

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 9 OCTOBER 2024

Ashleigh Sherry
Manager Business System and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 9 October 2024
via teleconference
Commencing at 10:00 AM**

1.0	APOLOGIES & DECLARATIONS OF INTEREST	
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ACKNOWLEDGEMENT OF COUNTRY

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

1.0 APOLOGIES & DECLARATIONS OF INTEREST

Nil

2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF THE DEVELOPMENT DETERMINATION PANEL MEETING HELD ON 25 SEPTEMBER 2024

RECOMMENDATION

That the Panel note that the minutes of the Development Determination Panel Meeting held on 25 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 DA2024/0142 - 111 ADDISON ROAD MANLY - DEMOLITION AND CONSTRUCTION OF 2 SEMI-DETACHED DWELLINGS WITH POOLS AND 2 LOT SUBDIVISION

PURPOSE

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

RECOMMENDATION

THAT Council as the consent authority **approves** Development Consent to DA2024/0142 for demolition and construction of 2 semi-detached dwellings with pools and 2 lot subdivision on land at Lot 1 DP 737826, 111 Addison Road MANLY, subject to the conditions set out in the Assessment Report.

Reporting manager	Rodney Piggott
TRIM file ref	2024/693605
Attachments	↓1 Assessment Report ↓2 Site Plan and Elevations ↓3 Clause 4.6

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/0142
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Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 1 DP 737826, 111 Addison Road MANLY NSW 2095
Proposed Development:	Demolition and construction of 2 semi-detached dwellings with pools and 2 lot subdivision
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Watershed Architects

Application Lodged:	21/02/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Other
Notified:	27/02/2024 to 12/03/2024
Advertised:	Not Advertised
Submissions Received:	5
Clause 4.6 Variation:	4.4 Floor space ratio: 6.88%
Recommendation:	Approval

Estimated Cost of Works:	\$ 2,160,245.20
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EXECUTIVE SUMMARY

This development application seeks consent for demolition of an existing dwelling house, construction of two semi-detached dwellings, and subdivision of the existing lot into two.

The application is referred to the Development Determination Panel (DDP) due to receipt of five submissions objecting to the development.

The proposal includes a variation to the floor space ratio of 6.88% for each of the two proposed lots. The non-compliance with the floor space ratio development standard arises due to the form of development proposed, being two semi-detached dwellings in place of one detached dwelling house.

Within this report, detailed assessment is given to the request to vary the floor space ratio development standard, the proposed non-compliant setbacks and total open space, and the proposed number of parking spaces. Overall, in consideration of the variations and non-compliant elements proposed, the

development is acceptable on merit.

Submissions raised concern regarding retention of fig tree, amenity (view sharing, privacy and solar access), non-compliance with built form controls, excessive bulk and scale, streetscape character, and stormwater management. These matters are addressed in detail within this report.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for demolition of the existing dwelling, subdivision of the existing lot into two lots, and construction of two semi-detached dwellings, each proposed as follows:

- Ground Floor: Single garage, study, family room, courtyard, laundry, bathroom, open-plan kitchen, dining room and living room, and rear deck.
- First Floor: Four bedrooms, including one with an ensuite and rear-facing balcony, bathroom, and front-facing balcony adjoining two of the bedrooms.
- Landscaping works,
- Front fencing,
- New driveway.

The above description is accurate to amended plans received on 27 August 2024. In accordance with Council's Community Participation Plan, the plans did not require re-notification, as they result in lesser environmental impact than the original notified plans.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - Zone R1 General Residential
Manly Local Environmental Plan 2013 - 4.4 Floor space ratio
Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Local Environmental Plan 2013 - 6.2 Earthworks
 Manly Local Environmental Plan 2013 - 6.4 Stormwater management
 Manly Local Environmental Plan 2013 - 6.5 Terrestrial biodiversity
 Manly Local Environmental Plan 2013 - 6.8 Landslide risk
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Local Environmental Plan 2013 - 6.12 Essential services
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
 Manly Development Control Plan - 4.1.10 Fencing

SITE DESCRIPTION

Property Description:	Lot 1 DP 737826 , 111 Addison Road MANLY NSW 2095
Detailed Site Description:	The subject site consists of one allotment located on the north-western side of Addison Road, Manly. The site is regular in shape with a frontage of 18.35 metres along Addison Road and a depth of 30.48 metres. The site has a surveyed area of 559.3m². The site is located within the R1 General Residential zone and accommodates a single-storey detached dwelling house with a single carport. The site is generally level, and contains some small trees and landscaping. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by a mix of residential land uses, including dwelling houses and residential flat buildings of varying sizes.

Map:



SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site. The land has been used for residential purposes for an extended period of time.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration	Comments
	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 heritage significance, tree retention, and driveway design. <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 Manly Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 27/02/2024 to 12/03/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Mr John Martin Shirbin	1603/7 Rockwall Crescent POTTS POINT NSW 2011
Bill Tulloch	Po Box 440 MONA VALE NSW 1660
Mr Grahame Kenneth Marks	20 / 140 Addison Road MANLY NSW 2095
Mr Gregory Charles Morris	6 / 20 Reddall Street MANLY NSW 2095
Colco Consulting Pty Ltd	29 A Amiens Road CLONTARF NSW 2093

The following issues were raised in the submissions:

- Retention of the heritage-listed fig tree in the road reserve.
- Excessive built form due to non-compliant floor space ratio, setbacks and total open space, and subsequent inconsistency with the character of the streetscape.
- Concern that the written request to vary the floor space ratio development standard is not well-founded., as the development is contrary to the objectives of the zone and the development standard, and contrary to the Aims of the LEP.
- Unreasonable amenity impacts with respect to visual privacy, solar access, and view sharing.
- Insufficient parking design, given it requires reversing into Addison Road.
- Excessive pool envelope and subsequent acoustic amenity impacts.

The above issues are addressed as follows:

Retention of the Fig Tree

Submissions raised concern that the heritage-listed fig tree in Council's road reserve fronting the site should be retained.

Comment:

The submitted plans and documents demonstrate the proposed development does not necessitate removal of the street fig tree. Conditions of consent have been included in the recommendation of this report requiring tree protection measures during works.

Built Form and Streetscape Character

Submissions raised concern that the proposed development is excessive with respect to bulk and scale, due to the proposed non-compliance with the floor space ratio, setbacks, and total open space controls. Submissions raised that the proposed development would be subsequently inconsistent with the streetscape character along Addison Road.

Comment:

Non-compliant elements are addressed in detail throughout this report and it is established the proposed

development is acceptable on merit with respect to floor space ratio, setbacks, and total open space. The proposed development is compatible with the streetscape along Addison Road, which contains a variety of residential development types.

Written Request to Vary FSR

Submissions raised concern that the written request to vary the floor space ratio development standard is not well-founded and cannot be supported. Specifically, the submission outlined opinion that the proposed development was contrary to the Aims of the *Manly Local Environmental Plan 2013*, the objectives of the R1 General Residential Zone, and the objectives of Clause 4.4 Floor Space Ratio.

Comment:

An assessment of the proposed variation to the floor space ratio development standard is provided within this report in the sections relating to Clause 4.4 Floor Space Ratio and Clause 4.6 Exceptions to Development Standards of the *Manly Local Environmental Plan 2013*. The assessment concludes that the written request is well-founded and that the variation is supported in the circumstances of the case.

Amenity - Privacy / Solar Access / View Sharing

Submissions raised concern that the proposed development would result in unreasonable amenity impacts, specifically with respect to visual privacy, solar access, and view sharing from Unit 6, 20 Reddall Street.

Comment:

The proposed development is acceptable with the requirements of Clause 3.4.1 Sunlight Access and Overshadowing and 3.4.2 Visual Privacy of the *Manly Development Control Plan 2013*, for the reasons detailed in the relevant sections of this report. An assessment of the impact on the view from Unit 6, 20 Reddall Street is provided in the section of this report relating to Clause 3.4.3 Maintenance of Views of the *Manly Development Control Plan 2013*. The assessment concludes that the proposed development is not unreasonable with respect to view sharing.

Parking Design

Submissions raised concern that the proposed parking arrangements were unacceptable, given the design relies on vehicles reversing to exit the site.

Comment:

The proposed development is supported by swept path diagrams demonstrating safe vehicular ingress and egress for the subject site. The proposed garages are supported by Council's Development Engineer.

Pool Envelope and Impacts

Submissions raised concern that the proposed pools were too close to boundaries and would result in unreasonable acoustic impacts to adjoining properties.

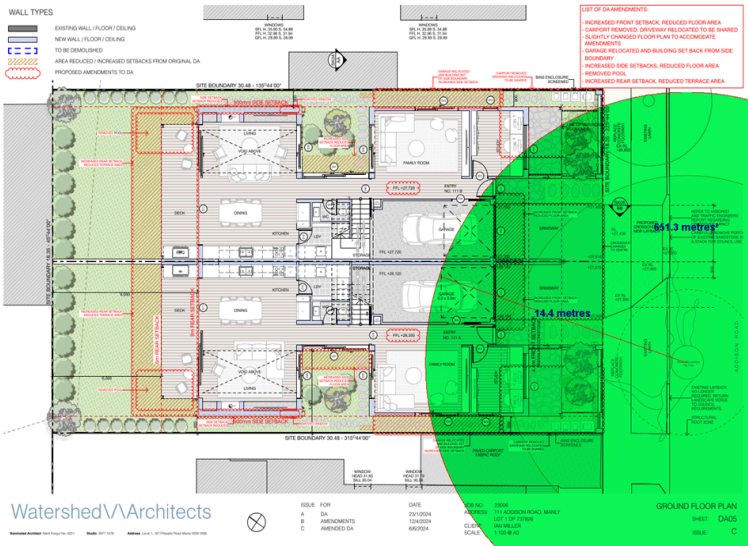
Comment:

The amended plans received in June 2024 deleted the proposed pools.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<i>Supported, subject to conditions</i> <u>Amended Comments (17 September 2024):</u> Previous comment included concern raised as follows regarding the Heritage Listed Tree forward of the property: <i>Concern is raised regarding the cumulative effect on the tree of all works proposed given the shallow soils and location of roots close to</i>

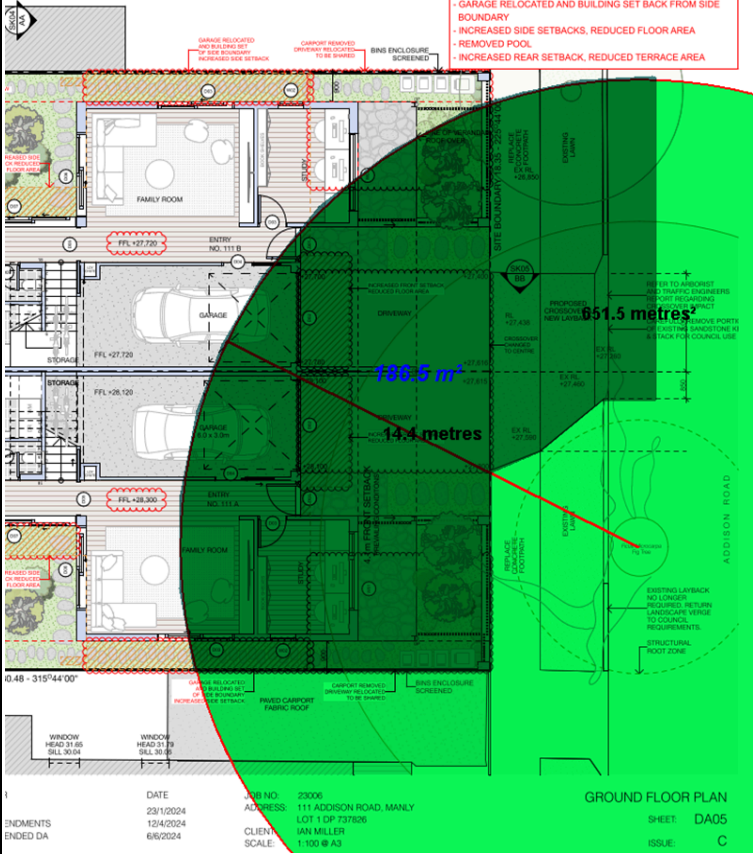
Internal Referral Body	Comments
	<i>the surface.</i> <i>In addition to the excavation required for the driveway layback, crossover and localised road re-sheeting, additional impacts are proposed.</i> <i>Excavation for the proposed OSD tanks and pipes, construction of retaining walls, excavation for slabs, services and regrading of existing surfaces levels are indicated within the TPZ of the tree.</i> Amended Plans are noted which address the majority of those concerns. Building levels have been altered, landscape works within the front setback have been amended, driveway crossover proposed has been amended and OSD tanks have been relocated. Demolition, excavation and construction works will require close supervision to ensure that the Heritage Listed Tree in Addison Road forward of the property is adequately cared for and protected. Conditions have been included requiring specific tree protection measures prior to, during and following works. If those measures are addressed, the works are considered able to be undertaken with an acceptable level of impact on the tree. As trees are living organisms, there is always risk of significant impact if tree care is not adequately addressed. This development will be reliant upon the competence of the nominated Protect Arborist and understanding of the building contractor of the ongoing management of the site during the project. It is noted that damage to Council assets within the road reserve is usually covered via the conditioning of a bond by Council's Development Engineers. It is further recommended that such bond condition specifically identify the Heritage Listed Tree forward of the property as an asset covered by the bond. The proposal is therefore supported. <u>Amended Comments (7 August 2024):</u> Amended Plans indicating relocation of the driveway crossover to the centre of the site are noted. The amended Arborist's Report by Ezigrow dated 23 May 2024 and Support Statement by Ezigrow dated 28 May 2024 are noted. The repositioning of the driveway will still require removal of roots within the Tree Protection Zone of the Heritage listed Fig tree forward of the site. The Arborist's report indicates that removal of the roots and root mass in the road reserve (Fig. 1) would not have a detrimental impact on the tree. In my opinion, removal of these roots would have a detrimental

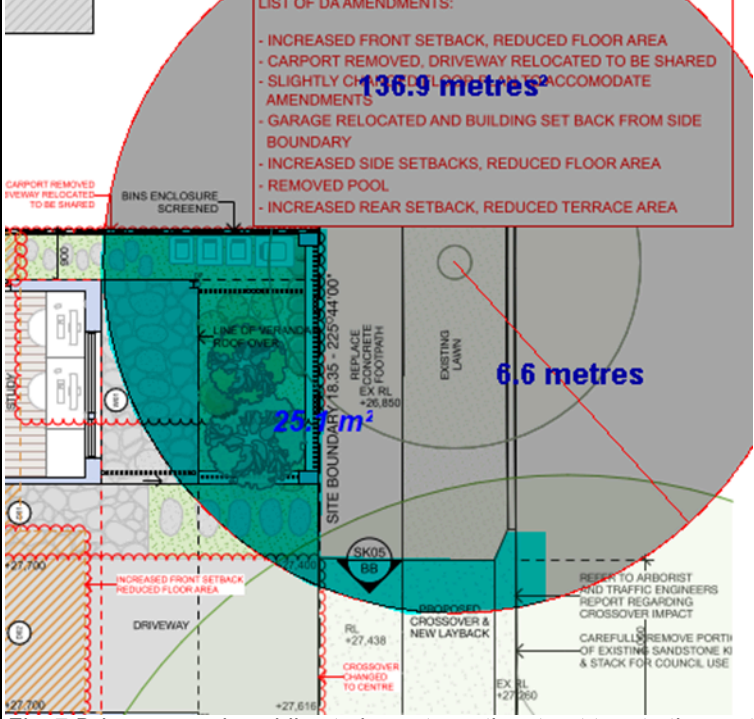
Internal Referral Body	Comments
	impact on the tree.  <i>Fig. 1 Root mass to be removed to accommodate new crossover. Dotted line indicates western edge of the drive.</i> A root mapping trench was dug along the edge of the western edge of the driveway, revealing one 200mm dia. root and one 40mm dia. root to be removed in addition to the root mass area in the road reserve to accommodate the new layback and crossover in the road reserve. The tree presents a theoretical Tree Protection Zone (as calculated under AS4970-2009 Protection of trees on development sites) of radius 14.4m and area volume of 651.3m² (Fig. 2). The theoretical TPZ encompasses a large area in general and extends into the subject site.  <i>Fig. 2 Overlay of TPZ over the amended ground floor plan.</i>

Internal Referral Body	Comments
	The location of the tree within the road carriageway presents complexity when assessing the location of the root area supporting the tree. Typically, due to compaction levels required for roads, very few roots are found beneath the road. One surface root in the road carriageway heading in a southerly direction can be seen (Fig. 3), however the majority of visible roots are located on the northern side of the tree.  <i>Fig. 3 Surface tree root in the road carriageway.</i> The significance of the tree's location in the road carriageway is that whilst the theoretical TPZ is represented by a circular area from the centre of the trunk, the lateral root system of the tree will have developed on one side only, that is, on the northern side of the tree. The consequences of disturbances to the lateral root system on the northern side are therefore highly significant to the tree's health and have a much greater impact that the theoretical TPZ circle would suggest. It is evident that tree roots have extended within the subject property. A large root can be observed along the western boundary of the subject property. (Fig. 4)

Internal Referral Body	Comments
	 <i>Fig. 4 Fig tree lateral root within the subject site circled yellow.</i> The Geotechnical report prepared by Crozier Geotechnical Consultants indicates the presence of shallow soils with sandstone outcropping within the site. (Fig. 5).

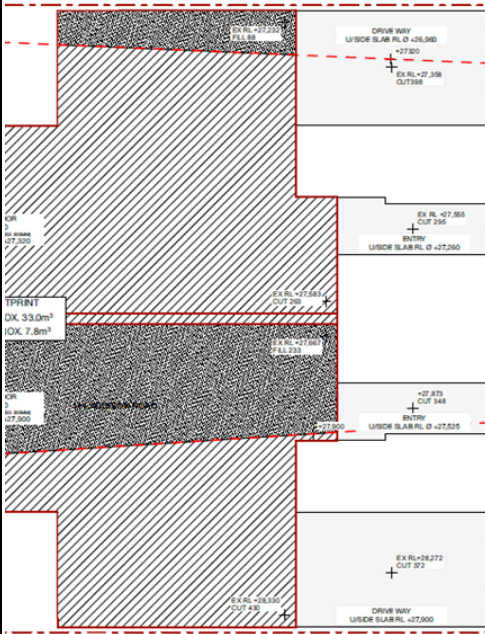
Internal Referral Body	Comments
	<i>Photograph-4: View of the sandstone outcrops. View looking south..</i> <i>Fig 5 Natural sandstone outcrop within the site circled yellow.</i> Concern is raised regarding the cumulative effect on the tree of all works proposed given the shallow soils and location of roots close to the surface. In addition to the excavation required for the driveway layback, crossover and localised road re-sheeting, additional impacts are proposed. Excavation for the proposed OSD tanks and pipes, construction of retaining walls, excavation for slabs, services and regrading of existing surfaces levels are indicated within the TPZ of the tree. Assessment of the combined impacts on the tree indicates that 186.5m² or 28.6% of the theoretical TPZ is likely to be affected (Fig 6). If the area of the theoretical TPZ located in the roadway is excluded (as explained above), the percentage of the area of impact on lateral roots is much higher.

Internal Referral Body	Comments
	 GROUND FLOOR PLAN DATE: 23/1/2024 JOB NO: 23006 ADDRESS: 111 ADDISON ROAD, MANLY LOT 1 OF F37626 CLIENT: IAN MILLER SCALE: 1:100 @ A3 ENDMENTS ENDED DA: 6/6/2024 SHEET: DA05 ISSUE: C Fig. 6 Area of the theoretical TPZ impacted by works (shaded). This is not to say that no development can be undertaken on the site. The proposed dwelling and associated works could be supported with specific tree protection and supervision conditions to reduce impacts on the tree's roots, however, the extent of root impact in critical areas of the root system (particularly forward of the existing dwelling) that would result from the road, layback crossover, driveway and drainage works as indicated on the plans cannot be supported in this instance. In addition to the impacts on the Heritage listed Fig Tree, it is evident that a major encroachment on the other street tree to the east (<i>Cupaniopsis anacardioides</i> - Cheese Tree) would also be exacerbated by the installation of the crossover works in the road reserve (Fig 7), which results in an encroachment of 18% into the TPZ.

Internal Referral Body	Comments
	 LIST OF DA AMENDMENTS: - INCREASED FRONT SETBACK, REDUCED FLOOR AREA - CARPORT REMOVED, DRIVEWAY RELOCATED TO BE SHARED - SLIGHTLY CHANGED FLOOR PLAN TO ACCOMMODATE AMENDMENTS - GARAGE RELOCATED AND BUILDING SET BACK FROM SIDE BOUNDARY - INCREASED SIDE SETBACKS, REDUCED FLOOR AREA - REMOVED POOL - INCREASED REAR SETBACK, REDUCED TERRACE AREA 136.9 metres 6.6 metres 25.4m² Fig. 7 Driveway works adding to impacts on the street tree to the east (shaded). The tree displays a significant number of surface roots in the road reserve, which further indicates shallow soils (Fig. 8). The deletion of the driveway component would also be of benefit to that tree.  Fig. 8 Significant tree roots either side of the street tree to the east

Internal Referral Body	Comments
	The proposed driveway and parking arrangement indicated on the amended plans is therefore not able to be supported in this instance. <u>Amended Comments (4 April 2024):</u> The amended Arborist's Report is noted. The Report still references Tree 2 as being retained, though presumably it is actually referring to T1. However, no details have been sighted regarding the proposed driveway adjacent to T1. It is evident that excavation is required to be boundary as shown on the Cut and Fill Plan, but no indication of the crossover levels and width have been provided. The Arborist's Report also appears not to have considered the extent of excavation as indicated in the Cut and Fill Plan. Combined with impacts of the crossover, the extent of excavation would appear to exceed the 11% incursion into the TPZ of T1 that is listed in the Report. There is insufficient detail to demonstrate the construction of the crossover can be achieved without impacting The TPZ and the Structural Root Zone of the tree, nor that an acceptable crossover width can be provided. Proposed works should be designed above existing ground levels to minimise impacts on T1. Details of the crossover and driveway, including cross sections, are required to ensure that impacts on tree roots are avoided. There is a real concern that vehicular access on the western side of the site cannot be achieved and may need to be deleted from the application.

Internal Referral Body	Comments

Internal Referral Body	Comments
	 DATE: 29 FEBRUARY 2024 JOB NO: 23006 ADDRESS: 111 ADDISON ROAD, MANLY EXCAVATION & FILL DIAGRAM <u>Original Comment (29 February 2024):</u> The application seeks consent for: Demolition and construction of 2 semi-detached dwellings with pools and 2 lot subdivision. The plans prepared by Watershed, Arborist's Report and Landscape Plans, both prepared by Ezigrow, are noted. The Plans and Report are contradictory in relation to the removal of the street trees. However, the cut and fill plan indicates significant earthworks in the vicinity of the trees, necessitating removal. The proposed works will clearly require removal of the two street trees forward of the property. The street trees in Addison Road are listed items of Environmental Heritage under Manly LEP. Advice provided at pre-lodgement indicated that removal of the street trees would not be supported. The proposal is not supported with regard to landscape issues due to proposed removal of the trees.
NECC (Bushland and Biodiversity)	Supported, subject to conditions

Internal Referral Body	Comments
	The comments in this referral relate to the following applicable controls and provisions: • NSW Biodiversity Conservation Act 2016 (BC Act) • NSW Biodiversity Conservation Regulation 2017 (BC Regulation) • Manly LEP Clause 6.5 (Terrestrial Biodiversity) • Manly DCP Clause 5.4.2 (Threatened Species and Critical Habitat Lands) • Manly DCP Clause 3.3.1.a.v (Landscaping Design – bandicoot habitat) The proposal has been submitted with a Flora and Fauna Assessment which includes a 5 part test of significance that has assessed the impacts to the Threatened Long-nosed bandicoot population of North Head. The report has concluded that the proposal in its current form would not represent a significant impact to the Long-nosed bandicoot population of North Head. Additionally, the report has also reviewed the submitted landscape plan (EZI Grow, December 2023) and concluded that the species selection would complement the areas that would remain accessible to Long-nosed bandicoots by providing adequate foraging habitat. The submitted arborist report has assessed the condition of a total of 9 trees and recommended the removal of all trees except tree 2 (<i>Cupaniopsis anacardioides</i>) and recommended the removal of tree 1 (<i>Ficus microcarpa</i>) which is a tree found on the council verge. The findings of the arborist report are inconsistent with the provided master plans which show that Tree 1 will be retained and tree 2 is to be removed. This matter is deferred to the Landscape referral body as the trees in question are found outside of the property boundary. The development is designed, sited and will be managed to avoid any significant adverse environmental impact.
NECC (Development Engineering)	<i>Supported, subject to conditions</i> <u>Amended Comments (17 September 2024):</u> The applicants arborist has now provided an alternative vehicle crossing detail which will minimise impacts on the fig tree's root system . Councils non standard vehicle crossing detail will be specified no objections subject to conditions . <u>Amended Comments (22 July 2024):</u> The applicant has now demonstrated safe vehicle access to both garages . However Councils Landscape Officer does not support the location of the proposed vehicle crossing because of the unresolved impacts on the existing root system of the heritage listed fig tree . The officers comments in part are presented below. It was originally suggested at the Pre Lodgement meeting that the vehicle crossing

Internal Referral Body	Comments			
	should be located towards the east where the existing tukeroo is located limited these imapcts, this may be the only viable option. The application is not supported. <i>This is not to say that no development can be undertaken on the site. The proposed dwelling and associated works could be supported with specific tree protection and supervision conditions to reduce impacts on the tree's roots, however, the extent of root impact in critical areas of the root system (particularly forward of the existing dwelling) that would result from the road, layback crossover, driveway and drainage works as indicated on the plans cannot be supported in this instance.</i> <u>Amended Comments (2 July 2024):</u> The proposed driveway crossing /garage vehicle turning template plans as prepared by TEF Consulting have been reviewed and an additional turning template demonstration is required to demonstrate safe vehicle manoeuvring into the proposed garages. The vehicle turning path from Addison Road (Heading in an Easterly direction) is to demonstrate safe vehicle manoeuvring into the garage of dwelling no 111 Addison Road. Please note Councils Aborist is to provide comments on the impacts of the proximity of the proposed vehicle crossing on the existing root system of the Fig tree. The application is not supported additional information required. <u>Original Comments (1 May 2024):</u> The proposed development application for a dual residence and subdivision is not supported for the following reasons: 1) the proposed western access driveway and vehicle crossing is not able to be constructed in accordance with councils engineering specifications . The location of the vehicle crossing is compromised by the location of an existing mature fig tree and its root system which will prevent safe vehicle access from Addison road as the standard vehicle access profile is blocked by the tree root system. Additionally the trunk of the tree also will compromise safe vehicle access and will result in a vehicle crossing the footpath across the neighbours driveway in diagonal direction. One vehicle access point is recommended clear of the street trees root system. The stormwater management plan as prepared by Taylor consultants has been reviewed and is satisfactory.			
Strategic and Place Planning (Heritage Officer)	Supported, subject to conditions <table><tr><th>HERITAGE COMMENTS</th></tr><tr><th>Discussion of reason for referral</th></tr><tr><td>The proposal has been referred to Heritage as the subject site is</td></tr></table>	HERITAGE COMMENTS	Discussion of reason for referral	The proposal has been referred to Heritage as the subject site is
HERITAGE COMMENTS				
Discussion of reason for referral				
The proposal has been referred to Heritage as the subject site is				

Internal Referral Body	Comments
	within the vicinity of a number of heritage items, listed in Schedule 5 of Manly Local Environmental Plan 2013: Item I72 - Houses - 95, 97–99 and 101 Addison Road Item I88 - House - 105 Bower Street Item I87 - House - 101 Bower Street Item I76 - Street trees - Addison Road (from Bruce Avenue to Reddall Street) Item I2 - All stone kerbs - Manly municipal area Details of heritage items affected Details of the heritage items as contained within the Northern Beaches Heritage Inventory are: Item I72 - Houses <u>Statement of significance:</u> Representative examples of Victorian period houses. <u>Physical description:</u> 95 Addison Road: Victorian Italianate style pair of semi with rendered walls, elaborate bracketed eaves and vermiculated panels below eaves and 3 storey (including the lower ground level) bay windows. (c1890) 97-99 Addison Road: 2 storey Victorian Italianate style semi detached house with rendered walls and faceted bay window to ground floor with balcony above. (c1890) 101 Addison Road: Single storey Victorian Filigree style rendered house with gabled roof to sides and skillion roof to verandah roof. Verandah features flat iron columns with iron lace brackets and frieze. (c1870) Item I88 - House <u>Statement of significance:</u> Fine and unusual example of Federation Arts & Crafts style house, featuring spectacular gabled roof and elaborate timber shingling. <u>Physical description:</u> Two storey Federation Arts & Crafts style house, face brick, with gabled unglazed terracotta tile roof featuring huge timber shingled gable ends to three sides, the front one including a recessed balcony. Features 6-paned sashes to timber framed double hung windows, and plain, rectangular brick chimneys. Item I76 - Street trees <u>Statement of significance:</u> Permanent mature street planting of late 19th century and early 20th century (from Bruce Avenue to Reddall Street) <u>Physical description:</u> Mixture of species planted in carriageway; includes Norfolk Island Pines, Port Jackson Figs, Ficus Hilli.

Internal Referral Body	Comments																					
	Item I2 - All stone kerbs <u>Statement of significance:</u> Stone kerbs are heritage listed. <u>Physical description:</u> Sandstone kerbing to streets relating to paving and kerbing of streets in the nineteenth century. Mostly located within Manly Village area and adjacent lower slopes of Eastern Hill and Fairlight. <table><tr><th colspan="3">Other relevant heritage listings</th></tr><tr><td>SEPP (Biodiversity and Conservation) 2021</td><td>No</td><td></td></tr><tr><td>Australian Heritage Register</td><td>No</td><td></td></tr><tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr><tr><td>National Trust of Aust (NSW) Register</td><td>No</td><td></td></tr><tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td><td></td></tr><tr><td>Other</td><td>No</td><td></td></tr></table> Consideration of Application <u>Original Comments (7 March 2024):</u> The proposal seeks consent for the demolition of the existing site structures, the construction of semi-detached dwellings and the Torrens Title subdivision. The existing building is not a heritage listed property, however it dates back to early 1900s, built in Federation style and retains the original, built form, roof form, chimneys and some external decorations. Therefore, the potential significance of the existing property must be addressed within the report. The character of the surrounding locality is consistent with the existing dwelling with two recent buildings along the southern side of Addison Road, and the northern side of Addison Road, between Reddall Street and Darley Road, mainly consists of the late 1800s and early 1900s dwellings. Therefore, the proposed bulk and scale is considered to be inconsistent with the character of the locality and the streetscape. Two heritage listed street trees are located within the road reserve outside the subject property. It is noted that the arborist report is contrary to the landscaping plan and architectural drawings. In the Pre-lodgement meeting Heritage recommended to redesign the proposal <i>"...to remove the double driveway in favour of a single driveway serving only one dwelling at the eastern end of the site closer to 20 Reddal Street. The tuckeroo does not form part of the street tree listing and heritage raises no objections to its removal. A single driveway will reduce impact to the heritage tree and reduce the extent of sandstone kerb removal."</i> and <i>"Heritage would really prefer no driveway at all to retain all the sandstone kerbs."</i>	Other relevant heritage listings			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	No	
Other relevant heritage listings																						
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	No																					

Internal Referral Body	Comments
	Although the double driveway has been removed in the current application, it is now been replaced with two single driveways (the architectural plans show a garage and a carport on both sides of the subject site) and the proposal is still considered to impact the heritage item and its significance. <u>Amended Comments (27 March 2024):</u> Amended Arborist Report dated 19 March 2024 is now showing the retention of the heritage listed tree, however it is not clarified how the proposed carport and garage for 111 Addison Road - western side of the subdivision - will have an access from Addison Road, as the architectural drawings or SEE have not been updated. <u>Amended Comments (13 August 2024):</u> Amended documents provide improvements to the proposal, including the reconfiguration of the plans and their reflection on the elevations. However, the location of the driveway cross-over is still a concern for the health of the heritage listed tree outside the subject site, as the proposed new location involves the removal of its roots. Landscape Referral comments raised concern regarding the health of the Fig tree and also another street tree located near the south-western corner of the subject site, as stated below: <i>"The Arborist's report indicates that removal of the roots and root mass in the road reserve (Fig. 1) would not have a detrimental impact on the tree. In my opinion, removal of these roots would have a detrimental impact on the tree."</i> <i>"In addition to the impacts on the Heritage listed Fig Tree, it is evident that a major encroachment on the other street tree to the east (Cupaniopsis anacardioides - Cheese Tree) would also be exacerbated by the installation of the crossover works in the road reserve...."</i> It is noted that Landscape Referral Comments have raised real concerns with regard to the impact of the proposal upon the health of these heritage listed the trees. Heritage can only support the application on the basis that the health of the heritage listed street trees are not affected by the proposed works. <u>Amended Comments (17 September 2024):</u> It is noted that the amended documents addressed the majority of concerns raised by the Landscape Officer subject to a number of conditions to ensure the protection of the heritage listed street tree (Fig Tree) outside the property and the other tree to the east (Cupaniopsis anacardioides - Cheese Tree). Therefore, no objections are raised on heritage grounds subject to one condition, requiring a photographic archival recording of the existing dwelling.

Internal Referral Body	Comments
	<u>Consider against the provisions of CL5.10 of Manly LEP 2013.</u> 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? Heritage impact to be further addressed in SEE.

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)

Housing and Productivity Contribution

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

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

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

Comment:

The proposed development involves subdivision of the existing lot into two and provision of two semi-detached dwellings, and is sited within the Greater Sydney region. As such, the contribution payable is \$12,000.

SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No. 1751601M dated 14 June 2024).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 4 Coastal use area

2.11 Development on land within the coastal use area

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

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

Comment:

The proposed development is supported by a geotechnical risk assessment report, biodiversity report, and plans that demonstrate the proposed development is of acceptably low risk in relation to the matters above at (a). As such, the proposed development is designed, sited and will be managed so as not to result in adverse impact, with reference to (b). The proposed development has been reviewed by Council's Development Engineer, who is supportive of the application, subject to conditions of consent. The proposal has been considered in relation to the coastal and built environment, bulk and scale throughout the assessment, as demonstrated within this report.

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:

Given the above, the consent authority can be satisfied that the proposed development is designed such that it will not result in increased risk of coastal hazards on the subject site or surrounding 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.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
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Minimum subdivision lot size:	Min. 250m ²	Lot 1: 279.6m ²	-	Yes
		Lot 2: 279.6m ²	-	Yes
Height of Buildings:	Max. 8.5m	Max. 7.8m	-	Yes
Floor Space Ratio	0.6:1 167.76m ² per lot	Lot 1: 0.64:1 (179.3m ²)	6.88%	No
		Lot 2: 0.64:1 (179.3m ²)	6.88%	No

Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision—consent requirements	Yes
4.1 Minimum subdivision lot size	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

Zone R1 General Residential

The underlying objectives of the R1 General Residential zone are addressed as follows:

To provide for the housing needs of the community.

Comment:

The proposed development increases the housing provision from the land, by demolishing the existing dwelling house, and proposing two new semi-detached dwelling houses. This serves the growing housing needs of the community.

To provide for a variety of housing types and densities.

Comment:

The proposed development is for construction of two semi-detached dwelling houses, being a residential development type compatible with the surrounding area.

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

Comment:

Not applicable. The proposed development retains the residential use of the land.

4.4 Floor space ratio

The proposed development seeks a 6.88% variation to the floor space ratio development standard, as detailed in the section of this report relating to Clause 4.6 Exceptions to Development Standards of the Manly Local Environmental Plan 2013. The objectives of this clause are addressed as follows:

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

Comment:

The surrounding area is developed with a variety of residential development types, including detached dwelling houses, semi-detached dwellings, and multi-storey residential flat buildings. It is noted that building height varies significantly in the surrounding area. Buildings in the visual catchment of the site are typically of generous bulk and scale and minimal setbacks. Along the north-western side of Addison Road (on which the subject site is located), dwellings are set close to the front boundary, forming a reduced prevailing building line, with minimal side separation. The proposed development is consistent with this, providing similar form as it presents to the streetscape.

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

Comment:

Despite its non-compliance with the floor space ratio, the proposed development is designed and sited so as not to obscure any important landscape and townscape features from any vantage point.

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

Comment:

The proposed development provides a suitable balance between new development and retention of the existing character in that it is compatible with the surrounding general bulk and scale of development, and retains an acceptable landscape presentation in the front yard.

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

Comment:

The proposed development does not result in any unreasonable amenity impacts for the subject site or surrounding/adjoining sites, as detailed throughout this report.

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

Comment:

Not applicable. The subject site is within the R1 General Residential zone.

4.6 Exceptions to development standards

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

Development standard: Clause 4.4 Floor Space Ratio

Requirement: 0.6:1 (167.76m² per lot)

Proposed: 0.64:1 (179.3m² per lot)

Percentage of variation: 6.88%

With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is/is not accompanied by a document that sets out the grounds on which the Applicant seeks to demonstrate the matters set out in Clause 4.6(3)(a) and (b) of the MLEP 2013 (the

'Clause 4.6 Request').

Subclause (1) of this clause provides that:

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

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

Comment:

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

Subclause (2) of this clause provides that:

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

Comment:

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

Subclause (3) of this clause provides that:

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

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

Comment:

Council is satisfied that the Applicant has demonstrated that compliance with Clause 4.4 Floor Space Ratio is unreasonable or unnecessary in the circumstances of this application, as the proposed development is demonstrably consistent with the objectives of Clause 4.4 and the objectives of the R1 General Residential zone. Assessment of these objectives is detailed in the relevant sections of this assessment report.

(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 proposal achieves a high level of compliance with associated LEP and DCP controls with regard to building height, wall height, total open space and soft landscaping despite the minor non-compliance with the FSR control. Varying side setbacks achieve a highly articulated built form which will minimise any perceived visual bulk when viewed from adjoining properties. The front and rear setbacks are compliant.*
- *The semi-detached development proposes a 2 storey built form which is consistent with the number of storeys anticipated within the DCP. Within the context of surrounding development the dwellings would not be seen as inappropriate or jarring in a streetscape or broader urban context.*
- *The development does not raise any unreasonable amenity impacts with regard to overshadowing, privacy or view loss.*
- *The development will provide a significant enhancement of soft landscaping across the site in excess of the requirement within the DCP. The ability to provide extensive landscaping, including new native trees, speaks to the reasonableness of the proposal with regard to its footprint and scale. The proposed landscaping will further achieve softening and screening of the development.*
- *The height, bulk and scale of the development, as reflected by floor space, is compatible with the built form characteristics established by adjoining development and development generally within the site's visual catchment.*

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

- The variations to the floor space ratio to each lot is minor, and the development is generally compliant with remaining built form and landscaping controls (or otherwise acceptable on merit).
- The proposed development retains a bulk and form consistent with the streetscape.
- The proposed development does not result in unreasonable amenity impacts, as detailed throughout this report.

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 MLEP 2013.

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

6.2 Earthworks

The objectives of Clause 6.2 Earthworks require development:

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

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

- (f) the likelihood of disturbing relics*

Comment:

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

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

Comment:

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

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

Comment:

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

6.4 Stormwater management

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

6.5 Terrestrial biodiversity

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

(a) protecting native fauna and flora, and

(b) protecting the ecological processes necessary for their continued existence, and

(c) encouraging the conservation and recovery of native fauna and flora and their habitats.

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

(a) whether the development is likely to have:

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

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

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

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

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

Comment:

The application was referred to Council's Bushland & Biodiversity team, who are supportive of the proposed works, subject to recommended conditions of consent. As such, the consent authority can be satisfied that the development will not have adverse impact on the matters above and that appropriate measures have been taken to avoid, minimise and mitigate the impacts of the development.

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

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

Comment:

The application was referred to Council's Bushland & Biodiversity team, who are supportive of the proposed works, subject to recommended conditions of consent. As such, the consent authority can be satisfied that the development is designed, sited and will be managed to avoid any significant adverse environmental impact.

6.8 Landslide risk

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

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

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

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

Comment:

The application is supported by a geotechnical report, stormwater management plans, a waste management plan, and architectural plans that demonstrate the proposed development is of acceptably low landslide risk. The proposed development has been reviewed by Council's Development Engineer, who raised no objection to the proposal, subject to recommended conditions of consent.

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

- (a) the development is designed, sited and will be managed to avoid any landslide risk or significant adverse impact on the development and the land surrounding the development, or*
- (b) if that risk or impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that risk or impact, or*
- (c) if that risk or impact cannot be minimised—the development will be managed to mitigate that risk or impact.*

Comment:

Given the above, the consent authority can be satisfied that proposed development is demonstrably designed, site and will be managed to avoid risk and adverse impact.

6.9 Foreshore scenic protection area

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

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

Comment:

The subject site does not adjoin foreshore land, but is within the foreshore scenic protection area. The proposed development:

- does not unreasonably impact upon the visual amenity of the foreshore and surrounds, and does not result in view loss from a public place to the foreshore,
- is not visible from the coastline, so does not impact upon its scenic quality,
- is suitable in its site context, and
- does not result in conflict between land-based and water-based coastal activities.

6.12 Essential services

Under this clause, development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

- (a) *the supply of water,*
- (b) *the supply of electricity,*
- (c) *the disposal and management of sewage,*
- (d) *stormwater drainage or on-site conservation,*
- (e) *suitable vehicular access.*

Comment:

The subject site is supplied with the above essential services. The proposed development retains and relies upon these services.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 559.3m²	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: Max. 1 dwelling per 250m ²	Lot 1: 1 dwelling per 279.65m ²	-	Yes
		Lot 2: 1 dwelling per 279.65m ²	-	Yes
	Dwelling Size: Min. 112m ² per dwelling	Lot 1: 179.3m ²	-	Yes
		Lot 2: 179.3m ²	-	Yes

4.1.2.1 Wall Height (based on flat gradient)	Lot 1 NE: Max. 6.5m	Max. 6.2m	-	Yes
	Lot 2 SW: Max. 6.5m	Max. 6.3m	-	Yes
4.1.2.2 Number of Storeys	Max. 2 Storeys	Lot 1: 2 storeys	-	Yes
		Lot 2: 2 storeys	-	Yes
4.1.2.3 Roof Height	Height: Max. 2.5m	Lot 1: 1.6m	-	Yes
		Lot 2: 1.6m		Yes
	Pitch: Max. 35 degrees	Lot 1: 8 degrees	-	Yes
		Lot 2: 8 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / Min. 6m	Lot 1 Dwelling: Min. 4.1m (prevailing)	-	Yes
		Lot 2 Dwelling: Min. 4.1m (prevailing)	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	NE Ground: Min. 1m	Lot 1: 900mm	10%	No
	NE First: Min. 2.06m	Lot 1: Min. 1.02m	50.48%	No
	SW Ground: Min. 1.06m	Lot 2: 900mm	15.6%	No
	SW First: Min. 2.1m	Lot 2: Min. 1.02m	51.43%	No
	Windows: Min. 3m	Lot 1 NE: Min. 900mm	70%	No
		Lot 2 SW: Min. 900mm	70%	No
4.1.4.4 Rear Setbacks	Min. 8m	Lot 1 Deck: Min. 6m	25%	No
		Lot 1 Dwelling: Min. 8m	-	Yes
		Lot 2 Deck: 6m	25%	No
		Lot 2 Dwelling: Min. 8m	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Total Open Space: Min. 55% of Site (153.78m ²)	Lot 1: 45.65% (127.4m ²)	17.15%	No
		Lot 2: 45.65% (127.4m ²)	17.15%	No
	Above Ground: Max. 25% of TOS (31.85m ²)	Lot 1: 11.5m ²	-	Yes
		Lot 2: 11.5m ²	-	Yes
4.1.5.2 Landscaped Area	Landscaped Area: Min. 35% of TOS (44.59m ²)	Lot 1: 69.46% (88.5m ²)	-	Yes
		Lot 2: 69.46% (88.5m ²)	-	Yes
	Min. 1 native tree	Lot 1: 1 tree	-	Yes
		Lot 2: 1 tree	-	Yes
4.1.5.3 Private Open Space	Min. 18m ²	Lot 1: 88.3m ²	-	Yes

		Lot 2: 88.3m ²	-	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Max. 50% of frontage, up to 6.2m	Lot 1: 34.9%, 3.2m	-	Yes
		Lot 2: 34.9%, 3.2m	-	Yes
4.1.10 Fencing	Max. 1.5m (30% transparent)	Max. 2.2m	46.67%	No
Schedule 3 Parking and Access	Min. 2 Spaces	Lot 1: 1 space	50%	No
		Lot 2: 1 space	50%	No

Compliance Assessment

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

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.10 Fencing	No	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
4.4.8 Subdivision	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

The proposed development is consistent with the requirements of this control with respect to the private open space of the adjoining property to the south-west, at 109 Addison Road. An assessment of the proposed development's impact with respect to living room windows and solar panels at 109 Addison Road is provided as follows with reference to the objectives of the control:

Objective 1) To provide equitable access to light and sunshine.

Comment:

For the reasons detailed below, it is established that the proposed development is designed and sited so as to retain equitable and acceptable solar access for the adjoining property to the south-west at 109 Addison Road.

Objective 2) To allow adequate sunlight to penetrate:

- *private open spaces within the development site; and*
- *private open spaces and windows to the living spaces/ habitable rooms of both the development and the adjoining properties.*

Comment:

The proposed development allows for the required solar access to the private open spaces of the subject site and adjoining sites. It is noted that the adjoining property to the south-west at 109 Addison Road has one living room window, which is orientated towards the south-east. Given that orientation, it is not reasonable to require retention of solar access to this window, as it would prevent redevelopment of the subject site to an unreasonable extent. It is noted that the living room at 109 Addison Road benefits from a wide north-facing bi-fold door opening, which provides ample direct sunlight to that room. The proposed development does not impact upon solar access to that room.

Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:

- *encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and*
- *maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.*

Comment:

The proposed development is generously modulated, with the inclusion of stepped built form and central courtyards. The proposed development includes non-compliance with the side setback control to the south-west, though this is established as acceptable for the reasons detailed in the section of this report relating to Clause 4.1.4 Setbacks of the Manly Development Control Plan 2013.

This control requires retention of a minimum of six hours solar access be retained to solar collectors on neighbouring properties. 109 Addison Road to the south-west includes solar panels in the north-eastern corner of its roof, which will receive less than six hours of full sunlight as a result of the development. It should be noted that 109 Addison Road is single-storey in height, with a roof height well below the applicable maximum building height. Solar panels at this elevation and location are difficult to wholly protect, as full retention of solar access would unreasonably restrict development of the subject site.

The submitted shadow diagrams demonstrate that the panels would receive a small amount of direct sun at 9am, and that solar access increases rapidly to full direct sun before midday. Given there is no period between 9am and 3pm in midwinter that the panels would be wholly without sun, and given the above factors, it is considered that a reasonable level of solar access is provided to the solar panels in consideration of the site and its context.

3.4.2 Privacy and Security

Submissions raised concern about visual privacy impact arising from the upper level side and rear windows, and the upper level rear balconies. The development is considered against the underlying objectives of the control as follows:

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

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

Comment:

The proposed development is designed and sited in consistency with the requirements of this control.

At the first floor, the windows within 3 metres of the side boundaries are for bedrooms and the void above the ground floor living room. These windows do not adjoin areas of recreation, and are for access to ambient light, rather than access to views. Further, the bedroom windows facing the boundary are predominantly orientated to the rear, away from the side boundaries, with a only small return portion of the windows being parallel to the side boundaries. The proposed first floor windows are not aligned with windows or private open spaces of 20 Reddall Street (adjoining to the north-east) and 109 Addison Road (adjoining to the south-west).

The first floor balcony and windows facing the north-west (rear, adjoining 18 Reddall Street) are set 8 metres and 9.1 metres from the rear boundary, respectively. This is in compliance with the rear setback control and provides adequate building separation for the purpose of privacy. Further, the rear boundary is demonstrated to be treated with trees that will achieve a mature height of 6 metres, which will assist with obscuring direct lines of sight to 18 Reddall Street.

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

Comment:

The proposed development provides a reasonable balance between providing suitable access to light and air for the subject site, while adequately protecting the amenity of surrounding sites.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposed development includes windows and balcony spaces fronting the street, thereby encouraging passive surveillance and neighbourhood security.

3.4.3 Maintenance of Views

The submission from Unit 6 at 20 Reddall Street, Manly raised concern that the proposed development will result in view loss to that property. The development is considered against the underlying objectives of the control as follows:

Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.

Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).

Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.

Comment:

In determining the extent of potential view loss to adjoining and nearby properties with respect to the above objectives, the four (4) planning principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*, are applied to the proposal.

1. Nature of the views affected

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

Comment to Principle 1:

The affected view from Unit 6, 20 Reddall Street is of other properties (rooftops), distant and partially obscured water views, and distant district views to Dobroyd Head. The view does not contain any icons.

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

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

Comment to Principle 2:

The affected view from Unit 6, 20 Reddall Street is obtained across the south-western rear boundary, from a standing position in the kitchen and at the external stair landing.

3. Extent of impact

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

Comment to Principle 3:

The extent of the impact on the view from Unit 6, 20 Reddall Street as a result of the development is minor. The development is anticipated to obscure view to the nearby rooftops and some distant vegetation, and is not anticipated to impact upon the partial water and district views (which are of value to the occupant of Unit 6).



Above: The view from the kitchen of Unit 6, 20 Reddall Street, from a standing position, looking south-west.



Above: The view from external stair landing of Unit 6, 20 Reddall Street, from a standing position, looking south-west.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

The impact on the view from Unit 6, 20 Reddall Street is not the result of any built form non-compliance. Given the minor extent of view loss, and in consideration of the expansive views afforded to the unit towards the north-east, east, and south-east (containing the ocean and St Patrick's Estate), the proposed development is reasonable in its context without amendment.

The proposed development's impact on views is included as a reason for refusal.

4.1.3 Floor Space Ratio (FSR)

The proposed development includes variation to the applicable floor space ratio development standard for each of the proposed semi-detached dwellings. The variation is considered on merit in the section of this report relating to Clause 4.6 Exceptions to Development Standards of the Manly Local Environmental Plan 2013.

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

The proposed development includes variation to the side setback control, at the ground and first floors. The control requires between 1 - 2.1 metres setbacks to the side boundaries (based on wall height) and the proposal includes encroachments to within 900 millimetres of the boundaries. The proposed development also includes an encroachment to the rear boundary for the purpose of the decks, which

are 6 metres from the rear boundary, where 8 metres is required. Finally, the proposed development includes new side-facing windows within 3 metres of the side boundaries. With regard to the consideration for a variations, the development is considered against the underlying objectives of the control as follows:

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

Comment:

The proposed non-compliant elements described above are consistent with the built form character along Addison Road. The proposed development includes semi-detached dwellings sited in such a way that is consistent with the predominant street alignment. This allows for suitable provision of landscaping in the front yard, so as to maintain the desired spatial proportions of the street, the street edge and the landscape character of Addison Road.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

With respect to the non-compliant side-facing windows, side setbacks and rear decks, the proposed development does not result in any unreasonable privacy outcome.

At the ground floor, the windows within 3 metres of the side boundaries are for the family room of each new dwelling. These windows are located such that they would be set behind a boundary fence. At the first floor, the windows within 3 metres of the side boundaries are for bedrooms and the void above the ground floor living room. These windows do not adjoin areas of recreation, and are for access to ambient light, rather than access to views. Further, the bedroom windows facing the boundary are predominantly orientated to the rear, away from the side boundaries, with a only small return portion of the windows being parallel to the site boundaries. The proposed first floor windows are not aligned with windows or private open spaces of 20 Reddall Street (adjoining to the north-east) and 109 Addison Road (adjoining to the south-west).

The rear decks for each dwelling are set 6 metres from the rear boundary, where a minimum of 8 metres is required. The decks are level on the ground, so do not provide elevated view to adjoining properties. Further, the rear boundary is demonstrated to be treated with trees that will achieve a mature height of 6 metres, which will assist with obscuring direct lines of site to the rear. Given these factors, the decks are acceptable with respect to the rear boundary setback control.

The proposed development is demonstrably acceptable with respect to the requirements of the Manly Development Control Plan 2013 with respect to light and view sharing, as detailed in the relevant sections of this report. The proposed development is of a type and location consistent with the character of Addison Road, and maintains the existing rhythm and pattern of spaces. The proposed development is designed in such a way to facilitate safe vehicular movements with sufficient visibility, given the proposed compliant front setback.

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

Comment:

The proposed development is designed and sited so as to allow for reasonable development of the site, without unreasonable amenity impacts to the site itself or surrounding land. The proposed development includes generous modulation by way of stepped built form and inclusion of central courtyards., providing relief with respect to the bulk and scale as perceived from adjoining properties.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposed development is acceptable with respect to the applicable total open space requirement of the Manly Development Control Plan 2013 for the reasons detailed in this report and is compliant with the applicable landscaped area requirement of the Manly Development Control Plan 2013, providing ample deep soil and vegetation. The subject site does not adjoin or impact upon open space lands, National Parks or urban bushland.

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

Comment:

Not applicable. The subject site is not classified as bush fire prone land.

4.1.5 Open Space and Landscaping

The proposed development includes 45.65% of each of the two proposed lots (127.4m²) as total open space, where 55% of the site (153.78m²) is required. With regard to the consideration for a variations, the development is considered against the underlying objectives of the control as follows:

Objective 1) To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.

Comment:

The site does not contain any significant or valuable landscape features that would be impacted by the development.

Objective 2) To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.

Comment:

The proposal provides for compliant landscaped area in accordance with the requirements of this control. The proposed development includes planting in the front, side and rear setback areas, consistent with the surrounding area.

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

Comment:

The proposed development is acceptable with respect to the requirements of Clauses 3.4.1 Sunlight Access and Overshadowing and 3.4.2 Privacy and Security of the Manly Development Control Plan 2013, as detailed in the relevant sections of this report, demonstrating that reasonable amenity is retained for adjoining sites.

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

Comment:

The development is supported by sufficient stormwater management measures, and includes an appropriate proportion of landscaped area to support infiltration.

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

Comment:

The proposed development includes appropriate planting species so as not to introduce weeds or invasive plants.

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

Comment:

The site is located in an urban environment and enhances the landscaped outcome for the site. The site is not within a wildlife corridor.

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

The proposed development includes parking space per lot, where two spaces per dwelling are required. With regard to the consideration for a variations, the development is considered against the underlying objectives of the control as follows:

Objective 1) To provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees).

Comment:

The proposed development includes accessible parking in a logical location on the site. The single garage space could be supplemented with informal parking on the driveway hardstand area where necessary to support users of the site and lessen the reliance on street parking.

Objective 2) To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances.

Comment:

The subject site is located within walking distance of bus and ferry public transport options, which reduces reliance on driving. Further, the single garage space could be supplemented with informal parking on the driveway hardstand area where necessary to support users of the site and reduce reliance on street parking.

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

Comment:

The proposed development is supported by swept path diagrams, demonstrating that the proposed garage spaces are easily and safely accessible by users of the site. The garages are integrated in the design of the dwellings, thereby reducing the visual impact of the development on the streetscape.

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

Comment:

The proposed parking spaces do not rely on significant earthworks, being generally level with the existing ground.

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

Comment:

The proposed development deletes the single existing informal driveway crossover and includes one new driveway crossover to service the two dwellings, thereby minimising the interruption to the footpath along Addison Road.

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

Comment:

The proposed development provides suitable total open space and landscaped area, so as to support infiltration of water and incorporate ample planting of a variety of vegetation types.

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

Comment:

The subject site is located within walking distance of bus and ferry public transport options, which reduces reliance on driving.

4.1.10 Fencing

Front fences are to be a maximum of 1 metre in height under this control, though may be increased to 1.5 metres in height where at least 30% of the fence is open/transparent for at least that part of the fence higher than 1 metre.

The proposed development includes fencing along approximately half of the frontage of each of the two proposed lots. The fencing along the frontage of Lot 2 (to the south-west) is compliant with this control, being 1.3 metres in height, with more than 30% transparency. The fencing along the frontage of Lot 1 (to the north-east) is more than 30% transparent, though reaches a maximum height of 2.2 metres, as it is proposed to sit atop the existing retaining wall at the front boundary of the site - the fence itself is 1.3 metres in height, above the existing 900-millimetre-high retaining wall. The fence reaches a maximum of 2.2 metres due to the slope of the land at the street.

The proposed fence is similar to that which exists at the frontage of the site currently in that it is entirely open (other than the existing retaining wall) though of a more modern design, and to a lesser proportion of the site's frontage to the street. In this way, the proposed fence achieves the intentions of this control, being to demarcate public and private land, retain an open street frontage, and to reduce the visual impact of front fencing.

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 \$21,602 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,160,245.

CONCLUSION

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

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

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

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

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

Council is satisfied that the Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify variation of the development standard contained within Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

PLANNING CONCLUSION

This development application seeks consent for demolition of an existing dwelling house, construction of two semi-detached dwellings, and subdivision of the existing lot into two.

The application was referred to the Development Determination Panel (DDP) due to receipt of five submissions objecting to the development.

The proposal includes a variation to the floor space ratio of 6.88% for each of the two proposed lots. The non-compliance with the floor space ratio development standard arises due to the form of development proposed, being two semi-detached dwellings in place of one detached dwelling house.

Within this report, detailed assessment was given to the request to vary the floor space ratio development standard, the proposed non-compliant setbacks and total open space, and the proposed number of parking spaces. Overall, in consideration of the variations and non-compliant elements proposed, the development is acceptable on merit.

Submissions raised concern regarding retention of fig tree, amenity (view sharing, privacy and solar access), non-compliance with built form controls, excessive bulk and scale, streetscape character, and stormwater management. These matters were addressed in detail within this report.

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

REASON FOR DETERMINATION

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

RECOMMENDATION

That Northern Beaches Council, as the consent authority, vary the development standard contained within Clause 4.4 Floor Space Ratio, pursuant to Clause 4.6 of the Manly Local Environmental Plan 2013 because the Applicant’s written request has adequately addressed the merits required to be demonstrated by subclause (3) of Clause 4.6.

Accordingly Council as the consent authority grant Development Consent to DA2024/0142 for Demolition and construction of 2 semi-detached dwellings with pools and 2 lot subdivision on land at Lot 1 DP 737826, 111 Addison Road, MANLY, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA03	D	Demolition Plan	Watershed Architects	22 August 2024
DA04	D	Site & Roof Plan	Watershed Architects	22 August 2024
DA05	D	Ground Floor Plan	Watershed Architects	22 August 2024
DA06	C	First Floor Plan	Watershed Architects	6 June 2024
DA07	C	Section AA	Watershed Architects	6 June 2024
DA08	D	Section BB	Watershed Architects	22 August 2024
DA09	C	North Elevation	Watershed Architects	6 June 2024
DA10	D	East Elevation	Watershed Architects	22 August 2024

DA11	D	Addison Rd - South Elevation	Watershed Architects	22 August 2024
DA12	D	West Elevation	Watershed Architects	22 August 2024
DA16	C	External Window and Door Schedule	Watershed Architects	6 June 2024
LP01	A	Landscape Plan (1 of 2)	Ezi Grow	13 June 2024
LP02	A	Landscape Plan (2 of 2)	Ezi Grow	13 June 2024
STORM-1/D	-	Stormwater Management Plan	Taylor Consulting	19 August 2024
STORM-2/C	-	Stormwater Management Details	Taylor Consulting	22 August 2024
STORM-3	-	Erosion and Sediment Control Plan	Taylor Consulting	13 June 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate	-	Bonnefin Consulting	14 June 2024
Arboricultural Impact Appraisal, Root Investigation and Method Statement	-	EziGrow	23 May 2024
Arboricultural Support Statement	-	EziGrow	28 May 2024
Arboricultural Support Statement	-	EziGrow	23 August 2024
Statement of Heritage Impact	-	Watershed Architects	7 June 2024
Terrestrial Biodiversity Report	-	ACS Environmental	21 December 2023
Report on Geotechnical Investigation	0	Crozier Geotechnical Consultants	20 December 2023
Waste Management Plan	-	Applicant	Undated

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

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

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

2. **Compliance with Other Department, Authority or Service Requirements**

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	4 March 2024

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

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

3. **Approved Land Use**

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a semi-detached dwelling in accordance with the Dictionary of the Manly Local Environmental Plan 2013, as follows:

Semi-detached dwelling means a dwelling that is on its own lot of land and is attached to only one other dwelling.

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

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

4. **Prescribed Conditions**

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

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and

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

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

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

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

Reason: Legislative requirement.

5. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1

per 20 persons.

- (f) Prior to the release of the Construction Certificate, payment of the following is required:
 - i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
 - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
 - iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;
- Relevant legislative requirements and relevant Australian Standards (including but not limited) to:
- (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2018
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$21,602.45 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$2,160,245.20.

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

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

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

Reason: To provide for contributions in accordance with the Contribution Plan to fund the

provision of new or augmented local infrastructure and services.

7. **Security Bond**

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

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

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

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

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

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

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

Contribution Type	Amount
Housing and Productivity Contribution	\$12,000.00
Strategic Biodiversity Component and/or Transport Project Component	\$ 0
Total:	\$12,000.00

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

highest PPI number

consent PPI number

where—

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

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

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

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

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

Development	Time by which HPC must be paid
Development consisting only of residential subdivision within the meaning of the HPC Order	Before the issue of the first subdivision certificate
High-density residential development within the meaning of the HPC Order for which no construction certificate is required	Before the issue of the first strata certificate
Development that consists only of residential strata subdivision (within the meaning of the HPC Order) or only of residential strata subdivision and a change of use of an existing building	Before the issue of the first strata certificate
Manufactured home estate for which no construction certificate is required	Manufactured home estate for which no construction certificate is required

4. The HPC must be paid using the NSW planning portal (<https://pp.planningportal.nsw.gov.au/>).
5. If the Minister administering the Environmental Planning and Assessment Act 1979 agrees, the HPC (apart from any transport project component) may be made, instead of as a monetary contribution, in the following ways:
 - a) the dedication or provision of land for the purpose of regional infrastructure in the region in which the development will be carried out,
 - b) the carrying out of works for the purpose of regional infrastructure in the region in which the HPC development will be carried out.

If the HPC is made partly as a monetary contribution, the amount of the part payable is the amount of the part adjusted in accordance with condition 2 at the time of payment.
6. Despite condition 1, a housing and productivity contribution is not required to be made to the extent that a planning agreement excludes the application of Subdivision 4 of Division 7.1 of the Environmental Planning and Assessment Act 1979 to the development, or the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023 exempts the development from the contribution. The amount of

the contribution may also be reduced under the order, including if payment is made before 1 July 2025.

Reason: Statutory requirement.

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

Crossing / Kerb & Gutter / Footpath Works

As security against any damage or failure to complete the construction of the non standard vehicular crossings, kerb and gutter and any required footpath works and removal of any redundant driveways required as part of this consent a bond of \$20000

Security Bond (Heritage listed tree)

As security against damage to Council's heritage listed fig tree fronting the site to protect against any physical damage caused site construction activities. The security bond as required by this consent is \$25000.

Security Bond

As security against damage to Council's roads fronting the site caused by the transport and disposal of materials and equipment to and from the site a bond of \$5000.

Details confirming payment of the bond(s) are to be submitted to the Principal Certifier prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

10. **Footing and Driveway Design Near Trees to be Retained**
1. Footing and structural layout plans for the works, including the driveway and crossover, shall be developed in co-ordination with an Arborist with AQF minimum Level 5 qualifications in arboriculture, and a qualified Structural/Civil Engineer, following a tree root mapping investigation near existing trees to locate critical tree roots and recommend footing design and locations for the construction works.
 2. The Arborist shall review, comment, recommend design revision as required and approve the footing layout, to ensure the locations of footings will not result in the removal of tree roots >25mm diameter.
 3. The Arborist shall submit certification to the Certifier, that the locations and levels of the footings, driveway and crossover are accepted.
 4. The agreed footing structural layout plans, including the driveway and crossover, shall be submitted to the Certifier for approval prior to the issue of a Construction Certificate.

Reason: Tree protection.

11. **Tree Protection Plan**

- a) A Tree Protection Plan shall be submitted to the Certifier for approval prior to the issue of a Construction Certificate, demonstrating tree protection measures in accordance with AS4970-2009 Protection of Trees on Development Sites, to protect the following trees:
 - i) Street Trees forward of the property - Tree 1 *Ficus microcarpa* and Tree 2 *Cupaniopsis anacardioides* as identified in the Arboricultural Impact Appraisal, Root Investigation and Method Statement dated 23 May 2024 prepared by Ezigrow
- b) The Tree Protection Plan shall be prepared by an Arborist with minimum AQF Level 5 in arboriculture in accordance with AS4970-2009 Protection of trees on development sites, incorporating the following:
 - i) location of all trees identified for retention, including extent of canopy,
 - ii) access routes throughout the site for construction activity,
 - iii) location of tree protection fencing / barriers,
 - iv) root protection in the form of mulching or boards proposed within the tree protection zone,
 - v) trunk and branch protection within the tree protection zone,
 - vi) location of stockpile areas and materials storage,
 - vii) tree management prior to works commencing (including pre-construction measures such as availability of water, and protection/enhancement of existing soil structure), during works and remediation measures following completion of works.
 - viii) Works stages or activities requiring on-site presence of and authorisation by the Project Arborist.

Reason: Tree protection.

12. Heritage Listed Trees

The site is adjacent to Heritage Listed Trees as identified in the Manly Local Environmental Plan. Heritage Listed Trees are to be protected from damage during construction.

- a) The following Heritage Listed Trees are located within the vicinity of the approved works:
 - i) Tree 1 *Ficus microcarpa* forward of the property as identified in the Arboricultural Impact Appraisal, Root Investigation and Method Statement dated 23 May 2024 prepared by Ezigrow

Reason: protection of significant community assets.

13. Fencing for Wildlife Passage – Ecologist Certification

Any new permanent fencing (with the exception of swimming pool fencing) is to be made passable to native fauna through the provision of access gaps or raised fencing to provide appropriate ground clearance. Any access gaps are to be a minimum of 150mm wide x 100mm high at ground level and spaced at a minimum of 6m intervals.

The Project Ecologist is to provide written certification of compliance to the Principal Certifier prior to issue of any Construction Certificate.

Reason: To preserve wildlife corridors.

14. On-Site Stormwater Detention Details

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by Taylor Consulting, drawing number STORM-1/D, 2/C, dated 18th August 2024. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

i. The PVC stormwater outlets located with Council's road reserve servicing proposed lot 111A and 111 B are to be deleted. The only stormwater discharge outlet is to be placed adjacent to the eastern side boundary (proposed lot 111B). The outlet is to be a 200x100mm galvanised RHS. A drainage easement shall be created over proposed lot 111B to provide for the installation of a drainage line to service Lot 111A.

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

15. Traffic Management and Control

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

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

16. Boundary Identification Survey

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

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

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

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

17. 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.

18. Submission Roads Act Application for Civil Works in the Public Road

The Applicant is to submit an application for approval for infrastructure works on Council's roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include Civil Engineering plans for the design of the non standard vehicle crossing in Council's footpath area which is to be in accordance with the Council's Drawing No 1601 -Final 8 and the alignment of the vehicle crossing as detailed on the Watershed Architects Plan DA05 Issue D. The plans shall be prepared by a qualified Civil Engineer. The design must include the following information: The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

An approval is to be submitted to the Principal Certifier prior to the issue of the Construction Certificate

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification.

19. Utilities Services

Prior to the issue of the Construction Certificate, written evidence of the following service provider requirements must be provided to the Principal Certifier:

- a) a letter from Ausgrid demonstrating that satisfactory arrangements can be made for the installation and supply of electricity,
- b) a response from Sydney Water as to whether the proposed works subject to this consent would affect any Sydney Water infrastructure, and whether further requirements need to be met, and
- c) other relevant utilities or services - that the development as proposed to be carried out is satisfactory to those other service providers, or if it is not, the changes that are required to make the development satisfactory to them.

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

Reason: To ensure relevant utility and service providers' requirements are provided to the Principal Certifier.

20. **Photographic Archival Record**

A photographic archival record of the site is to be made of all existing buildings and structures (including interiors and exteriors and their setting), generally in accordance with the guidelines issued by the NSW Heritage Division of the Department of Planning and Environment.

This record must be submitted and approved by Council's Heritage Advisor prior to the issue of the Construction Certificate and commencement of any demolition or works on-site. The photographic record should be made using digital technology, submitted on archival quality, and should include:

- Location of property, date of survey and author of survey;
- A site plan at a scale of 1:200 showing all structures and major landscape elements;
- Floor plans of any buildings at a scale of 1:100;
- Photographs which document the site, cross-referenced in accordance with recognised archival recording practice to catalogue sheets. The extent of documentation will depend on the nature of the item.

Reason: To provide an archival photographic record of this heritage property and any moveable heritage onsite, including any buildings and landscape elements, prior to the commencement of any works.

21. **Engagement of Project Ecologist**

A Project Ecologist is to be employed for the duration of the approved works to ensure all biodiversity protection measures are carried out in accordance with the Terrestrial Biodiversity Report (ACS Environmental P/L, December 2023).

The Project Ecologist must have one of the following memberships / accreditation:

- Practising member of the NSW Ecological Consultants Association (<https://www.ecansw.org.au/find-a-consultant/>) OR
- Biodiversity Assessment Method Accredited Assessor under the relevant legislation (<https://customer.lmbc.nsw.gov.au/assessment/AccreditedAssessor>)

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

Reason: To protect native vegetation and wildlife.

22. **Compliance with Standards**

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

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

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

23. **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

24. **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 supervision in accordance with the approved Tree Protection Plan and AS4970-2009 Protection of trees on development sites.

The Project Arborist shall be in attendance and supervise all works as nominated in the approved Tree Protection Plan, and in particular:

- a) Installation of the driveway and crossover
- b) Demolition works
- c) Excavation works
- d) Installation of services including stormwater pipes

All tree protection measures specified must:

- a) be in place before work commences on the site, and
- b) be maintained in good condition during the construction period, and
- c) remain in place for the duration of the construction works.

The Project Arborist shall provide certification to the Principal Certifier that all tree protection measures under the approved Tree protection Plan and AS4970-2009 have been satisfied, and the recommendations listed for the protection of the existing trees have been carried out satisfactorily to ensure no impact to the health of the trees. Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

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

Reason: Tree protection.

DURING BUILDING WORK

25. **Protection of Existing Street Trees**

All existing street trees in the vicinity of the works shall be retained during all construction stages, and the street trees fronting the development site shall be protected by tree protection fencing in accordance with the approved tree Protection Plan and Section 4 of AS4970-2009 Protection of trees on development sites. All fencing shall be located to allow for unrestricted and safe pedestrian access upon the road verge.

All street trees within the road verge are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any trees is prohibited. No excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of street trees without the express approval of the Project Arborist.

Reason: Street tree protection.

26. **Tree and Vegetation Protection**

- a) Existing trees and vegetation shall be retained and protected, including:
 - i) all trees within the site not indicated for removal on the approved Plans,
 - ii) all trees and vegetation located on adjoining properties,
 - iii) all trees and vegetation within the road reserve.
- b) Tree protection shall be undertaken as follows:
 - i) tree protection shall be in accordance with the approved tree Protection Plan and AS4970-2009 Protection of trees on development sites,
 - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by the Project Arborist,
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with the Project Arborist,
 - iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained without the express approval of the Project Arborist,
 - v) structures are to bridge or tunnel bore under tree roots at or >25mm (Ø) diameter unless directed by the Project Arborist on site,
 - vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone without consultation with the Project Arborist including advice on root protection measures,
 - vii) should either or all of v) or vi) occur during site establishment and construction works, the Project Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Project Arborist to the Principal Certifier,
 - viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,
 - ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
 - x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees and under the supervision of the Project Arborist,
 - xi) the tree protection measures specified in this clause must:
 - i) be in place before work commences on the site, and
 - ii) be maintained in good condition during the construction period, and
 - iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

- c) The arboricultural works listed in a) and b) are undertaken and certified by the Project Arborist as compliant to the approved Tree Protection Plan and AS4970-2009 Protection of trees on development sites.

Reason: Tree and vegetation protection.

27. **Condition of Trees**

During the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to or by seeking arboricultural advice from the Project Arborist during the works.

In this regard all protected trees shall not exhibit:

- i) a general decline in health and vigour,
- ii) damaged, crushed or dying roots due to poor pruning techniques,
- iii) more than 10% loss or dieback of roots, branches and foliage,
- iv) mechanical damage or bruising of bark and timber of roots, trunk and branches,
- v) yellowing of foliage or a thinning of the canopy untypical of its species,
- vi) an increase in the amount of deadwood not associated with normal growth,
- vii) an increase in kino or gum exudation,
- viii) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
- ix) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Project Arborist are to be implemented.

The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of trees.

28. **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.

29. **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.

30. **Wildlife Protection**

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

If an uninjured Long-nosed Bandicoot enters the worksite or is found during a survey of holes/stockpiles, works must cease until the Bandicoot has safely vacated the worksite. Any injured or dead Long-nosed Bandicoots found within the worksite must be reported to the National Parks & Wildlife Service (NPWS). For assistance to relocate a Bandicoot from the worksite, or to report a dead or injured Bandicoot, please contact:

- National Parks & Wildlife Service – Duty Officer (9457 9577)

Reason: To protect native wildlife.

31. **Bandicoot conservation measures - site inductions**

All workers are to be given an induction on bandicoot conservation measures prior to commencement of their duties on site. The site induction is to include information about:

- how to identify a bandicoot & the conservation significance of the endangered bandicoot population
- measures in place to be implemented for their protection
- who to contact should a bandicoot be identified on site and relevant contact details.

Written confirmation of this induction is to be signed by all workers and provided to the Principal Certifying Authority prior to issue of any Occupation Certificate.

Reason: To protect Long-nosed Bandicoots which may be utilising the site.

32. **Road Reserve**

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

Reason: Public safety.

33. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

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

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

34. **Traffic Control During Road Works**

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

Reason: Public Safety.

35. **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

36. **Required Tree Planting**

Trees shall be planted in accordance with the following:

- a) Minimum 2 locally native tree(s) shall be planted within the property (one on each Lot) to achieve at least 5 metres height at maturity, and in accordance with the following:
 - i) tree planting shall be a minimum pre-ordered planting size of 75 litres; generally selected from Northern Beaches Council's Native Plant Species Guide-Manly Ward; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and located either within garden bed or within a prepared bed within lawn,
 - ii) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces,
- b) Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of any Occupation Certificate.

Reason: To maintain environmental amenity.

37. **Landscape Completion**

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

- a) landscape works are to be contained within the legal property boundaries,
- b) all tree planting shall be a minimum pre-ordered planting size of 75 litres or as otherwise scheduled if greater in size; generally selected from Northern Beaches Council's Native Plant Species Guide, or Council's Tree Guide; to achieve at least (insert) metres height at maturity; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and located either within garden bed or within a prepared bed within lawn,

- c) tree, shrub and groundcover planting shall be installed as indicated on the approved Landscape Plans,
- d) mass planting shall be installed at minimum 1metre intervals for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch,

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

Reason: Environmental amenity.

38. **Condition of Retained Vegetation**

Prior to the issue of an Occupation Certificate, a report prepared by the Project Arborist shall be submitted to the Principal Certifier, assessing the health and impact on all existing trees required to be retained on the approved Plans , including the following information:

- a) compliance to any Arborist recommendations for tree protection generally and during excavation works,
- b) extent of damage sustained by vegetation as a result of the construction works,
- c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree and vegetation protection.

39. **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. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with the Taylor Consulting Plans Storm 1/D and 2/C and all relevant Australian Standards and Codes by the design 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.

41. **Reinstatement of Kerb**

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

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

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

42. **House Numbers**

House numbers are 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

43. **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.

BEFORE ISSUE OF A SUBDIVISION CERTIFICATE

44. **Certification of Civil Works and Works as Executed Data in accordance with Road Act Approval**

The Applicant shall submit a certification by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) that the completed vehicle crossing works been constructed in accordance with this consent and the approved Section 138 vehicle crossing application..

Reason: To ensure compliance of works with Council's specification for engineering works.

45. **Easement Creation**

The Applicant shall create an easement for drainage 1.0m wide (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision over proposed Lot 111B for the provision of a stormwater drainage line to service proposed Lot 111A. A survey is to accompany the Section 88B instrument to ensure all drainage infrastructure is located within the appropriate easement(s).

The Applicant shall create an easement for services (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision, to accompany the Section 88B instrument to ensure all utility services are located within the appropriate easement(s).

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

Reason: Council's Subdivision standards and statutory requirements of the Conveyancing Act 1919.

46. **Positive Covenant for On-site Stormwater Detention**

A positive covenant (under the provisions of Section 88B of the Conveyancing Act 1919) is to be created on the final plan of subdivision and accompanying 88B instrument, requiring the proprietor of the land to maintain the on-site stormwater detention structure in accordance with the standard requirements of Council. The terms of the positive covenant are to be prepared to

Council's standard requirements, which are available from Northern Beaches Council. Northern Beaches Council shall be nominated as the sole authority empowered to release, vary or modify such covenant.

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

Reason: To ensure ongoing maintenance of the on-site detention system.

47. **Provision of Services for Subdivision**

The applicant is to ensure all services including water, electricity, telephone and gas are provided, located and certified by a registered surveyor on a copy of the final plan of subdivision.

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

Reason: To ensure that utility services have been provided to the newly created lots.

48. **Reciprocal Right of Carriageway shared driveway area**

The Applicant shall create a right of carriageway (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision and accompanying 88B instrument, to include all vehicular access and manoeuvring areas. The Right of carriageway shall be consistent with the vehicle turning paths as detailed in the TEF consulting design plan DRW nos 24054 01-02 Issue D , 34054/03 Issue C.

Details demonstrating compliance are to be submitted to the Council prior to the issue of the Subdivision Certificate.

Reason: Council's subdivision standards and the statutory requirements of the Conveyancing Act 1919.

49. **Restriction as to User (On-site Stormwater Detention)**

The Applicant shall create a restriction as to user (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision and accompanying 88B instrument for the on-site stormwater detention system, restricting any alteration or additions to the system. The terms of such restriction are to be prepared to Council's standard requirements. Council shall be nominated as the party to release, vary or modify such restriction.

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

Reason: To ensure no modification to the on-site stormwater detention structure without Council's approval.

50. **Sydney Water Compliance Certification**

The Applicant shall submit a Section 73 Compliance Certificate under the Sydney Water Act 1994 issued by Sydney Water Corporation. Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au <<http://www.sydneywater.com.au>> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and fees to be paid. Please make early contact with the coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building,

driveway or landscape design.

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

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

51. **Subdivision Certificate Application**

The Applicant shall submit a Subdivision Certificate Application to Council, which is to include a completed Subdivision Certificate form and checklist, a final plan of subdivision prepared in accordance with the requirements of the Conveyancing Act 1919, the final plan of subdivision and all relevant documents including electronic copies. This documentation is to be submitted to Council prior to the issue of the Subdivision Certificate. All plans of survey are to show connections to at least two Survey Co-ordination Permanent Marks. The fee payable is to be in accordance with Council's fees and charges.

Reason: Statutory requirement of the Conveyancing Act 1919.

52. **Title Encumbrances**

The Applicant shall ensure all easements, rights of carriageway, positive covenants and restrictions as to user as detailed on the plans and required by the development consent are to be created on the title naming Council as the sole authority empowered to release or modify.

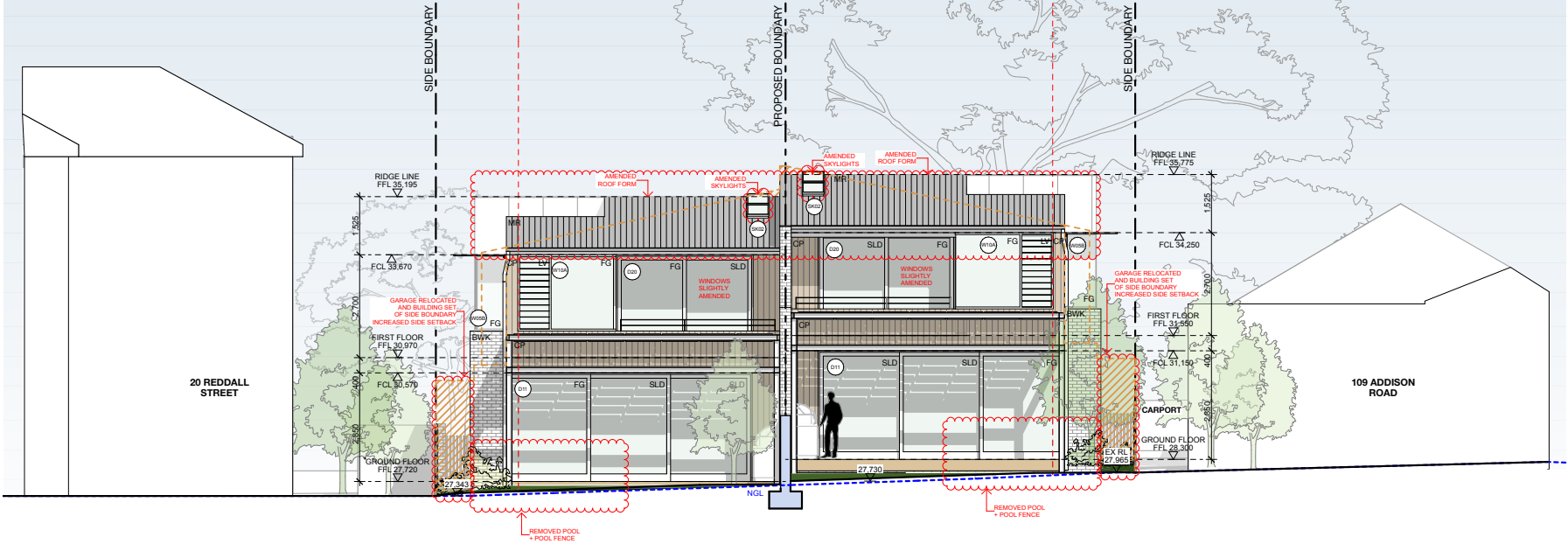
Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Subdivision Certificate.

Reason: To ensure proper management of land.

WALL TYPES

- EXISTING WALL / FLOOR / CEILING
- NEW WALL / FLOOR / CEILING
- TO BE DEMOLISHED
- AREA REDUCED / INCREASED SETBACKS FROM ORIGINAL DA
- PROPOSED AMENDMENTS TO DA

- LIST OF DA AMENDMENTS:
- AMENDED ROOF FORM
 - AMENDED SKYLIGHTS
 - GARAGE RELOCATED AND BUILDING SET BACK FROM SIDE BOUNDARY
 - INCREASED SIDE SETBACK
 - WINDOWS SLIGHTLY AMENDED (REFER TO SCHEDULES)
 - REMOVED POOL + POOL FENCE
 - AMENDED FLOOR LEVELS (LOWER)
 - LOWER & REDUCE COVERED ROOF TO REAR DECK
 - REDUCED DECK



Watershed\Architects

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

ISSUE FOR
A DA
B AMENDMENTS
C AMENDED DA

DATE
23/1/2024
12/4/2024
6/6/2024

JOB NO: 23006
ADDRESS: 111 ADDISON ROAD, MANLY
LOT 1 DP 737826
CLIENT: IAN MILLER
SCALE: 1:100 @ A3

NO CHANGES
NORTH ELEVATION
SHEET: DA09
ISSUE: C

WALL TYPES

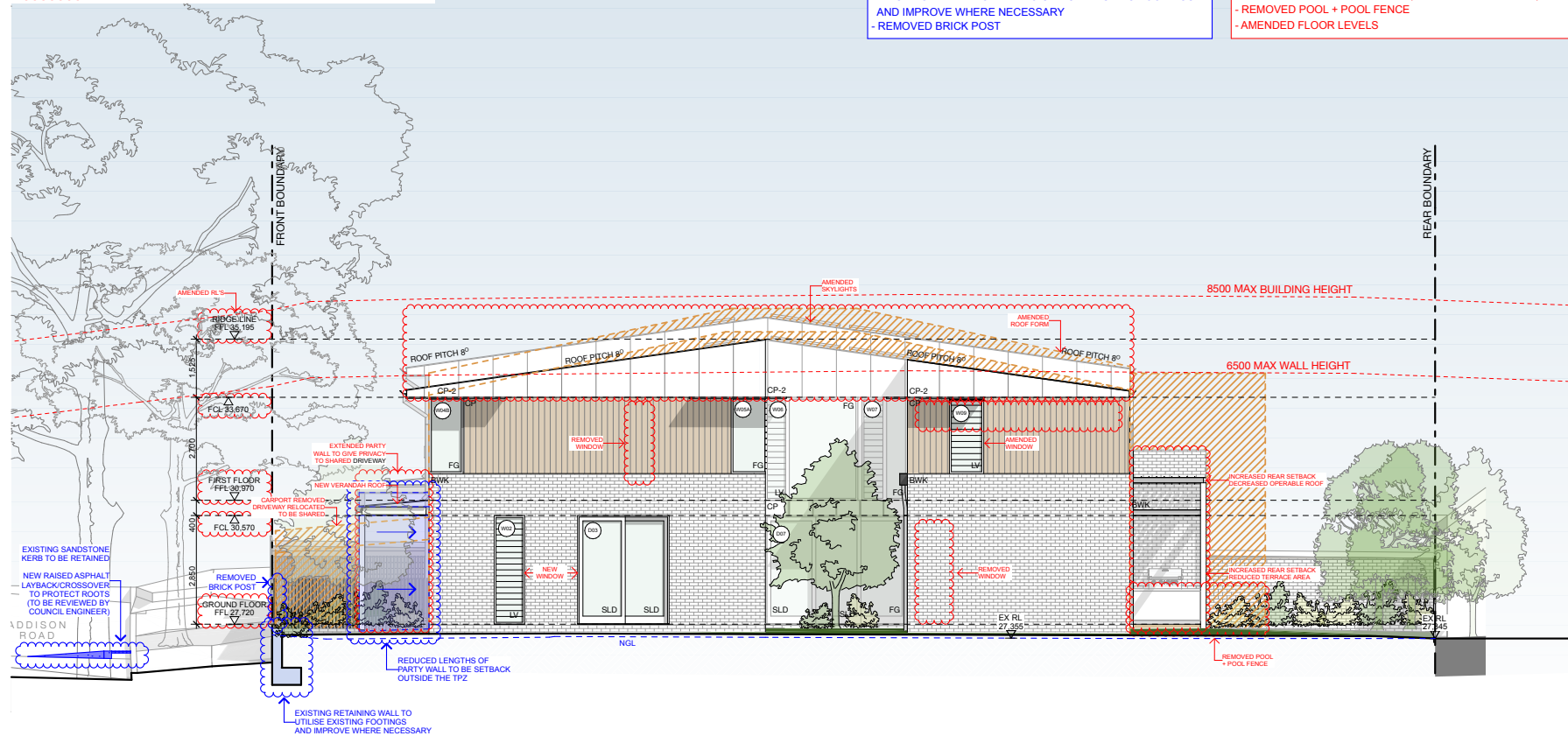
- | | |
|---|--|
|  | EXISTING WALL / FLOOR / CEILING |
|  | NEW WALL / FLOOR / CEILING |
|  | TO BE DEMOLISHED |
|  | AREA REDUCED / INCREASED SETBACKS FROM ORIGINAL DA |
|  | PROPOSED AMENDMENTS TO DA |

LIST OF DA AMENDMENTS - ISSUE D:

- EXISTING SANDSTONE KERB TO BE RETAINED
- NEW RAISED ASPHALT LAYBACK/CROSSOVER TO PROTECT ROOTS (TO BE REVIEWED BY COUNCIL ENGINEER)
- REDUCED LENGTHS OF PARTY WALL TO BE SETBACK OUTSIDE THE TPZ
- EXISTING RETAINING WALL TO UTILISE EXISTING FOOTINGS AND IMPROVE WHERE NECESSARY
- REMOVED BRICK POST

LIST OF DA AMENDMENTS:

- AMENDED ROOF FORM
- AMENDED SKYLIGHTS
- INCREASED REAR SETBACK, REDUCED TERRACE AREA, DECREASED OPERABLE ROOF
- CARPORT REMOVED, DRIVEWAY RELOCATED TO BE SHARED
- EXTENDED PARTY WALL
- NEW VERANDAH ROOF TO COMPLIMENT EXISTING
- WINDOWS SLIGHTLY AMENDED (REFER TO SCHEDULES)
- REMOVED POOL + POOL FENCE
- AMENDED FLOOR LEVELS



Watershed\\Architects

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

ISSUE	FOR	DATE
A	DA	23/1/2024
B	AMENDMENTS	12/4/2024
C	AMENDED DA	6/6/2024
D	AMENDED DA CROSSOVER/LAYBACK	22/8/2024

JOB NO: 23006
ADDRESS: 111 ADDISON ROAD, MANLY
LOT 1 DP 737826
CLIENT: IAN MILLER
SCALE: 1:100 @ A3

EAST ELEVATION

SHEET: DA10

ISSUE: D

WALL TYPES

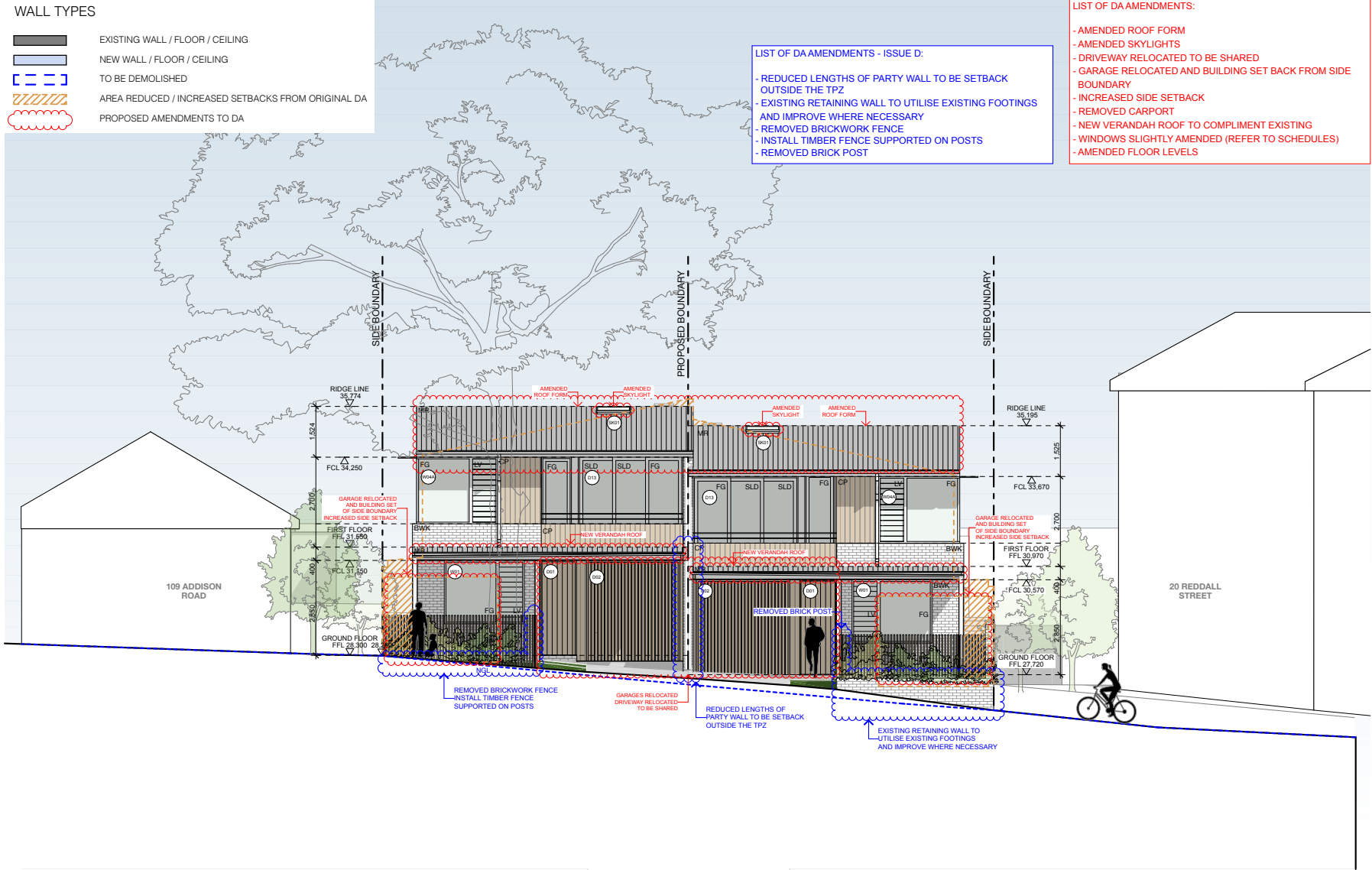
- EXISTING WALL / FLOOR / CEILING
- NEW WALL / FLOOR / CEILING
- TO BE DEMOLISHED
- AREA REDUCED / INCREASED SETBACKS FROM ORIGINAL DA
- PROPOSED AMENDMENTS TO DA

LIST OF DAAMENDMENTS - ISSUE D:

- REDUCED LENGTHS OF PARTY WALL TO BE SETBACK OUTSIDE THE TPZ
- EXISTING RETAINING WALL TO UTILISE EXISTING FOOTINGS AND IMPROVE WHERE NECESSARY
- REMOVED BRICKWORK FENCE
- INSTALL TIMBER FENCE SUPPORTED ON POSTS
- REMOVED BRICK POST

LIST OF DAAMENDMENTS:

- AMENDED ROOF FORM
- AMENDED SKYLIGHTS
- DRIVEWAY RELOCATED TO BE SHARED
- GARAGE RELOCATED AND BUILDING SET BACK FROM SIDE BOUNDARY
- INCREASED SIDE SETBACK
- REMOVED CARPORT
- NEW VERANDAH ROOF TO COMPLIMENT EXISTING
- WINDOWS SLIGHTLY AMENDED (REFER TO SCHEDULES)
- AMENDED FLOOR LEVELS



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

ISSUE FOR
A DA
B AMENDMENTS
C AMENDED DA
D AMENDED DA CROSSOVER/LAYBACK

DATE
23/1/2024
12/4/2024
6/6/2024
22/8/2024

JOB NO: 23006
ADDRESS: 111 ADDISON ROAD, MANLY
LOT 1 DP 737826
CLIENT: IAN MILLER
SCALE: 1:100 @ A3

ADDISON RD - SOUTH ELEVATION

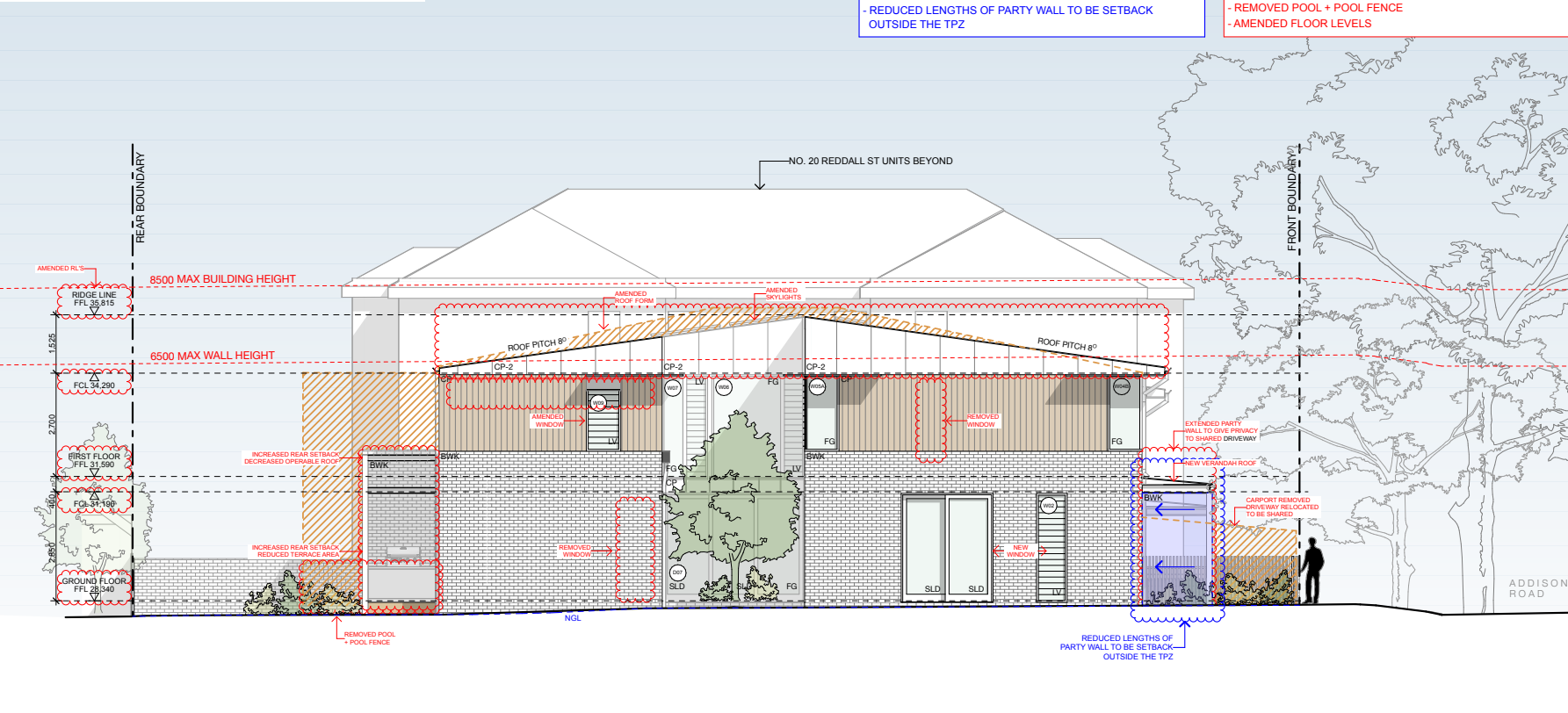
SHEET: DA11
ISSUE: D

WALL TYPES

- EXISTING WALL / FLOOR / CEILING
- NEW WALL / FLOOR / CEILING
- TO BE DEMOLISHED
- AREA REDUCED / INCREASED SETBACKS FROM ORIGINAL DA
- PROPOSED AMENDMENTS TO DA

- LIST OF DAAMENDMENTS:
- AMENDED ROOF FORM
 - AMENDED SKYLIGHTS
 - INCREASED REAR SETBACK, REDUCED TERRACE AREA, DECREASED OPERABLE ROOF
 - CARPORT REMOVED, DRIVEWAY RELOCATED TO BE SHARED
 - EXTENDED PARTY WALL
 - NEW VERANDAH ROOF TO COMPLIMENT EXISTING
 - WINDOWS SLIGHTLY AMENDED (REFER TO SCHEDULES)
 - REMOVED POOL + POOL FENCE
 - AMENDED FLOOR LEVELS

- LIST OF DAAMENDMENTS - ISSUE D:
- REDUCED LENGTHS OF PARTY WALL TO BE SETBACK OUTSIDE THE TPZ



Watershed\Architects

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

ISSUE	FOR	DATE
A	DA	23/1/2024
B	AMENDMENTS	12/4/2024
C	AMENDED DA	6/6/2024
D	AMENDED DA CROSSOVER/LAYBACK	22/8/2024

JOB NO:	23006
ADDRESS:	111 ADDISON ROAD, MANLY LOT 1 DP 737826
CLIENT:	IAN MILLER
SCALE:	1:100 @ A3

WEST ELEVATION
SHEET: DA12
ISSUE: D



Suite 1, 9 Narabang Way Belrose NSW 2085 | Phone: (02) 9986 2535 | Fax: (02) 9986 3050 | www.bbfplanners.com.au

**UPDATED CLAUSE 4.6 VARIATION REQUEST - FLOOR SPACE RATIO
PROPOSED SEMI-DETACHED DWELLINGS
111 ADDISON ROAD, MANLY**

1.0 Introduction

This updated clause 4.6 variation request has been prepared having regard to amended architectural plans DA00(C) to DA16(C) prepared by Watershed 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 Manly Local Environmental Plan 2013 (“MLEP”)

2.1 Clause 4.4 – Floor Space Ratio

Pursuant to Clause 4.4 of Manly Local Environmental Plan 2013 (MLEP) the floor space ratio control applicable to the site is 0.6:1. The objectives of this control are as follows:

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

growth, the retention of local services and employment opportunities in local centres.

The FSR has been calculated based on existing lot size and across both dwellings. The subdivision will subdivide the site evenly. The site is measured at 559.3m² and has an applicable FSR control of 0.6:1 or 335.58m² of gross floor area (GFA).

The amendments provide for a 14.98m² reduction in GFA as defined resulting in a proposed GFA of 354.7m² or an FSR of 0.63:1 across both allotments. This represents a variation of 19.12m² or 5.69%.

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of MLEP provides:

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

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

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

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

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

Clause 4.6(2) of MLEP provides:

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

This clause applies to the clause 4.4 FSR Development Standard.

Clause 4.6(3) of MLEP provides:

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

The proposed development does not comply with the FSR provision at 4.4 of MLEP which specifies a maximum FSR however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

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

Clause 4.6(4) of MLEP requires the consent authority to keep a record of its assessment carried out pursuant to clause 4.6(3).

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 4.4 of MLEP a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard

4.0 Request for variation

4.1 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 Floor Space Ratio standard

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

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

Response: The established streetscape character can be described as eclectic in nature where 1 and 2 storey dwelling houses are interspersed with 2, 3, 4 and 8 storey residential flat building forms.

There is no real consistency in relation to building height, form or density reflecting the streets R1 General Residential zoning which anticipates a range of dwelling typologies and densities including but not limited to detached dwelling houses, semi-detached dwellings, dual occupancies, multi dwelling housing and residential flat buildings. That said, the 8.5 metre building height standard reflects a 2 storey desired streetscape character.

The overall height, bulk and scale of the proposed 2 storey semi-detached dwellings and their overall streetscape presentation results in a development which is consistent with the existing and desired streetscape character as outlined. I also note that the existing trees, including Hills Fig (*Ficus Hilli*) located immediately adjacent to the property frontage is retained with such trees providing significant built form screening as viewed from the street such that the dwellings will not be visually prominent in a streetscape context.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 I have formed the considered opinion that most observers would not find the proposed development by virtue of its bulk and scale (as reflected by FSR), offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the site's visual catchment.

This objective is achieved notwithstanding the non-compliant FSR proposed.

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

Response: Having inspected the site and walked the surrounding streets I am satisfied that the proposal will not obscure important landscape and townscape features as viewed from both the public and private domains.

This objective is achieved notwithstanding the non-compliant FSR proposed.

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

Response: As previously outlined, the proposed 2 storey semi-detached dwelling houses maintain an appropriate visual relationship with existing built form and landscape features noting that the site is located immediately adjacent to a 4 storey residential flat building to the east and an 8 storey residential flat building directly opposite the site at 138-146 Addison Road.

The proposal has been carefully designed to maintain the existing heritage listed Hills Fig (*Ficus Hilli*) street tree located immediately adjacent to the property frontage.

This objective is achieved notwithstanding the non-compliant FSR proposed.

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

Response: The proposed GFA/FSR has been appropriately distributed across the site to minimise adverse environmental impacts on the use and enjoyment of surrounding land including the adjacent public domain. I am satisfied that the proposal, notwithstanding the FSR non-compliance not giving rise to unacceptable privacy, solar access, view or visual amenity impacts to surrounding residential properties with the retention of the existing heritage listed street tree maintaining the contribution that it makes to the amenity of the public domain.

This objective is achieved notwithstanding the non-compliant FSR proposed.

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

Response: N/A

In this regard, I am satisfied that the proposal, notwithstanding the non-compliant FSR proposed, achieves the objectives of the FSR standard. Adopting the first option in Wehbe, compliance with the development standard is unreasonable because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

4.2 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

Sufficient environmental planning grounds exist to justify the FSR variation. Specifically, the environmental planning grounds consist of the following:

- The proposal achieves a high level of compliance with associated LEP and DCP controls with regard to building height, wall height, total open space and soft landscaping despite the minor non-compliance with the FSR control. Varying side setbacks achieve a highly articulated built form which will minimise any perceived visual bulk when viewed from adjoining properties. The front and rear setbacks are compliant.
- The semi-detached development proposes a 2 storey built form which is consistent with the number of storeys anticipated within the DCP. Within the context of surrounding development the dwellings would not be seen as inappropriate or jarring in a streetscape or broader urban context.

- The development does not raise any unreasonable amenity impacts with regard to overshadowing, privacy or view loss.
- The development will provide a significant enhancement of soft landscaping across the site in excess of the requirement within the DCP. The ability to provide extensive landscaping, including new native trees, speaks to the reasonableness of the proposal with regard to its footprint and scale. The proposed landscaping will further achieve softening and screening of the development.
- The height, bulk and scale of the development, as reflected by floor space, is compatible with the built form characteristics established by adjoining development and development generally within the site's visual catchment.

The developments compliance with the objectives of the FSR standard and the general paucity of adverse environmental impact also giving weight to the acceptability of the variation sought.

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

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

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

87. *The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment).*

Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

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

5.0 Conclusion

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

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

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

Yours Sincerely



Greg Boston
Director

**ITEM 3.2 DA2024/0685 - 58 ALEXANDER STREET MANLY - ALTERATIONS
AND ADDITIONS TO A SEMI-DETACHED DWELLING HOUSE
INCLUDING A SWIMMING POOL AND CARPORT**

PURPOSE

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

RECOMMENDATION

- A.** That Council as the consent authority, vary the Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B.** THAT Council as the consent authority **approves** Development Consent to DA2024/0685 for alterations and additions to a semi-detached dwelling house including a swimming pool and carport on land at Lot A DP 106210, 58 Alexander Street MANLY, subject to the conditions set out in the Assessment Report.

Reporting manager	Rodney Piggott
TRIM file ref	2024/703045
Attachments	↓1 Assessment Report ↓2 Site Plan and Elevations ↓3 Clause 4.6

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/0685
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Responsible Officer:	Lachlan Rose
Land to be developed (Address):	Lot A DP 106210, 58 Alexander Street MANLY NSW 2095
Proposed Development:	Alterations and additions to a semi-detached dwelling house including a swimming pool and carport
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Marnix Pieter Ravesteijn

Application Lodged:	18/06/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	16/09/2024 to 30/09/2024
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.4 Floor space ratio: 10.63%
Recommendation:	Approval

Estimated Cost of Works:	\$ 214,720.00
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EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to a semi-detached dwelling house including a swimming pool and carport.

The application is referred to the Development Determination Panel (DDP) due to a proposed variation of greater than 10% to the floor space ratio (FSR) development standard as established by Clause 4.4 Floor space ratio of the Manly Local Environmental Plan 2013.

Concerns raised in the objections predominantly relate to overshadowing impacts whereby, the submissions have been addressed within this report and do not raise matters sufficient to warrant refusal of the application.

Critical assessment issues included assessment of the proposed variation to the FSR development standard, as well as the side setback to the carport and swimming pool, total open space, roof pitch, number of parking spaces and carport door width.

The 4.6 request for the non-compliance with FSR standard arises from a 12.78m² increase in floorspace. The existing building has an existing floorspace which is at 1.1% above compliance with the LEP based on historical approvals with the proposal increasing this to 10.63%. The additional floorspace does not result in an unreasonable increase in the bulk or scale of the site.

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

PROPOSED DEVELOPMENT IN DETAIL

The application seeks approval for alterations and additions to a semi-detached dwelling house including a swimming pool and carport.

Specifically, the development includes:

Ground floor:

- Construction of a carport
- Construction of a plunge pool and decking
- Associated landscaping
- New permeable driveway

Upper floor:

- Construction of a upper floor storage area

AMENDED PLANS

Following a preliminary assessment of the application and site inspection of the subject site and adjoining properties Council wrote to the applicant on 02/08/2024 outlining concerns that would not allow for Council to support the application in its current form. The concerns related to bulk and scale, FSR calculations, Landscape referral response, Development Engineer referral response, Manly Landslip Checklist and Owners Consent for boundary works. The applicant lodged amended plans on 06/09/2024 to address the concerns raised.

The amended plans incorporate the following changes:

- Architectural amendments to the design to reduce bulk and scale
- FSR calculation plans
- Owners Consent for boundary works
- MLEP landslip checklist

The proposed amendments will have a reduced environmental impact on the adjoining properties and public open space than the original proposal. The application was re-notified to correct a Council error in the initial development description and to notify the adjoining properties of the amended plans in accordance with Northern Beaches Community Participation Plan.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - Zone R1 General Residential
 Manly Local Environmental Plan 2013 - 4.4 Floor space ratio
 Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
 Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features

SITE DESCRIPTION

Property Description:	Lot A DP 106210 , 58 Alexander Street MANLY NSW 2095
Detailed Site Description:	The subject site consists of one (1) allotment located on the northern side of Alexander Street, and the southern side of Rolfe Street The site is regular in shape with a frontage of 6.095m along Alexander Street and Rolfe Street and a depth of 45.735m along the eastern boundary. The site has a surveyed area of 278.8m². The site is located within the R1 - General Residential zone from MLEP 2013 and accommodates a semi-detached

	dwelling. The site is relatively flat with a slight slope across the site towards the west. The site contains a front yard with a small tree and a rear yard with a palm tree and gardens along the western and eastern boundaries. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by a mix of one and two-storey detached and semi-detached dwellings.
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Map:



ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to bulk and scale, FSR calculations, Landscape referral response, Development Engineer referral response, Manly Landslip Checklist and Owners Consent for boundary works. <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 clause is not relevant to this application. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent

Section 4.15 Matters for Consideration	Comments
	authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 16/09/2024 to 30/09/2024 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 process council is in receipt of 1 submission/s from:

Name:	Address:
Mr Adam Lindsay Phillips	56 Rolfe Street MANLY NSW 2095

The following issues were raised in the submissions:

- Overshadowing

The above issues are addressed as follows:

- Overshadowing**

The submissions raised concerns that the proposed first floor storage area will impact the direct sunlight coming into the adjacent skylight to the eastern property.

Comment:

The submission has been addressed under Control 3.4.1 Sunlight Access and Overshadowing of this report. Upon re-notification of the amendments, an additional submission was received addressing that the apex of the roof be moved to at least 4.810m from the eastern boundary of the neighbouring property. In summary, the proposed shadow diagrams reflect no additional overshadowing from 9am and 12pm and that the skylight to the east results in overshadowing from existing shadows at 3pm. The additional shadows will not result in greater overshadowing to the skylight. It should be noted that the existing skylight does not face to the sky and has windows to the elevations as per image below:



REFERRALS

Internal Referral Body	Comments
Landscape Officer	Landscape Referral review of the proposal is specific to the impact from the proposed crossover across the road reserve to the existing Port Jackson Fig (<i>Ficus rubiginosa</i>), that is listed in Schedule 5 of Manly LEP 2013, as part of heritage item i77 - Street trees - Alexander Street (from Collingwood Street to Balgowlah Road). The Statement of Environmental Effects, following from advice provided as part of pre-lodgement PLM2024/0009, nominates a "permeable bitumen driveway constructed above existing grade". This construction methodology is supported by the Arboricultural Impact Assessment following sensitive tree root investigations that uncovered significant tree roots that are unable to be

Internal Referral Body	Comments
	impacted upon. Landscape Referral provided the following advice as part of the pre-lodgement meeting: (8) To preserve the existing Port Jackson Fig, no excavation of subgrade below existing ground is advised. (9) Maintain existing natural ground access across the road reserve. (10) Above existing natural ground construction methodology techniques are to be utilised ie. porous asphalt consisting of gravel base and standard bituminous asphalt in which the fines have been screened and reduced, creating void space to make it permeable to water. The submitted Root Investigation - Brief of Findings by Complete Arborcare provides the following recommendations: 3.1 To ensure that the subject Ficus rubiginosa will not be impacted by the proposed driveway crossover, the area hatched in magenta below will be required to be constructed above existing grade. The diagram is a 'GROUND FLOOR PLAN' at a scale of 1:50. It shows a 'NEW CONCRETE DRIVEWAY' with a '1:38 GRADE' crossing a 'STREET' and 'ROLFE' street. A 'SPEED BUMP' is located on Rolfe Street. A 'SRZ' (Street Reserve Zone) is indicated by a dashed line. A 'PORT JACKSON FIG TREE' (FICUS RUBIGINOSA) is shown with a 1.1m diameter and a 2.93m height. A 'DECK' is shown on the right. A 'MAGNETIC' area is indicated by a hatched pattern. The plan includes various dimensions and elevations, such as 'CH 0.00 RL 2.65', 'D1 6.44 RL 2.62', and 'D2 2.71'. A north arrow is present. The plan is labeled 'No.' in the bottom right corner. Amended Plans including a Driveway Longitudinal Section from the Rolfe Street road carriageway to the proposed carport slab is submitted and

Internal Referral Body	Comments
	documents the existing natural ground levels with driveway construction by permeable bitumen pavement over existing grade, to ensure requirements of the Arboricultural Impact Assessment to preserve the existing Port Jackson Fig are satisfied. The following driveway design shall be detailed: above existing natural ground construction methodology techniques are to be utilised ie. porous asphalt consisting of gravel base and standard bituminous asphalt in which the fines have been screened and reduced, creating void space to make it permeable to water. Conditions shall be imposed for the involvement of a Project Arborist during any excavation and during construction of the permeable driveway.
NECC (Coast and Catchments)	Proposed Works - This application seeks approval for the construction of a carport, plunge pool and landscape works ancillary to an existing dwelling house Officer comments The application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, State Environmental Planning Policy Resilience & Hazards) 2021 and has also been assessed against requirements of the Manly LEP 2013 and Manly DCP. Comment: SUPPORTED WITH CONDITIONS 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' map under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.10 and 2.12 of the CM (R & H) apply for this DA.

Internal Referral Body	Comments
	Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Nolan Planning dated May 2024, the DA satisfies requirements under clause 2.10 & 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. Manly LEP 2013 and Manly DCP No coastal related issues identified. As such, it is considered that the application does comply with the requirements of the coastal relevant clauses of the Manly LEP 2013 and Manly DCP.
NECC (Development Engineering)	The plans indicate that the proposed carport is for two vehicles. The proposed stair case up to the proposed store room encroaches into the parking area which will limit the required dimensions for the second parking space. It is considered that the second vehicle is to be removed from the plans or alternatively the stairs amended to ensure two vehicles can park in accordance with the requirements of AS/NZS 2890.1:2004. A review of the comments from Landscaping indicate that additional information with respect to the proposed driveway crossing is required to be submitted. If the levels of the carport are amended then the width of the driveway crossing will need to be reduced to permit a batter between the proposed driveway crossing and the existing crossing to the west servicing the rear of 60 Alexander St. The subject site is flood affected and as such on-site detention is not required. Development Engineering cannot support the proposal, due to insufficient information to address parking in accordance with schedule 3 - Part B

Internal Referral Body	Comments
	Amended plans submitted 6/09/24 The driveway levels have been amended to suit the arborist's report and the second vehicle has been deleted from the plans. Development Engineering support the proposal, subject to conditions as recommended.
NECC (Flooding)	The proposal seeks consent for the construction of a new pool, carport structure with a first floor storage area and associated landscaping works. The site is affected by the medium flood risk precinct, 1% AEP flood extent, PMF flood extent, flood fringe area and a H5 flood hazard. As per the Pre-Lodgment Meeting comments the minor area of flood storage impacting the site can be disregarded as it is a modelling error. Therefore, the applicant can consider the site to be affected by the flood fringe area only. Subject to the following conditions, council is generally satisfied that the proposal is compliant with Section 5.4.3 Flood Prone Land from the Manly DCP 2013 and Clause 5.21 of the Manly LEP 2013.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who raised no objections.

SEPP (Resilience and Hazards) 2021

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

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

Comment:

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

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

- c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

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

Division 5 General

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

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

Comment:

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

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

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

Comment:

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

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

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	5.3m	N/A	Yes
Floor Space Ratio	FSR: 0.6:1 (167.28sqm)	FSR: 0.664:1 (185.07sqm)	10.63% (17.79sqm)	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
5.21 Flood planning	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

Detailed Assessment

Zone R1 General Residential

Land use definition: MLEP 2013	Permitted or Prohibited
Semi-detached dwellings	Permitted with consent

The underlying objectives of the R1 General Residential zone:

- To provide for the housing needs of the community.*

Comment:

The proposed development retains the housing need of the site.

It is considered that the development satisfies this objective.

- To provide for a variety of housing types and densities.*

Comment:

There is no change to the housing type and housing density within this proposal.

It is considered that the development satisfies this objective.

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

Comment:

The proposed is for alterations and additions to a semi-detached dwelling house including a swimming pool and carport.

It is considered that the development satisfies this objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R1 General Residential zone

4.4 Floor space ratio

Objectives of development standard

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

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

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

Comment:

The proposed bulk and scale is consistent with the overall character and desired character of the streetscape. The subject site allows for a presentation of landscaping and vegetation that is complementary to the area. The proposal will not unreasonably impact upon the streetscape.

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

Comment:

No landscape of townscape features would be impacted by the proposed development.

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

Comment:

The development overall is found to enhance the visual continuity of the existing character of the area and improve the aesthetics of the development on site. The proposed development will sit appropriately within the residential setting in a manner that is consistent with the character and landscape of the area.

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

Comment:

The proposal is consistent with the numeric control under clause 3.4.1 Sunlight Access and Overshadowing and 3.4.2 Privacy and Security of the Manly DCP. With regards to views, there will be no unreasonable impact to neighbouring private open space or the public realm.

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

Comment:

N/A

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the Clause 4.4 Floor space ratio.

4.6 Exceptions to development standards

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

Development standard: Clause 4.4 Floor Space Ratio

Requirement: FSR: 0.6:1

Proposed: FSR: 0.664:1

Percentage of variation: 10.63%

With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is/is not accompanied by a document that sets out the grounds on which the Applicant seeks to demonstrate the matters set out in Clause 4.6(3)(a) and (b) of the MLEP 2013 (the 'Clause 4.6 Request').

Subclause (1) of this clause provides that:

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

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

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

Comment:

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

Subclause (2) of this clause provides that:

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

Comment:

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

Subclause (3) of this clause provides that:

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

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

Comment:

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

- The proposed development achieves the objectives of the standard notwithstanding the non-compliance.
- The proposed development achieves the desired general residential character of the area and is compatible with the height, bulk and scale of surrounding development.
- The proposal is not considered to give rise to unreasonable amenity impacts in terms of privacy, view loss or overshadowing to surrounding properties.
- The proposed works are to the rear of the site and fronts Rolfe Street where it is utilised as a service lane with the majority of properties comprising parking structures of one and two storeys with nil setbacks to the Street.
- The proposal provides an appropriate relationship to the adjoining property and character of the area. The upper level is well articulated on all facades to minimise bulk and scale and ensure sufficient separation to the adjoining properties.
- The variation to the development standard will not result in adverse environmental impacts.

(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 non-compliance with the floor space ratio controls is a result of providing a storage space within the roof form, with the storage included in the definition of gross floor area.*
- *The site is constrained being identified as flood prone land and as such the carport cannot be enclosed to enable additional storage, hence the storage level above.*
- *The non-compliance results in a development that is compatible with the existing surrounding development in this portion of Rolfe Street and which is consistent with the stated Objectives of the R1 General Residential Zone.*

The applicant's Clause 4.6 Request is generally supported. It is noted that the site is located on flood prone land, providing limitations to the use of the land. It is also acknowledged that the existing dwelling is already in breach of the FSR standard whereby any additional floor space would immediately result in non-compliance. In summary, the FSR variation is not considered to result in unreasonable bulk and scale and the proposed development is compatible with the character of surrounding development.

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

The proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect the amenity of the surrounding built environment, thereby satisfying objects 1.3(c) and (g) of the EPA Act.

Public Interest:

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

Conclusion:

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

It is considered on balance, that having regard to the particular circumstances, the Clause 4.4 Floor Space Ratio variation arising due to the flood prone land constraints, the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

Mainly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 278.8sqm	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	E: 6.5m (based on gradient 0)	4.6m	N/A	Yes
	W: 6.5m (based on gradient 0)	4.5m	N/A	Yes
4.1.2.2 Number of Storeys	2	2	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	0.2m	N/A	Yes
	Pitch: maximum 35 degrees	max 40 degrees	14%	No

4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	No change to front setback	N/A	N/A (existing)
4.1.4.2 Side Setbacks and Secondary Street Frontages	E: 0.9m-1.2m (ground floor) 1.5m (first floor) (based on wall height)	Nil (ground floor) Nil - 1m (first floor)	100% 100%	No
	W: 1m (ground floor) 1.53m (first floor) (based on wall height)	Nil (ground floor) 1m (first floor)	100% 34.64% (0.53m)	No
	Windows: 3m	No windows proposed to side elevations	N/A	Yes
	Secondary street frontage: Prevailing setback	Nil (ground floor) 0.87m (first floor) Consistent with prevailing setback	N/A	Yes
4.1.4.4 Rear Setbacks	8m	See 4.1.4.2 Side Setbacks and Secondary Street Frontages	N/A	N/A
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% (153.34sqm) of site area	34.11% (95.11sqm)	37.97% (58.23sqm)	No
	Open space above ground 25% of total open space	15.8% (6.02sqm)	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% (33.28sqm) of open space	56.92% (54.14sqm)	N/A	Yes
	1 native trees	1 tree	N/A	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	> 18sqm	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% (3.05m) of frontage up to maximum 6.2m	4.3m	40.98% (1.25m)	No
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	0.4m	N/A	Yes
	1m curtilage/1.5m water side/rear setback	E: Complies W: 1m (water) Nil (curtilage)	N/A 33.4% (0.5m) 100%	Yes No No
Schedule 3 Parking and Access	Dwelling 2 spaces	1 spaces	50%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.3.3 Footpath Tree Planting	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.3 Flood Prone Land	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

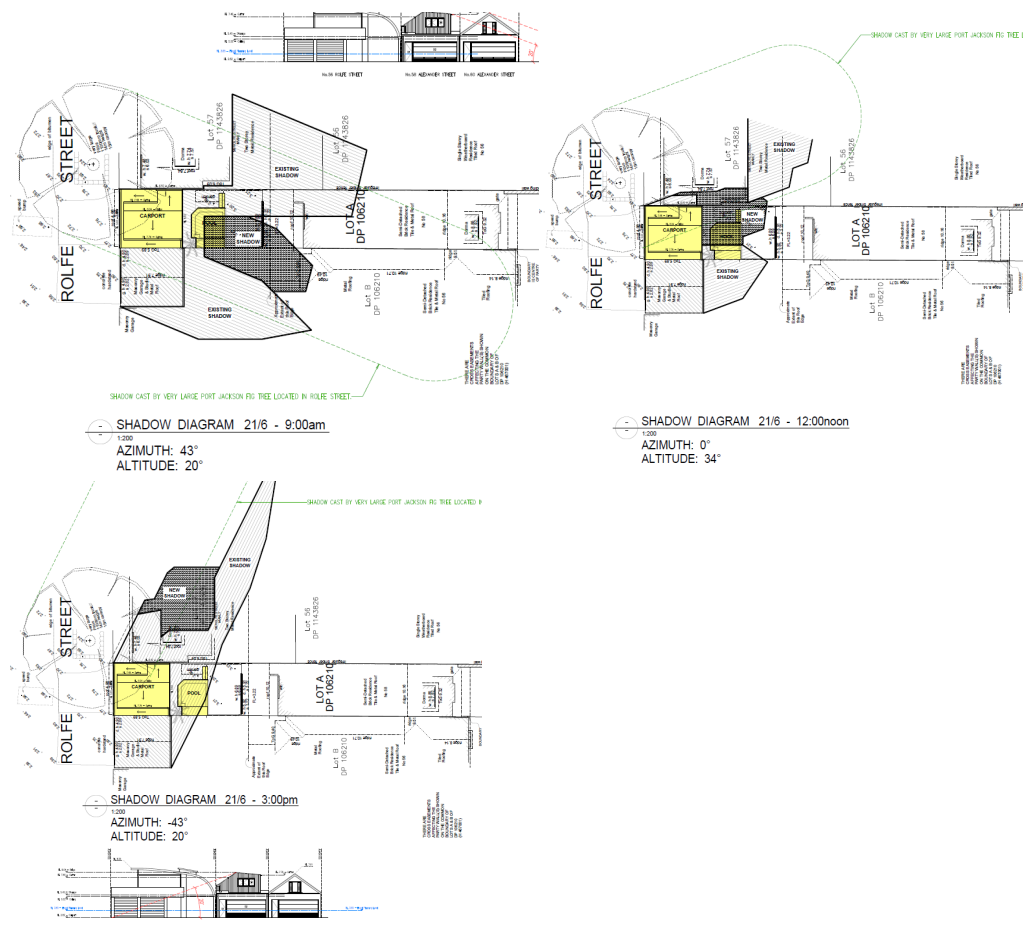
3.4.1.1 Overshadowing Adjoining Open Space

This control requires the following:

- a) New development (including alterations and additions) must not eliminate more than one third of the*

existing sunlight accessing the private open space of adjacent properties from 9am to 3pm at the winter solstice (21 June) ; or
b) Where there is no winter sunlight available to open space of adjacent properties from 9am to 3pm, the calculations for the purposes of sunlight will relate to the equinox in March and September from 9am to 3pm.

Shadow diagrams have been provided with this application (see figure below). With regards to adjoining open space, the proposal achieves compliance with these requirements.



3.4.1.2 Maintaining Solar Access into Living Rooms of Adjacent Properties

This control requires the following in relation to sunlight to windows or glazed doors to living rooms of adjacent properties:

- a) for adjacent buildings with an east-west orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors to living rooms for a period of at least 2 hours from 9am to 3pm on the winter solstice (21 June);
- b) for adjacent buildings with a north-south orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors of living rooms for a period of at least 4 hours from 9am to 3pm on the winter solstice (21 June);
- c) for all adjacent buildings (with either orientation) no reduction in solar access is permitted to any

window where existing windows enjoy less than the minimum number of sunlight hours specified above.

No elevational shadows have been submitted with the application, although the levels of additional overshadowing are subject to a maximum of 3 hours to the adjoining properties. Therefore, as per the above requirement for north to south orientated dwellings, the application does not result in overshadowing to adjacent buildings for a period of 4 hours between 9am to 3pm.

A submission has been received from 56 Rolfe Street, addressing overshadowing concerns into the skylight. In summary, the proposed shadow diagrams reflect no additional overshadowing from 9am and 12pm and that the skylight to the east results in overshadowing from existing shadows from 12pm to 3pm. The additional shadows will not result in greater overshadowing to the skylight. It should be noted that the existing skylight does not face to the sky and has windows to the elevations as per image below:



Therefore, the proposal complies with the control and the first floor storage area will not result in unreasonable impacts or warrant a reason for refusal.

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

Description of non-compliance

4.1.2.3 Roof Height

This control states:

Roof Pitch

c) The maximum roof pitch must be generally no steeper than 35 degrees. A roof with a steeper pitch will be calculated as part of the wall height. In this regard the wall height controls at paragraph 4.1.2.1 of this plan will apply to the combined wall height and the height of the roof steeper than 35 degrees.

The proposed development has a pitched roof pitch of 40 degrees, presenting a variation of 14%.

As such, a merit assessment has been conducted.

Merit consideration

There are no underlying objectives of this control under which to consider the merits of this variation. This clause instead relies on the objectives for the Height of Buildings at clause 4.3 in the Manly LEP 2013. An assessment against these objectives is as follows:

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

Comment:

The development is wholly within the maximum permissible height limit as evident on the architectural plans, and overall achieves a building height that is consistent with other residential dwellings along Rolfe Street.

(b) to control the bulk and scale of buildings,

Comment:

The bulk and scale of the development is consistent with nearby development and will not result in any unreasonable impacts within the locality. The design of the roof is consistent with the bulk and scale of buildings in the area.

(c) to minimise disruption to the following—

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

Comment:

The proposal is considered to not result in unreasonable disruptions to views.

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

Comment:

The shadow diagrams provided with the proposal depict that there will be limited additional overshadowing impacts to public and private open spaces. The proposal will maintain adequate sunlight to private open spaces and habitable rooms of adjacent dwellings.

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

Comment:

The height and bulk of the proposal are not considered to impact on existing vegetation. No significant trees or vegetation are required to be removed.

Having regard to the above assessment, and objectives of this clause it is concluded that the

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

4.1.3 Floor Space Ratio (FSR)

The provisions of this Clause providing for variation of the FSR development standard for undersized allotments is not applicable in this case, as the subject site is compliant with the minimum lot size control.

Refer to Clause 4.6 Exceptions to Development Standards of Manly Local Environmental Plan 2013 for a detailed assessment.

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

Description of non-compliance

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

The following setbacks are required and exhibited:

E: 0.9m-1.5m required (based on wall height) - nil to 1m exhibited- max variation of 100%

W: 1m-1.53m required (based on wall height) - nil to 1m exhibited- max variation of 100%

The control states:

b) Projections into the side setback may be accepted for unenclosed balconies, roof eaves, sun-hoods, and the like, if it can demonstrate there will be no adverse impact on adjoining properties including loss of privacy from a deck or balcony.

There will be no unreasonable loss of privacy from the proposed deck and storage area with the inclusion of the 1.65m privacy screen to the southern and western elevation and 1.2m side wall to eastern elevation. There are no proposed windows to the side elevations of the first floor storage area. Thus, the gutter and roof eave is excluded from the area of non-compliance above.

The subject site has two frontages, including the primary frontage to Alexander Street and the secondary frontage to Rolfe Street. Therefore, Control **4.1.4.4 Rear Setbacks** does not apply in this circumstance and the application is subject to Control **4.1.4.2 Side Setbacks and Secondary Street Frontages**.

The above mentioned control states:

d) For secondary street frontages of corner allotments, the side boundary setback control will apply unless a prevailing building line exists. In such cases the prevailing setback of the neighbouring properties must be used. Architecturally the building must address both streets.

A prevailing building line exists to Rolfe Street whereby, there are multiple built structures at a nil/minimal setback to the streetfront. The carport is located at a nil setback, with the first floor storage area at a 0.87m setback. Therefore, it is considered that the proposed carport and storage area will complement the existing prevailing building line to Rolfe Street and reduce the bulk and scale to the streetfront with a 0.87m setback to the first floor storage.

Merit consideration:

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

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

Comment:

As mentioned above, the proposal compliments the existing prevailing building line to Rolfe Street and is considered to maintain the built form to the streetscape. There are multiple built structures such as garages and carports with storage area above along Rolfe Street with a nil secondary setback and side setback. The plans have been amended to provide an alternate roofed design to the first floor storage area and a reduction in the bulk and scale enhance the design to the streetscape. Therefore, the proposal suitably retains the spatial portions and landscape character of the street.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposed carport and storage area will not result in unreasonable loss of privacy with the inclusion of the 1.65m privacy screen to the southern and western elevation and 1.2m side wall to eastern elevation. There are no proposed windows to the side elevations of the first floor storage area. The development will result in minor additional overshadowing impacts addressed under Control 3.4.1 Sunlight Access and Overshadowing of this report. The proposal will not result in view loss and will provide suitable separation between the carport and first floor addition on adjoining sites, allowing suitable rhythm and pattern of buildings. The development is designed to provide safe and adequate vehicular access to the subject site.

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

Comment:

The proposal promotes flexibility in that it provides suitable development on the site without unreasonable impacts to the site itself or surrounding land.

Objective 4) To enhance and maintain natural features by:

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*

- ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.

Comment:

The proposed development, despite its non-compliance detailed above, has been amended to increase the total open space from the existing design and provides compliant landscaped area, including suitable planting of vegetation. The proposal will result in new landscaping to the rear between the existing deck and proposed carport to provide an area of deep soil in the rear yard. The proposed development does not adjoin any open space land, National Parks, or urban bushland.

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

Comment:

Not applicable. The subject site is not classified as bushfire prone land.

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

4.1.5 Open Space and Landscaping

Description of non-compliance

4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area

The subject site is located within Residential Open Space Area OS3, which requires at least 55% (153.34sqm) of the site to be open space. In addition, at least 35% (33.28sqm) of the proposed total open space is to be landscaped area. Additionally, no more than 25% of total open space can be provided above ground level.

The proposed development results in a compliant landscaped area at 56.92% (54.14sqm), and a compliant level of total open space above ground at 15.8% (6.02sqm).

However, measurable total open space only accounts for 34.11% (95.11sqm) of site area, representing a variation of 37.97% (58.23sqm) to the control.

It is noted that the site is apart of a semi-detached dwelling house, whereby the allotment is small in width and impacts the ability to comply with total open space. The proposal results in a decrease of 32.6sqm in total open space from existing, due to the proposed carport to provide 1 off-street parking space. There is a lack of street parking available to Rolfe Street and Alexander Street and the proposed single off-street parking space helps to alleviate this.

It is further noted that the proposal has been amended to provide a slight increase in total open space by providing open space above ground through a deck located above the storage area. This additional deck area will provide an additional 6.02m from the existing proposal and is not considered to result in additional privacy impacts as a 1.65m height privacy screen is proposed to the western side boundary and the rear of the storage area. A 1.2m height wall from the first floor level is provided to the eastern side boundary to offset privacy concerns to the storage area.

Merit consideration:

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

Objective 1) To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.

Comment:

The proposal will result in the removal of existing landscaped area for the proposed carport, pool and deck extension, although no significant topographical or landscape features are removed. Furthermore, the landscaped area provided is compliant. In this regard, the proposal retains and augments important landscape features and vegetation.

Objective 2) To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.

Comment:

As mentioned, the proposal includes the removal of the artificial turf to the rear and replacement planting is to be conditioned to provide soft landscaping. Additional, screening is proposed to the eastern boundary with the retention of the existing palm tree to the western boundary. A new deck area is proposed to increase the total open space calculation and open space above ground level.

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

Comment:

As discussed above, the storage area includes privacy screening to maintain the amenity to adjacent properties. The proposal does not result in any unacceptable impacts to amenity including sunlight, privacy, and views. The proposal is consistent with the surrounding area and streetscape character.

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

Comment:

An acceptable amount of soft landscaping is provided on site to minimise stormwater runoff and maximise water infiltration. The proposal complies with landscaped area. Council's development engineer has reviewed the proposal and deemed it satisfactory subject to conditions.

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

Comment:

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

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

Comment:

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

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

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

Description of non-compliance

Clause 4.1.6.1 of MDCP 2013, requires that the maximum width of any garage, carport or hardstand area is not to exceed a width equal to 50 percent of the frontage, up to a maximum width of 6.2m.

The proposed carport has a width of 4.3m or 70.5% of the frontage. This represents a 40.98% (1.25m) variation to the control.

Additionally, Clause 4.1.6, dwellings require the provision of two (2) off-street parking spaces. This proposal provides one (1) off-street parking space whereby, no parking spaces were provided previously.

It should be noted that two off-street parking spaces were proposed with the initial proposal and has been reduced to one off-street parking space to satisfy Council's Development Engineering Referral Response. Specifically, the response indicated that the proposed staircase up to the store room encroaches into the parking area which will limit the required dimensions for the second parking space. Therefore, it was considered that the second vehicle is to be removed from the plans.

Merit consideration:

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

Objective 1) To provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees).

Comment:

The proposed carport provides an additional accessible and adequate parking space on-site for one (1) car. The size and width of the garage is considered appropriate.

Objective 2) To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances.

Comment:

The proposal provides one (1) off-street parking spaces which results in an increase from the existing nil parking space. There will be no impact to the demand for on-street parking as there is no on-street parking available to the proposed streetfront.

Objective 3) To ensure that the location and design of driveways, parking spaces and other vehicular

access areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape.

Comment:

The proposal's design adequately provides one off-street parking spaces for the dwelling that promotes efficient, safe, and convenient vehicular access.

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

Comment:

The current site has a small storage area in the proposed location of the carport and storage. Thus, there will be no significant excavation in order to provide the proposed carport.

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

Comment:

There will be no impact to footpath crossings with this proposal.

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

Comment:

The proposed carport and storage will allow for adequate access, parking and new landscaping to behind the carport. New screen planting is provided to the rear pool and landscaping area to the eastern boundary. The carport and storage area is located at nil side setbacks and will not have sufficient area for screening to the public view. Therefore, Objective 6 is achieved.

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

Comment:

The subject site is not located within an established town centre noted within the Manly DCP.

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

4.1.9 Swimming Pools, Spas and Water Features

Description of non-compliance

Control **4.1.9.2 Location and Setbacks** states that:

c) The setback of the outer edge of the pool/spa concourse from the side and rear boundaries must be at least 1m, with the water line being at least 1.5m from the boundary.

The development proposes a minor non-compliance to the minimum side water and curtilage setback. The non-compliance is largely a result of the small allotment width. The eastern side setback complies with the requirement. The western side setback to the curtilage is nil and the setback to the water line is 1m. Therefore, representing a numerical variation of 1m or 100% to the curtilage and 33.4% or 0.5m to the water line. It is considered that the objectives of the control are achieved subject to the merit assessment below.

Merit consideration

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

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

Comment:

Despite the numeric non-compliance, the proposed swimming pool is appropriately set back from the western side boundary and rear boundary. It should be noted that the property to the eastern side is located at a 1.9m setback from the pool curtilage and includes landscape screening to reduce additional privacy impacts. The pool does meet numerical compliance in height, located at 0.4m above ground, allowing for sufficient visual and privacy of the subject site and surrounding properties. An existing condition applies to the original consent limiting the noise of sound producing plant to no more than 5dB(A) above the background level, which will minimise the impact of the filter noise on adjoining properties. Overall, the proposal meets this objective.

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

Comment:

The pool is located to the rear of the property in between the existing deck and proposed carport/storage area. The height and size of the proposed swimming pool is deemed to be reasonable given that the proposed swimming pool is not visible from the streetscape.

Objective 3) To integrate landscaping.

Comment:

The existing landscaping to the rear and sides of the property are to be retained and enhanced as the existing area is artificial turf. Under this application that artificial turf is to be replaced with soft landscaping, compliant with the landscaping control. The proposal will meet the numeric control for landscape open space across the site. Additional screen planting is provided to the eastern side boundary to minimise the visual impacts of the pool to the neighbouring property to the east.

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

Comment:

The pool is small in size and the access to the pool may be restricted due to the proximity of the carport and dwelling, although it could be a viable water resource during bushfire emergencies.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$2,147 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$214,720.

CONCLUSION

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

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

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

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

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs

- Consistent with the objects of the Environmental Planning and Assessment Act 1979 Council is satisfied that the Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify variation of the development standard contained within Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:
- Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
- There are sufficient environmental planning grounds to justify the variation.

PLANNING CONCLUSION

This proposal, for alterations and additions to a semi-detached dwelling house including a swimming pool and carport has been referred to the Development Determination Panel (DDP) due to a proposed variation of greater than 10% to the floor space ratio (FSR) development standard as established by Clause 4.4 Floor space ratio of the Manly Local Environmental Plan 2013.

The concerns raised in the objections include overshadowing impacts which has been addressed, and found to result in no unreasonable overshadowing impacts. These submissions are addressed within this report and do not raise matters sufficient to warrant refusal of the application.

The critical assessment issues included assessment of the proposed variation to the FSR development standard, as well as the side setback to the carport and swimming pool, total open space, roof pitch, number of parking spaces and carport door width.

The proposed variation to the FSR development standard is supported, as the proposal, whilst remaining non-compliant with the development standard, has been amended to reduce the bulk and scale of the carport addition. The proposal is also supported on merit where minor non-compliances with MDCP controls arise.

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

REASON FOR DETERMINATION

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

RECOMMENDATION

That Northern Beaches Council, as the consent authority, vary the development standard contained within Clause 4.4 Floor Space Ratio, pursuant to Clause 4.6 of the Manly Local Environmental Plan 2013 because the Applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) of Clause 4.6.

Accordingly Council as the consent authority grant Development Consent to DA2024/0685 for Alterations and additions to a semi-detached dwelling house including a swimming pool and carport on land at Lot A DP 106210, 58 Alexander Street, MANLY, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA-01	B	SITE PLAN / SITE ANALYSIS PLAN	MICHAEL AIREY	May 2024
DA-02	B	GROUND FLOOR PLAN	MICHAEL AIREY	May 2024
DA-03	B	UPPER FLOOR PLAN	MICHAEL AIREY	May 2024
DA-04	B	NORTH AND SOUTH ELEVATIONS	MICHAEL AIREY	May 2024
DA-05	B	EAST AND WEST ELEVATIONS	MICHAEL AIREY	May 2024
DA-06	B	NORTH ELEVATION - ROLFE STREET	MICHAEL AIREY	May 2024
DA-07	B	SECTION A-A	MICHAEL AIREY	May 2024
DA-08	B	SECTION B-B DRIVEWAY LONGITUDINAL SECTION	MICHAEL AIREY	May 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Waste Management Plan	-	APPLICANT	June 2024
Flood Control Certificate	A	NB Consulting Engineers	21/05/2024
ROOT INVESTIGATION	-	COMPLETE ARBORCARE	18/12/2023

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

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

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

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	25/06/2024

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

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

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 \$2,147.20 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 \$214,720.00.

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. Driveway design near trees to be retained

The driveway design across the road reserve, in proximity to the identified Port Jackson Fig located within the road reserve verge, shall be developed in co-ordination with an Arborist with

AQF minimum Level 5 qualifications in arboriculture, and a qualified Structural Engineer, and in consideration of the approved Arboricultural Impact Assessment Root Investigations prepared by Complete Arborcare. The following driveway design shall be detailed: above existing natural ground construction methodology techniques are to be utilised ie. porous asphalt consisting of gravel base and standard bituminous asphalt in which the fines have been screened and reduced, creating void space to make it permeable to water.

Excavation is limited to the area as shown on Section B-B (ie. first 2950mm)

The Arborist shall review, comment, recommend design revision as required and approve the driveway construction methodology, to ensure compliance with section 3.1. Conclusion & Recommendations, of the approved Root Investigations prepared by Complete Arborcare.

Reason: Tree protection.

9. **Building components and structural soundness**

B1 - All new development below the Flood Planning Level of 3.66m AHD shall be designed and constructed from flood compatible materials.

B2 - All new development must be designed to ensure structural integrity up to the Flood Planning Level of 3.66m AHD, taking into account the forces of floodwater, debris load, wave action, buoyancy and immersion.

B3 - All new and existing electrical equipment, power points, wiring and connections must be located above the Flood Planning Level of 3.66m AHD, protected from flood water or have residual current devices installed to cut electricity supply during flood events.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

10. **Car parking**

D3 -The carport layout is accepted as per the architectural drawings prepared by Michael Airey dated May 2024

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

11. **Fencing**

New fencing (including pool fencing, boundary fencing, balcony balustrades and accessway balustrades) shall be open to allow for the unimpeded movement of flood waters. It must be designed with a minimum of 50% open area along any straight length, from the natural ground level up to the 1% AEP flood level 3.16m AHD. Openings shall be a minimum of 75mm x 75mm.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

12. **Pools**

All electrical equipment associated with the pool (including pool pumps) is to be waterproofed and/or located at or above the Flood Planning Level of 3.66 m AHD.

All chemicals associated with the pool are to be stored at or above the Flood Planning Level of 3.66m AHD.

Pool fencing shall be open to allow for the unimpeded movement of flood waters. It must be designed with a minimum of 50% open area from the natural ground level up to the 1% AEP flood level of 3.16m AHD.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

13. **Stormwater Disposal**

The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's Water Management for Development Policy. Details by an appropriately qualified and practicing Civil or Hydraulic Engineer demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with Council's policy are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

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.

14. **Vehicle Crossings Application**

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing 4.4 metres wide at the kerb to 5.2 metres wide at the boundary in accordance with Northern Beaches Council Standard Drawing Normal Profile in accordance with Section 138 of the Roads Act 1993.

Note, driveways are to be constructed in asphaltic concrete in accordance with the recommendations of the Arborist's report.

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

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

Reason: To facilitate suitable vehicular access to private property.

15. **Boundary Identification Survey**

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

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

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

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

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

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

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

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

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

17. **Compliance with Standards**

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

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

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

18. **Sydney Water "Tap In"**

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

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

- "Tap in" details - see <http://www.sydneywater.com.au/tapin>

- Guidelines for Building Over/Adjacent to Sydney Water Assets.

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

19. **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

20. **Project Arborist**

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged to provide tree protection measures in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of the approved Arboricultural Impact Assessment (Root Investigation) prepared by Complete Arborcare.

Before any driveway construction preparation, the Project Arborist shall be in attendance and delineate the limitations to excavation in accordance with section 3.1. Conclusion & Recommendations, of the Root Investigations prepared by Complete Arborcare. The Project Arborist shall be present to advise of the extent of permitted excavation to the area as shown on Section B-B (ie. first 2950mm). Photographic documentation of the delineated limitations shall be submitted to the Certifier and it is the responsibility of the Certifier to ensure no encroachment occurs to this area. The Project Arborist shall additionally document the condition of the Port Jackson Fig to be retained, including at commencement, during the works and at completion.

Note: Any potential impact to the Port Jackson Fig as assessed by the Project Arborist will require redesign of any approved component to ensure the tree is preserved, and shall be the subject of a modification application where applicable.

Reason: Tree protection.

21. **Road Reserve**

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

Reason: Public safety.

22. **Removing, Handling and Disposing of Asbestos**

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- Work Health and Safety Act;
- Work Health and Safety Regulation;

- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

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

23. 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.

24. Waste Management During Development

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

25. 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 Root Investigations, 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.

26. Building Components and Structural Soundness

B2 - A suitably qualified structural engineer is to certify the structural integrity of the new development up to the Flood Planning Level Flood level 3.66m AHD. The depth, velocity,

debris load, wave action, buoyancy and immersion must all be considered.

B3 - A suitably qualified electrician or contractor is to certify that all new and existing electrical equipment, power points, wiring and connections are located above the Flood Planning Level of 3.66m AHD, are protected from flood water or have residual current devices installed to cut electricity supply during flood events.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

27. **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.

28. **Swimming Pool Requirements**

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

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

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

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

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

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

(e) Signage showing resuscitation methods and emergency contact

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

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

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

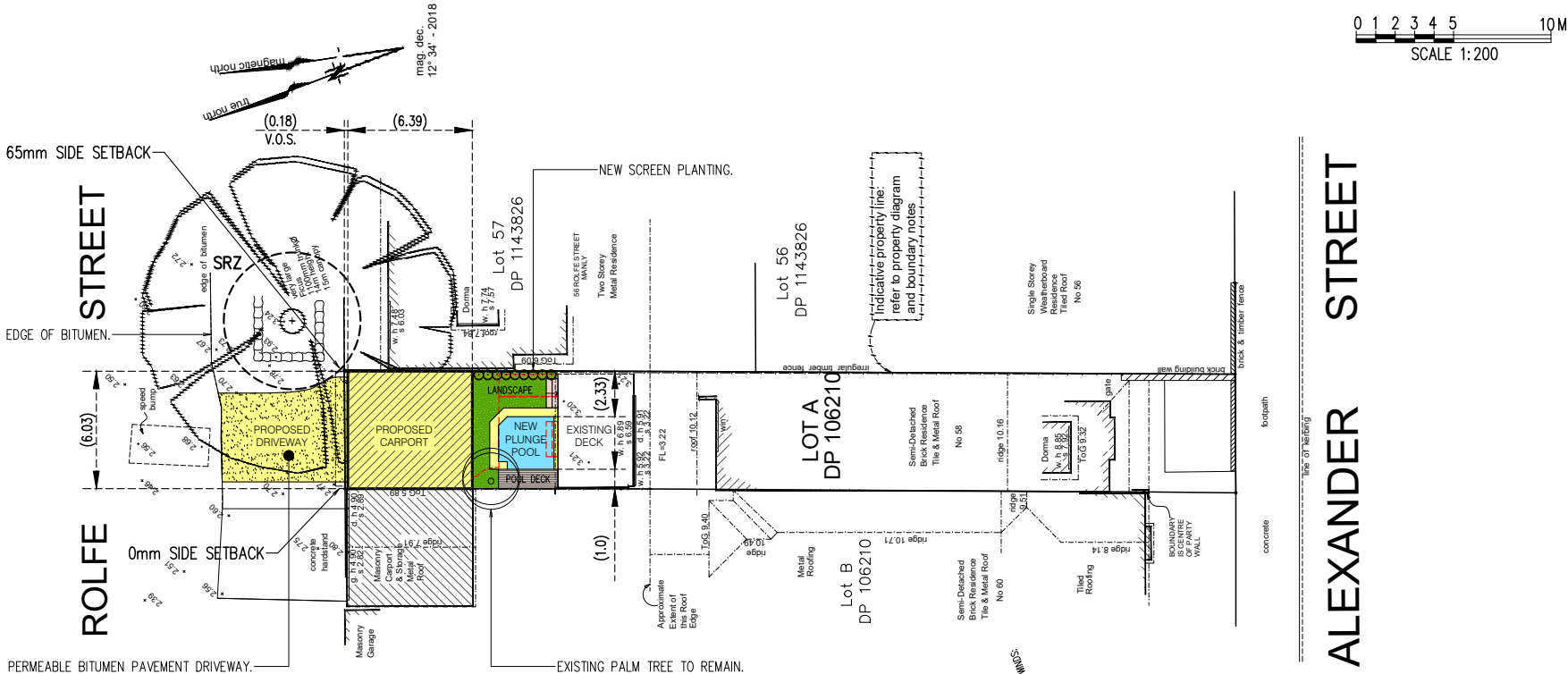
Reason: To protect human life.

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

29. **Swimming Pool/Spa Motor Noise**

The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

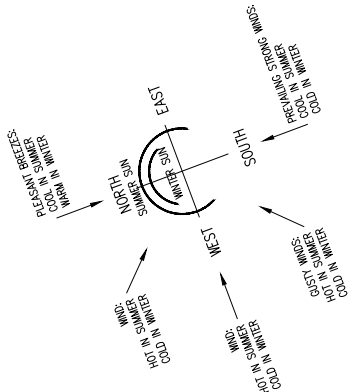
Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.



SITE PLAN / SITE ANALYSIS PLAN
1:200

LOT A, D.P. 106210

SITE ANALYSIS (m2)	
SITE AREA	277.00
TOTAL GROSS FLOOR AREA	185.07
FLOOR SPACE RATIO	0.669:1
EXISTING TOTAL OPEN SPACE	116.3
PROPOSED TOTAL OPEN SPACE	95.11
EXISTING LANDSCAPED AREA	53.80
PROPOSED LANDSCAPED AREA	54.14



No.58 ALEXANDER STREET, MANLY 2095
PROPOSED CARPORT AND POOL
APPLICANT: MARNIX AND CLAIRE RAVESTEIJN
SITE PLAN / SITE ANALYSIS PLAN

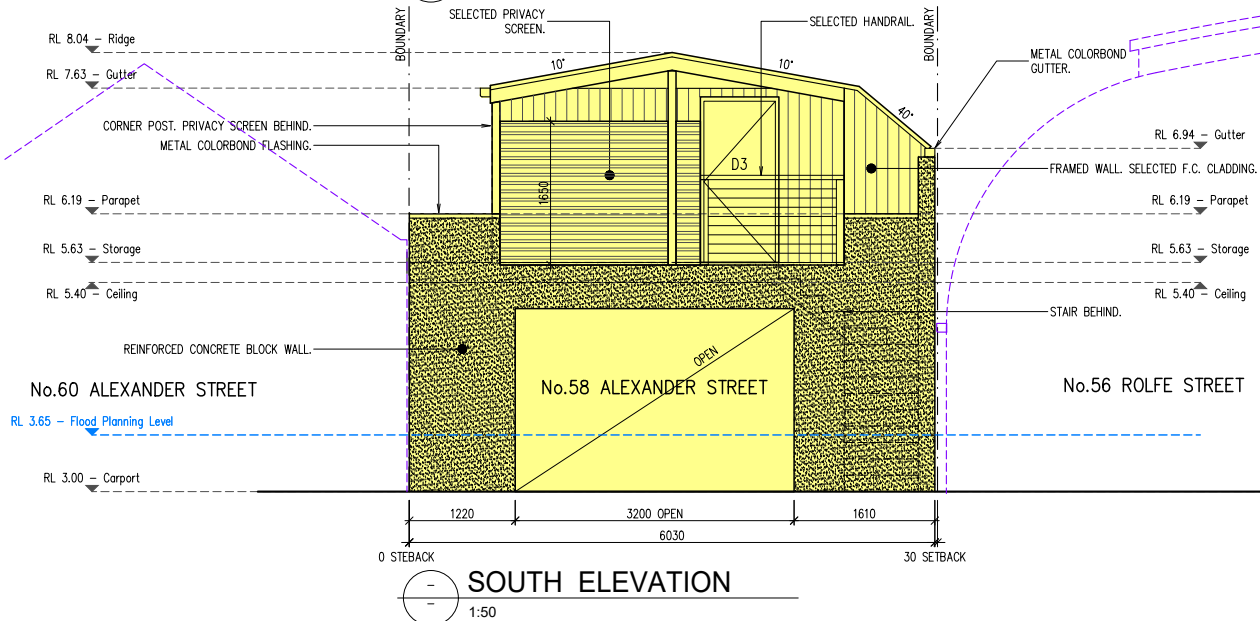
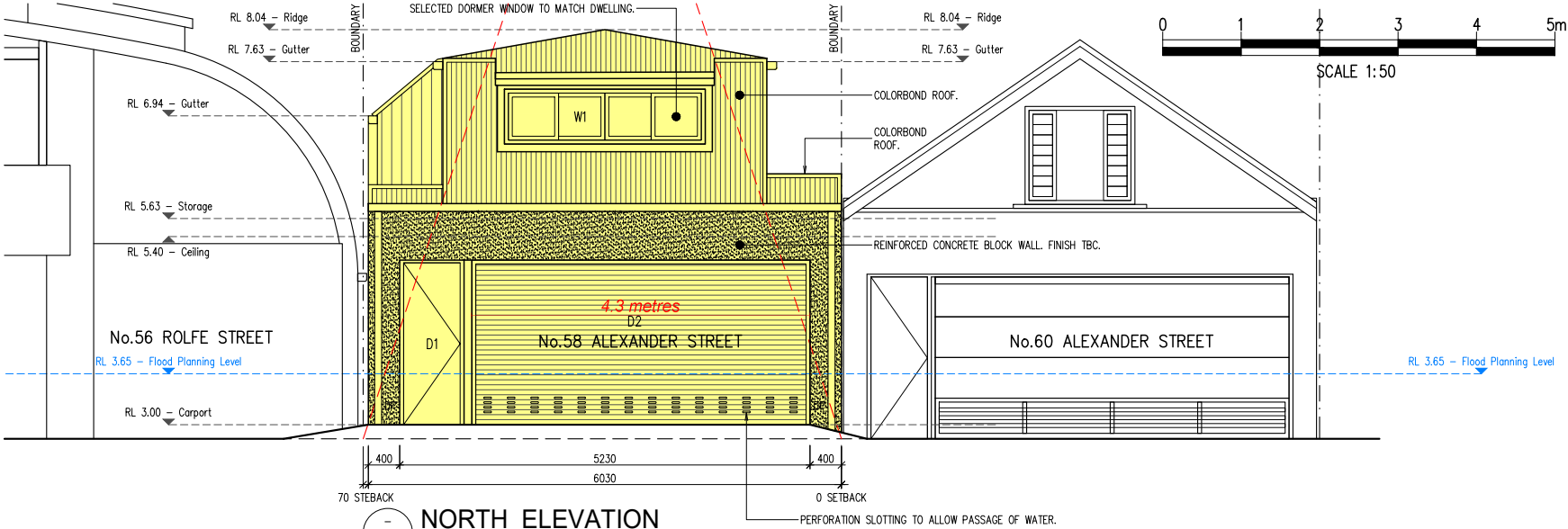
SCALE 1:200@ A3
DATE MAY 2024

MICHAEL AIREY
4/84 WYADRA AVENUE, FRESHWATER NSW 2096
PHONE 9939 7003, MOBILE 0418 289 585
EMAIL mikairey@bigpond.com.au

ABN 26 769 291 556

DRAWING NO. **DA-01**

REV. **B**



No.58 ALEXANDER STREET, MANLY 2095
PROPOSED CARPORT AND POOL
APPLICANT: MARNIX AND CLAIRE RAVESTEIJN
NORTH AND SOUTH ELEVATIONS

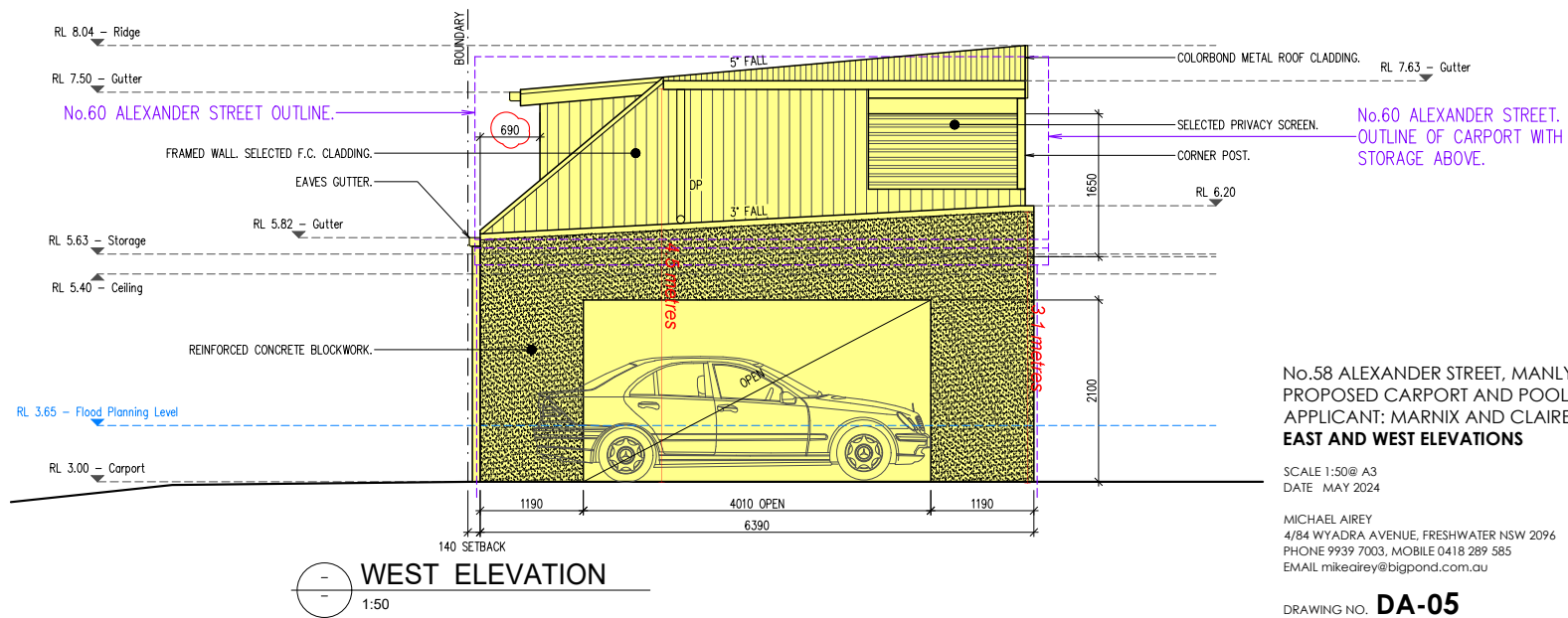
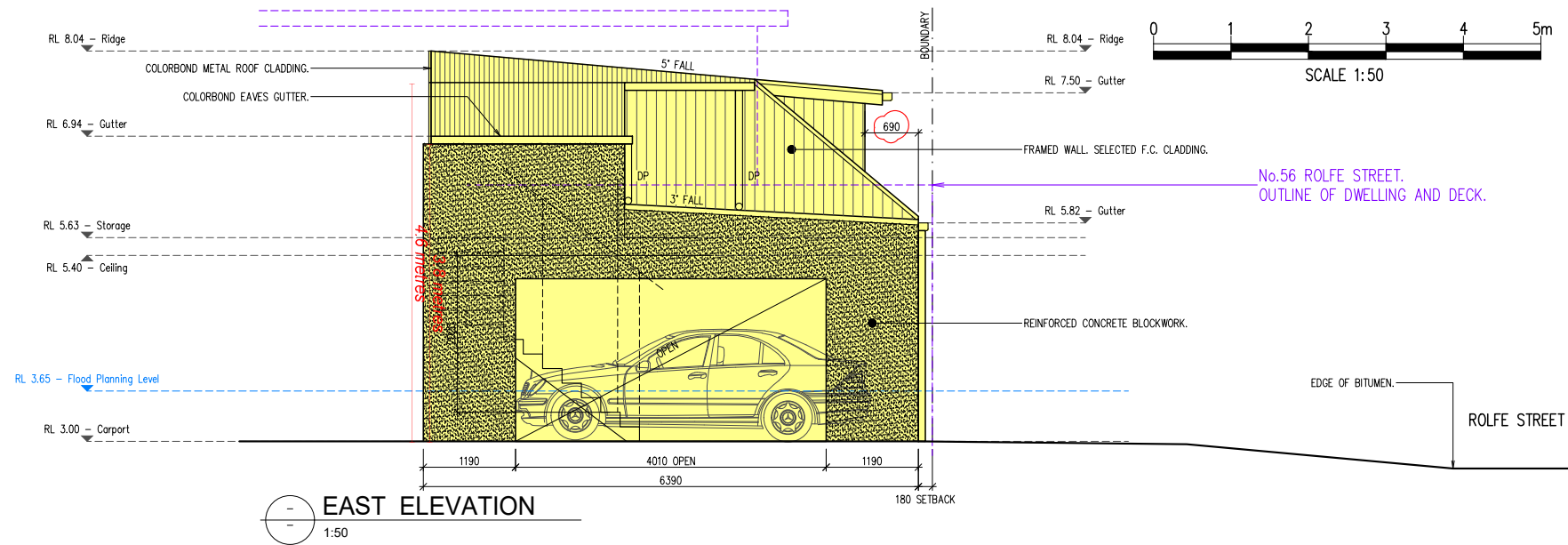
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DATE MAY 2024

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DRAWING NO. **DA-04**

REV. **B**



No.58 ALEXANDER STREET, MANLY 2095
PROPOSED CARPORT AND POOL
APPLICANT: MARNIX AND CLAIRE RAVESTEIJN
EAST AND WEST ELEVATIONS

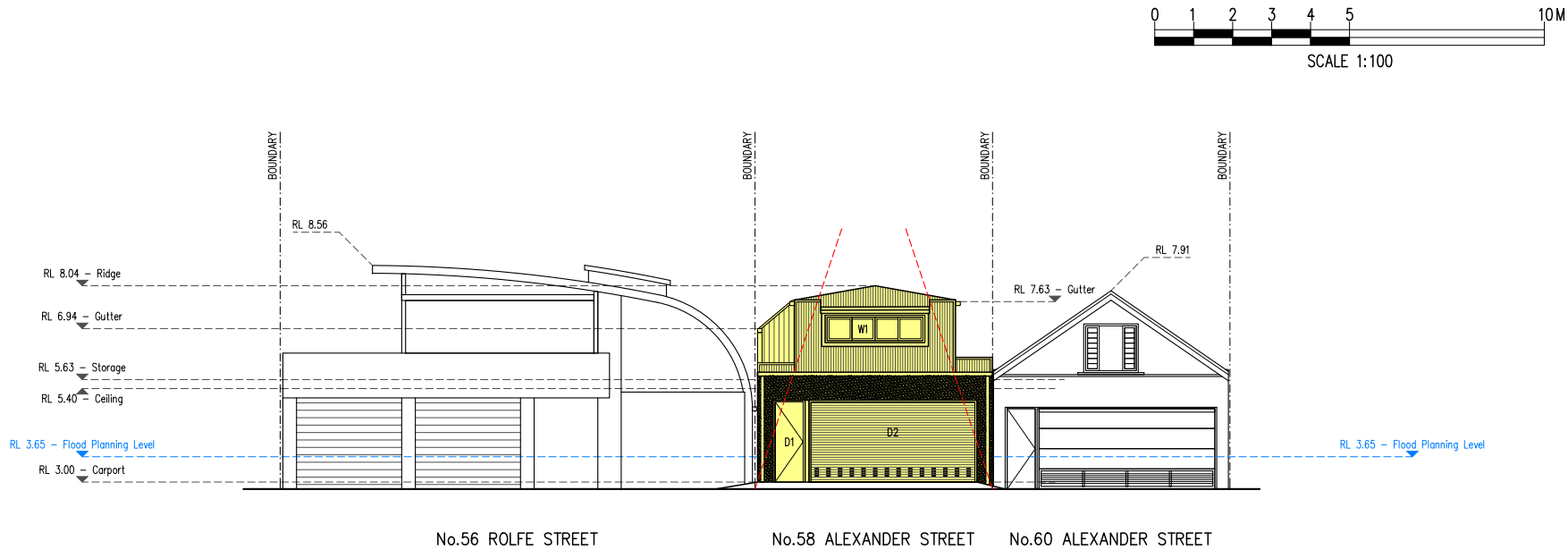
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DATE MAY 2024

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DRAWING NO. **DA-05**

REV. **B**



 NORTH ELEVATION - ROLFE STREET
1:100

No.58 ALEXANDER STREET, MANLY 2095
PROPOSED CARPORT AND POOL
APPLICANT: MARNIX AND CLAIRE RAVESTEIJN
NORTH ELEVATION - ROLFE STREET

SCALE 1:100@ A3
DATE MAY 2024

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DRAWING NO. **DA-06**

REV. **B**

58 Alexander Street, Manly

**58 ALEXANDER STREET, MANLY
CARPORT STRUCTURE ANCILLARY TO EXISTING SEMI-DETACHED DWELLING**

**VARIATION OF A DEVELOPMENT STANDARD REGARDING THE MAXIMUM
FLOOR SPACE RATIO CONTROL AS DETAILED IN CLAUSE 4.4 OF THE MANLY
ENVIRONMENTAL PLAN 2013**

For: Detached Carport Structure Ancillary to an Existing Semi-Detached Dwelling
At: 58 Alexander Street, Manly
Owner: Mr & Mrs Ravesteijn
Applicant: Mr & Mrs Ravesteijn

1.0 Introduction

This written request is made pursuant to the provisions of Clause 4.6 of Manly Local Environmental Plan 2013. In this regard, it is requested Council support a variation with respect to compliance with the maximum floor space ratio development standard as described in Clause 4.4 of the Manly Local Environmental Plan 2013 (MLEP 2013).

2.0 Background

Clause 4.4 of MLEP sets out the maximum floor space ratio of a building as follows:

- (2) *The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.*

The Floor Space Ratio Map specifies a maximum FSR of 0.6:1.

The proposed alterations and additions to the existing dwelling house provides for a floor space ratio of 0.664:1. This is a non-compliance of 17.79m² or a variation of 10.6%.

The proposal is considered acceptable and as discussed further within this request, there are sufficient environmental planning grounds to justify contravening the development standard.

The controls of Clause 4.4 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

Is Clause 4.4 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 the 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 4.4 relates to the maximum floor space ratio of a building. Accordingly, Clause 4.4 is a development standard.

3.0 Purpose of Clause 4.6

The Manly Local Environmental Plan 2013 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the 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 4.4 (the Maximum Floor Space Ratio Control) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of the LEP.

Clause 4.6(3) of the LEP provides:

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

The proposed development does not comply with the maximum floor space ratio development standard pursuant to Clause 4.4 of MLEP which specifies a maximum floor space ratio of 0.6:1 in this area of Manly Council.

The proposed detached carport and storage ancillary to the existing semi-detached dwelling will result in a floor space ratio of 0.664:1, resulting in a non-compliance of 17.79m² or a variation of 10.6%.

The non-compliance with the floor space ratio controls is a result of providing a storage space within the roof form, with the storage included in the definition of gross floor area. The existing dwelling is modest and there is very little storage currently on site. The site is constrained being identified as flood prone land and as such the carport cannot be enclosed to enable additional storage, hence the storage level above.

The floor space ratio control has not been strictly applied in this portion of Manly with a number of properties exceeding the FSR.

Strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

Clause 4.6(4) of MLEP provides:

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

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority.

The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]). The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest **because** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b).

The second precondition requires the consent authority to be satisfied that that the concurrence of the Planning Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, 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 the LEP provides:

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

Council has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), and should consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude Clause 4.4 of 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 allow for much needed storage on site, where it cannot be provided within the ground level of the carport (due to flood restrictions). The non-compliance results in a development that is compatible with the existing surrounding development in this portion of Rolfe Street and which is consistent with the stated Objectives of the R1 General Residential Zone, which are noted as:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

5.0 The Nature and Extent of the Variation

- 5.1 This request seeks a variation to the maximum floor space ratio standard contained in Clause 4.4 of MLEP.
- 5.2 Clause 4.4 of MLEP specifies a maximum floor space ratio of 0.6:1 in this area of Manly.
- 5.3 The proposal provides for construction of a detached carport structure with storage over and associated works ancillary to the existing semi-detached dwelling. The works proposed result in a development that is compatible with the existing surrounding development in this portion of Rolfe Street. The non-compliance is a result of the flood status of the property and need to provide a secure storage area on site that is compatible with the form of the existing surrounding development.

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 4.4 of MLEP a development standard?
 2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard

3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of Clause 4.4 and the objectives for development for in the R1 zone?
4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes Clause 4.4 of MLEP?

7.0. Request for Variation

7.1 Is compliance with Clause 4.4 unreasonable or unnecessary?

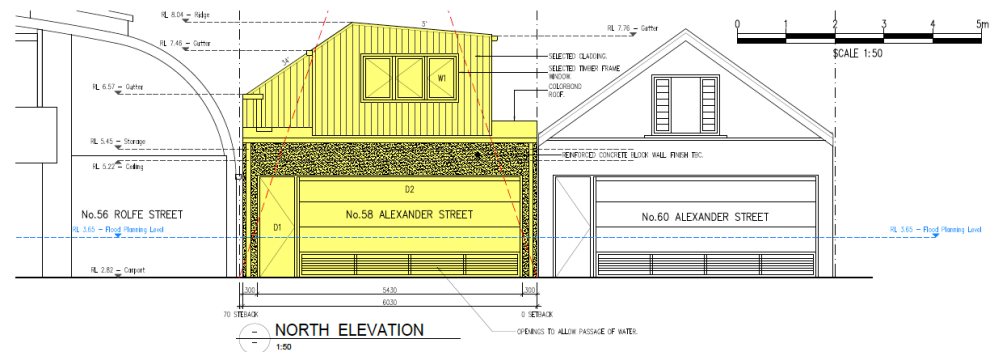
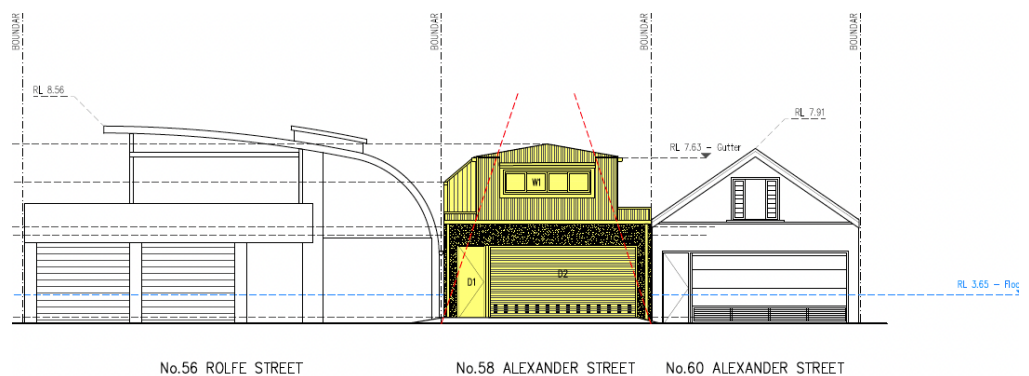
- (a) This request relies upon the 1st way identified by Preston CJ in Wehbe.
- (b) The first way in Wehbe is to establish that the objectives of the standard are achieved.
- (c) Each objective of the maximum floor space ratio development standard, as outlined under Clause 4.4, and reasoning why compliance is unreasonable or unnecessary, is set out below:

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

The proposed works are not visible from Alexander Street and therefore there is no impact on this existing streetscape.

The proposed works are located to the rear of the site and front Rolfe Street. Rolfe Street is currently characterised as a service lane with the majority of properties comprising parking structures of one and two storeys with nil setbacks to Rolfe Street. The proposed development, which incorporates a carport structure with storage above is compatible with the established streetscape. The upper level is appropriately setback from the Rolfe Street frontage and the side boundaries. The amended plans provide for an increased setback to the Rolfe Street frontage and also alter the roof form to pitch from the front northern elevation, thereby minimising bulk and scale. The architectural plans provide for a Rolfe Street streetscape view demonstrating that the proposal provides an appropriate outcome for the site.

58 Alexander Street, Manly

**Original Proposed Streetscape (Rolfe Street)****Proposed Amended Streetscape (Rolfe Street)**

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

The site is relatively level and the proposed works will not obstruct any landscape or townscape features.

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

The proposal provides an appropriate relationship to the adjoining property and character of the area. The upper level is well articulated on all facades to minimise bulk and scale and ensure sufficient separation to the adjoining properties. There is a consistent form of development in this portion of Rolfe Street with the ground level of the parking structures provided with nil setbacks to both side boundaries and the street frontage.

The proposal does not require the removal of any protected vegetation and has been designed to ensure the retention of the existing street tree in Rolfe Street. The proposal will not disrupt the landscape character of the area.

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

The proposed carport structure, and in particular the non-compliance with the floor space ratio controls (being the upper level storage), will not result in adverse environmental impacts. The carport and storage structure is a non-habitable structure with no windows on the upper side elevations and therefore will not reduce privacy of the adjoining properties. The deck is proposed with a privacy screen to prevent overlooking to the adjoining property. Shadow diagrams have been provided which indicate only minimal additional shadow. The proposal complies with Council's controls in this regard. The proposal will not have any adverse impacts on the public domain.

(e) to provide for the viability of Zone E1 and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

This objective is not relevant to the proposal.

The non-compliance with the floor space ratio control is a result of requiring sufficient storage on site. The carport is an open style structure that is not secure or weatherproof and cannot be used for storage. To provide a fully enclosed garage that could be utilised for storage would require an increased floor level to comply with the flood levels. This would be well elevated and complying vehicular access could not be achieved without impact on the Council's road reserve.

7.3 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 proposal seeks to provide off street parking and secure and weatherproof storage on site. The site is affected by flooding and as such the carport structure cannot be fully enclosed at ground floor level, thereby requiring additional storage above. The parking and storage area as proposed promotes the orderly & economic use of the land (cl 1.3(c)).
- The carport and storage structure, as amended, has been designed to complement the existing character of this portion of Rolfe Street and does not reduce the amenity of the adjoining properties. Therefore, the proposal will promote good design (cl 1.3(g)).
- The proposal provides for an appropriate bulk and scale that when viewed from Rolfe Street is compatible with the existing surrounding development and strict compliance is therefore unreasonable.

Further, the proposed works do not have any detrimental impact on the adjoining properties for the following reasons:

- The proposed structure is non-habitable and does not provide for any windows on the side elevations of the upper level. Therefore, the proposal does not reduce the current level of privacy provided to the adjoining properties. The deck structure will be provided with privacy screens to prevent overlooking.
- The site is orientated north south and shadow diagrams have been provided indicating only minimal additional shadow.
- The proposal does not require the removal of any protected vegetation and the landscaped character of the locality is retained.
- All collected stormwater will be discharged to the existing stormwater system. The proposal will not result in any additional stormwater runoff to the adjoining properties.

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the flood restrictions which prohibits a secure garage/storage area at ground level. Further, the resultant development is compatible within the immediate locality which is characterised by large parking structures with nil setbacks to the street frontage.

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.

The area of non-compliance does not result in any detrimental impact and provides for secure storage area. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

7.4 Is the proposed development in the public interest because it is consistent with the objectives of Clause 4.4 and the objectives of the R1 General Residential Zone?

- (a) Section 4.2 of this written request suggests the 1st test in Wehbe is made good by the development.
- (b) Each of the objectives of the R1 General Residential Zone and the reasons why the proposed development is consistent with each objective is set out below.

I have had regard for the principles established by Preston CJ in *Nessdee Pty Limited v Orange City Council* [2017] NSWLEC 158 where it was found at paragraph 18 that the first objective of the zone established the range of principal values to be considered in the zone.

Preston CJ 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 floor space ratio control, the resultant building as proposed will be consistent with the individual Objectives of the R1 General Residential Zone for the following reasons:

- ***To provide for the housing needs of the community.***

The proposal provides for a detached carport and storage structure. Secure weatherproof storage is required to suit the residents and there is currently very limited storage on site. As detailed previously, the proposal, and in particular the area of non-compliance, does not result in any loss of amenity to the adjoining properties.

- ***To provide for a variety of housing types and densities.***

The proposal provides for works ancillary to an existing semi-detached dwelling. Semi-detached dwellings are a permissible use in the zone and the proposed works are compatible.

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

This objective is not relative to the proposal.

Accordingly, it is considered that the site may be further developed with a variation to the prescribed maximum floor space ratio control, whilst maintaining consistency with the zone objectives.

7.5 Has council obtained the concurrence of the Director-General?

The Council can assume the concurrence of the Director-General with regards to this clause 4.6 variation.

7.6 Has the Council considered the matters in clause 4.6(5) of MLEP?

(a) Clause 4.6(5) has been repealed.

8.0 Conclusion

This development proposed a departure from the maximum floor space ratio development standard, with the proposed works providing for a floor space ratio of 0.669:1.

The non-compliance is a result providing for secure weatherproof storage on site to service the existing dwelling. Given the flood restrictions the carport structure cannot be fully enclosed to serve as a secure and weatherproof storage area.

The extent of the variation to the floor space ratio control does not result in any significant impact on the amenity, views and outlook for the neighbouring properties.

This written request to vary to the maximum floor space ratio standard specified in Clause 4.4 of the Manly LEP 2013 adequately demonstrates that the objectives of the standard will be met.

58 Alexander Street, Manly

The bulk and scale of the proposed development is appropriate for the site and locality.

Strict compliance with the maximum floor space ratio control would be unreasonable and unnecessary in the circumstances of this case.

Natalie Nolan
Town Planner

ITEM 3.3	DA2024/0803 - 70 GLADSTONE STREET NEWPORT - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING SECONDARY DWELLING
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PURPOSE

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

RECOMMENDATION

THAT Council as the consent authority **approves** Development Consent to DA2024/0803 for alterations and additions to a dwelling house including secondary dwelling on land at Lot B DP 160935, 70 Gladstone Street NEWPORT, subject to the conditions set out in the Assessment Report.

Reporting manager	Adam Richardson
TRIM file ref	2024/703056
Attachments	1 Assessment Report 2 Site Plan and Elevations

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/0803
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Responsible Officer:	Megan Surtees
Land to be developed (Address):	Lot B DP 160935, 70 Gladstone Street NEWPORT NSW 2106
Proposed Development:	Alterations and additions to a dwelling house including secondary dwelling
Zoning:	R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Andy Lehman Design

Application Lodged:	24/06/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New second occupancy
Notified:	09/09/2024 to 23/09/2024
Advertised:	Not Advertised
Submissions Received:	5
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 942,700.00
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EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) as the proposed development is in receipt of five (5) or more objections.

The proposed development was notified in accordance with Council's Community Participation Plan (CPP) between 5 July 2024 and 19 July 2024. Five (5) objections to the development were received during the notification period. Amended plans and documentation was provided to Council on 26 August 2024. The amended application was re-notified in accordance with the CPP between 9 September 2024 and 23 September 2024. Two (2) additional submissions were provided during the re-notification period. These submissions were received from objectors who provided submissions in the first notification period. Concerns raised in the objections predominantly relate to stormwater management, privacy, view sharing,

solar access impacts, loss of vegetation and impacts upon native fauna.

The proposed development is consistent with the controls of the Pittwater Local Environmental Plan 2014 (PLEP 2014) and is also found to be acceptable when considered against the Controls C1.5 Visual Privacy, D10.8 Side and rear building line (excluding Newport Commercial Centre) and D10.11 Building envelope (excluding Newport Commercial Centre) of the Pittwater 21 Development Control Plan (P21DCP).

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 seeks consent for the construction of a two (2) vehicle carport, alterations and additions to the existing dwelling and construction of a secondary dwelling, specifically:

Alterations and additions to the existing dwelling

Ground Floor Level

- Removal of the existing kitchen, to be replaced with a bedroom
- Removal of existing bathroom to be replaced with hallway to the proposed rear dwelling extension
- Removal of existing deck and family room to be replaced with an open plan kitchen (with walk-in pantry) dining and living area
- Laundry

First Floor Level

- Bedroom 1 with walk-in robe and en-suite
- Bedroom 2
- Library
- Bridge from internal staircase to bedrooms and library
- Voids to the internal and external ground floor level

Secondary dwelling

- One bedroom
- Bathroom
- Laundry
- Open plan kitchen, living and dining area

External

- Landscaping treatments

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 - 5.4 Controls relating to miscellaneous permissible uses
Pittwater 21 Development Control Plan - C1.3 View Sharing
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - D10.8 Side and rear building line (excluding Newport Commercial Centre)
Pittwater 21 Development Control Plan - D10.11 Building envelope (excluding Newport Commercial Centre)

SITE DESCRIPTION

Property Description:	Lot B DP 160935 , 70 Gladstone Street NEWPORT NSW 2106
Detailed Site Description:	The subject site consists of one (1) allotment located on the northern side of Gladstone Street. The site is regular in shape with a frontage of 16.46m along Gladstone Street and a depth of 57.91m. The site has a surveyed area of 953.1m². The site is located within the R2 Low Density Residential zone within the <i>Pittwater Local Environmental Plan 2014</i> (PLEP 2014) and accommodates a single storey residential dwelling within a landscaped setting. The site has a southerly orientation and is located on a slope of approximately 3.76 metres (or 6.59%), falling from the south-western corner toward the north-eastern corner of the site. The site is not known to have any threatened species on the site. Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by single residential dwellings, allotments with a residential dwelling and secondary dwelling, and Residential Flat Buildings (RFBs).

Map:



SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site.

The land has been used for residential purposes for an extended period of time.

The land was subdivided to create Lot A (70A Gladstone Street, Newport) and Lot B (70 Gladstone Street, Newport) by the Municipality of Shire of Warringah on 15 June 1955 (No. 3575).

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning	None applicable.

Section 4.15 Matters for Consideration	Comments
agreement	
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<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 amended architectural plans, an updated survey plan and information as requested by Council's Development Engineer. This information was detailed within a Request for Further Information (RFI) letter, dated 31 July 2024. This letter was sent to the Applicant via email and uploaded to the NSW Planning Portal. Amended documentation was provided to Council, via the NSW Planning Portal, on 26 August 2024. The amended application was formally re-notified in accordance with Council's Community Participation Plan (CPP). <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 09/09/2024 to 23/09/2024 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 process council is in receipt of 5 submission/s from:

Name:	Address:
Mr Stuart Craig Williamson	7 / 72 Gladstone Street NEWPORT NSW 2106
Ms Jeanette Maple	1 / 72 Gladstone Street NEWPORT NSW 2106
Amanda Loftus	68 Gladstone Street NEWPORT NSW 2106
Mr Stephen John Barnett	2 / 72 Gladstone Street NEWPORT NSW 2106
Mr Scott William Beggs	70A Princes Lane NEWPORT NSW 2106

In accordance with Council's CPP, the application was first notified between 5 July 2024 and 19 July 2024 during which time five (5) submissions were received. Upon receipt of amended plans and documentation, the application was re-notified between 9 September 2024 and 23 September 2024. During this time, two (2) submissions were received from adjoining property owners who had previously provided submissions during the first notification period.

All concerns raised within the submissions have been addressed below.

The following issues were raised in the submissions:

- **Privacy**

Concern that the proposed development will cause unreasonable privacy impacts upon adjoining properties.

Comment:

The proposed development has been assessed against the requirements and outcomes of control C1.5 Visual Privacy of the Pittwater 21 Development Control Plan (P21DCP). The assessment found that the proposal, as amended, provides a reasonable level of privacy between properties.

This issue does **not** warrant reason for refusal of this application.

- **Stormwater management**

Concern that the proposed development will cause unreasonable impacts upon existing stormwater run-off issues. Of further concern is that the proposed stormwater management (being an on-site detention tank) is not large enough to support the expected stormwater run-off.

Comment:

Council's Development Engineer has reviewed the proposed development, including the proposed stormwater management, and no concerns were raised, subject to recommended conditions.

This issue does **not** warrant reason for refusal of this application.

- **Solar access**

Concern that the proposed development will cause unreasonable solar access issues to internal habitable rooms as well as external private open spaces.

Comment:

Shadow diagrams have been provided with this application. These diagrams indicate compliance with the solar access requires as stipulated within control C1.4 Solar Access of the P21DCP. As such, a detailed assessment of the proposal against the outcomes of this control is not required in this particular circumstance and the assessment has found that the proposal provides a reasonable level of solar access to adjoining properties and the subject site.

This issue does **not** warrant reason for refusal of this application.

- **Views**

Concerns that the proposed development will remove district views currently obtained from units within 72 Gladstone Street.

Comment:

A view sharing assessment has been undertaken within this assessment report under section C1.3 Views P21DCP. The assessment found that the proposed development provides a reasonable sharing of views.

This issue does **not** warrant reason for refusal of this application.

- **Impact on native fauna**

Concern that removal of the trees within the front portion of the site to accommodate the

proposed carport will be detrimental to existing native fauna.

Comment:

The site is not located within a biodiversity value area. Council's Landscape Officer has reviewed the proposed development and is satisfied with the proposed removal of one (1) tree, noting that the site will retain six (6) native tree species.

This issue does **not** warrant reason for refusal of this application.

- ***Tree removal***

Concern that the proposed development includes the removal of multiple trees throughout the site which will have a detrimental impact upon adjoining properties.

Comment:

The proposed development includes the removal of one (1) prescribed tree to accommodate the proposed carport. As indicated by Council's Landscape Officer, the proposal will retain a further six (6) native trees throughout the site. The proposed removal of the single prescribed tree does not cause unreasonable amenity impacts upon adjoining properties.

This issue does **not** warrant reason for refusal of this application.

- ***Psychological impact***

Concern that the proposed tree removal, reduction of solar access and a larger built form will cause unreasonable psychological impact upon adjoining residents.

Comment:

Consideration of the psychological impact of development is not a consideration within the Environmental Planning and Assessment Act 1979.

This issue does **not** warrant reason for refusal of this application.

- ***Reduced property value***

Concern that the proposed development and its impacts upon adjoining land will unreasonably reduce the value of these properties.

Comment:

Consideration of a property's value is not a consideration within the Environmental Planning and Assessment Act 1979.

This issue does **not** warrant reason for refusal of this application.

- ***Inaccurate survey***

Concern that the boundary identification survey provided with the application is inaccurate, particularly relating to two (2) trees located along the rear boundary between the subject site and 70A Gladstone Street, Newport (otherwise known as 70A Princes Lane, Newport).

Comment:

An updated boundary identification survey has been provided which has accurately plotted the trees within the rear portion of the subject site.

This issue does **not** warrant reason for refusal of this application.

- ***Assurance the proposed works won't extend beyond property boundaries***

The submissions sought assurances that the proposed works will not extend beyond the property boundaries, specifically the access handle along the eastern boundary of the subject site which is part of 70A Gladstone Street (70A Princes Lane), Newport.

Comment:

The architectural plans do not indicate any encroachment beyond the property boundaries of 70 Gladstone Street. However, to ensure this, a condition will be recommended to ensure the proposed works are contained entirely within the property boundaries of 70 Gladstone Street, Newport.

This issue does **not** warrant reason for refusal of this application.

- ***Private open space***

Concern that the proposed development will have adverse impacts upon the private open space of adjoining properties.

Comment:

The proposed development achieves compliance with the requirements of C1.7 Private Open Space of the P21DCP. Further, the proposed location of the secondary dwelling is entirely within the property boundaries of 70 Gladstone Street, not within the private open space of 70A Gladstone Street (or 70A Princes Lane). Historically, it appears 70A Gladstone Street (or 70A Princes Lane) has been using a portion of the rear yard of the subject site for private use.

This issue does **not** warrant reason for refusal of this application.

- ***Building colours and materials***

Concern regarding the colour and materials of the roof of the existing dwelling, which has changed from a terracotta tiled roof to a silver colourbond sheeting. The submissions noted the unreasonable glare arising from the colourbond sheeting.

Comment:

The replacement of the terracotta roof with colourbond sheeting is not for consideration under this development application. For the proposed additions to the principal dwelling and the secondary dwelling, the proposed material palette indicates a suitable colour scheme that achieves compliance with the requirements of D10.4 Building Colours and Materials of the P21DCP. A suitable condition will be recommended to ensure the external finish to the roof will minimise solar reflections to neighbouring properties.

This issue does **not** warrant reason for refusal of this application.

- ***Off-street parking requirements***

Concern that the proposed development does not achieve the minimum number of on-site parking spaces for the number of bedrooms within the principal dwelling, nor does the proposal include one (1) additional on-site parking space for the secondary dwelling.

Comment:

The site currently has two (2) hardstand spaces for on-site parking. The proposed development seeks consent to construction a two (2) vehicle carport and retain one (1) hardstand space, thus resulting in three (3) on-site parking spaces for the principal dwelling. Control B6.3 Off-street Vehicle Parking Requirements of the P21DCP stipulates that for a dwelling with 2 or more bedrooms, 2 parking spaces are required. Therefore, the proposal achieves compliance with this control. While this control stipulates that one (1) parking space is required for a secondary dwelling, the State Environmental Planning Policy (Housing) 2021 Chapter 3, Part 1 Clause 53(b) stipulates that *the number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out*. Therefore, an additional on-site parking space for the secondary dwelling is not required.

This issue does **not** warrant reason for refusal of this application.

- ***Pittwater 21 Development Control Plan (P21DCP) Control non-compliances***

Concern that the proposed development does not achieve compliance with the relevant built form controls of the P21DCP - specifically the front, side and rear setback requirements, as well as the building envelope requirement and these non-compliances result in an unreasonable bulk and scale of the built form.

Comment:

The proposed development achieves compliance with the front and side setback requirements to both the principal dwelling and secondary dwelling. The proposed works to the principal dwelling achieves compliance with the rear setback requirement. However, the proposed secondary dwelling extends into the rear setback area. As such, a merit consideration of the proposed secondary dwelling against the outcomes of D10.8 Side and rear building line has been undertaken in the assessment report. The assessment found that the proposal achieves the outcomes of control D10.8. Further, there is a minor non-compliance to the building envelope of the principal dwelling along the western elevation. This non-compliance is marginal at a height of 0.1m for a length of 1.24 metres. Nonetheless, a merit consideration of this non-compliance was undertaken and the assessment found that the proposed development could achieve the outcomes of control D10.11 Building envelope of the P21DCP.

This issue does **not** warrant reason for refusal of this application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<i>Supported, subject to recommended conditions.</i> Council's Landscape Referral section have assessed the application against the Pittwater Local Environment Plan (PLEP), and the following Pittwater 21 DCP (PDCP) controls (but not limited to): B4.22 Preservation of Trees and Bushland Vegetation; C1.1 Landscaping; D10 Newport Locality. The proposed development is for alterations and

Internal Referral Body	Comments
	additions and a secondary dwelling. An Arboricultural Impact Assessment (AIA) and a Landscape Plan is submitted for consideration. The AIA report recommends the removal of one prescribed tree located within the property that is impacted by the proposed development works, and Landscape Referral raise no concerns. Six existing native trees are proposed for retention (one is on common boundary) and tree protection measures are included in the AIA, and conditions shall be imposed should the application be approved. All existing trees and vegetation within the road reserve and within adjoining properties shall be protected. The proposed landscape area shall satisfy the meaning of 'landscape area' as defined in PLEP, meaning: a part of a site used for growing plants, grasses and trees, but does not include any building, structure or hard paved area, and the Assessing Planning Officer shall determine this matter. The Landscape Plan includes additional planting within the property including trees and other planting. It is noted that the majority of nominated trees by design are arranged as likely to establish hedges rather than canopy trees. In consideration of the existing trees retained, Landscape Referral raise no objections to this scheme subject to the following nominated trees being planted to achieve their natural form: Banksia integrifolia and Tristaniopsis laurina, and conditions shall be imposed.
NECC (Development Engineering)	Supported, subject to recommended conditions. Original Engineering Comments 20 July 2024 The proposed development is on a Low Level Property in Region 1. The submitted stormwater management plans show discharge of stormwater from the site utilising an on-site detention system and level spreader. This is acceptable upon submission of an easement refusal letter from 70A Gladstone Street. Please provide proof of easement rejection from 70A Gladstone Street in accordance with Section 5.5 and Appendix 2 of Council's Water Management for Development Policy. Updated Engineering Comments 9 September 2024 Easement rejection proof from 70A Gladstone Street has been provided. Development engineering raises no further objections to the proposed development, subject to conditions.
External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	Supported, subject to recommended conditions. The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application

- Certificate No. A1749235, dated 28 May 2024 for the alterations and additions to the principle dwelling.
- Certificate No.1749229S_02, dated 28 May 2024 for the secondary dwelling.

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

SEPP (Housing) 2021

Part 1 – Secondary Dwellings

Clause 52 – Development may be carried out with consent	
Standard	Compliance/Comment
(2) Development consent must not be granted for development to which this Part applies unless— (a) No dwellings, other than the principal dwelling and the secondary dwelling, will be located on the land, and (b) The total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area permitted for a dwelling house on the land under another environmental planning instrument, and (c) The total floor area of the secondary dwelling is: (i) no more than 60m², or (ii) if a greater floor area is permitted for a secondary dwelling on the land under another environmental planning instrument - the greater floor area.	(a) The proposed development will result in the principle dwelling and secondary dwelling on the site. (b) The subject site is not bound by a Floor Space Ratio (FSR). (c) The proposed secondary dwelling has a floor area of 60.0m².
Clause 53 – Non-discretionary development standards—the Act, s 4.15	
Standard	Compliance/Comment

(a) For a detached secondary dwelling - a minimum site area of 450m ² .	The proposal includes a detached secondary dwelling. The subject site has a total site area of 953.1m ² , which exceeds the minimum site area of 450.0m ² .
(b) The number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out.	The subject site, as existing, has no formal off-street parking. The proposed development seeks consent to construct a two (2) vehicle carport, which meets the minimum requirement for parking under the P21DCP for a dwelling with more than 3 bedrooms. No additional parking is proposed for the secondary dwelling.

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	Carport: 3.0m Dwelling: 7.07m Secondary Dwelling: 4.95m	N/A N/A N/A	Yes Yes Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.10 Essential services	Yes

Detailed Assessment

5.4 Controls relating to miscellaneous permissible uses

Subclause (9) Secondary Dwellings stipulates that a secondary dwelling must have a total floor area that does not exceed whichever is the greater of the following:

- (a) 60.0m²
- (b) 25% of the total floor area of the principal dwelling

Comment:

The proposed secondary dwelling has a floor area of 60.0m², and thus achieves compliance with (a) as prescribed above.

Pittwater 21 Development Control Plan

Built Form Controls

Principal Dwelling

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	Carport: 8.05m	N/A	Yes
		Dwelling First Floor: 29.64m	N/A	Yes
Rear building line	6.5m	Dwelling First Floor: 14.02m	N/A	Yes
Side building line	Eastern Boundary 2.5m	Dwelling Ground Floor: 4.12m First Floor: 4.09m	N/A N/A	Yes Yes

Building envelope	Western Boundary 1m	Carport 7.83m	N/A	Yes
		Dwelling Ground Floor: 2.75m First Floor: 2.75m	N/A N/A	Yes Yes
		Carport 2.9m	N/A	Yes
	Eastern Elevation 3.5m	Dwelling Within envelope	N/A	Yes
		Carport Within envelope	N/A	Yes
	Western Elevation 3.5m	Dwelling Outside envelope for a length of 1.24 metres with a max. height of 0.1m	N/A	No
		Carport Within envelope	N/A	Yes
Landscaped area	50% (476.55m ²)	50.4% (480.9m ²)	N/A	Yes

Secondary Dwelling

Built Form Control	Requirement	Proposed	% Variation*	Complies
Rear building line	6.5m	3.95m	39.2%	No
Side building line	Eastern Boundary 2.5m	2.5m	N/A	Yes
	Western Boundary 1m	1.12m	N/A	Yes
Building envelope	Eastern Elevation 3.5m	Within envelope	N/A	Yes
	Western Elevation 3.5m	Within envelope	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.10 Newport Locality	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
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

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
C1.11 Secondary Dwellings and Rural Worker's Dwellings	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.23 Eaves	Yes	Yes
D10.1 Character as viewed from a public place	Yes	Yes
D10.3 Scenic protection - General	Yes	Yes
D10.4 Building colours and materials	Yes	Yes
D10.7 Front building line (excluding Newport Commercial Centre)	Yes	Yes
D10.8 Side and rear building line (excluding Newport Commercial Centre)	No	Yes
D10.11 Building envelope (excluding Newport Commercial Centre)	No	Yes
D10.12 Landscaped Area - General	Yes	Yes

Detailed Assessment

C1.3 View Sharing

Merit consideration

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

- *A reasonable sharing of views amongst dwellings.*

Comment:

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, are applied to the proposal.

1. Nature of the views affected

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

Comment to Principle 1:

The views obtained are district only. No views of the water or any iconic structures are obtained.

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

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

Comment to Principle 2:

Units 1 and 7 of 72 Gladstone Street enjoy district views across the side boundary facing east, as indicated in the figures below. These views are obtained from a standing position from the kitchen of Unit 1; and the kitchen and study of Unit 7. Unit 1 is located on the first level of the three storey residential flat building (noting that the ground floor level accommodates garages and laundries for the units); and, Unit 7 is located on the second level (top) of the residential flat building.

Unit 1/72 Gladstone Street, Newport



Figure 1. Standing in the kitchen, facing east, over the side boundary.



Figure 2. Standing in the kitchen, facing north-east, over the side boundary.

Unit 7 of 72 Gladstone Street, Newport



Figure 3. Standing in the kitchen, facing north-east, over the side boundary.



Figure 4. Sitting in the study, facing east, over the side boundary.



Figure 5. Sitting in the study, facing north-east, over the side boundary.

3. Extent of impact

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

Comment to Principle 3:

Unit 1 of 72 Gladstone Street

The district views toward the north-east of Unit 1 will not be impacted as the proposed rear extension to the principal dwelling are sited further to the north-east and will be out of view of this unit. The proposed carport is located at ground level and will not obscure the district views obtained from Unit 1.

Unit 7 of 72 Gladstone Street

The proposed development will likely partially obscure the district views toward the north-east of Unit 7 from both the kitchen and study, in both a standing and seated position, thus creating a more defined, and smaller, view corridor between the existing roof and the proposed rear addition. Notwithstanding, the district views are not considered to be high value or contain iconic structures. With consideration of the *whole* of Units 1 and 7 of 72 Gladstone Street, the extent of view loss is considered **minor**, and thus a reasonable sharing of views is provided.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

The proposed works to the principal dwelling achieve compliance with the front, side and rear setback requirements of the P21DCP, as well as the minimum requirement for landscaped area as stipulated within the P21DCP. The proposal does, however, marginally extend beyond the prescribed side boundary envelope along the western elevation. However, as has been detailed within this report under section D9.9 Building envelope, this non-compliance is sited at the rear portion of the proposed extension to the principal dwelling and does not cause any unreasonable impact upon the views obtained from residents of the residential flat building at 72 Gladstone Street. The proposal is also compliant with the maximum building height stipulated within Clause 4.3 of the PLEP 2014.

In this instance, the proposed development is a generally compliant structure that has been skillfully designed to minimise adverse or unreasonable amenity impacts upon adjoining properties. In this instance, as corroborated by Step 4, the proposed development is considered acceptable and the extent of view sharing is reasonable.

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

Comment:

The proposal has utilised innovative design solutions to improve the urban environment.

- *Canopy trees take priority over views.*

Comment:

The proposal has multiple canopy trees throughout the site, with only one (1) proposed for removal to accommodate the proposed carport. The remaining native canopy trees on site will be retained.

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.

C1.5 Visual Privacy

Detailed description of non-compliance

Submissions were received which raised concern regarding privacy impacts arising from the proposed development, including the secondary dwelling. Amended plans were provided which altered the window schedule along the northern elevation of the proposed secondary dwelling. These windows are now highlight windows (with a sill height of 1.7 metres when measured from the finished floor level) or treated with translucent glazing.

The proposed rear addition to the existing principal dwelling has raised concern that there would be unreasonable and direct overlooking into the private open space of adjoining properties. As such, an assessment of the proposal against the outcomes of this control has been undertaken below.

Merit consideration

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

Comment:

Two (2) windows (being W16 and W17) are proposed along the eastern elevation of the first floor addition to the principal dwelling. W16 is sited to the library, and W17 is sited to an internal void. In this instance, there is no unreasonable direct overlooking to the main private open space of the adjoining property. Three (3) windows (W23, W24 and W25) are proposed along the western elevation of the first floor addition to the principal dwelling. These windows are sited to bedrooms and a bathroom. These windows are offset from windows of the adjoining residential flat building. In this instance, there are no unreasonable privacy impacts arising from the alterations and additions to the principal dwelling.

The amended plans provided have changed the proposed windows along the northern elevation of the proposed secondary dwelling, ensuring that these are highlight windows (with a sill height of 1.7 metres when measured from the finished floor level) or treated with an opaque glazing. In this instance, and notwithstanding the rear setback distance to the proposed secondary dwelling, there are no unreasonable privacy impacts arising from the proposed secondary dwelling.

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

Comment:

The proposed development provides a sense of territory and safety for residents.

Having regard to the above assessment, it is considered that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D10.8 Side and rear building line (excluding Newport Commercial Centre)

Description of Non-Compliance

This control requires development to be setback 2.5 metres from one side boundary and 1.0 metre from the other side boundary. This control also requires development to be setback 6.5 metres from the rear boundary line.

The proposed dwelling achieves compliance with the side and rear setback requirements.

The proposed secondary dwelling achieves compliance with the side setback requirements, but results in a numerically non-compliant rear setback distance of 3.95 metres, which presents a variation of 39.2%.

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:

As outlined under Clause A4.10 Newport Locality of the P21 DCP, the proposed development is consistent with the objectives of the desired future character of the locality. The proposal does not result in the removal of native plant species. In this instance, the proposal is consistent with the existing and surrounding developments. As has been detailed throughout this assessment report, the proposal is unlikely to result in any unreasonable amenity impacts upon adjoining properties.

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

Comment:

Notwithstanding the extent of non-compliance to this control, the proposed development is a suitable bulk and scale that ensures the built form is minimised with no unreasonable amenity impacts upon adjoining properties.

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

Comment:

The extent of non-compliance does not give rise to unreasonable impacts upon views and vistas to and/or from public/private places.

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

Comment:

As above, the extent of non-compliance, and the proposed landscaping, does not give rise to any unreasonable impacts upon views from adjoining properties.

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

Comment:

The proposed development has been assessed against the outcomes of control C1.4 Visual Privacy of the P21DCP, and, based on the amended plans provided, the assessment found that a reasonable level of privacy was provided for the context of the subject site and adjoining properties. Further, due to the siting of the secondary dwelling, there is no unreasonable overshadowing to adjoining properties. In this particular circumstance, the proposal provides a reasonable level of privacy, amenity and solar access to the development site and adjoining properties, notwithstanding the extent of non-compliance to this control.

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

Comment:

Vegetation and canopy trees on site are not required to be removed to facilitate the proposed secondary dwelling. Furthermore, as the proposed secondary dwelling is sited in the rear yard there is no impact upon the existing streetscape.

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

Comment:

Notwithstanding the extent of non-compliance to this control, the proposal continues to provide flexibility in the siting of buildings and access.

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

Comment:

As has been detailed above, the proposed secondary dwelling does not require the removal of any important vegetation or canopy trees on site. The proposal does, however, include additional screen planting along the rear and side boundary lines which will contribute to providing visual relief of the built form of the secondary dwelling when viewed from adjoining and nearby properties.

- *To ensure a landscaped buffer between commercial and residential zones is established. (En, S)*

Comment:

The subject site is located within, and surrounded by, residential zoning. Therefore, this control does not apply.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D10.11 Building envelope (excluding Newport Commercial Centre)

Description of Non-compliance

The proposal achieves compliance with this requirement to both the dwelling, carport and secondary dwelling along the eastern elevation.

[illegible]

Figure 1. Western elevation building envelope, breach indicated by orange shading.

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

- The proposal does not result in the removal of native plant species. The extent of non-compliance to this control is minor and does not cause any unreasonable amenity impacts upon the occupants of the subject site or adjoining properties. In this instance, the proposal is consistent with the existing and surrounding developments. As outlined under Clause A4.10 Newport Locality of the P21 DCP, the proposed development is consistent with the objectives of the desired future character of the locality.

- The proposed envelope breach is sited at the rear of the first floor addition and is not easily discernible from the existing streetscape. In this instance, the extent of the breach will not impact upon the existing streetscape. Furthermore, as the breach to this control is minor it does not create an unreasonable bulky building, therefore the proposal promotes a building scale and density that is below the height of the trees in the surrounding natural environment.

- Notwithstanding the numerical non-compliance to this control, the proposed development satisfactorily responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment in that no important or native vegetation (including canopy trees) are

required for removal, nor does the proposal include substantial excavation or fill that would adversely alter the natural ground levels.

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

Comment:

The extent of non-compliance to this control is minor. Additionally, the proposed first floor addition is setback 2.75 metres from the western boundary line (where the minimum requirement is 2.5 metres). It shall also be noted that the proposal achieves compliance with the requirements of Clause 4.3 of the PLEP 2014. In this instance, the proposal will result in a building that is of an acceptable bulk and scale that is consistent with adjoining and nearby properties.

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

Comment:

The extent of non-compliance does not cause unreasonable view impacts to and/or from public/private places.

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

Comment:

The extent of non-compliance is minor and, therefore, does not cause any unreasonable privacy, amenity or solar access impacts upon adjoining properties. The proposed development has been assessed against the outcomes of control C1.4 Visual Privacy of the P21DCP, and the assessment found that a reasonable level of privacy was provided for the context of the subject site and adjoining properties. As indicated on the shadow diagrams provided, the proposed development achieves compliance with the requirements as set out in control C1.4 Solar Access. In this instance, and notwithstanding the extent of non-compliance to this control, the proposed development provides a reasonable level of amenity for the development site and residential properties.

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

Comment:

The extent of non-compliance to this control does not impact upon the vegetation on site. Furthermore, the proposal includes screen planting along the side and rear boundaries which will contribute to visually reducing the built form when viewed from adjoining and nearby properties.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$9,427 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$942,700.

CONCLUSION

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

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

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

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

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

PLANNING CONCLUSION

This proposal, for alterations and additions to a dwelling house including secondary dwelling has been referred to the Development Determination Panel (DDP) as the proposed development generated five (5) or more objections.

The proposed development was notified in accordance with Council's CPP between 5 July 2024 and 19 July 2024. Five (5) objections were provided during this time. Amended plans and documentation were provided to Council on 26 August 2024. The amended application was re-notified in accordance with the CPP between 9 September 2024 and 23 September 2024. Two (2) submissions were provided during the re-notification period. These submissions were received from objectors who provided submissions in the first notification period. Concerns raised in the objections predominantly relate to stormwater management, privacy, view sharing, solar access impacts, loss of vegetation and impacts upon native fauna. Where necessary, the concerns raised within the objections were rectified through amended plans or recommended conditions.

Critical assessment issues include Clause 5.4 Controls relating to miscellaneous permissible uses in the

Pittwater Local Environmental Plan 2014 (PLEP 2014); and Controls C1.5 Visual Privacy, D10.8 Side and rear building line (excluding Newport Commercial Centre) and D10.11 Building envelope (excluding Newport Commercial Centre) of the Pittwater 21 Development Control Plan (P21DCP).

Overall, the development is a high quality design that performs well against the relevant Clauses of the PLEP 2014 and Controls of the P21DCP and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for **approval**.

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2024/0803 for Alterations and additions to a dwelling house including secondary dwelling on land at Lot B DP 160935, 70 Gladstone Street, 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
DA01	C	DA Landscape Plan	Volker Klemm Landscape Design	December 2023
DA07	A	Proposed Site / Roof / Analysis Plan	Andy Lehman Design	August 2024
DA08	A	Proposed Ground Floor Plan (Main Dwelling)	Andy Lehman Design	August 2024
DA09	A	Proposed First Floor Plan	Andy Lehman Design	August 2024
DA10	A	Proposed Street Elevation	Andy Lehman Design	August 2024
DA10.1	A	Proposed South Elevation - Carport	Andy Lehman Design	August 2024
DA11	A	Proposed South Elevation	Andy Lehman Design	August 2024
DA12	A	Proposed North Elevation	Andy Lehman Design	August 2024

DA13	A	Proposed East Elevation	Andy Lehman Design	August 2024
DA14	A	Proposed West Elevation	Andy Lehman Design	August 2024
DA15	A	Proposed Section 1-1	Andy Lehman Design	August 2024
DA16	A	Proposed Section A-A	Andy Lehman Design	August 2024
DA17	A	Proposed Floor Plan & Section (Secondary Dwelling)	Andy Lehman Design	August 2024
DA18	A	Proposed (secondary dwelling) Elevations	Andy Lehman Design	August 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate A1749235	-	Anthony Ross Lehman	28 May 2024
BASIX Certificate 1749229S_03	-	Anthony Lehman	13 August 2024
Arboricultural Impact Assessment	-	Treeism Arboricultural Services	November 2023
SW1 Stormwater Management Plan & SW2 Stormwater Management Detailing	-	Barrenjoey Consulting Engineers Pty Ltd	8 December 2023
Waste Management Plan	-	Not signed	13 June 2024
DA23 Sediment & Waste Management Control Plan	A	Andy Lehman Design	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	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. 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 \$9,427.00 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 \$942,700.00.

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

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

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

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

6. Security Bond

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

7. Footing Design Near Trees to be Retained

Pier footings in proximity to existing trees 18, 19, 20 and 21 are required to satisfy the following requirements:

a) Pier footing locations shall be developed in co-ordination with an Arborist with AQF minimum

Level 5 qualifications in arboriculture, and a qualified Structural Engineer, following investigation by the Arborist, to locate critical tree roots and recommend footing design and locations for the construction works.

b) the Arborist shall review, comment, recommend design revision as required and approve the footing layout, to ensure the locations of footings will be manageable in terms of tree protection measures.

c) the Arborist shall submit certification to the Certifier, that the locations of the footings are accepted.

d) the agreed footing structural layout plans shall be submitted to the Certifier for approval prior to the issue of a Construction Certificate.

Reason: Tree protection.

8. On-Site Stormwater Detention Details

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by Barrenjoey Consulting Engineers, job number 230301, dated 08.12.2023. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

- i. Provision of a minimum thirty thousand (30,000) litre on-site detention tank with flows attenuated by a 62mm diameter orifice.
- ii. Provision of maintenance access for the on-site detention system and 9 metre long level spreader.

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

9. Boundary Identification Survey

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

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

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

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

10. Installation and Maintenance of Sediment Control

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

1. Council's relevant development control plan,
2. The guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate' (the Blue Book) (as amended from time to time), and

3. The 'Do it Right On-Site, Soil and Water Management for the Construction Industry' (Southern Sydney Regional Organisation of Councils and the Natural Heritage Trust) (as amended from time to time).

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

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

11. **Compliance with Standards**

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

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

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

12. **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.

13. **Sydney Water "Tap In"**

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

14. **Project Arborist**

A 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 or as otherwise listed, and in

particular:

- a) all excavation and construction works near existing trees 18, 19, 20 and 21,
- a) pruning works to tree 20 as identified in section 3.2.11,
- b) works under sections 4 and 5.

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.

15. **Tree Removal Within the Property**

This consent approves the removal of existing prescribed trees on the subject site as identified in the Arboricultural Impact Assessment, approved Plans, or as listed below:

- a) tree 1,
- b) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised development works.

DURING BUILDING WORK

16. **Protection of Existing Street Trees**

All existing street trees in the vicinity of the works shall be retained during all construction stages, and the street tree(s) fronting the development site shall be protected by tree protection fencing in accordance with Section 4 of AS4970-2009 Protection of trees on development sites. As a minimum the tree protection fencing for street tree(s) fronting the development site shall consist of standard 2.4m panel length to four sides and in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings, unless otherwise directed by an Arborist with minimum AQF Level 5 in arboriculture. All fencing shall be located to allow for unrestricted and safe pedestrian access upon the road verge.

All street trees within the road verge are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree(s) is prohibited. No excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of street trees.

Reason: Street tree protection.

17. **Tree and Vegetation Protection**

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

- b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,
- ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

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

Reason: Tree and vegetation protection.

18. Condition of Trees

During the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to, or by seeking arboricultural advice from an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture during the works. In this regard all protected trees shall not exhibit:

- a) a general decline in health and vigour,
- b) damaged, crushed or dying roots due to poor pruning techniques,
- c) more than 10% loss or dieback of roots, branches and foliage,
- d) mechanical damage or bruising of bark and timber of roots, trunk and branches,
- e) yellowing of foliage or a thinning of the canopy untypical of its species,
- f) an increase in the amount of deadwood not associated with normal growth,
- g) an increase in kino or gum exudation,
- h) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
- i) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist/Project Arborist are to be implemented. The owner of the adjoining allotment of land is not liable for the cost of work carried

out for the purpose of this clause.

Reason: Protection of trees.

19. **Road Reserve**

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

Reason: Public safety.

20. **Removing, Handling and Disposing of Asbestos**

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

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

21. **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.

22. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor at the following stages of construction for both the principal dwelling and secondary dwelling:

(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 and first floor 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.

23. Waste Management During Development

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

24. Landscape Completion

Landscape works are to be implemented in accordance with the approved Landscape Plan, 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 Plan, unless otherwise imposed by conditions,
- c) the nominated *Banksia integrifolia* and *Tristaniopsis laurina* shall be planted at a minimum pre-ordered planting size of 75 litres; 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.

25. 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.

26. **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.

27. **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.

28. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**

The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), and Civil Engineers' certification.

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

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

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

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

29. **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 Plan and any conditions of consent.

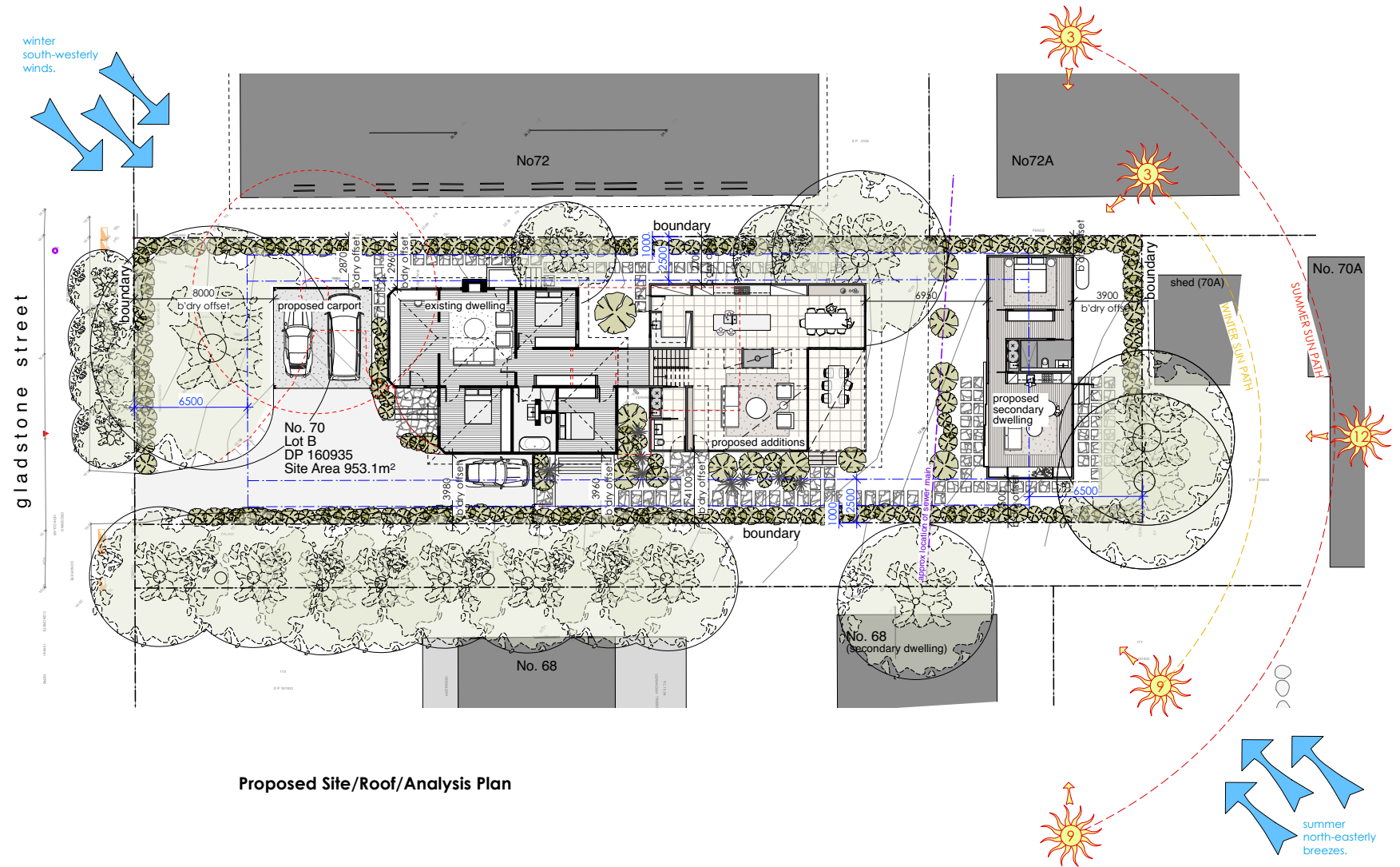
The approved landscape area shall in perpetuity remain as planting under the development consent, and shall not be replaced with any hard paved surfaces or structures.

Reason: To maintain local environmental amenity.

30. **Approved works**

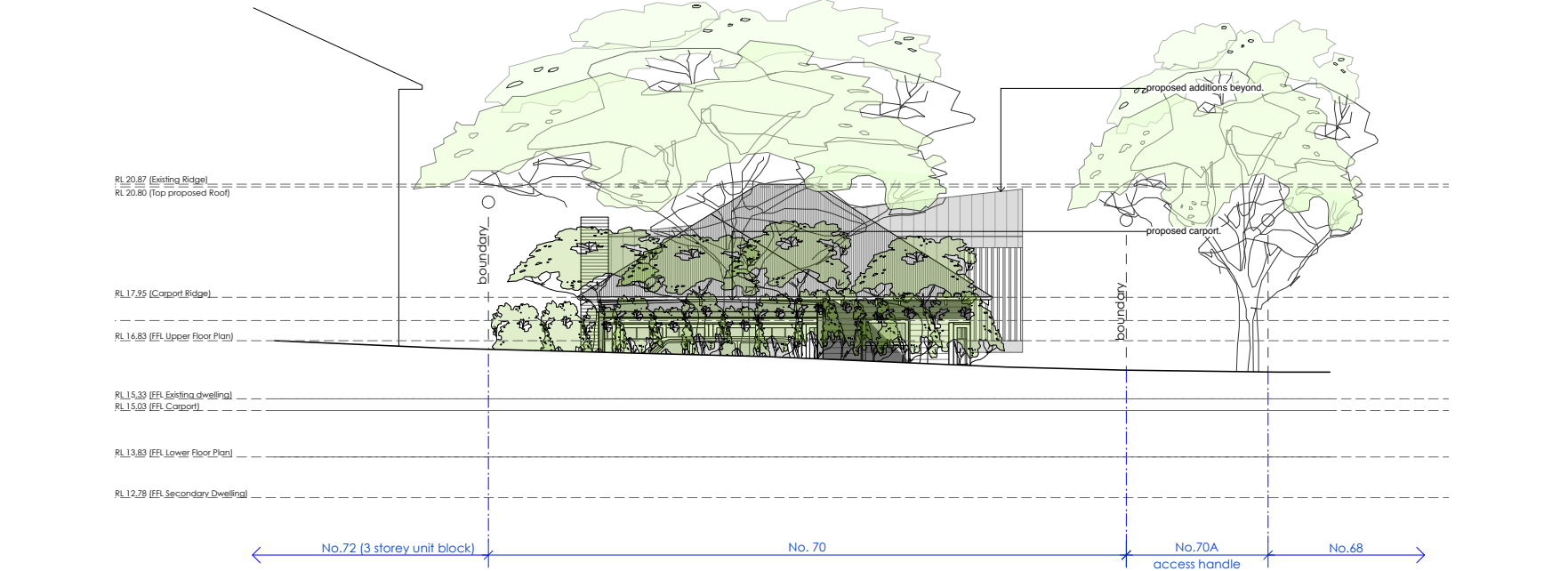
Nothing within this consent grants approval for works beyond the property boundaries of the subject site to which this development application applies.

Reason: To ensure all works are undertaken in accordance with this consent, and to ensure all works remain wholly within the property boundaries.



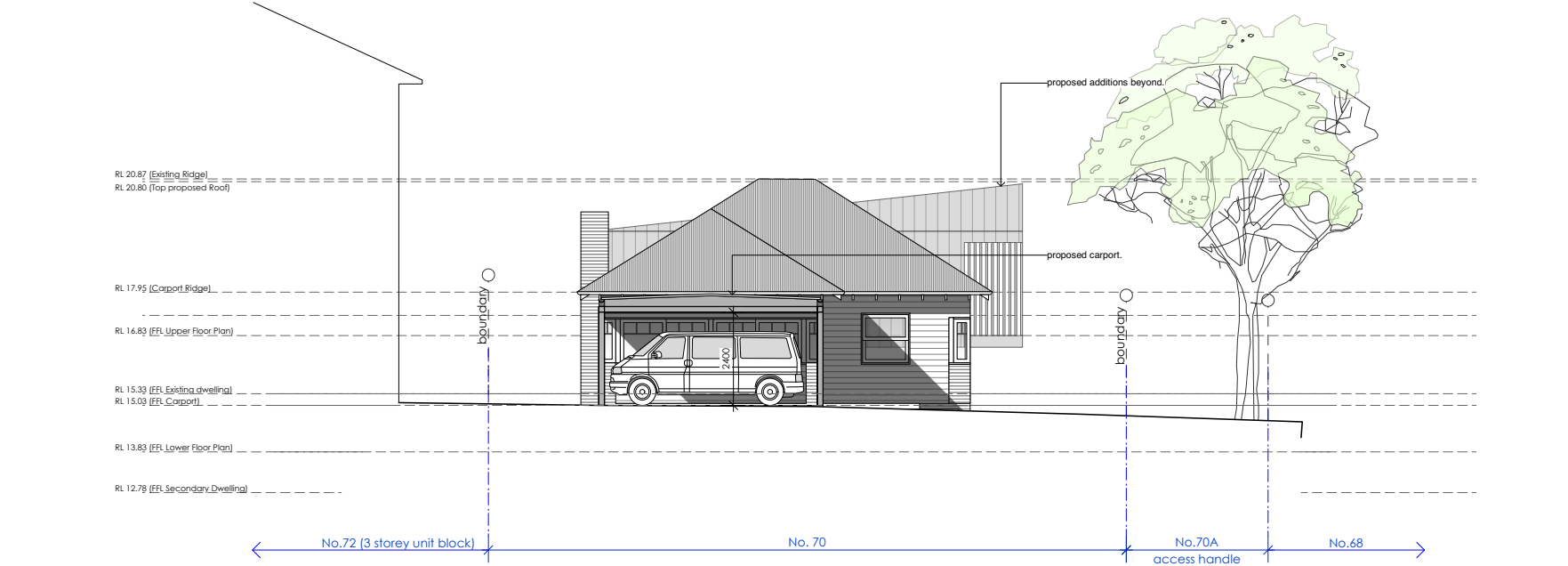
Proposed Site/Roof/Analysis Plan

	Note: All footings, slabs, structural beams, etc., to future structural engineers details. All wall/roof connections + member sizes to NCC & future engineers details. Rainwater from gutters to connect to water tank/drainwater system to hydraulic engineers details. All wastewater/sewerage to connect to existing sewer system to all relevant NCC, Building Codes + Council requirements. All works to comply with recommendations from the Arboricultural Report Report. All works to comply with all relevant NCC, Building Codes + Council requirements.			materials: BAL balustrade HWD hardwood LC lightweight cladding MRS metal roof sheathing NGL natural ground level PF pool fence TIM timber			 existing wall  to be removed  new wall			Ted & Robyn Ginty 70 GLADSTONE STREET NEWPORT NSW 2106 LOTS B DP 160935, SITE AREA 953.1m2		
	PROJECT	Alterations & Additions			ANDY LEHMAN DESIGN			DWG. NO.	DA07.1			
	DRAWING	Proposed Site Floor Plan			Tel: 0414 466 665 Email: andy@andylehman.com.au			SCALE	1:200@A3			
	NOTES	Please refer to A3 or A1. This drawing is copyright and is for Development Application purposes only. Do not measure off drawings. If in doubt ask.						DATE	November 2023			



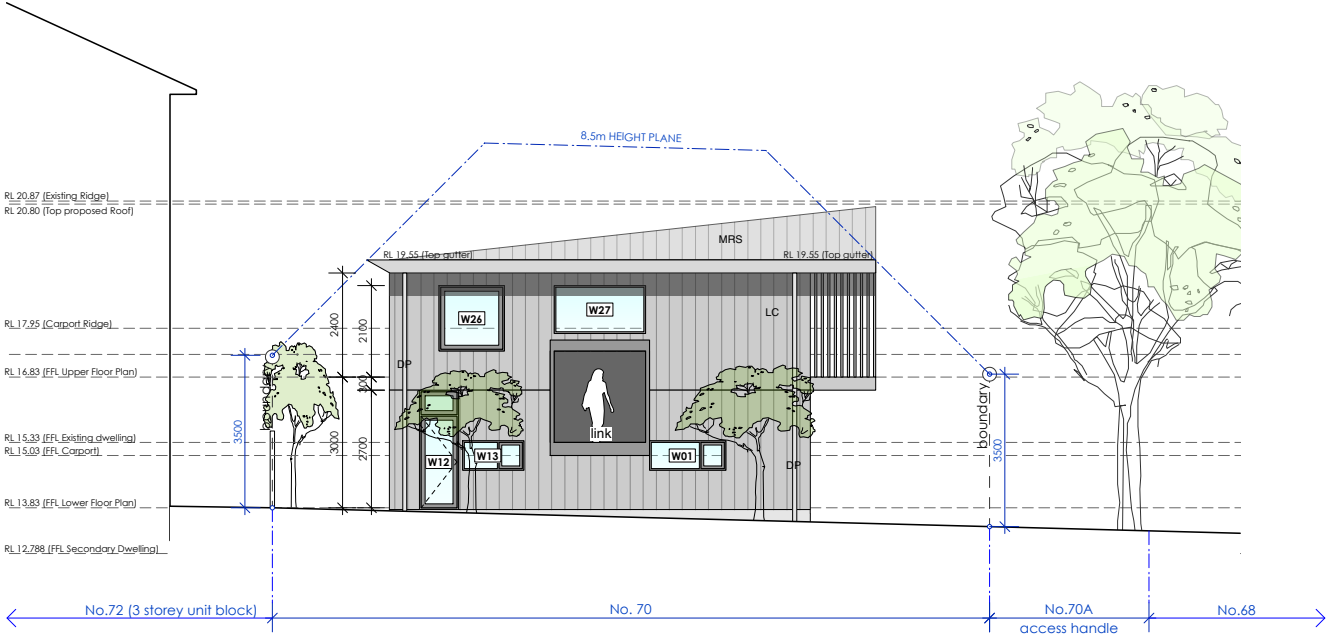
Proposed Street Elevation

Note: All footings, slabs, structural beams, etc, to future structural engineers details. All wall/roof connections + member sizes to NCC & future engineers details. Rainwater from gutters to connect to water tank/stormwater system to hydraulic engineers details. All wastewater/sewerage to connect to existing sewer system to all relevant NCC, Building Codes + Council requirements. All works to comply with recommendations from the Arboricultural Report Report. All works to comply with all relevant NCC, Building Codes + Council requirements.	materials: BAL balustrade HWD hardwood LC lightweight cladding MRS metal roof sheeting NGL natural ground level PF pool fence TIM timber	 existing wall	Ted & Robyn Ginty 70 GLADSTONE STREET NEWPORT NSW 2106 LOTS B DP 160935, SITE AREA 953.1m2 <table><tr><td>PROJECT</td><td>Alterations & Additions</td><td>ANDY LEHMAN DESIGN</td><td>DA: 10</td></tr><tr><td>DRAWING</td><td>Proposed Street Elevation</td><td></td><td></td></tr><tr><td>NOTES</td><td colspan="3">Please print in A3 or A1. This drawing is copyright and is for Development Application purposes only. Do not measure off drawings. Email: andy@andylehman.com.au Tel: 0414 466 665 A - August 2024</td></tr></table>				PROJECT	Alterations & Additions	ANDY LEHMAN DESIGN	DA: 10	DRAWING	Proposed Street Elevation			NOTES	Please print in A3 or A1. This drawing is copyright and is for Development Application purposes only. Do not measure off drawings. Email: andy@andylehman.com.au Tel: 0414 466 665 A - August 2024		
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		 to be removed																
		 new wall																



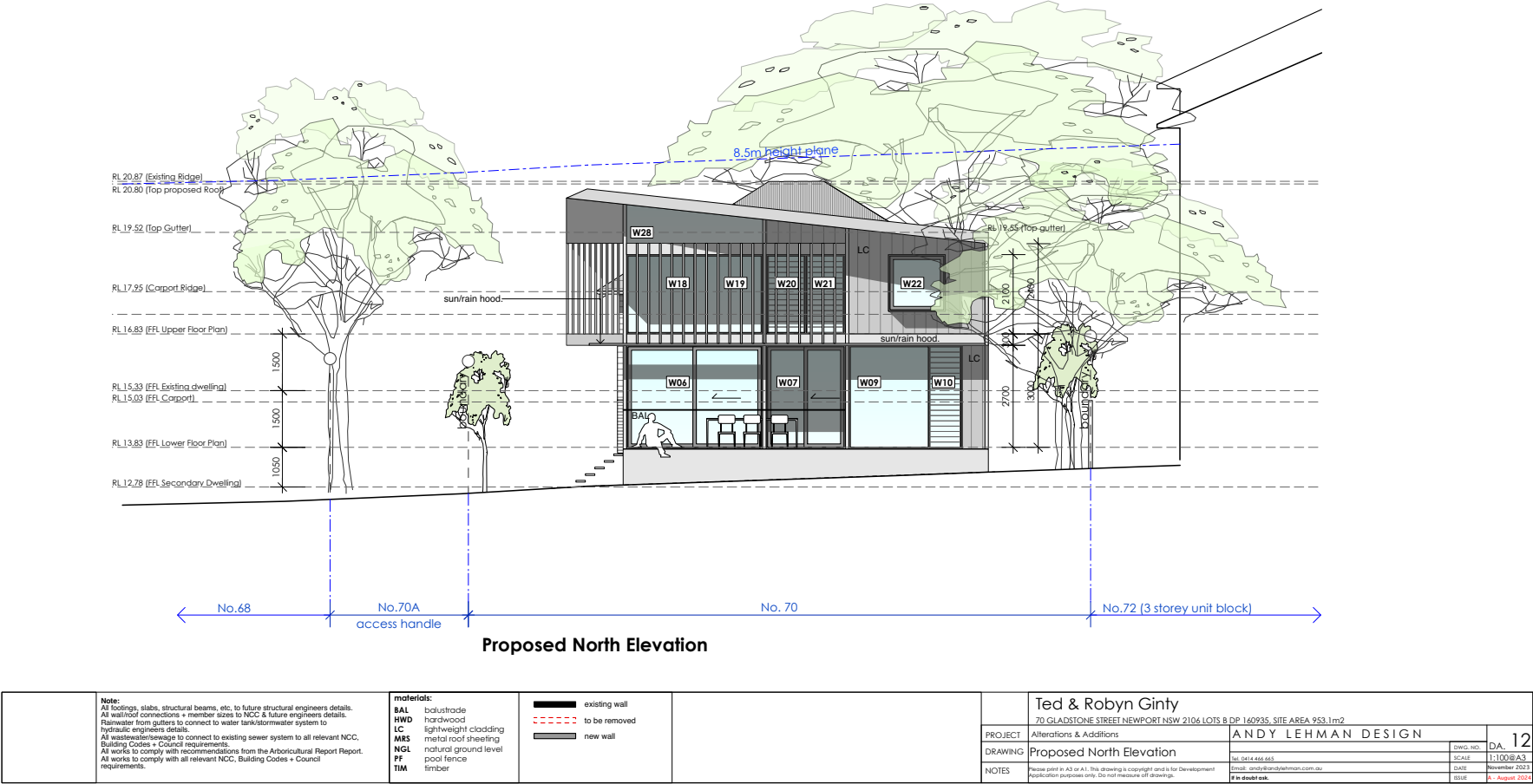
Proposed South Elevation - Carport

Note: All footings, slabs, structural beams, etc, to future structural engineers details. All wall/roof connections + member sizes to NCC & future engineers details. Rainwater from gutters to connect to water tank/stormwater system to hydraulic engineers details. All wastewater/sewage to connect to existing sewer system to all relevant NCC, Building Codes + Council requirements. All works to comply with recommendations from the Arboricultural Report Report. All works to comply with all relevant NCC, Building Codes + Council requirements.	materials: BAL balustrade HWD hardwood LC lightweight cladding MRS metal roof sheeting NGL natural ground level PF pool fence TIM timber	existing wall	Ted & Robyn Ginty 70 GLADSTONE STREET NEWPORT NSW 2106 LOTS B DP 160935, SITE AREA 953.1m2 <table><tr><td>PROJECT</td><td>Alterations & Additions</td><td colspan="2">ANDY LEHMAN DESIGN</td></tr><tr><td>DRAWING</td><td>Proposed South Elevation - Carport</td><td>DWG. NO.</td><td>DA.10.1</td></tr><tr><td rowspan="3">NOTES</td><td rowspan="3">Please refer to A3 or A4. This drawing is copyright and is for Development Application purposes only. Do not measure off drawings. If in doubt ask.</td><td>SCALE</td><td>1:100@A3</td></tr><tr><td>DATE</td><td>18th June 2024</td></tr><tr><td>ISSUE</td><td>A - August 2024</td></tr></table>				PROJECT	Alterations & Additions	ANDY LEHMAN DESIGN		DRAWING	Proposed South Elevation - Carport	DWG. NO.	DA.10.1	NOTES	Please refer to A3 or A4. This drawing is copyright and is for Development Application purposes only. Do not measure off drawings. If in doubt ask.	SCALE	1:100@A3	DATE	18th June 2024	ISSUE	A - August 2024
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		DRAWING					Proposed South Elevation - Carport	DWG. NO.	DA.10.1													
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								DATE	18th June 2024													
ISSUE	A - August 2024																					
 to be removed																						
new wall																						



Proposed South Elevation

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			PROJECT	Alterations & Additions	ANDY LEHMAN DESIGN
			DRAWING	Proposed South Elevation	DA: 11
			NOTES	Please refer to A3 or A1. This drawing is copyright and is for Development Application purposes only. Do not measure off drawings. If in doubt ask.	DATE November 2023 ISSUE A - August 2024



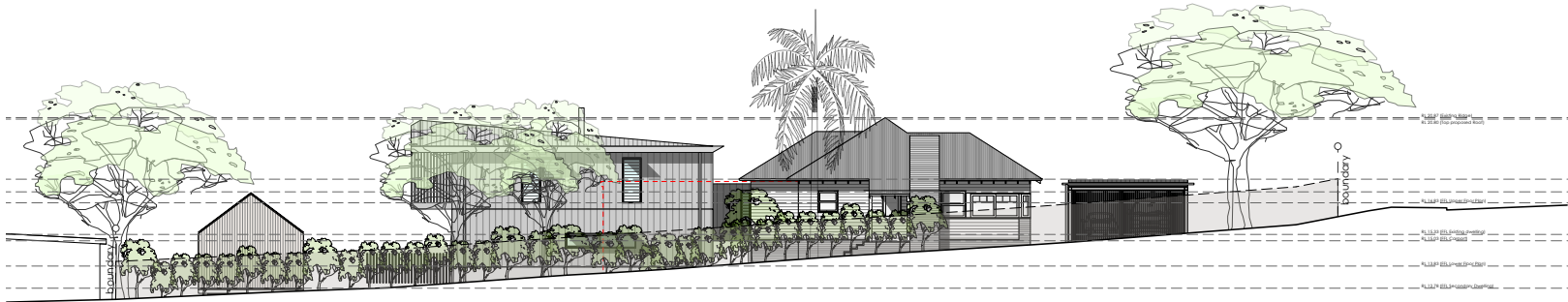


Proposed East Elevation 1:200

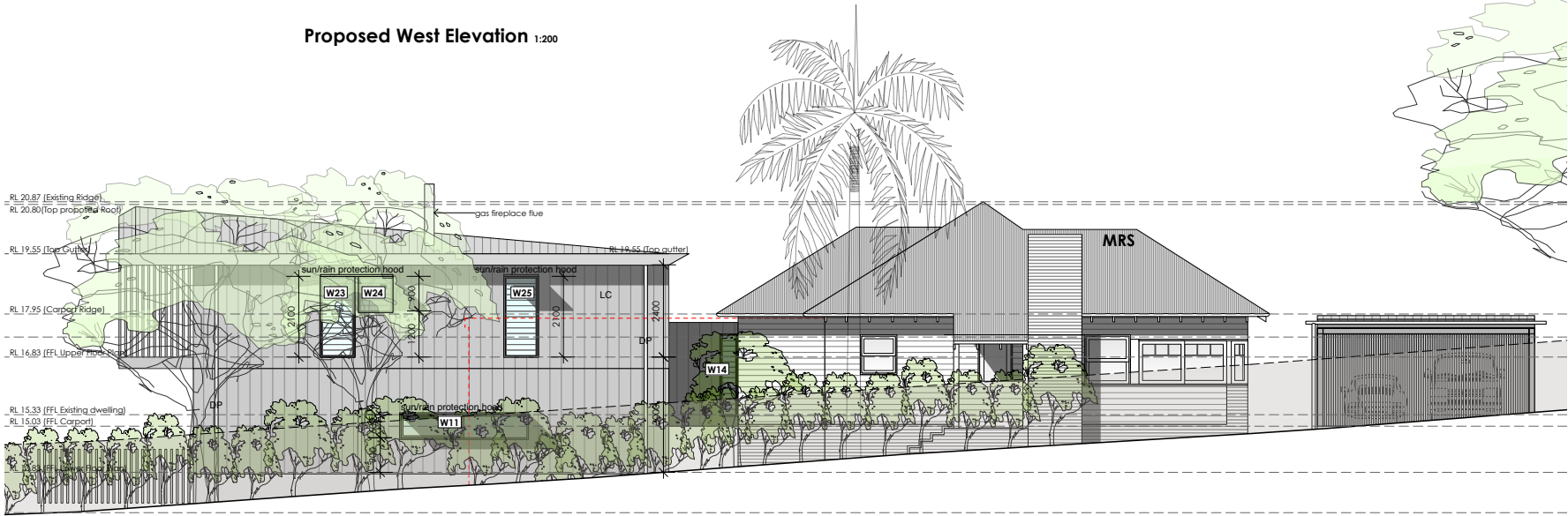


Proposed East Elevation 1:100

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				70 GLADSTONE STREET NEWPORT NSW 2106 LOTS B DP 160935, SITE AREA 953.1m2					
				PROJECT		Alterations & Additions		ANDY LEHMAN DESIGN	
				DRAWING		Proposed East Elevation		DA. 13	
				NOTES		Please print in A3 or A1. This drawing is copyright and is for Development Application purposes only. Do not measure off drawings.		DWG. NO. 1:100@A3	
				Tel: 0414 466 665					
				Email: andy@andylehman.com.au					
				DATE November 2023					
				ISSUE A - August 2024					



Proposed West Elevation 1:200



Proposed West Elevation 1:100

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