

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 23 OCTOBER 2024

Ashleigh Sherry
Manager Business System and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 23 October 2024
via teleconference
Commencing at 10:00 AM**

1.0	APOLOGIES & DECLARATIONS OF INTEREST	
2.0	MINUTES OF PREVIOUS MEETING	
2.1	Minutes of the Development Determination Panel Meeting held on 9 October 2024	2
3.0	DEVELOPMENT DETERMINATION PANEL REPORTS.....	4
3.1	DA2024/0967 - 1858 Pittwater Road CHURCH POINT - Alterations and additions to an existing restaurant and cafe	4
3.2	MOD2024/0355 - 120 Prince Alfred Parade NEWPORT - Modification of consent to DA2022/0246 granted for demolition works, subdivision of 4 lots into 2 lots and the construction of 1 dwelling on each lot including swimming pools and landscaping works	39
3.3	DA2024/0915 - 18 Bligh Crescent SEAFORTH - Alterations and additions to a dwelling house and secondary dwelling including swimming pool, rumpus and carport	69
3.4	DA2024/1100 - 11 Bower Street MANLY - Alterations and additions to a dwelling house.....	135
3.5	DA2024/0705 - 19 Clifford Avenue FAIRLIGHT - Alterations and additions to a semi-detached dwelling	189
3.6	DA2024/1048 - 19 Baranbali Avenue SEAFORTH - Alterations and additions to a dwelling house.....	259
3.7	DA2024/0962 - 62 Bower Street MANLY - Alterations and additions to a dwelling house.....	304
3.8	DA2024/1139 - 83 Crown Road QUEENSCLIFF - Alterations and additions to a dwelling house including a swimming pool and carport.....	374
3.9	Mod2024/0398 - 23 Hay Street COLLAROY - Modification of Development Consent DA2021/1824 granted for Alterations and additions to a dwelling house including a swimming pool and cabana	425

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 9 OCTOBER 2024

RECOMMENDATION

That the Panel note that the minutes of the Development Determination Panel Meeting held on 9 October 2024 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	DA2024/0967 - 1858 PITTWATER ROAD CHURCH POINT - ALTERATIONS AND ADDITIONS TO AN EXISTING RESTAURANT AND CAFE
----------	--

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 DA2024/0967 for Alterations and additions to an existing restaurant and café on land at Lot 142 DP 752046, Lot LIC 502589, Lot 1 DP 1148738 & Lot 3 DP 1148738, 1858 Pittwater Road CHURCH POINT, subject to the conditions set out in the Assessment Report.

Reporting manager	Adam Richardson
TRIM file ref	2024/727291
Attachments	↓1 Assessment Report ↓2 Site Plan and Elevations

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/0967
----------------------------	-------------

Responsible Officer:	Anais Sarkissian
Land to be developed (Address):	Lot 142 DP 752046, 1858 Pittwater Road CHURCH POINT NSW 2105 Lot LIC 502589, 1858 Pittwater Road CHURCH POINT NSW 2105 Lot 1 DP 1148738, 1858 Pittwater Road CHURCH POINT NSW 2105 Lot 3 DP 1148738, 1858 Pittwater Road CHURCH POINT NSW 2105
Proposed Development:	Alterations and additions to an existing restaurant and cafe
Zoning:	E1 Local Centre W1 Natural Waterways
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Paul Peterkin

Application Lodged:	02/08/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	19/08/2024 to 02/09/2024
Advertised:	Not Advertised
Submissions Received:	7
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 95,000.00
---------------------------------	--------------

EXECUTIVE SUMMARY

This Development Application seeks consent for a new insulated metal roof to replace the existing canvas structure, with new parapet and sound lock door at the Pasadena food and drink premises.

The DA is referred to the Development Determination Panel (DDP) due to the proposal having seven

(7) submissions. The submissions do not object to the development, but rather support the development in principle, subject to a number of acoustic matters being addressed. Concerns raised in the submissions predominantly relate to acoustic impacts by the operations of Pasadena. The purpose of the DA is to satisfy obligations imposed by a Liquor and Gaming NSW s81 decision under Section 81 of the Liquor Act 2007 in relation to noise complaints.

Overall and despite the issues raised within the submissions, the proposal is simply for a new insulated roof and sound lock entry door and is considered to be minor as the proposed works do not involve any excavation or fill and do not expand the existing footprint of the building. There is no changes proposed to the operational characteristics of Pasadena under this DA.

The proposed development was notified in accordance with the Northern Beaches Community Participation Plan (CPP) for 14 days to a 750m radius catchment. Seven (7) submissions were received.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposal is suitable for the subject site for the reasons outlined in this report.

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

PROPOSED DEVELOPMENT IN DETAIL

This application is for a new insulated roof at Pasadena Sydney in response to obligations imposed by a Liquor and Gaming NSW s81 decision under Section 81 of the *Liquor Act 2007* in relation to noise complaints.

Specifically, this Development Application is for the construction of new metal deck roofing panels and insulation over the existing supporting members to replace the current canvas roof membrane. The installation of a sound lock at the south-eastern end of the structure is also proposed. A new parapet is proposed to conceal the ends of the roof with all roof water connected to the existing stormwater drainage system.

ASSESSMENT INTRODUCTION

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

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

proposal.

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone RE1 Public Recreation
 Pittwater Local Environmental Plan 2014 - 5.10 Heritage conservation
 Pittwater Local Environmental Plan 2014 - 5.21 Flood planning
 Pittwater Local Environmental Plan 2014 - 7.1 Acid sulfate soils
 Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area
 Pittwater 21 Development Control Plan - C5.20 Liquor Licensing Applications

SITE DESCRIPTION

Property Description:	Lot 142 DP 752046 , 1858 Pittwater Road CHURCH POINT NSW 2105 Lot LIC 502589 , 1858 Pittwater Road CHURCH POINT NSW 2105 Lot 1 DP 1148738 , 1858 Pittwater Road CHURCH POINT NSW 2105 Lot 3 DP 1148738 , 1858 Pittwater Road CHURCH POINT NSW 2105
Detailed Site Description:	The site consists of three (3) allotments located on the northern side of Pittwater Road. The site is irregular in shape with a frontage of 40.19m along Pittwater Road and a depth of approximately 48m. This development application concerns one lot only, being Lot 3 in DP 1148738 on Crown Land. The subject site has a surveyed area of approximately 811.9m². The site is located within the RE1 Public Recreation zone and accommodates a single storey structure used in association with the restaurant component of the Pasadena. The subject also accommodates several outdoor parking spaces and an outdoor dining area. The site is relatively flat with a slight slope down towards the north-east over approximately 0.5m. The site contains a few palm trees towards the rear. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by a mix of residential and commercial uses, with predominantly dwelling houses landward of Pittwater Road, and Sir Thomas Stephens Reserve and shops directly to the west of the site, including the heritage-listed Church Point Post Office and store. The site also adjoins Church Point Wharf to the north and west, which is an

archaeological heritage listed site. A large public carpark is located directly to the east.

Map:



SITE HISTORY

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

On 1 November 1961, Council allegedly passed a resolution granting consent to a proposal for a ground floor of three (3) shops, office, café, kitchen, three (3) self-contained rooms, toilets, reclamation, tea garden, swimming pool, car parking and boat moorings, and a first floor of 12 self-contained rooms, and a second floor of residence and roof garden. However, a letter from Council dated 3 November 1988 confirmed that there is no evidence on Council's records that the consent was issued or concurrence of the State Planning Authority was received.

A212/63

Building Approval issued for three (3) shops, a real estate agent, three (3) storerooms, toilet facilities, vestibule, restaurant, kitchen and concrete terrace area, with a first floor of 13 motel rooms and a second floor of common laundry, plant room, private laundry and store.
Approved 27 March 1963

A641/66

Building Approval issued for the construction of a swimming pool on land to the north of the motel.
28 July 1966

N0761/00

Development Application (Option 2) for proposed carparking and garbage enclosure.
Outcome unknown - presumed return

N0762/00

Development Application (Option 1) for proposed car parking and land exchange.
Outcome unknown - presumed return

N0430/01

Development Application for demolition of the existing structure and erection of a 3 storey residential flat building with attic space comprising 12 units with basement parking for 16 vehicles.

Refused 25 February 2002 - proposal deemed prohibited

Applicant's appeal to the LEC (No 10787 of 2001) was withdrawn due to issues raised concerning the permissibility of the development

N0550/02

Development Application for demolition of the existing building and the erection of a 4 storey building containing 9 apartments, retail area and basement carparking.

Appeal lodged with LEC for deemed refusal of application. On 29 May 2003, LEC proceedings determined in relation to the land on which the existing use right was carried out, that the relevant unit of land for practical purposes was the land upon which the building stands.

Refused by Council on 18 September 2003

After the determination of the question of existing rights, the appeal proceeded before the Commissioner and the appeal was dismissed and the application was refused on 17 October 2003

N0051/05

Development Application for redevelopment of the Pasadena site consisting of the demolition of the existing Pasadena building on the site and the construction of a shop top housing development comprised of basement carparking, restaurant, 3 shops and 6 residential units.

Refused by Council on 8 February 2006

Appeal lodged 13 March 2006

Deferred commencement approval by LEC on 12 January 2007. With the submission of a modified proposal containing reduced parking and 3 residential units, the LEC ordered that deferred commencement conditions were satisfied and consent was operative from 24 October 2008

N0051/05/S96/2

Modification of Development Consent N0051/05 for demolition of the existing Pasadena building on the site and the construction of a shop top housing development.

Refused by LEC on 5 April 2011 on the basis that the modified development is not substantially the same as the Court consent

N0021/13

Development Application for adaptive re-use of the existing building to include a café, restaurant, bar, shop and motel uses.

Refused 21 October 2013

N0313/16

Development Application for refurbishment, BCA upgrade and fitout of the existing licensed restaurant and motel accommodation and the construction and use of a new day spa.

Refused 8 December 2016

DA2019/1359

Development Application for alterations and additions to an existing mixed use building.

Withdrawn

MOD2019/0605

Modification of Development Consent A212/63 granted for alterations and additions to to install an accessible lift to the motel.

Approved 14 February 2020

MOD2021/0005

Modification of Development Consent A212/63
Approved 19 May 2021

CC2021/0936

Construction Certificate issued (C2017041-A) for reinstatement of building generally in accordance with Development Consent A212/63.
Approved 3 August 2021

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 19/08/2024 to 02/09/2024 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 7 submission/s from:

Name:	Address:
Bayview Church Point Residents Association	PO Box 348 CHURCH POINT NSW 2105
Ms Joy Lesley Cowdery	19 Douglass Estate MCCARRS CREEK NSW 2105
Ms Susan Rushforth	7 Quarter Sessions Road CHURCH POINT NSW 2105
Dr Robyn Rae Iredale	PO Box 312 CHURCH POINT NSW 2105
Mr Christopher John Drummer Church Point Community Projects	PO Box 40 CHURCH POINT NSW 2105
West Pittwater Community Association	PO Box 289 CHURCH POINT NSW 2105
Withheld	CASTLE COVE NSW 2069

The following issues were raised in the submissions and have been addressed as follows:

- ***Acoustic impacts and compliance with soundproofing obligations***

The submissions raised concerns that the lack of insulation to the existing walls and windows will still create acoustic impacts, despite the new insulated roof. Concern was also raised over the doors and windows remaining open while events are held, and amplifiers being located in the outdoor garden area. The submissions also raised concerns over the Pasadena not fulfilling its obligations with respect to soundproofing improvements required by the s81 decision by Liquor and Gaming NSW (L&GNSW) under Section 81 of the *Liquor Act 2007*. Concern was also raised over the accuracy of the Acoustic Report prepared by The Acoustic Group, dated 19 April 2023, and inconsistencies between the venue's Plan of Management and the s81 decision.

Comment:

Council has no authority to ensure the Pasadena meets its obligations set out by L&GNSW under the DA's. Pasadena's compliance with their liquor licence and the requirements set by the s81 decision is a matter for L&GNSW and not this DA. It is important to note that this DA simply seeks consent for a new insulated roof. Council's Environmental Health Officer has made several attempts to consult with L&GNSW and obtain their feedback on what is proposed; however, did not hear back. Council is not required to notify or seek approval from L&GNSW as part of this development application, and therefore, lack of response from this organisation cannot delay the assessment of the application.

- ***Inadequate provision of on-site car parking***

The submissions raised concerns over the significant inadequacy of on-site parking to cater for the additional parking demand generated by events.

Comment:

Car parking is not a matter for this Development Application as the proposed development does not involve any operational changes to the venue or increase in capacity.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Industrial)	Supported, subject to Conditions General Comments The works appear to be replacement of the existing roof membrane metal deck roofing panels over insulation over the existing supporting members in the installation of a sound lock at the south-eastern end of the structure to comply with recommendations contained within the Acoustical Assessment, dated 19 April 2023, prepared by The Acoustic Group. A new parapet is introduced to conceal the ends of the roof with all roof water connected to the existing storm water drainage system. This site has been subject to customer requests regarding offensive noise and Council is aware of a L&G Section 81 Decision. Note: No consent is granted for any trafficable areas on any roof top areas. Recommendation APPROVAL - subject to conditions
NECC (Coast and Catchments)	Supported, subject to Conditions Officer comments This application was assessed in consideration of: • Supplied plans and reports; • State Environmental Planning Policy (Resilience and Hazards) 2021 (section 2.10, 2.11 & 2.12); • State Environmental Planning Policy (Biodiversity & Conservation) 2021 • Relevant LEP and DCP clauses. State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA. Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Boston Blyth

Internal Referral Body	Comments						
	Fleming dated May 2024, the DA satisfies requirements under clauses 2.10, 2.11 and 2.12 of the SEPP Pittwater LEP 2014 and Pittwater 21 DCP Estuarine Risk Management The subject property has also been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site. All proposed works are above the EPL of this site. The proposed development is therefore able to satisfy the relevant estuarine risk management requirements of P21 DCP. Development on Foreshore Area A section of the subject property is within the foreshore building line. Part 7, Clause 7.8 –Limited development on foreshore area of the Pittwater LEP 2014 applies for any development within the foreshore area. The DA proposes works outside the foreshore building line however as the existing building footprint is maintained it satisfies the exemption provisions at clause 7.8. All these proposed works are consistent with Clause 7.8(2)(b). On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Boston Blyth Fleming dated May 2024, the DA satisfies the objectives and requirements of Part 7, Clause 7.8 of the Pittwater LEP 2014. No other coastal issues identified.						
External Referral Body	Comments						
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	Supported, subject to Conditions The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.						
Aboriginal Heritage Office	Supported, subject to Conditions <table><tr><th colspan="3">Recommendation</th></tr><tr><td></td><td>APPROVAL</td><td>Subject to Conditions</td></tr></table>	Recommendation				APPROVAL	Subject to Conditions
Recommendation							
	APPROVAL	Subject to Conditions					

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP (Sustainable Buildings) 2022

3.1 Application of Chapter

- (1) This Chapter applies to development, other than development for the purposes of residential accommodation, that involves—
 - (a) *the erection of a new building \$5 million, or*
 - (b) *alterations, enlargement or extension of an existing building, if the development has a capital investment value of \$10 million or more.*

Comment:

The chapter is not applicable as the proposed development does not involve the erection of a new building or alterations, enlargement or extension of an existing building with a capital investment value of \$10 million or more.

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 1 Coastal Wetlands and littoral rainforest area

2.7 Development on certain land within coastal wetlands and littoral rainforests area

- 1) The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:
 - a) the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,
 - b) the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,
 - c) the carrying out of any of the following:
 - i) earthworks (including the depositing of material on land),
 - ii) constructing a levee,
 - iii) draining the land,
 - iv) environmental protection works,
 - d) any other development

Comment:

The site is not on land identified as 'coastal wetlands' or 'littoral rainforest' and therefore this clause is not applicable.

2.8 Development on land in proximity to coastal wetlands or littoral rainforest

- 1) Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:
 - a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or
 - b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.

Comment:

The site is not on land identified as 'proximity area for coastal wetlands' or 'proximity area for littoral rainforest' and therefore this clause is not applicable.

Division 2 Coastal Vulnerability Area

2.9 Development on land within the coastal vulnerability area

Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

- a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and
- b) the proposed development:
 - i) is not likely to alter coastal processes to the detriment of the natural environment or
 - ii) other land, and
 - iii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and
- c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.

Comment:

The site is not on land identified as 'coastal vulnerability area' and therefore this clause is not applicable.

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

- 1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:
 - a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,

- b) coastal environmental values and natural coastal processes,
- c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
- d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
- e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
- f) Aboriginal cultural heritage, practices and places,
- g) the use of the surf zone.

Comment:

The site is located within the 'coastal environment area'; however, the land has already been developed with a restaurant and café, and the proposed works do not require excavation or expansion of the existing building footprint. Council's Coastal Officer has also reviewed the application and supported the proposal, subject to conditions. The proposed development is therefore unlikely to cause an adverse impact on the above.

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

Comment:

The site is located within the 'coastal environment area'; however, the land has already been developed with a restaurant and café, and the proposed works do not require excavation or expansion of the existing building footprint. Council's Coastal Officer has also reviewed the application and supported the proposal, subject to conditions. It is therefore satisfied that the proposed development achieves the above requirements.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

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

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

Comment:

The site is located within the 'coastal use area'; however, the land has already been developed with a restaurant and café, and the proposed works do not require excavation or expansion of the existing building footprint. Council's Coastal Officer has also reviewed the application and supported the proposal, subject to conditions. It is therefore satisfied that the proposed development achieves the above requirements and is unlikely to cause adverse impacts.

Division 5 General

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

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

Comment:

The site is located within the coastal zone; however, the land has already been developed with a restaurant and café, and the proposed works do not require excavation or expansion of the existing building footprint. Council's Coastal Officer has also reviewed the application and supported the proposal, subject to conditions. It is therefore satisfied that the proposed development is not likely to cause increased risk of coastal hazards on the subject land or other land.

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

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

Comment:

No certified coastal management program applies to the land.

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

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for commercial 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 commercial 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	4.6m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.6 Biodiversity protection	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes
Schedule 5 Environmental heritage	Yes

Detailed Assessment

Zone RE1 Public Recreation

The site is on land zoned RE1 Public Recreation under the Pittwater Local Environmental Plan 2014.

The proposal has been assessed against the objectives of the RE1 zone and in this instance, the proposal satisfies the objectives, as detailed below:

- To enable land to be used for public open space or recreational purposes.***

Comment:

The use of the land as a restaurant and café remains unchanged.

- To provide a range of recreational settings and activities and compatible land uses.***

Comment:

The use of the land as a restaurant and café remains unchanged, which is a compatible land

use with recreational activities.

- ***To protect and enhance the natural environment for recreational purposes.***

Comment:

The proposal does not involve the removal of vegetation and enhances the surrounding natural environment for recreational purposes by reducing the extent of acoustic impact.

- ***To allow development that does not substantially diminish public use of, or access to, public open space resources.***

Comment:

The proposal does not diminish public use of, or access to, public open space resources. The proposal enhances the use of public open space by reducing the extent of acoustic impact.

- ***To provide passive and active public open space resources, and ancillary development, to meet the needs of the community.***

Comment:

The use of the land as a restaurant and café remains unchanged, which is ancillary to the enjoyment of adjacent public open spaces.

5.10 Heritage conservation

The site is located within the vicinity of a two-storey heritage-listed weatherboard building to the west, known as the Church Point Post Office and store. The site also adjoins Church Point Wharf to the north and west, which is an archaeological heritage listed site. The proposed development does not involve any earthworks or expansion of the existing building footprint. The proposed works are simply for a roof and therefore do not impact the heritage significance of the nearby heritage item or archaeological site.

5.21 Flood planning

Under this clause, development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development:

- (a) *is compatible with the flood function and behaviour on the land, and*
- (b) *will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) *will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and*
- (d) *incorporates appropriate measures to manage risk to life in the event of a flood, and*
- (e) *will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.*

Comment:

The south-eastern corner of the site is identified as a low and medium risk flood planning precinct, however the portion of the site where works are proposed are not affected by flood planning.

Notwithstanding, the proposal does not involve any excavation or fill and therefore is not affected by flooding and is unlikely to affect the flood function and behaviour of the land.

In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters:

- (a) the impact of the development on projected changes to flood behaviour as a result of climate change,*
- (b) the intended design and scale of buildings resulting from the development,*
- (c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,*
- (d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.*

Comment:

The proposal does not involve any excavation or fill and therefore the proposed development is unlikely to have any impact on projected changes to flood behaviour as a result of climate change. The proposal does not add to the existing footprint of the development.

7.1 Acid sulfate soils

Clause 7.1 - 'Acid sulfate soils' requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

The site is located in an area identified as Acid Sulfate Soil Class 2, as indicated on Council's Acid Sulfate Soils Planning Map.

Works below the natural ground surface and/or works by which the watertable is likely to be lowered within a Class 2 acid sulfate soil area are required to be assessed to determine if any impact will occur.

The proposed works are located above the natural ground surface and do not require any excavation. As such, a Preliminary Acid Sulfate Soil Assessment is not required.

7.8 Limited development on foreshore area

Under Clause 7.8(2) Limited Development on Foreshore Area, development consent must not be granted for development on land in the foreshore area except for the following purposes:

- a) the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, but only if the development will not result in the footprint of the building extending further into the foreshore area,*
- b) boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*

Comment:

The proposed development is for alteration of an existing building, being the Pasadena restaurant and café, which is located partly in the foreshore area. A portion of the main building, along with the

carparking area, outdoor seating area and partial outdoor area covered by a canvas roof, are within the foreshore area. The proposed sound lock, parapet and new metal roof to replace the canvas membrane over the existing structure are therefore located wholly within the foreshore area, but will not result in the footprint of the building extending further into the foreshore area, as evident in Figures 1-3 below. As such, the proposal satisfies the exemptions of cl 7.8(2)(b).

Figure 1: Foreshore Building Line Map

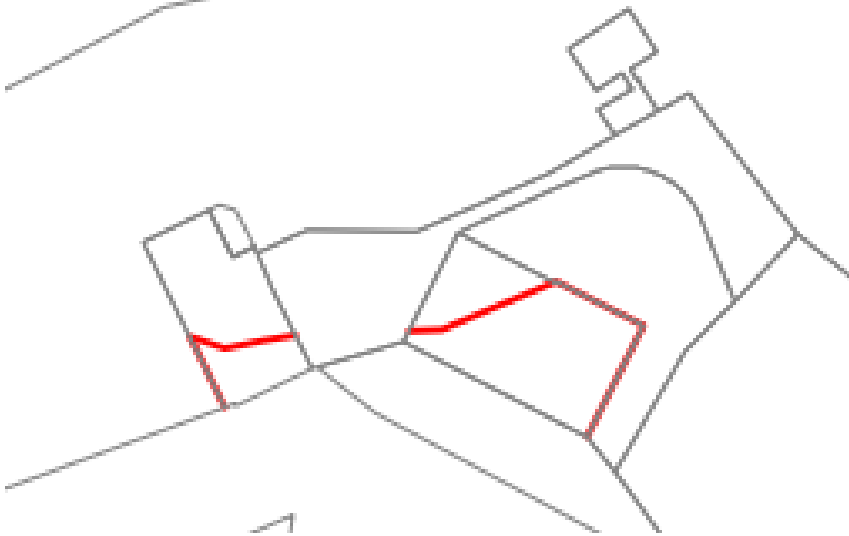


Figure 2: Existing Site Plan

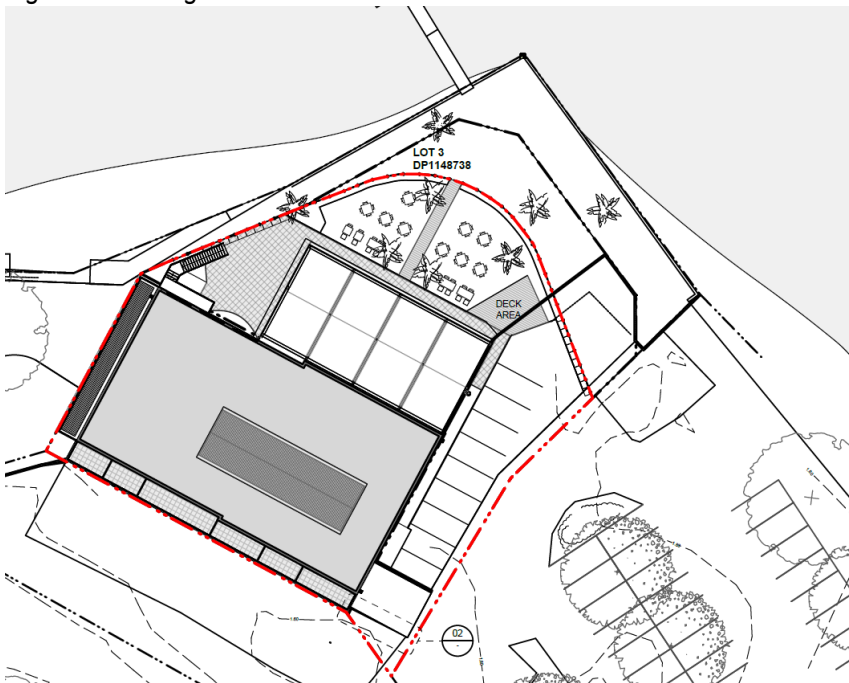
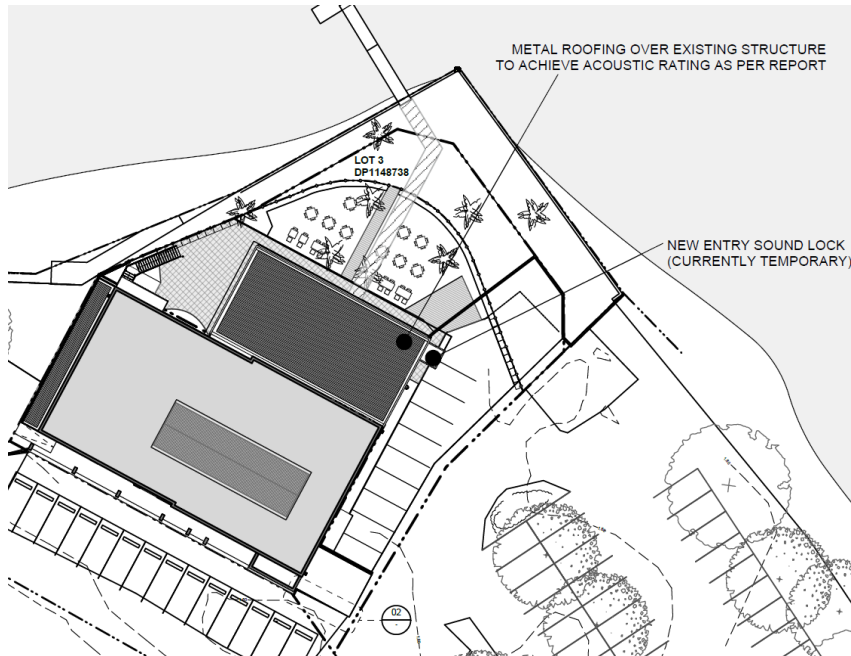


Figure 3: Proposed Site Plan



Development consent must not be granted under this clause unless the consent authority is satisfied that:

- a) the development will contribute to achieving the objectives for the zone in which the land is located, and
- b) the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and
- c) the development will not cause environmental harm such as:
 - i. pollution or siltation of the waterway, or
 - ii. an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or
 - iii. an adverse effect on drainage patterns, or
 - iv. the removal or disturbance of remnant riparian vegetation, and
- d) the development will not cause congestion or generate conflict between people using open space areas or the waterway, and
- e) opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and
- f) any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and
- g) in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and
- h) sea level rise, coastal erosion and recession, or change of flooding patterns as a result of climate change have been considered.

Comment:

The proposed development is consistent with the objectives of the RE1 zone. The appearance of the proposed development is compatible with the surrounding area. The proposed development will not cause environmental harm in relation to pollution, siltation, surrounding uses, marine habitat, wetland areas, flora or fauna habitats, drainage patterns or remnant riparian vegetation. The proposed development will not cause congestion or generate conflict between people using the adjacent open

space or waterway. The proposed development retains public access along the foreshore. The proposed development will not result in adverse impacts to any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land. The proposed development will not have an adverse impact on the amenity or aesthetic appearance of the foreshore. The proposed development will not impact upon sea level rise, coastal erosion or recession, or change flooding patterns.

In deciding whether to grant consent for development in the foreshore area, the consent authority must consider whether and to what extent the development would encourage the following:

- a) continuous public access to and along the foreshore through or adjacent to the proposed development,
- b) public access to link with existing or proposed open space,
- c) public access to be secured by appropriate covenants, agreements or other instruments registered on the title to land,
- d) public access to be located above mean high water mark,
- e) the reinforcing of the foreshore character and respect for existing environmental conditions.

Comment:

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

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	Merit assessment	19.5m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.4 Church Point and Bayview Locality	Yes	Yes
B1.1 Heritage Conservation - Heritage items, heritage conservation areas and archaeological sites listed in Pittwater Local Environmental Plan 2014	Yes	Yes
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.9 Estuarine Hazard - Business, Light Industrial and Other Development	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B5.15 Stormwater	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C2.2 Safety and Security	Yes	Yes
C2.5 View Sharing	Yes	Yes
C2.8 Energy and Water Conservation	Yes	Yes
C2.9 Waste and Recycling Facilities	Yes	Yes
C2.10 Pollution Control	Yes	Yes
C2.12 Protection of Residential Amenity	Yes	Yes
C5.20 Liquor Licensing Applications	Yes	Yes
D4.1 Character as viewed from a public place	Yes	Yes
D4.2 Scenic protection - General	Yes	Yes
D4.3 Building colours and materials	Yes	Yes
D4.5 Front building line	Yes	Yes
D4.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

C5.20 Liquor Licensing Applications

The venue holds an on-premises liquor licence, which commenced in 1966. Compliance with this liquor licence is a matter for Liquor and Gaming NSW and not this Development Application.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

CONCLUSION

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

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

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

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

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

PLANNING CONCLUSION

This proposal, for a new insulated metal roof to replace the existing canvas structure, with new parapet and sound lock at the Pasadena venue, has been referred to the Development Determination Panel (DDP) due to the proposal having seven (7) submissions, predominantly supporting the proposal in principle, subject to addressing acoustic concerns relating to compliance with the venue's liquor licence, and operational and noise limiting conditions.

The proposed development was notified in accordance with the Northern Beaches Community Participation Plan (CPP) for 14 days to a 750m radius catchment. Seven (7) submissions were received.

The critical assessment included a detailed response to the submissions received. The application has also been assessed against relevant State Environmental Planning Policies, the Pittwater Local Environmental Plan 2014, and the controls under the Pittwater 21 Development Control Plan.

The assessment found that the proposed new roof, parapet and sound lock are minor, owing to the fact that the works do not involve any excavation or fill and do not expand the existing footprint of the building. The proposal also offers an improved outcome for the local community with respect to acoustic impacts by replacing the existing canvas roof structure with an enclosed and insulated metal roof.

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

The proposal has therefore been recommended for approval.

REASON FOR DETERMINATION

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2024/0967 for Alterations and additions to an existing restaurant and cafe on land at Lot 142 DP 752046, 1858 Pittwater Road, CHURCH POINT, Lot LIC 502589, 1858 Pittwater Road, CHURCH POINT, Lot 1 DP 1148738, 1858 Pittwater Road, CHURCH POINT, Lot 3 DP 1148738, 1858 Pittwater Road, CHURCH POINT, 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-A-050	A	Site Plan	Quattro Architecture	11 March 2024
DA-A-104	A	Ground Level Plan	Quattro Architecture	11 March 2024
DA-A-104	A	Roof Plan - Existing and Proposed	Quattro Architecture	11 March 2024
DA-A-200	A	Building Elevations	Quattro Architecture	11 March 2024
DA-A-250	A	Building Sections	Quattro Architecture	11 March 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Waste Management Plan	-	Author Unknown	16 July 2024

Acoustical Assessment	-	The Acoustic Group	19 April 2024
-----------------------	---	--------------------	---------------

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

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

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

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	8 August 2024
Aboriginal Heritage Office	Aboriginal Heritage Office Referral Response	14 August 2024

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

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

3. **Prescribed Conditions (Crown Land Only)**

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

Reason: Legislative Requirement.

4. **General Requirements (Crown Land Only)**

(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) 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.

(c) 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.

(d) Where works are to be carried out to a Class 1a building, smoke alarms are to be installed throughout all new and existing portions of that Class 1a building in accordance with the Building Code of Australia prior to the occupation of the new works.

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

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

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

(h) All sound producing plant, equipment, machinery or fittings and the use will not exceed more than 5dB (A) above the background level when measured from any property boundary and/or habitable room(s) consistent with the Environment Protection Authority's NSW Industrial Noise Policy and/or Protection of the Environment Operations Act 1997.

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

(j) 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.

(k) Any Regulated System (e.g. air-handling system, hot water system, a humidifying system, warm-water system, water-cooling system, cooling towers) as defined under the provisions of the Public Health Act 2010 installed onsite is required to be registered with Council prior to operating.

Note: Systems can be registered at www.northernbeaches.nsw.gov.au

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

5. **Compliance with Standards (Crown Land Only)**

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

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

6. **Acoustic Review**

Within 30 days from the operations commencing under the terms of this consent, an acoustic review of the findings and recommendations of Acoustical Assessment, dated 19 April 2023, prepared by The Acoustic Group and Liquor and Gaming Section 81 Decision Doc23/126353 and any additional requirements at OC acoustic review stage; shall be carried out on site (during a busy period of trading) and additionally any necessary action to obtain acoustic compliance, shall be completed within a further 30 days of the assessment. The report associated with the compliance testing is to be furnished to Council for its records.

Reason: To ensure acoustic compliance in an operational situation.

7. **External Colours and Materials (Industrial, Commercial, Mixed & Apartment Buildings)**

(a) External Glazing - The reflectivity index of external glazing for windows, walls or roof finishes of the proposed development is to be no greater than 20% (expressed as a per centum of the reflected light falling upon any surface).

(b) External Roofing - The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Light colours such as off white, cream, silver or light grey colours are not permitted.

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 from glazing does not occur as a result of the development.

8. **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.

9. **Construction Traffic Management Plan**

A Construction Traffic Management Plan (CTMP) and report shall be prepared by a Transport

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

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase.
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken.
- Make provision for all construction materials to be stored on site, at all times.
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period.
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed.
- Where access is required across private property not in the direct ownership of the proponent, such as a private road/driveway, community title road or right of way, the CTMP is to include:
 - Evidence of the legal right and terms to use the access route or provide owners consent from the owners/strata/community association.
 - Demonstrate that direct access from a public space/road is not viable for each stage of works.
 - An assessment to be carried out of the physical constraints of the Right of Carriageway to determine the maximum size of vehicle that may access the site via the Right of Carriageway during construction.
 - Unless owner/strata/community associations consent is obtained, vehicles are not to exceed 24 tonnes or 7.5 metres in length (an assessment must be undertaken that the surface is capable of supporting up to 24 tonnes, otherwise the weight limit should be reduced in the CTMP). If consent is obtained, a copy must be included in the CTMP.
 - No construction vehicles, materials or plant are to be located or parked in the private road/driveway, community title road or right of way.
 - How any disruption to other users of the private road/driveway, community title road or right of way will be minimised and all users kept informed of likely disruption where the access will be closed or blocked for any given time.
 - If trees are located within or overhang the access route, a tree protection plan prepared by an Arborist with minimum AQF Level 5 in arboriculture demonstrating how any trees within the Right of Carriageway will be protected from damage by construction vehicles. Should any tree protection measures be required on private land in accordance with AS4970-2009 Protection of trees on development sites, owner's consent must be obtained.
 - A Dilapidation report, including photographic surveys, of the private road/driveway/right of way must be included prior to any works commencing on the site. The report must detail the physical condition of the private road/driveway/right of way, and any other adjacent private property assets (including trees) or adjacent public property that may be adversely affected by vehicles servicing the development site to undertake works or activity during site works.
 - A requirement for Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, to be submitted after the completion of works and prior to the Occupation certificate. The report must:
 - Compare the post-construction report with the pre-construction report,

- Clearly identify any recent damage or change to the private road/driveway/right of way and whether or not it is likely to be the result of the development works,
 - Should any damage have occurred, identify remediation actions taken.
 - Be submitted to Council with the Occupation Certificate.
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site.
- Make provision for parking onsite. All Staff and Contractors are to use any basement parking once available.
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior.
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety.
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees.
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site.
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site.
- Specify that the public roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council.
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent.
- Proposed protection for Council and adjoining properties.
- The location and operation of any on site crane.

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council's Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

A copy of the approved CTMP must be kept on-site at all times while work is being carried out.

The development is to be undertaken in accordance with the Construction Traffic Management

Plan approved by Northern Beaches Council Traffic Team.

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

DURING BUILDING WORK

11. **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.

12. **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.

13. **Survey Certificate**

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

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

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

14. **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.

15. **Stockpiling materials**

During construction, all material associated with works is to be contained at source, covered and must be within the construction area. All material is to be removed off site and disposed of according to local regulations. The property is to be kept clean and any building debris removed as frequently as required to ensure no debris enters receiving waters.

Reason: To ensure pollution control measures are effective to protect the aquatic habitats within receiving waters throughout the construction period.

CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO COMPLETION

16. **Acoustic Design Recommendations**

Prior to the issuing of any Construction Certificate, documentation is to be submitted to the satisfaction of the Principal Certifier that design recommendations within the Acoustical Assessment, dated 19 April 2023, prepared by The Acoustic Group and Liquor and Gaming Section 81 Decision Doc23/126353 have been implemented / incorporated into the design of the premises.

Reason: To prevent noise nuisance by using mitigation measures in design.

17. **Stormwater Drainage Disposal Certification**

Certification from an appropriately qualified and practising Civil Engineer demonstrating the stormwater drainage systems have been designed and installed in accordance with the requirements of Council's Water Management for Development Policy and where relevant a Geotechnical Engineer shall be provided to the Principal Certifier prior to the issue of an Occupation Certificate, and;

If any on site stormwater detention system is installed the Applicant shall lodge the Legal Documents Authorisation Application with Council.

The application is to include the completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification. A guide to the process and associated Legal Document Authorisation Application form can be found on Council's website

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater detention system within this development consent.

The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches

Council shall be nominated as the authority to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user for the on-site stormwater detention system is to be submitted.

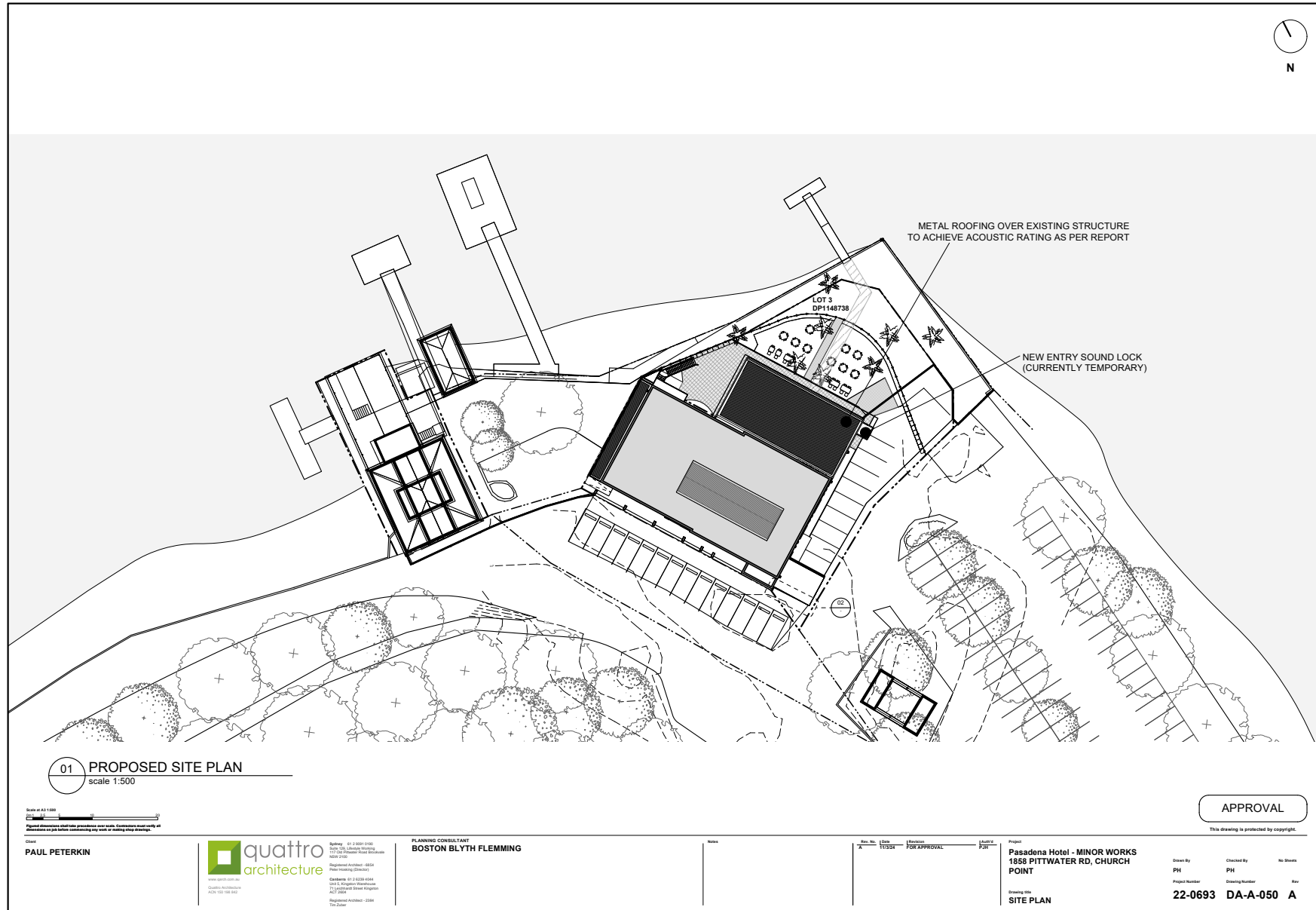
Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

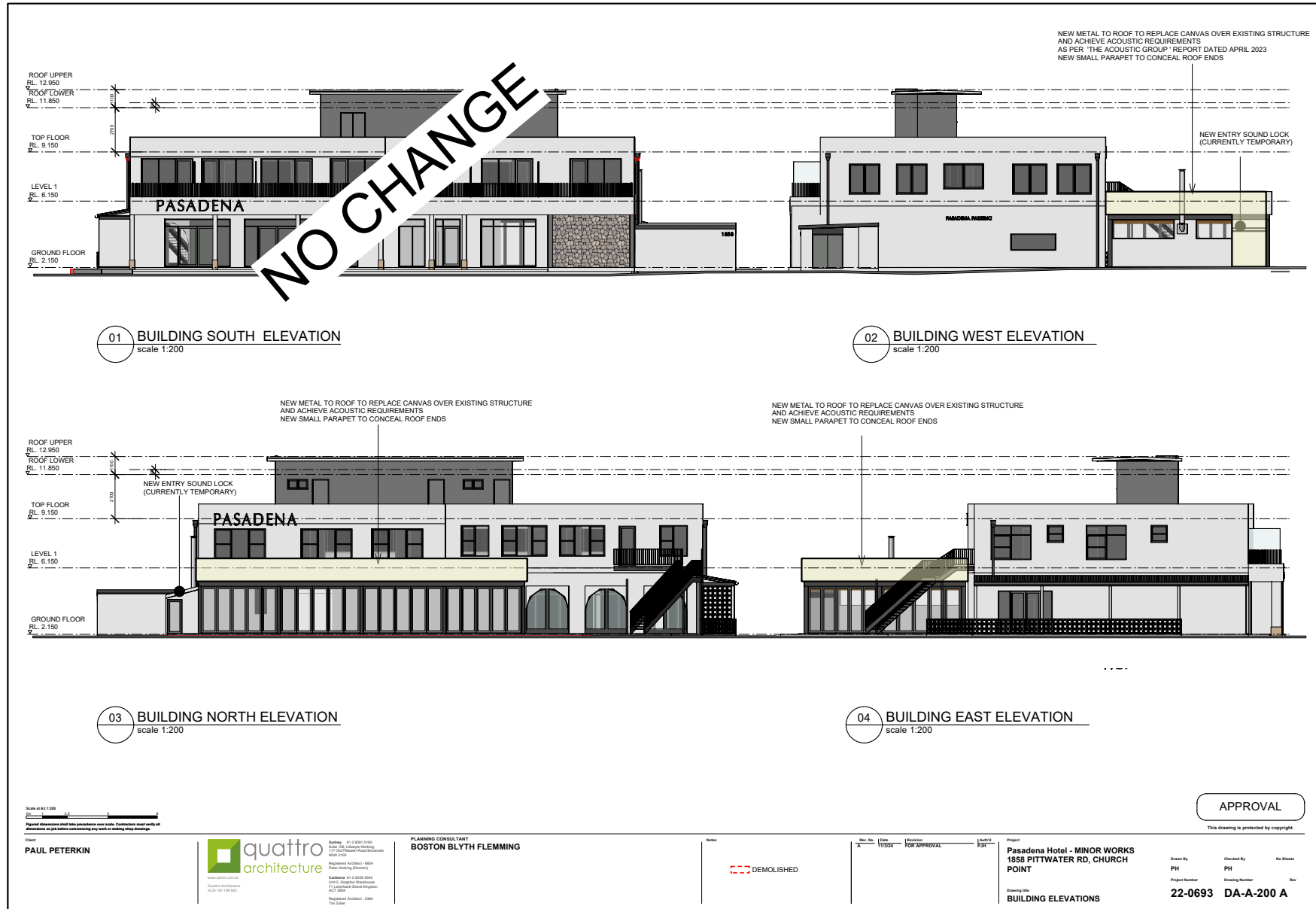
Reason: To ensure satisfactory management of stormwater.

18. **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.





**ITEM 3.2 MOD2024/0355 - 120 PRINCE ALFRED PARADE NEWPORT -
MODIFICATION OF CONSENT TO DA2022/0246 GRANTED FOR
DEMOLITION WORKS, SUBDIVISION OF 4 LOTS INTO 2 LOTS AND
THE CONSTRUCTION OF 1 DWELLING ON EACH LOT INCLUDING
SWIMMING POOLS AND LANDSCAPING WORKS**

PURPOSE

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

RECOMMENDATION

THAT Council as the consent authority **approves** Development Consent to Mod2024/0355 for Modification of consent to DA2022/0246 granted for demolition works, subdivision of 4 lots into 2 lots and the construction of 1 dwelling on each lot including swimming pools and landscaping works on land at Lot 9 DP 752046, Lot 34 DP 13457, Lot 35 DP 13457, Lot B DP 391307 & LIC 190387, 120 Prince Alfred Parade NEWPORT, subject to the conditions set out in the Assessment Report.

Reporting manager	Adam Richardson
TRIM file ref	2024/736355
Attachments	1 Assessment Report 2 Site Plan and Elevations



APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	MOD2024/0355
Responsible Officer:	Kalinda Li (Consultant Planner)
Land to be developed (Address):	120 Prince Alfred Parade, Newport
Lot and Deposited Plan:	Lot 9 DP 752046 Lot 34 DP 13457 Lot 35 DP 13457 Lot B DP 391307 LIC 190387
Proposed Development:	Modification of consent to DA2022/0246 granted for demolition works, subdivision of 4 lots into 2 lots and the construction of 1 dwelling on each lot including swimming pools and landscaping works
Zoning:	W1 – Natural Waterways C4 – Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Bravo Futura Residential Development No.1 Pty Ltd
Applicant:	Ella Maree Miles
Application Lodged:	04/07/2024
Integrated Development:	No
Designated Development:	No
Notified:	Yes – Between 15/07/2024 to 29/07/2024
Advertised:	Not Advertised
Submissions Received:	Nil (0)
Clause 4.6 Variation:	No
Recommendation:	Approval

EXECUTIVE SUMMARY

This report is an assessment of a modification application under Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) on land at 120 Prince Alfred Parade, Newport (Lot 9 DP 752046, Lot 34 DP 13457, Lot 35 DP 13457, Lot B DP 391307, and LIC 190387). The modification (MOD2024/0355) was lodged on 04 July 2024 and seeks to modify the consent under DA2022/0246 which was determined by the Northern Beaches Local Planning Panel on 07 December 2022 for the demolition works, subdivision of four lots into two lots and the construction of one dwelling on each lot including swimming pools and landscape works. The site is zoned C4 Environmental Living and W1 Natural Waterways under the *Pittwater Local Environmental Plan 2014* (PLEP 2014), and the proposed development is permitted with consent.



The application is reported to Council's Development Determination Panel (DDP) as the applicant for the application is a relative of a Council Staff member who is responsible for functions administered under the *Environmental Planning and Assessment Act, 1979*.

The Modification Application was notified between 15 July 2024 and 29 July 2024. No submissions were received.

A site visit was conducted on 06 August 2024.

The preliminary assessment of the submitted documentation revealed that details regarding the external staircase above the kayak storage area was insufficient. A request for further information was therefore issued to the applicant on 23 August 2024.

Revised documentation was received on 29 August 2024 which provided further details regarding the amended external staircase.

The amended documentation resolved the concern raised in relation to insufficient information.

An independent planning consultant has externally assessed this application.

Having regard to the matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act*, it is recommended that modification application MOD2024/0355 be approved.

The proposed development is not considered to result in any unacceptable impacts to adjoining properties and is deemed suitable for the site.

PROPOSED DEVELOPMENT IN DETAIL

The application proposes to modify the consent under DA2022/0246 and includes the following works:

Dwelling No.120:

- Addition of a spa within approved swimming pool footprint
- changing the façade materials for kayak storage room to lightweight materials
- Increasing the width of the gym door by including a sliding door
- Raised garden landscape planter removed to natural ground level and a replenishment tree proposed adjacent to the shared western boundary with Dwelling No. 120a
- Amendment to master ensuite layout
- Amendment to guest bedroom layout
- Addition of eight skylights
- Amendment to window and door dimensions
- Deletion of lift void (all levels)
- increasing the retaining wall setback for the external staircase alignment (atop the kayak storage room) from the street to minimize excavation and change the staircase from four to three runs and includes the deletion of raised landscape planters.

Dwelling No.120a:

- Addition of a spa within approved swimming pool footprint
- Amendment to master ensuite layout
- Amendment to bathroom layout
- Addition of three skylights
- Amendment to window and door dimensions
- Reduction in length of internal wall between hall and dining room
- Amendment to powder room layout



- Deletion of lift void deleted (all levels).

It is noted that the Architectural Plans show a driveway location that differs to the stamped plans approved under DA2022/0246. The new driveway was approved under s138 of the Roads Act (S138A2023/0014) on 24 June 2024 and therefore does not form part of this modification application.

Amended plans 29 August 2024

The following amendments to the plans were made by the Applicant after request from Council:

- Details of the amendment of external staircase and retaining wall along the western boundary (Dwelling No. 120).

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

There are no assessment issues.

SITE DESCRIPTION

Property Description:	120 Prince Alfred Parade, Newport Lot 9 DP 752046 Lot 34 DP 13457 Lot 35 DP 13457 Lot B DP 391307 LIC 190387
Detailed Site Description:	The subject property consists of four lots located at the northern side of Prince Alfred Parade. The site is an irregularly shaped lot and consists of 58.87m frontage to Prince Alfred Parade and extends back to Salt Pan Cove. The site has a total area of 1,631.6m ² and is zoned as C4 Environmental Living and W1 Natural Waterways.



	The terrain slopes steeply up from the street before leveling off near the approved dwellings and continuing toward the waterfront. A concrete crib wall and retaining wall, reaching up to 2 meters in height, support the filled embankment for the road. Low brick retaining walls terrace the downward slope from the front boundary. Currently, the rear of the site consists of a flat earthed surface that stretches from the rear of the approved dwellings and swimming pools to the water, supported by a low sandstone block seawall. The site boundaries and adjacent Council reserve, Florence Park, feature a mix of native and non-native trees, in various stages of maturity. Physical works approved under DA2022/0246 have already commenced and previous structures, which included a single-story house, and a detached garage with a studio, have been demolished under and the construction works are currently underway.
A photograph showing a two-story building under construction. The building has a light-colored facade and a dark roofline. It is surrounded by trees and a dirt area. In the foreground, there are some construction materials and a small structure. The background shows a clear blue sky and some distant hills. Figure 1 Subject site as viewed from Prince Alfred Parade. Source: CPS site inspection 06 August 2024	



Figure 2 Rear portion of the site, with boundary to Salt Pan Cove. Source: CPS site inspection 06 August 2024



Figure 3 Prince Alfred Parade from the subject site. Source: CPS site inspection 06 August 2024



Figure 4 Aerial Image with the site delineated in red. Source: Near Map 4 August 2024

Detailed Description of Adjoining/ Surrounding Development:	The site adjoins Florence Park on its eastern boundary and Salt Pan Bay to the north. Adjoining and surrounding development is characterised by detached dwellings in landscaping settings. The adjoining dwellings to the west of the site 118A,118, 116A, 116 and 114 Prince Alfred Parade are built close to the front boundary with a four-storey appearance when viewed from Salt Pan Cove.
--	--



Figure 5 Location Map with the site delineated in red. Source: Near Map 4 August 2024.

SITE HISTORY

DA2022/0246 was determined by the Northern Beaches Local Planning Panel on 07 December 2022 for the demolition works, subdivision of four lots into two lots and the construction of one dwelling on each lot including swimming pools and landscape works.



The new driveway design was approved under s138 of the Roads Act (S138A2023/0014) on 24 June 2024.

APPLICATION HISTORY

04 July 2024	The Modification Application was lodged.
15 July 2024 – 29 July 2024	The DA was notified to surrounding properties. In response, no submissions were received.
06 August 2024	The consultant planner undertook a site inspection of the subject site.
23 August 2024	A request for further information (RFI) was issued to the applicant requesting for further details regarding the proposed changes to the external staircase above the kayak storage area.
29 August 2024	The applicant responded to the RFI with amended architectural plans providing additional details of the amended external staircase and retaining wall along the western side boundary.
20 September 2024	A second RFI was issued to the applicant requiring confirmation from a geotechnical engineer that the development was consistent with the provisions of P21DCP.
28 September 2024	The applicant responded to the RFI with a revised Geotechnical Report confirming that the proposed modifications are minor from a geotechnical perspective and do not alter the recommendations or the risk assessment in the report submitted for the original DA.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EP&A Act)

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

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

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted, and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2022/0246, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:



Section 4.55(1A) – Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	Yes. The modification, as proposed in this application, is of minimal environmental impact for the following reasons: • The proposed addition of the spas is located within the each of the approved pool footprints and therefore does not change the area allocated to the pool, and any associated earthworks. Furthermore, the proposed modifications to the window sill heights and dimensions, door dimensions, and inclusion of new sky lights do not result in an increase of impacts on the visual and acoustic impacts of neighbouring properties, and rather, improves the privacy of the habitable spaces of each dwelling by reducing overall glazed areas. • The amendment of internal walls and room layouts, and removal of the lift voids across each level do not result in changes to the approved gross floor area and therefore maintains the massing and scale of the approved dwellings. • The amendments also include modifications of the extent of earthworks and retaining walls, kayak storage room and the external staircase above the kayak storage room. The works are minimal in nature and are not considered to negatively impact the soil and stormwater conditions of the site. However, it is noted that these changes have the opportunity to generate a perceived visual privacy impact for the occupants at the adjoining residential building at 118A Prince Alfred Parade which is discussed in detail below. • The proposed modification works generally do not alter any existing approved built form controls or principal development standards of the existing approved development and are of minimal environmental impact.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	Yes. The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2022/0246 for the following reasons: • The building height, building density and setbacks are maintained as approved.



Section 4.55(1A) – Other Modifications	Comments
	• Amendments to the building façade and footprint are minor in nature. • The modifications to the extent of earthworks, retaining walls, kayak storage area and the external staircase are not substantial, and do not change the intended purpose of the allocated site area.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been notified from 15 July 2024 – 29 July 2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions were received in relation to this application.

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 relevant to the application.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan (P21 DCP) applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.



Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(iv) – Provisions of the regulations	<u>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>Clauses 36 and 104</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested on 23 August 2024. The contents of the correspondence can be seen above under <i>Application History</i>. <u>Clause 61(1)</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 2001: The Demolition of Structures. This matter can be addressed via a condition of consent in the event of DA approval, which applied to the consent as issued. <u>Clauses 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(2)</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the <i>Home Building Act 1989</i>. This clause is not relevant to this application. <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 can be addressed via a condition of consent in the event of DA approval.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the P21 DCP section in this report. The development results in an acceptable environmental impact. (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 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	For the reasons outlined within this report, the development is acceptable and does not result in any adverse impacts upon adjoining properties and the environmental features of the site. Approval of the development would not be contrary to the public interest and the application is recommended for approval.

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.

FLOOD PRONE LAND

The site is classified as flood prone land.

BIODIVERSITY VALUES

The site is not classified as containing any biodiversity values. However, the adjoining land to the east is mapped as ‘biodiversity’ under the Pittwater LEP 2014.

NOTIFICATION & SUBMISSIONS RECEIVED

The Modification Application has been notified, from 15 July 2024 and 29 July 2024, in accordance with the *Environmental Planning and Assessment Act 1979*, *Environmental Planning and Assessment Regulation 2021* and the Northern Beaches Community Participation Plan 2019 (CPP).

As a result of the notification of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Development Engineering	Referral dated 26/08/2024 advised that the proposed amended works within public road reserve were approved under Road Act-Infrastructure works within public road way application S138A2023/0014, internal ref: TRIM 2024/428435,440226, 451350. Council's Development Engineering officer did not have objections to approval. The proposal was therefore supported.



Internal Referral Body	Comments
	The application was subsequently re-referred to the development engineering officer following receipt of amended plans that detailed a modification to the approved extent of earthworks and amendment to the approved retaining walls. A second referral received on 18/09/2024 advised that the extent of excavation is altered within the site, and as site is mapped on Geotechnical Hazard area H1, comments from consultant Geotech Engineer were therefore required. An RFI was issued on 20/09/2024 requesting that the applicant provide confirmation from a geotechnical engineer that the development was consistent with the provisions of the P21DCP. The applicant responded with additional information on 28/09/2024 and the application was subsequently re-referred to Council's Development Engineering officer. A third referral was received on 30/09/2024, which advised that no objections were raised subject to the inclusion of recommended conditions and that the existing development engineering conditions for DA2022/0246 are considered to still be relevant and adequate.
Natural Environment	Council's Natural Environment officer advised that none of the proposed modifications will have adverse impacts on flood behaviour or risk to life and property. Subject to the retention of the flood conditions outlined in DA2022/0246, the proposal is compliant with Section B3.11 of the Pittwater DCP and Clause 5.21 of the Pittwater LEP. The proposal is therefore supported.
Parks, Reserves and Foreshores	The Parks, Reserves and Foreshores Referral raised no concerns following review of the modification proposal as described in reports and as illustrated on plans. Parks Reserves and Foreshores Referral development consent conditions remain unaltered. The proposal is therefore supported.
External Referral Body	Comments
Water NSW	The Department of Planning and Environment-Water reviewed documents for the above application to modify a DA Consent and considers that, for the purposes of the Water Management Act 2000 (WM Act), previously issued General Terms of Approval are adequate, remain current, and no further assessment by this agency is necessary.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

All Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans (DCPs) 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, REPs and



LEPs), Development Controls Plans (DCPs) 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 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)

State Environmental Planning Policy (Sustainable Buildings) 2022

The proposed modification has been supported by revised BASIX Certificates (No. 1258806S_02 and No. 1258883S_03) dated 26 June 2024. The certificate demonstrates compliance with the provisions of the SEPP and is consistent with the commitments identified in the documentation.

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

State Environmental Planning Policy (Resilience and Hazards) 2021 (RH SEPP)

Chapter 2 – Coastal Management

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

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

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

Comment:

The proposed modification is unlikely to cause adverse impacts on the ecological environment, coastal values and processes, marine vegetation, access to the beach or heritage.

- (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*
 - (b) *referred to in subclause (1), or*
 - (c) *if that impact cannot be reasonably avoided—the development is designed, sited and*
 - (d) *will be managed to minimise that impact, or*
 - (e) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*



Comment:

The approved development incorporates measures to avoid adverse impacts on the ecological environment, coastal values and processes, marine vegetation, access to the beach or heritage. The proposed modification does not exacerbate any further adverse impacts.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

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

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. A preliminary site investigation has been undertaken by White Geotechnical to address the requirements of the SEPP as part of DA2022/0246. Council records indicate that the subject site has been used for residential purposes for a significant period 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 suitable for the proposed residential development.

State Environmental Planning Policy (Transport and Infrastructure) 2021 (TI SEPP)

Chapter 2 – Infrastructure

Subdivision 2 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 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.



DA2022/0246 was referred to Ausgrid who raised no objections. The building envelope and swimming pool footprint have largely remained as approved and therefore further referral is not warranted.

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

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements, and instruments	Yes
2.6 Subdivision – consent requirements	Yes
2.7 Demolition requires consent	Yes
4.1 Minimum subdivision lot size	Yes – as approved
4.3 Height of buildings	Yes – as approved
4.6 Exceptions to development standards	N/A
5.7 Development below mean high water mark	Yes
5.10 Heritage conservation	N/A
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes – proposed modifications are minor in nature.
7.10 Essential services	Yes – The site is within an established area. As such, Council is satisfied that the proposed allotments can be connected to essential services (water, electricity, sewerage).

PITTWATER 21 DEVELOPMENT CONTROL PLAN

Built Form Controls

No. 120

Built Form Control	Requirement	Approved	Proposed	% Variation	Complies
Front building line	6.5m	2.1m-3.6m	As approved	68%	No – As approved
Rear building line	6.5m	Foreshore building line applies	As approved	N/A	Yes
Side building line	East 1m	1.66m	As approved	N/A	Yes
	West 2.5m	2.6m	As approved	N/A	Yes



Built Form Control	Requirement	Approved	Proposed	% Variation	Complies
Building envelope	East 3.5m	Outside envelope (Encroachment between 0.83m to 1.84m at entry level and first floor level)	As approved	23.7% to 52.6%	No – As approved
	West 3.5m	Within envelope	As approved	N/A	Yes
Landscaped area	60%	52% (416.2sqm)	As approved	13%	No – As approved

No. 120a

Built Form Control	Requirement	Approved	Proposed	% Variation	Complies
Front building line	6.5m	2.7m	As approved	58%	No – As approved
Rear building line	6.5m	Foreshore building line applies	As approved	N/A	Yes
Side building line	East 2.5m	2.5m	As approved	N/A	Yes
	West 1m	1.6m	As approved	N/A	Yes
Building envelope	East 3.5m	Within envelope	As approved	N/A	Yes
	West 3.5m	Within envelope	As approved	N/A	Yes
Landscaped area	60%	59.5% (495.21sqm)	As approved	0.8%	No – As approved

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Section A: Shaping Development in Pittwater		
A1.7 Considerations before consent is granted	Yes	Yes
A4.10 Newport Locality	Yes	Yes
Section B: General Controls		
B1 Heritage Controls		
B1.3 Heritage Conservation	Yes	Yes
B1.4 Aboriginal Heritage Signage	Yes	Yes
B3 Hazard Controls		
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.7 Estuarine Hazard – Low density residential	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
B3.10 Estuarine Hazard – Subdivision	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B3.12 Climate Change	Yes	Yes
B4 Controls relating to the Natural Environment		
B4.15 Saltmarsh Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5 Water Management		
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6 Access and Parking		
B6.1 Access Driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	No	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.6 On-Street Parking Facilities	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8 Site Works Management		
B8.1 Construction and Demolition – Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition – Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition – Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
Section C: Development Type Controls		
C1 Design Criteria for Residential Development		
C1.1 Landscaping	No (variation as approved under DA2022/0246)	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.10 Building Facades	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve – Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Overruns	Yes	Yes
C4 Design Criteria for Subdivision		
C4.1 Subdivision – Protection from Hazards	Yes	Yes
C4.2 Subdivision - Access Driveways and Off-Street Parking Facilities	Yes	Yes
C4.3 Subdivision - Transport and Traffic Management	Yes	Yes
C4.4 Subdivision - Public Roads, Footpath and Streetscape	Yes	Yes
C4.5 Subdivision - Utility Services	Yes	Yes
C4.6 Service and delivery vehicle access in subdivisions	Yes	Yes
C4.7 Subdivision - Amenity and Design	Yes	Yes
C4.8 Subdivision - Landscaping on the Existing and proposed public road reserve frontage to subdivision lots	Yes	Yes
D10 Newport Locality		
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
D10.8 Side and rear building line (excluding Newport Commercial Centre)	Yes	Yes
D10.7 Front building line (excluding Newport Commercial Centre)	No (variation as approved under DA2022/0246)	Yes
D10.11 Building envelope (excluding Newport Commercial Centre)	No (variation as approved under DA2022/0246)	Yes
D10.12 Landscaped Area - General	No (variation as approved under DA2022/0246)	Yes
D10.14 Fences - General	Yes	Yes
D10.16 Construction, retaining walls, terracing, and undercroft areas	Yes	Yes
D10.18 Scenic Protection Category One Areas	Yes	Yes
D15.1 Character as viewed from a public place	Yes	Yes
D15 Waterways Locality		



Clause	Compliance with Requirements	Consistency Aims/Objectives
D15.3 Building colours and materials	Yes	Yes
D15.11 Waterfront lighting	Yes	Yes
D15.12 Development seaward of mean high-water mark	Yes	Yes
D15.14 Minimum frontage for waterfront development	Yes	Yes
D15.15 Waterfront development	Yes	Yes
D15.18 Seawalls	Yes	Yes
D15.19 Dredging	Yes	Yes

Detailed Assessment:

B6.1 Access driveways and Works on the Public Road Reserve

The Architectural Plans show a driveway location that differs to the stamped plans approved under DA2022/0246. The new driveway was approved under s138 of the Roads Act (S138A2023/0014) on 24 June 2024 and does not form part of this modification application. B6.1 specifies that the maximum width at the boundary and the kerb of an access driveway for a dwelling house is determined on the distance between the building line to the boundary.

The controls therefore require the development to have a maximum access driveway to have a maximum width of 5.5m at the boundary and 6m at the kerb.

The approved amendments under S138A2023/0014 show the following measurements:

Dwelling No. 120:

- Width at boundary: 6.1m (not compliant)
- Width at kerb: 6.4m (not compliant)

Dwelling No. 120a:

- Width at boundary: 4.8m (complies)
- Width at kerb: (cannot be determined from plans)

Although the access driveway widths for Dwelling No. 120 do not comply with the controls, the contravention is supported by Council's development engineer and from a merit perspective is supported given that a wider driveway at the boundary improves sightlines to the eastern bend in Prince Alfred Street when egressing from the site in a western direction.

B6.2 Internal Driveways

As outlined above, an amended driveway design was approved under s138 of the Roads Act (S138A2023/0014).

The revised driveway is compatible with the approved dwelling, and appears to provide safe and convenient access while minimising visual impact on the surrounding landscape by retaining existing vegetation.

Council is therefore satisfied that the development proposal demonstrates an adequate approach to safety and environmental considerations, and meets the objectives of B6.2.

C1.1 Landscaping



The PDCP requires at least 2 canopy trees in the front yard and 1 canopy tree in the rear yard. Given the constraints of the site, the large Fig trees adjoining the site, and the multitude of additional plantings proposed, the outcomes for section C1.1 were determined as satisfied under DA2022/0246.

An additional tree is proposed for dwelling No. 120 adjacent to the shared boundary with 120A. Amendments to the approved landscape plan and nomination of the tree species has been conditioned as part of this consent. Given minimal changes to the proposed landscaping and planting schedule have been proposed, the proposal remains satisfactory.

C1.3 View Sharing

The proposed modification does not increase the height or massing of the dwellings and does not intensify development within the site. As such, the development, as modified, remains satisfactory in achieving reasonable sharing of views from surrounding and nearby properties.

C1.5 Visual Privacy

The proposed modification consists of amending the extent of excavation, staircase and the location of the retaining walls along the western side boundary for Dwelling No. 120..

The perceived visual privacy concerns as a result of staircase impacts associated with removing raised planter beds and reducing some staircase run setbacks have been considered and still achieve the objectives of the control given:

- The staircase is located below adjacent levels at 118B and the potential for overlooking is unlikely.
- The removal of staircase runs ensures less area for congregating and provides for a more direct path of travel.
- A minimum 0.3m wide landscape area is maintained adjacent to the western shared boundary with No. 118B Prince Alfred Street and is capable of accommodating screen plants to filter views to and from the staircase.

The following assessment of the proposed new staircase landings has been undertaken to determine the compliance of the modification:

Proposed staircase levels for Dwelling No. 120	Levels at 118B (taken from entry level plan MOD104 (Issue B), dated 28/08/2024)	Overlooking Opportunity
First/Top staircase landing: 9.100	Adjacent garage door at 118B: 11.81 Fence height: 10.600	No
Second staircase landing: 7.235	Adjacent terrace: 8.97 (above staircase) Fence height: (Cannot be obtained from plans)	No
Third staircase landing: 5.600	No adjacent terrace or openings Adjacent top of wall 12.53	No
Ground level: 2.700	Terraces 8.97 and 5.96.	No



D10.11 Building Envelope (excluding Newport Commercial Centre)

Merit consideration was granted for a variation to the building envelope, in the assessment of DA2022/0246. The proposed modification does not increase the height or massing of the dwellings and does not intensify development within the site. As such, the development, as modified, remains satisfactory in achieving the objectives of the control.

D10.13 Landscaped Area - Environmentally Sensitive Land

The subject site is located within Area 1 of the Landscaped Area Map and therefore the site requires a minimum of 60% landscaped area.

Merit consideration was granted under DA2022/0246 to vary this development control. The proposed modification does not further reduce the minimum landscaped areas provided and maintains satisfactory in achieving compliance with the objectives of this control.

7.12 CONTRIBUTIONS

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments, including the Pittwater Local Environment Plan 2014;
- Pittwater 21 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:

- 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

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 grant approval to Modification Application MOD2024/0355 for the demolition works, subdivision of four lots into two lots and the construction of one dwelling on each lot including swimming pools and landscape works on land at 120 Prince Alfred Parade, Newport (Lot 9 DP 752046, Lot 34 DP 13457, Lot 35 DP 13457, Lot B DP 391307, and LIC 190387), subject to the conditions printed below:

Mod2024/0355

Page 21 of 25



Modification Summary

The development consent is modified as follows:

Modification Summary Table

Application Number	Determination Date	Modification description
MOD2024/0355	The date of this notice of determination	Modification of Development Consent DA2022/0246 granted for the demolition works, subdivision of four lots into two lots and the construction of one dwelling on each lot including swimming pools and landscape works. Insert Condition 1A – Modification of Consent – Approved Plans and Supporting Documentation Insert Condition 2A – Modification of Consent – Amendments to the approved plans Insert Condition 60A – Certification of Civil Works and Works ad Executed Data in accordance with Roads Act Approval.

Modified Conditions

A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting documentation, to read as follows:

(1A) Approved Plans and Supporting Documentation

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Driveway profile, DA01, revision D	11.11.2022	Corben Architects
Site plan, MOD101, revision B	28.08.2024	Corben Architects
Ground level plan, MOD102, revision B	28.08.2024	Corben Architects
First floor plan, MOD103, revision B	28.08.2024	Corben Architects
Entry level plan, MOD104, revision B	28.08.2024	Corben Architects
North and south elevations, MOD105, revision B	28.08.2024	Corben Architects
Eastern elevations, MOD106, revision B	28.08.2024	Corben Architects
Western elevations, MOD107, revision B	28.08.2024	Corben Architects
Sections, MOD108, revision B	28.08.2024	Corben Architects
Sections Driveway, MOD109, revision B	28.08.2024	Corben Architects
Section Stairs MOD110, revision B	28.08.2024	Corben Architects



Streetscape and materials/finishes schedule, DA12, revision D	11.11.2022	Corben Architects
Building envelope section, DA13, revision D	11.11.2022	Corben Architects
Sediment and Erosion, MOD114, revision B	28.08.2024	Corben Architects
Window and Door schedule P1, MOD115, revision B	28.08.2024	Corben Architects
Window and Door schedule P2, MOD116, revision B	28.08.2024	Corben Architects
Window and Door schedule P3, MOD 117, revision B	28.08.2024	Corben Architects
Window and Door schedule P4, MOD 118, revision B	28.08.2024	Corben Architects

Engineering Plans		
Report No. / Page No. / Section No.	Dated	Prepared By
Subdivision Plan	15.07.2022	DP Surveying
Stormwater Management Plan – 120A Prince Alfred Pde	14.04.2022	Taylor Consulting
Stormwater Management Details – 120A Prince Alfred Pde	04.02.2022	Taylor Consulting
Excavation plan	4.02.2022	Taylor Consulting
Driveway plan – 120A Prince Alfred Pde	4.02.2022	Taylor Consulting
Stormwater Management Plan – 120 Prince Alfred Pde	14.04.2022	Taylor Consulting
Stormwater Management Details – 120 Prince Alfred Pde	04.02.2022	Taylor Consulting
Excavation plan	4.02.2022	Taylor Consulting
Driveway plan and long sections – 120 Prince Alfred Pde	4.02.2022	Taylor Consulting
Swept path analysis TX16422.00, C1.00, C1.01, C2.00, C2.01, C2.02	11.02.2022	Taylor Consulting

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Statement of Environmental Effects	11 February 2022	Four Towns Pty Ltd
Statement of Modification	26 June 2024	Four Towns Pty Ltd
Geotechnical Report Ref: J3814B	27 September 2024	White Geotechnical Group
BASIX Certificate 1258806S_02 (120A Prince Alfred Pde)	26 June 2024	Chapman Environmental Services Pty Ltd
BASIX Certificate 1258883S_03 (120 Prince Alfred Pde)	26 June 2024	Chapman Environmental Services Pty Ltd
Arboricultural Impact Assessment	11 February 2022	Michael Shaw



Letter - Existing Crib Retaining Wall - 120 & 120a Prince Alfred Parade, Newport	13 September 2022	Taylor Consulting
NatHERS Certificate 000955177 (120 Prince Alfred Pde)	26 June 2024	Chapman Environmental Services Pty Ltd
NatHERS Certificate 0009565193 (120a Prince Alfred Pde)	26 June 2024	Chapman Environmental Services Pty Ltd

Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

- b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.
- c) The development is to be undertaken generally in accordance with the following:

Landscape Plans		
Drawing No.	Dated	Prepared By
Landscape concept plan, sheet 1, issue F	21.11.2022	Interlink
Landscape concept plan, sheet 2, issue F	21.11.2022	Interlink

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	08.02.2022	Ella and Luke Miles

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

B. Add Condition No.2A - Modification of Consent - Amendments to the approved plans, to read as follows:

- (2A) The following amendments are to be made to the approved landscape plan:

A landscape plan prepared by a qualified Landscape Architect or Landscape Consultant to a scale of 1:100 or 1:200 and conforming to the Pittwater 21 Development Control Plan and relevant conditions of this Consent, must be submitted to Council's Executive Manager of Development Assessments for approval prior to issue of a Construction Certificate application. The plan shall be consistent with the approved landscape plan referenced in Condition 1A of this consent, subject to the following amendments:

- a) The removal of the Cabbage Tree Palms from the landscape plan and planting schedule;
- b) Replacement with suitable native canopy trees to offset the removal of the Cabbage Tree Palms. The canopy trees shall grow to a maximum height of 8.5m at maturity. The new trees shall be planted at a minimum pot size of 100L and grown to Australian Standard 2303:2018 Tree stock for landscape use.
- c) The landscape plan is to reflect latest approved Architectural Plans (MOD2024/0355) and nominate a Blueberry Ash (*Elaeocarpus reticulatus*) with a minimum 75L pot size within the southern setback (adjacent to the pantry for Dwelling 120).

The following amendments are to be made to the approved Architectural Plans:



d) Skylight SK2 on Sheet No. MOD101 is to be clouded red (for Walk-In-Wardrobe).

Reason: To minimise view impacts to properties located to the south of the site and to demonstrate consistency across plans.

C. Add Condition No. 60A – Certification of Civil Works and Works as Executed Data in accordance with Roads Act Approval, to read as follows:

(60A) Certification of Civil Works and Works as Executed Data in accordance with Roads Act Approval

The Applicant shall submit a certification by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) that the completed works have been constructed in accordance with this consent and the approved Section 138 and/or Construction Certificate plans. Works as Executed data (details overdrawn on a copy of the approved civil plans) certified by a registered surveyor in relation to boundaries and/or relevant easements, prepared in accordance with Council's 'Guideline for preparing Works as Executed data for Council Assets' in an approved format shall be submitted to the Council for approval prior to the issue of the Occupation Certificate and the release of any security deposits.

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

Consultant Name:

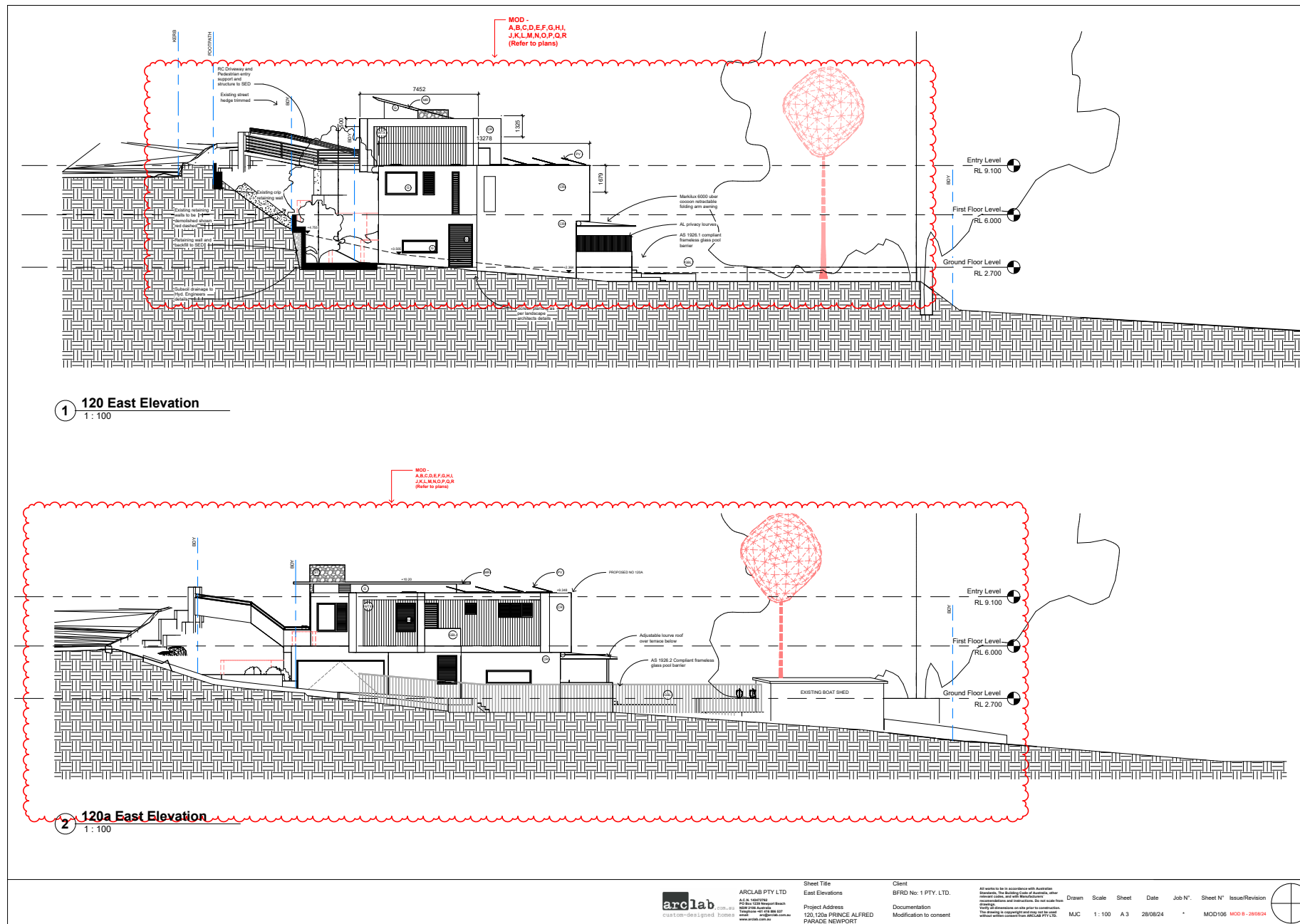
Kalinda Li – Creative Planning Solutions

In submitting this report to Council, I declare that I do not have a conflict of interest in making this recommendation.

A handwritten signature in black ink, appearing to read "Kalinda Li".

Kalinda Li
Consultant Planner







ITEM 3.3	DA2024/0915 - 18 BLIGH CRESCENT SEAFORTH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE AND SECONDARY DWELLING INCLUDING SWIMMING POOL, RUMPUS 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 building height standard.

RECOMMENDATION

- A.** That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of 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 DA2024/0915 for DESCRIPTION on land at Lot 1 DP 1268833, 18 Bligh Crescent SEAFORTH, subject to the conditions set out in the Assessment Report.

Reporting manager	Rodney Piggott
TRIM file ref	2024/727334
Attachments	↓1 Assessment Report ↓2 Site Plan and Elevations ↓3 Clause 4.6

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/0915
---------------------	-------------

Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 1 DP 1268833, 18 Bligh Crescent SEAFORTH NSW 2092
Proposed Development:	Alterations and additions to a dwelling house and secondary dwelling including swimming pool, rumpus and carport
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Nik Lee

Application Lodged:	17/07/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	24/07/2024 to 07/08/2024
Advertised:	Not Advertised
Submissions Received:	4
Clause 4.6 Variation:	4.3 Height of buildings: 22.35%
Recommendation:	Approval

Estimated Cost of Works:	\$ 2,318,250.00
--------------------------	-----------------

EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to a dwelling house and secondary dwelling including swimming pool, rumpus and carport.

The application is referred to the Development Determination Panel (DDP) due to the proposed variation to the height of buildings development standard set by Clause 4.3 of the *Manly Local Environmental Plan 2013*, in accordance with the delegation provided by the former Department of Planning, Industry & Environment Class 1 buildings (such as this).

The proposed variation to the height of buildings development standard equates to 22.35%. The non-

compliance with the height of buildings development standard arises due to the existing floor levels being added to, and the existing steep topography of the site.

Four submissions were received in relation to this application, raising concerns with construction traffic, parking, use of the site, and loss of rock formations, and potential privacy impacts.

Within this report, detailed assessment is given to the request to vary the height of buildings development standard, visual privacy, and with respect to the proposed non-compliant elements (setbacks, swimming pool height, and parking structure width). Overall, in consideration of the variations and non-compliant elements proposed, the development is acceptable on merit.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for alterations and additions to the existing principal dwelling, secondary dwelling, and hardstand area, as follows:

Principal Dwelling:

- Enclosure of the existing northern double carport to form a double garage.
- Reconfiguration and extension of the upper and lower levels, including construction of new southern decks.

Secondary Dwelling:

- Extension to the lower level and construction of a new southern deck.

Southern Hardstand Area:

- Expansion to provide two parking spaces within a carport.
- Addition of a rumpus room above, with an accessible green roof.

External Works:

- Demolition of the existing swimming pool and associated paved area.
- Construction of a new swimming pool.
- Landscaping works.

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - Zone R2 Low Density Residential
 Manly Local Environmental Plan 2013 - 4.3 Height of buildings
 Manly Local Environmental Plan 2013 - 4.6 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 - 6.8 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 - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
 Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features
 Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

SITE DESCRIPTION

Property Description:	Lot 1 DP 1268833 , 18 Bligh Crescent SEAFORTH NSW 2092
Detailed Site Description:	The subject site consists of one allotment located on the northern side of Bligh Crescent, Seaforth. The site is regular in shape with a frontage of 18.29 metres along Bligh Crescent and a depth of 56.085 metres. The site has a surveyed area of 1,025.7m². The site is located within the R2 Low Density Residential zone and accommodates a principal dwelling with attached garage, secondary dwelling, and carport. The subject site has vehicular access via both Bligh Crescent to the south of the site and the private accessway to the north of the site. The site steeply slopes down from north to south, by

	approximately 22 metres. The site includes a variety of landscaping and vegetation. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by multi-storey detached residential development,
--	--

Map:



SITE HISTORY

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

- DA245/2017 for alterations and additions to the existing dwelling and addition of a secondary dwelling was approved on 23 February 2018.

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 Matters for Consideration	Comments
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)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the 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.

Section 4.15 Matters for Consideration	Comments
	(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 classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the application (prepared by Control Line Consulting, dated 29 April 2024). The report recommends an alternative solution to comply with Planning for Bush Fire Protection. Accordingly, the application was referred to the NSW Rural Fire Service for further assessment. The NSW RFS raised no objections to approval, subject to conditions.

The recommendations of the Bush Fire Report, along with the conditions from the NSW RFS have been included as part of the recommended conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 24/07/2024 to 07/08/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 4 submission/s from:

Name:	Address:
Mrs Jean Nicholls	3 Bligh Crescent SEAFORTH NSW 2092
Mr George Robert Citer	1 Bligh Crescent SEAFORTH NSW 2092
Mr John Nixon Rabbitts Mrs Elizabeth Gai Rabbitts	28 Ethie Road BEACON HILL NSW 2100
Mr Stuart Everett Gray	24 Bligh Crescent SEAFORTH NSW 2092

The following issues were raised in the submissions:

- Construction of the development will result in unreasonable traffic and disruption in the street.
- The existing secondary dwelling is allegedly currently used as bed and breakfast accommodation - continued use as such will result in increased parking demand on the street.
- The widened southern carport may result in loss of an on-street parking space.
- Concern about retention of the existing sandstone rock outcrop.
- One of the plans indicates an inclinator, though it is not shown on any other plans.
- Concern regarding privacy to the west adjoining 24 Bligh Crescent

The above issues are addressed as follows:

Construction Traffic Management

Submissions noted that Bligh Crescent is narrow and will require specific construction traffic and parking arrangements to ensure resident access is not impeded.

Comment:

This matter is addressed via inclusion of a recommended condition of consent requiring preparation and approval of a Construction Traffic Management Plan (CTMP) prior to the issue of the Construction Certificate. The CTMP will specify how construction traffic and residential traffic will be managed throughout works and must be adhered to while works continue.

Secondary Dwelling Use

Submissions allege that the existing secondary dwelling is being used as bed and breakfast accommodation.

Comment:

Conditions of consent have been included in the recommendation stipulating the approved land uses (dwelling house, secondary dwelling, and detached studio) and prohibiting use as bed and breakfast accommodation without prior consent. If the site is used not in accordance with this consent, the matter can be reported to Council for investigation.

Carport Widening

Submissions raised concern that the widening of the southern carport will reduce on-street parking.

Comment:

Whilst the southern carport is proposed to be widened, there is no change proposed to the width of the existing driveway crossing. As such, there is no impact to on-street car parking spaces.

Sandstone Rock Outcrop

Submissions raised concern about loss of the sandstone rock outcrop onsite.

Comment:

The proposed new built form works do not unreasonably impact upon the existing sandstone rock outcrop towards the centre of the site, and do not require any works to the existing sandstone rock outcrop at the southern street frontage. The landscape plan indicates vegetation in the location of the central outcrop, which infers removal of that rock to enable such planting. A condition of consent has been included in the recommendation of this report for the retention of that rock outcrop.

Inclinators

Plan number DA18 includes a notation stating 'inclinators', but this is not shown on other plans.

Comment:

The 'inclinators' notation is noted. No inclinators are proposed as part of this application. A condition of

consent has been included in the recommendation of this report to delete this reference from plans, so as not to infer granting of consent for an inclinometer.

Privacy

Submissions raised concern about the potential visual privacy impact to 24 Bligh Crescent with respect to the side setback.

Comment:

The proposed development is addressed with respect to visual privacy in the section of this report relating to Clause 3.4.2 Privacy and Security of the Manly Development Control Plan 2013.

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	<i>Supported, subject to conditions</i> The comments in this referral relate to the following applicable controls and provisions: • SEPP (Resilience and Hazards 2021 - Coastal Environment Area) • Planning for Bushfire Protection 2019 • Manly LEP - Clause 6.5 Terrestrial Biodiversity The proposal would take place in a site that has been previously disturbed and is unlikely to impact upon native flora and fauna. As the site is mapped as being on Bushfire prone land, a bushfire report has been submitted with the application and awarded the site a level of risk of BAL12.5 and recommended that the site be treated as an Inner Protection Area given the site constraints (pre-existing structures and slope). No objections are raised. A Landscape plan has been submitted with the application and includes a range of exotic and native species. Conditions are recommended to ensure that no weeds are introduced into the site. 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> The submitted stormwater management plan including on-site stormwater detention amendments to the existing system is acceptable. The minor widening of the existing lower driveway crossing is also acceptable. Development Engineering support the proposal, subject to conditions as recommended.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	Supported, subject to conditions The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Rural Fire Service - Local Branch - EP&A Act, s4.14	Supported, subject to conditions The application was referred to the NSW Rural Fire Service, who were supportive of the proposed development, subject to conditions of consent.
Aboriginal Heritage Office	Supported, subject to conditions No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development. Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

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.

The proposed development is for alterations and additions to an existing dwelling house and secondary dwelling. The Housing and Productivity Contribution is not applicable.

SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No. A1734259_02 dated 4 June 2024). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Housing) 2021

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 would result in a principal dwelling and a secondary dwelling only. (b) The proposed development is compliant with the applicable floor space ratio development standard. (c) The secondary dwelling is 94m² in area. Clause 5.4 of the Manly LEP allows for a secondary dwelling with an area of 60 square metres or 30% of the total floor area of the principal dwelling, whichever is greater. The principal dwelling has an area of 315.4m². The secondary dwelling area is 29.8% of the principal dwelling area.

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 450m².	The proposed secondary dwelling is detached. The subject site has an area of 1,025.7m².
(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 existing site has three car parking spaces. The proposed development provides four spaces.

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	
Height of Buildings	Max. 8.5m	Max. 10.4m	
Floor Space Ratio	Max. 0.4:1 (410.28m ²)	Principal Dwelling:	315.4m ²
		Secondary Dwelling:	94m ²
		Total:	0.399 (409.4m ²)

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

Zone R2 Low Density Residential

With respect to the written request to vary the height of buildings development standard of the Manly Local Environmental Plan 2013, the objectives of the R2 Low Density Residential zone are addressed as follows:

To provide for the housing needs of the community within a low density residential environment.

Comment:

The proposed development retains the uses of the site for the principal dwelling house and the secondary dwelling, thereby retaining the existing residential use of the site.

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 existing residential use of the site.

4.3 Height of buildings

With respect to the written request to vary the height of buildings development standard under Clause 4.3 of the *Manly Local Environmental Plan 2013*, the objectives of the clause are addressed 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 proposed development retains and extends the existing low pitched roof form and does not increase its maximum height. The proposed development steps with the topography, so as to follow the slope, while also providing adequate floor area in consideration of the site constraints. The proposed development will be visually consistent with existing and approved developments in the locality, which predominantly consist of multi-storey detached dwelling houses. Additionally, the proposal includes landscaping surrounding the dwelling house, secondary dwelling, and carport/rumpus, so as to reduce the visual impact from public places.

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

Comment:

The proposed development is compliant with the floor space ratio development standard and is acceptable with respect to the applicable built form controls under the Manly DCP, as detailed in this report. This demonstrates the dwelling is of a bulk and scale anticipated for the subject site by the controls, and that the footprint of the dwelling is not excessive.

(c) to minimise disruption to the following—

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

Comment:

The proposed development is designed and sited so as not to result in any unreasonable view loss to or from public or private land.

(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 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 DCP, as detailed in the relevant sections of this report.

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

Comment:

Not applicable. The subject site is zoned R2 Low Density Residential.

4.6 Exceptions to development standards

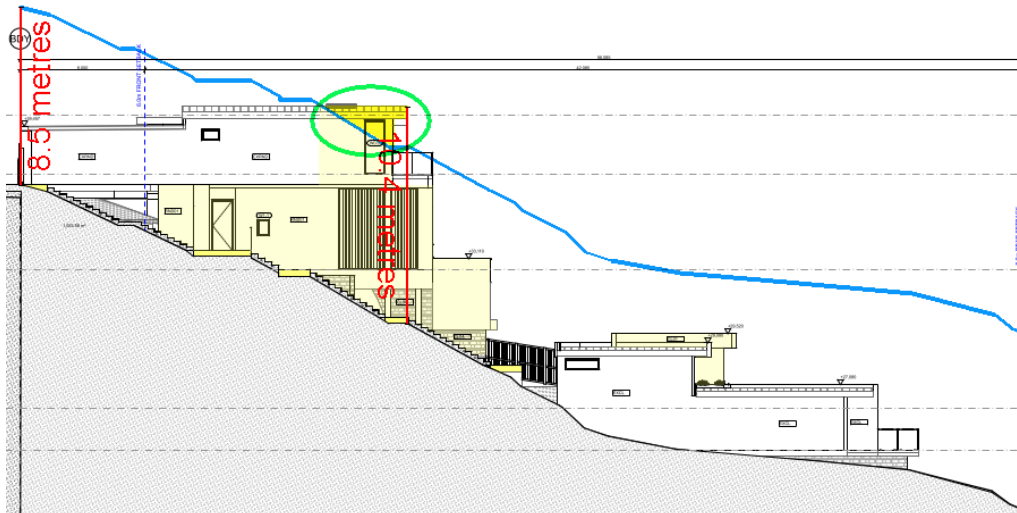
The application seeks consent to vary a development standard as follows:

Development standard: Clause 4.3 Height of Buildings

Requirement: Maximum 8.5 metres

Proposed: Maximum 10.4 metres

Percentage of variation: 22.35%



Above: The breaching portion of the development, highlighted in yellow and circled in green.

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

Subclause (3) of this clause provides that:

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

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

Comment:

Council is satisfied that the Applicant has demonstrated that compliance with Clause 4.3 Height of Buildings is unreasonable or unnecessary because the proposed development is consistent with the objectives of Clause 4.3 and the objectives of the R2 Low Density 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 proposed new dwelling will maintain the general bulk and scale of the existing surrounding newer dwellings and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).*
- *Similarly, the proposed development will provide for improved amenity through the inclusion of more functional floor space within a built form which is compatible with development in the surrounding area, which promotes the orderly and economic use of the land (cl 1.3(c)).*
- *The proposed new development is considered to promote good design and enhance the residential amenity of the building's occupants and the immediate area, which is consistent with the Objective 1.3 (g).*
- *The proposed development improves the amenity of the occupants of the subject site and respects surrounding properties by locating the development where it will not unreasonably obstruct views across the site and will maintain the views from the site (1.3(g)).*

Council is satisfied that the Applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of Clause 4.3 Height of Buildings. The proposal is consistent with the topography, landscape, prevailing building height, streetscape and character of the area, does not disrupt significant views to or from the site, and provides adequate solar access to adjacent properties. 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 development was referred to the Aboriginal Heritage Office who provided comments and conditions that have been included in the consent.

(g) the proximity to and potential for adverse impacts on any 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.

6.8 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 proposed development is supported by architectural plans, stormwater plans, and a geotechnical report, which demonstrate the proposal is acceptable with respect to the above matters. The proposed development has also been reviewed by Council's Development Engineer, who has raised no objection to the proposal, subject to conditions of consent, which are included in the recommendation of this report.

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 proposed development is demonstrated to be designed, sited and managed to avoid landslide risk and significant adverse impact on the subject site and surrounding land.

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 is within the foreshore scenic protection area and is not foreshore land. 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 closely 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: 1,025.7m ²	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: Max. 1 dwelling per 1,150m ²	2 dwellings per 1,025m ² site	-	Existing
	Dwelling Size: Min. 129m ²	315.4m ²	-	Yes
4.1.2.1 Wall Height (based on gradient 1:3)	East: Max. 8m	Max 11.6m	-	Existing
	West: Max. 8m	Max. 9.5m	18.75%	No
4.1.2.2 Number of Storeys	Max. 2 storeys	Max. 2 storeys	-	Yes
4.1.2.3 Roof Height	Height: Max. 2.5m	1.9m	-	Yes
	Pitch: Max. 35 degrees	6.5 degrees	-	Yes
4.1.4.1 Street Front Setbacks	North: Prevailing Building Line or Min. 6m	Garage: Nil	-	Existing
		Principal Dwelling: 5.859m	-	Existing
	South: Prevailing Building Line or Side Setback Control	Carport: Nil	-	Consistent with streetscape
		Rumpus: 2.824m	-	Yes (Compliant with side

4.1.4.2 Side Setbacks (based on wall height)					setback control in absence of prevailing building line for this element)
			Secondary Dwelling: 15.7m to new works	-	Yes
	Principal Dwelling	East Upper: 2.03- 3.87m	895mm	-	Existing
		West Upper: 900mm- 3.17m	930mm	-	Existing
		East Lower: 1.17- 2.87m	895mm	-	Existing
		West Lower: 733mm- 2.03m	933mm- 2.432m	-	Yes
	Secondary Dwelling	East Upper: 1.13- 1.8m	4.109m	-	Yes
		West Upper: 767mm- 1.53m	1.479m	-	Existing
		East Lower: 300- 967mm	4.109m	-	Yes
		West Lower: 0-1.13m	1.479m	-	Existing
	Carport/Rumpus	East Upper: 1.9m	1.186m	37.58%	No
		West Upper: 1.9m	10.6m	-	Yes
		East Lower: 933mm	Nil	-	Existing

		West Lower: Nil (in-ground)	10.6m	-	Yes
	Windows: Min. 3m		East: Min. 895mm	70.2%	No
			West: Min. 930mm	69%	No
4.1.4.4 Rear Setbacks	Min. 8m	Nil	-	-	Existing
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Total Open Space Min. 60% of site area (615.42m ²)	60.63% (621.9m ²)	-	-	Yes
	Above Ground: Max. 40% of TOS (248.76m ²)	34.75% (216.1m ²)	-	-	Yes
4.1.5.2 Landscaped Area	Landscaped Area: Min. 40% of TOS (248.76m ²)	47.2% (293.5m ²)	-	-	Yes
	Min. 4 native trees	16 trees	-	-	Yes
4.1.5.3 Private Open Space	Min. 18m ² per dwelling	>18m ² per dwelling	-	-	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Max. 50% of frontage, up to 6.2m	North: 34.45%, 6.3m	-	-	Existing
		South: 42.65%, 7.8m	23.8%	-	No
4.1.9 Swimming Pools, Spas and Water Features	Max. 1m above ground	5.6m	460%	-	No
	Min. 1m to coping	East: 1.52m	-	-	Yes
		West: 1.2m	-	-	Yes
	Min. 1.5m to water	East: 2.3m	-	-	Yes
		West: 3.8m	-	-	Yes
Schedule 3 Parking and Access	Min. 2 spaces per dwelling	4 spaces	-	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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	No	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
3.6 Accessibility	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
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

Given that the subject site has a direct north-south orientation, this control requires that, on the winter solstice (21 June):

1. New development must not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties from 9am to 3pm at the winter solstice, and
2. 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, and
3. No reduction in solar access is permitted to any window where existing windows enjoy less than the minimum number of sunlight hours specified above.

With respect to the above, consideration is given to the adjoining properties at 16 Bligh Crescent (to the east), as well as 20 and 24 Bligh Crescent (to the west).

It is not possible (regardless of the proposed development) for the western windows of 16 Bligh Crescent and the eastern windows of 20 and 24 Bligh Crescent to receive four hours of solar access between 9am and 3pm in midwinter in accordance with the control, as the sun angle only aligns with the relevant windows for a maximum of 3 hours (given the orientation of the lots). Accordingly, the control requires no reduction in solar access as the result of development, as detailed above.

The proposed development is supported by shadow diagrams depicting the impact of the proposed works on 16, 20, and 24 Bligh Crescent at both the winter and summer solstices. An assessment of the proposed development's impact with respect to 16, 20, and 24 Bligh Crescent 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 properties to the east and west at 16, 20, and 24 Bligh Crescent.

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 subject site and 16 and 20 Bligh Crescent each have a north-south orientation, and steeply slope from the north (front) to the south (rear). 24 Bligh Crescent has an east-west orientation. Each of the sites is particularly vulnerable to overshadowing due to the slope of the land and orientation of the dwellings on the lots. It is impossible for 16 and 20 Bligh Crescent to comply with the requirements of this control, given the adjoining dwellings do not have north-facing living room windows that achieve sunlight. as For 24 Bligh Crescent, the north-facing windows remain unaffected by the proposed development.

The submitted shadow diagrams demonstrate that, at midwinter, the adjoining sites do not receive direct solar access to their eastern and western windows, due to the aforementioned site constraints. The proposed development maintains this outcome, given that the works do not increase the overall height of the dwelling, and in that the topography causes the bulk of overshadowing. The proposed development will retain a comparable level of solar access to the private open spaces at 16, 20 and 24 Bligh Crescent to the existing scenario.

The submitted shadow diagrams also demonstrate existing and proposed overshadowing outcomes for the summer solstice, being when most sun is available to the subject site and adjoining sites. These plans show that the subject site and adjoining sites receive ample sunlight in excess of the

requirements of this control in summer.

Overall, given the site constraints and the reasonableness of the development, it is established that the proposed development allows for adequate sunlight to penetrate the subject site and adjoining sites.

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 down the steep slope and setbacks that follow the existing form (or better). The proposed development is acceptable with respect to setbacks for the reasons detailed in the section of this report relating to Clause 4.1.4 Setbacks of the Manly Development Control Plan 2013.

3.4.2 Privacy and Security

A submission raised concern as to whether the proposed development provides suitable privacy to the western elevation of the principal dwelling, adjoining 24 Bligh Crescent. For completeness, the entire development is considered with respect to visual privacy, noting that no objection was received from 16 and 20 Bligh Crescent, which also adjoin the site. Accordingly, the underlying objectives of this control are addressed as follows:

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

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

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 does not encroach any further than the existing eastern and western side setbacks for the purpose of the principal and secondary dwellings. As such, the general placement of the development remains acceptable.

With respect to the principal dwelling -

The proposed development includes a new dining room window to the western elevation of the upper level of the dwelling house (window W0.6). Whilst it is noted that this proposed window would result in some overlooking to 24 Bligh Crescent, there is also the need to consider the impact that wholly obscuring this window would have on views accessible from this point. From this vantage point, the window would benefit from views to Peach Tree Bay and across to Sugarloaf Point and its interface with the harbour. In accordance with the planning principle set by the NSW Land and Environment Court per *Tenacity Consulting v Warringah Council [2004] NSWLEC 140*, this sort of view holds high value. As such, it is not reasonable to wholly prevent this view. In this instance, it is reasonable to require the lower portion of this window to be obscured so as to prevent downward side view. A

condition of consent has been included in the recommendation of this report accordingly.

The proposed development also includes a new deck at the upper level, set towards the eastern side boundary. The eastern elevation of this deck is predominantly treated with privacy screening, plus a window. This window has a sill height of 1.3 metres above ground, and is acceptable in the context of the site, in that the window would not provide direct view to windows or private open spaces of 16 Bligh Crescent to the east.

At the lower level of the principal dwelling, a new deck (set at two floor levels) to the same setback as the existing upper level is proposed. The upper portion of deck is treated with privacy screening at key points, so as not to allow unreasonable direct viewing. The lower portion of the deck is for the purpose of accessing the pool, so is not anticipated to result in unreasonable privacy impacts from its use.

With respect to the secondary dwelling -

At the upper level of the secondary dwelling, no new eastern or western windows or new decks are proposed. At the lower level, no change is made to the western elevation. The secondary dwelling is extended towards the east, though at a generous 4.1 metre setback to the eastern side boundary.

A new deck is proposed adjoining the southern elevation of the lower level of the secondary dwelling. The proposed new deck is in the location of the existing swimming pool and associated paved areas, which are proposed to be demolished. The deck is of substantial dimensions, though would have a comparable impact on the adjoining property to the east to the existing outdoor recreation elements. As such (and in the absence of an objection from the adjoining property), this portion of the development is acceptable in its context. The deck's interface with the western side boundary is not of unreasonable visual privacy concern given it remains as existing.

With respect to the southern rumpus room and associated accessible green roof -

The rumpus room does not include windows facing either side boundary, and does not have any decking, and the accessible green roof aligns with other similar structures. As such, this portion of the development is acceptably designed with respect to visual privacy.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposed development retains the same outcome with respect to casual surveillance and neighbourhood security as the existing development.

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

The proposed development includes a wall height in breach of the maximum provided by this control. In the absence of objectives under this control, the objectives of Clause 4.3 Height of Buildings of the Manly Local Environmental Plan 2013 apply. Assessment of those objectives is provided in the relevant section of this report.

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

The proposed development includes the following elements that are not compliant with the applicable setback controls:

- Carport and rumpus 1.186 metres from the eastern side boundary, where 1 minimum of 1.9 metres is required, and

- New windows to the eastern and western elevations, 895 millimetres and 930 millimetres from their respective side boundaries, where a minimum of 3 metres is required by this control.

The underlying objectives of the control are addressed as follows.

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

Comment:

The proposed non-compliant elements described above are not perceptible from the street. The proposed development includes a detached dwelling house sited in such a way that is consistent with the predominant alignment along both frontages of Bligh Crescent. This allows for suitable provision of landscaping across the whole site, so as to maintain the desired spatial proportions of the street, the street edge and the landscape character of southern portion of Bligh Crescent (noting that the northern portion of Bligh Crescent is an access handle characterised by parking structures and minimal yards).

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposed development is acceptable with regard to privacy, solar access, and views, as detailed in the sections of this report relating to Clauses 3.4.1 Sunlight Access and Overshadowing, 3.4.2 Privacy and Security, and 3.4.3 Maintenance of Views of the Manly Development Control Plan 2013. The proposal retains suitable streetscape character and spacing of buildings with the inclusion of landscaping throughout the site to soften the visual impact of the development. The northern garage and southern carport are 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, is supported by compliant total open space and acceptable landscaped area, including ample planting of vegetation. The proposal provides significant areas of deep soil in consideration of its topographical constraints (steep

slope and rock outcrops). The proposed development does not adjoining any open space land, National Parks, or urban bushland, and does not present an unreasonable outcome to the nearby foreshore.

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

Comment:

Despite its non-compliance with this control, the subject site remains appropriate with respect to the bushfire prone classification of the land, as demonstrated by the supporting bushfire report.

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

The proposed development includes construction of a carport to the southern street frontage, to a width of 7.8m, where a maximum of 6.2 metres is allowed. With regard to the consideration for a variation, the development is considered against the underlying objectives of the control as follows:

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

Comment:

The proposed development includes accessible parking in two logical locations on the site. The proposed carport is level with the street, with sufficient dimensions to allow suitable access.

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

Comment:

The proposed dwelling provides the required number of parking spaces on the site.

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 driveway is of sufficient dimensions and is in a suitable location, allowing for efficient, safe, and convenient parking. The proposed carport is well-designed in the location of the existing excavated hardstand area, and does not require additional excavation of the rock outcrop to the southern street frontage.

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 carport does not rely on unreasonable excavation, as it is set in the same location as the existing excavated hardstand space. The development is supported by a geotechnical report demonstrating the works are of acceptably low risk with respect to landslip hazards.

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

Comment:

The proposed development retains the existing crossover width and does not introduce any other crossings.

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 compliant 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:

Not applicable. The subject site is not located in a local centre.

4.1.9 Swimming Pools, Spas and Water Features

The proposed development includes a swimming pool that is set up to 5.6 metres above natural ground level, where this control allows for up to 1 metre. This control allows for variation to this where the pool would not detract from the amenity or character of the neighbourhood, and is a minimum distance from any side boundary equivalent to the height of the swimming pools and/or spa and their curtilage and/or concourse at any point above existing ground level. The pool does not meet this minimum setback requirement. The height instead arises due to the steep slope of the land. As such, the underlying objectives of the control are addressed 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:

The pool is set below the general level of adjoining dwellings, so as not to result in unreasonable visual privacy impacts to surrounding land.

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 consistent with the character of the area as it centralised on the site, and will be integrated into the principal dwelling and landscaping design (thus not being readily discernible from either street frontage).

Objective 3) To integrate landscaping; and

Comment:

The proposed development as a whole provides more than the minimum total open space and landscaped area requirements, including ample areas of deep soil and planting. The pool is sited to below the dwelling house and is surrounded by vegetation, so is softened and screened from view from the street frontages.

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

Comment:

The subject site is classified as bushfire prone. The proposed pool is located such that it can be used as an emergency water resource in the event of a bushfire.

4.4.5 Earthworks (Excavation and Filling)

The proposed new built form works do not unreasonably impact upon the existing sandstone rock outcrop towards the centre of the site, and do not require any works to the existing sandstone rock outcrop at the southern street frontage. The landscape plan indicates vegetation in the location of the central outcrop, which infers removal of that rock to enable such planting. A condition of consent has been included in the recommendation of this report for the retention of that rock outcrop.

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 \$23,183 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,318,250.

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 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

PLANNING CONCLUSION

This development application seeks consent for alterations and additions to a dwelling house and secondary dwelling including swimming pool, rumpus and carport.

The application is referred to the Development Determination Panel (DDP) due to the proposed variation to the height of buildings development standard set by Clause 4.3 of the Manly Local Environmental Plan 2013, in accordance with the delegation provided by the former Department of Planning, Industry & Environment Class 1 buildings (such as this).

The proposed variation to the height of buildings development standard equates to 22.35%. The non-compliance with the height of buildings development standard arises due to the existing floor levels being added to, and the existing steep topography of the site.

Four submissions were received in relation to this application, raising concerns with construction traffic, parking, use of the site, and loss of rock formations, and potential privacy impacts.

Within this report, detailed assessment was given to the request to vary the height of buildings development standard, visual privacy, and with respect to the proposed non-compliant elements (setbacks, swimming pool height, and parking structure width).

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

The proposal has therefore been recommended for approval.

REASON FOR DETERMINATION

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

RECOMMENDATION

That Northern Beaches Council, as the consent authority, vary the development standard contained within Clause 4.3 Height of Buildings, pursuant to Clause 4.6 of the 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 DA2024/0915 for Alterations and additions to a dwelling house and secondary dwelling including swimming pool, rumpus and carport on land at Lot 1 DP 1268833, 18 Bligh Crescent, SEAFORTH, 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
DA12	-	Proposed Site Plan	Archisoul Architects	24 June 2024
DA13	-	Proposed Roof Plan L0	Archisoul Architects	24 June 2024
DA14	01 - WIP	Proposed Upper Level First Dwelling L1	Archisoul Architects	24 June 2024
DA15	01 - WIP	Proposed Lower Level First Dwelling L2	Archisoul Architects	24 June 2024
DA16	01 - WIP	Proposed Upper Level Second Dwelling L3	Archisoul Architects	24 June 2024
DA17	01 - WIP	Proposed Lower Level Second Dwelling L4	Archisoul Architects	24 June 2024
DA18	01 - WIP	Proposed Upper & Lower Carport L5/L6	Archisoul Architects	24 June 2024
DA19	-	Proposed - North & South Elevations	Archisoul Architects	24 June 2024
DA20	-	Proposed - East Elevations	Archisoul Architects	24 June 2024
DA21	-	Proposed - West Elevations	Archisoul Architects	24 June 2024
DA22	01 - WIP	Proposed - Section A	Archisoul Architects	24 June 2024
DA23	01 - WIP	Proposed - Section B	Archisoul Architects	24 June 2024
DA24	-	Proposed - Section C	Archisoul Architects	24 June 2024
DA25	-	Proposed - Window & Skylight Schedule	Archisoul Architects	24 June 2024
DA26	-	Proposed - Door Schedule	Archisoul Architects	24 June 2024
DA31	-	Waste Management Plan	Archisoul Architects	24 June 2024
DA32	-	External Finishes Schedule	Archisoul Architects	24 June 2024
LPL_1401	02	Landscape Planting Plan Level 3 Sheet 01 of 03	Lone Pine Landscapes	26 June 2024
LPL_1402	02	Landscape Planting Plan Level 3 Sheet 02 of 03	Lone Pine Landscapes	26 June 2024

LPL_1403	02	Landscape Planting Plan Level 3 Sheet 03 of 03	Lone Pine Landscapes	26 June 2024
DR01	B	Proposed Driveway Plan	Hyve Designs	24 February 2024
DR02	B	Section Details	Hyve Designs	24 February 2024
DR03	B	Section Details	Hyve Designs	24 February 2024
DR04	B	Section Details	Hyve Designs	24 February 2024
SC00	C	General Notes (Sheet 1 of 2)	Hyve Designs	26 June 2024
SC01	C	General Notes (Sheet 2 of 2)	Hyve Designs	26 June 2024
SC20	C	Main House Basement Plan	Hyve Designs	26 June 2024
SC21	C	Granny Flat Footing Plan	Hyve Designs	26 June 2024
SC30	C	Main House Ground Floor Plan	Hyve Designs	26 June 2024
SC31	C	Main House Ground Floor Plan	Hyve Designs	26 June 2024
SC32	C	Elevation	Hyve Designs	26 June 2024
SC33	C	Bottom Carport Lower Level Plan	Hyve Designs	26 June 2024
SC40	C	Main House First Floor Plan	Hyve Designs	26 June 2024
SC42	C	Elevation	Hyve Designs	26 June 2024
SC43	C	Bottom Carport Upper Level Plan	Hyve Designs	26 June 2024
SC44	C	Bottom Carport Details	Hyve Designs	26 June 2024
SC50	C	Main House Roof Plan	Hyve Designs	26 June 2024
SC51	C	Granny Flat Roof Plan	Hyve Designs	26 June 2024
SC52	C	Main House Upper Floor Elevation	Hyve Designs	26 June 2024
SC53	C	Bottom Carport Roof Plan	Hyve Designs	26 June 2024
SW01	C	Stormwater Plan	Hyve Designs	27 June 2024
SW02	C	Stormwater Details	Hyve Designs	27 June 2024
SW04	C	OSD Tank Alteration Plan	Hyve Designs	27 June 2024
SE01	C	Sediment and Erosion Plan	Hyve Designs	27 June 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate A1734259_02	-	Efficient Living	4 June 2024
Bushfire Hazard Assessment Report	-	Control Line Consulting	1 February 2024
Geotechnical Investigation J5311	-	White Geotechnical Group	25 June 2024
Waste Management Plan	-	Applicant	Undated

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

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

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

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	19 July 2024
NSW Rural Fire Service	RFS Referral Response	25 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. **Approved Land Use**

Nothing in this consent shall authorise the use of site as detailed on the approved plans for any land use of the site beyond the definitions of dwelling house, secondary dwelling and a detached studio as follows:

Dwelling house means a building containing only one dwelling.

Secondary dwelling means a self-contained dwelling that—
(a) is established in conjunction with another dwelling (the principal dwelling), and
(b) is on the same lot of land as the principal dwelling, and
(c) is located within, or is attached to, or is separate from, the principal dwelling.

Detached studio means a habitable building that is used for purposes ancillary to a dwelling house such as a home office, entertainment area, art studio or guest room and—
(a) is established in conjunction with a dwelling house, and

- (b) is on the same lot of land as the dwelling house, and*
- (c) is separate from the dwelling house, and*
- (d) is not used as a separate dwelling house, and*
- (e) does not contain any cooking facilities.*

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

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

4. No Approval for Bed and Breakfast Accommodation

No approval is granted under this Development Consent for use of any structure for the purpose of bed and breakfast accommodation.

Reason: To ensure compliance with the relevant Local Environmental Plan.

5. Prescribed Conditions

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

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

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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the

work relates (not being the Council) has given the Council written notice of the updated information.

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

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

Reason: Legislative requirement.

6. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
- 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday,
 - No work on Sundays and Public Holidays.
- Demolition and excavation works are restricted to:
- 8.00 am to 5.00 pm Monday to Friday only.
- (Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).
- (b) Construction certificate plans are to be in accordance with all finished levels identified on approved plans. Notes attached to plans indicating tolerances to levels are not approved.
- (c) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (d) At all times after the submission of the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (e) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

- (f) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (g) Prior to the release of the Construction Certificate, payment of the following is required:
 - i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
 - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
 - iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.
- (h) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (i) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (j) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (k) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (l) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (m) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall

notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

- (n) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (o) Should any construction cranes be utilised on site, they are to be fitted with bird deterrents along the counterweight to discourage raptor (bird) nesting activity. Deterrents are to remain in place until cranes are dismantled. Selection of deterrent methods is to be undertaken in accordance with the recommendations of a suitably qualified ecologist.
- (p) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

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

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

FEES / CHARGES / CONTRIBUTIONS

7. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$23,182.50 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 \$2,318,250.00.

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

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

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

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

8. **Security Bond**

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

9. **No Clearing of Vegetation**

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

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

Reason: To protect native vegetation.

10. **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 HYVE Designs, drawing number 23071 SW01, SW02, SW03 and SW04 Rev C, dated 27/06/2024. 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:

1. A secondary access lid for inspection and maintenance purposes is to be provided to each detention tank.

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

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

11. **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.

12. **Vehicle Crossings Application**

The Applicant is to submit an application with Council for driveway levels to widen the existing lower level vehicle crossing at the boundary by 1 metre 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 in plain concrete only.

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

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

Reason: To facilitate suitable vehicular access to private property.

13. **Amendments to the Approved Plans**

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

- All references to 'inclinator' are to be deleted from the approved plans. No consent is granted for an inclinator.
- The approved landscape plans are to be amended to demonstrate retention of the sandstone rock outcrop between the secondary dwelling deck and the southern carport.
- Window W0.6 is to be amended as follows:
 - The window is to be fixed and fitted with obscured glazing to a minimum height of 1.5 metres above finished floor level.
 - The remainder of the window above the fitted and obscured portion may be openable and may be of clear glazing.

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

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

14. 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.

15. Compliance with Standards

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

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

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

16. Sydney Water "Tap In"

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

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

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

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

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

DURING BUILDING WORK

17. **Wildlife Protection**

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

Reason: To protect native wildlife.

18. **Protection of Habitat Features**

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

Reason: To protect wildlife habitat.

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. **Geotechnical Requirements**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

21. **Survey Certificate**

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

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

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

22. **Traffic Control During Road Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with TfNSW Traffic Control At Work Sites Manual and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

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.

24. **Aboriginal Heritage**

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

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

Reason: Aboriginal Heritage Protection.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

25. **Native Landscaping**

Any new landscaping is to incorporate a minimum 80% locally native vegetation species as a proportion of the total number of plants. Locally native species are to be consistent with the relevant section of the Native Planting Guide available on Council's website.

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

Reason: To ensure compliance with the requirement to retain and protect native planting on the site.

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

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

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

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

27. **Priority Weed Removal and Management**

All Priority weeds (as specified in the Northern Beaches Local Weed Management Plan) within the development footprint are to be removed using an appropriate control method.

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

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

28. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified Civil Engineer.

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

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

development.

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

30. **Swimming Pool Requirements**

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

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

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

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

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

(d) A warning sign stating 'YOUNG CHILDREN SHOULD BE 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

31. **Protection of Habitat Features**

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

Reason: To protect wildlife habitat.

32. **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.

33. **Geotechnical Recommendations**

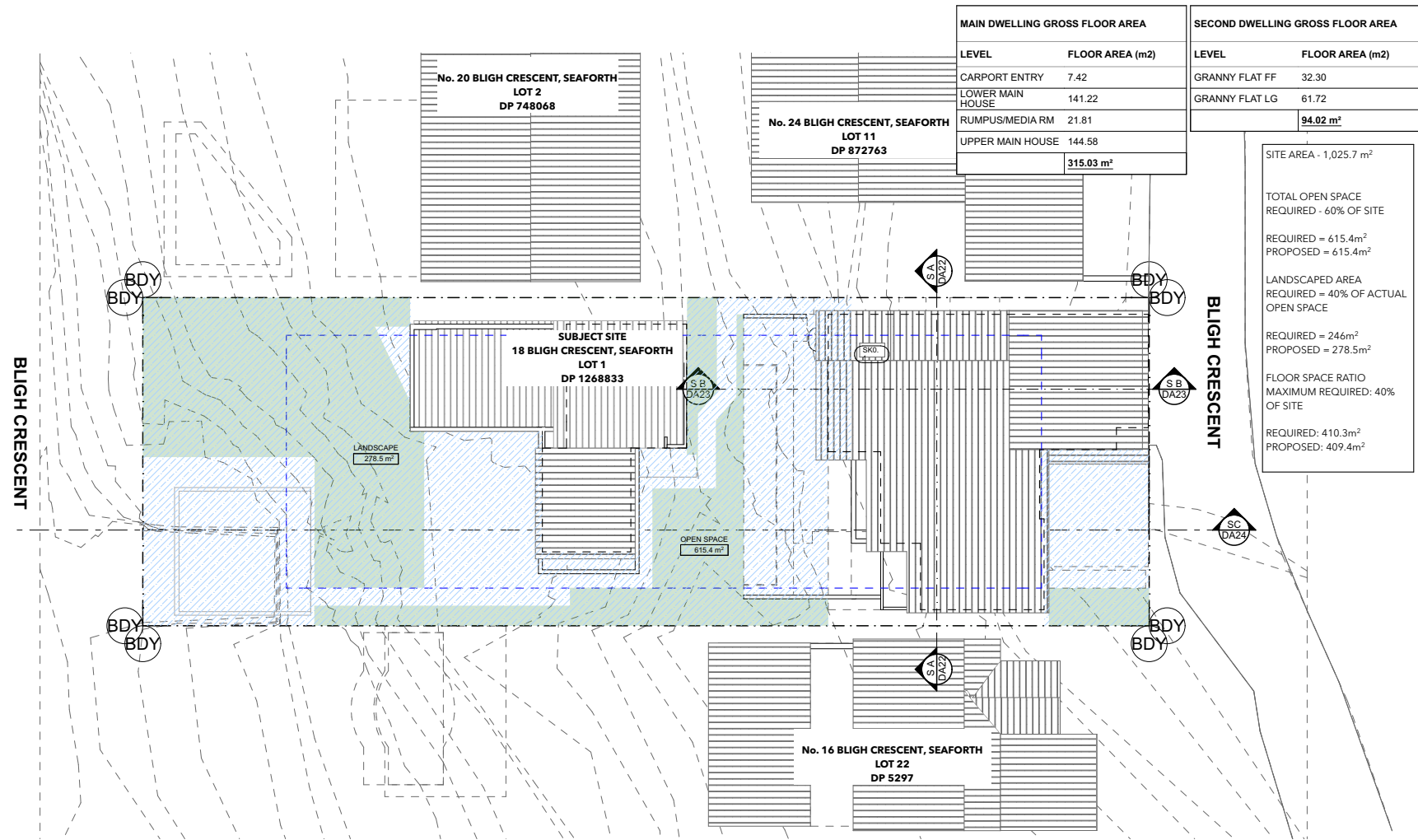
Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

34. **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.



ARCHITECT

ARCHISOUL
ARCHITECTS
UNIT 23/28-34 ROSEBERRY STREET
BALGOWLAH NSW AUSTRALIA 2093
Ph: 02 9976 5449
www.archisoul.com.au

NOTES

COPYRIGHT - ARCHISOUL ARCHITECTS PTY LTD
COPYRIGHT - ARCHITECTS ACT - 2003 NSW
MIN 92 159 006 006
NSW NOMINATED ARCHITECT 6850 - JOANNE GILLIES

DRAWING NOT ISSUED FOR CONSTRUCTION. DO NOT SCALE FROM DRAWINGS. THE BUILDER SHALL CHECK AND VERIFY ALL DIMENSIONS AND LEVELS ON SITE PRIOR TO MANUFACTURE & INSTALLATION. ALL ERRORS AND OMISSIONS TO BE CONFIRMED WITH THE ARCHITECT. DRAWINGS ARE TO BE READ IN CONJUNCTION WITH THE PREPARED WRITTEN SPECIFICATION & SCHEDULES & REQUIRED SHOP DRAWINGS. ALL WORK IN ACCORDANCE WITH RELEVANT AUSTRALIAN STANDARDS.

REV DATE DESCRIPTION

PROJECT DETAILS

Drawn | Checked: RP-RR - JG

Plot Date: 24/6/2024

Project Status: Development Application

Client: Nik Lee

Project: 2226

DRAWING TITLE:

**Proposed Site Plan (+
Site / FSR calculations)**

PROJECT NAME:

**LEE - 18 BLIGH CRESCENT,
SEAFORTH**

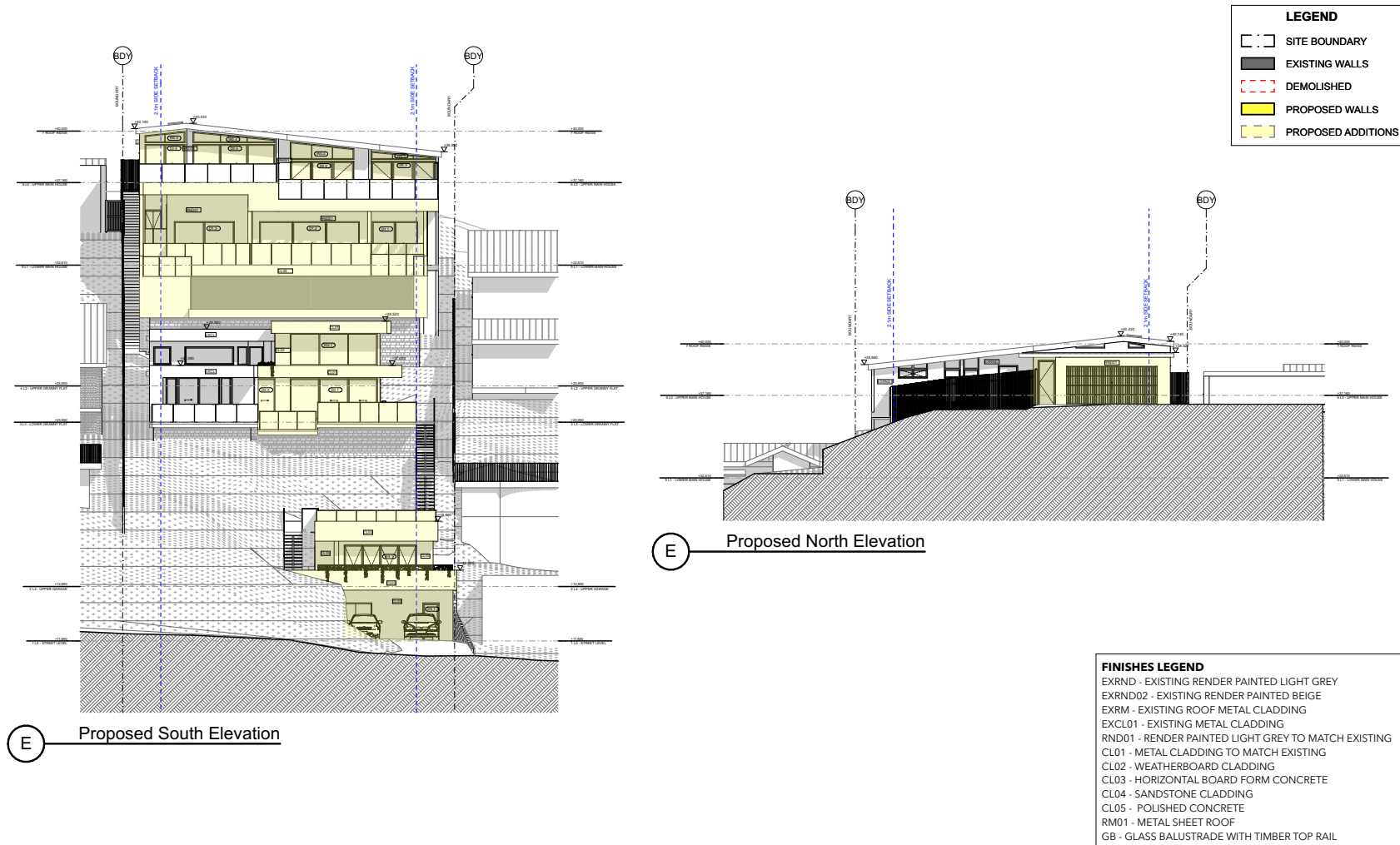
REVISION NO.

DRAWING NO.

DA12



SCALE:
@ A3



ARCHITECT

ARCHISOUL
ARCHITECTS
UNIT 23/28-34 ROSEBERRY STREET
BALGOWLAH NSW AUSTRALIA 2093
Ph: 02 9976 5449
www.archisoul.com.au

NOTES

COPYRIGHT - ARCHISOUL ARCHITECTS PTY LTD
COPYRIGHT - ARCHITECTS ACT - 2003 NSW
NSW NOMINATED ARCHITECT 6850 - JOANNE GILLIES

DRAWING NOT ISSUED FOR CONSTRUCTION. DO NOT SCALE FROM DRAWINGS. THE BUILDER SHALL CHECK AND VERIFY ALL DIMENSIONS AND LEVELS ON SITE PRIOR TO MANUFACTURE & INSTALLATION. ALL ERRORS AND OMISSIONS TO BE CONFIRMED WITH THE ARCHITECT. DRAWINGS ARE TO BE READ IN CONJUNCTION WITH THE PREPARED WRITTEN SPECIFICATION & SCHEDULES & REQUIRED SHOP DRAWINGS. ALL WORK IN ACCORDANCE WITH RELEVANT AUSTRALIAN STANDARDS.

REV DATE DESCRIPTION

PROJECT DETAILS

Drawn | Checked: RP-RR - JG

Plot Date: 24/6/2024

Project Status: Development Application

Client: Nik Lee

Project: 2226

DRAWING TITLE :

Proposed - North & South Elevations

PROJECT NAME :

**LEE - 18 BLIGH CRESCENT,
SEAFORTH**

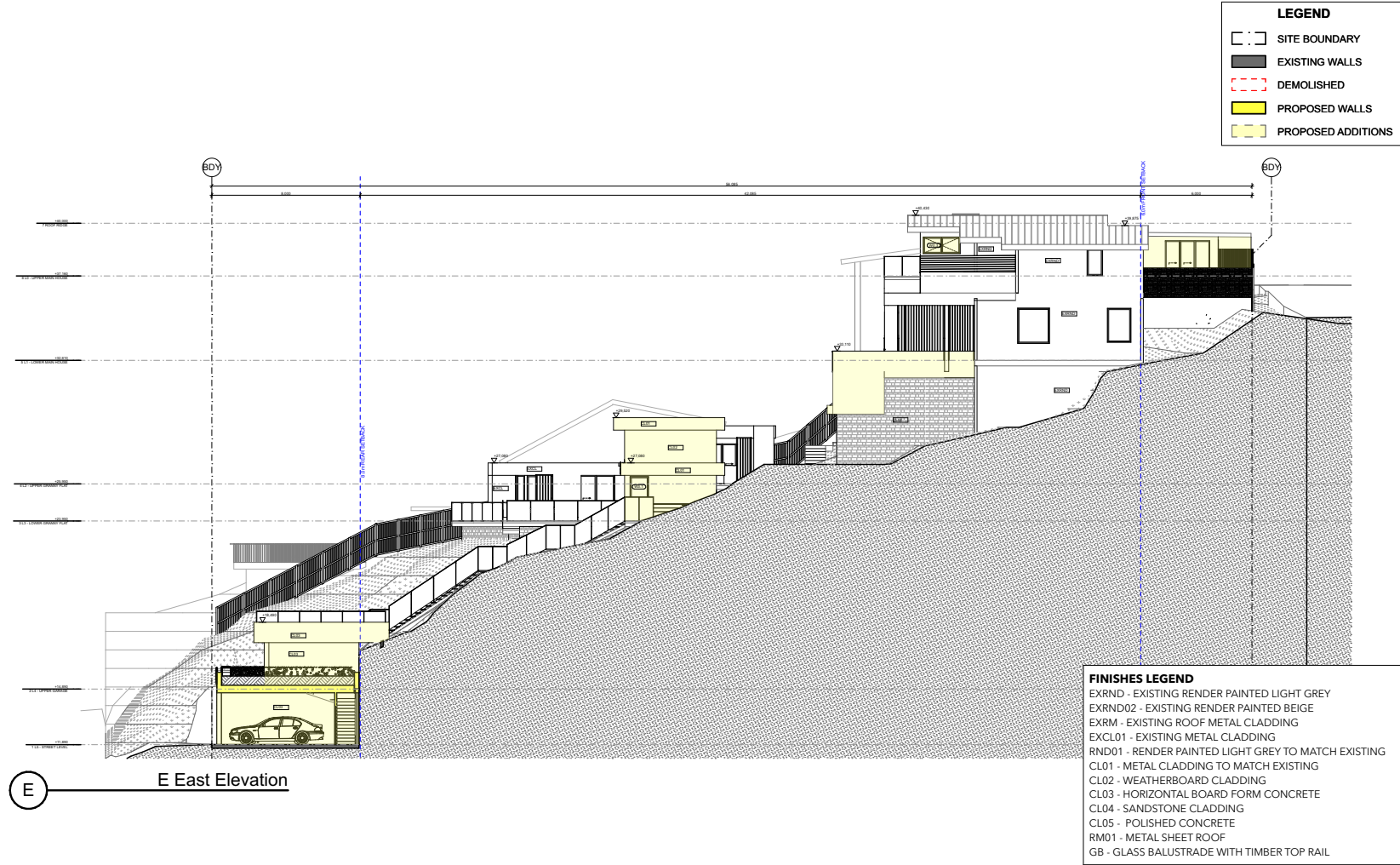
REVISION NO.

DRAWING NO.

DA19



SCALE:
@ A3



ARCHITECT
ARCHISOUL
ARCHITECTS
UNIT 23/28-34 ROSEBERRY STREET
BALGOWLAH NSW AUSTRALIA 2093
Ph: 02 9976 5449
www.archisoul.com.au

NOTES
COPYRIGHT - ARCHISOUL ARCHITECTS PTY LTD
COPYRIGHT - ARCHITECTS ACT - 2003 NSW
NSW NOMINATED ARCHITECT 6850 - JOANNE GILLIES
DRAWING NOT ISSUED FOR CONSTRUCTION. DO NOT SCALE FROM DRAWINGS. THE BUILDER SHALL CHECK AND VERIFY ALL DIMENSIONS AND LEVELS ON SITE PRIOR TO MANUFACTURE & INSTALLATION. ALL ERRORS AND OMISSIONS TO BE CONFIRMED WITH THE ARCHITECT. DRAWINGS ARE TO BE READ IN CONJUNCTION WITH THE PREPARED WRITTEN SPECIFICATION & SCHEDULES & REQUIRED SHOP DRAWINGS. ALL WORK IN ACCORDANCE WITH RELEVANT AUSTRALIAN STANDARDS.

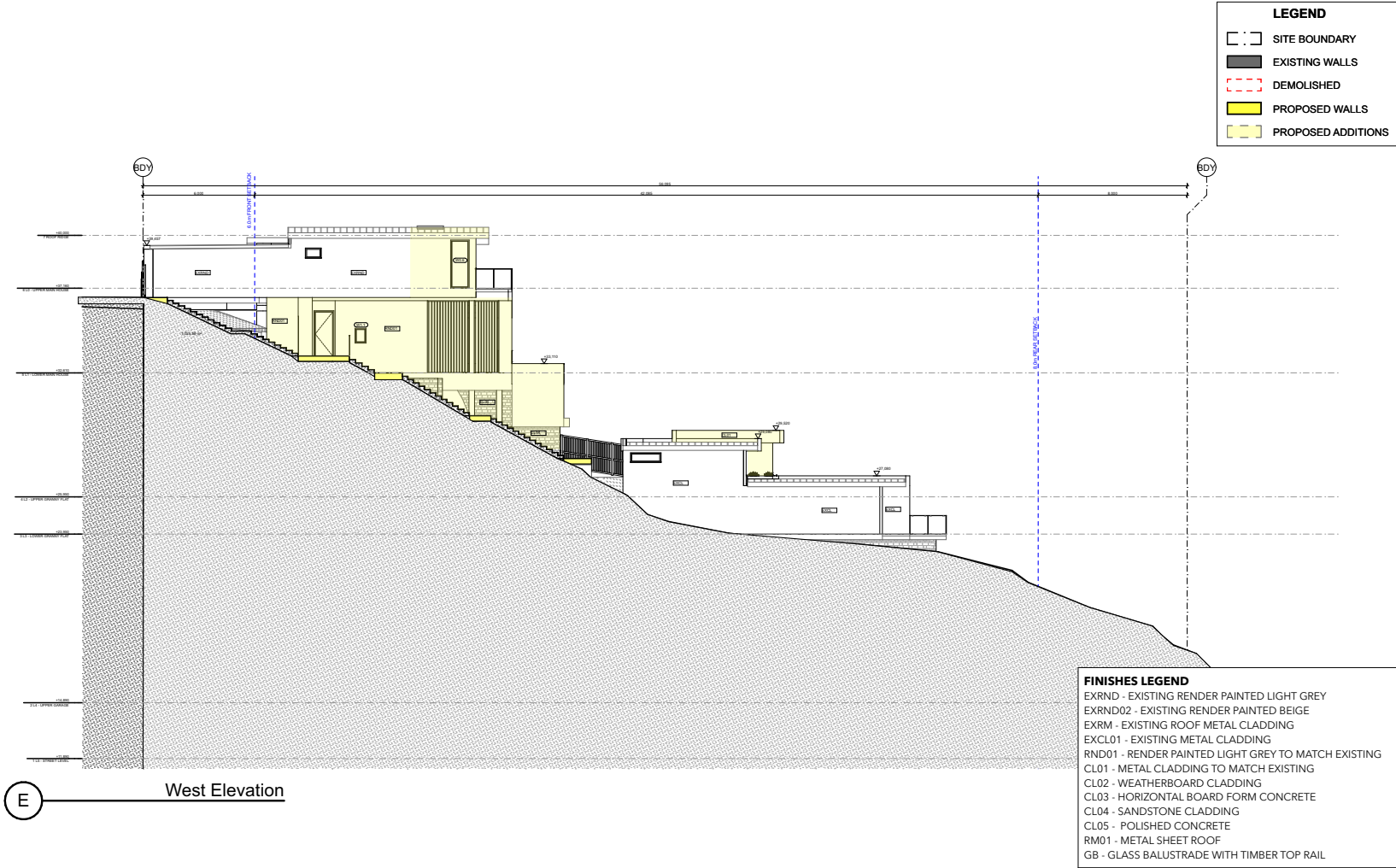
REV	DATE	DESCRIPTION

PROJECT DETAILS
Drawn | Checked: **RP-RR - JG**
Plot Date: **24/6/2024**
Project Status: **Development Application**
Client: **Nik Lee**
Project: **2226**

DRAWING TITLE :
Proposed - East Elevations
PROJECT NAME :
LEE - 18 BLIGH CRESCENT, SEAFORTH

REVISION NO.
DRAWING NO.
DA20
SCALE:
@ A3





ARCHITECT
ARCHISOUL
ARCHITECTS
UNIT 23/28-34 ROSEBERRY STREET
BALGOWLAH NSW AUSTRALIA 2093
Ph: 02 9976 5449
www.archisoul.com.au

NOTES
COPYRIGHT - ARCHISOULARCHITECTS PTY LTD
COPYRIGHT - ARCHITECTS ACT - 2003 NSW
A/NM 92 159 506 086
NSW NOMINATED ARCHITECT 6850 - JOANNE GILLIES
DRAWING NOT ISSUED FOR CONSTRUCTION. DO NOT SCALE FROM DRAWINGS. THE BUILDER SHALL CHECK AND VERIFY ALL DIMENSIONS AND LEVELS ON SITE PRIOR TO MANUFACTURE & INSTALLATION. ALL ERRORS AND OMISSIONS TO BE CONFIRMED WITH THE ARCHITECT. DRAWINGS ARE TO BE READ IN CONJUNCTION WITH THE PREPARED WRITTEN SPECIFICATION & SCHEDULES & REQUIRED SHOP DRAWINGS. ALL WORK IN ACCORDANCE WITH RELEVANT AUSTRALIAN STANDARDS.

REV	DATE	DESCRIPTION

PROJECT DETAILS
Drawn | Checked: **RP-RR - JG**
Plot Date: **24/6/2024**
Project Status: **Development Application**
Client: **Nik Lee**
Project: **2226**

DRAWING TITLE :
Proposed - West Elevations
PROJECT NAME :
LEE - 18 BLIGH CRESCENT, SEAFORTH

REVISION NO.
DRAWING NO.
DA21
SCALE:
@ A3



Vaughan Milligan Development Consulting Pty Ltd

APPENDIX

CLAUSE 4.6 – MLEP 2013 – HEIGHT OF BUILDINGS

**Prepared
June 2024**

Vaughan Milligan Development Consulting Pty Ltd

WRITTEN REQUEST PURSUANT TO CLAUSE 4.6 OF MANLY LOCAL ENVIRONMENTAL PLAN 2013

18 BLIGH CRESCENT, SEAFORTH

PROPOSED ALTERATIONS AND ADDITIONS TO THE EXISTING DWELLING

**VARIATION OF A DEVELOPMENT STANDARD REGARDING COUNCIL'S HEIGHT OF BUILDINGS
CONTROL AS DETAILED IN CLAUSE 4.3 OF THE MANLY
LOCAL ENVIRONMENTAL PLAN 2013**

For: Proposed alterations and additions to an existing dwelling
At: 18 Bligh Crescent, Seaforth
Owner: Nik Lee
Applicant: Nik Lee
C/- Vaughan Milligan Development Consulting

1.0 Introduction

This revised 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 Height of Buildings control as described in Clause 4.3 of the Manly Local Environmental Plan 2013 (MLEP 2013).

This request accompanies architectural plans prepared by Archisoul Architects in seeking development consent for alterations and additions to an existing dwelling.

The relevant maximum height of the building in this locality is 8.5m and is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The proposed additions and alterations to the existing dwelling include works to enclose an existing open first floor terrace to the south western corner of the principal dwelling, which has an open rafter roof above the terrace. The proposal see the enclosure of the space and continuation of the main roof sheet over the enclosed terrace for weatherproofing.

The new roofing over the currently open terrace will have a maximum height of up to 10.4m above existing ground level which exceeds the height control by 1.9m or 22.3%, as noted in Figure 1.

The overall height of the existing dwelling will be unchanged, with the current ridge level of RL 40.43 being maintained. Whilst there is no change to the existing building height, the new elements to the first floor level to enclose the existing open terrace will create a variation to the building height development standard.

18 Bligh Crescent, Seaforth

2

Vaughan Milligan Development Consulting Pty Ltd

The building height control is directly related to the extent and form of the existing development and the slope of the land to the south towards the lower road verge along Bligh Crescent.

The figure below notes the variation to the maximum height control and demonstrates the height levels for the new roofline based on the existing ground levels as shown on the plans.

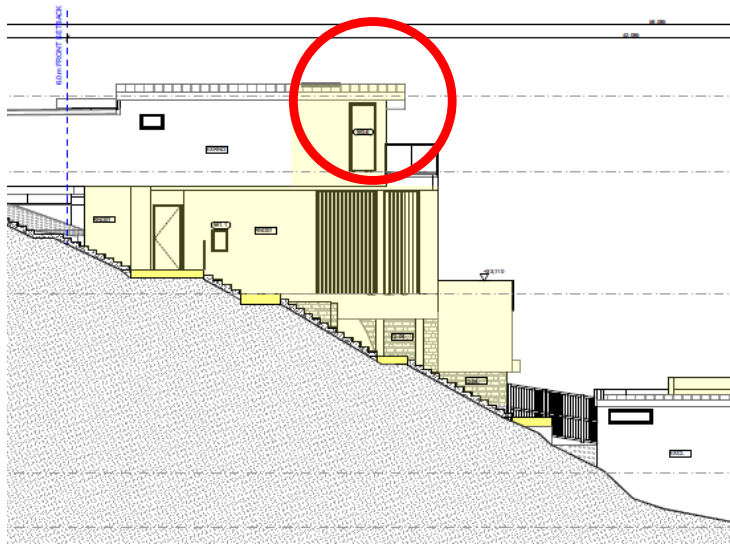


Figure 1: Building Height Variation noted in red

In the circumstances of the steep site conditions and the existence of important environmental features, variation of the development standard of 8.5m, while continuing to allow for a dwelling house that limits the excavation of the site to protect significant environmental rock outcrops, is not considered unreasonable. The new works are well below the overall height of the development on the site which is to remain at RL 40.43. It is considered that the breach is largely unavoidable due to the considerable slope of the land and that the non-compliance will not result in any unreasonable impacts to any surrounding properties.

1.1 Manly Local Environmental Plan 2013 ("MLEP")

1.1.1 Clause 2.2 and the Land Use Table

Clause 2.2 and the Land Zoning Map provide that the subject site is zoned R2 – Low Density Residential (the R2 zone) and the Land Use Table in Part 2 of MLEP 2013 specifies the following objectives for the R2 zone:

- *To provide for the housing needs of the community within a R2 Low Density Residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Vaughan Milligan Development Consulting Pty Ltd

The proposed development is for the purpose of additions and alterations to the existing dwelling which is a permissible use in the R2 Low Density Residential zone.

Through suitable design and siting, the proposal will result in a low-density residential development which will maintain and enhance the ecological and aesthetic values of the site.

1.1.2 Clause 4.3 – Height of buildings

Clause 4.3 of MLEP sets out the maximum height of a building as follows:

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

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

(2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

The Height of Buildings Map specifies a maximum building height of 8.5m.

1.1.3 The Dictionary to MLEP operates via clause 1.4 of MLEP. The Dictionary defines “building height” as:

building height (or height of building) means—

- (a) *in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- (b) *in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,*

Vaughan Milligan Development Consulting Pty Ltd

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

Is clause 4.3 of MLEP 2013 a development standard?

- (a) The definition of “development standard” in clause 1.4 of the EP&A Act means standards fixed in respect of an aspect of a development and includes:

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

- (b) Clause 4.3 relates to the maximum building height of a building. Accordingly, clause 4.3 is a development standard as defined in the Environmental Planning and Assessment Act, 1979.

2.0 Authority to vary a Development Standard

In September 2023, the NSW Government published amendments to Clause 4.6 of the Standard Instrument which change the operation of the clause across all local environmental plans, including the Pittwater LEP. The changes came into force on 1 November 2023.

The principal change is the omission of subclauses 4.6(3)-(5) and (7) in the Standard Instrument Principal Local Environmental Plan.

The following changes have been made as a result of this:

- Clause 4.6(3) was amended such that the requirement to ‘consider’ a written request has been changed with an express requirement that the consent authority ‘be satisfied that the applicant has demonstrated’ that compliance with the development standard is unreasonable or unnecessary.
- Clause 4.6(4)(a)(ii) was amended such that the requirement that the consent authority must be satisfied that the proposed development in the public interest has been removed.
- Clause 4.6(4)(b) & 5 amended such that the requirement for concurrence from the Planning Secretary has been removed.

The objectives of clause 4.6 of the LEP, as amended, seek to recognise that in the particular circumstances of this case strict application of development standards may be unreasonable or unnecessary. The clause provides objectives and a means by which a variation to the development standard can be achieved as outlined below:

Clause 4.6 Exception to development standard

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

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

Vaughan Milligan Development Consulting Pty Ltd

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

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

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

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

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

Note—

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

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

(5) (Repealed)

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

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

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

Note—

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

(7) (Repealed)

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

(a) a development standard for complying development,

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

(c) clause 5.4,

(caa) clause 5.5.

Vaughan Milligan Development Consulting Pty Ltd

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 LEP 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 considered in this request for a variation to the development standard.

4.0 Objectives of Clause 4.6

Clause 4.6(1) of MLEP provides:

- (c) *The objectives of this clause are as follows:*
- (d) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (e) *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

Vaughan Milligan Development Consulting Pty Ltd

provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of the LEP provides:

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

Clause 4.3 (the Height of Buildings control) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of the LEP.

Clause 4.6(3) of MLEP provides:

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

The proposed development does not comply with the maximum building height control development standard pursuant to clause 4.3 of MLEP which specifies a maximum building height of 8.5m in this area of Seaforth. The new works to the primary dwelling house to enclose the existing open terrace to the south western corner of the first floor level of the dwelling and provide a roof cover over the existing open rafter style roof will present a maximum building height of 10.4m which exceeds the height control by 1.9m or 22.3%.

Strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

Clause 4.6(4) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation

Clause 4.6(6) relates to subdivision and is not relevant to the development.

Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.3 of MLEP from the operation of clause 4.6.

Vaughan Milligan Development Consulting Pty Ltd

5.0 The Nature and Extent of the Variation

- 5.1 This request seeks a variation to the maximum building height standard contained in clause 4.3 of MLEP.
- 5.2 Clause 4.3 of MLEP specifies a maximum building height of 8.5m in this area of Seaforth.
- 5.3 The proposed works enclose the existing open terrace to the south western corner of the first floor level of the dwelling and provide a roof cover over the existing open rafter style roof new balcony on the upper floor of the primary dwelling will provide for a maximum height of 10.4m, which exceeds Council's maximum building height by 1.9m or 22.3% and therefore does not comply with this control.

As previously discussed, a major contributor to the breach of the height control is sloping topography of the site and siting of the existing dwelling house on the sloping topography. The proposal presents only a minor variation to the control, with the majority of the development readily meeting Council's height control, with no change to the existing overall ridge level of RL 40.430.

As discussed in this submission, it is considered that the proposal is reasonable notwithstanding the breach the height control and this will be discussed further within this submission.

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].*

Vaughan Milligan Development Consulting Pty Ltd

20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
 21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*
 22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*
- 6.2 The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:
1. Is clause 4.3 of MLEP a development standard?
 2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
 3. Is the consent authority satisfied that the proposed development will be consistent with the objectives of clause 4.3 and the objectives for development for in the R2 zone?
 4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?

Vaughan Milligan Development Consulting Pty Ltd

7.0. Request for Variation

7.1 Is compliance with clause 4.3 unreasonable or unnecessary?

- (a) This request relies upon the 1st way identified by Preston CJ in *Wehbe*.
- (b) The first way in *Wehbe* is to establish that the objectives of the standard are achieved.
- (c) Each objective of the maximum building height standard and reasoning why compliance is unreasonable or unnecessary is set out below:

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

The surrounding area is predominantly characterised by multiple storey development that steps down the slope of the sloping terrain within the locality. There is no change to the upper roof line of the existing dwelling house.

Many of the properties along the Bligh Crescent escarpment and within the immediate vicinity include similar roof forms and building heights variations.

Surrounding the properties display similar multi-level dwellings corresponding the sloping topography and in this regard, the proposal is compatible with the prevailing character of development in the vicinity. As such, despite the non-compliance with the height of building development standard, the proposed development is consistent with existing development in the locality, particularly in relation to height, roof form and character.

This objective is achieved.

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

The proposed new works to the existing dwelling will not result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing.

Consistent with the decision of Roseth SC in *Project Ventures Developments v Pittwater Council [2005] NSWLEC 191*, it is my opinion that “most observers would not find the proposed building offensive, jarring or unsympathetic”.

Further, this variation is heavily influenced by the steeply sloping topography of the site, and the need to not adversely impact, excavate or remove the existing natural features on the site such as the rock faces or rock outcrops. I

It is also important to note that the proposed development is compliant with the floor space ratio set by the MLEP 2013, which controls bulk and scale. The dwelling is sufficiently set back from all boundaries and retains generous landscaped areas.

Vaughan Milligan Development Consulting Pty Ltd

The minor area of building height non-compliance will have a negligible impact on view sharing from nearby public land or surrounding private property and will not result in any unreasonable amenity impacts on the subject site or adjacent sites.

The proposal presents a compatible height and scale to the surrounding development and the articulation to the building facades and the fact the proposal follows the sloping topography of the site will suitably distribute the bulk of the new deck area.

The extent of the landscaping area surrounding the development will ensure that the bulk and scale of the proposal is appropriately ameliorated.

This objective is achieved.

(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),***

The proposed dwelling will not see any unreasonable impacts on the existing views enjoyed by neighbouring properties, nor upon the existing views from further up the escarpment due to the higher placement/vantage point of these properties.

Views from the surrounding public spaces are not adversely affected.

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

The simplified massing of the development remains generally unchanged. Whilst the application seeks to modify the floor space, the additional area is reasonably distributed over the site to reduce the perception of bulk and scale and minimises impacts upon adjoining properties with regard to solar access.

The application is supported by solar access diagrams which confirm that the proposed development will not result in any unreasonable overshadowing of the adjoining dwelling at No.16 or No. 20 Bligh Crescent, noting that a substantial portion of the glazing associated with primary living rooms and private open spaces are not impacted by the proposal, with most of the sites remaining in direct sunlight for the majority of the day.

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

The works will respect the height, scale and form of the existing vegetation, topography and surrounding residential development and the existing development on the site.

Vaughan Milligan Development Consulting Pty Ltd

The proposal will not require the removal of any significant vegetation and will see the retention of the extensive landscaped area surrounding the dwelling.

Despite the variation to the building height control which occurs as a result of the existing dwelling siting on the sloping land, the proposal is generally consistent with the scale of newer development in the locality.

7.2 Are there sufficient environmental planning grounds to justify contravening the development standard?

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

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*

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

The requirements of clause 4.4.2 of Manly DCP 2013 "*promote the retention and adaptation of existing buildings rather than their demolition and replacement with new structures*".

Consistent with this objective, the particular element of the development which breaches the height development standard, is constrained by the siting of the existing dwelling on sloping topography which provides a constraint in constructing upper level which is currently above the height standard.

Vaughan Milligan Development Consulting Pty Ltd

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

- The proposed new dwelling will maintain the general bulk and scale of the existing surrounding newer dwellings and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).
- Similarly, the proposed development will provide for improved amenity through the inclusion of more functional floor space within a built form which is compatible with development in the surrounding area, which promotes the orderly and economic use of the land (cl 1.3(c)).
- The proposed new development is considered to promote good design and enhance the residential amenity of the building's occupants and the immediate area, which is consistent with the Objective 1.3 (g).
- The proposed development improves the amenity of the occupants of the subject site and respects surrounding properties by locating the development where it will not unreasonably obstruct views across the site and will maintain the views from the site (1.3(g)).

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development.

These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the maximum building height control.

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

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

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

Vaughan Milligan Development Consulting Pty Ltd

7.3 Is the proposed development consistent with the objectives of clause 4.3 and the objectives of the R2 Low Density Residential Zone?

- (a) Section 4.2 of this written request suggests the 1st test in Wehbe is made good by the development.
- (b) Each of the objectives of the R2 Low Density Residential Zone and the reasons why the proposed development is consistent with each objective is set out below.

I have had regard for the principles established by Preston CJ in *Nessdee Pty Limited v Orange City Council* [2017] NSWLEC 158 where it was found at paragraph 18 that the first objective of the zone established the range of principal values to be considered in the zone.

Preston CJ found also that *"The second objective is declaratory: the limited range of development that is permitted without or with consent in the Land Use Table is taken to be development that does not have an adverse effect on the values, including the aesthetic values, of the area. That is to say, the limited range of development specified is not inherently incompatible with the objectives of the zone"*.

In response to *Nessdee*, I have provided the following review of the zone objectives:

It is considered that notwithstanding the breach of the maximum building height by 1.9m for only a portion of the works to enclose the existing open terrace to the south western corner of the first floor level of the dwelling and provide a roof cover over the existing open rafter style roof will be consistent with the individual Objectives of the R2 Low Density Residential Zone for the following reasons:

- ***To provide for the housing needs of the community within a R2 Low Density Residential environment.***

The proposal provides for the housing needs of the community by constructing a new dwelling house on the site, with improved residential amenity for the dwelling's occupants.

The proposed dwelling presents a compatible form to newer development in the locality, which is commonly of a 2 to 3 storey scale.

The proposal will be consistent with and complement the existing detached style single dwelling housing within the locality and as such, will not be a visually dominant element in the area. The development does not have any unreasonable amenity impacts on its adjoining neighbours.

Accordingly, it is considered that the site may be further developed with a variation to the prescribed maximum building height control whilst maintaining consistency with the objectives of the R2 Low Density Residential Zone.

Vaughan Milligan Development Consulting Pty Ltd

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

This does not apply to the subject residential development.

7.4 Has the Council considered the matters in clause 4.6(5) of MLEP?

- (a) The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed new dwelling house for the particular site and this design is not readily transferrable to any other site in the immediate locality, wider region of the State and the scale or nature of the proposed development does not trigger requirements for a higher level of assessment.
- (b) As the proposed development complies with the objectives of the development standard and the objectives of the zone there is no significant public benefit in maintaining the development standard.

Vaughan Milligan Development Consulting Pty Ltd

8.0 Conclusion

Pursuant to clause 4.6(4)(a) of MLEP 2013, the consent authority can be satisfied that this written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

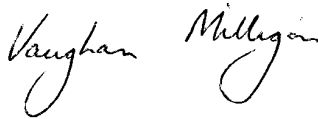
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

Accordingly, due to the topography of the site, the variety of built forms along Bligh Crescent, and the similarity of the bulk and scale to the existing dwelling house, the non-compliance is considered to be relatively minor and does not unreasonably conflict with the height and scale of surrounding and nearby development. In this context, the proposed height is considered to be compatible.

The proposals design with high quality external finishes and open style balcony areas, provides a more "stepped" look when viewed from neighbouring properties with extensive landscaping to be incorporated into the site to soften and filter the built form.

This written request to vary to the maximum building height specified in Clause 4.3 of the Manly LEP 2013 adequately demonstrates that that the objectives of the standard will be met.

In summary, the proposal satisfies all of the requirements of clause 4.6 of MLEP 2013 and the exception to the development standard is reasonable and appropriate in the circumstances of the case.



VAUGHAN MILLIGAN
Town Planner

ITEM 3.4	DA2024/1100 - 11 BOWER STREET MANLY - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
-----------------	--

PURPOSE

To refer the attached application for determination due to directions provided by the Department of Planning & Environment in relation to applications with a clause 4.6 variation to the 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.
- 1.
- B.** THAT Council as the consent authority **approves** Development Consent to DA2024/1100 for alterations and additions to a dwelling house on land at Lot 42 DP 8075, 11 Bower Street MANLY, subject to the conditions set out in the Assessment Report.

Reporting manager	Rodney Piggott
TRIM file ref	2024/727372
Attachments	1 Assessment Report 2 Site Plan and Elevations 3 Clause 4.6 - FSR

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/1100
----------------------------	-------------

Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 42 DP 8075, 11 Bower Street MANLY NSW 2095
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned C3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Lara Elizabeth Anne Ilse McGuire

Application Lodged:	23/08/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	30/08/2024 to 13/09/2024
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.4 Floor space ratio: 13.51%
Recommendation:	Approval

Estimated Cost of Works:	\$ 743,582.40
---------------------------------	---------------

EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to an existing detached dwelling house.

The application is referred to the Development Determination Panel (DDP) due to the proposed variation to the floor space ratio development standard.

The proposed variation to the floor space ratio development standard equates to 13.51%. The non-compliance with the floor space ratio development standard arises due to an existing floor space ratio variation and increased floor area proposed under this application.

One submission was received in relation to this application, relating to potential impact on visual privacy for 13 Bower Street to the south of the site. In response, a condition of consent has been included in the recommendation of this report, requiring privacy treatment to the relevant windows.

Within this report, detailed assessment is given to the request to vary the floor space ratio development standard, visual privacy in response to the submission, and with respect to the proposed breach to the side window setback control. Overall, in consideration of the variations and non-compliant elements proposed, the development is acceptable on merit.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for alterations and additions to the existing dwelling house, as follows:

- Addition of a bathroom at the lower (garage) floor,
- Addition of a highlight window to the southern elevation for the family room,
- Reconfiguration of and rear extension to the existing first floor, including changes to windows and doors, and
- Changes to the roof to accommodate the first floor extension.

Amended plans were received on 14 October 2024, responding to concerns raised with respect to privacy. The plans reduce the number of windows and include privacy louvres. In accordance with Council's Community Participation Plan, the plans did not require public notification, as they result in lesser environmental impact.

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 C3 Environmental Management
 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 - 6.4 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 - 3.4.2 Privacy and Security
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

SITE DESCRIPTION

Property Description:	Lot 42 DP 8075 , 11 Bower Street MANLY NSW 2095
Detailed Site Description:	The subject site consists of one allotment located on the south-eastern side of Bower Street, Manly. The site is regular in shape with a frontage of 15.24 metres along Bower Street and a depth of 45.72 metres. The site has a surveyed area of 696.7m². The site is located within the C3 Environmental Management zone and accommodates a three-storey detached dwelling house with a swimming pool in the rear yard. The site slopes down approximately 5 metres from south-east (rear) to north-west (front) and contains some landscaping and vegetation. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by multi-storey detached dwelling houses.

Map:



SITE HISTORY

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

- DA111/2015 for demolition of existing structures, construction of a two storey house with basement, roof deck, balconies, swimming pool and landscaping was approved by Council on 9 September 2015.
- CDC2024/0213 for alterations or additions to an existing dwelling was approved by a private certifier on 25 March 2024.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
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 Matters for Consideration	Comments
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 29 of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Mainly Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection. A Bush Fire Report was submitted with the application (prepared by Building Code & Bushfire Hazard Solutions, dated 22 March 2024) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 30/08/2024 to 13/09/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Mrs Julie Anne Howden	13 Bower Street MANLY NSW 2095

The issue raised in the submission is addressed as follows:

Visual Privacy

The submission raised concern that the proposed windows to the bathroom and bedroom 3 will result in loss of visual privacy to 13 Bower Street.

Comment:

The proposed windows are recommended to be amended with respect to visual privacy by way of a condition of consent. Detailed assessment is provided in the section of this report relating to Clause 3.4.2 Visual Privacy of the Manly Development Control Plan 2013.

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	<i>Supported, subject to conditions</i> The comments in this referral relate to the following applicable controls and provisions: • NSW Biodiversity Conservation Act 2016 • Planning for Bushfire Protection 2019 • Manly DCP Clause 5.4.2 - Threatened Species and Critical Habitat Lands • Manly DCP Clause 3.3.1 - Landscaping in Bandicoot Habitat The subject site is located within declared habitat for the endangered population of long-nosed bandicoot North Head. As such, a threatened species "test of significance" is required. This assessment has been conducted by Council's biodiversity officers and has concluded that no significant impacts would take place. Conditions are recommended to avoid and minimise potential impacts to the endangered Long-nosed bandicoot population. The submitted Bushfire report has concluded that the existing asset protection zones are sufficient for compliance with the requirements of Planning for Bushfire Protection 2019. The report recommends that the site be treated as an Asset Protection Zone in perpetuity and no additional vegetation removal has been recommended. No objections are raised. The development is designed, sited and will be managed to avoid any significant adverse environmental impact.
NECC (Coast and Catchments)	<i>Supported, subject to conditions</i> The application has been assessed in consideration of - The Coastal Management Act 2016 - State Environmental Planning Policy (Resilience & Hazards) 2021 - Assessed against requirements of the Manly LEP and DCP - Associated plans Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore Coastal Management Act 2016 is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the Coastal Management Act 2016. State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.11 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 Vaughan Milligan Development Consulting Pty Ltd dated August 2024 satisfies the requirements under clauses 2.11 and 2.12 of the SEPP R&H. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021. Manly LEP 2013 and Manly DCP Foreshores Scenic Protection Area Management The subject site is also shown to be as "Manly Foreshores Scenic Protection Area" on Council's Foreshores Scenic Protection Area in Manly LEP 2013. As such, Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013 will apply to proposed development on the site. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Vaughan Milligan Development Consulting Pty Ltd dated August 2024, the DA satisfies requirements under Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013. As such, it is considered that the application does comply with the requirements of the Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013.
NECC (Flooding)	<i>Supported, without conditions</i> This proposal is for additions and alterations to an existing dwelling. The proposal complies with Section 5.4.3 of the Manly DCP and Clause 5.21 of the Manly LEP.
Parks, reserves, beaches, foreshore	<i>Supported, without conditions</i> Parks, Reserves and Foreshores raise no concerns with the development proposal.

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.
Rural Fire Service - Local Branch - EP&A Act, s4.14	<i>Supported, subject to conditions</i> The New South Wales Rural Fire Service (NSW RFS) has considered the information submitted and provided recommended conditions.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No. A1758393 dated 2 August 2024). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 4 Coastal use area

2.11 Development on land within the coastal use area

- 1) *Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:*
 - a) *has considered whether the proposed development is likely to cause an adverse impact on the following:*
 - i) *existing, safe access to and along the foreshore, beach, headland or rock*
 - ii) *platform for members of the public, including persons with a disability,*
 - iii) *overshadowing, wind funnelling and the loss of views from public places to*
 - iv) *foreshores,*
 - v) *the visual amenity and scenic qualities of the coast, including coastal headlands,*
Aboriginal cultural heritage, practices and places,
cultural and built environment heritage, and
 - b) *is satisfied that:*
 - i) *the development is designed, sited and will be managed to avoid an*
 - ii) *adverse impact referred to in paragraph (a), or*
 - iii) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
if that impact cannot be minimised—the development will be managed to mitigate that impact, and
 - c) *has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*

Comment:

The proposed development is supported by the DCP checklist demonstrating that a geotechnical risk assessment report is not required. The proposed development is also supported by 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 to the matters above. The proposed development has been reviewed by Council's Coast & Catchments team, who are 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
Height of Buildings:	Max. 8.5m	New works: Max. 8.2m	-	Yes
Floor Space Ratio	0.45:1 (313.515m ²)	0.51:1 (355.88m ²)	13.51%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
5.21 Flood planning	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes

Clause	Compliance with Requirements
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

Zone C3 Environmental Management

With respect to the written request to vary the floor space ratio development standard of the Manly Local Environmental Plan 2013, the objectives of the C3 Environmental Management zone are addressed as follows:

To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.

Comment:

The proposed development is well designed with respect to the area's special ecological, scientific, cultural or aesthetic values, in that it is for the purpose of minor additions to the existing dwelling house and is acceptable on merit with respect to built form controls. In this way, the proposed development is of low impact.

To provide for a limited range of development that does not have an adverse effect on those values.

Comment:

The proposed development retains the single residential use of the site, and, given its compliance with controls (or acceptability on merit) does not have an adverse impact on the site or area's values.

To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.

Comment:

The proposed development does not require removal of any vegetation or trees and the site remains suitably landscaped such that the built form does not dominate the foreshore, despite its non-compliance with development standard.

To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.

Comment:

The proposed development is designed and sited so as not to negatively impact upon the foreshore. The proposed works do not rely on any additional excavation, and therefore do not unreasonably disturb significant geological features or bushland. The proposed development retains acceptable landscaped open space and vegetation.

To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.

Comment:

The proposed development does not include works to the foreshore. The proposed development is supported by suitable architectural plans, and makes no alteration to the existing outcome with respect to the required total open space and landscaped area requirements, demonstrating stormwater runoff will be suitably managed.

To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.

Comment:

The proposed development is of consistent and compatible height and bulk to existing and approved developments in the surrounding area. The proposed height and bulk are complementary to the height of canopy trees, and are designed such that it provides a suitable balance between following the landform and providing adequate amenity to the dwelling house.

4.4 Floor space ratio

With respect to the written request to vary the floor space ratio development standard under Clause 4.4 of the Manly Local Environmental Plan 2013, the objectives of the 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 proposed development, despite its non-compliance with a number of built form controls, is of a bulk and scale consistent and compatible with surrounding developments. The proposed new works are set to the rear of the site, and are less visible from the streetscape. The dwelling is of a similar scale to other dwellings in the area, as viewed from Bower Street. The proposed development is compliant with the maximum wall height control, and the minimum setback control, demonstrating the works are not excessive in scale.

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

Comment:

The proposed development is designed and sited so as not to obscure any important landscape and townscape features.

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

Comment:

The proposed development is designed so as not to disturb the existing landscaping on the site. The works retain the existing balance between the built form and landscape character of the locality.

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

Comment:

The proposed works do not result in any unreasonable environmental impact, and do not impact upon enjoyment or use of adjoining land.

(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.

Comment:

Not applicable. The subject site is zoned as C3 Environmental Conservation.

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: 0.45:1 (313.515m²)

Proposed: 0.51:1 (355.88m²)
Percentage of variation: 13.51%

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 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 is unreasonable or unnecessary in the circumstances of this application because the proposed development is consistent with the objectives of Clause 4.4 and the objectives of the C3 Environmental Management 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 written request argues, in part:

The low pitch roof form further introduces modulation and architectural relief to the building's facade, which further distributes any sense of visual bulk.

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

- The proposed alterations and additions introduce modulation and architectural relief to the building's façade and by locating the new works at the rear of the first floor level, the proposal will not see any substantial change to the building's bulk, which promotes good design and improves the amenity of the built environment (1.3(g)).*
- The proposed addition will maintain the general bulk and scale of the existing surrounding dwellings and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).*
- Similarly, the proposed additional floor area will provide for improved amenity within a built form which is compatible with the streetscape of Bower Street which also promotes the orderly and economic use of the land (cl 1.3(c)).*
- The proposed new works which exceed the gross floor area control and FSR standard of 0.6:1 is considered to promote good design and enhance the residential amenity of the buildings' occupants and the immediate area, which is consistent with the Objective 1.3 (g) of the EPA Act.*

It is noted that the reference to the floor space ratio standard of 0.6:1 above is an error.

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. The proposal is consistent with the topography, landscape, prevailing building height, streetscape and character of the area, does not disrupt significant views to or from the site, and provides adequate solar access to adjacent properties. 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.

6.4 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 is not required for the proposed works.

(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:

No change to the existing stormwater management measures is required or proposed. 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 proposed development is supported by architectural plans, and a geotechnical checklist, which demonstrate the proposal is acceptable with respect to the above matters. The proposed development does not require earthworks or any alteration to the site's existing stormwater management measures.

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 proposed development is demonstrated to be designed, sited and managed to avoid landslide risk and significant adverse impact on the subject site and surrounding land.

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 is within the foreshore scenic protection area and is not foreshore land. 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 closely 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: 696.7m²	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Dwelling Size: Min. 146m ²	355.88m ²	-	Yes
4.1.2.1 Wall Height (based on gradient)	N: Max. 6.9m	Max. 5.8m	-	Yes
	S: Max. 7.2m	Max. 6.8m	-	Yes
4.1.2.2 Number of Storeys	Max. 2 storeys	3 storeys	-	Existing
4.1.2.3 Roof Height	Height: Max. 2.5m	New roof: Max. 800mm	-	Yes
	Pitch: Max. 35 degrees	14.6 degrees	-	Yes
4.1.4.2 Side Setbacks (based on wall height)	N: 1.93m	2m	-	Yes
	S: 2.27m	2.7m	-	Yes
	Windows: Min. 3m	N: Min. 2m	33.33%	No
		S: Min. 2.7m	10%	No
4.1.4.4 Rear Setbacks	Min. 8m	13.7m	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	No	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
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	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

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
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

3.4.2 Privacy and Security

The submission from 13 Bower Street raised concern that the new works would result in unreasonable visual privacy loss, with reference to the southern bathroom and bedroom 3 windows.

In response, the Applicant submitted amended plans demonstrating an improved privacy outcome, by way of reduction in the number of windows to the southern elevation of bedroom 3 and inclusion of a shutter panel. The plans also amend the northern elevation of bedroom 5 to match and provide an improved privacy outcome to that elevation, noting that no objection was received from 9 Bower Street to the north. A condition of consent has been included in the recommendation of this report to ensure the shutter panel is to be fitted such that it does not open more than 20 degrees.

The Applicant's intention is to include opaque shutters to the bathroom windows, fixed at 45 degrees such that direct viewing out of these windows is not possible. A condition of consent has been included in the recommendation of this report accordingly.

Subject to application of the conditions mentioned above, the proposed works are acceptable with respect to the requirements of this control.

4.1.3 Floor Space Ratio (FSR)

The proposed development includes a floor area of 355.88m², being a 13.51% variation to the floor space ratio control. Assessment of the full variation is provided in the sections of this report relating to Clauses 4.4 Floor Space Ratio and 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 contains new windows to the northern and southern elevations, 2 metres and 2.7 metres from their respective side boundaries, where a minimum of 3 metres is required by this control. The underlying objectives of the control are addressed as follows.

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

Comment:

The proposed non-compliant elements described above are not readily perceptible from the street, given they are at the rear of the site and upslope. The resultant development is designed and sited in such a way that is consistent with the predominant alignment along Bower Street. Given the works are to the rear, they maintain the desired spatial proportions of the street, the street edge and the landscape character of Bower 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 development is acceptable with regard to privacy as detailed in the section of this report relating to Clause 3.4.2 Privacy and Security of the Manly Development Control Plan 2013. The proposed works are compliant with the requirements of Clauses 3.4.1 Sunlight Access and Overshadowing and 3.4.3 Maintenance of Views of the Manly Development Control Plan 2013. The proposal retains suitable streetscape character and spacing of buildings with the inclusion of landscaping to soften the visual impact of the development. The works do not alter vehicular access or traffic conditions.

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, does not alter the site's total open space or landscaped area. The site retains significant areas of deep soil in consideration of its topographical constraints (rock faces). The proposed development does not adjoining any open space land, National Parks, or urban bushland, and does not present an unreasonable outcome to the adjoining foreshore.

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

Comment:

The subject site is classified as bushfire prone land. The proposed development is supported by a bushfire report from a suitably qualified professional, demonstrating that the works are not of

unacceptable bush fire risk.

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 \$7,436 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$743,582.

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 alterations and additions to an existing detached dwelling house.

The application was referred to the Development Determination Panel (DDP) due to the proposed variation to the floor space ratio development standard.

The proposed variation to the floor space ratio development standard equates to 13.51%. The non-compliance with the floor space ratio development standard arises due to an existing floor space ratio variation and increased floor area proposed under this application.

One submission was received in relation to this application, relating to potential impact on visual privacy for 13 Bower Street to the south of the site. In response, a condition of consent has been included in the recommendation of this report, requiring privacy treatment to the relevant windows.

Detailed assessment was given to the request to vary the floor space ratio development standard, visual privacy in response to the submission, and with respect to the proposed breach to the side window setback control. Overall, in consideration of the variations and non-compliant elements proposed, the development is acceptable on merit.

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 DA2024/1100 for Alterations and additions to a dwelling house on land at Lot 42 DP 8075, 11 Bower 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
DA1001	C	Site Plan	Edge Architecture	14 October 2024
DA2001	C	Garage	Edge Architecture	14 October 2024
DA2002	C	Ground Floor	Edge Architecture	14 October 2024
DA2003	C	First Floor	Edge Architecture	14 October 2024
DA2004	C	Roof	Edge Architecture	14 October 2024
DA3001	C	Elevations	Edge Architecture	14 October 2024
DA3002	C	Elevations	Edge Architecture	14 October 2024
DA4001	C	Sections 1 & 3	Edge Architecture	14 October 2024
DA4002	C	Section 2	Edge Architecture	14 October 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate A1758393	-	Energy Design Group	2 August 2024
Bushfire Assessment Report	1	Building Code & Bushfire Hazard Solutions	22 March 2024
Waste Management Report	-	Applicant	31 July 2024

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

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

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

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	30 August 2024
NSW Rural Fire Service	RFS Referral Response	29 August 2024

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

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

3. Approved Land Use

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

Dwelling house means a building containing only one dwelling.

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

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

4. 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) Should any construction cranes be utilised on site, they are to be fitted with bird deterrents along the counterweight to discourage raptor (bird) nesting activity. Deterrents are to remain in place until cranes are dismantled. Selection of deterrent methods is to be undertaken in accordance with the recommendations of a suitably qualified ecologist.
- (p) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a

manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

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

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

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$7,435.82 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 \$743,582.40.

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

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

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

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

7. Security Bond

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

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

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

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is

located on Council's website at www.northernbeaches.nsw.gov.au).

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

8. No Clearing of Vegetation

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

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

Reason: To protect native vegetation.

9. Stormwater Drainage Disposal

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

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

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

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

Reason: To ensure satisfactory management of stormwater.

10. Amendment to Windows/Louvres

The louvres on the three windows on southern elevation of the first floor bathroom ('BATH' on plans) are to be opaque and fixed such that they open to a maximum angle of 45 degrees. The louvres are to be in place to a minimum height of 1.7 metres above finished floor level.

The timber privacy shutter panels on the windows on the southern elevation of 'BED 3' and the northern elevation of 'BED 5' at the first floor are to be fitted such that they open to a maximum angle of 20 degrees.

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

Reason: To ensure suitable visual privacy.

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.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

12. **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

13. **Pre-clearance Survey**

Before any vegetation/materials/debris stockpiles are removed, a pre-clearance survey for Long-nosed Bandicoot activity and presence is required. Clearing should ideally be carried out at dusk and completed within one day so that Long-nosed Bandicoots do not reoccupy partially cleared areas overnight. A record of each inspection is to be made in the daily inspection register log-book.

The logbook is to be made available to Principal Certifying Authority.

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

Reason: To protect native wildlife.

14. **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.

15. **Protection of Habitat Features**

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

Reason: To protect wildlife habitat.

16. **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.

17. **Survey Certificate**

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

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

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

18. **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.

19. **Stockpiling materials**

During construction, all material associated with works is to be contained at source, covered and must be within the construction area. All material is to be removed off site and disposed of according to local regulations. The property is to be kept clean and any building debris removed as frequently as required to ensure no debris enters receiving waters.

Reason: To ensure pollution control measures are effective to protect the aquatic habitats within receiving waters throughout the construction period.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

20. **Fencing for Wildlife Passage**

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.

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

Reason: To preserve wildlife corridors.

21. **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.

22. **Stormwater Drainage Disposal Certification**

Certification from an appropriately qualified and practising Civil Engineer demonstrating the stormwater drainage systems have been designed and installed in accordance with the requirements of Council's Water Management for Development Policy and where relevant a Geotechnical Engineer shall be provided to the Principal Certifier prior to the issue of an Occupation Certificate, and;

If any on site stormwater detention system is installed the Applicant shall lodge the Legal Documents Authorisation Application with Council.

The application is to include the completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification. A guide to the process and associated Legal Document Authorisation Application form can be found on Council's website. The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater detention system within this development consent.

The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the authority to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user for the on-site stormwater detention system is to be submitted.

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

Reason: To ensure satisfactory management of stormwater.

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

23. **Protection of Habitat Features**

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

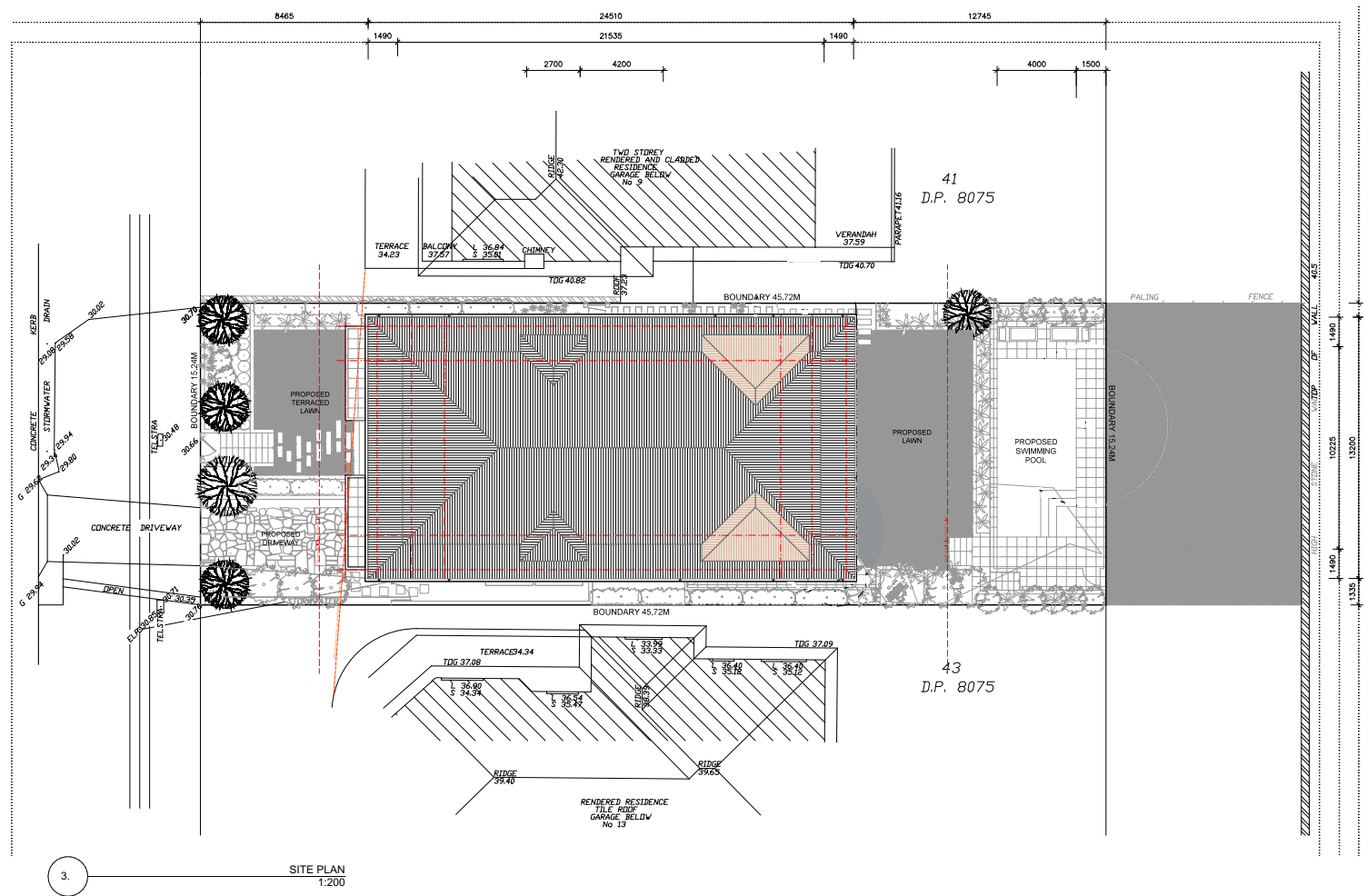
Reason: To protect wildlife habitat.

24. **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.



FAIRY BOWER RESIDENCE

FAIRY BOWER RESIDENCE



11 BOWER STREET MANLY NSW
Hugh & Lara McGuire



DA

DWG REF: 0564

DA1001

REV: C

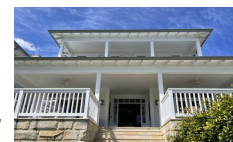
SIZE: A3

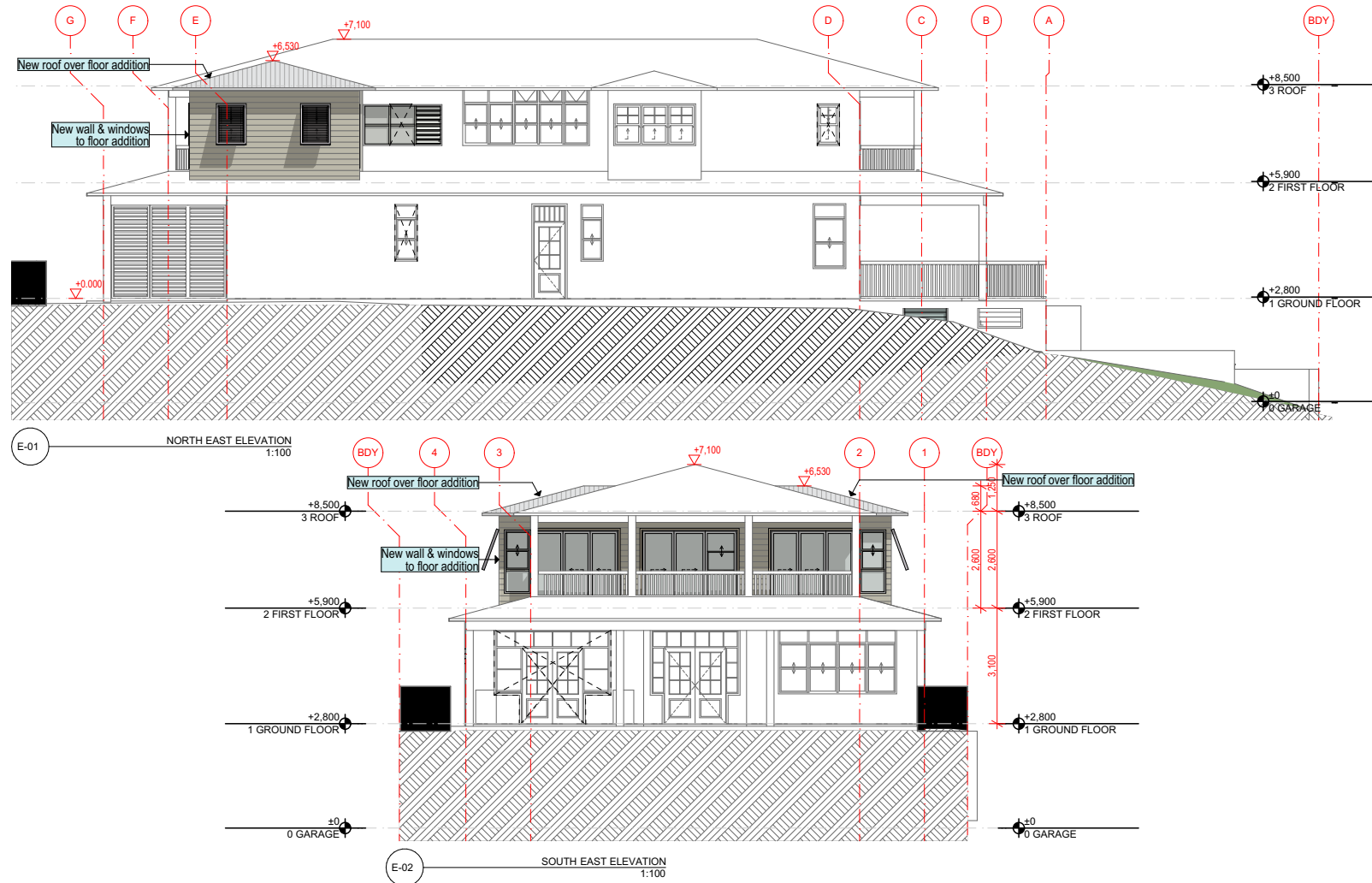
DATE: 14/10/2024



EMAIL: architecture@studioedge.com.au
WEBSITE: www.edgearchitecture.com.au
MAIL: PO Box 233 Mona Vale 1660 NSW
GORDON BEATH MOB: +61 412 546 041

SITE PLAN





FAIRY BOWER RESIDENCE

FAIRY BOWER RESIDENCE



11 BOWER STREET MANLY NSW
Hugh & Lara McGuire



DA

DWG REF: 0564

DA3001

REV: C

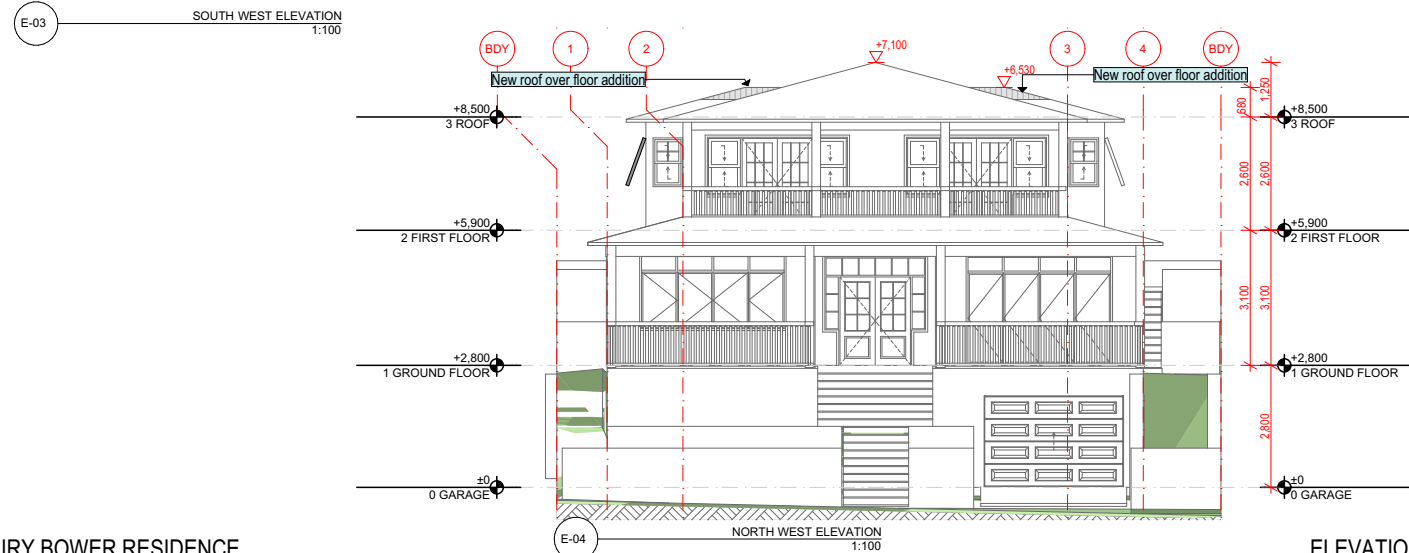
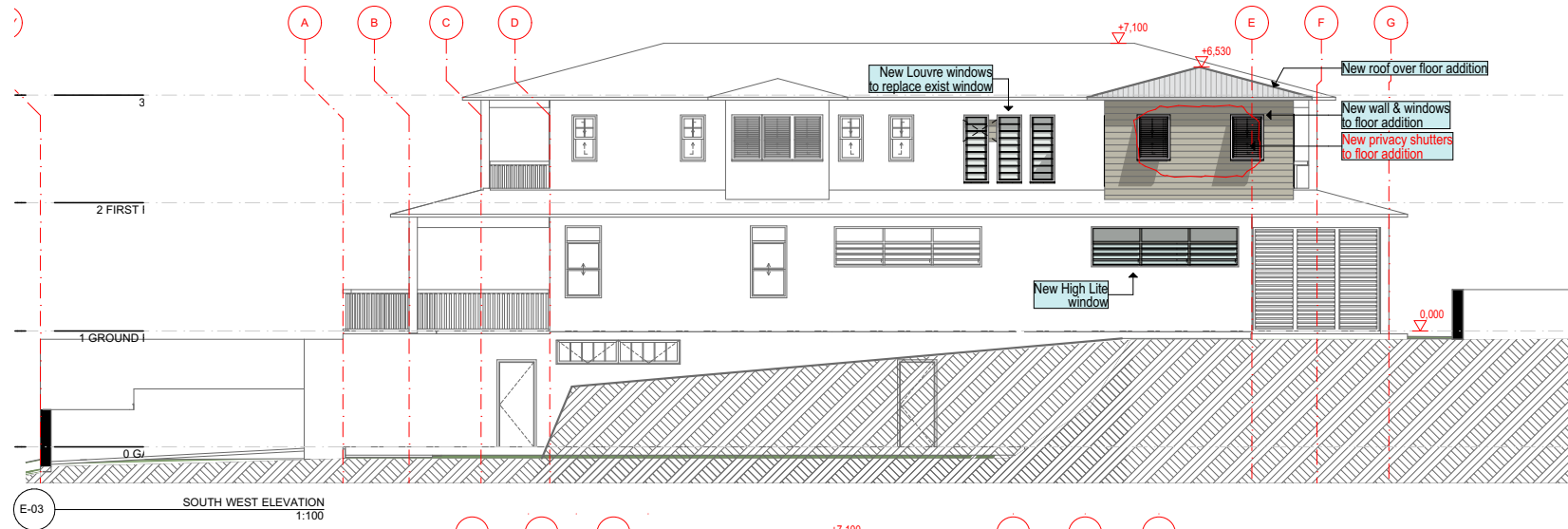
SIZE: A3

DATE: 14/10/2024



EMAIL: architecture@studioedge.com.au
WEBSITE: www.edgearchitecture.com.au
MAIL: PO Box 233 Mona Vale 1660 NSW
GORDON BEATH MOB: +61 412 546 041





FAIRY BOWER RESIDENCE



11 BOWER STREET MANLY NSW
Hugh & Lara McGuire



DA

DWG REF: 0564

DA3002

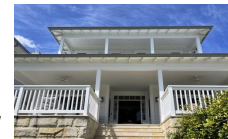
REV: C

SIZE: A3

DATE: 14/10/2024



EMAIL: architecture@studioedge.com.au
WEBSITE: www.edgearchitecture.com.au
MAIL: PO Box 233 Mona Vale 1660 NSW
GORDON BEATH MOB: +61 412 546 041



FAIRY BOWER RESIDENCE

Vaughan Milligan Development Consulting Pty Ltd

APPENDIX 1
CLAUSE 4.6 – FLOOR SPACE RATIO
(Clause 4.4 MLEP 2013)

Prepared April 2024

Vaughan Milligan Development Consulting Pty Ltd

**WRITTEN SUBMISSION PURSUANT TO CLAUSE 4.6 OF
MANLY LOCAL ENVIRONMENTAL PLAN 2013**

11 BOWER STREET, MANLY

**FOR THE PROPOSED CONSTRUCTION OF ALTERATIONS AND ADDITIONS TO
AN EXISTING DWELLING**

**VARIATION OF A DEVELOPMENT STANDARD REGARDING THE MAXIMUM FLOOR SPACE RATIO
AS DETAILED IN CLAUSE 4.4 OF THE MANLY LOCAL ENVIRONMENTAL PLAN 2013**

For: Proposed construction of alterations and additions to an existing dwelling
At: 11 Bower Street, Manly
Owner: Hugh & Lara McGuire
Applicant: Hugh & Lara McGuire
C/- Edge Architecture

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 restricts the maximum floor space area control within this area of the Clontarf locality and refers to the floor space ratio noted within the "*Floor Space Ratio Map*."

The relevant maximum floor space control in this locality is 0.45:1 or for this site with an area of 696.7m², the maximum gross floor area is 313.51m² and is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The proposed development will see minor additions and alterations to the rear of the existing first floor level of the dwelling, which will result in an increase to the total gross floor area from 340m² to 355.88m² or 0.515:1, and therefore the extent of the variation from the control will be 42.37m² or 13.5%.

The controls of Clause 4.4 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

Vaughan Milligan Development Consulting Pty Ltd

Is clause 4.4 of MLEP a development standard?

- (a) The definition of “development standard” in clause 1.4 of the EP&A Act means standard is fixed in respect of an aspect of a development and include:

“(d) the cubic content of floor space of a building.”

- (b) Clause 4.4 relates to floor space of a building. Accordingly, clause 4.4 is a development standard.

3.0 Purpose of Clause 4.6

The Manly Local Environmental Plan 2013 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the Standard Instrument is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the Standard Instrument should be assessed. These cases are taken into consideration in this request for variation.

In particular, the principles identified by Preston CJ in *Initial Action Pty Ltd vs Woollahra Municipal Council* [2018] NSWLEC 118 have been relied on in this request for a variation to the development standard.

4.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

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

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

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

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

“In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular,

Vaughan Milligan Development Consulting Pty Ltd

neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”. If objective (b) was the source of the Commissioner’s test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test.”

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

Clause 4.6(2) of MLEP provides:

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

Clause 4.4 (the FSR development standard) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of MLEP.

Clause 4.6(3) of MLEP provides:

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

The proposed development does not comply with the FSR development standard pursuant to clause 4.4 of MLEP which specifies an FSR of 0.45:1, however as the additional GFA is not unreasonable in bulk and scale and by being located towards the rear of the first floor level of the dwelling will not contribute to the building presenting a significant bulk and scale or one which is out of context with the surrounding dwellings, strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

Under cl 55 of the *Environmental Planning and Assessment Regulation 2021*, the Secretary has given written notice dated 5 May 2020, attached to the Planning Circular PS 20-002 issued on 5 May 2020, to each consent authority, that it may assume the Secretary’s concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(4) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation

Vaughan Milligan Development Consulting Pty Ltd

Clause 4.6(6) relates to subdivision and is not relevant to the development.

Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.4 of MLEP from the operation of clause 4.6.

The specific objectives of Clause 4.6 are as follows:

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

The development will achieve a better outcome in this instance as the site will provide for the construction of alterations and additions to an existing dwelling, which is consistent with the stated Objectives of the C3 Environmental Management Zone, which are noted as:

- To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*
- To provide for a limited range of development that does not have an adverse effect on those values.*
- To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*
- To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*
- To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*
- To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

The proposal will provide for the construction of alterations and additions to an existing dwelling to provide for increased amenity for the site's occupants.

The new works maintain a bulk and scale which is in keeping with the extent of surrounding development, with a consistent palette of materials and finishes, in order to provide for high quality development that will enhance and complement the locality.

The proposal will not exceed the maximum permitted building height control and remain consistent with the surrounding building height.

Notwithstanding the non-compliance with the maximum floor space ratio, the new works will provide attractive alterations and additions to a residential development that will add positively to the character and function of the local residential neighbourhood. It is noted that the proposal will maintain a consistent character with the built form of nearby properties.

Vaughan Milligan Development Consulting Pty Ltd

The proposed alterations and additions will not see any adverse impacts on the views enjoyed by neighbouring properties.

The works will not see any adverse impacts on the solar access enjoyed by adjoining dwellings.

The general bulk and scale of the dwelling as viewed from the public areas in Bower Street from the surrounding private properties will be largely maintained.

5.0 The Nature and Extent of the Variation

- 5.1 This request seeks a variation to the FSR development standard contained in clause 4.4 of MLEP.
- 5.2 Clause 4.4 of MLEP specifies an allowable gross floor area for a site in this part of Manly of 0.6:1 or for this site, the allowable gross floor area is 122.64m².
- 5.3 The subject site has an area of 204.9m².
- 5.4 The proposal has a calculable gross floor area of 149.m² or FSR of 0.73:1.
- 5.5 The total non-compliance with the FSR control is 26.86m² or 21.8%, which is a breach to the control.
- 5.6 When assessed against a minimum lot area of 250m², the proposal presents an FSR of 0.599:1, which complies with the control.

Vaughan Milligan Development Consulting Pty Ltd

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*

Vaughan Milligan Development Consulting Pty Ltd

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 consistent with the objectives of clause 4.4 and the objectives for development for in the C3 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?

Vaughan Milligan Development Consulting Pty Ltd

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 FSR standard and reasoning why compliance is unreasonable or unnecessary is set out below:

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

The objective of Clause 4.4(1)(a) seeks to ensure buildings, by virtue of their height and scale are consistent with the desired future streetscape character of the locality.

The proposal provides for alterations and additions to an existing dwelling which are intended to provide for a development outcome that benefits the surrounding neighbours by maintaining existing view sharing opportunities.

The contemporary building form with a low profile roof and earthy external finishes are considered to suitably reduce the visual bulk of the dwelling.

Further, the modulation of the front façade, together with the retention of the existing side setbacks at the street elevation and complementary external finishes will ensure the development minimises the visual impact when viewed from the surrounding public and private areas.

The proposal will be consistent with and complement the existing style of single dwelling housing within the locality and as such, will not be a visually dominant element in the area.

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

The proposal will not see the loss of any significant vegetation. The built footprint of the existing dwelling remains largely unchanged other than a slight increase at the ground floor level, and is therefore not considered to result in any adverse effects on the scenic qualities of the foreshore.

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

The site is considered to be sufficient to provide for the proposed works, with the dimensions of the lot to be unchanged.

Vaughan Milligan Development Consulting Pty Ltd

The proposal will retain an appropriate area of soft landscaping, and the site will maintain an appropriate balance between the landscaping and the built form.

On the basis that the proposal maintains an acceptable level of landscaped area, the site is considered to maintain an appropriate balance between the site's landscaping and the built form.

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

The proposed works are wholly contained within the site and will not result in any adverse impacts for any adjoining land.

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

The site is not located within a business zone and by providing for the construction of alterations and additions to an existing dwelling, is not contrary to the viability of any local business activity.

7.2 Are there sufficient environmental planning grounds to justify contravening the development standard?

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

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied*

Vaughan Milligan Development Consulting Pty Ltd

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

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

The low pitch roof form further introduces modulation and architectural relief to the building's facade, which further distributes any sense of visual bulk.

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

- The proposed alterations and additions introduce modulation and architectural relief to the building's facade and by locating the new works at the rear of the first floor level, the proposal will not see any substantial change to the building's bulk, which promotes good design and improves the amenity of the built environment (1.3(g)).
- The proposed addition will maintain the general bulk and scale of the existing surrounding dwellings and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).
- Similarly, the proposed additional floor area will provide for improved amenity within a built form which is compatible with the streetscape of Bower Street which also promotes the orderly and economic use of the land (cl 1.3(c)).
- The proposed new works which exceed the gross floor area control and FSR standard of 0.6:1 is considered to promote good design and enhance the residential amenity of the buildings' occupants and the immediate area, which is consistent with the Objective 1.3 (g) of the EPA Act.

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of a building that provides sufficient floor area for future occupants and manages the bulk and scale and maintains views over and past the building from the public and private domain.

These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the floor space ratio control.

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

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

Vaughan Milligan Development Consulting Pty Ltd

grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

7.3 Is the proposed development consistent with the objectives of clause 4.4 and the objectives of the C3 Environmental Management 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 C3 Environmental Management Zone and the reasons why the proposed development is consistent with each objective is set out below.

I have had regard for the principles established by Preston CJ in *Nessdee Pty Limited v Orange City Council* [2017] NSWLEC 158 where it was found at paragraph 18 that the first objective of the zone established the range of principal values to be considered in the zone.

Preston CJ found also that *“The second objective is declaratory: the limited range of development that is permitted without or with consent in the Land Use Table is taken to be development that does not have an adverse effect on the values, including the aesthetic values, of the area. That is to say, the limited range of development specified is not inherently incompatible with the objectives of the zone”*.

In response to *Nessdee*, I have provided the following review of the zone objectives:

It is considered that notwithstanding the compatible form of the proposed additions which see a minor reduction in the total gross floor area, the proposed alterations and additions to the existing dwelling will be consistent with the individual Objectives of the C3 Environmental Management Zone for the following reasons:

- ***To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.***

As found in *Nessdee*, this objective is considered to establish the principal values to be considered in the zone.

Vaughan Milligan Development Consulting Pty Ltd

Dwelling houses are a permissible form within the Land Use table and is considered to be specified development that is not inherently incompatible with the objectives of the zone.

The C3 Environmental Management Zone contemplates low density residential uses on the land, it is notable for its aesthetic values given its relationship to the escarpment and waterfront.

The relevant aspect of this objective which applies in this instance is that the area has aesthetic values that should be considered by a development.

The proposal results in a built form that minimises the visual presentation at the street and provides for an appropriate area of open space and landscaping that will protect and manage the aesthetic values of the area.

The proposed development will be compatible with the general height and form of the surrounding development and for this reason will protect and manage the aesthetic values of the area.

- ***To provide for a limited range of development that does not have an adverse effect on those values.***

As found in Nessdee, this second objective is considered to be declaratory in that it outlines the range of development that is permitted with or without consent in the Land Use and is taken to be development that does not have adverse effect on the values, including in this instance, the aesthetic values of the area.

Dwelling houses are a permissible form within the Land Use table and is considered to be specified development that is not inherently incompatible with the objectives of the zone.

In this instance, the proposal continues the existing single dwelling use and is considered to be an appropriate use for the site that will protect and improve the aesthetic values of the area. The form of the development stepping down the site will be compatible with adjoining development and which will not appear as out of character or jarring when viewed from the surrounding locality including Shelly Beach and Cabbage Tree Bay.

- ***To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.***

The proposal will not see the loss of any significant vegetation or tree canopy within the site.

The dwelling is well removed from the foreshore area and as result, will not have any adverse effects on the scenic qualities of the foreshore.

Vaughan Milligan Development Consulting Pty Ltd

The form of development is consistent with the developed area of the C3 Environmental Management zone in Bower Street that sits above and looks down to the foreshore. The development because of its stepping form and proposed landscaping will not stand out but will fit in when viewed as part of the backdrop to the foreshore.

The extent of the landscaping surrounding the dwelling and the compatible setback of the dwelling to the public recreation zone ensures that the proposal minimises impact on the natural environment.

When viewed by looking back from Shelly Beach towards the site, the proposal will not be a dominant feature when read in the context of its neighbours, which will further protect the natural scenic qualities of the foreshore.

Having regard to the above matters, it can be readily concluded that the proposal is a low impact residential use being a single dwelling house.

- ***To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.***

The proposal is well removed from the nearby foreshore and will not negatively impact on the Shelly Beach foreshore area.

The proposed works do not involve any further site disturbance or excavation with no significant geological features to be affected.

The site is in a disturbed state with managed domestic gardens and with no significant remnant natural vegetation.

The extent of the landscaping surrounding the dwelling is maintained and the relationship to the public recreation zone ensures that the proposal minimises impact on the natural environment, including the tree canopy within the public reserve.

All works are contained wholly within the site.

- ***To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.***

The proposal does not involve any works outside of the site boundaries and therefore the vegetation and rehabilitation of the foreshore is not an issue in this proposal.

The site will retain suitable landscaped area which will minimise which will minimise hard surfaces and reduce stormwater water quality issues, protecting the ecological characteristics of the locality.

Vaughan Milligan Development Consulting Pty Ltd

- ***To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.***

The proposal will not require the removal of any protected vegetation, remnant tree canopy or remove significant geological features or bushland.

The area of the building which does not comply with the maximum building height will not result in the loss of any existing significant or protected vegetation. The proposed alterations and additions maintain compliance with Council's 8.5 m height control.

The extent of soft landscaping within the front setback will not be altered or increased which visually softens a presentation of the site from Bower Street.

The proposal will be consistent with and complement the existing detached style single dwelling housing within the locality and as such, will not be a visually dominant element in the area. The development does not have any unreasonable amenity impacts on its adjoining neighbours.

Accordingly, it is considered that the site may be further developed with a variation to the prescribed maximum floor space ratio control. building height, whilst maintaining consistency with the zone objectives.

The compatible form and scale of the alterations and additions will meet the housing needs of the community within a single dwelling house which is a permissible use in this environmentally sensitive zone.

7.4 Has council obtained the concurrence of the Director-General?

The Council can assume the concurrence of the Director-General with regards to this clause 4.6 variation.

7.5 Has the Council considered the matters in clause 4.6(5) of MLEP?

- (a) The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed additions to the dwelling house for the particular site and this design is not readily transferrable to any other site in the immediate locality, wider region of the State and the scale or nature of the proposed development does not trigger requirements for a higher level of assessment.
- (b) As the proposed development complies with the objectives of the development standard and the objectives of the zone there is no significant public benefit in maintaining the development standard.
- (c) there are no other matters required to be taken into account by the secretary before granting concurrence.

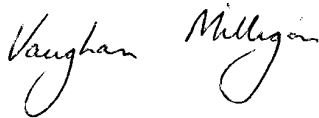
Vaughan Milligan Development Consulting Pty Ltd

8.0 Conclusion

This development proposes a departure from the maximum floor space ratio control for this locality of 0.6:1, with the proposed additions to the existing dwelling to provide a maximum floor space ratio of 0.515:1.

For the reasons outlined in this Written Request, we are of the view that the proposal is consistent with the objectives of the development standard.

In summary, the proposal satisfies all of the requirements of clause 4.6 of MLEP 2013 and the exception to the development standard is reasonable and appropriate in the circumstances of the case.



VAUGHAN MILLIGAN
Town Planner

ITEM 3.5	DA2024/0705 - 19 CLIFFORD AVENUE FAIRLIGHT - ALTERATIONS AND ADDITIONS TO A SEMI-DETACHED DWELLING
----------	---

PURPOSE

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

RECOMMENDATION

- A.** That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 and Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B.** THAT Council as the consent authority **approves** Development Consent to DA2024/0705 for alterations and additions to a semi-detached dwelling on land at Lot A DP 445431, 19 Clifford Avenue FAIRLIGHT, subject to the conditions set out in the Assessment Report.

Reporting manager	Rodney Piggott
TRIM file ref	2024/727381
Attachments	1 Assessment Report 2 Site Plan and Elevations 3 Clause 4.6 - FSR 4 Clause 4.6 - BHS



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/0705
----------------------------	-------------

Responsible Officer:	Julie Edwards
Land to be developed (Address):	Lot A DP 445431, 19 Clifford Avenue FAIRLIGHT NSW 2094
Proposed Development:	Alterations and additions to a semi-detached dwelling
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:	07/06/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	19/06/2024 to 03/07/2024
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 17.64% 4.4 Floor space ratio: 5.58%
Recommendation:	Approval

Estimated Cost of Works:	\$ 872,301.63
---------------------------------	---------------

EXECUTIVE SUMMARY

This development application seeks consent for Alterations and additions to a semi-detached dwelling house.

The application is referred to the Development Determination Panel (DDP) due to the application proposing a greater than 10% variation to the Height of Buildings and Floor Space Ratio (FSR) development standards.

No submissions were received.

Critical assessment issues relate to height of buildings, FSR, setbacks and wall height. These issues have been addressed within the assessment report.



The written Clause 4.6 request for the non-compliance with the FSR standard is associated with a 21.52^m increase in floorspace under this application. The additional floorspace is within the existing building footprint and does not increase the bulk and scale of the building.

The Clause 4.6 request for the non-compliance with height standard arises from the inclusion of dormer windows and changes to the roof which results in a 17.64% variation. The proposal does not increase the roof height of the existing building.

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

PROPOSED DEVELOPMENT IN DETAIL

The application seeks approval for alterations and additions to an existing dwelling. The proposal includes the following:

Ground Floor

- A new concrete slab and bike storage to the retained carport,
- A new front fence, paving, bin and surfboard storage areas and landscaping to the front yard,
- Relocate the internal staircase to the east party wall, and
- Convert the laundry to a combined bathroom / laundry.

Demolish the internal walls and reconfigure the layout to create:

- Guest bedroom,
- Family area,
- Bathroom,
- Bedrooms 2 & 3,
- Master bedroom with WIR and ensuite, and
- New windows and doors.

First floor

- Relocate the internal staircase to the east party wall.

Demolish the internal walls and reconfigure the layout to create:

- Open plan kitchen, dining and living room,
- Powder room
- Staircase to access the attic level, and
- New windows and doors.

Attic

- Extend the attic level of the dwelling to the south and west to create a study, with new windows, and
- Retain the existing attic roof storage towards the front of the dwelling.



Planners Note:

The application, as lodged, did not comply with the requirements for an attic conversion. The applicant was requested to provide amended plans which were more inline with the definition of an attic addition. The applicant provided amended plans on the 27 September 2024. The amended design addressed Councils concerns.

The application was not re-notified as the proposal resulted in a reduced environmental impact.

The application was assessed based on the amended plans drafted by Watershed Architects dated 18/09/2024.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

- Manly Local Environmental Plan 2013 - Zone R1 General Residential
- Manly Local Environmental Plan 2013 - 4.3 Height of buildings
- Manly Local Environmental Plan 2013 - 4.4 Floor space ratio
- Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
- Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
- Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
- Manly Development Control Plan - 4.1.7 First Floor and Roof Additions

SITE DESCRIPTION

Property Description:	Lot A DP 445431 , 19 Clifford Avenue FAIRLIGHT NSW 2094
Detailed Site Description:	The subject site consists of one allotment located on the southern side of Clifford Avenue.



	The site is regular in shape with a frontage of 7.45m along Clifford Avenue and a depth of 45.72m. The site has a surveyed area of 353.5m². The site is located within the R1 General Residential zone and accommodates a 2 storey semi-detached dwelling with an attached single carport. The site slopes down towards the rear boundary with a slope of approximately 10m. The site has minimal landscaping at the front and has rock outcrops, grass, trees and shrubs at the rear. There are no known threatened species on the site. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by semi-detached dwellings, residential flat buildings of varying heights and single two storey dwellings. Site Inspection A site inspection was undertaken 14 August 2024.
--	--

Map:



SITE HISTORY

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

- CDC2018/0897 - Internal works - Determined 11/09/2018



- Building Application no. 143/60 - Sunroom - Determined 25/03/1960

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>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to Attic Conversion. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider 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



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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 19/06/2024 to 03/07/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<i>Supported with Conditions</i> Council's Landscape Referral section have considered the application against the MLEP, and the following MDCP controls (but not limited to): 3.3.1 Landscaping Design; 3.3.2 Preservation of Trees or Bushland Vegetation; 4.1.5 Open Space and Landscaping, including 4.1.5.2 (c) Minimum Tree Plantings where applicable. Landscape Plans are submitted with the application for consideration by Landscape Referral. There are no prescribed trees that will be impacted by the proposed development works. Standard Council tree and vegetation protection conditions shall be imposed.



Internal Referral Body	Comments
	Proposed works as documented on the Landscape Plans raise no concerns from Landscape Referral, however consent conditions shall be imposed to remove Raphiolepis species from the Planting schedule, as these are self seeding species.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No. A1744719_04 dated 25 September 2024).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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



Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	10m	17.64%	No
Floor Space Ratio	FSR: 0.6:1	FSR: 0.64:1	5.58%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes

Detailed Assessment

Zone R1 General Residential

The underlying objectives of the R1 General Residential zone:



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

Comment:

The proposed works retain the residential use of the site.

It is considered that the development satisfies this objective.

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

Comment:

The proposal provides additional rooms to accommodate varying housing needs of a residential dwelling.

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:

Not applicable. The proposed modifications retain the residential use of the site

It is considered that the development satisfies this objective.

4.3 Height of buildings

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	10m
Percentage variation to requirement:	17.6%

4.3 Height of buildings

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

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

Comment:

The proposed building height and roof form are consistent with the topography and prevailing building heights and streetscape character. The proposed development will be retaining the established roof height of the building. The roof form will be generally consistent with the existing building and surrounding, development in the vicinity. The dwelling is appropriately articulated using recessed and modulated walls, fenestration, balconies and eaves to break up built form.

b) to control the bulk and scale of buildings,

Comment:

The proposed dwelling house is acceptable with respect to the proposed variation to the Height of buildings development standard and all built form controls under the MDCP,



including setbacks and wall heights. Additionally, the proposed development includes acceptable total open space and landscaped area. This demonstrates the dwelling is of a bulk and scale anticipated for the subject site by the controls, and that the footprint of the dwelling is not excessive.

c) to minimise disruption to the following—

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

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

(iii) views between public spaces (including the harbour and foreshores),

Comment:

The proposed development is designed and sited so as not to result in any unreasonable view loss to or from public or private land.

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 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 MDCP, as detailed in the relevant sections of this report.

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

Comment:

The development is not within a recreation or environmental protection zone

Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:

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

Comment:

The subject application is made under Section 4.55 of the EPA Act. As such, Clause 4.6 does not strictly apply and the concurrence of the Secretary is not required to be obtained.

4.4 Floor space ratio

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.4 to 1
Proposed:	0.64 to 1
Percentage variation to requirement:	5.58%

4.4 Floor space ratio

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

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

Comment:

The proposed development, despite its non-compliance with a number of built form controls, is



of a bulk and scale consistent and compatible with surrounding developments.

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

Comment:

The proposed development is designed and sited so as not to obscure any important landscape and townscape features.

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

Comment:

The works demonstrate a suitable balance between the existing built form and landscape character of the locality.

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

Comment:

The proposed works do not result in any unreasonable environmental impact, and do not impact upon enjoyment or use of adjoining land.

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

Comment:

Not applicable. The subject site is zoned as R1 General Resident

Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:

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

Comment:

The subject application is made under Section 4.55 of the EPA Act. As such, Clause 4.6 does not strictly apply and the concurrence of the Secretary is not required to be obtained.

4.6 Exceptions to development standards

(i) BUILDING HEIGHT

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

Development standard: Clause 4.3 Height of Buildings

Requirement: 8.5m

Proposed: 10m

Percentage of variation: 17.4%



northern
beaches
council

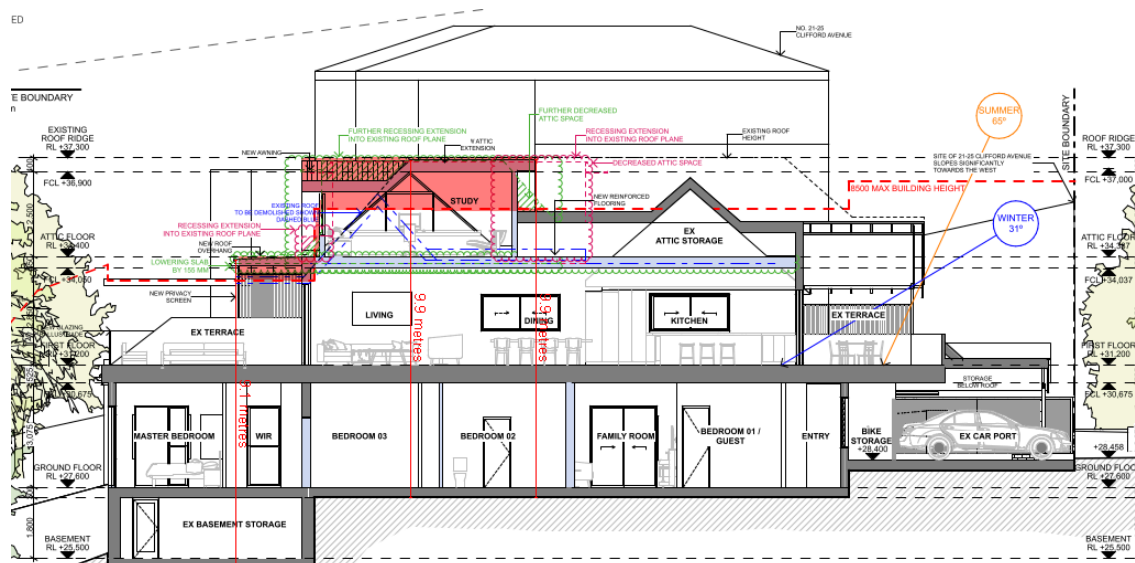


Figure 1: Height of Building variation shaded pink

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

Subclause (1) of this clause provides that:

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

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

Comment:

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

Subclause (2) of this clause provides that:

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

Comment:

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

Subclause (3) of this clause provides that:

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



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

Comment:

Council is satisfied that the Applicant has demonstrated that compliance with 4.3 Height of building is unreasonable or unnecessary in the circumstances of this application for the following reasons:

- The proposal will retain and extend the existing maximum building height, resulting in a scale consistent with the existing building and surrounding properties.
- The additions are located on the attic level of the existing semi-detached dwelling and will not alter the existing topography on the site.
- The area surrounding the subject site contains a number of 3 storey dwellings ensuring the development remains consistent with the locality. The variation to the building height control will not significantly alter the presentation of the dwelling to the street, as the attic addition is located towards the rear of the site, behind the existing primary roof.
- The proposed height exceedance is considered to be negligible in relation to bulk and scale and as such, it is considered this objective is met, despite the numerical variation.
- The proposed development will not result in any view loss impacts, as the properties located to the north and north-west of the subject site sit significantly upslope. In addition, the proposed works are located behind the existing primary roofline ensuring views across the site are retained.
- The proposed variation to height does not result in any unreasonable solar access impacts to adjoining dwellings.

(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:

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

Context

- *The existing dwelling has a non-compliant building height of 9.7 metres and the development proposes to extend the existing attic level, retaining the existing maximum building height,*



- The variation of 1.2 metres or 14.1% is the result of accommodating the existing built form and the resulting development remains consistent with other 3 storey dwellings in the locality,
- Amenity impacts are minimised due to the location of the attic addition, towards the rear of the site, behind the existing primary roof. The apparent bulk through the variation is negligible and the resulting development remains consistent with the streetscape, satisfying Cl1.3(g).
- Variation to the Manly LEP 2013 Cl. 4.3 Building Height control has been the subject of recent precedent for the following developments:
 - DA2023/0495 – 40 Bower Street MANLY, Height Variation 3.5%,
 - DA2023/0572 - 144 Griffiths Street BALGOWLAH, Height Variation 4.1%,
 - DA2022/2269 - 36 Beatrice Street BALGOWLAH HEIGHTS, Height Variation 6.4%,
 - DA2023/0325 - 9 Eustace Street MANLY, Height Variation 7.2%,
 - DA2023/0706 - 19 Harvey Street SEAFORTH, Height Variation 10.6%
 - DA2023/0359 - 33 Beatty Street BALGOWLAH HEIGHTS, Height Variation 12.9%
 - DA2023/0749 - 9 Francis Street FAIRLIGHT, Height Variation 15.3%
 - DA2022/2279 - 24 Fisher Street BALGOWLAH HEIGHTS, Height Variation 8.9%
 - DA2023/0819 - 13 Jamieson Avenue FAIRLIGHT, Height Variation 9.4%
- The setting and context with similar height variations recently approved, demonstrates that a varied building height is reasonable and that it is consistent with clause 1.3(c) and (d).

Future Development

- The proposed development will allow for alterations and additions to the existing semi-detached dwelling, to meet the housing needs of the residents,
- This represents an efficient use of an existing residential site, with all services readily available,
- The works do not result in any unreasonable impacts to neighbouring properties.
- The proposed works will not hinder any future development of the lot,
- The alterations proposed demonstrate fulfillment of clause 1.3(a), (b), (c) and (g).

Consistent with Zone Objectives

- The extent of the variation is considered to be in the public interest, as the proposal allows for alterations and additions to the existing dwelling house, on an existing residential site.
- The bulk and scale proposed is consistent with the existing built form and other dwellings in the locality, as such compliance with the height standard based on this would be unreasonable, with clause 1.3(c) demonstrated as fulfilled.

Natural Environment

- The proposed development allows for the current and future housing needs of the residents to be met, without developing a greenfield site, representing an efficient use of existing developed land,
- The development does not require the removal of any trees and will have minimal environmental impact,
- The natural environment is unaffected by the departure to the development standard and it would be unreasonable for the development to be refused on this basis with Cl 1.3(b) satisfied.

Social and Economic Welfare



- *The variation to the current height control, as detailed above will have no social impacts for the site or local area satisfying CI1.3(b) and accordingly refusal of the development based on this reason would be unreasonable.*
- *The height variation will have no economic impacts for the site or the local area satisfying CI1.3(b) and accordingly refusal of the development based on this reason would be unreasonable.*

Appropriate Environmental Planning Outcome

- *The variation to the current height control, is appropriate, as the existing maximum building height is retained on the site and the additions are located behind the primary roof form presenting to the street.*
- *The apparent bulk through the variation is negligible and the resulting development remains consistent with the streetscape, satisfying CI1.3(g).*

The sufficient environmental planning grounds stipulated above demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the building height variation.'

Planner's Comment:

The applicant has satisfactorily demonstrated that the works are consistent with the objects of the EP&A Act, specifically the following objects of the EP&A Act:

- The development promotes good design and amenity of the built environment, noting that the proposed development will not unreasonably compromise the amenity of adjoining residential and other development within the immediate vicinity.
- The development promotes the proper construction and maintenance of buildings, in so far as the proposed alterations and additions is a necessary upgrade of the ageing development.

Public Interest:

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

Conclusion:

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

It is considered on balance, that having regard to the particular circumstances of the breach of the building height development due to the existing site constraints and topography, the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

(ii) FLOOR SPACE RATIO

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

Development standard: Clause 4.4 Floor space ratio

Requirement: 0.6:1

Proposed: 0.64:1

Percentage of variation: 5.58%

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 proposal will result in a similar or lesser scale development than surrounding properties, which is characterised by 2 and 3 storey dwellings.
- The variation to the FSR control is considered minor and will not significantly add to the bulk and scale of the dwelling, as the attic addition is located towards the rear of the site, behind the existing primary roof.
- The development will result in a built form and massing that is of a consistent scale to surrounding properties.
- The development will not obscure any important landscape or townscape features and will not result in any view loss impacts.
- The proposed works are visually appropriate for the locality and the built form remains consistent with the existing semi and surrounding properties, due to the location within the attic area, behind the primary roof form.
- The existing dwelling is located on a section of Clifford Avenue that has a centre island, containing significant vegetation. The property is located on the low side of the street, meaning



it is screened from the public domain, ensuring there will be no impact on the streetscape character.

- The proposed variation to the floor space ratio does not result in any unreasonable 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:

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

Context

- *The area surrounding the subject site is characterised by 1, 2 and 3 storey detached residential dwellings, semi-detached dwellings and multi-dwelling housing, with a number of carports and garages on the street frontage,*
- *The proposed alterations and additions have been designed to remain consistent with the character of the existing semi-detached dwelling and other dwellings in the locality, through design, architectural features and complimentary materials and colour choices,*
- *The additional floor space proposed is located on the attic level, behind the primary roof form, ensuring it will not present with excessive bulk,*
- *The variation proposes is considered minor at just 5.8% or 12.48m²,*
- *Variation to the Manly LEP 2013 Cl. 4.4 FSR, control has been the subject of recent precedent for the following developments:*
 - *DA2023/0737 – 111 Frenchs Forest Road SEAFORTH, FSR Variation 2.8%,*
 - *DA2023/0697 - 3 Malvern Avenue MANLY NSW 2095, FSR Variation 8.17%,*
 - *DA2023/0166 - 21 Ocean Road MANLY NSW 2095, FSR Variation 12%,*
 - *DA2023/0749 - 47 Beatty Street BALGOWLAH HEIGHTS, FSR Variation 17.5%,*
 - *DA2022/2279 - 24 Fisher Street BALGOWLAH HEIGHTS, FSR Variation 7.2%,*
 - *DA2023/0819 - 13 Jamieson Avenue FAIRLIGHT, FSR Variation 5.1%,*
 - *DA2022/1471 - 8 B Beatty Street BALGOWLAH HEIGHTS, FSR Variation 20%,*
 - *DA2023/0814 - 13 Crescent Street FAIRLIGHT, FSR Variation 20.7%.*
- *The setting and context with similar FSR variations recently approved, demonstrates that a varied FSR is reasonable and that it is consistent with clause 1.3(c) and (d).*



Future Development

- The proposed development will allow for alterations and additions to the existing semi-detached dwelling, to meet the housing needs of the residents,
- This represents an efficient use of an existing residential site, with all services readily available,
- The works do not result in any unreasonable impacts to neighbouring properties.
- The proposed works will not hinder any future development of the lot,
- The alterations proposed demonstrate fulfillment of clause 1.3(a), (b), (c) and (g).

Consistent with Zone Objectives

- The extent of the variation is considered to be in the public interest, as the proposal allows for alterations and additions to the existing dwelling house, on an existing residential site.
- The bulk and scale proposed is consistent with the existing built form and other dwellings in the locality, as such compliance with the FSR standard based on this would be unreasonable, with clause 1.3(c) demonstrated as fulfilled.

Natural Environment

- The proposed development allows for the current and future housing needs of the residents to be met, without developing a greenfield site, representing an efficient use of existing developed land,
- The development does not require the removal of any trees and will have minimal environmental impact,
- The natural environment is unaffected by the departure to the development standard and it would be unreasonable for the development to be refused on this basis with CI 1.3(b) satisfied.

Social and Economic Welfare

- The variation to the FSR will have a positive social impact, as it will allow the housing needs of the residents to be met in their current local community. It utilises existing services, satisfying CI1.3(b). Accordingly, refusal of the development based on this reason would be unreasonable.

Appropriate Environmental Planning Outcome

- The works proposed do not represent an overdevelopment of the site and satisfies the objectives of the zone and the development standard as is detailed earlier in the report.

The sufficient environmental planning grounds stipulated above demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the FSR variation.'

Planner's Comment:

The applicant has satisfactorily demonstrated that the works are consistent with the objects of the EP&A Act, specifically the following objects of the EP&A Act:

- The development promotes the orderly and economic use and development of the land, in so far as the proposed development upgrades the useability of the existing dwelling and such



building is an orderly response to the development of the site, thereby satisfying objects 1.3(c) of the EPA Act.

- The development promotes good design and amenity of the built environment, noting that the works will not contribute to any unreasonable impact on amenity considerations (i.e solar access, privacy and view loss) to neighbouring properties, thereby satisfying objects 1.3(g) of the EPA Act.

Public Interest:

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

Conclusion:

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

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

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 353.5m ²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	W: 6.9m (based on gradient 1:15)	7.7m	55.4%	No
4.1.2.2 Number of Storeys	2	2	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	2.9m	16%	No
	Pitch: maximum 35 degrees	2 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	5.25m, consistent with prevailing setback	N/A	Yes - no change
4.1.4.2 Side Setbacks and Secondary Street Frontages	2.5m (based on wall height)	first floor - 2.3m Attic - 2.3m	N/A	yes
	Windows: 3m	Ground floor - 0.893m First floor - 2.3m Attic - 2.3m	73.4% 24% 24%	No
4.1.4.4 Rear Setbacks	8m	16.7m	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area	50.1% 177.35m ²	9%	Yes - no change
	Open space above ground 25% of total open space	13.7% 26.63m ²	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	48.2%	N/A	Yes
	2 native trees	2 trees	N/A	Yes



4.1.5.3 Private Open Space	18m ² per dwelling	18m ²	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	1 spaces	50%	Yes - no change

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4.1 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
3.5.1 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
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	No	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

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

Description of non-compliance

Clause 4.1.2.1 of the Manly Development Control Plan 2013 (MDCP 2013) stipulates that the maximum wall height permitted on the western elevation is 6.9m. The application proposes a wall height of 7.7m. This is consistent with the existing wall height along the western elevation.



Clause 4.1.2.3 Roof Height requires a max roof height of 2.5m. The proposal has a roof height of 2.9m. The works will maintain the existing roof height of the building.

Merit consideration

There are no underlying objectives of this control under which to consider the merits of this variation. This control instead relies on the objectives for the Height of Buildings at clause 4.3 in the MLEP 2013. The proposal has been assessed against these objectives under clause 4.6, above in this report. In summary, the variation is deemed to be reasonable and supported in this circumstance.

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

Description of non-compliance

The proposed development includes new dormer windows and first floor windows located 2.3m from the western boundary and new ground floor windows 0.8m from the western boundary, where a minimum of 3m is required by this control.

Merit consideration:

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

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

Comment:

The proposed development is compliant with the front setback control and maintains the existing side setback to the western boundary, demonstrating the works are designed as anticipated for the site. The works suitably retain the existing proportions and pattern of built form and landscape character along Clifford Avenue.

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 additions are within the footprint of the existing building and will result in a minor change to the built form. As such the proposal, is not anticipated to result in any adverse amenity impacts to adjoining neighbours in regards to solar access, view sharing, or privacy.

The proposed windows that are non-compliant with the 3m setback requirement, will replace existing windows along the ground and first floor. The ground floor windows and door sit below the height of the adjoining western boundary fence and do not provide any views of the adjoining property. The first floor and attic windows are proposed with a fixed privacy screens to limit opportunities for overlooking and ensure adequate privacy is maintained between buildings. Therefore, the proposal will not result in any detrimental impacts on local amenity.



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 existing topography of the land will be unaltered, with no significant forms of vegetation being proposed for removal. Acceptable dimensions of landscaped open space is provided on site to accommodate for plantings, deep soil zones, and vegetation.

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

Comment:

The site is not located within bush fire prone land.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent 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.

4.1.7 First Floor and Roof Additions

Merit Assessment

Clause 4.1.7.2 states as follows:

"Habitable rooms will be permitted in a roof structure subject to compliance with all other controls in this plan and the LEP including height and FSR in the LEP. However alterations and additions to a building which existed prior to 2007 may involve habitable rooms within an existing roof structure that is above the maximum wall and roof height; (see paragraph 4.1.2 of this plan) subject to the rooms not detracting from the character or integrity of the roof structure and not adversely impacting on the amenity of adjacent and nearby properties and the streetscape. Similarly, alterations and additions which exceed the maximum height must not increase the overall height of the building. Consideration may be given in this paragraph to the application of LEP clause 4.6 in considering exceptions to the LEP Building Height standard."

Comment:

The proposal includes the addition of a habitable room within a roof structure of a dwelling built before 2007. The proposal exceeds the building height requirement but does not increase the overall height of the building which meets the requirement of this clause. However, the proposal does not comply with the FSR and setback requirement of the MLEP and MDCP. These non-compliances have been addressed in detail elsewhere in the report.



It is considered that while there are several non-compliances the habitable rooms within the roof structure have been appropriately designed to be within the existing building footprint and do not detract from the character or integrity of the roof structure and do not adversely impact on the amenity of adjacent and nearby properties and the streetscape.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$8,723 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$872,302.

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 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

PLANNING CONCLUSION

This proposal, for alterations and additions to a Dwelling House is referred to the Development Determination Panel (DDP) due to the application proposing a greater than 10% variation to the Height of Buildings and Floor Space Ratio (FSR) development standards under the MLEP.

The critical assessment issues that were addressed, in detail, within the assessment report include; building height, setbacks and wall height..

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

The proposal has therefore been recommended for approval.

REASON FOR DETERMINATION

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

RECOMMENDATION

That Northern Beaches Council as the consent authority permits a contravention of clause 4.3 Height of Building and 4.4 Floor Space Ratio development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2024/0705 for Alterations and additions to a semi-detached dwelling on land at Lot A DP 445431, 19 Clifford Avenue, FAIRLIGHT, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS



1. **Approved Plans and Supporting Documentation**

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

Approved Plans				
Plan Number	Issue Number	Plan Title	Drawn By	Date of Plan
DA06	C	Demolition Plan	Watershed Architects	18/09/2024
DA07	C	Site & Roof Plan	Watershed Architects	18/09/2024
DA08	A	Ground Floor	Watershed Architects	28/05/2024
DA09	B	First Floor	Watershed Architects	18/09/24
DA10	C	Attic	Watershed Architects	18/09/24
DA11	C	Section AA	Watershed Architects	18/09/24
DA12	C	Section BB	Watershed Architects	18/09/24
DA13	C	North Elevation	Watershed Architects	18/09/24
DA14	C	West Elevation	Watershed Architects	18/09/24
DA15	C	South Elevation	Watershed Architects	18/09/24
DA16	A	East Elevation	Watershed Architects	28/05/24

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Waste Management Plan	-	-	-
BASIC Certificate	Certificate number: A1744719_04	BONNEFIN CONSULTING PTY LTD	25 September 2024

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

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

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

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	17/06/2024

(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. 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 \$8,723.02 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 \$872,301.63.

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. **Stormwater Drainage Disposal**

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

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

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

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

Reason: To ensure satisfactory management of stormwater.

8. **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.

9. 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.

10. Waste Management Plan

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

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

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

11. Compliance with Standards

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

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

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

12. Sydney Water "Tap In"

The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets



and/or easements. The appropriately stamped plans must then be submitted to the Certifier demonstrating the works are in compliance with Sydney Water requirements.

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

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

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

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

DURING BUILDING WORK

13. Tree and Vegetation Protection

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

- i) all prescribed trees within the site, or otherwise existing trees 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,
- ii) the following arboricultural requirements shall be adhered to unless authorised by an Arborist with minimum AQF level 5 qualifications: existing ground levels shall be maintained within the tree protection zone of trees to be retained; removal of existing tree roots at or >25mm (Ø) diameter is not permitted; no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained; and structures are to bridge tree roots at or >25mm (Ø) diameter,
- iii) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- iv) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
- v) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

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

Reason: Tree and vegetation protection.

14. 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.

15. Demolition Works - Asbestos

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifier, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

16. Survey Certificate

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

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

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

17. Waste Management During Development

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

18. Landscape Completion

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



- a) landscape works are to be contained within the legal property boundaries,
- b) tree, shrub and groundcover planting shall be installed as indicated on the approved Landscape Plans, unless otherwise imposed by conditions,
- c) all tree planting shall be a minimum pre-ordered planting size of 75 litres; 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 as shown on the approved Landscape Plans, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,
- e) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces..

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.

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

19. **Landscape Maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting. If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plans and any conditions of consent.

The approved landscape area shall in perpetuity remain as planting under the development consent, and shall not be replaced with any hard paved surfaces or structures.

Reason: To maintain local environmental amenity.

In signing this report, I declare that I do not have a Conflict of Interest.

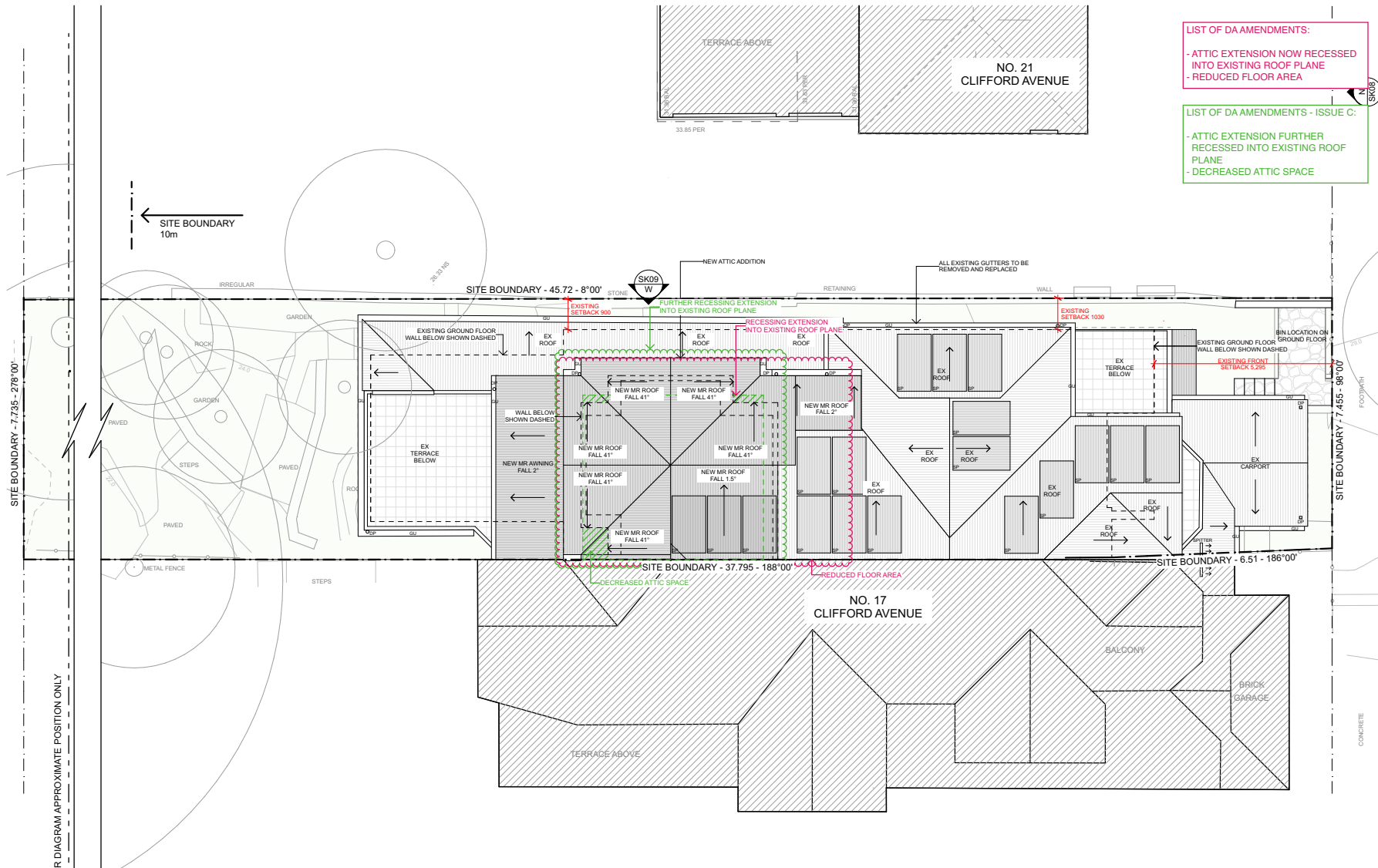
Signed

Rodney Piggott, Manager Development Assessments



The application is determined on //, under the delegated authority of:

Rodney Piggott, Manager Development Assessments



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 AMENDMENT TO DA

C AMENDMENT TO DA

DATE

28/05/2024

06/09/2024

18/09/2024

JOB NO: 23012

ADDRESS: 19 Clifford Avenue, Fairlight

CLIENT: Penny & Lee Palmer

SCALE: 1:100 @ A3

SITE & ROOF PLAN

SHEET: DA07

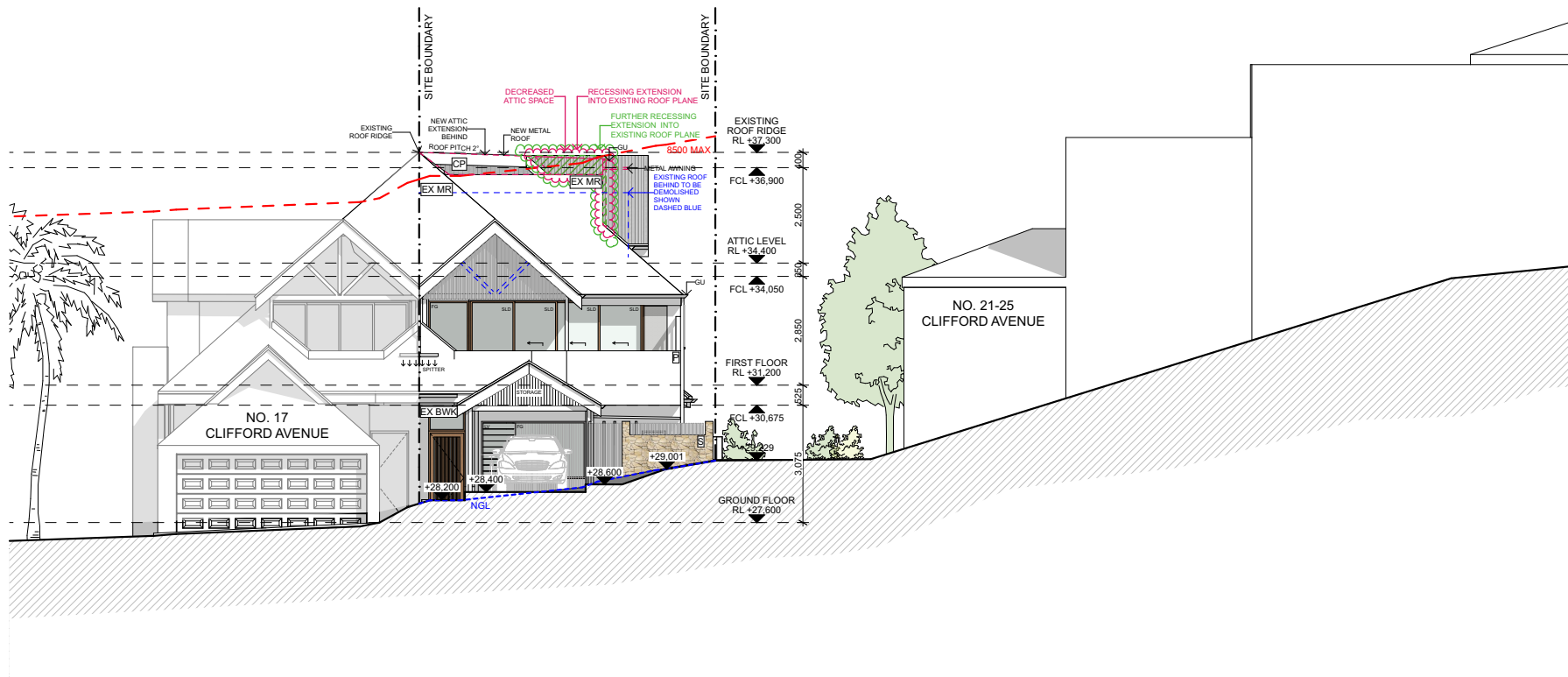
ISSUE: C

LIST OF DA AMENDMENTS:

- ATTIC EXTENSION NOW RECESSED INTO EXISTING ROOF PLANE
- REDUCED FLOOR AREA / DECREASED ATTIC SPACE

LIST OF DA AMENDMENTS - ISSUE C:

- ATTIC EXTENSION FURTHER RECESSED INTO EXISTING ROOF PLANE



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 AMENDMENT TO DA
C AMENDMENT TO DA

DATE
28/05/2024
06/09/2024
18/09/2024

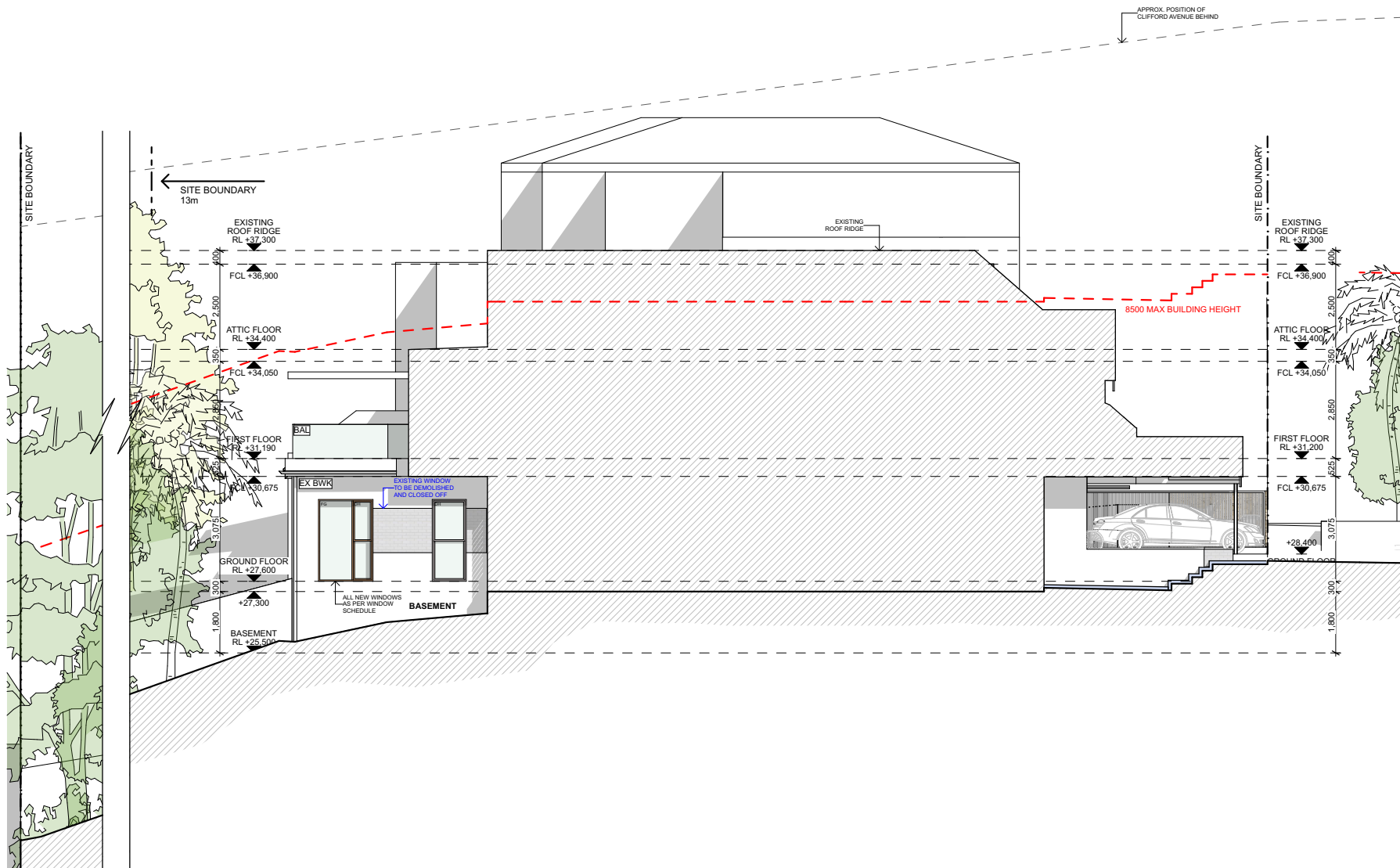
JOB NO: 23012
ADDRESS: 19 Clifford Avenue, Fairlight
CLIENT: Penny & Lee Palmer
SCALE: 1:100 @ A3

NORTH ELEVATION

SHEET: DA13

ISSUE: C

ISSUE: C



Watershed\Architects

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

ISSUE FOR
A DA

DATE
28/05/2024

JOB NO: 23012
ADDRESS: 19 Clifford Avenue, Fairlight
CLIENT: Penny & Lee Palmer
SCALE: 1:100 @ A3

NO CHANGES
NO CHANGES
EAST ELEVATION

SHEET: DA16

ISSUE: A



**19 CLIFFORD AVENUE,
FAIRLIGHT**

**CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS
(FLOOR SPACE RATIO - FSR)**



Report prepared for
Penny and Lee Palmer
September 2024

T 02-89010741 | E info@watermarkplanning.com.au | W watermarkplanning.com.au



1. Introduction

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

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

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

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



Commencing on 1 November 2023 Clause 4.6(3) and (4) of the MLEP 2013, state that development consent, that contravenes a development standard, must not be granted unless the consent authority is satisfied the applicant has demonstrated that:

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

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

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

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

2. Environmental Planning Instrument Details (Manly LEP 2013)

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

Manly Local Environmental Plan 2013

2.2 What is the zoning of the land?

R1 – General Residential

2.3 What are the objectives of the zone?

- *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.*

2.4 What is the development standard being varied?

Cl. 4.4 – Floor Space Ratio

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

Cl. 4.4 of the Manly Local Environmental Plan 2013



2.6 What are the objectives of the development standard?

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

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

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

The numeric value of the FSR development standard applicable to the subject site is 0.6:1, this equates to a maximum Gross Floor Area (GFA) of 212.1m² for the site area of 353.5m².

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

The development proposes a GFA of 224.58m² or FSR of 0.64:1

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

The percentage variation sought is 5.8% or 12.48m².

3. NSW Land and Environment Court Case Law

Several key Land and Environment Court (NSW LEC) judgements have refined the manner in which variations to development standards are required to be approached. The key findings and direction of each of these matters are outlined in the following discussion.

2.1 *Wehbe v Pittwater* [2007] NSW LEC 827

The decision of Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827, (expanded on the findings in *Winten v North Sydney Council*), identified 5 ways in which the applicant might establish that compliance with a development standard is unreasonable or unnecessary. It was



not suggested that the five ways were the only ways that a development standard could be shown to be unreasonable or unnecessary.

The five ways outlined in *Wehbe* include:

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

In the *Micaul* decision Preston CJ confirmed that the requirements mandated by SEPP 1 (as discussed in *Wehbe*) are only relevant in demonstrating that compliance with a development standard is unreasonable or unnecessary for the purpose of Clause 4.6(3)(a).

2.2 *Four2Five Pty Ltd v Ashfield Council* [2015] NSW LEC

In the matter of *Four2Five Pty Ltd v Ashfield Council* [2015] NSW LEC, initially heard by Commissioner Pearson, upheld on appeal by Justice Pain, it was found that an application under Clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe V Pittwater* [2007] NSW LEC 827 and demonstrate the following:

1. Compliance with the particular requirements of Clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP;
2. That there are sufficient environment planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity);
3. That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone in which the site occurs;
4. All three elements of clause 4.6 have to be met and it is best to have different reasons for each but it is not essential.



2.3 Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7

In Randwick City Council v Micaul Holdings, the Court allowed a departure from development standards, provided the processes required by clause 4.6 are followed, a consent authority has a broad discretion as to whether to allow a departure from development standards under clause 4.6, even where the variation is not justified for site or development specific reasons.

Preston CJ noted that *the Commissioner did not have to be satisfied directly that compliance with each development standard was unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the appellant's written request had adequately addressed the matter in clause 4.6(3)(a) that compliance with each development standard was unreasonable or unnecessary.*

2.4 Zhang v City of Ryde

Commissioner Brown reiterated that clause 4.6 imposes three preconditions which must be satisfied before the application could be approved:

1. The consent authority must be satisfied that the proposed development will be consistent with the objectives of the zone;
2. The consent authority must be satisfied that the proposed development will be consistent with the objects of the standard which is not met; and
3. The consent authority must be satisfied that the written request demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances and there are sufficient environmental planning grounds to justify contravening the development standard.

It is only if all of these conditions are met that consent can be granted to the application, subject to an assessment of the merits of the application.

The Commissioner applied the now familiar approach to determining consistency with zone objectives by considering whether the development was antipathetic to the objectives.

In contrast to four2five, the reasons relied on to justify the departure from the standards in this case were not necessarily site specific.

2.5 Action Pty Ltd v Woollahra Municipal Council [2018]

In Action Pty Ltd v Woollahra Municipal Council, the court demonstrated the correct approach to the consideration of clause 4.6 requests, including that the clause does not require that a development that contravenes a development standard, must have a neutral or better environmental planning outcome than one that does not.



4. Consideration

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

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

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

The five ways outlined in *Wehbe* include:

3.1 Five (5) Part Test - *Wehbe v Pittwater*

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

The objectives of the standard are:

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

Comment

The proposed alterations and additions are appropriate to the site and will result in a similar or lesser scale development than surrounding properties, which is characterised by 2 and 3 storey dwellings.

The variation to the FSR control is considered minor and will not significantly add to the bulk and scale of the dwelling, as the attic addition is located towards the rear of the site, behind the existing primary roof.

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

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

Comment

Consistent. The development will result in a built form and massing that is of a consistent



scale to surrounding properties. The development will not obscure any important landscape or townscape features and will not result in any view loss impacts.

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

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

Comment

The proposed works are visually appropriate for the locality and the built form remains consistent with the existing semi and surrounding properties, due to the location within the attic area, behind the primary roof form.

The existing dwelling is located on a section of Clifford Avenue that has a centre island, containing significant vegetation. The property is located on the low side of the street, meaning it is screened from the public domain, ensuring there will be no impact on the streetscape character.

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

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

Comment

The proposed variation to the floor space ratio does not result in any unreasonable environmental impacts. The use or enjoyment of adjoining land, or the public domain will be unaffected by the attic additions proposed.

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

(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.

Comment

Not relevant as the subject site is not located in Zone E1 and no business or service activities are proposed.



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

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

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

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

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

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

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

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

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

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

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

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

Context

- The area surrounding the subject site is characterised by 1, 2 and 3 storey detached residential dwellings, semi-detached dwellings and multi-dwelling housing, with a number of carports and garages on the street frontage,



- The proposed alterations and additions have been designed to remain consistent with the character of the existing semi-detached dwelling and other dwellings in the locality, through design, architectural features and complimentary materials and colour choices,
- The additional floor space proposed is located on the attic level, behind the primary roof form, ensuring it will not present with excessive bulk,
- The variation proposes is considered minor at just 5.8% or 12.48m²,
- Variation to the Manly LEP 2013 Cl. 4.4 FSR, control has been the subject of recent precedent for the following developments:
 - DA2023/0737 – 111 Frenchs Forest Road SEAFORTH, FSR Variation 2.8%,
 - DA2023/0697 - 3 Malvern Avenue MANLY NSW 2095, FSR Variation 8.17%,
 - DA2023/0166 - 21 Ocean Road MANLY NSW 2095, FSR Variation 12%,
 - DA2023/0749 - 47 Beatty Street BALGOWLAH HEIGHTS, FSR Variation 17.5%,
 - DA2022/2279 - 24 Fisher Street BALGOWLAH HEIGHTS, FSR Variation 7.2%,
 - DA2023/0819 - 13 Jamieson Avenue FAIRLIGHT, FSR Variation 5.1%,
 - DA2022/1471 - 8 B Beatty Street BALGOWLAH HEIGHTS, FSR Variation 20%,
 - DA202
 - DA2023/0814 - 13 Crescent Street FAIRLIGHT, FSR Variation 20.7%.
- The setting and context with similar FSR variations recently approved, demonstrates that a varied FSR is reasonable and that it is consistent with clause 1.3(c) and (d).

Future Development

- The proposed development will allow for alterations and additions to the existing semi-detached dwelling, to meet the housing needs of the residents,
- This represents an efficient use of an existing residential site, with all services readily available,
- The works do not result in any unreasonable impacts to neighbouring properties.
- The proposed works will not hinder any future development of the lot,
- The alterations proposed demonstrate fulfillment of clause 1.3(a), (b), (c) and (g).

Consistent with Zone Objectives

- The extent of the variation is considered to be in the public interest, as the proposal allows for alterations and additions to the existing dwelling house, on an existing residential site.
- The bulk and scale proposed is consistent with the existing built form and other dwellings in the locality, as such compliance with the FSR standard based on this



would be unreasonable, with clause 1.3(c) demonstrated as fulfilled.

Natural Environment

- The proposed development allows for the current and future housing needs of the residents to be met, without developing a greenfield site, representing an efficient use of existing developed land,
- The development does not require the removal of any trees and will have minimal environmental impact,
- The natural environment is unaffected by the departure to the development standard and it would be unreasonable for the development to be refused on this basis with Cl 1.3(b) satisfied.

Social and Economic Welfare

- The variation to the FSR will have a positive social impact, as it will allow the housing needs of the residents to be met in their current local community. It utilises existing services, satisfying Cl1.3(b). Accordingly, refusal of the development based on this reason would be unreasonable.

Appropriate Environmental Planning Outcome

- The works proposed do not represent an overdevelopment of the site and satisfies the objectives of the zone and the development standard as is detailed earlier in the report.

The sufficient environmental planning grounds stipulated above demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the FSR variation.

Clause 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*

Will the proposed development be in the public interest?

It is considered that alterations and additions to the existing semi-detached dwelling, on an existing residential site, does not raise any matters contrary to the public interest.

How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Act.

Strict compliance with the standard would hinder the attainment of the objects specified in section 1.3 of the Act



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

Strict numerical compliance with the 0.6:1 FSR development standard would hinder the development for the purpose of *promoting the orderly and economic use and development of land, promoting good design and amenity of the built environment and promoting the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.*

Conclusion

The proposed development is for alterations and additions to the existing semi-detached dwelling, on land zoned R1 – General Residential.

The development proposes a minor variation of 12.48m² or 5.8% to the FSR control, to create additional habitable rooms on the attic level. The variation does not result in any unreasonable amenity impacts due to the location of the additions, towards the rear of the site, behind the existing primary roof.



Strict numerical compliance is considered to be unnecessary and unreasonable given that the proposed variation sought is consistent with the underlying objectives of the control despite the numerical variation, of which have been reasonably satisfied under the provisions of Clause 4.6. The statement sufficiently demonstrates that compliance with the development standard is both unreasonable and unnecessary in this instance.

The proposed variation satisfies the objectives of the zone, underlying intent of Clause 4.6 and Clause 4.4, and therefore the merits of the proposed variation are considered to be worthy of approval.



Planner Declaration

Document Control Table

Document Purpose:	Clause 4.6 Variation Request	
Date	Prepared by	Approved by
24/09/2024	Naomi Lyons Senior Planner	Sarah McNeilly Director

Disclaimer

This report has been prepared by Watermark Planning with input from a number of other expert consultants (if relevant). Watermark Planning has prepared this document for the sole use of the Client and for a specific purpose, each as expressly stated in the document. No other party should rely on this document without the prior written consent of Watermark Planning.

Copyright © Watermark Planning
ABN 41 340 109 262



**19 CLIFFORD AVENUE,
FAIRLIGHT**

**CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS
(HEIGHT OF BUILDINGS)**



Report prepared for
Penny and Lee Palmer
May 2024

T 02-89010741 | E info@watermarkplanning.com.au | W watermarkplanning.com.au



1. Introduction

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

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

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

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



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

Commencing on 1 November 2023 Clause 4.6(3) and (4) of the MLEP 2013, states that development consent, that contravenes a development standard, must not be granted unless the consent authority is satisfied the applicant has demonstrated that:

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

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

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

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

2. Environmental Planning Instrument Details (Manly LEP 2013)

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

Manly Local Environmental Plan 2013

2.2 What is the zoning of the land?

R1 – General Residential

2.3 What are the objectives of the zone?

- *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.*

2.4 What is the development standard being varied?

Cl. 4.3 - Height of Buildings



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

Cl. 4.3 of the Manly Local Environmental Plan 2013

2.6 What are the objectives of the development standard?

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

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

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

The numeric value of the height of buildings development standard applicable to the subject site is a maximum of 8.5m.

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

The existing building has a maximum building height proposed is 9.7 metres and the development proposes to extend the attic, retaining the existing maximum height, as illustrated below.

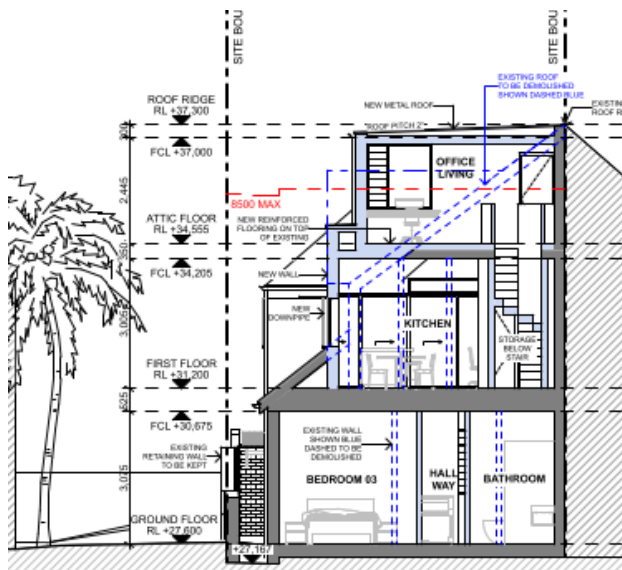


Figure 1. Plan Extract: Section BB Illustrating the existing and proposed building height.

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

The development proposes a variation of 1.2 metres or 14.1%.

3. NSW Land and Environment Court Case Law

Several key Land and Environment Court (NSW LEC) judgements have refined the manner in which variations to development standards are required to be approached. The key findings and direction of each of these matters are outlined in the following discussion.

3.1 *Wehbe v Pittwater* [2007] NSW LEC 827

The decision of Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827, (expanded on the findings in *Winten v North Sydney Council*), identified 5 ways in which the applicant might establish that compliance with a development standard is unreasonable or unnecessary. It was not suggested that the five ways were the only ways that a development standard could be shown to be unreasonable or unnecessary.

The five ways outlined in *Wehbe* include:



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

In the Micaul decision Preston CJ confirmed that the requirements mandated by SEPP 1 (as discussed in *Wehbe*) are only relevant in demonstrating that compliance with a development standard is unreasonable or unnecessary for the purpose of Clause 4.6(3)(a).

3.2 Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC

In the matter of *Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC*, initially heard by Commissioner Pearson, upheld on appeal by Justice Pain, it was found that an application under Clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe V Pittwater [2007] NSW LEC 827* and demonstrate the following:

1. Compliance with the particular requirements of Clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP;
2. That there are sufficient environment planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity);
3. That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone in which the site occurs;
4. All three elements of clause 4.6 have to be met and it is best to have different reasons for each but it is not essential.

3.3 Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7

In *Randwick City Council v Micaul Holdings*, the Court allowed a departure from development standards, provided the processes required by clause 4.6 are followed, a consent authority has



a broad discretion as to whether to allow a departure from development standards under clause 4.6, even where the variation is not justified for site or development specific reasons.

Preston CJ noted that *the Commissioner did not have to be satisfied directly that compliance with each development standard was unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the appellant's written request had adequately addressed the matter in clause 4.6(3)(a) that compliance with each development standard was unreasonable or unnecessary.*

3.4 Zhang v City of Ryde

Commissioner Brown reiterated that clause 4.6 imposes three preconditions which must be satisfied before the application could be approved:

1. The consent authority must be satisfied that the proposed development will be consistent with the objectives of the zone;
2. The consent authority must be satisfied that the proposed development will be consistent with the objects of the standard which is not met; and
3. The consent authority must be satisfied that the written request demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances and there are sufficient environmental planning grounds to justify contravening the development standard.

It is only if all of these conditions are met that consent can be granted to the application, subject to an assessment of the merits of the application.

The Commissioner applied the now familiar approach to determining consistency with zone objectives by considering whether the development was antipathetic to the objectives.

In contrast to four2five, the reasons relied on to justify the departure from the standards in this case were not necessarily site specific.

3.5 Action Pty Ltd v Woollahra Municipal Council [2018]

In Action Pty Ltd v Woollahra Municipal Council, the court demonstrated the correct approach to the consideration of clause 4.6 requests, including that the clause does not require that a development that contravenes a development standard, must have a neutral or better environmental planning outcome than one that does not.

4. Consideration

The following section addresses the provisions of clause 4.6 of the MLEP 2013 together with



principles established in the NSW Land and Environment Court Case Law outlined above.

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

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

The five ways outlined in *Wehbe* include:

4.1 Five (5) Part Test - *Wehbe v Pittwater*

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

The objectives of the standard are:

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

The proposed alterations and additions are appropriate and will retain and extend the existing maximum building height, resulting in a scale consistent with the existing building and surrounding properties. The additions are located on the attic level of the existing semi-detached dwelling and will not alter the existing topography on the site.

The area surrounding the subject site contains a number of 3 storey dwellings ensuring the development remains consistent with the locality. The variation to the building height control will not significantly alter the presentation of the dwelling to the street, as the attic addition is located towards the rear of the site, behind the existing primary roof.

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

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

Comment

The proposed built form retains the existing maximum building height on the site and the attic additions will not significantly add to the bulk and scale of the building, due to the location towards the rear of the site, behind the existing primary roof.



The proposed height exceedance is considered to be negligible in relation to bulk and scale and as such, it is considered this objective is met, despite the numerical variation.

(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 subject site and surrounding properties enjoy harbour views to the south and south-west. A site visit has been undertaken and it is considered the proposed development will not result in any view loss impacts, as the properties located to the north and north-west of the subject site sit significantly upslope. In addition, the proposed works are located behind the existing primary roofline ensuring views across the site are retained.

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

(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 proposed variation to height does not result in any unreasonable solar access impacts to adjoining dwellings, as assessed within the SEE. Given that compliant solar access is achieved, despite the height variation sought, it is considered the underlying objective of this clause has been satisfied.

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

Comment

Not applicable as the subject site is not located in a recreation or environmental protection zone.

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



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

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

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

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

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

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

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

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

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

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

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

Context

- The existing dwelling has a non-compliant building height of 9.7 metres and the development proposes to extend the existing attic level, retaining the existing maximum building height,
- The variation of 1.2 metres or 14.1% is the result of accommodating the existing built form and the resulting development remains consistent with other 3 storey dwellings in the locality,



- Amenity impacts are minimised due to the location of the attic addition, towards the rear of the site, behind the existing primary roof. The apparent bulk through the variation is negligible and the resulting development remains consistent with the streetscape, satisfying Cl1.3(g).
- Variation to the Manly LEP 2013 Cl. 4.3 Building Height control has been the subject of recent precedent for the following developments:
 - DA2023/0495 – 40 Bower Street MANLY, Height Variation 3.5%,
 - DA2023/0572 - 144 Griffiths Street BALGOWLAH, Height Variation 4.1%,
 - DA2022/2269 - 36 Beatrice Street BALGOWLAH HEIGHTS, Height Variation 6.4%,
 - DA2023/0325 - 9 Eustace Street MANLY, Height Variation 7.2%,
 - DA2023/0706 - 19 Harvey Street SEAFORTH, Height Variation 10.6%
 - DA2023/0359 - 33 Beatty Street BALGOWLAH HEIGHTS, Height Variation 12.9%
 - DA2023/0749 - 9 Francis Street FAIRLIGHT, Height Variation 15.3%
 - DA2022/2279 - 24 Fisher Street BALGOWLAH HEIGHTS, Height Variation 8.9%
 - DA2023/0819 - 13 Jamieson Avenue FAIRLIGHT, Height Variation 9.4%
- The setting and context with similar height variations recently approved, demonstrates that a varied building height is reasonable and that it is consistent with clause 1.3(c) and (d).

Future Development

- The proposed development will allow for alterations and additions to the existing semi-detached dwelling, to meet the housing needs of the residents,
- This represents an efficient use of an existing residential site, with all services readily available,
- The works do not result in any unreasonable impacts to neighbouring properties.
- The proposed works will not hinder any future development of the lot,
- The alterations proposed demonstrate fulfillment of clause 1.3(a), (b), (c) and (g).

Consistent with Zone Objectives

- The extent of the variation is considered to be in the public interest, as the proposal allows for alterations and additions to the existing dwelling house, on an existing residential site.
- The bulk and scale proposed is consistent with the existing built form and other dwellings in the locality, as such compliance with the height standard based on this would be unreasonable, with clause 1.3(c) demonstrated as fulfilled.



Natural Environment

- The proposed development allows for the current and future housing needs of the residents to be met, without developing a greenfield site, representing an efficient use of existing developed land,
- The development does not require the removal of any trees and will have minimal environmental impact,
- The natural environment is unaffected by the departure to the development standard and it would be unreasonable for the development to be refused on this basis with Cl 1.3(b) satisfied.

Social and Economic Welfare

- The variation to the current height control, as detailed above will have no social impacts for the site or local area satisfying Cl1.3(b) and accordingly refusal of the development based on this reason would be unreasonable.
- The height variation will have no economic impacts for the site or the local area satisfying Cl1.3(b) and accordingly refusal of the development based on this reason would be unreasonable.

Appropriate Environmental Planning Outcome

- The variation to the current height control, is appropriate, as the existing maximum building height is retained on the site and the additions are located behind the primary roof form presenting to the street.
- The apparent bulk through the variation is negligible and the resulting development remains consistent with the streetscape, satisfying Cl1.3(g).

The sufficient environmental planning grounds stipulated above demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the building height variation.

Clause 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*

Will the proposed development be in the public interest?

It is considered that alterations and additions to the existing semi-detached dwelling, on an existing residential site, does not raise any matters contrary to the public interest.

How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Act.



Strict compliance with the standard would hinder the attainment of the objects specified in section 1.3 of the Act

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

Strict compliance with the 8.5 metres height development standard would hinder the development for the purpose of *promoting the orderly and economic use and development of land, promoting good design and amenity of the built environment and promoting the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.*

5. Conclusion



The proposed development is for alterations and additions to the existing semi-detached dwelling, on land zoned R1 – General Residential.

As stated above the existing dwelling has a non-compliant building height of 9.7 metres and the development proposes to extend the existing attic level, retaining the existing maximum building height (resulting in a variation of 1.2 metres or 14.1% to the current building height control).

The variation does not result in any unreasonable amenity impacts due to the location of the attic addition, towards the rear of the site, behind the existing primary roof, ensuring the resulting development is of a similar scale to surrounding properties.

Strict numerical compliance is considered to be unnecessary and unreasonable given that the proposed variation sought is consistent with the underlying objectives of the control despite the numerical variation of which have been reasonably satisfied under the provisions of Clause 4.6.

The proposed variation satisfies the objectives of the zone, underlying intent of Clause 4.6 and Clause 4.3, and therefore the merits of the proposed variation are considered to be worthy of approval.



Planner Declaration

Document Control Table

Document Purpose:	Clause 4.6 Variation Request	
Date	Prepared by	Approved by
28/05/2024	Naomi Lyons Senior Planner	Sarah McNeilly Director

Disclaimer

This report has been prepared by Watermark Planning with input from a number of other expert consultants (if relevant). Watermark Planning has prepared this document for the sole use of the Client and for a specific purpose, each as expressly stated in the document. No other party should rely on this document without the prior written consent of Watermark Planning.

Copyright © Watermark Planning
ABN 41 340 109 262

ITEM 3.6	DA2024/1048 - 19 BARANBALI AVENUE SEAFORTH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
-----------------	---

PURPOSE

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

RECOMMENDATION

- A.** That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 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 DA2024/1048 for alterations and additions to a dwelling house on land at Lot 9 DP 27239, 19 Baranbali Avenue SEAFORTH, subject to the conditions set out in the Assessment Report.

Reporting manager	Rodney Piggott
TRIM file ref	2024/727434
Attachments	1 Assessment Report 2 Site Plan and Elevations 3 Clause 4.6



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/1048
Responsible Officer:	Julie Edwards
Land to be developed (Address):	Lot 9 DP 27239, 19 Baranbali Avenue SEAFORTH NSW 2092
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	The Trustee For Varley Family Trust
Application Lodged:	27/08/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	04/09/2024 to 18/09/2024
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 16.47%
Recommendation:	Approval
Estimated Cost of Works:	\$ 620,000.00

EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) due to the application proposing a greater than 10% variation to the Height of Buildings development standards.

No submissions were received.

Critical assessment issues relates to the height of buildings.

The Clause 4.6 request for the non-compliance with height standard arises from the excavation of the garage level which results in a 16.47% variation.



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

PROPOSED DEVELOPMENT IN DETAIL

The application seeks approval for alterations and additions to a dwelling house. The works include the following:

Lower Ground Floor:

- Internal staircase connection to ground level.

Ground Floor:

- Internal reconfigurations to create a new bedroom, bathroom, conversion of existing bathroom to an ensuite for Bedroom 1 and new rumpus room, and
- New internal staircase to connect each floor.

First Floor:

- New first floor to provide an open plan living/dining/kitchen with butlers pantry and powder room, and
- New rear facing terrace with bridge connection to rear yard.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - Zone R2 Low Density Residential



Manly Local Environmental Plan 2013 - 4.3 Height of buildings
Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

SITE DESCRIPTION

Property Description:	Lot 9 DP 27239 , 19 Baranbali Avenue SEAFORTH NSW 2092
Detailed Site Description:	The subject site consists of one allotment located on the north-western side of Baranbali Avenue. The site is irregular in shape with a frontage of 14.5m along Baranbali Avenue and a depth of 36.9m. The site has a surveyed area of 917m². The site is located within the R2 Low Density Residential zone and accommodates single storey dwelling with a lower level garage and undercroft area. The site is sloping and rises up from street level approximately 8m to the rear of the site. The site has medium an large trees at the rear and large rock shelf. There are no known threatened species. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by one to three storey residential dwellings of varying architectural styles. Site Inspection A site inspection was undetaken 4 October 2024.

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)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent.



Section 4.15 Matters for Consideration	Comments
Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	These matters have been addressed via a condition of consent. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>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 04/09/2024 to 18/09/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	<i>Supported - subject to conditions</i> The proposal does not require OSD and connection to the existing kerb outlet is acceptable. The site is burdened by a Council drainage easement and pipeline. The proposed works will not impact upon this infrastructure or easement. Development Engineering support the proposal, subject to conditions as recommended.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No. A1758565 dated 05 August 2024).



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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.9m	16.47%	No



Floor Space Ratio	FSR: 0.45:1 (412.65m ²)	FSR: 0.19:1 (181.95m ²)	N/A	Yes
-------------------	-------------------------------------	-------------------------------------	-----	-----

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes

Detailed Assessment

Zone R2 Low Density Residential

The underlying objectives of the R2 Low Density Residential zone:

- To provide for the housing needs of the community within a low density residential environment.*
Comment:
The proposed development is for residential purposes, being alterations and additions to a dwelling.

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:
Not applicable. The proposed modifications retain the residential use of the site.

It is considered that the development satisfies this objective.

4.3 Height of buildings

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.9m
Percentage variation to requirement:	16.47%



4.3 Height of buildings

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

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

Comment:

The proposed building height and roof form are consistent with the topography and prevailing building heights and streetscape character. The roof form will be generally consistent with the existing building and surrounding, development in the vicinity. The dwelling is appropriately articulated using recessed and modulated walls, fenestration, balconies and eaves to break up built form.

b) to control the bulk and scale of buildings,

Comment:

The proposed dwelling house is acceptable with respect to the proposed variation to the Height of buildings development standard and all built form controls under the MDCP, including setbacks and wall heights. Additionally, the proposed development includes acceptable total open space and landscaped area. This demonstrates the dwelling is of a bulk and scale anticipated for the subject site by the controls, and that the footprint of the dwelling is not excessive.

c) to minimise disruption to the following—

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

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

(iii) views between public spaces (including the harbour and foreshores),

Comment:

The proposed development is designed and sited so as not to result in any unreasonable view loss to or from public or private land.

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 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 MDCP, as detailed in the relevant sections of this report.

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

Comment:

The development is not within a recreation or environmental protection zone.

Conclusion:

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

Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:

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

Comment:



The subject application is made under Section 4.55 of the EPA Act. As such, Clause 4.6 does not strictly apply and the concurrence of the Secretary is not required to be obtained.

4.6 Exceptions to development standards

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

Development standard: Clause 4.3 Height of buildings

Requirement: 8.5m

Proposed: 6.9m

Percentage of variation: 16.47%

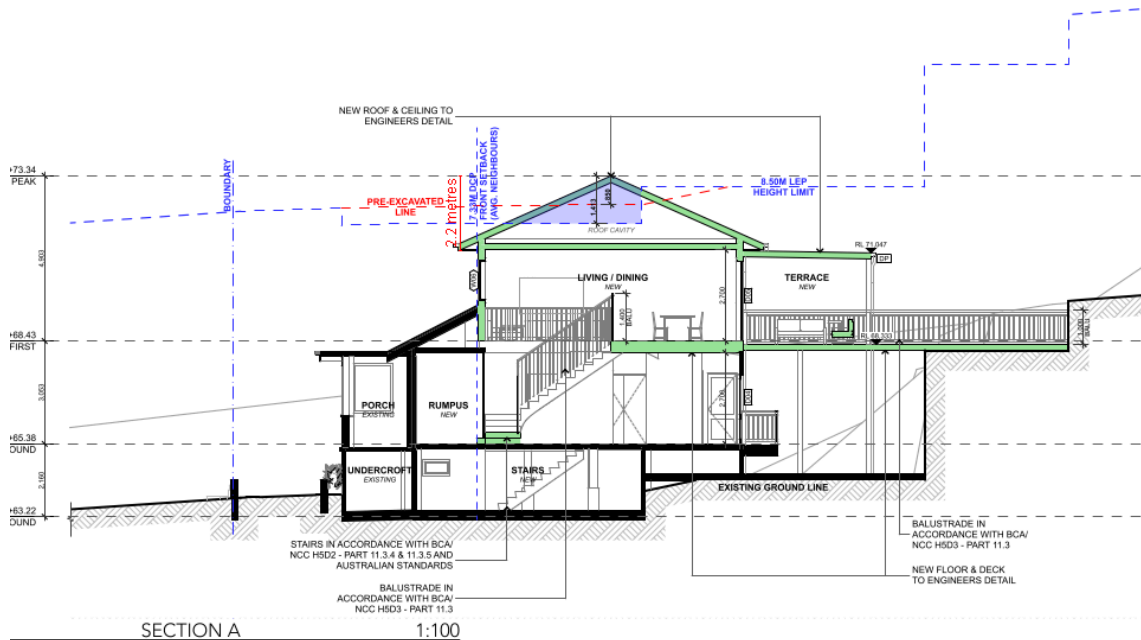


Figure 1: Height of Building variation shaded blue



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

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

Comment:

Council is satisfied that the Applicant has demonstrated that compliance with Clause 4.3 Height of buildings is unreasonable or unnecessary in the circumstances of this application for the following reasons:

- The building height proposed is consistent with the built form characteristics established by surrounding development and development generally within the site's visual catchment.
- The sloping topography contributes to the building breach with the top of the pitched roof being the area of non-compliance.
- The existing pitched roof form is continued to the new first floor level and considered a better streetscape outcome than a flat roof design that would not be characteristic with the existing form of the dwelling.
- The height breach occurs to the proposed first floor addition above the excavated garage level and will present to the street as a 2 storey dwelling with lower level garage.
- No public views are impacted as a result of the offending area of noncompliance.
- The proposal has been assessed against the view sharing planning principle and determined that adverse view impacts will occur as a result of the works proposed.
- Shadow diagrams have been provided which demonstrate compliant levels of solar access achieved to neighbouring properties.

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

Comment:

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

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

The Clause 4.6 Request argues, in part:

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

- *The pitched roof is the offending area of the development and that design choice is reflective of the existing character of the dwelling to provide a more cohesive first floor addition. In this*



regard, it is considered an appropriate streetscape outcome to provide a pitched roof to the new first floor.

- The first floor level is setback further from the front façade and is of a modest scale in comparison to the footprint of the dwelling. The additional front setback to the new first floor addition will minimise its visual bulk when viewed from the street. The 3D image provided below gives a representation of breach and the scale of the first floor.
- When extrapolating a height plane from surveyed natural levels the proposal is 850mm above the 8.5m development standard and results in only a minor portion of the tip of the roof pitch being non-compliant. When using the extrapolation method the offending area is minor and represents a 10% variation. The bulk of the dwelling would sit below the 8.5m. This is demonstrated in the image above with the crossfall across the site exacerbating the breach when interpolating the ground level.
- The breach does not raise any unreasonable amenity impacts with regard to overshadowing, privacy and view loss. The additional overshadowing to No. 17 is minor and confined to the afternoon. No privacy impacts occurs as a result of the offending eaves breaching the height standard. No views loss occurs as a result either.

I have formed the considered opinion that sufficient environmental planning grounds exist to justify the variation including the compatibility of the height, bulk and scale of the development, as reflected by building height, with the built form characteristics established by adjoining development and development generally within the site's visual catchment."

Planner's Comment:

The applicant has satisfactorily demonstrated that the works are consistent with the objects of the EP&A Act, specifically the following objects of the EP&A Act:

- The development promotes good design and amenity of the built environment, noting that the proposed development will not unreasonably compromise the amenity of adjoining residential and other development within the immediate vicinity.
- The development promotes the proper construction and maintenance of buildings, in so far as the proposed alterations and additions is a necessary upgrade of the ageing development.

Public Interest:

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

Conclusion:

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

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

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 570.88m ²	Requirement	Proposed	Complies
4.1.2.1 Wall Height	N: 6.7m (based on gradient 1:30)	6.4m	Yes



	W: 8m (based on gradient 1.4+)	7.6m	Yes
4.1.2.2 Number of Storeys	2	2	Yes
4.1.2.3 Roof Height	Height: 2.5m	2.2m	Yes
	Pitch: maximum 35 degrees	24 degrees	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line	7.3m, consistent with prevailing setback	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	N - 2.1m (based on wall height) S - 2.5m (based on wall height)	7.6m 7m	Yes Yes
	Windows: 3m	No change	Yes
4.1.4.4 Rear Setbacks	8m	13.8m	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area	No change (81.5%)	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	64.51%	Yes
4.1.5.3 Private Open Space	18m ² per dwelling	18m ² +	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	No change	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	No change	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4.1 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
3.5.1 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
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

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 \$6,200 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$620,000.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- 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 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

PLANNING CONCLUSION

This proposal, for alterations and additions to a dwelling house has been referred to the Development Determination Panel (DDP) due to the application proposing a greater than 10% variation to the Height of Buildings development standards under the MLEP.

The critical assessment issues that were addressed, in detail, within the assessment report include building height.

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

The proposal has therefore been recommended for approval.

REASON FOR DETERMINATION

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

RECOMMENDATION

That Northern Beaches Council, as the consent authority, vary the development standard contained within Clause 4.3 Height of Buildings, pursuant to Clause 4.6 of the 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 DA2024/1048 for Alterations and additions to a dwelling house on land at Lot 9 DP 27239, 19 Baranbali Avenue, SEAFORTH, 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
DA04	B	Site Analysis	Progressive Plans	09.10.24
DA05	B	Site - Waste - Sediment Plan	Progressive Plans	09.10.24
DA06	B	Existing Lower Ground Floor Plan	Progressive Plans	09.10.24
DA07	B	Proposed Lower Ground Floor Plan	Progressive Plans	09.10.24
DA08	B	Existing Ground Floor Plan	Progressive Plans	09.10.24
DA09	B	Proposed Ground Floor Plan	Progressive Plans	09.10.24
DA10	B	Proposed First Floor Plan	Progressive Plans	09.10.24
DA11	B	Existing Roof Plan	Progressive Plans	09.10.24
DA12	B	Proposed Roof / Concept Stormwater Plan	Progressive Plans	09.10.24
DA13	B	Elevation - North	Progressive Plans	09.10.24
DA14	B	Elevation - South	Progressive Plans	09.10.24
DA15	B	Elevation - East	Progressive Plans	09.10.24
DA16	B	Elevation - West	Progressive Plans	09.10.24
DA17	B	Section - A	Progressive Plans	09.10.24
DA18	B	Section - B	Progressive Plans	09.10.24



DA19	B	Finishes Board	Progressive Plans	09.10.24
------	---	----------------	-------------------	----------

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate	Certificate number: A1758565	Progressive Building Design	05 August 2025
Geotechnical Assessment	Ref: AG 24325	Ascent Geo Geotechnical Consulting	21 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	02/10/2024

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

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

3. Prescribed Conditions

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



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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

4. General Requirements

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

Demolition and excavation works are restricted to:



- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Construction certificate plans are to be in accordance with all finished levels identified on approved plans. Notes attached to plans indicating tolerances to levels are not approved.
- (c) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (d) At all times after the submission of the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (e) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (f) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (g) Prior to the release of the Construction Certificate, payment of the following is required:
 - i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
 - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
 - iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.
- (h) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (i) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (j) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.



- (k) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (l) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

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

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



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

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$6,200.00 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 \$620,000.00.

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

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

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

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

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. Stormwater Disposal

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent in accordance with AS/NZS 3500 and Council's Water Management for Development Policy, prepared by an appropriately qualified and practicing Civil Engineer who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG), indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to the existing kerb outlet.

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.

8. 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.

9. 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.

10. **Waste Management Plan**

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

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

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

11. **Compliance with Standards**

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

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

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

12. **Sydney Water "Tap In"**

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

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

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

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

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

DURING BUILDING WORK

13. **Road Reserve**

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

Reason: Public safety.

14. **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.

15. **Demolition Works - Asbestos**

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifier, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

16. **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

17. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified Civil Engineer.

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

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



18. **Garbage and Recycling Facilities**

All internal walls of the storage area shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.

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

Reason: To prevent pollution of the environment and to protect the amenity of the area.

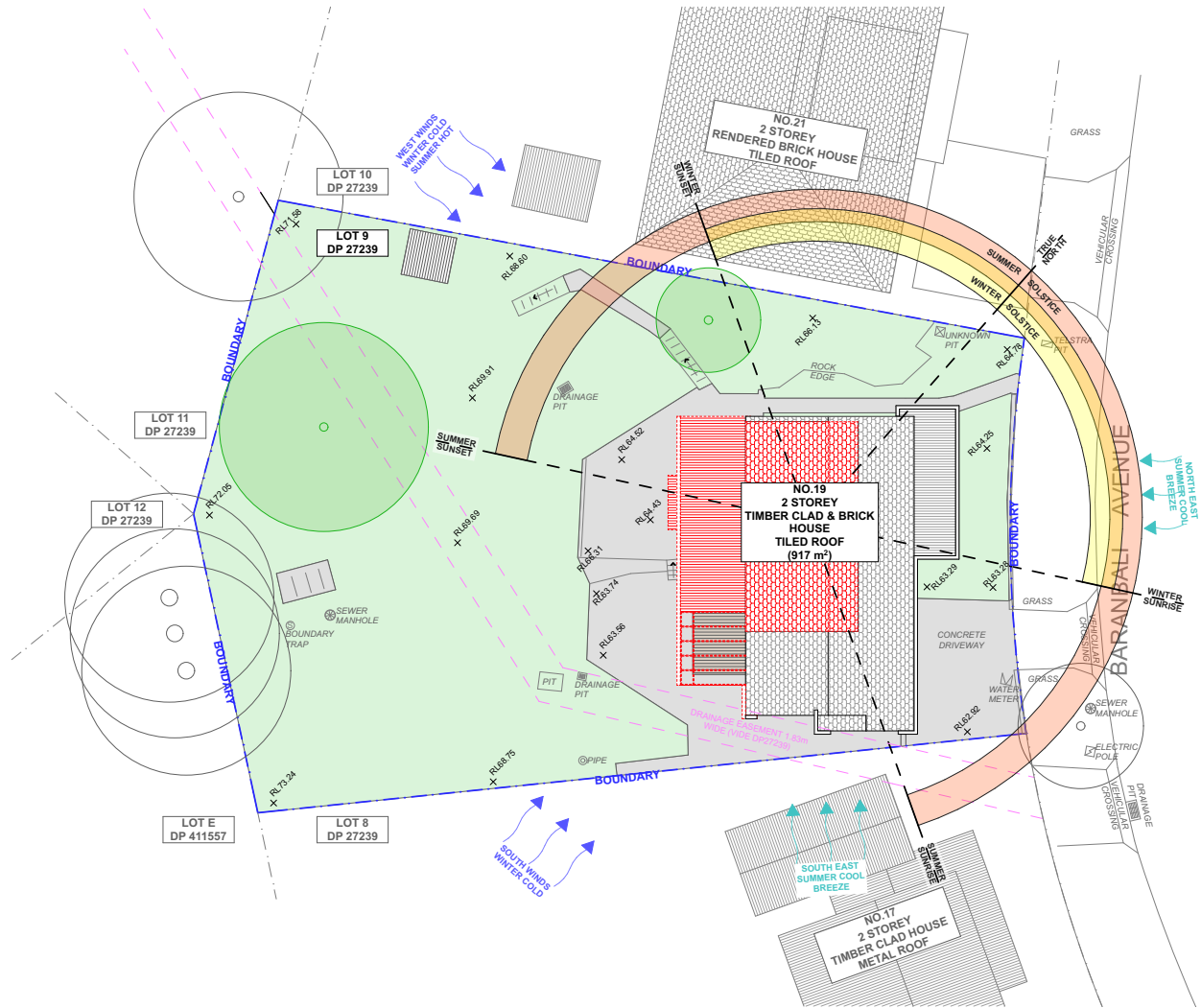
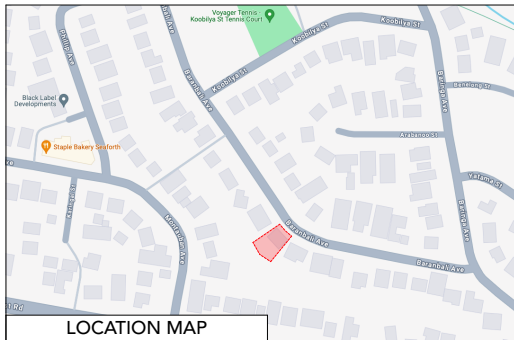
In signing this report, I declare that I do not have a Conflict of Interest.

Signed

Rodney Piggott, Manager Development Assessments

The application is determined on //, under the delegated authority of:

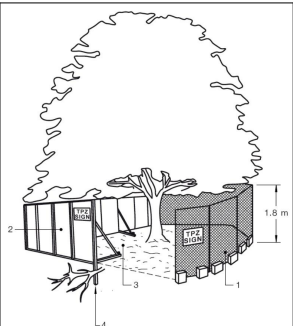
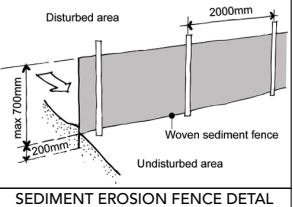
Rodney Piggott, Manager Development Assessments



1 SITE ANALYSIS 1:200

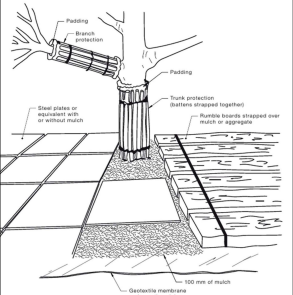
NOTE: ALL DEMOLITION WORK TO BE CARRIED OUT IN ACCORDANCE WITH AS2601-2001

 progressive plans 0400 699 850 16 BOWLING GREEN LANE AVALON BEACH, NSW, 2107 HELLO@PROGRESSIVEPLANS.COM.AU WWW.PROGRESSIVEPLANS.COM.AU	NOTES THE BUILDER SHALL CHECK AND VERIFY ALL DIMENSIONS AND VERIFY ALL ERRORS AND OMISSIONS TO THE DRAFTING OFFICE. DO NOT SCALE THE DRAWING. DRAWINGS SHALL NOT BE USED FOR CONSTRUCTION PURPOSES UNTIL ISSUED BY THE DRAFTING OFFICE FOR CONSTRUCTION AND NOTED ON THE TITLE BLOCK. THE WORK MUST BE VERIFIED BY STRUCTURAL ENGINEER BEFORE WORK COMMENCES.	REV	NOTES	INITIAL	DATE	LEGEND         	ABBREVIATIONS DP: DEPOSIT PLAN RL: REDUCED LEVEL SP: STRATA PLAN	NORTH POINT 	Clients: DANIEL HEALEY SITE ADDRESS: 19 BARANBALI AVENUE SEAFORTH, NSW, 2092	DRAWING TITLE: SITE ANALYSIS	
		A	DA SET	SB	05.08.24					SCALE: @A3	DATE: 10/10/2024
B	DA SET - RF1		09.10.24	PROJECT NO: 1089	DRAWING NO: DA04						



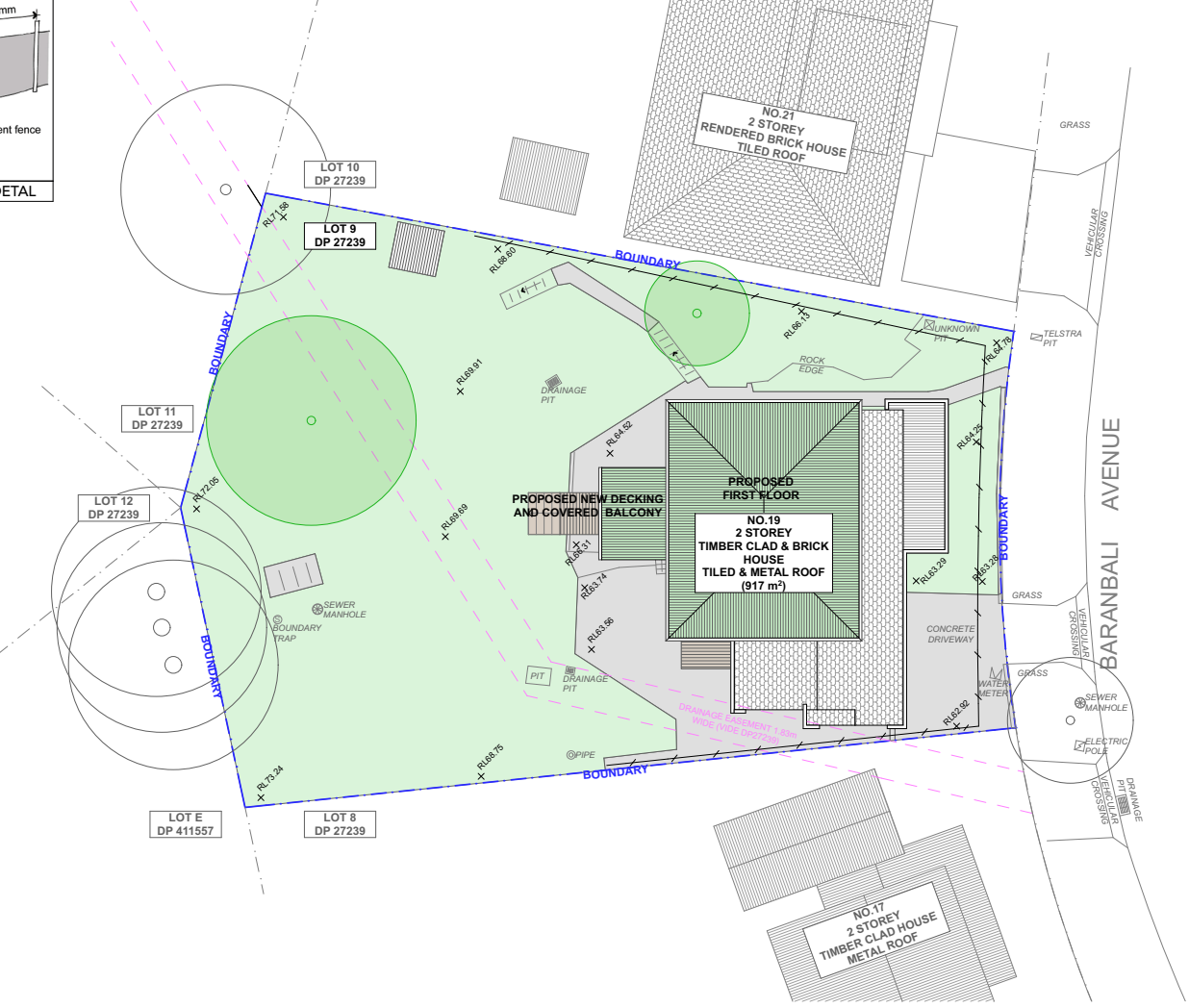
TREE PROTECTION ZONE (TPZ) FENCING (WHEN POSSIBLE):

1. CHAIN WIRE MESH PANELS WITH SHADE CLOTH (IF REQUIRED) ATTACHED, HELD IN PLACE WITH CONCRETE FEET.
2. ALTERNATIVE PLYWOOD OR WOODEN PALING FENCE PANELS. THE FENCING MATERIAL ALSO PREVENTS BUILDING MATERIALS OR SOIL ENTERING THE TPZ.
3. MULCH INSTALLATION ACROSS SURFACE OF TPZ (AT THE DISCRETION OF THE PROJECT ARBORIST). NO EXCAVATION, CONSTRUCTION ACTIVITY, GRADE CHANGES, SURFACE TREATMENT OR STORAGE OF MATERIALS OF ANY KIND IS PERMITTED WITHIN THE TPZ.
4. BRACING IS PERMISSIBLE WITHIN THE TPZ. INSTALLATION OF SUPPORTS TO AVOID DAMAGING ROOTS.



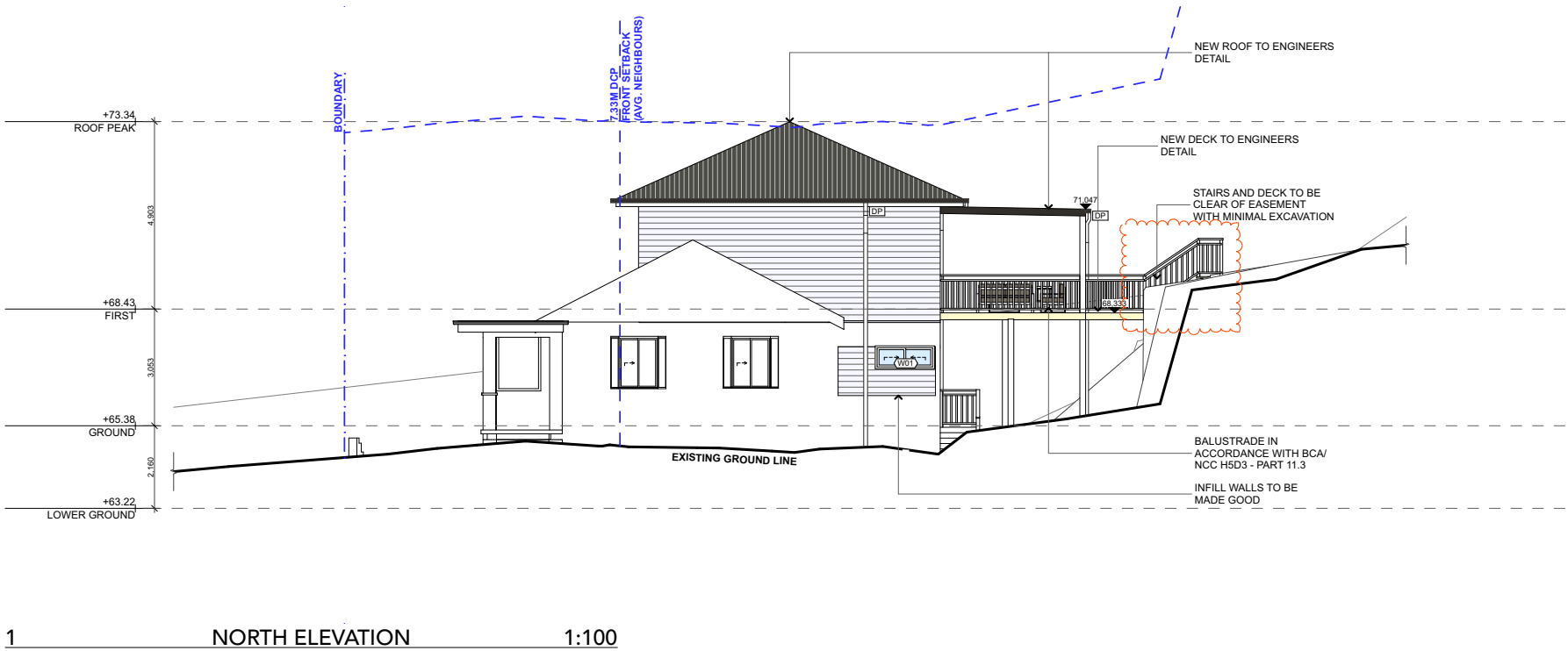
TREE PROTECTION ZONE (TPZ) FENCING (NOT POSSIBLE):

1. FOR TRUNK AND BRANCH PROTECTION USE BOARDS AND PADDING THAT WILL PREVENT DAMAGE TO BARK. BOARDS ARE TO BE STRAPPED TO TREES, NOT NAILED, OR SCREWED.
2. RUMBLE BOARDS SHOULD BE OF SUITABLE THICKNESS TO PREVENT SOIL COMPACTION AND ROOT DAMAGE.



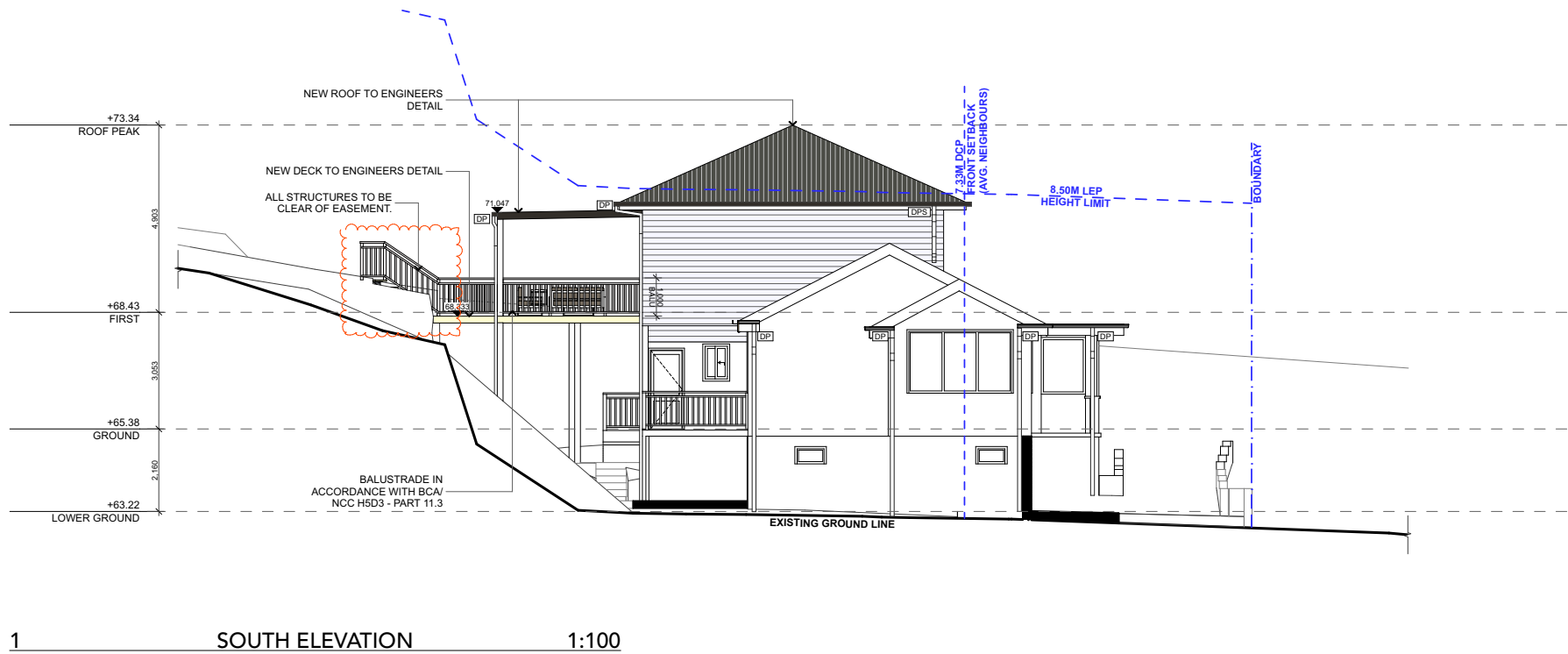
1 SITE - WASTE - SEDIMENT PLAN 1:200

 0400 699 850 16 BOWLING GREEN LANE AVALON BEACH, NSW, 2107 HELLO@PROGRESSIVEPLANS.COM.AU WWW.PROGRESSIVEPLANS.COM.AU	NOTES THE BUILDER SHALL CHECK AND VERIFY ALL DIMENSIONS AND VERIFY ALL ERRORS AND OMISSIONS TO THE DRAFTING OFFICE. DO NOT SCALE THE DRAWING. DRAWINGS SHALL NOT BE USED FOR CONSTRUCTION PURPOSES UNTIL ISSUED BY THE DRAFTING OFFICE FOR CONSTRUCTION AND NOTED ON THE TITLE BLOCK. THE WORK MUST BE VERIFIED BY STRUCTURAL ENGINEER BEFORE WORK COMMENCES.		REV. A B	NOTES. DA SET DA SET - R/F1	INITIAL SB LW	DATE 05.09.24 09.10.24	LEGEND  EXISTING  DEMOLISHED  EXISTING ROOF  PROPOSED ROOF  LANDSCAPE / GRASS  CONCRETE / PAVERS  TIMBER DECK  POOL / WATER  SEDIMENT EROSION FENCE	ABBREVIATIONS DP: DEPOSIT PLAN RL: REDUCED LEVEL SP: STRATA PLAN	NORTH POINT 	CUSTOMER: DANIEL HEALEY	DRAWING TITLE: SITE - WASTE - SEDIMENT PLAN	
										SITE ADDRESS: 19 BARANBALI AVENUE SEAFORTH, NSW, 2092	SCALE: 1:200 @ A3	DATE: 10/10/2024
											PROJECT NO: 1089	DRAWING NO: DA05



NOTE: LEP HEIGHT LIMIT ENCROACHMENT
BEST REPRESENTED IN SECTION

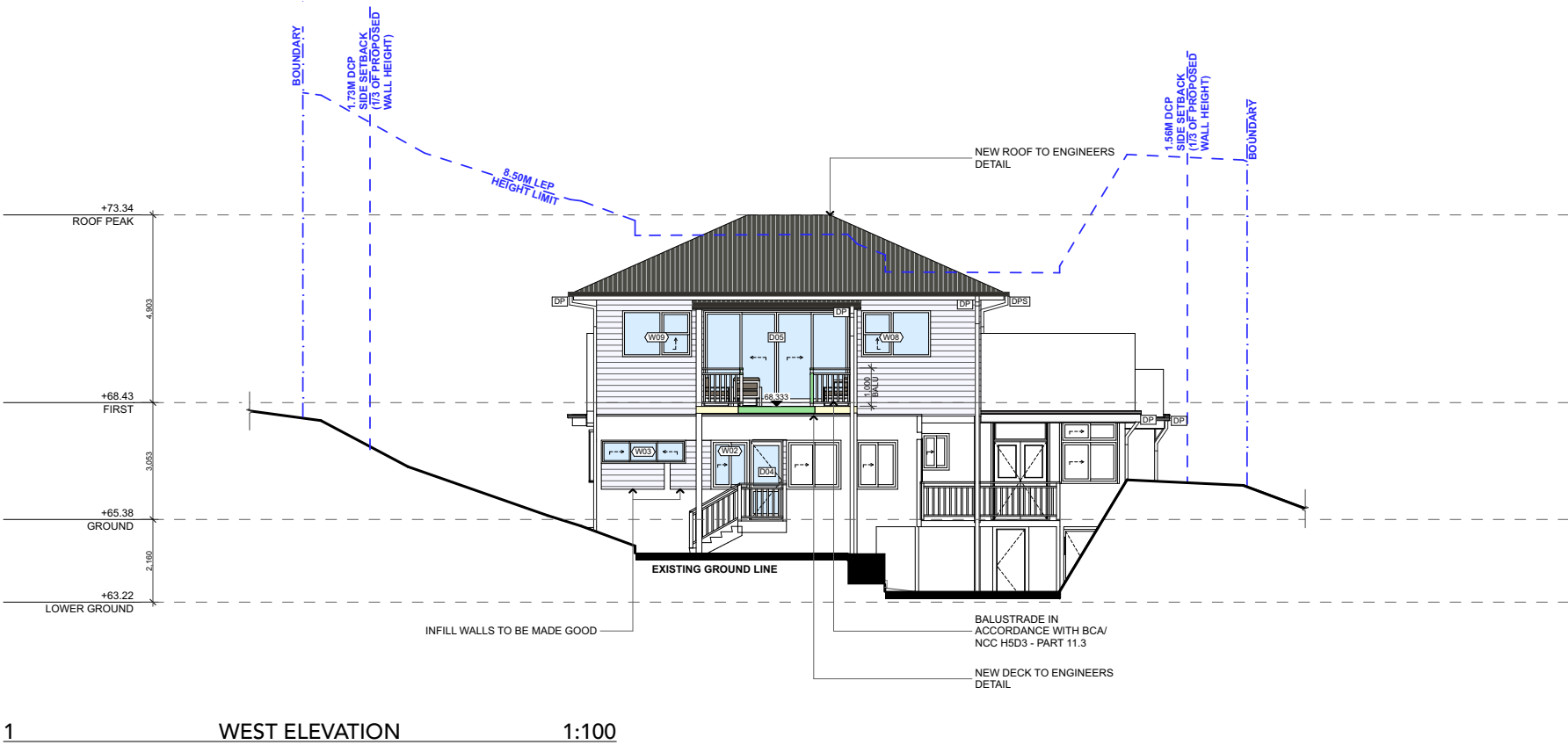
 progressive plans 0400 699 850 16 BOWLING GREEN LANE AVALON BEACH, NSW, 2107 HELLO@PROGRESSIVEPLANS.COM.AU WWW.PROGRESSIVEPLANS.COM.AU	NOTES THE BUILDER SHALL CHECK AND VERIFY ALL DIMENSIONS AND VERIFY ALL ERRORS AND OMISSIONS TO THE DRAFTING OFFICE. DO NOT SCALE THE DRAWING. DRAWINGS SHALL NOT BE USED FOR CONSTRUCTION PURPOSES UNTIL ISSUED BY THE DRAFTING OFFICE FOR CONSTRUCTION AND NOTED ON THE TITLE BLOCK. THE WORK MUST BE VERIFIED BY STRUCTURAL ENGINEER BEFORE WORK COMMENCES.	REV.	NOTES.	INITIAL	DATE	LEGEND  EXISTING  DEMOLISHED  CUT THROUGH PROPOSED  WEATHERBOARD WHITE - MATCH EXISTING  TIMBER FLOORBOARDS OAK FINISH OR SIMILAR  CB WOODLAND GREY OR SIMILAR  GLASS	ABBREVIATIONS CPD: CUPBOARD DP: DOWNPIPE DPS: DOWN PIPE SPITTER DPRH: DOWN PIPE RAIN HEAD PFL: FINISHED FLOOR LEVEL HWS: HOT WATER SYSTEM RL: REDUCED LEVEL	CLIENTS: DANIEL HEALEY SITE ADDRESS: 19 BARANBALI AVENUE SEAFORTH, NSW, 2092	DRAWING TITLE: ELEVATION - NORTH			
		A	DA SET	SB	05.09.24				SCALE: 1:100 @A3	DATE: 10/10/2024		
		B	DA SET - RF1	LW	09.10.24							
											PROJECT NO: 1089	DRAWING NO: DA13



NOTE: LEP HEIGHT LIMIT ENCROACHMENT
BEST REPRESENTED IN SECTION

 progressive plans 0400 699 850 16 BOWLING GREEN LANE AVALON BEACH, NSW, 2107 HELLO@PROGRESSIVEPLANS.COM.AU WWW.PROGRESSIVEPLANS.COM.AU	NOTES THE BUILDER SHALL CHECK AND VERIFY ALL DIMENSIONS AND VERIFY ALL ERRORS AND OMISSIONS TO THE DRAFTING OFFICE. DO NOT SCALE THE DRAWING. DRAWINGS SHALL NOT BE USED FOR CONSTRUCTION PURPOSES UNTIL ISSUED BY THE DRAFTING OFFICE FOR CONSTRUCTION AND NOTED ON THE TITLE BLOCK. THE WORK MUST BE VERIFIED BY STRUCTURAL ENGINEER BEFORE WORK COMMENCES.	REV.	NOTES.	INITIAL	DATE	LEGEND EXISTING DEMOLISHED CUT THROUGH PROPOSED	WEATHERBOARD WHITE - MATCH EXISTING TIMBER FLOORBOARDS OAK FINISH OR SIMILAR CB WOODLAND GREY OR SIMILAR GLASS	ABBREVIATIONS CPD: CUPBOARD DP: DOWNPIPE DPS: DOWN PIPE SPITTER DPRH: DOWN PIPE RAIN HEAD PFL: FINISHED FLOOR LEVEL HWS: HOT WATER SYSTEM RL: REDUCED LEVEL	CLIENTS: DANIEL HEALEY SITE ADDRESS: 19 BARANBALI AVENUE SEAFORTH, NSW, 2092	DRAWING TITLE: ELEVATION - SOUTH	
		A	DA SET	SB	05.08.24					SCALE: 1:100 @A3	DATE: 10/10/2024
		B	DA SET - RF1	LW	09.10.24					PROJECT NO: 1089	DRAWING NO: DA14

 progressive plans 0400 699 850 16 BOWLING GREEN LANE AVALON BEACH, NSW, 2107 HELLO@PROGRESSIVEPLANS.COM.AU WWW.PROGRESSIVEPLANS.COM.AU	NOTES THE BUILDER SHALL CHECK AND VERIFY ALL DIMENSIONS AND VERIFY ALL ERRORS AND OMISSIONS TO THE DRAWING BEFORE PROCEEDING TO SCALE THE DRAWING. DRAWINGS SHALL NOT BE USED FOR CONSTRUCTION PURPOSES UNTIL ISSUED BY THE DRAFTING OFFICE FOR CONSTRUCTION AND NOTED ON THE TITLE BLOCK. THE WORK MUST BE VERIFIED BY STRUCTURAL ENGINEER BEFORE WORK COMMENCES.	REV.	NOTES.	INITIAL	DATE	LEGEND		ABBREVIATIONS	Clients:	DRAWING TITLE:
		A	DA SET	SB	05.08.24	EXISTING DEMOLISHED CUT THROUGH PROPOSED	WEATHERBOARD WHITE - MATCH EXISTING TIMBER FLOORBOARDS OAK FINISH OR SIMILAR CEILING WOODLAND GREY OR SIMILAR GLASS	CPD: CUPBOARD DP: DOWNPIPE DS: DOWN PIPE SPITTER DWH: DOWN PIPE RAIN HEAD FF: FINISHED FLOOR LEVEL HW: HOT WATER SYSTEM RL: REDUCED LEVEL	DANIEL HEALEY 19 BARANBALI AVENUE SEAFORTH, NSW, 2092	ELEVATION - EAST SCALE: 1:100 @A3 DATE: 10/10/2024 PROJECT NO: 1089 DRAWING NO: DA15
B	DA SET - RF1	SW	09.10.24							



NOTE: LEP HEIGHT LIMIT ENCROACHMENT
BEST REPRESENTED IN SECTION.
SIDE SETBACKS BEST REPRESENTED IN PLANS

 progressive plans 0400 699 850 16 BOWLING GREEN LANE AVALON BEACH, NSW, 2107 HELLO@PROGRESSIVEPLANS.COM.AU WWW.PROGRESSIVEPLANS.COM.AU	NOTES THE BUILDER SHALL CHECK AND VERIFY ALL DIMENSIONS AND VERIFY ALL ERRORS AND OMISSIONS TO THE DRAFTING OFFICE. DO NOT SCALE THE DRAWING. DRAWINGS SHALL NOT BE USED FOR CONSTRUCTION PURPOSES UNTIL ISSUED BY THE DRAFTING OFFICE FOR CONSTRUCTION AND NOTED ON THE TITLE BLOCK. THE WORK MUST BE VERIFIED BY STRUCTURAL ENGINEER BEFORE WORK COMMENCES.	REV.	NOTES.	INITIAL	DATE	LEGEND EXISTING DEMOLISHED CUT THROUGH PROPOSED WEATHERBOARD WHITE - MATCH EXISTING TIMBER FLOORBOARDS OAK FINISH OR SIMILAR CB WOODLAND GREY OR SIMILAR GLASS	ABBREVIATIONS CPD: CUPBOARD DP: DOWNPIPE DPS: DOWN PIPE SPITTER DPRH: DOWN PIPE RAIN HEAD PFL: FINISHED FLOOR LEVEL HWS: HOT WATER SYSTEM RL: REDUCED LEVEL	CLIENTS: DANIEL HEALEY SITE ADDRESS: 19 BARANBALI AVENUE SEAFORTH, NSW, 2092	DRAWING TITLE: ELEVATION - WEST	
		A	DA SET	SB	05.08.24					
		B	DA SET - RF1	LW	09.10.24					
									SCALE: 1:100 @A3	DATE: 10/10/2024
									PROJECT NO: 1089	DRAWING NO: DA16



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

RE: CLAUSE 4.6 REQUEST TO VARY THE HEIGHT OF BUILDINGS 19 BARANBALI AVENUE, SEAFORTH

1.0 Introduction

This clause 4.6 variation has been prepared having regard to the Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 and *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582.

2.0 Manly Local Environmental Plan 2013 (“MLEP”)

2.1 Clause 4.3 – Height of Buildings

Pursuant to Clause 4.3 of Manly Local Environmental Plan 2013 (MLEP) the height of buildings control applicable to the site is 8.5m. The objectives of this control are as follows:

- (a) *to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*
- (b) *to control the bulk and scale of buildings,*
- (c) *to minimise disruption to the following—*
 - (i) *views to nearby residential development from public spaces (including the harbour and foreshores),*
 - (ii) *views from nearby residential development to public spaces (including the harbour and foreshores),*
 - (iii) *views between public spaces (including the harbour and foreshores),*
- (c) *to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*

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

Building height is defined as follows:

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

Ground level existing is defined as follows:

ground level (existing) means the existing level of a site at any point.

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

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

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

The development has a maximum height of 9.913m which is 1.413m or 16.62% variation to the development standard. This is demonstrated in the section below:

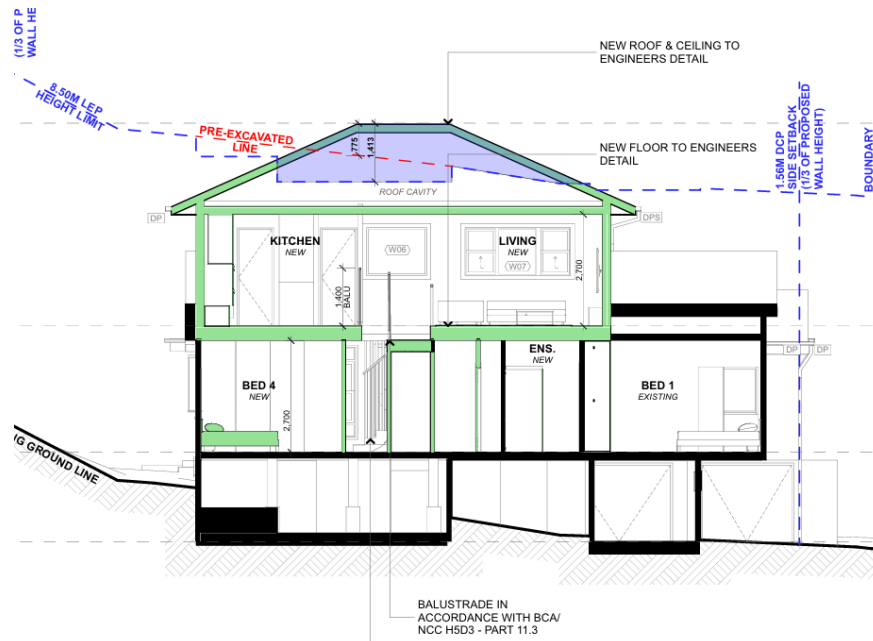


Image 1: Section A

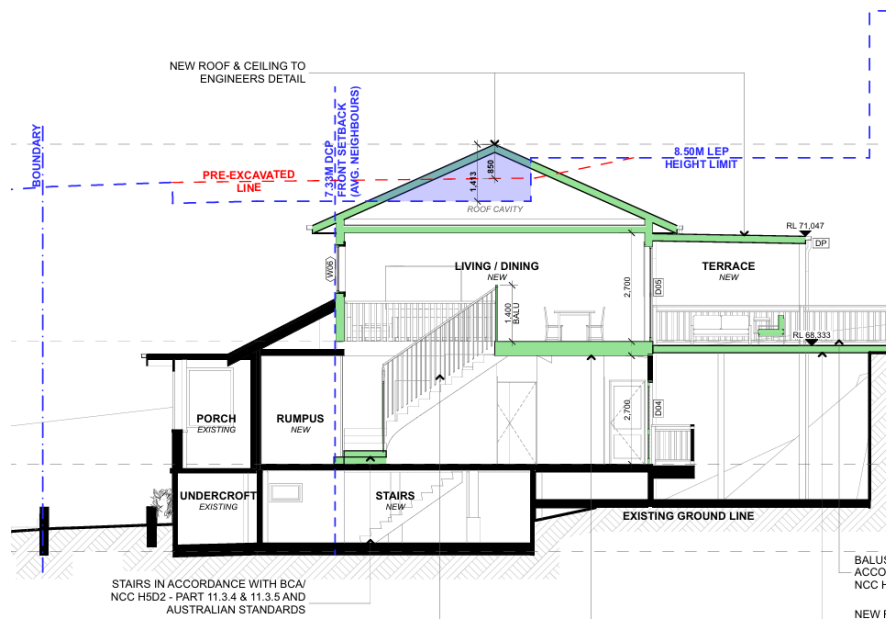


Image 2: Section B

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 4.3 height of buildings 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 building height provision at 4.3 of MLEP which specifies a maximum building height however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

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

3.0 Relevant Case Law

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

- 17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
- 18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
- 19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*

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

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

1. Is clause 4.3 of 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 Height of buildings standard

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

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

Response: The building height proposed is consistent with the built form characteristics established by surrounding development and development generally within the site's visual catchment. The sloping topography contributes to the building breach with the top of the pitched roof being the area of non-compliance. The existing pitched roof form is continued to the new first floor level and considered a better streetscape outcome than a flat roof design that would not be characteristic with the existing form of the dwelling.

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

Response: This objective is explanatory of the purpose of the height of building standard. The objective is not an end in itself. The objective is explanatory of the central purpose of the standard. By fixing different upper limits for the height of buildings on land in different areas by means of the building height map the clause does seek to control bulk and scale of buildings. The establishment of upper limit for height is not the end to be achieved by the clause rather it is a means to achieve the other objectives of the standard that are dealt with above and below (*Baron Corporation Pty Limited –v- the City of Sydney Council* [2019] NSWLEC 61 at [48]-[49]).

Notwithstanding, the height breach occurs to the proposed first floor addition above the excavated garage level and will present to the street as a 2 storey dwelling with lower level garage. The first floor addition is consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council (2005) NSW LEC 191* insofar that observers would not find the proposed development by virtue of its bulk and scale offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the sites visual catchment.

The proposal meets this objective.

(c) *to minimise disruption to the following:*

i. views to nearby residential development from public spaces (including the harbour and foreshores),

Response: No public views are impacted as a result of the offending area of non-compliance.

ii. views to nearby residential development from public spaces (including the harbour and foreshores),

Response: The proposal has been assessed against the view sharing planning principle and determined that adverse view impacts will occur as a result of the works proposed.

iii. views between public spaces (including the harbour and foreshores),

Response: No views are impacted between public spaces.

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

Response: Shadow diagrams have been provided which demonstrate compliant levels of solar access achieved to neighbouring properties.

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

Response: N/A

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 exist to justify the building height variation. Specifically, the environmental planning grounds consist of the following:

- The pitched roof is the offending area of the development and that design choice is reflective of the existing character of the dwelling to provide a more cohesive first floor addition. In this regard, it is considered an appropriate streetscape outcome to provide a pitched roof to the new first floor.

- The first floor level is setback further from the front façade and is of a modest scale in comparison to the footprint of the dwelling. The additional front setback to the new first floor addition will minimise its visual bulk when viewed from the street. The 3D image provided below gives a representation of breach and the scale of the first floor.



Image 3: 3D images showing the breach from existing ground level and when using the extrapolated method

- When extrapolating a height plane from surveyed natural levels the proposal is 850mm above the 8.5m development standard and results in only a minor portion of the tip of the roof pitch being non-compliant. When using the extrapolation method the offending area is minor and represents a 10% variation. The bulk of the dwelling would sit below the 8.5m. This is demonstrated in the image above with the crossfall across the site exacerbating the breach when interpolating the ground level.

- The breach does not raise any unreasonable amenity impacts with regard to overshadowing, privacy and view loss. The additional overshadowing to No. 17 is minor and confined to the afternoon. No privacy impacts occurs as a result of the offending eaves breaching the height standard. No views loss occurs as a result either.

I have formed the considered opinion that sufficient environmental planning grounds exist to justify the variation including the compatibility of the height, bulk and scale of the development, as reflected by building height, 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 building height 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)).

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.*



Clause 4.6 BUILDING HEIGHT

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

Yours Sincerely

Greg Boston
B Urb & Reg Plan (UNE) MPIA

A handwritten signature in black ink, appearing to read 'Greg Boston', written over a horizontal dashed green line.

Boston Blyth Fleming Pty Ltd
Director

ITEM 3.7	DA2024/0962 - 62 BOWER STREET MANLY - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
-----------------	--

PURPOSE

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

RECOMMENDATION

- A.** That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 and Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B.** THAT Council as the consent authority **approves** Development Consent to DA2024/0962 for alterations and additions to a dwelling house on land at Lot 14 DP 8075, 62 Bower Street MANLY, subject to the conditions set out in the Assessment Report.

Reporting manager	Rodney Piggott
TRIM file ref	2024/727246
Attachments	1 Assessment Report 2 Site Plan and Elevations 3 Clause 4.6 - FSR 4 Clause 4.6 - BHR

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/0962
----------------------------	-------------

Responsible Officer:	Jordan Howard
Land to be developed (Address):	Lot 14 DP 8075, 62 Bower Street MANLY NSW 2095
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned C3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Lucia Serena Plane

Application Lodged:	31/07/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	08/08/2024 to 22/08/2024
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 48.2% 4.4 Floor space ratio: 42.1%
Recommendation:	Approval

Estimated Cost of Works:	\$ 532,597.00
---------------------------------	---------------

EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) due to proposed breaches of the height of buildings and Floor Space Ratio (FSR) development standards of greater than 10%.

Concerns raised in the one objection received predominantly relate to perceived privacy impacts of the proposal on properties located to the south of the subject site on the southern side of Bower Street.

Critical assessment issues included assessment of the Applicant's request to vary development standards established by Manly Local Environmental Plan (MLEP) 2013 Clause 4.3 Height of buildings

and Clause 4.4 Floor space ratio, as well as assessment of Manly Development Control Plan built form non-compliances with wall height, roof height and number of storey controls, and assessment of potential privacy impacts.

The 4.6 request for the non-compliance with the height standard arises in part from the site being partially excavated underneath the existing building. The proposed habitable roof space will result in a 48.2% variation. Nonetheless, this habitable roof space will be located mostly within an existing roof area and will not result in any increase to the existing ridgeline RL. Furthermore, the additions will not significantly alter the built form, nor will they look out of place in the context of surrounding development.

The 4.6 request for the non-compliance with the FSR standard arises from an increase in floorspace from the addition of a habitable roof space and enclosure of an existing balcony. These alterations and additions will create 45.4sqm of additional floorspace. The existing building has an existing floorspace which is 27.7% above compliance with the MLEP 2013, with the proposal increasing this to 42.1%. The additional floorspace does not increase the bulk or scale of the building, with new elements located below the existing ridgeline RL and mostly contained within the existing building envelope and will appear as a room within the roof space.

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

PROPOSED DEVELOPMENT IN DETAIL

This Development Application seeks development consent for alterations and additions to a dwelling house. Specifically, it is proposed to carry out alterations and additions to an existing dwelling, including a new attic level within the existing roof profile, new roof sheeting, rear terrace and dormer window, as well as works to provide a minor bathroom addition by enclosing an existing balcony. The works are outlined below:

First Floor:

- Provide new stairs to attic level.
- Minor addition to bathroom by enclosing an existing balcony.

Attic Level:

- New attic home office and stairs.
- New north facing roof terrace.
- Fixed obscured glazing to west facing window.

Roof:

- New roof sheeting with retention of existing roof profile.
- Gable roof additions.
- New replacement solar panels.

Additional information was requested in relation to Manly Local Environmental 2013 Clause 4.3 Height of buildings & Clause 4.6 Exceptions to development standards and Manly Development Control Plan Clause 4.1.8 Development on Sloping Sites. Additional information was provided which did not require re-notification, in accordance with the Northern Beaches Community Participation Plan.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - Zone C3 Environmental Management
 Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 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 - 4.1.7 First Floor and Roof Additions

SITE DESCRIPTION

Property Description:	Lot 14 DP 8075 , 62 Bower Street MANLY NSW 2095
Detailed Site Description:	The subject site consists of one (1) allotment located on the northern side of Bower Street. The site is irregular in shape with a frontage of 15.14m along Bower Street and a depth of 45.72m. The site has a surveyed area of 696.8sqm. The site is located within the C3 Environmental Management zone and accommodates a dwelling house. The site slopes from the front (south) down towards the rear (north), with a fall across the site of approximately 13m.

	The site contains lawn areas, garden beds, trees and vegetation. The subject site is located within known habitat for the endangered population of Long-nosed Bandicoots at North Head. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by dwelling houses.
--	--

Map:



SITE HISTORY

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

Development Application No. DA2023/1270 granted for "Alterations and additions to a dwelling house" on 5 February 2024.

Development Application No. DA79/08 granted for "Alterations and additions to existing dwelling house including new garage, walkway, lift, balconies and landscaping" on 4 August 2008.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration	Comments
environmental planning instrument	
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <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 Manly Local Environmental 2013 Clause 4.3 Height of buildings & Clause 4.6 Exceptions to development standards and Manly Development Control Plan Clause 4.1.8 Development on Sloping Sites. <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	(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.

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Mr Olivier Chretien	67 Bower Street MANLY NSW 2095

The following issues were raised in the submission:

- **Privacy**

The submission raised concerns that the proposed attic southern elevation window would create unreasonable and undesirable privacy impacts on properties to the south.

Comment:

Refer to the section of this report on MDCP Clause 3.4.2 Privacy and Security for a detailed

assessment of visual privacy. In summary, considering the large separation between the proposed southern elevation window and dwellings to the south, the proposed southern elevation window is not considered to create any unreasonable privacy impacts. The southern facing window of the attic level is oriented towards the front boundary of the subject site with Bower Street. Properties to the south of the subject site are located uphill and across Bower Street. The window will be at least 40m away from the front boundary of properties the south, and up to 50m away from the dwellings located on these properties. This distance is sufficient to provide adequate privacy between dwellings.

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	Supported - subject to conditions. The comments in this referral relate to the following applicable controls and provisions: • NSW Biodiversity Conservation Act 2016 (BC Act) • SEPP (Resilience and Hazards) - Coastal Environment Area • Manly LEP Clause 6.5 Terrestrial Biodiversity • Manly DCP Clause 5.4.2 Threatened Species and Critical Habitat Lands The subject site is located within known habitat for the endangered population of Long-nosed Bandicoots at North Head. As such, a threatened species 'test of significance' (or 'five part test') is required to be undertaken in accordance with Section 7.3 of the BC Act. This assessment has been undertaken by the consulting ecologist and has concluded that the proposal will not result in a significant impact to the endangered bandicoot population, subject to recommended ameliorative measures which will be conditioned.
NECC (Coast and Catchments)	Supported - subject to conditions. The application has been assessed in consideration of: • Supplied plans and reports; • State Environmental Planning Policy (Resilience and Hazards) 2021 (section 2.10, 2.11 & 2.12); • Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity & Conservation) 2021 • Relevant LEP and DCP clauses. State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental

Internal Referral Body	Comments
	Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA. Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by aSquare Planning dated May 2024, the DA satisfies requirements under clauses 2.10, 2.11 and 2.12 of the SEPP R&H. As such, it is considered that the application does/does not comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021. Manly LEP 2013 and Manly DCP Foreshores Scenic Protection Area Management The subject site is also shown to be as "Manly Foreshores Scenic Protection Area" on Council's Foreshores Scenic Protection Area in Manly LEP 2013. As such, Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013 will apply to proposed development on the site. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by aSquare Planning dated May 2024, the DA satisfies requirements under Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013. As such, it is considered that the application does comply with the requirements of the Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013.
Parks, reserves, beaches, foreshore	<i>Supported - subject to conditions.</i> The property adjoins a public reserve to the north. No physical encroachments over the site boundaries are permitted, and structures and built elements are not permitted beyond the site boundaries. All development works must ensure that surface sediment runoff and/or erosion is controlled, managed and contained within the site boundaries.
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

External Referral Body	Comments
	stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	<i>Supported - subject to conditions.</i> Reference is made to the proposed development at the above area and Aboriginal heritage. No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development. Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No. A1743215, issued 10

April 2024).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 2 Coastal Vulnerability Area

2.9 Development on land within the coastal vulnerability area

Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

- a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and
- b) the proposed development:
 - i) is not likely to alter coastal processes to the detriment of the natural environment or
 - ii) other land, and
 - iii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and

- c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.

Comment:

There is currently no adopted Coastal Vulnerability Area Map. Nonetheless, Council's Coasts and Catchments team has reviewed the proposal and consider that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021, supporting the proposal, subject to conditions.

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:

Council's Coasts and Catchments team has reviewed the proposal and consider that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021, supporting the proposal, subject to conditions.

- 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's Coasts and Catchments team has reviewed the proposal and consider that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021, supporting the proposal, subject to conditions.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

- 1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
 - a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - i) existing, safe access to and along the foreshore, beach, headland or rock
 - ii) platform for members of the public, including persons with a disability,
 - iii) overshadowing, wind funnelling and the loss of views from public places to
 - iv) foreshores,
 - v) the visual amenity and scenic qualities of the coast, including coastal headlands, Aboriginal cultural heritage, practices and places, cultural and built environment heritage, and
 - b) is satisfied that:
 - i) the development is designed, sited and will be managed to avoid an
 - ii) adverse impact referred to in paragraph (a), or
 - iii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or if that impact cannot be minimised—the development will be managed to mitigate that impact, and
 - c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

Council's Coasts and Catchments team has reviewed the proposal and consider that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021, supporting the proposal, subject to conditions.

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's Coasts and Catchments team has reviewed the proposal and consider that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021, supporting the proposal, subject to conditions.

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

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

Comment:

Council's Coasts and Catchments team has reviewed the proposal and consider that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards)

2021, supporting the proposal, subject to conditions.

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	12.6m	48.2%	No
Floor Space Ratio	0.45:1 (313.56sqm)	0.64:1 (445.7sqm)	42.1% (132.14sqm)	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

Detailed Assessment

Zone C3 Environmental Management

The proposed development is assessed against the objectives of the C3 Environmental Management zone as follows:

To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.

Comment:

The subject site has been disturbed as existing for residential use. The proposed development is located within the footprint of the existing building, thereby not impacting on the special ecological, scientific, cultural or aesthetic values of the area.

To provide for a limited range of development that does not have an adverse effect on those values.

Comment:

As above, the proposed development is located within the footprint of the existing building, thereby not impacting on the special ecological, scientific, cultural or aesthetic values of the area.

To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.

Comment:

The proposed development is located within the footprint of the existing building. The tree canopy will not be impacted and the use remains that of a dwelling house.

To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.

Comment:

The proposed development is located within the footprint of the existing building. The proposed development will not negatively impact on nearby foreshores, significant geological features and bushland, or result in the loss of natural vegetation.

To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.

Comment:

The proposed development is located within the footprint of the existing building and will not increase stormwater runoff or hard surface area.

To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.

Comment:

The proposed development will maintain the existing roof ridgeline RL and will not significantly increase building bulk or scale.

It is considered that the proposed development is consistent with the zone objectives.

4.6 Exceptions to development standards

Clause 4.3 Height of buildings

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

Development standard: Clause 4.3 Height of buildings

Requirement: 8.5m

Proposed: 12.6m

Percentage of variation: 48.2%

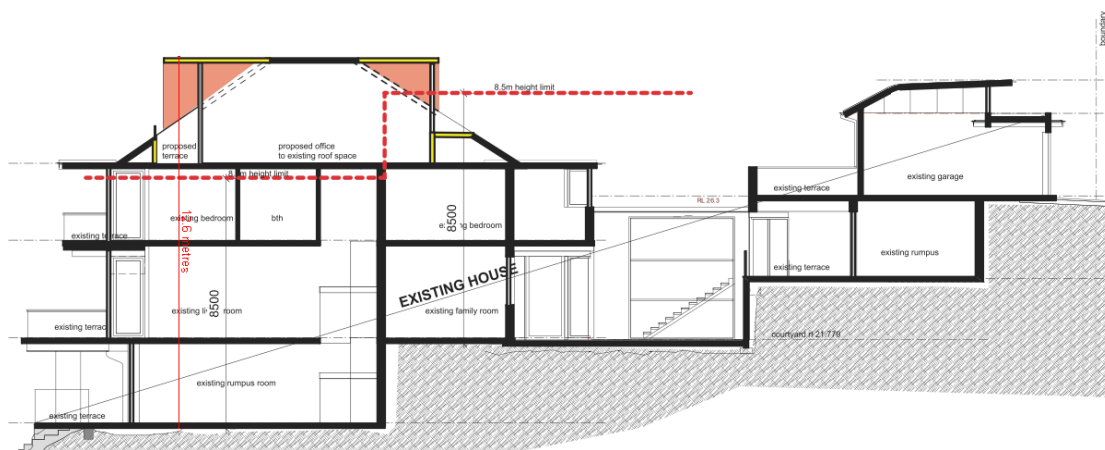


Figure 1 - Extract from Section AA depicting building height.

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

Subclause (3) of this clause provides that:

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

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

Comment:

In considering if compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, the Applicant has considered the 'Five Ways' test established by *Wehbe v Pittwater Council [2007] NSWLEC 827*. The Applicant has demonstrated that the proposal meets the 'First Way' by demonstrating that the objectives of the development standard are achieved notwithstanding non-compliance with the standard. The objectives of the development standard and the Applicants arguments are outlined 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,

- Proposed elements will not require any excavation or other works that might alter the existing topography.
- The proposed elements above the height control are limited to the roof sheeting, replacement of solar panels, extension of gable ends and side facing dormer and these elements are no higher than the existing ridge.
- The proposal does not increase the existing height of the dwelling, which is consistent with surrounding development in the locality and lower than those adjoining.
- The height of the proposed elements matches the existing ridge and can be considered in character with the locality.

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

- The proposed components above the height limit are no higher than the existing roof ridge height and have a greater separation from the boundaries of the site than the existing dwelling.
- The dwelling will appear at a bulk and scale that is comparable with the existing and entirely in keeping with that of the locality.
- The majority of the additional height proposed is the result of the existing ground level needing to be measured from the basement. If measured from the natural ground level above the basement the variation is reduced to 1m or 11%. Such a variation would be imperceptible to a casual observer and would easily be considered an appropriate bulk and scale given the existing and surrounding development and especially given the absence of material impacts on the natural or built environment and amenity generated by the development.

(c) to minimise disruption to the following—

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

- Views from public spaces, including the foreshore, towards dwellings are unchanged or unimpacted.

- Views surrounding dwellings are not unreasonable impacted.

(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,

- There are no overshadowing impacts to public spaces, including to the foreshore pathway to the north.
- The proposal does not result in any new shadows falling upon the private open space of adjacent properties.
- Windows at adjacent sites receive sunlight to their surfaces for the same length as time as existing at midwinter.

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

- The proposed works are generally contained within the existing roof profile with some protrusions and do not affect any key natural features or vegetation on the site.

The arguments provided by the Applicant are generally concurred with. In particular, it is noted that building height is measured from a existing basement, with existing excavation contributing to the headline breach percentage. Additionally, the works are mostly confined to the existing building footprint, which exhibits existing non-compliances. The proposal will not exceed the existing maximum ridgeline RL, and surrounding development is of similar or greater height.

The applicant has demonstrated that the objectives of the development standard are achieved notwithstanding non-compliance with the standard. Therefore, Council is satisfied that the Applicant has demonstrated that compliance with Clause 4.3 Height of buildings is unreasonable or unnecessary in the circumstances of this application.

(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 proposed dwelling has an identical roof ridge RL and envelope as existing.
- The extent of the variation is largely the result of the basement, where ground level (existing) is taken from and building height must be measured from. If building height was measured from

the ground level above the basement (that is, the height of the building that is actually above ground) the variation would be reduced to 1m or 11%.

- The variation is located at the lowest point of a steeply sloping site.
- The proposal sits comfortably in its context, despite the variation.
- There are no material impacts caused by the development.

The arguments provided by the Applicant are generally concurred with. In particular, it is noted that building height is measured from a existing basement, with existing excavation contributing to the headline breach percentage. Additionally, the works are mostly confined to the existing building footprint, which exhibits existing non-compliances. The proposal will not exceed the existing maximum ridgeline RL, and surrounding development is of similar or greater height. The proposal is considered to be a reasonable architectural solution to provided additional floor space mostly within the confines of the existing roof space, with only slight alteration of the roof form to achieve this. In this regard, the additions will not significantly alter the built form, nor will they look out of place in the context of surrounding development.

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

- The proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, thereby satisfying objects 1.3(c) and (g) of the EPA Act.
- Flexibility in the application of the development standard will allow adaptation and reuse of existing built form for the changing needs of owners and occupants. This promotes ecologically sustainable development and the orderly development of land, thereby satisfying objects 1.3(b) and (c) 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.

Clause 4.4 Floor space ratio

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

Development standard: Clause 4.4 Floor space ratio

Requirement: 0.45:1 (313.56sqm)

Proposed: 0.64:1 (445.7sqm)

Percentage of variation: 42.1% (132.14sqm)

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:

In considering if compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, the Applicant has considered the 'Five Ways' test established by *Wehbe v Pittwater Council [2007] NSWLEC 827*. The Applicant has demonstrated that the proposal meets the 'First Way' by demonstrating that the objectives of the development standard are achieved notwithstanding non-compliance with the standard. The objectives of the development standard and the Applicants arguments are outlined as follows:

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

- The bulk and scale of the proposal is considered to be consistent with the existing and desired future character of the locality.
- The proposal will not result in the loss of visual amenity or environmental amenity for adjoining properties.
- There are a number of developments in the immediate visual catchment that exceed the FSRs applicable to their sites

(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 additional floor area is largely contained within the existing envelope of the building with new elements limited to the minor addition to the bathroom (at rear), new roof additions to the north (rear) and south (front) and dormer roof extension to western side. The bulk and scale of the building in relation to the site will be comparable to that existing and smaller and lower than adjacent properties.
- The attic will not affect any important 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 will provide a dwelling which sits comfortably within its context and will not affect landscaping within the site.

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

- The proposal will not alter the existing maximum ridge height of the dwelling or alter its location with respect to the boundaries of the site.
- The proposal will protect private views towards Cabbage Tree Bay from the opposite side of Bower Street, noting new elements are limited to the front and rear and a minor protrusion to the western side.
- The proposal does not lead to any substantial changes to solar access, with shadow diagrams demonstrating that the level of overshadowing of private open spaces and habitable room windows will remain as existing.
- New windows and openings to areas of additional GFA will not provide direct sightlines to neighbouring sites and the addition of the new attic is not likely to generate much in the way of acoustic disturbance.

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

- The site is not located in an E1 Zone and the proposal is for a residential use. As such this objective is not applicable.

The arguments provided by the Applicant are generally concurred with. In particular, it is noted that the additional floor space is largely confined within the existing building footprint and envelope. New elements protrude minorly within a changed roof form to the north and south, as well as a dormer roof extension to the west. The bathroom extension will occur by enclosing an existing portion of balcony. The proposal will not exceed the existing maximum ridgeline RL and surrounding development is of similar or greater bulk and scale. The proposal is considered to be a reasonable architectural solution to provided additional floor space mostly within the confines of the existing roof space, with the headline percentage variation largely reflective of the existing exceedance of the FSR development standard.

The applicant has demonstrated that the objectives of the development standard are achieved notwithstanding non-compliance with the standard. Therefore, 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.

(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:

- All additional floor area is largely contained within the existing building envelope and the dwelling is suitable in its context.
- There is limited impact on visual appearance from the public domain.
- There are no material impacts caused by the development.
- The proposal sits comfortably in its context, despite the variation

The arguments provided by the Applicant are generally concurred with. In particular, it is noted that the additional floor space is largely confined within the existing building footprint and envelope. New elements protrude minorly within a changed roof form to the north and south, as well as a dormer roof extension to the west. The bathroom extension will occur by enclosing an existing portion of balcony. The proposal will not exceed the existing maximum ridgeline RL and surrounding development is of similar or greater bulk and scale.

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

- The proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, thereby satisfying objects 1.3(c) and (g) of the EPA Act.
- Flexibility in the application of the development standard will allow adaptation and reuse of existing built form for the changing needs of owners and occupants. This promotes ecologically sustainable development and the orderly development of land, thereby satisfying objects 1.3(b) and (c) of the EPA Act.

Public Interest:

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

Conclusion:

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

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

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 696.8sqm	Requirement	Proposed	% Variation	Complies
4.1.1.1 Residential Density and Dwelling Size	Dwelling Size: 105sqm (3 bedrooms, 4 bathrooms)	445.7sqm	-	Yes
4.1.2.1 Wall Height	E: 7.8m (based on gradient 1:4.5)	No change to existing walls	-	Yes
	W: 7.8m (based on gradient 1:4.5)	8m (to dormer window)	2.6%	No
4.1.2.2 Number of Storeys	2	4	100%	No
4.1.2.3 Roof Height	Height: 2.5m	3.6m	44%	No
	Pitch: maximum 35 degrees	33 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	No change, works behind existing building line	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	East	No change to existing walls, works within existing building and to roof form	-	Yes
	West: 2.7m (based on 8m wall height)	3.9m (to dormer window)	-	Yes
	No windows within 3m of a side boundary	No windows within 3m of a side boundary	-	Yes
4.1.4.4 Rear Setbacks	8m	>8m	-	Yes
4.1.4.6 Setback for development adjacent to LEP Zones RE1, RE2, E1 and E2	8m (rear boundary)	>8m	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area	No change, works within existing building footprint	N/A	N/A
	No more than 25% of open space above ground	No change, works within existing building footprint	N/A	N/A
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	No change, works within existing building footprint	N/A	N/A

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	N/A	N/A
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes
4.1.5 Open Space and Landscaping	N/A	N/A
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	No	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

One submission has raised privacy as a concern. This submission raised concern that the proposed attic southern elevation window would create unreasonable and undesirable privacy impacts on properties to the south.

The assessment of potential privacy impacts of a proposal requires consideration of the requirements and objectives of this Clause, as well as planning principals established within *Meriton v Sydney City Council [2004] NSWLEC 313*, which hold that when applying judgment to assess privacy impacts, consideration should be given to density, separation, use and design.

Considering separation, the southern facing window of the attic level is oriented towards the front boundary of the subject site with Bower Street. Properties to the south of the subject site are located uphill and across Bower Street. The window will be at least 40m away from the front boundary of properties the south, and up to 50m away from the dwellings located on these properties.

Density of development is also relevant, with this area of Bower Street characterise by large houses seeking to orient north towards views of Manly Beach and the ocean. In this instance, a southern facing window of a downhill property will be visible from an uphill property that is oriented north towards a desired view and solar access. In such areas, there is a reasonable expectation that some windows of neighbouring development may be visible from a distance, compared to more isolated, rural areas.

Overall, considering the large separation between the proposed southern elevation window and dwellings to the south, the proposed southern elevation window is not considered to create any unreasonable privacy impacts.

Additionally, whilst not raised in submissions, it is noted that the privacy impact of the proposed western elevation window has been considered. This window is to a low use / transient space (a stairwell), and is to be installed with obscure glazing, and is therefore not considered to create any unreasonable privacy impacts either.

For the benefit of a full assessment, 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:

As described above, the proposed development is considered to respect the privacy of surrounding development by virtue of density, separation, use and design. As such, the design is considered to minimise loss of privacy to adjacent and nearby development, and not to require further privacy mitigation measures.

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:

As described above, the proposed development is considered to respect the privacy of surrounding development by virtue of density, separation, use and design. As such, the design is considered to

increase privacy without compromising access to light and air, and to balance outlook and views from habitable rooms and private open space.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal will not compromise neighbourhood security or casual surveillance of the street frontage.

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.

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

Description of non-compliance

Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height) stipulates that walls are not to exceed:

- 7.8m (based on gradient 1:4.5) for the eastern elevation.
- 7.8m (based on gradient 1:4.5) for the western elevation.

There are no changes proposed to external walls on the eastern elevation of the dwelling. On the western elevation, the proposed dormer window will have an external wall with a wall height of 8m, representing a 2.6% variation to the control.

Clause 4.1.2.2 Number of Storeys stipulates a number of storeys limit of two-storeys for this site. The dwelling as existing has three-storeys. The proposal seeks to add an additional storey by creating a habitable area within the roof space, which would result in a four-storey building.

Clause 4.1.2.3 Roof Height stipulates that pitched roof structures must be no higher than 2.5m above the wall height. The proposal will exhibit a roof form with a height of 3.6m, representing a 44% variation to the control. However, this is an existing feature of the dwelling house. Furthermore, MDCP Clause 4.1.7.2 states in part that "*alterations and additions to a building which existed prior to 2007 may involve habitable rooms within an existing roof structure that is above the maximum wall and roof height; subject to the rooms not detracting from the character or integrity of the roof structure and not adversely impacting on the amenity of adjacent and nearby properties and the streetscape*". This is considered to be the case, providing some justification for the non-compliance.

Merit consideration

There are no underlying objectives of this control under which to consider the merits of this variation. This control instead relies on the objectives for the Height of Buildings at clause 4.3 in the Manly LEP 2013. The proposal has been assessed against these objectives under clause 4.6, above in this report. In summary, compliance with the objectives of the standard is achieved notwithstanding non-compliance with the standard. It is noted that building height is measured from a existing basement, with existing excavation. Additionally, the works are confined to the existing building footprint, which exhibits existing non-compliances. The proposal will not exceed the existing maximum ridgeline RL, and surrounding development is of similar or greater height.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and MLEP 2013 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 the section of this report on MLEP 2013 Clause 4.6 Exceptions to Development Standards for a detailed assessment of the proposed FSR variation.

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

Clause 4.1.4.2 Side Setbacks and Secondary Street Frontages stipulates that the setbacks between any part of a building and the side boundary must not be less than one third of the wall height. The first floor extension of the bathroom will be achieved by infilling an existing balcony behind an existing external wall. The attic addition is accommodated within the roof form, which are not dwelling walls where side setbacks are applicable. The flat western dormer window wall is compliant with the side setback control.

All proposed works are either compliant with the side setback control or located behind existing external walls. Therefore, the proposal is compliant with the requirements of this control.

4.1.5 Open Space and Landscaping

All proposed works are located within the footprint of the existing dwelling and therefore do not impact on the provision of total open space or landscaped area. As such, the level of total open space and landscaped area will remain as existing.

4.1.7 First Floor and Roof Additions

MDCP Clause 4.1.7.2 states as follows:

"Habitable rooms will be permitted in a roof structure subject to compliance with all other controls in this plan and the LEP including height and FSR in the LEP. However alterations and additions to a building which existed prior to 2007 may involve habitable rooms within an existing roof structure that is above the maximum wall and roof height; (see paragraph 4.1.2 of this plan) subject to the rooms not detracting from the character or integrity of the roof structure and not adversely impacting on the amenity of adjacent and nearby properties and the streetscape. Similarly, alterations and additions which exceed the maximum height must not increase the overall height of the building. Consideration may be given in this paragraph to the application of LEP clause 4.6 in considering exceptions to the LEP Building Height standard."

The proposal includes the addition of a habitable room within a roof structure of a dwelling house built before 2007. The proposal exceeds the building height development standard but does not increase the overall height of the building, which meets the requirement of this Clause. However, the proposal does not comply with the FSR development standard of the MLEP 2013. Nonetheless, both the building height and FSR development standard non-compliances are addressed within the section of this report on MLEP 2013 Clause 4.6 Exceptions to development standards.

It is considered that while there are some non-compliances, the habitable rooms within the roof structure have been appropriately designed to be within the existing building footprint and do not detract from the character or integrity of the roof structure and do not adversely impact on the amenity of adjacent and nearby properties and the streetscape. Furthermore, the effect of this Clause in promoting the creation of habitable rooms in the roof structure should be considered in regards to the high of buildings development standard non-compliance, given the building was built prior to 2007 and the maximum height of the building is not increased.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$5,326 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$532,597.

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 4.3 Height of Buildings has adequately addressed and demonstrated that:
- Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
- There are sufficient environmental planning grounds to justify the variation.

Council is also 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 dwelling house, has been referred to the Development Determination Panel (DDP) due to proposed breaches of the height of buildings and Floor Space Ratio (FSR) development standards of greater than 10%.

Concerns raised in the one objection received predominantly relate to perceived privacy impacts of the proposal on properties located to the south of the subject site on the southern side of Bower Street. This concern has been assessed and it is not considered that the proposal will create any unreasonable privacy impacts.

Critical assessment issues included assessment of the Applicant's request to vary development standards established by Manly Local Environmental Plan (MLEP) 2013 Clause 4.3 Height of buildings and Clause 4.4 Floor space ratio, as well as assessment of Manly Development Control Plan built form non-compliances with wall height, roof height and number of storey controls, and assessment of potential privacy impacts.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The Applicant's written requests have adequately addressed the merits required to be demonstrated by subclause (3) of Clause 4.6. The proposal has therefore been recommended for approval.

REASON FOR DETERMINATION

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

RECOMMENDATION

That Northern Beaches Council, as the consent authority, vary the development standard contained within Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio, pursuant to Clause 4.6 of the Manly Local Environmental Plan 2013, because the Applicant's written requests have 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 DA2024/0962 for Alterations and additions to a dwelling house on land at Lot 14 DP 8075, 62 Bower 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
DA01	A	Roof / Site Plan	Sofair Design	April 2024
DA02	A	Plan	Sofair Design	April 2024
DA03	A	Plan	Sofair Design	April 2024
DA04	A	Plan	Sofair Design	April 2024
DA05	A	Plan	Sofair Design	April 2024
DA06	A	Plan	Sofair Design	April 2024
DA07	A	Elevations Sections	Sofair Design	April 2024
DA08	A	Elevation Section	Sofair Design	April 2024
DA09	A	Calcs Section	Sofair Design	April 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate No. A1743215	-	House Energy Certified	10 April 2024
Terrestrial Biodiversity Report	2	GIS Environmental Consultants	19 June 2024
Geotechnical Assessment	Ref: 32003PHE2rpt	JK Geotechnics	1 October 2024

Waste Management Plan - 62 Bower Street, Manly	-	-	-
Stormwater Plans, Job No. 14/79, Drawing No. H-DA3-00, H-DA3-01, H-DA3-02	A	ITM Design	3 January 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	Undated

(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 \$5,325.97 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 \$532,597.00.

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

The recommendations of the risk assessment required to manage the hazards as identified in

the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

8. Compliance with Standards

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

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

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

9. External Finishes to Roof

The external finish to the roof shall have a Solar Absorptance (SA) greater than 0.43 in accordance with the requirements of the BASIX Certificate to minimise solar reflections to neighbouring properties. Any roof with a reflective finish is not permitted.

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

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

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

10. Sydney Water "Tap In"

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

11. 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

12. **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.
13. **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.
14. **No Access Through Land Owned or Managed by Council**
Site access is not approved for delivery of materials nor construction of the development through adjacent land owned or managed by Council, without the written approval of Council.

Reason: Public safety, landscape amenity and tree protection.
15. **Storage of Materials on Land Owned or Managed by Council Prohibited**
The dumping or storage of building materials, spoil, vegetation, green waste or any other material in land owned or managed by Council is prohibited.

Reason: Public safety and environmental protection.
16. **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.

17. **Geotechnical Requirements**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

18. **Survey Certificate**

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

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

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

19. **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.

20. **Stockpiling materials**

During construction, all material associated with works is to be contained at source, covered and must be within the construction area. All material is to be removed off site and disposed of according to local regulations. The property is to be kept clean and any building debris removed as frequently as required to ensure no debris enters receiving waters.

Reason: To ensure pollution control measures are effective to protect the aquatic habitats within receiving waters throughout the construction period.

21. **Aboriginal Heritage**

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

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

Reason: Aboriginal Heritage Protection.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

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

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

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

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

23. **Protection of Habitat Features – Certified by Ecologist**

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

Written details demonstrating compliance are to be certified by the Project Ecologist and provided to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To protect wildlife habitat.

24. **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.

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

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

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

26. **Control of Domestic Dogs/Cats**

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

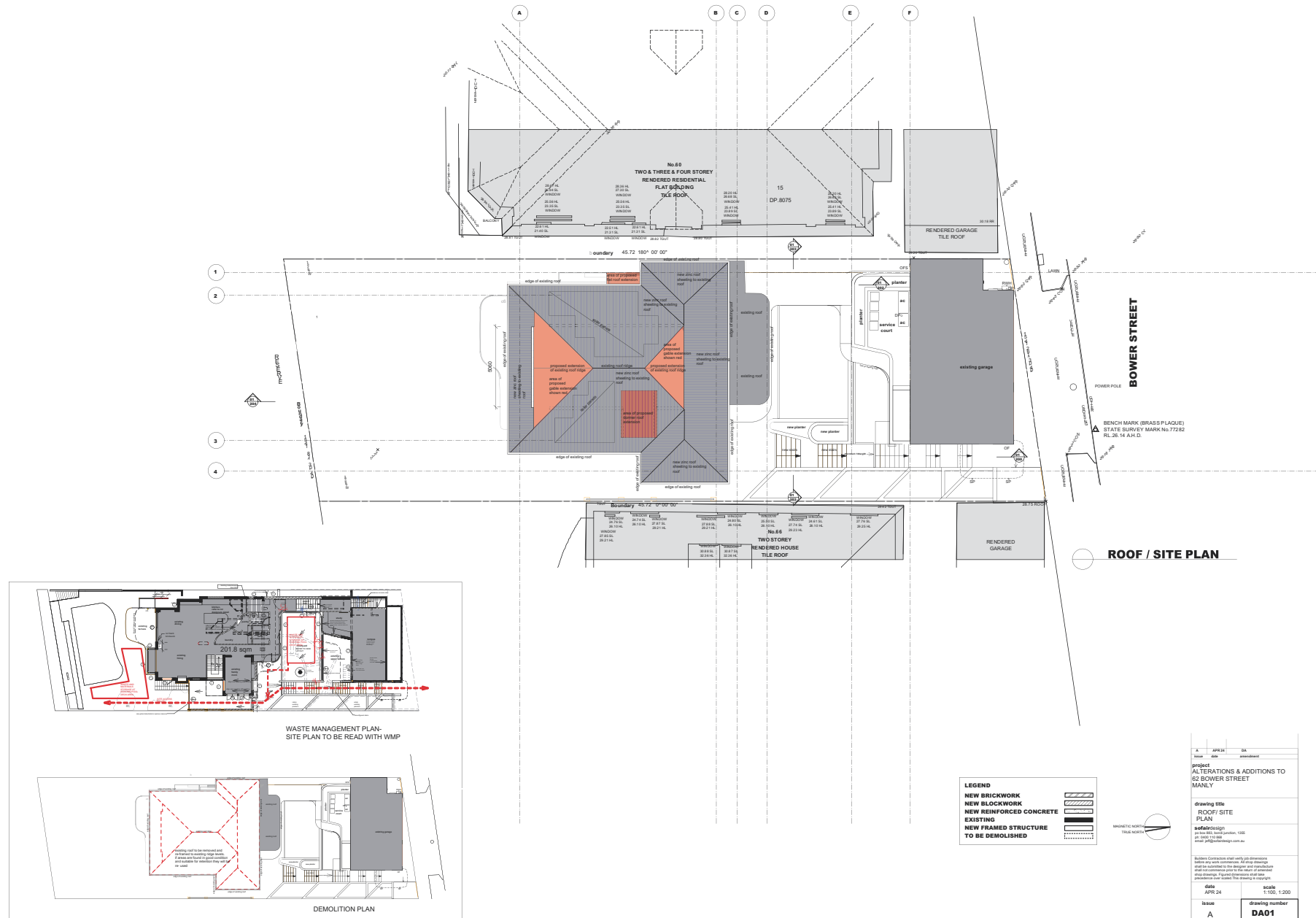
Dogs and cats are to be kept in an enclosed area and/or inside the dwelling, or on a leash such that they cannot enter areas of wildlife habitat, bushland or foreshore unrestrained, on the site or on surrounding properties or reserves.

Reason: To protect native wildlife and habitat.

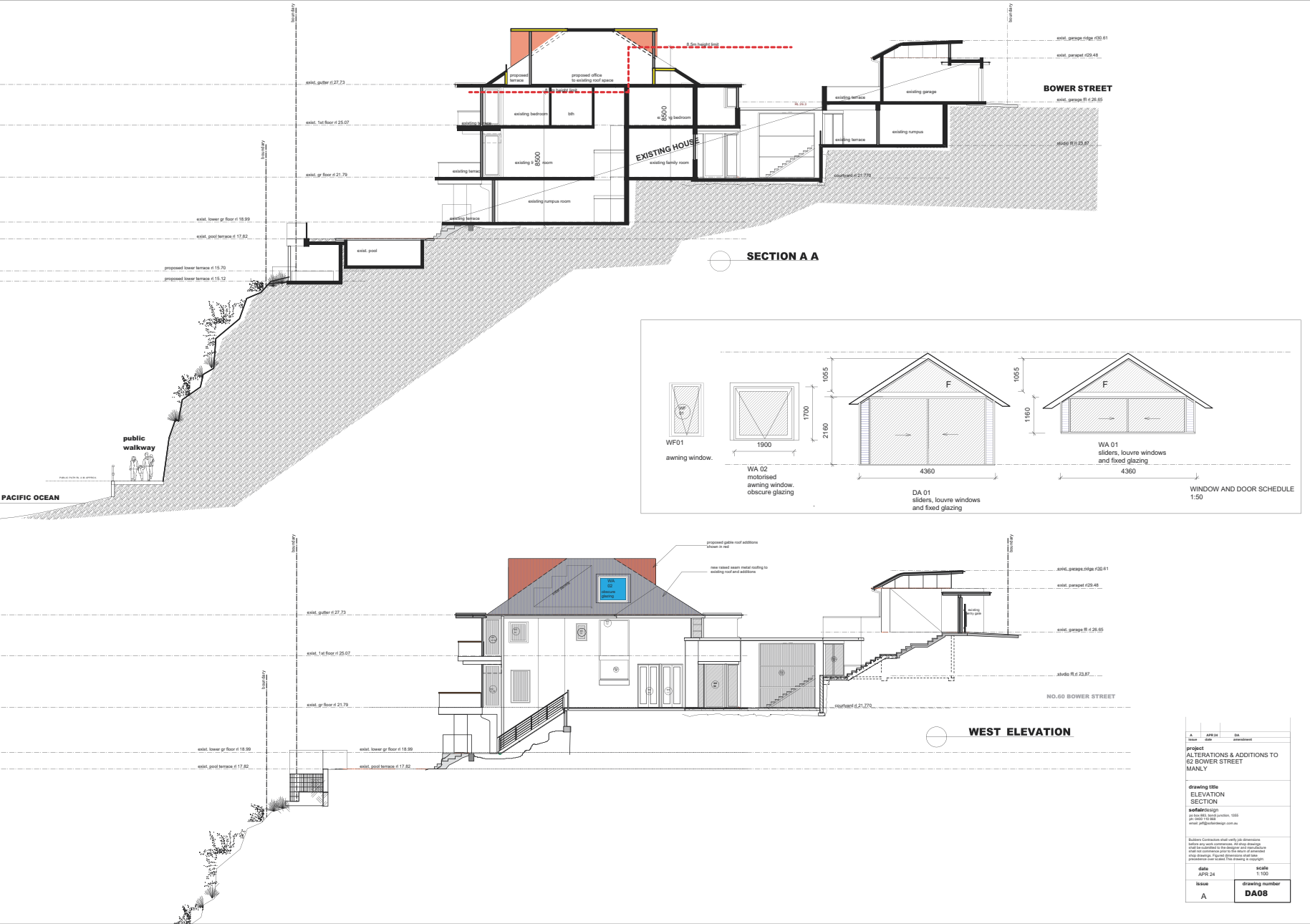
27. **Geotechnical Recommendations**

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

Reason: To ensure geotechnical risk is mitigated appropriately.









62 Bower Street, Manly

**REQUEST FOR VARIATION TO FLOOR SPACE RATIO OF BUILDINGS
DEVELOPMENT STANDARD PURSUANT TO CLAUSE 4.6(3) OF
MANLY LOCAL ENVIRONMENTAL PLAN 2013**

This Clause 4.6 variation relates to a proposal for addition of an attic home office and roof terrace to the existing dwelling on the subject site.

It is proposed to carry out alterations and additions to the existing dwelling on site. The works are limited to the provision of new attic home office within the existing roof form of the dwelling, small roof terrace and extension of the gable roof ends.

The proposal results in a non-compliance with clause 4.4 of the *Manly Local Environmental Plan 2013 (MLEP)* which relates to the floor space ratio (**FSR**) of buildings. As such, this Clause 4.6 request has been prepared in accordance with Clause 4.6 of the MLEP, which applies to the subject site.

The request demonstrates that compliance with the development standard relating to floor space ratio is unreasonable or unnecessary in the circumstances of the case and establishes that there are sufficient environmental planning grounds to justify contravening the development standard, satisfying clause 4.6(3) of the MLEP.

Based on this Clause 4.6 request, the consent authority can be satisfied that the written request has adequately addressed the matters required to be demonstrated by subclause (3), and that the proposed development will be consistent with the objectives of the FSR development standard.

The nature of the exceedance to the development standard relating to FSR is set out below, followed by consideration of the relevant matters in clause 4.6 of the MLEP.

The NSW Department of Planning, Industry and Environment (DPI&E) provides guidance on how to prepare Clause 4.6 variations; 'Varying development standards: A Guide' (August 2011). This written request to vary the standards is based on the Guide.

Suite 207 | 59 Great Buckingham Street | Redfern | NSW 2016
telephone: 02 9360 0989 | www.a2p.com.au

Zoning of the site

The zoning of the land is C3 – Environmental Living. The objectives of the C3 zone are:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*
- *To provide for a limited range of development that does not have an adverse effect on those values.*
- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*
- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*
- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*
- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

Clause 4.4 – Floor Space Ratio

The Standard

The site has an area of 696.8m² and clause 4.4 of the MLEP and its associated map prescribes a maximum FSR of 0.45:1. As such, the maximum allowable a gross floor area (GFA) for the site is 313.56m².

The existing dwelling has a GFA of 399.79m², which equates to a FSR of 0.573:1 with variation of 86.23m² (27.5%). The proposal seeks to provide additional GFA of 45.91m² which equates to a total GFA of 445.7m² and a FSR of 0.639:1. The additional floor area is proposed at attic level and a minor portion of 3.11m² at first floor level within the existing dwelling. As such consent is sought for a 132.14m² variation or a percentage variation of 42.14%, noting that the proposal seeks to extend the existing variation of 27.5% to 42.14%.

The objectives of Clause 4.4

The objectives of Clause 4.4 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 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.*

Clause 4.6 – Exceptions to Development Standards

Clause 4.6 of the MLEP allows for exceptions to Development Standards. The objectives of this Clause 4.6 are:

- (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.*

Clause 4.6 of the MLEP allows for exceptions of Development Standards. The objectives of this Clause 4.6 are:

- (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.*

Clause 4.6(2) provides the power for development consent to be granted even though the development would contravene a development standard, subject to that clause:

- (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 4.6(3) sets out what a clause 4.6 written request seeking to justify a contravention of a development standard must demonstrate in order for consent to be granted for development that contravenes a development standard:

- (3) *Development consent must not be granted for 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*
 - (b) *there are sufficient environmental planning grounds to justify contravening the development standard.*

The matters required to be demonstrated under clause 4.6(3) are set out below as Points 1 and 2.

Clause 4.6(4) requires that Council keep a record of its assessment carried out under Clause 4.6(3).

1. Clause 4.6(3)(a) - Compliance with the development standard must be unreasonable or unnecessary in the circumstances of the case:

In order to assess whether strict compliance with the development standard is unreasonable or unnecessary, a proposal is considered against the following five ways¹. Each 'test' offers a potential way of demonstrating that compliance is unnecessary or unreasonable in a particular circumstance².

1. *The objectives of the development standard are achieved notwithstanding non-compliance with the standard;*
2. *The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;*
3. *The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard; or*

¹ see *Wehbe v Pittwater Council* [2007] NSWLEC 827

² *Mecone Pty Limited v Waverley Council* [2015] NSWLEC 1312

5. *The zoning of particular land was unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to the land.*

All tests are separate and not all tests may be applicable in each case. Therefore, not all tests need to be met.

This objection relies on the first method set out above, that compliance with a standard is unreasonable and unnecessary given that the objectives of the standard are met even though the standard is not complied with³.

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

Comment: The bulk and scale of the proposal is considered to be consistent with the existing and desired future character of the locality. In terms of establishing consistency with existing character, I have relied on the planning principle established in *Project Venture Developments v Pittwater Council [2005] NSWLEC 191 (Project Venture)*. In *Project Venture*, the Court held that there were to (2) matters that should be considered when assessing whether a development is compatible with its context⁴:

- (1) *its physical impacts; and*
(2) *whether it sits in harmony with surrounding development.*

In terms of physical impacts, the proposal will not result in the loss of visual amenity or environmental amenity for adjoining properties (see Objective d below).

In terms of the second point, the Court held that a photomontage showing the development in context is the best way to assess whether a development will exist in harmony with its surroundings⁵. As shown in the photomontage below, the proposed development clearly sits comfortably in its context, with a comparable height to those adjoining and comparable roof form, noting many of these have attics.

³ *Wehbe v Pittwater Council [2007] NSWLEC 827, Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 and Al Maha Pty Ltd v Huajun Investments Pty Ltd [2018] NSWCA 245*

⁴ *Project Venture Developments v Pittwater Council [2005] NSWLEC 191 at [24]*

⁵ *Ibid at [31]*



Figure 1 Photomontage of the proposal

The new floor area proposed is attributable to the new habitable attic room and a minor addition to the bathroom at first floor level. These elements are not discernible from Bower Street or pedestrian pathway. The attic is built within the existing and partially extended pitched roof form, which is the predominate roof form in the locality. The extension of the roof will not affect the existing location of the dwelling with respect to the boundaries of the site and will not increase the existing maximum ridge height of the building. Accordingly, the proposal is clearly consistent with local character.

As for desired future character, where this is not defined (as in the MLEP), it can be inferred from the development standards in the LEP, along with reference to existing development in the locality, including development that contravenes development standards⁶.

In this regard there are a number of developments in the immediate visual catchment that exceed the FSRs applicable to their sites. These include:

- 70 Bower Street (8% variation)
- 74 Bower Street (14% variation)
- 77 Bower Street (51.2% variation)
- 65 Bower Street (7.34% variation)
- 1 Bower Lane (9.9% variation)

⁶ Woollahra Municipal Council v SJD DB2 Pty Limited [2020] at [63]

The location of these dwellings in relation to the subject site is indicated on the below map.

Consistent with the judgement in *Woollahra Municipal Council v SJD DB2 Pty Ltd [2020]*, the presence of these developments in breach of the FSR development standard shows that Council has considered developments with increased FSRs to be in line with desired future character of the locality and accordingly, the proposed development should also be considered to be in character.

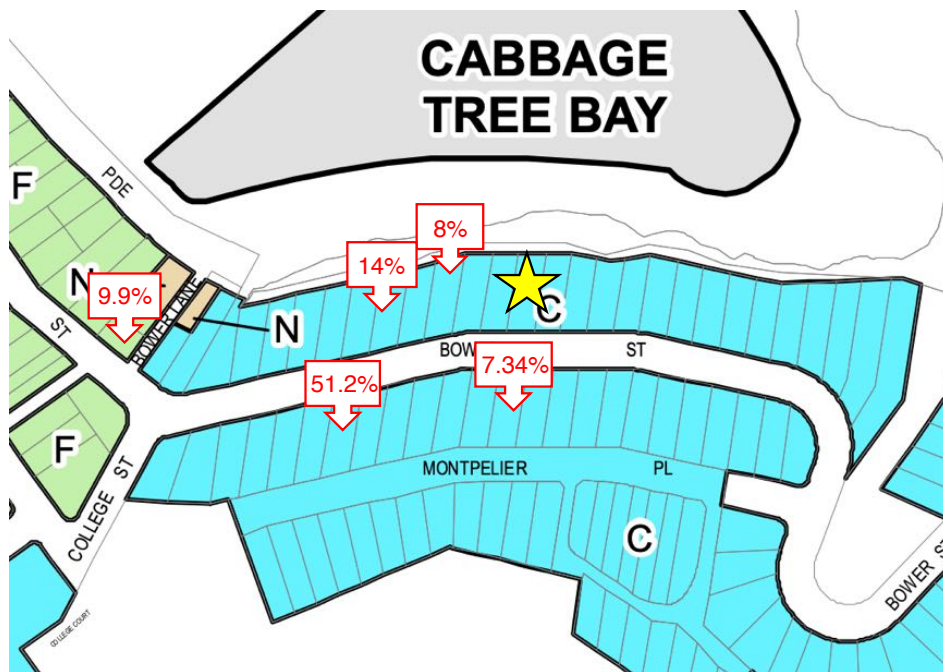


Figure 2 Nearby variations to the FSR development standard (the site = star)

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

Comment: The additional floor area is largely contained within the existing envelope of the building with new elements limited to the minor addition to the bathroom (at rear), new roof additions to the north (rear) and south (front) and dormer roof extension to western side. The bulk and scale of the building in relation to the site will be comparable to that existing and smaller and lower than adjacent properties.

The attic will not affect any important landscape or townscape features.

Objective (c): To maintain an appropriate visual relationship between new development and the existing character and landscape of the area:

Comment: The proposal will provide a dwelling which sits comfortably within its context and will not affect landscaping within the site.

Objective (d): To minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain:

Comment: The proposal will not alter the existing maximum ridge height of the dwelling or alter its location with respect to the boundaries of the site. As a consequence, the proposal will protect private views towards Cabbage Tree Bay from the opposite side of Bower Street, noting the new elements are limited to the front and rear and a minor protrusion to the western side.

The proposal does not lead to any substantial changes to solar access, with shadow diagrams demonstrating that the level of overshadowing of private open spaces and habitable room windows will remain as existing. New windows and openings to areas of additional GFA will not provide direct sightlines to neighbouring sites and the addition of the new attic is not likely to generate much in the way of acoustic disturbance.

Objective (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.

Comment: The site is not located in an E1 Zone and the proposal is for a residential use. As such this objective is not applicable.

Based on the above, compliance with the development standard is unreasonable and unnecessary, as the proposed building height and bulk is of an appropriate form and scale and is compatible with surrounding development and the desired future character for the locality and meets the objectives of the development standard.

2. Clause 4.6(3)(b) - There are sufficient environmental planning grounds to justify contravening the development standard:

The area proposed above the FSR control is:

- 132.14m² of GFA with 86.23m² of this existing and 45.91m² proposed

The proposal seeks to extend the existing FSR variation of 27.5% to 42.14%.

In addition to the consistency of the proposal against the FSR objectives (see **Point 2 above**), in my opinion there are sufficient environmental planning grounds to justify contravening the development standard⁷.

These planning grounds are listed below:

1. All additional floor area is largely contained within the existing building envelope and the dwelling is suitable in its context:

The proposal is limited to the introduction of new attic home office primarily within the existing envelope of the building but including roof elements and a minor extension to the bathroom at first floor level with a total floor area of 45.91m². The elements beyond the existing envelope will not unduly add to the bulk and scale of the dwelling to such a degree that it does not fit comfortably within its context.

2. Limited impact on visual appearance from the public domain:

The proposed additional GFA will not be readily perceptible to the casual observer on Bower Street or Marine Parade.

3. There are no material impacts caused by the development:

Exceedance of the height control will not create additional building bulk that results in unreasonable environmental amenity as follows:

- The proposal will not result in the loss of views from surrounding development as the site is lower than those on the opposite side of Bower Street and the proposed elements will not extend beyond the existing maximum ridge height;
- The proposal will not result in unreasonable overshadowing of adjoining properties as confirmed in the submitted shadow diagrams;
- The proposal will provide a development, which has been designed to ensure that the visual and acoustic privacy of adjoining properties is maintained through the placement of windows and the proposed terrace; and
- The proposal will provide a development, which is consistent with the scale and roof form of the adjoining developments and is of an appropriate visual bulk for the locality.

⁷ see *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [90]

4. The proposal sits comfortably in its context, despite the variation:

Overall, the proposed building is of an appropriate bulk and scale and is compatible with surrounding development in terms of height and roof form.

The proposal retains the same height and key character features such as the pitched roof to ensure it remains in keeping with other dwellings in the locality

There are a number of other developments in the locality which exceed the FSR development standard, showing that developments varying the standard are considered in character with the area.

The proposal will provide a suitable design and be of suitable amenity in terms of the built environment and represents the orderly and economic use and development of land, which are identified as objects of the Act (Section 1.3 of the EP&A Act, 1979). The building envelope and design of the proposal responds appropriately to the unique opportunities and constraints of the site.

3. Clause 4.6(5)

In the context of the requirements of Clause 4.6(5), it is considered that no matters of State or regional planning significance are raised by the proposed development. Moreover, it is considered that there would be no public benefit in maintaining the particular planning control in question, in the case of this specific development.

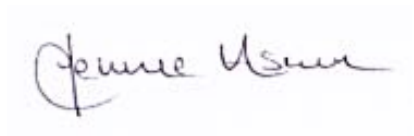
Conclusion

The proposal is consistent with the objects of Section 1.3 of the EP&A Act, 1979, which are to encourage development that promotes the social and economic welfare of the community and a better environment, to promote and coordinate orderly and economic use and development of land and to promote good design and amenity of the built environment.

This submission is considered to adequately address the matters required by Clause 4.6 and demonstrates that compliance with the development standard would be unreasonable and unnecessary in the circumstances of this case and that there are sufficient environmental planning grounds to support the variation.

Based on this Clause 4.6 request, the consent authority can be satisfied that the written request has adequately addressed the matters required to be

demonstrated by subclause (3), and that the proposed development is consistent with the objectives of the FSR development standard under the MLEP, in which the development is proposed to be carried out.



Jennie Askin
aSquare Planning Pty Ltd

10 September 2024



62 Bower Street, Manly NSW 2095

**REQUEST FOR VARIATION TO HEIGHT OF BUILDINGS
DEVELOPMENT STANDARD PURSUANT TO CLAUSE 4.6(3) OF
MANLY LOCAL ENVIRONMENTAL PLAN 2013**

This Clause 4.6 variation relates to a proposal for addition of an attic rumpus room and roof terrace to the existing dwelling on the subject site.

It is proposed to carry out alterations and additions to the existing dwelling on site. The works are limited to the provision of new attic rumpus room within the existing roof form of the dwelling, new roof sheeting, rear terrace and extension of the gable roof ends.

The proposal results in a non-compliance with clause 4.3 of the *Manly Local Environmental Plan 2013 (MLEP)* which relates to height of buildings. As such, this Clause 4.6 request has been prepared in accordance with Clause 4.6 of the MLEP, which applies to the subject site.

The request demonstrates that compliance with the development standard relating to building height is unreasonable or unnecessary in the circumstances of the case and establishes that there are sufficient environmental planning grounds to justify contravening the development standard, satisfying clause 4.6(3) of the MLEP.

Based on this Clause 4.6 request, the consent authority can be satisfied that the written request has adequately addressed the matters required to be demonstrated by subclause (3), and that the proposed development will be consistent with the objectives of the height of buildings development standard.

The nature of the exceedance to the development standard relating to height is set out below, followed by consideration of the relevant matters in clause 4.6 of the MLEP.

The NSW Department of Planning, Industry and Environment (DPI&E) provides guidance on how to prepare Clause 4.6 variations; 'Varying development standards: A Guide' (August 2011). This written request to vary the standards is based on the Guide.

Suite 207 | 59 Great Buckingham Street | Redfern | NSW 2016
telephone: 02 9360 0989 | www.a2p.com.au

Zoning of the site

The zoning of the land is C3 – Environmental Living. The objectives of the C3 zone are:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*
- *To provide for a limited range of development that does not have an adverse effect on those values.*
- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*
- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*
- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*
- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

Clause 4.3 – Building Height

The Standard

The site is subject to a building height standard of 8.5m from existing ground level.

The existing dwelling exceeds this height standard as demonstrated in Figure 1 below:

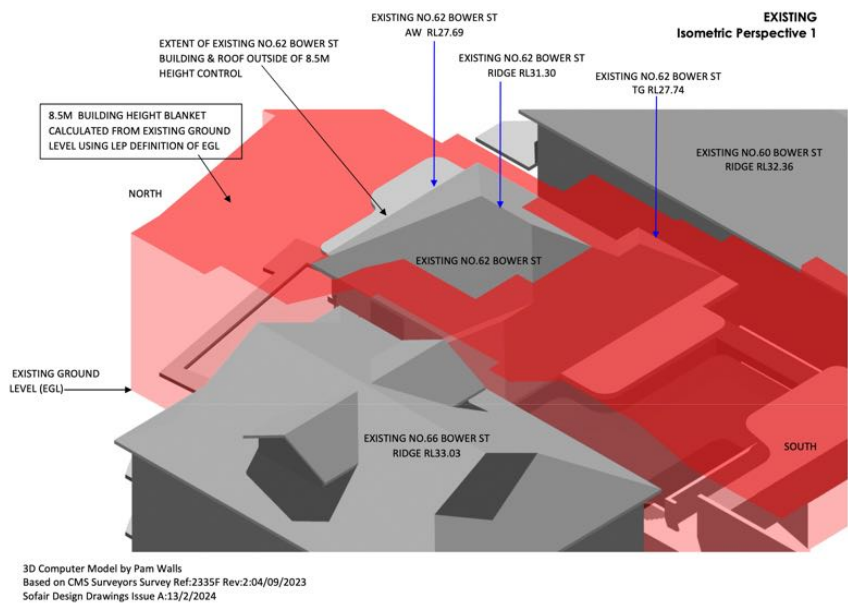


Figure 1: Existing height looking in north-easterly direction

The proposed works will reach a maximum height of 12.6m (measured from the floor of the basement) but new works will be no higher than the existing dwelling (see Figure 2 below) and include replacement of roof material but matching the existing profile (for that part show in grey).

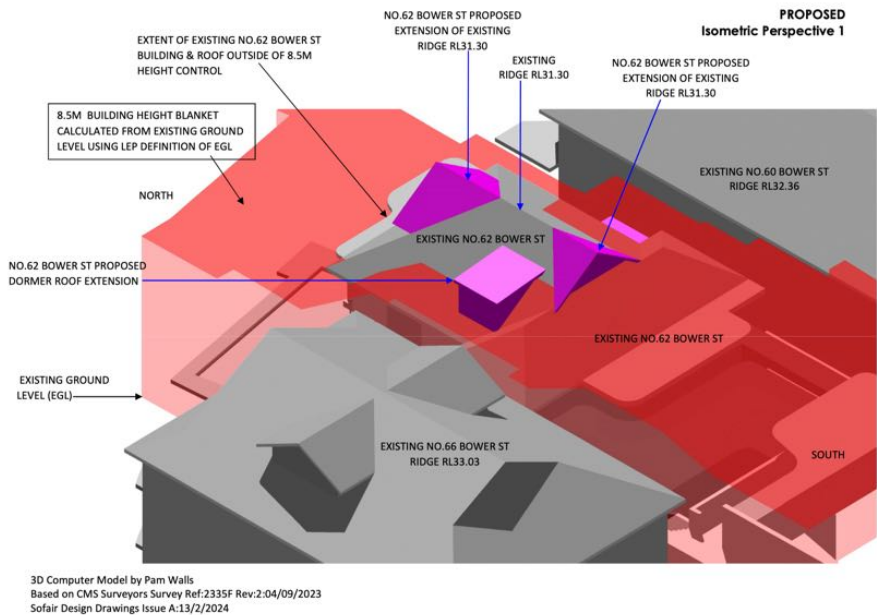


Figure 2: Proposed height looking in north-easterly direction

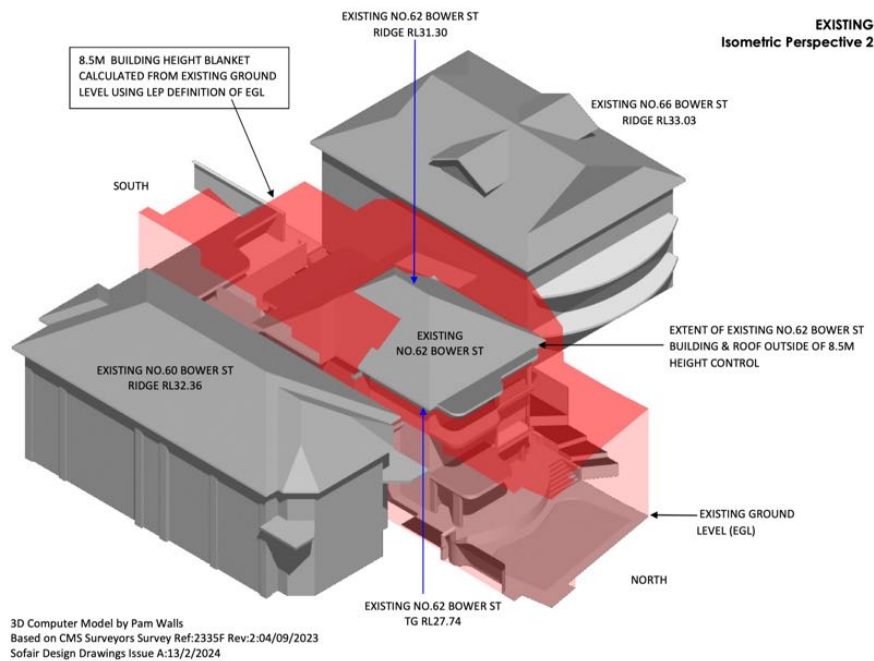


Figure 3: Existing height looking in south-westerly direction

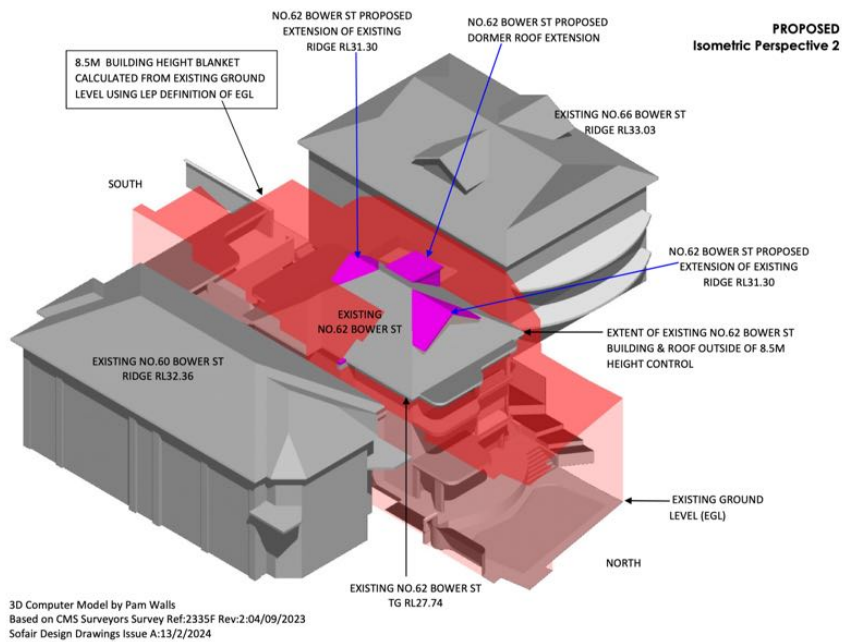


Figure 4: Proposed height looking in south-westerly direction

The proposal includes a numerical variation of 4.1m or a percentage variation of 48.2%.

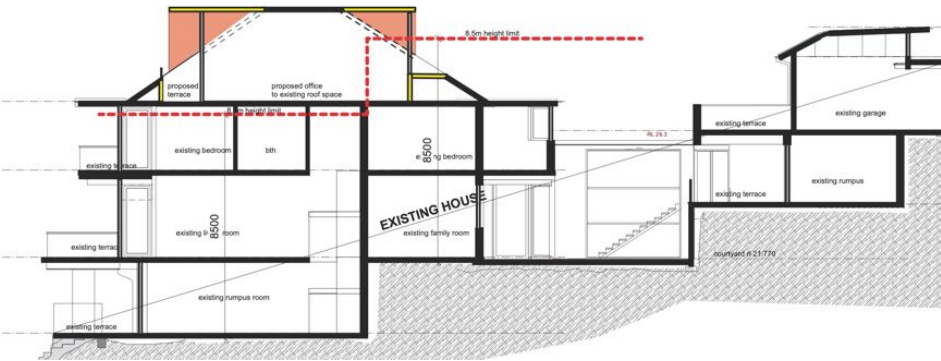


Figure 5 Section showing extent of the non-compliance

The variation is largely the result of the existing basement. When measured from the ground level above the basement the variation is reduced to 1m or 11%.

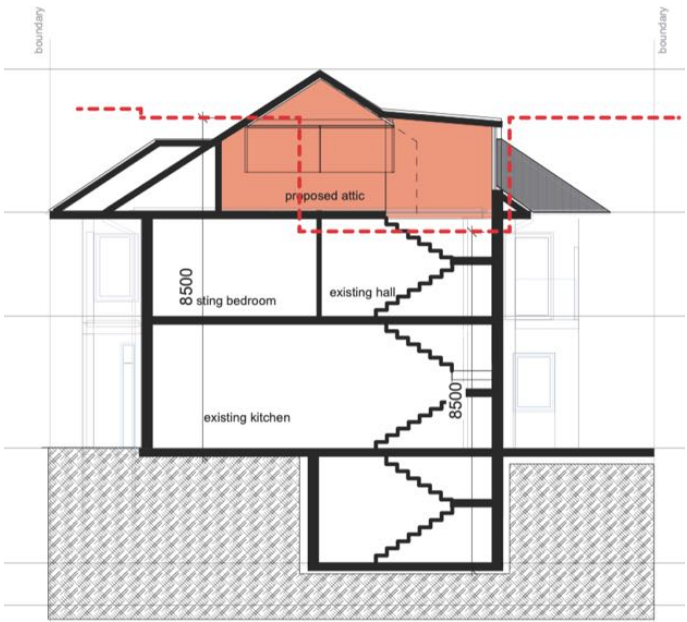


Figure 6 Section demonstrating how basement leads to increased variation

Figure 4 illustrates the areas of the roof which are above the height and the ground level immediately below.

The objectives of Clause 4.3

The objectives of Clause 4.3 are as follows:

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

Clause 4.6 - Exceptions to Development Standards

Clause 4.6 of the MLEP allows for exceptions to Development Standards. The objectives of this Clause 4.6 are:

- (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.*

Clause 4.6 of the MLEP allows for exceptions of Development Standards. The objectives of this Clause 4.6 are:

- (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.*

Clause 4.6(2) provides the power for development consent to be granted even though the development would contravene a development standard, subject to that clause:

- (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 4.6(3) sets out what a clause 4.6 written request seeking to justify a contravention of a development standard must demonstrate in order for consent to be granted for development that contravenes a development standard:

- (3) *Development consent must not be granted for 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*
 - (b) *there are sufficient environmental planning grounds to justify contravening the development standard.*

The matters required to be demonstrated under clause 4.6(3) are set out below as Points 1 and 2.

Clause 4.6(4) requires that Council keep a record of its assessment carried out under Clause 4.6(3).

1. Clause 4.6(3)(a) - Compliance with the development standard must be unreasonable or unnecessary in the circumstances of the case:

In order to assess whether strict compliance with the development standard is unreasonable or unnecessary, a proposal is considered against the following five ways¹. Each 'test' offers a potential way of demonstrating that compliance is unnecessary or unreasonable in a particular circumstance².

¹ see *Wehbe v Pittwater Council* [2007] NSWLEC 827

² *Mecone Pty Limited v Waverley Council* [2015] NSWLEC 1312

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

All tests are separate and not all tests may be applicable in each case. Therefore, not all tests need to be met.

This objection relies on the first method set out above, that compliance with a standard is unreasonable and unnecessary given that the objectives of the standard are met even though the standard is not complied with³.

Objective (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 proposal is limited to the construction of an attic rumpus room, new roof sheeting and replacement solar panels, minor extension of the gable ends of the roof and a new roof terrace. All of these features are located at the top of the dwelling and will not require any excavation or other works that might alter the existing topography.

The proposed elements above the height control are limited to the roof sheeting, replacement of solar panels, extension of gable ends and side facing dormer and these elements are no higher than the existing ridge.

As shown in the photomontage below, the proposal does not increase the existing height of the dwelling which is consistent with surrounding development in the locality and is in fact lower than those adjoining.

³ *Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 and *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245



Figure 7 Photomontage of the proposal

Finally, the height of the proposed elements matches the existing ridge and has long been considered in character with the locality. This is consistent with the ruling in *Woollahra Municipal Council v SJD DB2 Pty Ltd* [2020] NSWLEC 115 (*SJD DB2*) in which the court held that desired future character could be a set by existing buildings in the locality, including ones that the vary development standards⁴.

In this sense, the building on site, with its existing height variation, is considered compatible with the desired future character of the area. The proposal results in a reduced level that is identical to the existing building (RL 31.31) and proposes a similar pitched roof form. Accordingly, and consistent with the judgement in *SJD DB2*, if the existing building is considered in line with desired future character, the building as proposed must also be considered in character, as there is no apparent change to its height or roof form. As such, the proposal meets objective (a).

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

Comment: The works will not alter the apparent bulk of the building. The proposed components above the height limit are no higher than the existing roof ridge height and have a greater separation from the boundaries of the site than the existing dwelling. The dwelling will appear at a bulk and scale that is the comparable with the existing and entirely in keeping with that of the locality.

⁴ see *Woollahra Municipal Council v SJD DB2 Pty Ltd* [2020] NSWLEC 115 at [63]

It is noted that the majority of the additional height proposed is the result of the existing ground level needing to be measured from the basement. If measured from the natural ground level above the basement the variation is reduced to 1m or 11%. Such a variation would be imperceptible to a casual observer and would easily be considered an appropriate bulk and scale given the existing and surrounding development and especially given the absence of material impacts on the natural or built environment and amenity generated by the development.

Objective (c)(i) to minimise disruption to views to nearby residential development from public spaces (including the harbour and foreshores),

Comment: Views from public spaces towards dwellings are unchanged. The overall height and envelope of the building are not extended and as such views from both Cabbage Tree Bay and Bower Street to dwellings are unaltered. Views from the foreshore to dwellings are not easily acquired due to the sheer rock wall between dwellings at foreshore path.

Objective (c)(ii) to minimise disruption to views from nearby residential development to public spaces (including the harbour and foreshores),

Comment: The works do not impact views from properties on either side of the site, which continue to receive unobstructed views to the north towards the ocean.

Dwellings located to the south also continue to enjoy views towards the water. Local topography results in dwellings on the southern side of Bower being set higher and above the roof form. As such, views towards the ocean are retained over and above the subject dwelling.

The proposal will not extend beyond the existing maximum height of the building and will not lead to any reduction in setbacks.



Figure 8 Dwellings on bower street, showing how views are maintained over the subject site (Google Maps 2023)

Objective (c)(iii) to minimise disruption to views between public spaces (including the harbour and foreshores),

Comment: The dwelling does not sit at the interface of any views between different public spaces and as such this objective is not relevant to the proposal

Objective (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: Shadow diagrams have been prepared demonstrating the proposals impact upon the surrounding dwellings and the public domain. As shown in these diagrams there are no impacts to public spaces, including to the foreshore pathway to the north.

As shown in the birds-eye view the proposal does not result in any new shadows falling upon the private open space of adjacent properties. Dwellings on Bower Street are oriented from the south to north with their principal private open spaces located to the north, to take advantage of sunlight and views across Cabbage Tree Bay. As such, all private open spaces are located north of the dwelling on site and are completely unaffected by shadows, which fall to the south.

Elevational shadow diagrams have been prepared showing the impact on the windows of No. 66 and No. 60 Bower Street. In terms of the dwelling at No. 66 Bower Street, the diagrams show that there is no new overshadowing of windows on the 21st of June as a consequence of this development. In terms of the flat building at No. 60 Bower Street, the impact upon windows is largely

unchanged, with the only new impact being to one window at 2pm, which is still provided with sunlight to more than 50% of its surface at this time. Accordingly, all windows at adjacent sites receive sunlight to their surfaces for the exactly the same length as time as existing at midwinter.

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

Comment: The proposed works are generally contained within the existing roof profile with some protrusions and do not affect any key natural features or vegetation on the site. As such, the objective is not relevant to the proposal.

Accordingly, the proposed building height meets the objectives of the height of buildings the development standard, notwithstanding the variation. Therefore, the first test in *Wehbe v Pittwater Council* [2007] NSWLEC 827 is met and as such compliance with the development standard can be considered unreasonable and unnecessary

2. Clause 4.6(3)(b) - There are sufficient environmental planning grounds to justify contravening the development standard:

The components proposed above the height control are:

- New roof sheeting
- Replacement of solar panels
- Extension of gable ends and windows
- New side facing dormer

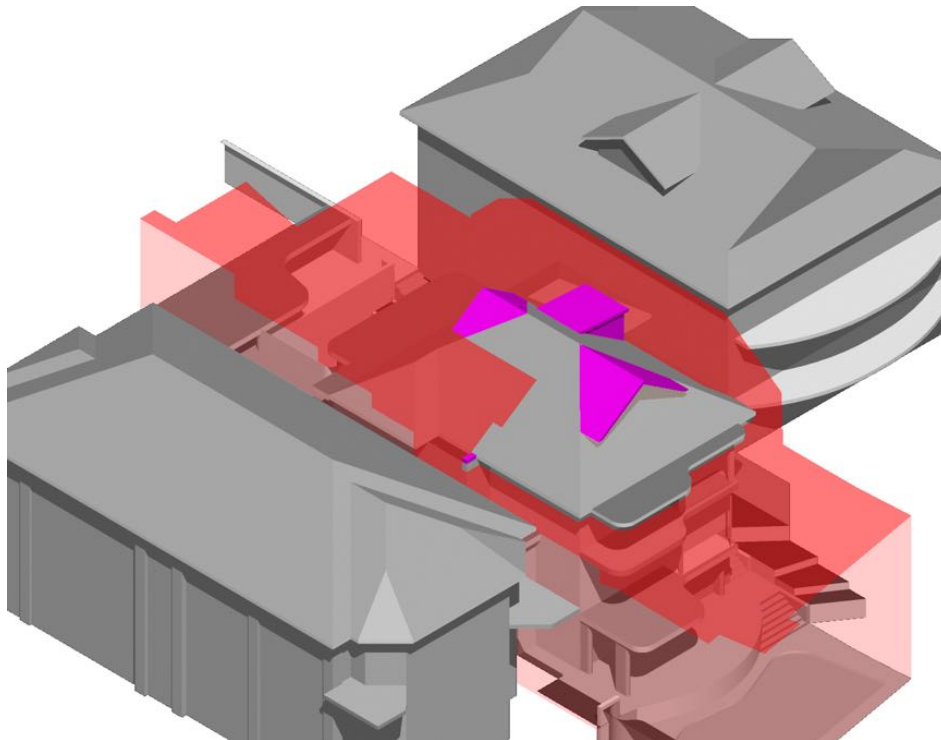


Figure 10 Height plane with non-compliant components in pink

In addition to the consistency of the proposal against the height objectives (see **Point 2 above**), in my opinion there are sufficient environmental planning grounds to justify contravening the development standard⁵.

These planning grounds are listed below:

1. The proposed dwelling has an identical roof ridge RL and envelope as existing

The dwelling, as altered, will reach an RL of 31.31, which matches the existing height.

The proposed elements above the height control are set back to a greater extent from the boundaries of the site than the building below with the gable ends within the general envelope of the existing building.

2. The extent of the variation is largely the result of the basement

⁵ see *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [90]

Building height in is defined in the MLEP as the vertical height in metres from ground level (existing). This means that height must be measured from the existing lowest point of the site which in this case is the floor of the basement. This inflates the proposed variation to 38.86%. When measured from the ground level above the basement (that is, the height of the building that is actually above ground) the variation is reduced to 1m or 11%.

When measured like this, the only part of the building that remains above the height limit is the pitch section of the roof, with no windows, openings or balconies above 8.5m. As mentioned, this pitched section of the roof has an identical RL as the existing building.

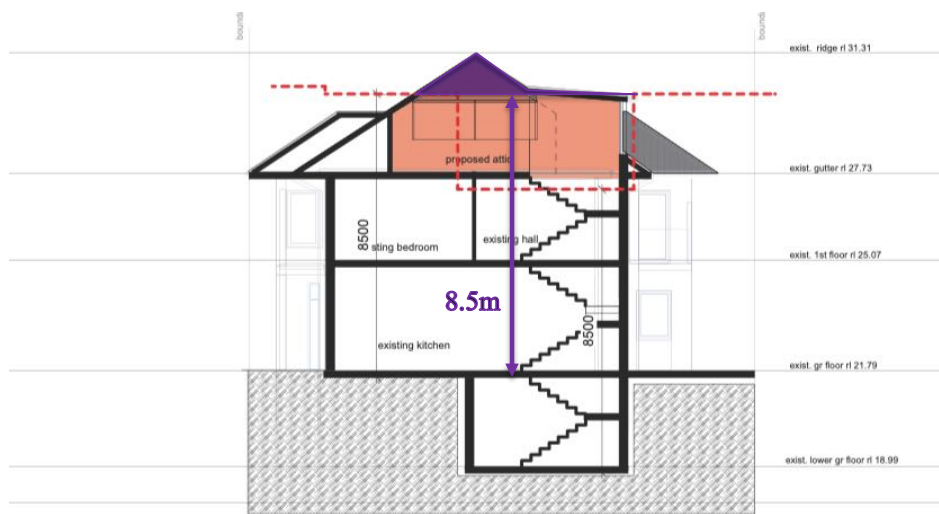


Figure 11 Section showing height variation if measured from ground level above basement (purple)

3. The variation is located at the lowest point of a sloping site

The variation is located at the lowest point of the site where development is situated. As a consequence, the roof ridge height is of a comparable RL to the garage on Bower Street.

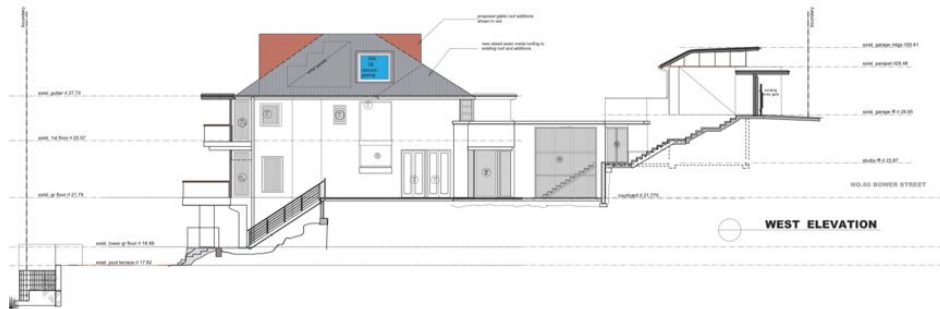


Figure 12 Elevation showing height variation in context of slope

Because of the steep topography, the majority of the built form is not visible from Bower Street, with only the roof and first floor level being above the streetscape level. In addition, the steep rocky outcrop at the northern end of the site obscures the dwelling from view from the pedestrian foreshore path.

Accordingly, the bulk and scale of the proposal will not be readily apparent to casual observers in the locality.

4. The proposal sits comfortably in its context, despite the variation

Overall, the proposed building height and bulk is of an appropriate form and scale and is compatible with surrounding development and the desired future character for the locality.

The proposal retains the same height and key character features such as the pitched roof to ensure it remains in keeping with other dwellings in the locality.

5. There are no material impacts caused by the development.

Exceedance of the height control will not create additional building bulk that results in unreasonable environmental amenity impacts as follows:

- The proposal will not result in the loss of views from surrounding development as detailed in the responses to objectives (c)(i), (c)(ii) and (c)(iii).
- The proposal will not result in unreasonable overshadowing of adjoining properties as detailed in the response to objective (d)
- The proposal will provide a development, which has been designed to ensure that the visual and acoustic privacy of adjoining properties is maintained; and
- The proposal will provide a development, which is consistent with the scale of the adjoining developments and is of an appropriate visual bulk for the locality.

The proposal will provide a suitable design and of suitable amenity in terms of the built environment and represents the orderly and economic use and development of land, which are identified as objects of the Act (Section 1.3 of the EP&A Act and the building envelope and design of the proposal responds appropriately to the unique opportunities and constraints of the site.

3. Clause 4.6(5)

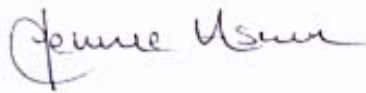
In the context of the requirements of Clause 4.6(5), it is considered that no matters of State or regional planning significance are raised by the proposed development. Moreover, it is considered that there would be no public benefit in maintaining the particular planning control in question, in the case of this specific development.

Conclusion

The proposal is consistent with the objects of Section 1.3 of the EP&A Act, which are to encourage development that promotes the social and economic welfare of the community and a better environment, to promote and coordinate orderly and economic use and development of land and to promote good design and amenity of the built environment

This submission is considered to adequately address the matters required by Clause 4.6 and demonstrates that compliance with the development standard would be unreasonable and unnecessary in the circumstances of this case and there are sufficient environmental planning grounds to support the variation.

Based on this Clause 4.6 request, the consent authority can be satisfied that the written request has adequately addressed the matters required to be demonstrated by subclause (3), and that the proposed development will be in the public interest because it is consistent with the objectives of the height of buildings development standard under the MLEP, in which the development is proposed to be carried out.



Jennie Askin
aSquare Planning Pty Ltd

20 May 2024

ITEM 3.8	DA2024/1139 - 83 CROWN ROAD QUEENSCLIFF - ALTERATIONS AND ADDITIONS TO A 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 building height standard.

RECOMMENDATION

- | | |
|-----------------------------------|--|
| <p>A.</p> <p>B.</p> | <p>That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of WLEP 2011 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.</p> <p>THAT Council as the consent authority approves Development Consent to DA2024/1139 for alterations and additions to a dwelling house including a swimming pool and carport on land at Lot 6 DP 17127, 83 Crown Road QUEENSCLIFF, subject to the conditions set out in the Assessment Report.</p> |
|-----------------------------------|--|

Reporting manager	Rodney Piggott
TRIM file ref	2024/734063
Attachments	1 Assessment Report 2 Site Plan and Elevations 3 Clause 4.6

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/1139
----------------------------	-------------

Responsible Officer:	Jordan Howard
Land to be developed (Address):	Lot 6 DP 17127, 83 Crown Road QUEENSCLIFF NSW 2096
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool and carport
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Matt Elkan

Application Lodged:	28/08/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	05/09/2024 to 19/09/2024
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 15.3%
Recommendation:	Approval

Estimated Cost of Works:	\$ 1,307,397.00
---------------------------------	-----------------

EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) due to a proposed breach of the height of buildings development standards of greater than 10%.

Following a period of public exhibition, Council has received no submissions on this application.

Critical assessment issues included assessment of the Applicant's request to vary a development

standard established by Warringah Local Environmental Plan (WLEP) 2011 Clause 4.3 Height of buildings, as well as assessment of Warringah Development Control Plan built form non-compliances with wall height, building envelope, side setbacks and front setbacks controls.

The 4.6 request for the non-compliance with the height of buildings development standard arises from the replacement of the existing roof with a new flat parapet and pop-up skillion roof design over the existing first floor, which exhibits a maximum height of 9.8m, representing a 15.4% non-compliance with the 8.5m building height development standard. However, the proposed alterations and additions will reduce the overall building height. The existing dwelling roof profile reaches a maximum height of 11.2m, represent an existing 31.8% non-compliance that is to be reduced. The design of the proposed roof form will also provide visual relief and reduce the amount of the roof above the height limit, whilst enabling solar access from the north. As such, the the alterations and additions, particularly the roof form changes, will reduce the overall bulk, scale and height of the dwelling house, whilst enabling the reuse / adaptation of an existing structure for the changing needs of owners and occupants.

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

PROPOSED DEVELOPMENT IN DETAIL

This Development Application seeks development consent for alterations and additions to a dwelling house including a swimming pool and carport. Specifically, the following is proposed:

- Removal of some existing internal walls at the mid-level to reconfigure the floorplan to best suit the owner's needs and future requirements and increase solar access to all spaces.
- Addition of internal stairs to allow the owner to navigate all three storeys without being exposed to the outside elements.
- Relocation of mid-level deck and shared living spaces to the upper floor to maximise natural light, ventilation and distant ocean views.
- Reconfiguration of basement level to establish a more useable and welcoming space.
- Reconfiguration of windows to existing house to accommodate reconfigured floor plans and to improve performance.
- Extending the upper deck to enhance access to district views and connection with the back garden.
- New roof structure including skillion roofs over upper level living space to improve solar access, ventilation and quality of internal spaces while providing articulation to built form.
- Replacement of all cladding and roofing to existing house to allow for walls, ceilings and roof to be effectively insulated.
- Enhancing the existing entry to demarcate a formal entrance and core to the building.
- New, small swimming pool in the rear garden.
- New open carport to protect parked vehicles adjacent to Highview Avenue.
- No new fencing proposed. Minor alterations will be necessary to the existing brick wall on Highview Avenue to facilitate a sliding security gate.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Local Environmental Plan 2011 - Zone R2 Low Density Residential
Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - B5 Side Boundary Setbacks
Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - B9 Rear Boundary Setbacks
Warringah Development Control Plan - D16 Swimming Pools and Spa Pools

SITE DESCRIPTION

Property Description:	Lot 6 DP 17127 , 83 Crown Road QUEENSCLIFF NSW 2096
Detailed Site Description:	The subject site consists of one (1) allotment located on the northern side of Crown Road and southern side of Highview Avenue. The site is irregular in shape with a primary frontage of 13.715m along Crown Road, a secondary frontage of 15.24m along Highview Avenue, and a maximum depth of 34.6m along the western side boundary. The site has a surveyed area of 486.1sqm. The site is located within the R2 Low Density Residential zone and accommodates a dwelling house. The site slopes from the primary frontage (south) down towards the secondary frontage (north), with a fall across the site of 3m.

	The site contains lawn areas, garden beds, trees and vegetation. There are no details of threatened species at the subject site. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by dwelling houses.
--	---

Map:



SITE HISTORY

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

Development Application No. DA2024/1064 for "Alterations and additions to a dwelling house including a swimming pool and carport" was returned at lodgment on 8 August 2024 due to inadequate and / or insufficient information being provided to assess the proposed development.

Pre-Lodgment Meeting No. PLM2021/0243 for "Alterations and Additions a dwelling house to relocate the driveway" was held on 12 October 2021 to discuss a proposed development.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

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

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 05/09/2024 to 19/09/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<i>Supported, subject to conditions.</i> The proposal is supported with regard to landscape issues. The application is assessed by Landscape Referral against Warringah Local Environmental Plan 2011 and the following Warringah Development Control Plan 2011 controls (but not limited to): • D1 Landscaped Open Space and Bushland Setting • E1 Preservation of Trees or Bushland Vegetation Two trees are proposed to be removed in the rear setback. Council has sighted these trees and due to their size no concerns are raised

Internal Referral Body	Comments
	with their removal subject to native tree replacement. All other trees and vegetation shown to be retained shall be protected during works. New planting is shown indicatively on the plans and any new planting shall be installed in accordance with the requirements outlined in the conditions of consent.
NECC (Coast and Catchments)	<i>Supported, subject to conditions.</i> The applicant seeks development consent to undertake the following: • Alterations and additions to existing dwelling, and proposed new carport, swimming pool and ancillary works This application was assessed in consideration of: • Supplied plans and reports; • Coastal Management Act (2016) • State Environmental Planning Policy (Resilience and Hazards) 2021 (section 2.10, & 2.12); • Relevant LEP and DCP clauses. Comment: SUPPORTED WITH CONDITIONS State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the 'Coastal Environmental Area' maps 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. Comment: On internal assessment, 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. Warringah LEP 2011 and Warringah DCP 2011 No other coastal related issues identified. As such, it is considered that the application does comply with the requirements of the coastal relevant clauses of the Warringah LEP 2011 and Warringah DCP 2011.
NECC (Development Engineering)	<i>Supported, subject to conditions.</i> The proposed development is in Region 2. On-site detention is not

Internal Referral Body	Comments
	required for alterations and additions. Vehicle crossing construction is proposed. Development engineering raises no objections to the proposed development, subject to conditions.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No. A1757599_02, issued 6 August 2024).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 2 Coastal Vulnerability Area

2.9 Development on land within the coastal vulnerability area

Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

- a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and
- b) the proposed development:
 - i) is not likely to alter coastal processes to the detriment of the natural environment or
 - ii) other land, and
 - iii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and
- c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.

Comment:

There is currently no adopted Coastal Vulnerability Area Map. Nonetheless, Council's Coasts and Catchments team has reviewed the proposal and considers that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021, supporting the proposal, subject to conditions.

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:

Council's Coasts and Catchments team has reviewed the proposal and considers that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021, supporting the proposal, subject to conditions.

- 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's Coasts and Catchments team has reviewed the proposal and considers that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021, supporting the proposal, subject to conditions.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

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

- if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

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's Coasts and Catchments team has reviewed the proposal and considers that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021, supporting the proposal, subject to conditions.

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

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

Comment:

Council's Coasts and Catchments team has reviewed the proposal and considers that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021, supporting the proposal, subject to conditions.

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.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.8m	15.3%	No

Compliance Assessment

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

Detailed Assessment

Zone R2 Low Density Residential

The proposed development is assessed against the objectives of the R2 Low Density Residential zone as follows:

To provide for the housing needs of the community within a low density residential environment.

Comment:

The proposed development is for alterations and additions to a dwelling house, which will allow for the adaptation and reuse of an existing dwelling house for the changing housing needs of owners and occupants, and therefore the community, within a low density residential environment.

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

Comment:

The proposed development does not provide for non-residential uses. However, it will provide for the residential needs of owners and occupants.

To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.

Comment:

The proposed development is considered to remain appropriate for the low density residential environment and remain in harmony with the natural environment of Warringah.

It is considered that the proposed development is consistent with the zone objectives.

4.3 Height of buildings

The proposed development has a maximum height of 9.8m, representing a 15.4% non-compliance with the 8.5m building height development standard. The Applicant's written request to vary this

development standard is assessed within the section of this report on WLEP 2011 Clause 4.6
Exceptions to development standards.

The proposed development is assessed against the objectives of the height of buildings development standard as follows:

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

Comment:

The proposed development will reduce the overall building height. The existing dwelling roof profile reaches a maximum height (as measured on Section AA to the rumps room floor) of 11.2m. The alterations and additions will reduce the overall bulk, scale and height of the roof form by replacing the existing roof with a flat pop-up skillion roof design. The maximum building height will be reduced to 9.8m, still non-compliant with the 8.5m height control, but reduced from existing. Surrounding development is of a similar height, bulk and scale, with the proposal considered to be commensurate to that of surrounding development. In this regard, the proposal is considered to be an improvement to the existing height non-compliance, and compatible with the height and scale of surrounding and nearby development.

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

Comment:

The proposed development will reduce the overall building height. With the overall height of the dwelling house to be reduced, the proposal will reduce overall visual impact, disruption of views, and solar impact. The propose development is designed such that it is not considered to result in any unreasonable amenity impacts on adjoining properties (including light, solar or privacy impacts).

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

Comment:

The proposed development will reduce the overall building height. With the overall height of the dwelling house to be reduced, the proposal will reduce overall visual impact, reducing the visual appearance of the dwelling house within the environment. Nonetheless, this area is already disturbed for residential use and is characterised by low density residential development, and medium density residential development to the south. The proposal complies with the landscape open space requirements of WDCP Clause D1 Landscaped Open Space (LOS) and Bushland Setting. Therefore, sufficient opportunities for landscaping and vegetation are retained to maintain the scenic quality of Warringah within a residential area.

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

Comment:

The proposed development will reduce the overall building height. With the overall height of the dwelling house to be reduced, the proposal will reduce overall visual impact, reducing the visual appearance of the dwelling house when viewed from public places such as parks and reserves, roads and community facilities.

It is considered that the proposed development is consistent with the objectives of the height of buildings development standard.

4.6 Exceptions to development standards

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

Development standard: Clause 4.3 Height of buildings

Requirement: 8.5m

Proposed: 9.8m

Percentage of variation: 15.3%

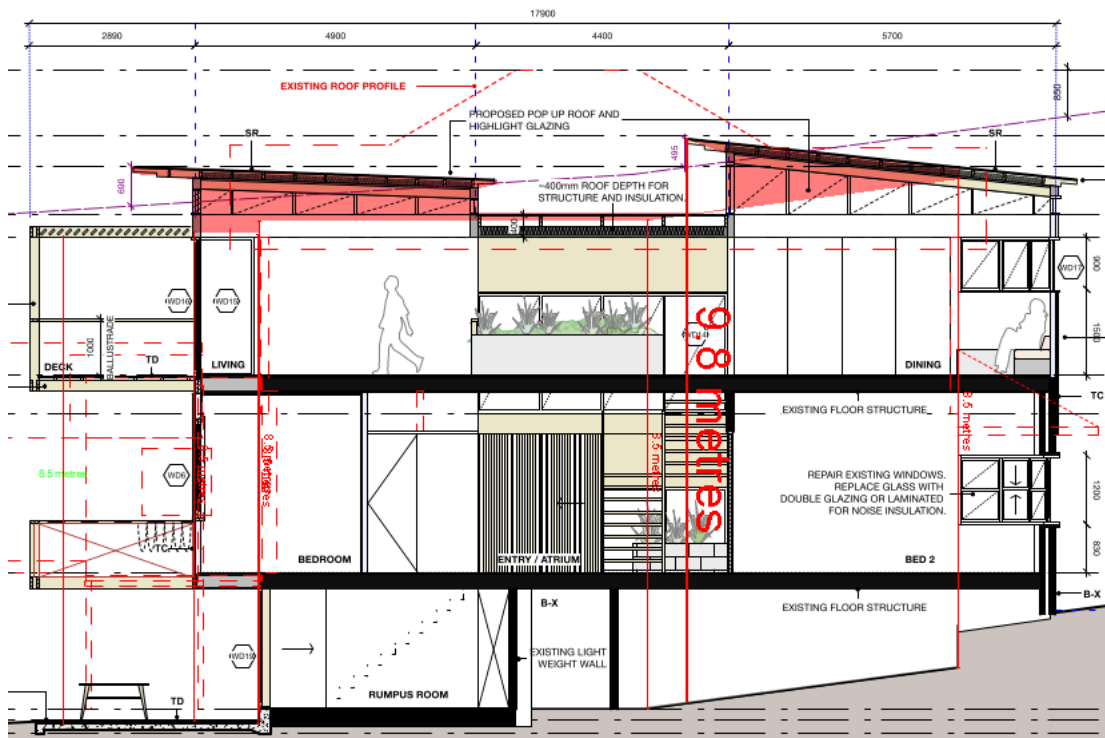


Figure 1 - Extract from Section AA depicting maximum building height (9.8m) and area above 8.5m height standard in red.

With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is/is not accompanied by a document that sets out the grounds on which the Applicant seeks to demonstrate the matters set out in Clause 4.6(3)(a) and (b) of the WLEP 2011 (the 'Clause 4.6 Request').

Subclause (1) of this clause provides that:

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

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

Comment:

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

Subclause (2) of this clause provides that:

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

Comment:

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

Subclause (3) of this clause provides that:

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

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

Comment:

In considering if compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, the Applicant has sought to establish that the objectives of the development standard are achieved notwithstanding non-compliance with the standard. This is done in reference to *Wehbe v Pittwater Council [2007] NSWLEC 827*, where it was established that demonstrating that the objectives of the development standard are achieved notwithstanding non-compliance with the standard was one of five ways to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

The objectives of the development standard and the Applicants arguments, in part, and sorted by objective, are outlined as follows:

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

- The existing tiled gable roof form exceeds the 8.5m height limit, with the proposed development to reduce the highest point of the roof (whilst remaining non-compliant). The proposal therefore reduces overall bulk, scale and height from existing currently.
- Exceedance of the height control is not easily visible from Crown Road and the proposal presents as two-storey to Crown Road.
- The proposal is compatible with the height and scale of surrounding development in an area characterised predominantly by large two and three storey dwelling houses.

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

- By renovating the existing roof form, the proposal reduces the bulk of the existing building and improves visual impact and solar access.
- Reasonable sharing of views to and from public and private properties is allowed.
- Neighbouring properties will have improved solar access and maintain the required level of solar access.

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

- The proposal has been designed to respond sensitively to the existing topography by following the slope of the land and minimising excavation as far as possible.
- Landscaped Open Space is compliant with the minimum 40% requirement

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

- Reasonable sharing of views to and from public and private properties is allowed.
- The surrounding vicinity is characterised predominantly by large two and part three storey dwellings of a similar scale. This proposal is in keeping with existing bulk and scale of the streetscape.

The arguments provided by the Applicant are generally concurred with. In particular, it is noted that the proposal will reduce the overall building height. The existing dwelling roof profile reaches a maximum height (as measured on Section AA to the rumps room floor) of 11.2m. The alterations and additions will reduce the overall bulk, scale and height of the roof form by replacing the existing roof with a flat pop-up skillion roof design. The maximum building height will be reduced to 9.8m, still non-compliant with the 8.5m height control, but reduced from existing. Furthermore, the size of the breach will be reduced, as the roof form will involve the skillion elements popping up in two sections, providing visual relief and reducing the amount of the roof above the height limit.

The applicant has demonstrated that the objectives of the development standard are achieved notwithstanding non-compliance with the standard. Therefore, Council is satisfied that the Applicant has demonstrated that compliance with Clause 4.3 Height of buildings is unreasonable or unnecessary in the circumstances of this application.

(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:

- Compliance with the height of building standard is unreasonable and unnecessary and the objectives of the development standard are achieved notwithstanding non-compliance with the standard.
- The existing tiled gable roof form exceeds the 8.5m height limit, with the proposed development to reduce the highest point of the roof (whilst remaining non-compliant). The

- proposal therefore reduces overall bulk, scale and height from existing currently.
- By renovating the existing roof form, the proposal reduces the bulk of the existing building and improves visual impact and solar access.
- Requiring further reduction to the proposed roof height would result in significant modification to the existing building (noting that the existing building is non-compliant with the development standard) and so result in an unreasonable reduction to the existing habitable floor area and thus impact the overall amenity of the residents.
- The proposal has been designed with articulated facades to minimise the visual bulk from the street and adjoining properties.

The arguments provided by the Applicant are generally concurred with. In particular, it is again noted that the proposal will reduce the overall building height, despite remaining non-compliant with the development standard.

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

- The proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, thereby satisfying objects 1.3(c) and (g) of the EPA Act.
- Flexibility in the application of the development standard will allow adaptation and reuse of existing built form for the changing needs of owners and occupants. This promotes ecologically sustainable development and the orderly development of land, thereby satisfying objects 1.3(b) and (c) 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 WLEP 2011.

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.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation	Complies
B1 Wall height	7.2m	8m	11.1%	No
B3 Side Boundary Envelope	East: 5m	Outside envelope (see Figure 2)	N/A	No
	West: 5m	Outside envelope (see Figure 3)	N/A	No

B5 Side Boundary Setbacks	East: 0.9m	Carport: Nil Entry Porch: 1.1m Dwelling: 2.3m	100% - -	No Yes Yes
	West: 0.9m	Swimming Pool: 1.6m - 1.7m Sauna: 0.9m - 1m Dwelling: 2.5m - 3.1m	- - -	Yes Yes Yes
B7 Front Boundary Setbacks	Primary (Crown Road): 6.5m	Dwelling: 5.9m	9.2%	No
	Secondary (Highview Avenue): 3.5m	Carport: 0.4m Swimming Pool 1.9m - 2.5m Dwelling / Deck 9.5m - 10.1m	88.6% 45.7% -	No No Yes
B9 Rear Boundary Setbacks	N/A - site has two road frontages	N/A	N/A	N/A
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (194.44sqm)	53% (257.7sqm)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	N/A	N/A
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D13 Front Fences and Front Walls	Yes	Yes
D14 Site Facilities	Yes	Yes
D15 Side and Rear Fences	Yes	Yes
D16 Swimming Pools and Spa Pools	Yes	Yes
D20 Safety and Security	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of non-compliance

Clause B1 Wall Heights requires that walls are not to exceed 7.2 metres from ground level (existing) to the underside of the ceiling on the uppermost floor of the building (excluding habitable areas wholly located within a roof space).

The proposal presents a wall height of 8m, measured at both the eastern and western side elevations, to the underside of the parapet, representing a 11.1% variation to the control.

Notably, the proposal largely retains external walls, with existing walls exhibiting approximately the same height, and only the altered roof form changing how the roof meets the external walls.

Merit consideration

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

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

Comment:

Notwithstanding the non-compliance, the proposed development is considered to be appropriately sited to minimise visual impacts caused by the proposed wall height. The breach is largely an existing one, occurring in part due to sloping topography down towards the north. It is considered that the visual impact of the development is minimised from adjoining

properties, streets, waterways and land zoned for public recreation purposes, particularly given that the changes will reduce the overall height of the dwelling.

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

Comment:

From the primary frontage (Crown Road), the development appears generally beneath the existing tree canopy level. The development appears larger at the secondary frontage (Highview Avenue), however, the site slopes towards this secondary frontage and there are little to no canopy trees existing on the property or within the Highview Avenue streetscape. It is assumed that the proposed development would be consistent with the general height of canopy trees. It is noted that the height of the development is generally consistent with surrounding development.

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

Comment:

The proposal is not considered to result in any unreasonable view impacts to and from public and private properties. The overall height of the dwelling is reduced due to proposed roof form changes.

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

Comment:

The extent of impacts are considered to be reasonable in the context of the site and adjacent properties. The overall height of the dwelling is reduced due to proposed roof form changes.

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

Comment:

The proposal responds appropriately to the site topography and minimises significant excavation of the natural landform.

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

Comment:

The proposal puts forward an acceptable roof design and roof form. The overall height of the dwelling is reduced due to proposed roof form changes. The roof form changes do not contribute to a significant increase in wall height from existing.

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

B3 Side Boundary Envelope

Description of non-compliance

Under this Clause, buildings must be sited within a building envelope determined by projecting planes at 45 degrees from a height of 5m above ground level (existing) at the side boundaries.

The proposed development encroaches the side building envelope on the eastern elevation as depicted in *Figure 2*. The proposed development also encroaches the building envelope on the western elevation as depicted in *Figure 3*.

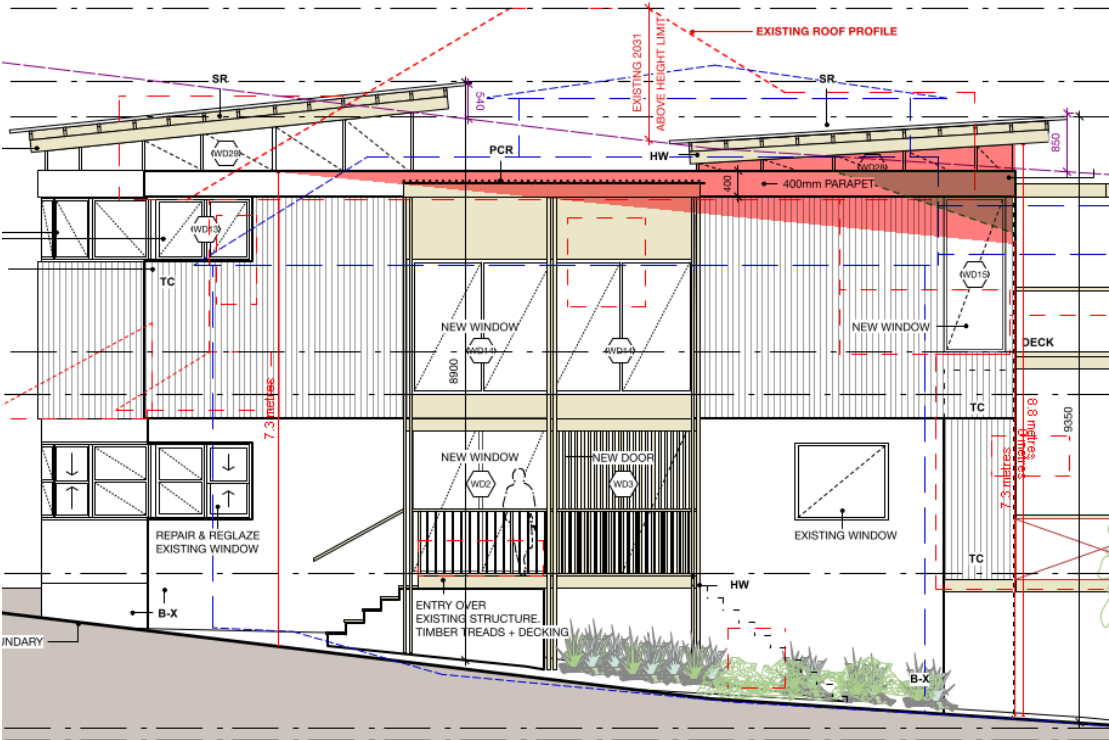


Figure 2 - Extract from Eastern Elevation with side boundary envelope encroachment in red.

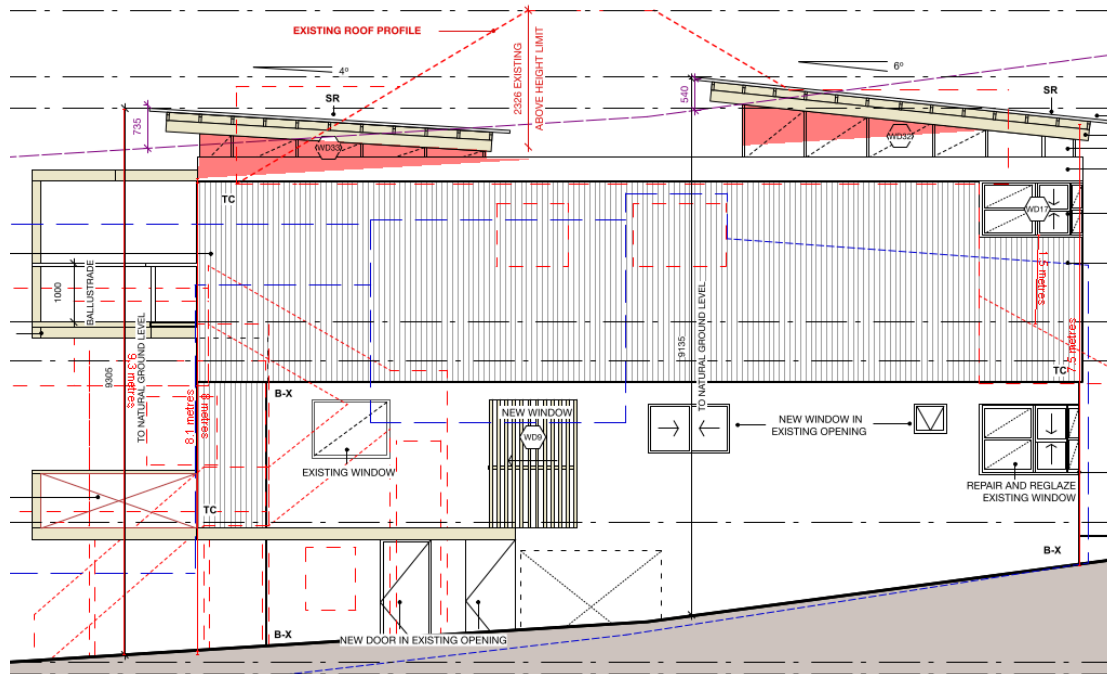


Figure 3 - Extract from Western Elevation with side boundary envelope encroachment in red.

Notably, the proposal largely retains external walls, with portions of these breaches caused by existing walls to be retained. The parapets and pop-up skillion roofs are the proposed elements which breach the side building envelope.

Merit consideration

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

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

Comment:

Notwithstanding the variation, the proposed alterations and additions are well removed from adjoining properties, and provide fully compliant side setbacks to the dwelling house at both eastern and western side elevations. The breach is largely an existing one, occurring in part due to topography sloping down toward the northern end of the site, and due to the reuse / adaptation of an existing structure, with existing non-compliances. The changed roof design reduces bulk, height and scale by lowering the roof height overall, and breaking up the design of the roof with pop-up skillion roof segments. Overall, the proposed alterations and additions are considered to result in a dwelling commensurate to that of surrounding development and not visually dominant by virtue of its height and bulk.

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

Comment:

The proposed alterations and additions to the dwelling house are compliant with side setback requirements, providing an appropriate level of spatial separation between the subject site and surrounding allotments. Furthermore, the proposal is not considered to result in any unreasonable amenity impacts on adjoining properties (including light, solar or privacy impacts), noting in particular that the overall height of the dwelling is reduced due to proposed roof form changes.

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

Comment:

The proposal responds appropriately to the site topography and minimises significant excavation of the natural landform.

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

B5 Side Boundary Setbacks

Description of non-compliance

Under Clause B5 Side Boundary Setbacks of the DCP, development is to maintain a minimum setback from the side boundaries of 0.9m. The control stipulates that the side boundary setback areas are to be landscaped and free of any above or below ground structures, car parking or site facilities other than driveways and fences.

All proposed elements, including the proposed swimming pool, sauna and dwelling house alterations and additions, comply with the west side boundary setback requirement.

At the east side boundary, the proposal has the following setbacks to various elements:

- Carport: Nil, representing a 100% variation.
- Entry Porch: 1.1m, compliant.
- Dwelling: 2.3m, compliant.

The only proposed element to breach the side setback requirement is the proposed carport, which is setback nil from the eastern side boundary. Notably, the property to the east of the subject site (81 Crown Road) has a garage with nil setback to the shared side boundary also at this location.

Merit consideration

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

- To provide opportunities for deep soil landscape areas.

Comment:

The proposal complies with the landscape open space requirements of WDCP Clause D1 Landscaped Open Space (LOS) and Bushland Setting. Therefore, sufficient opportunities for deep soil landscape areas are provided.

- To ensure that development does not become visually dominant.

Comment:

The dwelling itself and all other proposed elements are compliant with the side setback requirement. The non-compliant element is a single-storey, single space carport. This element is located adjacent to a solid garage, much larger in design, also with a nil to boundary setback. As such, this non-compliance is not considered to result in a visually dominate development.

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

Comment:

As above, the non-compliant element is a single-storey, single space carport. This element is located adjacent to a solid garage, much larger in design, also with a nil to boundary setback. As such, this non-compliance is not considered to contribute to excessive bulk and scale.

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

Comment:

The proposed development is not expected to cause an unreasonable impact to the privacy, amenity or solar access of adjacent properties. Whilst the separation between the carport and the garage adjacent at 81 Crown Road will be nil, both are single-storey parking structures, and there is not anticipated to be any unreasonable amenity impacts as a result.

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

Comment:

The proposal is not considered to result in any unreasonable view impacts to and from public and private properties.

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

B7 Front Boundary Setbacks

Description of non-compliance

Under Clause B7 Front Boundary Setbacks of the DCP, development is to maintain a minimum

setback from the front boundary of 6.5m. Furthermore, an exception is provided for corner allotments or sites with a double street frontage, where the minimum front building setback is 6.5m to both frontages, which allows the front setback to be reduced to 3.5m for the secondary frontage, provided the character of the street is considered.

In this case, Crown Road is taken as the primary frontage and Highview Avenue is taken as the secondary frontage.

At the primary frontage, the proposed alterations and additions will not decrease the existing dwelling front setback, which at its closest is 5.9m at the ground floor. However, the proposal does include minor first floor additions which will expand the first floor over the footprint of the ground floor below, thereby reducing the first floor front setback from 7.5m to 5.9m. This is in line with the existing ground floor below, representing a 9.2% non-compliance with the 6.5m requirement.

At the secondary frontage, the dwelling and rear deck are compliant with the 3.5m control, exhibiting a 9.5m - 10.m setback. However, the proposed carport exhibits a 0.4m setback, representing a 88.6% non-compliance. The swimming pool exhibits a 1.9m - 2.5m setback, representing a maximum 45.7% non-compliance.

It is noted that WDCP Clause D16 Swimming Pools and Spa Pools stipulates that where there are two frontages, swimming pools and spas are not to be situated in the primary street frontage, which has been followed in this case. Furthermore, if the secondary frontage were to be a rear setback area, and subject to the requirements of WDCP B9 Rear Boundary Setbacks instead, swimming pools are permitted in cases where such outbuildings and other structures do not exceed 50% of the rear setback area. In this instance, the carport and swimming pool occupy approximate 50% of the secondary front setback area and are structures which would therefore be permitted in a rear setback area (subject to a merit assessment).

Merit consideration

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

- *To create a sense of openness.*

Comment:

The proposed development complies with the landscape open space requirements of WDCP Clause D1 Landscaped Open Space (LOS) and Bushland Setting. The primary front setback non-compliance is not considered to impinge on the sense of openness of the streetscape, given that it is largely existing, with the proposal only seeking to expand the first floor over the footprint of the ground floor below. The rear setback non-compliances are to small complementary elements to the dwelling house (a single-storey, single space carport and a swimming pool) and are not considered to impinge on the sense of openness of the Highview Avenue streetscape. It is also noted that surrounding development along the secondary frontage exhibit nil or minimal front boundary setbacks to parking structures, such as examples at 81 Crown Road and 3 Highview Avenue.

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

Comment:

The proposed building additions respect existing setback lines. Surrounding development along the secondary frontage exhibit nil or minimal front boundary setbacks to parking structures, such as examples at 81 Crown Road and 3 Highview Avenue. The proposed development is commensurate to the surrounding character and maintains the visual continuity and pattern of buildings and landscape elements.

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

Comment:

The proposal will not detract from the existing quality of streetscapes and public spaces. The proposal is of appropriate design and visual quality, and considers the existing streetscape.

- *To achieve reasonable view sharing.*

Comment:

The proposal is not considered to result in any unreasonable view impacts to and from public and private properties.

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

B9 Rear Boundary Setbacks

The subject site does not have a rear boundary. Rather the site has two front boundaries (a primary frontage to Crown Road and a secondary frontage to Highview Avenue) and two side boundaries. As such, the rear boundary control is not applicable in this case.

D16 Swimming Pools and Spa Pools

It is noted that this Clause stipulates the following:

- *Pools are not to be located in the front building setback.*
- *Where there are 2 frontages, swimming pools and spas are not to be situated in the primary street frontage.*

The subject site has two frontages and the proposed swimming pool is located within the secondary frontage, as required by this Clause. Whilst the proposed swimming pool is not compliant with the secondary frontage setback requirement of WDCP Clause B7 Front Boundary Setbacks, this is assessed a supportable on merit within that section of this report, with reference to the requirements of this Clause on swimming pool positioning.

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 \$13,074 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,307,397.

CONCLUSION

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

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

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

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

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

Council is satisfied that the Applicant's written request under Clause 4.6 of the Warringah Local Environment Plan 2011 seeking to justify variation of the development standard contained within Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

PLANNING CONCLUSION

This proposal, for alterations and additions to a dwelling house including a swimming pool and carport, has been referred to the Development Determination Panel (DDP) due to a proposed breach of the height of buildings development standards of greater than 10%.

Following a period of public exhibition, Council has received no submissions on this application.

Critical assessment issues included assessment of the Applicant's request to vary a development standard established by Warringah Local Environmental Plan (WLEP) 2011 Clause 4.3 Height of buildings, as well as assessment of Warringah Development Control Plan built form non-compliances with wall height, building envelope, side setbacks and front setbacks controls.

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 Applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) of Clause 4.6. The proposal has therefore been recommended for approval.

REASON FOR DETERMINATION

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

RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2024/1139 for Alterations and additions to a dwelling house including a swimming pool and carport on land at Lot 6 DP 17127, 83 Crown Road, QUEENSCLIFF, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

Approved Plans

Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA1	-	Site Plan / Analysis	Incidental Architecture	August 2024
DA2	-	Basement Floor Plan	Incidental Architecture	August 2024
DA3	-	Ground Floor Plan	Incidental Architecture	August 2024
DA4	-	First Floor Plan	Incidental Architecture	August 2024
DA5	-	North and East Elevations	Incidental Architecture	August 2024
DA6	-	South and West Elevations	Incidental Architecture	August 2024
DA7	-	Section AA	Incidental Architecture	August 2024
DA8	-	Demolition Plans	Incidental Architecture	August 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate No. A1757599_02	-	Incidental Architecture	6 August 2024
Waste Management Plan - 83 Crown Road, Queenscliff	-	-	-
Landscape & Private Open Space Area Calculation Plan, Drawing No. DA12	-	Incidental Architecture	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	Undated

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

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

3. Prescribed Conditions

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

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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

4. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.

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

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (m) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (n) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (o) Should any construction cranes be utilised on site, they are to be fitted with bird deterrents along the counterweight to discourage raptor (bird) nesting activity. Deterrents are to remain in place until cranes are dismantled. Selection of deterrent methods is to be undertaken in accordance with the recommendations of a suitably qualified ecologist.
- (p) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

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

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

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

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

5. No Approval for Secondary Dwelling

No approval is granted or implied under this Development Consent for the use of any part of the dwelling house 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 (located on the First Floor of the approved plans).

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

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$13,073.97 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$1,307,397.00.

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

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

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

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

7. **Security Bond**

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

8. **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. Stormwater shall be conveyed from the site to the street. 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.

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

9. **Vehicle Crossings Application**

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing 4.0 metres wide on the kerb line and a maximum of 6.0 metres wide on the property boundary in accordance with Northern Beaches Council Standard Drawing A4 3330/1 N in accordance with Section 138 of the Roads Act 1993. The vehicle crossing shall be a minimum of 500mm clear of all utility access covers.

Note, driveways are to be in plain concrete only.

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

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

Reason: To facilitate suitable vehicular access to private property.

10. **Off Street Parking Design**

The Applicant shall submit a design for the parking facility in accordance with the relevant provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical Controls and Section 2.6 Design of Domestic Driveways.

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

Reason: Compliance with this consent.

11. **Amendments to the approved plans**

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

- The Basement Floor Kitchenette is not to contain built in cooking facilities.

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

Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development and to ensure compliance with the terms of this consent.

12. **Boundary Identification Survey**

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

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

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

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

13. **Erosion and Sediment Control Plan**

An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:

- Site Boundaries and contours
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities);
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls;
- North point and scale.

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

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

14. Compliance with Standards

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

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

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

15. Sydney Water "Tap In"

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

16. Tree Removal Within the Property

a) this consent approves the removal of existing prescribed trees on the subject site as listed below:

i) the two trees shown for removal in the rear setback on drawing Basement Floor Plan (DA2) by Incidental Architecture and dated August 2024.

b) identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised development works.

17. Installation and Maintenance of Sediment and Erosion Control

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment

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

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site

DURING BUILDING WORK

18. 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 AS 4970-2009 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 AS 4970-2009 Protection of trees on development sites,
- ix) the activities listed in section 4.2 of AS 4970-2009 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 AS 4373-2007 Pruning of amenity trees,
- xi) the tree protection measures specified in this clause 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.

c) the Principal Certifier must ensure that:

- i) If activated, the arboricultural works listed in a) and b) are undertaken and certified by an Arborist/Project Arborist as compliant to AS 4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

Reason: Tree and vegetation protection.

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. **Survey Certificate**

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

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

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

22. **Property Boundary Levels**

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

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

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

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.

24. **Stockpiling materials**

During construction, all material associated with works is to be contained at source, covered and must be within the construction area. All material is to be removed off site and disposed of according to local regulations. The property is to be kept clean and any building debris

removed as frequently as required to ensure no debris enters receiving waters.

Reason: To ensure pollution control measures are effective to protect the aquatic habitats within receiving waters throughout the construction period.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

25. Required Tree Planting

a) one locally native tree shall be planted within the rear setback to achieve at least 6 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 Planting Guide, or Council's Tree Guide; meet the requirements of 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 and other trees or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn.

b) 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.

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

Reason: To maintain environmental amenity.

26. Landscape Completion

a) any new landscape works are to be implemented in accordance with the following conditions:

i) landscape works are to be contained within the legal property boundaries,

ii) mass planting shall be installed at minimum 1 metre intervals (or less) for shrubs of a minimum 200mm container size at planting, and at minimum 4 plants per metre square for groundcovers of a minimum 140mm container size at planting, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,

iii) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone.

b) prior to the issue of an Occupation Certificate, details 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.

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. **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.

29. **Certification of Off Street Parking Works**

The Applicant shall submit a certificate from a suitably qualified person certifying that the parking facility was constructed in accordance within this development consent and the relevant provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical Controls and Section 2.6 Design of Domestic Driveways.

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

Reason: Compliance with this consent.

30. **House / Building Number**

House/building number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings.

31. **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.

32. **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

33. Landscape Maintenance

a) if any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components.

b) 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.

c) 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(s) and any conditions of consent.

d) the approved landscape planted areas, whether containing lawn, gardens or planters 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.

34. Swimming Pool & Sauna Noise

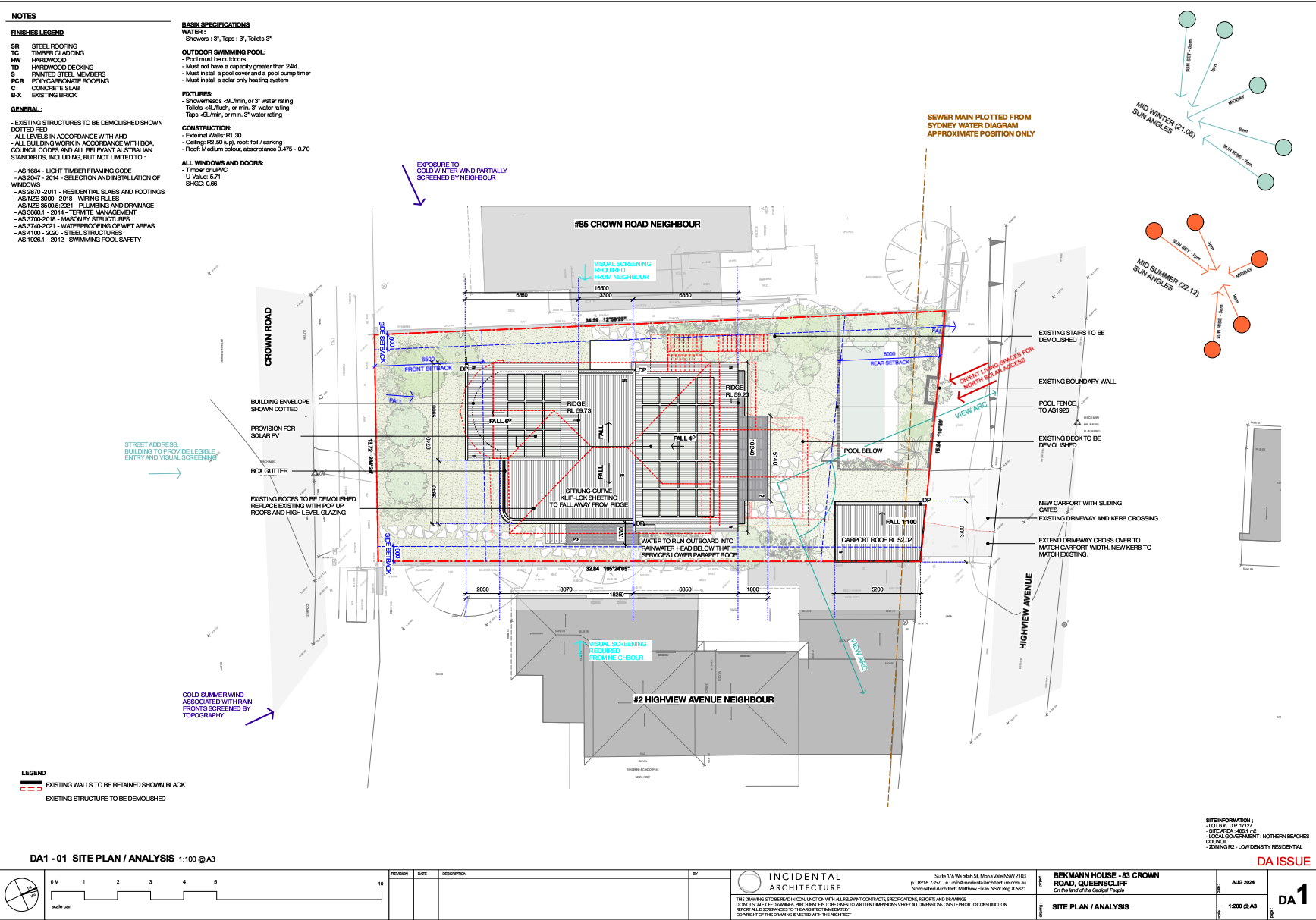
The swimming pool motor / filter & sauna shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

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

35. No Approval for Secondary Dwelling (On-Going)

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 (located on the First Floor of the approved plans).



DA5 - 01 NORTH ELEVATION A 1:100 @ A3

RL60.87 (EXISTING ROOF RIDGE)

RL59.73 (ROOF RIDGE)

RL59.20 (ROOF RIDGE)

RL55.56 (FFL FIRST FLOOR)

EXISTING FCL54.90

RL52.14 (FFL GROUND FLOOR)

RL49.70

RL48.52

DA5 - 01 EAST ELEVATION B 1:100 @ A3

RL59.73 (ROOF RIDGE)

RL59.20 (ROOF RIDGE)

RL55.56 (FFL FIRST FLOOR)

EXISTING FCL54.90

RL52.14 (FFL GROUND FLOOR)

RL49.70

RL48.52

INCIDENTAL ARCHITECTURE

Scale 1/4" = 1'-0"

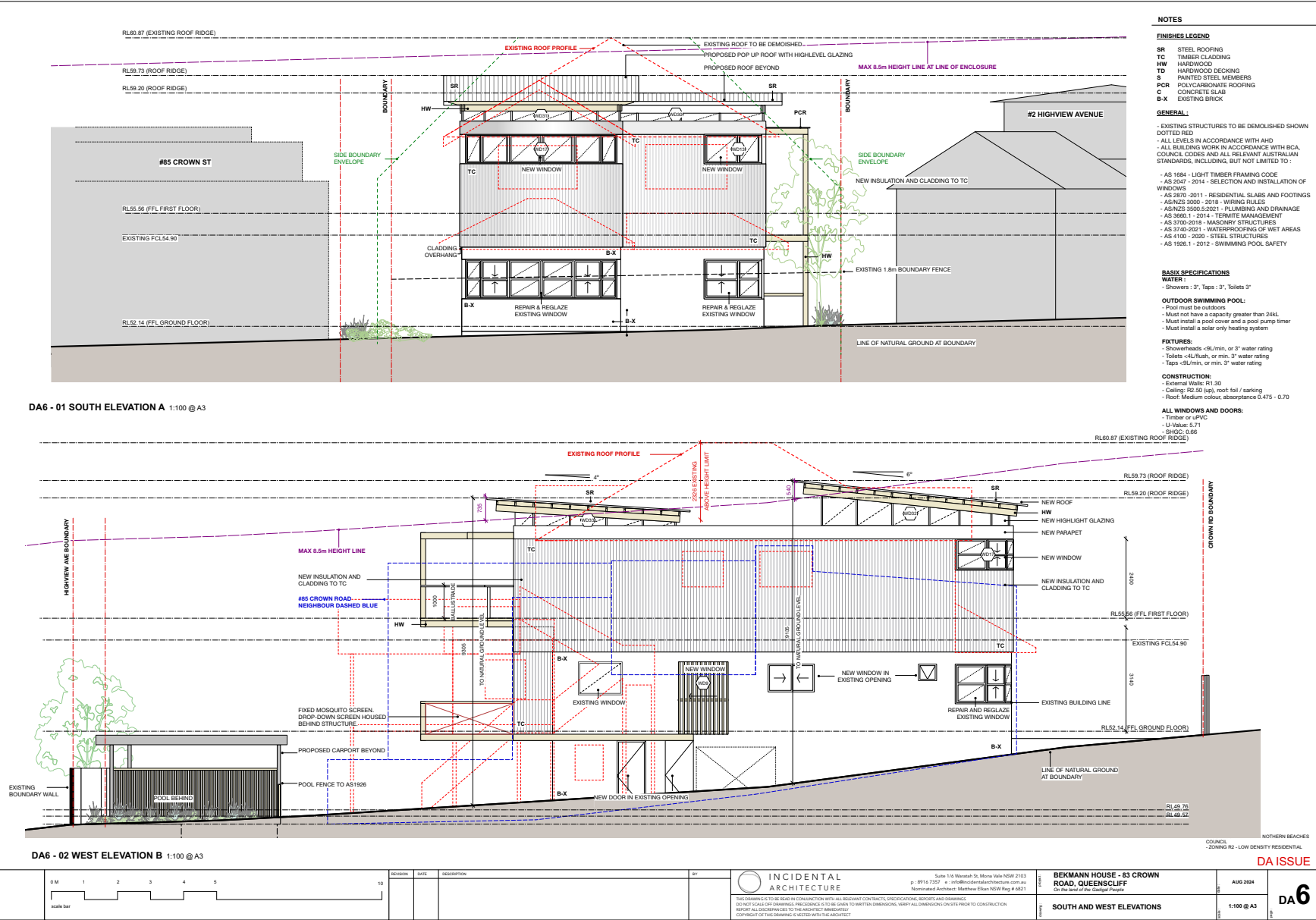
© 2024 Incidental Architecture

BEKMAN HOUSE - 83 CROWN ROAD, QUEENSLAND

DATE: 10/01/2024

1:100 @ A3

DA5





Clause 4.6 – Variation Request

Exceptions to Development Standards in relation to Clause 4.3(2) - Height of buildings, of the Warringah Local Environmental Plan 2011.

83 CROWN ROAD, QUEENSCLIFF

DA ISSUE

Prepared by
Incidental Architecture Pty Ltd
09 July 2024

Preamble

This written request is made pursuant to the provisions of Clause 4.6 of the Warringah Local Environmental Plan 2011 (the LEP). A variation is sought in relation to the Height of Buildings standard of Clause 4.3(2) of the LEP, in relation to alterations and additions to the existing dwelling house, at 83 Crown Road, Queenscliff. Under Clause 4.3 a maximum height of 8.5m above natural ground is permissible.

This exception statement has been prepared having regard to the Land and Environment Court judgments 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.

Clause 4.6 Exceptions to development standards

The objective of LEP Clause 4.6 are as follows:

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

The Development Standard to be Varied

The development standard to be varied is Clause 4.3 Height of Buildings in the WLEP 2011. As identified on the WLEP 2011 Height of Buildings map, the subject site has a maximum height of 8.5m.



Objectives of this Standard

The objectives of LEP Clause 4.3 Height of Buildings are as follows:

- (a) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
- (c) *to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*
- (d) *to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

In accordance with the decision of *Wehbe v Pittwater Council* the applicant seeks to establish that 'the objectives of the development standard are achieved notwithstanding non-compliance with the standard'.

Extent of Variation to the Development Standard

The proposed development includes alterations and additions to a primarily two storey dwelling house. By virtue of the slope of the site, the dwelling becomes three storeys at the Northern extent of the dwelling towards Highview Avenue.

New flat and skillion roofs are proposed over the existing building envelope to replace an existing tiled gable roof form. The ridges of two proposed skillion roofs exceed the maximum height limit of 8.5m. The amount by which the roofs exceed the height line varies due to the topography (as shown on the attached Architectural plans; East and West Elevations DA6 and DA7). At the worst case, the northern-most skillion roof ridge measures 9.35m above natural ground surface, that is 850mm above the maximum building height line. The majority of the proposed skillion roofs and the entirety of the proposed flat roof remains well under the maximum height line.

It is important to note the existing tiled gable roof form exceeds the 8.5m height limit (WLEP 2011) currently. Its ridge measures 10.2m above the ground line at its highest point. The proposed skillion roofs will reduce the highest point of the roof to 9.35m. While still exceeding the height limit, it represents a substantial reduction in overall building height and is consistent with the proposal's efforts to minimise visual impact. The proposed form of a skillion reduces the bulk of the non-compliance of the existing gable roof form and improves the existing non-compliance by at least 800mm.



Furthermore, it is important to note that the majority of the dwelling and roof exists within the 8.5m building limit defined by the WLEP 2011, and that only the highest ridges of these roofs exceed the maximum height line.

In addition, the surrounding vicinity is characterised predominantly by large two and part three storey dwellings of a similar scale. This proposal is in keeping with existing bulk and scale of the streetscape and will not set an undue precedent.

Assessment

In accordance with the NSW LEC judgement on *Initial Action Pty Ltd v Woollahra Municipal Council* [2018], the applicant's written request to contravene a development standard should demonstrate two matters. First, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. Secondly, that there are sufficient environmental planning grounds to justify contravening the development standard. This request addresses both matters.

Clause 4.6(3)(a) – Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case

Strict compliance with the height of buildings standard is unreasonable and unnecessary given the following circumstances of this case:

- The proposal complies with the objectives of the height control as the exceedance of the height control is not easily visible from Crown Rd and the proposal presents as two-storey to Crown Rd.
- In accordance with objectives of LEP Clause 4.3 Height of Buildings, the proposal is compatible with the height and scale of surrounding development with many neighbouring developments of comparable height and scale along the street. The proposed building envelope and height of walls remain largely unchanged from the existing, maintaining the existing bulk and scale which is in harmony with the streetscape, characterised predominantly by large two and three storey dwelling houses. It should be noted that there are numerous dwellings in the vicinity that demonstrate non-compliance with the height standard. Properties on the opposite side of Crown Road are three to four storeys in height.
- By renovating the existing roof form, the proposal reduces the bulk of the existing and improves visual impact and solar access, in accordance with objectives of LEP Clause 4.3, Height of Buildings. Roofs are proposed at a lower height than that of the existing building. Thus, the impacts of the proposed development on adjoining and nearby properties are not only minimised, but views, privacy and overshadowing is improved.



- Given the proposals reduction in roof bulk and height, neighbouring properties will have improved solar access as illustrated in the shadow diagrams submitted with the Architectural drawings. These demonstrate three hours of sunlight to the adjoining properties principal private open space on the 21st June is maintained between 9am and 3pm. It is important to note that the North / South orientation of these properties guarantees all properties sufficient solar access. There is no impact on the privacy of neighbours created by the alterations to the existing non-compliant portion of roof.
- A reduction to the proposed roof height would result in significant modification to the existing building and so result in an unreasonable reduction to the existing habitable floor area and thus impact the overall amenity of the residents.
- Every effort has been made to minimise this non-compliance. The following features should be noted:
 - The roofs that encroach the maximum height line have been designed to provide shade in summer, maximise sunlight in winter and allow natural cross-ventilation, supporting DCP objectives for “innovative roof pitch and variation in roof design”
 - Reasonable sharing of views to and from public and private properties is allowed.
 - The proposal has been designed with articulated facades to minimise the visual bulk from the street and adjoining properties. Landscaping and increased vegetation will assist in ensuring that the natural environment retains priority.
 - The proposal has been designed to respond sensitively to the existing topography by following the slope of the land and minimising excavation as far as possible.
 - Landscaped Open Space is compliant with the minimum 40% requirement.

Any Matters of Significance for State or Regional Environmental Planning

The minor exceedance to the height control does not raise any matter of State or regional planning significance.

Conclusion

This written request is for an exception to the height of building standard under clause 4.6 of the WLEP 2011. It justifies the contravention to the height of building standard in the terms required under clause 4.6 of the LEP and in particular demonstrates that the proposal provides a better



planning outcome with no significant adverse environmental impacts. Therefore in the circumstances of the case:

- Compliance with the height of building standard is unreasonable and unnecessary.
- There are sufficient environmental planning grounds for the contravention.
- The proposed dwelling is sympathetic to the scale and character of the existing site, its environment and its neighbours.
- The proposal is an improvement to the existing building envelope.
- The alterations are contained largely within the existing building envelope.
- A range of higher impact solutions have been considered by the applicant, however, the proposed design has been submitted due to its lower impact on the environment and neighbouring properties.
- It is in the public interest in being consistent with the objectives of the height of building standard and zone.
- There are no matters of State or regional planning significance and no public benefits in maintaining the height standard in this case.

ITEM 3.9 MOD2024/0398 - 23 HAY STREET COLLAROY - MODIFICATION OF DEVELOPMENT CONSENT DA2021/1824 GRANTED FOR ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL AND CABANA

PURPOSE

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

RECOMMENDATION

- A.** That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of WLEP 2011 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B.** THAT Council as the consent authority **approves** Development Consent to Mod2024/0398 for modification of Development Consent DA2021/1824 granted for Alterations and additions to a dwelling house including a swimming pool and cabana on land at Lot 36 DP 10648, 23 Hay Street COLLAROY, subject to the conditions set out in the Assessment Report.

Reporting manager	Thomas Prosser
TRIM file ref	2024/727446
Attachments	1 Assessment Report 2 Site Plan and Elevations

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2024/0398
----------------------------	--------------

Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 36 DP 10648, 23 Hay Street COLLAROY NSW 2097
Proposed Development:	Modification of Development Consent DA2021/1824 granted for Alterations and additions to a dwelling house including a swimming pool and cabana
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Charles Parisi

Application Lodged:	29/07/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	02/08/2024 to 16/08/2024
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 4.7%
Recommendation:	Approval

EXECUTIVE SUMMARY

The modification application seeks consent for the reconstruction of pre-existing floor and wall structures that were approved to be retained under DA2021/1824 but have been demolished.

As the application is made under Section 4.55(2) and necessitates the deletion of condition Nos. 15, 26 and 33 that were imposed on the development consent by the Development Determination Panel (DDP), the application is reported back to the DDP for determination.

The public exhibition of the application in accordance with Council's Community Participation Plan attracted 1 submission in objection to the proposal. The issues raised in the submission broadly relate to whether the modified development is substantially the same as the approved development, the validity of the development consent and whether the consent is able to be modified as proposed.

These matters are addressed in detail in this report, having regard to the relevant case law. The assessment concludes that the modified development is substantially the same as the approved development and that the proposed modification is supportable.

Other critical assessment issues include the proposed variations to the building height, wall height and building envelope controls, all of which relate to the reconstructed first floor wall at the southern elevation. The works proposed through the subject application, and the modified development generally, are considered to avoid adverse impacts upon adjoining properties and the public domain and are therefore acceptable.

Accordingly, the proposal is found to satisfy the relevant planning controls and has sufficient merit to be recommended for **approval** by the Development Determination Panel, subject to the conditions included in the Recommendation of this report.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks to modify DA2021/1824 for alterations and additions to the existing dwelling.

The proposed modification is for the reconstruction of pre-existing structures that were approved to be retained but have been demolished. Specifically, consent is sought for the reconstruction of the following building elements:

- Portions of the lower ground, ground and first floor slabs;
- Portions of the southern elevation;
- Portions of the eastern elevation; and
- Portions of the western elevation.

The intent of the proposed modification is to enable the construction of the development approved through DA2021/1824, albeit with an increased 2m side setback to the first floor of the southern elevation.

Changes to Conditions of Consent

Given that the modified development is considered to be substantially the same as the development approved under DA2021/1824 (as discussed later in this report), it is considered that Conditions 15, 26 and 33 are not necessary or enforceable. These conditions may be deleted from the consent.

15. Maintain the existing building fabric

The parts of the existing building fabric which are shown to be retained on the approved plans are to be shown as retained on the Construction Certificate drawings prior to issuing a Construction Certificate to ensure consistency with approval as alterations and additions to a dwelling house. If this cannot be achieved, a new development application will need to be lodged with Northern Beaches Council.

Reason: Coorey v Municipality of Hunters Hill [2013] NSWLEC 1187

26. Maintain the existing building fabric

The parts of the existing building fabric which are shown to be retained on the approved plans are to be retained during construction works to ensure consistency with approval as alterations and additions to a dwelling house. If this cannot be achieved, a new development application will need to be lodged with Northern Beaches Council.

Reason: Coorey v Municipality of Hunters Hill [2013] NSWLEC 1187

33. Maintain the existing building fabric

The parts of the existing building fabric which are shown to be retained on the approved plans are to be retained to ensure consistency with approval as alterations and additions to a dwelling house prior to the issuing of any Occupation Certificate. If this cannot be achieved, a new development application will need to be lodged with Northern Beaches Council.

Reason: Coorey v Municipality of Hunters Hill [2013] NSWLEC 1187

Amendment of Application

Following lodgement, the application was amended to increase the side setback to the first floor southern wall. As the amendment results in a reduction in the environmental impacts of the development, re-notification of the application is not required in accordance with Council's Community Participation Plan.

Unauthorised Demolition Works

The unauthorised works undertaken on the site following approval of DA2021/1824 are limited to demolition works, which have been referred to Council's Building Control section. As no unauthorised construction works have occurred and no retrospective consent is sought, the case law established in Ku-ring-gai Council v Buyozo Pty Ltd [2021] NSWCA 177 is not of relevance to the subject development.

Substantially the Same Development

Given the demolition and reconstruction works described above, it was necessary to consider whether the modified development is substantially the same as the originally approved development. A quantitative and qualitative analysis undertaken in this report, and having regard to the relevant case law, concludes that the modified development is "essentially or materially" the same as the approved development, thereby satisfying the requirements of Section 4.55(2).

Note: The use of the term "pre-existing" in this report refers to structures or building elements that were existing at the time of approval of DA2021/1824.

ASSESSMENT INTRODUCTION

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

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

- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Local Environmental Plan 2011 - 6.2 Earthworks
Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land
Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - B9 Rear Boundary Setbacks
Warringah Development Control Plan - D6 Access to Sunlight
Warringah Development Control Plan - D7 Views
Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - D9 Building Bulk

SITE DESCRIPTION

Property Description:	Lot 36 DP 10648 , 23 Hay Street COLLAROY NSW 2097
Detailed Site Description:	The subject site consists of one allotment located on the eastern side of Hay Street. The site is regular in shape with a frontage of 15.24m along Hay Street and a depth of 46.34m. The site has a surveyed area of 687.5m². The site is located within the R2 Low Density Residential zone and accommodates a dwelling house under construction. The site is located on the low side of the road and has a North-east aspect. The sites slopes approximately 7.3m from front to rear. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by one to two storey dwellings of varying architectural styles.

Map:



SITE HISTORY

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

- On 22 June 2022, **DA2021/1824** for Alterations and additions to a dwelling house including a swimming pool and cabana was approved by Council.
- On 5 July 2024, Council issued a Stop Works Order in relation to the development due to the unauthorised demolition of structures that were approved/conditioned to be retained under DA2021/1824.
- On 29 July 2024, **Mod2024/0398** (subject application) was submitted to Council, seeking consent for the reconstruction of the structures that were demolished without consent.
- On 20 August 2024, the Stop Works Order dated 5 July 2024 was revoked. A new Stop Works Order was issued by Council, which allowed the construction of the swimming pool, cabana and retaining wall to continue.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;

- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2021/1824, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	Having regard to the judgements in <i>Moto Projects (No 2) Pty Ltd V North Sydney C [1999] NSWLEC 280</i>, and more recently, <i>Arrage v Inner West Council [2019] NSWLEC 85</i> and <i>Ganley v Mosman Municipal Council [2021] NSWLEC 1124</i>, Council is satisfied that the modified development is substantially the same as the development for which consent was originally granted. In Moto Projects, the following test was established: <i>"[54] The relevant satisfaction required by s96(2)(a) to be found to exist in order that the modification power be available involves an ultimate finding of fact based upon the primary facts found. I must be satisfied that the modified development is substantially the same as the originally approved development.</i> <i>[55] The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is "essentially or materially" the same as the (currently) approved development.</i> <i>[56] The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted)."</i> <u>Comment:</u> Quantitatively, the modification involves the reconstruction various structures that were approved to be retained but were demolished, those being portions of the lower ground, ground and first floor slabs and southern, eastern and western elevations. The proposed built form, external appearance and internal layout is identical to the approved development, with the exception of the

Section 4.55 (2) - Other Modifications	Comments
	increased upper level southern side setback which is increased from 1.2m to 2m. Qualitatively, it is evident that the modified development maintains the essential and material characteristics of the approved development. Notably: • The use of the building as a dwelling house does not change; • The external building envelope does not change significantly, with only a minor setback increase at the southern elevation of the first floor as described earlier; • The appearance of the dwelling will be essentially the same when viewed from surrounding properties and the public domain; • The internal configuration is largely unchanged; • The floor slabs and walls are to be reconstructed largely in their pre-existing/approved locations; • The roof form and height are consistent with the approved dwelling; With regard to the consideration of "the circumstances in which the development consent was granted", <i>Arrage</i> at [24] & [25] makes clear that in assessing whether the modified development is substantially the same as the originally approved development, the essential elements of the development to be identified are the features or components of the originally approved and modified developments, rather than the circumstances of the grant of the development consent. As described above, there is no substantial qualitative or quantitative change that would mean the modified development is not substantially the same as the approved development. Further, the description of the approved development and the requirement to retain certain building elements are not considered to be of significant weight, in accordance with <i>Gordon & Valich Pty Ltd v City of Sydney Council</i> [2007] NSWLEC 780 and <i>Ganley</i>. In view of the above, Council is satisfied that the proposed modification is substantially the same as the development for which the consent was originally granted and can be considered under Section 4.55 of the Act.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or	Development Application DA2021/1824 did not require concurrence from the relevant Minister, public authority or approval body.

Section 4.55 (2) - Other Modifications	Comments
in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<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 the form of amended plans. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 2001: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social

Section 4.15 'Matters for Consideration'	Comments
	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 02/08/2024 to 16/08/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Emilie Kate Burns	25 Hay Street COLLAROY NSW 2097

The issues raised in the submissions are addressed as follows:

- **Substantially the same development**

The submissions provide various reasons as to why the proposed development cannot be undertaken through a modification application, and instead requires the lodgement and approval of a new development application.

Comment:

For the reasons discussed in the S4.55(2) assessment section of this report and having regard to the relevant case law, the modified development is found to be substantially the same. As the modification satisfies the substantially the same test, a new development application is not

considered necessary.

With regard to S4.55(3) of the Act, the Assessment Report prepared for DA2021/1824 includes the following reasons for the grant of consent in its conclusion.

"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."

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

The minutes of the 22 June 2022 Development Determination Panel meeting list the below 'Statement of Reason' and this has also been considered.

"The proposal generally satisfies the relevant strategy, objectives and provisions of Warringah LEP 2011 and the Warringah DCP 2011 subject to conditions."

This assessment has taken the reasons for the grant of consent into consideration and the proposed modification is not found to be in contravention of these reasons.

The submission highlights the circumstances behind the assessment of various built form non-compliances and the demolition planning principle (Coorey) undertaken in relation to DA2021/1824. As the subject application is made under S4.55, Council is bound to consider whether the modified development is substantially the same as the approved development, rather than to reconsider the merits of the approved development or whether the modified development constitutes alterations and additions. As required by S4.55(3), an assessment of the modified development's performance against the relevant WLEP and WCDP controls has been undertaken, including merit assessment where necessary. As noted in the S4.55(2) assessment section of this report and in accordance with the relevant case law, the circumstances in which the development consent was granted are not a critical factor in determining whether the development is substantially the same.

Based on the above and the further assessment undertaken in this report, this matter does not warrant refusal of the application.

- **Compliance with consent**

The submissions raise concerns with compliance with the consent.

Comment:

Works undertaken without consent with reported to Council's Building control team for investigation. Further, any future concerns with compliance with any consent can be reported to Council's Building Control team for investigation.

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	The proposed modifications do not alter the original assessment by Development Engineers. Development Engineering support the proposal, with no additional or modified conditions of consent recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.4m (NGL) 10.3m (EGL)	Unchanged	Unchanged	No (as approved)
			Proposed: 8.9m (EGL)	4.7%	No

Note: The works that are the subject of the modification application involve the reconstruction of floor structures and walls at the southern, eastern and western elevations. The proposal does not alter the approved maximum building height and the maximum breach sought through this application is 8.9m at the first floor of the southern elevation. The proposed building height variation has been calculated based on the existing ground level of the site, in accordance with the decision in *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582*.

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No (see detail under Clause 4.6 below)
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

4.3 Height of buildings

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	8.9m
Percentage variation to requirement:	4.7%

The building height breach sought through this application is limited to the first floor of the reconstructed southern wall. The remaining structures for which the subject modification seeks consent remain below the 8.5m building height standard. The extent of the proposed 400mm height breach is illustrated below.

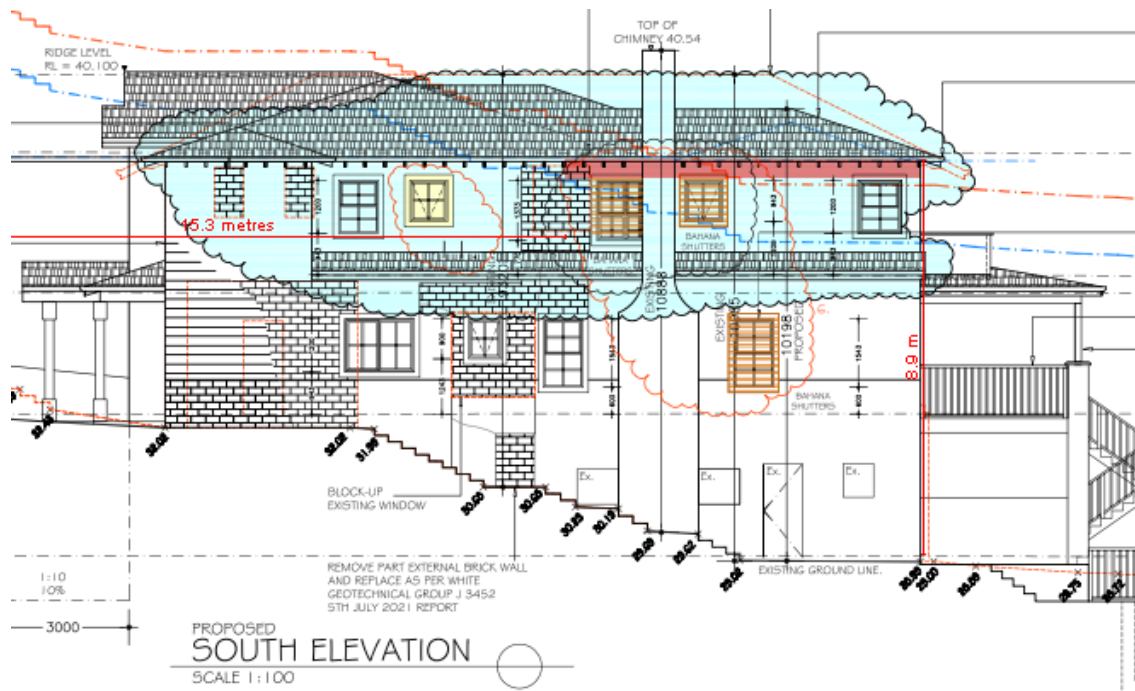


Figure 1. Proposed 400mm building height breach at the southern elevation shown shaded red.

Assessment of request to vary a development standard:

Whilst the modification application will result in a building height that exceeds the maximum permitted by Clause 4.3 of the Warringah LEP 2011, the application does not strictly need to address the requirements of Clause 4.6.

The application has been made under Section 4.55 of the Environmental Planning and Assessment (EPA) Act 1979, which is a free standing provision that in itself authorises the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own stand-alone tests (such as the substantially the same test and consideration of all relevant Section 4.15 matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application.

Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications. As such, the applicant is not required to submit a written request adequately addressing the matters required to be demonstrated by cl 4.6(3).

Notwithstanding that Clause 4.6 does not apply to Section 4.55 modification applications, the merits of the variation have been assessed with regard to the objectives of the height of buildings development standard. Notwithstanding that Clause 4.6 does not strictly apply, the assessment has also taken into consideration the relevant tests of the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

4.3 Height of buildings

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

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

Comment:

The height and bulk of the modified dwelling will remain compatible with the approved development and surrounding dwellings on the eastern side of Hay Street.

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

Comment:

The height breach associated with the reconstruction of the first floor southern wall is a maximum of 400mm and will not contribute to any adverse loss of views, privacy or solar access.

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

Comment:

The visual appearance of the dwelling is largely unchanged and will remain compatible with the character of the surrounding area. As such, the proposal will not give rise to adverse impacts upon the scenic values of the locality.

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

Comment:

The proposed height breach will not cause any adverse visual impacts when viewed from the surrounding public domain.

Conclusion

The proposal is found to achieve consistency with the height of buildings objectives and is supported, notwithstanding the minor departure from the development standard.

6.2 Earthworks

The proposed modification does not include any additional earthworks beyond those approved in the original consent.

6.4 Development on sloping land

The submitted geotechnical letter prepared by White Geotechnical Group, dated 12 July 2024, advises that the proposed modification does not alter the recommendations or assessment included in the previous 5 July 2021 report. The conditions imposed in relation to the geotechnical recommendations remain applicable to the modified development.

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
B1 Wall height	7.2m	North - 6.6m	Unchanged	Yes
		South - 9m (existing)	9m (proposed)	No
B3 Side Boundary Envelope	North - 4m	Outside envelope (as approved)	Unchanged	No
	South - 4m	Outside envelope (existing)	Outside envelope (proposed)	No
B5 Side Boundary Setbacks	North - 0.9m	Lower ground floor - 1.0m Ground floor - 1.0m First Floor - 2.0m	Unchanged	Yes
	South - 0.9m	Lower Ground floor - 1.2m Ground floor - 1.2m First Floor - 1.2m	Lower Ground floor - Unchanged Ground floor - Unchanged First Floor - 2m	Yes
B7 Front Boundary Setbacks	6.5m	Garage - 5.4m	Unchanged	No
B9 Rear Boundary Setbacks	6m	Dwelling - 14.2m Out House - 3.6 - 5.0m	Unchanged	Yes No
D1 Landscaped Open Space and Bushland Setting	40%	40.72% (280m ²)	Unchanged	Yes

Note: The works that are the subject of the modification application involve the reconstruction of floor structures and walls at the southern and eastern elevations. The built form non-breaches sought through this application are limited to the wall height and envelope controls at the southern elevation. The approved variations to the northern boundary envelope, front and rear setback controls remain unchanged by the modification.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of non-compliance

The 9m height of the reconstructed first floor wall at the southern elevation exceeds the 7.2m control.

Merit consideration:

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

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

Comment:

The increased setback provided to the southern elevation of the first floor wall minimises the visual impact of the development when viewed from adjoining properties.

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

Comment:

The proposed modification does not alter the height of the approved development, which remains below the existing tree canopy level.

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

Comment:

The development as modified enables a reasonable view sharing outcome.

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

Comment:

The increased southern side setback to the first floor wall as noted above will minimise the visual and amenity impacts of the development on the adjoining property.

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

Comment:

The proposal responds to the topography and does not involve any additional excavation works.

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

Comment:

The proposal does not alter the approved roof design.

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

B3 Side Boundary Envelope

Description of non-compliance

The reconstructed first floor wall at the southern elevation breaches the building envelope control by a maximum of 2m as illustrated below.

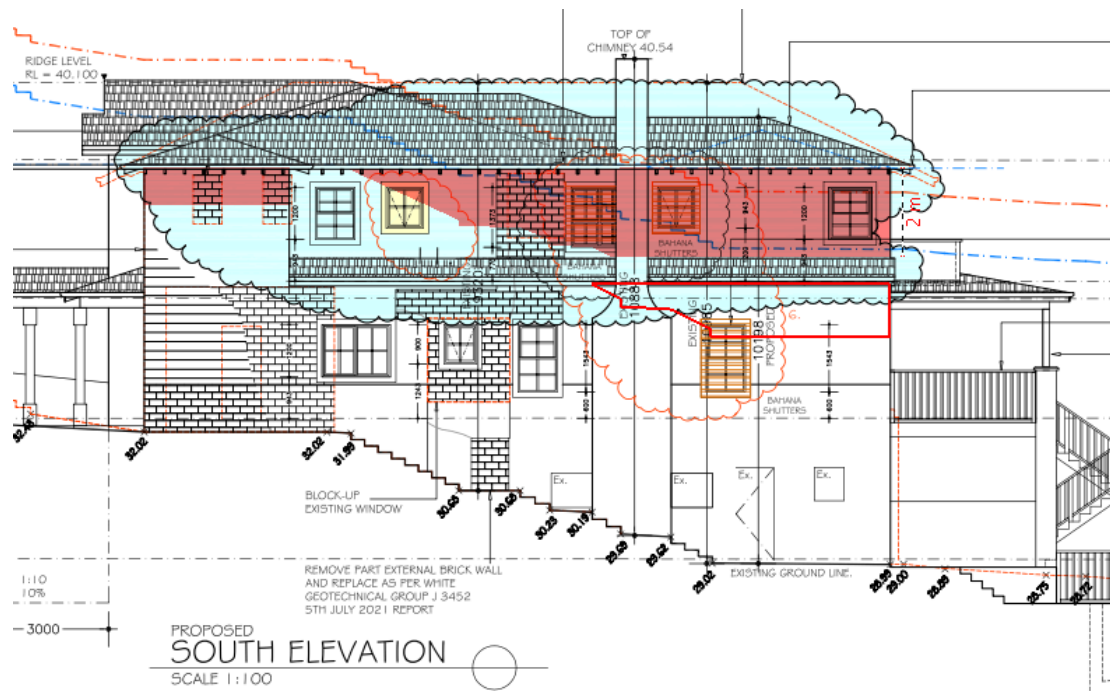


Figure 2. Southern elevation building envelope breaches shaded red. The envelope breach associated with the existing ground floor southern wall is outlined red.

Merit consideration

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

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

Comment:

The proposed development will not be visually dominant by virtue of its height and bulk. The increased southern side setback at the first floor will result in a reduction in bulk relative to the approved development.

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

Comment:

The modified development will maintain adequate light, solar access and privacy to adjoining properties while increasing spatial separation to the dwelling to the south.

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

Comment:

The proposal responds appropriately to the topography.

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

B7 Front Boundary Setbacks

The proposed modification does not alter the approved variation to the front setback control.

B9 Rear Boundary Setbacks

The proposed modification does not alter the approved variation to the rear setback control.

D6 Access to Sunlight

The proposed reconstruction of the floor and wall elements will not cause any additional overshadowing or alter the approved development's compliance with the control. The increased southern setback to the first floor level will marginally improve solar access to the adjoining property (from the approved situation)..

D7 Views

The view loss assessment undertaken in relation to DA2021/1824 concluded that the approved development would not unreasonably impact views available from surrounding properties of the public domain. The modified development will generally retain the approved view sharing outcome, with a minor increase in the view corridor through the southern side setback by virtue of the increased first floor setback proposed. Accordingly, the view sharing outcome remains acceptable and no further assessment is undertaken.

D8 Privacy

The proposed modification does not alter the privacy impacts of the approved development, which were found to be acceptable. The conditions imposed in the development consent remain applicable to the modified development and ensure that reasonable privacy is maintained for the occupants of the subject site and adjoining properties.

D9 Building Bulk

The proposed modification includes additional building separation and articulation of the southern elevation, thereby ensuring a reasonable level of visual bulk and scale.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

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

PLANNING CONCLUSION

The modification application seeks consent for the reconstruction of pre-existing floor and wall structures that were approved to be retained under DA2021/1824 but have been demolished.

As the application is made under Section 4.55(2) and necessitates the deletion of condition Nos. 15, 26 and 33 that were imposed on the development consent by the Development Determination Panel (DDP), the application is reported back to the DDP for determination.

Council's public exhibition of the application attracted 1 submission in objection to the proposal. The concerns raised in the submission are considered in detail in this report and do not warrant refusal of the application.

The modified development is assessed as being substantially the same as the approved development and the variations proposed to the building height, wall height and building envelope controls are acceptable on merit. The modified development will not give rise to unreasonable impacts upon adjoining properties or the public domain.

On balance, the development performs appropriately against the relevant controls and is therefore 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 approval to Modification Application No. Mod2024/0398 for Modification of Development Consent DA2021/1824 granted for Alterations and additions to a dwelling house including a swimming pool and cabana on land at Lot 36 DP 10648,23 Hay Street, COLLAROY, subject to the conditions printed below:

Modification Summary

The development consent is modified as follows:

MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
PAN 454216 Mod2024/0398	The date of this notice of determination	Modification of Development Consent DA2021/1824 granted for Alterations and additions to a dwelling house including a swimming pool and cabana. Add Condition 1A Delete Condition 15 Delete Condition 26 Delete Condition 33

Modified conditions

A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting documentation, to read as follows:

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
MC01	F	Site Plan	Sammy Fedeles	4 July 2024
MC04	F	Lower Ground Floor Plan	Sammy Fedeles	4 July 2024
MC05	F	Ground Floor Plan	Sammy Fedeles	4 July 2024
MC06	F	First Floor Plan	Sammy Fedeles	4 July 2024

MC07	F	Roof Plan	Sammy Fedele	4 July 2024
MC08	F	South Elevation	Sammy Fedele	4 July 2024
MC09	F	North Elevation	Sammy Fedele	4 July 2024
MC10	F	Elevation - East & West	Sammy Fedele	4 July 2024
MC11	F	Sections - AA & NN	Sammy Fedele	4 July 2024

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

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

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

B. Delete Condition 15. Maintain the existing building fabric to read as follows:

15. DELETED

C. Delete Condition 26. Maintain the existing building fabric to read as follows:

26. DELETED

D. Delete Condition 33. Maintain the existing building fabric to read as follows:

33. DELETED

