

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 25 SEPTEMBER 2024

Ashleigh Sherry
Manager Business System and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 25 September 2024
via teleconference
Commencing at 10:00 AM**

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ACKNOWLEDGEMENT OF COUNTRY

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

1.0 APOLOGIES & DECLARATIONS OF INTEREST

Nil

2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF THE DEVELOPMENT DETERMINATION PANEL MEETING HELD ON 11 SEPTEMBER 2024

RECOMMENDATION

That the Panel note that the minutes of the Development Determination Panel Meeting held on 11 September 2024 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	DA2024/0647 - 14 THE CIRCLE BILGOLA PLATEAU - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
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PURPOSE

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

RECOMMENDATION

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

THAT Council as the consent authority **approves** Development Consent to DA2024/0647 for alterations and additions to a dwelling house on land at Lot 512 DP 16902, 14 The Circle BILGOLA PLATEAU, subject to the conditions set out in the Assessment Report.

Reporting manager	Adam Richardson
TRIM file ref	2024/663342
Attachments	1 Assessment Report 2 Site Plan and Elevations 3 Clause 4.6

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/0647
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Responsible Officer:	Brittany Harrison
Land to be developed (Address):	Lot 512 DP 16902, 14 The Circle BILGOLA PLATEAU NSW 2107
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	JJ Drafting Australia Pty Ltd

Application Lodged:	28/05/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	06/06/2024 to 20/06/2024
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 36.5%
Recommendation:	Approval

Estimated Cost of Works:	\$ 850,000.00
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EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) as the proposal results in a variation of more than 10.0% to Clause 4.3 Height of Buildings of the *Pittwater Local Environmental Plan 2014* (PLEP 2014).

The maximum permitted building height under the PLEP 2014 is 8.5 metres. As the site is located on a slope of over 30.0% (16.7 degrees) a dispensation exists within the LEP whereby minor breaches up to a 10.0 metres height limit maybe permitted. The proposed works include replacement windows at a height of 9.4 metres, which is located above the 8.5 metres building height standard but below the 10.0 metres exemption. It has been found that this element is consistent with the dispensations

permitted under Clause 4.3. However and despite this, the proposal includes a new gable roof section which exceeds the height dispensation of Clause 4.3; therefore, the building height maximum reverts back to the 8.5 metres building height standard for this element of the proposal. The gable roof exhibits a height of 11.6 metres, with a variation of 36.5%.

In support of the variation is a detailed written Clause 4.6 variation request where compliance with the development standard is considered unreasonable in the circumstances of this case. The variation arises from the proposed gable roof placement that is located above the master bedroom, which is located above a large undercroft area, on steeply sloped topography. The roof is isolated to one section of the building toward the rear and will be situated below the overall existing roof ridge of the dwelling and will not result in adverse visual or amenity impacts.

The proposal includes several variations to the built form controls under the Pittwater 21 Development Control Plan (P21DCP), these being Clause D3.6 Front Building Line, D1.7 Side and Rear Building Line and D3.9 Building Envelope. The proposal in regard to these variations do not result in unacceptable environment and/or amenity impacts, with the development achieving the relevant objectives, subject to conditions. A further assessment in relation to privacy was also undertaken, details have been provided in this report.

The proposed development was notified in accordance with the Northern Beaches Community Participation Plan (CPP) for fourteen (14) days, with one (1) submission received. The concerns raised in this submission primarily related to the initial front fence design, the construction phase and protection of trees, which is addressed in detail under the 'Submissions' section of this report. Amended plans were received which satisfactory addressed the concerns raised with the applicant during the assessment process, which is discussed in detail under the 'Site History' section of this report.

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

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

PROPOSED DEVELOPMENT IN DETAIL

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

Specifically, the works comprise of the following:

- Enclose undercroft area under the existing first floor to accommodate an open living area, dining, kitchen and bathroom;
- New elevated verandah at rear with access stairs;
- New subfloor to be enclosed with screening;
- Internal reconfigurations to existing floor area;
- Window and door amendments/additions;
- New front porch area and entry pathway;
- Addition of gable roof above first floor;
- Construction of front fence and vehicle gate; and
- Landscaping works including 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

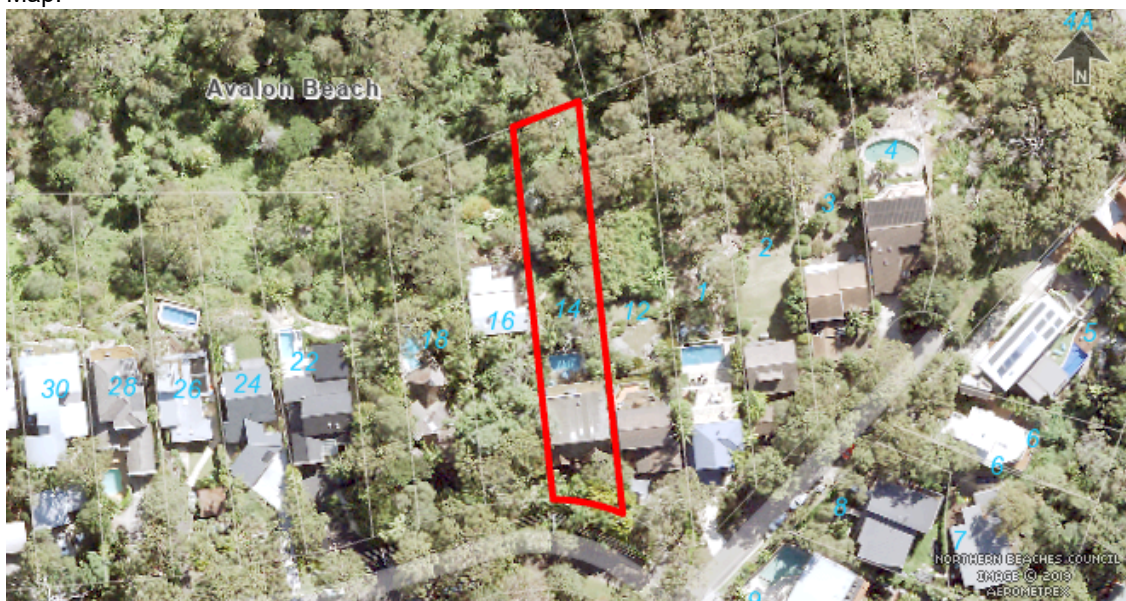
Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living
 Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings
 Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
 Pittwater Local Environmental Plan 2014 - Public Bushland
 Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
 Pittwater 21 Development Control Plan - C1.5 Visual Privacy
 Pittwater 21 Development Control Plan - D3.3 Building colours and materials
 Pittwater 21 Development Control Plan - D3.6 Front building line
 Pittwater 21 Development Control Plan - D3.7 Side and rear building line
 Pittwater 21 Development Control Plan - D3.9 Building envelope
 Pittwater 21 Development Control Plan - D3.13 Fences - Flora and Fauna Conservation Areas

SITE DESCRIPTION

Property Description:	Lot 512 DP 16902 , 14 The Circle BILGOLA PLATEAU NSW 2107
Detailed Site Description:	The subject site consists of one (1) allotment located on the northern side of The Circle. The subject site is legally identified as Lot 512 in Deposited Plan 16902, No. 14 The Circle, Bilgola Plateau. The site is irregular in shape with a frontage of 16.185m and an average depth of 88.52m. The site has a surveyed area of 1348.0m².

	The site is located within the C4 Environmental Living zone under the provisions of the <i>Pittwater Local Environmental Plan 2014</i> and accommodates a dwelling house and swimming pool. The site topography slopes downward from south to north by approximately 20.0m. The site consists of dense vegetation, bushland (to the south) and various rock outcrops. The site is located within a Geotechnical Hazard, Bushfire Prone Land and Proximity Area for Littoral Rainforest. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by residential dwellings situated within a landscaped setting and adjoins Angophora Reserve.
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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:

N0831/05

Development Application for the construction of a swimming pool.
Approved on the 16 January 2006.

Current Application

The development application was notified for a period of fourteen (14) days, in accordance with

Council's Community Participation Plan (CPP), with one (1) submission received.

Amended information was requested to address the following:

- **Clause 4.6 Variation:** The Clause 4.6 written request was not well-founded in that it does not clearly set out why it is unreasonable or unnecessary to comply with the maximum building height and that there are sufficient environmental planning grounds to justify the proposed height. An opportunity was provided to amend accordingly.
- **Clause D3.9 Building Envelope:** Whilst it is acknowledged that the clause stipulates that the building footprint is situated on a slope over 16.7 degrees (i.e., 30%) the envelope will be assessed on a merit basis, the original proposed encroachment was not considered to be acceptable. Requested that the envelope be reduced by increasing side setback to new floor area.
- **Clause D3.13 Fences:** It is requested that the front fence be removed from the proposal or be amended to strictly comply with the clause requirements and present a design that is of low impact to surrounding trees and not visually prominent.
- **Interdepartmental Referral - Landscape and Biodiversity:** Concerns regarding tree removal.
- **Interdepartmental Referral – Development Engineer:** The original submitted stormwater plan did not show a point of discharge. The site falls to the rear and as such a stormwater plan in accordance with Section 5.5 of Council's Water Management for development policy was requested.

An amended proposal was submitted on 17 July 2024 which was sufficient in addressing the above issues. Re-notification was not required as the plans resulted in a lesser environmental impact than the plans originally notified. However, the objector was informally notified of the amendments and was provided seven (7) days to make comment. No additional concerns were raised by the objector.

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)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested, refer to 'Site History'. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the *Environmental Planning and Assessment Act 1979* requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled *Planning for Bush Fire Protection 2019*.

A Bush Fire Report was submitted with the application that included a certificate (prepared by Stephen Cotter - BPAD Accredited Practitioner, dated 6 May 2024) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

The accreditation noted on the submitted Bush Fire Report was near expiration, as such the application was referred to the NSW Rural Fire Service for further assessment. The NSW RFS could not verify the Bush Fire Report, therefore undertook an independent assessment of the proposal to determine compliance with *Planning for Bush Fire Protection 2019*. The conditions from the NSW RFS have been included as part of the recommended conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 06/06/2024 to 20/06/2024 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 1 submission/s from:

Name:	Address:
Mr Andrew Donald Cameron	18 The Circle BILGOLA PLATEAU NSW 2107

One (1) submission was received. The issues raised in the submission are addressed below:

- ***The proposed solid boundary wall at the front of the property is completely out of character with the streetscape and wider area...replace with a ‘softened’ boundary that would enable native wildlife, flora and fauna to use the remaining lateral corridor between the road and houses, and remain in keeping with the local environment.***

Comment

The original proposed fence was raised as a concern which was conveyed to the applicant. The amended proposal included a front fence that was better aligned with the relevant DCP requirements and existing streetscape. Refer to 'Clause D3.13 Fences - Flora and Fauna Conservation' for further detail.

- ***Expected duration of the works has not been made clear in the documents.***

Comment

It is not a requirement for the applicant to include expected timeframes or duration for the construction of the proposed works. The development consent will be valid for five (5) years from the date of determination, works are to be commenced within that time frame to avoid the consent lapsing.

- ***How many cars and trucks are expected to be parked in the street during the works? And what protections will be made for the large and protected angophora costata trees in the street to ensure no damage from trucks or delivery vehicles.***

Comment

Construction Traffic Management Plans (CTMP) are required for applications that include extensive earthworks or for streets that are irregular, narrow or for private laneways etc. The Circle is considered to consist of ample space for construction vehicles to be parked without causing detriment to the street. Street trees on the road reserve that adjoins the subject site will be protected by conditions of consent prepared by Council's Landscape Officer.

- ***Considerable clearing is expected at the front and rear of the house...no plans have been proposed or made available for the replanting of cleared vegetation.***

Comment

The number of trees originally proposed to be removed have been reduced including no trees in the road reserve to be removed. The amendments have been reviewed by Council's Landscape and Biodiversity Teams, who are in support, subject to conditions.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<i>Supported, subject to conditions.</i> 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 (PDGP) controls (but not limited to): B4.22 Preservation of Trees and Bushland Vegetation; C1.1 Landscaping; D3 Bilgola 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

Internal Referral Body	Comments
	landscape objectives of the C4 Environmental Living zone. <u>Final Comment (3):</u> Should the application be approved, conditions shall be imposed for tree protection measures. The two trees required for removal as noted previously (T13 and T29) are exempt species that do not require Council consent. Existing tree T28 (Cheese Tree) is not agreed for removal nor is it listed in the Arboricultural Impact Assessment (AIA) for removal, and as a high retention tree as rated in the AIA report shall be retained. The proposed front fencing shall be determined by the Assessing Planning Officer. The indicative planting within the property is noted. <u>Revised Comment (2):</u> <i>Amended Plans and Reports are submitted in response to concerns. The Amended Plans include a reduction in front boundary fence height as per DCP control D3.12 however it is noted the control requires planting to screen the fence on the roadside which means the fencing should be setback from the boundary, and this matter shall be determined by the Assessing Planning Officer.</i> <i>The amended Arboricultural Impact Assessment (AIA) includes the recommendation to remove two exempt species within the property, impacted by the proposed development works, and no concerns are raised nor is Council consent required for management or removal. Condition of consent are to be imposed on the protection of retained trees as recommended in the AIA. A Project Arborist shall be engaged to monitor works and tree health in proximity to existing trees 24, 28, 33, 34 and 35.</i> <u>Original Comment (1):</u> <i>The MasterSet Plan proposal for removal of existing vegetation (T9 to T12 and T22 as indicated in the Arboricultural Impact Assessment) within the road reserve verge is not supported as there are no works that impact upon the existing vegetation, nor is the encroachment of a new path from the front boundary to the road as this is not consistent with the streetscape character. Likewise the proposed front fencing is inconsistent with the existing streetscape character and this matter shall be determined by the Assessing Planning Officer.</i> <i>The Site Analysis Plan indicates existing trees within the property for removal including T13, T28 and T29. An Arboricultural Impact Assessment (AIA) is submitted. The removal of T13 and T29 within the property raise no concerns as these are exempt species, however T28 (Cheese Tree) is not agreed for removal nor is it listed in the AIA for removal, and as a high retention tree as rated in the AIA report shall be retained.</i>

Internal Referral Body	Comments
	<i>Given the above discrepancy and the matters raised regarding non agreeance to remove existing vegetation within the road reserve, Landscape Referral do not support the application as submitted. Furthermore the indicative planting within the road reserve verge forward of the front property boundary is also not supported as this would require a Minor Encroachments application for approval or otherwise.</i>
NECC (Bushland and Biodiversity)	Supported, subject to conditions. <u>Revised Comments 16 July 2024</u> Amended plans have been submitted and show that tree 28 shall be retained. The site is on land identified as proximity area for littoral rainforest and as such the development must not impact on the ecological integrity of the rainforest. The development is designed, sited and will be managed to avoid any significant adverse environmental impact. <u>Original Comments 14 June 2024</u> The comments in this referral relate to the following applicable controls and provisions: • SEPP (Resilience and Hazards) 2021 - Littoral Rainforest and Proximity Area • Planning for Bushfire Protection 2019 (PBP 2019) • Pittwater LEP Clause 7.6 Biodiversity Protection • Pittwater DCP Clause B4.2 Flora and Fauna Conservation Category 1 and Wildlife Corridor • Pittwater DCP Clause B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor The site is on land identified as proximity area for littoral rainforest and as such the development must not impact on the ecological integrity of the rainforest. The proposal has been submitted with an arboricultural impact assessment (EZIGROW, April 2024) that has assessed the condition of a total of 35 trees and recommended the removal of trees 9,10,11,12,13 and 22. Trees 9-12 and 22 are found in the road reserve and the approval of their removal is deferred to the relevant referral body. No objections are raised in relation to the removal of tree 13 (<i>Schefflera actinophylla</i>) as this is an exempt species that can be removed without Council's consent. The application has also been submitted with a Bushfire Report (Bushfire Planning and Design, May 2024) that has confirmed that the Bushfire Attack Level awarded to the site is BAL 29 and

Internal Referral Body	Comments
	recommended that the site be treated as an Asset Protection Zone in perpetuity and recommends the establishment of an Outer Protection Area that will be contained within the site. Additional measures to attain compliance have been recommended including the removal of all weeds on site. No removal of native vegetation has been recommended for compliance with PBP 2019. The architectural plans show that the removal of trees 28 and 29 is to take place, however, these trees are not impacted by the proposed works. The removal of tree 28 is not supported as it is a prescribed tree (<i>Glochidion ferdinandi</i>) with a high retention value and will have to be retained. The removal of tree 29 is not objected to as it is an exempt species. The Biodiversity Referral will recommence upon reception of amended plans showing retention of all native vegetation not impacted by the works.
NECC (Development Engineering)	<i>Supported, subject to conditions.</i> <u>Original Comment:</u> The proposal is for alterations and additions to the existing dwelling. The submitted stormwater plan does not show a point of discharge. The site falls to the rear and as such a stormwater plan in accordance with Section 5.5 of Council's Water Management for development policy is to be submitted for assessment. Additionally the proposed separate concrete access pathway in the road reserve is not supported. Amended plans are to be provided for assessment. <u>Revised Comment:</u> Amended plans have been reviewed. No objections to approval subject to conditions as recommended.
Parks, reserves, beaches, foreshore	<i>Supported, subject to conditions.</i> The development site adjoins Angophora Reserve that is located upslope of the property. All development works must ensure that surface sediment runoff and/or erosion is controlled, managed and contained within the site boundaries and prevented from travelling across the boundary and into the Reserve. No physical encroachments over the site boundaries are permitted, and structures and built elements are not permitted beyond the site boundaries. The development is not detrimental to the landscape character of the adjoining Reserve, and as such Parks, Reserves and Foreshores raise no concerns with the development proposal.
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral

Internal Referral Body	Comments																		
	<i>Supported, no conditions required.</i> The proposal has been referred to Heritage as the subject property adjoins a heritage item Angophora Reserve and Angophora Costata Tree - 93 Palmgrove Road Details of heritage items affected <u>Statement of Significance</u> Angophora Reserve and Angophora costata tree are significant in that the tree is thought to be the biggest of its species and the reserve provides a small taste of the Peninsula similar to what it was like pre-settlement and provides significant samples of vegetation communities and fauna habitats that are under threat. It is one of the most significant reserves in an area that is now dominated by suburbia and true bushland is restricted to mostly small reserves. <u>Physical Description</u> Angophora Reserve is located in the core of the Barrenjoey Peninsula bordering the suburbs of Avalon, Clareville and Taylors Point. The reserve consists of 18.5 hectares of urban bushland in Avalon on the Barrenjoey Peninsula. It is dominated by remnant forest and woodland vegetation communities. 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>N/A</td><td></td></tr></table> Consideration of Application The proposal seeks consent for alterations and additions to the dwelling. Proposed works include the enclosing of an existing undercroft space at the rear of the dwelling to create a new kitchen and living room level, internal layout reconfiguration and changes to the external presentation of the dwelling. The subject property adjoins the reserve to the north. The dwelling is located at the top of the site, closer to the road while the land slopes down towards the reserve which is located at some distance from the dwelling due to the elongated nature of the property. Given the works are mostly contained either to within the existing building or at the front	SEPP (Biodiversity and Conservation) 2021	No		Australian Heritage Register	No		NSW State Heritage Register	No		National Trust of Aust (NSW) Register	No		RAIA Register of 20th Century Buildings of Significance	No		Other	N/A	
SEPP (Biodiversity and Conservation) 2021	No																		
Australian Heritage Register	No																		
NSW State Heritage Register	No																		
National Trust of Aust (NSW) Register	No																		
RAIA Register of 20th Century Buildings of Significance	No																		
Other	N/A																		

Internal Referral Body	Comments
	facing the street and the physical separation to the heritage item, the proposal is considered to not impact upon the heritage item or its significance. Therefore Heritage raises no objections and requires no conditions. Consider against the provisions of CL5.10 of PLEP. Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	Supported, subject to conditions. The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Rural Fire Service - Local Branch - EP&A Act, s4.14	Supported, subject to conditions. The New South Wales Rural Fire Service provided advice regarding the bush fire protection for the Development Application in accordance with <i>section 4.14 of the Environmental Planning and Assessment Act 1979</i>. The New South Wales Rural Fire Service has considered the information submitted and provided conditions, which will form part of this consent. It is noted that the NSW RFS was not able to verify the assessment set out in the bush fire report submitted with the application and has therefore undertaken an independent assessment of the proposal to determine compliance with Planning for Bush Fire Protection 2019.
Aboriginal Heritage Office	Supported, subject to conditions. No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development. Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under

External Referral Body	Comments
	Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No. A1740714 dated 21 March 2024).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment

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

SEPP (Resilience and Hazards) 2021

Chapter 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 10.0m*	New Gable Roof: 11.6m Replacement windows (upper level): 9.4m	36.5% -	No (Refer to Clause 4.6) Yes (Refer to Clause 4.3)

*Under Clause 4.3 of the *Pittwater Local Environmental Plan 2014*, development on land that has a maximum building height of 8.5 metres, may exceed a height of 8.5 metres, but not be more than 10.0 metres if the building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%).

The existing dwelling is located on a slope that is approximately 18 degrees, therefore the new windows to the upper level comply as they are located below the 10.0 metres exemption and are considered minor development, refer to Clause 4.3 for further detail. However, as the new gable roof extends above this height exemption, this element will be assessed under Clause 4.6 against the 8.5 metres building height standard.

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
Public Bushland	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes

Clause	Compliance with Requirements
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone C4 Environmental Living

The objectives of the C4 Environmental Living zone are addressed below:

- ***To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.***

Comment

The works include alterations and additions which is unlikely to affect any special ecological, scientific or aesthetic values. 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 site is located in a Geotechnical Hazard area, close proximity to littoral rainforest and bushfire prone land. Relevant reports have been submitted for review and conditions will be included to ensure protection of the natural values of the site.

- ***To provide for residential development of a low density and scale integrated with the landform and landscape.***

Comment

The proposal will result in a dwelling house suitable for a low density residential area, that is of a scale acceptable for the allotment size and topography. The non-compliances arise from the constraints present on site and the existing building footprint. The application is accompanied by a Geotechnical Report in relation to the steeply sloped topography. The recommendations included in this Geotechnical Report are to be incorporated into the design and construction process as per recommended conditions by Council's Development Engineer. The retention of the dense vegetation will aid in the visual softening of the built form and project a design that is well-situated within a landscaped setting. Therefore, the proposal will provide for a dwelling that is integrated with the landform and landscape.

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

Comment

Council's Biodiversity Officer has reviewed the proposal and is in support of the development subject to recommended conditions to ensure that the impacts to the native wildlife corridors are minimised.

4.3 Height of buildings

Detailed Assessment

The subject site is located within Area I on the *PLEP 2014* Height of Buildings Map. Within this area, the maximum building height permitted is 8.5 metres, which is measured from existing ground level.

Notwithstanding, Clause 4.3(2D) of PLEP 2014, consists of an exemption provision that stipulates that the maximum building height within Area I can be increased to 10.0 metres, subject to meeting relevant requirements, which will be discussed below.

The maximum height of the proposed development is 11.6 metres as a result of a new gable roof located over a portion of the existing first floor, this will be assessed under Clause 4.6 elsewhere in this report as the works exceed the 10.0 metres exemption. The proposed replacement windows to the first floor exceeds the 8.5 metres building height, but is situated below the 10.0 metres exemption and can achieve the following requirements:

(a) the consent authority is satisfied that the portion of the building above the maximum building height is minor, and

Comment

Whilst it is noted that a section of the proposal (new gable roof) extends above the 10.0 metres exemption (which has been accompanied by a Clause 4.6 Variation Request), the replacement windows sit below the allowable exemption at 9.4 metres in height (refer to below Figure 1). This area as existing consists of windows, this proposal seeks to amend the window layout and add additional windows. As the dwelling consist of an existing height above 8.5 metres, it is not possible for the windows to be located below this height plane. It is noted however that the majority of built form is situated below the 8.5 metres building height standard.

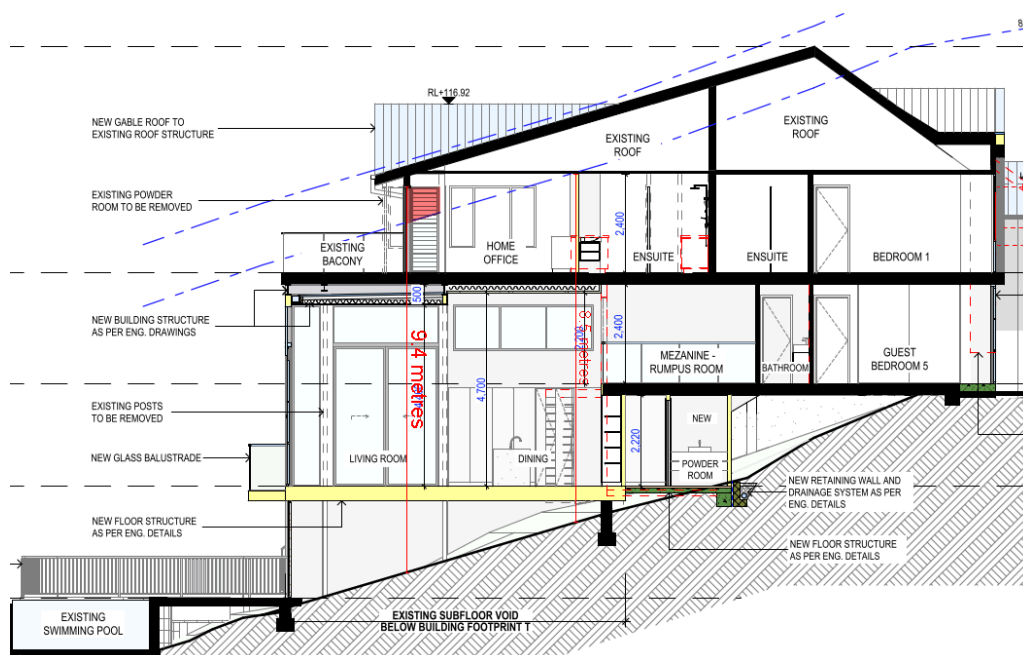


Figure 1: Section AA - Indication of proposed works (windows) that are above 8.5 metres in red

shading, but below 10.0m.

(b) the objectives of this clause are achieved, and

Comment

The proposed works overall will not result in unacceptable amenity impact such as privacy loss, view loss or overshadowing. The existing built form is located on a naturally steep slope which was originally built as a stilt/pole house with a large undercroft area below. The proposal seeks to enclose this undercroft to provide additional floor space to an underutilised area, it is considered that the development is of a design suitable for the topography. The dwelling is situated amongst dense vegetation, rock outcrops and canopy trees which will soften the built form and demonstrate an acceptable response to the natural environment. The windows that exceed 8.5 metres are of a low scale and open in design not resulting in visual dominance.

(c) the building footprint is located on a slope in excess of 16.7 degrees (being 30%), and

Comment

The slope of the land is approximately 18 degrees and meets this requirement.

(d) the buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope,

Comment

As noted above, the existing building has a large undercroft area which is to be infilled to create floor space. As a result, no significant excavation or fill is required to accommodate the proposed works, nor does a further extension down the slope which would result in additional landscape loss. The windows are located directly upon a steep slope, and the overall building exhibits an existing height over 8.5 metres. Therefore, any replacement of the windows would result in a height over 8.5 metres.

Conclusion

In this instance, Council can be satisfied that the proposed development i.e. window replacement achieves compliance with the objectives of subclause 2D of Clause 4.3. Therefore, the 10.0 metres maximum building height is applied to the site for the window replacement. The gable roof however is assessed separately under Clause 4.6.

4.6 Exceptions to development standards

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

Development standard: Clause 4.3 Height of Buildings

Requirement: 8.5 metres

Proposed: 11.6 metres

Percentage of variation: 36.5%

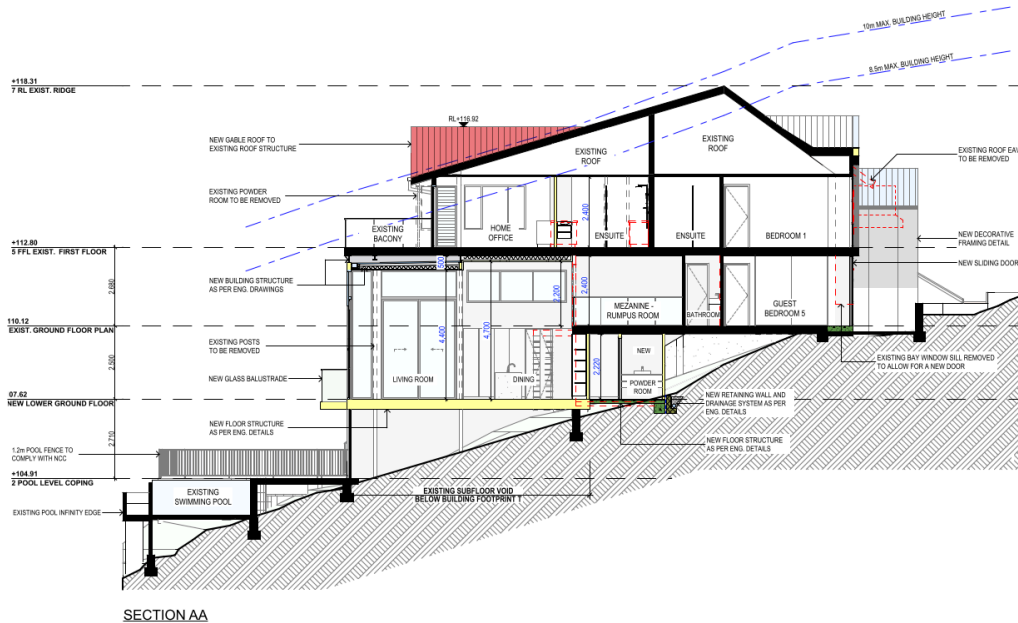


Figure 2: Section AA - Indication of proposed works (gable roof) that are above 8.5 metres in red shading. Note: New windows are subject to 10.0m requirement - refer to Clause 4.3 Height of Buildings.

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

Subclause (1) of this clause provides that:

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

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

Comment

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

Subclause (2) of this clause provides that:

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

Comment

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

Subclause (3) of this clause provides that:

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

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

Comment

Council is satisfied that the Applicant has demonstrated that compliance with Clause 4.3 Height of Buildings is unreasonable or unnecessary in the circumstances of this application for the following reasons (extract from submitted Clause 4.6 prepared by JJ Drafting):

- *"The proposed small gable roof addition is an extension of the existing rear roof to the dwelling. The proposed small gable roof addition will allow for more natural light within the bedroom area and better views over Pittwater. The new roof addition follows the existing roof pitch and ridge level and will not affect adjoining properties in view loss, privacy loss or solar loss."*
- *"The existing slope of the site varies between 19deg and 27deg. Due to the topography of the land and the elevated existing dwelling, it is difficult to adhere to the building height".*
- *"The gable roof is located to the rear of the dwelling and it is not visible from the streetscape."*
- *"Currently the existing rear roof above the deck is quite low and the new gable roof will allow for a better head height."*
- *"The new small gable roof will provide for more light within the dwelling".*
- *"Adjoining properties will not be affected in view loss, privacy loss or overshadowing."*

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

Comment

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

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

The Clause 4.6 Request argues, in part (extract from submitted Clause 4.6 prepared by JJ Drafting):

- *"The proposed height of the new gable roof to the rear of the dwelling varies between 10m – 11.6m. It is a variation of 36.5% from the 8.5m building height. Currently the existing roof is at a*

variable height between 8.5m - 10m height. The new small gable roof exceeds the 8.5m building height by 36.5% it is requested that this non-compliance be supported as the small gable roof will not affect adjoining properties or the streetscape."

- *"The new roof addition follows the existing roof pitch and ridge level and will not affect adjoining properties in view loss, privacy loss or solar loss."*

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.

The gable roof which contravenes the 8.5 metres building height standard is as a result of the steeply sloped topography and is isolated to the roof form only (proposed works). It is noted that the gable roof will be situated over an existing master-bedroom and will be located within the existing building footprint. The new gable roof structure, although exceeds the height limit by 36.5% (with RL 116.92), will be sited below the existing roof ridge of the overall dwelling (RL 118.31) and therefore will not be viewed from the street, nor is considered to result in visual or amenity impact to surrounding properties or the public domain. The proposal is consistent with the locality and surrounding developments within the immediate vicinity that are of similar height and scale and has been designed to complement the architecture of the dwelling.

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 building height of 11.6 metres will not give rise to adverse visual or amenity impacts and is isolated to the new gable roof form located above steeply sloped topography and situated below the existing roof ridge of the existing dwelling. The proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

Public Bushland

The subject site is adjacent to a public reserve that is owned, managed or reserved for open space by Council, and includes natural vegetation of the land. Council as the consent Authority must consider the following:

- (3) Development consent must not be granted to development that will disturb, or is reasonably likely to disturb, public bushland unless the consent authority is satisfied of the following—
 - (a) the disturbance of the bushland is essential for a purpose in the public interest,
 - (b) there is no reasonable alternative to the disturbance,
 - (c) the development minimises the amount of bushland to be disturbed,
 - (d) the development includes measures to remediate the disturbed bushland.

Comment

The works will be wholly located within the boundaries of the subject site and will not disturb, or is reasonably unlikely to disturb the adjacent public reserve. No site access on or through land owned or managed by Council is necessary. The proposed development is not located in an area of biodiversity significance or a wildlife habitat corridors.

- (7) In deciding whether to grant development consent to development on land adjoining public bushland, the consent authority must consider the following—
- (a) the need to retain public bushland adjoining the site of the development,
 - (b) the likely effect of the development on public bushland, including the following—
 - (i) the erosion of soil,
 - (ii) the siltation of streams and waterways,
 - (iii) the spread of weeds and non-native plants within public bushland,
 - (c) other matters the consent authority considers relevant to the protection and preservation of public bushland.

Comment

As noted above, the works will be wholly located within the boundaries of the subject site and will not detrimentally impact the adjacent reserve. A recommended condition has been included for sediment and erosion controls.

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 Assessment prepared by Crozier Geotechnical Consultants (dated 15 April 2024) 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 Assessment prepared by Crozier

Geotechnical Consultants (dated 15 April 2024) 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, it is considered that the proposed development has been designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front Building Line	6.5m <i>Southern Boundary</i>	Building: 7.8m Entry Pathway: 1.3m	- 80.0%	Yes No
Rear Building Line	6.5m <i>Northern Boundary</i>	> 6.5m		Yes
Side Building Line	2.5m <i>Western Boundary</i>	Ground Floor Extension: 1.76m New Balcony: 1.76m Subfloor Screening: 1.76m	29.6%	No
	1.0m <i>Eastern Boundary</i>	Ground Floor Extension: 1.1m New Balcony and Stairs: 1.3m Subfloor Screening: 2.2m	-	Yes
Building Envelope	Merit Assessment (> 30.0%)	Outside Envelope	-	Merit Assessment
	Merit Assessment (> 30.0%)	Outside Envelope	-	Merit Assessment
Landscaped Area	60.0% (808.8m ²)	68.7% (926.7m ²)	-	Yes

Note: All other works are internal, window and roof changes.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.3 Bilgola Locality	Yes	Yes
B1.2 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
B3.2 Bushfire Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.2 Flora and Fauna Conservation Category 1 and Wildlife Corridor	Yes	Yes
B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.6 On-Street Parking Facilities	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
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	No	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	N/A	N/A
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
D3.1 Character as viewed from a public place	Yes	Yes
D3.2 Scenic protection - General	Yes	Yes
D3.3 Building colours and materials	Yes	Yes
D3.6 Front building line	No	Yes
D3.7 Side and rear building line	No	Yes
D3.9 Building envelope	No	Yes
D3.11 Landscaped Area - Environmentally Sensitive Land	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D3.13 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D3.14 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

C1.5 Visual Privacy

Merit Consideration

Private open space areas including swimming pools and living rooms of the proposal, and any existing adjoining dwellings are to be protected from direct overlooking within 9.0 metres, through the use of privacy screens or another similar design element.

The proposed windows along the eastern elevation are highlight windows, hence, will limit the potential of overlooking. The proposed windows along the western elevation (Windows 24, 25 and 26) are associated with bathrooms and a pantry/storage room. Window 23 is narrow, 4.4 metres long and associated with the dining room however is not adjacent to the No. 16 The Circle's main open space or dwelling but rather adjacent to densely vegetated areas. This window is not considered to result in adverse visual privacy impacts.

The upper floor balcony associated with the master bedroom is existing and will not be altered apart from new windows that are orientated toward the north. The 'new tiled verandah' associated with the new living spaces on the lower ground floor, is elevated and within close proximity to the eastern neighbour's (No. 12 The Circle) primary outdoor area. As this new verandah is also associated with the existing pool and connected to high usage internal spaces with large windows, the potential for overlooking increases when this space is in use. To protect both the residents of the subject site and the eastern neighbour, a privacy screen is recommended to be conditioned along the eastern edge of the verandah for a length of 3.0 metres (adjacent to the external stairs which will be located east of the screen). These stairs will only be used for trafficable purposes and are not considered to disrupt privacy levels on a high scale.

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

Comment

Subject to the condition for screening, the proposal has utilised good design to optimise visual privacy from habitable rooms and outdoor spaces.

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

Comment

Subject to the condition for screening, a sense of territory and safety is provided for residents.

Having regard to the above assessment it is concluded that the applicable outcomes of the control have been achieved and that the proposal provides acceptable privacy (both visually and aurally) within a residential setting. Therefore, the application is supported on merit.

D3.3 Building colours and materials

Merit Consideration

Clause D3.3 Building Colours and Materials require that buildings are to utilise medium to dark colour ranges with natural and earthy tones. A formal schedule of external finishes and materials was not submitted with this development application

The submitted Statement of Environmental Effects includes the following statement: *"The colours and materials for the proposal will enhance the visual character within the streetscape. The development will value the natural environment and treasure the existing dwelling using medium to dark tones"*. A condition of consent will be recommended to ensure the proposal meets the requirements of this control.

An additional condition is recommended to ensure the proposed roof consists of a medium to dark range (BCA classification M and D) and that any roof with a metallic steel finish is not permitted in order to minimise solar reflections to neighbouring properties.

D3.6 Front building line

Description of non-compliance

Control D3.6 Front Building Line prescribes a front setback of 6.5 metres or established building line, whichever is greater. As the building line in the immediate vicinity varies, the 6.5 metres setback shall apply.

The dwelling house is setback 7.8 metres, compliant with the numerical requirements, in exception of the proposed front entry pathway which exhibit a minimum front setback of 1.3 metres. Retaining walls and fencing are permitted within the front setback area.

Merit Consideration

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

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

Comment

The proposed alterations and additions consist of a low-density residential development situated within a landscaped setting.

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

Comment

The encroachment into the front setback area is not considered to result in any unreasonable view loss from surrounding private properties or the public domain.

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

Comment

The Circle is not a main road, and therefore this outcome does not apply.

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

Comment

The proposal (as amended) will retain all trees within the road reserve and front setback (in exception one tree), maintaining the highly vegetated street presence the site currently projects. This vegetation and any new plantings will assist in the softening and visual relief of the proposed development.

- **Vehicle manoeuvring in a forward direction is facilitated. (S)**

Comment

As the subject site is not located on a road that would prompt vehicle manoeuvring in a forward direction, this outcome is not deemed necessary.

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

Comment

The design keeps within the height of the natural environment by sitting below tree canopy height and responding to the area's topography in an acceptable manner.

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

Comment

The front façade of the build includes a new front porch and bay windows with the retention of existing landscaping features as noted on the Architectural Plans, which will provide for an attractive street frontage. Pedestrian amenity will be improved by the addition of a designated front entryway and fencing.

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

Comment

Majority of dwelling houses include access pathways/stairs within the front setback area, this element will not disrupt spatial characteristics of the existing urban environment within the immediate vicinity.

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

D3.7 Side and rear building line

Description of Non-compliance

Clause D3.7 Side and Rear Building Line prescribes a side setback of 2.5 metres to one side and 1.0 metre to the other, and a rear setback of 6.5 metres. For this assessment, the 2.5 metres side building line is applied to the western boundary, the 1.0 metre side building line applied to the eastern boundary and the 6.5 metres rear setback to the northern boundary.

The proposal (as amended) includes a ground floor and associated balcony extension with a setback of 1.76 metre. The subfloor will also be enclosed with a 1.76 metre setback to the western boundary. Therefore, exhibiting a variation of 29.6%. It is noted that the extension follows the line of the existing side setback to the western boundary for consistency.

A variation in the control states the following: *"Where alterations and additions to existing buildings are proposed, maintenance of existing setbacks less than as specified may be considered where it is*

shown that the outcomes of this clause are achieved."

All other proposed works exhibit compliance with the numerical requirements of this clause.

Merit Consideration

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

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

Comment

The proposed alterations and additions consists of a low density residential development situated within a landscaped setting.

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

Comment

The bulk and scale of the building will be acceptably mitigated by spatial separation, existing vegetation, articulation and the various external materials proposed. Further detail is noted under 'Clause D3.9 Building envelope', elsewhere in this report.

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

Comment

The encroachment into the side setback area is not considered to result in any unreasonable view loss from surrounding private properties or the public domain.

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

Comment

The extension takes place below the upper floor of the building within the existing undercroft. It is considered that this area is most acceptable for additional built form to limit amenity impacts.

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

Comment

The proposal complies with the relevant solar access requirements within the P21DCP. Privacy is addressed in detail under 'Clause 1.5 Visual Privacy', elsewhere in this report.

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

Comment

The non-conforming elements will not be easily viewed from the street. The subject site maintains substantial landscaping, and will be located below the surrounding tree canopy.

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

Comment

Majority of the setback areas are free from development, maintaining acceptable flexibility.

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

Comment

It is evident that the subject site and surrounds are highly vegetated. This retention of landscaping will allow for the existing vegetation to act as a visual buffer, which will soften built form.

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

Comment

The subject site is located in and is surrounded immediately by residential and environmental protection zones, this outcome does not apply.

Having regard to the above assessment, it is concluded that the outcomes of the clause have been achieved. Therefore, the application is supported on merit in this particular circumstance.

D3.9 Building envelope

Description of Non-compliance

Clause D3.9 Building Envelope generally requires development to be sited within a 3.5 metre building envelope to ensure the bulk and scale of the built form is minimised.

When subject to this envelope requirement, the proposed development exhibits an encroachment on both the eastern and western elevations (See Figure 3 + 4 below). It is noted that the envelope breach has been reduced via amended plans.

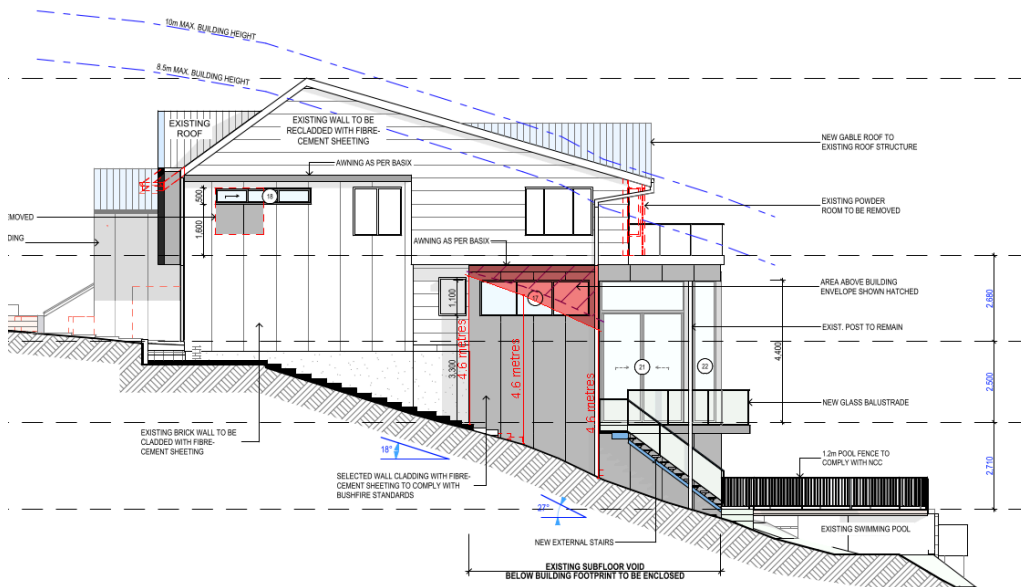


Figure 3: Eastern Elevation (red shading indicates encroachment).

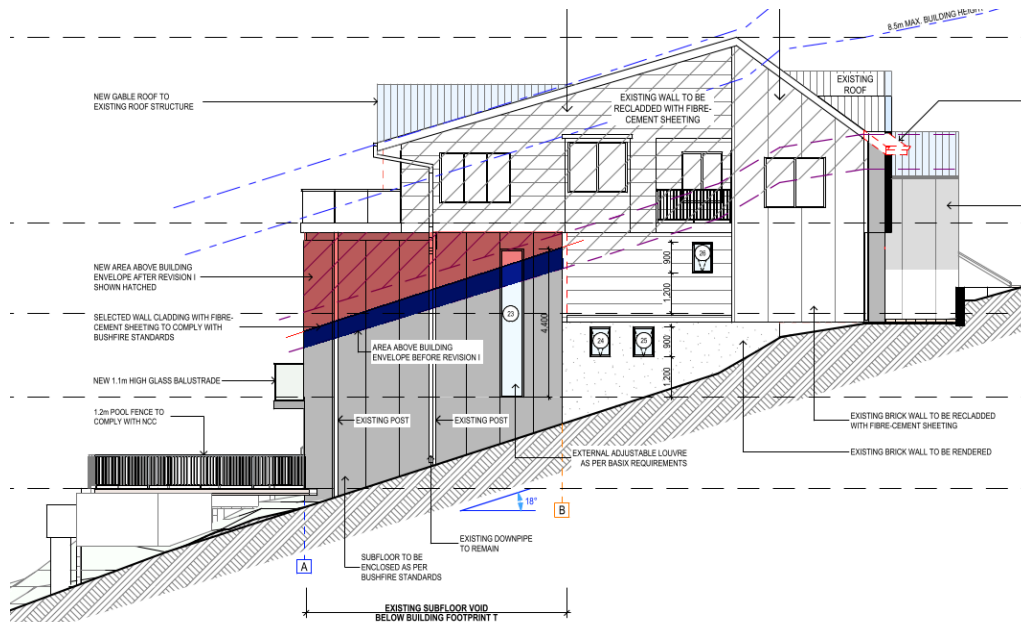


Figure 4: Western Elevation (red shading indicates encroachment, blue shading indicating previous encroachment).

This clause permits a variation to the minimum numerical requirements, which allows for a building footprint which is located over a slope exceeding 16.7 degrees (being 30%). As the building footprint of the dwelling house is located over a slope of approximately 18 degrees, the variation may be applied and will be subject to a merit-based assessment.

It is noted that the envelope breach to the west (when assessed against the standard 3.5 metre requirement) is as a result of the subfloor being enclosed to provide habitable space below the upper floor. The setback to this area follows the existing line of the building and is not directly adjacent to any neighbouring structures but rather vegetation.

Merit Consideration

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

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

Comment

The proposed alterations and additions consist of a low-density residential development situated within a landscaped setting.

- **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 site is surrounded by dense vegetation and will be situated below existing tree canopy height. The proposal overall exhibits compliance with the landscape requirement of the P21DCP. In this regard it is considered to complement the existing natural environment.

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

Comment

The amount of landscaping on site will assist in reducing the impact of the built form and softening the appearance of the dwelling when viewed from the street and surrounding properties.

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

Comment

The proposal incorporates different materials to aid in the breakup of built form and to add visual interest to the design. The building overall provides acceptable levels of articulation, the area of breach on the western elevation is due to enclosing the subfloor area and following the line of the existing building.

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

Comment

The encroachment into the side setback area is not considered to result in any unreasonable view loss from surrounding private properties or the public domain. The extension takes place below the upper floor of the building within the existing undercroft. It is considered that this area is most acceptable for additional built form to limit amenity impacts.

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

Comment

The proposal complies with the relevant solar access requirements within the P21DCP. Privacy is addressed in detail under 'Clause 1.5 Visual Privacy', elsewhere in this report.

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

Comment

It is evident that the subject site and surrounds are highly vegetated. This retention of landscaping will allow for the existing vegetation to act as a visual buffer, which will soften built form.

Having regard to the above assessment, it is concluded that the applicable outcomes of this control are achieved. Therefore, the application is supported on merit in this particular circumstance.

D3.13 Fences - Flora and Fauna Conservation Areas

Clause D3.13 stipulates that front fence heights within the front setback shall not exceed 1.0 metre above existing ground level.

The proposal (as amended) proposes a front fence of 1.0m with a pedestrian and vehicle access gate. The fence will be constructed of open, see-through, dark-coloured materials. The landscaping located within the road reserve is quite dense and will act as a vegetated buffer.

Front fences are to be compatible with the streetscape character of the area. It is noted that majority of the properties include open fenceless front yards, however several properties scattered throughout the

street and surrounds do contain front fences. As this fence is considerate in nature and complies with the requirements of the control, and will be screened by vegetation, it is considered that a fence of this design would be compatible with the streetscape character and not result in adverse visual impact.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$8,500 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$850,000.

CONCLUSION

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

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

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

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

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

Council is satisfied that the Applicant's written request under Clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking to justify variation of the development standard contained within

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

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

PLANNING CONCLUSION

This proposal, for alterations and additions to a dwelling house has been referred to the Development Determination Panel (DDP) due to a variation of more than 10.0% 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, with one (1) submission received. The concerns in which have been addressed in detail under 'Site History' of this report.

The critical assessment issues related primarily to built form controls such as overall height, building envelope and setbacks. Amended plans were received which satisfactorily addressed the original concerns raised with the applicant during the assessment process. The built form variations of the proposal do not preclude the development from achieving the outcomes of the relevant controls of the P21DCP.

On balance, and considering the preceding detailed assessment of the application, including a detailed analysis of the variation to Clause 4.3 of the PLEP 2014, it is considered that the proposal, subject to recommended conditions will result in a development that is acceptable in design, and not detrimentally impact the character or amenity of the area.

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 to the DDP for **approval**.

REASON FOR DETERMINATION

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

RECOMMENDATION

That Northern Beaches Council, as the consent authority, vary the development standard contained within Clause 4.3 Height of Buildings, pursuant to Clause 4.6 of the Pittwater Local Environmental Plan 2014 because the Applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) of Clause 4.6.

Accordingly Council as the consent authority grant Development Consent to DA2024/0647 for Alterations and additions to a dwelling house on land at Lot 512 DP 16902, 14 The Circle, BILGOLA PLATEAU, 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 I	Site Analysis Plan	JJ Drafting Australia P/L	4 July 2024
DA.08	Revision I	Pool Level Floor Plan	JJ Drafting Australia P/L	4 July 2024
DA.09	Revision I	New Lower Ground Floor	JJ Drafting Australia P/L	4 July 2024
DA.10	Revision I	Ground Floor Plan	JJ Drafting Australia P/L	4 July 2024
DA.11	Revision I	First Floor Plan	JJ Drafting Australia P/L	4 July 2024
DA.12	Revision I	South Elevation	JJ Drafting Australia P/L	4 July 2024
DA.13	Revision I	North Elevation	JJ Drafting Australia P/L	4 July 2024
DA.14	Revision I	East Elevation	JJ Drafting Australia P/L	4 July 2024
DA.15	Revision I	West Elevation	JJ Drafting Australia P/L	4 July 2024
DA.16	Revision I	Section AA	JJ Drafting Australia P/L	4 July 2024
DA.17	Revision I	Roof & Stormwater Concept Plan	JJ Drafting Australia P/L	4 July 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Bushfire Hazard Assessment (Ref. ARM 24/18)	-	Stephen Cotter	6 May 2024

BASIX Certificate (No. A1740714)	-	JJ Drafting Australia Pty Ltd	21 March 2024
Report on Geotechnical Assessment (Ref. 2024-028)	Issue 0	Crozier Geotechnical Consultants	15 April 2024
Waste Management Plan	-	JJ Drafting Australia Pty Ltd	21 March 2024
Arboricultural Impact Appraisal and Method Statement (Revised)	-	Ezigrow Arboricultural Consulting	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. **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	4 June 2024
New South Wales Rural Fire Service (RFS)	Referral - RFS - 14 The Circle Bilgola Plateau	2 July 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. **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.

4. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- (i) showing the name, address and telephone number of the Principal Certifier for the work, and
- (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (iii) stating that unauthorised entry to the work site is prohibited.

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

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

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

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

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

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

Reason: Legislative requirement.

5. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Construction certificate plans are to be in accordance with all finished levels identified on approved plans. Notes attached to plans indicating tolerances to levels are not approved.
- (c) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (d) At all times after the submission of the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (e) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (f) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (g) Prior to the release of the Construction Certificate, payment of the following is required:
 - i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
 - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
 - iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.
- (h) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

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

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

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

 - (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2018
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
 - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

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

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

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$8,500.00 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 \$850,000.00.

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 Certifier prior to issue of Construction Certificate.

Reason: To protect native vegetation.

9. **Stormwater Disposal**

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent in accordance with AS/NZS 3500 and Council's Water Management for Development Policy, prepared by an appropriately qualified and practicing Civil 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 suitably designed level spreader at the rear of the site.

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

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

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by Crozier Geotechnical Consultants dated 15/4/2024 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.

11. **Amendments to the approved plans**

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

- A privacy screen is to be installed along the eastern edge of the new lower ground floor "New Tiled Verandah" (adjacent to the external stairs which will be located east of the

screen) as shown on the approved plans for a length of 3.0m, and to a minimum height of 1.65 metres above the finished floor level. The privacy screen shall be of fixed opaque panels or angled louver style construction (with a maximum spacing of 20mm), in durable materials that complement the design of the dwelling.

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

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

12. **Boundary Identification Survey**

A boundary identification survey, prepared by a Registered Surveyor, shall be provided in respect of the subject site.

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

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

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

13. **Installation and Maintenance of Sediment Control**

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

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

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

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

14. **Compliance with Standards**

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

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

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

15. **Sydney Water "Tap In"**

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

Please refer to the website www.sydneywater.com.au for:

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

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

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

16. **External Colours and Finishes**

The external finishes of the approved works shall utilise 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 new gable 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. Alternatively, the roof material can match the existing roof colour. Any roof with a reflective finish is not permitted.

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

17. **Project Arborist**

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged prior to any commencement of works on site to provide tree protection measures in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment, including in particular section 4. Arboricultural Method Statement, Appendix 7. Schedule of works and responsibilities, and Appendix 8. Tree Management Plan.

The Project Arborist shall be engaged to monitor works and tree health where excavation and construction works are in proximity to existing trees numbered 24, 28, 33, 34 and 35.

All tree protection measures specified must: be in place before work commences on the site; be maintained in good condition during the construction period; and remain in place for the duration of the construction works. The Project Arborist shall provide certification to the Certifier that all tree protection measures under AS4970-2009 have been satisfied, and the

recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

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

Reason: Tree protection.

18. **Works on Land Owned or Managed By Council**

No encroachments are to be carried out on Land owned or managed by Council.

Reason: To protect the land owned or managed by Council.

19. **Installation and Maintenance of Sediment and Erosion Control**

Prior to commencement of works on site, sediment and erosion controls must be installed along the immediate downslope of the works area in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). The erosion controls shall be maintained in an operational condition until the development activities have been completed and the site fully stabilised. Sediment shall be removed from the sediment controls following each heavy or prolonged rainfall period. 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

20. **Tree and Vegetation Protection**

a) Existing trees and vegetation shall be retained and protected, including:

- i) all prescribed trees within the site,
- ii) all trees and vegetation located on adjoining properties,
- iii) all trees and vegetation within the road reserve.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level

5 in arboriculture including advice on root protection measures,
vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,
viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,
ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

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

Reason: Tree and vegetation protection.

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. **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.

23. **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.

24. **No Access Through Land Owned or Managed by Council**

Site access is not approved for delivery of materials nor construction of the development through adjacent land owned or managed by Council, without the written approval of Council.

Reason: Public safety, landscape amenity and tree protection.

25. **Storage of Materials on Land Owned or Managed by Council Prohibited**

The dumping or storage of building materials, spoil, vegetation, green waste or any other

material in land owned or managed by Council is prohibited.

Reason: Public safety and environmental protection.

26. Protection of Council's Public Assets

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

Council's public assets include, but is not limited to, the following: road, kerb and gutters, crossovers, crossings, paths, grass verge, open space and associated elements such as furniture, recreational facilities and the like, within the meaning of the Local Government Act 1993. Existing trees shall be protected in accordance with AS4970-2009 Protection of Trees on Development Sites, with particular reference to Section 4, with no ground intrusion into the tree protection zone and no trunk, branch nor canopy disturbance.

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

27. 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.

28. 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.

29. 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.

30. **Survey Certificate**

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

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

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

31. **Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

32. **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

33. **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, 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.

34. **No Weeds Imported On To The Site**

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan) are to be imported on to the site prior to or during construction works.

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

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

35. **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.

36. **Stormwater Disposal**

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

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

37. **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.

38. **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 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.

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

39. 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.

40. Control of Domestic Dogs/Cats

Domestic dogs and cats are to be kept from entering wildlife habitat areas at all times.

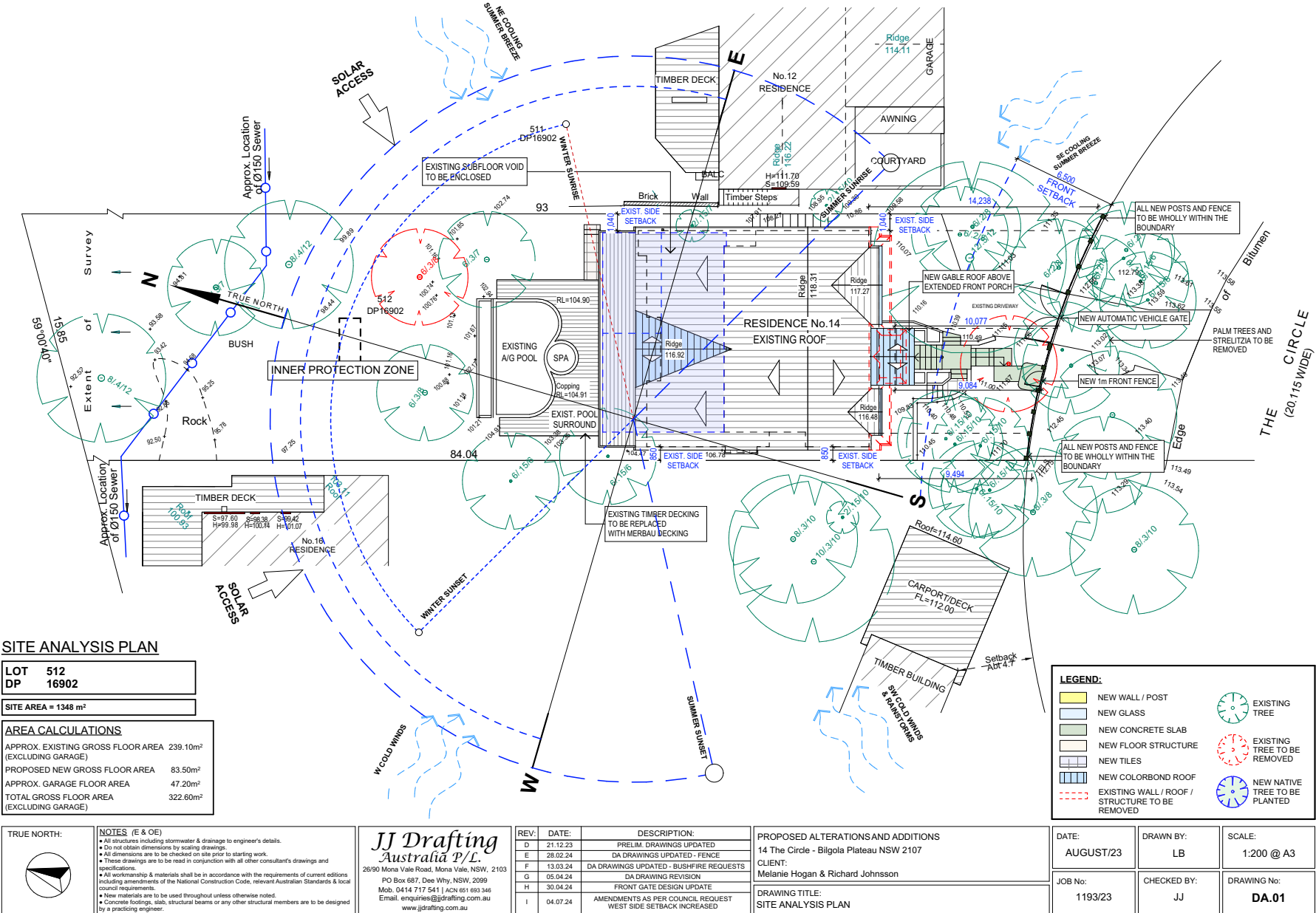
Dogs and cats are to be kept in an enclosed area and/or inside the dwelling, or on a leash such that they cannot enter areas of wildlife habitat, bushland or foreshore unrestrained, on the site or on surrounding properties or reserves.

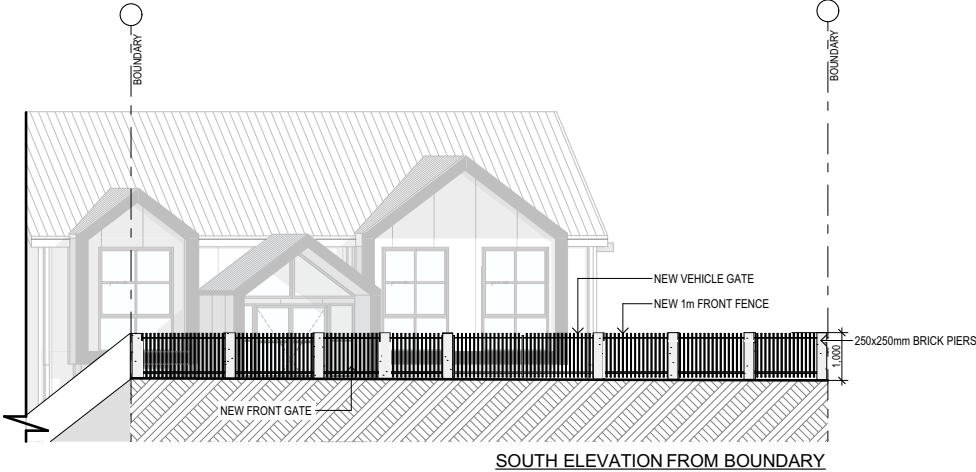
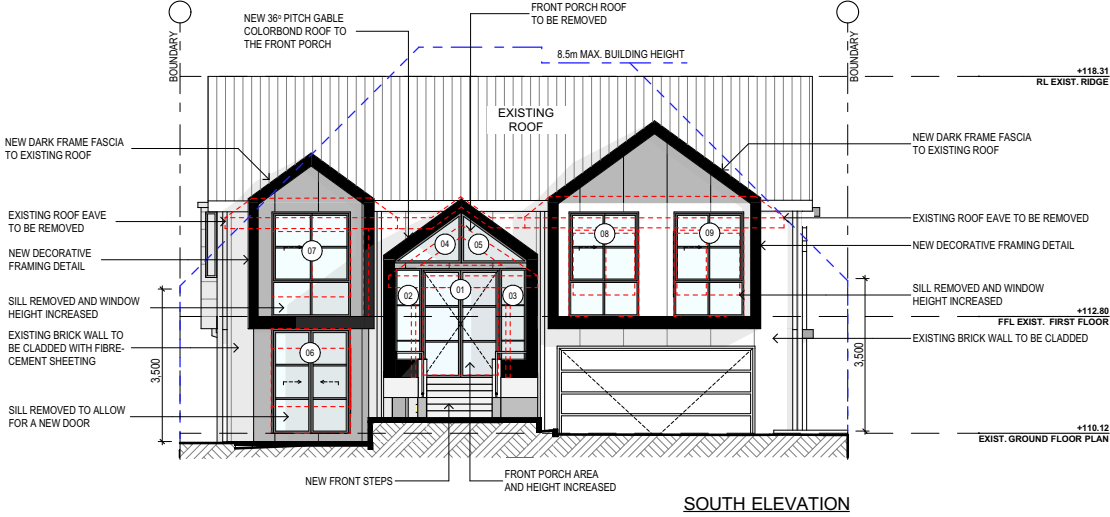
Reason: To protect native wildlife and habitat.

41. Geotechnical Recommendations

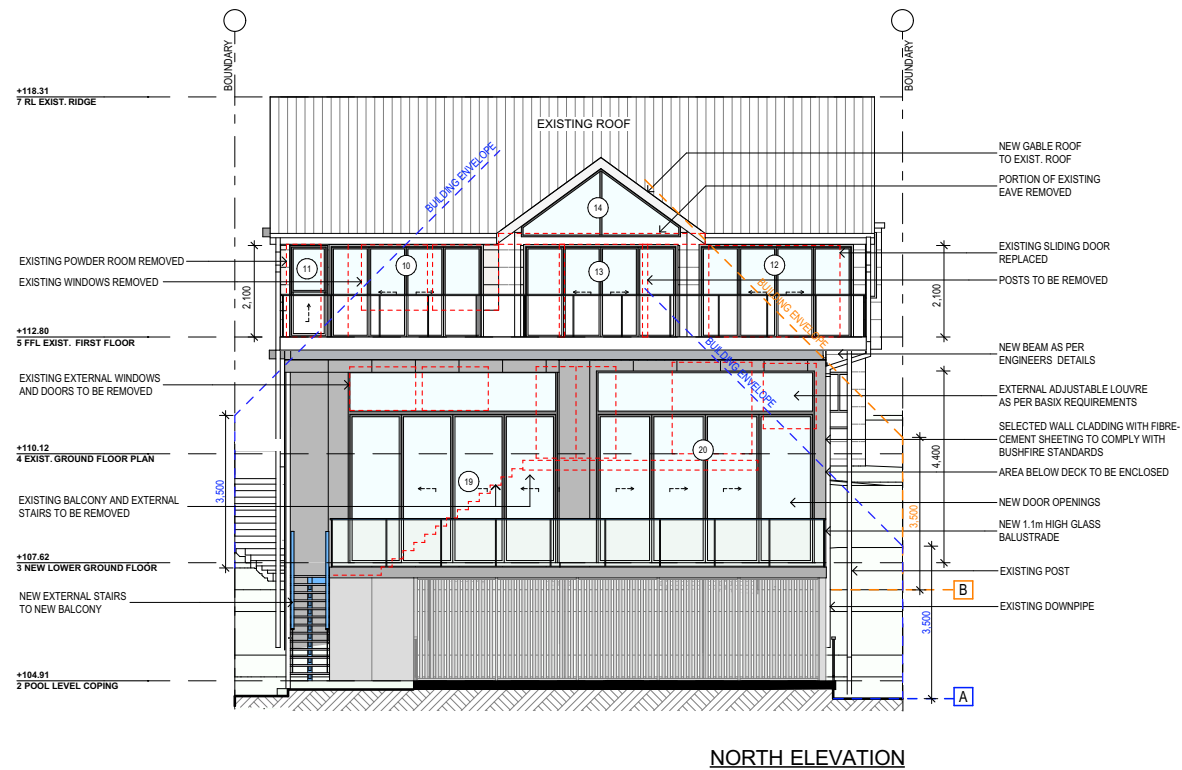
Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.



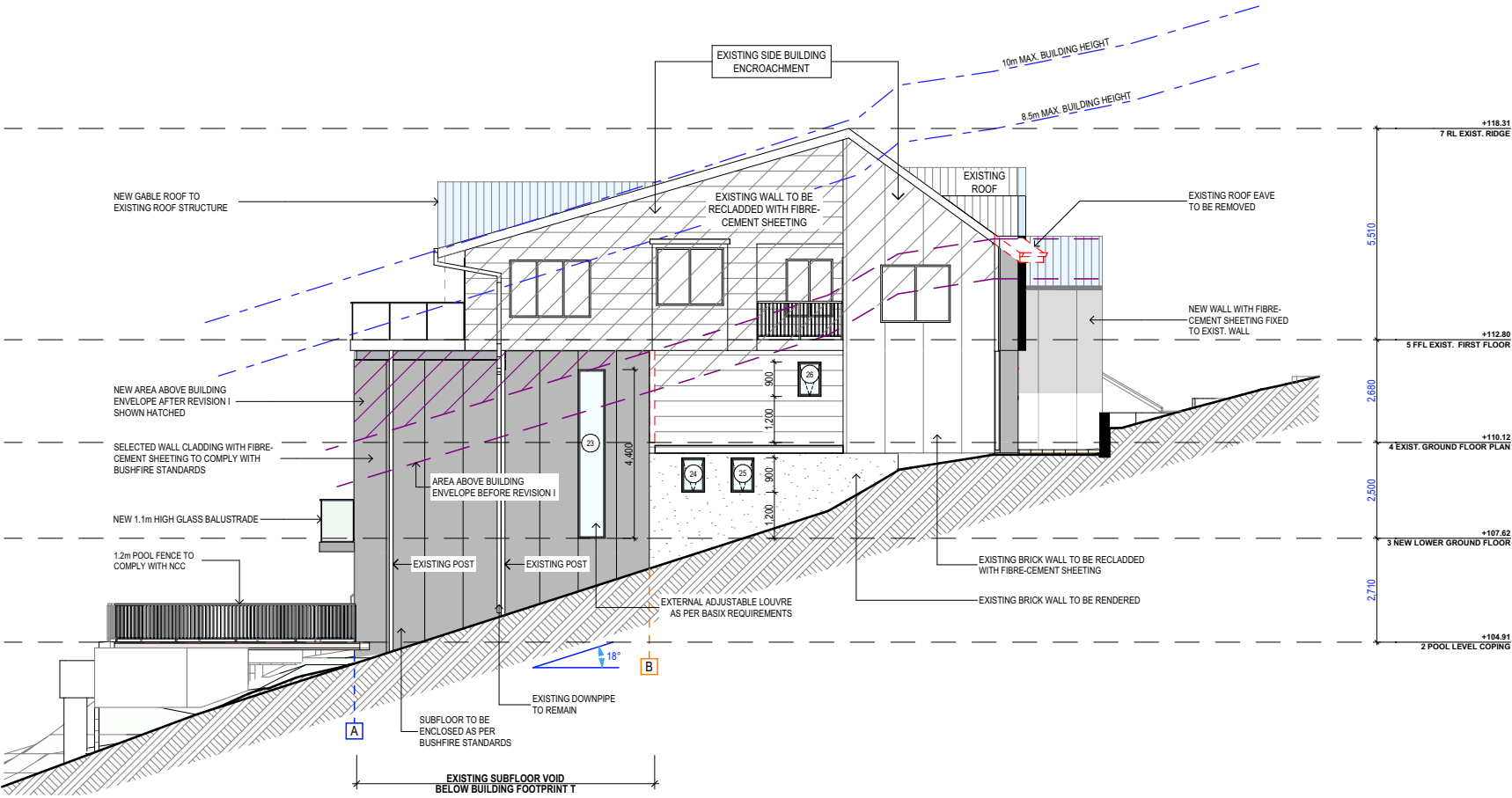


NOTES (E & OE) • All structures including stormwater & drainage to engineer's details. • Do not obtain dimensions by scaling drawings. • All dimensions are to be checked on site prior to starting work. • These drawings are to be read in conjunction with all other consultant's drawings and specifications. • 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@jldrafting.com.au www.jldrafting.com.au	REV: D 21.12.23 E 28.02.24 F 13.03.24 G 05.04.24 H 30.04.24 I 04.07.24	DESCRIPTION: D 21.12.23 PRELIM. DRAWINGS UPDATED E 28.02.24 DA DRAWINGS UPDATED - FENCE F 13.03.24 DA DRAWINGS UPDATED - BUSHFIRE REQUESTS G 05.04.24 DA DRAWING REVISION H 30.04.24 FRONT GATE DESIGN UPDATE I 04.07.24 AMENDMENTS AS PER COUNCIL REQUEST WEST SIDE SETBACK INCREASED	PROPOSED ALTERATIONS AND ADDITIONS 14 The Circle - Bilgola Plateau NSW 2107 CLIENT: Melanie Hogan & Richard Johnsson	DATE: AUGUST/23	DRAWN BY: LB	SCALE: 1:100 @ A3
		DRAWING TITLE: SOUTH ELEVATION	JOB No: 1193/23	CHECKED BY: JJ	DRAWING No: DA.12		



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		DRAWING TITLE: EAST ELEVATION	JOB No: 1193/23 CHECKED BY: JJ DRAWING No: DA.14																							



WEST ELEVATION

TRUE NORTH:



NOTES (E & OE)

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I	04.07.24	AMENDMENTS AS PER COUNCIL REQUEST WEST SIDE SETBACK INCREASED

PROPOSED ALTERATIONS AND ADDITIONS
14 The Circle - Bilgola Plateau NSW 2107
CLIENT: Melanie Hogan & Richard Johnsson
DRAWING TITLE: WEST ELEVATION

DATE: AUGUST/23	DRAWN BY: LB	SCALE: 1:100 @ A3
JOB No: 1193/23	CHECKED BY: JJ	DRAWING No: DA.15

Dear Chief Executive Officer and planner

10th July 2024 REVISED**PREMISES AT 14 THE CIRCLE BILGOAL PLATEAU
PROPOSED ALTERATIONS AND ADDITIONS TO AN EXISTING DWELLING****CLAUSE 4.6 REQUEST -EXCEPTION TO THE DEVELOPMENT STANDARD (HEIGHT OF
BUILDINGS) -PITTWATER LOCAL ENVIRONMENTAL PLAN 2014**

This present document is a written variation request submitted under clause 4.6 of Pittwater Local Environmental Plan 2014 in connection with a development application seeking consent for alterations and additions to an existing dwelling.

1. INTRODUCTION

Clause 4.3 of the PLEP controls the height of building. Relevantly, clause 4.3 (2) of PLEP provides that the height of a building on any land is not to exceed the maximum height shown for the land on the height of buildings map.

~~(2D) Despite subclause (2), development on land that has a maximum building height of 8.5 metres shown for that land on the *Height of Buildings Map* may exceed a height of 8.5 metres, but not be more than 10.0 metres if—~~

~~The maximum building height control -----8.5m.~~

~~Although a maximum building height of 10.0m is allowable if:~~

- ~~(a) the consent authority is satisfied that the portion of the building above the maximum height shown for that land on the *Height of Buildings Map* is minor, and~~
- ~~(b) the objectives of this clause are achieved, and~~
- ~~(c) the building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%), and~~
- ~~(d) the buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.~~

ABOVE NOTATION DELETED

Due to the steep topography of the land, currently the existing roof to the dwelling has a building height which is between 8.5m – 10m. The proposal is to add a small gable to the rear of the existing roof to provide better natural light within the main bedroom. The new small gable roof contravenes the 8.5m building height, however it is located on an existing roof which already contravenes the 8.5m building heights. Due to the steep topography of the land and the siting of the existing dwelling it is therefore requested that this slight non- compliance be supported as it will not affect adjoining properties in solar loss, view loss or privacy loss. It is not visible from the streetscape.

A variation has been requested.

2. REQUEST TO VARY A DEVELOPMENT STANDARD

It is requested that a variations be sought for the max building height (clause 4.3) for the proposed new gable roof addition to the existing dwelling. The proposed new small gable roof requires a 36.5% variation taken from the 8.5m building height, even though the existing roof complies with the 10m building height. However as the proposal is above the 10m building height the calculations are required to be taken from the lesser height

The request is submitted to council in connection with and in support of the development application and is to be read in conjunction with the statement of environmental effects and submitted to council in support of and to inform the development application.

The SOEE deals with the impacts of the development proposal in detail and provides details and compliance with the relevant planning controls and objectives.

Clause 4.6 of the PLEP allows Council to grant consent for development even though the development contravenes a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Clause 4.6 of the PLEP requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard:

** that the applicant has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case*

** that the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard and*

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

The consent authority's satisfaction as to those matters, must be informed by the objective of providing flexibility in the application of the relevant control to achieve better outcomes for and from the development in question.

The land and environment Court of NSW has provided judicial interpretation and clarification of the matters to be addressed in relation to variations to development standards lodged under the State Environmental Planning Policy 1 – Development Standards (SEPP 1) through the judgment of Justice Lloyd in “Winten Property Group Ltd v North Sydney Council (2001) 130 LGERA 79 at 89 (‘Winten’)

The ‘Winten test’ was later rephrased by Chief Justice Preston, in the decision of ‘Wehbe v Pittwater Council (2007) NSW LEC 827 (‘Wehbe’). These tests and clause 4.6 of the LEP and other standard LEP instruments. Accordingly, this clause 4.6 variation request is set out using the relevant principals established by the court. Another recent one in the NSW Court of Appeal in “Four2Five Pty Ltd v Ashfields Council (2015) NSWCA 248 has had some very important things to say about the use and construction of clause 4.6.

3. DEVELOPMENT STANDARD TO BE VARIED

The site is Zoned C4 Environmental Living under the PLEP.

This written request is to justify the contravention of the standard by demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that a sufficient environmental planning grounds to justify contravening the development standard.

The proposed development will be in the public interest as it is consistent with the objectives of the standards and are of relevance to the subject matter of the development application and the objectives for the development within the C4 Environmental Living zone under PLEP in which the development is proposed to be carried out.

The proposed small gable roof addition is an extension of the existing rear roof to the dwelling. The proposed small gable roof addition will allow for more natural light within the bedroom area and better views over Pittwater. The new roof addition follows the existing roof pitch and ridge level and will not affect adjoining properties in view loss, privacy loss or solar loss.

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VIEW FROM TOP BALCONY



VIEW FROM THE TOP FLOOR -THE PROPOSED NEW GABLE ROOOF WILL PROVIDE ADDITIONAL LIGHT WITHIN .



VIEW LOOKING INTO
THE MAIN BEDROOM
NEW SMALL GABLE
ROOF ABOVE THIS
AREA TO PROVIDE
FOR ADDITIONAL
LIGHT AND BETTER
VIEWS FROM
INTERNALLY

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The existing slope of the site varies between 19deg and 27deg. Due to the topography of the land and the elevated existing dwelling, it is difficult to adhere to the building height.

Currently the existing roof sits between the 8.5m – 10m building height. The proposed small gable will be located above the 10m building height controls. A request to vary this control is sought, even though the small gable roof sits above the 10m height plane. Reason for the variation sought:

1. The gable roof is located to the rear of the dwelling and it is not visible from the streetscape
2. Currently the existing rear roof above the deck is quite low and the new gable roof will allow for a better head height.
3. The new small gable roof will provide for more light within the dwelling
4. Streetscape will not be affected
5. Adjoning properties will not be affected in view loss, privacy loss or overshadowing
6. the additional small gable roof will provide a sense of openness within the room and also provide extra views looking out towards Pittwater when entering the roomthe view is amazing !!!!!!!

Below is photo of some of the house in The Circle, which are large in scale

No.26

no.28

no.30

no.32

no.34



4. THE OBJECTIVES OF THE STANDARDS

Clause 4.3 (1) of the PLEP and 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.

The proposed small gable roof addition is consistent with the low density character of the precinct

Landscaping of the site has not been reduced due to the proposed addition. Majority of the existing vegetation will remain on the site.

The scale of the proposed development is consistent with the adjoining residential lots. The proposed development does not result in any privacy issues or impacts to nearby neighbours.

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

Development in the area is defined to a greater or lesser extent by residential lots constrained by steeper slopes and dense vegetation.

The proposed small gable roof addition to the existing dwelling is compatible with the surround developments in the area. **Refer to photo above.**

The proposed new gable roof is a very small addition to an existing low pitch roof. There numerous dwellings in the vicinity which are large in scale than what we are proposing.

c) to minimise any overshadowing of neighbouring properties

Neighbours privacy will **not** be affected by the small gable roof addition

The proposed roof extension will not affect adjoining properties.

Existing properties will continue to receive a min of 3 hours of solar access.

The proposal satisfies this objective.

d) to allow for the reasonable sharing of views.

The proposal will not interrupt view corridors of its neighbours to any significant or material extent.

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

The proposal will not affect the existing landscaping on the site. **The proposal responds well to the natural topography of the site. Given the steep topography of the site it is difficult to strongly adhere to a fully compliant height or strongly follow the topography of the land. The new small gable roof has been positioned within the existing roof in this location to create more light within and to raise portion of the low roof.**

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

The development is not a heritage item nor is it located in a heritage conservation area.

The site contains natural vegetation with some introduced species. The proposed addition will not affect the natural environment, as it will be located below and within the existing building footprint.

The objective satisfies this objective.

Conclusion to this

In respect of the height standard which is of a minimal significance in terms with respect to the objectives of the relevant applicable height of building development standard. The gradient of the land and the height of the existing building ridge, all assist in ensuring that

a casual observer would have some difficulty in reading the additional height of the proposed addition and roof extension. The additional small gable roof which is located to the rear of the dwelling will not be visible from the streetscape.

It is concluded that the development will be consistent and will satisfy relevant height objectives, notwithstanding the numerical departure from the standard contained in clause 4.3 of PLEP. **A variation of 36.5% is sought**

The development is consistent with all of the abovementioned objectives of the standard.

The proposed development is consistent with such of the aims of the PLEP as are relevance to the development.

5. ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT CLAUSES 4.6 (3)(b)

There are numerous environmental planning grounds for varying the development standard which is the preservation of appropriate residential density and the amenity, maintaining privacy for residents, preserving the natural topography and the biodiversity significance of the locality.

The proposal is consistent with the aims of the PLEP as it constitutes a good environmental planning ground justifying a contravention of the maximum height of buildings development standard contained in clause 4.3 of the PLEP.

Another good environmental planning ground justifying a contravention of the development standard in this instance is that there is no demonstrable public benefit in maintaining the development standard, clause 4.6 (5)(b) in this instance for to do would not result in any material public benefit in this situation.

The proposed height of the new gable roof to the rear of the dwelling varies between 10m – 11.7m. **It is a variation of 36.5% from the 8.5m building height.** Currently the existing roof is at a variable height between 8.5m - 10m height.

The new small gable roof exceeds the 8.5m building height by 36.5% it is requested that this non-compliance be supported as the small gable roof will not affect adjoining properties or the streetscape.

The proposed development will result in an improved outcome for the occupants and for the wider community in that there are likely to be no significant amenity impacts for residents and neighbours.

The proposed development is unlikely to increase the demand on local infrastructure and service and is entirely consistent with such of the zone objectives as are of relevance. The residential environment will remain characterised by a diverse range of low density dwelling styles, whilst not detracting from the consistent natural landscape setting.

This is a written request that the development will achieve the relevant zone objectives notwithstanding the numerical non-compliance with the height standard contained in clause 4.3 of the PLEP.

The above constitute good environmental planning grounds to justify contravening the development standard.

6. CONCLUSION

The proposed addition has been designed to allow for better views and light within the main bedroom, it will not affect adjoining properties.

Amenity to adjoining properties is maintained and no view loss will be experienced by the proposal.

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The proposal will not have an adverse effect on any special ecological, scientific or aesthetic values.

It is requested that this non compliance be supported as there would be no practical utility in enforcing strict compliance with the relevantly applicable height of buildings development standard. All of the above constitutes good environmental planning grounds to justify contravening the development standard in this particular instance.

The variation from the development standard will not contravene any overarching State or regional objectives or standards, it will have no effect outside the site's immediate area and rises no issue of significance for State and or regional environmental planning.

Maintaining strict numerical with the 8.5m height of buildings development standard would not result in any public benefit in this instance. To maintain, to strictly enforce and apply the development standard in this instance would prevent the carrying out of an otherwise well designed residential development which is suited to the site.

IN SUMMARY

It is requested that this development justifies the contravention of the height of buildings development standard contained in clause 4.3 of the PLEP by demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances and there are sufficient environmental planning grounds to justify contravening the development standard.

The proposed development shows it will be in the public interest as it is consistent with such of the objectives of the standard as are of relevance to the subject matter of the development application and the objectives for the development within the C4 Environmental Living zone.

It is sought that this development application may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of the PLEP.

Yours Sincerely

Ms Jitka Jankovec c/- JLDRAFTING AUSTRALIA P/L

**ITEM 3.2 DA2024/0725 - 179 RIVERVIEW ROAD AVALON BEACH -
DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING
HOUSE AND ASSOCIATED SITE WORKS**

PURPOSE

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

RECOMMENDATION

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

THAT Council as the consent authority **approves** Development Consent to DA2024/0725 for demolition works and construction of a dwelling house and associated site works on land at Lot 3 DP 236812 & Lot LIC 363233, 179 Riverview Road AVALON BEACH, subject to the conditions set out in the Assessment Report.

Reporting manager	Adam Richardson
TRIM file ref	2024/662972
Attachments	1 Assessment Report 2 Site Plan and Elevations 3 Clause 4.6 - HOB 4 Clause 4.6 - FBL

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/0725
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Responsible Officer:	Stephanie Gelder
Land to be developed (Address):	Lot 3 DP 236812, 179 Riverview Road AVALON BEACH NSW 2107 Lot LIC 363233, 179 Riverview Road AVALON BEACH NSW 2107
Proposed Development:	Demolition works and construction of a dwelling house and associated site works
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:	Madeleine Blanchfield Architects Pty Ltd

Application Lodged:	07/06/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	19/06/2024 to 03/07/2024
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 50.59%
Recommendation:	Approval

Estimated Cost of Works:	\$ 5,408,484.00
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EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) due to a departure to a development standard of greater than 10%. Clause 4.3 Height of buildings of Pittwater Local Environmental Plan 2014 restricts the maximum building height to 8.5m. The proposal presents a maximum height of 12.8m. The variation to the proposed height of buildings is supported by a written Clause 4.6 variation request.

The written Clause 4.6 variation request for the non-compliance with the height of buildings standard arises from an existing large rock outcrop on the site that results in a steep sloping topography. It should be noted that the site's crossfall is greater than 30% and is subject to the 10.0m height dispensation under Clause 4.3(2D) of PLEP 2014. However and despite this, due to the steep and abrupt topography at the rear of the building footprint, there are elements such as the eaves and a portion of the roof that are above 10.0m. As such, the maximum height reverts back to 8.5m. The detailed written Clause 4.6 variation request that is submitted demonstrates that compliance is unreasonable or unnecessary, and that there are sufficient environmental planning grounds to justify contravening the development standard.

The proposed development was notified in accordance with the Northern Beaches Community Participation Plan (CPP) for fourteen (14) days with no objections received.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposed development comprises of the following works:

- Demolition of the existing site structures;
- Construction of a new dwelling house, comprising of the following:
 - Second Level (Upper Level):
 - 2 car garage with bin storage. A lift is provided from the garage level down to the rumpus room;
 - This level includes the kitchen/living/dining space, rumpus room, powder room and courtyard with outdoor dining area;
 - First Floor (Middle Level):
 - 2 bedrooms with ensuites with the primary bedroom including a WIR;
 - Library;
 - Storage space accessed externally;
 - Ground Floor:
 - 2 bedrooms;
 - Bathroom;
 - Laundry;
 - Additional living/rumpus;
 - Each floor is accessed via an internal spiral staircase as well as a lift that is proposed to the southern elevation; and
- Associated landscaping works.

APPLICATION HISTORY

Following the preliminary assessment of the application, Council requested additional information in relation to Clause 4.3 Height of buildings of Pittwater Local Environmental Plan 2014, Clause 7.8 Limited development on foreshore area of Pittwater Local Environmental Plan 2014, D1.9 Side and rear building line of Pittwater 21 Development Control Plan (P21 DCP), D1.11 Building envelope of P21 DCP, and D1.5 Building colours and materials of P21 DCP. Further information was requested from Council's Bushland and Biodiversity Officer in relation to the submitted BDAR and Credit Reports.

Amended plans were subsequently submitted which included the following changes:

- Deletion of inclinator;

- Reduction in height of building;
- Reduction in building envelope non-compliance; and
- Reduction in building footprint.

As the proposal deleted the inclinator, the proposed description was amended from "Demolition works and construction of a dwelling house, including inclinator and associated site works" to "Demolition works and construction of a dwelling house and associated site works".

The amended plans constitute a reduced environmental impact and therefore, the application was not required to be re-notified, in accordance with the Northern Beaches Community Participation Plan (CPP).

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living
Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area
Pittwater 21 Development Control Plan - A4.1 Avalon Beach Locality
Pittwater 21 Development Control Plan - D1.5 Building colours and materials
Pittwater 21 Development Control Plan - D1.9 Side and rear building line
Pittwater 21 Development Control Plan - D1.11 Building envelope
Pittwater 21 Development Control Plan - D1.14 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 3 DP 236812 , 179 Riverview Road AVALON BEACH NSW 2107 Lot LIC 363233 , 179 Riverview Road AVALON BEACH NSW 2107
Detailed Site Description:	The subject site consists of one (1) allotment located on the western side of Riverview Road. The site is regular in shape with a frontage of 16.46m along Riverview Road and a depth of 51.02m. The site has a surveyed area of 866.2m². The site is located within the C4 Environmental Living zone from PLEP 2014 and accommodates a dwelling house and garage currently on the site. The site slopes from the front eastern boundary downwards to the rear western boundary over approximately 26 metres. The site contains dense vegetation at the rear, and includes trees, plantings, and gardens throughout the site. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by dwelling houses that vary in architectural style and design.

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:

N0313/00

Development Application for Additions to the dwelling.
Approved on 23 May 2000.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to Clause 4.3 Height of buildings of Pittwater Local Environmental Plan 2014, Clause 7.8 Limited development on foreshore area of Pittwater Local Environmental Plan 2014, D1.9 Side and rear building line of Pittwater 21 Development Control Plan (P21 DCP), D1.11 Building envelope of P21 DCP, and D1.5 Building colours and materials of P21 DCP. Further information was requested from Council's Bushland and Biodiversity Officer in relation to the submitted BDAR and Credit Reports. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the

Section 4.15 Matters for Consideration	Comments
	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 (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
Landscape Officer	<i>Supported - subject to conditions</i> An Arboricultural Impact Assessment and Landscape Plans are submitted and are considered by Landscape Referral. The assessment of biodiversity outcomes as completed by Council's Bushland & Biodiversity Referral team is noted. The landscape proposals as documented in the Landscape Plans raise no concerns. Likewise the recommendations of the Arboricultural Impact Assessment is not objected to subject to conditions.
NECC (Bushland and Biodiversity)	<i>Supported - subject to conditions</i> <u>AMENDED COMMENTS</u> The BDAR has been resubmitted with the application and uploaded to the portal with finalised credit reports. The BDAR confirms the presence of Pittwater and Wagstaffe Spotted Gum Forest, which is listed as an Endangered Ecological Community (EEC) under the NSW Biodiversity Conservation (BC) Act 2016. In accordance with the BDAR, the proposed impacts to biodiversity include the removal of a total of 0.053ha of PWSGF EEC, including the removal of 10 trees of which 7 are native trees as identified by the Arboricultural Report. The assessed residual impacts of the development result in the following offset requirements under the Biodiversity Offsets Scheme: • Retirement of one Ecosystem Credit for Pittwater and Wagstaffe Spotted Gum Forest EEC (PCTs 3234, 3437) • Retirement of one Species Credit for Chalinolobus dwyeri/Large-eared Pied Bat • Retirement of one Species Credit for Vespadelus troughtoni/Eastern Cave Bat The retirement of offsets will be conditioned as part of the consent. The submitted arborist report assessed a total of 19 trees/groups of trees and recommended the removal of T2 (Jacaranda mimosifolia), G3 (Archontophoenix cunninghamiana x3), T4(Corymbia gummifera), G5 (Ligustrum lucidum x6), T6 (Brachychiton acerifolius), T7 (Ficus rubiginosa), T8 (Acacia implexa), T9 (Pittosporum undulatum), T11 (Corymbia maculata) and T19 (Olea europaea subsp.). Tree protection measures recommended in the Arborist report will have to be in place before works commence and maintained for the duration of works to ensure retention of protected trees that have not been approved for removal.

Internal Referral Body	Comments
	Lastly, a Landscape plan has been submitted with the application. No weeds have been identified on the proposed planting schedule and replacement canopy trees have been considered to compensate the removal of prescribed trees to be removed. The development is designed, sited and will be managed to avoid any significant adverse environmental impact. <u>ORIGINAL COMMENTS</u> The comments in this referral relate to the following applicable controls and provisions: • NSW Biodiversity Conservation Act 2016 • NSW Biodiversity Regulation 2017 • 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 Portions of the site are identified on the Department of Climate Change, Energy, the Environment and Water (DCCEEW) Biodiversity Values Map (BV Map). Under the NSW Biodiversity Conservation Act 2016, any removal of native vegetation from within mapped areas will trigger the Biodiversity Offsets Scheme (BOS) and the requirement for a Biodiversity Development Assessment Report (BDAR). A BDAR prepared by GIS Environmental Consultants (May 2024) has been submitted with the application. The BDAR confirms the presence of Pittwater and Wagstaffe Spotted Gum Forest, which is listed as an Endangered Ecological Community (EEC) under the NSW Biodiversity Conservation (BC) Act 2016. In accordance with the BDAR, the proposed impacts to biodiversity include the removal of a total of 0.053ha of PWSGF EEC, including the removal of 10 trees of which 7 are native trees as identified by the Arboricultural Report. The assessed residual impacts of the development result in the following offset requirements under the Biodiversity Offsets Scheme: • Retirement of one Ecosystem Credit for Pittwater and Wagstaffe Spotted Gum Forest EEC (PCTs 3234, 3437) • Retirement of one Species Credit for <i>Chalinolobus dwyeri</i>/Large-eared Pied Bat • Retirement of one Species Credit for <i>Vespadelus troughtonii</i>/Eastern Cave Bat No objections are raised, however, the BDAR will have to be resubmitted as the Credit Reports have not been finalised as

Internal Referral Body	Comments
	required under the Section 10.1.1.8 of the Biodiversity Assessment Method. The Biodiversity Referral will recommence upon reception of the amended BDAR with finalised Credit Reports.
NECC (Coast and Catchments)	Supported - subject to conditions This Development Application is to seek consent for the demolition of the existing site structures and the construction of a new dwelling including inclinor and associated site works. The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Resilience & Hazards) 2021 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP. Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>. State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA. Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Boston Blyth Fleming Pty. Ltd. dated April 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 Estuarine Risk Management The subject property has also been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site.

Internal Referral Body	Comments
	In accordance with the Pittwater Estuary Mapping of Sea Level Rise Impacts Study (2015), a base estuarine planning level (EPL) of RL 2.66m AHD would apply when the design life of proposed development is 25 years or less and RL 3.07m AHD when the design life of proposed development is over 25 years at the subject site. A reduction factor (RF) based upon the distance from the foreshore of proposed development may also apply at a rate of 0.07m reduction to the EPL for every 5.00m distance from the foreshore edge up to a maximum distance of 40.00m. Development on Foreshore Area A section of the subject property is within the foreshore building line. Part 7, Clause 7.8 –Limited development on foreshore area of the Pittwater LEP 2014 applies for any development within the foreshore area. The DA no longer proposes construction of an inclinor or construction of a dwelling located within the foreshores area therefore the the DA satisfies the objectives and requirements of Part 7, Clause 7.8 of the Pittwater LEP 2014.
NECC (Development Engineering)	Supported - subject to conditions The proposed development is in Region 1. The site is subject to geotechnical hazard and a geotechnical report has been provided. Stormwater disposal is proposed into Pittwater. This is possible on-site with suitable erosion control. Vehicle crossing construction is not proposed. Development engineering raises no objections to the proposed development, subject to conditions. Engineering Comments 04.09.24 No changes to the suggested engineering conditions of consent.
NECC (Riparian Lands and Creeks)	Supported - subject to conditions This application was assessed in consideration of: - Supplied plans and reports; - Coastal Management Act 2016; - State Environmental Planning Policy (Resilience and Hazards) 2021; - Relevant LEP and DCP clauses; and - Northern Beaches Council Water management for development policy. Riparian The site abuts Pittwater and as such proposed development must not significantly impact on the biophysical, hydrological or ecological integrity of Pittwater or the quantity and quality of surface and ground water flows that it receives.

Internal Referral Body	Comments
	Seagrass As per Pittwater DCP B4.16, no filling, dredging or other disturbance shall be undertaken within a 50m buffer area of seagrass beds. The site is within 50m a DPI mapped Posidonia australis (seagrass) Endangered Population. Posidonia is sensitive to sedimentation, sediment plumes and scarring from vessels entering shallow waters. These seagrass beds provide numerous ecological benefits and the planning and execution of works must not have any negative impact on local seagrass beds. Sediment Management Sediment and erosion controls must be installed prior to any disturbance of soil on site and maintained until all work is complete and groundcover re-established.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	Supported - subject to conditions The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	Supported - subject to conditions Development Application No. DA2024/0725 Description: Demolition works and construction of a dwelling house, including inclinor and associated site works Address: 179 Riverview Road AVALON BEACH Reference is made to the proposed development at the above area and Aboriginal heritage. No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development. Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No.1745986S_02 dated 25 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 raised no objections, subject to conditions which have been included in the recommendation of this report.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

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

Comment:

The subject site is located within land identified as "coastal environment area". The proposed development is not likely to cause adverse impact to items listed under Clause 2.10(1)(a-g) inclusive.

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

Comment:

The proposed development has been designed, sited, and managed to avoid an adverse impact to items listed under Clause 2.10(1)(a-g) inclusive.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

- 1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
 - a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
 - iv) foreshores,
 - v) the visual amenity and scenic qualities of the coast, including coastal headlands,

- Aboriginal cultural heritage, practices and places,
cultural and built environment heritage, and
- b) is satisfied that:
 - i) the development is designed, sited and will be managed to avoid an
 - ii) adverse impact referred to in paragraph (a), or
 - iii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or if that impact cannot be minimised—the development will be managed to mitigate that impact, and
 - c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The subject site is located within land identified as "coastal use area". The proposed development is not likely to cause an adverse impact to items listed under Clause 2.11(1)(a)(i-v) inclusive. The proposal has been designed, sited, and managed to avoid any adverse impacts as detailed under Clause 2.11(1)(a)(i-v) inclusive.

Division 5 General

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

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

Comment:

The proposed development is not likely to cause an increased risk of coastal hazards on the land or other land.

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

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

Comment:

There is no certified coastal management program applicable to the land.

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

Chapter 4 – Remediation of Land

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

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	12.8m	50.59% (4.3m)	No

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone C4 Environmental Living

The subject site is located in Zone C4 Environmental Living of Pittwater Local Environmental Plan 2014.

The proposal has been assessed against the objectives of zone as detailed below:

- To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.***

Comment:

The proposal will provide for low-impact residential development in areas with special ecological, scientific, or aesthetic values.

- To ensure that residential development does not have an adverse effect on those values.***

Comment:

The residential development will not have any adverse effects on the special ecological, scientific or aesthetic values.

- ***To provide for residential development of a low density and scale integrated with the landform and landscape.***

Comment:

The proposal will provide a development of a low density and scale that will integrate with the landform, and landscape.

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

Comment:

The development will not impact upon any riparian, foreshore vegetation, or wildlife corridors.

4.6 Exceptions to development standards

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

Development standard: Clause 4.3 Height of buildings

Requirement: 8.5m

Proposed: 12.8m

Percentage of variation: 50.59% (4.3m)

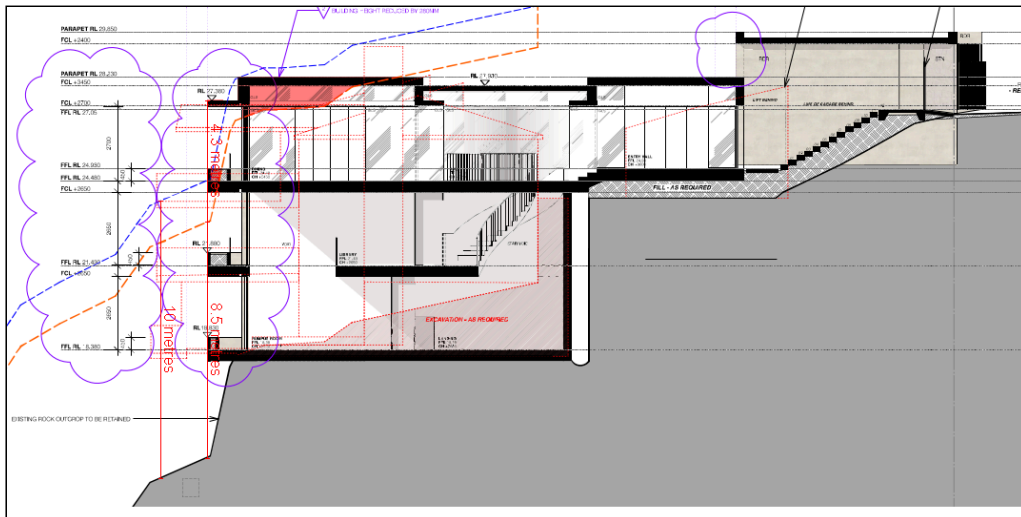


Figure 1. Long Section A-A (red highlighting height variation over 8.5m)

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:

It is considered that the applicant has demonstrated sufficiently that compliance with Clause 4.3 Height of buildings is unreasonable or unnecessary in the circumstances of this application. The applicant has demonstrated that the proposal is consistent with the objectives of the height of buildings development standard. It is agreed that the proposal is consistent with the objectives of the clause 4.3, and as such it is considered that strict compliance is 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 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:

Sufficient environmental planning grounds

Topography/Rock outcrops

Sufficient environmental planning grounds exist to justify the height of buildings variation. The steep and undulating large rock outcrops makes strict compliance difficult without significant intrusions into the natural landscape via excavation. The offending areas outside the 10m height control relate to eaves and a portion of roof above a crevice in the rock outcrop. This is shown below in the 3D height blankets.

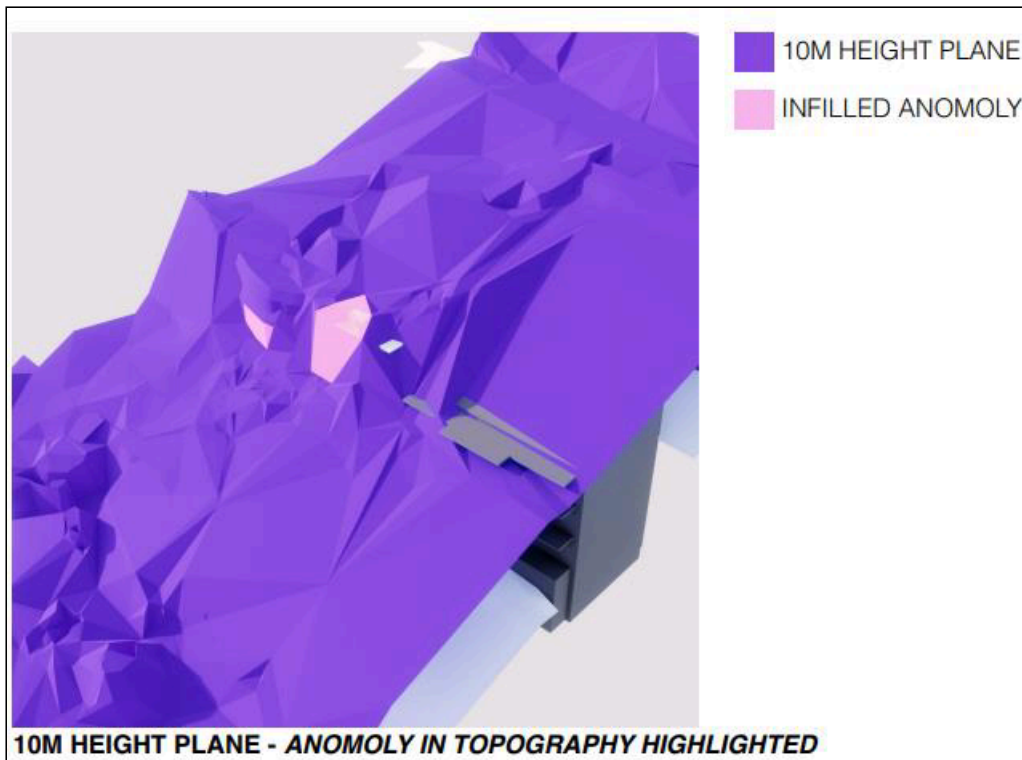


Figure 2: 3D Height Blanket

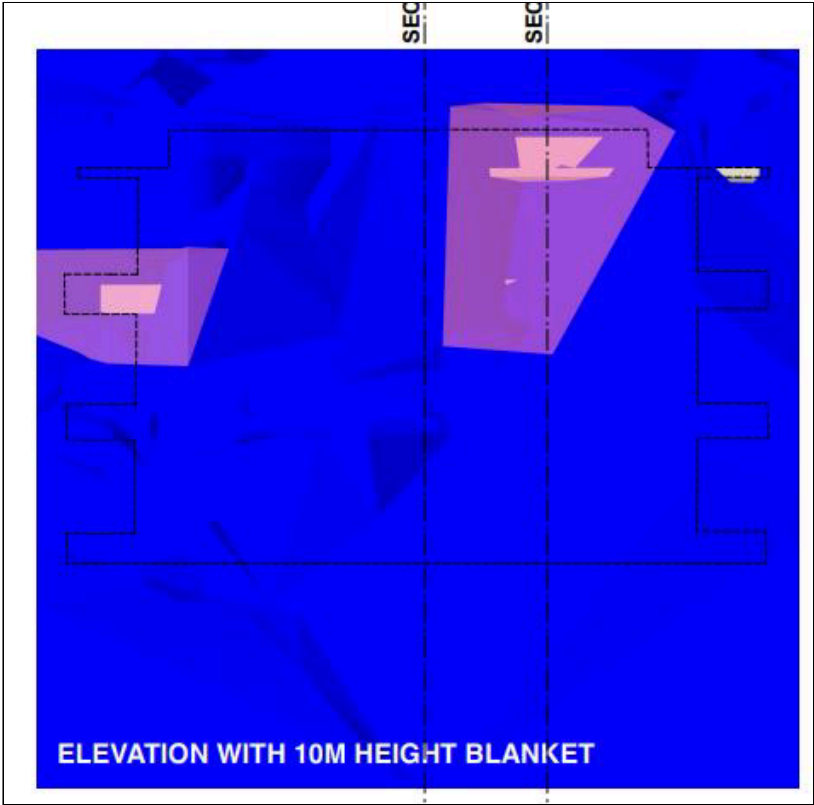


Figure 3: 3D blanket drawings showing areas of breach

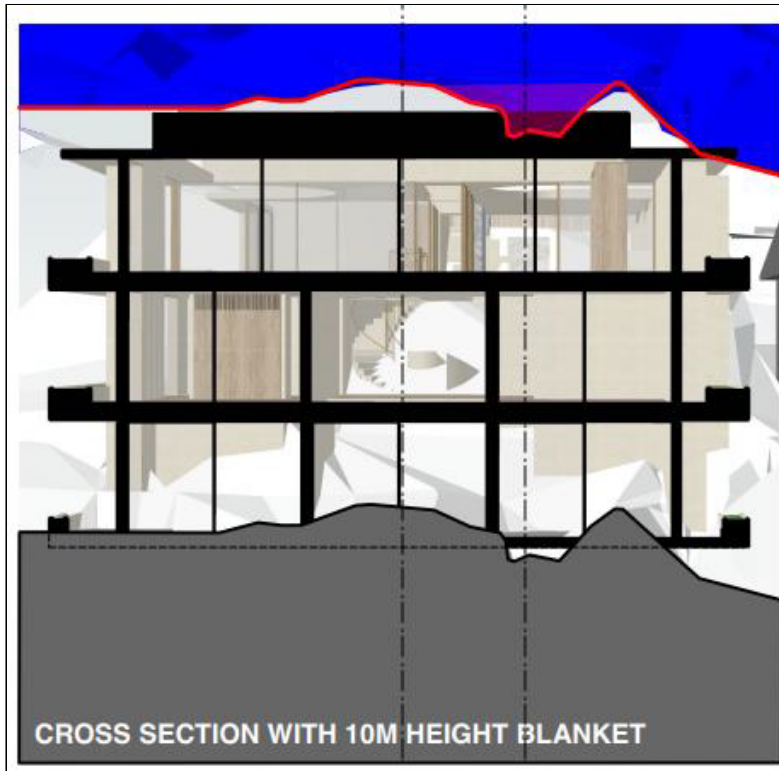


Figure 4: Levels of rock outcrop highlighted

The eaves are required to satisfy BASIX requirements and do not give rise to any unreasonable visible bulk or amenity impacts. The breaching eave elements are a result of the undulating levels of the rock outcrops which will be discussed further below.

The roof area above the crevice, as seen in image 3 above, creates the predominate non-compliance. The undulating nature of the outcrop creates areas that sit comfortably below the 10m control and areas above the 10m. If a reasonable level height plane was to be interpolated the dwelling would be consistent with the 10m development standard. As such, the breach is not reflective of overdevelopment but rather the existing characteristics of the land.

The topography of the land does not lend itself to designing a dwelling that can step down the slope reasonably. To achieve a dwelling of such form would require significant excavation into the rock to achieve. Given this site is sensitive, as reflected in its zoning and biodiversity mapping, it was deemed not appropriate in this instance.

The dwelling towards the front boundary sits well below the 8.5m height standard and is single storey. On balance, the dwelling largely respects the height control and highlights the topography constraints of the site.

Contextual Outcome

The photo montages provided demonstrate that the dwelling will be consistent with the scale of surrounding development and with the 3 storey built form comparable with the existing dwelling to be demolished and with adjoining development. It will sit comfortably below the tree canopy with impacts to the rock outcrops minimised to ensure the natural landscape and bushland setting are preserved.



Figure 5. Photomontage depicting the proposed development as viewed from Pittwater



Figure 6. Photomontage depicting the proposed development as viewed from Riverview Road

From the finished floor level to the top of the parapet roof the dwelling complies with the 10m control reflective of its reasonableness.

The non-compliance does not result in any unacceptable environmental consequences in terms streetscape, residential amenity or foreshore scenic outcomes. In this regard, I consider the proposal to be of a skilful design which responds appropriately to the topography and environmental constraints on the site. Such outcome is achieved whilst realising the reasonable development potential of the land.

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

- The proposal promotes the orderly and economic use and development of land (1.3(c)).*
- The development represents good design (1.3(g)).*

It is agreed that the proposal presents sufficient environmental planning grounds to justify the contravention of Clause 4.3 Height of buildings. It is considered that the site topography, rock outcrops, and contextual outcome present sufficient environmental planning grounds that are warranted to vary Clause 4.3 Height of buildings of Pittwater Local Environmental Plan 2014.

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 variation to Clause 4.3 Height of buildings is acceptable as the works located above this height include a portion of the roof and roof eaves that is resultant due to the sites topography, rock outcrops, and constrained building footprint. 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.

(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.

(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.

7.6 Biodiversity protection

Before determining a development application for development on land to which this clause applies, this clause requires the consent authority to consider:

(a) whether the development is likely to have:

(i) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and

(ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and

(iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and

(iv) any adverse impact on the habitat elements providing connectivity on the land, and

Comment:

The development has been assessed by Council's Bushland and Biodiversity Officer, who raised no objections to approval. Therefore, 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. Furthermore, the development will not unreasonably fragment, disturb, or diminish the biodiversity structure, function, or composition of the land.

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

Comment:

The development has been assessed by Council's Bushland and Biodiversity Officer, who raised no objections to approval. Therefore, the proposal includes appropriate measures to avoid, minimise, or mitigate the impacts of the development.

Before granting development consent, this clause also requires the consent authority to be satisfied that:

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

Comment:

The development has been assessed by Council's Bushland and Biodiversity Officer, who raised no objections to approval. Therefore, the development is designed, sited and will be managed to any significant adverse environmental impact.

7.7 Geotechnical hazards

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

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

Comment:

The proposed development is supported by a Geotechnical Report, Architectural Plans, and Stormwater Plans that demonstrate all geotechnical risks have been taken into account. 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 Report and Stormwater 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, the proposed development has been designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development.

7.8 Limited development on foreshore area

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 waterway access stairs that is an exception in the foreshore area as detailed above.

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 development will retain continuous public access to and along the foreshore. The proposed development does not impact upon any public access. The proposed development is acceptable in relation to the foreshore character and the existing environmental conditions.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m (East)	7.5m	-	Yes
Rear building line	Foreshore Building Line (West)	Dwelling House (Above Foreshore Building Line) Waterway Access Stairs (Below Foreshore Building Line)	- -	Yes Yes
Side building line	1m (South)	Second Floor Plan: 1.0m (Lift) First Floor Plan: 1.0m (Lift) Ground Floor: 1.0m (Lift)	- - -	Yes Yes Yes
	2.5m (North)	Second Floor Plan: 1.0m (Garage) First Floor Plan: 1.8m (Primary Bedroom/Store) Ground Floor: 1.0m (Stairs)	60% (1.5m) 28% (0.7m) 60% (1.5m)	No No No
Building envelope	3.5m (South)	Outside envelope	85.19% (4.6m)	No
	3.5m (North)	Outside envelope	83.33% (4.5m)	No

Landscaped area	60% (519.72m ²)	51.10% (442.6m ²) 6% Impervious (51.97m ²) Total: 57.10% (494.57m ²)	4.25% (25.15m ²)	No
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Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	Yes	Yes
D1.1 Character as viewed from a public place	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D1.5 Building colours and materials	No	Yes
D1.8 Front building line	Yes	Yes
D1.9 Side and rear building line	No	Yes
D1.11 Building envelope	No	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	No	Yes
D1.17 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D1.20 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

A4.1 Avalon Beach Locality

Description of non-compliance

The Avalon Beach Locality Desired Character statement outlines the following:

"The most important desired future character is that Avalon Beach will continue to provide an informal relaxed casual seaside environment. The locality will remain primarily a low-density residential area with dwelling houses a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape. Secondary dwellings can be established in conjunction with another dwelling to encourage additional opportunities for more compact and affordable housing with minimal environmental impact in appropriate locations. Any dual occupancies will be located on the valley floor and lower slopes that have less tree canopy coverage, species and habitat diversity, fewer hazards and other constraints to development. Any medium density housing will be located within and around commercial centres, public transport and community facilities. Retail, commercial, community and recreational facilities will serve the community.

Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport. Vehicular and pedestrian access into and through the locality is good. Pedestrian links, joining the major areas of open space (Angophora Reserve, Stapleton Park and Hitchcock Park) and along the foreshores, should be enhanced and upgraded. Similarly, cycle routes need to be provided through the locality. Carparking should be provided on site and where possible integrally designed into the building.

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 development. The objective is that there will be houses amongst the trees and not trees amongst the houses.

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.

Most houses are set back from the street with low or no fencing and vegetation is used extensively to delineate boundary lines. Special front building line setbacks have been implemented along Avalon

Parade to maintain the unique character of this street. This, coupled with the extensive street planting of canopy trees, gives the locality a leafy character that should be maintained and enhanced..."

Comment:

The proposal presents three storeys at the rear of the dwelling house that is consistent with the existing dwelling house on site. It is considered that the three storey natural of the development is acceptable given the site characteristics including the constraints due to the Pittwater Foreshore Building Line to the rear, and right of way to the front of the site. The proposal will present as a single storey dwelling from the streetscape, with the three storey element being visible from Pittwater Waterway. It is considered that the three storey that presents to Pittwater Waterway is consistent with surrounding development, and as such the proposal is consistent with the desired future character. The proposal presents an acceptable building height that is below the tree canopy, and minimises bulk and scale through the articulated setbacks and use of varied colours and materials. The proposal includes the retention and enhancement of vegetation on site that will present a dwelling house that is integrated within the landscaped setting.

D1.5 Building colours and materials

Detailed description of non-compliance

The Materials Board (DA.902, Revision B prepared by Madeleine Blanchfield Architects Pty Ltd) details the proposed roof to be Concrete, and the Garage Roof to be Metal Deck Roof, Light.

Clause D1.5 Building colours and materials of Pittwater 21 Development Control Plan stipulates the following:

External colours and materials shall be dark and earthy tones as shown below:



White, light coloured, red or orange roofs and walls are not permitted:



The proposed colours for the Concrete roof is a beige colour, and the roof is detailed as a light colour similar to beige.

In this instance, it is considered that the flat roof design will not result in any unacceptable reflection to adjoining sites. The proposal has been assessed against the outcomes of the control as detailed below, and it is considered that the roof colours are supportable in this circumstance.

Merit consideration

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

- ***The development enhances the visual quality and identity of the streetscape. (S)***

Comment:

The proposal enhances the visual quality and identity of the streetscapes, and is consistent with surrounding development.

- ***To provide attractive building facades which establish identity and contribute to the streetscape.***

Comment:

The proposal presents an attractive building façade that will contribute positively to the streetscape of Riverview Road.

- ***To ensure building colours and materials compliments and enhances the visual character its location with the natural landscapes of Pittwater.***

Comment:

The proposed building colours and materials compliment and enhance the visual character of the location abutting Pittwater Waterway, and is consistent with the natural landscapes of Pittwater.

- ***The colours and materials of the development harmonise with the natural environment. (En, S)***

Comment:

The colours and materials of the development harmonise with the natural environment and include natural materials including stones, and timber.

- ***The visual prominence of the development is minimised. (S)***

Comment:

The visual prominence of the development is minimised and includes planter boxes along each level that will assist to visually soften the built form.

- ***Damage to existing native vegetation and habitat is minimised. (En)***

Comment:

The proposal is limited to a suitable building footprint that will limit damage to existing native vegetation and habitats.

- ***An informal beachside appearance of the Avalon Beach Village. (S, Ec)***

Comment:

The proposed colours and materials and natural and earthy colours that are consistent with the beachside appearance of the Avalon Beach Village.

D1.9 Side and rear building line

Description of non-compliance

Under Clause D1.9 Side and rear building line of Pittwater 21 Development Control Plan, the following side setbacks are required:

2.5 at least to one side; 1.0 for other side

In this instance the 2.5m side setback is applied to the northern side boundary, and the 1.0m side setback is applied to the southern side boundary. The proposal is compliant with the 1.0m southern side boundary line. Furthermore, the proposal is compliant with the rear building line that requires the development to be above the Foreshore Building Line. Please see Clause 7.8 Limited development on foreshore area of Pittwater Local Environmental Plan 2014 contained within this report.

The proposal presents variations to the 2.5m side setback as follows:

- Second Floor Plan: 1.0m (Garage)
- First Floor Plan: 1.8m (Primary Bedroom/Store)
- Ground Floor: 1.0m (Stairs)

It is considered that the variations made are point encroachments with the remainder of the development largely located behind the 2.5m northern side boundary line. In this instance an assessment has been conducted against the outcomes of the control, and it is considered the minor variations are acceptable due to the constrained site and demonstration that the proposal will not result in any unacceptable amenity or environmental impacts.

Merit consideration

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

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

Comment:

The proposal is consistent with the desired future character of the Avalon Beach Locality.

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

Comment:

The bulk and scale of the built form is minimised through the articulated side setbacks and use of varied colours and materials that provides visual relief to the development. It is considered that the proposal presents an appropriate bulk and scale that is consistent with surrounding development.

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

Comment:

The proposal will provide equitable preservation of views and vistas to and from public and

private places.

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

Comment:

The proposal will encourage view sharing through the siting of the buildings, suitable design and well-positioned landscaping throughout the site.

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

Comment:

The proposal presents a reasonable level of privacy, amenity and solar access to the development site and to adjoining residential properties.

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

Comment:

The proposal includes substantial landscaping and retention of the mature tree canopy that will contribute to present an attractive streetscape.

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

Comment:

Flexibility is afforded as the site is constrained by the site topography, existing rock outcrops, Pittwater Foreshore Building Line at the rear of the site, and right of way at the front of the site. Therefore, the siting of the building is in the most logical location that provides suitable access for the residents.

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

Comment:

The proposal includes the retention and enhancement of vegetation as detailed on the accompanying Landscape Plans that will assist to visually reduce the built form.

- ***A landscaped buffer between commercial and residential zones is achieved.(En,S)***

Comment:

The subject site is surrounded by residential zoning. Therefore this outcome is not relevant.

D1.11 Building envelope

Description of non-compliance

Clause D.11 requires buildings to be siting with the following envelope:

Planes are to be projected at 45 degrees from a height of 3.5 metres above ground level (existing) at the side boundaries to the maximum building height (refer to Pittwater Local Environmental Plan 2014).

Under Clause D.11 variations can be made in the following circumstances:

Where the building footprint is situated on a slope over 16.7 degrees (ie 30%), variation to this control will be considered on a merits basis.

In this instance, the building footprint is situated on a slope greater than 16.7 degrees (30%), with an approximate slope of 35% along the northern elevation, and 34% along the southern elevation.

The proposal presents variations along the Northern Elevation (see Figure 7) and along the Southern Elevation (see Figure 8). In this instance, the proposal is considered to be supportable, despite the extent of building envelope variations, as the site is subject to steep sloping topography and a limited building footprint as a result of the right of way at the front of the site, and the Pittwater Foreshore Building Line at the rear of the site. Furthermore, it is considered that if the building mass were moved further east (towards the street) this would result in greater solar access impacts to the site to the south, and also present greater bulk and scale as viewed from the streetscape. It is considered that the location of the proposal is appropriate and is integrated into the landform and will present as a single storey development from the streetscape. The location of the building envelope variation is attributed to the topography of the site, and it should be noted that the proposal is comparable to the developments located on the low side of Riverview Road that include multi-level designs due to the site constraints.

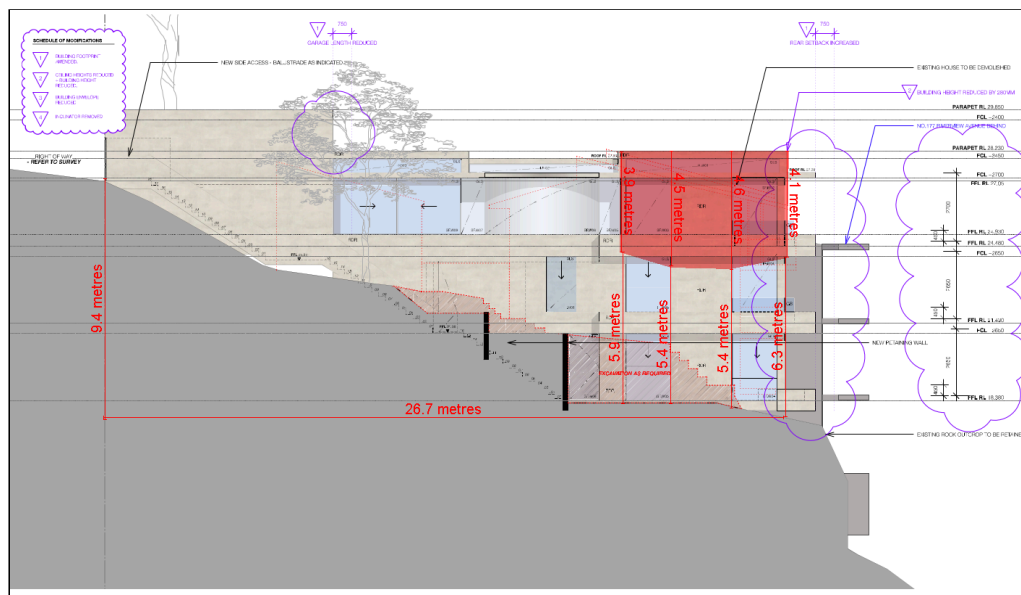


Figure 7. North Elevation (red highlighting building envelope numerical non-compliance)

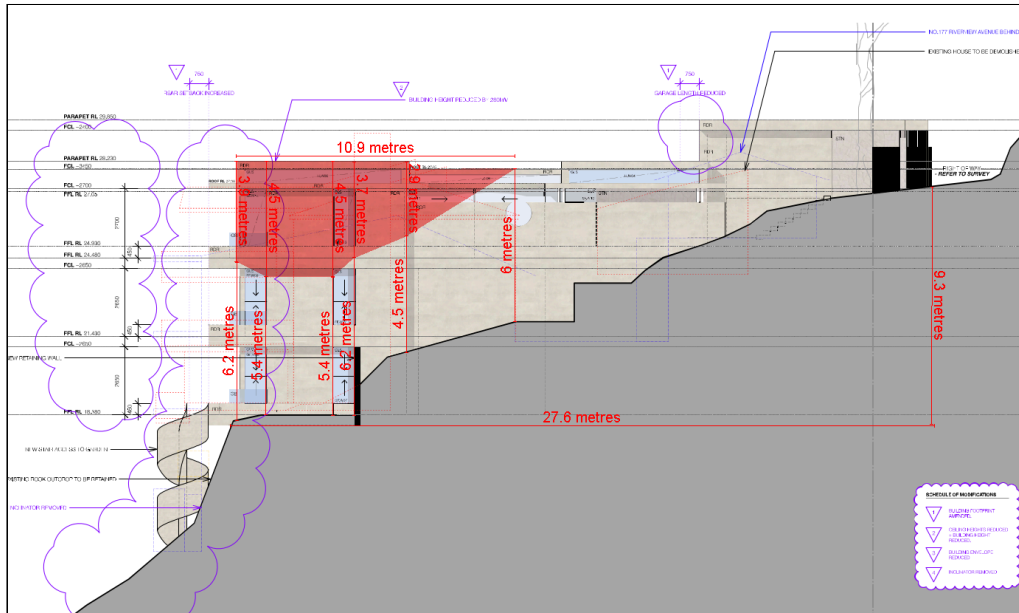


Figure 8. South Elevation (red highlighting building envelope numerical non-compliance)

As such, the proposal has been assessed against the outcomes of the control as detailed below.

Merit consideration

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

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

Comment:

The proposal is consistent with the desired future character of the Avalon Beach Locality.

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

Comment:

The proposal will enhance the existing streetscape, and promote an acceptable building scale and density that is below the height of the trees of the natural environment. The proposal will presents as a single storey development from the streetscape.

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

Comment:

The new development responds sensitively to the spatial characteristics of the existing natural environment. Council's Bushland and Biodiversity Officer and Council's Landscape Officer has reviewed the proposal, and is supportable subject to recommended conditions.

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

Comment:

The proposal includes articulation and the inclusion of varied colours and materials that assist to minimise the bulk and scale of the development.

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

Comment:

The proposal will provide preservation of views and vistas to and from public and private places.

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

Comment:

The proposal will provide a suitable level of privacy, amenity, and solar access to the development site and adjoining residential site.

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

Comment:

The proposal includes the retention and enhancement of vegetation as detailed on the accompanying Landscape Plans that will assist to visually reduce the built form.

D1.14 Landscaped Area - Environmentally Sensitive Land

Description of non-compliance

Clause D1.14 of the Pittwater 21 DCP requires a minimum of 60% (519.72m²) of the site area to be landscaped area.

The proposal presents a total of 51.10% (442.6m²) landscaped area.

Under Clause D1.14 Landscaped Area - Environmentally Sensitive Land the following variations can be made:

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)).*

In this instance, the site includes 6% of impervious area as paved pathways and the outdoor dining area. The impervious areas equate to a total of 51.97m², and when this is added to the landscaped area on site, a total of 57.10% (494.57m²) is provided.

It is important to note that the site is burdened by a right of carriageway and the eastern front of the site, and as such this should be taken into consideration. The minor variation to the landscaped area is considered acceptable in this circumstance, as the variation is 4.25% (25.15m²) that is minor.

The proposal has been assessed against the outcomes of the control, and in this circumstance the proposal is supportable as the outcomes have been met.

Merit consideration

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

- ***Achieve the desired future character of the Locality. (S)***

Comment:

The proposal is consistent with the desired future character of the Avalon Beach Locality.

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

Comment:

The proposed building footprint is considered to be constrained on the site due to the right of carriageway at the front of the site, and the Pittwater Foreshore Building Line at the rear of the site. As such, it is considered that the bulk and scale has been minimised through the articulation of the floors and use of varied materials and colours to provide suitable visual relief.

- ***A reasonable level of amenity and solar access is provided and maintained. (En, S)***

Comment:

The proposal will provided for a reasonable level of amenity, and a compliant level of solar access is provided and maintained as detailed on the accompanying Shadow Diagram plans.

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

Comment:

The proposal includes the retention and enhancement of vegetation as detailed in the accompanying Landscape Plans that will assist to visually reduce the built form.

- ***Conservation of natural vegetation and biodiversity. (En)***

Comment:

The proposal conserves the natural vegetation and biodiversity of the site. Council's Bushland and Biodiversity Officer has reviewed the proposal and, is supportable subject to recommended conditions.

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

Comment:

The proposal will appropriately manage stormwater, and suitable conditions have been recommended by Council's Development Engineer to ensure the appropriate disposal of

stormwater in accordance with Council's Water Management for Development Policy.

- ***To preserve and enhance the rural and bushland character of the area. (En, S)***

Comment:

The proposal will not detract for the rural and 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 provides suitable soft surfaces that will assist to maximise infiltration of water to the water table that will minimise run-off, and assist with stormwater management.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$54,085 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$5,408,484.

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 demolition works and construction of a dwelling house and associated site works has been referred to the Development Determination Panel (DDP) due to a Clause 4.6 variation greater than 10% to Clause 4.3 Height of buildings of Pittwater Local Environmental Plan 2014.

The proposed development was notified in accordance with the Northern Beaches Community Participation Plan (CPP) for fourteen (14) days with no objections received.

The critical assessment issues include variation to Clause 4.3 Height of buildings of Pittwater Local Environmental Plan 2014. The detailed written Clause 4.6 variation request that is submitted demonstrates that compliance is unreasonable or unnecessary, and that there are sufficient environmental planning grounds to justify contravening the development standard. Furthermore, critical assessment issues included the variation to D1.9 Side building lines, D1.11 Building envelope and D1.14 Landscaped Area - Environmentally Sensitive Land of Pittwater 21 Development Control Plan.

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

REASON FOR DETERMINATION

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

RECOMMENDATION

That Northern Beaches Council, as the consent authority, vary the development standard contained within Clause 4.3 Height of Buildings, pursuant to Clause 4.6 of the Pittwater Local Environmental Plan 2014 because the Applicant's written request has adequately addressed the merits required to be

demonstrated by subclause (3) of Clause 4.6.

Accordingly Council as the consent authority grant Development Consent to DA2024/0725 for Demolition works and construction of a dwelling house and associated site works on land at Lot 3 DP 236812, 179 Riverview Road, AVALON BEACH, Lot LIC 363233, 179 Riverview Road, AVALON BEACH, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA.101	B	Site Analysis Plan	Madeleine Blanchfield Architects	August 2024
DA.102	A	Demolition Site Plan	Madeleine Blanchfield Architects	May 2024
DA.103	A	Demolition Floor Plan	Madeleine Blanchfield Architects	May 2024
DA.301	B	Roof Plan	Madeleine Blanchfield Architects	August 2024
DA.302	B	Second Floor Plan	Madeleine Blanchfield Architects	August 2024
DA.303	B	First Floor Plan	Madeleine Blanchfield Architects	August 2024
DA.304	B	Ground Floor Plan	Madeleine Blanchfield Architects	August 2024
DA.401	B	Street Elevation (East)	Madeleine Blanchfield Architects	August 2024
DA.402	B	Rear Elevation (West)	Madeleine Blanchfield Architects	August 2024
DA.403	B	South Elevation	Madeleine Blanchfield Architects	August 2024
DA.404	B	North Elevation	Madeleine Blanchfield Architects	August 2024

DA.501	B	Long Section A-A	Madeleine Blanchfield Architects	August 2024
DA.502	B	Cross Section B-B	Madeleine Blanchfield Architects	August 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Arborist Report	-	Martin Peacock Tree Care	1 May 2024
BASIX Certificate	1745986S_02	Integreco Consulting Pty Ltd	25 August 2024
Biodiversity Development Assessment Report (BDAR)	D	GIS Environmental Consultants	17 May 2024
Geotechnical Report	0	Crozier Geotechnical Consultants	10 May 2024
Landscape Plan - DA Cover Page - DA01-D5723	D	Landscape Design Sydney	23 August 2024
Ground Floor/Rear Landscape Plan - DA02-D5723	D	Landscape Design Sydney	23 August 2024
First Floor Landscape Plan - DA03-D5723	D	Landscape Design Sydney	23 August 2024
Second Floor Landscape Plan - DA04-D5723	D	Landscape Design Sydney	23 August 2024
Details - DA05-D5723	D	Landscape Design Sydney	23 August 2024
Materials Board - DA.902	B	Madeleine Blanchfield Architects	August 2024
NatHERS Certificate	0009264649-02	Madeleine Blanchfield Architects	25 August 2024
Cover Sheet - C-DA000	P5	JHA Consulting Engineers	22 August 2024
Roof Drainage Plan - C-DA100	P5	JHA Consulting Engineers	22 August 2024
Second Floor Drainage Plan - C-DA101	P5	JHA Consulting Engineers	22 August 2024
First Floor Drainage Plan - C-DA102	P5	JHA Consulting Engineers	22 August 2024
Ground Floor Drainage Plan - C-DA103	P5	JHA Consulting Engineers	22 August 2024
Lower Ground Floor Drainage Plan - C-DA104	P5	JHA Consulting Engineers	22 August 2024
Details Sheet - C-DA300	P5	JHA Consulting Engineers	22 August 2024
Erosion and Sediment Control Plan and Details - C-DA500	P5	JHA Consulting Engineers	22 August 2024

Waste Management Report	-	No Author	n.d.
Waste Management Plan - DA.904	B	Madeleine Blanchfield Architects	August 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	17 June 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 \$54,084.84 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 \$5,408,484.00.

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. **Compliance with Ecologist's Recommendations – Pre-construction**

All impact mitigation measures specified in the approved Flora and Fauna Assessment Report/Biodiversity Development Assessment Report are to be implemented at the appropriate stage of development.

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

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

8. **No Clearing of Vegetation**

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

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

Reason: To protect native vegetation.

9. **Like for like credit retirement conditions - Ecosystem credit retirement conditions**

Prior to issue of the relevant Construction Certificate the class and number of ecosystem credits in Table 1 must be retired to offset the impacts of the development.

The requirement to retire credits outlined in Table 1 may be satisfied by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of ecosystem credits, as calculated by the Biodiversity Offsets Payment Calculator.

Evidence of the retirement of credits or payment to the Biodiversity Conservation Fund in satisfaction of Table 1 requirements must be provided to the Satisfaction of Councils Bushland and Biodiversity team and to the Principal Certifier prior to release of construction certification. Evidence will be in the form of:

- A copy of the confirmation email (from the BOS Credits team) to show that the correct type and number of credits have been retired, and from a relevant IBRA sub region as per the offset rules, or
- If paid into the Biodiversity Conservation Fund, a copy of the section 6.33 statement.

Table 1 Ecosystem credits required to be retired – like for like

Impacted Plant Community Type	TEC	Number of ecosystem credits	Containing HBT	IBRA sub-region	Plant community type(s) that can be used to offset the impacts from development
PCT 3234: Hunter Coast Lowland Spotted Gum Moist Forest	Pittwater and Wagstaffe Spotted Gum Forest in the Sydney Basin Bioregion	1	NO	Pittwater, Cumberland, Sydney Cataract, Wyong and Yengo. or Any IBRA subregion that is within 100 kilometers of the outer edge of the impacted site.	3234, 3437

Reason: To offset the residual biodiversity impacts of the development in accordance with the NSW Biodiversity Offset Scheme.

10. **Like for like credit retirement conditions - Species credit retirement conditions**

Prior to issue of the relevant Construction Certificate the class and number of species credits in Table 2 must be retired to offset the impacts of development.

The requirement to retire credits outlined in Table 2 may be satisfied by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of ecosystem credits, as calculated by the Biodiversity Offsets Payment Calculator.

Evidence of the retirement of credits or payment to the Biodiversity Conservation Fund in satisfaction of Table 2 requirements must be provided to the Satisfaction of Councils Bushland and Biodiversity team and the Principal Certifier prior to release of construction certification.

Evidence will be in the form of:

- A copy of the confirmation email (from the BOS Credits team) to show that the correct type and number of credits have been retired, and from a relevant IBRA sub-region as per the offset rules, or
- If paid into the Biodiversity Conservation Fund, a copy of the section 6.33 statement.

Table 2 Species credits required to be retired – like for like

Impacted species credit species	Number of species credits	IBRA sub-region
Chalinolobus dwyeri / Large-eared Pied Bat	1	Pittwater
Vespadelus trouhntoni / Eastern Cave Bat	1	Pittwater

Reason: To offset the residual biodiversity impacts of the development in accordance with the NSW Biodiversity Offset Scheme.

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 the adjacent waterbody.

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 10.05.2024 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 Principal Certifier for approval prior to the issue of the Construction Certificate.

Reason: To protect the receiving environment.

14. **Estuarine Planning Level Requirements**

An Estuarine Planning Level (EPL) of 2.66m AHD has been adopted by Council for the subject site and shall be applied to all proposed development:

1. The base of the inclinometer should be located above the EPL.;
2. All electrical equipment, wiring, fuel lines or any other service pipes and connections must be located either above 2.66m AHD or waterproofed to this level; and
3. All interior power supplies (including electrical fittings, outlets and switches) must be located at or above 2.66m AHD. All exterior power supplies (including electrical fittings, outlets and switches) shall be located at or above 2.66m 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.

15. **Compliance with Standards**

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

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

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

16. **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

17. **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 under section 9. 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.

18. **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

19. **Protection of Landscape Features 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.

20. **Project Arborist**

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged prior to any commencement of works on site to provide tree protection measures in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment. The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, and in particular sections 9.2 to 9.8.

All tree protection measures specified must: be in place before work commences on the site; be maintained in good condition during the construction period; and remain in place for the duration of the construction works. The Project Arborist shall provide certification to the Certifier that all tree protection measures under AS4970-2009 have been satisfied, and the recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

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

Reason: Tree protection.

21. **Tree and Vegetation Protection**

a) Existing trees and vegetation shall be retained and protected, including:

- i) all trees within the site not approved for removal, including trees and vegetation nominated for retention on the approved Plans,
- ii) all trees and vegetation located on adjoining properties,
- iii) all trees and vegetation within the road reserve.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with 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 compliant to AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment and/or Project Arborist as applicable.

Reason: Tree and vegetation protection.

22. **Compliance with Ecologist's Recommendations – During Construction**

All impact mitigation measures specified in the approved Flora and Fauna Assessment Report/Biodiversity Development Assessment Report are to be implemented at the appropriate stage of development.

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

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

23. **Pre-clearance Survey - Certified by Project Ecologist**

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

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

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

Reason: To protect native wildlife.

24. **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.

25. **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.

26. **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.

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 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. **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. **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. **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; meet the requirements of Australian Standard AS2303 - Tree Stock for Landscape Use; planted into a prepared planting hole 1m x 1m x 600mm depth generally, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,
- d) mass planting shall be installed 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.

36. **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.

37. **Compliance with Ecologist's Recommendations – Post Construction**

All impact mitigation measures specified in the approved Flora and Fauna Assessment Report/Biodiversity Development Assessment Report are to be implemented at the appropriate stage of development.

Written and photographic evidence of compliance is to be prepared by the Project Ecologist and provided to the Principal Certifier prior to issue of any Occupation Certificate.

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

38. **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 plant species.

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.

39. **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.

40. **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.

41. **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.

42. **Waste Management Confirmation**

Prior to the issue of an Occupation Certificate, evidence / documentation must be submitted to the Principal Certifier that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

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

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

44. **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

45. **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.

46. **Compliance with Ecologist's Recommendations – Ongoing**

All impact mitigation measures specified in the approved Flora and Fauna Assessment Report/Biodiversity Development Assessment Report are to be implemented at the appropriate stage of development.

Successful establishment/initiation of ongoing biodiversity measures is to be certified by the Project Ecologist in writing to the Principal Certifier prior to issue of any Occupation Certificate.

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

47. **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.

48. **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.

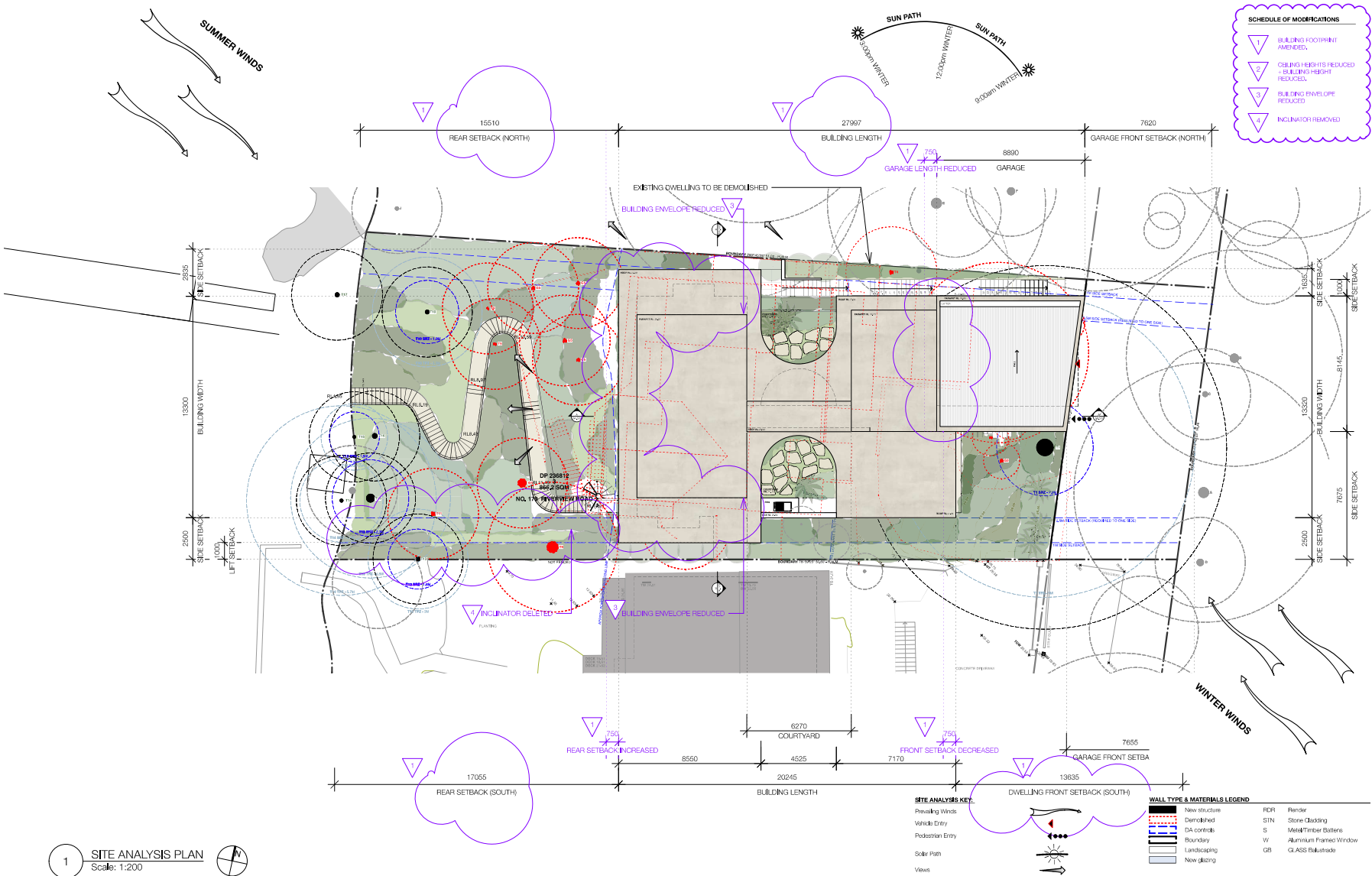
Reason: To protect native wildlife and habitat.

49. **Maintenance of Stormwater Treatment Measures**

Stormwater treatment measures must be maintained at all times in accordance with manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

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

Reason: To protect the receiving environment.



1 SITE ANALYSIS PLAN
Scale: 1:200

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- To Be Read In Connection With All Other Consultant's Drawings.
- The Architect To Be Immediately Notified Of Any Discrepancies.

Certificate No. 000926469-02
This is a Certificate of Approval for the use of the seal of the architect.
Architect Name: Madeleine Blanchfield
Accreditation No.: 000926469-02
Property Address: 173 River View Road, Avalon
State: NSW 2107

4050_JAMES
173 RIVER VIEW ROAD
AVALON 2107

DEVELOPMENT APPLICATION

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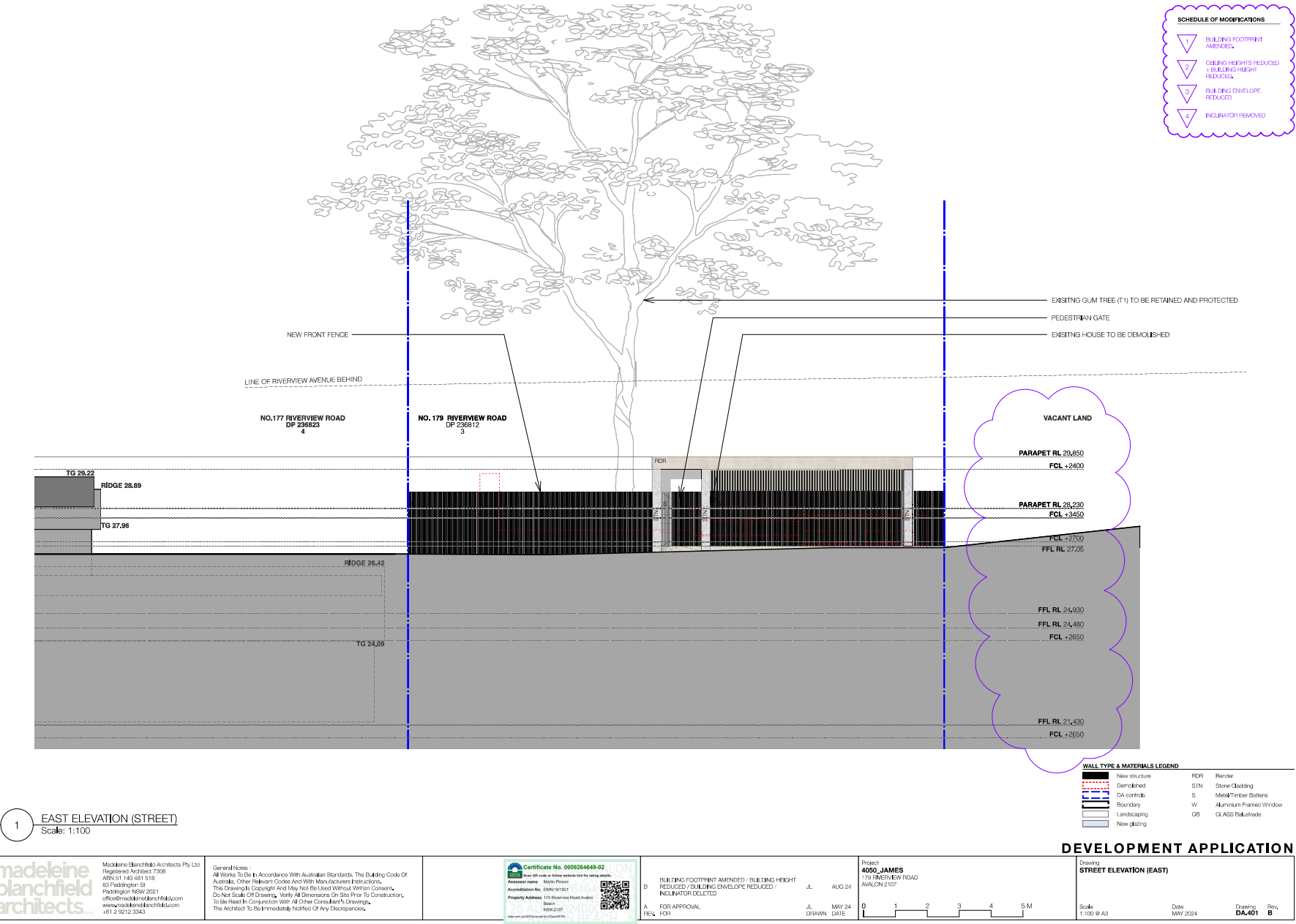
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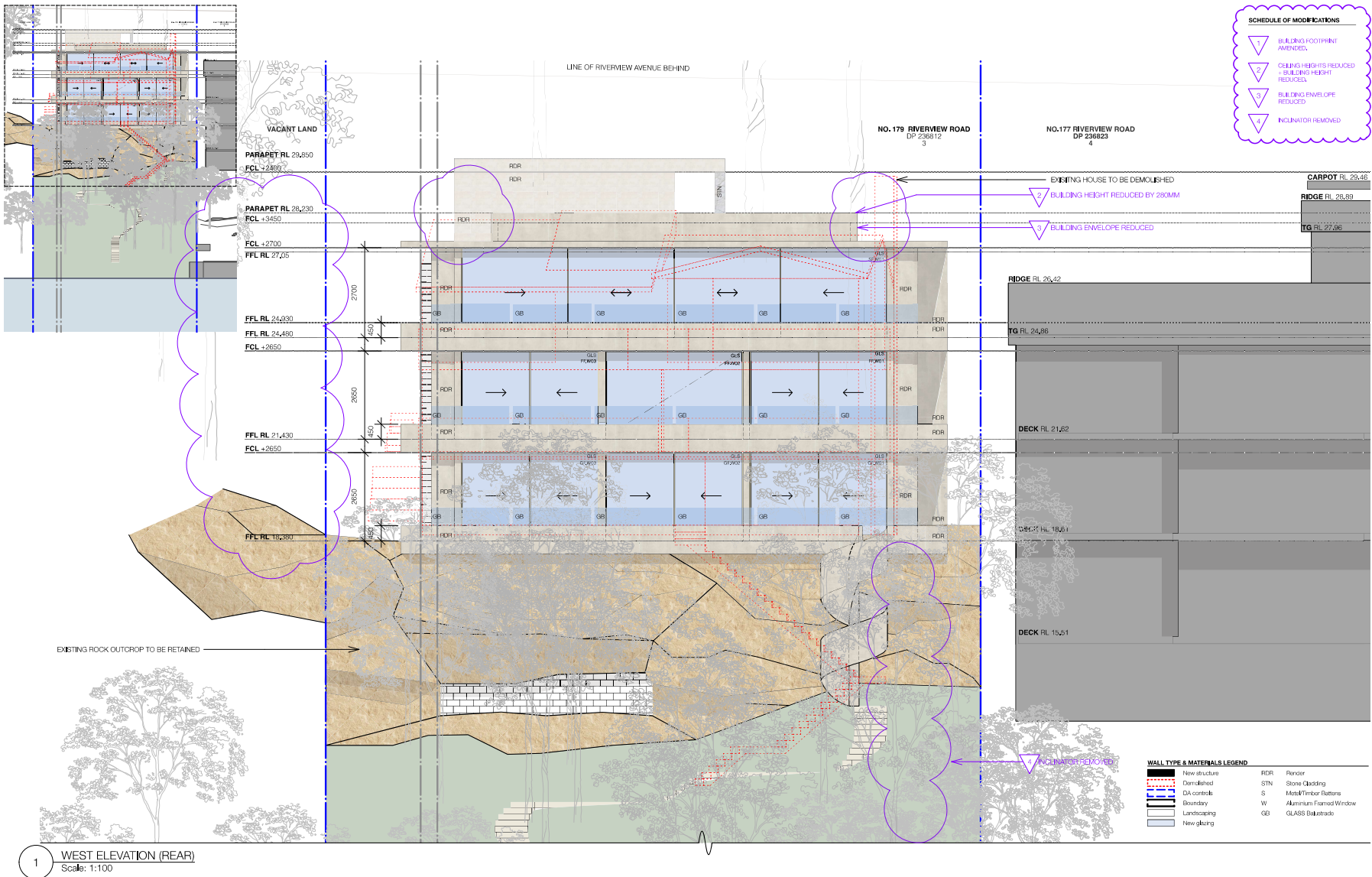
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Drawing: DA-101
Rev: B

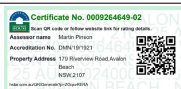
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Project
4050_JAMES
179 RIVERVIEW ROAD
AVALON 2107

Rev
A FOR APPROVAL
B BUILDING FOOTPRINT AMENDED / BUILDING HEIGHT REDUCED / BUILDING ENVELOPE REDUCED / INCINERATOR DELETED

Rev
A FOR APPROVAL
B BUILDING FOOTPRINT AMENDED / BUILDING HEIGHT REDUCED / BUILDING ENVELOPE REDUCED / INCINERATOR DELETED

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Date
MAY 2024

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DEVELOPMENT APPLICATION

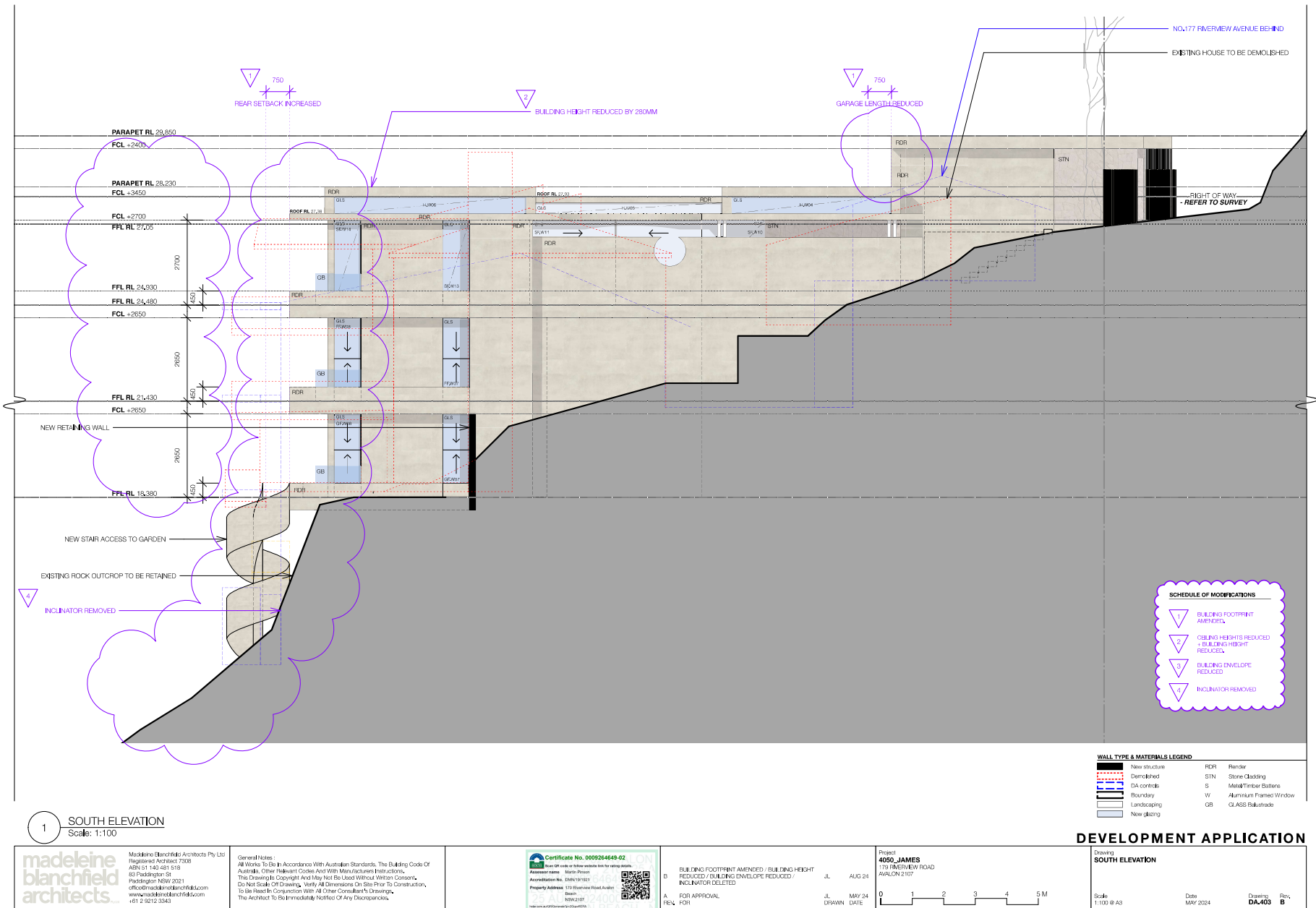
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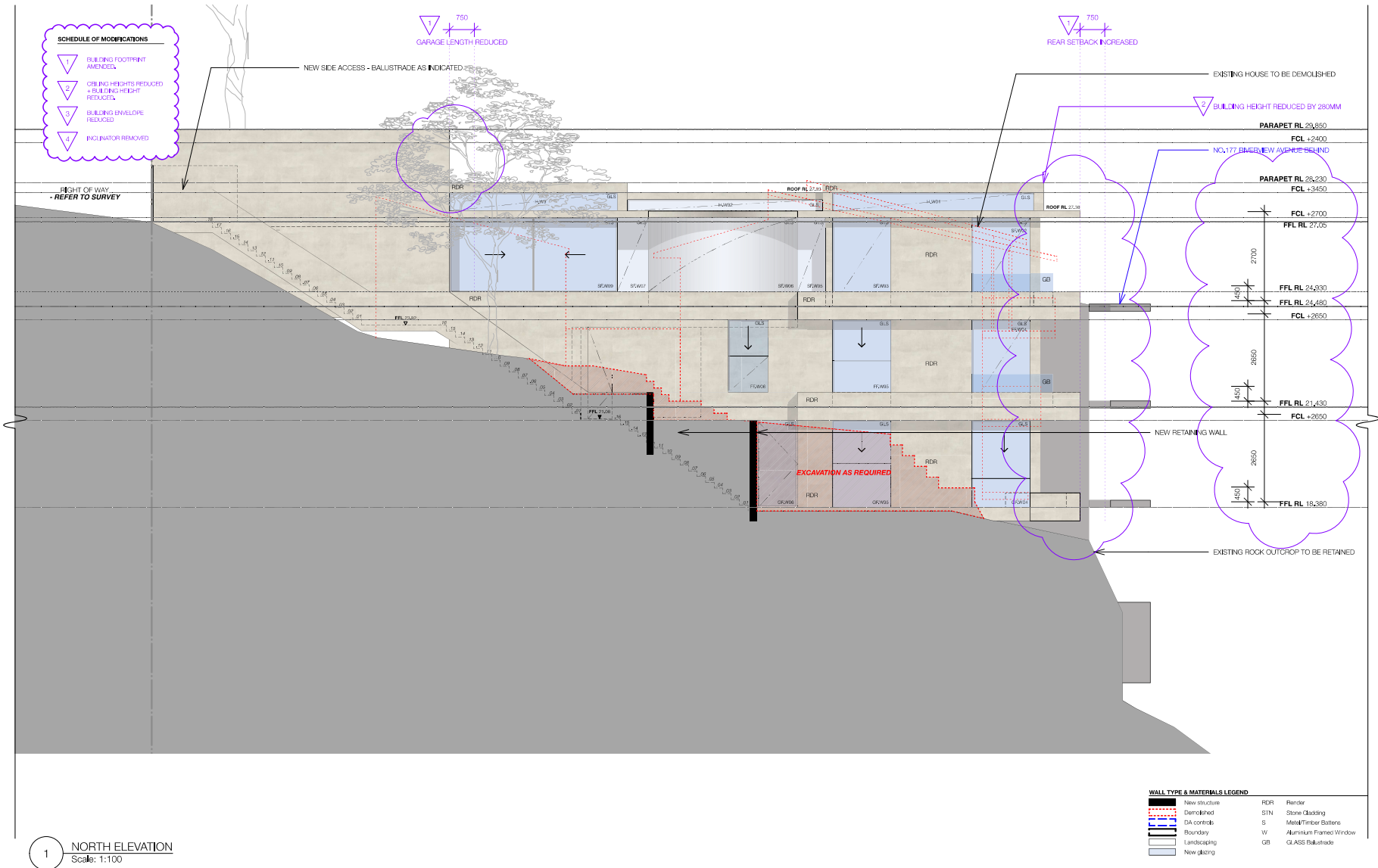
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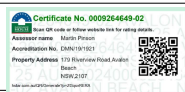
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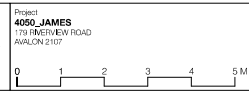


Project
4050_JAMES
179 FIVEVIEW ROAD
WALSON 2107

Drawn
JL
AUG 24

Rev.
FOR APPROVAL
REV. FOR

Date
MAY 24



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Date
MAY 2024

Drawing
DA.404

Rev.
B



CLAUSE 4.6 REQUEST TO VARY HEIGHT OF BUILDINGS DEVELOPMENT STANDARD

179 Riverview Road,
Avalon Beach

Suite 1, 9 Narabang Way Belrose NSW 2085

Phone: (02) 9986 2535 | Fax: (02) 9986 3050 |

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4.6 Request to Vary Development Standard

Proposed New Dwelling

179 Riverview Road, Avalon Beach

William Fleming

MPLAN

Suite 1/9 Narabang Way
Belrose NSW 2085

Tel: (02) 99862535

May 2024

1.0 Introduction

This clause 4.6 variation request has been prepared in support of a building height breach associated with a development application proposing the construction of a new dwelling house on the subject allotment. In the preparation of this variation request consideration has been given to architectural plans prepared by Madeline Blanchfield Architects.

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

2.0 Pittwater Local Environmental Plan 2014 (PLEP)

2.1 Clause 4.3 - Height of buildings

Pursuant to Clause 4.3(2D) development on land that has a maximum building height of 8.5 metres shown for that land on the Height of Buildings Map may exceed a height of 8.5 metres, but not be more than 10.0 metres if—

- (a) *the consent authority is satisfied that the portion of the building above the maximum height shown for that land on the Height of Buildings Map is minor, and*
- (b) *the objectives of this clause are achieved, and*
- (c) *the building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%), and*
- (d) *the buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.*

The slope meets the requirements to exceed the 8.5m however the proposal is minorly above the 10m height limit.

The objectives of this control are as follows:

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

- (a) *to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*
- (b) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (c) *to minimise any overshadowing of neighbouring properties,*

- (d) to allow for the reasonable sharing of views,
- (e) to encourage buildings that are designed to respond sensitively to the natural topography,
- (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

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.

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

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

74. The prior excavation of the site within the footprint of the existing building, which distorts the height of buildings development standard plane overlaid above the site when compared to the topography of the hill, can properly be described as an environmental planning ground within the meaning of cl 4.6(3)(b) of LEP 2014.

The height breach at its highest point reaches 12.8m to the top of the awning which represents a 4.3m variation to the 8.5m development standard, or 50.59% variation.

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of PLEP provides:

(1) *The objectives of this clause are:*

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

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

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

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

“In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”. If objective (b) was the source of the Commissioner’s test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test.”

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

Clause 4.6(2) of PLEP provides:

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

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

Clause 4.6(3) of PLEP provides:

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

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

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

Clause 4.6(4) of PLEP provides:

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

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]).

The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest **because** it is consistent with the objectives of the development standard and the objectives for development of the zone in which

the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 64 of the *Environmental Planning and Assessment Regulation* 2000, the Secretary has given written notice dated 5th May 2020, attached to the Planning Circular PS 18-003 issued on 5th 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 PLEP provides:

- (5) *In deciding whether to grant concurrence, the Director-General must consider:*
- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Director-General before granting concurrence.*

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.3 of PLEP from the operation of clause 4.6.

3.0 Relevant Case Law

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

17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*

19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*
22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

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

1. Is clause 4.3 of 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 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?

4.0 Request for variation

4.1 Is clause 4.3 of PLEP 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 PLEP prescribes a fixed building height provision that seeks to control the height of certain development. Accordingly, clause 4.3 PLEP is a development standard.

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

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

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

Consistency with objectives of the height of buildings standard

An assessment as to the consistency of the proposal when assessed against the objectives of the standard is as follows:

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

Response: The subject property is located within the Avalon Beach Locality. The Desired Future Character (DFC) statement within Pittwater 21 Development Control (P21DCP) plan is as follows:

The most important desired future character is that Avalon Beach will continue to provide an informal relaxed casual seaside environment. The locality will remain primarily a low-density residential area with dwelling houses a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape. Secondary dwellings can be established in conjunction with another dwelling to encourage additional opportunities for more compact and affordable housing with minimal environmental impact in appropriate locations. Any dual occupancies will be located on the valley floor and lower slopes that have less tree canopy coverage, species and habitat diversity, fewer hazards and other constraints to development. Any medium density housing will be located within and around commercial centres, public transport and community facilities. Retail, commercial, community and recreational facilities will serve the community.

Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport. Vehicular and pedestrian access into and through the locality is good. Pedestrian links, joining the major areas of open space (Angophora Reserve, Stapleton Park and Hitchcock Park) and along the foreshores, should be enhanced and upgraded. Similarly, cycle routes need to be provided through the locality. Carparking should be provided on site and where possible integrally designed into the building.

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 development. The objective is that there will be houses amongst the trees and not trees amongst the houses.

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.

Most houses are set back from the street with low or no fencing and vegetation is used extensively to delineate boundary lines. Special front building line setbacks have been implemented along Avalon Parade to maintain the unique character of this street. This, coupled with the extensive street planting of canopy trees, gives the locality a leafy character that should be maintained and enhanced.

The design, scale and treatment of future development within the Avalon Beach

Village will reflect the 'seaside-village' character of older buildings within the centre, and reflect principles of good urban design. External materials and finishes shall be natural with smooth shiny surfaces avoided. Landscaping will be incorporated into building design. Outdoor cafe seating will be encouraged.

A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, to provide feed trees and undergrowth for koalas and other animals, and to enhance wildlife corridors. The natural landscape of Careel Bay, including seagrasses and mangroves, will be conserved. Heritage items and conservation areas indicative of early settlement in the locality will be conserved, including the early subdivision pattern of Ruskin Rowe.

Vehicular, pedestrian and cycle access within and through the locality will be maintained and upgraded. The design and construction of roads will manage local traffic needs, minimise harm to people and fauna, and facilitate co-location of services and utilities.

Having regard to the DFC statement, I am satisfied that that the building, by virtue of its height and scale, is consistent with the desired character of the locality notwithstanding the building height breaching elements proposed. In forming this opinion, I note:

- Notwithstanding the building height breaching elements, the Avalon Locality will remain primarily a low-density residential area with the dwelling housing, the subject of this document, having no direct street frontage and will be consistent with the scale of development when viewed from Pittwater with regard to its prevailing height and number of storeys.
- The building height breaching elements will not be readily discernible as viewed from Riverview Road and in any event will not contribute to any significant manner to the perceived height bulk and scale of the building when viewed from the water.
- The building height breaching elements aim to minimise impacts to the land which is constrained by large rock outcrops and trees. The arborist report confirms that 10 trees are to be removed of which 6 are exempt species and all are considered low retention value. A detailed landscape plan is provided which will provide enhancements across the site and contribute positively to the bushland character of the area.
- The development area is situated on top of a large rock outcrop with varying levels and tails back into the slope at the northern and southern boundaries. The design minimises excavation into the rock which will limit impacts to site stability while also maintaining it as a natural feature of the site.

- The non-compliant building elements will not prevent the building as whole from blending into the escarpment which forms a backdrop to the site. The dwelling is a similar scale and with the number of storeys of the dwelling to be demolished and will not be perceived as out of place when viewed from the water.
- The building height breaching elements will not impact on any public or private views, privacy or unreasonable overshadowing.

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 height and scale, in particular the building height breaching elements, offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the site's visual catchment. Photo montages of the proposal within the context of surrounding development are provided below.

Notwithstanding the building height breaching elements, the proposal is consistent with this objective.



Figure 1 - Photomontage depicting the proposed development as viewed from Pittwater



Figure 2 - Photomontage depicting the proposed development as viewed from Riverview Road

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

Response: Development along Riverview Road is characterised by multi-level dwellings that respond to the sloping topography. The majority of the proposed dwelling will sit within the 10 metre height development standard with the bulk complying with the 8.5m control. In this regard, it is considered that the building height breaching elements do not unreasonable contribute to visual bulk to the extent that the building would be considered incompatible with nearby development.

As mentioned previously, the area of non-compliance will not be discernible from the street as the dwelling slopes down from street level. When viewed from the water the dwelling will sit comfortably within the context of existing development with the height and scale similar to the dwelling to be demolished. Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191, most observers would not find the proposed development by virtue of its height and scale, in particular the building height breaching elements, offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the site's visual catchment. Again, we rely on the photomontages at Figures 2 and 3 to support this position.

Notwithstanding the building height breaching elements, the proposal is consistent with this objective.

- (c) *to minimise any overshadowing of neighbouring properties,*

Response: The shadow diagrams prepared by Madeline Blanchfield Architecture demonstrate that the building height breaching elements will not contribute to non-compliant shadow impact on neighbouring properties. Notwithstanding the building height breaching elements, the proposal is consistent with this objective.

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

Response: Having inspected the site and identified available public and private view lines over and across the site, I am satisfied that the building height breaching elements will not give rise to any unacceptable view loss with a view sharing outcome maintained in accordance with the planning principle established in the matter of *Tenacity vs Warringah Council (2004) NSWLEC 140*.

The site to the north does not include any directly adjoining dwellings with the only development being a small dwelling situated down the slope adjacent to the water. They will have no view impacts. The views corridors from the southern adjoining dwelling (No. 177) across the site to the north will be improved with the new dwelling set back into the slope further than the dwelling to be demolished.

Notwithstanding the building height breaching elements, the proposal is consistent with this objective.

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

Response: As previously indicated, the building height breaching elements do not themselves require excavation or modification of the landform.

Notwithstanding, the design aims to minimise excavation into the rock outcrops the dwelling will sit on and preserve them as a natural feature of the site.

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

Response: The proposed minor areas of non-compliance will not adversely impact on the natural environment with site disturbance not directly attributed to the building height breaching elements proposed. The site is not listed as a heritage item or within a heritage conservation area.

Notwithstanding the building height breaching elements, the proposal is consistent with this objective.

4.2B Clause 4.6(4)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

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

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be “environmental planning grounds” by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.*

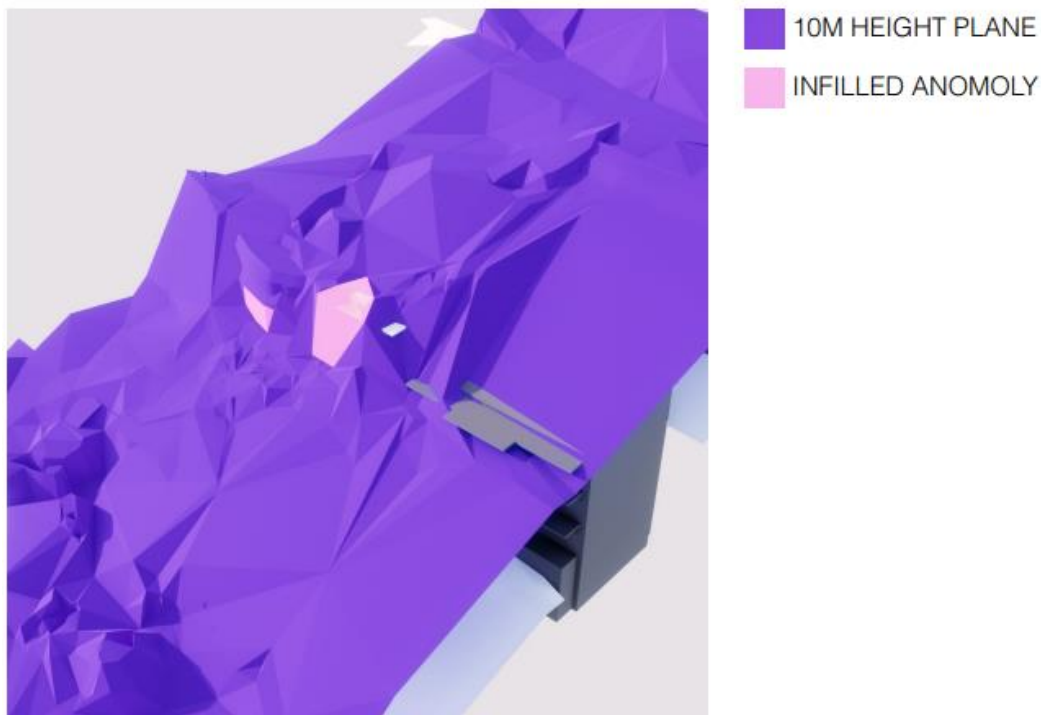
The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must

*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

Topography/Rock outcrops

Sufficient environmental planning grounds exist to justify the height of buildings variation. The steep and undulating large rock outcrops makes strict compliance difficult without significant intrusions into the natural landscape via excavation. The offending areas outside the 10m height control relate to eaves and a portion of roof above a crevice in the rock outcrop. This is shown below in the 3D height blankets.



10M HEIGHT PLANE - ANOMOLY IN TOPOGRAPHY HIGHLIGHTED

Image 1: 3D height blanket



Image 2: 3D blanket drawings showing areas of breach



Image 3: Levels of rock outcrop highlighted

The eaves are required to satisfy BASIX requirements and do not give rise to any unreasonable visible bulk or amenity impacts. The breaching eave elements are a result of the undulating levels of the rock outcrops which will be discussed further below.

The roof area above the crevice, as seen in image 3 above, creates the predominate non-compliance. The undulating nature of the outcrop creates areas that sit comfortably below the 10m control and areas above the 10m. If a reasonable level height plane was to be interpolated the dwelling would be consistent with the 10m development standard. As such, the breach is not reflective of overdevelopment but rather the existing characteristics of the land.

The topography of the land does not lend itself to designing a dwelling that can step down the slope reasonably. To achieve a dwelling of such form would require significant excavation into the rock to achieve. Given this site is sensitive, as reflected in its zoning and biodiversity mapping, it was deemed not appropriate in this instance.

The dwelling towards the front boundary sits well below the 8.5m height standard and is single storey. On balance, the dwelling largely respects the height control and highlights the topography constraints of the site.

Contextual Outcome

The photo montages provided demonstrate that the dwelling will be consistent with the scale of surrounding development and with the 3 storey built form comparable with the existing dwelling to be demolished and with adjoining development. It will sit comfortably below the tree canopy with impacts to the rock outcrops minimised to ensure the natural landscape and bushland setting are preserved.

From the finished floor level to the top of the parapet roof the dwelling complies with the 10m control reflective of its reasonableness.

The non-compliance does not result in any unacceptable environmental consequences in terms streetscape, residential amenity or foreshore scenic outcomes. In this regard, I consider the proposal to be of a skilful design which responds appropriately to the topography and environmental constraints on the site. Such outcome is achieved whilst realising the reasonable development potential of the land.

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

- The proposal promotes the orderly and economic use and development of land (1.3(c)).
- The development represents good design (1.3(g)).

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

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

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

4.3 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 4.3 and the objectives of the E4 Environmental Living Zone

The consent authority needs to be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

Preston CJ in *Initial Action* (Para 27) described the relevant test for this as follows:

"The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii)."

As demonstrated in this request, the proposed development it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

Accordingly, the consent authority can be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

4.4 Secretary's concurrence

By Planning Circular dated 5th May 2020, the Secretary of the Department of Planning & Environment advised that consent authorities can assume the concurrence to clause 4.6 request except in the circumstances set out below:

- Lot size standards for rural dwellings;
- Variations exceeding 10%; and
- Variations to non-numerical development standards.

The circular also provides that concurrence can be assumed when an LPP is the consent authority where a variation exceeds 10% or is to a non-numerical standard, because of the greater scrutiny that the LPP process and determination s are subject to, compared with decisions made under delegation by Council staff. Concurrence of the Secretary can therefore be assumed in this case.

5.0 Conclusion

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

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

As such, there is no statutory or environmental planning impediment to the granting of a height of buildings variation in this instance.



CLAUSE 4.6 REQUEST TO FORESHORE BUILDING LINE

179 Riverview Road,
Avalon Beach

Suite 1, 9 Narabang Way Belrose NSW 2085

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4.6 Request to Vary Development Standard

Proposed New Dwelling with Inclinor

179 Riverview Road, Avalon Beach

William Fleming

MPLAN

Suite 1/9 Narabang Way
Belrose NSW 2085

Tel: (02) 99862535

May 2024

1.0 Introduction

This clause 4.6 variation request has been prepared in support of a foreshore building line (FBL) breach associated with a development application proposing the construction of a new dwelling house on the subject allotment. In the preparation of this variation request consideration has been given to architectural plans prepared by Madeline Blanchfield Architects.

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

2.0 Pittwater Local Environmental Plan 2014 (PLEP)

2.1 Clause 7.8 – Development within the Foreshore Area

Clause 7.8(2) of PLEP 2014 states that development consent must not be granted for development on land within the foreshore area (being the land between the foreshore building line and the mean high water mark) except for the following purposes:

- (a) *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,*
- (b) *boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*

The foreshore building line control is a fixed standard relating to the siting of buildings on a site, consistent with the definition of a development standard as defined by the EP&A Act. As such, the provisions of clause 4.6 of PLEP 2014 can be applied.

Pursuant to clause 4.6(2) of PLEP 2014, consent may be granted for development even though the proposal contravenes a development standard prescribed by an environmental planning instrument. Whilst this clause does not apply to those standards expressly excluded from this clause, the foreshore building line development standard of clause 7.8 of PLEP 2014 is not expressly excluded and thus, the provisions of clause 4.6 can be applied in this instance.

The development application seeks consent for the construction of an inclinor associated with the new dwelling proposed, part of which is proposed within the foreshore area. The inclinor is shown on the plans provided by the architect.

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of PLEP provides:

(1) *The objectives of this clause are:*

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

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

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

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

“In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”. If objective (b) was the source of the Commissioner’s test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test.”

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

Clause 4.6(2) of PLEP provides:

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

This clause applies to the clause 7.8 FBL Development Standard.

Clause 4.6(3) of PLEP 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 FBL provision at 7.8 of PLEP which limits development within the foreshore area however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

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

Clause 4.6(4) of PLEP provides:

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

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]).

The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest **because** it is consistent with the objectives of the development standard and the objectives for development of the zone in which

the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 64 of the *Environmental Planning and Assessment Regulation 2021*, the Secretary has given written notice dated 5th May 2020, attached to the Planning Circular PS 18-003 issued on 5th 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 PLEP provides:

- (5) *In deciding whether to grant concurrence, the Director-General must consider:*
- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Director-General before granting concurrence.*

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 7.8 of PLEP from the operation of clause 4.6.

3.0 Relevant Case Law

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

17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*

19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: *Wehbe v Pittwater Council* at [46].*
20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: *Wehbe v Pittwater Council* at [47].*
21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: *Wehbe v Pittwater Council* at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in *Wehbe v Pittwater Council* at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*
22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

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

1. Is clause 7.8 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 7.8 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 7.8 of PLEP?

4.0 Request for variation

4.1 Is clause 7.8 of PLEP 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 7.8 PLEP limits development within the FBL. Accordingly, clause 7.8 PLEP is a development standard.

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

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

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

Consistency with objectives of the FBL standard

An assessment as to the consistency of the proposal when assessed against the objectives of the standard is as follows:

- (a) *to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area,*

Response: The natural foreshore process will not be impacted by the inclinor and will be distanced from the waterfront area and potential wave/tidal inundation or erosion of the foreshore area.

The inclinor and its rail will not have an unreasonable impact on the scenic qualities of the foreshore area. It is modest in scale with it only running from the foreshore area to the rear of the dwelling as opposed to the entire length of the site. In this regard, the modest scale, in comparison to more recently approved and existing inclinors in the immediate area, does not give rise to any adverse visual impacts. Council can be satisfied that the proposed inclinor rail will not adversely impact the visual qualities of the foreshore area, noting that the track is limited in width, is located low to the ground and will be finished in earthy tones to blend with surrounding vegetation. The inclinor has been sited to avoid adverse impacts upon vegetation and disturbance of rock outcrops.

Overall, the consent authority can be satisfied that the proposed development will not impact on natural foreshore processes or affect the significance and amenity of the foreshore area.

- (b) *to ensure continuous public access along the foreshore area and to the waterway.*

Response: No impact to public access notwithstanding that the individual circumstances of the site does not lend itself to providing continuous access along the foreshore area.

4.2B Clause 4.6(4)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

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

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be “environmental planning grounds” by their nature: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.*

*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

Topography & Access

The rear of the site is steeply sloping with a sheer rock outcrop at the rear of the dwelling. Currently the access to the waterfront is via winding stairs that are dilapidated and not fit for purpose. These stairs are proposed to be replaced however does not provide convenient and easy access for the elderly or people with a disability. The owners are seeking to 'age in place' and the inclinator is the only option in providing safe and convenient access to the waterfront.

The inclinator is also intended to be able to transport items from the dwelling to the waterfront and jetty. The access stairs would not facilitate easy transportation of item from the dwelling to the waterfront. As such, the inclinator is integral to the amenity and functionality of their waterfront private open space and recreational uses.

Orderly Development

It is noted that safe and contemporary access to the waterfront via an inclinator was sufficient environmental planning grounds with this type of development in relation to recent approvals. The recent approvals relate to:

- DA2023/0588 at 161 Riverview Road, Avalon Beach
- DA2018/2051 and Mod2022/0342 at 135 Riverview Road, Avalon Beach
- DA2022/0281 at 167 Riverview Road, Avalon Beach
- DA2021/1522 at 189 Riverview Road, Avalon Beach
- DA2021/0256 at 26A Hudson Parade, Avalon Beach
- DA2019/0565 at 129 Riverview Road, Avalon Beach
- DA2018/2015 at 163 Riverview Road, Avalon Beach
- DA2022/1048 at 15 Sturdee Lane, Elvina Beach
- DA2022/1368 at 15 The Chase, Lovett Bay
- DA2022/0133 at 182 McCarrs Creek Road, Church Point
- DA2019/0534 at 271 Whale Beach Road, Whale Beach

This is only the recent approvals of inclinator. There are many more examples of existing inclinator in the area.

As confirmed in *Stockland Development Pty Ltd v Manly Council (2004) 136 LGERA 254*, consistency in decision making is a fundamental objective to those who make administrative decisions.

Character

Given the proliferation of inclinators in the immediate area and the recent approvals mentioned above, the proposed could not be considered out of character for the area or unreasonable with regard to the scenic qualities of the foreshore.

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

- The proposal promotes the orderly and economic use and development of land (1.3(c)).
- The development represents good design (1.3(g)).

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

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

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

7.8 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 7.8 and the objectives of the E4 Environmental Living Zone

The consent authority needs to be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

Preston CJ in *Initial Action* (Para 27) described the relevant test for this as follows:

“The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development’s consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).”

As demonstrated in this request, the proposed development it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

Accordingly, the consent authority can be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

4.4 Secretary’s concurrence

By Planning Circular dated 5th May 2020, the Secretary of the Department of Planning & Environment advised that consent authorities can assume the concurrence to clause 4.6 request except in the circumstances set out below:

- Lot size standards for rural dwellings;
- Variations exceeding 10%; and
- Variations to non-numerical development standards.

The circular also provides that concurrence can be assumed when an LPP is the consent authority where a variation exceeds 10% or is to a non-numerical standard, because of the greater scrutiny that the LPP process and determination s are subject to, compared with decisions made under delegation by Council staff. Concurrence of the Secretary can therefore be assumed in this case.

5.0 Conclusion

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

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

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

As such, there is no statutory or environmental planning impediment to the granting of a FBL variation in this instance.

ITEM 3.3	DA2024/1095 - 81 PRINCE ALFRED PARADE NEWPORT - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
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PURPOSE

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

RECOMMENDATION

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

THAT Council as the consent authority **approves** Development Consent to DA2024/1095 for alterations and additions to a dwelling house on land at Lot 109 DP 13457, 81 Prince Alfred Parade NEWPORT, subject to the conditions set out in the Assessment Report.

Reporting manager	Adam Richardson
TRIM file ref	2024/664217
Attachments	1 Assessment Report 2 Site Plan and Elevations 3 Clause 4.6

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/1095
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Responsible Officer:	Anais Sarkissian
Land to be developed (Address):	Lot 109 DP 13457, 81 Prince Alfred Parade 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:	Keith Roy Hobbs

Application Lodged:	22/08/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	30/08/2024 to 13/09/2024
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 27%
Recommendation:	Approval

Estimated Cost of Works:	\$ 88,770.00
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EXECUTIVE SUMMARY

This development application seeks consent for an eave and hip roof extension over the existing north-facing, second-storey deck, including new privacy screens and enclosed balustrading to the eastern and western sides of the deck.

The application is referred to the Development Determination Panel (DDP) due to the proposal having a height of 10.8 metres, representing a 27% variation to the 8.5 metres maximum height of buildings standard. This height breach arises from the steep sloping topography and previous excavation of the site creating a distorted height plane, with the excavated garage level being underneath the proposed works. The departure from the development standard has been justified through the submission of a written Clause 4.6 variation request which argues that based on extrapolated natural ground levels, the maximum height measures at a maximum of 7 metres. Given the proposal is for a hip roof

extension, the roof is only 10.8 metres at its highest point; the low point of the roof is 9.8 metres. Overall and despite the variation, proposal is considered minor as it forms an unenclosed structure and does not exceed the height of the existing roof ridge of the dwelling. The proposal also results in improved amenity for both the occupants of the dwelling and neighbouring properties with respect to solar protection and privacy.

The proposed development was notified in accordance with the Northern Beaches Community Participation Plan (CPP) for 14 days. No submissions were received.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposal is suitable 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 development application involves the following works:

- New eave and hip roof extension over the existing second storey, north-facing deck
- New privacy screens and enclosed balustrading to the eastern and western sides of the deck
- Demolition of an existing small awning over the doors to the northern façade of the deck

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living
Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings
Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards

Pittwater 21 Development Control Plan - D10.11 Building envelope (excluding Newport Commercial Centre)

SITE DESCRIPTION

Property Description:	Lot 109 DP 13457 , 81 Prince Alfred Parade NEWPORT NSW 2106
Detailed Site Description:	The subject site consists of one (1) allotment located on the southern side of Prince Alfred Parade. The site is regular in shape with a frontage of 14.03m along Prince Alfred Parade and a depth of up to 36.52m. The site has a surveyed area of 507m². The site is located within the C4 Environmental Living zone and accommodates a three storey dwelling with attached double garage and swimming pool. The site has a steeply sloping topography with an approximate 10m crossfall from the southern boundary of the site down towards the north. The site contains lawn areas and shrubs, with dense canopy coverage towards the rear. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by 2-3 storey detached dwelling houses, varying in architectural design and style.

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:

N0285/16

Development Application for demolition of existing structures and construction of a new dwelling.
Approved 18 October 2016

CC2019/0424

Construction Certificate issued for demolition of existing structures and construction of a new dwelling.
Approved 12 April 2019

MOD2019/0484

Modification of Development Consent N0285/16 granted for alterations and additions to demolition of existing structures and construction of a new dwelling.
Approved 18 December 2019

DA2020/0267

Development Application for construction of a swimming pool.
Approved 23 April 2020

CC2020/0416

Updated Construction Certificate issued for modified design to the dwelling house.
Approved 29 April 2020

CC2020/0452

Construction Certificate issued for construction of a swimming pool.
Approved 13 May 2020

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)(iia) – Provisions of any planning agreement	None applicable.

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in	See discussion on "Notification & Submissions Received" in this report.

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 30/08/2024 to 13/09/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	<i>Supported, subject to Conditions</i> Council's Biodiversity Referrals team have assessed the Development Application for compliance against the following applicable provisions: • Pittwater LEP 2014 cl. 7.6 Biodiversity Protection • Pittwater 21 DCP cl. B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community • SEPP (Resilience and Hazards) 2021 cl. 2.10 Development within the coastal environment area The proposed works are located within the existing built footprint of the dwelling and as such does not require the removal of any native prescribed vegetation or impact to native fauna habitat. As such there are no objections in relation to biodiversity, subject to conditions.
NECC (Coast and Catchments)	<i>Supported, subject to Conditions</i> This application was assessed in consideration of: • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Resilience and Hazards) 2021 (section 2.10, 2.11 & 2.12); • State Environmental Planning Policy (Biodiversity & Conservation)

Internal Referral Body	Comments
	2021 • Relevant LEP and DCP clauses. SUPPORTED WITHOUT CONDITIONS Proposed works - Alterations and additions to a dwelling house including roof and eve extension over the existing second floor level State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the 'Coastal Environment Area' and 'Coastal use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021. Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA. Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Vaughan Milligan Development Consulting dated August 2024 the DA satisfies requirements under clauses 2.10, 2.11 and 2.12 of the SEPP. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP (Sustainable Buildings) 2022

The proposal is classified as 'BASIX excluded development' as it does not result in a fully enclosed space, in accordance with the definition within the *Environmental Planning and Assessment Regulation 2021*, as extracted below. As such, a BASIX certificate is not required.

BASIX excluded development means the following development—

- (a) development for the purposes of a garage, storeroom, carport, gazebo, verandah or awning,
- (b) development that involves the alteration of a building listed on the State Heritage Register under the [Heritage Act 1977](#),
- (c) development that involves the alteration of a building resulting in a space that cannot be fully enclosed, other than a space that can be fully enclosed but for a vent needed for the safe operation of a gas appliance,

Example—

A verandah that is open or enclosed by a screen, mesh or other material that permits the free and uncontrolled flow of air.

- (d) development that involves the alteration of a building declared by the Planning Secretary, by order published in the *Gazette*, to be BASIX excluded 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 2 – Coastal Management

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

Division 1 Coastal Wetlands and littoral rainforest area

2.7 Development on certain land within coastal wetlands and littoral rainforests area

- 1) The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:
 - a) the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,
 - b) the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,
 - c) the carrying out of any of the following:
 - i) earthworks (including the depositing of material on land),
 - ii) constructing a levee,
 - iii) draining the land,
 - iv) environmental protection works,
 - d) any other development

Comment:

The site is not identified as 'coastal wetlands' or 'littoral rainforests', and therefore this clause is not applicable.

2.8 Development on land in proximity to coastal wetlands or littoral rainforest

- 1) Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:
 - a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or
 - b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.

Comment:

The site is not identified as 'proximity area for coastal wetlands' or 'proximity area for littoral rainforests', and therefore this clause is not applicable.

Division 2 Coastal Vulnerability Area

2.9 Development on land within the coastal vulnerability area

Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

- a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of

- the building or works, and
- b) the proposed development:
- i) is not likely to alter coastal processes to the detriment of the natural environment or
 - ii) other land, and
 - iii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and
- c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.

Comment:

The site is not identified as a 'coastal vulnerability area', and therefore this clause is not applicable.

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

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

Comment:

The site is identified within the 'coastal environment area'; however, the land has already been developed with a dwelling house and the proposal is simply for a roof extension and therefore does not alter the existing building footprint on the site. Additionally, the proposal has been supported by Council's Biodiversity and Coastal Officers. As such, it is satisfied that the proposed development is unlikely to cause an adverse impact on (a) to (g).

- 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 site is identified within the 'coastal environment area'; however, the land has already been developed with a dwelling house and the proposal is simply for a roof extension and therefore does not alter the existing building footprint on the site. Additionally, the proposal has been supported by Council's Biodiversity and Coastal Officers. As such, it is satisfied that the proposed development complies with the requirements of this clause.

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 site is identified within the 'coastal use area'; however, the land has already been developed with a dwelling house and the proposal is simply for a roof extension and therefore does not alter the existing building footprint on the site. Additionally, the proposal has been supported by Council's Biodiversity and Coastal Officers. As such, it is satisfied that the proposed development complies with the requirements of this clause.

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 land has already been developed with a dwelling house and the proposal is simply for a roof extension and therefore does not alter the existing building footprint on the site. Notwithstanding, the

proposal has been supported by Council's Biodiversity and Coastal Officers. As such, it is satisfied that the proposed development is not likely to cause an increased risk of coastal hazards on the subject land or other land.

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

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

Comment:

There is no certified coastal management program that applies to the land.

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

Chapter 4 – Remediation of Land

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

Pittwater Local Environmental Plan 2014

Is the development permissible?	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:	10m (slope >30%)	10.8m	27%	No

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
7.1 Acid sulfate soils	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes

Clause	Compliance with Requirements
7.10 Essential services	Yes

Detailed Assessment

Zone C4 Environmental Living

The proposed works are located on land zoned C4 Environmental Living under the Pittwater Local Environmental Plan 2014.

The proposal has been assessed against the objectives of the C4 zone and in this instance, the proposal satisfies the objectives, as detailed below.

- ***To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.***

Comment:

The proposal will continue to provide for low-impact residential development within an area that contains special ecological, scientific or aesthetic values.

- ***To ensure that residential development does not have an adverse effect on those values.***

Comment:

The proposed roof extension does not alter the existing building footprint. The proposal has also been supported by Council's Biodiversity Officer. It is therefore satisfied that the proposal will not adversely affect those values.

- ***To provide for residential development of a low density and scale integrated with the landform and landscape.***

Comment:

The proposal will continue to provide for residential development of a low density and scale that is integrated with the landform and landscape as the works involve only a roof extension over an existing deck.

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

Comment:

The proposed roof extension does not alter the existing amount of landscaping on the site does not involve the removal of any trees or native vegetation. The proposed alterations do not negatively impact riparian and foreshore vegetation and wildlife corridors. The proposal has been supported by Council's Biodiversity and Coastal Officers.

4.3 Height of buildings

The proposed roof extension will result in a building height that exceeds the maximum permitted by Clause 4.3 of the Pittwater LEP 2014, at 10.8 metres. While the building footprint is situated on a slope greater than 30% at approximately 31.5%, pursuant to clause 4.3, subclause 2(D), development on such sites may exceed a height of 8.5 metres, but not more than 10 metres. As such, this dispensation cannot be utilised for the proposed development, and therefore the proposal presents a building height variation of 27% to the maximum standard of 8.5 metres. This height variation is justified under Section 4.6 of this assessment report.

4.6 Exceptions to development standards

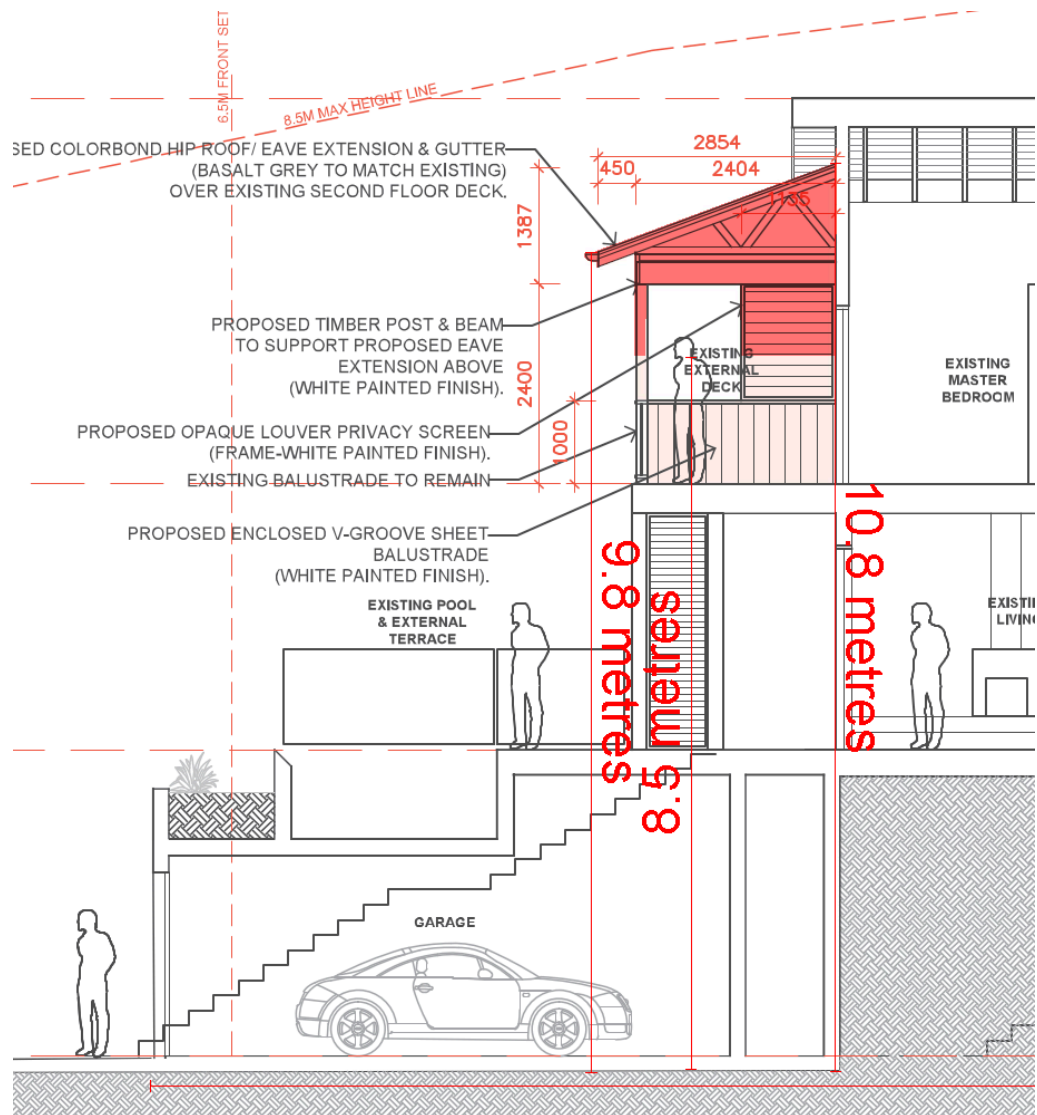
The application seeks consent to vary a development standard as follows:

Development standard: Clause 4.3 Height of Buildings

Requirement: 8.5m

Proposed: 10.8m

Percentage of variation: 27%



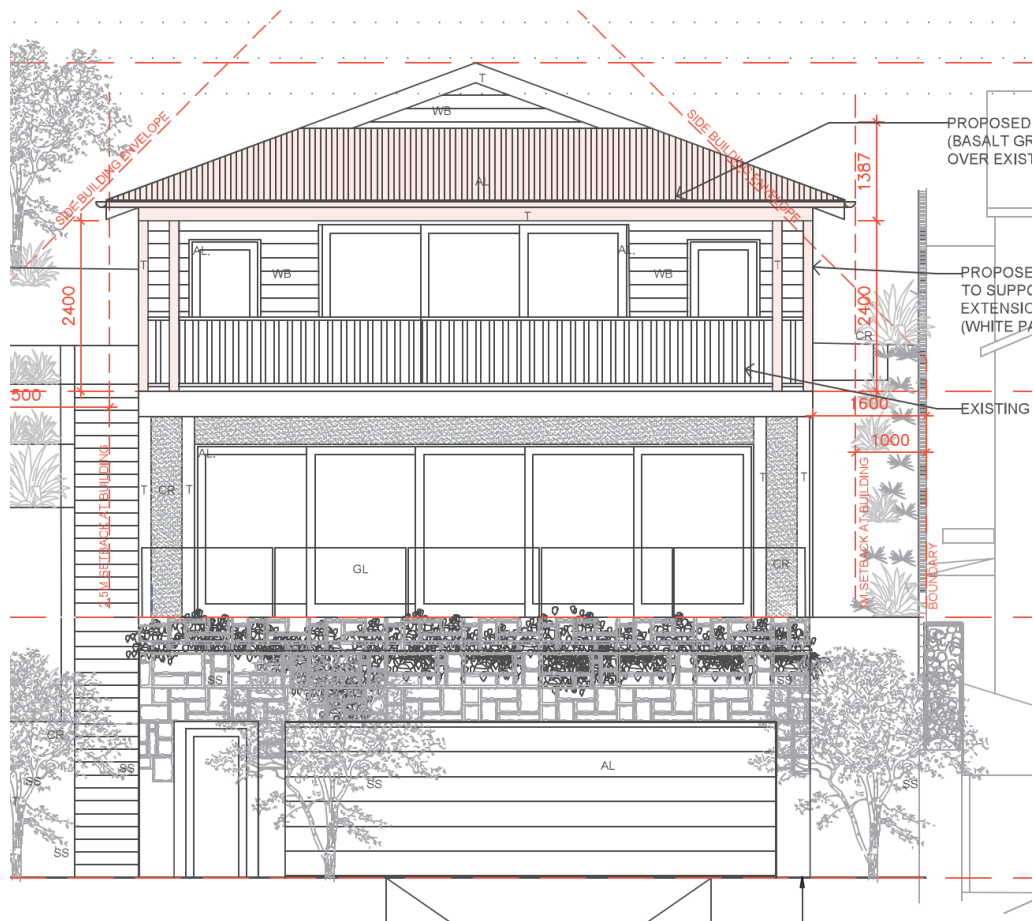


Figure 1 - extent of height breach indicated in red

With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is accompanied by a document that sets out the grounds on which the Applicant seeks to demonstrate the matters set out in Clause 4.6(3)(a) and (b) of the PLEP 2014 (the 'Clause 4.6 Request').

Subclause (1) of this clause provides that:

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

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

Comment:

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

Subclause (2) of this clause provides that:

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

Comment:

Clause 4.3 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 for the following reasons:

- *The proposal satisfies the objectives of the height of buildings standard, notwithstanding the non-compliance with the standard;*
- *The proposal is consistent with the desired future character of the Newport locality as the building maintains its height and setbacks and the built form is consistent with the existing pattern of newer development in the southern side of Prince Alfred Parade;*
- *The proposed development maintains consistency with the height and scale of the existing building and the surrounding dwellings in the immediate vicinity as the proposed roof extension overhangs an existing deck and does not exceed the overall ridge height of the existing building;*
- *The proposal minimises any overshadowing of neighbouring properties as the proposed roof extension is minimal in nature and creates an unenclosed structure. The height of the additional works will not unreasonably affect the primary living spaces and outdoor areas of the adjacent neighbour to the south, with the proposal consistent with Council's solar access requirements;*
- *The proposal allows for the reasonable sharing of views as the adjoining properties will continue to maintain their primary views to the north and north-west towards Pittwater. Additionally, the development has no unreasonable impact upon the existing views from further up slope of the site due to the higher placement/vantage point of these properties;*
- *The proposal is considered to respond sensitively to the natural topography as the new roof over the existing deck will not increase the overall ridge height of the building;*
- *The proposal minimises adverse visual impact of development on the natural environment and heritage significance as the proposed works will not see any further site disturbance, or loss of landscaped area, and the site does not join any heritage sites; and*
- *The uneven, steeply sloped topography and previously excavated levels create a distorted height plane.*

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

Comment:

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

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

The Clause 4.6 Request argues, in part:

- The uneven, steeply sloped topography and previously excavated levels create a distorted height plane;
- The roof extension will provide improved amenity for occupants of the dwelling and neighbouring properties; and
- The proposal promotes the orderly and economic use of the land by maintaining consistency with surrounding development.

It is argued that the height non-compliance can be attributed to the prior excavation of the site within the footprint of the existing building, which has distorted the height plane over the development when compared to the natural topography of the land, as the excavated garage sits directly below the proposed roof extension. This is an environmental planning ground, in accordance with the findings of the NSW LEC in *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582. Additionally, the extension of the roof over the existing north-facing, uncovered deck will provide improved amenity for the building occupants through solar, weather and privacy protection. Furthermore, the proposed development will maintain the general bulk and scale of the existing surrounding development and maintains architectural consistency with the prevailing development pattern which promotes the orderly and economic use of the land.

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 height breach is a result of the uneven, steeply sloped topography and previously excavated levels creating a distorted height plane. The proposed development is an orderly and economic use and development of the land, and 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, that the height of buildings breach caused by the proposed roof extension over the existing deck is relatively minor and an unenclosed structure that is caused by the steep sloping topography and previous excavation of the site, the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	11.1m	N/A	Yes
Rear building line	6.5m	22.2m	N/A	Yes
Side building line	2.5m (east)	2.8m	N/A	Yes
	1m (west)	1.6m	N/A	Yes
Building envelope	3.5m (east)	Within envelope	N/A	Yes
	3.5m (west)	Outside envelope	23.5% (1.2m)	No
Landscaped area	60%	51.5% (261.3m ²) +6% impervious = 57.5%	N/A	Yes - unaltered

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.10 Newport Locality	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
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
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
D10.1 Character as viewed from a public place	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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)	No	Yes
D10.13 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D10.18 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

D10.11 Building envelope (excluding Newport Commercial Centre)

Description of Non-compliance

Pursuant to Section D10.11 Building envelope of the Pittwater 21 Development Control Plan, buildings must be sited within the building envelope which is determined by projecting planes at 45° from a height of 3.5m above the existing ground level at the side boundaries. Where the building footprint is situated on a slope over 16.7 degrees (30%), variation to this control will be considered on a merits basis.

The western elevation presents an encroachment of 1.2m in vertical height for a horizontal length of 2.4m, resulting in a maximum variation of 23.5% (1.2m), as shown shaded red below.

It is important to note that this envelope breach relates only to privacy screening along the western edge of the existing deck, and the building footprint is situated on a slope over 30%. As such, the breach is associated with an unenclosed structure with no provision of any windows, providing an improved planning outcome to the existing open air deck with respect to privacy and amenity. Furthermore, the western wall at the ground and first floors is compliant with the western side building line at 1.6m.

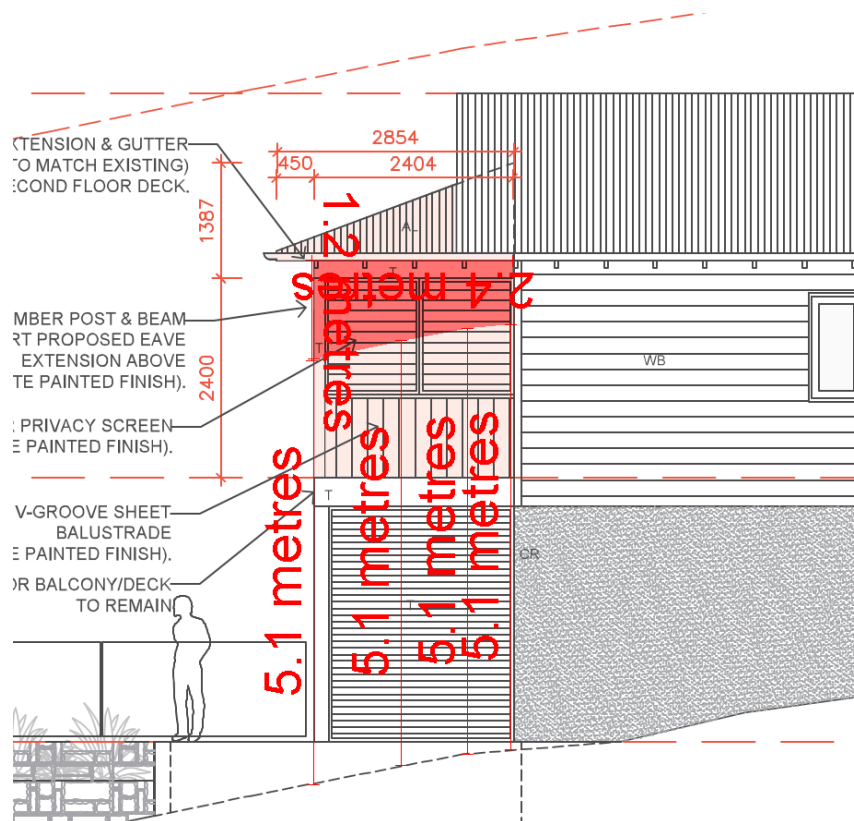


Figure 2: extent of building envelope breach

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

Comment:

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

The proposal, as a new eave and hip roof extension, does not detract from the existing streetscape as it complements the style and form of the existing roof shape. The proposal is of a scale and density that is below the height of the trees of the natural environment and does not exceed the existing ridge height of the dwelling.

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

Comment:

The proposed roof extension steps down from the height of the existing roof ridge, following the steep sloping topography of the site, and thereby sensitively responding to the spatial characteristics of the existing natural environment.

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

Comment:

The deck is existing and the proposal merely seeks to provide a roof above with privacy screening to either side. The proposal does not exceed the height of the existing roof ridge, thereby minimising the bulk and scale of the built form.

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

Comment:

The proposal continues to preserve views and vistas owing to the steep sloping topography of the site and the orientation of the dwelling north towards Pittwater. As such, the proposal does not obstruct views for neighbouring dwellings to the sides and rear of the property.

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

Comment:

The proposal does not result in an unreasonable level of additional overshadowing and provides increased amenity by providing shade on the north-facing deck for the dwelling occupants. The proposal also improves privacy both within the development site and to residential properties through privacy screening along both the eastern and western edges of the deck.

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

Comment:

The proposal does not involve the removal of any vegetation on the site.

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

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

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 an eave and hip roof extension over an existing deck, including privacy screening and balustrading, has been referred to the Development Determination Panel (DDP) due to the works having a 27% variation to the 8.5m maximum height of buildings standard, at 10.8m.

The proposed development was notified in accordance with the Northern Beaches Community

Participation Plan (CPP) for 14 days. No submissions were received.

The critical assessment included a detailed assessment of the proposed height variation under clause 4.6 of the *Pittwater Local Environmental Plan 2014*. The application has also been assessed against other relevant State Environmental Planning Policies, the *Pittwater Local Environmental Plan 2014*, and the controls under the Pittwater 21 Development Control Plan.

The assessment found that the proposed roof extension, privacy screening and balustrading is minor, owing to the unenclosed nature of the structure and the steep sloping topography and previous excavation of the site creating a distorted height plane. The proposal also sits below the height of the existing roof ridge of the dwelling and provides improved amenity in relation to privacy and solar protection.

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.

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 DA2024/1095 for Alterations and additions to a dwelling house on land at Lot 109 DP 13457, 81 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-001	-	Site Plan	Daniel Raymond Architect	9 July 2024
DA-102	-	Second Floor Arrangement Plan	Daniel Raymond Architect	9 July 2024
DA-102	-	Roof Plan	Daniel Raymond Architect	9 July 2024
DA-300	A	Elevation Sheet 01	Daniel Raymond Architect	9 July 2024
DA-301	-	Elevation Sheet 02	Daniel Raymond Architect	9 July 2024
DA-302	A	Elevation Sheet 03	Daniel Raymond Architect	9 July 2024
DA-400	-	Section Sheet 01	Daniel Raymond Architect	9 July 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
DA-002 Stormwater Management Plan	-	Daniel Raymond Architect	9 July 2024
Proposed Schedule of Colours, Materials and External Finishes	-	Daniel Raymond Architect	15 August 2024
Geotechnical Statement	0	Douglas Partners Pty Ltd	9 July 2024
Waste Management Plan	-	No Author	12 August 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	30 August 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) Should any construction cranes be utilised on site, they are to be fitted with bird deterrents along the counterweight to discourage raptor (bird) nesting activity. Deterrents are to remain in place until cranes are dismantled. Selection of deterrent methods is to be undertaken in accordance with the recommendations of a suitably qualified ecologist.

- (p) 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. **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.

7. **Stormwater Drainage Disposal**

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

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

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

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

Reason: To ensure satisfactory management of stormwater.

8. **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.

9. **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.

10. **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

11. **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.

12. **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.

13. **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.

14. **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.

15. **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.

16. **Survey Certificate**

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

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

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

17. **Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

18. **Stormwater 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.

19. **Waste Management Confirmation**

Prior to the issue of an Occupation Certificate, evidence / documentation must be submitted to the Principal Certifier that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

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

20. **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.

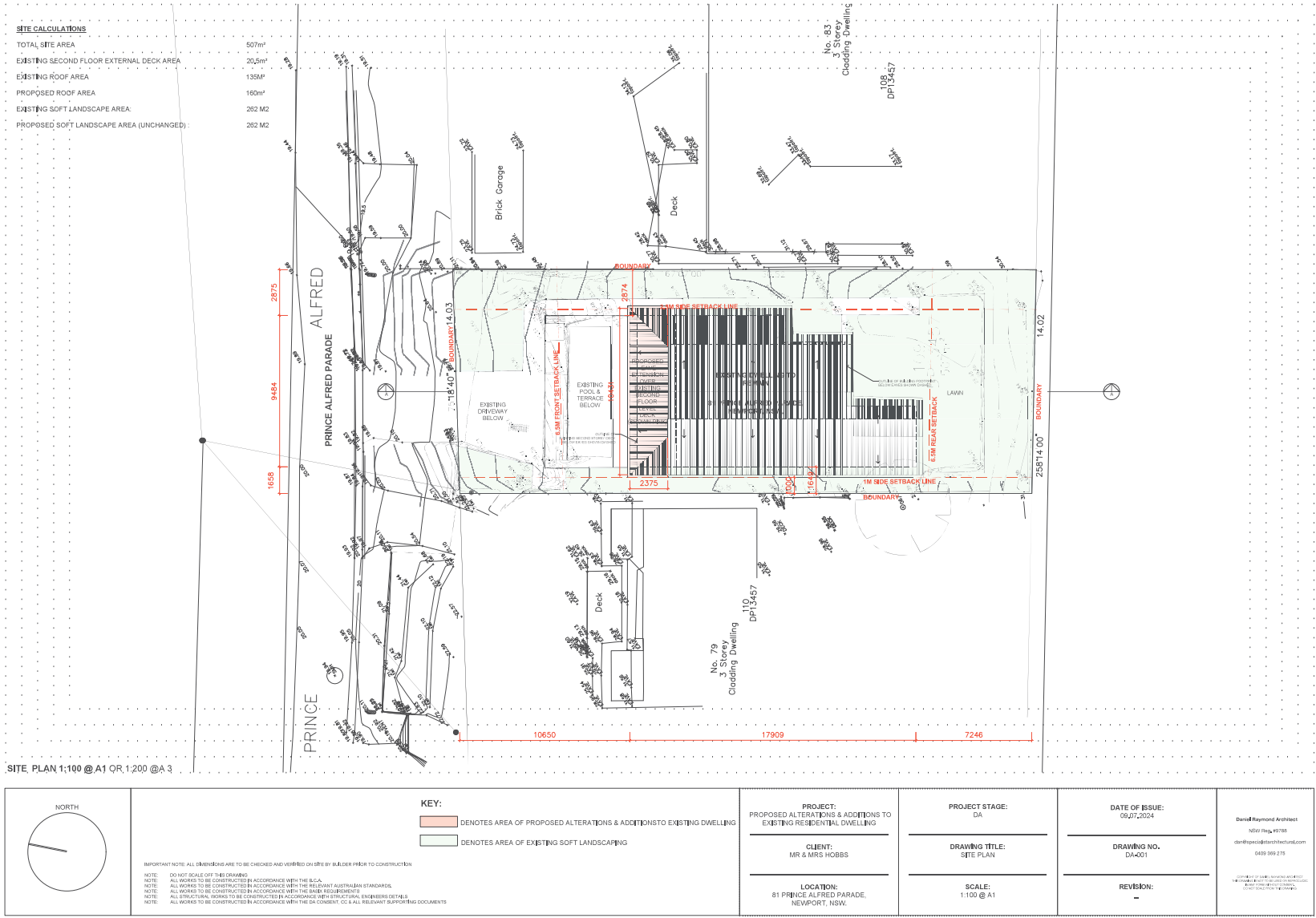
(b) A warning sign stating 'YOUNG CHILDREN SHOULD BE ACTIVELY SUPERVISED WHEN USING THIS POOL' has been installed.

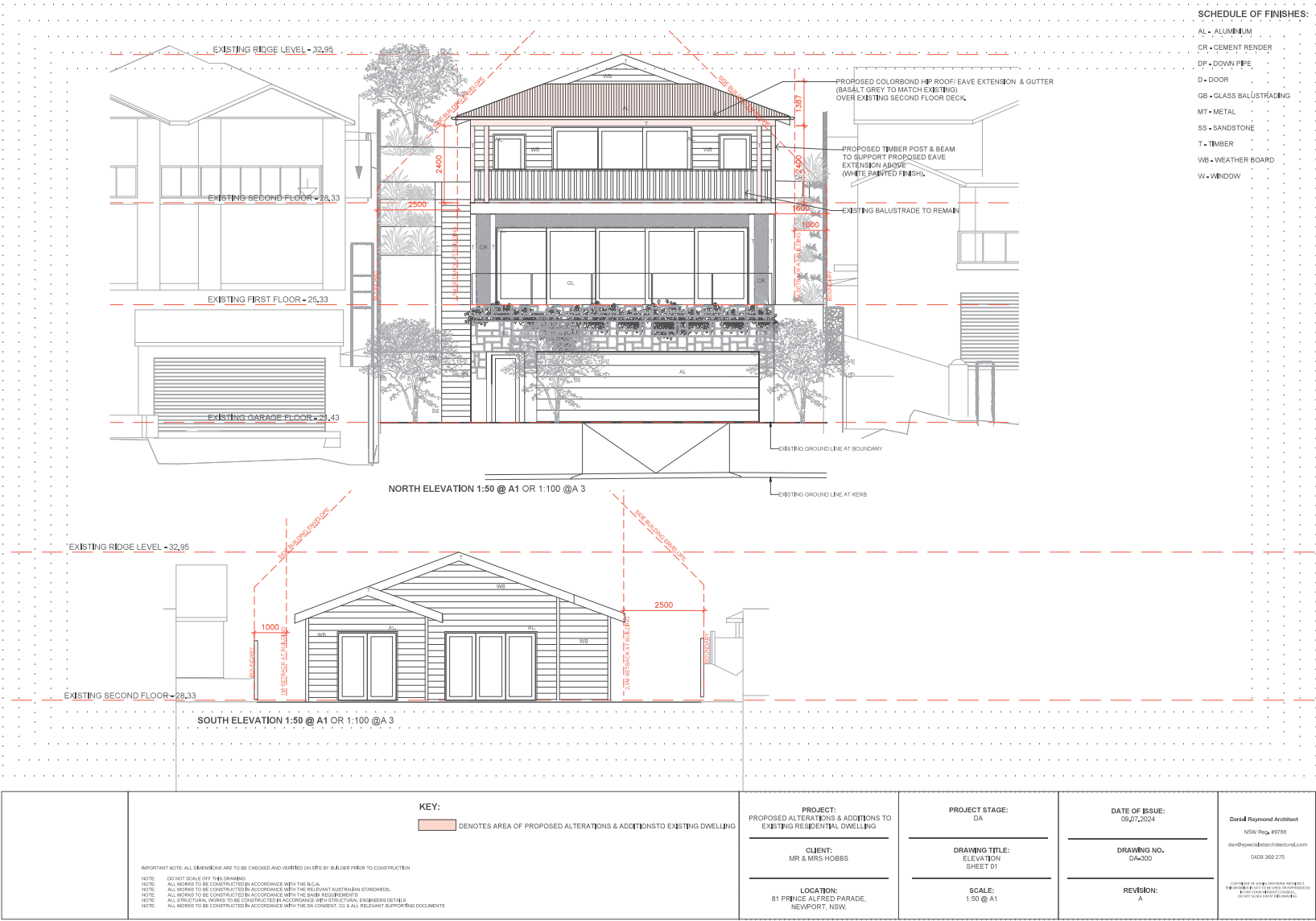
(c) All signage shall be located in a prominent position within the pool area.

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

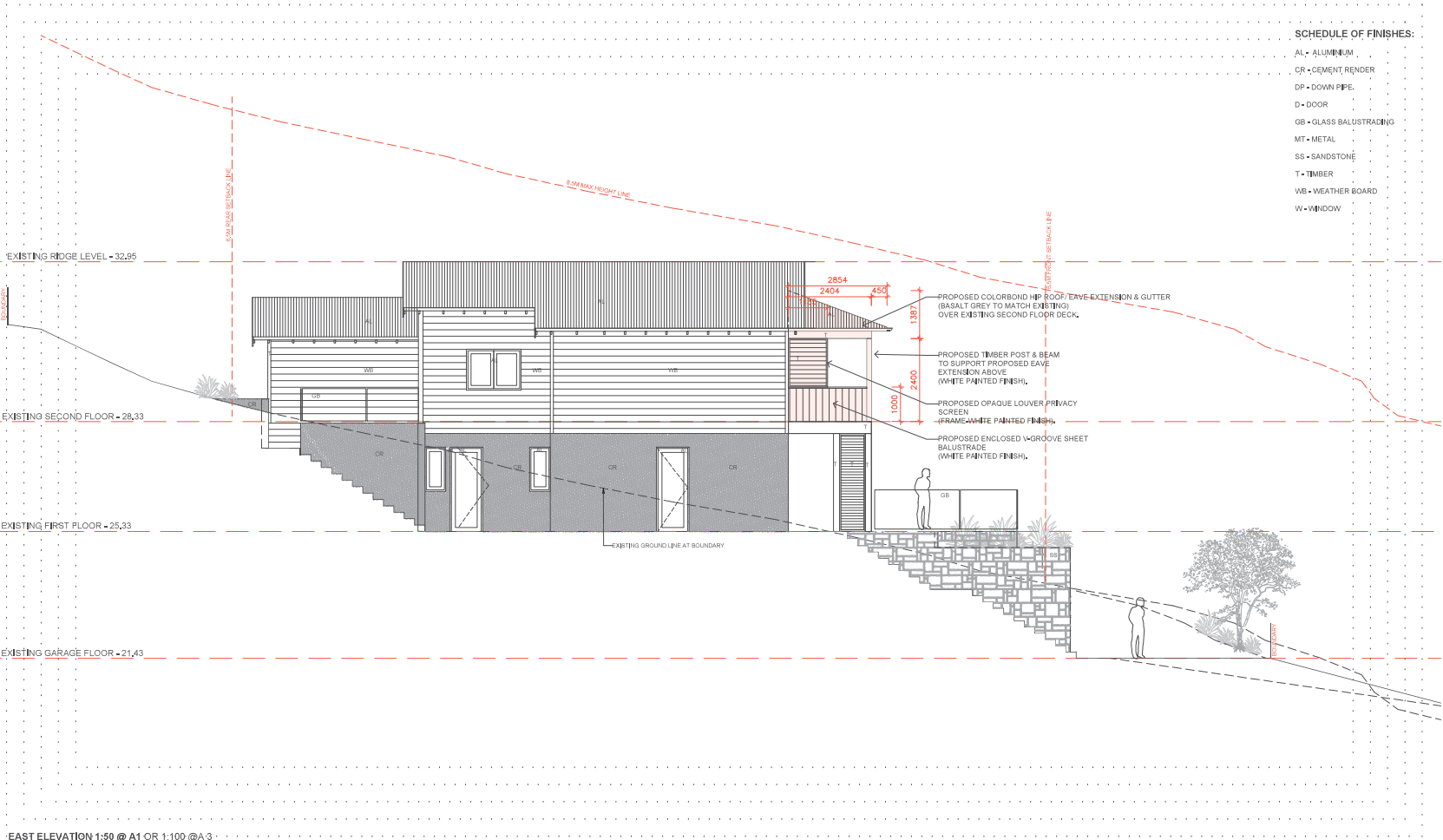
Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To protect human life.



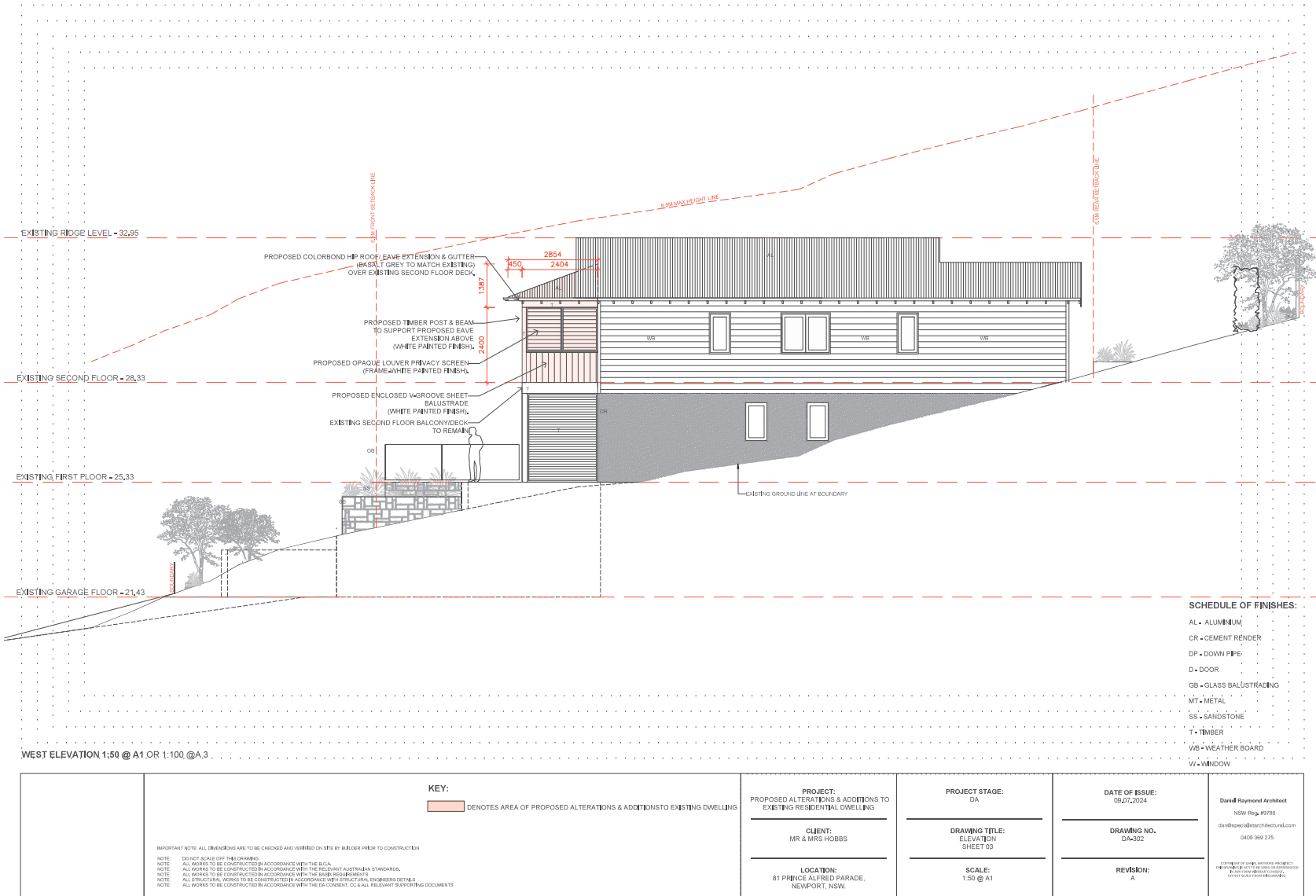


ATTACHMENT 2 : SITE PLAN AND ELEVATIONS - ITEM 3.3 - DEVELOPMENT DETERMINATION PANEL - 25 SEPTEMBER 2024



	KEY: DENOTES AREA OF PROPOSED ALTERATIONS & ADDITIONS TO EXISTING DWELLING	PROJECT: EXISTING ALTERATIONS & ADDITIONS TO PROPOSED RESIDENTIAL DWELLING	PROJECT STAGE: DA	DATE OF ISSUE: 09/07/2024	Daniel Raymond Architect NSW Reg. #9788 darda@pearcearchitectural.com 0439 360 275
		CLIENT: MR & MRS HOBBS	DRAWING TITLE: ELEVATION SHEET 02	DRAWING NO. DA-301	
	IMPORTANT NOTE: ALL DIMENSIONS ARE TO BE CHECKED AND VERIFIED ON SITE BY BUILDER PRIOR TO CONSTRUCTION. NOTE: DO NOT SCALE OFF THIS DRAWING. NOTE: ALL WORKS TO BE CONSTRUCTED IN ACCORDANCE WITH THE S.C.A. NOTE: ALL WORKS TO BE CONSTRUCTED IN ACCORDANCE WITH THE RELEVANT AUSTRALIAN STANDARDS. NOTE: ALL WORKS TO BE CONSTRUCTED IN ACCORDANCE WITH THE BULK HEIGHT RESTRICTIONS. NOTE: ALL STRUCTURAL WORKS TO BE CONSTRUCTED IN ACCORDANCE WITH STRUCTURAL ENGINEERS DETAILS. NOTE: ALL WORKS TO BE CONSTRUCTED IN ACCORDANCE WITH THE DA COMMENT. GC & ALL RELEVANT SUPPORTING DOCUMENTS.	LOCATION: 81 PRINCE ALFRED PARADE, NEWPORT, NSW.	SCALE: 1:50 @ A1	REVISION: -	CONTENTS OF THIS DRAWING ARE PREPARED BY DANIEL REAYMOND ARCHITECTS PTY LTD (DRA) AND ARE TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED ON THE DRAWING. NO PART OF THIS DRAWING IS TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, WITHOUT PERMISSION IN WRITING FROM DRA.

ATTACHMENT 2 : SITE PLAN AND ELEVATIONS - ITEM 3.3 - DEVELOPMENT DETERMINATION PANEL - 25 SEPTEMBER 2024



VMDC Planning

**APPENDIX
CLAUSE 4.6 – HEIGHT OF BUILDINGS
(Clause 4.4 PLEP 2014)**

Prepared August 2024

VMDC Planning

**WRITTEN REQUEST PURSUANT TO CLAUSE 4.6 OF
PITTWATER LOCAL ENVIRONMENTAL PLAN 2014**

81 PRINCE ALFRED PARADE, NEWPORT

FOR PROPOSED ALTERATIONS & ADDITIONS TO AN 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 dwelling
At: 81 Prince Alfred Parade, Newport
Owner: Mr & Mrs K & J Hobbs
Applicant: Mr & Mrs K & J Hobbs
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

Clause 4.3 restricts the building height of a building within this area of the Newport locality and refers to the maximum height noted within the "*Height of Buildings Map*."

The maximum building height in this portion of Newport is 8.5m.

The proposed additions and alterations to the second floor level of the dwelling will see the construction of a new roof over the existing second floor level north facing open deck to provide for weather proofing and solar protection to the upper floor level.

The existing maximum ridge level of the dwelling will remain unchanged.

The maximum height of the new roof over the upper floor level deck will be 10.687m, which presents a 2.187m or 25.72% variation to the building height development standard, when measured to the existing ground level within the site which in this instance is the excavated garage level which is an artificially lowered level through previous excavation for the lower ground floor level.

For the purposes of calculating the maximum building height, the existing excavated level within the site and in particular the excavated lower floor level has been determined in accordance with the principles identified in *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582 [at 73].

81 Prince Alfred Parade, Newport

2

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When the excavated lower level is used as the reference point for the 8.5m height control, the proposed additions and alterations present a non-compliance with the maximum building height standard, having a height of up to 10.687m.

When measured above the external ground levels and in particular the western elevation where the new skillion roof rises to its highest point, the visual height of the building does not exceed 7.072m when viewed from the west and north. From the east and south, the building presents as a stepped two storey height.

The extent of the breach of the building height control is directly related to the extent and form of the existing development and the slope of the land to the north towards the road verge along Prince Alfred Parade.

The figures below notes the variation to the maximum height control and demonstrates the height levels for the new roofline based on the existing ground levels as shown on the plans.

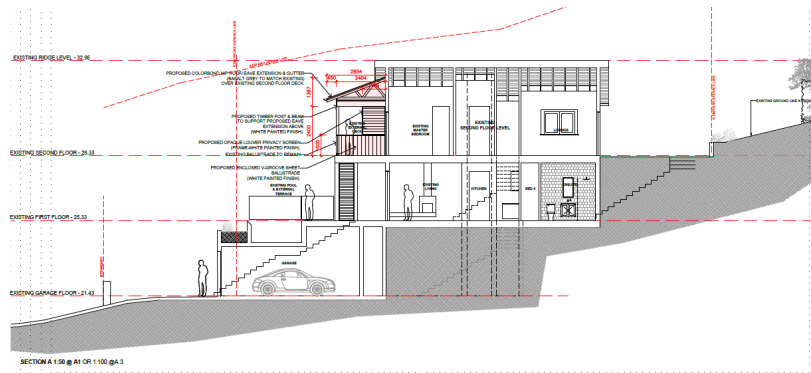


Fig 1: Building section indicating the height of the new works

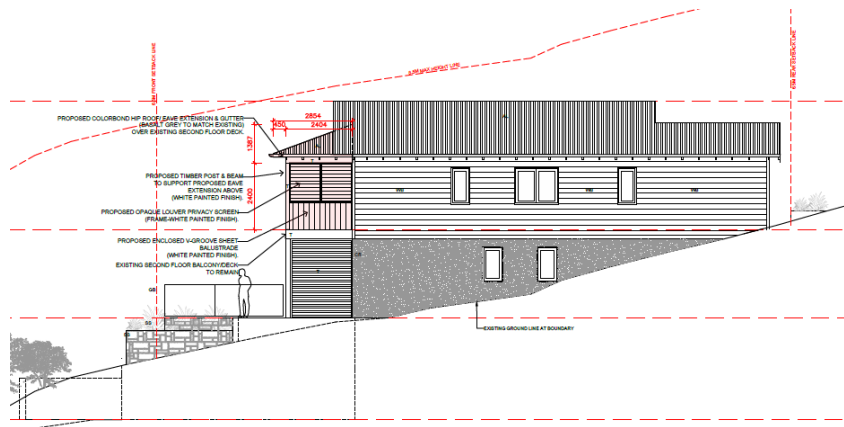


Fig 2: Western elevation of new works

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The demonstrated building height variation is minor and restricted to only a small portion of the roof area of the roof over the north facing second floor level open deck and given the levels of the land, the works correspond with the sloping topography.

As noted in *Merman* [at 74] the prior excavation of the site within the footprint of the existing building, which distorts the height of buildings development standard plane overlaid above the site when compared to the topography of the land, is considered to be an environmental planning grounds within the meaning of clause 4.6 (3)(b) of PLEP 2014.

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.

2.1 Authority to vary a Development Standard

In September 2023, the NSW Government published amendments to Clause 4.6 of the Standard Instrument which change the operation of the clause across all local environmental plans, including the Pittwater LEP. The changes came into force on 1 November 2023.

The principal change is the omission of subclauses 4.6(3)-(5) and (7) in the Standard Instrument Principal Local Environmental Plan.

The following changes have been made as a result of this:

- Clause 4.6(3) was amended such that the requirement to 'consider' a written request has been changed with an express requirement that the consent authority 'be satisfied that the applicant has demonstrated' that compliance with the development standard is unreasonable or unnecessary.
- Clause 4.6(4)(a)(ii) was amended such that the requirement that the consent authority must be satisfied that the proposed development in the public interest has been removed.
- Clause 4.6(4)(b) & 5 amended such that the requirement for concurrence from the Planning Secretary has been removed.

The objectives of clause 4.6 of the LEP, as amended, seek to recognise that in the particular circumstances of this case strict application of development standards may be unreasonable or unnecessary. The clause provides objectives and a means by which a variation to the development standard can be achieved as outlined below:

Clause 4.6 Exception to development standard

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

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

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(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.

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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 Height of Buildings control) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of the LEP.

Clause 4.6(3) of 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:*

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

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

The proposed development does not comply with the maximum building height development standard pursuant to Clause 4.3 of PLEP which specifies a maximum building height of 8.5m in this area of Newport.

The proposed alterations and additions to the existing dwelling will accommodate a new roof over the existing second floor level north facing deck which will have a building height of up to 10.687m, resulting in a variation to the height standard of 2.187m. The additional roof over the existing open deck will maximise the solar protection and amenity for the owners increase weather protection to the dwelling

The proposed new roof is similar to other awnings over elevated decks in the immediate area.

Strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

Clause 4.6(4) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation.

Clause 4.6(6) relates to subdivision and is not relevant to the development.

Clause 4.6(8) is only relevant so as to note that it does not exclude Clause 4.3 of 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 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 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*

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wildlife corridors.

As sought by the zone objectives, the proposal will provide for a minor alterations and additions to an existing dwelling which are designed to accommodate the existing dwelling position, the sensitive water way location and the sloping topography of the locality.

The non-compliance with the building height control arises as a direct result of the sloping topography of the site and position of the existing dwelling over the previously excavated portions of the site. The site levels fall towards the road verge at the northern boundary, with the building height variation of the new upper floor level roof cover occurring as a direct result of the existing dwelling location over the excavated area of the site combined with the sloping nature of the site.

The proposal maintains a bulk and scale which is in keeping with the extent of surrounding development, with a consistent palette of materials and finishes which will provide for high quality development that will enhance and complement the locality.

The proposed additions to the dwelling will not introduce unreasonable impacts on the existing views enjoyed by neighbouring properties, nor create unreasonable or adverse impacts to the existing levels of solar access or privacy enjoyed by adjoining dwellings.

Notwithstanding the non-compliance with the maximum building height control, the new works will provide an attractive addition to the existing residential development that will continue to maintain the building's contribution to the character and function of the local water way residential neighbourhood.

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 8.5m in this area of Newport.
- 5.3 The proposed additions and alterations to the existing building and in particular the new skillion roof form over the second floor level open northern deck will see a height of up to 10.687m when measured above the excavated garage level, exceeding the height standard by 2.187m or 25.72%.

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 consistent with the objectives of Clause 4.3 and the objectives for development for in the C4 zone?
 4. Where the consent authority is the Court, has the Court considered the matters in clause 4.6 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 future character of the locality

The Objective of Clause 4.3 (1)(a) seeks to ensure buildings are compatible with the height and scale of surrounding and nearby development and her desired future character of the locality.

The surrounding area is predominantly characterised by two and three storey development corresponding with the sloping topography.

The proposal seeks to accommodate the new works within a compatible building form, with the slope of the site towards the north resulting in the new roof cover over the north facing open deck at the second floor level displaying a building height of 10.687m.

The uneven topography and excavated levels of the land of the land influence the requirement to seek a variation under Clause 4.6.

The land has a sloping topography from the rear towards the street boundary which together with the previous excavation of the site through the construction of the dwelling, influences the building height and roof elements which exceed the corresponding height plane.

In response to the site conditions, the open nature of the new work at the second floor level and the minimal extent of the new roof cover, together with the existing maximum ridge height of the building being within sure that the built form is consistent with the existing pattern of newer development in this portion of the southern side of Prince Alfred Parade.

Detailed solar access diagrams are provided to demonstrate that the proposed height variation does not create any unreasonable impact on solar access to adjacent land.

Accordingly, the building height is acceptable with regard to the streetscape when viewed in context with adjacent and nearby dwellings and when viewed from the public road level and nearby public.

By retaining the building's contribution to the local streetscape and its building heights and setbacks, the works will be consistent with the desired character of the Newport locality.

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

The proposed development maintains consistency with the height and scale of the existing building and the surrounding dwellings in the immediate vicinity. The proposal is a site-specific design response which takes advantage of the properties superior waterway locational attributes whilst respecting the environmental characteristics of the site and the amenity of adjoining development.

Whilst compliance with the height control is constrained by the sloping topography of the site in the form and heights of the existing building on the site, the development is considered appropriate and compatible within the locality and is therefore worthy of support.

(c) to minimise any overshadowing of neighbouring properties,

The extent of the proposed overshadowing is reflected in the shadow diagrams submitted with the architectural package and which note that the height of the new works will not unreasonably affect the primary living spaces and outdoor areas of the adjacent neighbour to the south, with the proposal consistent with Councils solar access requirements.

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

The adjoining properties will continue to maintain their primary views to the north and north-west towards Pittwater.

The development has no unreasonable impact upon the existing views from further up slope of the site due to the higher placement/vantage point of these properties.

The proposal is therefore not considered to result in any unreasonable view loss for neighbouring properties.

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

The proposal includes a new roof cover over the existing open second floor level north facing balcony, with no increase in the overall which height of the building. The new roof over the deck will not add significant or bulky element to the building façade and will provide for important solar protection for the owners and weather protection to the building. As the floor levels and Ridge levels of the building remain unchanged, and the primary outlook for the adjoining neighbours is retained, the building will continue to present a compatible bulk and scale the locality. The works are considered 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.

The proposed works will not see any further site disturbance, or loss of landscaped area. The site does not join any sites of heritage significance and the proposal is considered to be reasonable in this portion of Prince Alfred Parade and Bassett Street and the Newport locality.

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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 height non-compliance can be attributed to the prior excavation of the site within the footprint of the existing building, which has distorted the height of buildings development standard plane overlaid above the site when compared to the topography of the existing land and this is considered to be an environmental planning grounds which supports the variation to the control.
- The non-compliance primarily arises as a result of historical excavation undertaken to provide for the lower floor level of the existing dwelling. In accordance with the findings of the NSW LEC in Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582, the prior excavation of the site within the footprint of the existing building, which distorts the height of buildings development standard plane overlaid above the site when compared to the topography of the hill, can properly be described as an environmental planning ground within the meaning of cl 4.6(3)(b) of LEP 2014.

- Consistent with the findings of Commissioner Walsh in *Eather v Randwick City Council* [2021] NSW LEC 1075 and Commissioner Grey in *Petrovic v Randwick City Council* [2021] NSW LEC 1242, the particularly small departure from the actual numerical standard and absence of impacts consequential of the departure constitute environmental planning grounds, as it promotes the good design and amenity of the development in accordance with the objects of the EP&A Act.
- The proposed development will maintain the general bulk and scale of the existing surrounding development and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).
- Similarly, the proposed development will provide for improved amenity through the introduction of additional solar protection for the building occupants and weatherproofing to the dwelling within a built form which is compatible with the streetscape of Prince Alfred Parade which also promotes the orderly and economic use of the land (cl 1.3(c)).
- The topography has influenced the design response of maintain the existing floor levels, side and front setbacks positions, overall building height and amenity considerations for waterway views in context with surrounding houses, which is consistent with the Objective 1.3 (g).
- The proposed development improves the amenity of the occupants and respects the current levels of privacy, amenity and solar access enjoyed by the surrounding properties by largely maintaining significant majority of 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 when considering the bulk, height, setbacks and selected elements of the proposal have been designed in consideration to minimise elements that contribute to the height and scale of the upper level to ensure non-complying elements do not contribute to unreasonable views and overshadowing.

The previous excavation of the site and the consequent distortion of the height of buildings plane over the site when compared to the external levels and natural topography of the land is considered to be a constraint which impacts on the aspect of the development that contravenes a development standard, being the minor breach to the maximum building height control that is directly above the former excavation of the site.

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

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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?

- (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 C4 Environmental Living 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 C4 Environmental Living Zone for the following reasons:

- ***To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.***

The proposed height variation does not offend this objective of the zone in that the use of the dwelling remains for detached housing and is provided for within a landscape setting that is compatible with the scale, density and pattern of surrounding development.

The proposed development has been sensitively designed in response to the architectural style of the existing dwelling and with regard to the amenity of neighbouring properties. The proposed development will not be antipathetic to the visual significance of the area and is of a scale that is consistent and compatible with surrounding dwellings.

The height variation does not impact the scenic setting of the site and the surrounding steep topography. The surrounding dwellings display similar architectural treatments including patio and balcony covers to provide for solar protection, that reflect the northern aspect and waterway locality, which characterise this area with special ascetic values.

It is considered that the development satisfies this objective.

- ***To ensure that residential development does not have an adverse effect on those values.***

The proposed development does not result in any adverse impacts upon the scenic quality of the locality and has been designed to be safe from the natural hazards that affect the site. The dwelling is highly articulated, and is to be finished in earthy tones, and natural materials to blend with the surrounding environment.

- ***To provide for residential development of a low density and scale integrated with the landform and landscape.***

The proposed development remains a single dwelling house, that is appropriately integrated into the slope of the land.

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

The site is not identified as being located within a wildlife corridor and there are no works proposed at the ground level, with all works over the existing building footprint. No trees will be removed to accommodate the proposed roof over the second floor level open balcony.

7.4 Has the Council considered the matters in clause 4.6 of PLEP?

- (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 minor additions to the existing dwelling within 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.

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8.0 Conclusion

This development proposed a departure from the maximum building height development standard, with the proposed alterations and additions to the existing dwelling to provide a maximum building height of 10.687m which is a variation to the standard of 2.187m or 25.72%.

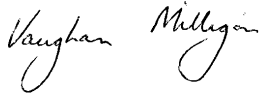
This variation occurs as a result of the existing excavation, sloping topography of the site, and the inclusion of the new roof form to the second floor level north facing open deck.

The proposed development does not adversely impact the Pittwater waterway area or neighbouring properties and will substantially improve the amenity of the existing dwelling.

The unique site constraints provide sufficient environmental planning grounds to justify contravening the development standard.

This written request to vary to the maximum building height standard specified in Clause 4.3 of the Pittwater LEP 2014 adequately demonstrates that the objectives of the standard will be met.

Strict compliance with the maximum building height control would be unreasonable and unnecessary in the circumstances of this case.



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