controls. Refer to the assessment undertaken under PDCP D9.10 for further detail.

Compliance Assessment

Clause	**Compliance with Requirements**	**Consistency Aims/Objectives**
A1.7 Considerations before consent is granted	Yes	Yes
A4.9 Mona Vale Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B2.5 Dwelling Density and Subdivision - Medium Density Residential	No	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 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
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

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
C1.20 Undergrounding of Utility Services	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D9.1 Character as viewed from a public place	Yes	Yes
D9.2 Scenic protection - General	Yes	Yes
D9.3 Building colours and materials	Yes	Yes
D9.6 Front building line	No	Yes
D9.7 Side and rear building line	No	Yes
D9.9 Building envelope	No	Yes
D9.10 Landscaped Area - General	No	Yes
D9.12 Fences - General	Yes	Yes
D9.14 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

A4.9 Mona Vale Locality

The Desired Future Character (DFC) of the locality is detailed within Clause A4.9 Mona Vale Locality. The below extracts are applicable to the proposed development, with the bold emphasis added to the most relevant sections.

- *Existing residential areas will remain primarily low-density with dwelling houses a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape. Secondary dwellings can be established in conjunction with another dwelling to encourage additional opportunities for more compact and affordable housing with minimal environmental impact in appropriate locations. Any dual occupancies will be located on the valley floor and lower slopes that has less tree canopy coverage, species and habitat diversity and fewer other constraints to development.* ***Any medium density housing will be located within and around commercial centres, public transport and community facilities.***

- ***Future development will maintain a building height limit below the tree canopy and minimise bulk and scale. Existing and new native vegetation, including canopy trees, will be integrated with the development. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment.***

Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards.

- ***A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, and to enhance wildlife corridors.***

Comment:

The proposed medium density housing development is appropriately located in proximity to the Mona Vale commercial centre.

The proposed building height remains below the building height control and the tree canopy. The proposal's performance against the applicable built form controls demonstrates that the bulk and scale of the development is appropriate for the context. Existing vegetation is retained where possible and substantial new vegetation, including natives and canopy trees, are proposed to be planted on the site. The proposed development is highly articulated and incorporates a range of colours and materials suitable for the surrounding environment.

The proposal achieves an suitable balance between the natural environment and the development of the land. Council's Landscape and Biodiversity sections are satisfied that the proposal appropriately maintains existing vegetation. New planting proposed through the development will ensure compatibility with the surrounding landscape character and the enhancement of wildlife corridors.

Conclusion

The proposal represents a site and context-responsive design that is compatible with surrounding development and the desired future character as set out above and informed by the applicable built form controls.

Accordingly, the proposal is assessed as being consistent with the desired future character of the Mona Vale locality.

B2.5 Dwelling Density and Subdivision - Medium Density Residential

Description of non-compliance

Control
Medium density housing must not be carried out unless the street frontage is greater than or equal to one third of the length of the longest side boundary.

The 19.81m street frontage of the subject site is equivalent to 28.1% of the 70.41m depth of the site. Therefore, the proposal is non-compliant with the above control.

Variations
Variations to this control may be permitted provided it is demonstrated that the outcomes are achieved.

Variations may be applied to the following: development on a battleaxe lot, non-frontage lot or on an isolated lot that would otherwise be prohibited only because of non-compliance with the street frontage

controls.

The subject site is isolated and there is no opportunity for amalgamation with any adjoining property. The proposal is considered to be a reasonable in-fill development that responds to the site context and achieves the outcomes of the control as assessed below. Accordingly, it is appropriate to allow flexibility in the application of the control in this case.

Merit consideration

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

- *Achieve the desired future character of the Locality.*

  Comment:

  The proposed development is found to be consistent with the desired future character of the locality as assessed in this report.

- *The density and scale of development reflects the infrastructure capability of the area.*

  Comment:

  The proposed density and scale of the development is compatible with the site area, surrounding development and the infrastructure capability of the area.

- *Design opportunities and site layout efficiencies are improved through amalgamation of allotments.*

  Comment:

  As noted above, there is no opportunity for amalgamation with adjoining properties. The proposal is therefore eligible for the variation to the control.

- *The development does not adversely impact upon adjoining residential development.*

  Comment:

  The proposal is appropriately designed with regard to density, layout and bulk and scale to avoid adverse impacts upon the amenity of adjoining properties.

- *To encourage development of sites with sufficient width to provide design opportunities and site integration and to avoid long, narrow "gun barrel" development.*

  Comment:

  The site width is sufficient to accommodate dwellings of adequate dimensions with setback distances that generally comply with the applicable controls.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant outcomes of the control. Accordingly, this assessment finds that the proposal is

supported in this particular circumstance.

B6.3 Off-Street Vehicle Parking Requirements

The proposal includes a compliant number of car parking spaces with 12 residential spaces (2 per apartment) and 2 visitor spaces.

B8.6 Construction and Demolition - Traffic Management Plan

Conditions are recommended requiring the preparation and implementation of demolition and construction traffic management plans.

C1.3 View Sharing

Based on an inspection of the site and surrounds and review of the submissions received by Council, the proposed development is not expected to unreasonably impact any significant views available from surrounding properties.

C1.4 Solar Access

Compliance with control

Controls

The main private open space of each dwelling and the main private open space of any adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st.

Windows to the principal living area of the proposal, and windows to the principal living area of adjoining dwellings, are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st (that is, to at least 50% of the glazed area of those windows).

Solar collectors for hot water or electricity shall receive at least 6 hours of sunshine between 8.00am and 4.00pm during mid winter.

Comment:

The main private open space areas and living room windows of units 2, 4, 5 and 6 will receive the required 3 hours of sunlight. Units 1 and 3 will receive the required sunlight to living room windows, but not to the main private open space areas, primarily due to the orientation of the site.

The private open space areas of units within the adjoining development at 34-36 Golf Avenue are not materially affected by overshadowing until after 12pm, and will maintain the the required 3 hours of sunlight between 9am and 12pm. Approximately 5 hours of sunlight will be maintained to 50% of the glazed areas of the northwest-facing windows of those units from 9am until around 2pm, in compliance with the control. The roofed areas of adjoining developments are not overshadowed by the proposal, so there will be no impact to existing/future solar collectors.

Merit consideration

With regard to the impact of the development on adjoining properties and the variation relating to solar access to private open space areas within the site, the proposal is assessed against the outcomes of the control below.

Outcomes
Residential development is sited and designed to maximise solar access during mid-winter.
A reasonable level of solar access is maintained to existing residential properties, unhindered by adjoining development.
Reduce usage and/dependence for artificial lighting.

Comment:

A reasonable level of solar access is provided to each of the proposed units within the development. The non-compliant solar access to the private open space areas of units 1 and 3 is largely a result of the orientation of the site. The lack of solar access to the private open spaces of these units is offset by the amenity afforded in relation to sunlight to living room windows, outlook, cross-ventilation and privacy.

The proposed setbacks, articulation and compliance with the building height standard facilitate compliant and reasonable solar access to adjoining properties.

Based on the above assessment, the proposal is found to comply with the controls and achieve the relevant outcomes.

C1.5 Visual Privacy

Compliance with control

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

Elevated decks and pools, verandahs and balconies should incorporate privacy screens where necessary and should be located at the front or rear of the building.

Direct views from an upper level dwelling shall be designed to prevent overlooking of more than 50% of the private open space of a lower level dwelling directly below.

Comment:

The proposed development does not enable unreasonable overlooking of the adjoining properties. Privacy impacts from the ground floor windows and private open spaces are mitigated by the proposed setbacks and existing boundary fencing. The northwest-facing first floor windows are limited to bedrooms and narrow kitchen and pantry windows and are appropriately located, sized, angled and set back to avoid adverse privacy impacts. The southeast-facing first floor windows, several of which incorporate screening devices, service bedrooms and bathrooms and are not considered to cause adverse privacy impacts.The proposed unit 3 and 4 balconies incorporate full height privacy screening to prevent overlooking.

In conclusion, the proposed placement and design of windows and balconies are sufficient to protect the privacy of adjoining dwellings and private open space areas as anticipated by the controls.

Merit consideration

Outcomes

Habitable rooms and outdoor living areas of dwellings optimise visual privacy through good design. A sense of territory and safety is provided for residents.

Comment:

The orientation, layout and design of the proposed units and privacy open space areas ensure an appropriate level of visual privacy is provided for residents of the subject development and adjoining properties. The proposal also provides a sense of territory and safety for residents.

Based on the above assessment, the proposal is found to comply with the controls and achieve the relevant outcomes.

C1.6 Acoustic Privacy

The proposed development is appropriately sited and designed to ensure the acoustic amenity of occupants of the development and adjoining properties.

C1.7 Private Open Space

Each dwelling includes a private open space area of sufficient dimensions to comply with the control and enable outdoor recreation and service functions for occupants.

C1.9 Adaptable Housing and Accessibility

Compliance with control

The control requires a minimum of 20% of the proposed dwellings meet the Silver Level criteria of the Liveable Housing Guideline. The submitted Access Report confirms that the proposed development provides two dwellings that comply, or are capable of compliance, with the relevant requirements. Conditions of consent are recommended to ensure compliance with this control.

D9.6 Front building line

Description of non-compliance
The proposed 1.6m-2m front setback to the entry structure and bin store is non-compliant with the 6.5m control. The primary front building line complies with the control and exceeds those of the immediately adjoining properties.

Merit consideration

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

- *Achieve the desired future character of the Locality.*

  Comment:

  The proposed development is found to be consistent with the desired future character of the locality as assessed in this report.

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

  Comment:

The proposal is not expected to impact any significant views or vistas from adjoining properties or the pubic domain.

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

  Comment:

  N/A - The subject site does not adjoin a main road.

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

  Comment:

  The front setback area does not contain any existing significant vegetation. New trees and vegetation are proposed within the front setback and across the balance of the site to reduce the visual bulk of the development.

- *Vehicle manoeuvring in a forward direction is facilitated.*

  Comment:

  The proposed basement design facilitates forward entry and exit from the site.

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

  Comment:

  The proposed built form and landscaping are of appropriate proportions that will enhance the streetscape and remain compatible with the natural environment.

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

  Comment:

  The proposed facade design addresses the street frontage in a manner that will visually improve the streetscape and will provide adequate pedestrian amenity.

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

  Comment:

  The proposal is compatible with the scale, proportions and siting of nearby developments within the visual catchment.

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

D9.7 Side and rear building line

Description of non-compliance

The requirements side setback control are as follows:

Where the wall height is 3 metres or less, the minimum side and rear boundary setback shall be 3 metres.

Where the wall height is more than 3 metres above ground level (existing), the minimum distance from any point on the external wall of the building and a side or rear boundary shall not be less than the distance calculated in accordance with the following:

$$S = 3 + \frac{H - 2}{4}$$

where
S = the distance in metres
H = the height of the wall at that point measured in metres above existing ground level

The proposal includes various breaches of the side setback control at the northwestern and southwestern elevations as illustrated below.

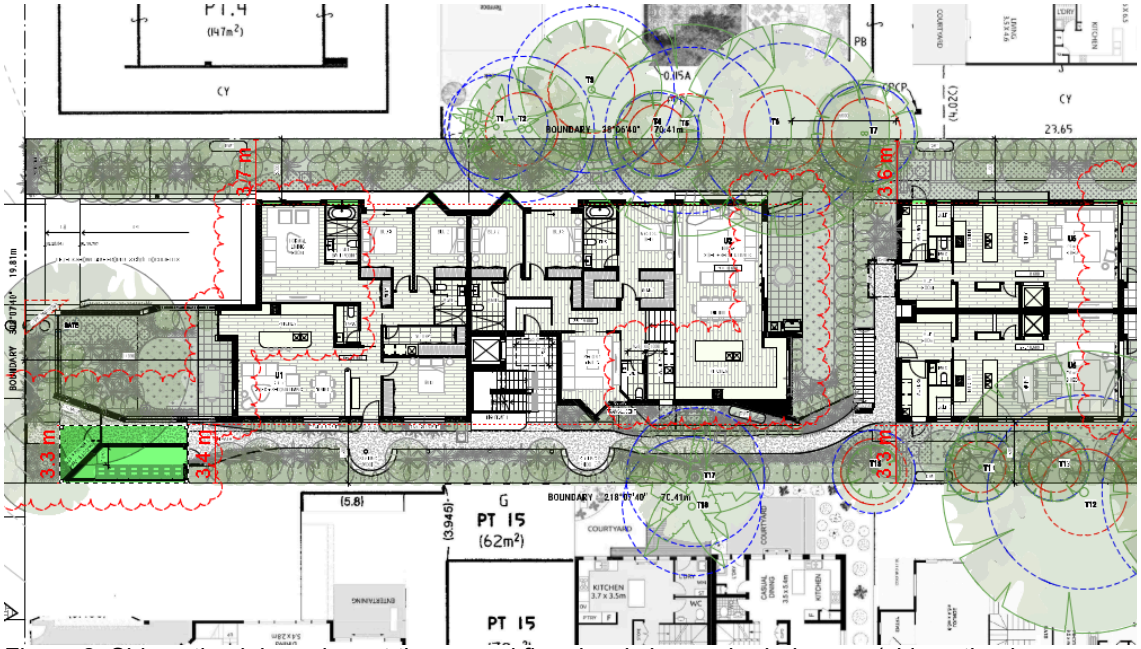


Figure 2. Side setback breaches at the ground floor level shown shaded green (side setback requirements represented by dashed red line).



Figure 3. Side setback breaches at the first floor level shown shaded green (side setback requirements represented by dashed red line).

Merit consideration

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

- *To achieve the desired future character of the Locality.*

  Comment:

  The proposed development is found to be consistent with the desired future character of the locality as assessed in this report.

- *The bulk and scale of the built form is minimised.*

  Comment:

  The design, siting and articulation of the development sufficiently minimise the bulk and scale of the built form. The side setback encroachments are minor and do not give rise to any excessive visual bulk.

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

  Comment:

  The proposal is not expected to unreasonably impact any significant views or vistas from adjoining properties or the pubic domain.

- *To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.*

  Comment:

  The siting and design of the proposal achieve an appropriate view sharing outcome.

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

  Comment:

  The proposed setbacks, articulation and privacy measures ensure that reasonable privacy, amenity and solar access are afforded to occupants of the proposed development and adjoining properties.

- *Substantial landscaping, a mature tree canopy and an attractive streetscape.*

  Comment:

  The proposal incorporates a variety of landscaping, including new trees, shrubs and ground covers that will positively contribute to the streetscape.

- *Flexibility in the siting of buildings and access.*

  Comment:

  Given the isolated nature of the site and the minor extent of the side setback breaches, it is considered appropriate to allow a degree of flexibility in the siting of the proposed buildings.

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

  Comment:

  The proposed side setbacks are sufficient to enable the planting of new trees and vegetation that will assist in reducing the visual bulk of the development.

- *To ensure a landscaped buffer between commercial and residential zones is established.*

  Comment:

  N/A - The site does not adjoin a commercial zone.

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

D9.9 Building envelope

Description of non-compliance

The proposal includes two breaches of the building envelope control at the northwestern elevation as illustrated below.

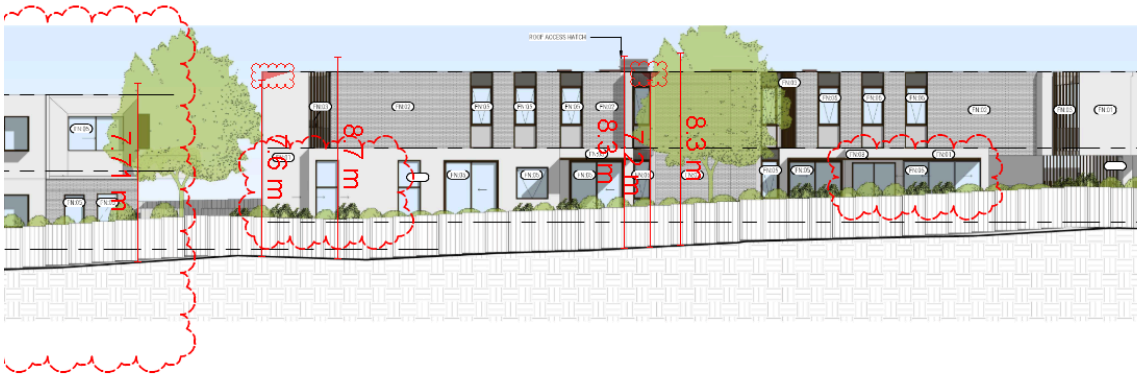


Figure 4. Building envelope breaches shaded and clouded red at the northwestern elevation.

Merit consideration

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

- *To achieve the desired future character of the Locality.*
- *To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.*
- *To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.*
- *The bulk and scale of the built form is minimised.*
- *Equitable preservation of views and vistas to and/or from public/private places.*
- *To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.*
- *Vegetation is retained and enhanced to visually reduce the built form.*

Comment:

The extent of the proposed building envelope breaches are negligible in the context of the development and the above outcomes of the control are achieved as addressed throughout this report.

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

D9.10 Landscaped Area - General

Description of non-compliance

The PLEP *Landscaped area* definition and the PDCP C1.1 and D9.10 controls provide varying criteria for the inclusion of landscaped areas as outlined below.

PLEP Definition
"Landscaped area means a part of a site used for growing plants, grasses and trees, but does not include any building, structure or hard paved area."

PDCP C1.1 Landscaping
"The following soil depths are required in order to be counted as landscaping:
300mm for lawn
600mm for shrubs
1metre for trees"

PDCP D9.10 Landscaped Area - General
"Variations
Provided the outcomes of this control are achieved, the following may be permitted on the landscaped proportion of the site:
impervious areas less than 1 metre in width (e.g. pathways and the like);
Residential Flat Buildings, Multi Dwelling Housing and Shop Top Housing
Provided the outcomes of this control are achieved, and the bulk and scale of the development is not increased, the following may be permitted:
Areas with soil depth greater than 800mm above built structures (excluding drainage and waterproof membranes) may be included as landscaped area. Soil depths above built structures less than this will not be included as landscaped area."

Due to the varying criteria noted above, the landscaped area of the proposed development has been calculated in accordance with each requirement.

Based on the **PLEP definition** the proposal has a landscaped area of 32%, representing a shortfall of 249.95m² or a variation of 35.8%.

Based on **PDCP C1.1** the proposal has a landscaped area of 45.8%, representing a shortfall of 58.75m² or a variation of 8.4%.

Based on **PDCP D9.10** the proposal has a landscaped area of 37.6%, representing a shortfall of 172.95m² or a variation of 24.8%.

Regardless of the criteria used to calculate the proposed landscaped area, the proposal must be found to achieve the outcomes of control D9.10. Accordingly, an assessment against those outcomes is undertaken below.

Merit consideration

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

- *Achieve the desired future character of the Locality.*

Comment:

The proposed development is found to be consistent with the desired future character of the locality as assessed in this report.

- *The bulk and scale of the built form is minimised.*

Comment:

The bulk and scale of the buildings are sufficiently minimised as demonstrated by the proposal's performance against the applicable built form controls. The proposal remains well below the 8.5m building height standard and maintains sufficient separation from the property boundaries, with only minor elements of the buildings exceeding the permitted setbacks and building envelope.

- *A reasonable level of amenity and solar access is provided and maintained.*

Comment:

The proposal provides reasonable amenity and solar access to adjoining properties. The development incorporates suitable privacy measures and maintains a compliant level of solar access to the adjoining dwellings to the south in accordance with PDCP C1.4.

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

Comment:

The proposal includes the removal of 8 trees rated as low and medium retention value. The proposed landscape plan includes numerous replacement trees in addition to a range of shrubs, climbers and plants that will visually reduce the bulk of the development.

- *Conservation of natural vegetation and biodiversity.*

Comment:

Council's Bushland and Biodiversity section are satisfied that the proposal will avoid significant adverse environmental impacts, subject to the recommended conditions of consent.

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

Comment:

The proposal results in a minor increase in impervious area relative to the existing development and is recommended for approval by Council's Development Engineering and Water Management sections, subject to conditions.

- *To preserve and enhance the rural and bushland character of the area.*

Comment:

The proposal will increase the quantity and quality of trees and vegetation on the site relative to the existing development and is therefore considered to preserve and enhance the character of

the locality.

- *Soft surface is maximised to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management.*

  Comment:

  The proposal is considered to provide adequate permeable surfaces and provision for stormwater management in accordance with Council's Water Management Policy.

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

D9.12 Fences - General

The proposed front fence is compatible with existing fencing within the visual catchment and satisfies the requirements of the control. No new side or rear boundary fencing is proposed or approved.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of $41,294 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $4,129,447.

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

The application seeks consent for demolition works and construction of a two-storey residential flat building comprising 6 units with basement car parking.

The proposal, as amended, demonstrates an acceptable level of compliance with the applicable built form controls and ensures that the proposed height, scale, and density of the development is compatible with both the existing and desired future character of the locality. The proposed design also provides a reasonable level of amenity for occupants of the development and adjoining properties as envisaged by the controls.

The amended application incorporates the majority of the recommendations made by the DSAP and represents a significantly improved design that is considered to satisfactorily address the Panel's concerns.

In response to Council's advertising, a total of 9 submissions were received in objection to the proposal. The performance of the proposal against parts C1 and D9 of the P21 DCP demonstrate that the development is appropriate for the context and would not unreasonably impact the amenity of surrounding properties. Conditions of consent are recommended to address concerns in relation to landscaping and tree retention, construction traffic management and other impacts associated with demolition and construction works. The issues raised in the submissions are addressed in detail in this report and are not considered to warrant refusal of the application in the public interest.

On balance, the assessment concludes with a recommendation that the DDP should **approve** the application, subject to the conditions listed in the report.
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 DA2024/0190 for Demolition works and construction of a residential flat building on land at Lot 2 SP 57603, 2 / 32 Golf Avenue, MONA VALE, Lot 2 SP 57603, 2 / 32 Golf Avenue, MONA VALE, Lot 4 SP 57603, 4 / 32 Golf Avenue, MONA VALE, Lot 4 SP 57603, 4 / 32 Golf Avenue, MONA VALE, Lot 1 SP 57603, 1 / 32 Golf Avenue, MONA VALE, Lot 1 SP 57603, 1 / 32 Golf Avenue, MONA VALE, Lot 3 SP 57603, 3 / 32 Golf Avenue, MONA VALE, Lot 3 SP 57603, 3 / 32 Golf Avenue, MONA VALE, Lot CP SP 57603, 32 Golf Avenue, MONA VALE, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

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

Approved Plans				
Plan Number	**Revision Number**	**Plan Title**	**Drawn By**	**Date of Plan**
DA030	B	Demolition Plan	Walsh Architects	22 June 2024
DA040	B	Proposed Site Plan	Walsh Architects	22 June 2024
DA100	B	Service Plan	Walsh Architects	22 June 2024
DA101	B	Basement Plan	Walsh Architects	22 June 2024
DA102	B	Ground Floor Plan	Walsh Architects	22 June 2024
DA103	B	Level 1 Plan	Walsh Architects	22 June 2024
DA104	B	Roof Plan	Walsh Architects	22 June 2024
DA201	C	Long Sections	Walsh Architects	9 July 2024
DA202	C	Cross Sections	Walsh Architects	9 July 2024
DA203	C	Cross Sections	Walsh Architects	9 July 2024
DA204	C	Cross Sections	Walsh Architects	9 July 2024
DA300	B	Elevations	Walsh Architects	22 June 2024
DA301	B	Elevations	Walsh Architects	22 June 2024
LS501.1	C	Landscape Plan (Ground Level) - Sheet 1	Plot Design Group	26 June 2024
LS501.2	C	Landscape Plan (Planters) - Sheet 2	Plot Design Group	26 June 2024
LS503.1	C	Landscape Details - Sheet 3	Plot Design Group	26 June 2024

Approved Reports and Documentation			
Document Title	**Version Number**	**Prepared By**	**Date of Document**
BASIX Certificate	-	Building Sustainability Assessments	27 June 2024

Geotechnical Investigation Report	1	Crozier Geotechnical Consultants	1 July 2024
Arboricultural Impact Assessment	-	Selena Hannan Landscape Design	25 June 2024
NCC (BCA) Report	1	East Coast Approvals Group	19 February 2024
Access Report	2	East Coast Approvals Group	9 February 2024
Waste Management Plan	-	-	-

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

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

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	26 March 2024

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

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

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

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

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

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

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

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

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

A. the name of the owner-builder, and

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

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

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

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

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

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

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

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

Reason: Legislative requirement.

4. **General Requirements**

(a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

(b) Construction certificate plans are to be in accordance with all finished levels identified on approved plans. Notes attached to plans indicating tolerances to levels are not approved.

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

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

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

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

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

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

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

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

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

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

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

(k) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties,

shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

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

i) Building/s that are to be erected

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

iii) Building/s that are to be demolished

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

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

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

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

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

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

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

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

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

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

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

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

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

A monetary contribution of $41,294.47 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of $4,129,446.80.

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

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

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

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

6. **Security Bond**

A bond (determined from cost of works) of $10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

7. **Housing and productivity contribution - Development consents**

1. The housing and productivity contribution (HPC) set out in the table below, but as adjusted in accordance with condition 2, is required to be made:

Contribution Type	**Amount**
Housing and Productivity Contribution	$20,986.22 (2 additional dwellings)
Total:	**$20,986.22**

2. The amount payable at the time of payment is the amount shown in condition 1 as the total housing and productivity contribution adjusted by multiplying it by:

$$\frac{highest\ PPI\ number}{consent\ PPI\ number}$$

where—

highest PPI number is the highest PPI number for a quarter following the June quarter 2023 and up to and including the 2nd last quarter before the quarter in which the payment is made.

consent PPI number is the PPI number last used to adjust HPC rates when consent was granted.

June quarter 2023 and PPI have the meanings given in clause 22 (4) of the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023.

If the amount adjusted in accordance with this condition is less than the amount at the time consent is granted, the higher amount must be paid instead.

3. The HPC must be paid before the issue first construction certificate in relation to the development, or before the commencement of any work authorised by this consent (if no construction certificate is required). However, if development is any of the kinds set out in the table below, the total housing and productivity contribution must be paid as set out in the table:

Development	**Time by which HPC must be paid**
Development consisting only of residential subdivision within the meaning of the HPC Order	Before the issue of the first subdivision certificate
High-density residential development within the meaning of the HPC Order for which no construction certificate is required	Before the issue of the first strata certificate
Development that consists only of residential strata subdivision (within the meaning of the HPC Order) or only of residential strata	Before the issue of the first strata certificate

subdivision and a change of use of an existing building	
Manufactured home estate for which no construction certificate is required	Manufactured home estate for which no construction certificate is required

4. The HPC must be paid using the NSW planning portal (https://pp.planningportal.nsw.gov.au/).

5. If the Minister administering the Environmental Planning and Assessment Act 1979 agrees, the HPC (apart from any transport project component) may be made, instead of as a monetary contribution, in the following ways:
   a) the dedication or provision of land for the purpose of regional infrastructure in the region in which the development will be carried out,
   b) the carrying out of works for the purpose of regional infrastructure in the region in which the HPC development will be carried out.

   If the HPC is made partly as a monetary contribution, the amount of the part payable is the amount of the part adjusted in accordance with condition 2 at the time of payment.

6. Despite condition 1, a housing and productivity contribution is not required to be made to the extent that a planning agreement excludes the application of Subdivision 4 of Division 7.1 of the Environmental Planning and Assessment Act 1979 to the development, or the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023 exempts the development from the contribution. The amount of the contribution may also be reduced under the order, including if payment is made before 1 July 2025.

Reason: Statutory requirement.

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

Drainage Works
As security against any damage or failure to complete the construction of stormwater drainage works required as part of this consent a bond of $75,000.

Maintenance for Civil Works
A maintenance bond of $10,000 for the construction of s[tormwater drainage works that revert to Council's care and control. The maintenance bond will only be refunded upon completion of the six month maintenance period, if work has been completed in accordance with the approved plans and to the satisfaction of Council. The maintenance bond is to be paid prior to Council prior to issuing of practical completion.

Details confirming payment of the bond(s) are to be submitted to the Principal Certifier prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

9. **On Slab Landscape Works**
Details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided. Landscape treatment details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, and services connections.

The following soil depths are required to support landscaping:

i) 300mm for groundcovers, perennials, grasses and lawn
ii) 600mm for shrubs
iii) 800mm for small trees

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

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

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 Disposal**
The applicant is to submit Stormwater Engineering Plans for the new development within this development consent in accordance with AS/NZS 3500 and Council's Water Management for Development Policy, prepared by an appropriately qualified and practicing Civil or Hydraulic Engineer who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) , indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to t[he inter-allotment drainage easement and proposed new Council pipeline in Darley 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.

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by Crozier Geotechnical Consultants dated 23 February 2024 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

13. **Erosion and Sediment Control Plan**

An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:

- Site Boundaries and contours
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities)
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls that must include sediment fences, stabilised site access, materials and waste stockpiles locations, location of any stormwater pits on the site and how they are going to be protected.
- North point and scale.

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

Reason: Protection of the receiving environment.

14. **Detailed Design of Stormwater Treatment Measures**

A certificate from a Civil Engineer, stating that the stormwater treatment measures have been designed in accordance with the plans prepared by Civil Consulting Engineers (Rev A dated 15.02.2024) and Council's Water Management for Development Policy.

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

Reason: Protection of the receiving environment.

15. **Car Parking Standards**

The driveway/access ramp grades (except the first 6m ramp*), access and car parking facilities must comply with the Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking. The dimensions of car parking bays and aisle widths in the car park are to comply with Australian/New Zealand Standard for Off-Street Parking AS/NZS 2890.1-2004.

*Note: The first 6m ramp is not fully compliant with AS2890.1:2004. However, the design presented on Civil Plans prepared by RTS Civil Constructing Engineers, dated 0.1.07.2024 is deemed acceptable with the maximum of 5% ramp provided from the footpath instead of property boundary.

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

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

16. **Car Parking Finishes**
All driveways, car parking areas and pedestrian paths are to be surfaced and sealed. Details of treatment to these areas are to be submitted to the Principal Certifier prior to issue of the Construction Certificate.

Reason: To provide suitable stormwater disposal and to prevent soil erosion and runoff.

17. **Vehicular Swept Paths**
Vehicular manoeuvring paths must be provided to demonstrate all vehicles can enter or depart the site in a forward direction without encroaching on required car parking spaces. The drawings must be compliant with Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking.

Details demonstrating compliance with this condition must be submitted to the Principal Certifier prior to the issue of the construction Certificate.

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

18. **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.

19. **Removal of Redundant Driveways**
All redundant driveways shall be removed and reinstated to Council standard kerb and gutter. Suitably prepared plans shall be submitted to for an approval under and approved by Council prior to the issue of the Construction Certificate. All costs associated with the works shall be borne by the applicant.

A plan checking fee (amount to be advised) and lodgement of a performance bond may be required from the applicant prior to the release of the approval.

Reason: To maximise on street car parking by removing driveways that are no longer needed in accordance with Council policy.

20. **Vehicle Mechanical Turntable**
The applicant is to provide information on the proposed vehicular turntable, operation details, and instructions to residents on using the device, maintenance plan, and contingency plan

during a malfunction.

Details are to be provided to Council for approval and this requirement is to be reflected on the Construction Certificate plans Details demonstrating compliance are to be reflected on the Construction Certificate plans and any supporting documentation for the endorsement of the Principal Certifier prior to the release of the Construction Certificate.

Reason: To ensure no vehicle conflicts within the basement carpark.

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

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

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

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

Reason: To ensure satisfactory management of stormwater.

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

- A minimum 900mm setback comprising landscape screening shall be provided between any water tanks and site boundaries. Water tanks shall not be located forward of the primary building line.

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

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

23. **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.

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

The Building Code of Australia fire safety requirements for the building as detailed and recommended in the NCC (BCA) Report prepared by East Coast Approvals Group, dated 19/2/2024, Ref. No. 24/0009, Version 1, including any required Performance Reviews, are to be considered as part of the assessment for any Construction Certificate. Details demonstrating compliance are to be provided to the Certifying Authority, prior to the issue of a Construction Certificate.
Reason: To ensure adequate provision is made for Health, Amenity, access and Fire safety for building occupant health and safety.

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

Access and facilities to and within the building are to be provided as required for Persons with a Disability in accordance with the Building Code of Australia and AS1428.In this regard the Access C Report prepared by East Coast Accessibility Pty Ltd Group dated 9/2/2024 Ref. 24/0009 Rev. 2, is to be taken into consideration as part of the Construction Certificate assessment. Details are to be provided to the Certifying Authority prior to the issue of the Construction Certificate and be implemented prior to occupation of the building.

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

26. **Submission Roads Act Application for Civil Works in the Public Road**
The Applicant is to submit an application for approval for infrastructure works on Council's roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include Civil Engineering plans for the design of the driveway crossing, reinstatement of the existing crossing and pit and pipe construction in Darley Avenue which are to be generally in accordance with the Civil Engineering plans submitted by RTS Consulting Engineers, Project Number 240101 drawings CW001A, CW100A, CW200A, CW201A, SW001A, SW002A, SW100A and SW300A dated 15/02/2024 and 23/02/2024 and Council’s specification for engineering works - AUS-SPEC #1. The plans shall be prepared by a qualified Civil Engineer. The design must include the following information:

1. The driveway crossing is to be 5.5 metres wide at the kerb to 5.8 metres wide at the boundary in accordance with Council's Normal profile.
2. The existing crossing is to be reinstated to kerb, footpath and turf.
3. The existing footpath is to be reconstructed along the entire frontage of the site to 1.5 metres wide.

4. Provide a new stormwater pit with 1.8 metre lintel in Darley St.
5. Provide a 375mm diameter RRJ concrete pipe Class 3 between the new pit and existing pit SPP50174 in Darley St.
6. Reconstruct the kerb and gutter and any laybacks along the length of the new pipeline in Darley Street.
7. Provide a services plan and concurrent from any affected service authority.

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

An approval is to be submitted to the Principal Certifier prior to the issue of the Construction Certificate

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification.

27. **Utilities Services**
Prior to the issue of the Construction Certificate, written evidence of the following service provider requirements must be provided to the Principal Certifier:

a) a letter from Ausgrid demonstrating that satisfactory arrangements can be made for the installation and supply of electricity,
b) a response from Sydney Water as to whether the proposed works subject to this consent would affect any Sydney Water infrastructure, and whether further requirements need to be met, and
c) other relevant utilities or services - that the development as proposed to be carried out is satisfactory to those other service providers, or if it is not, the changes that are required to make the development satisfactory to them.

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

Reason: To ensure relevant utility and service providers' requirements are provided to the Principal Certifier.

28. **Sub-Soil Seepage**
The Applicant is to submit plans demonstrating that all sub-soil seepage drainage is discharged via a suitable silt arrester pit, directly to Council's nearest stormwater drainage line being the proposed extension of the Council pipeline within Darley Street and is to be carried out in accordance with relevant Australian Standards.

Note: At the time of determination the following (but not limited to) Standards applied:
- Australian/New Zealand Standard AS/NZS 3500.3 - 2003 Plumbing and drainage - Stormwater drainage
- Australian/New Zealand Standard AS/NZS 3500.3 - 2003 / Amdt 1 - 2006 Plumbing and drainage - Stormwater drainage.

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

Reason: To ensure appropriate drainage and Stormwater management on site to protect amenity of residents.

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

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

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

30. **Acoustic Treatments**
Prior to the issue of any Construction Certificate, an acoustic engineer is to review the final architectural plans to provide advice on effective acoustic treatment to the apartments to ensure noise from the operation of the nearby Golf Club is reduced to residents inside the apartments bedrooms and living spaces. The acoustic engineer is to review the chosen location for any external noise sources such as air conditions units and provide appropriate design/acoustic treatment advise to be implemented into the construction.

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

Reason: To ensure potential noise sources have been considered and effectively managed.

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

At the time of determination the following (but not limited to) Australian Standards applied:

(a) AS2601.2001 - Demolition of Structures**
(b) AS4361.2 - Guide to lead paint management - Residential and commercial buildings**
(c) AS4282:1997 Control of the Obtrusive Effects of Outdoor Lighting**
(d) AS 4373 - 2007 'Pruning of amenity trees' (Note: if approval is granted) **
(e) AS 4970 - 2009 'Protection of trees on development sites'**
(f) AS/NZS 2890.1:2004 Parking facilities - Off-street car parking**
(g) AS 2890.3 - 2015 Parking facilities - Bicycle parking facilities**
(h) AS 1742 Set - 2010 Manual of uniform traffic control devices Set**

**Note: the listed Australian Standards is not exhaustive and it is the responsibility of the applicant and the Principal Certifier to ensure compliance with this condition and that the relevant Australian Standards are adhered to.

The Australian Human Rights Commission provides useful information and a guide relating to building accessibility entitled "the good the bad and the ugly: Design and construction for access". This information is available on the Australian Human Rights Commission website.

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

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

32. **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.

33. **Photovoltaic (PV) System**
The development shall provide and maintain a minimum of 5kW of PV per dwelling as indicated on the approved plans. The system shall be installed and maintained in accordance with the relevant provisions of SEPP (Transport and Infrastructure) 2021.

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

Reason: To ensure that the sustainability measures of the development are incorporated in accordance with the approved plans.

34. **Bicycle Parking**
A minimum of two (2) bicycle parking spaces are to be provided as per the requirements of Pittwater DCP. The bicycle spaces must be designed in accordance with AS2890.3 2015 must be accessible within the basement at all times. Details demonstrating compliance with this condition must be submitted to the Principal Certifier prior to the issue of the construction Certificate

Reason: to ensure bicycle parking requirements are met and provided as per the Pittwater DCP

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

36. **Project Arborist**
A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged prior to any commencement of works on site to provide tree protection measures in accordance with the Arboricultural Impact Assessment dated 23 February 2024 (updated 25 June 2024) prepared

by Selena Hannan and AS4970-2009 Protection of trees on development sites.

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment dated 23 February 2024 (updated 25 June 2024) prepared by Selena Hannan.

All tree protection measures specified must:

a) be in place before work commences on the site, and
b) be maintained in good condition during the construction period, and
c) remain in place for the duration of the construction works.

The Project Arborist shall provide certification to the Principal Certifier that all tree protection measures under AS4970-2009 have been satisfied, and the recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

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

Reason: Tree protection.

37. **Tree Removal Within the Property**
This consent approves the removal of existing trees on the subject site as identified in the Arboricultural Impact Assessment dated 23 February 2024 (updated 25 June 2024) prepared by Selena Hannan:
i) Trees 11, 16, 19ab, 20, 21, 22, 23, 24
ii) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised building works.

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

A separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane

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

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

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

The DTMP must:-

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

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

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

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

40. **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:

1. 28-30 Golf Avenue, Mona Vale

2. 34-36 Golf Avenue, Mona Vale
3. 33 Darley Street East, Mona Vale

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.

41. **Demolition, Excavation and Construction Management Plan**
A Demolition, Excavation and Construction Management Plan is to be prepared by a suitable person and implemented into the demolition, excavation and construction phase of the development. The Plan is to contain detailed information on effective methods of controlling dust, air, water and noise pollution during these phases.

The plan is to include, but not limited to, likely pollution sources during the demolition, excavation and construction phase, effective methods to be implemented to control the pollution, complaints process, person of contact.

A copy of the final plan is to be provided to the Principal Certifying Authority and the Project Manager.

Reason: To ensure potential pollution is controlled during demolition, excavation and construction.

DURING BUILDING WORK

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

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

Reason: Preservation of significant environmental features.

43. **Tree and Vegetation Protection**
a) Existing trees and vegetation shall be retained and protected, including:

i) all trees within the site not approved for removal, including trees and vegetation nominated for retention on the approved Plans,

ii) all trees and vegetation located on adjoining properties,

iii) all trees and vegetation within the road reserve.

b) Tree protection shall be undertaken as follows:

i) tree protection shall be in accordance with the Arboricultural Impact Assessment dated 23 February 2024 (updated 25 June 2024) prepared by Selena Hannan and AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,

ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by the Project Arborist,

iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with the Project Arborist,

iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,

v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by the Project Arborist on site,

vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with the Project Arborist including advice on root protection measures,

vii) should either or all of v) or vi) occur during site establishment and construction works, the Project Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Project Arborist to the Principal Certifier,

viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,

ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,

x) tree pruning from within the site to enable approved works shall not exceed 15% of any tree canopy, and shall be in accordance with the Arboricultural Impact Assessment dated 23 February 2024 (updated 25 June 2024) prepared by Selena Hannan and AS4373-2007 Pruning of amenity trees,

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

The Principal Certifier must ensure that:

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

Reason: Tree and vegetation protection.

44. **Condition of Trees**
During the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to or by seeking arboricultural advice from the Project Arborist during the works.

In this regard all protected trees shall not exhibit:

i) a general decline in health and vigour,
ii) damaged, crushed or dying roots due to poor pruning techniques,
iii) more than 10% loss or dieback of roots, branches and foliage,
iv) mechanical damage or bruising of bark and timber of roots, trunk and branches,
v) yellowing of foliage or a thinning of the canopy untypical of its species,
vi) an increase in the amount of deadwood not associated with normal growth,
vii) an increase in kino or gum exudation,
viii) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
ix) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist are to be implemented.

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

Reason: Protection of trees.

45. **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.

46. **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.

47. **Dewatering Management**
Tailwater and Groundwater: A permit from Council is required for any dewatering. Contact catchment@northernbeaches.nsw.gov.au

The groundwater/tailwater to be discharged must be compliant with the General Terms of Approval/Controlled Activity permit issued by WaterNSW (if applicable), Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) (Blue Book), Council's Compliance and

Enforcement Policy and legislation including Protection of the Environment Operations Act 1997 and Contaminated Lands Act 1997.

All approvals, water discharges and monitoring results are to be documented and kept on site. Copies of all records shall be provided to the appropriate regulatory authority, including Council, upon request.

Reason: Protection of the receiving environment and groundwater resources.

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

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan prior to commencement of any other works on site.

Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: Protection of the receiving environment.

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

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

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

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

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

Reason: To ensure public safety.

52. **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.

53. **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.

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

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

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

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

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

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

55. **Waste/Recycling Requirements (Waste Plan Submitted)**
During demolition and/or construction the proposal/works shall be generally consistent with the submitted Waste Management Plan titled dated [INSERT].

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

56. **Waste/Recycling Requirements (Materials)**
During demolition and/or construction the following materials are to be separated for recycling: timber, bricks, tiles, plasterboard, metal, concrete, and evidence of disposal for recycling is to be retained on site.

Reason: To ensure waste is minimised and recovered for recycling where possible.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

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

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

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

58. **Landscape Completion**
Landscape works are to be implemented in accordance with Landscape Plans Issue C dated 26.06.24 prepared by Plot Design Group 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,

c) any tree species proposed to be planted within 4m of the southeastern side boundary shall have a maximum height of 4m at maturity.

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.

59. **Native Landscaping**
Any new landscaping is to incorporate a minimum 60% 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.

60. **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.

61. **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.

62. **Post- Construction Stormwater Assets Dilapidation Report (Council stormwater assets)**
The Applicant shall submit a post-construction Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset in order to determine if the asset has been damaged by the works. Council's Guidelines are available at https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/preparingdilapidationsurveyforcouncilstormwaterassets.pdf

The post-construction / demolition dilapidation report must be submitted to Council for review and approval. Any damage to Council's stormwater infrastructure is to be rectified prior to the release of any Drainage security bonds. Council's acceptance of the Dilapidation Survey is to be submitted to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: Protection of Council's infrastructure.

63. **Certification of Civil Works and Works as Executed Data in accordance with Road Act Approval**
The Applicant shall submit a certification by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) that the completed works have been constructed in accordance with this consent and the approved Section 138 plans. Works as Executed data certified by a registered surveyor in relation to boundaries and/or relevant easements, prepared in accordance with Council's 'Guideline for preparing Works as Executed data for Council Assets' in an approved format shall be submitted to the Principal Certifier for approval prior to the issue of the Occupation Certificate.

Reason: To ensure compliance of works with Council's specification for engineering works.

64. **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.

65. **Certification for the Installation of Stormwater Treatment Measures**
A certificate from a Civil Engineer, who has membership to Engineers Australia and the National Engineers Register must be provided, stating that the stormwater treatment measures

have been installed in accordance with the plans prepared by Civil Consulting Engineers (Rev A dated 15.02.2024). The certificate must confirm that stormwater treatment measures are completed, online, in good condition and are not impacted by sediment. Vegetated measures must exhibit an 80 percent survival rate of plantings.

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

Reason: Protection of the receiving environment.

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

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

The terms of the positive covenant and restriction as to user are to be prepared to Council's standard requirements (available from Council) at the applicant's expense and endorsed by the Northern Beaches Council's delegate prior to lodgement with the Department of Lands. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user is to be submitted to the Principal Certifier prior to the issue of the Occupation Certificate.

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

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

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

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

g) Identification of maintenance and management responsibilities
h) Maintenance and emergency contact information

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

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

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

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

Reason: Protection of the receiving environment.

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

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

Reason: Protection of the receiving environment.

69. **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.

70. **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.

71. **Access to Bins for Waste Collection Staff**
All doors and gates used by collection staff must provide unimpeded access to the bins. Should any doors or gates have a requirement to be secured they must be fitted with a timer lock set to remain open from 6.00am to 6.00pm on the scheduled day of collection.
All doors and gates must be able to be latched in the open position to facilitate bin manoeuvring.

Reason: To ensure unimpeded access to waste bins for collection staff at the appropriate times.

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

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

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

73. **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.

74. **Unit Numbering for Multi Unit Developments (Residential, Commercial and Industrial)**
The units within the development are to be numbered in accordance with NSW Address Policy and User Manual.

In this regard, the numbering is to be as per the Unit Numbering for Multi Unit Development Table available on Council's website Unit Numbering for Multi-Unit Developments Form

External directional signage is to be erected on site at driveway entry points and on buildings and is to reflect the numbering in the table provided. Unit numbering signage is also required on stairway access doors and lobby entry doors.

It is essential that all signage throughout the complex is clear to assist emergency service providers in locating a destination within the development with ease and speed, in the event of an emergency.

Details are to be submitted with any Occupation Certificate or Strata Subdivision Certificate certifying that the numbering has been implemented in accordance with this condition and the Unit Numbering for Multi Unit Development Table.

Reason: To ensure consistent numbering for emergency services access.

75. **Undergrounding of Telecommunications Services**
Arrangements are to be made for the provision of underground telecommunications services to the building.

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

Reason: Provision of telecommunication facilities in a manner that facilitates the future underground provision of cable services.

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

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

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

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

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

77. **Staff and Contractor Parking**
The applicant is to make provision for parking for all construction staff and contractors for the duration of the project. All Staff and Contractors are to use the basement parking once available. All necessary facilities are to be provided to accommodate this requirement including lighting in the basement, security cameras, etc.

Reason: To ensure minimum impact of construction activity on local parking amenity.

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

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

Reason: To ensure waste and recycling facilities are provided.

79. **Waste/Recycling Compliance Documentation**
Evidence of disposal for recycling from the construction/demolition works shall be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure waste is minimised and recycled.

80. **Positive Covenant for Council and Contractor Indemnity**
A positive covenant shall be created on the title of the land prior to the issue of an Occupation Certificate requiring the proprietor of the land to provide access to the waste storage facilities. The terms of the positive covenant are to be prepared to Council's requirements, (Appendix E of the Waste Management Guidelines), at the applicant's expense and endorsed by Council prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

Reason: To ensure ongoing access for servicing of waste facilities.

81. **Authorisation of Legal Documentation Required for Waste Services**
The original completed request form (NSW Land Registry Services form 13PC) must be submitted to Council for authorisation prior to the issue of an Occupation Certificate. A copy of the work-as-executed plan (details overdrawn on a copy of the approved plan) must be included with the above submission. A Compliance Certificate, issued by the Certifying Authority, shall also be provided in the submission to Council.

If Council is to issue the Compliance Certificate for these works, the fee is to be in accordance with Council's Fees and Charges.

Reason: To create encumbrances on the land.

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

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

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

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

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

Reason: Protection of the receiving environment.

83. **Parking Enclosure**
No parking spaces, or access thereto, shall be constrained or enclosed by any form of structure such as fencing, cages, walls, storage space, or the like, without prior consent from Council.

Reason: To ensure accessibility is maintained.

84. **Landscaping adjoining vehicular access**
The applicant must ensure that the planting chosen for any land immediately adjacent to the driveway and adjacent to any driveway intersections must not exceed a height of 1m

Reason: To maintain unobstructed sight distance for motorists.

85. **Fencing Height / Vegetation**
All fencing and/or vegetation along the frontage road(s) shall not impede pedestrian or driver visibility. This requires that vegetation does not exceed one (1) metre in height. Appropriate plants shall be selected within the 2.0 x 2.5m splay to ensure this condition is met.

Reason: To ensure maximum vehicular and pedestrian visibility.

86. **Car Parking Allocation**
The development is to maintain the following parking allocation for the life of the development:

a. 12 x residential spaces, with a minimum of 1 space incorporating an EV charging point (min. 15 amp to suit level 1 charging) per unit,
b. 2 x visitor spaces.

All spaces must be line-marked and identified accordingly.

Manoeuvring areas must be kept clear of obstructions at all times. Vehicles must not be required to queue on public roads at any time.

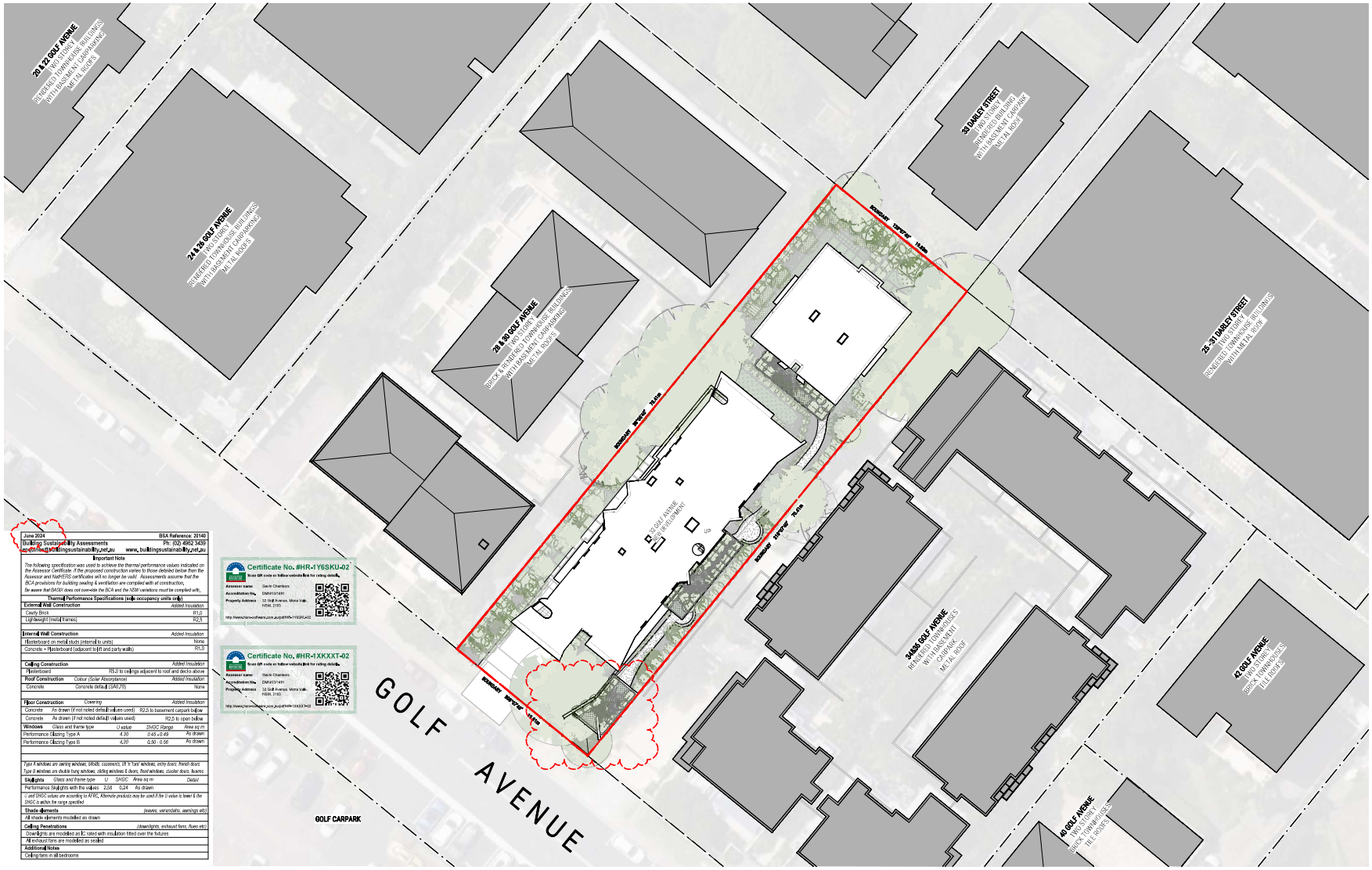
Reason: To ensure the appropriate management of parking on site.

87. **Mechanical Plant**
Any mechanical plant equipment 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.

88. **Liveable Housing Units**
The proposal must maintain two (2) apartments incorporating the *Livable Housing Guideline's* silver level universal design features in accordance with the Class C requirements of AS4299.

Reason: To maintain the appropriate quantity of liveable and adaptable units over the life of the development.



June 2024 — BSA Reference: 39148

Building Sustainability Assessments — Ph: (02) 4862 3499

www.buildingsustainability.net.au

Important Note

The following specification was used to achieve the thermal performance values indicated on the Assessor Certificate. If the proposed construction varies to those detailed below then the Assessor and NatHERS certificate will no longer be valid. Assessments assume that the BCA provisions for building sealing & ventilation are complied with at construction.

Be aware that BASIX does not over-ride the BCA and the NSW variations must be complied with.

Thermal Performance Specifications (sole occupancy units only)

External Wall Construction		Added Insulation
Cavity Brick		R1.0
Lightweight (metal frames)		R2.5

Internal Wall Construction		Added Insulation
Plasterboard on metal studs (internal to units)		None
Concrete + Plasterboard (adjacent to lift and party walls)		R1.0

Ceiling Construction		Added Insulation
Plasterboard	R5.0 to ceilings adjacent to roof and decks above	
Roof Construction	*Colour (Solar Absorptance)*	*Added Insulation*
Concrete	Concrete default (SRC≥70)	None

Floor Construction	*Covering*	*Added Insulation*
Concrete	As drawn (if not noted default values used)	R2.5 to basement carpark below
Concrete	As drawn (if not noted default values used)	R2.5 to open below

Windows	Glass and frame type	*U value*	*SHGC Range*	*Area sq m*
Performance Glazing Type A		4.30	0.43 - 0.49	As drawn
Performance Glazing Type B		4.30	0.00 - 0.06	As drawn

Type A windows are awning windows, bifolds, casements, tilt 'n' turn windows, entry doors, french doors
Type B windows are double hung windows, sliding windows & doors, fixed windows, shutter doors, louvres

Skylights	*Glass and frame type*	*U*	*SHGC*	*Area sq m*	*Detail*
Performance Skylights with this values		2.58	0.24	As drawn	

U and SHGC values are according to AFRC. Alternate products may be used if the U value is lower & the SHGC is within the range specified

Shade elements	*(eaves, verandahs, awnings etc)*
All shade elements modelled as drawn	

Ceiling Penetrations	*(downlights, exhaust fans, flues etc)*
Downlights are modelled as IC rated with insulation fitted over the fixtures	
All exhaust fans are modelled as sealed	

Additional Notes

Ceiling fans in all bedrooms

Certificate No. #HR-1 Y6SKU-02

Assessor name: Gavin Chambers
Accreditation No.: DMN/13/1491
Property Address: 32 Golf Avenue, Mona Vale NSW, 2103

Certificate No. #HR-1 XKXXT-02

Assessor name: Gavin Chambers
Accreditation No.: DMN/13/1491
Property Address: 32 Golf Avenue, Mona Vale NSW, 2103

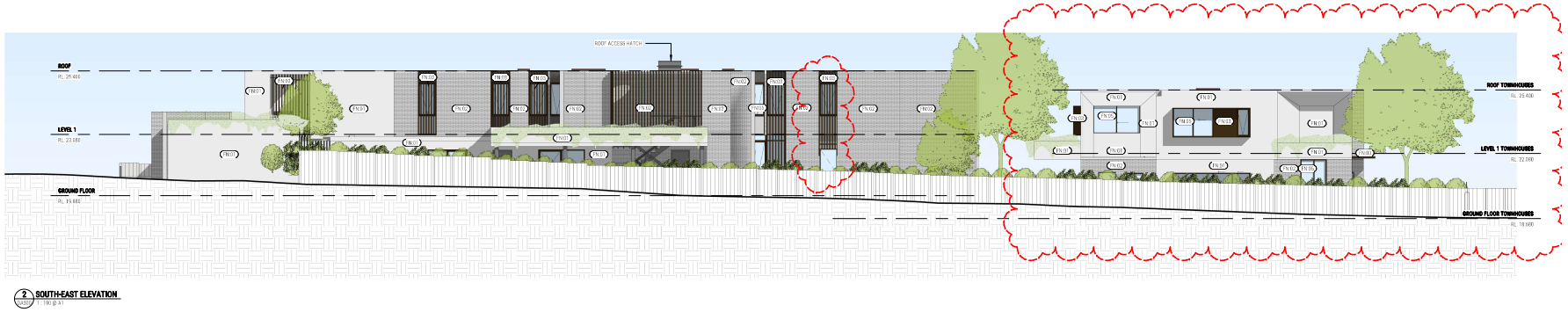
WALSH ARCHITECTS

E: scott@walsharchitects.com.au
P: 0400 669 880
Nominated Architect: Scott Walsh ACT 3524

REV NO.	DESCRIPTION	REV DATE
A	ISSUE FOR DA APPROVAL	19.01.24
B	UPDATED FOR DA APPROVAL	22.06.24

PROPOSED SITE PLAN
SHEET NUMBER **DA040**
REVISION **B**
SCALE @ A1 **1 : 200**
32 GOLF AVENUE MONA VALE









SCHEDULE OF FINISHES

FN:01 - CONCRETE LOOK FINISH
FN:02 - MASONRY BRICKS SIMILAR TO BLANCO LINEAR
FN:03 - METALWORK FINISHED IN BRONZE COLOURING
FN:04 - BIRCH PLYWOOD LOOK SOFFITS
FN:05 - GLASS TO MEET BASIX REQUIREMENTS

WALSH ARCHITECTS

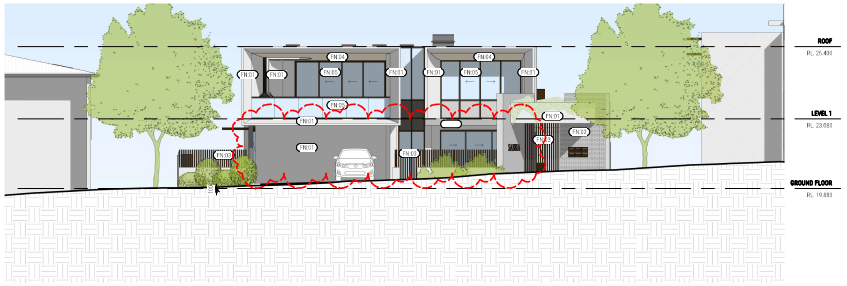
REV NO.	DESCRIPTION	REV DATE
A	ISSUE FOR DA APPROVAL	19.01.24
B	UPDATED FOR DA APPROVAL	22.05.24

ELEVATIONS
SHEET NUMBER **DA300**
REVISION **B**
SCALE @ A1 **1 : 100**
32 GOLF AVENUE MONA VALE



1 NORTH-EAST ELEVATION
1:100 @ A1





2 SOUTH-WEST ELEVATION
1:100 @ A1

SCHEDULE OF FINISHES

FN:01 - CONCRETE LOOK FINISH
FN:02 - MASONRY BRICKS SIMILAR TO BLANCO LINEAR
FN:03 - METALWORK FINISHED IN BRONZE COLOURING
FN:04 - BIRCH PLYWOOD LOOK SOFFITS
FN:05 - GLASS TO MEET BASIX REQUIREMENTS

WALSH ARCHITECTS
E: scott@walsharchitects.com.au
P: 0400 040 880
Nominated Architect: Scott Walsh ACT 3624

REV NO.	DESCRIPTION	REV DATE
A	ISSUE FOR DA APPROVAL	19.01.24
B	UPDATED FOR DA APPROVAL	22.06.24

ELEVATIONS
SHEET NUMBER **DA301**
REVISION **B**
SCALE @ A1 **1 : 100**
32 GOLF AVENUE MONA VALE

ITEM 3.3 DA2023/1850 - 50 PERONNE AVENUE CLONTARF - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL

PURPOSE

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

RECOMMENDATION

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

B. THAT Council as the consent authority **refuses** Development Consent to DA2023/1850 for alterations and additions to a dwelling house including a swimming pool on land at Lot 9 DP 29355, 50 Peronne Avenue CLONTARF, for the reasons for refusal set out in the Assessment Report.

Reporting manager	Adam Richardson
TRIM file ref	2024/592821
Attachments	⇩1 Assessment Report ⇩2 Site Plan and Elevations ⇩3 Clause 4.6

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/1850

Responsible Officer:	Nick England
Land to be developed (Address):	Lot 9 DP 29355, 50 Peronne Avenue CLONTARF NSW 2093
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Robert Ursino Design Pty Ltd

Application Lodged:	15/01/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	18/04/2024 to 02/05/2024
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	4.3 Height of buildings: 36% 4.4 Floor space ratio: 18%
Recommendation:	Refusal

Estimated Cost of Works:	$ 1,991,226.00

EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to the existing dwelling house on the subject site.

The application is referred to the Development Determination Panel (DDP) due to the application seeking variations exceeding 10% with the following development standards of Manly Local Environmental Plan 2013 (MLEP 2013):

- Height of Buildings (36%); and

- Floor Space Ratio (18%).

The application was notified in accordance with the Northern Beaches Community Participation Plan total of three (3) submissions were received, raising concerns with (in summary):

- visual impact;
- visual / acoustic privacy;
- loss of views;
- solar access;
- non-compliance with the relevant standards and controls of Council's policies;
- insufficient landscaping;
- stormwater management; and
- vehicular access.

An assessment of the matters raised in the submission has found that the matters in relation: non-compliances with Council policy; visual impact; solar access; and visual privacy are valid issues and are relevant to the findings and recommendations made in this report.

The non-compliance with the building height standard arises from an addition to the upper (1st) floor, for the purposes of providing a passenger lift, additional floor space and an associated balcony.

The non-compliance with floor space ratio standard arises from additional floor space on the lower ("entry) level; lower ground floor; and 1st floors.

The application has been supported by written Clause 4.6 written requests for these non-compliances. It is considered that the environmental planning grounds advanced are insufficient, insofar that they largely promote the benefits of the breaches. The non-compliances with the development standards are also inter-related with other non-compliances with other development controls relating to: wall height; number of storeys; front setback; garage design and in wholistic terms represents a proposed development that is adequate to meet the objectives of Council's policies.

This report concludes with a recommendation that the DDP refuse application, for the reasons recommended in this report.

PROPOSED DEVELOPMENT IN DETAIL

The application proposes the extensive alteration and additions to the existing dwelling house, comprising of the following (as amended):

- two (2) car garage adjoining western front boundary of the site, with associated terrace above and pedestrian access stairs;
- conversion of existing garage as $50m^2$ rumpus room, cellar and toilet;
- revised entry foyer and installation of passenger lift;
- $21.3m^2$ floor space additions and reduced $29.7m^2$ balcony to lower ground floor (existing balcony reduced in width by 0.3m);
- $1.6m^2$ reduction in floor space and reduced $38.1m^2$ balcony to ground floor (existing balcony reduced in width by 0.8m); and
- additions for $6m^2$ of floor space, new $10m^2$ balcony and passenger lift on 1st floor.

History of Application

Upon initial assessment of the application, correspondence was sent to the applicant on 3 May 2024. The applicant was advised that the proposal was not supported, based on the following issues:

- Height of Buildings and Floor Space Ratio development standards;
- Wall Height and Number of Storeys development controls;
- Front and Side Boundary setback controls;
- Swimming pool location;
- Insufficient solar access to adjoining properties;
- Visual privacy impacts to adjoining dwellings; and
- Visual impact / width of proposed garage structure.

The applicant submitted concept plans for discussion on 28 May 2024 and 26 June 2024. In both instances, the applicant was advised that the concept plans had failed to adequately address the issues previously raised by Council it its assessment.

Formally amended plans were provided to Council (via NSW Planning Portal) on 24 July 2024. These plans are the subject of the assessment made in this report.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Local Environmental Plan 2013 - 6.1 Acid sulfate soils
Manly Local Environmental Plan 2013 - 6.2 Earthworks
Manly Local Environmental Plan 2013 - 6.4 Stormwater management
Manly Local Environmental Plan 2013 - 6.8 Landslide risk

Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
Manly Local Environmental Plan 2013 - 6.12 Essential services
Manly Development Control Plan - 3.1 Streetscapes and Townscapes
Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)
Manly Development Control Plan - 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)
Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
Manly Development Control Plan - 3.4.2 Privacy and Security
Manly Development Control Plan - 3.4.3 Maintenance of Views
Manly Development Control Plan - 4.1 Residential Development Controls
Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
Manly Development Control Plan - 4.1.7 First Floor and Roof Additions
Manly Development Control Plan - 5.4.1 Foreshore Scenic Protection Area

SITE DESCRIPTION

Property Description:	Lot 9 DP 29355 , 50 Peronne Avenue CLONTARF NSW 2093
Detailed Site Description:	The subject site consists of one (1) allotment located on the eastern/uphill side of Peronne Avenue, Clontarf. The site is irregular in shape with a variable frontage of approximately 16.59m along Peronne Avenue and a depth varying between 47.88 (north boundary) and 54.7m (south boundary). The site has a surveyed area of 806.9m². The site is located within the R2 Low Density Residential zone and accommodates a split-level dwelling house, with a semi-basement garage for two vehicles and a swimming pool at the rear. Vehicular access to the site is via a narrow driveway on the adjoining road reserve, with the main carriageway further down the slope on the western frontage. This accessway also serves the dwellings at Nos.44 to 54. The site has a westerly aspect, on a moderate to steep slope, particularly at the rear eastern boundary. No significant vegetation exists on the site, with the exception of five (5) Palms, that are not in close proximity of the proposed works. Adjoining and surrounding development is characterised by dwelling houses.

Map:



SITE HISTORY

A search of Council's records has revealed the following relevant applications for this site and adjoining land.

PLM2021/0331: Pre-lodgement meeting (PLM) held with Council on 25 January 2022, to discuss conceptual alterations and additions to a dwelling house including a swimming pool. These plans were not dissimilar to the application as originally proposed and the notes for the PLM advised conceptual support the proposal contingent upon: adequate justification being provided for variations to the Building Height and FSR development standards; mitigating privacy impact to No.48 Peronne Avenue; and demonstrating consistency with the objectives of MDCP 2013, where non-compliances occur.

DA2018/1018: Consent granted by the Development Determination Panel (DDP) on 15 October 2018 for "Demolition work and construction of a dwelling house" at No.52 Peronne Avenue, to the north of the subject site. A variation to the Height of Buildings development standard, of 25.8% (10.7m) was approved in this consent. The application was consistent with the Floor Space Ratio development standard of 0.4:1, at an approved 255m^2 or 0.376:1.

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	There are no current draft environmental planning instruments.

Section 4.15 Matters for Consideration	Comments
environmental planning instrument	
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan 2013 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters could be 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: height of buildings; floor space ratio; wall height; number of storeys; front boundary; swimming pool / front setback; side setback; solar access; visual privacy; width of garage; and vehicular access, in correspondence dated 3 May 2024. Additional information (conceptual plans, not formally amended through the NSW Planning Portal) was received in response on 24 May 2024 and 21 June 2024. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter could be addressed via a condition of consent. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter could be 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 could be addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan 2013 section in this report. (ii) **Social Impact**

Section 4.15 Matters for Consideration	Comments
and economic impacts in the locality	The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant policy requirement(s) of Council, specifically: • Height of Buildings and Floor Space Ratio development standards of Manly LEP 2013; and • the development controls of Manly DCP 2013, pertinent to: number of storeys; front setback; and solar access. This will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 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 3 submission/s from:

Name:	Address:
Mr Gregory Camden Camp Bill Tulloch	48 Peronne Avenue CLONTARF NSW 2093

Name:	Address:
Mr Neil Clinton Tanner Ms Grace Lu Ye	115 Clontarf Street SEAFORTH NSW 2092
John Mathios Panayota Georgia Koutroulis	46 Peronne Avenue CLONTARF NSW 2093

The application was re-notified twice, with the most recent period being between 15 April and 2 May 2024. Re-notification was required as the standard on-site notice has not been affixed to the site during the first notification period.

The amended plans received on 27 July 2024 were not formally re-notified, as consistent with Council's Community Participation Plan, the plans represented a lesser / reduced environmental impact. However, all person/s who made a submission on the application were informally notified of the amended plans, consistent with Council's current procedure.

The following issues were raised in the submissions, which are summarised and considered below:

- ***The proposal will have an adverse visual impact when viewed from adjoining properties.***

  Comment: Detailed assessment on the likely visual impact of the proposed development is provided elsewhere in this report. In summary, the proposed works will represent an unacceptable bulk and scale when viewed from both adjoining properties and the public domain. Hence, this issue is considered valid and forms one of the recommended reasons for refusal of the application.

- ***The application will have an adverse impact on the visual and acoustic privacy of the adjoining dwellings at Nos. 48 and 52 Peronne Avenue.***

  Comment: In respect to the visual privacy of adjoining dwellings, no adverse or unreasonable impact is considered likely to the adjoining dwelling at No.52. This is based on the design of the proposal not increasing the size and location of the existing lower ground and ground floor balconies (in effect, reducing their areas). The new balcony on the 1st floor is not of a size and shape or proximity that will generate adverse visual privacy impacts. However, the modifications to the existing balconies (specifically the loss of the side blade walls) that adjoin No.48 will result in an adverse impact, given their close proximity to No.48.

  In regard to acoustic privacy, there is no element of the proposed works that would result in adverse amenity impacts to these adjoining dwellings or any other dwelling in the vicinity.

  In summary, the issues raised in regard to visual privacy are considered valid and therefore forms one of the recommended reasons for refusal of the application.

- ***The proposal will have an adverse impact on the views currently enjoyed by adjoining properties.***

  Comment: A detailed consideration of the potential loss of views from adjoining properties is provided elsewhere in this report. In summary, there are no adverse loss of views as a result of

the proposed development and this issue is not considered a valid reason to refuse the proposed development.

- ***The application is not consistent with the Height of Buildings and Floor Space Ratio development standards of Manly LEP 2013.***

  Comment: A detailed consideration of the proposed variations to the Height of Buildings and Floor Space Ratio development standards is provided elsewhere in this report. In summary, there are no circumstances that would warrant the proposed variations to either of these development standards. As such, this forms one of the recommended reasons for the refusal of the application.

- ***The recent removal of vegetation on the site and the inadequate level of landscaping plantings in the application will result in adverse impacts on the visual and acoustic privacy of adjoining dwellings at Nos.48 and 52 Peronne Avenue.***

  Comment: The proposed areas of landscaped open space (and the potential plantings that may occur on them) are not critical to ensuring the adequate visual and acoustic amenity of adjoining properties. The application provides adequate Total Open Space and Landscaped Areas to be consistent with the relevant policies of Council. As such, this issue is not considered a valid reason to refuse the application.

- ***Stormwater management required for the proposed development is likely to effect existing vegetation along the southern boundary of the adjoining property at No.52 Peronne Avenue.***

Comment: Council's Development Engineer has advised that no upgrade of the existing stormwater management system is required. The plans provided have not specifically shown the location of any stormwater management structures or pipes and hence it can be reasonably assumed no such infrastructure is either proposed or required as part of the proposed works. Hence, this is issue is not a valid reason to refuse the application.

- ***The proposal will adversely effect the access driveway that other properties in Peronne Avenue rely upon, particularly during construction.***

Comment: The subject site, and the properties of Nos.46, 48, 52 and 54 rely upon the single carriageway access driveway on the adjoining road reserve. Based on consultation with Council's Development Engineer, the design of the proposed works (in particular, the garage and revised driveway) will be compliant with the relevant standards for vehicular access. In relation to access during any construction, conditions of consent could apply to ensure adequate management of the road reserve, in the event that consent is granted. As such, this issue is not considered a valid reason to refuse the application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	***Supported, subject to Conditions*** The application is for alterations and additions to the existing

Internal Referral Body	Comments
	dwelling. Landscape Plans are submitted with the application and it is noted that the works include removal of exempt species that do not require Council consent. The Landscape Plans include new hard and soft landscape works within the property and following review Landscape Referral raise no concerns with the proposed landscape outcomes, subject to conditions.
NECC (Development Engineering)	***Supported, subject to Conditions*** The proposed development is in Region 3. On-site detention is not required. Vehicle crossing construction is not proposed. A geotechnical report has been provided. I have no objections to the proposed development subject to the inclusion of the recommended engineering conditions of consent.

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 could 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.A1373716 dated 25 October 2023).

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment: The proposal was referred to Ausgrid who raised no objections.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.5 - 11.6m	36	**No**
Floor Space Ratio	FSR: 322.8m^2 or 0.4:1*	FSR: 381m^2 or 0.47:1	18	**No**

* the existing gross floor area (GFA) is estimated at 292.3m2 or a floor space ratio (FSR) of 0.36:1

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	No
4.6 Exceptions to development standards	No

Clause	Compliance with Requirements
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	No
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

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

1. Height of Buildings

Development standard: Clause 4.3 Height of Buildings
Requirement: 8.5m
Proposed: 9.5 - 11.6m
Percentage of variation: 36%

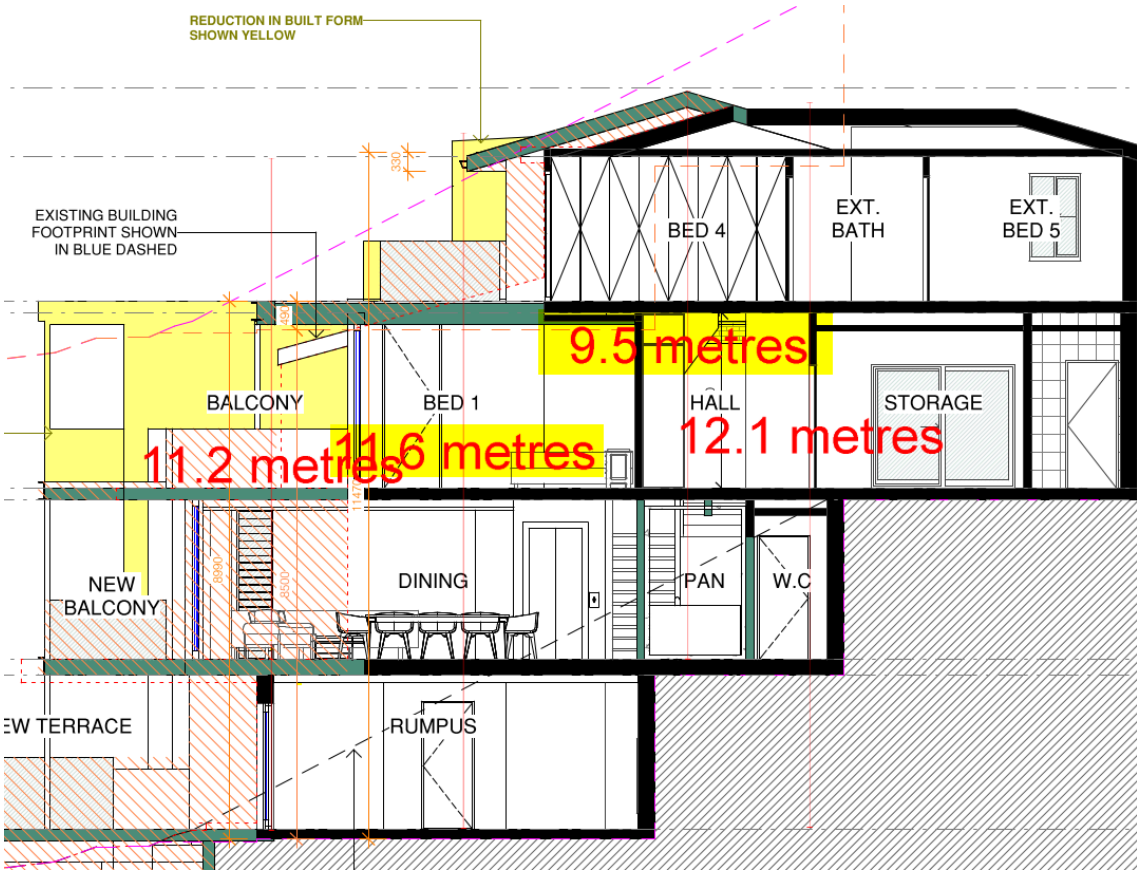


Figure 1 - height section

In terms of how the proposed works will represent as an increase to the existing height of the dwelling, this is estimated at in increase varying between 0.2 to 2.4m, measured from the existing roof levels.

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

Subclause (1) of this clause provides that:

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

Comment:

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

Subclause (2) of this clause provides that:

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

Comment:

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

Subclause (3) of this clause provides that:

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

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

Comment:

Council is not satisfied that the Applicant has demonstrated that compliance with Clause 4.3 Height of Buildings is unreasonable or unnecessary in the circumstances of this application for the following reasons:

- the proposed works will represent an unreasonable bulk and scale when viewed from the adjoining public domain;

- the bulk and scale of the proposal will have an adverse visual impact when viewed from adjoining private residences;
- the overall visual presentation of the proposal will be inconsistent with the desired future streetscape character in the locality; and
- the proposal will not provide an adequate level of solar access to the habitable rooms of the adjacent dwelling at No.48 Peronne Avenue.

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

Comment:

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

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

The Clause 4.6 request argues, in summary:

- *the extent of the proposed height breach is amplified by existing excavation on the site and the proposed height is in effect diminished, if the ground level upon which it is measured is taken from an interpolated or assumed natural ground level;*
- *the site is subject to a steep topography which inadvertently accentuates any proposed building height; and*
- *the non-compliances are generally limited to architectural details that provide for enhanced amenity for future occupants including the retrofitting of a passenger lift to enable the occupants to age in place.*

In response to these grounds:

- Existing excavation / floor levels on the site are not of the significant degree that modifies substantially the overall slope and topography of the site. As such, this would not justify a return to a natural ground level, as a means of measuring any proposed height. This is important to note given that the works are alterations and additions to an existing dwelling, hence measuring from the existing ground levels is entirely reasonable. Measuring from a interpolated or assumed natural ground level would be more reasonable if the development proposed was to demolish the existing dwelling and erect a new dwelling.
- The existing topography of the site is not of a nature that would in itself justify setting aside the numerical control.
- Any works that seek to facilitate "aging-in-place" for single residential dwelling are not required to provide equitable access, or be designed to a standard which meets AS1428 under the Building Code of Australia / National Construction Code. Further, this is not a relevant planning

consideration or ground, insofar that residential development is not required to be built to an accessible standard.

- These grounds are not consistent with the basic principle behind *Initial Action Pty Ltd v Woollahra Municipal Council*, which established that the acceptable grounds for a variation must centre on the proof of acceptable environmental impact and not solely on the implied benefit of the development itself.

As a result of these considerations, Council is not satisfied that the applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of Clause 4.3 Height of Buildings.

Public Interest:

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

Conclusion:

Council is not satisfied as to the matters set out in Clause 4.6 of the MLEP 2013, with regard to the maximum Height of Buildings development standard.

2. Floor Space Ratio

Development standard: Clause 4.4 Floor Space Ratio
Requirement: 0.4:1
Proposed: 381m^2 or 0.47:1
Percentage of variation: 18%

The floor space of the existing dwelling is estimated at 292m^2 or 0.36:1, consistent with or less that the applicable standard.

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 (FSR) 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 not satisfied that the applicant has demonstrated that compliance with Clause 4.4 Floor Space Ratio is unreasonable or unnecessary in the circumstances of this application for the following reasons:

- the bulk and scale of the proposed development is not consistent with both the existing and desired streetscape character;
- the proposal will not result in an appropriate visual relationship with existing development in the area; and
- the design of the proposal will result in adverse environmental impacts to the amenity of the adjoining property to the south (ie. solar access to habitable rooms of No.48 Peronne Avenue)

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

Comment:

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

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

The Clause 4.6 Request argues the following grounds, in summary:

- *The non-compliance will allow additions to the dwelling that will facilitate enhanced building design and amenity, including: replacement of an existing antiquated and non-compliant/*

dangerous driveway arrangement; enhance internal layout efficiencies; and accommodate new passenger lift and associated circulation space.

- *Enabling a design to facilitate the above grounds will be contiguous with the objectives of Clause 4.6, specifically to allow a degree of flexibility and achieve better outcomes in planning.*
- *The FSR variation sought will promote the orderly and economic use and development of the land (enabling ageing in place), will promote good design and amenity of the built environment (enhanced building design and amenity) and promote the proper construction and maintenance of buildings including the protection of the health and safety of their occupants (addressing existing antiquated off street parking arrangement)*
  consistent with objectives (c), (g) and (h) of the Act.

In response to these grounds:

- Improvements in the internal amenity and comfort of a dwelling are in themselves not considered a valid planning ground to support a variation to a numerical development standard.
- The objectives of Clause 4.6 in relation to "flexibility" and "better outcomes" are to allow for the standards to be relaxed in instances where they do need to be applied. The circumstances of the subject application is that the proposed variation will have a verifiable adverse impact on the surrounding area and reasons provided for the variation are not sufficient to justify these identified impacts. This is certainly not considered a better planning outcome. As such, the circumstances of the site do not warrant a flexible approach to the application of the standard.
- The quoted Objects of the Act speak to: orderly and economic use and development of land; good design and amenity; construction and maintenance of buildings; and health and safety of the dwellings occupants. The proposal is not considered to be an orderly development based on the extent of the variation and the other matters are in themselves not adequate to justify the non-compliance given its demonstrated failure to meet the relevant objectives of the control.

Based on the discussion above, Council is not satisfied that the Applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of Clause4.4 - Floor Space Ratio.

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:

The proposed variation is significant and is largely a result of the conversion of the existing garage to habitable floor space, with a corresponding relocation of the garage to within the existing front setback. Under the circumstances, Council is not satisfied as to the matters set out in Clause 4.6 of the MLEP 2013, in relation to Clause 4.4 - Floor Space Ratio.

6.1 Acid sulfate soils

Clause 6.1 - 'Acid sulfate soils' requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being

of the class specified for those works.

The site is located in an area identified as Acid Sulfate Soil Class 5, as indicated on Council's Acid Sulfate Soils Planning Map.

Works in a Class 5 area that is within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum (AHD) on adjacent Class 1, 2, 3 or 4 land is required to be assessed to determine if any impact will occur.

However, the land is not within 500m of any Class 1 - 4 land and is more than 5m above the AHD. Hence, no further specialist investiagtion is required and the application is consistent with Clause 6.1 of MLEP 2013.

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. If consent was granted, a condition of consent could be recommended, 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 effect of the proposed earthworks (on their own) are not likely to result in unreasonable amenity impacts on adjoining properties.

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

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

(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 could be recommended to minimise the impacts of the development, in the event that consent is granted.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of MLEP and MDCP 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.

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. The application has also been referred to Council's Development Engineers, who have advised that the proposed stormwater management system is consistent with the Council's Water Management Policy.

(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: As stated before, the proposal has been assessed by Council's Development Engineers who have raised no objections to approval, subject to potential conditions of consent. In this regard, It is considered that the development will minimise any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters.

6.8 Landslide risk

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

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

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

(a) site layout, including access,
(b) the development's design and construction methods,
(c) the amount of cut and fill that will be required for the development,
(d) waste water management, stormwater and drainage across the land,
(e) the geotechnical constraints of the site,
(f) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Comment: A detailed geotechnical report, prepared by a suitably qualified professional (Eswnman Pty Ltd, dated 22 December 2023) was provided in support of the proposed works. In summary, the findings and recommendations of the report indicate that the ground conditions at the site are suitable for the proposed development and present no adverse risk with respect to landslide. In the event that consent is granted, the recommendations of this report could ensure that such a risk is minimised.

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

(a) the development is designed, sited and will be managed to avoid any landslide risk or significant adverse impact on the development and the land surrounding the development, or
(b) if that risk or impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that risk or impact, or
*(c) if that risk or impact cannot be minimised—the development will be managed to mitigate that risk or impac*t.

Comment: As stated above, the professional documentation provided with this application is adequate to ensure that avoid any landslide risk or significant adverse impact is reasonably avoided on this site.

6.9 Foreshore scenic protection area

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

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

Comment: The application represents numerous non-compliances with the relevant development standards and controls of Council. In particular, both: Height of Buildings; and Floor Space Ratio development standards. This results in a proposed development of a built scale, size and intensity that

is not consistent with objectives (a) and (b), which are to limit the impact of new development in areas that will be visually prominent from coastal areas.

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: Adequate services infrastructure is present on the site to meet the requirements of Clause 6.12.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 806.9m^2	**Requirement**	**Proposed**	**% Variation**	**Complies**
4.1.2.1 Wall Height	North: 8m (based on gradient 1:4+)	8.4 - 9.4m	18	**No**
	South: 8m (based on gradient 1:4+)	5.8 - 8.4m	5	**No**
	East: 8m (based on gradient 1:4)	No change	N/A	N/A
	West: 7.6m (based on gradient 1:5.5)	6m	N/A	Yes
4.1.2.2 Number of Storeys	2	4	100	**No**
4.1.2.3 Roof Height	Height: 2.5m	1m	N/A	Yes
	Parapet Height: 0.6m	N/A	N/A	N/A
	Pitch: maximum 35 degrees	N/A	N/A	N/A
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	1.2 - 3.4m (garage) 6.8 - 9.1m (entry) 5.1 - 8m (lower ground) 5.1 - 7.9m (ground) 11.1 - 15m (1st floor)	80 N/A 15 15 N/A	**No** Yes **No** **No** Yes
4.1.4.2 Side Setbacks	North: 1.2 - 3.1m (based on 8.4 - 9.4m wall height)	Garage: 3.6m Entry Level: no change	N/A N/A N/A	Yes N/A N/A

		Lower Ground: no change Ground Floor: no change 1st Floor: 3.7m	N/A N/A	N/A Yes
	South: 2.8m (based on 8.4m wall height)	Garage: 4.6m Entry level: no change Lower Ground: No change Ground Floor: No change 1st Floor: No change	N/A N/A N/A N/A N/A	N/A N/A N/A N/A N/A
	Windows: 3m	North: 1.1m South: 1.3 - 2.3m	65 54	**No** **No**
4.1.4.4 Rear Setbacks	8m	26m	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area	581.4m^2 or 72%	N/A	Yes
	Open space above ground, max 40% of total open space	55m^2 or 9%	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space (or 233m^2)	413.8m^2 or 71%	N/A	Yes
	4 native trees	2 trees	50	**No**
4.1.5.3 Private Open Space	18m^2 per dwelling	>18m^2	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	46% / 7.7m	24	**No**
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	No change	N/A	N/A
	1m curtilage/1.5m water side/rear setback	No change	N/A	N/A
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

Compliance Assessment

Clause	**Compliance with Requirements**	**Consistency Aims/Objectives**
3.1 Streetscapes and Townscapes	No	No
3.1.1 Streetscape (Residential areas)	No	No
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)	No	No
3.4.1 Sunlight Access and Overshadowing	No	No

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.4.2 Privacy and Security	No	No
3.4.3 Maintenance of Views	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	No	No
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	No
4.1.4 Setbacks (front, side and rear) and Building Separation	No	No
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	No
4.1.7 First Floor and Roof Additions	No	No
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	Yes	Yes
5 Special Character Areas and Sites	No	No
5.4.1 Foreshore Scenic Protection Area	No	No
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

3.1 Streetscapes and Townscapes

Refer to detailed discussion on Part 3.1.1 Streetscape (Residential areas).

3.1.1 Streetscape (Residential areas)

Part 3.1.1.4 of MDCP 2013 states that:

"*a) Garages, carports and hardstand areas must be designed and sited in a manner that does not to dominate the street frontage by:*

i) its roof form, material choice and detailing by being subservient to the associated dwelling; and

ii) being compatible with the streetscape and the location in relation to front setback criteria."

The proposed garage structure will result in an excessive level of excavation and will not be subservient to the existing dwelling on the site. In total, the front setback proposed is inadequate to meet the relevant criteria of this control, specifically to limit visual impact. In turn, this will have an adverse impact on the adjoining streetscape and as such the proposal fails this part of the DCP.

3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)

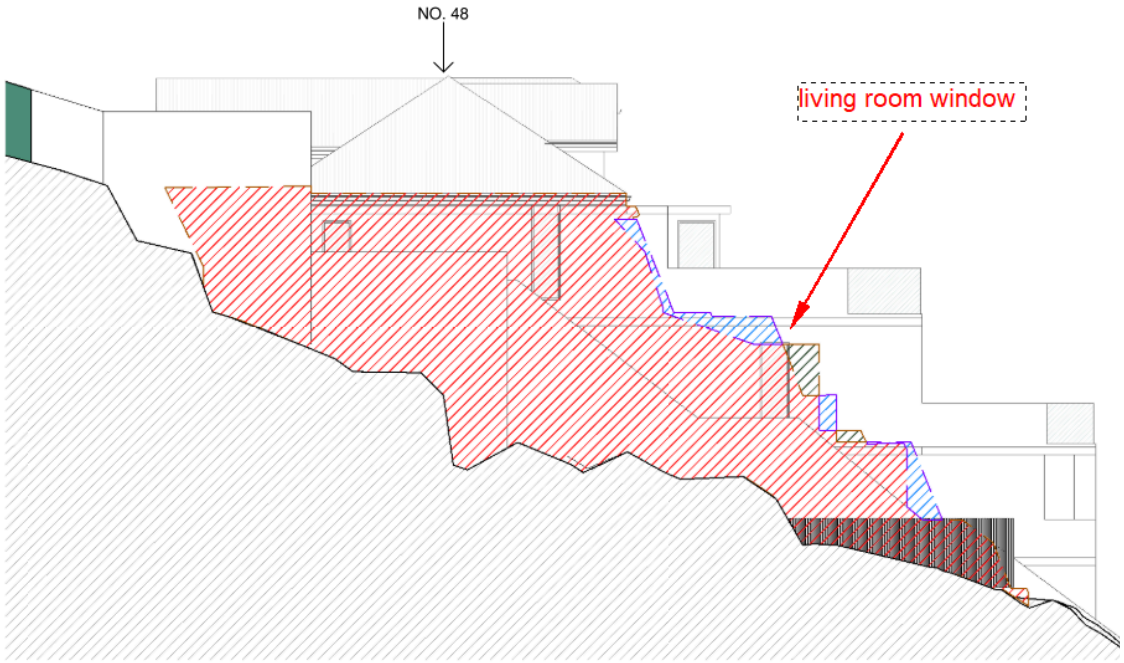
A detailed consideration of the proposed development with regard to: solar access; privacy; and maintenance of views is provided elsewhere in this report. In summary, the application will result in

adverse impacts with respect to solar access and privacy and as such, the application is not consistent with Part 3.4 of MDCP 2013.

3.4.1 Sunlight Access and Overshadowing

In the original design, the shadow cast by the proposed development will result in the overshadowing of a living room window on the north elevation of the adjoining dwelling at No.48 Peronne Avenue.

The application has been subsequently amended, with the following shadows estimated on the window, see below at 12 midday and 3pm in midwinter respectively:



NORTHERN ELEVATION OF NO. 48 PERONNE AVENUE CLONTARF

4 ELEVATIONAL SHADOW - 12PM ON 21 JUNE

1 : 200

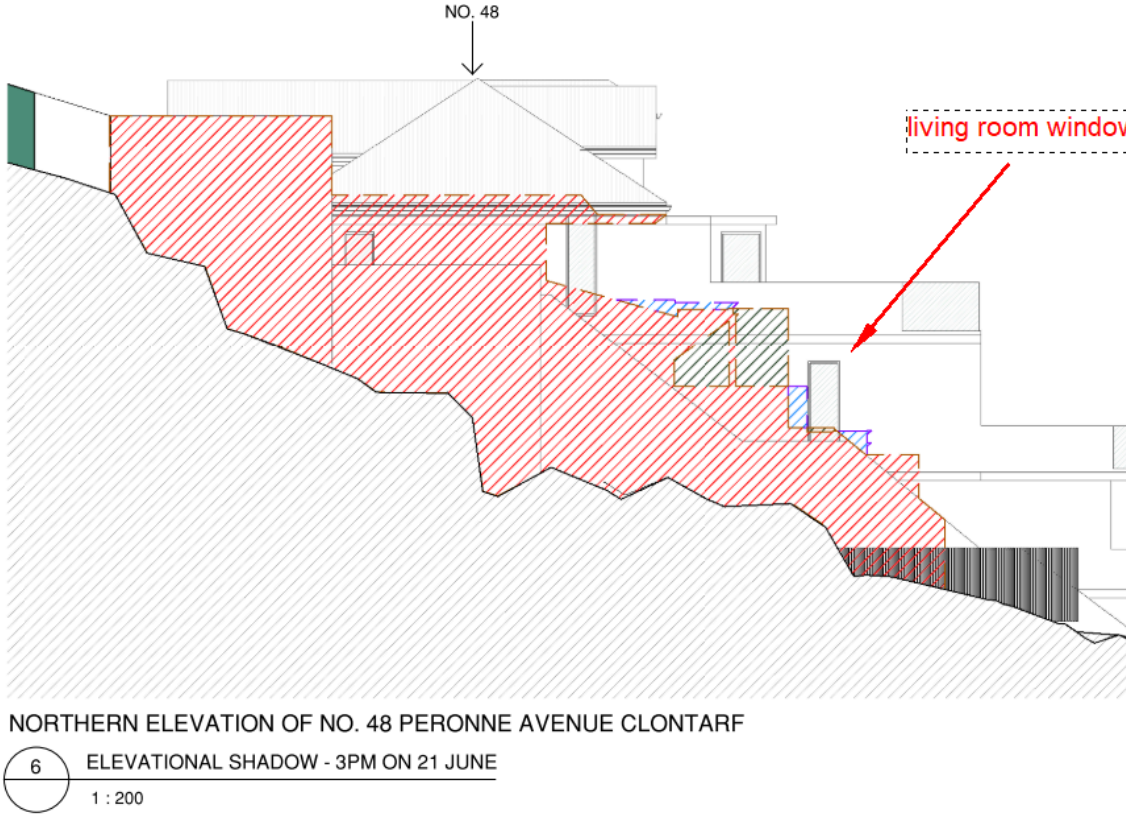


Figure 2 - elevational shadows

Note the areas in red depict the existing shadow, the areas in blue proposed development and the area in green depicts the apparent reduction in shadow.

Part 3.4.1.2 "Maintaining Solar Access into Living Rooms of Adjacent Properties" of the DCP requires that sunlight to adjoining buildings with an east-west orientation must be maintained for a period of at least 2 hours from 9am to 3pm in mid-winter.

The information provided is not conclusive to demonstrate that this standard can be achieved. In effect, the shadow diagrams would need to depict the period between 1pm and 3pm, as this is the only period where this requirement can be achieved. It should be noted that in correspondence to the applicant on 30 May 2024, it was advised:

Solar Access	The shadow diagrams in elevation demonstrates that the proposal sti cannot meet the solar access requirements of Manly DCP. Part 3.4.1. a) states that (see underlined for emphasis): *for adjacent buildings with an east-west orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors to living rooms for a period of at least 2 hours from 9am to 3pm the winter solstice (21 June);* Hence, the subject window on the north elevation of No.48 would hav to be completely in sunlight (as it currently is) between the periods of 1pm to 3pm in midwinter. Compliance with this standard is essential to the serious consideratic of the suitability other non-compliances with building height, wall hei and setbacks.

Figure 3 - exert from the request for information letter

As the proposal cannot demonstrate achievement of this requirement, this forms one of the recommended reasons for the refusal of the application.

3.4.2 Privacy and Security

In respect to the visual privacy of adjoining dwellings, no adverse or unreasonable impact is considered likely to the adjoining dwelling at No.52. This is based on the design of the proposal not increasing the size and location of the existing lower ground and ground floor balconies (in effect, reducing their areas). The new balcony on the 1st floor is not of a size and shape or proximity that will generate adverse visual privacy impacts. However, the modifications to the existing balconies (specifically the loss of the side blade walls) that adjoin No.48 will result in an adverse impact, given their close proximity to the private open space areas of No.48.

In regard to acoustic privacy, there is no element of the proposed works that is likely to result in an adverse amenity impact to these (or other) adjoining dwellings. These matters are raised in significant detail in the submissions received. In broad terms, the use of a dwelling house in a residential zone is a typical land use and any noise generated from it is considered to be within the acceptable and normal range of domestic activities that such a dwelling facilitates. Refusing the application on these grounds would be unreasonable.

In summary, the application in its amended form, will have an adverse impact on the visual privacy of the adjoining dwelling at No.48 Peronne Avenue and this forms one of the recommended reasons for the refusal of the application.

3.4.3 Maintenance of Views

During the notification of the application, a submission was received from an adjoining property (No.52 Peronne Avenue) which raised concern with the potential loss of views from this property.

As such, the development is considered against the objectives of Part 3.4.3 Maintenance of Views:

Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.
Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).
Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.

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

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

Comment:

A site visit was conducted to No.52 Peronne Avenue on 11 April 2024. From this site visit, the following views were identified: general water views of Middle Harbour to the south and west; the Spit and Parriwi Park (to the west); Pearl Bay (to the west); Beauty Point (to the west); and district views of the ridgelines to the south-east, south and south-west. A small view of Sydney CBD, most prominently Centrepoint Tower, was identified to the south-west. The neighbour has emphasised the importance of this view and a photo of this view (taken from the southern end of the upper level terrace) is enclosed below:



Figure 5 - existing view

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

be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

Comment:

The views are enjoyed from the following areas of the dwelling: middle level, terrace adjoining bedrooms, in a standing and seated position; upper level, terrace adjoining living areas, in a standing and seated position. In regard to the view of Sydney CBD / Centrepoint Tower, this view is enjoyed from both the upper and middle level terraces, from a standing position. The views of the Sydney CBD / Centrepoint Tower are enjoyed across the side (southern) boundary of No.52.

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

Comment: The proposed development will result in no loss of the landmarks identified in this assessment. With respect to the views of Sydney CBD / Centrepoint Tower, there will be likewise no loss of these views, even with the development being identified as being inconsistent with various development standards and controls.

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

Comment: As stated previously, the proposed development will result in no loss of the identified landmark views. Hence, the proposal can demonstrate compliance with this Principle.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP 2013, the relevant planning principles outlined within the Land and Environment Court 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.

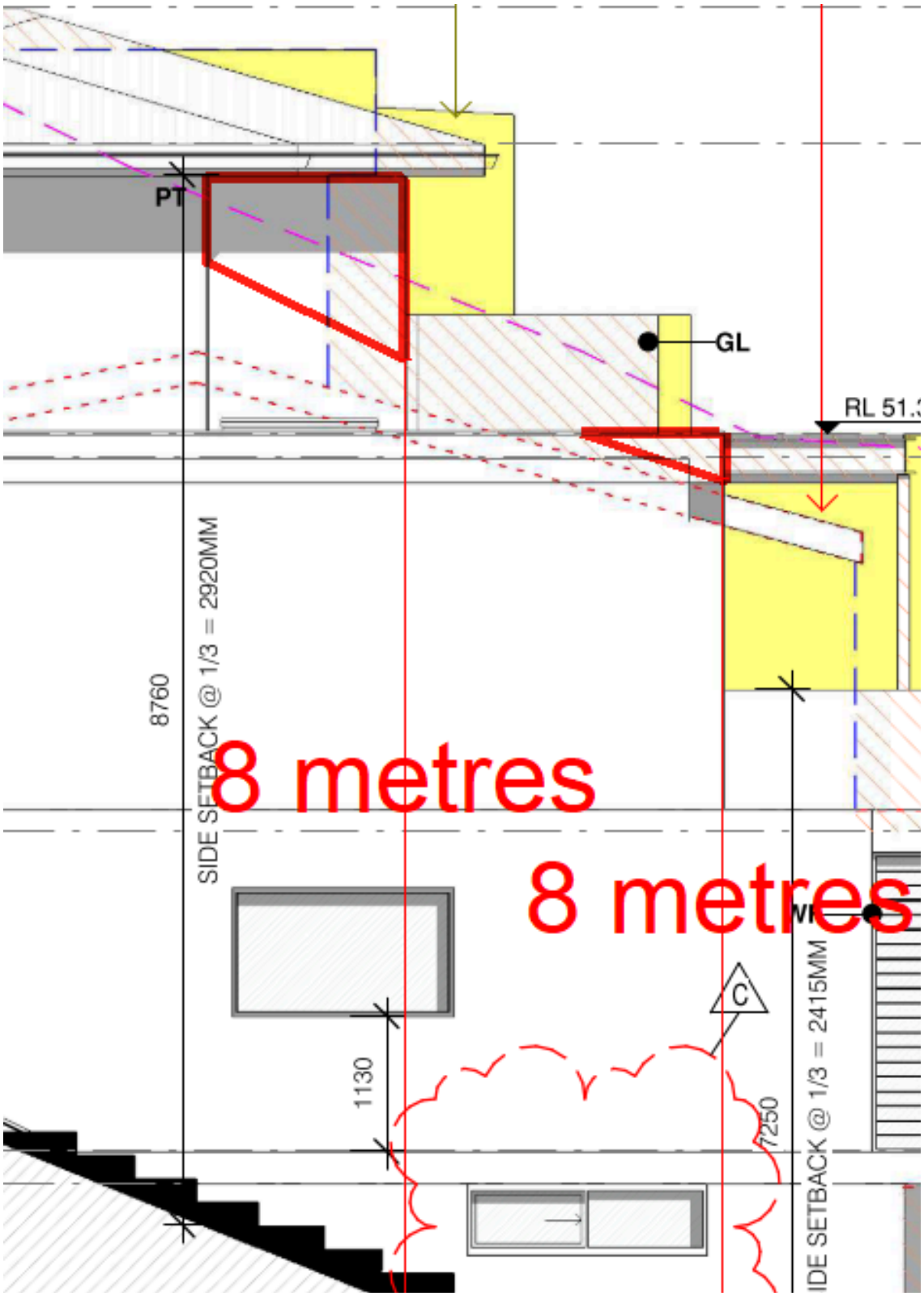
4.1 Residential Development Controls

A detailed discussion on the relevant subsections of Part 4.1 is provided further is this report. In summary, the proposed works cannot demonstrate compliance with the relevant controls and objectives in regard to: wall heights; setbacks (front and side); parking design; first floor additions; and swimmimg pools. As such, the application is not supported.

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

Description of non-compliance

Part 4.1.2.1 Wall Height: 9.4m (north side elevation, 1st floor addition), in excess of maximum 8m control and represents a 18% variation with the control. An excerpt from the working plans below show this non-compliance:


PT
GL
RL 51.
8760
SIDE SETBACK @ 1/3 = 2920MM
8 metres
8 metres
C
1130
7250
IDE SETBACK @ 1/3 = 2415MM

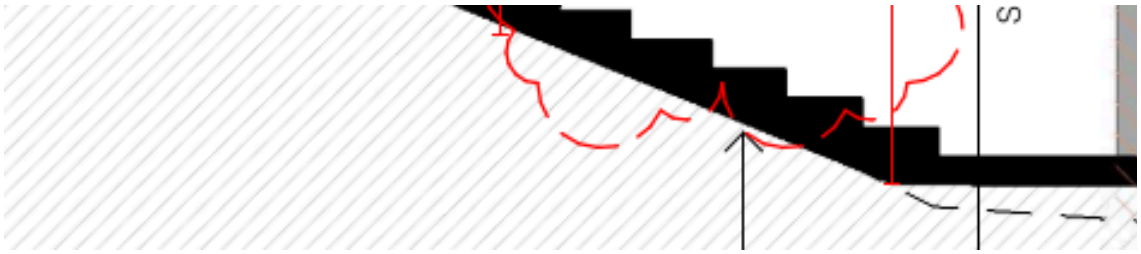
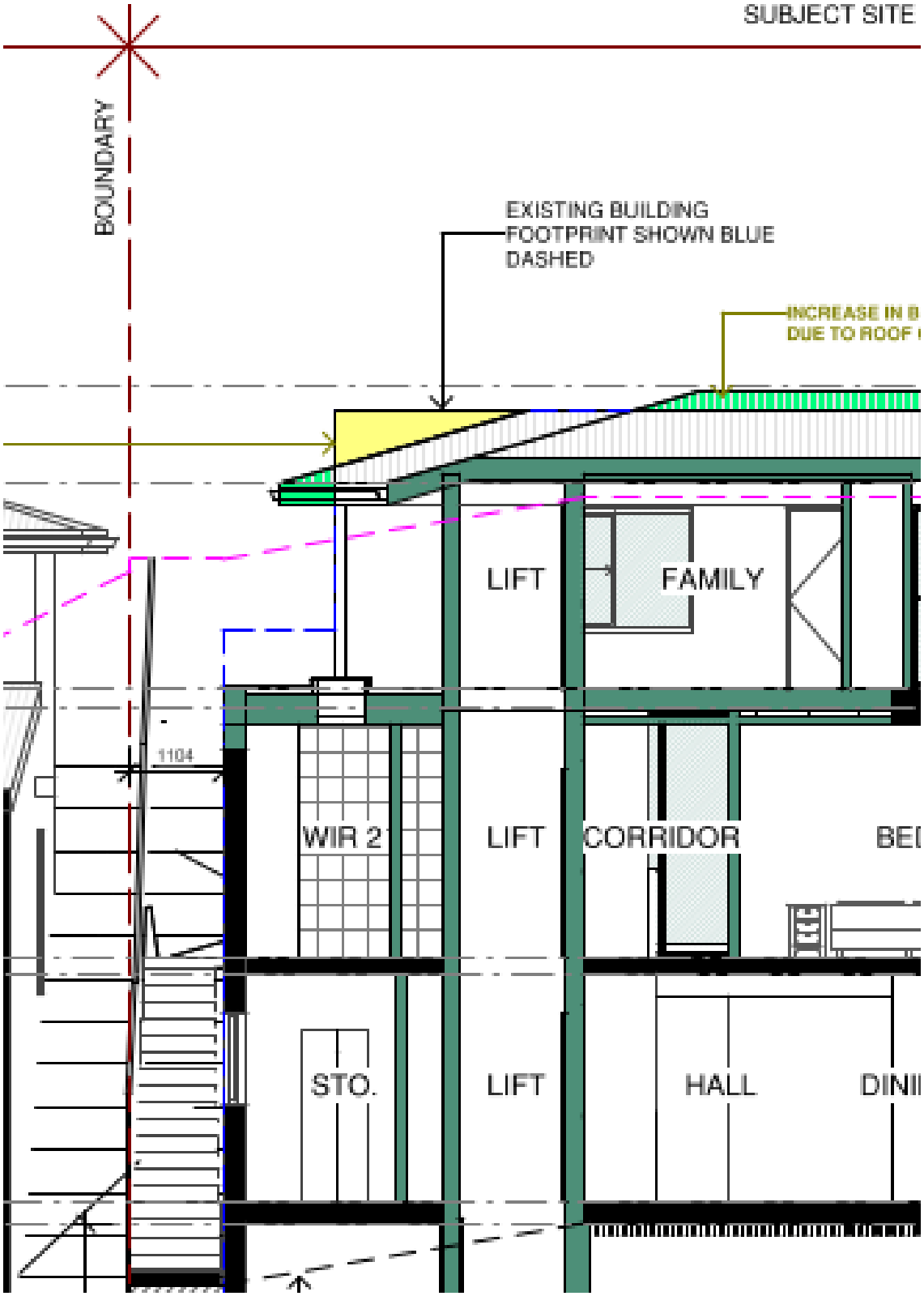


Figure 5 - wall height extract

Part 4.1.2.2 Number of Storeys: 4 stories (north side elevation, 1st floor addition), in excess of maximum 2 stories control, which represents a 100% variation with the control. An excerpt from the working plans is shown below:


SUBJECT SITE
BOUNDARY
EXISTING BUILDING
FOOTPRINT SHOWN BLUE
DASHED
INCREASE IN B
DUE TO ROOF
LIFT
FAMILY
1104
WIR 2
LIFT
CORRIDOR
BE
STO.
LIFT
HALL
DINI

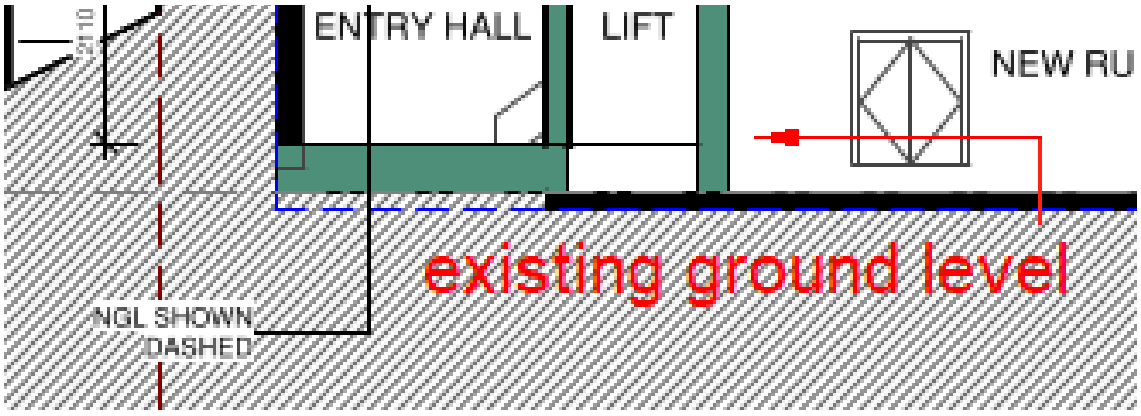


Figure 6 - section through building

Merit consideration

There are no underlying objectives of this control under which to consider the merits of this variation. This control instead relies on the objectives for the Height of Buildings at clause 4.3 in the Manly LEP 2013. The proposal has been assessed against these objectives under clause 4.6 of Manly LEP 2013, above in this report. A general discussion on the objectives and how they relate to the non-compliances proposed with each control is provided below.

Wall Height: The extent of the variation on the north-west corner of the dwelling will add unnecessary bulk and scale to the existing dwelling. As such, the proposed development cannot justify the proposed non-compliance to the Wall Height control.

Number of Storeys: Variations to this control are contingent upon the development also being consistent with the Height of Buildings development standard and "other numeric height controls", such as the Wall Height control discussed above. As the proposed lift addition on the 1st floor represents both a failure to comply with the Height of Buildings development standard and the Wall Height control, the proposed 4 stories is not supported.

In conclusion, the proposed development does not meet the associated objectives and requirements of Part 4.1.2. Hence, this forms one of the recommended reasons for the refusal of the application.

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

The proposal represents non-compliances with the following relevant setback controls of MDCP 2013:

Front Setback: An extract from the MDCP Compliance table is provided below, which shows the various non-compliances with the nominal 6m front building setback*

4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	1.2 - 3.4m (garage) 6.8 - 9.1m (entry) 5.1 - 8m (lower ground) 5.1 - 7.9m (ground) 11.1 - 15m (1st floor)	80 N/A 15 15 N/A

In regard to the proposed front setback, the setback of the re-located garage is substantially inadequate to limit the visual impact of the proposed structure that is forward of the existing dwelling.

This structure comprises a significant double garage, ancillary storage and an associated terrace above.

The closer proximity of the proposed works to the existing lower ground floor on the north-western edge of the proposed structure to the front boundary is also another element of the proposed development which adds to its overall visual impact.

Overall, this results in a structure that will dominate the front, western boundary of the site and has an excessive visual impact on the adjoining public domain. This aspect of the development is adverse to the objective of creating a suitable desired spatial proportion for new development. It also worth noting that the existing garage is compliant with the 6m control, and the proposal in effect will be retrograde in the direction of Council's policies.

In summary, the application cannot meet the objectives of the front and side setback controls and hence this forms one of the recommended reasons for the refusal of the application.

* A "prevailing building line" can also be established, however adjoining and surrounding development in the vicinity is neither consistent nor established, hence the 6m control should apply to this application.

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

Part 4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas requires that all new garages, particularly those that are forward of the front setback, be located be designed and sited so as not to dominate the street frontage. Specifically parts (b)(i) and (c) state that:

- *garages and carports adjacent to the front property boundary may not be permitted if there is a reasonably alternative onsite location*; and
- *the maximum width of any garage, carport or hardstand area is not to exceed a width equal to 50 percent of the frontage, up to a maximum width of 6.2m.*

The proposed garage will replace an existing garage that is at least 10.2m from the front boundary with a new structure that is as close as 1.2m from the front boundary. Whilst the topography of the site may justify a new garage of this setback, due to its overall bulk and scale, this does not fully justify its position, which could be retained in its current location.

Further, the width of the complete garage structure will be 7.7m, exceeding the maximum 6.2m width specified in Requirement (c). The purpose of this control is limit the impact of garages forward of building lines and as such, this is an excessive non-compliance and of itself is demonstrative of the proposal's adverse visual impact.

4.1.7 First Floor and Roof Additions

Part 4.1.7 First Floor and Roof Additions, specifically Part 4.1.7 (b) states:

"*The dwelling and the form of alterations and additions must retain the existing scale and character of the street and should not degrade the amenity of surrounding residences or the aesthetic quality of the former Manly Council area. In this regard, it may be preferable that the addition be confined to the rear of the premises or be contained within the roof structure.*"

The proposal will result in a structure that is overly prominent in bulk and scale, by projecting excessively towards the western front boundary of the site. In turn, this results in a development that

does not adequately retain the existing scale and character of the street and will have an adverse amenity impact on adjoining residences with respect to solar access, privacy and visual impact. The proposed development does not meet the stated preference for the additions to be located to the rear, where such impacts could be reasonably mitigated.

5.4.1 Foreshore Scenic Protection Area

Detailed discussion has been provided in regard to the Foreshore Scenic Protection Area in the section of this report regarding Manly LEP 2013. In summary, the proposed development will not be consistent with the objectives of the scenic protection area designed under MLEP 2013 and in turn, the principles and objectives re-iterated in MCDP 2013.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of $19,912 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $1,991,226.

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, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

- Inconsistent with the objectives of the DCP

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

Council is not satisfied that the Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify variation of the development standard contained within Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

PLANNING CONCLUSION

This proposal has been referred to the DDP due to the extent of the variations sought to both the Height of Buildings and Floor Space Ratio development standards of MLEP 2013, which exceeds 10% of the maximum specified standard (36 and 18%, respectively).

In the three (3) submissions received during the notification period/s, concerns were raised in relation to: visual impact; solar access; privacy; views; water management; landscaping; and vehicular access. Upon assessment of these matters, the issues raised in the submissions in regard to visual impact, privacy and solar access are valid in relation to the recommendations of this report.

The critical assessment issues as they relate to the recommendation of this report are identified as follows:

- significant variation / escalation of the building height of the existing dwelling;
- increase of the floor space of the existing dwelling (from a situation from where it is currently compliant);
- failures to comply with various development controls of MDCP 2013, most notably Wall Height and Number of Storeys, which contributes to an adverse bulk and scale;
- non-compliance with the front setback control (again, from a situation from where the dwelling is currently compliant); and
- identified adverse amenity impacts on the adjoining dwelling at No.48, with respect to solar access and visual privacy.

To summarise, the proposed works represent a substantial modification to the existing dwelling in a way that has an inadequate response to the adjoining streetscape and fails to mitigate its adverse impact on adjoining dwellings. In this regard, there is no adequate justification for the degree of the variations sought to the relevant development standards and controls.

As a consequence of this assessment, it is therefore recommended that the development be refused. It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2023/1850 for the Alterations and additions to a dwelling house including a swimming pool on land at Lot 9 DP 29355,50 Peronne Avenue, CLONTARF, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to Development Standards of the Manly Local Environmental Plan 2013.

   Particulars:

   Council is not satisfied that the applicant's written requests under clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of both Clauses 4.3 (Height of Buildings) and 4.4 (Floor Space Ratio) of MLEP 2013, has adequately addressed and demonstrated that:

   i. compliance with the standard/s is reasonable or unnecessary in the circumstances of the case; and
   ii. there are sufficient environmental planning grounds to justify the contraventions.

2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 6.9 Foreshore Scenic Protection Area of the Manly Local Environmental Plan 2013.

   Particulars:

   The built form and scale of the proposed development exceeds the expected form of new development in the foreshore scenic protection area.

3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Part 3.1.1 Streetscape (Residential areas) of the Manly Development Control Plan 2013.

   Particulars:

   The proposed garage is excessive in area and located at too close a distance to the front boundary of the site to have a positive relationship with the adjoining streetscape.

4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Part 3.4.1 Sunlight Access and Overshadowing of the Manly Development Control Plan 2013.

   Particulars:

   The proposal will result in the overshadowing of the window of a living room on the adjoining property at No.48 Peronne Avenue that will not meet the requisite solar access standard specified under Part 3.4.1.2 (a) of Manly Development Control Plan 2013.

5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.4.2 Privacy and Security of the Manly Development Control Plan 2013.

Particulars:

The proposal will have an adverse impact on the visual privacy of the open space areas of the adjoining dwelling at No.48 Peronne Avenue.

6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height) of the Manly Development Control Plan 2013.

   Particulars:

   The proposed additions to the 1st floor represent unnecessary bulk and scale and results in unreasonable non-compliances with both the Wall Height (4.1.2.1) and Number of Storeys (4.1.2.2) development controls of MCDP 2013.

7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Part 4.1.4 Setbacks (front, side and rear) and Building Separation of the Manly Development Control Plan 2013.

   Particulars:

   The proposal does not comply with the requisite front and side setback controls and will have an adverse amenity impact on adjoining properties and an adverse visual impact on the adjoining public domain as a result of these compliances.

8. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Part 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities) of the Manly Development Control Plan 2013.

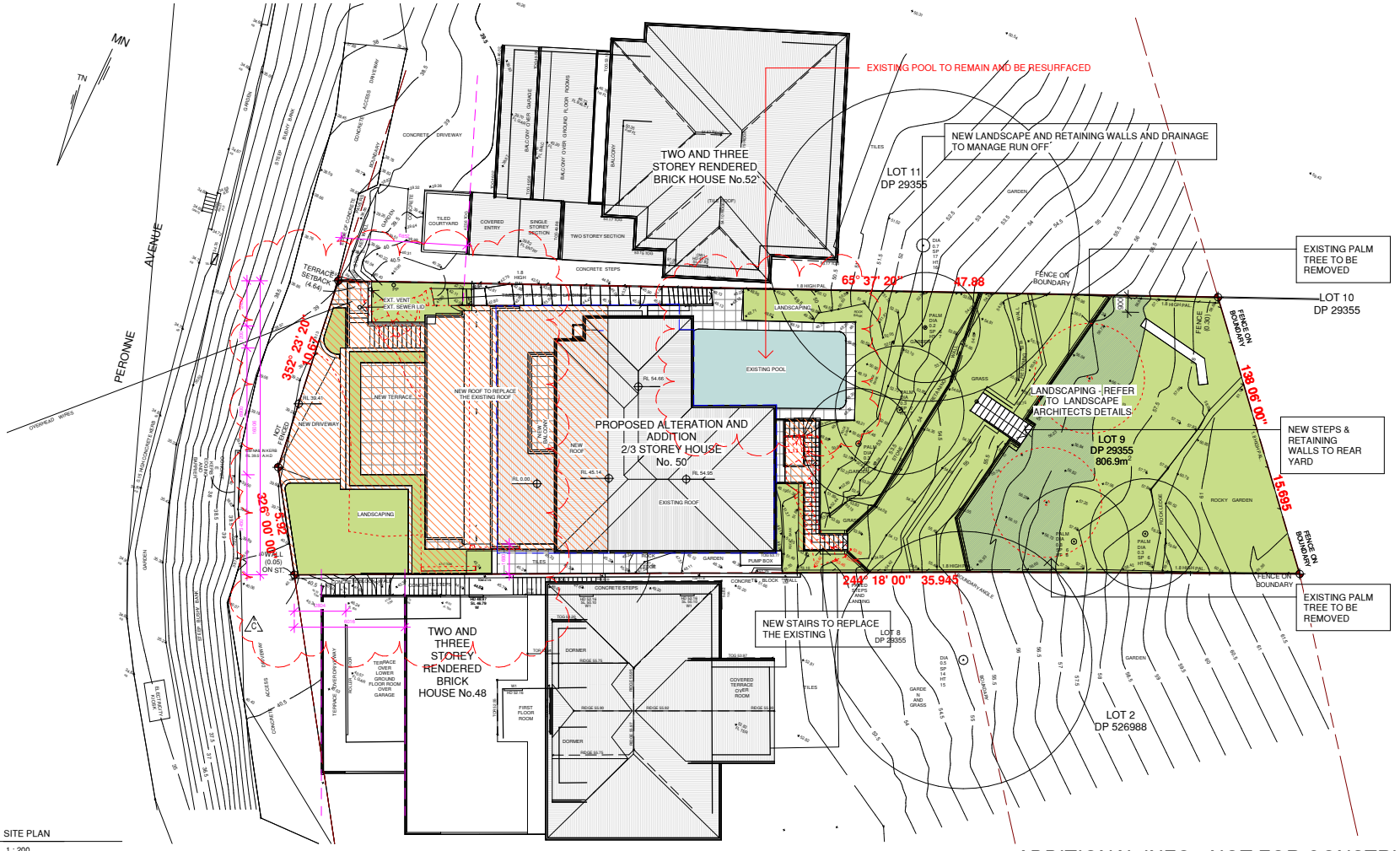
   Particulars:

   The proposed garage structure is of an excessive width and located at too close a distance from the front boundary of the site resulting in an adverse visual impact on the adjoining streetscape.

9. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Part 4.1.7 First Floor and Roof Additions of the Manly Development Control Plan 2013.

   Particulars:

   The proposed additions are excessive in bulk and scale and project at too close a distance from the front western boundary of the site to adequately minimise its adverse impact on the adjoining streetscape.



1 SITE PLAN
1 : 200

ADDITIONAL INFO - NOT FOR CONSTRUCTION

URSINO ARCHITECTS
Suite 313 , 49 Queens Road Five Dock NSW 2046
(02) 8970 2421 / PO Box 981 Five Dock NSW 2046
www.ursino.com.au
REGISTERED ARCHITECT: Robert Ursino NSW ARB No: 10565

REVISION	DESCRIPTION	DATE
A	DEVELOPMENT APPLICATION ISSUE - NOT FOR CONSTRUCTION	20.09.2023
B	ADDITIONAL INFO - NOT FOR CONSTRUCTION	21.06.2024
C	ADDITIONAL INFO - NOT FOR CONSTRUCTION	19.07.2024

LEGEND & NOTES
- EXISTING TREE TO BE RETAINED
- EXISTING TREE TO BE REMOVED
- PROPOSED NEW TREE
- EXISTING BUILDING FOOTPRINT IN DASHED BLUE
- PROPOSED DEMOLITION SHOWN IN DOTTED RED
- NEW WORK TO EXISTING FOOTPRINTS SHOWN HATCHED

GENERAL NOTES: ALL DIMENSIONS TO BE VERIFIED BY BUILDER PRIOR TO COMMENCEMENT OF WORKS // BOUNDARY DIMENSIONS & ALL LEVELS SUBJECT TO CONFIRMATION BY BUILDER. USE FIGURED DIMENSIONS ONLY. DO NOT SCALE FROM PLANS // ALL WORKS TO COMPLY WITH THE RELEVANT AUSTRALIAN STANDARDS // ALL WORKS ARE TO BE CARRIED OUT IN ACCORDANCE WITH THE REQUIREMENTS OF THE BUILDING CODE OF AUSTRALIA // ALL DRAWINGS ARE DESIGN INTENT ONLY AND NOT FOR CONSTRUCTION.

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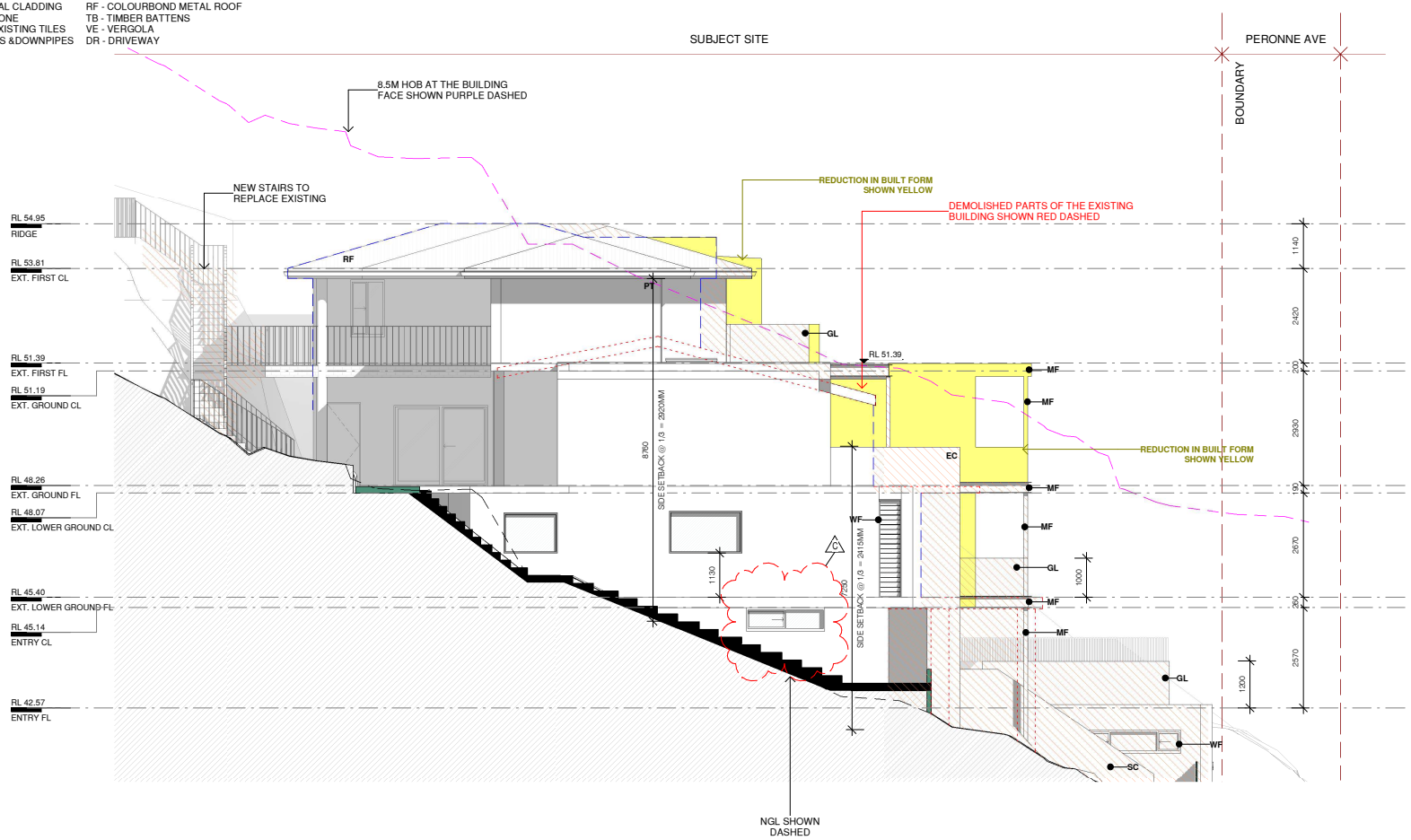
CLIENT: CHEN

ADDRESS: 50 PERONNE AVENUE CLONTARF NSW 2093

SCALE: 1 : 200 @ A3
DRAWING TITLE: SITE PLAN
DRAWN BY: RU
DESIGNED BY: RU
TRUE NORTH
DATE: 19.07.2024
PROJECT NO.: 21.02
REV: C
DRAWING NO.: A202

MATERIALS LEGEND
(REFER TO DA901)

PT - PAINT - LIGHT	WF - WINDOW FRAMES
MF - METAL FRAMES	GL - GLASS
EC - EXTERNAL CLADDING	RF - COLOURBOND METAL ROOF
SC - SANDSTONE	TB - TIMBER BATTENS
RF - ROOF EXISTING TILES	VE - VERGOLA
GU - GUTTERS &DOWNPIPES	DR - DRIVEWAY



1 NORTH ELEVATION
1 : 100

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C	ADDITIONAL INFO - NOT FOR CONSTRUCTION	19.07.2024

LEGEND & NOTES
EXISTING
NEW WALL/ STRUCTURE
EXISTING BUILDING FOOTPRINT
DEMOLISHED
NEW WORK TO EXISTING FOOTPRINTS SHOWN HATCHED

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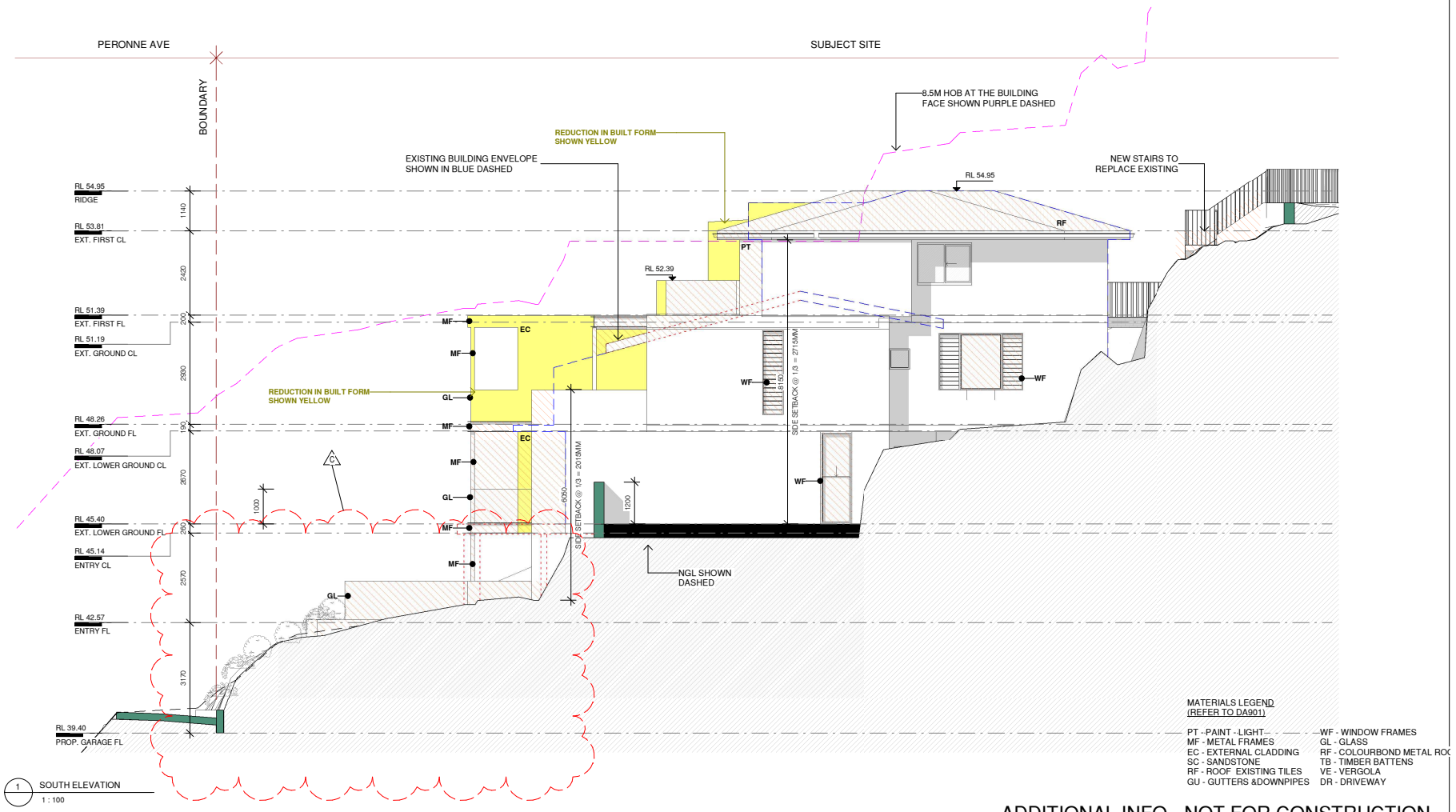
ADDRESS
50 PERONNE AVENUE
CLONTARF NSW 2093

SCALE @ A3
1 : 100

DRAWING TITLE
NORTH ELEVATION

DRAWN BY.	DESIGNED BY.	TRUE NORTH	DATE
RU	RU		19.07.2024

PROJECT NO.	REV	DRAWING NO.
21.02	C	A501



MATERIALS LEGEND
(REFER TO DA901)

PT - PAINT - LIGHT	WF - WINDOW FRAMES
MF - METAL FRAMES	GL - GLASS
EC - EXTERNAL CLADDING	RF - COLOURBOND METAL ROO
SC - SANDSTONE	TB - TIMBER BATTENS
RF - ROOF EXISTING TILES	VE - VERGOLA
GU - GUTTERS &DOWNPIPES	DR - DRIVEWAY

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LEGEND & NOTES
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NEW WALL/ STRUCTURE
EXISTING BUILDING FOOTPRINT
DEMOLISHED
NEW WORK TO EXISTING FOOTPRINTS SHOWN HATCHED

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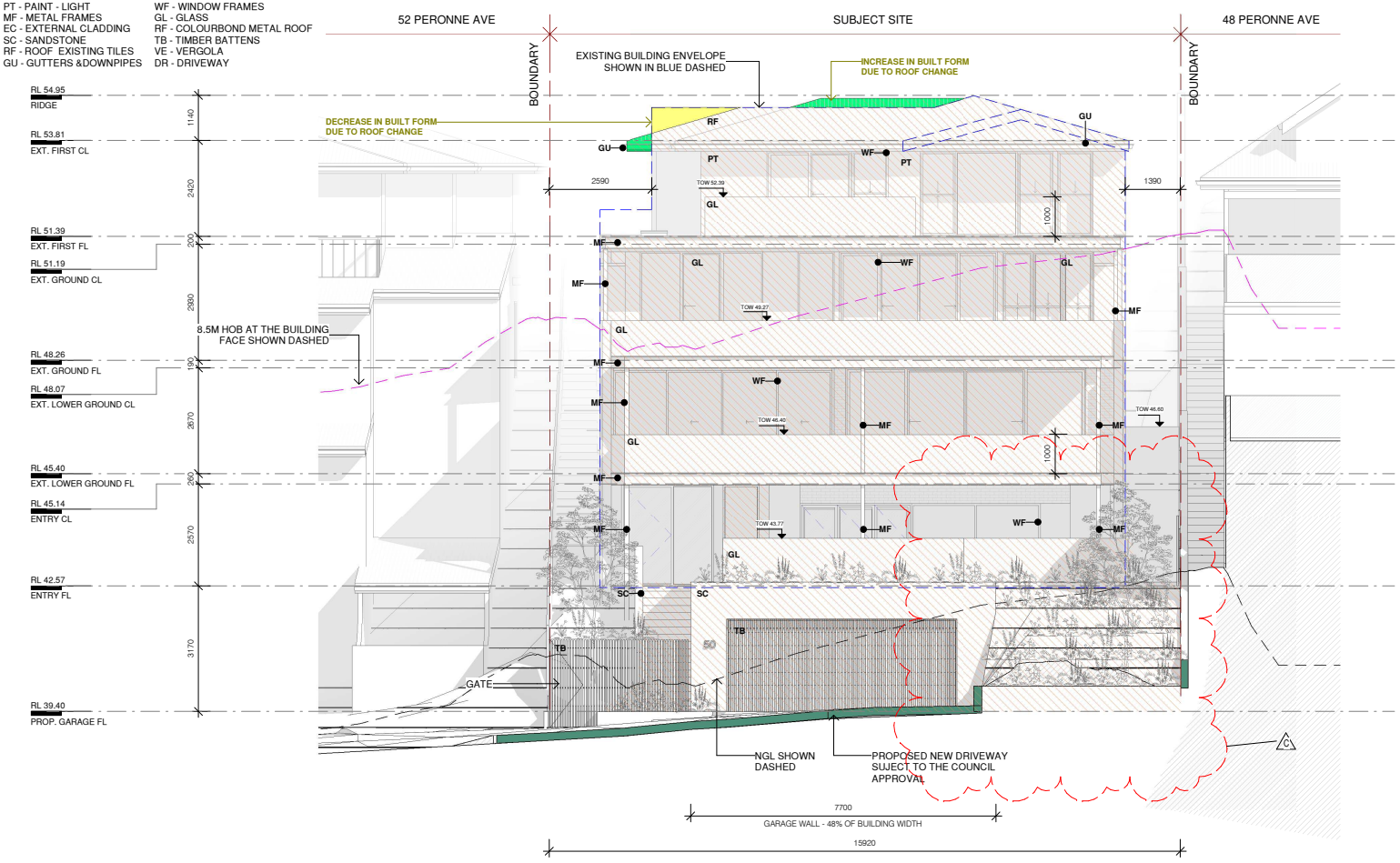
ADDRESS
50 PERONNE AVENUE
CLONTARF NSW 2093

SCALE	@ A3	DRAWING TITLE
1 : 100		**SOUTH ELEVATION**

DRAWN BY.	DESIGNED BY.	TRUE NORTH	DATE
RU	RU		19.07.2024
PROJECT NO.	REV		DRAWING NO.
21.02	C		A502

MATERIALS LEGEND
(REFER TO DA901)

PT - PAINT - LIGHT
MF - METAL FRAMES
EC - EXTERNAL CLADDING
SC - SANDSTONE
RF - ROOF EXISTING TILES
GU - GUTTERS &DOWNPIPES
WF - WINDOW FRAMES
GL - GLASS
RF - COLOURBOND METAL ROOF
TB - TIMBER BATTENS
VE - VERGOLA
DR - DRIVEWAY



1 WEST ELEVATION
1 : 100

ADDITIONAL INFO - NOT FOR CONSTRUCTION

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LEGEND & NOTES
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NEW WALL/ STRUCTURE
EXISTING BUILDING FOOTPRINT
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NEW WORK TO EXISTING FOOTPRINTS SHOWN HATCHED

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CHEN

ADDRESS
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SCALE @ A3
1 : 100

DRAWING TITLE
WEST ELEVATION

DRAWN BY.	DESIGNED BY.	TRUE NORTH	DATE
RU	RU		19.07.2024

PROJECT NO.	REV	DRAWING NO.
21.02	C	A503

MATERIALS LEGEND
(REFER TO DA901)

PT - PAINT - LIGHT	WF - WINDOW FRAMES
MF - METAL FRAMES	GL - GLASS
EC - EXTERNAL CLADDING	RF - COLOURBOND METAL ROOF
SC - SANDSTONE	TB - TIMBER BATTENS
RF - ROOF EXISTING TILES	VE - VERGOLA
GU - GUTTERS &DOWNPIPES	DR - DRIVEWAY



1 EAST ELEVATION
1 : 100

ADDITIONAL INFO - NOT FOR CONSTRUCTION

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www.ursino.com.au
REGISTERED ARCHITECT: Robert Ursino NSW ARB No: 10565

REVISION	DESCRIPTION	DATE
A	DEVELOPMENT APPLICATION ISSUE - NOT FOR CONSTRUCTION	20.09.2023
B	ADDITIONAL INFO - NOT FOR CONSTRUCTION	21.06.2024

LEGEND & NOTES
EXISTING
NEW WALL/ STRUCTURE
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CLIENT: **CHEN**

ADDRESS: **50 PERONNE AVENUE CLONTARF NSW 2093**

SCALE: **1 : 100** @ A3

DRAWING TITLE: **EAST ELEVATION**

DRAWN BY: **RU** | DESIGNED BY: **RU** | TRUE NORTH | DATE: **21.06.2024**

PROJECT NO.: **21.02** | REV: **B** | DRAWING NO.: A504

Updated Clause 4.6 variation request – Building Height

DA2023/1850

Alterations and additions to an existing dwelling

50 Peronne Avenue, Clontarf

1.1 Introduction

This updated clause 4.6 variation request has been prepared having regard to the following amended plans prepared by Ursino Architects:

DRAWING LIST

A101	BASIX REQUIREMENTS	A	20.09.2023
A201	SITE ANALYSIS	A	20.09.2023
A202	SITE PLAN	C	19.07.2024
A301	EXISTING ENTRY FLOOR PLAN	A	20.09.2023
A302	EXISTING LOWER GROUND FLOOR PLAN	A	20.09.2023
A303	EXISTING GROUND FLOOR PLAN	A	20.09.2023
A304	EXISTING FIRST FLOOR PLAN	A	20.09.2023
A305	EXISTING ROOF PLAN	A	20.09.2023
A306	PROPOSED GARAGE FLOOR PLAN	C	19.07.2024
A307	PROPOSED ENTRY FLOOR PLAN	C	19.07.2024
A308	PROPOSED LOWER GROUND FLOOR PLAN	B	21.06.2024
A309	PROPOSED GROUND FLOOR PLAN	C	19.07.2024
A310	PROPOSED FIRST FLOOR PLAN	B	21.06.2024
A311	PROPOSED ROOF FLOOR PLAN	C	19.07.2024
A401	SECTION AA	C	19.07.2024
A402	SECTION BB	B	21.06.2024
A403	SECTION CC	B	21.06.2024
A501	NORTH ELEVATION	C	19.07.2024
A502	SOUTH ELEVATION	C	19.07.2024
A503	WEST ELEVATION	C	19.07.2024
A504	EAST ELEVATION	B	21.06.2024
A601	CALCULATIONS 01	B	21.06.2024
A602	CALCULATIONS 02	C	19.07.2024
A603	PROPOSED CUT AND FILL PLAN	C	19.07.2024
A702	SHADOW DIAGRAMS 01	B	21.06.2024
A703	SHADOW DIAGRAMS 02	B	21.06.2024
A704	SHADOW DIAGRAMS 03	B	21.06.2024
A705	VIEW FROM SUN - WINTER 12PM	C	19.07.2024
A706	VIEW FROM SUN - WINTER 1PM	C	19.07.2024
A707	VIEW FROM SUN - WINTER 2PM	C	19.07.2024
A708	VIEW FROM SUN - WINTER 3PM	C	19.07.2024
A801	PERSPECTIVES	C	19.07.2024
A901	MATERIALS & WINDOW SCHEDULES	C	19.07.2024

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

1.2 Manly Local Environmental Plan 2013 (MLEP 2013)

1.2.1 Clause 4.3 – Height of Buildings

Pursuant to Clause 4.3(2) of MLEP 2013, the height of a building is not to exceed the maximum height shown for the land on the Height of Buildings Map, being 8.5m with respect to the subject site. The objectives of this control are as follows:

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

Building height is defined as follows:

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

Ground level existing is defined as follows:

> ***ground level (existing)*** means the existing level of a site at any point.

The proposed development reaches a maximum height of 12.07m above existing ground, measured to the slab of the existing excavated rumpus room as shown in Figure 1. This represents a variation of 3.57m or 42% of the maximum building height development standard.

We note that the existing dwelling breaches the building height standard to a similar extent.

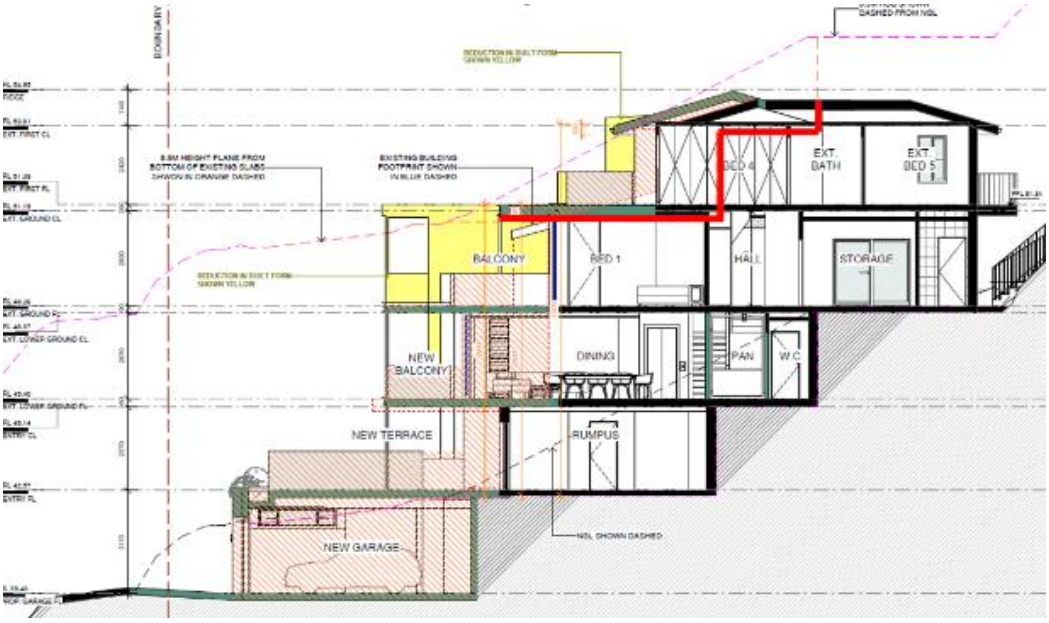


Figure 1: *Extract of Section CC showing building height breaching elements*

1.2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of MLEP 2013 provides:

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

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

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner. At [90] of *Initial Action* the Court held that:

> *"In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard "achieve better outcomes for and from development". If objective (b) was the source of the Commissioner's test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test."*

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

Clause 4.6(2) of MLEP 2013 provides:

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

This clause applies to the building height development standard in clause 4.3 of MLEP 2013.

Clause 4.6(3) of MLEP 2013 provides:

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

The proposed development does not comply with the building height development standard at clause 4.3(2) of MLEP 2013 which specifies a maximum building height of 8.5m. However, strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

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

Clause 4.6(4) of MLEP 2013 provides:

> *Development consent must not be granted for development that contravenes a development standard unless:*
>
> *(a) the consent authority is satisfied that:*
>
> *(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

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

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

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority.

The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]). The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest ***because*** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]).

The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

The Local Planning Panels Direction issued by the Minister for Planning and Public Spaces, dated 30 June 2020, provides that local planning panels have the delegation to approve development that contravenes a development standard imposed by an environmental instrument by more than 10% or non-numerical development standards.

Following advice received from the Department of Planning, Industry & Environment (letter dated 2 November 2021) applications for Class 1 buildings (single dwelling houses) with a Clause 4.6 variation greater than 10% to building height within the Warringah Local Environment Plan 2011, Manly Local Environment Plan 2013 and Pittwater Local Environment Plan 2014 and floor space ratio under the Manly Local Environment Plan 2013, may be determined by Council staff under delegation in accordance with Council procedures.

Clause 4.6(5), which relates to matters that must be considered by the Director-General in deciding whether to grant concurrence is not relevant, as the Council has the authority to determine this matter. Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.3 of MLEP 2013 from the operation of clause 4.6.

1.3 Relevant Case Law

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

The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].

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

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

A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].

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

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

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

1. Is clause 4.3 of MLEP 2013 a development standard?

2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:

    (a) compliance is unreasonable or unnecessary; and

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

3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.3 of MLEP 2013 and the objectives for development for in the zone?

4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?

5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.3 of MLEP 2013?

1.4 Request for variation

1.4.1 Is clause 4.3 of MLEP 2013 a development standard?

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

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

Clause 4.3 of MLEP 2013 limits the height of development on the land. Accordingly, clause 4.3 of MLEP 2013 is a development standard.

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

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

The first approach is relevant in this instance, being that compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Consistency with objectives of the floor space ratio development standard

An assessment as to the consistency of the proposal when assessed against the objectives of the standard is as follows:

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

Response: The proposed development involves modest upper level alterations and additions to the dwelling with the overall building height not significantly altered and certainly not to the extent that the resultant building height and roof form will be inconsistent with prevailing buildings heights within the sites visual catchment and the likely future streetscape character where new dwellings will be designed to step back up the slope, over a number of levels, in response to topography. The development maintains a stepped building form which appropriately responds to the topographic landscape. Such outcomes are depicted in the plan extracts at Figures 2, 3 and 4.

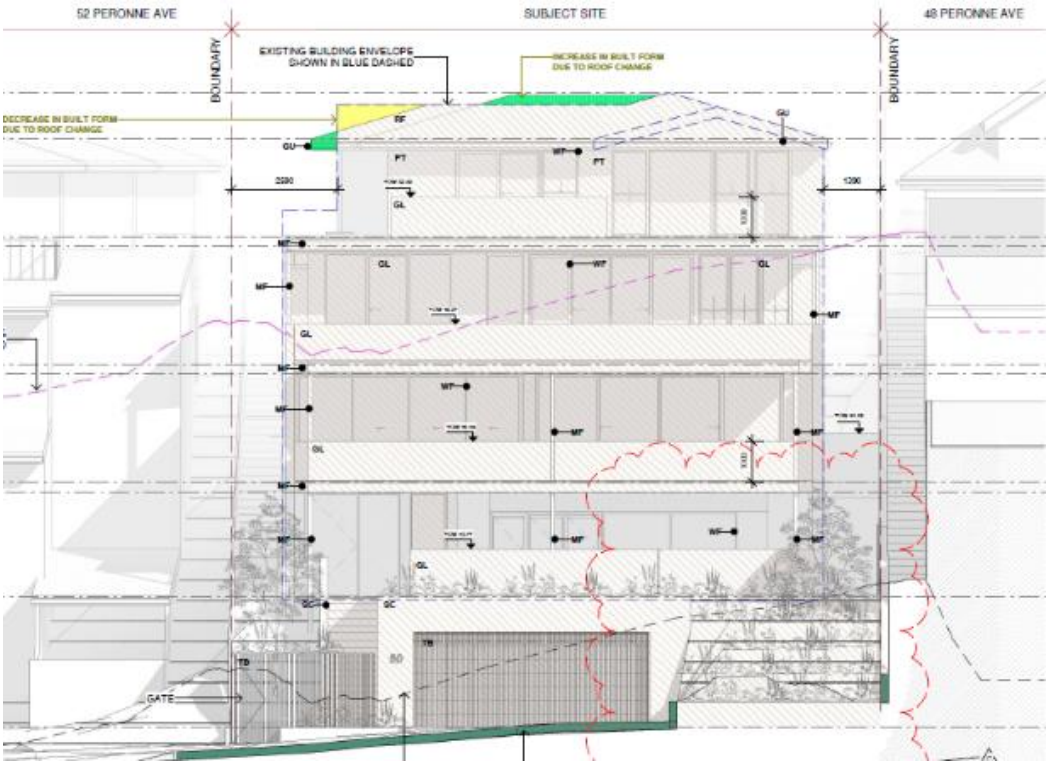


Figure 2: *Extract of street elevation showing additional building height elements as perceived from Peronne Avenue*



Figure 3: *Perspective image showing consistent height with that established by adjning development*



Figure 4: *Perspective image showing consistent height with that established by adjoining development as viewed from Peronne Avenue*

The upper roof form with a ridgeline at 54.95m AHD is to be maintained, which is generally consistent with that of adjoining dwellings, with a maximum ridgeline of 54.63m AHD at the dwelling to the north at 52 Peronne Avenue and 55.97m AHD at the dwelling to the south at 48 Peronne Avenue.

The building height and roof form proposed are consistent with the built form characteristics established by surrounding development and development generally within the site's visual catchment. I also note that other dwelling house development within proximity of the site breach the 8.5 metre building height standard, including the dwelling at 52 Peronne Avenue in 2018 (DA2018/1018).

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191 I have formed the considered opinion that most observers would not find the proposed development by virtue of its roof form and building height offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the site's visual catchment. This objective is achieved notwithstanding the building height breaching elements proposed.

(b) to control the bulk and scale of buildings

Response: The bulk and scale of the proposed development is entirely commensurate with that of surrounding development as detailed in response to objective (a). The building height breaching elements do not contribute to bulk and scale to the extent that the bulk and scale of the building as a whole will be perceived as inappropriate or jarring have regard to the bulk and scale of development within the site's visual catchment.

This objective is achieved notwithstanding the building height breaching elements proposed.

(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),

Response: Having inspected the site and its immediate surrounds to identify potential view corridors across the site from adjoining development and the properties located upslope, I have formed the opinion that the building height breaching elements will not impact on existing views to the extent that a view sharing outcome is not maintained having regard to the view sharing principles established by the Land and Environment Court of NSW in the matter of *Tenacity Consulting v Warringah* [2004] NSWLEC 140. A view sharing outcome is achieved notwithstanding the non-compliant building height breaching elements proposed.

This objective is achieved notwithstanding the building height breaching elements proposed.

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

Response: The accompanying shadow diagrams by Ursino Architects demonstrate that the building height breaching elements will not contribute to unacceptable shadowing impacts between 9AM and 3PM on 21 June. This objective is achieved notwithstanding the building height breaching elements proposed.

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

Response: This objective is not applicable in relation to the subject site.

These objectives are achieved notwithstanding the building height breaching elements.

Consistency with zone objectives

The subject property is zoned R2 Low Density Residential pursuant to MLEP 2013. The developments consistency with the stated objectives of the R2 zone is as follows:

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

  Response: The proposed alterations and additions to the existing dwelling house have been designed to provide for the growing needs of the property owners. The proposed works represent a contextually appropriate response to the development of the land within the R2 zone.

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

  Response: Not applicable – the proposal relates to a dwelling house.

Having regard to the above, the non-compliant component of the building will achieve the objectives of the standard to at least an equal degree as would be the case with a development that complied with the building height standard. Given the developments consistency with the objectives of the height of buildings standard strict compliance has been found to be both unreasonable and unnecessary under the circumstances.

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

In *Initial Action* the Court found at [23]-[25] that:

> *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
>
> *The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.*
>
> *The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*

Sufficient environmental planning grounds

Ground 1 – Existing excavation

The extent of the proposed height breach is amplified by existing excavation that has occurred at the site, with the height of the building to be measured to the top of the slab of the existing excavated garage. The extent of the building height non-compliance is significantly reduced when measured to interpolated or assumed natural ground levels, as shown in Figure 3, below.

When measured to interpolated or assumed natural ground levels, the maximum height of the proposed development is 9.34m, with the non-compliances limited to the projecting roof forms of the front upper level balconies.

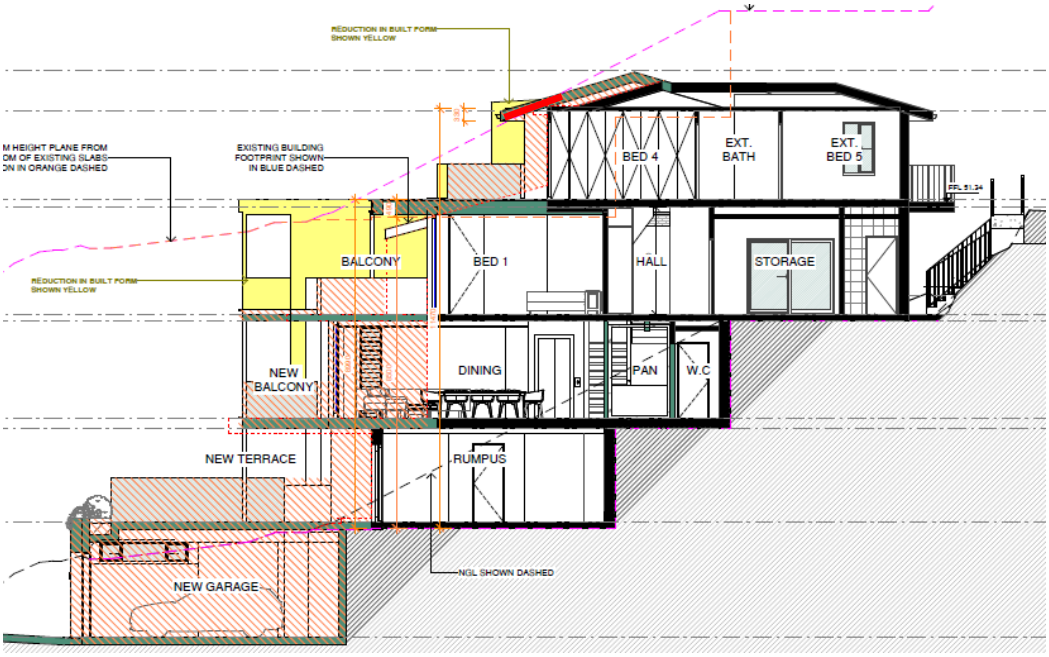


Figure 5: *Extract of Section CC with proposed development above assumed 8.5m height plane highlighted in pink (red marking shows non-compliance*

Consistent with the findings of Commissioner O'Neill in *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582, the prior excavation within the building footprint that distorts the height of buildings development standard plan can be properly described as an environmental planning ground within the meaning of clause 4.6(3)(b) of the LEP.

Ground 2 – Topography

The site experiences a fall of approximately 22.5m from the upper rear boundary down to the front boundary, with a slope of approximately 45%. The proposed development has been appropriately stepped in response to the fall of the land, with the non-compliances generally limited to architectural details that provide for enhanced amenity for future occupants including the retrofitting of a passenger lift to enable the occupants to age in place.

The slope of the site, and the scale of surrounding buildings along the same contours, is considered to warrant the minor variations proposed.

Allowing for the height breach in response to the topography of the site is considered to ensure the orderly and economic development of the site, consistent with Objective 1.3(c) of the EP&A Act.

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

1.4.4 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 4.3 and the objectives of the R2 zone

The consent authority needs to be satisfied that the proposed development will be in the public interest. A development is said to be in the public interest if it is consistent with the objectives of the particular standard to be varied and the objectives of the zone.

Preston CJ in Initial Action (Para 27) described the relevant test for this as follows:

> *The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.*
>
> *It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).*

As demonstrated in this request, the proposed development is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

Accordingly, the consent authority can be satisfied that the proposed development will be in the public interest.

1.4.5 Secretary's concurrence

The Local Planning Panels Direction issued by the Minister for Planning and Public Spaces, dated 30 June 2020, provides that local planning panels have the delegation to approve development that contravenes a development standard imposed by an environmental instrument by more than 10% or non-numerical development standards.

Following advice received from the Department of Planning, Industry & Environment (letter dated 2 November 2021) applications for Class 1 buildings (single dwelling houses) with a Clause 4.6 variation greater than 10% to building height within the Warringah Local Environment Plan 2011, Manly Local Environment Plan 2013 and Pittwater Local Environment Plan 2014 and floor space ratio under the Manly Local Environment Plan 2013, may be determined by Council staff under delegation in accordance with Council procedures.

Concurrence of the Secretary can therefore be assumed by Council's Development Determination Panel in this case.

1.5 Conclusion

Pursuant to clause 4.6(4)(a) of MLEP 2013, the consent authority can be satisfied that this written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

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

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

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

Boston Blyth Fleming Pty Limited



Greg Boston

B Urb & Reg Plan (UNE) MPIA

Director

25.7.24

Updated Clause 4.6 variation request - Floor Space Ratio

DA2023/1850

Alterations and additions to an existing dwelling

50 Peronne Avenue, Clontarf

1.1 Introduction

This updated clause 4.6 variation request has been prepared having regard to the following amended plans prepared by Ursino Architects:

DRAWING LIST

A101	BASIX REQUIREMENTS	A	20.09.2023
A201	SITE ANALYSIS	A	20.09.2023
A202	SITE PLAN	C	19.07.2024
A301	EXISTING ENTRY FLOOR PLAN	A	20.09.2023
A302	EXISTING LOWER GROUND FLOOR PLAN	A	20.09.2023
A303	EXISTING GROUND FLOOR PLAN	A	20.09.2023
A304	EXISTING FIRST FLOOR PLAN	A	20.09.2023
A305	EXISTING ROOF PLAN	A	20.09.2023
A306	PROPOSED GARAGE FLOOR PLAN	C	19.07.2024
A307	PROPOSED ENTRY FLOOR PLAN	C	19.07.2024
A308	PROPOSED LOWER GROUND FLOOR PLAN	B	21.06.2024
A309	PROPOSED GROUND FLOOR PLAN	C	19.07.2024
A310	PROPOSED FIRST FLOOR PLAN	B	21.06.2024
A311	PROPOSED ROOF FLOOR PLAN	C	19.07.2024
A401	SECTION AA	C	19.07.2024
A402	SECTION BB	B	21.06.2024
A403	SECTION CC	B	21.06.2024
A501	NORTH ELEVATION	C	19.07.2024
A502	SOUTH ELEVATION	C	19.07.2024
A503	WEST ELEVATION	C	19.07.2024
A504	EAST ELEVATION	B	21.06.2024
A601	CALCULATIONS 01	B	21.06.2024
A602	CALCULATIONS 02	C	19.07.2024
A603	PROPOSED CUT AND FILL PLAN	C	19.07.2024
A702	SHADOW DIAGRAMS 01	B	21.06.2024
A703	SHADOW DIAGRAMS 02	B	21.06.2024
A704	SHADOW DIAGRAMS 03	B	21.06.2024
A705	VIEW FROM SUN - WINTER 12PM	C	19.07.2024
A706	VIEW FROM SUN - WINTER 1PM	C	19.07.2024
A707	VIEW FROM SUN - WINTER 2PM	C	19.07.2024
A708	VIEW FROM SUN - WINTER 3PM	C	19.07.2024
A801	PERSPECTIVES	C	19.07.2024
A901	MATERIALS & WINDOW SCHEDULES	C	19.07.2024

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

1.2 Manly Local Environmental Plan 2013 (MLEP 2013)

1.2.1 Clause 4.4 – Floor Space Ratio

Pursuant to Clause 4.4 of MLEP 2013, the floor space ratio of development on the subject land is not to exceed 0.4:1. The objectives of this control are as follows:

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

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

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

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

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

In accordance with the provisions of clause 4.5(2) of MLEP 2013, floor space ratio is defined as follows:

> *The **floor space ratio** of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area.*

The proposal provides for an additional 60.3sqm of GFA resulting in a total GFA of 377.3sqm and an FSR of 0.47:1. This represents a variation of 54.5m² or 16.17%.

1.2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of MLEP 2013 provides:

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

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

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner. At [90] of *Initial Action* the Court held that:

> *"In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard "achieve better outcomes for and from development". If objective (b) was the source of the Commissioner's test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test."*

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

Clause 4.6(2) of MLEP 2013 provides:

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

This clause applies to the floor space ratio development standard in clause 4.4 of MLEP 2013.

Clause 4.6(3) of MLEP 2013 provides:

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

The proposed development does not comply with the floor space ratio development standard at clause 4.4 of MLEP 2013 which specifies a maximum floor space ratio of 0.40:1. However, strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

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

Clause 4.6(4) of MLEP 2013 provides:

> *Development consent must not be granted for development that contravenes a development standard unless:*
>
> *(c) 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*
>
> *(d) the concurrence of the Planning Secretary has been obtained.*

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority.

The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]). The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest ***because*** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]).

The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

The Local Planning Panels Direction issued by the Minister for Planning and Public Spaces, dated 30 June 2020, provides that local planning panels have the delegation to approve development that contravenes a development standard imposed by an environmental instrument by more than 10% or non-numerical development standards.

Following advice received from the Department of Planning, Industry & Environment (letter dated 2 November 2021) applications for Class 1 buildings (single dwelling houses) with a Clause 4.6 variation greater than 10% to building height within the Warringah Local Environment Plan 2011, Manly Local Environment Plan 2013 and Pittwater Local Environment Plan 2014 and floor space ratio under the Manly Local Environment Plan 2013, may be determined by Council staff under delegation in accordance with Council procedures.

Clause 4.6(5), which relates to matters that must be considered by the Director-General in deciding whether to grant concurrence is not relevant, as the Council has the authority to determine this matter. Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.4 of MLEP 2013 from the operation of clause 4.6.

1.3 Relevant Case Law

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

> *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
>
> *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
>
> *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
>
> *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
>
> *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*
>
> *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

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

1. Is clause 4.4 of MLEP 2013 a development standard?

2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:

   (d) compliance is unreasonable or unnecessary; and

   (e) 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 4.4 of MLEP 2013 and the objectives for development for in the zone?

4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?

5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.4 of MLEP 2013?

1.4 Request for variation

1.4.1 Is clause 4.4 of MLEP 2013 a development standard?

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

(d) the cubic content or floor space of a building,

Clause 4.4 of MLEP 2013 prescribes a bulk and scale provision that seeks to control the floor space ratio of certain development. Accordingly, clause 4.4 of MLEP 2013 is a development standard.

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

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

The first approach is relevant in this instance, being that compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Consistency with objectives of the floor space ratio development standard

An assessment as to the consistency of the proposal when assessed against the objectives of the standard is as follows:

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

Comment: The existing dwelling is located above an existing embankment and is not readily visible from the street. Nonetheless, when seen at a distance from Peronne Street to the north, the bulk and scale of the resultant development will be consistent with that of surrounding development, which are shown in Figure 1, below.



Figure 1: *Perspective image depicting streetscape context of Peronne Avenue*

The additional floor space at the existing entry floor level is as a result of the conversion of the existing garage, a significant portion of which is not GFA as defined, into a rumpus room which is GFA as defined. The proposed garage is located at street level to address the existing antiquated and non-compliant/ dangerous driveway arrangement.

The additional floor space at lower ground floor plan is associated with the squaring off of the western façade to enhance internal layout efficiencies and the amenity of this primary floor plate. We note that the additional floor space does not project beyond the alignment of the existing façade and balcony over.

The ground floor level balcony is demolished and replaced with a new balcony which does not project as close to the street frontage as the existing with floor space at this level reduced through the deletion of the existing bay window element.

Floor space at the upper level is increased primarily to accommodate the lift and associated circulation space all as depicted on the GFA calculation plan A601 as reproduced over page.

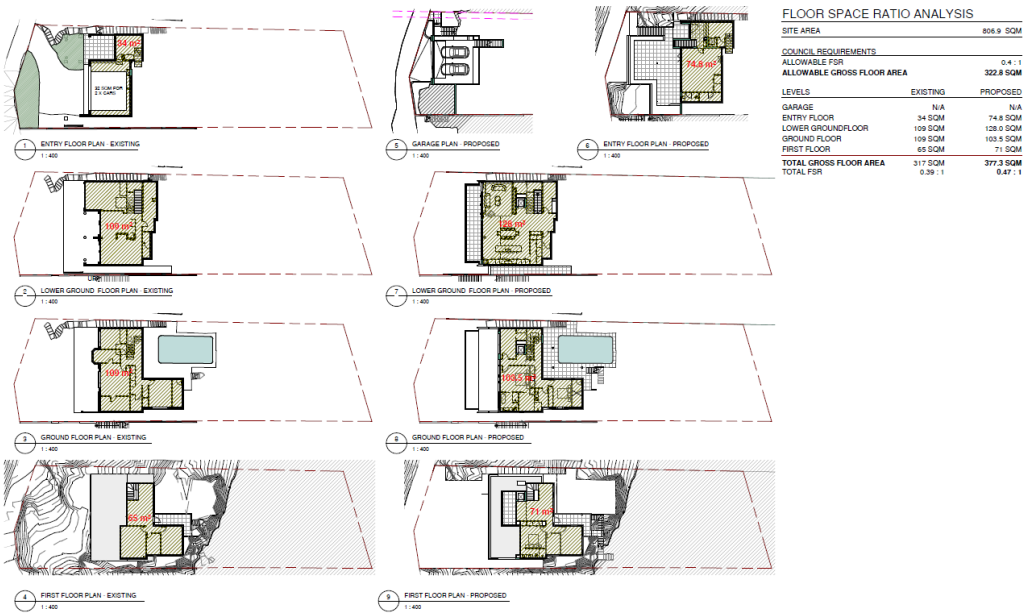


Figure 2: *GFA Plan extract*

In this regard, the additional GFA does not significantly contribute to the overall bulk and scale of the building and reflects a rationalisation of the western façade alignment at the lower ground and ground floors, the conversion of the existing garage into habitable floor space to address the existing antiquated off-street car parking arrangement and to facilitate the retrofitting of a passenger lift to enable the occupants to age in place.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191, I have formed the considered opinion that most observers would not find the altered bulk and scale of the proposed development, as viewed from Peronne Avenue, to be offensive, jarring or unsympathetic in a streetscape context. The non-compliant FSR does not detract from consistency with this objective.

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

Comment: The proposed development has been sensitively designed to respond to the topography of the land and the availability of views from surrounding sites

Having inspected the site and its immediate surrounds to identify potential view corridors across the site from adjoining development and the properties located upslope, I have formed the opinion that the proposal achieves view sharing having regard to the view sharing principles established by the Land and Environment Court of NSW in the matter of *Tenacity Consulting v Warringah* [2004] NSWLEC 140.

The proposed FSR non-compliance does not attribute to any unreasonable impacts upon views and does not obscure important landscape and townscape features. The non-compliant FSR does not detract from consistency with this objective.

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

Comment: The proposed development is compatible with the character of other development in the visual catchment of the site, and the wider R2 Low Density Residential Zone.

In relation to landscape character, the application does not require the removal of any significant trees or vegetation with a building footprint maintained which is compliant with the total open space and landscaped area MDCP controls. The building will sit within a landscaped setting. The application is accompanied by a schedule of materials and finishes which will enable the development to blend into the vegetated escarpment which forms and backdrop to the site. An appropriate visual relationship between new development and the existing landscape of the area is maintained.

I am satisfied that the development, notwithstanding its FSR non-compliance, achieves the objective as it maintains an appropriate visual relationship between new development and the existing character and landscape of the area.

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

Comment: The proposed development does not result in any unreasonable impacts upon neighbouring properties with regards to overshadowing, visual or acoustic privacy. The proposed built form is highly articulated, by virtue of recessed elements, varied setbacks, differing materials and landscaping, and will not be overly dominant as seen from the street, the waterway or adjoining properties. The non-compliant FSR does not detract from consistency with this objective.

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

Comment: Not Applicable.

Consistency with zone objectives

The subject property is zoned R2 Low Density Residential pursuant to MLEP 2013. The developments consistency with the stated objectives of the R2 zone is as follows:

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

Response: The proposed alterations and additions to the existing dwelling house have been designed to provide for the growing needs of the property owners. The proposed works represent a contextually appropriate response to the development of the land within the R2 zone.

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

  Response: Not applicable – the proposal relates to a dwelling house.

The non-compliant development, as it relates to floor space ratio, demonstrates consistency with objectives of the zone and the floor space ratio development standard objectives. Adopting the first option in *Wehbe,* strict compliance with the floor space ratio development standard has been demonstrated to be unreasonable and unnecessary in the circumstances of this application.

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

In *Initial Action* the Court found at [23]-[25] that:

> *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
>
> *The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.*
>
> *The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*

Sufficient environmental planning grounds

Ground 1 – Enhanced building design and amenity

As previously indicated, the additional floor space at the existing entry floor level is as a result of the conversion of the existing garage, a significant portion of which is not GFA as defined, into a rumpus room which is GFA as defined. The proposed garage is located at street level to address the existing antiquated and non-compliant/ dangerous driveway arrangement.

The additional floor space at lower ground floor plan is associated with the squaring off of the western façade to enhance internal layout efficiencies and the amenity of this primary floor plate. We note that the additional floor space does not project beyond the alignment of the existing façade and balcony over.

The ground floor level balcony is demolished and replaced with a new balcony which does not project as close to the street frontage as the existing with floor space at this level reduced through the deletion of the existing bay window element.

Floor space at the upper level is increased primarily to accommodate the lift and associated circulation space all as depicted on the GFA calculation plan A601 as reproduced at Figure 2.

In this regard, the additional GFA does not significantly contribute to the overall bulk and scale of the building and reflects a rationalisation of the western façade alignment at the lower ground and ground floors, the conversion of the existing garage into habitable floor space to address the existing antiquated off-street car parking arrangement and to facilitate the retrofitting of a passenger lift to enable the occupants to age in place.

Enhanced building design and residential amenity, including driveway safety, are facilitated through approval of the FSR variation sought with the absence of unacceptable streetscape or residential amenity impacts forming an appropriate environmental planning ground in support of the variation. Such outcome consistent with the objectives of clause 4.6 namely:

> *(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.*

Ground 1 – Consistency with objectives of the Act

For the reasons outlined above, approval of the FSR variation will promote the orderly and economic use and development of the land (enabling ageing in place), will promote good design and amenity of the built environment (enhanced building design and amenity) and promote the proper construction and maintenance of buildings including the protection of the health and safety of their occupants (addressing existing antiquated off street parking arrangement) consistent with objectives (c), (g) and (h) of the Act.

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

1.4.4 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 4.4 and the objectives of the R2 Low Density Residential zone

The consent authority needs to be satisfied that the proposed development will be in the public interest. A development is said to be in the public interest if it is consistent with the objectives of the particular standard to be varied and the objectives of the zone.

Preston CJ in Initial Action (Para 27) described the relevant test for this as follows:

> *The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.*
>
> *It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).*

As demonstrated in this request, the proposed development is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

Accordingly, the consent authority can be satisfied that the proposed development will be in the public interest.

1.4.5 Secretary's concurrence

The Local Planning Panels Direction issued by the Minister for Planning and Public Spaces, dated 30 June 2020, provides that local planning panels have the delegation to approve development that contravenes a development standard imposed by an environmental instrument by more than 10% or non-numerical development standards.

Following advice received from the Department of Planning, Industry & Environment (letter dated 2 November 2021) applications for Class 1 buildings (single dwelling houses) with a Clause 4.6 variation greater than 10% to building height within the Warringah Local Environment Plan 2011, Manly Local Environment Plan 2013 and Pittwater Local Environment Plan 2014 and floor space ratio under the Manly Local Environment Plan 2013, may be determined by Council staff under delegation in accordance with Council procedures.

Concurrence of the Secretary can therefore be assumed by Council's Development Determination Panel in this case.

1.5 Conclusion

Pursuant to clause 4.6(4)(a) of MLEP 2013, the consent authority can be satisfied that this written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

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

(d) 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 floor space ratio variation in this instance.

Boston Blyth Fleming Pty Limited



Greg Boston

B Urb & Reg Plan (UNE) MPIA

Director

25.7.24

ITEM 3.4 DA2024/0683 - 130 PRINCE ALFRED PARADE NEWPORT - CONSTRUCTION OF A BOAT SHED, DECK, WATERWAY ACCESS STAIRS AND BOAT RAMP

PURPOSE

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

RECOMMENDATION

A. 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.

B. THAT Council as the consent authority **approves** Development Consent to DA2024/0683 for Construction of a boat shed, deck, waterway access stairs and boat ramp on land at Lot 1 DP 1188243, 130 Prince Alfred Parade NEWPORT, subject to the conditions set out in the Assessment Report.

Reporting manager	Adam Richardson
TRIM file ref	2024/591267
Attachments	⇩1 Assessment Report ⇩2 Site Plan and Elevations ⇩3 Clause 4.6 - BHS ⇩4 Clause 4.6 - Foreshore

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/0683

Responsible Officer:	Brittany Harrison
Land to be developed (Address):	Lot 1 DP 1188243, 130 Prince Alfred Parade NEWPORT NSW 2106
Proposed Development:	Construction of a boat shed, deck, waterway access stairs and boat ramp
Zoning:	C4 Environmental Living W1 Natural Waterways
Development Permissible:	Yes - Zone C4 Environmental Living Yes - Zone W1 Natural Waterways
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Applicant:	Jane Edwards

Application Lodged:	07/06/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	19/06/2024 to 03/07/2024
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 60.0%
Recommendation:	Approval

Estimated Cost of Works:	$ 322,727.27

EXECUTIVE SUMMARY

This development application seeks consent for the construction of a boat shed, deck, waterway access stairs and boat ramp.

The application is referred to the Development Determination Panel (DDP) as the proposed boat shed contravenes Clause 4.3 Height of Buildings under the *Pittwater Local Environmental Plan 2014* (PLEP 2014) by more than 10.0% for a Class 10 building.

The maximum permitted building height under the PLEP 2014 is 4.0 metres for sites located within the

W1 Natural Waterway zone. The proposed height of the boatshed is 6.4 metres, with a variation of 60.0%.

In support of the variation is a detailed written Clause 4.6 variation request where compliance with the development standard is considered unreasonable in the circumstances of this case. The written Clause 4.6 variation request for the non-compliance with height standard arises from the proposed boat shed being situated partly atop an existing concrete slab in an area that was subject to historical excavation and elevated over the below rock shelf. The variation is considered to be acceptable as the works have been designed to avoid unnecessary excavation, significant site disturbance and canopy tree removal. The structure is consistent with the overall area and will sit in conformity with the surrounding development, has been designed to withstand the impacts of sea level rise and have an acceptable visual impact from the Pittwater Waterway.

It is noted that the application was also accompanied by a precautionary Clause 4.6 variation request for decking that is situated between the proposed boatshed, waterway access stairs and boat ramp. It is considered that in this particular case the Clause 4.6 is not required as the decking forms part of the boat shed and boat ramp structure due to its location and is to act as a trafficable connection for watercraft from the waterway to the boatshed, as well as for boating maintenance rather than for independent purposes. A recommended condition is included to reduce the decking in size to better respond to surrounding built form and further mitigate visual impact.

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

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that, on balance the proposal is suitable and presents an acceptable form of development for the subject site for the reasons outlined in this report.

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

PROPOSED DEVELOPMENT IN DETAIL

This application seeks development consent for the construction of a boatshed, deck, waterway access stairs and boat ramp.

Specifically, the works comprise of the following:

- Construction of a boatshed (Length: 5.8m x Width: 4.6m x Height: 6.4m) including a utility sink and store atop an existing concrete slab;
- Construction of associated decking area and boat/skid ramp (10.6m²);
- Removal of existing waterway access stairs and construction of new access stairs; and
- Removal of two (2) trees.

Crown Lands
Part of the proposed works are located on Crown land below mean high water mark (MHWM) fronting Lot 1 DP1188243, known as 130 Prince Alfred Parade, Newport NSW 2106. The applicant has submitted Landowner's Consent from the the Department of Planning, Housing and Infrastructure – Crown Lands & Public Spaces (LOC No.645674) dated 16 May 2024.

Transport for NSW

The application is accompanied with consent from Transport of NSW, which states the following:

"I refer to your email to Transport for NSW Maritime dated 26 February 2024 regarding assessment of the above proposal. We advise that an inspection/assessment has been conducted by the local Boating Safety Officer and there are no navigational concerns regarding the designated proposal."

Department of Primary Industries - Fisheries
DPI Fisheries ensures that developments comply with the requirements of the FM Act (namely the aquatic habitat protection and threatened species conservation provisions in Parts 7 and 7A of the Act, respectively), and the associated *Policy and Guidelines for Fish Habitat Conservation and Management (2013).* The application is accompanied with consent from DPI Fisheries, which states the following:

" DPI Fisheries has reviewed the proposal in light of these provisions and has no objections provided all construction works are done without excavation and by driving piles to minimise potential disturbance to the seabed...This proposal is not considered to include any dredging, reclamation, harm to marine vegetation, or blockage of fish passage, and therefore DPI Fisheries does not consider the proposal to constitute Integrated Development under s.91 of the Environmental Planning and Assessment Act 1979. DPI Fisheries does not need to be consulted at the development application stage unless there are amendments to the proposal."

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 - 2.5 Additional permitted uses for particular land
Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living
Pittwater Local Environmental Plan 2014 - Zone W1 Natural Waterways
Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 7.1 Acid sulfate soils
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection

Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area
Pittwater 21 Development Control Plan - B3.7 Estuarine Hazard - Low density residential
Pittwater 21 Development Control Plan - D10.4 Building colours and materials
Pittwater 21 Development Control Plan - D10.13 Landscaped Area - Environmentally Sensitive Land
Pittwater 21 Development Control Plan - D15.15 Waterfront development

SITE DESCRIPTION

Property Description:	Lot 1 DP 1188243 , 130 Prince Alfred Parade NEWPORT NSW 2106
Detailed Site Description:	The subject site consists of one (1) allotment located on the western side of Prince Alfred Road. The subject site is legally identified as Lot 1 in Deposited Plan 1188243, No. 130 Prince Alfred Road, Newport. The site is irregular in shape with a frontage of 17.715m and an average depth of 31.545m. The site has a surveyed area of 630.5m². The site is located within the C4 Environmental zone and W1 Waterways zone under the provisions of the *Pittwater Local Environmental Plan 2014* and accommodates a dwelling house, sea wall and waterway access stairs. The site topography slopes downward from east to west by approximately 19.0m. The site consists of a well vegetated foreshore area with tiered landscaped garden beds which include several canopy trees. The site fronts Pittwater, with a rock shelf at the waters edge **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by waterfront development situated within a landscaped setting. Majority of properties consists of boatsheds, jetties and decking areas within the foreshore area.

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	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.

Section 4.15 Matters for Consideration	Comments
Assessment Regulation 2021 (EP&A Regulation 2021)	Clause 29 of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 19/06/2024 to 03/07/2024 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 of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Acid Sulfate)	***Supported, no conditions required.*** General Comments This application is seeking consent for the construction of a new boat shed, deck and ramp located at 130 Prince Alfred Parade, Newport. The Acid Sulfate Soils on this property have been classed as Class 5. The excavation depth is approximately 2m for the above construction. According to the 1998 Acid Sulfate Soils Manual, Class 5 soils require further assessment if: Works within 500 metres of adjacent Class 1, 2, 3, or 4 land which are likely to lower the watertable below 1 metre AHD on adjacent Class 1, 2, 3 or 4 land. It is Environmental Healths opinion, based on the architectural plans, that the water table is unlikely to be lowered below 1 metre AHD on the Class 1 Acid Sulfate Soils. Environmental Health recommends approval without conditions.
Landscape Officer	***Supported, subject to conditions.*** General Comments The application seeks consent for: Construction of a boat shed, deck, waterway access stairs and boat ramp. The Arborist's Report prepared by Ezigrow is noted. The Report indicates that two (2) exempt palm trees (*Archontophoenix alexandrae)* are to be removed to accommodate the proposed works. No objections are raised to removal of the exempt trees.

Internal Referral Body	Comments
	The Report concludes that the works can be undertaken subject to Arboricultural supervision during the works to address specific tree protection measures. The Plans and Geotechnical report indicate that the majority of the works will occupy an existing concrete slab area within an existing concrete retaining wall to be retained. No objections are raised with regard to landscape issues subject to conditions as recommended.
NECC (Bushland and Biodiversity)	***Supported, subject to conditions.*** <u>General Comments</u> The comments in this referral relate to the following applicable controls and provisions: • SEPP (Resilience and Hazards) 2021 - Coastal Environment Area • Pittwater LEP 2014 - Clause 7.6 Biodiversity Protection • Pittwater DCP 21 - Clause B4.7 Pittwater Spotted Gum Forest Endangered Ecological Community The proposal has been submitted with an arboricultural impact assessment that has recommended the removal of two exempt trees identified as trees 14 and 15 which are exempt palms (Archontophoenix cunninghamiana). No objections are raised in relation to their removal subject to retention of all other prescribed trees identified on site. The proposed works would take place in previously disturbed areas of the site and would be unlikely to impact upon native terrestrial fauna. However, impacts to the marine environment will have to be assessed by the appropriate referral body. The development is designed, sited and will be managed to avoid any significant adverse environmental impact.
NECC (Coast and Catchments)	***Supported, subject to conditions.*** <u>General Comments</u> This Development Application is to seek consent for construction of a new boat shed with storage, utility sink, deck, stair access and water access ramp. The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Resilience & Hazards) 2021 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP. The application has been assessed in consideration approval/support

Internal Referral Body	Comments
	of: • Consent to lodge DA from the NSW Department of Planning, Housing and Infrastructure – Crown Lands and Public Spaces dated 16 May 2024. • No navigational Concerns from the Transport for NSW-Maritime Division dated 26 February 2024 enclosing dated and signed maps. • No Objection from the DPI-Fisheries, a division of the Department of Primary Industries dated 10 April 2024. **Coastal Management Act 2016** The subject site has been identified as being within the coastal zone and therefore Coastal Management Act 2016 is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the Coastal Management Act 2016. **State Environmental Planning Policy (Resilience & Hazards) 2021** The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA. <u>Comment</u> On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Vaughan Milligan Development Consulting Pty. Ltd. dated February 2024 and also as assessed in the submitted Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 10 January 2024, the DA satisfies requirements under clauses 2.10, 2.11 and 2.12 of the SEPP R&H. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021. **Pittwater LEP 2014 and Pittwater 21 DCP** <u>Estuarine Risk Management</u> The subject property has also been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site. In accordance with the submitted Estuarine Risk Management

Internal Referral Body	Comments
	Report prepared by Horton Coastal Engineering Pty. Ltd. dated 10 January 2024, an estuarine planning level (EPL) of RL 2.31m AHD would apply considering the design life of proposed development as 25 years. On internal assessment and as assessed in the submitted Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 10 January 2024 , the ground floor level for the proposed additions and alterations is above the applicable EPL for the site. The proposed development is therefore able to satisfy the relevant estuarine risk management requirements of P21 DCP. <u>Development on Foreshore Area</u> A section of the subject property is within the foreshore building line. Part 7, Clause 7.8 –Limited development on foreshore area of the Pittwater LEP 2014 applies for any development within the foreshore area. The DA proposes new boat shed, deck, stair access . These proposed works are consistent with Clause 7.8(2)(b). An internal assessment of the DA satisfies the objectives and requirements of Part 7, Clause 7.8 of the Pittwater LEP 2014. <u>Development seaward of mean high water mark</u> Proposed development works are located on crown land below the Mean High Water Mark. Hence, Section D15.12: Development seaward of mean high water mark of the Pittwater 21 DCP applies to proposed development. <u>Comment</u> On internal assessment, the DA satisfies/does not satisfy requirements under the Section D15.12: Development seaward of mean high water mark of the Pittwater 21 DCP. An analysis of the proposal demonstrated that the proposed development will not adversely impact on the visual amenity of the foreshore or water quality or estuarine habitat of the Pittwater waterway. The applicant has also submitted a Marine Habitat Survey prepared by Waterfront Surveys Australia dated 2 November 2023. The report concluded that the potential impacts on the aquatic ecology from the installation of new boatshed, timber deck area and timber skid ramp are expected to be minimal, temporary and unlikely to cause significant damage to any marine life. As such, it is considered that the application does comply with the requirements of the Section D15.12: Development seaward of mean high water mark of the Pittwater 21 DCP.

Internal Referral Body	Comments
NECC (Riparian Lands and Creeks)	***Supported, subject to conditions.*** General Comments This application was assessed in consideration of: - Supplied plans and reports; - Coastal Management Act 2016; - State Environmental Planning Policy (Resilience and Hazards) 2021; - Relevant LEP and DCP clauses; and - Northern Beaches Council Water management for development policy. Riparian and aquatic ecology The site is located on the foreshore of the Pittwater estuary which support large pastures of seagrass including the endangered and protected *Posidonia australis* and as such proposed development must not significantly impact on the biophysical, hydrological or ecological integrity of Pittwater or the quantity and quality of surface and ground water flows that it receives. The Aquatic Ecology report found no seagrass or mangroves present or near to the proposed development and excavation elements of the construction are limited to a few piers to support the skid ramp. Impacts to aquatic ecology and habitat are minimal with conditions adhered to. Sediment Management Limit the construction of the piers to support the skid ramp and forward section of the boats shed to low tides to minimise the dispersal of fine sediments into the bay. Should any piering activities occur from the waterway at high tide, sediment and erosion controls such as sediment curtains around the site must be installed prior to any disturbance of soil on site and maintained until all work is complete.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	***Supported, subject to conditions.*** General Comments The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	***Supported, subject to conditions.*** General Comments No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there

External Referral Body	Comments
	are no Aboriginal heritage issues for the proposed development. Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Transport and Infrastructure) 2021

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

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

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

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management
The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been

carried out as follows:

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

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

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

Comment
The proposal has been reviewed by Council's Coastal, Biodiversity, Riparian, and Environmental Health (Acid Sulfate) Officers, who are all in support of the proposed works, subject to recommended conditions to ensure the protection of the environmental factors of the site and surrounds. The Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development. However, a recommended condition has been included to ensure Aboriginal Heritage Protection.

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 foreshores,

iv) the visual amenity and scenic qualities of the coast, including coastal
v) 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 development subject to conditions is unlikely to result in unacceptable impacts to the foreshore or waterway areas and will not detract from the scenic quality of the locality, maintaining an appropriate visual relationship with the surrounding built environment. Recommended conditions are included to ensure that the protection to the environmental environment is to occur, to mitigate any adverse impacts.

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

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

Comment
It is considered that the proposed development, subject to recommended conditions to respond to the environmental constraints of the site, will unlikely result in an increased risk of coastal hazards within the locality.

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

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

Comment
Council's Coastal Officer has reviewed the proposal. It is considered that the relevant provisions of any certified coastal management program that applies to the land has occurred.

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

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

and (c) of this Chapter and the land is considered to be suitable for the residential land use.

Pittwater Local Environmental Plan 2014

Is the development permissible?	Zone C4 : Yes Zone W1 : Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Zone C4 : Yes Zone W1 : Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	8.5m *(C4 - Environmental Living)* 4.0m *(W1 - Natural Waterways)*	Boatshed: 4.7m Skid Ramp: 1.23m* Deck: < 4.0m Boatshed: 6.1 - 6.4m	- - - 60.0%	Yes Yes Yes **No** *(Refer to Clause 4.6)*

*Height of buildings measured from 1.17 AHD which is the Highest Astronomical Tide where the structure is located behind the MHWM.

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.5 Additional permitted uses for particular land	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.7 Development below mean high water mark	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes
23 Use of certain land in the W1 Natural Waterways Zone	Yes

Detailed Assessment

2.5 Additional permitted uses for particular land

Under Clause 2.5 Additional permitted uses for particular land development that is described or referred to in Schedule 1 of the Pittwater Local Environmental Plan 2014 (PLEP 2014) may be carried out—
(a) with development consent, or
(b) if the Schedule so provides—without development consent,

in accordance with the conditions (if any) specified in that Schedule in relation to that development.

Schedule 1 Additional permitted uses of the PLEP 2014 stipulates the following:

23 Use of certain land in Zone W1 Natural Waterways
(1) This clause applies to land identified as "Area 23" on the Additional Permitted Uses Map.
(2) Development for the purposes of boat sheds, jetties or water recreation structures is permitted with development consent.

Comment
The proposed decking located within the Natural Waterways zone is associated with the proposed boatshed and boat ramp, which considered to be a water recreational structure. The boatshed is of dimensions capable of storing boating equipment and water recreation craft.

As per the definition under *Pittwater Local Environmental Plan 2014* a water recreational structure is used primarily for recreational purposes that has a direct structural connection between the shore and the waterway.

The proposed deck is connected to the boatshed and boat ramp forming a link between the shore and waterway and has the capability to provide for recreational type purposes.

In light of the above, the proposed works are therefore permissible within the W1 Natural Waterways zone under the provisions of the PLEP 2014, with development consent.

Zone C4 Environmental Living

The C4 - Environmental Living zone objectives are addressed below:

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

  Comment
  The proposal includes the construction of a boatshed and associated decking area/boat ramp. The proposed works are partly located within the C4 Environmental Living zone. The portion of boatshed located within this zone presents a compliant building height under the 8.5 metres building height standard. As the works are located within the Foreshore Building Area, the application will be assessed in accordance with the objectives of Clause 7.8 Limited development on foreshore area, particularly in relation to the associated decking.

  The proposal has been reviewed by the relevant interdepartmental Officers to ensure low

impact to the ecological, scientific or aesthetic values of the site.

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

  Comment
  The subject property has been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping, and has been accompanied by a Coastal Engineering and Risk Assessment Report and reviewed by Council's Coastal Officer. The site is also located within the Geotechnical Hazard H1 zone and a Geotechnical Assessment has been submitted with the proposal.

  In addition to the above, recommended conditions of consent have been included by Council's Biodiversity, Landscape and Riparian Lands Officers to ensure that impacts to the ecological, heritage, scientific or aesthetic values of the site, are minimised.

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

  Comment
  The proposed works, subject to conditions is considered to be of low density and scale. The boatshed is located upon an existing concrete slab which is situated amongst the landscaped foreshore area of the site. This landscaping will provide a vegetated backdrop when viewed from the waterway, providing a design that is integrated within the landform and landscape.

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

  Comment
  Councils Riparian, Biodiversity and Landscape Officers have reviewed the proposal and support the development subject to recommended conditions of consent to ensure that the impacts to the riparian and native wildlife corridors are also minimised.

Zone W1 Natural Waterways

The W1 - Natural Waterways zone objectives are addressed below:

- ***To protect the ecological and scenic values of natural waterways.***

  Comment
  The proposal has obtained consent and/or correspondence from DPI Fisheries, Transport for NSW and the Department of Planning, Housing and Infrastructure – Crown Lands & Public Spaces. A condition is recommended for the reduction of the decking area to ensure that the mitigation of adverse impacts to the ecological and scenic values of natural waterways in particular to the existing rock shelf.

  In addition, Council's Biodiversity, Riparian and Coastal Team support the proposal, subject to conditions.

- ***To prevent development that would have an adverse effect on the natural values of waterways in this zone.***

  Comment
  The proposal is consistent with surrounding development located within the natural waterways area. As discussed above, conditions are included that will ensure the ecological and scenic values are acceptably protected.

- ***To provide for sustainable fishing industries and recreational fishing***.

  Comment
  Not applicable to the proposal.

- ***To ensure development does not adversely impact on the natural environment or obstruct the navigation of the waterway.***

  Comment
  Recommended conditions of consent have been included by Council's relevant Teams (as discussed above) to ensure the protection of the natural environment. The proposal is accompanied by a letter from Transport for NSW advising that there are no navigational concerns regarding the designated proposal.

- ***To provide opportunities for private access to the waterway where these do not cause unnecessary impact on public access to the foreshore.***

  Comment
  The decking area will restrict the amount of foot traffic on the existing rock shelf below by the occupants and will also provide access during high tide. It is considered that there is no public access around the foreshore as there are no clear safe pathways due to the densely landscaped and sloped topography that meets the existing seawall. Seaward of this wall is a low rock shelf that would be covered at hightide.

4.6 Exceptions to development standards

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

Height of Buildings

Description of Non-Compliance
Development standard: Clause 4.3 Height of buildings
Requirement: 4.0 metres
Proposed: 6.4 metres
Percentage of variation: 60.0%

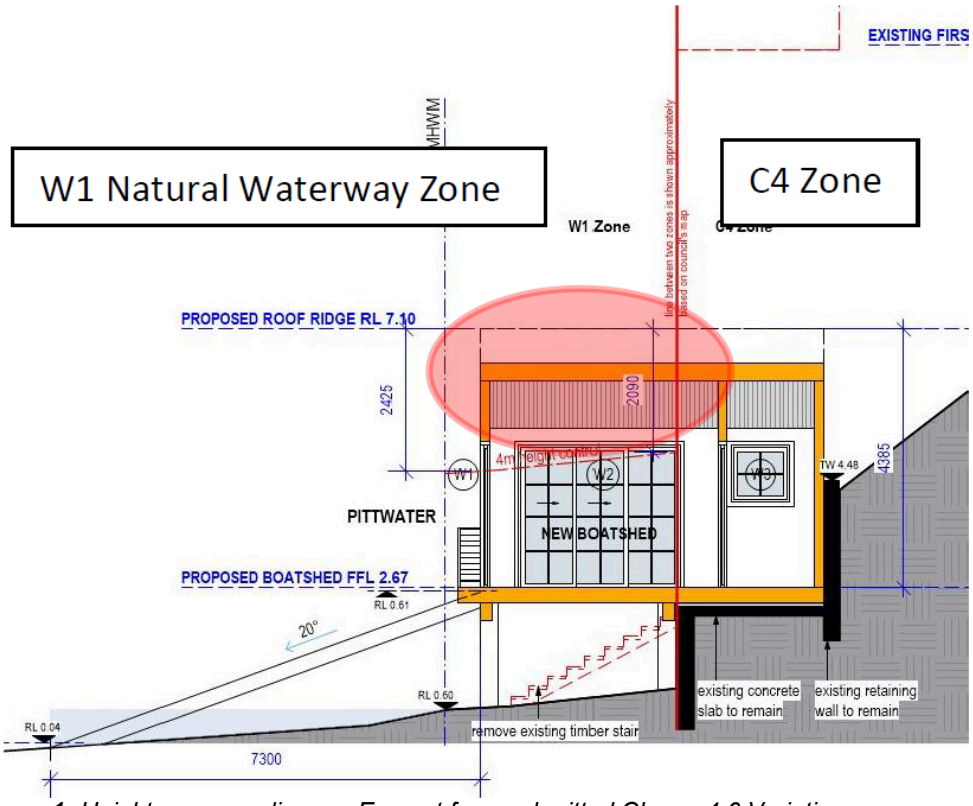


Figure 1: *Height non-compliance - Excerpt from submitted Clause 4.6 Variation*

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

Subclause (1) of this clause provides that:

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

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

Subclause (2) of this clause provides that:

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

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

Subclause (3) of this clause provides that:

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

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

Comment
Council is satisfied that the Applicant has demonstrated that compliance with Clause 4.3 Height of buildings is unreasonable or unnecessary in the circumstances of this application for the following reasons (extract from submitted Clause 4.6 Variation prepared by Vaughan Milligan):

- *The proposed boat shed is of a modest scale that will be compatible in its building height, design and materiality with other foreshore development along the waterfront within the immediate setting. Based on the technical information accompanying this application, does not give rise to any unacceptable ecological, scientific, or aesthetic impacts. Accordingly, the development is unlikely to create unacceptable impacts to the foreshore or waterway areas and will not detract from the scenic quality of the locality, maintaining an appropriate visual relationship with the surrounding built environment.*

- *The works will not impact the existing solar access provision to the principal private open space or living areas of the adjacent properties. The adjoining properties will maintain suitable solar access throughout the day in accordance with Council's provisions.*

- *It is acknowledged that there are existing view lines to the Pittwater waterway to the north-west, west and south-west of the site. However, the living areas and principle private recreational spaces of nearby dwellings are significantly elevated on the sloping topography above the foreshore area, meaning it is not anticipated that the boatshed and its associated works will impact neighbouring views or public vantage points.*

- *The proposed boatshed and overall development works have been located and designed to avoid unnecessary altering of the existing topography, landscaping and seawall structures which could result in detrimental environmental impacts to the marine environment and/or established canopy trees of significant biodiversity value. Accordingly, the boatshed is located appropriately to access the site's foreshore interface.*

- *The works location on the site are supported by a range of technical studies. Accordingly, it can be determined that the proposed works will not adversely affect the natural coastal processes and coastal environmental values, nor Aboriginal Culture significance*

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

Comment
In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the Applicant's

written request has adequately demonstrated that that there are sufficient environmental planning grounds to justify contravening the development standard:

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

The Clause 4.6 Request argues, in part (extract from submitted Clause 4.6 Variation prepared by Vaughan Milligan):

- *The proposed development will facilitate a development that supports safe and orderly access to the waterway from the lands water frontage, storage of marine and boating related equipment that would otherwise be visible, unsecured, an impediment to orderly access. The works will maintain the general bulk and scale of the existing marine based surrounding development and. maintains architectural consistency with the prevailing foreshore development pattern which promotes the orderly & economic use of the land.*

- *Similarly, the proposed development will provide for improved amenity within a built form which is compatible with the immediate foreshore area which also promotes the orderly and economic use of the land.*

- *The location of the boatshed is logical and considers the sloping topography and required interface with the site interface to the foreshore water's edge. To move the proposed boatshed outside the W1 Natural Waterway Zone would require harm to the environment, including unnecessary additional excavation, adverse impact/removal landscaping, significant site disturbance and the need to remove sections of the existing seawall.*

- *The proposal is compatible with the height and scale of development, (similar boat shed structures) within the property's visual catchment; and achieve a development on the property that is characteristic of the foreshore. The proposed development improves the amenity of the occupants and respects the current levels of privacy, amenity and solar access enjoyed by the surrounding this replicating the existing built form*

The proposed boatshed height, scale and location is consistent with similar structures in the immediate vicinity if the waterway. The proposed height is considered an acceptable design and size for functionality (personal watercraft maintenance and storage), with amenity impacts to surrounding development being acceptably mitigated. The non-conforming element of the boatshed as discussed in the points above is as a result of the development being located partly within the W1 - Waterways zone and atop an existing concrete slab that is situated within a historical "cutout" of the hillside. The remainder of the boatshed is therefore elevated over the rock shelf below. To provide a compliant height the site would need to accommodate for significant excavation, disruption to the existing sloped topography and removal of native canopy trees (that currently provide a visual buffer within the foreshore area). Such an outcome would result in far greater impacts on the site's natural features, whilst also being impractical for use, being setback from the site's foreshore interface. The location currently ensures no excessive and unnecessary tree or earthworks removal. The proposed height shall not disrupt the environmental significance of the area, or visual quality of the Pittwater waterway or foreshore area. The submitted technical reports support the proposal and ensure that the works does not give rise to any unacceptable ecological, scientific, or aesthetic impacts, subject to conditions from Council's interdepartmental bodies.

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

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

Public Interest:

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

Conclusion:

Council is satisfied as to the matters set out in Clause 4.6 of the PLEP 2014.

It is considered on balance, that having regard to the particular circumstances the proposed height of the boatshed (maximum 6.4 metres) is a direct result of being located within the W1 - Natural Waterways zone and atop a previously excavated area. The location of the boatshed and non-compliant height is considered environmentally to be acceptable as it avoids the necessity of unnecessary disruption to the natural features of the site, which would result in greater impact. The proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

7.1 Acid sulfate soils

Clause 7.1 - 'Acid sulfate soils' requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

The site is located in an area identified as Acid Sulfate **Soil Class 5**, as indicated on Council's Acid Sulfate Soils Planning Map.

Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land is required to be assessed to determine if any impact will occur.

The proposed development is located within 500 metres of adjacent Class 1 land that is below 5 metres Australian Height Datum. Despite this, the proposed works are predominantly situated above ground in exception of excavation works in the hillside approx. 2.0m (as noted in the submitted Geotechnical Report prepared by White Geotechnical Group).

Council's Environmental Health Officer indicated that based on the architectural plans, that the water table is unlikely to be lowered below 1 metre AHD on the Class 1 Acid Sulfate Soils. Council's Environmental Health Officer is supportive without conditions.

In this regard, an Acid Sulfate Soil Management Plan (ASSMP) is not considered to be necessary for the development.

Having regard to the above assessment, it is concluded that the proposed development is consistent

with the aims and objectives of this clause. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

7.2 Earthworks

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

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

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

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

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

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

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

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

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

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

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

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

(f) the likelihood of disturbing relics

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

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

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

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

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

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

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

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

7.6 Biodiversity protection

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

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

Comment
The development has been assessed by Council's Biodiversity Team, who raised no objections to approval, subject to conditions. It is considered that the development will not have any adverse impact on the condition, ecological value and significance of the fauna and flora on the land; the importance of the vegetation on the land to the habitat and survival of native fauna; or the habitat elements providing connectivity on the land. The development will not unreasonably fragment, disturb, or diminish the biodiversity structure, function, or composition of the land, if the conditions included are adhered to.

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

Comment
The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Conditions are included to ensure that the proposal will ustilise appropriate measures to avoid, minimise, or mitigate the impacts of the development.

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

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

Comment
It is considered that the development is designed, sited and will be managed to any significant adverse environmental impact, subject to conditions.

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

7.7 Geotechnical hazards

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

(a) site layout, including access,
(b) the development's design and construction methods,
(c) the amount of cut and fill that will be required for the development,
(d) waste water management, stormwater and drainage across the land,
(e) the geotechnical constraints of the site,
(f) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Comment
The proposed development is supported by a geotechnical risk assessment prepared by White Geotechnical Group (dated 4 October 2023) that demonstrate all geotechnical risks have been taken into account. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

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

Comment
The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

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

Comment
The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent. As such, it can be considered that the proposed development has been designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development.

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

7.8 Limited development on foreshore area

Under Clause 7.8 Limited Development on Foreshore Area, development consent must not be granted for development on land in the foreshore area except for the following purposes:

- ***the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, but only if the development will not result in the footprint of the building extending further into the foreshore area,***
- ***boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).***

Comment
The proposed development is for the construction of a boatshed, waterway access stairs and boat ramp which are all permitted within the foreshore area. The proposed decking is considered to be part of the boatshed and ramp as it forms part of the waterway structure design due to its location and is to act as a trafficable connection for watercraft from the waterway to the boatshed, as well as for boating maintenance. As the decking is not for an independent use, the need for a Clause 4.6 Variation Request is not deemed to be necessary, in this particular instance. The applicant however has provided a precautionary Clause 4.6 Variation Request, which was reviewed but will not be explicitly assessed under Clause 4.6, as it has been found that there has been no breach of the development standard.



Figure 2: *Development works within the foreshore building area*

The overall footprint of the ancillary decking could be further reduced, whilst still providing for the intended use for boat maintenance and launching watercraft in and out of the waterway. Therefore, it is recommended via a condition to remove 5.0m² of the northern section of the decking as demonstrated in the below figure *(Fig. 3)* and to delete the small section of decking located outside of the window W1 of the boatshed.

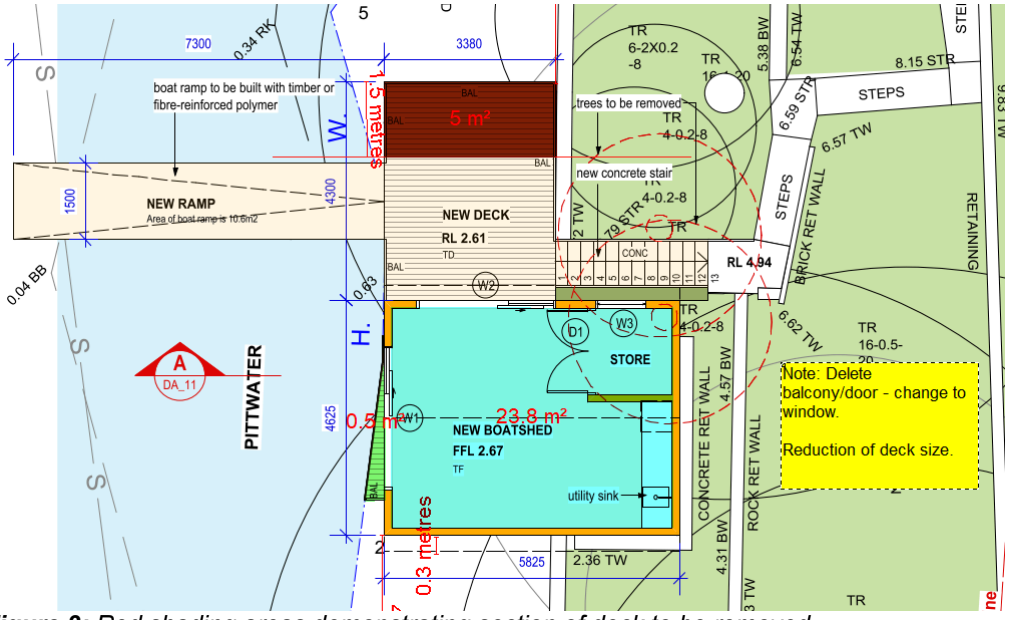


Figure 3: *Red shading areas demonstrating section of deck to be removed.*

Subject to this recommended condition, the proposed development will be consistent with nearby waterway structures in the surrounding area. No significant excavation or clearing of established trees will take place due to the decking location over the rock shelf, and the dense vegetated areas located behind the proposed development will act to visually soften overall built form. These works have been reviewed by Council's relevant interdepartmental officers who have included recommended conditions to ensure that the development does not detrimentally impact the natural foreshore processes. The proposal has also been accompanied by the relevant supporting documentation that include recommendations to ensure the protection of the ecological and aesthetic values on site.

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

- *the development will contribute to achieving the objectives for the zone in which the land is located, and*
- *the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and*
- *the development will not cause environmental harm such as:*
  - *pollution or siltation of the waterway, or*
  - *an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or*
  - *an adverse effect on drainage patterns, or*
  - *the removal or disturbance of remnant riparian vegetation, and*
- *the development will not cause congestion or generate conflict between people using open space areas or the waterway, and*

- *opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and*
- *any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and*
- *in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and*
- *sea level rise, coastal erosion and recession, or change of flooding patterns as a result of climate change have been considered.*

Comment
The proposed development is consistent with the objectives of both the Natural Waterways and Environmental Living zone. The appearance of the proposed development is compatible with the surrounding area, subject to the previously mentioned condition. The proposed development will not cause environmental harm in relation to pollution, siltation, surrounding uses, marine habitat, wetland areas, flora or fauna habitats, drainage patterns or remnant riparian vegetation, subject to conditions recommended by the referral officers. The application was also supported by technical reports that demonstrate that the works do not give rise to any unacceptable ecological, scientific, or aesthetic impacts.

The proposed development will not cause congestion or generate conflict between people using the adjacent open space or waterway, the application has been accompanied by responses from DPI Fisheries and Transport of NSW. The proposed development will not result in adverse impacts to any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land by limiting extent of site disturbance and excavation. The proposed development will not have an adverse impact on the amenity or aesthetic appearance of the foreshore. The proposed development has been designed in consideration of sea level rise and is supported by Council's Coastal Officer.

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

- *continuous public access to and along the foreshore through or adjacent to the proposed development,*
- *public access to link with existing or proposed open space,*
- *public access to be secured by appropriate covenants, agreements or other instruments registered on the title to land,*
- *public access to be located above mean high water mark,*
- *the reinforcing of the foreshore character and respect for existing environmental conditions.*

Comment
It is considered that there is no continuous public access around the foreshore in this particular area as there are no clear safe pathways due to the densely landscaped and sloped topography that meets the existing seawall on site. Seaward of this wall is a low rock shelf that would be covered at hightide. The works will therefore not impact on public access links.

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

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front Building Line	6.5m	> 6.5m	-	Yes
Rear Building Line	6.5m *Foreshore Building Line applies.*	Boatshed including decking and access stars: Within FSB Boat Ramp: Below M.H.W.M *(permitted)*	-	Yes Yes
Side Building Line	2.5m	8.2m	-	Yes
	1.0m	4.7m	-	Yes
Building Envelope	3.5m	Within Envelope	-	Yes
	3.5m	Within Envelope	-	Yes
Landscaped Area	60.0% *(378.3m²)*	51.6%* *(325.5m²)*	14.0% *(52.8m²)*	**No**

*Subject to the recommended condition to reduce decking by 5.0m².

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.10 Newport Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes

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
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
D10.1 Character as viewed from a public place	Yes	Yes
D10.4 Building colours and materials	Yes	Yes
D10.7 Front building line (excluding Newport Commercial Centre)	Yes	Yes
D10.8 Side and rear building line (excluding Newport Commercial Centre)	Yes	Yes
D10.11 Building envelope (excluding Newport Commercial Centre)	Yes	Yes
D10.13 Landscaped Area - Environmentally Sensitive Land	No	Yes
D10.16 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D10.18 Scenic Protection Category One Areas	Yes	Yes
D15.11 Waterfront lighting	Yes	Yes
D15.12 Development seaward of mean high water mark	Yes	Yes
D15.13 Lateral limits to development seaward of mean high water mark	Yes	Yes
D15.14 Minimum frontage for waterfront development	Yes	Yes
D15.15 Waterfront development	No	Yes

Detailed Assessment

B3.7 Estuarine Hazard - Low density residential

The subject property has also been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site.

In accordance with the submitted Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 10 January 2024, an estuarine planning level (EPL) of RL 2.31m AHD would apply considering the design life of proposed development as 25 years.

The ground floor level for the proposed boatshed is above the applicable EPL for the site.

The proposed development is therefore able to satisfy the relevant estuarine risk management

requirements of P21 DCP.

D10.4 Building colours and materials

Merit Consideration
The materials and colours of the boatshed are proposed to be of a light colour scheme (white, cream and light grey), which is not consistent with the requirements of this clause.

Given the sensitive nature of the foreshore, high usage of the waterway and the elevated design of the boatshed/decking the proposed colour scheme would not aid in the desired harmonisation with the natural environment.

Therefore, a condition of consent will be recommended to ensure that the external colours and finishes are of dark and earthy tones (medium - dark range) so as to integrate the built form into the surrounding natural environment and to comply with the requirements of the clause.

D10.13 Landscaped Area - Environmentally Sensitive Land

Description of Non-compliance
Clause D10.13 Landscaped Area - Environmentally Sensitive Land requires a minimum of 60.0% landscaped area which equates to 378.3m²

The subject site provides a landscaped area of 51.6% which equates to 325.5 m², representing a variation of 14.0% or 52.8m² to the requirements of the clause. This landscape calculation is a result of the reduction of the associated decking area attached to the boatshed, which is required through amendment to the plans specified in the recommended Conditions.

Provided that the outcomes of the clause have been achieved, impervious areas up to 6.0% of the site area can be included in the landscaped area calculation. This includes impervious areas used for outdoor recreational purposes. The inclusion of this variation increases the landscaped area to 363.3m², presenting a near-compliant landscaped area of 57.6%.

Merit Consideration
With regard to the consideration of a variation, the proposed development is considered against the underlying outcomes of the control as follows:

- ***Achieve the desired future character of the Locality. (S)***

  Comment
  The proposed landscaped area will not result in the removal of significant vegetation but rather two (2) exempt palm trees. The proposed alterations and additions are sited well below tree canopy height and within a landscaped setting. The proposal is considered to be consistent with the desired future character of the Newport Locality.

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

  Comment
  The foreshore area of the site includes landscaping and canopy trees providing a vegetated backdrop when viewed from the waterway and adjoining properties. This vegetation will aid visual softening the built form of the development within the foreshore area.

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

  Comment
  The proposed boatshed and decking is not considered to result in adverse amenity impacts i.e. solar access and visual privacy. The decking is proposed to allow ease of pedestrian access and associated activities relating to marine usage above the natural landscape within the intertidal zone rather than for entertaining.

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

  Comment
  The foreshore area of the site is extensively vegetated, with majority of landscaping to be retained (exception of the removal of exempt trees). The boatshed and associated works is predominantly located upon an existing pre-excavated concrete slab or elevated over the rock shelf below. Excavation works will occur for the footings and a minor section of the boatshed, which will not result tin a significant loss in vegetation.

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

  Comment
  Council's Biodiversity and Landscape Officers has reviewed the proposal and is supportive, subject to conditions. The native canopy trees on site will be retained and not adversely impacted upon, which is supported by a submitted Arboricultural Impact Assessment. Part of the boatshed and decking will be elevated over the below rock shelf due to topography, however will result in the avoidance of foot traffic on the rocks below.

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

  Comment
  Stormwater runoff is not expected result in any unreasonable impacts to soil erosion and siltation of natural drainage channels.

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

  Comment
  The subject site is located within, and is surrounded by, environmental protection or waterway zones, however, the proposal will result tin the preservation of acceptable level of landscaping and the retention of native canopy trees. Furthermore, preserving the bushland character that may be present in the immediate vicinity.

- ***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 shortfall in landscaped area, the site still maintains an adequate area of soft surface to provide the infiltration of stormwater.

Having regard to the above assessment, it is concluded that the outcomes of the clause have been achieved. Therefore, the application is supported on merit in this particular circumstance.

D15.15 Waterfront development

Merit Assessment
The proposal consists of the construction of a boatshed, associated decking and boat ramp.

The design of the waterfront development in relation to the requirements listed under this clause are discussed below:

1. Boatshed
The proposed boatshed is located landward of the mean high watermark, however is located within both the C4 Environmental Living zone (where it is subject to a maximum building height of 8.5 metres) and W1 Natural Waterways zone (where it is subject to a maximum building height of 4.0 metres), therefore is limited to a maximum building height of 4.0 metres for part of the boatshed as stipulated within the Height of Buildings Map under the PLEP 2014. The proposal seeks a variation of 60.0% to the maximum building height standard, which is considered acceptable and discussed in detail under 'Clause 4.6' elsewhere in this report.

In addition, the requirements under this control stipulate that *"Boatsheds shall be one storey and no greater than 4.5 metres in building height above the platform on which it is built, 4.0 metres in width and 6.0 metres in length."* This would result in a boatshed area of 24.0 square metres. The proposed boat shed is of a height of 4.385 metres when measured from the platform on which it is built, 4.625 metres in width, and 5.825 metres in length, this would result in an area of 26.9 square metres.

The minimum floor level of proposed boatshed shall be in accordance with the Clause B3 Estuarine Hazard controls for foreshore development around the Pittwater Waterway of the P21DCP. In accordance with the Pittwater Estuary Mapping of Sea Level Rise Impacts Study (2015), a base estuarine planning level (EPL) of RL 2.31 meters AHD applies at the subject site. The ground floor level of the boatshed is above the applicable EPL for the site.

2. Skid Ramp
Council may consider slipways and launching ramps where structures are unlikely to detract from the visual character of the foreshore, will not affect marine vegetation and will not restrict public foreshore access.

In such instances, the following criteria shall apply:

- *Innovative design which incorporates slipping facilities with other existing or proposed structures is encouraged (Diagram 5).*
- *Structures, the storage of lightweight boats, and any winch equipment shall be entirely on private freehold land and shall not obstruct public foreshore access.*
- *Structures shall be at ground level, where possible. Slipways from boatsheds, or reclamation must be recessed into the subject structure or work to minimise the height of the sliprails or boat ramp above the bed of the Pittwater Waterway. (Diagram 6).*
- *Sliprails are to be in the form of two parallel rails, no more than 2 metres width apart, with either locking spreaders between the rails or bolted directly to the surface of the concrete without the use of spreaders or embedded in concrete to facilitate free access. (Diagram 7).*
- *Timber construction is preferred for proposed boat ramps. Concrete ramps may be considered at bed level in certain locations such as at Crystal Bay, Winji Jimmi Bay, Palm Beach and Careel Bay or where it can be shown, to the satisfaction of Council, that the aims of this clause are not compromised. Other materials such as steel with bonded rust proof coating will also be considered.*

Comment
The proposed skid ramp will be of timber construction as noted above or of fibre reinforced polymer. The ramp will only be 1.5 metres in width and will be connected to the new boat deck. The ramp is considered to be acceptable in this instance.
With regard to the consideration for a variation, the development is considered against the underlying Outcomes of the Control as follows:

- ***Waterfront development does not have an adverse impact on the water quality and estuarine habitat of Pittwater.***

  Comment
  The proposal is accompanied with a Marine Habitat Survey (prepared by Waterfront Surveys Australia) and an Estuarine Risk Management Report (prepared by Horton Coastal Engineering) the recommendations of these technical documents and have been reviewed by Council's relevant departments being Biodiversity, Riparian Lands and Coastal, who are in support of the development subject to conditions. It is therefore considered, that the works will not not have an adverse impact on the water quality and estuarine habitat of Pittwater.

- ***Public access along the foreshore is not restricted.***

  Comment
  The works will not interfere with the public access along the foreshore.

- Waterfront development does not encroach on navigation channels or adversely affect the use of ferries and service vessels or use of the waterway by adjoining landowners.

  Comment
  The works have been reviewed by Transport for NSW Maritime, with the written referral response accompanying the application. The referral states that there are no navigational concerns. Therefore, the proposal is not considered to impact upon navigation channels or adversely affect the use of ferries and service vessels or use of the waterway by adjoining landowner.

- ***Structures blend with the natural environment.***

  Comment
  The boatshed although slightly bigger than the desired size in terms of height and width is located in an area that consists of an existing leveled concrete slab that is situated within the hillside. A condition has been recommended to amended the material colours to a an earthy/medium to dark range to better respond to the natural colours of the area. The native trees and vegetation behind the structure will be retained (apart from the exempt trees to be removed), and will provide a landscaped buffer.

- ***Structures are not detrimental to the visual quality, water quality or estuarine habitat of the Pittwater Waterway.***

  Comment
  The works have been designed to ensure no detrimental impacts will occur, this includes the location of the boatshed which will only need to accommodate for a limited section of excavation rather than a significant extent. A condition has been included to further mitigate visual dominance by reducing the decking size by 5.0m². Councils' interdepartmental officers

are supportive of the proposal, subject to conditions in relation to water quality or estuarine habitat of the Pittwater Waterway.

- ***To promote a mix of commercial waterfront development for the accommodation of boats, their repair and maintenance, and for organised waterfront development.***

  Comment
  The proposal is not for commercial waterfront development, but rather for residential. This outcome is therefore, not applicable.

- ***Waterfront development which does not comply with the outcomes of this clause are removed.***

  Comment
  As detailed above, the proposed waterfront development complies with the outcomes of this clause.

Having regard to the above assessment, it is concluded that the outcomes of the clause have been achieved. Therefore, the application is supported on merit in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of $3,227 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $322,727.

CONCLUSION

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

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

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

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

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

Council is satisfied that the Applicant's written request under Clause 4.6 of the *Pittwater Local Environmental Plan 2014* seeking to justify variation of the development standard contained within Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

PLANNING CONCLUSION

This proposal, for the construction of a boat shed, deck, waterway access stairs and boat ramp and has been referred to the Development Determination Panel (DDP) due to the proposal resulting in a variation of more than 10.0% to Clause 4.3 Height of Buildings of the *Pittwater Local Environmental Plan 2014* (PLEP 2014).

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

On balance, and considering the preceding detailed assessment of the application, including a detailed analysis of the Clause 4.6 written request to vary Clause 4.3 Height of buildings, and an assessment against Clause 7.8 Limited development on foreshore area and Clause D15.15 Waterfront development. It is considered that the proposal, subject to recommended conditions will result in a development that is acceptable in design, which shall not unacceptably impact the natural foreshore processes or affect the significance and amenity of the area.

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

REASON FOR DETERMINATION

It is considered that the proposed development satisfies the appropriate controls and that all

processes and assessments have been satisfactorily addressed.

RECOMMENDATION

That Northern Beaches Council, as the consent authority, vary the development standard contained within Clause 4.3 Height of Buildings, pursuant to Clause 4.6 of the *Pittwater Local Environmental Plan 2014* because the Applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) of Clause 4.6.

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2024/0683 for Construction of a boat shed, deck, waterway access stairs and boat ramp on land at Lot 1 DP 1188243, 130 Prince Alfred Parade, NEWPORT, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

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

Approved Plans				
Plan Number	**Revision Number**	**Plan Title**	**Drawn By**	**Date of Plan**
DA_01	Revision C	Site Plan/Site Analysis	Jane Edwards Architecture	10 April 2024
DA_04	Revision D	Proposed Boatshed Plan	Jane Edwards Architecture	15 August 2024
DA_05	Revision C	Proposed Roof Plan	Jane Edwards Architecture	10 April 2024
DA_06	Revision C	Elevations	Jane Edwards Architecture	10 April 2024
DA_07	Revision C	Elevations	Jane Edwards Architecture	10 April 2024
DA_08	Revision C	Elevations	Jane Edwards Architecture	10 April 2024
DA_10	Revision C	Section A	Jane Edwards Architecture	10 April 2024
DA_15	Revision A	Section B	Jane Edwards Architecture	15 August 2024

Approved Reports and Documentation			
Document Title	**Version Number**	**Prepared By**	**Date of Document**
Estuarine Risk Management Report on 130 Prince Alfred Parade Newport	-	Horton Coastal Engineering Pty Ltd	10 January 2024
Waste Management Plan	-	-	-
Arboricultural Impact Appraisal and Method Statement	-	Ezigrow	16 October 2023
Geotechnical Investigation (Ref. J5159)	-	White Geotechnical Group	4 October 2023
Marine Habitat Survey (Ref. 4-010-05)	-	Waterfront Surveys Australia Pty Ltd	30 October 2023 + 2 November 2023

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

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

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	17 June 2024
Department of Primary Industries - Fisheries	Referral DPI Fisheries	10 April 2024
Transport for New South Wales	Referral Transport for NSW	26 February 2024

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

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 $3,227.27 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 $322,727.27.

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

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

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

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

6. **Security Bond**

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

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

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

Reason: To protect native vegetation.

8. **Erosion and Sediment Control Plan**
An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:

- Site Boundaries and contours
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities)
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls that must include sediment fences, stabilised site access, materials and waste stockpiles locations, location of any stormwater pits on the site and how they are going to be protected.
- North point and scale.

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

Reason: To protect the receiving environment.

9. **Stormwater Drainage Disposal**
The stormwater drainage systems for the development are to be designed, installed and maintained in accordance with Council’s Water Management for Development Policy.

All stormwater drainage systems must comply with the requirements of Council’s Water Management for Development Policy. Any recommendations identified within a Geotechnical Report relevant to the development are to be incorporated into the design of the stormwater

drainage system. Details demonstrating compliance from a qualified and practising Civil Engineer and where relevant a Geotechnical Engineer must be submitted to and approved by the Certifier prior to the issue of a Construction Certificate.

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

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

Reason: To ensure satisfactory management of stormwater.

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

a) Boatshed Decking: The north-western portion of the decking is to be reduced by 1.5 metres, equating to a 5.0m² reduction in area.

b) Boatshed Decking outside W1: The decking and balustrade situated outside of Window W1is to be removed from the approved plans.

c) Window W1: Is to be amended to reflect a fixed window that cannot be opened in a way that can be utilised as a door opening.

d) The note on the amended plans that states the following: *"Rectification of retaining wall sand steps to be determined at CC Stage with Geotech engineer and structural engineers advise. Refer to Geotechnical Report"* shall be deleted. If any amendments are necessary to existing retaining walls than a further application must be submitted for assessment.

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.

11. **Boundary Identification Survey**
A boundary identification survey, prepared by a Registered Surveyor, shall be provided in respect of the subject site.

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

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

Reason: To ensure all approved works are constructed within the subject site and in a manner

anticipated by the development consent.

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

To ensure Council's recommended flood evacuation strategy of 'shelter-in-place', it will need to be demonstrated that there is safe pedestrian access to a 'safe haven' above the Estuarine Planning Level.

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

13. **Estuarine Planning Level Requirements**
An Estuarine Planning Level (EPL) of 2.31m AHD has been adopted for the subject site and shall be applied to all development proposed below this level as follows:

1. All structural elements below 2.31m AHD shall be of marine environment compatible materials;
2. All electrical equipment, wiring, fuel lines or any other service pipes and connections must be located either above 2.31m AHD or waterproofed to this level; and
3. The storage of toxic or potentially polluting goods, chemicals or materials, which may be hazardous or pollute the waterway, is not permitted below 2.31m AHD.
4. All interior power supplies (including electrical fittings, outlets and switches) must be located at or above 2.31m AHD. All exterior power supplies (including electrical fittings, outlets and switches) shall be located at or above 2.31m AHD to avoid the likelihood of contact with splashing waves and spray.

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

14. **Compliance with Estuarine Risk Management Report**
The development is to comply with all recommendations of the approved Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 10 January 2024 and these recommendations are to be incorporated into construction plans and specifications and maintained over the life of the development.

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

15. **Structural Engineering for Estuarine Risk**
Structural engineering design for the development shall be prepared, with input as necessary from a chartered professional engineer with coastal engineering as a core competency, to ensure that for its design life (taken to be 25 years as justified and accepted by Council) the development is able to withstand the wave impact forces and loadings identified in the approved Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 10 January 2024.

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

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

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

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

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

17. **External Finishes**
The external finishes of the boatshed and ancillary decking/skid ramp shall utlise a medium to dark colour range in order to minimise solar reflections to neighbouring properties. Light colours such as off white, cream, silver or light grey colours are not permitted.

The external finish to the boat shed 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.

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

19. **Project Arborist**
A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged prior to any commencement of works on site to provide tree protection measures in accordance with the Arboricultural Impact Appraisal and Method Statement dated 16 October 2023 prepared by Ezigrow and AS4970-2009 Protection of trees on development sites.

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment.

All tree protection measures specified must:

a) be in place before work commences on the site, and
b) be maintained in good condition during the construction period, and
c) remain in place for the duration of the construction works.

The Project Arborist shall provide certification to the Principal Certifier that all tree protection measures under AS4970-2009 have been satisfied, and the recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

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

Reason: Tree protection.

20. **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

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

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

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

Reason: Preservation of significant environmental features.

22. **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 the Arboricultural Impact Appraisal and Method Statement dated 16 October 2023 prepared by Ezigrow and AS4970-2009 Protection of trees on development sites,

ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by the Project Arborist,

iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with the Project Arborist,

iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,

v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by the Project Arborist on site,

vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with the Project Arborist 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, the Project Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Project Arborist to the Principal Certifier,

viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,

ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,

x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,

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

The Principal Certifier must ensure that:

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

Reason: Tree and vegetation protection.

23. **Condition of Trees**

During the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to or by seeking

arboricultural advice from the Project Arborist during the works.

In this regard all protected trees shall not exhibit:

i) a general decline in health and vigour,
ii) damaged, crushed or dying roots due to poor pruning techniques,
iii) more than 10% loss or dieback of roots, branches and foliage,
iv) mechanical damage or bruising of bark and timber of roots, trunk and branches,
v) yellowing of foliage or a thinning of the canopy untypical of its species,
vi) an increase in the amount of deadwood not associated with normal growth,
vii) an increase in kino or gum exudation,
viii) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
ix) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist are to be implemented.

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

Reason: Protection of trees.

24. **Pre-clearance Survey**
Any habitat for native wildlife (including tree hollows) approved for removal is to be inspected for native wildlife prior to its removal. If native wildlife is found within habitat to be removed, a licensed wildlife rescue and rehabilitation organisation must be contacted for advice.

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

Written evidence of compliance (including records of inspections and any wildlife incidents) is to be provided to the Principal Certifier prior to any Occupation Certificate.

Reason: To protect native wildlife.

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

Reason: To protect native wildlife.

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

Reason: To protect wildlife habitat.

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

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

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

Reason: To protect the aquatic environment.

29. **Use of equipment and vessels in the vicinity of seagrass**
No equipment is to be placed on any seagrass beds.

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

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

Reason: Protection of seagrass.

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. **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.

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 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. **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.

34. **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

35. **Condition of Retained Vegetation**
Prior to the issue of an Occupation Certificate, a report prepared by the Project Arborist shall be submitted to the Principal Certifier, assessing the health and impact on all existing trees required to be retained on the approved Plans or as listed in the Arboricultural Impact Assessment, including the following information:

a) compliance to any Arborist recommendations for tree protection generally and during excavation works,

b) extent of damage sustained by vegetation as a result of the construction works,

c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree and vegetation protection.

36. **Native Landscaping**
Any new landscaping is to incorporate a minimum 80% locally native vegetation species as a proportion of the total number of plants. Locally native species are to be consistent with the Pittwater Spotted Gum Forest Endangered Ecological Community.

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

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

37. **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.

38. **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.

39. **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

40. **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.

41. **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.

42. **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.

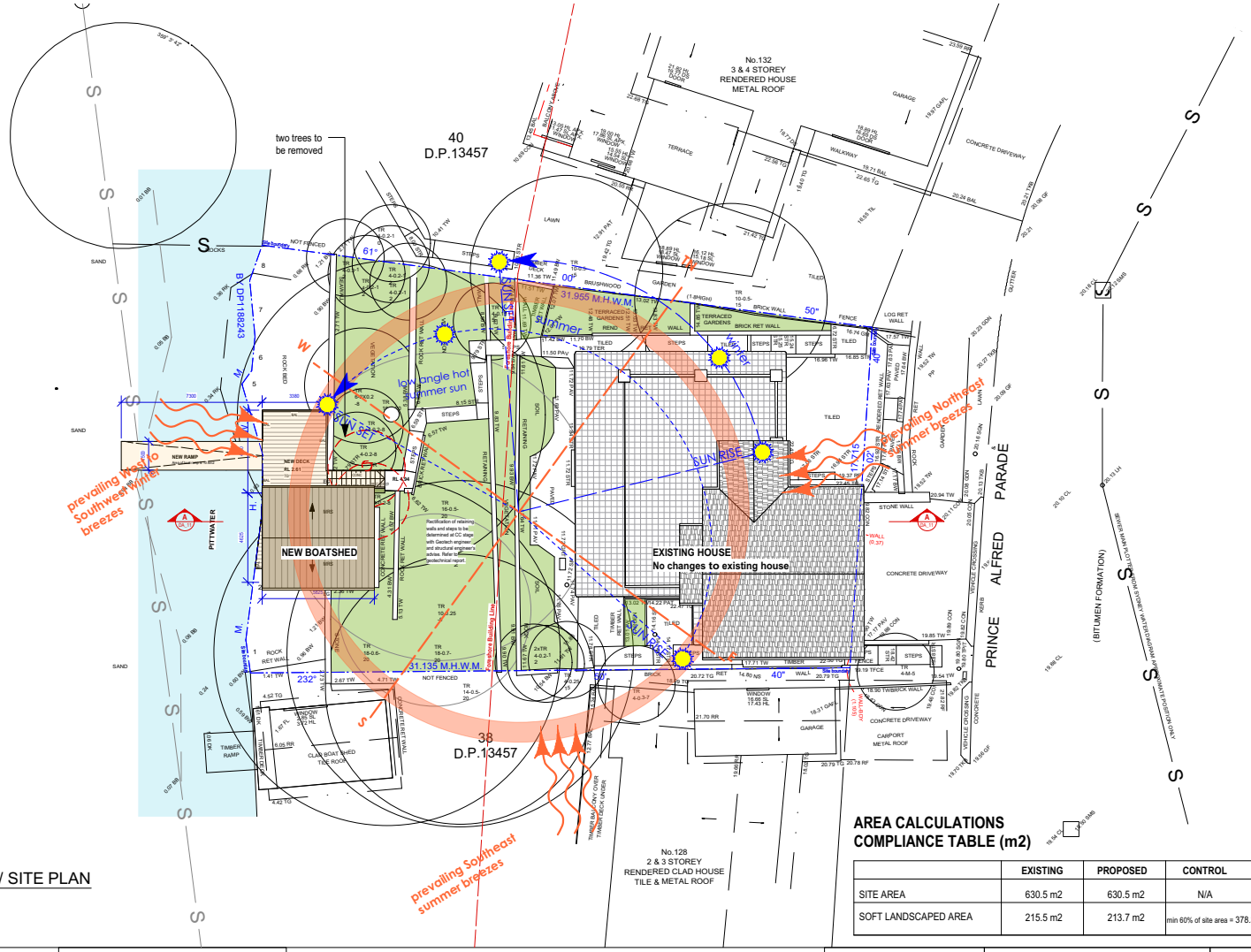
Reason: To ensure geotechnical risk is mitigated appropriately.

43. **Boatshed Not for Habitation**

At no time shall the boatshed be utilised or converted to provide for residential habitation. The boatshed must not be used for any other purpose than the storage of small boats, light watercraft and boating and marine equipment. The incorporation of any internal kitchen facilities, habitable rooms, shower or toilet facilities is not permitted.

Installation of a utility sink is **NOT PERMITTED** inside the boatshed.

Reason: To ensure compliance with Pittwater Estuarine Risk Management Policy.



1 SITE ANALYSIS / SITE PLAN
SCALE 1:200 @ A3

AREA CALCULATIONS COMPLIANCE TABLE (m2)

	EXISTING	PROPOSED	CONTROL	COMPLIANCE
SITE AREA	630.5 m2	630.5 m2	N/A	N/A
SOFT LANDSCAPED AREA	215.5 m2	213.7 m2	min 60% of site area = 378.3m2	NO proposed landscaped area is 1.8m2 smaller than existing landscaped

NOTE

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REVISION SCHEDULE

Rev	Date	Revision notes
A	30/05/23	Pre-DA
B	4/01/24	90% DA
C	10/04/24	DA submission

LEGEND / KEY

AD	ALUMINIUM DOOR	MRS	METAL ROOF SHEETING
AW	ALUMINIUM WINDOW/ DOOR	PF	PAINT FINISH
BG	BOX GUTTER	RF	ROOF TIMBER FASCIA
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GD	NEW GRATED DRAIN	TF	TIMBER FLOOR

WALL LEGEND

- EXISTING WALL
- WALL TO BE DEMOLISHED
- NEW WALL / NEW WORK

JANE EDWARDS ARCHITECTURE
NSW REGISTERED 7050

Project
130 Prince Alfred Parade, Newport NSW, 2106
ALTERATIONS & ADDITIONS

Scale
1:200 @ A3

Plot date

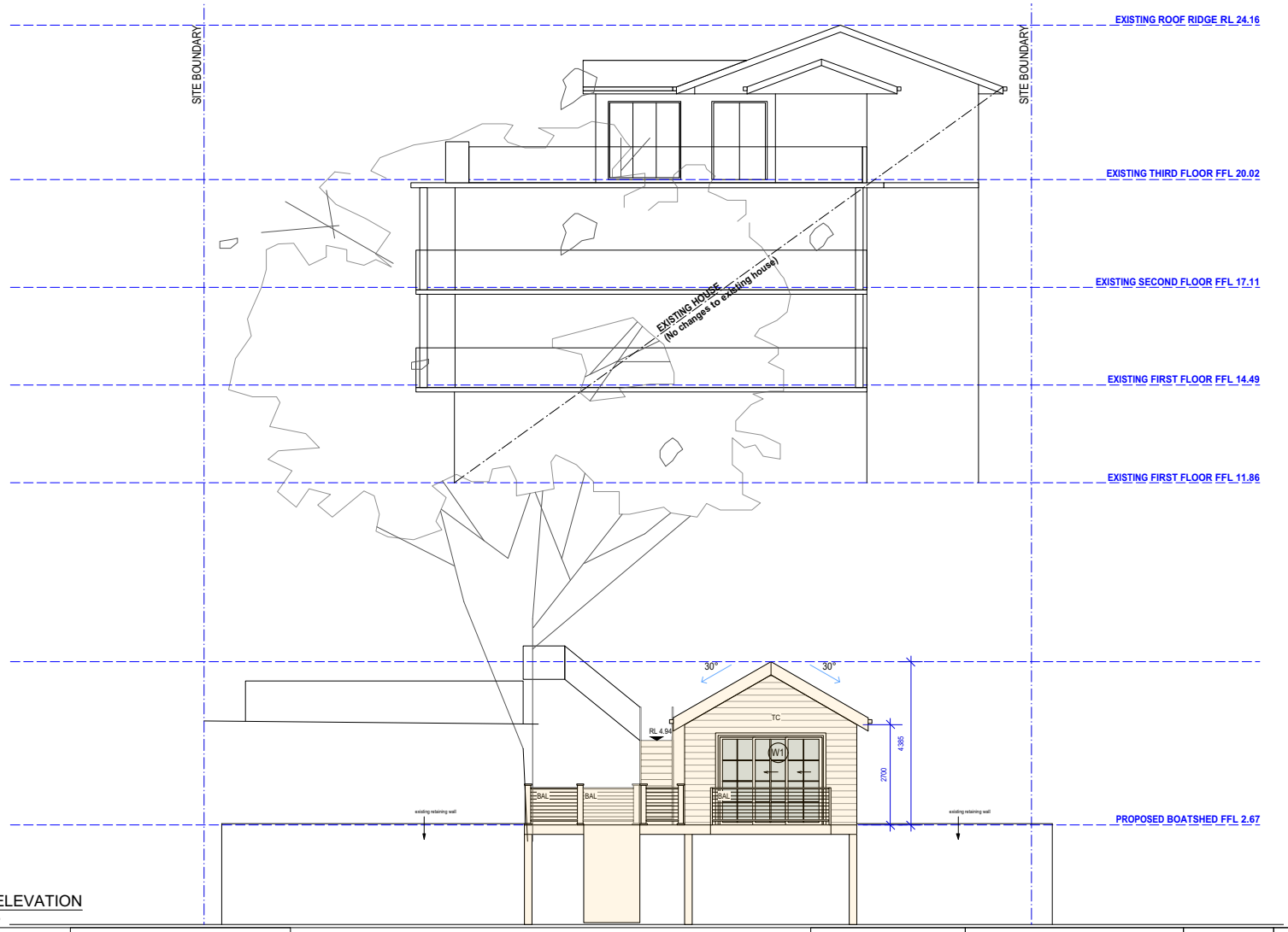
dwg. title
SITE PLAN / SITE ANALYSIS

dwg status
DEVELOPMENT APPLICATION

Client
Maggie & Johan Hundertmark

Job number
2023

dwg no.
DA_01



1 SOUTH WEST ELEVATION
SCALE 1:100 @ A3

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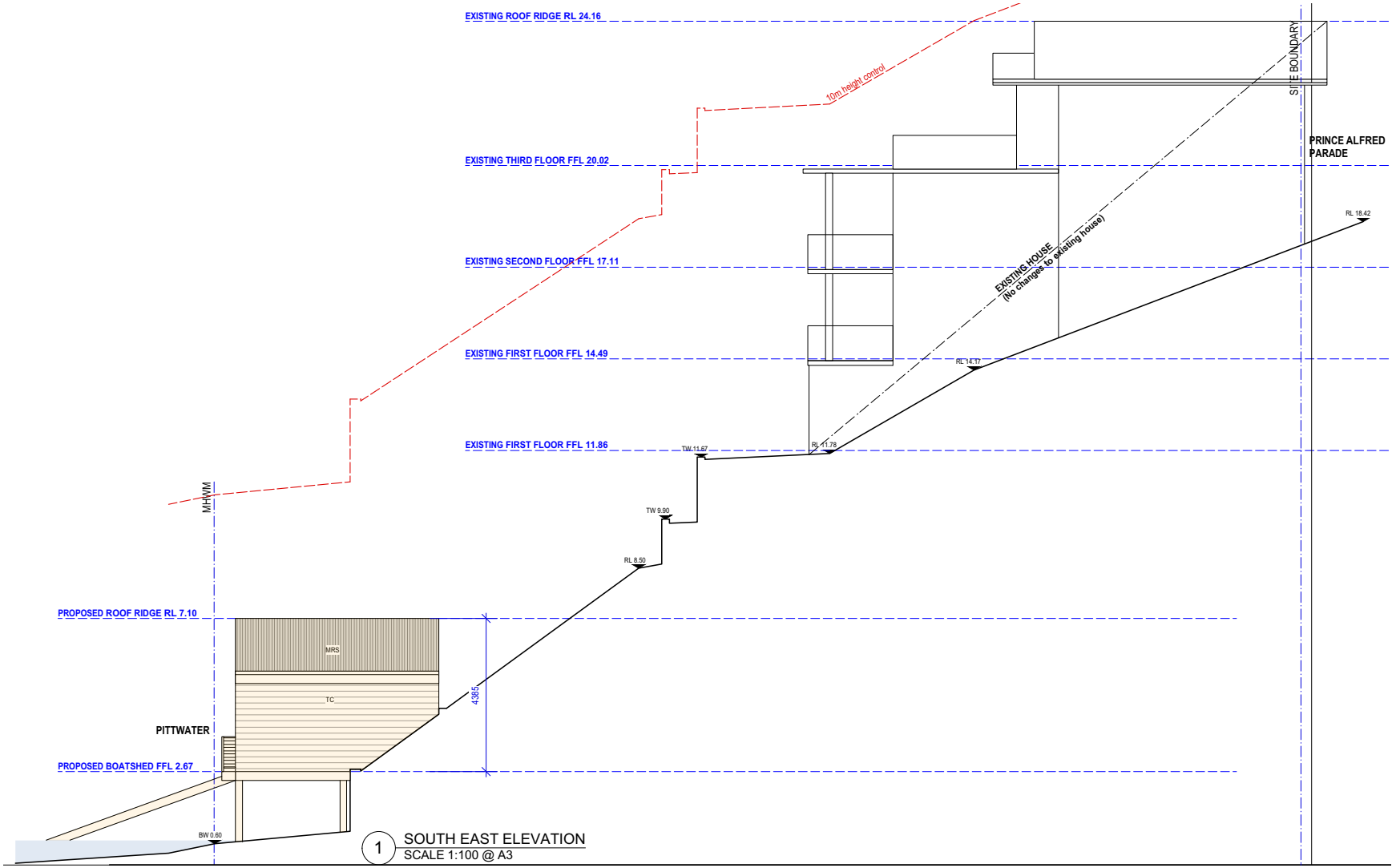
dwg. title
ELEVATIONS

dwg status
DEVELOPMENT APPLICATION

Client
Maggie & Johan Hundertmark

Job number
2023

dwg no.
DA_06



1 SOUTH EAST ELEVATION
SCALE 1:100 @ A3

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JANE EDWARDS ARCHITECTURE
NSW REGISTERED 7050

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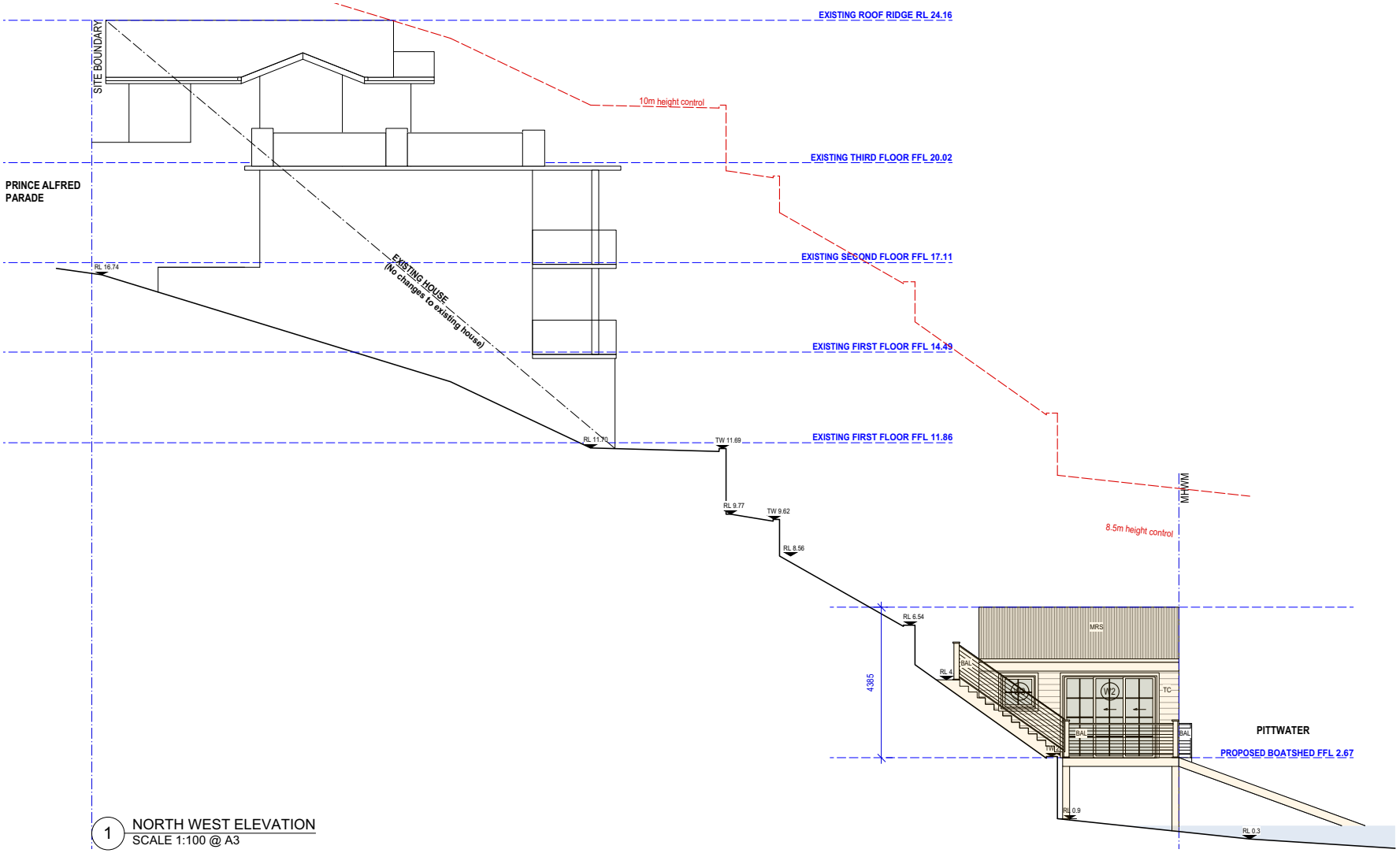
dwg. title
ELEVATIONS

dwg status
DEVELOPMENT APPLICATION

Client
Maggie & Johan Hundertmark

Job number
2023

dwg no.
DA_07



1 NORTH WEST ELEVATION
SCALE 1:100 @ A3

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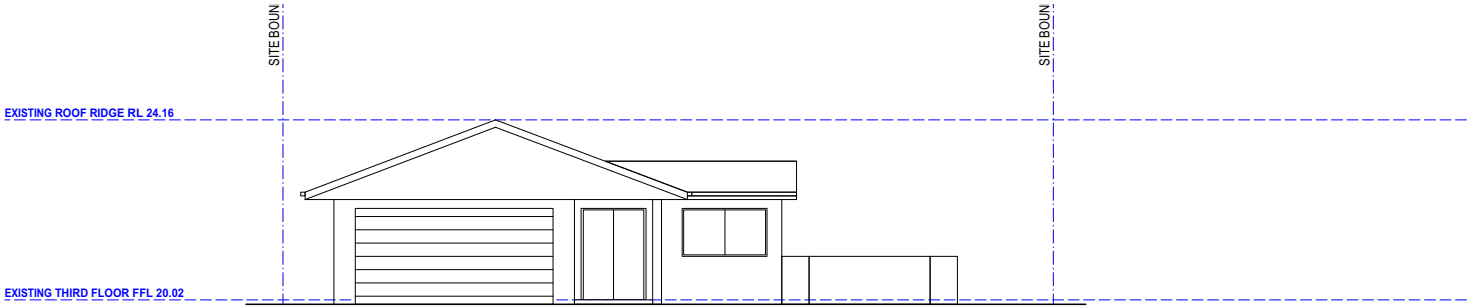
dwg. title
ELEVATIONS

dwg status
DEVELOPMENT APPLICATION

Client
Maggie & Johan Hundertmark

Job number
2023

dwg no.
DA_08



1 NORTH EAST ELEVATION / STREET ELEVATION
SCALE 1:100 @ A3

Note:
No changes to this elevation

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NEW WALL / NEW WORK

JANE EDWARDS ARCHITECTURE
NSW REGISTERED 7050

Project
130 Prince Alfred Parade, Newport NSW, 2106
ALTERATIONS & ADDITIONS

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Plot date

dwg. title
ELEVATIONS

dwg status
DEVELOPMENT APPLICATION

Client
Maggie & Johan Hundertmark

Job number
2023

dwg no.
DA_09

APPENDIX
CLAUSE 4.6 – MAXIMUM BUILDING HEIGHT

Prepared February 2024

WRITTEN REQUEST PURSUANT TO CLAUSE 4.6 OF PITTWATER LOCAL ENVIRONMENTAL PLAN 2014

130 PRINCE ALFRED PARADE, NEWPORT

FOR THE CONSTRUCTION OF ALTERATIONS AND ADDITIONS TO THE EXISTING DWELLING

VARIATION OF A DEVELOPMENT STANDARD REGARDING THE MAXIMUM BUILDING HEIGHT CONTROL AS DETAILED IN CLAUSE 4.3 OF THE PITTWATER LOCAL ENVIRONMENTAL PLAN 2014

For:	Proposed alterations and additions to an existing residential flat building
At:	130 Prince Alfred Parade, Newport
Owner:	Maggie & Johan Hundertmark
Applicant:	Maggie & Johan Hundertmark C/- VMDC Planning

1.0 Introduction

This written request is made pursuant to the provisions of Clause 4.6 of Pittwater Local Environmental Plan 2014. In this regard it is requested Council support a variation with respect to compliance with the maximum building height as described in Clause 4.3 of the Pittwater Local Environmental Plan 2014 (PLEP 2014).

2.0 Background

The site is mapped within the C4 Environmental Living zone and within the W1 Natural Waterways Zone as per the Pittwater Local Environment Plan 2014 (see Figure 1). This results in there being two building height development standards that apply to the site.



Figure 1: *Excerpt of the LEP building height map showing the section at the rear (south-west) of the site with a 4m building height*

Clause 4.3 restricts the building height of a building within this area of the Pittwater locality and refers to the maximum height noted within the "*Height of Buildings Map*."

The proposal includes the construction of a boatshed, associated decking, ramp and access stairs located partly within the C4 Environmental Living zone and partly within the W1 Natural Waterways Zone. The portion of boatshed located within the C4 Environmental Living Zone presents a compliant building height under the 8.5 metres building height standard. However, the portion of the boatshed located within the W1 Natural Waterways Zone presents a non-compliant building height over the required 4.0 metres building height standard (see Figure 2).

The proposed works are located appropriately upon the land in terms of its topographical features noting the steep slope of the land and the location of the foreshore building line means it is not possible to locate the proposed structure outside of the foreshore area. Such an outcome would result in far greater impacts on the site's natural features and topography while also being impractical for use, being significantly setback and elevated from the site's foreshore interface. As a result, a portion of the boatshed exceeds the height control of 4.0m by 2.1 – 2.4m which represents a non-compliance with the height standard of 60%, which is as a direct result of the ground levels at the foreshore interface.

The proposed boatshed decking responds to the physical and environmental constraints of the site, and does not give rise to any unacceptable ecological, scientific, or aesthetic impacts.

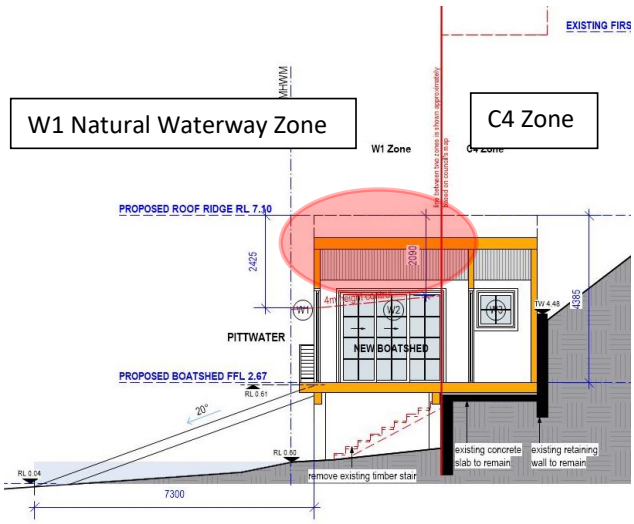


***Figure 2**: Boatshed and decking building height, portion of non-compliant building height circled in red*

The proposal is considered acceptable and there are sufficient environmental planning grounds to justify contravening the development standard.

The controls of Clause 4.3 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

Is Clause 4.3 of the LEP a development standard?

(a) The definition of "development standard" in clause 1.4 of the EP&A Act means standards fixed in respect of an aspect of a development and includes:

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

(b) Clause 4.3 relates to the maximum height of a building. Accordingly, Clause 4.3 is a development standard.

3.0 Purpose of Clause 4.6

The Pittwater Local Environmental Plan 2014 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the 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.

4.0 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 the LEP 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 4.3 (the Maximum Building Height Control) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of the LEP.

Clause 4.6(3) of the LEP provides:

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

The proposed development does not comply with the maximum building height development standard pursuant to Clause 4.3 of PLEP which specifies a maximum building height of 4m in this waterway area of Newport. The proposed works include a new boatshed, decking, ramp and associated access stairs that results in a logical and orderly concealed storage of marine and boating related equipment that would otherwise be visible

When measured from the seabed level (RL 0.06 AHD), rather than the building level of RL 2.67 AHD (which sets the minimum acceptable floor level for the boat shed), the proposed boat shed within the WI Natural Waterway zone exceeds the 4m building height development standard by 2.5m. The area within the C4 Environmental Living Zone complies with the required building height (see Figure 2).

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.

Under cl 55 of the *Environmental Planning and Assessment Regulation 2021,* the Secretary has given written notice dated 5 May 2020, attached to the Planning Circular PS 20-002 issued on 5 May 2020, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(4) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation.

Clause 4.6(6) relates to subdivision and is not relevant to the development.

Clause 4.6(8) is only relevant so as to note that it does not exclude Clause 4.3 of the LEP from the operation of clause 4.6.

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 additions and alterations to the existing dwelling, which is consistent with the stated Objectives of the W1 Natural Waterways Zone, which are noted as:

- *To protect the ecological and scenic values of natural waterways.*
- *To prevent development that would have an adverse effect on the natural values of waterways in this zone.*
- *To provide for sustainable fishing industries and recreational fishing.*
- *To ensure development does not adversely impact on the natural environment or obstruct the navigation of the waterway.*
- *To provide opportunities for private access to the waterway where these do not cause unnecessary impact on public access to the foreshore.*

The proposed development will have appropriate impacts upon the locality as the proposed works are compatible with the nature and scale with the other foreshore interface structures within the immediate foreshore area.

The works are located logically on the site due to the steep slope of the property. It is not possible to locate the proposed structures outside of the W1 zone, as such an outcome would result in far greater impacts on the site's natural features and topography whilst also being impractical for use, being significantly setback and elevated from the site's foreshore interface. Also, the location of the works

ensures there is no significant and unnecessary earthworks or tree removal within the site and the surrounding marine environment.

Accordingly, the works are sufficiently located within the landscaped and waterfront setting, with submitted technical reports submitted with the application ensures the works does not give rise to any unacceptable ecological, scientific, or aesthetic impacts. Nor impact marine ecology or the navigation of the waterway.

Notwithstanding the non-compliance with the maximum building height control, the proposed works will provide for increased residential amenity, while providing improved and safe site access functionality, while minimising the impacts for neighbouring waterfront properties.

5.0 The Nature and Extent of the Variation

5.1 This request seeks a variation to the maximum building height standard contained in Clause 4.3 of PLEP.

5.2 Clause 4.3 of PLEP specifies a maximum building height of 4m in this area of W1 Natural Waterways area of Newport.

5.3 The proposed boathouse will present a height of 6.5m above the mean high water (0.6 AHD). The Pittwater Development Control Plan clause D15.15 Boat sheds requires the floor height of boat sheds to be no lower than the estuarine planning level which RL 2.6m. As a result, the proposed boat shed minimum floor height is RL 2.6m, with this floor height impacting the level of building height non-compliance as the minimum floor to ceiling height is required for the structure to be functional. As a result, a portion of the boatshed exceeds the height control of 4.0m by 2.1m – 2.4m which represents a non-compliance with the height standard of 60%. However, boatshed will present as a modest marine structure of similar/compatible height to nearby boat sheds.

6.0 Relevant Caselaw

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

> *17. The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*

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

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

20. A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].

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

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

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

1. Is Clause 4.3 of 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

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 W1 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 PLEP?

7.0. Request for Variation

7.1 Is compliance with Clause 4.3 unreasonable or unnecessary?

(a) This request relies upon the 1st way identified by Preston CJ in Wehbe.

(b) The first way in Wehbe is to establish that the objectives of the standard are achieved.

(c) Each objective of the maximum building height standard, as outlined under Clause 4.3, and reasoning why compliance is unreasonable or unnecessary, is set out below:

(a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,

As demonstrated along the immediate area of the foreshore area boat sheds, jetties, pontoons, and their ancillary structures are common characteristic of the waterfront properties of Prince Alfred Parade.

The proposed boat shed is of a modest scale that will be compatible in its building height, design and materiality with other foreshore development along the waterfront within the immediate setting.

Based on the technical information accompanying this application, does not give rise to any unacceptable ecological, scientific, or aesthetic impacts.

Accordingly, the development is unlikely to create unacceptable impacts to the foreshore or waterway areas and will not detract from the scenic quality of the locality, maintaining an appropriate visual relationship with the surrounding built environment.

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

The proposed building height is compatible the works are located appropriately and logically sited upon the site in terms of the topography and alongside the foreshore interface, with the height and scale compatible with the surrounding development along the foreshore. The boatshed development is considered appropriate and compatible within the locality and is therefore worthy of support.

(c) to minimise any overshadowing of neighbouring properties,

The works will not impact the existing solar access provision to the principal private open space or living areas of the adjacent properties.

The adjoining properties will maintain suitable solar access throughout the day in accordance with Council's provisions.

(d) to allow for the reasonable sharing of views,

It is acknowledged that there are existing view lines to the Pittwater waterway to the north-west, west and south-west of the site. However, the living areas and principle private recreational spaces of nearby dwellings are significantly elevated on the sloping topography above the foreshore area, meaning it is not anticipated that the boatshed and its associated works will impact neighbouring views or public vantage points.

Given that the works are located low on the site sloping topography adjoining the foreshore area, views from the adjoining properties will be maintained and there will be no substantial change to the existing views enjoyed by the neighbouring properties.

(e) to encourage buildings that are designed to respond sensitively to the natural topography,

The proposed boatshed and overall development works have been located and designed to avoid unnecessary altering of the existing topography, landscaping and seawall structures which could result in detrimental environmental impacts to the marine environment and/or established canopy trees of significant biodiversity value. Accordingly, the boatshed is located appropriately to access the site's foreshore interface.

(f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

There are no adjacent heritage items in the site is not within a heritage conservation area.

The works location on the site are supported by a range of technical studies. Accordingly, it can be determined that the proposed works will not adversely affect the natural coastal processes and coastal environmental values, nor Aboriginal Culture significance. Therefore, the proposal is assessed as satisfactory in relation to this consideration.

7.2 Are there sufficient environmental planning grounds to justify contravening the development standard?

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

> *23. As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
>
> *24. The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see* Four2Five Pty Ltd v Ashfield Council *[2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see* Four2Five Pty Ltd v Ashfield Council *[2015] NSWLEC 90 at [31].*

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

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

- The proposed development will facilitate a development that supports safe and orderly access to the waterway from the lands water frontage, storage of marine and boating related equipment that would otherwise be visible, unsecured, an impediment to orderly access. The works will maintain the general bulk and scale of the existing marine based surrounding development and maintains architectural consistency with the prevailing foreshore development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).

- Similarly, the proposed development will provide for improved amenity within a built form which is compatible with the immediate foreshore area which also promotes the orderly and economic use of the land (cl 1.3(c)).

- The location of the boatshed is logical and considers the sloping topography and required interface with the site interface to the foreshore water's edge. To move the proposed boatshed outside the W1 Natural Waterway Zone would require in harm to the environment,

including unnecessary additional excavation, adverse impact/removal landscaping, significant site disturbance and need to remove sections of the existing seawall (1.3(g)).

- The proposal is compatible with the height and scale of development, (similar boat shed structures) within the property's visual catchment; and achieve a development on the property that is characteristic of the foreshore. The proposed development improves the amenity of the occupants and respects the current levels of privacy, amenity and solar access enjoyed by the surrounding this replicating the existing built form (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 marine structures that are comparable with surrounding marine structures and supports safe and orderly access to the waterway from the lands water frontage, storage of marine and boating related equipment that would otherwise be visible, unsecured, and potentially impede orderly access.

These are not simply benefits of the development as a whole, but are benefits emanating from breach of the maximum building height control.

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

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

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

7.3 Is the proposed development consistent with the objectives of Clause 4.3 and the objectives of the C4 Environmental Living Zone & W1 Natural Waterways 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 W1 Natural Waterways 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 also found 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 variation of to the building height control, the proposal which involves additions and alterations to the existing building will be consistent with the individual Objectives of the W1 Natural Waterways Zone following reasons:

- ***To protect the ecological and scenic values of natural waterways.***

  The proposal includes the construction of various waterway structures located entirely seaward of the mean high water mark which are permitted with consent within the W1 Natural Waterways Zone.

  The proposed works have been minimised through siting and appropriate design and remain consistent with the location of adjoining and surrounding development of this type.

  The proposed development has also been designed to facilitate the existing access provisions along the foreshore area.

  The application is accompanied by several environmental technical reports that are satisfied that the structures will not unreasonably harm the marine ecosystem raising no objections.

- ***To prevent development that would have an adverse effect on the natural values of waterways in this zone.***

  Based on the expert assessment reports submitted as part of the development application, there are no unreasonable impacts on the natural values of the waterways associated with the proposed structure's location.

- ***To provide for sustainable fishing industries and recreational fishing.***

  The proposed structures will allow for recreational fishing options for the occupants and their guests.

- ***To ensure development does not adversely impact on the natural environment or obstruct the navigation of the waterway.***

  The proposed development will not inappropriately obstruct the navigation of the waterway.

- ***To provide opportunities for private access to the waterway where these do not cause unnecessary impact on public access to the foreshore***

  Presently there is no public access along the foreshore. The proposed boathouse, nor the associated works will compromise future opportunities to provide continuous public access along the foreshore and to the waterway.

7.4 Has council obtained the concurrence of the Director-General?

The Council can assume the concurrence of the Director-General with regards to this clause 4.6 variation.

7.5 Has the Council considered the matters in clause 4.6(5) of PLEP?

(a) The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is particular to the site and this design is not readily transferrable to any other site in the immediate locality, wider region of the State and the scale or nature of the proposed development does not trigger requirements for a higher level of assessment.

(b) As the proposed development complies with the objectives of the development standard and the objectives of the zone there is no significant public benefit in maintaining the development standard.

(c) there are no other matters required to be considered by the secretary before granting concurrence.

8.0 Conclusion

This development proposes a departure from the maximum building height development standard, as a consequence of the boatsheds logical location responding to the physical and environmental constraints of the land. The boatshed is located on a part of the site that will not require significant earthworks or modifications to the surrounding adjacent marine environment.

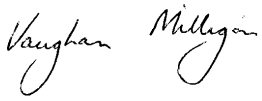
The boatshed will provide low-impact development ancillary to the dwelling house compatible with the other foreshore interface structures within the immediate area. Based on the information accompanying the development application the boatshed and its associated structures do not give rise to any unacceptable ecological, scientific, or aesthetic impacts.

This written request to vary to the maximum building height standard specified in Clause 4.3 of the Pittwater LEP 2014 adequately demonstrates that that the objectives of the standard will be met.

The area of the proposed boatshed which exceeds the 4 m height above the foreshore level is up to 2.1m to 2.4m above the height control and is a direct result of the existing levels at the foreshore interface.

The bulk and scale of the proposed development is appropriate for the site and locality.

Strict compliance with the maximum building height control would be unreasonable and unnecessary in the circumstances of this case.



VAUGHAN MILLIGAN
Town Planner

APPENDIX 2
CLAUSE 4.6 – FORESHORE BUILDING LINE

February 2024

WRITTEN OBJECTION PURSUANT TO CLAUSE 4.6 OF PITTWATER LOCAL ENVIRONMENTAL PLAN 2014

130 PRINCE ALFRED PARADE, NEWPORT

FOR THE CONSTRUCTION OF ALTERATIONS AND ADDITIONS TO THE EXISTING DWELLING

VARIATION OF A DEVELOPMENT STANDARD REGARDING THE WORKS WITHIN COUNCIL'S RESOLVED FORESHORE AREA AS DETAILED IN CLAUSE 7.8 OF THE PITTWATER LOCAL ENVIRONMENTAL PLAN 2014

For:	For proposed alterations and additions
At:	130 Prince Alfred Parade, Newport
Owner:	Maggie & Johan Hundertmark
Applicant:	Maggie & Johan Hundertmark C/- VMDC Planning

Introduction

This written request is made pursuant to the provisions of Clause 4.6 of Pittwater Local Environmental Plan 2014. In this regard it is requested Council support a variation with respect to compliance with the foreshore building line as described in Clause 7.8 of the Pittwater Local Environmental Plan 2014 (PLEP 2014).

2.0 Background

Clause 7.8 restricts the development within the foreshore area and refers to the foreshore building line noted within the "*Foreshore Building Line Map*."

The site is affected by the foreshore building line within the rear portion of the site and is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The proposal seeks to provide for the construction of a new boatshed, deck, ramp, and access steps which encroaches on the foreshore building line.

While a boatshed, ramp and access stairs are a form of development purpose considered under clause 7.8 (2) (b)), the proposed decking is not considered to be a purpose to which clause 7.8 applies.

The decking proposed by the application comprises a minor area of 14m^2 within the foreshore area. The decking is ancillary to the boatshed and waterway access.

The controls of Clause 7.8 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

3.0 Purpose of Clause 4.6

The Pittwater Local Environmental Plan 2014 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the LEP should be assessed. These cases are taken into consideration in this request for variation.

4.0 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 development will achieve a better outcome in this instance as the site will provide for the construction of a new dwelling, which is consistent with the stated Objectives of the C4 Environmental Living Zone, which are noted as:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To protect tree canopies and ensure that new development does not dominate the natural scenic qualities of the foreshore. To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*
- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*
- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

As sought by the zone objectives, the proposal will provide for construction of boatshed, deck, ramp and access steps to meet the housing needs of the dwelling's occupants (see **Figure 1** & **Figure 2**).

The existing dwelling does not fall within the foreshore area. However, the proposed works which seek to provide for the construction of a new boatshed, deck and ramp will fall within the foreshore area, thereby presenting an encroachment on the foreshore building line.

While a boat shed, ramp and access stairs are a form of development purpose considered under clause 7.8 (2)(b), the proposed decking (considered ancillary to the boatshed) is not considered to be a purpose under 7.8 (2)(b).

Boatsheds, jetties, inclinators, and their associated structures are common developments within the local area and a defining characteristic of the local area's foreshore interface. The local development and foreshore character comprises varied building setbacks, vegetated hillside, marine interface and associated structures.

The new works are modest in height and scale, with a consistent palette of materials and finishes, in order to provide for high quality development that will enhance and complement the waterways and locality.

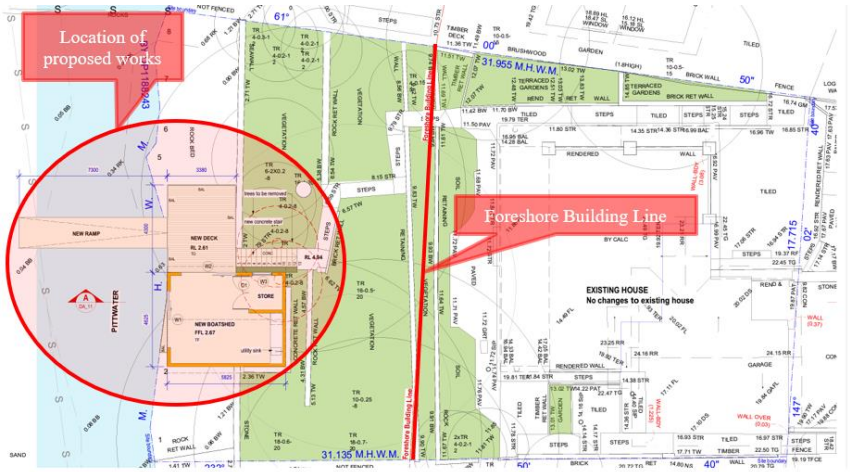


Figure 1: *Works below the Foreshore building line*

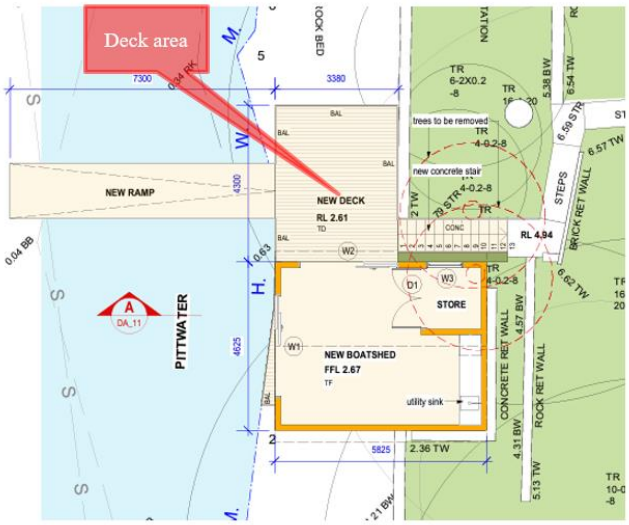


Figure 2: *Non-compliant decking area ancillary to the boatshed*

5.0 Onus on Applicant

Clause 4.6(3) provides that:

> *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.*

6.0 Justification of Proposed Variation

There is jurisdictional guidance available on how variations under Clause 4.6 of the Standard Instrument should be assessed in *Initial Action Pty Ltd vs Woollahra Municipal Council [2018] NSWLEC 11 Samadi v Council of the City of Sydney [2014]* NSWLEC 1199.

Paragraph 27 of the Samadi judgement states:

> *Clause 4.6 of LEP 2013 imposes four preconditions on the Court in exercising the power to grant consent to the proposed development. The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)). The second precondition requires the Court to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)). The third precondition requires the Court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)). The fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).*

Precondition 1 - Consistency with zone objectives

The site is located in the C4 Environmental Living Zone. The objectives of the C4 zone are noted as:

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

Comments

It is considered that notwithstanding the non-compliance with the decking within the foreshore building line control, the proposed works, including the ancillary decking will be consistent with the individual Objectives of the C4 Environmental Living zone for the following reasons:

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

  Comment:
  The proposal provides for a modest alterations and additions in a manner which will retain the single dwelling character of the site and the immediate area.

  The site and its location in Prince Alfred Parade, with the rear frontage to Pittwater Waterway is considered to be an area of special visual and aesthetic value. The dwelling itself remains outside the foreshore area.

  The proposed boatshed decking is a form of residential development, that is of a low profile and scale, appropriately located and integrated with the landform and landscape, including the adjacent waterway. The works provide a low-impact development ancillary to the dwelling house compatible with the other foreshore interface structures within the visual catchment.

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

  Comment:
  It is considered the proposed works, including the decking involves an appropriate development on the site which, supported by technical reports that accompanying this application, that demonstrate the works do not give rise to any unacceptable ecological, scientific, or aesthetic impacts.

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

  Comment:
  The proposed works are located appropriately upon the land in terms of its topographical features noting the steep slope of the land and the location of the foreshore building line means it is not possible to locate the proposed structure outside of the foreshore area. Such an outcome would result in far greater impacts on the site's natural features and topography while also being impractical for use, being significantly setback and elevated from the site's foreshore interface.

  The proposed boatshed decking responds to the physical and environmental constraints of the site, and does not give rise to any unacceptable ecological, scientific, or aesthetic impacts.

  The proposed works are also partially within the W1 Natural Waterways zone and the flowing consideration of the relevant the individual Objectives of the W1 Natural Waterways Zone are provided over:

- *To protect the ecological and scenic values of natural waterways.*
- *To prevent development that would have an adverse effect on the natural values of waterways in this zone.*
- *To provide for sustainable fishing industries and recreational fishing.*
- *To ensure development does not adversely impact on the natural environment or obstruct the navigation of the waterway.*
- *To provide opportunities for private access to the waterway where these do not cause unnecessary impact on public access to the foreshore.*

It is considered that the proposed new works will be consistent with the W1 objectives as follows:

- the proposed development will have appropriate impacts upon the locality as the proposed works are compatible with the nature and scale of waterfront development within the local area.
- that the accompanying technical report by the marine ecologist finds that the proposal will not result in unreasonable overshadowing of marine vegetation or marine life.
- the proposed development will not inappropriately obstruct the navigation of the waterway.
- the proposed development responds to the topographical physical and environmental constraints of the land by locating the proposed structures on a part of the site that will not require significant modifications or earthworks within the site and the surrounding adjacent marine environment.
- The setbacks are compatible with the existing surrounding development.
- The proposal does not adversely impact the public access to the foreshore.

Accordingly, it is considered that the site may be further developed with a variation to the prescribed foreshore building line control, whilst maintaining consistency with the relevant zone objectives.

Precondition 2 - Consistency with the objectives of the standard

The objectives of Clause 7.8 are articulated at Clause 7.8(1):

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

Comments

Despite the minor variation to the foreshore building line control, the proposed alterations and additions are considered to be in keeping with the relevant Objectives of Clause 7.8(1)(a)(b) for the following reasons:

(a) to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area,

The works, including the decking will not detrimentally impact upon riparian, foreshore vegetation, or established wildlife corridors. The Arboricultural Assessment Report confirms that the proposed development will have an acceptable on the biodiversity value of the site. The Marine Habitat Survey prepared by Waterfront Surveys Pty Ltd, dated 2 November 2023 and the Estuarine Risk Management Report prepared by Horton Coastal Engineering, dated 10 January

2024 finds that the proposal is not likely to cause detrimental increases in coastal risks to other development or properties, existing ecology of the land nor cause unreasonable harm existing marine vegetation.

(b) to ensure continuous public access along the foreshore area and to the waterway.

Presently there is no public access along this area of the foreshore. There are no planning provisions within the Pittwater LEP to create public access along the foreshore. The proposed decking will not compromise future opportunities to provide continuous public access along the foreshore and to the waterway if required in the future.

The proposed alterations and additions are considered to be in keeping with the relevant Objectives of Clause 7.8(3) for the following reasons:

(a) the development will contribute to achieving the objectives for the zone in which the land is located, and

As stated above, the works including the decking achieve the objectives of the zone.

(b) the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and

The footprint of the proposed decking is 14m^2 and its height is compatible with the height of similar access arrangements ancillary to boatsheds on adjoining land. It is not inappropriately elevated, will display a low profile, with minimal bulk when viewed from the waterway. Its extent is appropriate within its context and compatible with the scale of development within the foreshore building line along the waterfront. Therefore, the proposed decking or associated works will not be seen as visually offensive or jarring when viewed from the waterway or adjacent foreshore areas.

(c) the development will not cause environmental harm such as—
(i) pollution or siltation of the waterway, or
(ii) an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or
(iii) an adverse effect on drainage patterns, or
(iv) the removal or disturbance of remnant riparian vegetation, and

The proposed decking or associated works do not give rise to any unacceptable environmental impacts. The proposed decking will facilitate conservation of the foreshore land by elevating pedestrian access and the associated activities relating to marine usage above the natural landscape within the intertidal zone.

It is considered the proposed works, including the decking involves an appropriate development on the site which, supported by technical reports that accompanying this application, that demonstrate the works do not give rise to any unacceptable ecological, scientific, or aesthetic impacts.

Appropriate siltation control measures will be employed so as not to harm existing marine vegetation, stormwater is proposed to be directly discharged to the waterway in accordance

with Council's requirements and the proposal is not likely to cause detrimental increases in coastal risks to other development or properties.

(d) the development will not cause congestion or generate conflict between people using open space areas or the waterway, and

The proposed decking or associated works will not cause congestion or generate conflict between people using open space areas or the waterway.

(e) opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and

Presently there is no public access along the foreshore. The proposed decking will not compromise future opportunities to provide continuous public access along the foreshore and to the waterway.

(f) any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and

Based on the expert assessment reports submitted as part of this application, there are no unreasonable impacts on the historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land associated with the proposed structure's location.

(g) in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and

No development is proposed for the alteration or rebuilding of an existing form of development to which clause 7.8 (2) (a) applies.

(h) sea level rise, coastal erosion and recession, or change of flooding patterns as a result of climate change, have been considered.

The Estuarine Risk Management Report prepared by Horton Coastal Engineering, dated 10 January 2024 found the proposal is not likely to cause detrimental increases in coastal risks to other development or properties.

The proposed alterations and additions are considered to be in keeping with the relevant Objectives of Clause 7.8(4) for the following reasons:

(4) In deciding whether to grant consent for development in the foreshore area, the consent authority must consider whether and to what extent the development would encourage the following—

(a) continuous public access to and along the foreshore through or adjacent to the proposed development,

As stated above, there is presently no public access along the foreshore. The proposed decking will not compromise future opportunities to provide continuous public access along the foreshore and to the waterway.

(b) public access to link with existing or proposed open space,

The proposed decking is technically land based development, wholly contained within the boundaries of the site. The proposed decking or associated works will not cause congestion or generate conflict between people using open space areas or the waterway.

(c) public access to be secured by appropriate covenants, agreements or other instruments registered on the title to land,

As stated above, the proposed decking and associated boatshed, and access stairs are technically land based development, wholly contained within the boundaries of the site. The proposed works will not cause congestion or generate conflict between people using open space areas or the waterway to the extent a covenant or agreement is required.

(d) public access to be located above mean high water mark,

As stated above, there is presently no public access along the foreshore.

(e) the reinforcing of the foreshore character and respect for existing environmental conditions.

It is considered the proposed works, including the decking involves an appropriate development on the site which, supported by technical reports that accompanying this application, that demonstrate the works do not give rise to any unacceptable ecological, scientific, or aesthetic impacts.

Accordingly, we are of the view that the proposal is consistent with the objectives of the development standard.

Precondition 3 - To consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

It is unreasonable and unnecessary to require strict compliance with the development standard as the proposal provides for the alterations and additions to an existing dwelling which is constrained by the nature of the existing development on site.

Council's controls in Clause 7.8 provide a foreshore building line which falls within the site.

It is considered that the proposal achieves the Objectives of Clause 7.8 and that the development is justified in this instance for the following reasons:

- As the land is steeply sloping and the location of the foreshore building line make it not possible to locate the proposed structures behind the foreshore building line and outside of the foreshore area. Such an outcome would result in far greater impacts on the site's natural

features and topography whilst also being impractical for use, being significantly setback and elevated from the site's foreshore interface.

- The proposed decking will facilitate conservation of the site's foreshore land by elevating the pedestrian access and the associated activities relating to marine usage above the natural landscape which includes a rock platform within the intertidal zone.

- The proposed decking and associated works will provide for the orderly development and use of the site that is safer and facilitates waterway access that will meet reasonable user needs.

- The development will maintain a compatible scale relationship with the existing waterway development in the area. The proposal will reflect a positive contribution to the foreshore area.

In the Wehbe judgment (*Wehbe v Pittwater Council [2007] NSWLEC 827*), Preston CJ expressed the view that there are 5 different ways in which a SEPP 1 Objection may be well founded and that approval of the Objection may be consistent with the aims of the policy. These 5 questions may be usefully applied to the consideration of Clause 4.6 variations: -

1. *the objectives of the standard are achieved notwithstanding non-compliance with the standard;*

   Comment: Yes. Refer to comments under 'Justification of Proposed Variation' above which discusses the achievement of the objectives of the standard.

2. *the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

   Comment: It is considered that the purpose of the standard is relevant but the purpose is satisfied.

3. *the underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

   Comment: Compliance does not defeat the underlying object of the standard development; however, compliance would prevent the approval of an otherwise supportable development.

   Furthermore, it is noted that development standards are not intended to be applied in an absolute manner; which is evidenced by clause 4.6 (1)(a) and (b).

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

   Comment: Not applicable.

5. *the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the*

land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

Comment: The development standard is applicable to and appropriate to the zone.

For the above reasons it would therefore be unreasonable and unnecessary to cause strict compliance with the standard.

Precondition 4 - To consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court [or consent authority] finding that the matters required to be demonstrated have been adequately addressed

Council's controls in Clause 7.8 provide a foreshore building line which falls within the site.

As the land is steeply sloping and the location of the foreshore building line make it not possible to locate the proposed structures behind the foreshore building line and outside of the foreshore area. Such an outcome would result in far greater impacts on the site's natural features and topography whilst also being impractical for use, being significantly setback and elevated from the site's foreshore interface.

It is therefore considered there are sufficient environmental planning grounds to justify a variation of the development standard for the foreshore building line.

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

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

24. The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].

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

Having regard to the above, it is considered there are sufficient environmental planning grounds to justify a variation of the development standard for foreshore building line.

In the recent 'Four2Five' judgement *(Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90),* Pearson C outlined that a Clause 4.6 variation requires identification of grounds that are particular to the circumstances to the proposed development. That is to say that simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 variation.

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

- The proposed development will facilitate a development that supports safe and orderly access to the waterway from the lands water frontage, storage of marine and boating related equipment that would otherwise be visible, unsecured, an impediment to orderly access. The works will maintain the general bulk and scale of the existing marine based surrounding development and maintains architectural consistency with the prevailing foreshore development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).

- Similarly, the proposed development will provide for improved amenity within a built form which is compatible with the immediate foreshore area which also promotes the orderly and economic use of the land (cl 1.3(c)).

- The location of the boatshed is logical and considers the sloping topography and required interface with the site interface to the foreshore water's edge. To move the proposed boatshed outside the foreshore building area would be impractical and cause harm to the environment via unnecessary additional excavation, adverse impact/removal landscaping, significant site disturbance and need to remove sections of the existing seawall (1.3(g)).

- The proposal is compatible with the height and scale of development, (similar boat shed structures) within the property's visual catchment; and achieve a development on the property that is characteristic of the foreshore. The proposed development improves the amenity of the occupants and respects the current levels of privacy, amenity and solar access enjoyed by the surrounding this replicating the existing built form (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 decking, boatshed and access stairs will provide for the orderly development and use of the site that allows appropriate area at the foreshore for the preparation, setting up, and dismantling of boats / watercraft before and after usage. Accordingly, the works provide safer waterway access and facilitates that will meet reasonable user needs. These are not simply benefits of the development as a whole but are benefits emanating from the breach of the decking and associated works being located within the foreshore building area.

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 proposal will provide for a better planning outcome than a development which simply observed the foreshore building line setback. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

7.0 Conclusion

This development proposes a departure from the foreshore building line standard, with the proposed decking, boatshed, ramp and access stairs to occur within the foreshore area.

This variation occurs as a result of the siting of the foreshore building line on the site, and the sloping topography.

This objection to the foreshore building line specified in Clause 7.8 of the Pittwater LEP 2014 adequately demonstrates that that the objectives of the standard will be met.

Strict compliance with the foreshore building line control would be unreasonable and unnecessary in the circumstances of this case.

VAUGHAN MILLIGAN
Town Planner

ITEM 3.5 DA2023/1427 - 1 LOVERING PLACE NEWPORT - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE

PURPOSE

To refer the attached application for determination by the discretion of the Executive Manager Development Assessment.

RECOMMENDATION

THAT Council as the consent authority **approves** Development Consent to DA2023/1427 for Alterations and additions to a dwelling house on land at Lot 7 DP 21686, 1 Lovering Place NEWPORT, subject to the conditions set out in the Assessment Report.

Reporting manager	Adam Richardson
TRIM file ref	2024/590981
Attachments	⇩1 Assessment Report ⇩2 Site Plan and Elevations

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/1427

Responsible Officer:	Olivia Ramage
Land to be developed (Address):	Lot 7 DP 21686, 1 Lovering Place NEWPORT NSW 2106
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Lance Doyle

Application Lodged:	25/10/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	09/05/2024 to 23/05/2024
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	Nil
Recommendation:	Deferred Commencement Approval

Estimated Cost of Works:	$ 213,000.00

EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) at the discretion of the Executive Manager, Development Assessment due to the history of past applications.

The application is an amending DA to DA2019/0964. Works have commenced under Development Consent DA2019/0964 which granted approval for demolition works and construction of a dwelling including a swimming pool. There have been works which have occurred on site which have not been undertaken not in accordance with the consent and are subject to separate compliance investigations and a Building Information Certificate Application (BC2023/0157) currently under assessment. The works under this current DA are for prospective amendments to the approved works and works that have occurred without approval.

The application was notified in accordance with the Northern Beaches Community Participation Plan (CPP). During the notification period, a total of three (3) submissions were received. Concerns raised in the objections predominantly relate to privacy, solar access, view loss and previous unauthorised works.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that, on balance the proposed development (as amended) is a suitable and an acceptable amendment to the dwelling, for the reasons outlined in this report.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposed development consists of alterations and additions to a dwelling house. Specifically, the works comprise:

Level 1:

- New metal spiral stair to the northern elevation
- Glazed pool fence and gates to eastern elevation
- Slatted pool fence on southern elevation
- New vertical louvre privacy screen either side of chimney on southern elevation

Level 2:

- Retractable external blind to northern elevation
- Frameless glass balustrade to roof terrace
- Planter boxes and landscaping to southern section of roof terrace
- Vertical louvre privacy screen to southern elevation glazing
- Delete vertical louvre panels over main entry door and outside walk in robe (western elevation)

Roof:

- Delete solar panels located on north-western corner of the roof
- New solar panels located on south-western corner of the roof

External Site Works

- 1.8m high brush fence on southern elevation
- 1.2m high slatted front fence
- 1.2m high brush fence on the northern elevation
- Landscaping works

Application History
A Request for Further Information (RFI) letter was sent to the applicant on 1 February 2024 raising the following issues: stormwater, scope of works, orderly development, privacy, fencing, landscaping and solar access. Amended plans were provided by the applicant on 28 March 2024, and amended

stormwater plans on 10 April 2024. Further stormwater information was provided on 1 May 2024. The amended plans and documents were re-notified to surrounding properties from 9 May 2024 to 23 May 2024 as the amendments were found to have a greater impact than the original plans.

Further amended plans and stormwater information was provided by the applicant on 3 July 2024. As the amendments resulted in a lesser environmental impact than the original plans, formal re-notification was not required as per 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

Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living
Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area
Pittwater 21 Development Control Plan - B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites
Pittwater 21 Development Control Plan - C1.3 View Sharing
Pittwater 21 Development Control Plan - C1.4 Solar Access
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - D10.8 Side and rear building line (excluding Newport Commercial Centre)
Pittwater 21 Development Control Plan - D10.11 Building envelope (excluding Newport Commercial Centre)
Pittwater 21 Development Control Plan - D10.13 Landscaped Area - Environmentally Sensitive Land
Pittwater 21 Development Control Plan - D10.14 Fences - General

SITE DESCRIPTION

Property Description:	Lot 7 DP 21686 , 1 Lovering Place NEWPORT NSW 2106
Detailed Site Description:	The subject site consists of one (1) allotment located on the eastern side of Lovering Place.

	The site is irregular in shape with a frontage of 24.385m along Lovering Place and a depth of 65.31m. The site has a surveyed area of 1530m². The site is located within the C4 Environmental Living Zone under the PLEP 2014. The site is currently occupied by a two storey dwelling house that is under construction. The site slopes down from the western frontage towards the eastern rear of the site adjoining the coastal cliff. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by residential dwellings of varying sizes and styles.

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:

- **DA2019/0964** - Development Application for Demolition works and construction of a dwelling including swimming pool. Approved 8 April 2020.
- **BC2023/0001** - Building Information Certificate for Northern boundary retaining wall, garage basement, terrace glazed wall, main bedroom ensuite, stair orientation, northern louvres, garage overhang, solar panels and external decks. Refused 4 April 2023.
- **BC2023/0157** - Building Information Certificate for Works not in accordance with development consent DA2019/0964. Currently under assessment.

The works proposed under the subject application relate to elements of the built form approved under DA2019/0964. The site is currently occupied by a dwelling house and swimming pool under construction as approved by DA2019/0964. Condition 7 of this consent required the following amendments to be made to the approved plans:

- *The aluminium vertical louvred panels used on the northern elevation are also to be installed on the south facing first floor master bedroom windows. This is to protect the privacy of the neighbouring property.*
- *The setback of the Living Room (external eastern glass line wall) as shown on Level 1 Plan (DA-03B) and Southern Elevation Plan (DA-06B) is to be increased by 2.0m to the eastern boundary of the site. This amendment allows the building element comprising the Living Room, Study and Bath to be moved 2.0m to the west to facilitate the increased setback, with associated amendments.*

The applicant notes that the required amendments without the benefit of architectural plans has resulted in unforeseen design changes and consequences. As such, reconfigurations of the development have been constructed that were not in accordance with the Development Consent or the Construction Certificate. The as-built works that are not in accordance with the Development Consent are currently the subject of a Building Information Certificate application BC2023/0157.

This subject development application proposes works to address some impacts and issues that resulted due to the undertaking of works contrary to the consent.

It is noted that DA2019/0964 is currently an active consent and construction works have commenced on the site. As the works proposed under this subject development application relate to elements approved under DA2019/0964, any further consent needs to be properly considered and structured so that the works under the previous consent can be integrated into this application. As such, a condition is recommended requiring an Occupation Certificate to be issued for DA2019/0964 before the Occupation Certificate can be issued for this application. Furthermore, the proposed works also relate to unauthorised works that are currently subject of a BIC application. As such, a deferred commencement condition is recommended limiting the operation of this consent until a BIC is issued for the unauthorised works. This is to ensure the orderly development of land.

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 Matters for Consideration	Comments
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to Development Engineering, proposed works, privacy, fencing and landscaping. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (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 Matters for Consideration	Comments
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 09/05/2024 to 23/05/2024 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 3 submission/s from:

Name:	Address:
Mr Owen Paterson Ms Alethea Edkins Deane	155 Queens Parade East NEWPORT NSW 2106
Mr Antoine Michel Raymond Domin Ms Veronique Marie Margaret Domin-Reid	3 Lovering Place NEWPORT NSW 2106
Hamptons Property Services Pty Ltd Mr Murray Robert Grantham Ms Rosina Grantham	2 Lovering Place NEWPORT NSW 2106

The following issues were raised in the submissions:

- ***Proposed Fencing***

  The submissions raised concerns that the height of the proposed fence causes unnecessary overshadowing to the adjoining southern property 2 Lovering Place. Specifically, concern is raised that the 1.8 metre high fence is erected on top of the existing 1.0 metre high retaining wall, resulting in an overall structure which is 2.8 metres when viewed from the adjoining property. The submission raises concerns that the proposed fence will severely reduce the winter sunlight available to 2 Lovering Place ground ground floor living areas, clothes drying area and the grassed yard. The submission requests that the fence be of transparent material to allow winter solar access to be maintained. The submission also states that the 50mm x 10mm slatted metal fence will impact views from the balcony and ground and first floor living areas at 2 Lovering Place of the world class surf break and sunrise. The submission requests that the 1.8 metre high pool fence be moved at least 2.0 metres north of the boundary including

the glass pool fence as it will cause a blinding refection of the summer afternoon sun to 2 Lovering Place. The submissions also raised concerns regarding the height of the fence towards the western end adjoining the existing pool at 2 Lovering Place which would cause further shadowing of the pool. The submission requests that the fence be 1.2 metres high in accordance with the DCP. The submission also notes that the existing agg drain at the base of the existing boundary wall needs to be protected by conditions.

The submissions also raised concerns that the fence is not of an adequate height to prevent overlooking from the south facing floor to ceiling windows at the subject site into 3 Lovering Place. The submission requests that the fence be 2.2 metres in height and not see through, starting from the end of the proposed brush fence and finishing at the cliff edge. This would prevent occupants using the southern terrace area, eastern terrace which extends from the ground floor living and dining rooms, and the pool decks having full view into 3 Lovering Place.

The submissions also raised concerns regarding the proposed glazed pool fencing connecting with the southern boundary. As there are no elevations provided showing the glazed pool fencing, the height is unknown and could cause glare impacts to 2 Lovering Place.

Concern is also raised regarding the materiality of the proposed fence. Brushbox fencing is uncharacteristic of the foreshore location and should be replaced with an open style slat fencing the enable the sharing of coastal views.

Comment:

The proposed fencing adjoining the southern side boundary results in a minor increase in overshadowing, however the additional shadow caused by the fence is already within an area of shadow from the dwelling. The increase in shadows occurs to the northern-most side of the rear yard, while a significant area of the rear yard will retain solar access as per the requirements of the DCP. The side fence within the front setback is reduced to 1.2 metres high (per the recommended conditions) which minimises the extent of overshadowing into the pool area of 2 Lovering Place. Additionally, the fencing adjoining the pool is of a similar height to the existing pool fence/wall at 2 Lovering Place and does not result in additional shadow being cast. The proposed side fence within the foreshore area is open metal slats and through its design limits overshadowing. A detailed assessment on solar access is provided under C1.4 of this report.

In relation to concerns regarding view loss as a result of the proposed fence, a detailed view sharing assessment against the four (4) planning principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*, has been undertaken. The view impact assessment finds that the development is acceptable in the context of where the affected views are obtained from and the extent of views that remain unaffected. A detailed assessment on view sharing is provided under C1.3 of this report. The glazed pool fence is screened by the side fence and will not cause unreasonable glare impacts to surrounding properties.

With regards to the height of the fence, submissions from 2 Lovering Place raises concerns that the 1.8 metre high fence atop of the 1.0 metre high retaining wall is too high. However, submissions from 3 Lovering Place state that the fence is not high enough and should be at least 2.2 metres high. The extract provided within the submission from 2 Lovering Place regarding fence heights to be measured from the low side where there is a difference, is taken from D15 of the Warringah Development Control Plan which does not apply to the site. D10.14 of the P21DCP applies to the site which requires fencing along the rear and side boundaries (other than within the front building setback) to a maximum height of 1.8 metres. The height of

the fence is measured from existing ground level at the base of the fence, not the ground level of the adjoining property. The proposed fence is found to be at an acceptable height in its context, per the detailed assessment provided under D10.14 of this report.

- ***Privacy***

The submissions raised concerns that Council's assessment of DA2019/0964 did not adequately address privacy and has resulted in severe privacy impacts to the southern properties. Of concern is the full height glass windows at the subject site which allow direct viewing into both 2 and 3 Lovering Place. Additionally, the level 2 accessible roof and terrace accessed by a spiral staircase looking south-east will look directly into the southern properties. Bedroom 2 looks into the loungeroom at 3 Lovering Place and the planter boxes are too low to offer privacy for this area of the terrace. The submissions request privacy screens to the southern elevation of the level 2 terrace that are 2.2 metres in height and translucent film to the bedroom 2 windows. The submissions also request conditions be imposed ensuring the level 2 roof is not to be used as a roof top balcony and is a non-trafficable area for maintenance only so as not to impact on privacy. Concern is also raised regarding the privacy impacts from the terrace/deck leading off the pool and requests a privacy screen as the fence is insufficient.

With regards to the proposed louvre blades incorporated for privacy, concern is raised that the louvres need to be fitted closer together to be effective for privacy mitigation. The submissions also request that the louvres extend to the concrete overhand at level 1 to avoid further direct overlooking into 2 Lovering Place. Alternatively, the louvres should be replaced with fixed translucent glazing panels to a height of 1.6 metres to mitigate overlooking.

Comment:

It is important to note that the above privacy concerns arise predominantly due to the construction of the existing dwelling approved under DA2019/0964 which allowed full height clear glass windows facing the surrounding properties. The approved plans for DA2019/0964 included obscure glazing to the level 1 south facing bathroom windows and the level 2 south facing ensuite windows. Condition 7 also required vertical louvered panels to be installed on the south facing first floor master bedroom windows for privacy. This amendment, along with the obscure glazing has not been fulfilled. This has resulted in significant privacy impacts for the surrounding properties and requires rectification. As the unauthorised works are a compliance matter currently under investigation, the assessment cannot consider rectification of the retrospective works. Rather, this application considers the merits of the proposed works which seek to ameliorate the resultant privacy impacts. The proposed works include the proposed privacy louvres to the southern windows on level 1 and level 2, external privacy blind to the northern façade, and the proposed fence adjoining the southern boundary. In the context of the existing dwelling as the site currently stands and its relationship with surrounding properties, the proposed works provide an overall improved privacy impact. If the proposed works are not undertaken and the previous unauthorised works are not rectified, a worse privacy outcome would result. As such, the proposed development is found to provide an improved and reasonable level of privacy for surrounding properties. A detailed assessment is provided under C1.5 of this report.

- ***View Loss***

The submissions raised concerns that the proposed fence adjoining the southern boundary will impact the views of the ocean and sunrise from 2 Lovering Place.

Comment:

A detailed view sharing assessment against the four (4) planning principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*, has been conducted. The view impact was found to be acceptable in the context of where the affected views are obtained from and the extent of views that remain unaffected. A detailed assessment on view sharing is provided under C1.3 of this report.

- ***Landscape Plan / Screen Planting***

The submissions raised concerns that there are no landscaping plans that show the location, type and species of any planting. The submissions state that conditions should be imposed requiring all tree and shrub planting to be maintained, trimmed and kept to an acceptable height so that it does not interfere with views and winter sun.

Comment:

A landscape plan has been submitted indicating the areas of proposed plantings. Conditions are recommended requiring the planting to comprise native species capable of attaining a height of no more than 2.0 metres at maturity.

- ***Right of Way Access***

A submission has been received from the adjoining northern neighbour at 155 Queens Parade East who benefit from a right of way over the property for driveway access. The submission expresses support for the proposal and requests that works are able to continue so that better functioning access can be provided to their property.

Comment:

The submission is noted. It is also noted that Condition 24 of DA2019/0964 required access over the right of way, to 153 and 155 Queens Parade must be kept clear and maintained in a suitable state at all times during works.

- ***Unauthorised Works***

The submissions raised concerns that a series of illegal works have been undertaken at the site that do not comply with the consent DA2019/0964 and associated conditions. Particularly, Condition 7 which required further privacy louvres and an increased eastern setback. Non-compliance with this condition has resulted in direct overlooking from the dwelling into 2 Lovering Place. The submissions note that a Building Information Certificate BC2023/0157 has been lodged seeking retrospective approval for works.

Comment:

It is acknowledged that prior works have been carried out under Development Consent DA2019/0964 granted for Demolition works and construction of a dwelling including a swimming pool. However, some works have been undertaken not in accordance with the consent and are subject to separate compliance investigations and a Building Information Certificate Application (BC2023/0157) currently under assessment. This subject development application proposes works to address some impacts and issues that resulted due to the undertaking of works contrary to the consent. As Council has no power under a development

application to consent to retrospective works, this application is confined to the proposed works only.

- ***Adequacy of Plans***

  The submissions raised concerns that the architectural plans are insufficient for the following reasons:
  - RLs not shown along southern boundary and proposed fencing not shown on southern elevation, nor is the natural ground level or height of the fence
  - Unspecified levels for the proposed tapered stairs on the southern side of level 1, therefore privacy impact cannot be understood
  - The shadow diagrams to not demonstrate the impact of the proposed fencing or solar panels
  - There are no landscape plans that show the type and location of planting

  Comment:

  Amended plans have been provided including a southern elevation showing the RLs of the proposed fence, existing retaining walls and height of the fence. The amended plans have removed the proposed changes to the stairs on the southern side of level 1. A landscape plan has been provided indicating the location of planting. Shadow diagrams have been provided demonstrating the shadows cast by the as-built dwelling at the subject site. The proposed development does not alter the footprint, height or setbacks of the existing dwelling. Rather, various elements are proposed to be attached to the existing dwelling including louvre screens, solar panels and also fencing. As such, the resulting shadows are largely attributed to the existing dwelling which is not changing under this application. A detailed assessment on solar access is provided under C1.4 of this report.

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	Council's Biodiversity referrals team have assessed the Development Application for compliance against the following applicable biodiversity related provisions: • Pittwater 21 DCP cl. B4.18 Heathland/Woodland Vegetation The proposal is for alterations and additions to a dwelling house. This site does not contain intact native vegetation and currently contains a partially constructed dwelling and swimming pool. The works do not propose any impacts to native trees within Council's road reserve. The proposal is consistent with biodiversity controls.
NECC (Coast and Catchments)	The application has been assessed in consideration of the *Coastal Management Act 2016*, State Environmental Planning Policy (Resilience & Hazards) 2021 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP. The proposed works under the subject DA are primarily a consequence of the imposition of a condition of development consent under DA 2019/0964 which required the following modification to the

Internal Referral Body	Comments
	proposal as approved - The setback of the Living Room (external eastern glass line wall) as shown on Level 1 Plan (DA-03B) and Southern Elevation Plan (DA06B) is to be increased by 2.0m to the eastern boundary of the site. This amendment allows the building element comprising the Living Room, Study and Bath to be moved 2.0m to the west to facilitate the increased setback, with associated amendments. The subject site is located within the coastal zone and on the 'Coastal Use Area' map under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). The subject site is also shown to be affected by Coastline Bluff/Cliff Instability Hazard on Council's Coastal Risk Planning Map in Pittwater LEP 2014. A section of the subject property is within the foreshore building line. As this DA relates to DA 2019/0964, the coastal assessments made on 4 December 2019 (TRIM 2019/702068) remain valid.
NECC (Development Engineering)	The submitted development application has not addressed the method of stormwater disposal from the site. The predominant fall from the site is towards neighbouring properties with the site being notionally a low level property based on information from Council's GIS. Amended plans are to show how stormwater from the site will be drained in accordance with Council's *Water Management for Development Policy Version 2, 26 February 2021* in particular Section 4.4 and/ or Section 5.5 or Section 9.3.1. **Engineering comments 10.04.24** Development engineering has reviewed the submitted Stormwater Management plans by Stormwater Engineers Pty Ltd (Leon Savage). 1. The stormwater strategy proposes to convey roof water to a charged OSD at the front of site. The water level in the OSD tank is 1 metre above habitable levels on site. The top water level in underground OSD systems, should be a minimum of 300mm below habitable floor levels. 2. There does not appear to be a safe overland flow path from the tank, with flows likely flowing downstream through neighbouring driveways. 3. Amended plans should show the OSD tank located at the low, sea side end of the property, with a level spreader directing flows to the sea. **Engineering comments 17.05.24** 1. The stormwater strategy proposes to convey roof water to a charged OSD at the front of site. The water level in the OSD tank is 1 metre above habitable levels on site. The top water level in underground OSD systems, should be a minimum of 300mm below habitable floor levels. 2. There does not appear to be a safe overland flow path from the tank, with flows likely flowing downstream through neighbouring

Internal Referral Body	Comments
	driveways and possibly habitable areas. 3. Amended plans should show the OSD tank located at the low, sea side end of the property, with a level spreader directing flows to the sea. 4. The proposed design will result in an additional peak and volume of stormwater run-off into Council's 375 mm RCP. The capacity of this system to convey additional flows has not been verified. **Engineering comments 25.07.24** A Stormwater management report has been provided which has addressed Council's concerns. Development engineering raises no further objections to the proposed development, subject to conditions.
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS Discussion of reason for referral The proposal has been referred to Heritage as the subject site is adjacent to a heritage item, as listed in Schedule 5 of Pittwater LEP 2014. **Item 2270328 - Fink House** - 153 Queens Parade East, Newport Details of heritage items affected Details of the heritage item as contained within the Manly Heritage inventory, are as follows: **Item 2270328 - Fink House** <u>Statement of Significance</u> Completed in 1949 to a design by internationally recognised Sydney architect Harry Seidler, Fink House at 153 Queens Parade East in Newport, has historic and aesthetic significance as an early example of Late Twentieth-Century Sydney Regional architecture demonstrating key modernist features including almost flat skillion roof, bright coloured door panels, exposed concrete structure, horizontal emphasis and open plan. Fink House is aesthetically and technically significant as it demonstrates a change in fashion in architectural residential style. Its architectural features are based on the houses designed by Le Corbusier in Europe and the brightly coloured panels show direct influence from Piet Mondrian's abstract paintings. The house and its setting display recognisable Seidler characteristics including the cubiform shapes, the emphasis on large glassed areas, uninterrupted surfaces and an emphasis on functionalism. The residence represents the early stages of a significant movement by Sydney architects and their adaption of the International style and design theory to a local and regional language. Fink House is an early example of Seidler's work and,

<table>
<tr><th>Internal Referral Body</th><th>Comments</th></tr>
<tr><td></td><td>despite some changes over the years, it retains a substantial proportion of original integrity.

The listing includes part of the interiors of the house as changes to some detailing have occurred over the years. Important internal features include open plan layout, centrally located fireplace (no longer used as a woodfire), courtyard created by the U-shape layout, coloured door panels, and overall roof form and concrete finishes to the exteriors. The lower ground floor is largely modified, so are the kitchen fittings. However, the general design intention is still evident.

<u>Physical Description</u>
Fink House is one-storey, flat roof, white painted weekender designed in a U-shape and located on a sloping site, it takes advantage of the land's topography. The front and back sections of the roof slope towards the centre of the house. The house is similar in plan to the Rose Seidler House with the exception of a broken or 'butterfly' roof form as its roof is closer to a flat roof with a shallow pitch.

The house is described in the "Houses, Interiors and Projects" book by Harry Seidler as:

"A simple low cost house with clear zoned plan: living and sleeping wings joined by the "mechanical core" of kitchen and bath.

A panoramic view of the open sea and coastline is toward the South - away from the sun.
This resulted in a main exposure of the living areas to the view with some openness to the sun on the North toward a central court (one wall of which will be decorated with a mural [the mural is no longer in existence]).

All bedrooms in a row have access on to a private garden on the North and are sun-protected by a roof overhang.

The slope of the land provides for an open carport, entrance and workshop-utility room below the main floor.

Most of the available floor area is a continuous flowing space including the inner court, the stair well and the open kitchen around a free standing fireplace."

<table>
<tr><td colspan="3">Other relevant heritage listings</td></tr>
<tr><td>SEPP (Biodiversity and Conservation) 2021</td><td>No</td><td></td></tr>
<tr><td>Australian Heritage Register</td><td>No</td><td></td></tr>
</table>
</td></tr>
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Internal Referral Body	Comments

	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	

Consideration of Application

The proposal seeks consent to modify the approved consent DA2019/0964, including changes to the internal layout to satisfy the requirements of Condition 7, extended turning area, a new spiral staircase to the North-western corner of the approved building and replacement of the approved vertical louvres with retractable external screens, which the material and colour of these screens is not known from the submitted drawings or reports. The modifications do not involve any changes to the approved envelope adjacent to the heritage item. Given the physical separation between the heritage building and the proposed works it is considered the proposal to not further impact the significance of the heritage item.

Therefore no objections are raised on heritage grounds, subject to one condition.

Consider against the provisions of CL5.10 of PLEP 2014.
Is a Conservation Management Plan (CMP) Required? No
Has a CMP been provided? No
Is a Heritage Impact Statement required? No
Has a Heritage Impact Statement been provided? No

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	Reference is made to the proposed development at the above area and Aboriginal heritage. No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development. Under the National Parks and Wildlife Act 1974 (NPW Act) all

External Referral Body	Comments
	Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (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 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 proposed development consists of alterations and additions predominantly within the footprint of the existing dwelling. The proposal has been reviewed by Council's Coast and Catchments Team deeming it acceptable subject to the recommended conditions. The proposed development is considered to be designed, sited and will be managed to avoid adverse impacts on the above matters.

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

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

Comment:
The proposed development is not likely to cause increased risk of coastal hazards.

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

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

Comment:
The proposal has been reviewed against all relevant legislation and policies.

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

Chapter 4 – Remediation of Land

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

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.6m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.5 Coastal risk planning	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone C4 Environmental Living

The underlying objectives of the C4 Environmental Living zone

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

  Comment:

  The proposal consists of alterations and additions to an existing low density residential dwelling.

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

  Comment:

  The proposed development does not have an adverse effect on the special ecological, scientific or aesthetic values of the area.

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

  Comment:

  The proposed development consists of alterations and additions that do not alter the existing density or scale.

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

  Comment:

  The proposed development does not impact on riparian and foreshore vegetation and wildlife corridors.

7.8 Limited development on foreshore area

Under Clause 7.8 Limited Development on Foreshore Area, development consent must not be granted for development on land in the foreshore area except for the following purposes:

- *the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, but only if the development will not result in the footprint of the building extending further into the foreshore area,*
- *boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*

Comment:
The proposed development within the foreshore area is for a fence which is permitted by this clause.

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

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

Comment:
The proposed development is consistent with the objectives of the C4 Environmental Living zone. The appearance of the proposed development is compatible with the surrounding area. The proposed development will not cause environmental harm in relation to pollution, siltation, surrounding uses, marine habitat, wetland areas, flora or fauna habitats, drainage patterns or remnant riparian vegetation. The proposed development will not cause congestion or generate conflict between people using the adjacent open space or waterway. The proposed development retains public access along the foreshore. The proposed development will not result in adverse impacts to any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land. The proposed development will not have an adverse impact on the amenity or aesthetic appearance of the foreshore. The proposed development will not impact upon sea level rise, coastal erosion or recession, or change flooding patterns.

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

- *continuous public access to and along the foreshore through or adjacent to the proposed development,*
- *public access to link with existing or proposed open space,*
- *public access to be secured by appropriate covenants, agreements or other instruments registered on the title to land,*
- *public access to be located above mean high water mark,*
- *the reinforcing of the foreshore character and respect for existing environmental conditions.*

Comment:

The proposed fence adjoins the southern side boundary extending to the rear boundary adjoining the cliff edge. The proposed fence is contained wholly within the subject site and delineates private property. As the site adjoins the cliff edge, there is limited existing public access along the foreshore due to the existing topography, whereby, the proposed fence does not impact on any existing public access. The proposed development is acceptable in relation to the foreshore character and the existing environmental conditions.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	26.5m	N/A	Yes
Rear building line	FBL	Pool Fence: Above Level 2 Terrace: Above Side Fence: Below (permitted)	N/A N/A N/A	Yes Yes Yes
Side building line	South - 2.5m	Louvre Screen: 3.4m-3.6m Fence: Nil-0.3m Level 2 louvre: 3.4m Level 2 Terrace: 11.8m	N/A 88-100% N/A N/A	Yes **No** Yes Yes
	North - 1m	Pool Gate: 0.5m Spiral Stair: 1.4m External Blind: 1.9m	50% N/A N/A	**No** Yes Yes
Building envelope	South - 3.5m	Outside envelope	-	**No**
	North - 3.5m	Outside envelope	-	**No**
Landscaped area	60%	48.6% (744.1m^2)	19%	**No**

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.10 Newport Locality	Yes	Yes
B1.2 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
B3.4 Coastline (Bluff) Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.18 Heathland/Woodland Vegetation	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D10.1 Character as viewed from a public place	Yes	Yes
D10.3 Scenic protection - General	Yes	Yes
D10.4 Building colours and materials	Yes	Yes
D10.7 Front building line (excluding Newport Commercial Centre)	Yes	Yes
D10.8 Side and rear building line (excluding Newport Commercial Centre)	No	Yes
D10.11 Building envelope (excluding Newport Commercial Centre)	No	Yes
D10.13 Landscaped Area - Environmentally Sensitive Land	No	Yes
D10.14 Fences - General	No	Yes
D10.16 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites

The subject site is adjacent to Heritage Item 2270328 - Fink House - 153 Queens Parade East, Newport as listed in Schedule 5 of Pittwater LEP 2014. The proposal has been reviewed by Council's Heritage Officer noting that the works do not involve any changes to the approved envelope adjacent to the heritage item. Given the physical separation between the heritage building and the proposed works it is considered the proposal to not further impact the significance of the heritage item. The proposal is supported by Council's Heritage Officer subject to the recommended conditions.

C1.3 View Sharing

Merit consideration

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

- *A reasonable sharing of views amongst dwellings.*

  Comment:

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

  1. Nature of the views affected

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

  Comment to Principle 1:

  The affected view is to the north/north-east of the Pacific Ocean including the surf break north of Newport Reef viewed from 2 Lovering Place. The view extends to the horizon and captures the sunrise as seen in figure 1 below. The property also enjoys whole sweeping views of the ocean extending from the east to the south-east.

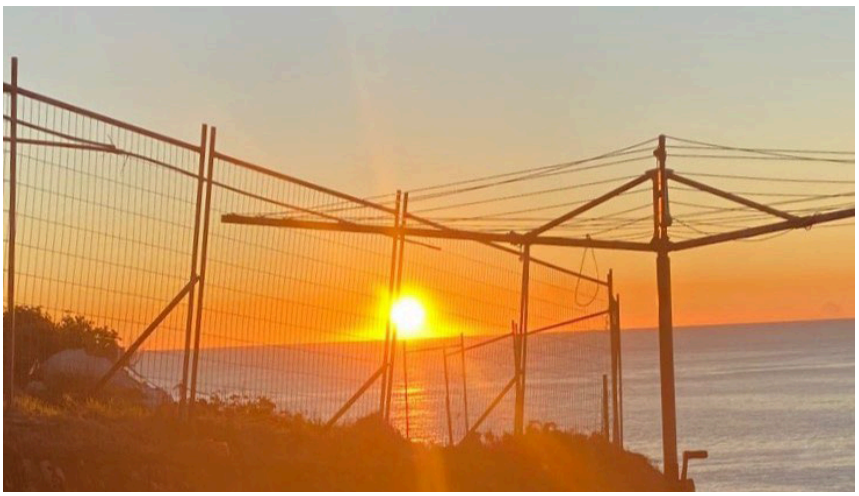


Figure 1 - View from rear yard 2 Lovering Place looking north-east (source: neighbour submission)



Figure 2 - View from rear balcony 2 Lovering Place looking north (source: site photos)



Figure 3 - View from rear balcony 2 Lovering Place looking north-east (source: site photos)



Figure 4 - View from rear yard 2 Lovering Place looking north (source: site photos)



Figure 5 - View from rear yard 2 Lovering Place looking south-east (source: site photos)

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

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

Comment to Principle 2:

The views are obtained from the first floor rear balcony to the north and north-east over the northern side boundary, to the east over the rear boundary, and to the south over the southern side boundary. The views are also obtained from the first floor living area and ground floor to the east over the rear boundary. The views from the rear yard are obtained to the north and north-east over the northern side boundary, to the east over the rear boundary, and to the south over the southern side boundary. All views are obtained from both sitting and standing positions.

3. Extent of impact

"*The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more*

significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating".

Comment to Principle 3:

The view from the ground floor and rear yard looking north and north-east is most affected by the proposed development. When looking north and north-east from these areas, the northern most portion of the horizon and ocean view will be partly obstructed by the proposed fence. However, as one moves further south and south-east within the rear yard, the available views increase. The views obtained from the first floor balcony will be mostly retained, with the proposed fence obstructing a small portion of the ocean view at the cliff edge. The views to the east from the first floor balcony and living areas and ground floor will remain unaffected. All views available to the south will also be unaffected. The view loss is categorised as minor.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

The element of the proposal resulting in the view impact is the proposed fence adjoining the southern side boundary that extends to the rear boundary. The proposed fence presents a maximum height of 1.8 metres when measured from existing ground level at the subject site. The height of the proposed fence is consistent with the requirements of D10.14 of the P21DCP and also provides slatted metal fencing within the foreshore area. This design allows for an extent of transparency by permitting some views through the fence within the foreshore area. Furthermore, expansive sweeping views to the east and south-east are unaffected by the proposed development which are predominantly obtained over the rear boundary. The affected views are obtained over the northern side boundary from the rear yard and are less valuable than the views obtained from the first floor balcony and living room. As such, given the extent of views to be retained, the view sharing is acceptable.

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

Comment:

The proposal reasonably maintains views and vistas from roads and public places to water, headland, beach and bush views.

- *Canopy trees take priority over views.*

Comment:

The proposal does not impact on any canopy trees.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

C1.4 Solar Access

This control requires the following:

- *The main private open space of each dwelling and the main private open space of any adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st.*
- *Windows to the principal living area of the proposal, and windows to the principal living area of adjoining dwellings, are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st (that is, to at least 50% of the glazed area of those windows).*
- *Solar collectors for hot water or electricity shall receive at least 6 hours of sunshine between 8.00am and 4.00pm during mid winter.*
- *Developments should maximise sunshine to clothes drying areas of the proposed development or adjoining dwellings.*
- *The proposal must demonstrate that appropriate solar access is achieved through the application of the Land and Environment Court planning principle for solar access.*

Submissions have been received from the adjoining southern property 2 Lovering Place raising concerns regarding overshadowing of their property by the proposed development.

Of note, Condition 7 - Amendments to the approved plans of consent DA2019/0964, required the eastern setback of the level 1 living room to be increased by an additional 2.0 metres to minimise the overshadowing of the first floor level eastern terrace of the adjoining dwelling to the south and provide for an appropriate transitionary setback to that adjoining dwelling. The dwelling has not been constructed accordingly and does not comply with this condition. As a result, the solar access impacts are greater than what was permitted by this consent. This is a matter of retrospective works that are currently under investigation by Council's Building Compliance Team.

The assessment of this current application is isolated to proposed works only. The proposed development does not alter the footprint, height or setbacks of the existing dwelling. Rather, various elements are proposed to be attached to the existing dwelling including louvre screens, solar panels and also fencing. As such, the resulting shadows are largely attributed to the existing dwelling which is not changing under this application. In the context of the proposed works, the proposed louvres are necessary for privacy screening and include spaced panels that do not contribute additional overshadowing. Additionally, the proposed solar panels sit atop the existing roof and are set in from the eave so as not to create additional shadows. Lastly, the proposed fencing adjoining the southern side boundary results in a minor increase in shadows, however is mostly already overshadowed by the existing dwelling. The increase in shadows occurs to the northern-most side of the rear yard, while a significant area of the rear yard will retain solar access. The side fence within the front setback is reduced to 1.2 metres high (subject to conditions) which reduces shadows to the pool area at 2 Lovering Place. Additionally, the fencing adjoining the pool is of a similar height to the existing pool

fence/wall at 2 Lovering Place and does not result in additional shadows. The proposed side fence within the foreshore area is open metal slats and minimises shadows.

Merit consideration

- *Residential development is sited and designed to maximise solar access during mid-winter. (En)*

  Comment:
  The proposed development is sited predominantly within the footprint of the existing dwelling. The proposed development comprises louvre screens and fencing that are necessary to provide privacy to the site and adjoining properties. Whilst resulting in a minor increase in shadowing, the proposed development is sited and designed to improve privacy and balance solar access through appropriate treatments.

- *A reasonable level of solar access is maintained to existing residential properties, unhindered by adjoining development. (En)*

  Comment:
  As mentioned above, the majority of shadows are cast by the existing dwelling on the subject site and the adjoining property. The proposed development provides minimal impacts to existing solar access.

- *Reduce usage and/dependence for artificial lighting. (En)*

  Comment:
  The proposal does not affect usage/dependence for artificial lighting.

Having regard to the above assessment, it is considered that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

C1.5 Visual Privacy

This control requires the following:

- *Private open space areas including swimming pools and living rooms of proposed and any existing adjoining dwellings are to be protected from direct overlooking within 9 metres by building layout, landscaping, screening devices or greater spatial separation (measured from a height of 1.7 metres above floor level).*
- *Elevated decks and pools, verandahs and balconies should incorporate privacy screens where necessary and should be located at the front or rear of the building.*

Direct views of private open space or any habitable room window within 9m can be restricted (see diagram below) by:

- *vegetation/landscaping*

- *a window sill height 1.7 metres above floor level, or*
- *offset windows*
- *fixed translucent glazing in any part below 1.7 metres above floor level, or*
- *solid translucent screens or perforated panels or trellises which have a maximum of 25% openings, and which are:*
- *permanent and fixed;*
- *made of durable materials; and*
- *designed and painted or coloured to blend in with the dwelling.*

The submissions raised concerns that Council's assessment of DA2019/0964 did not adequately address privacy and has resulted in severe privacy impacts to the southern properties. Of concern is the full height glass windows at the subject site which allow direct viewing into 2 and 3 Lovering Place. Additionally, the level 2 accessible roof and terrace accessed by a spiral staircase looking south-east will look directly into the southern properties. Bedroom 2 looks into the loungeroom at 3 Lovering Place and the planter boxes are too low to offer privacy for this area or the terrace. The submissions request privacy screens to the southern elevation of the level 2 terrace that are 2.2 metres in height and translucent film to the bedroom 2 windows. The submissions also request conditions be imposed ensuring the level 2 roof is not to be used as a roof top balcony and is a non-trafficable area for maintenance only so as not to impact on privacy. Concern is also raised regarding the privacy impacts from the terrace/deck leading off the pool and requests a privacy screen as the fence is insufficient.

With regards to the proposed louvre blades incorporated for privacy, concern is raised that the louvres need to be fitted closer together to be effective for privacy mitigation. The submissions also request that the louvres extend to the concrete overhang at level 1 to avoid further direct overlooking into 2 Lovering Place. Alternatively, the louvres should be replaced with fixed translucent glazing panels to a height of 1.6 metres to mitigate overlooking.

It is important to note that the above privacy concerns arise predominantly due to the construction of the existing dwelling approved under DA2019/0964, of which some works are contrary to the consent. The approved plans for DA2019/0964 included obscure glazing to the level 1 south facing bathroom windows and the level 2 south facing ensuite windows. Condition 7 also required vertical louvered panels to be installed on the south facing first floor master bedroom windows for privacy. This amendment, along with the obscure glazing has not been fulfilled. The below figures demonstrate the current overlooking relationship between the subject site and 2 Lovering Place.



Figure 6 - View from swimming pool at 2 Lovering Place (source: site photos)



Figure 7 - View from rear balcony 2 Lovering Place (source: site photos)

The works proposed under the subject application seek to address the resultant impacts and ameliorate further privacy impacts. This includes the addition of vertical louvre privacy screens to the level 1 south facing living room windows either side of the chimney. The louvres also extend 800mm to the concrete overhang at the terrace as requested within the submissions. The same vertical louvre privacy screens are proposed to the level 2 south facing ensuite and master bedroom windows. Another vertical louvre is also to be installed to the level 2 west facing ensuite windows as shown on the approved plans for DA2019/0964. The louvre panels are fixed 20mm apart and angled east towards the rear boundary away from the adjoining southern dwelling. The louvres effectively mitigate overlooking from these windows and do not permit occupants to look south into 2 Lovering Place.

The proposal seeks consent for a trafficable terrace on level 2 with planter boxes on the southern edge. The trafficable terrace is setback 11.6 metres from the southern side boundary and therefore provides more than 9 metres of spatial separation to the living areas and private open space at 2 and 3 Lovering Place. Additionally, there is a significant level difference between the terrace and the surrounding properties whereby occupants of the terrace would only meaningfully have views over the roofs of the dwellings as seen in the below figure. As such, a privacy screen is not necessary and would only add further bulk to the dwelling. Conditions are recommended ensuring the planting areas are non-trafficable. Furthermore, the property enjoys sweeping views to the east with viewing predominantly in this direction. As such, occupants are less likely to look back south towards the surrounding properties. Similarly, the windows to bedroom 2 are setback 17 metres from the southern side boundary providing significant spatial separation to

surrounding properties to mitigate privacy impacts. The spiral staircase provides external access to level 2 of the dwelling and the garage and does not generate any privacy impacts as it sits behind the retaining wall to the northern boundary and behind the dwelling when viewed from the south.



Figure 8 - View from bedroom 2 at subject site looking south (source: site photos)

In relation to the privacy concerns regarding the terrace/deck leading off the pool, it is noted that these are existing elements and works are not proposed to the elements besides glazed pool fencing to meet the Australian Standards. Additionally, the terrace is mostly at ground level and will be screened largely by the proposed 1.8 metre high fence adjoining the southern boundary. Any taller fencing is contrary to the requirements and outcomes of D10.14 of the P21DCP resulting in unnecessary bulk and scale.

Consequently, the proposal is considered to effectively address the privacy issues arising from the construction of the existing dwelling and contravention of the conditions of consent. The proposed louvres and fencing provide suitable measures to ameliorate the existing privacy concerns and mitigate further opportunities for overlooking.

Merit consideration

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

  Comment:
  The proposal includes louvre screening to habitable rooms and substantial spatial separation

from outdoor living areas to optimise visual privacy.

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

  Comment:
  The proposal allows for a sense of territory and safety to be provided for residents.

Having regard to the above assessment, it is considered that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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

Description of Non-Compliance

This control requires development to be sited a minimum 2.5 metres from one side boundary and 1.0 metres from the other side boundary. The minimum side setbacks apply to built structures including pools and carparks other than driveways, fences and retaining walls.

For this assessment, the 2.5 metres requirement has been applied to the southern side boundary and the 1.0 metres requirement applied to the northern side boundary.

The southern side setbacks are as follows:

- Fence: 0.3m
- Level 1 louvre: 3.4m-3.6m
- Level 2 louvre: 3.4m
- Level 2 Terrace: 11.8m

The northern side setbacks are as follows:

- Pool Gate: 0.5m
- Spiral Stair: 1.4m
- External Blind: 1.9m

Evidently, the proposed fence is non-compliant with the southern side setback and the proposed pool gate is non-compliant with the northern side setback. However, these elements constitute fences and are not subject of the minimum side building lines prescribed by this control.

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

D10.11 Building envelope (excluding Newport Commercial Centre)

Description of Non-compliance

This control requires development to be sited within a building envelope determined by projecting planes at 45 degrees from a height of 3.5 metres above ground level at the side boundaries to the maximum building height.

The proposed development breaches both the northern and southern side boundary envelopes as shown below.

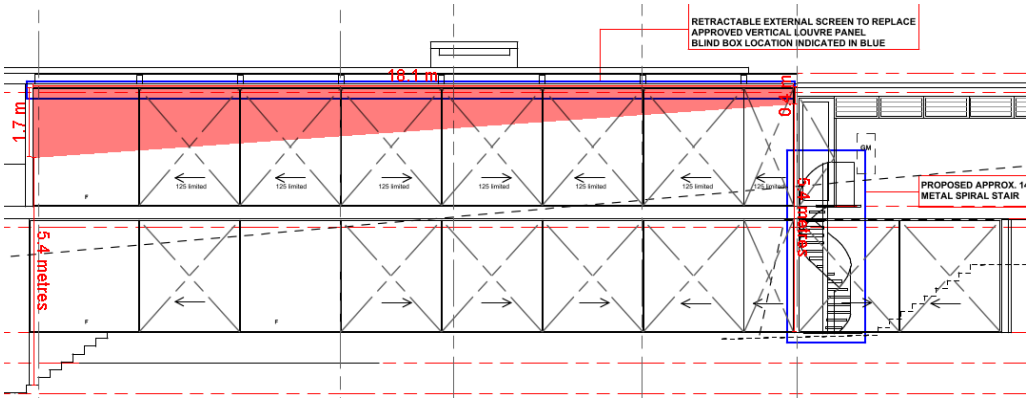


Figure 9 - Northern elevation showing envelope encroachment in red

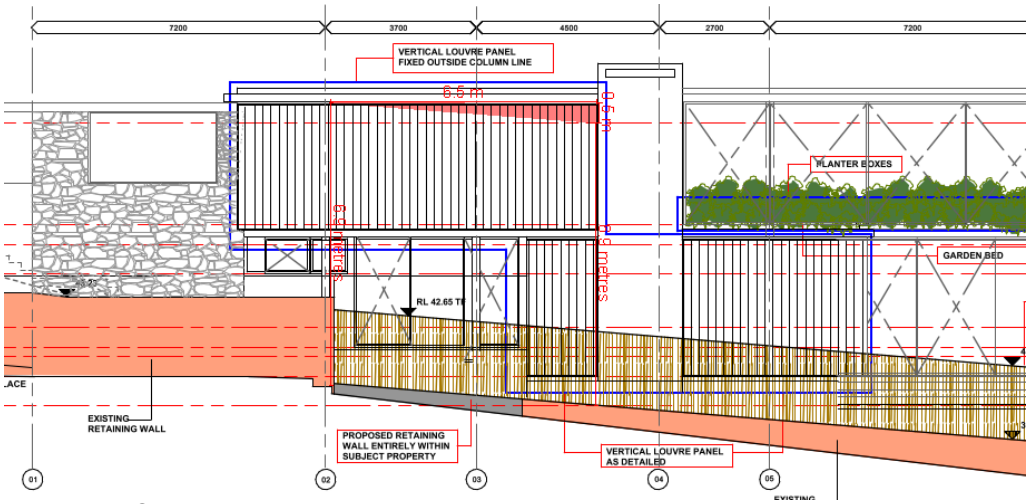


Figure 10 - Southern elevation showing envelope encroachment in red

It is noted that the proposed elements encroaching the building envelope are confined to the proposed external privacy screens and external privacy louvres. These elements are to be affixed externally to the façade and the setbacks/envelope of the existing dwelling remain unaltered.

Merit Consideration

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

- *To achieve the desired future character of the Locality. (S)*

  Comment:

  The proposal maintains the low density residential nature of the area and achieves the desired future character of the Locality.

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

  Comment:
  The proposed development does not alter the height or footprint of the existing dwelling. As such, the proposal maintains the existing building scale and density that is below the height of the trees of the natural environment.

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

  Comment:
  The proposed development involves the addition of elements to the façade of the existing dwelling. The proposed external privacy louvres and screens are to be affixed to the northern and southern facades of the dwelling to ameliorate privacy impacts arising from the construction of the existing dwelling. The proposed screens and louvres are suitably designed to respond to the spatial characteristics of the existing natural environment.

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

  Comment:
  As mentioned above, the proposed external privacy screens and louvres are affixed externally to the existing facades. These elements are not considered to generate additional bulk and scale of the built form.

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

  Comment:
  The proposed works that breach the building envelope do not impact on views and vistas to and/or from public/private places.

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

  Comment:
  The proposed louvres to the southern façade are fixed externally and extend the full height of the windows. This resolves the privacy impacts currently experienced between the adjoining properties from the full height glass windows. While the screens to the northern façade are retractable, the dwelling is well-screened and separated by vegetation and retaining walls between the adjoining dwellings. The proposal is found to provide a reasonable level of privacy, amenity and solar access.

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

  Comment:
  The proposed development does not require the removal of any significant vegetation and existing landscaping on the site is to be maintained and reinforced.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D10.13 Landscaped Area - Environmentally Sensitive Land

Description of Non-compliance

This control requires at least 60% of the site area to be landscaped area. Provided the outcomes of this control are achieved, the following may be permitted on the landscaped proportion of the site:

impervious areas less than 1 metre in width (e.g. pathways and the like);

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

The proposal provides 48.6 % (744.1m^2) including the above variation permitted for the terrace and swimming pool area.

It is noted that the proposal does not require the removal of any landscaping and does not alter the existing quantum of landscaped area as the site currently stands. It is also noted that unauthorised works have been undertaken contrary to consent DA2019/0964 which have reduced the quantum of landscaped area. This is a matter for compliance as this is assessment considers the proposed works only.

Merit Consideration
With regard to the consideration of a variation, the proposed development is considered against the underlying outcomes of the control as follows:

- *Achieve the desired future character of the Locality. (S)*

  Comment:
  The proposal maintains the low density residential nature of the area and achieves the desired future character of the Locality.

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

  Comment:
  The proposed development does not significantly contribute to additional bulk and scale and maintains the height and footprint of the existing dwelling.

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

  Comment:
  The proposal incorporates new louvres, screens and fencing which provide improved amenity and privacy while maintaining a reasonable level of solar access.

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

  Comment:
  The proposal does not require the removal of any significant vegetation and existing

landscaping is retained to visually reduce the built form.

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

  Comment:
  The proposal has been reviewed and supported by Council's Bushland and Biodiversity Team.

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

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

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

  Comment:
  The proposal does not detract from the bushland character of the area.

- *Soft surface is maximised to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management.(En, S)*

  Comment:
  The proposal maintains existing soft surface to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D10.14 Fences - General

Description of non-compliance

This control requires the following:

a. Front fences and side fences (within the front building setback)

Front fences and side fences (within the front building setback) shall:

- *not exceed a maximum height of 1 metre above existing ground level,*
- *be compatible with the streetscape character, and*
- *not obstruct views available from the road.*

Fences are to be constructed of open, see-through, dark-coloured materials.

Landscaping is to screen the fence on the roadside. Such landscaping is to be trimmed to ensure clear

view of pedestrians and vehicles travelling along the roadway, for vehicles and pedestrians exiting the site.

Original stone fences or stone fence posts shall be conserved.

b. Rear fences and side fences (to the front building line)

Fencing is permitted along the rear and side boundaries (other than within the front building setback) to a maximum height of 1.8 metres.

The proposal includes a 1.2 metre high slatted front fence. No information has been provided as to the materiality or finishes of the proposed front fence. As per the requirements of this control, the proposed front fence and fence adjoining the driveway is to be constructed of open, see-through, dark-coloured materials as shown on drawing DA-07C. This amendment is subject to the recommended conditions.

The proposal also provides a 1.8 metre high side fence that extends to the front boundary and does not fully comply with this control. The proposed side fence is to be reduced to 1.2 metres high for the portion within 6.5 metres from the front boundary to be consistent with the proposed front fence. This amendment is subject to the recommended conditions.

The proposal also includes a 1.2 metre high brush fence to the northern edge of the driveway turning area and atop the northern retaining wall. This fence complies with the requirements of this control.

Merit Consideration

With regards to the consideration for a variation, the development is considered against the underlying outcomes of the control as follows:

- *To achieve the desired future character of the Locality. (S)*

  Comment:
  The proposal consists of alterations and additions to the existing dwelling and maintains the low density residential nature of the area.

- *An open streetscape that allows casual surveillance of the street. (S)*

  Comment:
  The proposed front fence is slatted and open to allow casual surveillance of the street.

- *Fences, where provided, are suitably screened from view from a public place. (S)*

  Comment:
  The proposed fence will be suitably screened by the existing street trees which soften the development. The road reserve is relatively deep providing substantial separation from the street and the front boundary adding further softening.

- *Safe and unhindered travel for native animals. (En)*

  Comment:
  The proposed front fence is to be slatted which helps provide safe and unhindered travel for native animals. Similarly, the side fence to the rear boundary within the foreshore area is

slatted permitting travel for native animals.

- *To ensure fences compliment and conserve the visual character of the street and neighbourhood.*

  Comment:
  There is a variety of front fencing along Lovering Place including masonry and timber fencing to which the proposed fence will remain compatible. In the eastern rear yards there is a presence of terraced retaining walls, timber fences and metal fences. The proposed brushwood fence and metal slatted fence compliment the existing visual character.

- *To define the boundaries and edges between public and private land and between areas of different function.*

  Comment:
  The proposed fencing defines the boundaries between public and private land.

- *To contribute positively to the public domain.*

  Comment:
  The proposed fencing contributes positively by providing added privacy screening between the site and surrounding properties.

- *To enhance safe sight distances and clear view of the street (including to and from driveways) for motorists and pedestrians. (S)*

  Comment:
  The proposed fencing maintains safe sight distances and clear view of the street for motorists and pedestrians.

- *To ensure heritage significance is protected and enhanced. (S)*

  Comment:
  The proposal has been reviewed by Council's Heritage Officer deeming it acceptable subject to the recommended conditions.

- *To ensure an open view to and from the waterway is maintained. (S)*

  Comment:
  The proposed fencing within the foreshore area is metal slatted fencing that allows an open view to and from the waterway.

- *To ensure native vegetation is retained (En).*

  Comment:
  The proposal does not require the removal of any native vegetation.

- *To ensure any fencing provides for the safe and unhindered travel of native animals. (En)*

  Comment:
  The proposed front fence is to be slatted which helps provide safe and unhindered travel for native animals. Similarly, the side fence to the rear boundary within the foreshore area is slatted permitting travel for native animals.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of $2,130 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $213,000.

CONCLUSION

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

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

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

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

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

PLANNING CONCLUSION

This proposal, for alterations and additions to a dwelling house has been referred to the Development Determination Panel (DDP) at the discretion of the Executive Manager, Development Assessment.

The concerns raised in the objections largely relate to issues arising from the construction of the existing dwelling and contravention of the conditions of consent DA2019/0964. Concerns in relation to privacy, solar access and view loss have been assessed against the relevant controls of the P21DCP.

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

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

REASON FOR DETERMINATION

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

RECOMMENDATION

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 DA2023/1427 for Alterations and additions to a dwelling house on land at Lot 7 DP 21686,1 Lovering Place, NEWPORT, 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. **Building Information Certificate for Unauthorised Works**
   A Building Information Certificate is to be obtained for the unauthorised works not in accordance with Development Consent DA2019/0964 before the consent can become

operational.

Reason: To regularise unauthorised development.

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**
DA-01C	-	Level 1 Floor Plan	BJP Architects	15 March 2024
DA-02B	-	Level 2 Floor Plan	BJP Architects	15 March 2024
DA-03B	-	Roof Plan	BJP Architects	15 March 2024
DA-04D	-	Elevations 02	BJP Architects	9 April 2024
DA-05B	-	Elevations 01	BJP Architects	15 March 2024
DA-06B	-	Landscape Control Plan	BJP Architects	15 March 2024
DA-07C	-	Southern Boundary Elevation	BJP Architects	8 April 2024

Approved Reports and Documentation			
Document Title	**Version Number**	**Prepared By**	**Date of Document**
1 Lovering Place, Newport Changes to Design During Construction	J2039I	White Geotechnical Group	29 August 2023
010719 - Stormwater Drainage	F	Stormwater Engineers Pty Ltd (Leon Savage)	February 2024
Stormwater Drainage Report	1	Waterdesign Civil Engineers	2 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.

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	Undated
Aboriginal Heritage Office	AHO Referral Response	30 October 2023

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

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

4. **Prescribed Conditions**

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

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

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

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

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

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

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

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

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

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

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

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

A. the name of the owner-builder, and

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

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

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

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

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

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

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

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

Reason: Legislative requirement.

5. **General Requirements**

(a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

(c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times

until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

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

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

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

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

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

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

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

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

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

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

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

i) Building/s that are to be erected

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

iii) Building/s that are to be demolished

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

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

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the

development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

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

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

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

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

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

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

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

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

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

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

A monetary contribution of $2,130.00 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 $213,000.00.

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

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

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

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

7. **Security Bond**

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

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

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

Reason: To protect native vegetation.

9. **Adherence to Natural Environment Consent Conditions**
All biodiversity-related conditions of consent under previous development applications are to be adhered to, including DA2019/0964, unless amended by these biodiversity-related conditions of consent.

Reason: To protect biodiversity values.

10. **On-Site Stormwater Detention Details**
The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by Stormwater Engineers Pty Ltd (Leon Savage), drawing number 010719, dated February 2019. 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. The approved plans by Stormwater Engineers Pty Ltd are to be amended in accordance with the recommendations of the Stormwater Drainage Report, Project No. 2024-030, rev 1, dated 02.07.2024 by Water Design Civil Engineers. Specifically, the existing 100 mm diameter UPVC overflow pipe installed at the top water level shall be increased to a 150 mm diameter pipe.

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

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 prepared by White Geotechnical Group dated 04.07.2019 and 29.08.2023 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

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

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

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

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

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. **Privacy Louvres**
The privacy louvres to the southern elevation shall be of fixed panels not operable (with a maximum spacing of 20mm), in materials that complement the design of the approved development.

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

Reason: In order to maintain privacy to the adjoining / nearby property.

15. **Material and colour of new external screens**
The proposed retractable external screens have not been specified in the submitted drawings or reports, that the material and colour should be sympathetic to the adjacent heritage item. Details, demonstrating compliance with this condition must be submitted to Council's Heritage Officer for approval, prior to the issue of a Construction Certificate.

Reason: To ensure the proposed works do not detract from the significance of the heritage item.

16. **Coastal Bluff Engineering Assessment Implementation**
The advice and recommendations contained in the approved Coastal Engineering Assessment report prepared by Horton Coastal Engineering Pty. Ltd. dated 8 October 2019, addressed as necessary through the original and updated Geotechnical Risk Management Report prepared in support of the development application and must be incorporated as required into construction plans and structural specifications for the development.

Reason: To ensure potential hazards associated with development on a Coastal Bluff are minimised

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

Reason: To ensure potential hazards associated with development on a Coastal Bluff are minimised

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

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

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

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

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

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

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

20. **Fencing**
The fencing to the southern boundary adjoining the existing boundary wall to 2 Lovering Place is to be designed so as not to impact on the existing agg drain at the base of the wall.

The following amendments are to be made to the fence as shown on the approved plans:

- The front fence and fence adjoining the driveway is to be constructed of open, see-through, dark-coloured materials as shown on drawing DA-07C.
- The side fence is to be reduced to 1.2 metres high for the portion within 6.5 metres from the front boundary.

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

Reason: To protect existing structures.

DURING BUILDING WORK

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

Reason: To protect native wildlife.

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

Reason: Public safety.

23. **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.

25. **Geotechnical Issues**
All conditions outlined in Geotechnical Assessment Report dated 4 July 2019 and an update dated 29 August 2023 prepared by White Geotechnical Group are to be complied with and adhered to throughout development.

Reason: To ensure (insert excavation, foundations, footings, etc.) is undertaken in an appropriate manner and structurally sound.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

26. **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.

27. **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.

28. **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.

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. **On slab Planter at Level 2 identified as 'planter boxes' along southern end of terrace**

Details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage upon the slab, over which soil and planting is being provided as shown on drawing DA-02B. Landscape treatment details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating planter type including minimum planter size with 600mm soil depth and minimum planter width of 500mm; selected shrub planting to achieve a height of at least 1.8 metres above the terrace level, and planted at minimum 600mm centres and at minimum 200mm pot size; automatic irrigation; and services connections.

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

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

31. **Planting along the southern boundary**

Planting along the southern boundary as shown on drawing DA-06B shall be planted in accordance with the following:

a) the selected planting is to comprise of native species capable of attaining a height of no more than 2.0 metres at maturity or as maintained at that height,

b) plants are to be installed at minimum 900mm intervals and be of a minimum container size of 200mm at planting in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch.

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

Reason: To maintain environmental amenity.

32. **Occupation Certificate for DA2019/0964**
An Occupation Certificate is to be issued for DA2019/0964 before the Occupation Certificate is issued for this consent.

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

Reason: To ensure the orderly development of land.

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

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

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

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

35. **Swimming Pool Requirements (existing pool modified by works)**
The existing onsite Swimming Pool / Spa fencing enclosure shall be upgraded to comply with:

(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 warning sign stating 'YOUNG CHILDREN SHOULD BE ACTIVELY SUPERVISED WHEN USING THIS POOL' has been installed.
(c) All signage shall be located in a prominent position within the pool area.

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.

36. **On slab Planter at Level 2 identified as 'garden bed' over level 1 terrace**

Details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage upon the slab, over which soil and planting is being provided as shown on drawing DA-02B. Landscape treatment details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating minimum 300mm soil depth; planting of ground cover species to achieve at least 500mm height, at minimum 600mm centres and at minimum 150mm pot sizes; automatic irrigation; and services connections.

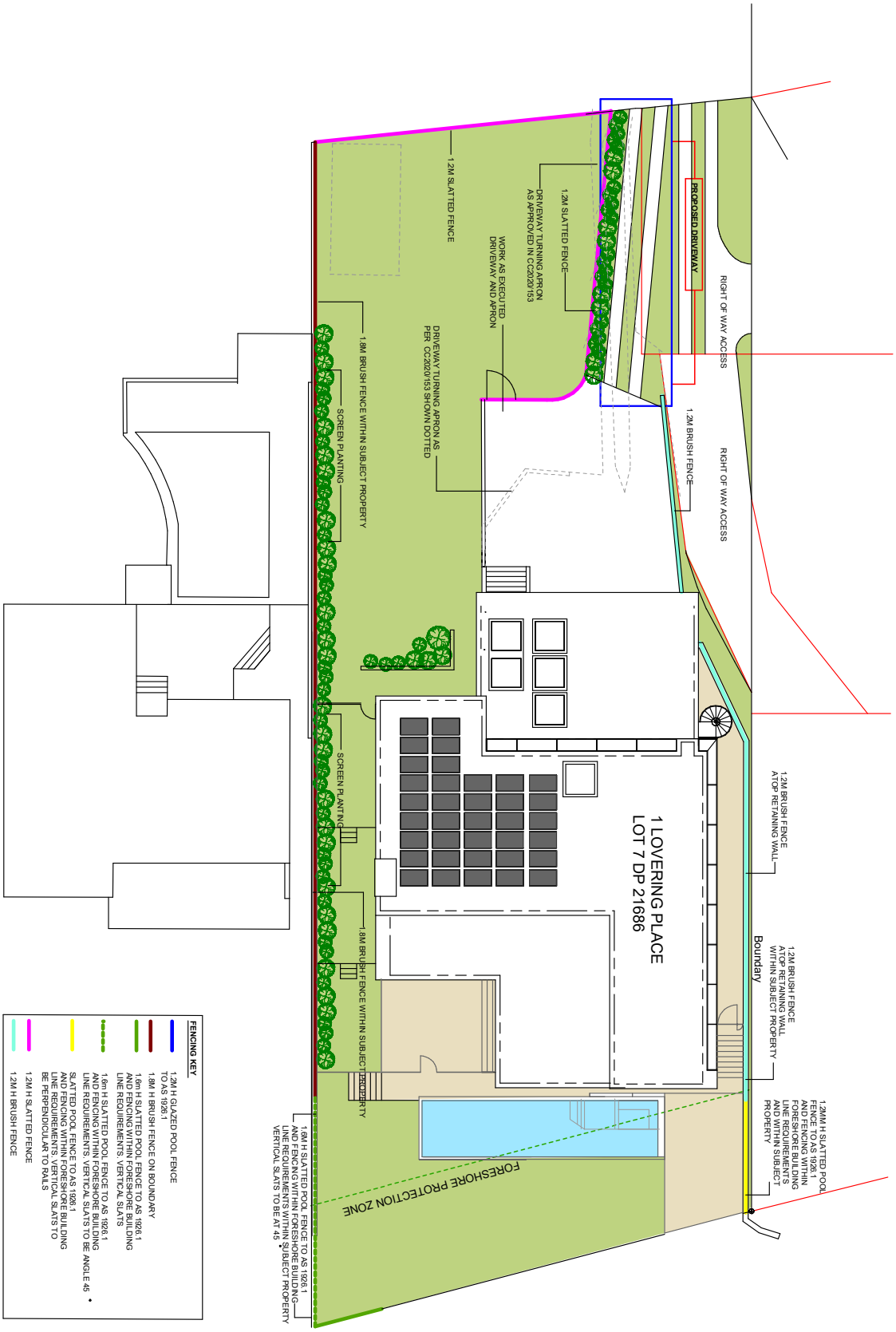
Design certification shall be submitted to the Certifier by a qualified Structural Engineer, that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

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

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

37. **Non-Trafficable Areas**
The on slab planter areas on level 2 identified as 'garden bed' and 'planter boxes' on the approved plans are to be non-trafficable areas with the exception of periodic maintenance.

Reason: To ensure compliance with this consent.



SCALE 1 : 200 @ A3 0 2000 4000 10000

LANDSCAPE CONTROL PLAN

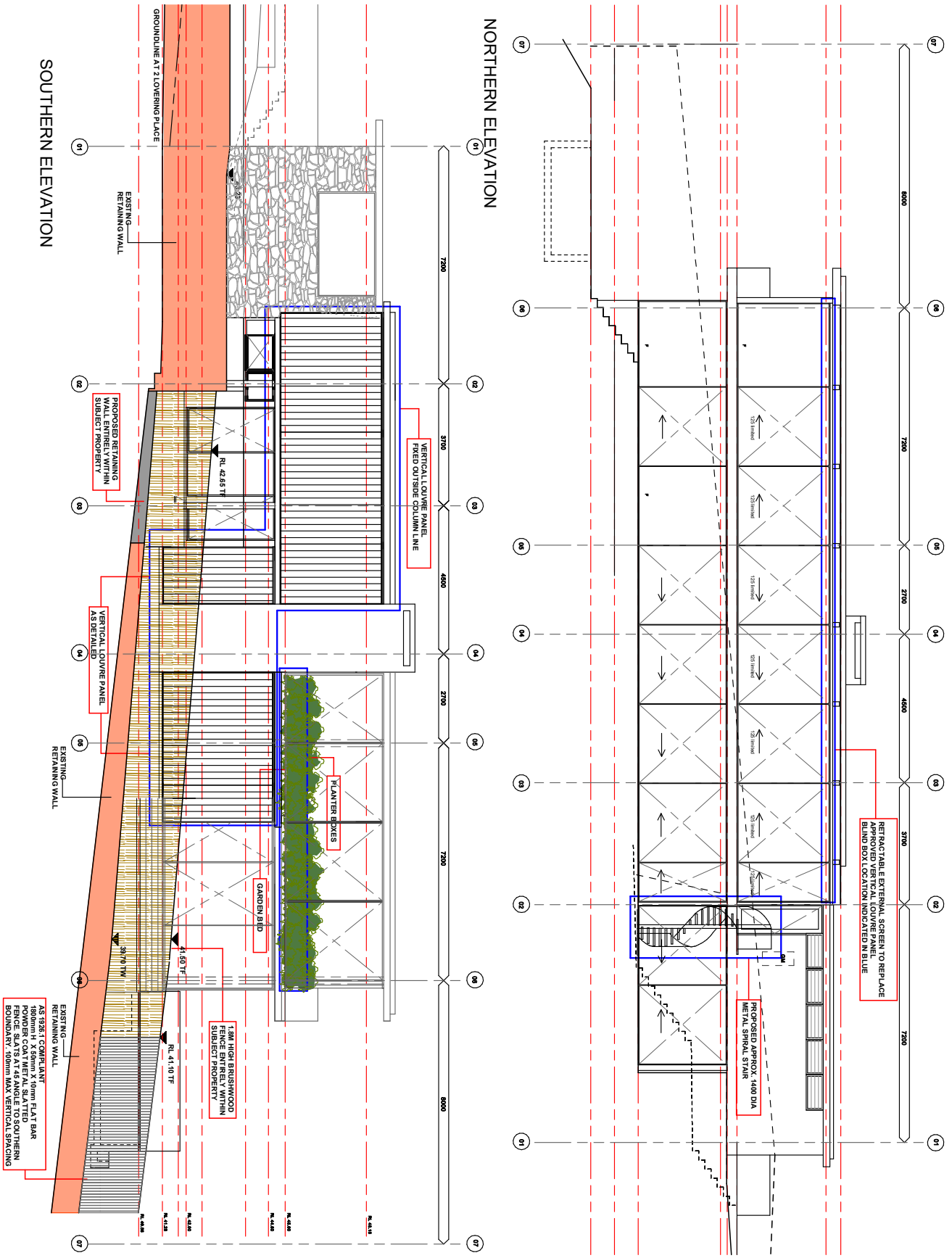
DATE 15/03/2024
SCALE : 1:200 @ A3
LOT 7 DP 21686

N.

BJP ARCHITECTS PL
1012 Barrenjoey Rd Palm Beach 2108
tel: 0439 483 997
email: arkhouse@bigpond.com

1 Lovering Place NEWPORT

DA-06B



SCALE 1 : 100 @ A3

ELEVATIONS 02

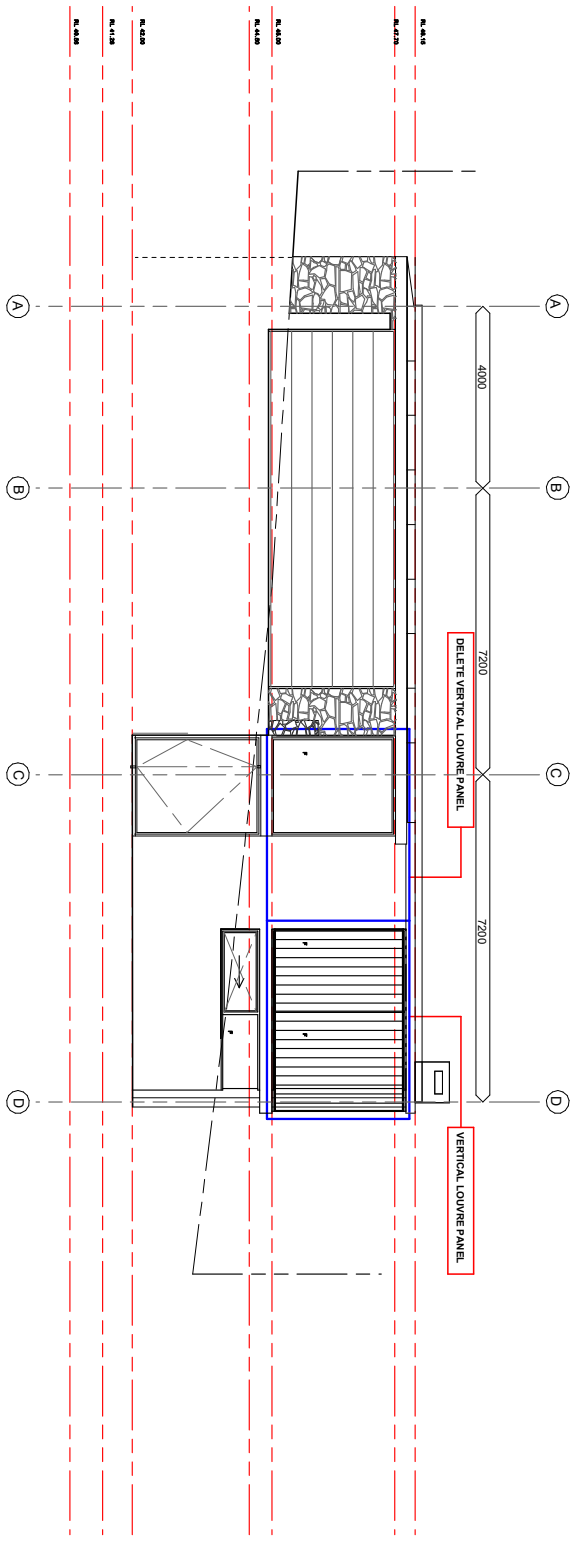
DATE 09/04/2024
SCALE : 1:100 @ A3
LOT 7 DP 21686

BJP ARCHITECTS PL
1012 Barrenjoey Rd Palm Beach 2108
tel: 0439 483 997
email: arkhouse@bigpond.com

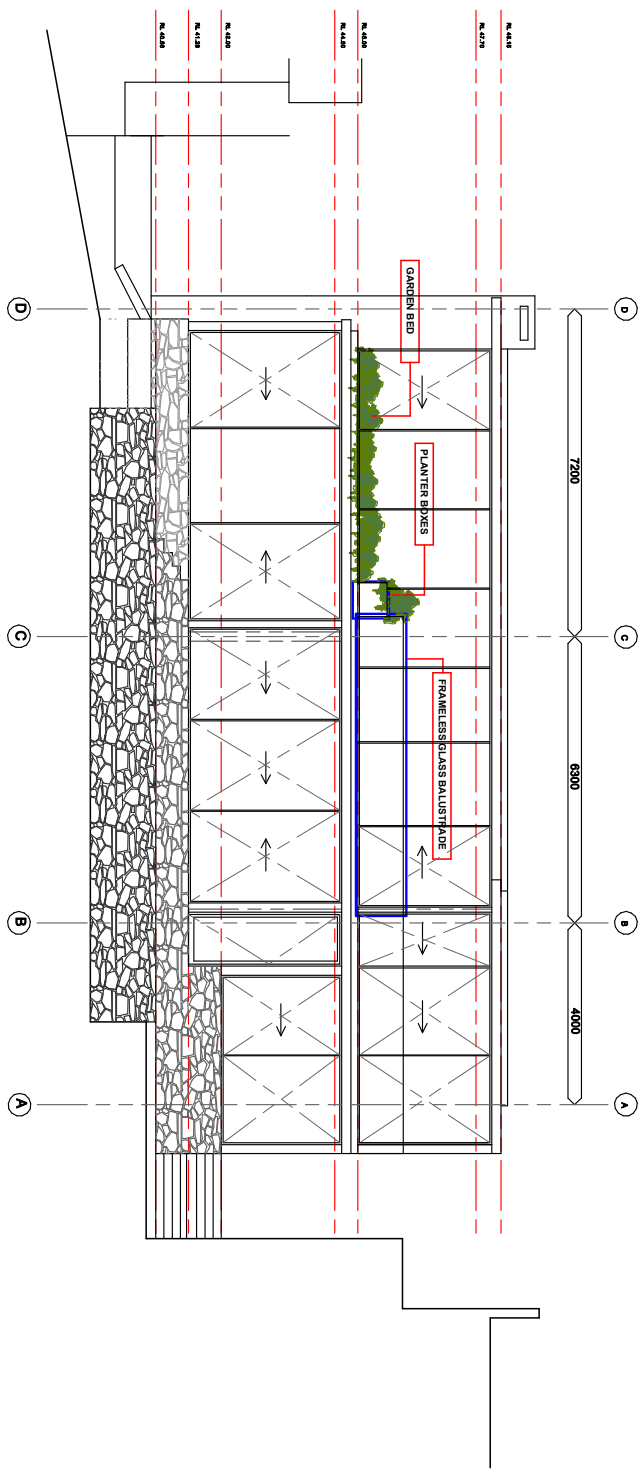
1 Lovering Place NEWPORT

DA-04D

WESTERN ELEVATION



EASTERN ELEVATION



SCALE 1 : 100 @ A3 0 1000 2000 5000

ELEVATIONS 01

DATE 15/03/2024
SCALE : 1:100 @ A3
LOT 7 DP 21686

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1 Lovering Place NEWPORT

DA-05B

ITEM 3.6 DA2024/0530 - 77 BASSETT STREET MONA VALE - INSTALLATION OF 6 BUSINESS IDENTIFICATION SIGNS TO EXISTING BUILDING FAÇADE

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 DA2024/0530 for Installation of 6 business identification signs to existing building façade on land at Lot 1 DP 88028, 77 Bassett Street MONA VALE, subject to the conditions set out in the Assessment Report.

Reporting manager	Adam Richardson
TRIM file ref	2024/591017
Attachments	⇩1 Assessment Report ⇩2 Site Plan and Elevations

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/0530

Responsible Officer:	Stephanie Gelder
Land to be developed (Address):	Lot 1 DP 88028, 77 Bassett Street MONA VALE NSW 2103
Proposed Development:	Installation of 6 business identification signs to existing building façade
Zoning:	E4 General Industrial
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	JJ Drafting Australia Pty Ltd

Application Lodged:	11/06/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	20/06/2024 to 04/07/2024
Advertised:	Not Advertised
Submissions Received:	6
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	$ 40,000.00

EXECUTIVE SUMMARY

This development application seeks consent for installation of 6 business identification signs to existing building façade for the proposed Total Tools.

The application is referred to the Development Determination Panel (DDP) due to more than 5 objections received, with a total of 6 unique objections received.

The application was notified in accordance with the Northern Beaches Community Participation Plan. Concerns raised in the objections predominantly relate to exempt development provisions, internal fitout works/unauthorised works, parking, traffic, character of the area, signage, value of homes, and the public interest. The issues raised within the submissions do not warrant refusal of the application and the concerns are addressed in detail within the report.

A merit assessment against that Clause C3.12 Signage of Pittwater 21 Development Control Plan has been undertaken. It is considered that the proposed signage is appropriate and provides suitable business identification signage. As application REV2024/0021 for the *"Use of Premises as a hardware and building supplies facility"* has yet to be determined, a suitable condition is recommended to ensure that an Operational Consent is obtained for the use of the premises as a hardware and building supplies facility (Total Tools). The recommended condition will restrict the issue of a Construction Certificate for this DA until an Operational Consent is to be obtained for REV2024/0021.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposed development comprises of the following works:

- Installation of 6 business identification signs to existing building façade.

The proposed signage is for "Total Tools" standard signage to be applied to the North, West and East façades 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

Pittwater 21 Development Control Plan - C3.12 Signage
Pittwater 21 Development Control Plan - D9.1 Character as viewed from a public place
Pittwater 21 Development Control Plan - D9.3 Building colours and materials

SITE DESCRIPTION

Property Description:	Lot 1 DP 88028 , 77 Bassett Street MONA VALE NSW 2103
Detailed Site Description:	The subject site consists of two (2) units within an industrial complex located on the south-western side of Bassett Street. The site is regular in shape with a frontage of 102.745m along Bassett Street and a depth of 146.38m. The site has a surveyed area of 14470m². The site is located within the E4 General Industrial zone (previously IN2 Light Industrial) from PLEP 2014 and accommodates two buildings with multiple units separated by a central driveway. The site is generally flat with no significant changes in topography. The site contains lawn areas and trees at the front of the site. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by neighbouring industrial sites to the east, west and south along Bassett Street. Development to the north consists of dwelling houses zoned R2 Low Density Residential.

Map:



SITE HISTORY

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

CDC2024/0370
Complying Development Certificate for Alterations to an existing fire hydrant system - Stage 1 works approved only.
Works include Stage 1 of hydrant works to include the booster and FH1 Upgrade to AS2419.1:2021 compliance to Unit 1 & 2.
Approved on 21 May 2024.

DA2023/1841
Development Application for Use of Premises as a hardware and building supplies facility and associated internal alterations.
Refused on 22 May 2024 by Development Determination Panel.

REV2024/0021
Review Application for Review of Determination of Application DA2023/1841 for Use of Premises as a hardware and building supplies facility and associated internal alterations.
Currently under assessment.

APPLICATION HISTORY
Following the preliminary assessment of the application, Council conducted a site visit on 25 June 2024. It was noted at the site visit that the proposed colour to the building façade works had already been undertaken.

On 8 July 2024, Council requested further information in relation to the proposed colour of the building façade, and Clause C3.12 Signage of Pittwater 21 Development Control Plan.

Subsequently, on 11 July 2024, the applicant submitted an amended Statement of Environmental Effects, and amended Master Plans that deleted the proposed colour of the building façade from the application. On page 23 of the amended Statement of Environmental Effects (prepared by Vaughan Milligan Development Consulting Pty Ltd, dated July 2024), the response under Clause D9.3 Building Colours of Pittwater 21 Development Control Plan is as follows: *"The controls suggest that building finishes should be primarily dark earthy colours. The building has been painted and the works do not form part of this application, as they are considered to be exempt development".*

The amended documentation 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). Notwithstanding the provisions of the CPP, the neighbouring properties were informed of the amended plans via written email correspondence on 15 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 environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report. The NSW employment zones reforms have been made and came into

Section 4.15 Matters for Consideration	Comments
	force on 26 April 2023. These reforms resulted in this property changing from a IN2 Light Industrial zone to a E4 General Industrial zone. The proposed use remains permissible in the new zone.
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 documentation has been submitted. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to the colour of the building façade, and Clause C3.12 Signage of Pittwater 21 Development Control Plan. Subsequently the applicant submitted an amended Statement of Environmental Effects, and amended Master Plans that deleted the proposed colour of the building façade from the application. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development,	(i) **Environmental Impact** The environmental impacts of the proposed development on the

Section 4.15 Matters for Consideration	Comments
including environmental impacts on the natural and built environment and social and economic impacts in the locality	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 20/06/2024 to 04/07/2024 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 6 submission/s from:

Name:	Address:
Mr Mario Francisco Benitez	94 Bassett Street MONA VALE NSW 2103
Mr Jens Frei	96 Bassett Street MONA VALE NSW 2103
Mrs Vanessa Alison McDonald	56 Bassett Street MONA VALE NSW 2103
Mr Brian Stanley Hawkett Mrs Ruby Josephine Hawkett	1 Jedda Place MONA VALE NSW 2103
Withheld	MONA VALE NSW 2103
Withheld	MONA VALE NSW 2103

The following issues were raised in the submissions:

- ***Exempt Development***

  The submissions raised concerns surrounding the painted red façade without approval as they have deemed this to be exempt development, however this paint colour does not 100% comply with the relevant development standards as identified by the Department of Planning and Environment.

  Comment:
  The applicant has deleted the proposed red painted colour façade from the application, as such the proposed external painting of the existing development does not form part of this application. Notwithstanding, the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* is a state legislation that supersedes Council's Development Control Plan.

- ***Internal Fitout/Unauthorised Works***

  The submissions raised concerns that the applicant has begun the internal fitout without approval, resulting in unauthorised works.

  Comment:
  This submissions in relation to the internal fitout/unauthorised works are not related to this application as this application is for the installation of signage. A detailed assessment has been conducted under REV2024/0021.

- ***Statement of Environmental Effects***

  The submissions raised concerns that the Statement of Environmental Effects prepared May 2025 (Revised 2024) includes images of the original building consisted of black, grey and brown coloured finishes, consistent with Pittwater 21 DCP. This is not a true representation of what the building looks like today. The applicant has painted the building red which is not permitted in Pittwater 21 DCP Section 9.3. Further concerns were raised with the accuracy of the Statement of Environmental Effects.

  Comment:
  It is noted that the Statement of Environmental Effects includes images of the building prior to the painting of the façade red. However, as detailed above the proposed painting of the façade has been deleted from the application, as the works have been conducted and deemed Exempt Development. The Statement of Environmental Effects has been reviewed as an accompanying documents, and Council has conducted a detailed assessment against the relevant legislation and controls.

- ***Ownership***

  The submissions raised concerns that this application references Unit 1 and 2 ONLY. There should be no reference or reliance on Unit 3 as this Unit does no form part of this application. The owners consent letter also acknowledges/identifies that Unit 3 does not form part of the proposed 'Total Tools' store.

Comment:
The proposed signage is located on Unit 1 and Unit 2 only.

- ***Parking***

  The submissions raised concerns surrounding the proposed tandem parking, and reliance on Unit 3 parking and re-distribution of car spaces for Unit 3 elsewhere on the site.

  Comment:
  This submission relating to parking is not related to this application as this application is for the installation of signage. A detailed assessment has been conducted under REV2024/0021.

- ***Traffic Report***

  The submissions raised concerns surrounding swept paths for small trucks, without mentioning larger trucks.

  Comment:
  This submission relating to the Traffic Report is not related to this application as this application is for the installation of signage. A detailed assessment has been conducted under REV2024/0021.

- ***Access***

  The submissions raised concerns surrounding how access will be managed to the rear spaces when the is a gate that is actively closed.

  Comment:
  This submission relating to access is not related to this application as this application is for the installation of signage. A detailed assessment has been conducted under REV2024/0021.

- ***Character of the Area***

  The submissions raised concerns that the proposed development is inconsistent with the character of the area.

  Comment:
  A detailed assessment has been conducted under Clause D9.1 Character as viewed from a public place of Pittwater 21 Development Control Plan contained within this report. In summary, it is considered the proposal is consistent with Clause D9.1 of Pittwater 21 Development Control Plan.

- ***Signposting***

  The submissions raised concerns surrounding signposting of the "Total Tools" car spaces.

  Comment:
  This submission relating to signposting works is not related to this application as this application is for the installation of signage that has not be undertaken. A detailed assessment has been conducted under REV2024/0021.

- ***Traffic***

The submissions raised concerns surrounding traffic in the area and surrounding streets.

Comment:
This submission relating to traffic is not considered to be related to this application, as the application is for the installation of signage. A detailed assessment has been conducted under REV2024/0021.

- ***Value of Homes***

  The submissions raised concerns that residential properties located on the northern side of Bassett Street will be devalued significantly due to the red colour of the development.

  Comment:
  The suggestion that the colour of the development will devalue adjoining residential developments is not a matter for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

- ***Signage***

  The submissions raised concerns surrounding the size of the signage beyond the limits of 4.5m^2.

  Comment:
  A detailed assessment has been conducted under Clause C3.12 Signage of Pittwater 21 Development Control Plan. It is considered that the size of the signage is acceptable and proportionate to the overall area of the north, east and western façades. Therefore, it is considered that the proposed signage is appropriate in this circumstance.

- ***Public Interest***

  The submissions raised concerns surrounding the public interest to be considered, and that the applicant has not mentioned the neighbours as a relevant consideration in their proposal.

  Comment:
  Council has considered and addressed the submissions and subsequent public interest with this Assessment Report. Overall, it is considered that the proposal is acceptable and is therefore within the public interest.

REFERRALS

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

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

SEPP (Industry and Employment) 2021

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

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

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

Matters for Consideration	Comment	Complies
1. Character of the area Is the proposal compatible with the existing or	The proposed signage is consistent with the desired future character of the	YES

desired future character of the area or locality in which it is proposed to be located?	Mona Vale Commercial Centre. The proposal is consistent with signage in the industrial complex and surrounding industrial zoned land.	
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	The proposal is consistent with business identification signage in surrounding industrial sites.	YES
2. Special areas Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	The subject site is located in E4 General Industrial zone of Pittwater Local Environmental Plan 2014. It is considered that the proposal will not detract from any amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas. It is noted that residential zoned land is located to the north of the site, however it is considered that there is a suitable front setback on the site, coupled with the physical separation of Bassett Street to mitigate any unacceptable amenity or visual impacts.	YES
3. Views and vistas Does the proposal obscure or compromise important views?	The proposal is affixed to the existing premise, and as such will not result in any obscuring or compromising of important views.	YES
Does the proposal dominate the skyline and reduce the quality of vistas?	The proposal is affixed to the existing premise, and as such will not dominate the skyline or reduce the quality of vistas.	YES
Does the proposal respect the viewing rights of other advertisers?	The signage will not adversely impact on the viewing rights of other advertisers in the area.	YES
4. Streetscape, setting or landscape Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	The scale, proportion and form of the proposal is considered appropriate for the streetscape, setting and landscape of the general industrial zone.	YES
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The proposal provides business identification signage that effectively communicates the premise as a hardware and building supplies retailer. It is considered that the proposal contributes to the visual interest of the streetscape, setting and landscape of the general industrial zone.	YES
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	The proposal provides clear signage that simplifies the signage on site.	YES

Does the proposal screen unsightliness?	The proposal is affixed to the existing premise and is consistent with the existing premise. The proposal is not considered to screen unsightliness.	YES
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	The proposed signage is flush with the existing premise and does not protrude above buildings, structures or tree canopies in the area or locality.	YES
5. Site and building Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	The proposal is compatible with the scale, and proportion of the existing premise and is consistent with signage within the site.	YES
Does the proposal respect important features of the site or building, or both?	The proposal respects the existing premise and overall signage within the industrial site.	YES
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	The proposed signage is compatible to the premise, and demonstrates an appropriate relationship to the site and building.	YES
6. Associated devices and logos with advertisements and advertising structures Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	The proposal does not include any safety devices, platforms, or lighting devices. The proposal includes logos that are consistent with the Total Tools branding and corporate colours.	YES
7. Illumination Would illumination result in unacceptable glare, affect safety for pedestrians, vehicles or aircraft, detract from the amenity of any residence or other form of accommodation?	The proposed signage does not include illumination.	N/A
Can the intensity of the illumination be adjusted, if necessary?	The proposed signage does not include illumination.	N/A
Is the illumination subject to a curfew?	The proposed signage does not include illumination.	N/A
8. Safety Would the proposal reduce the safety for any public road, pedestrians or bicyclists?	The signage will not reduce the safety for any public road, pedestrians or cyclists.	YES
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	Safety for pedestrians, particularly children is not expected to be reduced as a result of the proposed signage.	YES

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for industrial 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 industrial 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:	11.0m	7.0m (Top of Sign)	-	Yes
Floor Space Ratio	FSR: 1:1	unaltered	-	N/A

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	N/A
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.10 Essential services	Yes

Pittwater 21 Development Control Plan

Built Form Controls

There are no relevant Built Form Controls for this application as the proposed signage is affixed to the existing premises.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.9 Mona Vale Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.9 Estuarine Hazard - Business, Light Industrial and Other Development	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
C3.2 Safety and Security	Yes	Yes
C3.8 Building Facades	Yes	Yes
C3.12 Signage	No	Yes
D9.1 Character as viewed from a public place	Yes	Yes
D9.2 Scenic protection - General	Yes	Yes
D9.3 Building colours and materials	N/A	N/A
D9.16 Character of the Public Domain - Mona Vale Commercial Centre	Yes	Yes

Detailed Assessment

C3.12 Signage

Description of non-compliance

The proposed signage is for six (6) business identification signs for 'Total Tools' to be applied to the North, West and East façades of the building.

The proposed signage consists of the following:

1. North Elevation - Wall Sign "Total Tools" - 7.4m x 1.28m (approx. 9m^2)
2. North Elevation - Wall Sign "Total Tools" - 9.68m x 1.685m (approx. 15.5m^2)
3. North Elevation - Wall Sign "Low Price Guarantee" - 2.9m x 1.4m (approx. 3.1m^2)
4. North Elevation - Window Sign "Total Tools Man" - 2 panels of 0.8m x 2.4m (each panel approx. 1.9m^2)
5. East Elevation - Wall Sign "Total Tools" - 9.68m x 1.685m (approx. 15.5m^2)
6. West Elevation - Wall Sign "Total Tools" - 7.4m x 1.28m (approx. 9m^2)

Under Clause 3.12 Signage of Pittwater 21 Development Control Plan wall signs are defined as:
Wall sign (painted onto a wall of a building or attached to the wall of a building, not being a sign elsewhere listed in this table)

The criteria of walls signs are as follows:
i) shall not extend laterally beyond the wall of the building upon which it is attached;

ii) shall not cover any window or architectural projections;
iii) shall not have a signage area greater than 4.5sq m;
iv) where illuminated, shall not be less than 2.6m above the ground; and
v) shall not project more than 300mm from the wall.

The proposed wall signs are affixed to the existing premises and do not extend laterally beyond the wall of the building which it is attached, with the exception of the hat of the "Total Tools" person on Sign 2 and Sign 5. It is considered the portion of the hat of the "Total Tools' person that extends beyond the wall is acceptable, as it does not extended higher than the maximum height of the existing premises. The wall signs do not cover any window or architectural projections. The proposed signage presents area great than 4.5m2 for Sign 1, Sign 2, Sign 5, and Sign 6. However, it is considered that the size of the signs are proportionate and relative to the area available on the existing premise and the signage is not disproportionate to the overall area of the north, east and western facades. The proposed signage is not illuminated, and a suitable condition has been recommended to ensure no illumination. The proposed signage is to be mounted on the façade and therefore will not project from than 300mm from the wall. It addition to this, the quantum and setting of the signage is not dissimilar to that of signage displayed on surrounding buildings.

Under Clause 3.12 Signage of Pittwater 21 Development Control Plan window signs are defined as:
Window sign (painted or letters stuck onto the inside or outside of a display window)

The criteria of window signs are as follows:
i) shall not cover the whole of the display window so as to obstruct natural light;
ii) shall only be permitted on ground floor windows.

The proposed Sign 4 consists of two (2) panels on the existing windows on the ground floor on either side of the entrance to the premise. The proposed window signs will not cover the whole of the display window and will not obstruct natural light. The window signs are located on the ground floor windows only.

A detailed assessment has been conducted under the outcomes of the control as detailed below. It is considered despite the variations to the criteria of the wall signs, the proposed signage is acceptable given the circumstances of the proposal.

Merit consideration

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

- ***Signage is are compatible with the desired amenity and visual character of the locality. (S)***

  Comment:
  The proposed signage is compatible with the desired amenity and visual character of the Mona Vale Locality that is within the E4 General Industrial Zone of Pittwater Local Environmental Plan 2014. The proposal is consistent with surrounding signage, and therefore is considered to be acceptable.

- ***Signage does not adversely impact upon any heritage item or conservation area. (S)***

  Comment:

The site is not located a heritage item or located within a heritage conservation area.

- ***Signage does not result in visual clutter of the landscape. (S)***

  Comment:
  The proposed signage does not result in visual clutter of the landscape, and is appropriately located on the existing building. The proposed signage is considered to be of an acceptable scale and design that does not result in unacceptable clutter.

- ***Signage is of high quality design and finish. (S)***

  Comment:
  The proposed signage is of high quality design and finish that will present appropriately to the streetscape and surrounding sites.

D9.1 Character as viewed from a public place

The proposal for the installation of 6 business identification signs to existing building façade has been assessed against the outcomes of the control as detailed below.

It is considered that the proposal is consistent with the outcomes of the control, and is therefore compatible with the character as viewed from a public place.

Merit consideration

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

- ***To achieve the desired future character of the Locality.***

  Comment:
  The proposal is consistent with the desired future character of the Mona Vale Locality that stipulates the following: "*Retail, commercial and light industrial land uses will be employment-generating. The Mona Vale commercial centre status will be enhanced to provide a one-stop convenient centre for medical services, retail and commerce, exploiting the crossroads to its fullest advantage and ensuring its growth and prosperity as an economic hub of sub-regional status*".

- ***To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing built and natural environment. (En, S, Ec)***

  Comment:
  The proposed signage does not result in any changes to the existing development. As such, the proposal will not result on any adverse impacts to the existing built and natural environment.

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

  Comment:

The proposal does not result in any changes to the existing scale and density of the development.

- ***The visual impact of the built form is secondary to landscaping and vegetation, or in commercial areas and the like, is softened by landscaping and vegetation. (En, S, Ec)***

  Comment:
  The site includes existing trees located forward of the existing building. As such, the existing landscaping and vegetation will soften the built form.

- ***High quality buildings designed and built for the natural context and any natural hazards. (En, S)***

  Comment:
  The proposal does not alter the existing building design. Notwithstanding, the proposal is consistent with the natural context that includes surrounding industrial development.

- ***Buildings do not dominate the streetscape and are at 'human scale'. Within residential areas, buildings give the appearance of being two-storey maximum. (S)***

  Comment:
  The location of the existing building is unaltered. The existing building is no greater than two storeys.

- ***To preserve and enhance district and local views which reinforce and protect the Pittwater's natural context.***

  Comment:
  The proposed signage is consistent with the existing height of the building and as such will not impact on any district or local views.

- ***To enhance the bushland vista of Pittwater as the predominant feature of the landscape with built form, including parking structures, being a secondary component.***

  Comment:
  The site is located in the E4 General Industrial zone of Pittwater Local Environmental Plan. As such, the vista is largely industrial sites that include limited landscape features.

- ***To ensure that development adjacent to public domain elements such as waterways, streets, parks, bushland reserves and other public open spaces, compliments the landscape character, public use and enjoyment of that land. (EN, S)***

  Comment:
  The development is adjacent to Bassett Street and residential development located on the northern side of Bassett Street. The proposed signage is consistent with the streetscape along the southern side of Bassett Street.

D9.3 Building colours and materials

As detailed in the Statement of Environmental Effects prepared by Vaughan Milligan Development Consulting Pty Ltd dated July 2024, the following is detailed under Clause D9.3 of Pittwater 21

Development Control Plan:

The controls suggest that building finishes should be primarily dark earthy colours. The building has been painted and the works do not form part of this application, as they are considered to be exempt development.

Therefore, the application does not propose any changes to the building colours and materials.

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;
- 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 installation of 6 business identification signs to existing building façade has been referred to the Development Determination Panel (DDP) due to more 5 objections received, with a total 6 unique objections received.

The concerns raised in the objections have been addressed within the report, and it is considered that the concerns raised were largely relating to REV2024/0021. Notwithstanding, the relevant concerns have been considered during the assessment of the application and do not warrant the refusal of the application.

The critical assessment issues including variation to Clause C3.12 Signage of Pittwater 21 Development Control Plan has been address and it is considered that the proposed signage is appropriate and provides suitable business identification signage. Furthermore, as a valid consent for the use of the premises as a hardware and building supplies premise has not been obtained, a suitable condition is recommended to ensure an valid consent is obtained prior to the issuance of a Construction Certificate as the installation of the signage directly relates to the associated use of a hardware and building supplies premise.

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

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 DA2024/0530 for Installation of 6 business identification signs to existing building façade on land at Lot 1 DP 88028, 77 Bassett Street, MONA VALE, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

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

require otherwise.

Approved Plans				
Plan Number	**Revision Number**	**Plan Title**	**Drawn By**	**Date of Plan**
DA.01	B	Site Plan	JJ Drafting Australia Pty Ltd	9 July 2024
DA.03	B	Elevations Sheet 1	JJ Drafting Australia Pty Ltd	9 July 2024
DA.04	B	Elevations Sheet 2	JJ Drafting Australia Pty Ltd	9 July 2024
DA.05	B	Elevations Sheet 3	JJ Drafting Australia Pty Ltd	9 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. **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 ***business identification sign***, in accordance with the Dictionary of the Pittwater Local Environmental Plan 2014, as follows:

business identification sign *means a sign—*
(a) that indicates—
(i) the name of the person or business, and
(ii) the nature of the business carried on by the person at the premises or place at which the sign is displayed, and
(b) that may include the address of the premises or place and a logo or other symbol that identifies the business,
but that does not contain any advertising relating to a person who does not carry on business at the premises or place.

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.

3. **Prescribed Conditions**
(a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
(b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);

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

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

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

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

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

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

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

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

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

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

A. the name of the owner-builder, and

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

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

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

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

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

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

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

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

Reason: Legislative requirement.

4. **General Requirements**

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

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

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

(b) Construction certificate plans are to be in accordance with all finished levels identified on approved plans. Notes attached to plans indicating tolerances to levels are not approved.

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

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

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

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

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

i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than $250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.

iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.

(h) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

(i) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(j) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(k) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

(l) Prior to the commencement of any development onsite for:

i) Building/s that are to be erected

ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place

iii) Building/s that are to be demolished

iv) For any work/s that is to be carried out

v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

(m) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

(n) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

(o) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

(1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools

(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

(2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

(3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

(4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

FEES / CHARGES / CONTRIBUTIONS

5. **Security Bond**

A bond (determined from cost of works) of $2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the Certifier prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at www.northernbeaches.nsw.gov.au).

Reason: To ensure adequate protection of Council's infrastructure.

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

6. **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.

7. **Operational Consent**
An Operational Consent is to be obtained for the use of Premises as a hardware and building supplies facility.

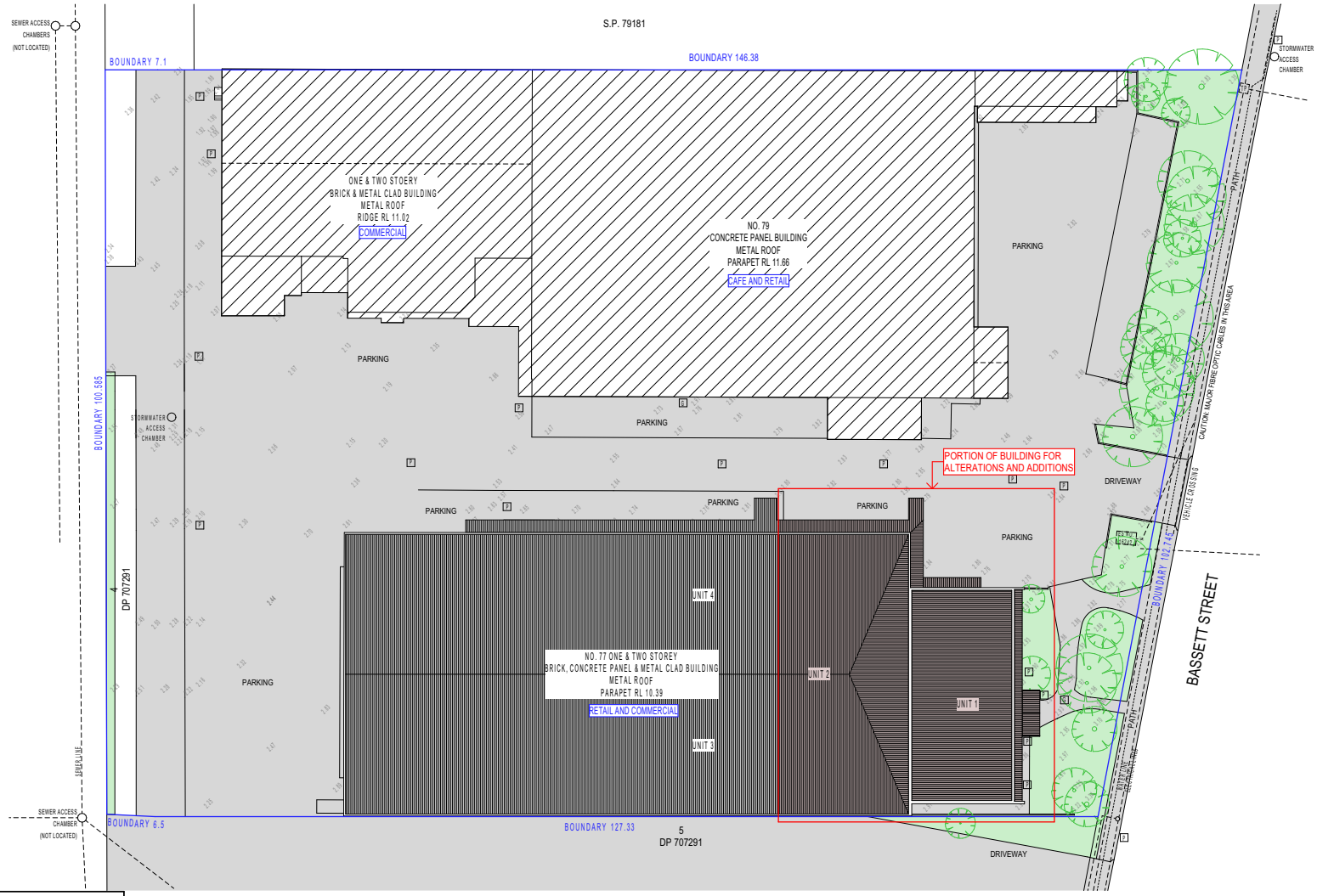
Details demonstrating an Operational Consent has been obtained is to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure the orderly development of land.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

8. **No Illumination**
No consent is given or implied for any form of illumination or floodlighting to any sign or building or other external areas other than that approved.

Reason: To ensure appropriate forms of illumination that are consistent with Council's controls, and do not interfere with amenity of nearby properties.



LOT 1
DP 88028

SITE AREA = 14470 m²

SITE PLAN

TRUE NORTH:

NOTES (E & OE)
- All structures including stormwater & drainage to engineer's details.
- Do not obtain dimensions by scaling drawings.
- All dimensions are to be checked on site prior to starting work.
- These drawings are to be read in conjunction with all other consultant's drawings and specifications.
- All workmanship & materials shall be in accordance with the requirements of current editions including amendments of the National Construction Code, relevant Australian Standards & local council requirements.
- New materials are to be used throughout unless otherwise noted.
- Concrete footings, slab, structural beams or any other structural members are to be designed by a practicing engineer.

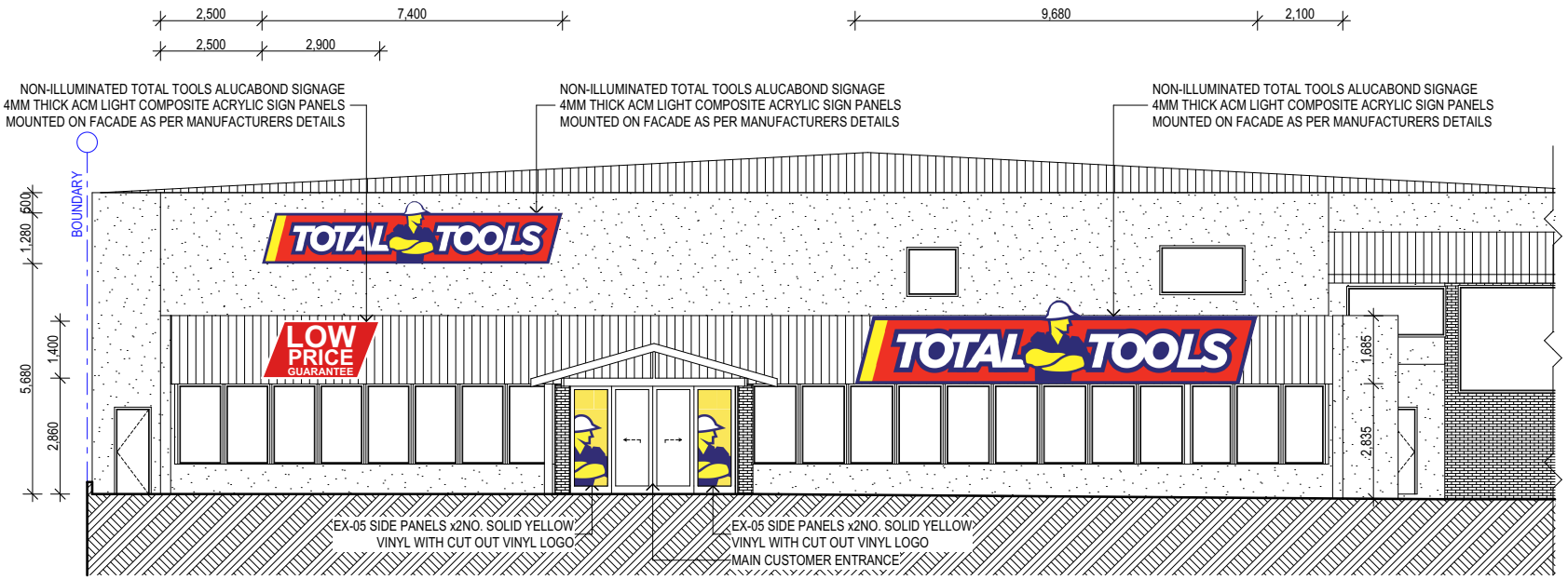
JJ Drafting Australia P/L.
26/90 Mona Vale Road, Mona Vale, NSW, 2103
PO Box 687, Dee Why, NSW, 2099
Mob. 0414 717 541 | ACN 651 693 346
Email. enquiries@jjdrafting.com.au
www.jjdrafting.com.au

REV:	DATE:	DESCRIPTION:
(F) A	24/04/2024	DA DRAWINGS - SIGNAGE
B	9/07/2024	DA DRAWINGS - REVISE (ADD. INFO.)

ALTERATIONS & ADDITIONS (PROPOSED SIGNAGE)
77 BASSETT STREET, MONA VALE
CLIENT:
ROBERT JOHNSON

DRAWING TITLE:
SITE PLAN

DATE:	DRAWN BY:	SCALE:
APR/24	AD	1:500 @ A3
JOB No: 1247/24	CHECKED BY: JJ	DRAWING No: **DA.01**



NORTH ELEVATION

NOTES (E & OE)
- All structures including stormwater & drainage to engineer's details.
- Do not obtain dimensions by scaling drawings.
- All dimensions are to be checked on site prior to starting work.
- These drawings are to be read in conjunction with all other consultant's drawings and specifications.
- All workmanship & materials shall be in accordance with the requirements of current editions including amendments of the National Construction Code, relevant Australian Standards & local council requirements.
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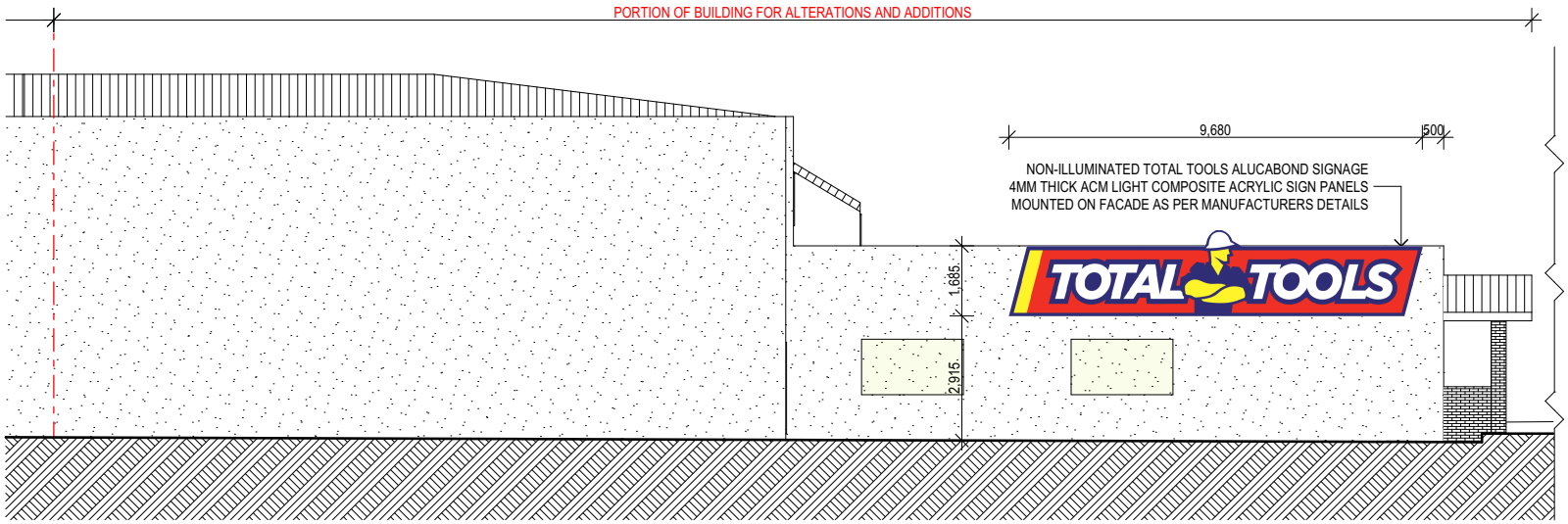
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ALTERATIONS & ADDITIONS (PROPOSED SIGNAGE)
77 BASSETT STREET, MONA VALE
CLIENT:
ROBERT JOHNSON

DRAWING TITLE:
ELEVATIONS SHEET 1

DATE:	DRAWN BY:	SCALE:
APR/24	AD	1:100 @ A3
JOB No:	CHECKED BY:	DRAWING No:
1247/24	JJ	**DA.03**



EAST ELEVATION

TRUE NORTH:

NOTES (E & OE)
- All structures including stormwater & drainage to engineer's details.
- Do not obtain dimensions by scaling drawings.
- All dimensions are to be checked on site prior to starting work.
- These drawings are to be read in conjunction with all other consultant's drawings and specifications.
- All workmanship & materials shall be in accordance with the requirements of current editions including amendments of the National Construction Code, relevant Australian Standards & local council requirements.
- New materials are to be used throughout unless otherwise noted.
- Concrete footings, slab, structural beams or any other structural members are to be designed by a practicing engineer.

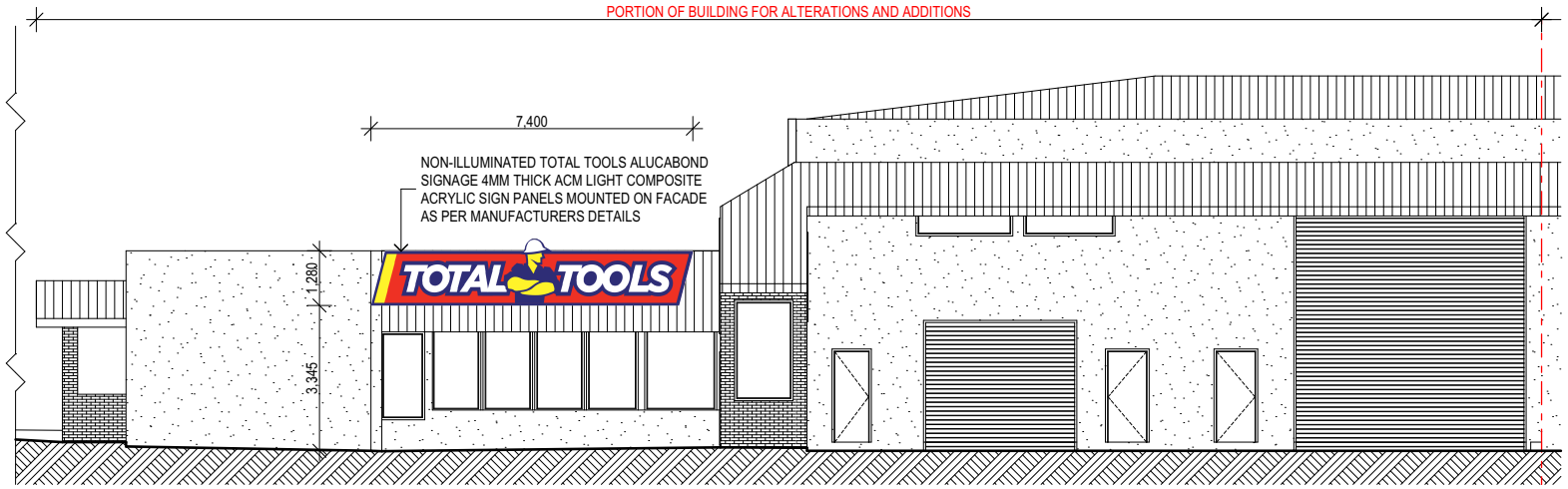
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REV:	DATE:	DESCRIPTION:
(F) A	24/04/2024	DA DRAWINGS - SIGNAGE
B	9/07/2024	DA DRAWINGS - REVISE (ADD. INFO.)

ALTERATIONS & ADDITIONS (PROPOSED SIGNAGE)
77 BASSETT STREET, MONA VALE
CLIENT:
ROBERT JOHNSON

DRAWING TITLE:
ELEVATIONS SHEET 2

DATE:	DRAWN BY:	SCALE:
APR/24	AD	1:100 @ A3
JOB No:	CHECKED BY:	DRAWING No:
1247/24	JJ	**DA.04**



WEST ELEVATION

TRUE NORTH:

NOTES (E & OE)
- All structures including stormwater & drainage to engineer's details.
- Do not obtain dimensions by scaling drawings.
- All dimensions are to be checked on site prior to starting work.
- These drawings are to be read in conjunction with all other consultant's drawings and specifications.
- All workmanship & materials shall be in accordance with the requirements of current editions including amendments of the National Construction Code, relevant Australian Standards & local council requirements.
- New materials are to be used throughout unless otherwise noted.
- Concrete footings, slab, structural beams or any other structural members are to be designed by a practicing engineer.

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REV:	DATE:	DESCRIPTION:
(F) A	24/04/2024	DA DRAWINGS - SIGNAGE
B	9/07/2024	DA DRAWINGS - REVISE (ADD. INFO.)

ALTERATIONS & ADDITIONS (PROPOSED SIGNAGE)
77 BASSETT STREET, MONA VALE
CLIENT:
ROBERT JOHNSON

DRAWING TITLE:
ELEVATIONS SHEET 3

DATE:	DRAWN BY:	SCALE:
APR/24	AD	1:100 @ A3
JOB No:	CHECKED BY:	DRAWING No:
1247/24	JJ	**DA.05**

ITEM 3.7 REV2024/0021 - 77 BASSETT STREET MONA VALE - REVIEW OF DETERMINATION OF APPLICATION DA2023/1841 FOR USE OF PREMISES AS A HARDWARE AND BUILDING SUPPLIES FACILITY AND ASSOCIATED INTERNAL ALTERATIONS

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 REV2024/0021 for Review of Determination of Application DA2023/1841 for Use of Premises as a hardware and building supplies facility and associated internal alterations on land at Lot 1 DP 88028 & Lot 4 DP 707291, 77 Bassett Street MONA VALE, subject to the conditions set out in the Assessment Report.

Reporting manager	Adam Richardson
TRIM file ref	2024/591141
Attachments	⇩1 Assessment Report ⇩2 Site Plan and Elevations

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2024/0021

Responsible Officer:	Stephanie Gelder
Land to be developed (Address):	Lot 1 DP 88028, 77 Bassett Street MONA VALE NSW 2103 Lot 4 DP 707291, 77 Bassett Street MONA VALE NSW 2103
Proposed Development:	Review of Determination of Application DA2023/1841 for Use of Premises as a hardware and building supplies facility and associated internal alterations
Zoning:	E4 General Industrial
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	JJ Drafting Australia Pty Ltd

Application Lodged:	26/06/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	05/07/2024 to 19/07/2024
Advertised:	Not Advertised
Submissions Received:	6
Clause 4.6 Variation:	Nil
Recommendation:	Deferred Commencement Approval

Estimated Cost of Works:	$ 150,000.00

EXECUTIVE SUMMARY

This review application seeks to review the determination of Development Application DA2023/1841 for the use of an existing premises as a hardware and building supplies facility and associated internal alterations that was determined by way of refusal on 22 May 2024 by the Development Determination Panel (DDP).

The application is referred to the DDP as any Review of Determination under Section 8.2 for a development previously determined by the DDP is required to be determined by the DDP, and the application has received six (6) unique objections, including one (1) supportive petition.

DA2023/1841 was refused by DDP for the following five (5) reason as detailed below:

1. *Pursuant to Section 4.15(1)(b)(i)(ii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the environmental impact and social impact provisions of the Environmental Planning and Assessment Act 1979.*
2. *Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause A1.7 Considerations before consent is granted of the Pittwater 21 Development Control Plan.*
3. *Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B6.3 Off-Street Vehicle Parking Requirements of the Pittwater 21 Development Control Plan.*
4. *Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979 the proposed development is unsuitable for the site and therefore inconsistent with the provisions of the Environmental Planning and Assessment Act 1979.*
5. *Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.*

In seeking the review, the applicant has sought to address the reasons for refusal namely insufficient car parking through the provision of additional and amended information. On balance, the reviews finds that the use of the premises as a hardware and building supplies facility is supportable, subject to a deferred commencement approval.

The application was notified in accordance with the Northern Beaches Community Participation Plan. During the notification period, a total of 6 submissions were received. Concerns raised in the submissions predominantly relate to unauthorised works, colour and signage, parking, traffic, ownership of the units, the submission of an inadequate Statement of Environmental Effects, and the public interest. The issues raised within the submissions do not warrant refusal of the application and the concerns are addressed in detail within the report.

This report concludes with a recommendation that the DDP grant deferred commencement approval to the review application, subject to recommended conditions.

PROPOSED DEVELOPMENT IN DETAIL

The Review Application seeks consent for the use of Premises as a hardware and building supplies facility and associated internal alterations for the subject units, known as Units 1 & 2, 77-79 Bassett Street.

The proposal seeks consent for the following operating hours:

- Monday to Friday: 7.00am-5.30pm
- Saturday: 8.00am-5.00pm
- Sunday: 9.30am-3.00pm

The proposal will also have a maximum of five (5) staff on site at any given time.

The proposal does not involve any increase in the gross floor area of the building.

The proposal includes the provision of the following parking spaces for Units 1 & 2:

- 10 Single Car Spaces;
- 6 Tandem Car Spaces (12 Single Car Spaces);
- 1 Disabled Car Space; and
- 1 Motorcycle Space.

Total - 23 Car Spaces and 1 Motorcycle Space

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
Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements
Pittwater 21 Development Control Plan - D9.3 Building colours and materials

SITE DESCRIPTION

Property Description:	Lot 1 DP 88028 , 77 Bassett Street MONA VALE NSW 2103 Lot 4 DP 707291 , 77 Bassett Street MONA VALE NSW 2103
Detailed Site Description:	The subject site consists of two (2) units within an industrial complex located on the south-western side of Bassett Street. The site is regular in shape with a frontage of 102.745m along Bassett Street and a depth of 146.38m. The site has a surveyed area of 14470m².

	The site is located within the E4 General Industrial zone (previously IN2 Light Industrial) from PLEP 2014 and accommodates two buildings with multiple units separated by a central driveway. The site is generally flat with no significant changes in topography. The site contains lawn areas and trees at the front of the site. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by neighbouring industrial sites to the east, west and south along Bassett Street. Development to the north consists of dwelling houses zoned R2 Low Density Residential.

Map:



SITE HISTORY

The land has been used for industrial purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

CDC2024/0370
Complying Development Certificate for Alterations to an existing fire hydrant system - Stage 1 works approved only.
Works include Stage 1 of hydrant works to include the booster and FH1 Upgrade to AS2419.1:2021 compliance to Unit 1 & 2.
Approved on 21 May 2024.

DA2023/1841
Development Application for Use of Premises as a hardware and building supplies facility and associated internal alterations.
Refused on 22 May 2024 by Development Determination Panel.

DA2024/0530
Development Application for Installation of 6 business identification signs to existing building façade.
Currently under assessment.

BC2024/0212
Building Information Certificate for
Currently under assessment.

APPLICATION HISTORY
Following the preliminary assessment of the application, Council undertook a site visit on 17 July 2024. The site visit concluded that the internal alterations proposed under this application had already been undertaken. It is noted that Council's Building Compliance team are aware of the internal alterations works and have investigated the works (Ref No.BLD2024/01044). In a response dated 13 June 2024 from Robert Johnson it is claimed that the works were done under the exempt development provisions of the Codes SEPP. However, when Council has reviewed Subdivision 13 Demolition of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP), demolition works are only exempt when the development is specified as exempt development under the Exempt Code. The erection of the works that have been demolished are not in themselves exempt development pursuant of the Codes SEPP and the demolition of them cannot be categorised as exempt development.

As such, the review of the determination of the DA cannot consider the internal alterations as Council is not able to retrospectively approve the works under such an application. On 18 July 2024, Council provided advice to the applicant surrounding the requirement for a Building Information Certificate to be lodged and approved to regularise the works undertaken to ensure the works are structurally adequate and meet the relevant fire safety requirements.

On 16 July 2024, the applicant submitted an amended Statement of Environmental Effects due a typographical error. The amended Statement of Environmental Effects did not alter the environmental impact and therefore, the application was not required to be re-notified, in accordance with the Northern Beaches Community Participation Plan (CPP).

On 8 August 2024, the applicant submitted a Cover Letter to confirm the description of the proposed works being sought within Application No REV2024/0021, with the application sought to be characterised as: "Use of Premises as a hardware and building supplies facility". Furthermore, as the application is for the use only, the estimated cost of the work is requested to be amended to $0.

On 8 August 2024, the applicant submitted a petition with signed signatures for support of the application, as well as an additional Cover Letter to clarify components of the proposal.

On 8 August 2024, the applicant lodged a Building Information Certificate (Ref No.BC2024/0212) for the internal alterations works.

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 22 May 2024 and the notice of determination was issued on 28 May 2024. The review was lodged on 20 June 2024 and is to be considered by the Development Determination Panel on 28 August 2024, which is within 6 months of the date of determination.

Section 8.3 (3) provides that the Council may review a determination if in the event that the applicant has made amendments to the development described in the original application, the consent authority is satisfied that the development, as amended, is substantially the same as the development described in the original application.

The amendments to the proposal are outlined in the 'Detailed Description of Works" section of this report.

A review of the original and amended plans has found that there are fundamental similarities between the original and the amended design (being subject of the 8.3 review) and the nature of the intended land use remains the same. 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.

The Review Application has addressed the reasons for refusal of DA2023/1841 as detailed below:

1. *Pursuant to Section 4.15(1)(b)(i)(ii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the environmental impact and social impact provisions of the Environmental Planning and Assessment Act 1979.*

   Comment:
   It is considered that the use of premises as a hardware and building supplies facility will not result in any unacceptable environmental or social impacts. The use of the premises as a hardware and building supplies facility does not result in any environmental impacts as no works are proposed. Furthermore, the use of the premises as a hardware and building supplies facility will not result in any unacceptable social impacts as the site is located within a General Industrial area and the proposed use is consistent with the E4 General Industrial zoning.

2. *Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause A1.7 Considerations before consent is granted of the Pittwater 21 Development Control Plan.*

   Comment:
   The proposal is consistent with the provisions of Clause A1.7 Considerations before consent is granted as the proposal is consistent with Pittwater Local Environmental Plan 2014 (PLEP 2014), the desired character of the Locality, and the development controls applicable to the development. The use of the premises as a hardware and building supplies facility is an

acceptable land use that is permitted in the E4 General Industrial zone of PLEP 2014.

3. *Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B6.3 Off-Street Vehicle Parking Requirements of the Pittwater 21 Development Control Plan.*

   Comment:
   As detailed under Clause B6.3 Off-Street Vehicle Parking Requirements contained within this report, the proposal provides adequate car parking. Council's Traffic Engineer has reviewed the proposal, and is supportable to the proposal, subject to recommended conditions.

4. *Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979 the proposed development is unsuitable for the site and therefore inconsistent with the provisions of the Environmental Planning and Assessment Act 1979.*

   Comment:
   It is considered that the proposal provides adequate off-street parking, and therefore the proposed development is suitable for the site and is consistent with the provisions of the Environmental Planning and Assessment Act 1979.

5. *Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.*

   Comment:
   The concerns raised by objectors have been addressed and considered in this report. In summary, the concerns raised do not warrant the refusal of the application. Therefore, it is considered that the proposed development is within the public interest, and will provide a hardware and building supplies facility that will service the public.

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 05/07/2024 to 19/07/2024 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 6 submission/s from:

Name:	Address:
Withheld	MONA VALE NSW 2103
Johnson Bros. Investments (Avalon) Pty Ltd	296 Hudson Parade CLAREVILLE NSW 2107

Name:	Address:
Mrs Vanessa Alison McDonald	56 Bassett Street MONA VALE NSW 2103
Mr Stephen John Pye	13 Jedda Place MONA VALE NSW 2103
Withheld	MONA VALE NSW 2103
Mr Mario Francisco Benitez	94 Bassett Street MONA VALE NSW 2103

The following issues were raised in the submissions:

- ***Unauthorised Works***

  The submissions raised concerns that the works have already commenced without Development Consent.

  Comment:
  It has been confirmed (despite the content of the application) that internal alteration works have been undertaken, and a Building Information Certificate is required. The proposal has been recommended for Deferred Commencement Approval, subject to a Building Information Certificate being obtained. Furthermore, the applicant has amended the application such that the review application is for the use of premises as a hardware and building supplies facility only, and is to exclude the internal alterations works.

- ***Colour and Signage***

  The submissions raised concerns surrounding the colour of the building and signage.

  Comment:
  This review application is not for the building colour or signage, and a separate application has been lodged for the signage (DA2024/0530). Therefore, these concerns are not relevant to this application and a detailed assessment has been conducted under DA2024/0530.

- ***Parking and Traffic***

  The submissions raised concerns that the proposal does not provide sufficient parking and will result in exacerbated parking and traffic congestion occurring along Bassett Street. Further concern is related in regards to the proposed tandem car spaces, and usability of these spaces.

  Comment:
  A detailed assessment has been conducted under Clause B6.3 Off-Street Vehicle Parking Requirements of Pittwater 21 Development Control Plan. Furthermore, Council's Traffic Officer has provided comments under the Internal Referrals section of this report, that details the proposed parking is supportable, subject to recommended conditions.

- ***Ownership***

  The submissions raised concerns that this application references Unit 1 and 2 ONLY. There should be no reference or reliance on Unit 3 as this Unit does no form part of this application.

The owners consent letter also acknowledges/identifies that Unit 3 does not form part of the proposed 'Total Tools' store.

Comment:
The application is located within the No.77 Bassett Street, and the Units 1, 2, 3 are individual units that are part of one title. Therefore, the applicant may reallocated, and redistribute parking as required across the site, as there are no separate lots or strata titled allotments. The applicant has submitted Owners Consent for the subject site that accompanies the application.

- ***Use of Unit 3 Parking***

The submissions raised concerns that this application relies on the use of Unit 3's car spaces and re-distributing car spaces for Unit 3 elsewhere within the site. This is on the basis that there is insufficient parking for Unit 1 and 2. As mentioned Unit 3 does not form part of this DA therefore its car spaces should not be relied on. In addition, would this be considered a change of use? It is currently used as boat/material storage. From hardstand to parking?

Comment:
As detailed above, the site is one allotment, and the distribution of carparking on the site is subject to Owners Consent that has been submitted. There are no proposed changes to the use of Unit 3, and the reallocation of parking is considered acceptable as detailed by Council's Traffic Officer. It is important to note that the application provides sufficient car parking for Units 1 & 2, and Unit 3.

- ***Traffic Report***

The submissions raised concerns surrounding swept paths for small trucks, without mentioning larger trucks.

Comment:
Council's Traffic Officer has reviewed the Traffic Report (prepared by Traffic and Transport Planning Solutions (TTPS) dated 12 December 2023). As such, there are no concerns surrounding the required swept path requirements, and the proposal is supportable subject to recommended conditions.

- ***Access***

The submissions raised concerns surrounding how access will be managed to the rear spaces when the is a gate that is actively closed.

Comment:
Council's Traffic Officer has reviewed the proposal and recommended suitable conditions to ensure that required car spaces are allocated and signposted accordingly. As such, the conditions recommended are Operational Conditions that are required to be complied with at all times.

- ***Character of the Area***

The submissions raised concerns that the proposed development is inconsistent with the character of the area.

Comment:

As the proposal is for the use of premises as a hardware and building supplies it is considered that the proposal is consistent with the character of the area, given the land zoning is permissible with consent.

- ***Signposting***

  The submissions raised concerns surrounding signposting of the "Total Tools" car spaces.

  Comment:
  It is noted that some signposting for some car spaces have been conducted. It is considered these works constitute Exempt Development under Subdivision 10 Community notice and public information signs of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.* It is considered that the signposting is acceptable to clearly distinguish the proposed car parking spaces. Furthermore, Council's Traffic Engineer has recommended suitable signposting for all car parking spaces so that they are clearly marked and signposted for staff, and customers.

- ***Parking in Surrounding Residential Streets***

  The submissions raised concerns surrounding parking in surrounding residential streets, including concerns of illegal parking.

  Comment:
  The development has been demonstrated to provide adequate on site carparking. As such, the issues with illegal street parking are existing matters. It is note that the on-street parking network is unregulated and maybe used by any motorist lawfully.

- ***Statement of Environmental Effects***

  The submissions raised concerns that the images in the Statement of Environmental Effects of the building colour is inaccurate and has been painted red.

  Comment:
  It is noted that the images within the Statement of Environmental Effects is inaccurate. Notwithstanding, the concerns surrounding the painting of the façade are not relevant to this application and have been addressed in the assessment of DA2024/0530.

- ***Location to Residential Area***

  The submissions raised concerns that the Statement of Environmental Effects does not mention the site is directly adjacent to a residential area.

  Comment:
  The application has been assessed against the relevant legislation and controls, and it is noted that the subject site is adjacent to a R2 Low Density Residential zone.

- ***Reference in Statement of Environmental Effects***

  The submission raised concerns that the Statement of Environmental Effects refers to a "new vehicle sales premises".

  Comment:
  On, 16 July 2024 the applicant submitted an amended Statement of Environmental Effects to

correct the typographical error as detailed above.

- ***Public Interest***

  The submissions raised concerns that the parking spaces, traffic and red colour building have already been identified by Council and residents as being impacts, so why are they not assessing these and mitigating these - they have already been identified?

  Comment:
  Council's Traffic Officer has reviewed the proposed parking spaces, and accompanying Traffic Report (prepared by Traffic and Transport Planning Solutions (TTPS) dated 12 December 2023). It is considered that these elements are acceptable, and therefore within the public interest. Furthermore, the concerns surrounding the colour red is not relevant to this application and has been discussed during the assessment of DA2024/0530. Overall, it is considered that the proposal is acceptable and is therefore within the public interest. Overall, Council's assessment has found that the proposal is within the public's interest, and the concerns raised do not warrant the refusal of the application.

- ***Support of Application***

  A petition was submitted by the Applicant that contains signatures of support.

  Comment:
  The petition is in support of the opening of Total Tools at 77 Bassett Street, Mona Vale.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	***Supported - subject to conditions*** The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no concerns with the application subject to inclusion of the attached conditions of approval and consideration of the notes below. *Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.*
Environmental Health (Industrial)	***Supported - subject to conditions*** General Comments

Internal Referral Body	Comments
	This review of determination and associated documentation does not alter previous conclusions from Environmental Health's review associated with DA2023/1841 and therefore conditions applied remain.
Landscape Officer	***Supported - without conditions*** Note: The assessment of landscape matters for this development application review is undertaken by an alternate Landscape Officer. The application is for the proposed fit out and use of an existing premise for hardware and building supplies. Existing landscaped area containing trees, other planting and lawn is not altered by this proposal as no external works are proposed. Thus no issues are raised by Landscape Referral subject to preservation of the existing landscape setting, and conditions of consent shall be applied for protection of trees and vegetation. <u>Planner Comment:</u> As the application is for the use of premises as a hardware and building supplies facility and no longer includes any works, Council's Landscape Offer confirmed that a Landscape Referral is not required.
NECC (Development Engineering)	***Supported - without conditions*** The proposal is for internal alterations. No objections to approval.
NECC (Flooding)	***Supported - without conditions*** The proposal is for interior alterations and additions to Unit 1 and 2 at 77 Basset Street, Mona Vale. Preparing the units for use as a hardware and building supplies outlet. Unit 1 & 2 are within the identified Low Risk Flood Precinct. As such, they are unaffected by the 1% AEP Flood Event and flood planning area. The units are affected by the Probable Maximum Flood (PMF). With an identified PMF Level of 3.29m AHD. Council is satisfied that the proposal is compliant with Section B3.11 of the Pittwater 21 DCP 2021 and Clause 5.21(2)(a-e) of the Pittwater LEP 2014, with consideration of Clause 5.21(3)(a-d) of the Pittwater LEP 2014.

Internal Referral Body	Comments
Traffic Engineer	***Supported - subject to conditions*** This application is a review of DA2023/1841 (Change of Use to hand and power tool store) which was refused by Northern Beaches Council's Development Determination Panel. Upon review of the submitted material the Transport Network team consider that the application can now be supported of traffic and parking grounds subject to conditions.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	***Supported - without conditions*** The proposal was referred to Ausgrid who provided a response stating the following: *all works proposed are internally within existing and will not effect Ausgrid assets.* Therefore, the proposal is acceptable, without 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)

Housing and Productivity Contribution

Part 2 Development for which contribution is require and determination of contribution, Division 2 Housing and productivity contribution amounts, Clause 7 Base component.

This Clause details the base component amounts that apply to the calculation of the housing and productivity contribution, as set out in the following table:

Region	HPC class of development	Amount	HPC unit
Greater Sydney	Residential subdivision	$12,000	new dwelling lot
	Residential strata subdivision	$10,000	new strata dwelling lot
	Non-strata multi-dwelling development	$10,000	new non-strata dwelling
	Commercial development	$30	square metre of new GFA
	Industrial development	$15	square metre of new GFA

Comment:
The subject site is an industrial development and is sited within the Greater Sydney region. The proposed development does not alter the GFA, and therefore no contribution is payable.

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, as Ausgrid stated the following: *all works proposed are internally within existing and will not effect Ausgrid assets*.

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 industrial 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 industrial 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:	11.0m	unaltered	-	N/A
Floor Space Ratio	FSR: 1:1	unaltered	-	N/A

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	N/A
4.4 Floor space ratio	N/A
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.10 Essential services	Yes

Pittwater 21 Development Control Plan

Built Form Controls

There are no relevant Built Form Controls for this application as the proposal is for the use of the existing premises.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.9 Mona Vale Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
B6.8 Access Driveways and Works on the Public Road Reserves on or Adjacent to a Commercial Centre Primary Road	Yes	Yes
C3.1 Landscaping	Yes	Yes
C3.2 Safety and Security	Yes	Yes
C3.4 Accessibility	Yes	Yes
C3.7 Pollution Control	Yes	Yes
C3.8 Building Facades	Yes	Yes
C3.10 Waste and Recycling Facilities	Yes	Yes
C3.12 Signage	N/A	N/A
C3.13 Industrial Development Adjoining Residential Land	Yes	Yes
D9.1 Character as viewed from a public place	Yes	Yes
D9.2 Scenic protection - General	Yes	Yes
D9.3 Building colours and materials	N/A	N/A
D9.16 Character of the Public Domain - Mona Vale Commercial Centre	Yes	Yes

Detailed Assessment

B6.3 Off-Street Vehicle Parking Requirements

The proposal involves the use of premises as a hardware and building supplies facility. Unit 1 and 2 were previously used as a showroom and warehouse. Hence, the proposal involves an intensification of the use and additional off-street parking requirements.

There is no specific parking requirement for hardware and building supplies under Clause B6.3 Off-Street Vehicle Parking Requirements of Pittwater 21 Development Control Plan. As such, the following requirements apply:

The minimum number of vehicle parking requirements must be determined using the appropriate guidelines for parking generation and servicing facilities based on development type comparison based on the Roads and Maritime Services Guide to Traffic Generating Development or analysis drawn from surveyed data for similar development uses. Provision must be made within the development site for access and parking of all service vehicles servicing the site, visitor parking and parking for people with disabilities.

The proposal includes the provision of the following parking spaces for Units 1 & 2:

- 10 Single Car Spaces;
- 6 Tandem Car Spaces (12 Car Spaces);

- 1 Disabled Car Space; and
- 1 Motorcycle Space.

Total: 23 Car Spaces and 1 Motorcycle Space

The proposal includes the provision of the following parking spaces for Unit 3:

- 7 Single Car Spaces; and
- 1 Tandem Car Space (2 Car Spaces).

Total: 9 Car Spaces

The applicant submitted a Traffic Report (prepared by Traffic and Transport Planning Solutions (TTPS)) dated 12 December 2023, and a Proposed Carpark Management Plan (prepared by Traffic and Transport Planning Solutions (TTPS)) dated 17 June 2024.

The proposed car parking arrangement includes the reallocation of parking spaces that were previously allocated to Unit 3 to be allocated to Units 1 and 2 (see Figure 1). Furthermore, the addition of new parking spaces have been proposed for Unit 3 that is an existing warehouse. Unit 3 requires 1 car space per 300m^2 of gross floor area as per the requirements stipulated in the *Roads and Maritime Services Guide to Traffic Generating Development*. The 9 car spaces provided for Unit 3 exceeds the required 4 parking spaces.

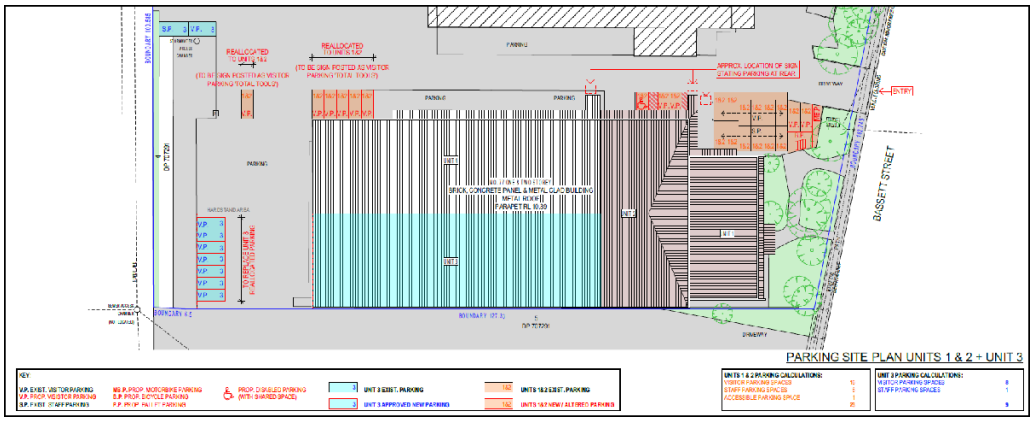


Figure 1. Extract of Parking Site Plan - Units 1 & 2 + Unit 3

Council's Traffic Officer has reviewed the proposal including the supporting documentation and provided comments under the Internal Referrals section of this report. In summary, the proposed number of car spaces is acceptable and as such the proposal is supportable, subject to recommended conditions.

Merit consideration

With regard to the consideration of a variation, the proposed development is considered against the underlying Outcomes of the Control as follows:

- ***An adequate number of parking and service spaces that meets the demands generated by the development.***

Comment:
The proposal provides an adequate number of parking spaces and services spaces that meet the demands generated by the development.

- ***Functional parking that minimises rainwater runoff and adverse visual or environmental impacts while maximising pedestrian and vehicle safety.***

  Comment:
  The proposal includes functional parking that will not result in any adverse visual or environmental impacts, and will not inhibit any pedestrian or vehicle safety.

- ***Safe and convenient parking.***

  Comment:
  The proposal provide for safe and convenient parking for the staff and customers of the proposed development.

D9.3 Building colours and materials

There are no proposed changes to the existing building colour and materials under this application.

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

S7.12 levies are not applicable to this application as they were subject to the original development application relating to the whole site.

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 review application, for review of the determination of Development Application DA2023/1841 for the use of existing premises remises as a hardware and building supplies facility and associated internal alterations has been referred to the Development Determination Panel (DDP) as any Review of Determination under Section 8.2 for a development previously determined by the DDP is required to be determined by the DDP, and the application has received 6 unique objections, including 1 supportive petition.

The concerns raised in the objections have been addressed within the report, and it is considered that the concerns raised do not warrant the refusal of the application.

The critical assessment issues relate to the unauthorised works that comprises of the proposed internal alterations that have already been completed. These works will be addressed separately under a Building Information Certificate, and the requirement to obtain a Building Information Certificate forming a condition required to be satisfied prior to an operational consent. It is important to note that the Review Application is for the use of premises as a hardware and building supplies facility only.

Overall, the use of the premises as a hardware and building supplies facility 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 deferred commencement 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

DEFERRED COMMENCEMENT APPROVAL

A. THAT Council as the consent authority, reviews the determination of DA2023/1841, pursuant to Section 8.2 of the Environmental Planning and Assessment Act, 1979.

B. THAT Council as the consent authority in reviewing the determination of DA2023/1841, 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 REV2024/0021 for Review of Determination of Application DA2023/1841 for Use of Premises as a hardware and building supplies facility and associated internal alterations on land at Lot 1 DP 88028,77 Bassett Street, MONA VALE, Lot 4 DP 707291,77 Bassett Street, MONA VALE, subject to the conditions printed below:

C. 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 B 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. **Deferred Commencement - Building Information Certificate for Unauthorised Works**
   An application for a Building Information Certificate is to be lodged and approved for the unauthorised internal works before this consent can become operational.

   Reason: To regularise unauthorised development.

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**
DA.01	J	Site Plan	JJ Drafting	11 June 2024
DA.22	J	Parking Plan	JJ Drafting	11 June 2024
DA.24	J	Parking Site Plan Units 1 & 2 + Unit 3	JJ Drafting	11 June 2024

Approved Reports and Documentation			
Document Title	**Version Number**	**Prepared By**	**Date of Document**
BCA Report	BR2300235D	12 December 2023	12 December 2023
Flood Report	MBAS-1-2-1001	WaterPlan Pty Ltd	12 December 2023
Traffic Report	A	Traffic and Transport Planning Solutions (TTPS)	12 December 2023
Proposed Carpark Management Plan	N318/2024/RTC/03	Traffic and Transport Planning Solutions (TTPS)	17 June 2024

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

3. **Car Parking Spaces for Unit 3**
All parking spaces for Unit 3 (9 spaces) must be appropriately linemarked and signposted (with signage dimensions no greater than 600mm x 450mm) for use by staff and visitors of Unit 3 prior to the use of the premises.

Reason: to ensure parking remains available to serve unit 3.

4. **Motorcycle and Bicycle Parking**
All the bicycle parking spaces and motorcycle parking space must be linemarked and signposted (with signage dimensions no greater than 600mm x 450mm) in accordance with AS 2890.1:2004 and AS2890.3:2015 prior to the use of the premises.

Reason: to maintain motorcycle and bicycle parking spaces.

5. **Allocated Car Parking Spaces (retail/commercial)**
Car parking allocated to this development (23 spaces) must be clearly signposted (with signage dimensions no greater than 600mm x 450mm) and linemarked as being for the

exclusive use of this development with staff spaces denoted "Total Tools Staff Parking" and customer spaces denoted "Total Tools Customer Parking" prior to the use of the premises.

Reason: To ensure parking availability.

6. **Disabled Parking Spaces**
Where disabled parking spaces are provided they must be in accordance with AS2890.6:2009.

Reason: To ensure compliance with Australian Standards.

7. **Shared Zone Bollard**
A bollard is to be provided in the hatched shared zone adjacent to disabled parking spaces in accordance to Australian Standards AS2890.6:2009.

Reason: To ensure compliance with Australian Standards.

8. **Loading Dock Management Plan**
A Loading Dock Management Plan shall be prepared by the applicant prior to the use of the premises.

The Plan must outline how deliveries will be managed, that they must always take place offstreet and must stipulate that deliveries will not be undertaken by vehicles larger than 8.8m MRV. the Plan must also state that deliveries by medium rigid vehicles will only occur between the hours of 5:30pm and 8pm on weekdays, with no deliveries to occur on weekends or public holidays.

Reason: to ensure the loading dock is managed appropriately and safely and congestion managed.

9. **No Approval for Unauthorised Works**
No approval is granted or implied under this Development Consent for the unauthorised works including the internal alterations undertaken and subject to a Building Information Certificate.

As such, this Development Consent is for the Use of Premises as a hardware and building supplies facility only.

Reason: To ensure compliance with the terms of this consent.

10. **Fire Safety Matters**
Provide a Fire Safety Certificate demonstrating the Essential Fire Safety Measures installed in accordance with the National Construction Code Report prepared by INCERT dated 12 December 2023 and referenced BR2300235D. This certificate must be prominently displayed in the building and copies must be sent to Council and Fire and Rescue NSW.

Each year the Owners must send to the Council and Fire and Rescue NSW, an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement under Parts 10, 11 & 12 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021.

11. **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 ***hardware and building supplies***, in accordance with the Dictionary of the Pittwater Local Environmental Plan 2014, as follows:

hardware and building supplies *means a building or place the principal purpose of which is the sale or hire of goods or materials, such as household fixtures, timber, tools, paint, wallpaper, plumbing supplies and the like, that are used in the construction and maintenance of buildings and adjacent outdoor areas.*

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.

12. **No Approval for any Signage**
No approval is granted under this Development Consent for signs (as defined under Warringah Local Environment Plan 2011 and State Environmental Planning Policy (Transport and Infrastructure) 2021. A separate Development Application for any signs (other than exempt and signs permitted under Complying Development) must be submitted for the approval prior to the erection or display of any such signs.

Reason: Control of signage.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

13. **Waste and Recycling Collection Hours**
Waste and recycling collection to and from the site is to be carried out between 7am and 8pm only to minimise noise.

Reason: To minimise noise to residential receivers.

14. **Delivery Vehicles**
Deliveries are to only to take place offstreet within designated loading/unloading areas with deliveries by medium rigid vehicles up to 8.8m in length only permitted between the hours of 5:30pm and 8pm Monday to Friday. No deliveries are to occur on weekends or Public Holidays.

Reason: to minimise congestion and impacts on adjacent parking spaces.

15. **Unit 3 - Truck Access**
The largest truck to access Unit 3 shall be an 8.8m MRV truck as shown by the swept path attached in the Carpark Management Plan prepared by Traffic and Transport Planning Solutions dated 17 June 2024 .

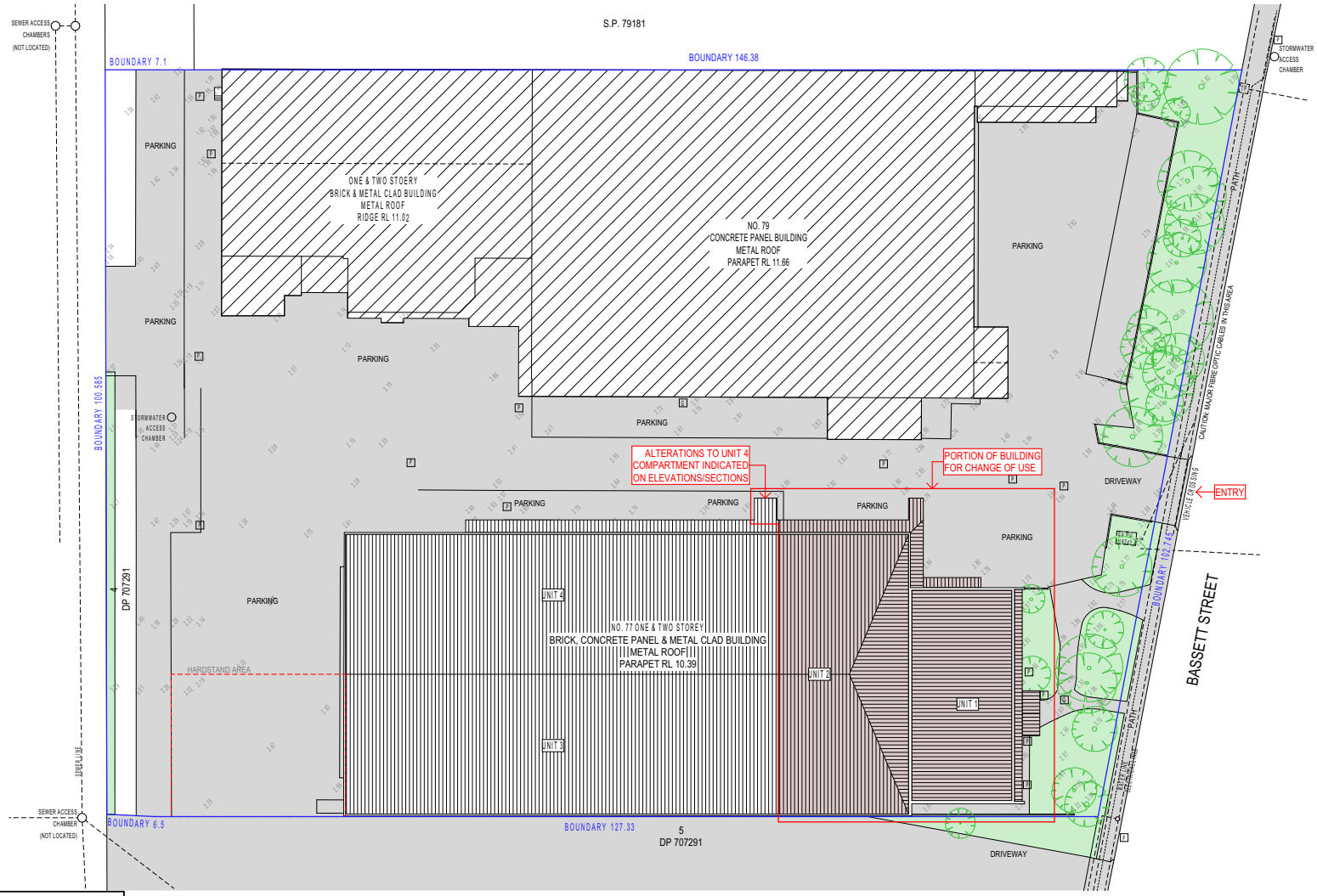
Reason: To ensure safe and efficient access to/from the site and adequate area for manoeuvring.

16. **Hours of Operation**
The hours of operation are to be restricted to:

- Monday to Friday – 7:00AM to 5:30PM
- Saturday – 8:00AM to 5:00PM
- Sunday and Public Holidays – 9:30AM to 3:00PM

Upon expiration of the permitted hours, all service shall immediately cease, no customers shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

Reason: Information to ensure that amenity of the surrounding locality is maintained.



LOT 1
DP 88028

SITE AREA = 14470 m²

SITE PLAN

TRUE NORTH:

NOTES (E & OE)
- All structures including stormwater & drainage to engineer's details.
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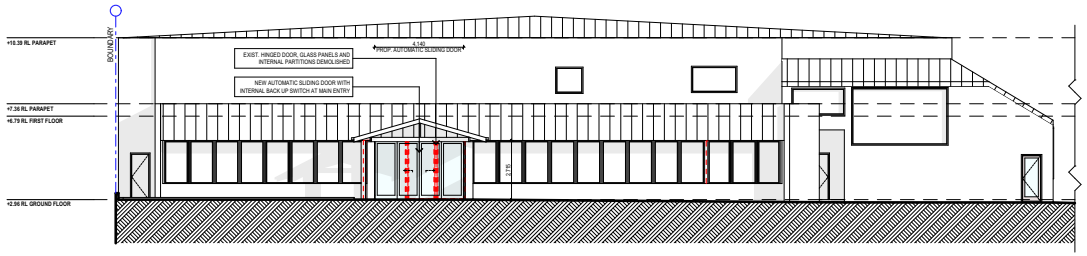
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PO Box 687, Dee Why, NSW, 2099
Mob. 0414 717 541 | ACN 651 693 346
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REV:	DATE:	DESCRIPTION:
D	26/10/2023	DA ADDITIONAL DRAWINGS
E	31/10/2023	DA DESIGN REVISE
F	24/01/2024	DA CONDITIONS - PARKING REVISE
G	20/05/2024	DA CONDITIONS - PARKING REVISE
H	22/05/2024	DA CONDITIONS - SWEEPING PATHS
I	3/06/2024	SITE PARKING SCHEDULE
J	11/06/2024	SITE PARKING PLAN REVISE

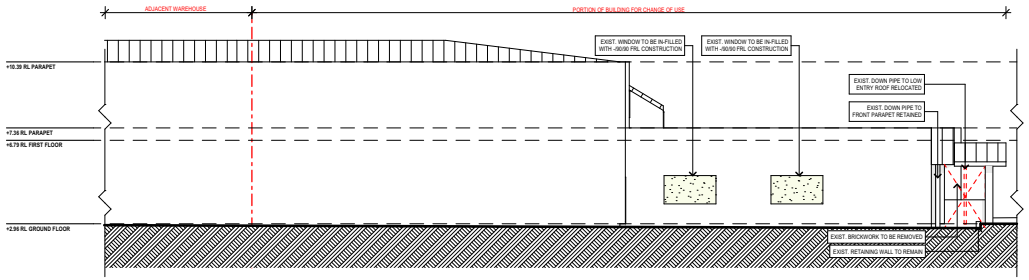
ALTERATIONS & ADDITIONS FOR PROPOSED CHANGE OF USE
77 BASSETT STREET, MONA VALE
CLIENT:
ROBERT JOHNSON

DRAWING TITLE:
SITE PLAN

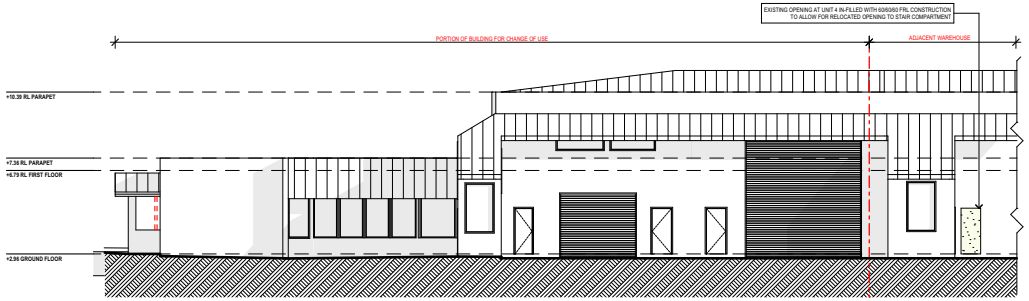
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JUN/24	AD	1:500 @ A3
JOB No:	CHECKED BY:	DRAWING No:
1182/23	JJ	**DA.01**



NORTH ELEVATION



EAST ELEVATION



WEST ELEVATION

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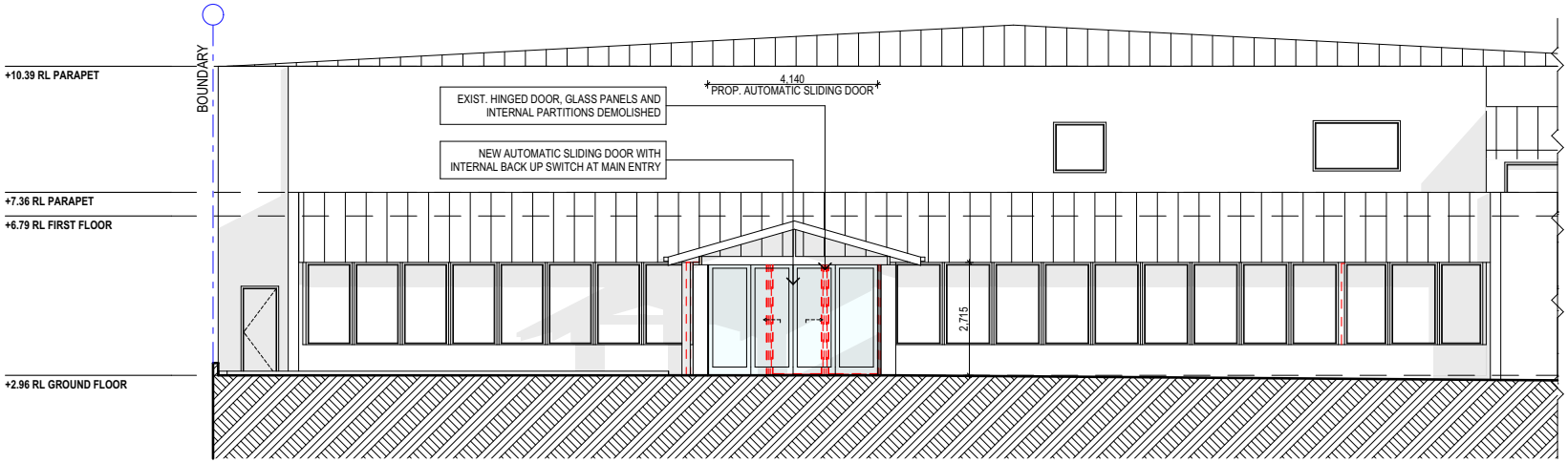
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J	11/06/2024	SITE PARKING PLAN REVISE

ALTERATIONS & ADDITIONS FOR PROPOSED CHANGE OF USE
77 BASSETT STREET, MONA VALE
CLIENT:
ROBERT JOHNSON

DRAWING TITLE:
ELEVATIONS SHEET 1

DATE:	DRAWN BY:	SCALE:
AUG/23	AD	1:200 @ A3
JOB No:	CHECKED BY:	DRAWING No:
1182/23	JJ	**DA.14**



NORTH ELEVATION

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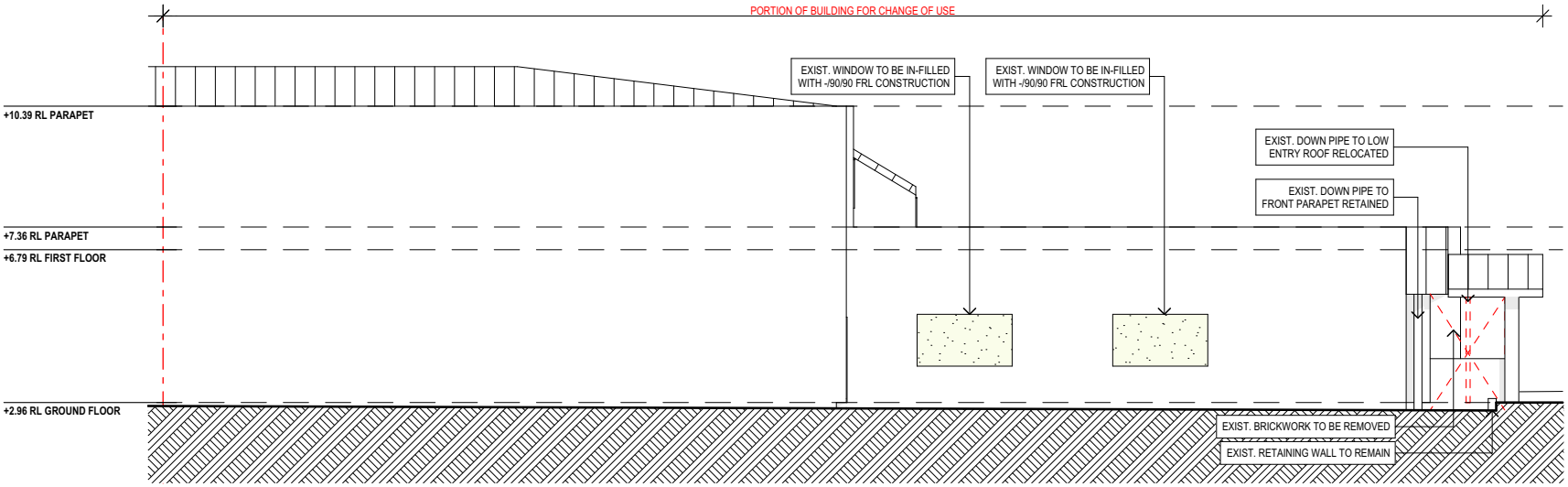
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J	11/06/2024	SITE PARKING PLAN REVISE

ALTERATIONS & ADDITIONS FOR PROPOSED CHANGE OF USE
77 BASSETT STREET, MONA VALE
CLIENT:
ROBERT JOHNSON

DRAWING TITLE:
ELEVATIONS SHEET 2

DATE:	DRAWN BY:	SCALE:
AUG/23	AD	1:100 @ A3
JOB No: 1182/23	CHECKED BY: JJ	DRAWING No: **DA.15**



EAST ELEVATION

TRUE NORTH:

NOTES (E & OE)
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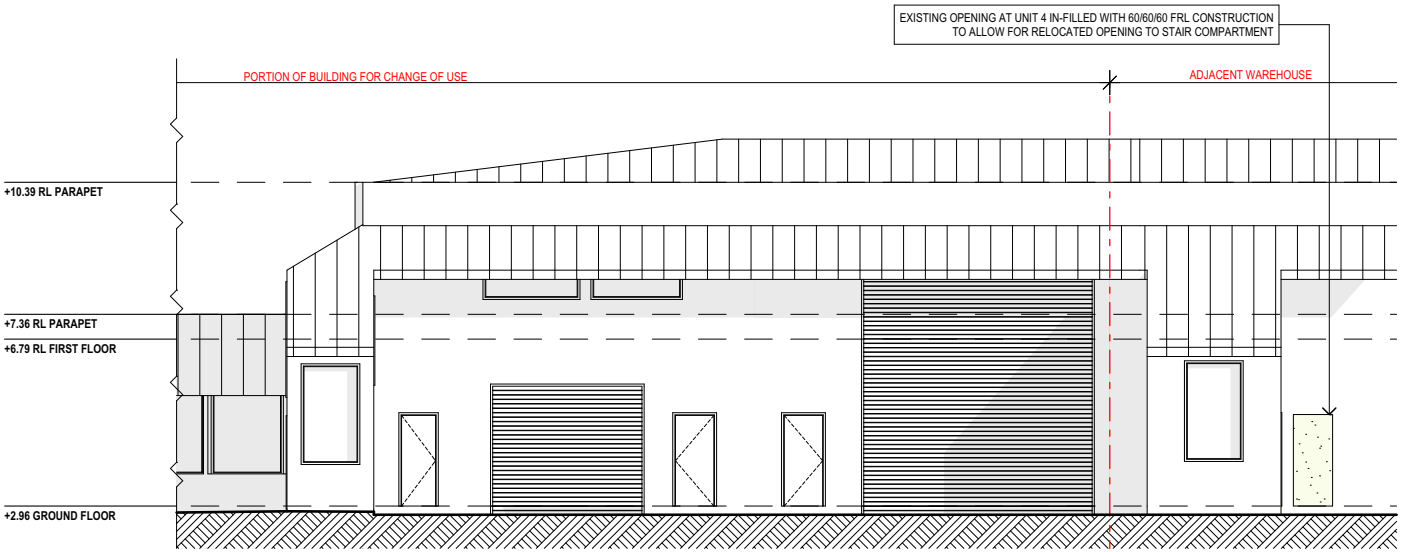
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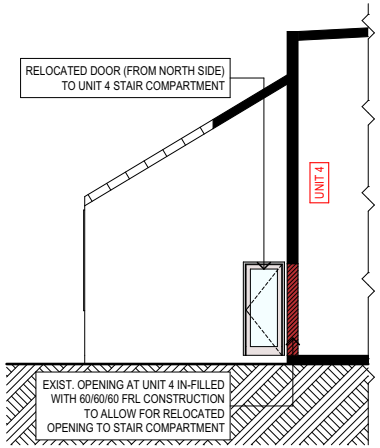
ALTERATIONS & ADDITIONS FOR PROPOSED CHANGE OF USE
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CLIENT:
ROBERT JOHNSON

DRAWING TITLE:
ELEVATIONS SHEET 3

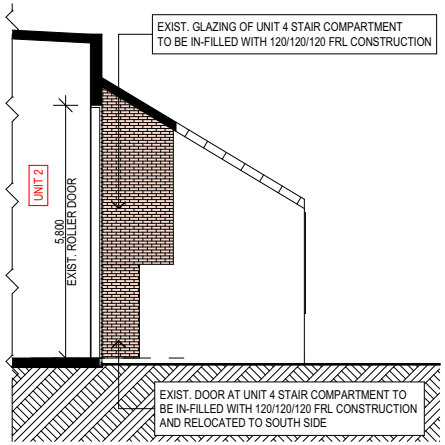
DATE:	DRAWN BY:	SCALE:
JUN/24	AD	1:100 @ A3
JOB No:	CHECKED BY:	DRAWING No:
1182/23	JJ	**DA.16**



WEST ELEVATION



UNIT 4 COMPARTMENT SOUTH ELEVATION



UNIT 4 COMPARTMENT NORTH ELEVATION

TRUE NORTH:

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ALTERATIONS & ADDITIONS FOR PROPOSED CHANGE OF USE
77 BASSETT STREET, MONA VALE
CLIENT:
ROBERT JOHNSON

DRAWING TITLE:
ELEVATIONS SHEET 4

DATE:	DRAWN BY:	SCALE:
JUN/24	AD	1:100 @ A3
JOB No: 1182/23	CHECKED BY: JJ	DRAWING No: DA.17

ITEM 3.8 DA2024/0662 - 40 PINE STREET MANLY - 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 DA2024/0662 for alterations and additions to a dwelling house on land at Lot 5 DP 939161, 40 Pine Street MANLY, subject to the conditions set out in the Assessment Report.

Reporting manager	Rodney Piggott
TRIM file ref	2024/591218
Attachments	⇩1 Assessment Report ⇩2 Site Plan and Elevations

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/0662

Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 5 DP 939161, 40 Pine Street MANLY NSW 2095
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Carlisle Architects

Application Lodged:	27/05/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	04/06/2024 to 18/06/2024
Advertised:	Not Advertised
Submissions Received:	7
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	$ 48,300.00

EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to an approved (and under construction) dwelling house, for the purpose of a first floor addition.

The application is referred to the Development Determination Panel (DDP) due to the number of submissions (7).

Concerns raised in the objections predominantly relate to site history and previous NSW Land and Environment Court proceedings, site constraints, and bulk and scale. Critical assessment issues surrounded visual privacy impacts, built form controls, and parking.

It is noted that the site is unique in its nature, and that the history has involved the Court a number of times, particularly with respect to a previously proposed two-storey dwelling house. Despite the site history, the

proposed development is demonstrated to be acceptable on its merits, and this report concludes with a recommendation that the DDP grant approval to the development application, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for alterations and additions to the approved, but not constructed dwelling house as follows:

- Reconfiguration of the ground floor (no change to building footprint), and
- Addition of a first floor for a bedroom with bathroom.

Amended plans providing an increased rear setback to the first floor were received on 14 August 2024. In accordance with Council's Community Participation Plan, the amended plans did not require public notification, as they result in lesser environmental impact than the original notified plans. However, all parties who lodged a submission to the original plans was informally notified of the amended plans on 15 August 2024.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 6.1 Acid sulfate soils
Manly Local Environmental Plan 2013 - 6.4 Stormwater management
Manly Local Environmental Plan 2013 - 6.8 Landslide risk
Manly Local Environmental Plan 2013 - 6.12 Essential services
Manly Development Control Plan - 3.4.2 Privacy and Security
Manly Development Control Plan - 4.1.1.1 Residential Density and Dwelling Size
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

SITE DESCRIPTION

Property Description:	Lot 5 DP 939161 , 40 Pine Street MANLY NSW 2095
Detailed Site Description:	The subject site consists of one allotment located on the northern side of a public walkway located within the unmade section of Pine Street. The site is rectangular in shape with a frontage of 12.19 metres and a maximum depth of 8.165 metres. The site has a surveyed area of 99.4m^2. The site is atypical to the size and configuration of surrounding private properties. The site is located within the R1 General Residential zone pursuant to Manly LEP 2013. The site is currently under construction with the dwelling house approved under DA2021/2590. The site does not have vehicular access. The site slopes down approximately 2 metres from the frontage (south) to the rear (north). **Description of Surrounding Development** Development to the north of the site is characterised by one- to two-storey semi-detached dwellings and dwelling houses. Development to the south of the site is characterised by one- to two-storey dwelling houses and multi-storey residential flat buildings. The land directly adjoining the front of the site (south) is zoned RE1 Public Recreation and contains a public walkway that provides a pedestrian link between the made sections of Pine Street and Birkley Road.

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:

- DA60/2013 for construction of a two-storey dwelling house was refused by the former Manly Independent Assessment Panel on 19 September 2013.
- DA60/2013 Part 2 (Section 82A) for review of the determination of DA60/2013 was dismissed by the NSW Land and Environment Court on appeal.
- Pre-lodgement Meeting PLM2021/0247 was held on 14 October 2021 to discuss construction of a dwelling house.
- DA2021/2590 for construction of a dwelling house was approved by the NSW Land and Environment Court via upheld appeal on 6 July 2022.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 29 of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Amended plans with a greater rear setback were requested and provided in August 2024.

Section 4.15 Matters for Consideration	Comments
	Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 04/06/2024 to 18/06/2024 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 7 submission/s from:

Name:	Address:
Ms Sarah Burke	4 Kangaroo Street MANLY NSW 2095
Mr Kurt James Green Jeston	7 Pacific Parade MANLY NSW 2095
Ms Rebecca Joy McKenzie	9 Pacific Parade MANLY NSW 2095
Mr Robert Martin O'brien	1/1 Herbert Street MANLY NSW 2095
Gavin Marc Gottschalk	6 Kangaroo Street MANLY NSW 2095
Mrs Pamela Eileen Jackson	16 Kangaroo Street MANLY NSW 2095
Mr Edward Alexander Whiteley	11 Pacific Parade MANLY NSW 2095

The following issues were raised in the submissions:

- The submissions raised concern that the proposed development attempts to reinstate the two-storey form rejected by the NSW Land and Environment Court under DA60/2013.
- The additional bedroom intensifies pressure on parking and services like waste and stormwater.
- The development will be of unreasonable bulk and scale and poor design quality.
- The development does not comply with landscaped area, and the approved landscape screening will not obscure the view of the first floor addition.
- The proposed development will result in unreasonable visual privacy loss to 7 and 9 Pacific Parade.
- The site has not contained a dwelling for more than 100 years, so a two-storey dwelling would be inconsistent with the history and character of the site. The site should have been consolidated into adjoining land or amalgamated into public land.
- Construction works for the approved dwelling have caused disruption to public land.
- The public land to the south of the site will be used for private recreation by occupants of 40 Pine Street.
- The site has no vehicular or emergency services access.
- The development could give rise to an adverse possession claim by adjoining landowners.

The above issues are addressed as follows:

Court Proceedings
The submissions raised concern that the proposed development attempts to reinstate the two-storey form rejected by the NSW Land and Environment Court.
Comment:
The history of the site through the NSW Land and Environment Court is noted. The dwelling house proposed under DA60/2013 was of markedly greater built form, and is not comparable to the proposed first floor addition under this application. The reasons DA60/2013 was refused by Council and the Court are not applicable in this instance, as this first floor addition is demonstrably acceptable with

respect to the applicable planning controls, as detailed throughout this report.

Services
The submissions raised concern that the additional bedroom intensifies pressure on parking and services like waste and stormwater.
Comment:
Parking, waste, and stormwater requirements for single dwelling houses are per dwelling, not per bedroom. As such, the additional bedroom in the proposed first floor does not create a material difference with respect to parking, waste or stormwater requirements for the site.

Bulk and Scale / Built Form Controls
The submissions raised concern that the development will be of unreasonable bulk and scale and poor design quality, and that the development does not comply with landscaped area.
Comment:
The proposed first floor addition is compliant with the maximum building height and floor space ratio development standards set by the Manly Local Environmental Plan 2013, and with the side setback controls set by the Manly Development Control Plan 2013. The proposed non-compliant front and rear setbacks are acceptable for the reasons detailed in the section of this report relating to Clause 4.1.4 Setbacks of the Manly Development Control Plan 2013. The proposed works under this application do not alter the approved building footprint, and therefore do not alter the approved landscaped area outcome for the site. As such, the proposed development is of an acceptable bulk and scale anticipated for the site.

It is noted that a landscaping screen was incorporated into the development approved under DA2021/2590. This screen remains useful, though it is not reasonable to expect it to wholly screen the entire dwelling from view from any vantage point. It should be noted that Council's Landscape Officer has reviewed the proposed development and raised raised no objection.

Privacy
The submissions raised concern that the proposed development will result in unreasonable visual privacy loss to 7 and 9 Pacific Parade.
Comment:
The proposed development is acceptable with respect to privacy for the reasons detailed in the section of this report relating to Clause 3.4.2 Privacy and Security of the Manly Development control Plan 2013.

History of the Site
The submissions raised concern that the site has not contained a dwelling for more than 100 years, so a two-storey dwelling would be inconsistent with the history and character of the site. The site should have been consolidated into adjoining land or amalgamated into public land.
Comment:
The subject site is zoned R1 General Residential, being suitable for residential land uses. A dwelling house was approved for the site by the NSW Land and Environment Court, establishing that a dwelling house is acceptable on the site. The proposed first floor addition is acceptable for the reasons detailed throughout this report.

The site was subdivided in 1908 from the rear of Nos. 9 and 11 Pacific Parade. The site was acquired by Council as the previous owner had not paid Council rates. The site was then sold by Council, which would have provided an opportunity for amalgamation into Nos. 9 and 11 Pacific Parade. As amalgamation did not happen, the land remained as an individual parcel, and may be developed within legislative rights.

Construction Works

The submissions raised concern that construction works for the approved dwelling have caused disruption to public land.
Comment:
This is a matter for investigation by Council's Compliance team and does not prevent approval of a new development application.

Use of Public Land
The submissions raised concern that the public land to the south of the site will be used for private recreation by occupants of 40 Pine Street.
Comment:
Future use of land without consent is hypothetical and not relevant to the assessment of this application. Should this occur in future, it is a matter for investigation by Council's Compliance team.

Site Access
The submissions raised concern that the site has no vehicular or emergency services access.
Comment:
Despite its constraints, a dwelling house was approved for the site by the NSW Land and Environment Court. The proposed first floor addition does not worsen the existing site access constraints.

Adverse Possession Claim
The submissions raised concern that the development could give rise to an adverse possession claim by adjoining landowners.
Comment:
This matter not relevant to assessment of the application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	Retention of the existing Sydney Red Gum and landscape works to the available landscape areas is dealt with under development consent DA2021/2590, and there are no additional impacts to the existing Sydney Red Gum nor the approved landscape works. Planning matters shall be dealt with by the Assessing Planning Officer.
NECC (Development Engineering)	The proposal is for the addition of a first floor to the approved dwelling under DA2021/2590 and internal alterations. 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. A1742962_02 dated 13 August 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 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.

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	Max. 8.5m	8.5m	-	Yes
Floor Space Ratio	0.6:1 (59.64m^2)	0.58:1 (58m^2)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
6.1 Acid sulfate soils	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

Detailed Assessment

6.1 Acid sulfate soils

Clause 6.1 Acid Sulfate Soils requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works. The site is located in an area identified as Acid Sulfate Soil Classes 4 and 5 as indicated on Council's Acid Sulfate Soils Planning Map. The proposed works do not require any earthworks, so are not likely to result in any increased risk with respect to acid sulfate soils.

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.

6.8 Landslide risk

The objectives of this clause are to ensure that development on land susceptible to landslide—

(a) matches the underlying geotechnical conditions of the land, and
(b) is restricted on unsuitable land, and
(c) does not endanger life or property.

In this regard, before determining a development application for development on land to which this clause applies, the consent authority must consider the following matters to decide whether or not the development takes into account the risk of landslide—

(a) site layout, including access,
(b) the development's design and construction methods,
(c) the amount of cut and fill that will be required for the development,
(d) waste water management, stormwater and drainage across the land,
(e) the geotechnical constraints of the site,
(f) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.
Comment:
The application is supported by a geotechnical addendum report, stormwater management plans, a waste management plan, and architectural plans that demonstrate the proposed development is of acceptably low landslide risk. The proposed development has been reviewed by Council's Development Engineer, who raised no objection to the proposal, subject to recommended conditions of consent.

Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and that—

(a) the development is designed, sited and will be managed to avoid any landslide risk or significant adverse impact on the development and the land surrounding the development, or
(b) if that risk or impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that risk or impact, or
*(c) if that risk or impact cannot be minimised—the development will be managed to mitigate that risk or impac*t.
Comment:
Given the above, the consent authority can be satisfied that proposed development is demonstrably designed, site and will be managed to avoid risk and adverse impact.

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 services.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 99.4m^2	**Requirement**	**Proposed**	**% Variation**	**Complies**
4.1.1.1 Residential Dwelling Size	Dwelling Size: Min. 75m^2	57m^2	24%	**No**
4.1.2.1 Wall Height (based on gradient 1:2)	Max. 8m	E: 6.1m	-	Yes
		W: 7.9m	-	Yes
4.1.2.2 Number of Storeys	Max. 2 storeys	2 storeys	-	Yes
4.1.2.3 Roof Height	Height: Max. 2.5m	1.3m	-	Yes
	Pitch: Max. 35 degrees	5 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Min. 6m*	800mm	86.67%	**No**
4.1.4.2 Side Setbacks (based on wall height)	E: Min. 2.03m	E: 2.1m	-	Yes
	W: Min. 2.63m	W: 4m	-	Yes
	Windows: Min. 3m	E: 2.2m	26.67%	**No**
4.1.4.4 Rear Setbacks	Min. 8m	Min. 3.86m	51.75%	**No**
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Total Open Space: Min. 55% of Site	Unchanged	-	NA
	Above Ground: Max. 25% of TOS	Unchanged	-	NA
4.1.5.2 Landscaped Area	Landscaped Area: Min. 35% of TOS	Unchanged	-	NA
	1 Native Tree	Unchanged	-	NA
4.1.5.3 Private Open Space	Min. 18m^2	Unchanged	-	NA
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Max. 50% of frontage, up to 6.2m	Unchanged	-	NA
Schedule 3 Parking and Access	Min. 2 spaces	Unchanged	-	NA

* The required front setback is 6 metres in the absence of a prevailing building line (in accordance with Clause 4.1.4.1 of the Manly Development Control Plan 2013), as well as in consideration of the front boundary of the site adjoining RE1 Public Recreation (in accordance with Clause 4.1.4.6 of Manly Development Control Plan 2013).

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 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	No	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	N/A	N/A
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	N/A	N/A
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

Submissions raise concern that the proposed first floor addition will result in unreasonable visual

privacy impacts. The underlying objectives of this control are addressed 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;*
- *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

Comment:
The proposed first floor addition includes windows to each elevation. The first floor addition is for a bedroom and bathroom only, which are not places of indoor recreation. To the north, the window (to the bedroom) has a sill height of 1.6 metres, plus a sunshade box extending a further 300 millimetres from the window elevation, to prevent looking downwards. To the south, the window adjoins the internal staircase and looks towards the Pine Street walkway. To the east, the window is to the bedroom and does not align with windows of any adjoining dwelling. Additionally, the roof of the ground floor below extends to prevent close viewing of the adjoining property to the east. Given the features described and the siting of the first floor addition, the proposal is designed for privacy and to mitigate viewing between the subject site and adjacent sites.

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:
Given the above, the proposed development allows for privacy of the occupants of the subject site and adjoining sites, while also allowing for suitable light and air and outlook to the subject site.

Objective 3) To encourage awareness of neighbourhood security.
Comment:
The proposed development allows for increased passive surveillance towards the Pine Street walkway, given the inclusion of the southern window.

4.1.1.1 Residential Density and Dwelling Size

The proposed development includes a first floor addition to an approved one-storey dwelling house. The dwelling has an area of 57m^2, where a minimum of 75m^2 is required by this control. The proposed development is acceptable in this regard, as it presents an improvement on the approved undersized dwelling area of 44m^2.

4.1.3 Floor Space Ratio (FSR)

This control provides an exception to floor space ratio for lots with a site area less than the minimum lot size required on the Lot Size Map ('undersized lots'). The subject site has an existing and unchanged area of 99.4m^2, where the minimum lot size is 250m^2. The exception under this control is not relevant, as the proposed development is compliant with the applicable floor space ratio.

4.1.4 Setbacks (front, side and rear) and Building Separation

The proposed first floor addition includes works 800 millimetres from the southern front boundary, and 3.86 - 4.05 metres from the northern rear boundary, where 6 metres (front) and 8 metres (rear) are required. The proposed development also includes a window 2.2 metres from the eastern side boundary, where a minimum of 3 metres is requred. The underlying objectives of the control are addressed 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:
It should be noted that the subject site is not located on any formed street, and is instead accessed via a public walkway along Pine Street. The proposed development is of a height and scale generally anticipated for the site, and does not alter the landscaped character, as it does not impact upon the approved building footprint.

Objective 2) To ensure and enhance local amenity by:

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*
- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
- *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

Comment:
The proposed development is acceptable with respect to privacy for the reasons detailed in the section of this report relating to Clause 3.4.2 Privacy and Security of the Manly Development Control Plan 2013. The proposed development is compliant with the solar access and view sharing requirements of Clauses 3.4.1 Sunlight Access and Overshadowing and 3.4.3 Maintenance of Views of the Manly Development Control Plan 2013. The proposed development provides suitable separation between the first floor addition and buildings on adjoining sites, allowing suitable rhythm and pattern of buildings. The proposed first floor addition does not impact upon traffic conditions in that the site does not adjoin a road and therefore does not have vehicular access.

Objective 3) To promote flexibility in the siting of buildings.
Comment:
The proposed development allows for flexibility in the siting of the first floor addition, without resulting in any unreasonable amenity impacts, as detailed above.

Objective 4) To enhance and maintain natural features by:

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Comment:
The proposed works do not alter the approved landscaped areas and deep soil areas. The subject site does not detract from the adjoining RE1 zoned land to the south, and is not in proximity of a National Park or Urban Bushland.

Objective 5) To assist in appropriate bush fire asset protection zones.
Comment:
Not applicable. The subject site is not classified as bushfire prone land.

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 alterations and additions to an approved (and under construction) dwelling house, for the purpose of a first floor addition, was referred to the Development Determination Panel (DDP) due to the number of submissions (7).

The concerns raised in the objections have been addressed and resolved by demonstration of the development's acceptability on merit, including with respect to the reasons previous applications on

site were refused by Council and the NSW Land and Environment Court.

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 DA2024/0662 for Alterations and additions to a dwelling house on land at Lot 5 DP 939161, 40 Pine Street, 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**
DA-01	B	Site Plan	Carlisle Architects
DA-02	B	Ground Floor Plan	Carlisle Architects
DA-03	B	First Floor Plan	Carlisle Architects
DA-04	B	Roof Plan	Carlisle Architects
DA-05	B	Section AA	Carlisle Architects
DA-06	B	Section BB	Carlisle Architects
DA-07	B	South Elevation	Carlisle Architects
DA-08	B	East Elevation	Carlisle Architects
DA-09	B	North Elevation	Carlisle Architects
DA-10	B	West Elevation	Carlisle Architects

23506	1	SW-1	Michael Korecky

Approved Reports and Documentation			
Document Title	**Version Number**	**Prepared By**	**Date of Document**
BASIX Certificate A1742962_02	-	Evergreen Energy Consultants	13 August 2024
Arboricultural Impact Assessment	-	Bluegum Tree Care and Consultancy	March 2024
Geotechnical Addendum	J3541F	White Geotechnical Group	7 August 2024
Waste Management Plan	-	Applicant	6 May 2024

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

2. **Compliance with Other Department, Authority or Service Requirements**
The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	31 May 2024

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

3. **Prescribed Conditions**
   (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
   (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
   (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
      (i) showing the name, address and telephone number of the Principal Certifier for the work, and
      (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working

hours, and

(iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

(d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

(i) in the case of work for which a principal contractor is required to be appointed:

A. the name and licence number of the principal contractor, and

B. the name of the insurer by which the work is insured under Part 6 of that Act,

(ii) in the case of work to be done by an owner-builder:

A. the name of the owner-builder, and

B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

(e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

(i) protect and support the adjoining premises from possible damage from the excavation, and

(ii) where necessary, underpin the adjoining premises to prevent any such damage.

(iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

(iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative requirement.

4. **General Requirements**

(a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

(b) Construction certificate plans are to be in accordance with all finished levels identified on approved plans. Notes attached to plans indicating tolerances to levels are not approved.

(c) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.

(d) At all times after the submission of the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

(e) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

(f) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

(g) Prior to the release of the Construction Certificate, payment of the following is required:

i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than $250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.

iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.

(h) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

(i) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(j) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(k) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

(l) Prior to the commencement of any development onsite for:

i) Building/s that are to be erected

ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place

iii) Building/s that are to be demolished

iv) For any work/s that is to be carried out

v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

(m) A “Road Opening Permit” must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

(n) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

(o) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

(1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools

(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

(2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

(3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the

irrigation area for any wastewater system and is separate from any onsite stormwater management system.

(4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

FEES / CHARGES / CONTRIBUTIONS

5. **Security Bond**

A bond (determined from cost of works) of $2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the Certifier prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at www.northernbeaches.nsw.gov.au).

Reason: To ensure adequate protection of Council's infrastructure.

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

6. **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 Michal Korecky, drawing number 23056-SW-1, dated 29/4/2024 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 OSD to be provided to restrict stormwater flows from the whole site for all storm events up to and including the 1% AEP storm event.
ii. Total discharge including bypass flows and controlled flows through the level spreader must not exceed the 20% AEP state of nature storm event.

Detailed drainage plans, including engineering certification, are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for the disposal of stormwater and stormwater management arising from the development.

7. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**

   The recommendations identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the construction certificate.

   Reason: To ensure geotechnical risk is mitigated appropriately.

8. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**
   The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

   Details demonstrating compliance are to be submitted to the Certifier prior to the issue of a Construction Certificate.

   Reason: To ensure geotechnical risk is mitigated appropriately.

9. **Boundary Identification Survey**
   A boundary identification survey, prepared by a Registered Surveyor, shall be provided in respect of the subject site.

   The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

   Details demonstrating compliance are to be submitted to the Certifier prior to the issue of any Construction Certificate.

   Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

10. **Installation and Maintenance of Sediment Control**
    Prior to any works commencing on site, including demolition, an erosion and sediment control plan must be prepared by a suitably qualified person in accordance with the following documents and provided to the Principal Certifier:

    1. Council’s relevant development control plan,
    2. The guidelines set out in the NSW Department of Housing manual ‘Managing Urban Stormwater: Soils and Construction Certificate’ (the Blue Book) (as amended from time to time), and
    3. The ‘Do it Right On-Site, Soil and Water Management for the Construction Industry' (Southern Sydney Regional Organisation of Councils and the Natural Heritage Trust) (as amended from time to time).

Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To ensure no substance other than rainwater enters the stormwater system and waterways.

11. **Compliance with Standards**
The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards.

12. **Sydney Water "Tap In"**
The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifier demonstrating the works are in compliance with Sydney Water requirements.

Please refer to the website www.sydneywater.com.au for:
- “Tap in” details - see http://www.sydneywater.com.au/tapin
- Guidelines for Building Over/Adjacent to Sydney Water Assets.

Or telephone 13 000 TAP IN (1300 082 746).

Reason: To ensure compliance with the statutory requirements of Sydney Water.

DURING BUILDING WORK

13. **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.

14. **Survey Certificate**
A survey certificate prepared by a Registered Surveyor at the following stages of construction:

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier.

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

15. **Waste Management During Development**
The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

Details demonstrating compliance must be submitted to the Principal Certifier.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

16. **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.

17. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**
The Applicant shall lodge the Legal Documents Authorisation Application with Council. The application shall include the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan certified by a registered surveyor (details overdrawn on a copy of the approved drainage plan), and Civil Engineers' certification.

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater disposal structures within this development consent. The terms of the positive covenant and restriction as to user are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgment with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user is to be submitted.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.

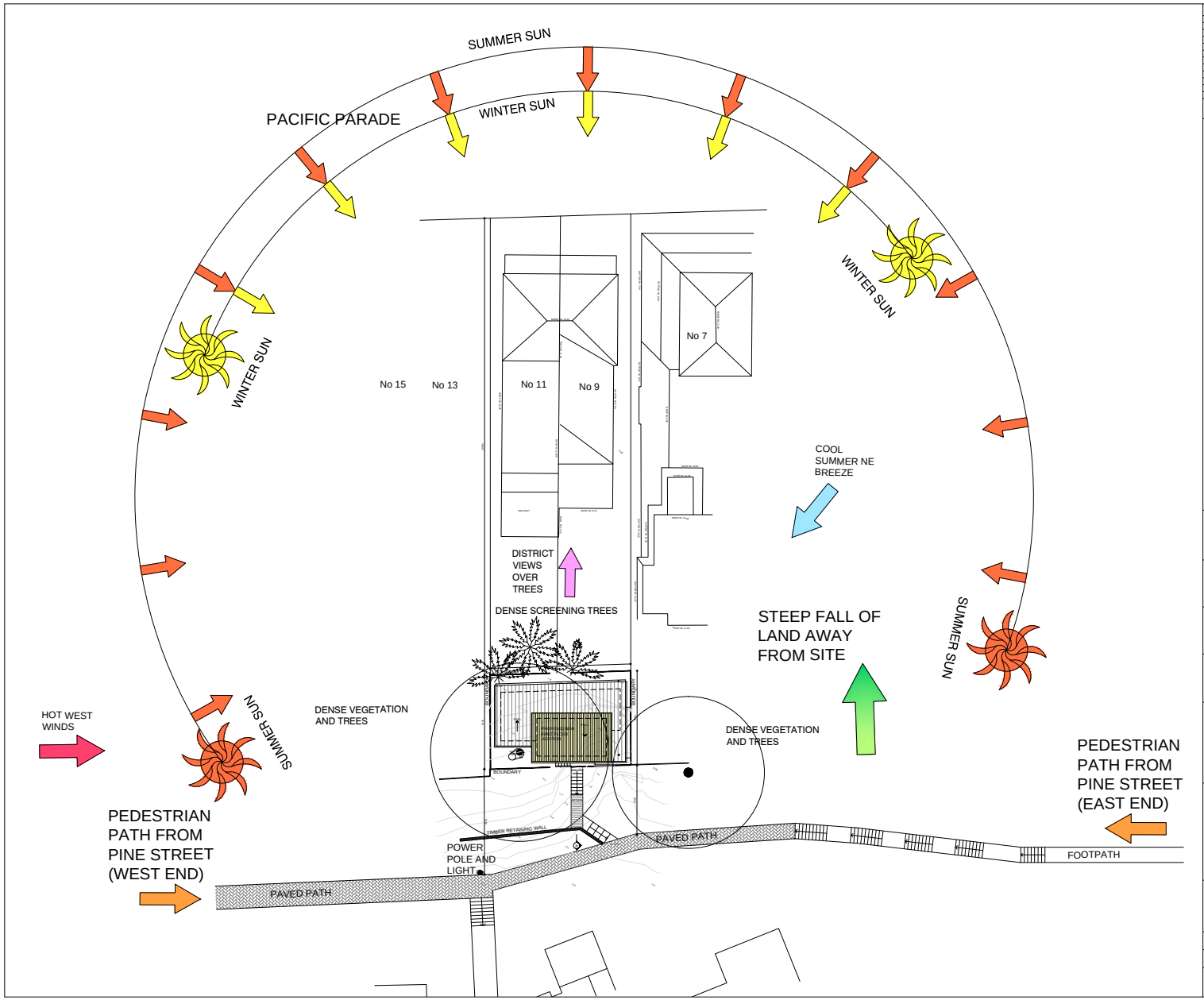
ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

18. **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.

19. **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.



REV	DATE	NOTES
A	06-05-24	DA ISSUE
B	01-08-24	AMENDED DA ISSUE - REAR SETBACK INCREASED

BASIX CERTIFICATE A1742962_02 REQ'MTS FOR ALTERATIONS AND ADDITIONS:

- SHOWERHEAD, TOILET CISTERN, BASIN TAPS, KITCHEN TAP TO ALL BE MINIMUM 3 STAR RATED
- MIN 40% OF NEW OR ALTERED LIGHTS TO BE LED
- EXTERNAL WALL INSULATION: R1.30 (OR R1.7 INCLUDING CONSTRUCTION)
- CEILING INSULATION: CEILING R1.58 (UP), ROOF - FOIL BACKED BLANKET (55mm)
- MEDIUM COLOURED ROOF - SOLAR ABSORPTANCE 0.475-0.7
- WINDOW REQUIREMENTS:
  W09, W10: SHADING DEVICE - PROJECTION / HEIGHT ABOVE SILL >=0.23, STANDARD ALUM FRAME, SINGLE CLEAR GLASS, (OR U-VALUE 7.63, SHGC 0.75)
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  W12: NO SHADING DEVICE, STANDARD ALUM FRAME, SINGLE CLEAR GLASS, (OR U-VALUE 7.63, SHGC 0.75)

0 1 2 3 4 5m

PROJECT:
ALTERATIONS & ADDITIONS TO APPROVED DWELLING HOUSE

ADDRESS:
40 PINE STREET
MANLY, NSW, 2095

CLIENT:
METRO DEVELOPMENT GROUP

CARLISLE ARCHITECTS
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E: MATT@CARLISLEARCHITECTS.COM
WWW.CARLISLEARCHITECTS.COM
NOMINATED ARCHITECT: MATT CARLISLE
NSW REG NO 7739 ABN: 63 604 133 299
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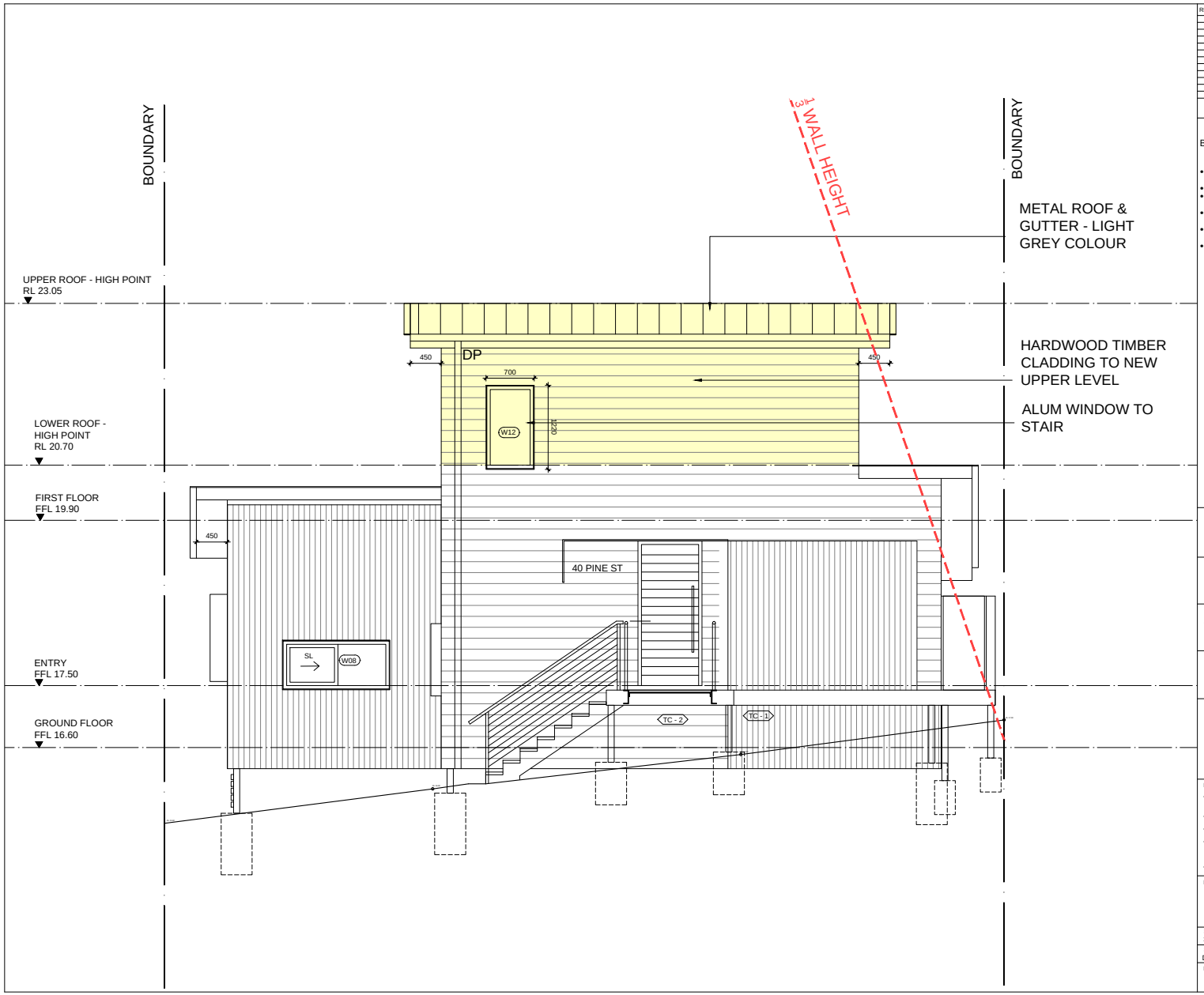
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- USE LABELLED DIMENSIONS. DO NOT SCALE FROM DRAWINGS

DRAWING TITLE:
SITE PLAN

SCALE:	DATE:
1:300 @ A3	23-02-2024
STAGE:	JOB No:
DEVELOPMENT APPLICATION	24-01

N

DRAWING NO: DA-01 REV: B



REV	DATE	NOTES
A	06-05-24	DA ISSUE
B	01-08-24	AMENDED DA ISSUE - REAR SETBACK INCREASED

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0 1 2 3 4 5m

PROJECT:
ALTERATIONS & ADDITIONS TO APPROVED DWELLING HOUSE

ADDRESS:
40 PINE STREET
MANLY, NSW, 2095

CLIENT:
METRO DEVELOPMENT GROUP

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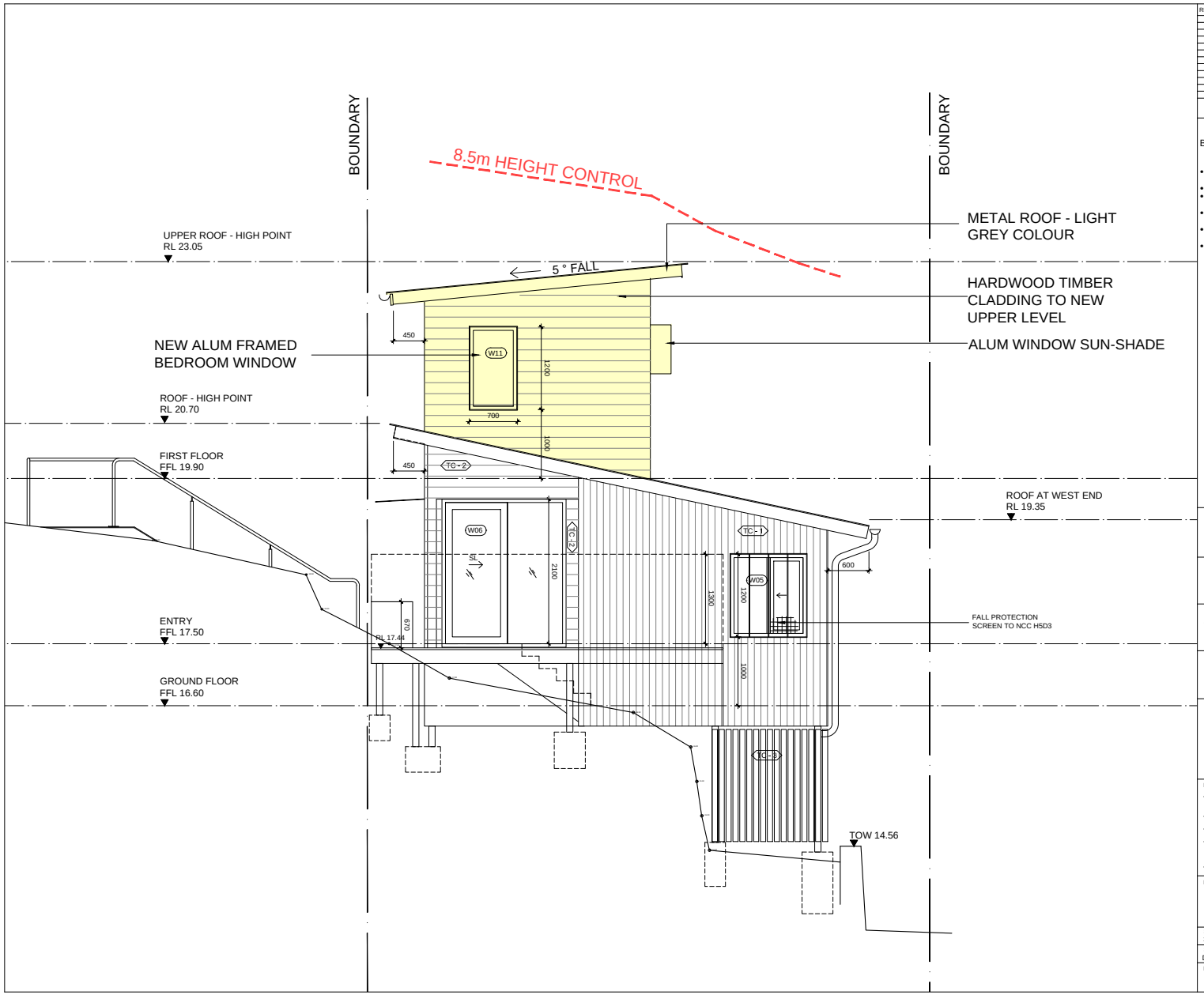
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DRAWING TITLE:
SOUTH ELEVATION

SCALE:	DATE:
1:50 @ A3	23-02-2024
STAGE:	JOB No:
DEVELOPMENT APPLICATION	24-01

N

DRAWING NO: DA-07 REV: B



REV	DATE	NOTES
A	06-05-24	DA ISSUE
B	01-08-24	AMENDED DA ISSUE - REAR SETBACK INCREASED

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0 1 2 3 4 5m

PROJECT:
ALTERATIONS & ADDITIONS TO APPROVED DWELLING HOUSE

ADDRESS:
40 PINE STREET
MANLY, NSW, 2095

CLIENT:
METRO DEVELOPMENT GROUP

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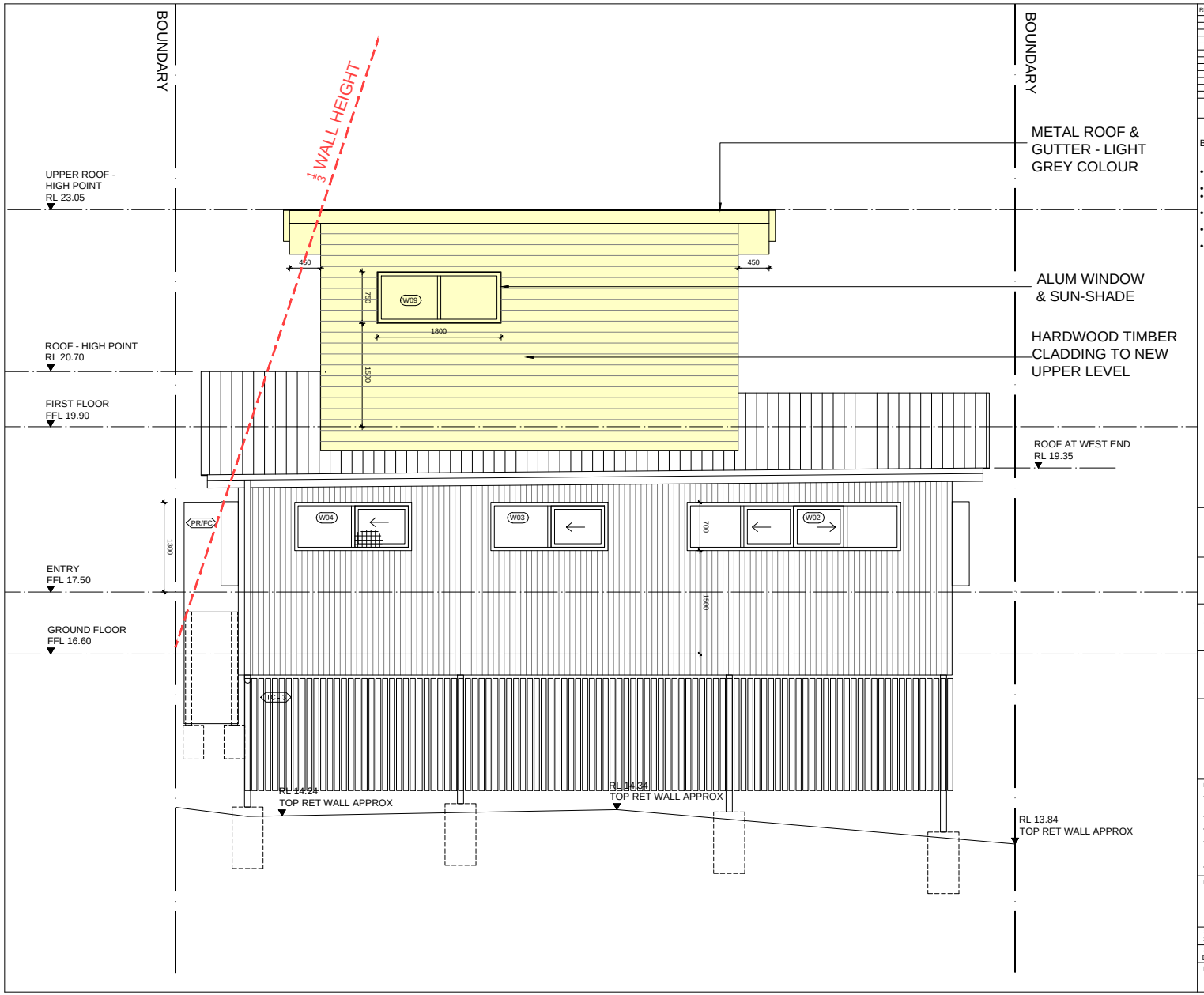
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DRAWING TITLE:
EAST ELEVATION

SCALE:	DATE:
1:50 @ A3	23-02-2024
STAGE:	JOB No:
DEVELOPMENT APPLICATION	24-01

N

DRAWING NO: DA-08 REV: B



REV	DATE	NOTES
A	06-05-24	DA ISSUE
B	01-08-24	AMENDED DA ISSUE - REAR SETBACK INCREASED

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PROJECT:
ALTERATIONS & ADDITIONS TO APPROVED DWELLING HOUSE

ADDRESS:
40 PINE STREET
MANLY, NSW, 2095

CLIENT:
METRO DEVELOPMENT GROUP

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DRAWING TITLE:
NORTH ELEVATION

SCALE:	DATE:
1:50 @ A3	23-02-2024
STAGE:	JOB No:
DEVELOPMENT APPLICATION	24-01

N

DRAWING NO: DA-09 REV: B

ITEM 3.9 DA2023/1824 - 8 ALMA STREET CLONTARF - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL

PURPOSE

To refer the attached application for determination due to directions provided by the Department of Planning & Environment in relation to applications with a clause 4.6 variation to the building height standard and floor space ratio.

RECOMMENDATION

A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 and Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

B. THAT Council as the consent authority **approves** Development Consent to DA2023/1824 for alterations and additions to a dwelling house including a swimming pool on land at Lot 7 Sec 3 DP 12177, 8 Alma Street CLONTARF, subject to the conditions set out in the Assessment Report.

Reporting manager	Rodney Piggott
TRIM file ref	2024/591271
Attachments	⇩1 Assessment Report ⇩2 Site Plan and Elevations ⇩3 Clause 4.6 - FSR ⇩4 Clause 4.6 - BHS

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/1824

Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 7 DP 12177, 8 Alma Street CLONTARF NSW 2093
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Chad Anthony Hing

Application Lodged:	15/01/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	06/08/2024 to 20/08/2024
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 15.2% 4.4 Floor space ratio: 33.7%
Recommendation:	Approval

Estimated Cost of Works:	$ 2,003,460.00

EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to the existing dwelling house at No. 8 Alma Street, Clontarf.

The application is referred to the Development Determination Panel **(DDP)** due to the application proposing a greater than 10% variation to the Height of Buildings and Floor Space Ratio (FSR) development standards.

The application was notified in accordance with Council's Community Participation Plan **(CPP)** and received one (1) submission. Concerns raised in the objection predominantly relate to amenity (solar access and view loss). This reports includes a detailed assessment of the objection, and finds that the

totality of impact does not warrant the refusal of the application.

The 4.6 request for the non-compliance with the height of buildings development standard (8.5m) arises from the site being previously excavated to allow for the existing lower floor and from the sloping topography of the site. The application proposes a maximum building of 9.8m.

The Manly Local Environmental Plan **(MLEP)** 2013 prescribes a maximum FSR 0.4:1 (222.96sqm) for the site and the application proposes 0.535:1 (298.3sqm) a departure of 33.7% 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.

This report concludes with a recommendation that the DDP grant approval to the development application, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The new works will provide for demolition works and the construction of alterations and additions to an existing dwelling house. Specifically the proposed works consist of the following:

Lower Floor

- Entry foyer & internal access area to upper level
- Theatre & storeroom within previous garage area
- New double garage
- Reconfiguration of existing lower floor to provide a storeroom, study, bathroom and communications area

Ground Floor

- New front extension to provide for a open plan dining and living area and terrace over the garage
- New rear extension
- Reconfiguration floor plan to proivde a kitchen, TV room, office, laundry and WC
- Covered rear terrace

First Floor

- New front extension to provide for a master bedroom and Bed 3 and associated balcony
- New rear extension
- Reconfiguration floor plan to provide additional bedrooms

External Works

- New driveway
- New entry steps and planters
- Swimming pool
- Front fence
- Rear deck and terrace
- Landscaping and tree removal

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - Zone R2 Low Density Residential
Manly Local Environmental Plan 2013 - 4.3 Height of buildings
Manly Local Environmental Plan 2013 - 4.4 Floor space ratio
Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Local Environmental Plan 2013 - 6.2 Earthworks
Manly Local Environmental Plan 2013 - 6.4 Stormwater management
Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
Manly Development Control Plan - 3.3.2 Preservation of Trees or Bushland Vegetation
Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
Manly Development Control Plan - 3.4.3 Maintenance of Views
Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
Manly Development Control Plan - 4.1.5 Open Space and Landscaping
Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

SITE DESCRIPTION

Property Description:	Lot 7 DP 12177 , 8 Alma Street CLONTARF NSW 2093
Detailed Site Description:	The subject site consists of one (1) allotment located on the northern side of Alma Street. The site is regular in shape with a frontage of 12.19m along Alma Street and a depth of 45.72m. The site has a

	surveyed area of 557.4m². The site is located within the R2 Low Density Residential zone and accommodates a three (3) level dwelling house. The site slopes from the northern (rear) boundary to the southern (front) boundary of the property approximately 7m The property contains one prescribed tree within the frontage of the property. Other existing vegetation upon the property is exempt by either species type or height. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by one, two and three storey dwelling houses of varying architectural styles.

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:

- **DA2018/1074** - Development Application for Alterations and Additions to a dwelling house - Approved 30/11/2018
- **Mod2019/0082** - Modification of Development Consent DA2018/1074 granted for alterations and additions to a dwelling house - Approved 18/04/2019
- **IOC2020/0129** - Interim Occupation Certificate for double garage and deck.

APPLICATION HISTORY

6 March 2024
Council wrote to the applicant, primarily raising concerns in relation to:

- Height
- Floor Space Ratio
- Bulk, scale and setbacks

13 June 2024
Amended plans and additional information were submitted to address Council's concerns.

31 July 2024
Amended plans formally renotified to adjoining properties with the same issues raised by the same objector. A additional submission from No. 6 Alma Street, Clontarf was received.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 Matters for Consideration	**Comments**
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 29 of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended plans.

Section 4.15 Matters for Consideration	Comments
	Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 06/08/2024 to 20/08/2024 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 Robert John Salisbury	6 Alma Street CLONTARF NSW 2093

The following issues were raised in the submissions:

- **Sunlight Access and Overshadowing**
- **Outlook**

The above issues are addressed as follows:

- **Sunlight Access and Overshadowing**

  The submissions raised concerns that the proposed development would overshadow the adjoining property to the east and impact upon living rooms and bedrooms.

  Comment:

  A detailed assessment of the application has been undertaken in this report (Refer to cl. 3.4.1 of the Manly Development Control Plan **(MDCP)** section of this report) with shadow diagrams detailing the shadowing impacts upon No. 6 Alma Street. The development does not unreasonably overshadow living room windows or private open space of adjoining properties, adequate sunlight is retained to neighbouring properties. This matter does not warrant the refusal of the application.

- **Outlook**

  The submissions raised concerns that proposal results in an unacceptable visual impact, which detracts from the westerly outlook obtained from the adjoining property to the east.

  Comment:

  The submission raises concern that the proposed development would disrupt existing views through the subject site. Any development of the subject site would compromise the outlook over the western side property boundary. The affected outlook resulting from the proposed development is best described as an aspect over adjoining properties. Consequently, further altering the design isn't considered reasonable, given that the buildings largely is of a reasonable bulk and scale, effectively mitigating any undue visual impacts. This matter does not warrant the refusal of the application.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Solid Fuel/Oil Heater)	***Supported, without conditions*** This application is seeking consent for a residential dwelling with a proposed fireplace in the living room. Confirmation from the planning agency has confirmed the proposed fireplace is to be gas operated. Environmental Health recommends approval without conditions.
Landscape Officer	***Supported, with conditions*** The proposal is for alterations and additions including a swimming pool. The property contains one prescribed tree within the frontage of the property. Other existing vegetation upon the property is exempt by either species type or height and Council consent is not required for management or removal. An Arboricultural Impact Assessment (AIA) report is submitted and notes that the Sydney Red Gum identified as tree 1 in the AIA report requires removal to accommodate the proposed driveway. Retention under this development proposal is not feasible. Given the condition of tree 1 with poor crown structure, visible canker, and previous removal of branches, the request for removal is able to be supported subject to replacement canopy tree planting. Landscape Plans are submitted indicating landscape works at ground level and over the garage structure, and no concerns are raised subject to imposed conditions.
NECC (Development Engineering)	***Supported, with conditions*** The proposed development is in Region 3. On-site detention is shown on submitted Stormwater Management plans. A geotechnical report has been provided. Vehicle crossing construction is proposed. I have no objections to the proposed development subject to the inclusion of the recommended engineering conditions of consent.
NECC (Water Management)	***Supported, with conditions*** This application was assessed in consideration of: • Supplied plans and reports; • Northern Beaches Water Management for Development Policy (WMD Policy), and; • Relevant LEP and DCP clauses; Proposal is for construction of alterations and additions for a single residential development. Section 4.0 of the WMD Policy applies. In place of specific targets, this section of the Policy outlines water management outcomes sought by Council. Water sensitive urban design, water reuse and infiltration into the soil, and the resulting quality of stormwater leaving the site are interconnected concepts that guide this merit-based assessment. The proposal includes a rainwater tank, stormwater detention tank, and sediment pit. On review, the stormwater

<table>
<tr><th>Internal Referral Body</th><th>Comments</th></tr>
<tr><td></td><td>treatment measures are considered acceptable.</td></tr>
<tr><td>Strategic and Place Planning (Heritage Officer)</td><td>
HERITAGE COMMENTS
Discussion of reason for referral
Supported, with conditions
The proposal has been referred to Heritage as the subject property adjoins a heritage item:

Item I40 - House -1 Woodland Street, Balgowlah Heights

Details of heritage items affected
Details of the items as contained within the Manly inventory are as follows:

Item I40 - House
<u>Statement of Significance:</u>
Aesthetically significant as a fine example of Inter-War Spanish Mission style architecture.
<u>Physical Description:</u>
Single storey textured stuccoed house with hipped terracotta tile roof, central gable over projecting porch and arched openings and barley twist columns. Facade also features two pairs of arched timber framed double hinge windows with stuccoed planter boxes. Elaborate textured stuccoed front fence with stepped features, and stuccoed structure over driveway.

Other relevant heritage listings
<table>
<tr><td>SEPP (Biodiversity and Conservation) 2021</td><td>No</td><td></td></tr>
<tr><td>Australian Heritage Register</td><td>No</td><td></td></tr>
<tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr>
<tr><td>National Trust of Aust (NSW) Register</td><td>No</td><td></td></tr>
<tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td><td></td></tr>
<tr><td>Other</td><td>No</td><td></td></tr>
</table>
Consideration of Application
The proposal seeks consent for alterations and additions to the existing two and a half storey dwelling, including a significant extension to the front. The heritage item is located adjacent to its north, the rear boundary. The existing property dates back to 1950s, Post-War period architecture, with influences of Inter-War Functionalist Style. Although, the original building has been altered with a recent application - DA2018/0174, it still retains its original fabric, therefore, a photographic archival recording will be
</td></tr>
</table>

Internal Referral Body	Comments
	required. The proposed works involve internal alterations and a significant extension to the south of the property facing Alma Street, which will remove all original fabric. It is not clear from the submitted documents that considerations have been given to the front extension in relation with the neighbouring buildings, specifically No 12 Alma Street and No 4 Alma Street. The front steback to the building mass must not be beyond these neighbours. The adjoining dwellings set well back from the street and the existing character of the area is dominated by two and three storey dwelling houses. Considerations should also be given to the scale of the development to ensure that it is consistent with the existing character of the area and the provisions of the Manly DCP. However, given the existing building is not listed as a heritage item, and the heritage listed building is located adjacent to the northern boundary, where the building mass is not proposed to be extended, the impact of the proposal upon the significance of the heritage item is considered manageable. Therefore no objections are raised on heritage grounds subject to one condition. <u>Consider against the provisions of CL5.10 of Manly LEP2013.</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? No

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	***Supported, with conditions*** The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the

application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No. A1376337_02 dated 6 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 (Biodiversity and Conservation) 2021

Chapter 6 – Water catchments

The subject property is located within the Sydney Harbour Catchment and Sydney Harbour Foreshores and Waterways Area therefore the provisions of Chapter 6 Water catchments of *State Environmental Planning Policy (Biodiversity and Conservation) 2021* apply to this development. Accordingly, an assessment under Chapter 6 has been carried out as follows:

Part 6.2 Development in regulated catchments - Division 2 Controls on development generally

6.6 Water quality and quantity

(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the following—

(a) whether the development will have a neutral or beneficial effect on the quality of water entering a waterway,
(b) whether the development will have an adverse impact on water flow in a natural waterbody,
(c) whether the development will increase the amount of stormwater run-off from a site,
(d) whether the development will incorporate on-site stormwater retention, infiltration or reuse,
(e) the impact of the development on the level and quality of the water table,
(f) the cumulative environmental impact of the development on the regulated catchment,
(g) whether the development makes adequate provision to protect the quality and quantity of ground water.

(2) Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied the development ensures—

(a) the effect on the quality of water entering a natural waterbody will be as close as possible to neutral or beneficial, and
(b) the impact on water flow in a natural waterbody will be minimised.

Comment:

The proposal has been reviewed by Council's Development Engineer and water management Officer who have raised no objection to the works and their impacts to the adjoining waterway (subject to conditions).

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 proposed development will not have any impact upon public access along the foreshore. The proposed works are located entirely within the subject site.

6.10 Total catchment management

In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consult with the council of each adjacent or downstream local government area on which the development is likely to have an adverse environmental impact.

Comment:

The proposal has been reviewed by water management officer who have raised no objection to the works and their impacts to the surrounding natural environment. Based on the expert advice provided and conditions imposed, the proposed works are not considered to have an adverse environmental impact. As such consultation with adjoining local government areas was not undertaken in this instance.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

Manly Local Environmental Plan 2013

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies

Height of Buildings:	8.5m	9.8m	15.3%	**No**
Floor Space Ratio	FSR: 0.4:1 (222.96sqm)	FSR: 0.535:1 (298.3sqm)	33.7%	**No**

Compliance Assessment

Clause	**Compliance with Requirements**
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

Zone R2 Low Density Residential

Land use definition: MLEP 2013	**Permitted or Prohibited**
Dwelling House	Permitted without consent

The underlying objectives of the R2 Low Density Residential zone:

- *To provide for the housing needs of the community within a low density residential environment.*

  Comment:

  The proposed development is for residential purposes, being alterations and additions to a dwelling house.

  It is considered that the development satisfies this objective.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

  Comment:

  N/A

It is considered that the development satisfies this objective.

4.3 Height of buildings

Description of non-compliance
Clause 4.3 (2) stipulates that height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. The subject site is located within Area 'I' of the Height of Buildings Map which has a maximum height of 8.5m.

The height of the proposed development has been measured at maximum height of 9.8m from existing ground level. This represents a variation of 15.3%.

Merit consideration

a) To provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality.

Comment:
The proposed building height and roof form are consistent with the topography and prevailing building heights and streetscape character. The vast majority of the proposed dwelling will be under the 8.5m requirement and the areas of height and wall non-compliance predominately relate to a centrally sited section of the building as the land falls away and will not result in excessive bulk and scale. The roof form will be generally consistent with the existing building and surrounding, more modern development in the vicinity and the development will be below the ridge height of adjoining development. The dwelling is appropriately articulated using recessed and modulated walls, fenestration, balconies, eaves and planters to break up built form. Furthermore, the development incorporates a terraced style design that steps down with the slope of the land, which provides further visual relief.

b) To control the bulk and scale of buildings.

Comment:
The proposed development is well articulated and modulated such that the visual dominance of the built form is broken up as a result. As above, the dwelling is appropriately articulated using recessed and modulated walls, fenestration, balconies, eaves and planters to break up built form. Furthermore, the development incorporates a terraced style design that steps down with the slope of the land, which provides further visual relief. The proposal will also maintain sufficient open space landscape treatment, which in turn will contribute to the softening and screening of the development.

c) *To minimise disruption to the following:*

(i) views to nearby residential development from public spaces (including the harbour and foreshores)
(ii) views from nearby residential development to public spaces (including the harbour and foreshores)
(iii) views between public spaces (including the harbour and foreshores).

Comment:
The proposed breaches will not unreasonably impact views to, from or between nearby residential development and public spaces, including the harbour and foreshores.

d) *To provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings.*

Comment:
The proposal will not cause excessive overshadowing of adjoining properties or the public domain. The development satisfies this objective.

e*To ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

Comment:
The development is not within a recreation or environmental protection zone.

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

4.4 Floor space ratio

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.4:1 (222.96sqm)
Proposed:	0.535:1 (298.3sqm)
Percentage variation to requirement:	33.7%

(1) The objectives of this clause are as follows—

a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,

Comment:

The proposed development is well articulated and modulated so as to break down the visual appearance of the built form. The subject site allows for a presentation of landscaping and vegetation that is complementary to the area. The proposal will not unreasonably impact upon the streetscape.

b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,

Comment:

No important landscape features within the close vicinity of the subject site will be unreasonably impacted by the proposed works. In regards to townscape features, there are no townscape features within the close vicinity of the subject site.

c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,

Comment:

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.

d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,

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 provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres,

Comment:

N/A

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

4.6 Exceptions to development standards

The application seeks consent to vary a development standard as follows:

Development standard: Clause 4.3 (Height of Buildings)
Requirement: 8.5m
Proposed: 9.8m
Percentage of variation: 15.3%

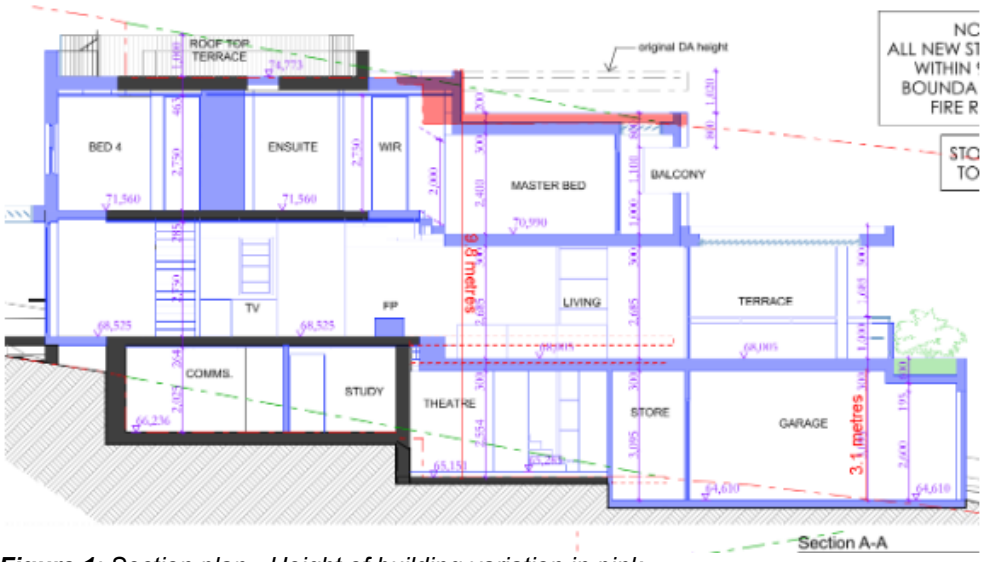


***Figure 1**: Section plan - Height of building variation in pink.*

With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is accompanied by a document that sets out the grounds on which the Applicant seeks to demonstrate the matters set out in Clause 4.6(3)(a) and (b) of the MLEP 2013 (the 'Clause 4.6 Request').

Subclause (1) of this clause provides that:

(1) The objectives of this clause are as follows:
(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Comment:

The objectives of this clause have been considered pursuant to Section 4.15(a)(i) of the *Environmental Planning and Assessment Act 1979*.

Subclause (2) of this clause provides that:

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Comment:

Clause 4.3 (Height of Buildings) is not expressly excluded from the operation of this clause.

Subclause (3) of this clause provides that:

(3) Development consent must not be granted to development that contravenes a development

standard unless the consent authority is satisfied the applicant has demonstrated that—

(a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

Comment:

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 Height of Buildings development standard, arguments that are generally concurred with, including:

- The surrounding area is predominantly characterised by two – three storey development.
- The proposal seeks to accommodate the additions within a compatible and consistent building form, with the slope of the site towards the south, with a resulting height for the new works will be up to 9.837m in height when measured above the existing excavated lower floor level.
- The overall building height respects the surrounding character and the design seeks to minimise the visual impact through distributing the new first floor extension with a compatible setback from the rear, retaining the current three storey height.
- The proposed additions and alterations to the existing dwelling will not result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing.
- Further, the modulation of the front façade and building elevations where visible from the public domain minimises the visual impact of the development. Combined with a substantial setback to the front boundary, and the fact that the development joins in the public reserve to the north, the proposal is not present a significant impact of the surrounding streetscape and is compatible with the bulk and scale of the nearby development and.
- The proposal presents a compatible height and scale to the surrounding development and the articulation to the building facades and low pitch roof form will suitably distribute the bulk of the additional floor area.
- Due to the general slope of the site towards the south, the adjoining properties on the east and west enjoy district and water views towards the south.
- The assessment confirms that the proposed alterations and additions will not result in any unreasonable or adverse impacts to the existing solar access enjoyed by the primary private open spaces and primary living rooms of the adjacent eastern and western neighbours.

(b) there are sufficient environmental planning grounds to justify contravening the development standard.

Comment:

In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the Applicant's written request has adequately demonstrated that that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not

defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

The Clause 4.6 Request argues, in part:

"There are sufficient environmental planning grounds to justify contravening the development standard.

The low pitch roof form maintains modulation and architectural relief to the building's facade, and 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 increase to the building's bulk, which promotes good design and improves the amenity of the built environment (1.3(g).*
- *The design will maintain the general bulk and scale of the existing surrounding dwellings and responds to the sloping topography and the constraints presented by the location and form of the existing dwelling, 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 Alma Street which also promotes the orderly and economic use of the land (cl 1.3(c)).*
- *The proposed new works which exceed the maximum building height control are considered to promote good design and enhance the residential amenity of the buildings' occupants and the immediate area, by massing the new work towards the rear of the site and over the existing building footprint, minimising the visual impact of the bulk and scale when viewed from the rear yard of the northern neighbours.*
- *The alterations demonstrate good design and improve the amenity of the built environment by creating improved and functional living area whilst retaining suitable amenity for the adjoining properties (cl 1.3(g))."*

Planner's Comment:
The applicant has satisfactorily demonstrated that the works are consistent with the objects of theEP&A Act, specifically the following objects of the EP&A Act:

- The development promotes good design and amenity of the built environment, noting that the proposed development will not unreasonably compromise the amenity of adjoining residential and other development within the immediate vicinity.
- The development promotes the proper construction and maintenance of buildings, in so far as the proposed alterations and additions is a necessary upgrade of the ageing development.

Public Interest:

Matters relevant to public interest in respect of the development are considered in the relevant sections of this report as per Section 4.15(1)(e) of the EPA Act.

Conclusion:

Council is satisfied as to the matters set out in Clause 4.6 of the MLEP 2013.

It is considered on balance, that having regard to the particular circumstances of the breach of the

building height development due to the existing site constraints and topography, the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

The application seeks consent to vary a development standard as follows:

Development standard: Clause 4.4 (Floor Space Ratio)
Requirement: 0.4:1 (222.96sqm)
Proposed: 0.535:1 (298.3sqm)
Percentage of variation: 33.7%

With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is accompanied by a document that sets out the grounds on which the Applicant seeks to demonstrate the matters set out in Clause 4.6(3)(a) and (b) of the MLEP 2013 (the 'Clause 4.6 Request').

Subclause (1) of this clause provides that:

(1) The objectives of this clause are as follows:
(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Comment:

The objectives of this clause have been considered pursuant to Section 4.15(a)(i) of the *Environmental Planning and Assessment Act 1979*.

Subclause (2) of this clause provides that:

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Comment:

Clause 4.4 (Floor Space Ratio) is not expressly excluded from the operation of this clause.

Subclause (3) of this clause provides that:

(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

(a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

Comment:

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:

- *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.*
- *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.*
- *The proposal will not see the loss of any significant vegetation. One tree is to be removed from the front yard to accommodate the new driveway and garage however the Landscape Plan prepared to support the development includes two additional trees within the front yard which will achieve a height of 15m and additional canopy trees for the rear yard. As 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.*
- *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.*
- *The proposed works are wholly contained within the site and will not result in any adverse impacts for any adjoining land.*

(b) there are sufficient environmental planning grounds to justify contravening the development standard.

Comment:

In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the Applicant's written request has adequately demonstrated that that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

The Clause 4.6 Request argues, in part:

"The proposed 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 Alma 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 0.4:1 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))."*

Planner's Comment:
The applicant has satisfactorily demonstrated that the works are consistent with the objects of theEP&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 FSR 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.

(d) the effect of the proposed development on the existing and likely amenity of adjoining properties

Comment: The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties.

(e) the source of any fill material and the destination of any excavated material

Comment: The excavated material will be processed according to the Waste Management Plan for the development.

(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.

6.9 Foreshore scenic protection area

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following matters:

(a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,
(b) measures to protect and improve scenic qualities of the coastline,
(c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,
(d) measures to reduce the potential for conflict between land-based and water-based coastal activities.

Comment:
The proposed development is suitably sited away from and will not be readily visible from the foreshore. The scale of development is consistent with surrounding development and will not result in unreasonable impact to the foreshore or coastline.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 557.4sqm	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	West: 7.5m (based on gradient 1:6)	9.3m (Max)	24%	**No**
	East: 7.5m (based on gradient 1:6)	9.3m (Max)	24%	**No**
4.1.2.2 Number of Storeys	2	3	50%	**No**
4.1.2.3 Roof Height	Height: 2.5m	N/A - Flat roof	-	Yes
	Parapet Height: 0.6m	0.3m	-	Yes

	Pitch: maximum 35 degrees	Flat roof	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line - varied street setback 9m to 22m setback	0.8m (Bin storage area) 9.1m (Garage) 10.8m (Terrace and roof) 15.7m (Dwelling)	88%	**No**
4.1.4.2 Side Setbacks and Secondary Street Frontages	**East:** Garage: 1.3m Ground Floor: 1.8m First Floor: 2.7m - 3.1m **West:** Garage: 1.1m Garage Roof Terrace: 1.4m Ground Floor: 2m First Floor: 2.7m - 3.1m	**East:** Garage: 3.9m Ground Floor: 1.2m - 2.7m First Floor: 1.2m - 2.7m **West:** Garage: 1m Garage Roof Terrace: 1.1m Ground Floor: 1.1m First Floor: 1.1m - 2.7m	up to 66% up to 60%	**No**
	Windows: 3m	1.2m	60%	**No**
4.1.4.4 Rear Setbacks	8m	1.4m (terrace) 10.2m (deck and pergola) 14.5m (dwelling)	82.5% - -	**No**
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area (334.44sqm)	63.7% (355sqm)	-	Yes
	Open space above ground 25% of total open space (89sqm)	22% (78sqm)	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space (142sqm)	38% (135sqm)	5%	**No**
4.1.5.3 Private Open Space	18sqm	>18sqm	-	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	7.2m	16.1%	**No**
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	<1m above ground	-	Yes
	1m curtilage/1.5m water side/rear setback	1.2m curtilage/1.5m water	-	Yes
4.1.10 Fencing	1m or 1.5m with 30% transparency	1.5m	-	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.3.2 Preservation of Trees or Bushland Vegetation

Proposed tree removal has been assessed by Council's Landscape Officer who has raised no objections subject to conditions and replacement planting.

3.4.1 Sunlight Access and Overshadowing

Private Open Space
Clause 3.4.1.1 (Overshadowing Adjoining Open Space) stipulates that new development must not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties from 9am to 3pm at the winter solstice (21 June).

The submitted shadow diagrams depict that the proposal will not result in a net increase in shadowing to the rear private open space of 6 Alma Street from 9am to 3pm at the winter solstice (21 June). Therefore, the proposal complies with this control.

Windows
Clause 3.4.1.2 (Solar Access to living rooms of adjacent properties) stipulates that for new development the level of solar access presently enjoyed must be maintained to windows or glazed doors of living rooms for a period of at least 4 hours from 9am to 3pm on the winter solstice (21 June) and for all adjacent buildings no reduction in solar access is permitted to any window where existing windows enjoy less than the minimum number of sunlight hours specified above.

The existing dwelling house shadows living rooms windows between 12pm and 3pm during the winter solstice. The proposed new works will not further overshadow the living room windows of the adjoining eastern property between 9am - 3pm during the winter solstice.

3.4.3 Maintenance of Views

As a result of the public exhibition of the development application Council received a number one submissions raising view loss as a concern.



Image 1 - Location of objecting property (Red) and proximity to subject site.

Merit consideration:

The development is considered against the Objectives of the Control:

Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.

Comment:

The proposed development will result in a loss of district views from neighbouring properties. The loss of views is not unreasonable and will maintain adequate view sharing between properties.

Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council* (2004) NSWLEC 140, are applied to the proposal.

1. Nature of the views affected

"The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured".

Comment to Principle 1:

No. 6 Alma Street, Clontarf
A view sharing analysis was undertaken from the adjoining property to the east of the subject site at (No. 6 Alma Street, Clontarf). The nature of the view affected from this property would be skyline and district views. The views in question are not highly valued, having regard to this principle.

No. 6 Alma Street currently enjoys views over the front property boundary of Middle Harbour. These views are not impacted by the proposed development.

2. What part of the affected property are the views obtained

"The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic".

Comment to Principle 2:

No. 6 Alma Street, Clontarf
Views are obtained from the ground floor living rooms and balcony off the living room, first floor bedrooms and balcony. Views are taken over the side boundary.

3. Extent of impact

"The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating".

Comment to Principle 3:



Photo 1 - Ground floor balcony



Photo 2 - Ground floor living room



Photo 3 - First floor balcony

No. 6 Alma Street, Clontarf

The internal rooms and balcony at ground and first floor levels will be will be impacted to a **severe** extent as a result of the proposed works. These areas are high use living areas, however, while there may be loss of district views as a result of the forward projection of the dwelling house, it is noted that views in question are not highly valued. Additionally the views are severely susceptible to any development on site.

4. Reasonableness of the proposal that is causing the impact

"The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable."

Comment to Principle 4:

In considering the totality of impact it is noted that the dwelling house is non-complaint with the Height of buildings and FSR development standards under MLEP 2013. While it acknowledged that district views will be highly impacted, the view in question is not deemed to be highly valued and is severely vulnerable to development on the subject site. Further, the current view to the front of the property of Middle harbour, which is highly valued is retained in full. The total severity of impacts upon water views is not considered to be unreasonable. A more skillful design is not likely to be able to achieve the same development potential and amenity while reducing view impacts to neighbouring properties.

Given the above, it is considered that the proposal is acceptable and view sharing is achieved.

Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.

Comment:

The proposed works will not cause unreasonable loss of view. In regards to 'view creep' the proposal does not include any unreasonable bulk which could result in unreasonable future view loss.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

Description of non-compliance

Clause 4.1.2 Height of Buildings stipulates that walls are not to exceed 7.5m based on the slope of land. The east and western elevation contravenes the 7.5m control by up to 24% (1.8m)

Furthermore, in accordance with Clause 4.1.2.2 of the MDCP, buildings are restricted to a maximum of two storeys. The proposed development would result in three storeys.

Merit consideration

There are no underlying objectives of this control under which to consider the merits of this variation. This control instead relies on the objectives for the Height of Buildings at clause 4.3 in the Manly LEP

2013. The proposal has been assessed against these objectives under clause 4.6, above in this report. In summary, the variation is deemed to be reasonable and supported in this circumstance.

4.1.4 Setbacks (front, side and rear) and Building Separation

Description of non-compliance

Clause 4.1.4.2 of the MDCP requires development be setback at least one third of the adjoining wall height. The development proposes multiple variations to the numeric requirement at the ground and first floor along both the eastern and western elevations.

The clause requires the first floor western wall be setback 2.7m-3.1m at the highest point. The application proposes a setback of 1.1m - 2.7m, non-compliant with the numeric control. This represents a 60% variation to the numeric control.

The clause requires the first floor eastern wall be setback 2.7m-3.1m. The application proposes a setback of 1.2m - 2.7m non-compliant with the numeric control. This represents a variation up to 66%.

Clause 4.1.4.2 requires windows from habitable rooms of dwellings that face the side boundary to be setback at least 3m from side boundaries. The proposed window altered along the eastern setback 1.2m from the side property boundary, will be non-compliant with the numerical control.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

Objective 1) To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.

Comment:

The proposal maintains the prevailing pattern of front setbacks in the street, with parking towards the frontage and the front of the dwelling aligning with the prevailing line of neighbouring dwellings. The proposal also involves an area of landscaping between the garage and dwelling as well as landscaping in front of the garage structure. This ensures the proposal provides for appropriate spatial proportions and suitable landscape character.

Objective 2) To ensure and enhance local amenity by:

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*
- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
- *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

Comment:

The proposal provides suitable design for privacy with suitable physical separation and screening (subject to conditions). The proposal also complies with the solar access provisions under the DCP and provides open corridors to surround the development to assist in the provision of equitable amenity.

Objective 3) To promote flexibility in the siting of buildings.

Comment:

Flexibility to allow the numerical non-compliance with the setback controls is warranted given the complementary nature of the structure with the established character of the street, and the lack of unreasonable amenity impact including sufficient physical separation from neighbouring living spaces.

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:

Adequate planting is provided across the site.

Objective 5) To assist in appropriate bush fire asset protection zones.

Comment:

The subject site it not located in a bush fire zone.

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.

4.1.5 Open Space and Landscaping

Description of non-compliance

Clause 4.1.5.2 of the Manly DCP requires at 40% (142sqm) of total open space be landscaped open space. The development proposes 38% (135sqm), non-compliant with the numeric control (5% variation).

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 application does not propose the removal of any important landscape features (Trees, plants or rock formations).

Objective 2) To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.

Comment:

The proposed development provides suitable landscape open space on site, compliant with the numeric control.

Objective 3) To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.

Comment:

Amenity considerations including sunlight, privacy and views have been are suitability mitigated to a reasonable standard as part of this application, despite the non-compliance with the numeric control.

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 proposal is not likely to lead to a significant spread of weeds.

Objective 6) To maximise wildlife habitat and the potential for wildlife corridors.

Comment:

The development will not 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 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.

4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

Description of non-compliance

The proposed garage is 7.2m in width, which is a 1m or 16% non compliance to the control requiring a maximum width of 6.2m.

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).
Objective 2) To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances.

Comment:
The proposed development retains two parking spaces on the site in an accessible location, as required by Schedule 3 Part A1 of the Manly DCP. This is sufficient in supporting the vehicular access needs of the occupants of the site. In this way, the proposed development does not result in reliance on street parking.

Objective 3) To ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape.

Comment:
The proposed garage is adequately setback from the front boundary line. The front boundary setback is clear of structures and will have adequate landscaping to minimise the visual impact of the development

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 proposal only requires a small amount of excavation for the garage and it is not expected to have any adverse impacts on site stability or ground water flows.

Objective 5) To ensure the width and number of footpath crossings is minimised.

Comment:
Existing vehicular 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 proposal provides adequate landscaping within the front setback to provide screening of internal accesses from public views.

Objective 7) To encourage the use of public transport by limiting onsite parking provision in Centres that are well serviced by public transport and by encouraging bicycle use to limit traffic congestion and promote clean air.

Comment:
N/A - the proposal is located within a residential 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

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 $20,035 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $2,003,460.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
b) There are sufficient environmental planning grounds to justify the contravention.

2) The proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

PLANNING CONCLUSION

This proposal, for alterations and additions to a dwelling house has been referred to the Development Determination Panel (DDP)as the application requests a greater then 10% variation to both the FSR and Height of Buildings development standards.

The concerns raised in the objections have been addressed and resolved by way of amended plans, reducing the overall bulk and scale of the development.

The critical assessment issues issues included the assessment of the proposed variation of the FSR and Height of Buildings development standard, as well as assessment of amenity impacts on adjoining properties to the east and west of the subject site.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.

REASON FOR DETERMINATION

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

That Northern Beaches Council as the consent authority permits a contravention of clause 4.3 Height of Building and 4.4 Floor Space Ratio development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2023/1824 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 7 DP 12177, 8 Alma Street, CLONTARF, subject to the conditions printed below:

Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

GENERAL CONDITIONS

1. **Approved Plans and Supporting Documentation**
   Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	**Revision Number**	**Plan Title**	**Drawn By**	**Date of Plan**
DA1	-	Cover Page, Colour Render	sketchArc	N/A
DA4	-	Site, Site Analysis, Sediment Control and Waste Management Plan	sketchArc	12 June 2024
DA5	-	Lower Floor Plan	sketchArc	12 June 2024
DA6	-	Ground Floor Plan	sketchArc	12 June 2024
DA7	-	First Floor Plan	sketchArc	12 June 2024
DA8	-	Roof Floor Plan	sketchArc	12 June 2024
DA9	-	Front fence elevation	sketchArc	12 June 2024
DA10	-	West Elevation	sketchArc	12 June 2024
DA11	-	Street Elevation	sketchArc	12 June 2024
DA12	-	Section A-A, Section B-B	sketchArc	12 June 2024
DA13	-	Section C-C, Section D-D	sketchArc	12 June 2024
L-01	C	Landscape Site Plan	Serenescapes	29 May 2024
L-02	C	Zone A - Detail + Planting Plan	Serenescapes	29 May 2024
L-03	C	Zone B - Detail + Planting Plan	Serenescapes	29 May 2024
L-04	C	Sections + Elevations	Serenescapes	29 May 2024
L-05	C	Sections + Elevations	Serenescapes	29 May 2024

L-06	C	Sections + Elevations	Serenescapes	29 May 2024
L1	-	Stormwater Management Plan	Taylor Consulting	17 November 2023
L1	-	Stormwater Management Details	Taylor Consulting	17 November 2023

Approved Reports and Documentation			
Document Title	**Version Number**	**Prepared By**	**Date of Document**
BASIX Certificate No. A1376337_02	2	Bodill Ventures	6 June 2024
Arboricultural Impact Assessment	-	Peake Arboriculture	15 November 2023
Waste Management Plan	-	Vaughan Milligan Development Consulting	20 November 2023
Preliminary Geotechnical Assessment	-	White Geotechnical Group	21 November 2023

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

2. **Compliance with Other Department, Authority or Service Requirements**
The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	**EDMS Reference**	**Dated**
Ausgrid	Ausgrid Referral Response	25/01/2024

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

3. **Approved Land Use**
Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a dwelling house, in accordance with the Dictionary of the Manly Local Environmental Plan 2013, as follows:

"dwelling house means a building containing only one dwelling."

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

Reason: To ensure compliance with the terms of this consent.

4. **No Approval for Secondary Dwelling**
No approval is granted or implied under this Development Consent for the use of any part of the dwelling house for the purpose of a secondary dwelling or separate occupancy. Built in cooking facilities are not permitted to be installed, other than those shown in the designated kitchen area.

Reason: To ensure compliance with the terms of this consent.

5. **Prescribed Conditions**
   (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
   (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
   (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
      (i) showing the name, address and telephone number of the Principal Certifier for the work, and
      (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
      (iii) stating that unauthorised entry to the work site is prohibited.

   Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
   (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
      (i) in the case of work for which a principal contractor is required to be appointed:
         A. the name and licence number of the principal contractor, and
         B. the name of the insurer by which the work is insured under Part 6 of that Act,
      (ii) in the case of work to be done by an owner-builder:
         A. the name of the owner-builder, and
         B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

   If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the

work relates (not being the Council) has given the Council written notice of the updated information.

(e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

(i) protect and support the adjoining premises from possible damage from the excavation, and

(ii) where necessary, underpin the adjoining premises to prevent any such damage.

(iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

(iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative requirement.

6. **No Works on Adjoining Land**
All approved works are to be located entirely within the subject site. No Approval is granted under this consent for any works within or on the property boundaries of adjoining privately owned land.

Reason: To ensure compliance with the terms of this consent.

7. **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 $20,034.60 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 $2,003,460.00.

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. **On Slab Landscape Planters**

Details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided. Landscape treatment details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, and services connections. Soil depth shall be as documented on the approved Plans.

Design certification shall be submitted to the Certifier by a qualified Structural Engineer, that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

Reason: To ensure appropriate soil depth for planting and ensure waterproofing and drainage

is installed.

11. **On-Site Stormwater Detention Details**
The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by Taylor Consulting, drawing number Storm-1, Storm-2, dated 28.11.2023. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering.

Detailed drainage plans, including engineering certification, are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

12. **Stormwater Disposal**
The applicant is to submit Stormwater Engineering Plans for the new development within this development consent in accordance with AS/NZS 3500 and Council's Water Management for Development Policy, prepared by an appropriately qualified and practicing Civil or Hydraulic Engineer who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) , indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to the 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.

13. **Vehicle Crossings Application**
The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing 3.0 metres wide in accordance with Northern Beaches Council Standard Drawing A4 3330/4 EH 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.

14. **Off Street Parking Design**
The Applicant shall submit a design for the parking facility in accordance with the relevant provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical Controls and Section 2.6 Design of Domestic Driveways.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Construction Certificate.

Reason: Compliance with this consent.

15. **Erosion and Sediment Control Plan**
An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:

- Site Boundaries and contours
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities)
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls that must include sediment fences, stabilised site access, materials and waste stockpiles locations, location of any stormwater pits on the site and how they are going to be protected.
- North point and scale.

Details demonstrating compliance are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

Reason: Protection of the receiving environment.

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. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**
The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of a Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

18. **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.

19. **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.

20. **Photographic Archival Record**
A photographic archival record is to be made of all existing buildings and structures (including all interiors and exteriors and their setting), in accordance with the guidelines issued by NSW Heritage. This record must be submitted to and approved by Council's Heritage Officer prior to the issuing of the Construction Certificate. Once approved, a physical copy must also be submitted to Council's Local Studies Library.

The photographic record should be made using digital technology, and must include at a minimum:

- Location of property, date of survey and author of survey;
- A site plan at a scale of 1:200 showing all structures and major landscape elements;
- Floor plans of any buildings at a scale of 1:100 with dimensions of rooms;
- Internal photos detailing every room;
- Photographs which document the site, cross-referenced in accordance with recognised archival recording practice to catalogue sheets.

Details demonstrating compliance with this condition must also be submitted to the Principal Certifiying Authority prior to commencement of any demolition or works on-site.

Reason: To provide an archival photographic record of the historic building including its setting and any moveable heritage onsite, prior to the commencement of any works.

21. **Linking of Consents**

To the extent of any inconsistency between this consent and the development consent granted to Development Application DA2018/1074 by Northern Beaches Council for alterations and additions at 8 Alma Street, Clontarf, the plans, drawings and documents approved by, and the conditions of, DA2023/1824 shall prevail.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To prevent any inconsistencies between consents applying to the site.

22. **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.

23. **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.

24. **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

25. **Tree Removal Within the Property**
This consent approves the removal of existing prescribed trees on the subject site as identified in the Arboricultural Impact Assessment, approved Plans, or as listed below:
a) tree 1 Sydney Red Gum (Angophora costata),
b) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised development works.

DURING BUILDING WORK

26. **Tree and Vegetation Protection**
a) Existing trees and vegetation shall be retained and protected, including:
i) any prescribed trees within the site not approved for removal,
ii) all trees and vegetation located on adjoining properties,
iii) all trees and vegetation within the road reserve.

b) Tree protection shall be undertaken as follows:
i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites,
ii) the following arboricultural requirements shall be adhered to unless authorised by an Arborist with minimum AQF level 5 qualifications: existing ground levels shall be maintained within the tree protection zone of trees to be retained; removal of existing tree roots at or >25mm (Ø) diameter is not permitted; no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained; and structures are to bridge tree roots at or >25mm (Ø) diameter,
iii) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
iv) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
v) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:
c) The arboricultural works listed in a) and b) are undertaken as complaint to AS4970-2009 Protection of trees on development sites.

Reason: Tree and vegetation protection.

27. **Road Reserve**
The applicant shall ensure the public footways and roadways adjacent to the site are maintained in a safe condition at all times during the course of the work.

Reason: Public safety.

28. **Installation and Maintenance of Sediment and Erosion Controls**
Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan prior to commencement of any other works on site.

Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: Protection of the receiving environment.

29. **Removing, Handling and Disposing of Asbestos**
Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:
    - Work Health and Safety Act;
    - Work Health and Safety Regulation;
    - Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
    - Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
    - Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
    - The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

30. **Geotechnical Requirements**
All recommendations (if any) included in the Geotechnical Report referenced in Condition 1 of this consent are required to be complied with during works.

Reason: To ensure geotechnical risk is mitigated appropriately.

31. **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 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.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

35. **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 of 75 litres or as otherwise scheduled if greater in size; planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,
d) mass planting shall be installed at minimum 1metre intervals for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,
e) all proposed tree planting shall be positioned in locations to minimise significant impacts on

neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces,
f) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone.

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.

36. **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.

37. **Reinstatement of Kerb**
The Applicant shall reinstate all redundant laybacks and vehicular crossings to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To facilitate the preservation of on street parking spaces.

38. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**
The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), and Civil Engineers' certification.

The Applicant shall create on the Title a restriction on the use of land and a positive covenant in respect to the ongoing maintenance and restriction of the on-site stormwater disposal structures within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.

39. **Certification of Off Street Parking Works**
The Applicant shall submit a certificate from a suitably qualified person certifiying that the parking facility was constructed in accordance within this development consent and the relevant provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical Controls and Section 2.6 Design of Domestic Driveways.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: Compliance with this consent.

40. **House / Building Number**
House/building number is to be affixed to the building to be readily visible from the public domain.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: Proper identification of buildings.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

41. **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.

42. **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.

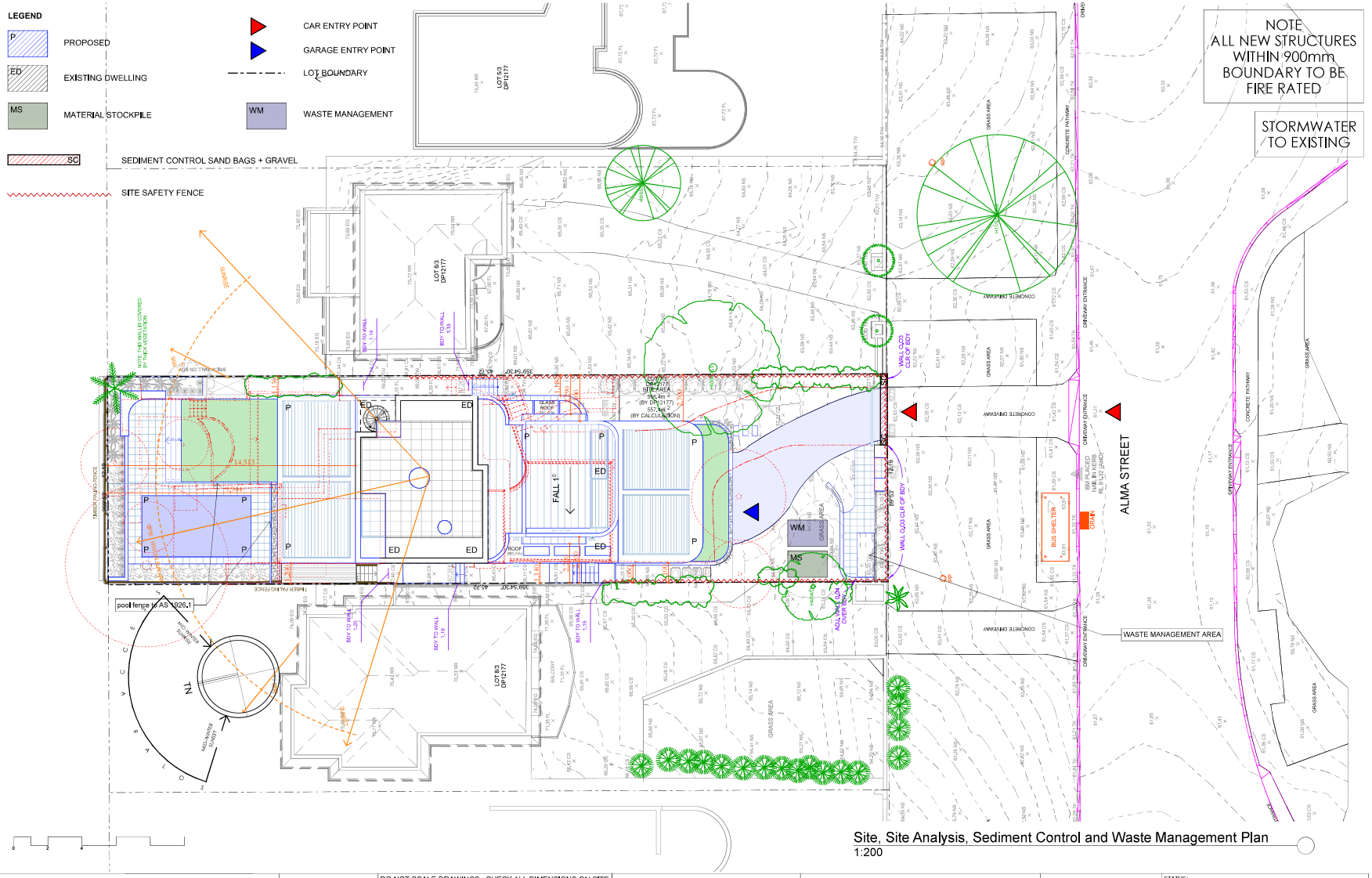
Reason: Protection of the receiving environment.

43. **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.

44. **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.



DO NOT SCALE DRAWINGS. CHECK ALL DIMENSIONS ON SITE. FIGURED DIMENSIONS TAKE PRECEDENCE. The builder shall check and verify all dimensions and verify all errors and omissions to the Architect. Do not scale the drawings. Drawings shall not be used for construction purposes until issued by the Architect for construction.

REV	DATE	DESCRIPTION

sketchArc
Po Box 377 Manly 1655
m : 0422 521 871
e : power@sketcharc.com.au
w : www.sketcharc.com.au

PROJECT:
8 Alma St, Clontarf, 2093, NSW
Alterations & Additions
LOT 7/3 in DP12177 - 556.4m2

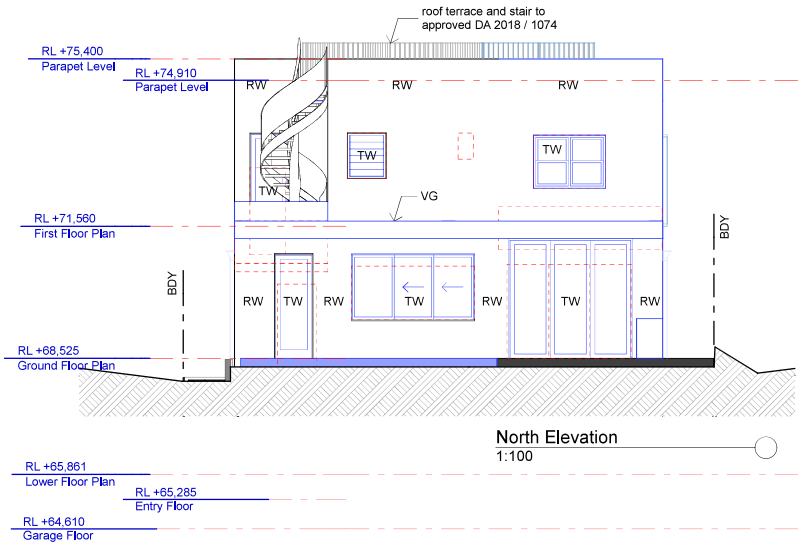
CLIENT:
Private

- Proposed Work
- Demolition
- Existing

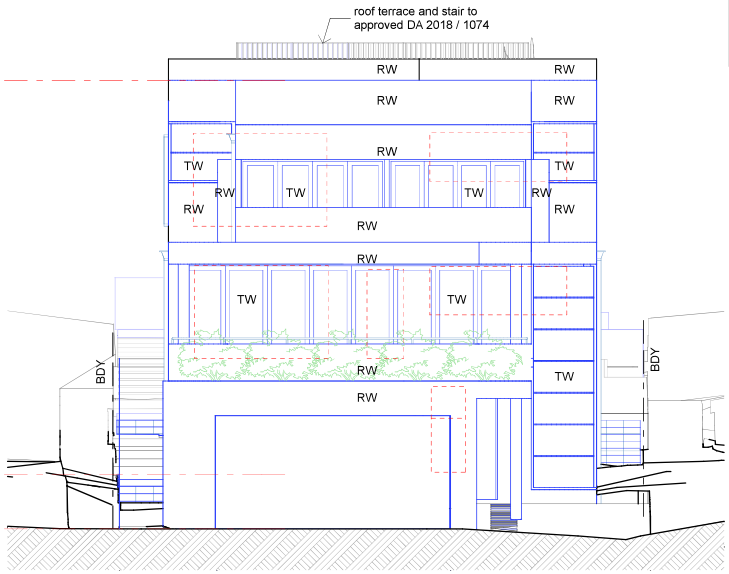
STATUS:		
DA Amended		
DATE:	SCALE:	PROJECT NUMBER:
120624	1:200@A3	2307
STAGE:	DRAWN/DESIGNED:	ISSUE:
DA Amended	PB / MP	
DRAWING NO:		
DA4		

NOTE
ALL NEW STRUCTURES WITHIN 900mm BOUNDARY TO BE FIRE RATED

STORMWATER TO EXISTING

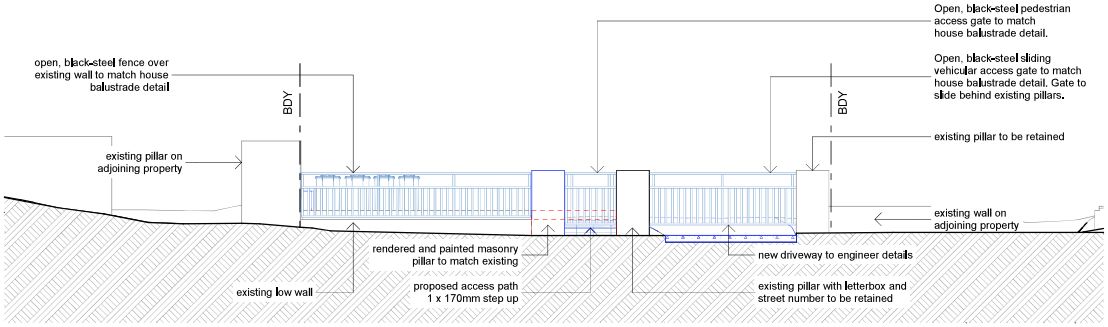


North Elevation
1:100



South Elevation
1:100

MR	roof with metal cladding
RW	rendered wall
TW	timber window
PF	pool fence to AS1926.1
VG	Vergola
SC	screen



Front Fence Elevation
1:100

0 2 4

DO NOT SCALE DRAWINGS. CHECK ALL DIMENSIONS ON SITE. FIGURED DIMENSIONS TAKE PRECEDENCE. The builder shall check and verify all dimensions and verify all errors and omissions to the Architect. Do not scale the drawings. Drawings shall not be used for construction purposes until issued by the Architect for construction.

REV	DATE	DESCRIPTION

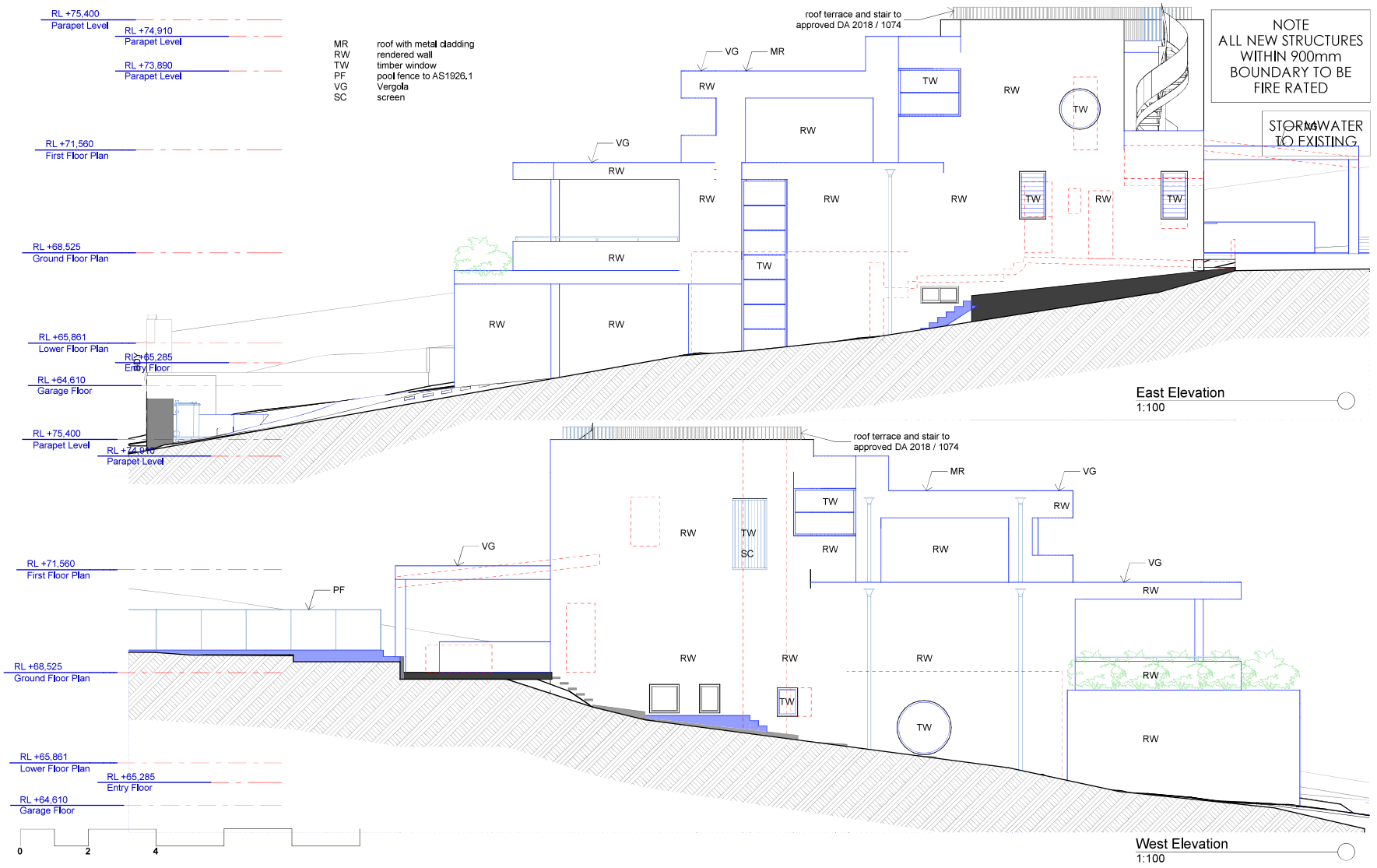
sketchArc
Po Box 377 Manly 1655
m : 0422 521 871
e : power@sketcharc.com.au
w : www.sketcharc.com.au

PROJECT:
8 Alma St, Clontarf, 2093, NSW
Alterations & Additions
LOT 7/3 in DP12177 - 556.4m2

CLIENT:
Private

- Proposed Work
- Demolition
- Existing

STATUS: DA Amended		
DATE: 120624	SCALE: 1:100@A3	PROJECT NUMBER: 2307
STAGE: DA Amended	DRAWN/DESIGNED: PB / MP	ISSUE:
DRAWING NO: DA9		



DO NOT SCALE DRAWINGS. CHECK ALL DIMENSIONS ON SITE. FIGURED DIMENSIONS TAKE PRECEDENCE. The builder shall check and verify all dimensions and verify all errors and omissions to the Architect. Do not scale the drawings. Drawings shall not be used for construction purposes until issued by the Architect for construction.

REV	DATE	DESCRIPTION

sketchArc
Po Box 377 Manly 1655
m : 0422 521 871
e : power@sketcharc.com.au
w : www.sketcharc.com.au

PROJECT: 8 Alma St, Clontarf, 2093, NSW
Alterations & Additions
LOT 7/3 in DP12177 - 556.4m2

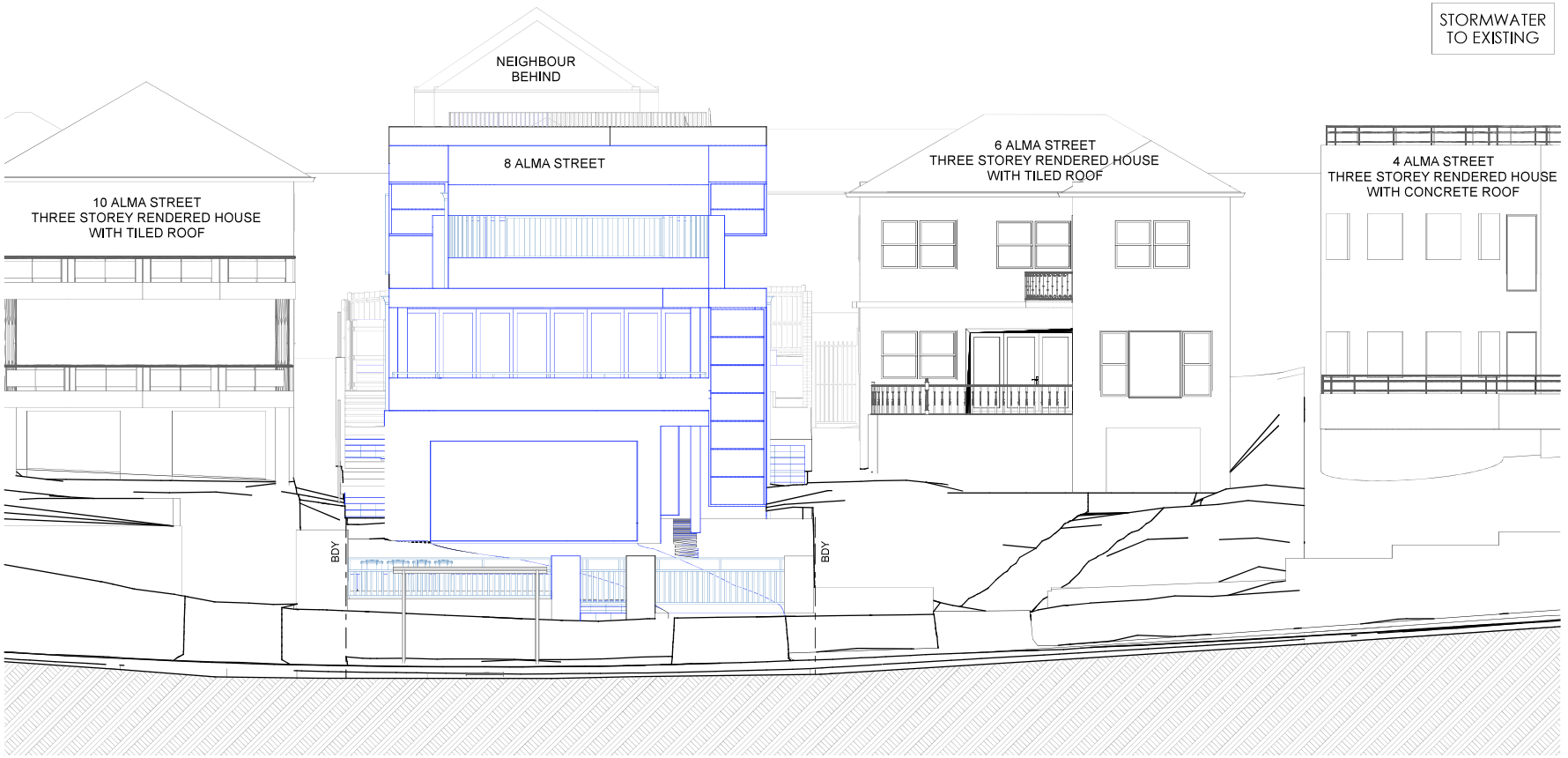
CLIENT: Private

= Proposed Work
= Demolition
= Existing

STATUS: DA Amended		
DATE: 120624	SCALE: 1:100@A3	PROJECT NUMBER: 2307
STAGE: DA Amended	DRAWN/DESIGNED: PB / MP	ISSUE:
DRAWING NO: DA10		

NOTE
ALL NEW STRUCTURES WITHIN 900mm BOUNDARY TO BE FIRE RATED

STORMWATER TO EXISTING



Street Elevation
1:100

0 2 4

DO NOT SCALE DRAWINGS. CHECK ALL DIMENSIONS ON SITE. FIGURED DIMENSIONS TAKE PRECEDENCE. The builder shall check and verify all dimensions and verify all errors and omissions to the Architect. Do not scale the drawings. Drawings shall not be used for construction purposes until issued by the Architect for construction.

REV	DATE	DESCRIPTION

sketchArc
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m : 0422 521 871
e : power@sketcharc.com.au
w : www.sketcharc.com.au

PROJECT:
8 Alma St, Clontarf, 2093, NSW
Alterations & Additions
LOT 7/3 in DP12177 - 556.4m2

CLIENT:
Private

= Proposed Work
= Demolition
= Existing

STATUS: DA Amended

DATE:	SCALE:	PROJECT NUMBER:
120624	1:100@A3	2307
STAGE:	DRAWN/DESIGNED:	ISSUE:
DA Amended	PB / MP	

DRAWING NO: DA11

CLAUSE 4.6 – FLOOR SPACE RATIO
(CLAUSE 4.4 MLEP 2013)

Prepared December 2023
(As revised August 2024)

WRITTEN SUBMISSION PURSUANT TO CLAUSE 4.6 OF MANLY LOCAL ENVIRONMENTAL PLAN 2013

8 ALMA STREET, CLONTARF

ADDITIONS AND ALTERATIONS TO AN EXISTING DWELLING, INCLUDING DOUBLE GARAGE

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:	Additions and alterations to an existing dwelling, including double garage
At:	8 Alma Street, Clontarf
Owner:	Chad Hing & Emily Wong
Applicant:	Chad Hing & Emily Wong C/- Vaughan Milligan Development Consulting Pty Ltd

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 prepared by SketchArc dated 12 June 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 Manly LEP. The changes came into force on 1 November 2023.

The principal change is the omission of subclauses 4.6(3)-(5) and (7) in the Standard Instrument Principal Local Environmental Plan.

The following changes have been made as a result of this:

- Clause 4.6(3) was amended such that the requirement to 'consider' a written request has been changed with an express requirement that the consent authority 'be satisfied that the applicant has demonstrated' that compliance with the development standard is unreasonable or unnecessary.

- Clause 4.6(4)(a)(ii) was amended such that the requirement that the consent authority must be satisfied that the proposed development in the public interest has been removed.

- Clause 4.6(4)(b) & 5 amended such that the requirement for concurrence from the Planning Secretary has been removed.

The objectives of clause 4.6 of the LEP, as amended, seek to recognise that in the particular circumstances of this case strict application of development standards may be unreasonable or unnecessary. The clause provides objectives and a means by which a variation to the development standard can be achieved as outlined below:

Clause 4.6 Exception to development standard

> *(1) The objectives of this clause are as follows—*
> > *(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
> > *(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
>
> *(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
>
> *(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—*
> > *(a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
> > *(b) there are sufficient environmental planning grounds to justify the contravention of the development standard.*

Note—
The Environmental Planning and Assessment Regulation 2021 requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).

> *(4) The consent authority must keep a record of its assessment carried out under subclause (3).*
>
> *(5) (Repealed)*

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note—

When this Plan was made it did not include all of these zones.

(7) (Repealed)

(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

(a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,

(c) clause 5.4,

(caa) clause 5.5.

3.0 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 0.4:1 or for this site with an area of 557.4m^2, the maximum gross floor area is 222.9m^2 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 in the total gross floor area to 298.3m^2 or 0.535:1, and therefore the extent of the variation from the control will be 75.4m^2 or 33.8%.

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 FSR can be calculated based on a minimum lot size of 750m^2 (Area "R" on LSZ Map)the required minimum lot size in the locality is 750m^2 and when calculated against this required lot size, the permissible floor area is 300m^2.

The proposed development will present a total floor area of 298.3m^2 or a FSR of 0.397:1 when assessed against the Lot Size control of 750m^2, which would comply with the control.

The controls of Clause 4.4 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

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 or 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.

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:

(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 0.4:1. As the lot is undersized when compared to the minimum lot size in the area and the proposed new works do not result in an excessive or unreasonable bulk and scale for the immediate locality, strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case. It is considered that there are sufficient environmental planning grounds to justify contravening the development standard.

The relevant arguments are set out later in this written request.

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:

(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 0.4:1, however as the lot is undersized and with the proposed additions and alterations to the dwelling, which contributes to the 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.

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 R2 Low Density Residential Zone, which are noted as:

- *To provide for the housing needs of the community within a low density residential environment*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The 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 Alma Street from the surrounding private properties will be largely maintained.

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 Clontarf of 0.4:1 or for this site of 557.4m^2, the allowable gross floor area is 222.96m^2.

6.3 The proposal has a calculable gross floor area of 298.3m^2 or FSR of 0.535:1.

6.4 The total non-compliance with the FSR control is 75.4m^2 or 33.8%, which is a breach to the control.

6.5 When assessed against a minimum lot area of 750m^2, the proposal presents an FSR of 0.397:1, which complies 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].*
>
> *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 R2 zone?

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 4.4 of MLEP?

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.

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. One tree is to be removed from the front yard to accommodate the new driveway and garage however the Landscape Plan prepared to support the development includes two additional trees within the front yard which will achieve a height of 15m and additional canopy trees for the rear yard. As 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.

(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 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 Alma 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 0.4:1 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.

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.

8.3 Is the proposed development in the public interest because it is consistent with the objectives of clause 4.4 and the objectives of the R2 Low Density Residential zone?

(a) Section 4.2 of this written request suggests the 1st test in Wehbe is made good by the development.

(b) Each of the objectives of the R2 Low Density Residential Zone and the reasons why the proposed development is consistent with each objective is set out below.

I have had regard for the principles established by Preston CJ in *Nessdee Pty Limited v Orange City Council [2017] NSWLEC 158* where it was found at paragraph 18 that the first objective of the zone established the range of principal values to be considered in the zone.

Preston CJ found also that "*The second objective is declaratory: the limited range of development that is permitted without or with consent in the Land Use Table is taken to be development that does not have an adverse effect on the values, including the aesthetic values, of the area. That is to say, the limited range of development specified is not inherently incompatible with the objectives of the zone".*

In response to *Nessdee,* I have provided the following review of the zone objectives:

It is considered that notwithstanding the 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 individual Objectives of the R2 Low Density Residential Zone for the following reasons:

- ***To provide for the housing needs of the community within a low density residential environment***

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 R2 Low Density 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 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 detached dwelling that is consistent with the dominant housing typology in the area and along Alma Street. The density is not inconsistent with the Clontarf 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 for 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 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.

9.0 Conclusion

This development proposes a departure from the maximum floor space ratio control for this locality of 0.4:1, with the proposed additions to the existing dwelling to provide a maximum floor space ratio of 0.535:1.

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 750m^2 and when calculated against this required lot size, the development prescribes a FSR of 0.397:1, which presents a compliant development when considered against the FSR control as it applies to the minimum lot size in the area of 750m^2.

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.



VAUGHAN MILLIGAN
Town Planner

CLAUSE 4.6 – HEIGHT OF BUILDINGS
(CLAUSE 4.3 MLEP 2013)

Prepared December 2023

WRITTEN SUBMISSION PURSUANT TO CLAUSE 4.6 OF MANLY LOCAL ENVIRONMENTAL PLAN 2013

8 ALMA STREET, CLONTARF

ADDITIONS AND ALTERATIONS TO AN EXISTING DWELLING, INCLUDING DOUBLE GARAGE

VARIATION OF A DEVELOPMENT STANDARD RELATING TO COUNCIL'S HEIGHT OF BUILDINGS CONTROL AS DETAILED IN CLAUSE 4.3 OF THE MANLY LOCAL ENVIRONMENTAL PLAN 2013

For:	Additions and alterations to an existing dwelling, including double garage
At:	8 Alma Street, Clontarf
Owner:	Chad Hing & Emily Wong
Applicant:	Chad Hing & Emily Wong C/- Vaughan Milligan Development Consulting Pty Ltd

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 height of a building as described in Clause 4.3 of the Manly Local Environmental Plan 2013 (MLEP 2013).

This revised written request considers the revised architectural plans prepared by sketchArc, Issue A dated 5 December 2023.

2.0 Background

Clause 4.3 of MLEP sets out the maximum height of a building as follows:

(1) The objectives of this clause are as follows—

(a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,

(b) to control the bulk and scale of buildings,

(c) to minimise disruption to the following—

(i) views to nearby residential development from public spaces (including the harbour and foreshores),

(ii) views from nearby residential development to public spaces (including the harbour and foreshores),
(iii) views between public spaces (including the harbour and foreshores),
(d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,
(e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

The Height of Buildings Map specifies a maximum building height of 8.5m.

The proposed additions to the existing dwelling will result in a portion of the new roofing being up to 9.837m in height, resulting in a non-compliance of 1.337m or 15.7% to the control, as noted in Figure 1.

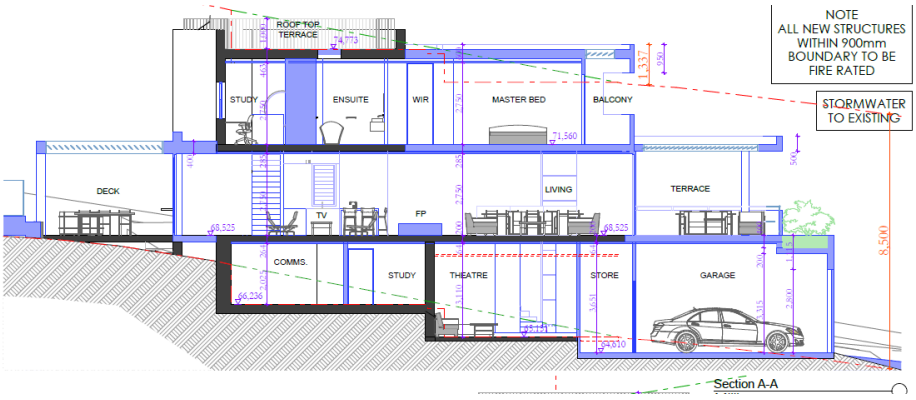


Fig 1: Section indicating proposed roof exceeding Council's height of buildings control (Source: sketchArc)

The Dictionary to MLEP operates via clause 1.4 of MLEP. The Dictionary defines "building height" as:

building height *(or* ***height of building****) means—*

(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or
(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

The proposal is considered acceptable and as discussed further within this request, there are sufficient environmental planning grounds to justify contravening the development standard.

The controls of Clause 4.3 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

Is clause 4.3 of MLEP a development standard?

(a) The definition of "development standard" in clause 1.4 of the EP&A Act means standards fixed in respect of an aspect of a development and includes:

"(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work."

(b) Clause 4.3 relates to the maximum height of a building. Accordingly, clause 4.3 is a development standard.

3.0 Purpose of Clause 4.6

The Manly Local Environmental Plan 2013 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the 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.

4.0 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 4.3 (the height of a building 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:*
>
> *(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 maximum height of a building development standard pursuant to clause 4.3 of MLEP which specifies a maximum building height of 8.5m. As a consequence of the site's slope and the existing built form the proposal will present a maximum height of 9.837m.

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.

In the circumstances of this case, there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

Clause 4.6(4) of MLEP provides:

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:
(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Planning Secretary has been obtained.

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]). The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest ***because*** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that that the concurrence of the Planning Secretary (of the Department of Planning and the Environment) has been obtained.

Under cl 55 of the *Environmental Planning and Assessment Regulation 2021,* the Secretary has given written notice dated 5 May 2020, attached to the Planning Circular PS 20-002 issued on 5 May 2020, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of MLEP provides:

(5) In deciding whether to grant concurrence, the Secretary must consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

Council has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), and should consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.4 of MLEP from the operation of clause 4.6.

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 R2 Low Density Residential Zone, which are noted as:

- *To provide for the housing needs of the community within a low-density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposal will provide for the construction of alterations and additions to an existing dwelling to provide for increased amenity for the site's occupants.

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.

Notwithstanding the minor non-compliance with the maximum height 8.5m control of 1.337m or 15.7%, 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 other dwellings on the high side of our street in the immediate vicinity present tw to three levels in a stepped form following the sloping topography of the land. As such, the proposed works are not out of character with the scale and form of the surrounding development.

5.0 The Nature and Extent of the Variation

5.1 This request seeks a variation to the maximum height of a building development standard contained in clause 4.3 of MLEP.

5.2 Clause 4.3 of MLEP specifies a maximum building height of 8.5m for development in this part of Manly.

5.3 As a consequence of the sloping topography of the site and the previous excavation to the existing lower floor level within the building footprint, the proposed additions and alterations to the existing dwelling will incorporate an extension of the existing first floor with a maximum building height of 9.837m, which exceeds the building height control by 1.337m or 15.7%.

6.0 Relevant Caselaw

6.1 In Initial Action the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 continue to apply as follows:

17. The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].

18. A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].

19. A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].

20. A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].

21. A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate

for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.

22. These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

6.2 The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 4.3 of MLEP a development standard?

2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:

   (a) compliance is unreasonable or unnecessary; and

   (b) there are sufficient environmental planning grounds to justify contravening the development standard

3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.3 and the objectives for development for in the R2 zone?

4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?

5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.3 of MLEP?

7.0. Request for Variation

7.1 Is compliance with clause 4.3 unreasonable or unnecessary?

(a) This request relies upon the 1st way identified by Preston CJ in Wehbe.

(b) The first way in Wehbe is to establish that the objectives of the standard are achieved.

(c) Each objective of the maximum building height standard and reasoning why compliance is unreasonable or unnecessary is set out below:

(a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,

The Objective of Clause 4.3 (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 surrounding area is predominantly characterised by two – three storey development. The proposal seeks to accommodate the additions within a compatible and consistent building form, with the slope of the site towards the south, with a resulting height for the new works will be up to 9.837m in height when measured above the existing excavated lower floor level.

The overall building height respects the surrounding character and the design seeks to minimise the visual impact through distributing the new first floor extension with a compatible setback from the rear, retaining the current three storey height.

(b) to control the bulk and scale of buildings,

The proposed additions and alterations to the existing dwelling will not result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing.

Further, the modulation of the front façade and building elevations where visible from the public domain minimises the visual impact of the development. Combined with a substantial setback to the front boundary, and the fact that the development joins in the public reserve to the north, the proposal is not present a significant impact of the surrounding streetscape and is compatible with the bulk and scale of the nearby development and.

The proposal presents a compatible height and scale to the surrounding development and the articulation to the building facades and low pitch roof form will suitably distribute the bulk of the additional floor area.

(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),***

Due to the general slope of the site towards the south, the adjoining properties on the east and west enjoy district and water views towards the south.

The proposal will provide for a low profile roof form which will allow for suitable views to be maintained through and over the site.

Views from the surrounding public spaces are not adversely affected.

(d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,

As the proposal will see the construction of alterations and additions to an existing dwelling, the shadow analysis prepared by sketchArc details the proposed shadow impacts.

The assessment confirms that the proposed alterations and additions will not result in any unreasonable or adverse impacts to the existing solar access enjoyed by the primary private open spaces and primary living rooms of the adjacent eastern and western neighbours.

(e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

The proposal requires the removal of an existing tree located forward of the existing dwelling. The tree removal is required to provide for the new driveway. However, the works are largely over disturbed footprint and there will be no loss of significant or native vegetation within the site, the proposal does not conflict with bushland or any surrounding land uses.

The application is supported by a landscape plan to provide for the managed replanting of the site and will maintain a suitable area of soft landscaping.

7.2 Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

> *23. As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
>
> *24. The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*

There are sufficient environmental planning grounds to justify contravening the development standard.

The low pitch roof form maintains modulation and architectural relief to the building's facade, and 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 increase to the building's bulk, which promotes good design and improves the amenity of the built environment (1.3(g).

- The design will maintain the general bulk and scale of the existing surrounding dwellings and responds to the sloping topography and the constraints presented by the location and form of the existing dwelling, 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 Alma Street which also promotes the orderly and economic use of the land (cl 1.3(c)).

- The proposed new works which exceed the maximum building height control are considered to promote good design and enhance the residential amenity of the buildings' occupants and the immediate area, by massing the new work towards the rear of the site and over the existing building footprint, minimising the visual impact of the bulk and scale when viewed from the rear yard of the northern neighbours.

- The alterations demonstrate good design and improve the amenity of the built environment by creating improved and functional living area whilst retaining suitable amenity for the adjoining properties (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 whilst reducing the maximum building height and manages the bulk and scale and maintains views over and past the building from the public and private domain.

These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the height of buildings 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 4.3 and the objectives of the R2 Low Density Residential Zone?

(a) Section 4.2 of this written request suggests the 1st test in Wehbe is made good by the development.

(b) Each of the objectives of the R2 Low Density Residential Zone and the reasons why the proposed development is consistent with each objective is set out below.

I have had regard for the principles established by Preston CJ in *Nessdee Pty Limited v Orange City Council [2017] NSWLEC 158* where it was found at paragraph 18 that the first objective of the zone established the range of principal values to be considered in the zone.

Preston CJ found also that "*The second objective is declaratory: the limited range of development that is permitted without or with consent in the Land Use Table is taken to be development that does not have an adverse effect on the values, including the aesthetic values, of the area. That is to say, the limited range of development specified is not inherently incompatible with the objectives of the zone".*

In response to *Nessdee,* I have provided the following review of the zone objectives:

It is considered that the proposed alterations and additions to the existing dwelling will be consistent with the individual Objectives of the R2 Low Density Residential Zone for the following reasons:

- ***To provide for the housing needs of the community within a low-density residential environment.***

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 R2 Low Density Residential Zone contemplates low density residential uses on the land.

The proposal results in a built form that minimises the visual presentation at the street and provides for an appropriate area of open space and landscaping that will provide for the housing needs of the site and wider area.

The proposed development will be compatible with the general height and form of the surrounding development and for this reason will protect and manage the aesthetic values of the area.

- ***To enable other land uses that provide facilities or services to meet the day to day needs of residents.***

The proposal continues the existing single dwelling use and is considered to be an appropriate use for the site. The proposal will provide for improved facilities and services of the site for the occupants by providing additional areas of living space and private open space to improve the level of residential amenity.

Having regard to the above matters, it can be readily concluded that the proposal is a low impact residential use being a single dwelling house.

7.4 Has council obtained the concurrence of the Director-General?

The Council can assume the concurrence of the Director-General with regards to this clause 4.6 variation.

7.5 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 development does not trigger requirements for a higher level of assessment.

(b) As the proposed development is in the public interest because it 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.

(c) there are no other matters required to be taken into account by the secretary before granting concurrence.

8.0 Conclusion

This development proposed a departure from the maximum building height development standard, with the proposed additions and alterations to provide for a maximum building height of 9.837m when measured above the prior excavated levels of the site immediately within the building footprint which results in a non-compliance with the standard of 1.337m or 15.7%.

The plans provide for suitable eastern and western side setbacks to the first floor and minimising new window openings on the side boundaries which also assists in alleviating the impacts to the neighbouring properties resulting from the proposed works.

This variation occurs as a result of the sloping topography of the site and the form of the existing building.

The extent of the variation to the building height control does not result in any significant impact to the views and outlook for the neighbouring properties.

This written request to vary to the maximum building height standard specified in Clause 4.3 of the Manly LEP 2013 adequately demonstrates that that the objectives of the standard will be met.

The bulk and scale of the proposed development is appropriate for the site and locality.

Strict compliance with the maximum building height control would be unreasonable and unnecessary in the circumstances of this case.



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