

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 13 NOVEMBER 2024

Ashleigh Sherry
Manager Business System and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 13 November 2024
via teleconference
Commencing at 10:00 AM**

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ACKNOWLEDGEMENT OF COUNTRY

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

1.0 APOLOGIES & DECLARATIONS OF INTEREST

Nil

2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF THE DEVELOPMENT DETERMINATION PANEL MEETING HELD ON 23 OCTOBER 2024

RECOMMENDATION

That the Panel note that the minutes of the Development Determination Panel Meeting held on 23 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 REV2024/0024 - 948 BARRENJOEY ROAD PALM BEACH - REVIEW OF DETERMINATION OF APPLICATION DA2023/1658 FOR ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING THE REPLACEMENT AND EXTENSION OF AN INCLINE PASSENGER LIFT

PURPOSE

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

RECOMMENDATION

THAT Council as the consent authority **approves** Development Consent to REV2024/0024 for Review of Determination of Application DA2023/1658 for alterations and additions to a dwelling house including the replacement and extension of an incline passenger lift on land at Lot 1 DP 13686, 948 Barrenjoey Road PALM BEACH, subject to the conditions set out in the Assessment Report.

Reporting manager	Rodney Piggott
TRIM file ref	2024/736748
Attachments	↓1 Assessment Report ↓2 Site Plan and Elevations

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2024/0024
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Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 1 DP 13686, 948 Barrenjoey Road PALM BEACH NSW 2108
Proposed Development:	Review of Determination of Application DA2023/1658 for alterations and additions to a dwelling house including the replacement and extension of an incline passenger lift
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Applicant:	Peter Downes Designs Pty Ltd

Application Lodged:	30/08/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	10/09/2024 to 24/09/2024
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 207,210.08
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PROPOSED DEVELOPMENT IN DETAIL

This application seeks review of the determination of DA2023/1658, pursuant to Section 8.3 Application for and conduct of review of the *Environmental Planning and Assessment Act 1979*. DA2023/1658 sought consent for an incline passenger lift, as follows:

- Demolition of the existing line of rail, approximately 26 metres in length, and replace with a new rail on piers of up to 1.2m in height,
- Extension of the lift rail for the lift, by approximately 9.6m,
- Demolition and reconstruction of Landing 1 at the frontage of the site,
- Demolition and reconstruction of Landing 2 in a slightly different location,
- Construction of a new landing ('Landing 3') to access the rear of the existing dwelling,
- Construction of a winch enclosure at the top of the rail, and

- Construction of a 1.8 metre acoustic screen along the southern side boundary (wholly on the subject site), for a length of 11.2 metres.

DA2023/1658 was refused for the following reasons:

1. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Part C1.5 Visual Privacy of the Pittwater 21 Development Control Plan.

Particulars:

The proposed works will have an adverse impact on the sense of territory and visual privacy of the adjoining property at No. 946 Barrenjoey Road.

2. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Part C1.19 Incline Passenger Lifts and Stairways of the Pittwater 21 Development Control Plan.

Particulars:

The proposed works will result in an unacceptable visual disturbance to the adjoining property as a result of the non-compliance with the minimum 2m side setback control.

3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D12.6 Side and rear building line of the Pittwater 21 Development Control Plan.

Particulars:

The close proximity of the proposed incline passenger lift to the adjoining property at No. 946 Barrenjoey Road will have an adverse impact on the amenity of this property with regard to visual impact / amenity and visual privacy.

The proposal under this application is substantially the same as that under DA2023/1658, though proposes the following changes in response to the reasons for refusal:

- A lower rail by up to 245 millimetres,
- A lower Landing 3 level by 170 millimetres,
- A reduction in the pathway from Landing 3 to the dwelling house, and
- A reduction in the length of the acoustic screen by 7.2 metres to 4 metres in length.

ASSESSMENT INTRODUCTION

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

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

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

SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 8.3 - Environmental Planning and Assessment Act 1979 - Section 8.3

Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living

Pittwater Local Environmental Plan 2014 - 5.21 Flood planning

Pittwater Local Environmental Plan 2014 - 7.1 Acid sulfate soils

Pittwater Local Environmental Plan 2014 - 7.2 Earthworks

Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection

Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards

Pittwater Local Environmental Plan 2014 - 7.10 Essential services

Pittwater 21 Development Control Plan - C1.5 Visual Privacy

Pittwater 21 Development Control Plan - C1.6 Acoustic Privacy

Pittwater 21 Development Control Plan - C1.19 Incline Passenger Lifts and Stairways

Pittwater 21 Development Control Plan - D12.5 Front building line

Pittwater 21 Development Control Plan - D12.6 Side and rear building line

SITE DESCRIPTION

Property Description:	Lot 1 DP 13686 , 948 Barrenjoey Road PALM BEACH NSW 2108
Detailed Site Description:	The subject site consists of one (1) allotment located on the eastern side of Barrenjoey Road, Palm Beach. The site is irregular in shape, with a frontage of 15.24 metres along Barrenjoey Road, a maximum depth of 72.71 metres, and a surveyed area of 1,190m². The site is located within the C4 Environmental Living zone and accommodates a two-storey dwelling house, detached garage and incline passenger lift ('inclinators') approximately 26m in length adjoining the southern side boundary. The inclinators are situated within an existing retaining wall structure, also adjoining the southern side boundary. This subject site slopes down approximately 30 metres from east (rear) to west (front). The rear half of the site is heavily vegetated and identified on the Department of Planning and Environment's Biodiversity Values Map (BV Map - Littoral Rainforest / Proximity to Littoral Rainforest). The existing dwelling and the proposed works are within the mapped

	proximity area, with the rear undeveloped portion of the site subject to the identified littoral rainforest. The site also identified as being within a Flame Zone under the NSW Rural Fire Service bush fire prone land mapping. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by dwelling houses to the north, south and west. To the east is bushland reserve.
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Map:



SITE HISTORY

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

- DA2018/1901 for alterations and additions to a dwelling house was approved by Council on 5 February 2019.
- Mod2022/0553 for modification of Development Consent DA2018/1901 was approved by Council on 17 January 2023.
- DA2023/1658 for alterations and additions to a dwelling house including the replacement and extension of an incline passenger lift was refused by Council on 17 May 2024. The refusal of DA2023/1658 is the subject of this review application.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <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 Pittwater 21 Development Control Plan section in this report.

Section 4.15 Matters for Consideration	Comments
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.

In accordance with Section 8.3 of the Act, an applicant may request Council to review a determination of a development application, other than for a complying development, integrated development, designated development or a determination made by Council in respect to an application by the Crown. The development application does not fall into any of these categories, therefore the applicant may request a review.

In accordance with Section 8.3 (2) of the Act, the request for the review must be made and determined within 6 months after the date of the notice of determination of the development application was notified on the NSW Planning Portal. The application was determined on 20 May 2024 and the notice of determination was notified on the NSW Planning Portal on 20 November 2024. The review was lodged on 30 August 2024 and is to be considered by Council's Development Determination Panel on 13 November 2024, which is within the stipulated 6 months.

Section 8.3 (3) provides that the Council may review a determination if in the event that the applicant has made amendments to the development described in the original application, the consent authority is satisfied that the development, as amended, is substantially the same as the development described in the original application.

The amendments to the proposal are outlined in the ‘Detailed Description of Works’ section of this report.

A review of the original and amended plans has found that there are fundamental similarities between the original and the amended design (being subject of the 8.3 review) and the nature of the intended land use remains the same. Accordingly it is concluded that the amended scheme is substantially the same as the original proposal. Accordingly, it is considered that the proposal satisfies the requirement of Section 8.3 (3).

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 Bushfire Consultancy Australia, dated 28 August 2023). The report stated that the bushfire attack level of the site is "Flame Zone". 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 10/09/2024 to 24/09/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Mr Robert Harold Woog	39 Dudley Street HABERFIELD NSW 2045

The following issues were raised in the submission:

- The proposed development is materially the same as that which was refused under DA2023/1658.
- The proposed incline passenger lift is not compliant with the applicable built form controls, including setback and height above ground.
- The extension of the incline passenger lift and the associated acoustic screen will severely reduce the width of the stairway that runs along the common boundary between 946 and 948 Barrenjoey Road, restricting pedestrian access to the rear yard of 946 Barrenjoey Road.
- There are alleged unauthorised structures on the site (including a shed and fence posts).
- One of the subject site owners allegedly parks unlawfully on Council land.
- The land where the inclinator is proposed to run is subject to substantial stormwater runoff in heavy rain, so is not suitable to house an inclinator motor.
- The proposed development will result in unreasonable visual privacy and acoustic privacy impacts to the adjoining property to the south at 946 Barrenjoey Road.

The above issues are addressed as follows:

Substantially the Same

The submission raised concern that the proposed development is not materially different to that under DA2023/1658, so should be refused accordingly.

Comment:

Section 8.3 of Division 8.2 Reviews of the *Environmental Planning and Assessment Act 1979* states that in requesting a review, the Applicant may amend the proposed development and the consent

authority may review the matter having regard to the amended development, but only if it is satisfied that it is substantially the same development. That is, it is a legislative requirement that the proposed development be substantially the same as that for which consent was refused. Council is satisfied the proposed development under REV2024/0024 is substantially the same as that under DA2023/1658, as it includes only minor amendments and retains all previously proposed elements.

Built Form Controls

The submission raised concern that the proposed incline passenger lift is not compliant with the applicable built form controls, including setback and height above ground.

Comment:

The proposed development is acceptable with respect to the applicable built form controls, as detailed throughout this assessment report.

Shared Stairway

The submission raised concern that extension of the incline passenger lift and the associated acoustic screen will severely reduce the width of the stairway that runs along the common boundary between 946 and 948 Barrenjoey Road, restricting pedestrian access to the rear yard of 946 Barrenjoey Road.

Comment:

The stairway in question was observed on site, and is noted to meander between 946 and 948 Barrenjoey Road, across the common boundary between the two properties. No easement for footway exists over this stairway benefiting or burdening any parties. As such, use of the portion of the stairway on 948 Barrenjoey Road by the occupant of 946 Barrenjoey Road (and vice versa) without consent is trespassing. Pedestrian access to the rear yard of 946 Barrenjoey Road is a matter for resolution by the owner of that land.

Alleged Unlawful Buildings/Activity

The submission alleges that there are unauthorised structures on the site (including a shed and fence posts) and that one of the subject site owners allegedly parks unlawfully on Council land.

Comment:

These matters are not relevant to the assessment of this application, as the proposed incline passenger lift does not rely on any of the alleged unauthorised structures, and the parking arrangements on the site do not relate to the proposed works. These matters may be reported to Council's Building Control team and Rangers for investigation.

Stormwater

The submission raised concern that the land where the inclinor is proposed to run is subject to substantial stormwater runoff in heavy rain, so is not suitable to house an inclinor motor.

Comment:

The inclinor motor is specifically designed to be used outdoors and withstand weather conditions, including heavy rain.

Amenity - Visual and Acoustic Privacy

The submission raised concern that the proposed development will result in unreasonable visual privacy and acoustic privacy impacts to the adjoining property to the south at 946 Barrenjoey Road

Comment:

The proposed development is acceptable with respect to visual and acoustic privacy for the reasons detailed in the sections of this report relating to Clauses C1.5 Visual Privacy and C1.6 Acoustic Privacy of the Pittwater 21 Development Control Plan.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Industrial)	<i>Supported, subject to conditions</i> With regard to this Review of Determination of Application DA2023/1658, the following comments were previously provided by the Environmental Health Team: <i>"This application is seeking consent to replace the existing inclinator, tracks and provide a further extension from landing two to landing three. An acoustic fence has been proposed from landing two to landing three.</i> <i>An acoustic report has been provided which recommends an acoustic fence be provided from landing two to landing three. The winch motor is to be acoustically treated. Given the close proximity to the neighboring property, the inclinator must not cause offensive noise to the neighboring resident/s while they are inside their home in a habitable room (bedroom ,living room), as per the Protection of the Environment Operations Act 1997. Please note, noise can be considered as offensive in three ways according to its audibility, duration and inherently offensive characteristics.</i> <i>It would be unreasonable to condition the use of the inclinator to a set number of movements per day as emergencies may occur and/or other reasons for high use that may not necessarily be considered Offensive Noise.</i> <i>Given the inclinator motor will be new, it is reasonable to assume there will not be offensive noise characteristics coming from the inclinator however a condition to ensure it is managed and serviced as per manufacturer's warranty will be provided.</i> <i>Environmental Health recommends approval subject to conditions.</i> <i>The proposal is therefore supported."</i> The review proposes: • Lowered L3 landing (170mm). • Lowered top section of rail (245mm) resulting in lower rail car height. • Reduction of proposed acoustic fence. • Inclusion of acoustic barrier adjoining winch motor. • Reduction in access pathway. It is noted that the reduction in acoustic fencing between landing 2 and 3 still complies with original recommendations of acoustic report in relation to acoustic fencing requirement. Therefore, supported subject to appropriate conditions of consent relating to maintenance and compliance with the recommendations of the acoustic report.

Internal Referral Body	Comments
Landscape Officer	<i>Supported, subject to conditions</i> The proposal is supported with regard to landscape issues. Council's Landscape Referral is assessed against the Pittwater Local Environment Plan clause C4 zone Environmental Living, and the following Pittwater 21 DCP controls (but not limited to): • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • D12 Palm Beach Locality The site is located in the C4 Environmental Living zone, requiring development to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment, including the retention of natural landscape features and existing trees, to satisfy the landscape objectives of the C4 Environmental Living zone. The proposal will replace and extend an existing incline passenger lift. No trees or vegetation are shown to be removed and all trees and/or vegetation located on the neighbouring property must be protected during works, subject to the imposed conditions.
NECC (Bushland and Biodiversity)	<i>Supported, subject to conditions</i> The proposal seeks approval for alterations and additions to a dwelling house including the replacement and extension of an incline passenger lift. The comments in this referral relate to the following applicable controls and provisions: • SEPP (Resilience and hazards) 2021 - Littoral Rainforest and Proximity Area • Planning for Bushfire Protection 2019 • NSW Biodiversity Conservation Act 2016 • NSW Biodiversity Conservation Regulation 2017 • Pittwater LEP - Clause 7.6 Biodiversity Protection • Pittwater DCP - Clause B4.17 Littoral Rainforest - Endangered Ecological Community Portions of the site are identified on the Department of Planning and Environment's Biodiversity Values Map (BV Map). Under the NSW Biodiversity Conservation Act, any removal of native vegetation from within mapped areas will trigger the Biodiversity Offsets Scheme (BOS) and the requirement for a Biodiversity Development Assessment Report (BDAR). The site is on land identified as proximity area for littoral rainforest under the SEPP, and as such the development must not impact on the ecological integrity of the rainforest. The original proposal was submitted with a Bushfire report and the RFS provided general terms of approval including the requirement for

Internal Referral Body	Comments
	an asset protection zone. The APZ does not impact the BV map area, and it is assumed that the APZ requirements will be the same under this application.T The proposal would mainly take place in previously disturbed areas of the site and is unlikely to impact upon native flora and fauna, and the development is designed, sited and will be managed to avoid any significant adverse environmental impact.
NECC (Coast and Catchments)	Supported without conditions The information provided has been assessed and does not impact or change the assessment of coastal matters considered for DA2023/1658. The assessment for the proposed works undertaken for DA2023/1658 remains. Previous comments were as follows: <i>The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Resilience and Hazards) 2021 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP.</i> <i>This Development Application seeks approval for the replacement and extension of an existing Incline Passenger Lift, and associated alterations and additions to the existing dwelling.</i> Coastal Management Act 2016 <i>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.</i> State Environmental Planning Policy (Resilience & Hazards) 2021 <i>The subject land has been included on the Littoral Rainforest Area, 'Proximity to Littoral Rainforest Area', 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021. Hence, Clauses 2.7, 2.8, 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA.</i> <i>Comment:</i> <i>On internal assessment, the DA satisfies requirements under clauses 2.7, 2.8, 2.10, 2.11 and 2.12 of the SEPP R&H. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021.</i> Pittwater LEP 2014 and Pittwater 21 DCP

Internal Referral Body	Comments
	<i>No other coastal related issues identified.</i> <i>As such, it is considered that the application does comply with the requirements of the coastal relevant clauses of the Pittwater LEP 2014 and Pittwater 21 DCP.</i>
NECC (Development Engineering)	Supported, subject to conditions No objections to approval subject to conditions as recommended.
NECC (Flooding)	Supported without conditions This proposal is for the replacement of an existing incline passenger lift with a new one. While there is some overland flow and a low flood risk precinct along the north western property boundary, all proposed works are to the south eastern side of the property which is not flood affected. This proposal generally complies with Section B3.11 of the Pittwater DCP and Clause 5.21 of the Pittwater LEP.

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 proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to recommended conditions of consent, which have been included in the recommendation of this report.
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

External Referral Body	Comments
	Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who 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 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 subject site is partially classified as littoral rainforest area. The proposed development is located outside of the area marked as littoral rainforest.

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 subject site is partially classified as land in proximity to littoral rainforest. Council's Bushland & Biodiversity team have reviewed the development with regard to this clause and are satisfied the proposed development will not significantly impact upon the matters above at a) and b).

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

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

- g) *the use of the surf zone.*

Comment:

The subject site is partially classified as coastal environment area. The proposed development is supported by a geotechnical risk assessment report and plans that demonstrate the proposed development is of acceptably low risk in relation to the above matters. As such, the proposed development is not anticipated to result in adverse impact.

- 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 development is designed, sited and will be managed to avoid an adverse impact, in accordance with the above at (1).

Division 4 Coastal use area

2.11 Development on land within the coastal use area

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

Comment:

The subject site is partially classified as coastal use area. The proposed development is supported by a geotechnical risk assessment report and plans that demonstrate the proposed development is of acceptably low risk in relation to the matters above. As such, the proposed development is designed, sited and will be managed so as not to result in adverse impact to the matters above at (a). 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.

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	Max. 8.5m	Acoustic Wall: Max. 1.8m	-	Yes
		Inclinators: Max. 4m		

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes

Clause	Compliance with Requirements
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone C4 Environmental Living

The underlying objectives of the C4 Environmental Living zone are addressed as follows:

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

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

Comment:

The proposed development, being for reconstruction and extension of an incline passenger lift, is relatively low-impact in its residential setting and in consideration of the area's special ecological and aesthetic values. As such, the proposed development is not of adverse effect on those values.

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

Comment:

The proposed development does not impact upon the site's existing dwelling (single detached dwelling house) and does not rely on substantial earthworks, so is well integrated with the landform and landscape.

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

Comment:

The proposed development will have no adverse impact on the identified wildlife corridors on the 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 proposed development has been referred to Council's Flood Engineer, who is supportive of the works in relation to the above matters. The consent authority can be satisfied in this regard.

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 proposed development has been referred to Council's Flood Engineer, who is supportive of the works in relation to the above matters. The consent authority can be satisfied in this regard.

7.1 Acid sulfate soils

Clause 7.1 Acid Sulfate Soils requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works. The site is located in an area identified as Acid Sulfate Soil Class 5, as indicated on Council's Acid Sulfate Soils Planning Map. The proposed development is not anticipated to result in risk associated with acid sulfate soils.

7.2 Earthworks

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

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

(f) the likelihood of disturbing relics

Comment:

The development was referred to the Aboriginal Heritage Office who provided comments and conditions that have been included in the consent.

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

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

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

Comment:

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

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

Comment:

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

7.6 Biodiversity protection

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

(a) whether the development is likely to have:

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

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

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

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

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the development will not have any adverse impact on the condition, ecological value and significance of the fauna and flora on the land; the importance of the vegetation on the land to the habitat and survival of native fauna; or the habitat elements providing connectivity on the land. Council is also satisfied that the development will not unreasonably fragment, disturb, or diminish the biodiversity structure, function, or composition of the land.

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

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the proposal includes appropriate measures to

avoid, minimise, or mitigate the impacts of the development.

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

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

Comment:

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

7.7 Geotechnical hazards

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

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

Comment:

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

Development consent must not be granted to development on land to which this clause applies unless:

- (a) the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and*

Comment:

The proposed development is supported by a geotechnical risk assessment that demonstrates these matters are suitably managed on site. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

- (b) the consent authority is satisfied that:*

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

Comment:

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

7.10 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.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	Min. 6.5m	Min. 3.4m	47.69%	No - Existing
Rear building line	Min. 6.5m	38.5m	-	Yes
Side building line (general)	Min. 2.5m / Min. 1m to other	400mm	60%	No
Side building line (incline passenger lift)	Min. 2m	400mm	80%	No
Building envelope	Min. 3.5m	Within envelope	-	Yes
Landscaped area	Min. 60% (714m ²)	61.7% (735.2m ²)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.2 Bushfire Hazard	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B3.11 Flood Prone Land	Yes	Yes
B4.17 Littoral Rainforest - Endangered Ecological Community	Yes	Yes
B5.15 Stormwater	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	No	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	No	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.5 Front building line	No	Yes
D12.6 Side and rear building line	No	Yes
D12.8 Building envelope	Yes	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

C1.5 Visual Privacy

In consideration of the concerns raised in the submission received from 946 Barrenjoey Road about the visual privacy impact of the incline passenger lift (particularly on the main bedroom), the underlying outcomes of this control are considered as follows:

Habitable rooms and outdoor living areas of dwellings optimise visual privacy through good design.

Comment:

Not applicable. The proposed development does not relate to habitable rooms or outdoor living areas.

A sense of territory and safety is provided for residents.

Comment:

Assessment under the previous iteration of this development under DA2023/1658 found that the proposed works were "an unnecessary impost on the sense of territory of this adjoining property. The proposed works will add unnecessary bulk and scale on the adjoining side boundary and are not considered an adequate response to mitigating visual privacy impacts."

With respect to the proximity of works to the southern side boundary, assessment is provided in the section of this report relating to Clause D12.6 Side and Rear Building Line, and the proposed works are acceptable on merit.

With respect to a sense of territory and safety, the incline passenger lift carriage and its landings are considered, particularly with reference to the main bedroom of 946 Barrenjoey Road.

Landings 1 and 2 remain in the same locations as existing, and do not result in any unreasonable visual privacy impacts.

It is understood that a third landing exists for the current lift, but that this will be removed by this proposal. The third landing proposed under this application ('Landing 3') is set further to the east, away from the main bedroom of 946 Barrenjoey Road. Further, Landing 3 has been lowered from the previous iteration under DA2023/1658 by 170 millimetres, has been reduced in width, and has been located further from the adjoining property to the south. Whilst these amendments do not materially change the deck individually, their cumulative impact serves to better respond to the visual privacy impact on the adjoining property to the south. It should also be noted that the landing is a point of access only, and not a point of recreation, so the landing itself is not inherently a point where users of the site would spend a length of time.

The carriage of the incline passenger lift is raised above the ground (by its nature), which is likely to allow direct viewing to 946 Barrenjoey Road. Accordingly, a condition of consent has been included in the recommendation of this report requiring the outer (southern) elevation of the incline passenger lift carriage to be fitted with opaque materials so as to prevent direct viewing to the neighbouring property.

Subject to the recommended conditions of consent, the proposed development is acceptable with regard to visual privacy.

C1.6 Acoustic Privacy

In consideration of the concerns raised in the submission received from 946 Barrenjoey Road, the underlying outcomes of this control are considered as follows:

Noise is substantially contained within each dwelling and noise from any communal or private open space areas are limited.

Comment:

Not applicable. The proposed development does not relate to internal spaces, or communal/private open space.

Noise is not to be offensive as defined by the Protection of the Environment Operations Act 1997, including noise from plant, equipment and communal or private open space areas.

Comment:

The proposed development includes replacement and extension of an incline passenger lift along the southern side boundary of the subject site, nearby the adjoining property at 946 Barrenjoey Road. The submission from the adjoining property raised concern that operation of the lift will result in noise impacts.

The proposed development sets the winch motor approximately 6.5 metres from the bedroom of the adjoining property to the south at 946 Barrenjoey Road. In addition, the proposed development includes a well-located acoustic screen adjacent to the winch motor. The screen is of lesser length than the previously proposed iteration under DA2023/1658 (4 metres in length, reduced from 11.2 metres). This is in response to the third reason for refusal of DA2023/1658, relating to visual impact and bulk. Further, the winch motor itself is fitted with an acoustic enclosure. Conditions of consent has been included in the recommendation of this report requiring that operation of the lift shall not exceed 60dB(A), when measured 1 metre from any adjoining property, as stipulated by this control, and requiring that operation of the lift is not to result in offensive noise as defined by the *Protection of the Environment Operations Act 1997*.

Subject to the recommended conditions of consent, the proposed development is acceptable with regard to acoustic privacy.

C1.19 Incline Passenger Lifts and Stairways

The underlying outcome of this control is:

Incline passenger lifts and stairways that cause minimal visual and acoustic disturbance to the environment and neighbours.

This control stipulates a number of requirements for incline passenger lifts, most of which the development achieves. The following is an assessment of the matters that the proposed development does not achieve compliance with, in consideration of the underlying outcome noted above.

Incline passenger lifts shall:

Be erected as near as possible to the ground level (existing) of the site, and shall not involve the erection of high piers or visible retaining structures

Comment:

The proposed incline passenger lift rail is set between 200 millimetres and 1.2 metres above the ground. It should be noted that the rail has been lowered by up to 245 millimetres from the previously proposed iteration under DA2023/1658. This is in response to the second and third reasons for refusal of DA2023/1658, relating to privacy, visual impact, and bulk.

Whilst a height of 1.2 metres is not 'near' to the ground, it is as near to the ground as possible, given the variable and steep topography of the site. The proposed development does not require additional substantial earthworks, so does not result in visible retaining structures. The piers are a maximum of 1 metre above ground, so are not unreasonably or uncommonly high, and are well placed so as not to be visually offensive. The proposed development is acceptable with respect to this requirement.

Be located and designed to minimise the effects of noise from the motor and overlooking of adjoining dwellings.

Comment:

With respect to noise, a detailed assessment is provided in the section of this report relating to Clause C1.6 Acoustic Privacy of the P21 DCP. The proposed development sets the winch motor approximately 6.5 metres from the bedroom of the adjoining property to the south at 946 Barrenjoey Road. In addition, the proposed development includes a well-located acoustic screen adjacent to the winch motor. The screen is of lesser length than the previously proposed iteration under DA2023/1658 (4 metres in length, reduced from 11.2 metres). This is in response to the third reason for refusal of DA2023/1658, relating to visual impact and bulk. Further, the winch motor itself is fitted with an acoustic enclosure. Conditions of consent has been included in the recommendation of this report requiring that operation of the lift shall not exceed 60dB(A), when measured 1 metre from any adjoining property, as stipulated by this control, and requiring that operation of the lift is not to result in offensive noise as defined by the *Protection of the Environment Operations Act 1997*.

It should also be noted that this proposed incline passenger lift is far newer (and, therefore, better) technology than the existing lift, which inherently means it is anticipated to be quieter and therefore of less acoustic imposition to the adjoining property to the south at 946 Barrenjoey Road.

With respect to visual privacy, a detailed assessment is provided in the section of this report relating to Clause C1.5 Visual Privacy of the P21 DCP. In short, the landings are not considered to result in unreasonable visual privacy impacts, and a condition of consent has been included in the recommendation of this report requiring the outer (southern) elevation of the incline passenger lift carriage to be fitted with opaque materials so as to prevent direct viewing to the neighbouring property to the south at 946 Barrenjoey Road.

Subject to the above-mentioned conditions of consent, the proposed development is acceptable with respect to noise and overlooking.

Be set back two (2) metres from the side boundary to the outer face of the carriage.

Comment:

The proposed incline passenger lift is set less than 2 metres from the southern side boundary. The rail is 835 millimetres from the boundary, and the carriage is 400 millimetres from the boundary.

The location of the structure is dictated by two factors - the location of the existing rail, and the location of the existing dwelling house and its ancillary structures. The proposed incline passenger lift utilises the existing location, and proposes to extend it further to the east. To locate the rail (and, therefore, the carriage) any closer to the dwelling and further away from the boundary would require more substantial earthworks, and alteration of the dwelling itself and its ancillary structures, being an overall larger environmental impact.

The proposed incline passenger lift is acceptable with respect to visual and acoustic privacy as detailed above, and is not an unreasonable visual imposition, as detailed in the relevant sections of this report. As such, the non-compliance with this requirement does not warrant refusal of the application, subject to recommended conditions of consent.

D12.5 Front building line

The proposed incline passenger lift is set 3.4 metres from the front boundary, where a minimum of 6.5 metres is required. The proposed lift is to be in the same location as the existing lift and will therefore result in no material change to existing development beyond the front building line. As such, this aspect of the proposed development will be consistent with the outcomes of this control. The numerical variation to the front building lines is therefore supported.

D12.6 Side and rear building line

This control requires that the minimum side and rear building line for built structures including pools and parking structures, other than driveways, fences and retaining walls, shall be minimum 2.5 metres to one side and 1 metre for other side. As the proposed development is not one of the listed exceptions, the requirements of this control apply. The proposed incline passenger lift is located 400 millimetres from the southern side boundary. As such, the underlying outcomes of the control are addressed as follows:

To achieve the desired future character of the Locality.

Comment:

The proposed development is consistent with the requirements of Clause A4.12 Palm Beach Locality of the P21 DCP, which details desired future character for the subject site and surrounds.

The bulk and scale of the built form is minimised.

Comment:

As detailed in the section of this report relating to Clause C1.19 Incline Passenger Lifts of the P21 DCP, the incline passenger lift rail has been lowered by up to 245 millimetres from the previously proposed iteration under DA2023/1658. Further, the proposed acoustic screen is of lesser length than the previously proposed iteration under DA2023/1658 (4 metres in length, reduced from 11.2 metres). This is in response to the second and third reason for refusal of DA2023/1658, relating to visual impact and bulk. The proposed development, while a maximum of 4 metres at its highest (when considering the slope of the land, the height of the rail, and the height of the carriage above the rail), the structure is generally far lower than this for its predominant length, being mostly rail. The highest

point of the structure (the carriage) is also dynamic by its very nature, as it moves along the rail. As such, the high point will not be located in one specific location at all times, which lessens its visual impact on the adjoining property to the south at 946 Barrenjoey Road.

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

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

Comment:

The proposed development is designed and sited so as not to obscure any significant or valuable views to or from public or private places, and is therefore suitable with respect to view sharing.

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

Comment:

The proposed development is acceptable with respect to privacy for the reasons detailed in the section of this report relating to Clause C1.5 Visual Privacy of the P21 DCP, and is compliant with the applicable solar access requirements of Clause C1.4 Solar Access of the P21 DCP.

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

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

Comment:

The proposed development does not require any tree or landscaping removal.

Flexibility in the siting of buildings and access.

Comment:

The proposed development allows for flexibility in the siting of the incline passenger lift without resulting in any unreasonable amenity impacts.

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

Comment:

Not applicable. The subject site and adjoining sites are within the C4 Environmental Living zone.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$2,072 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$207,210.

REASONS FOR REFUSAL OF PREVIOUS APPLICATION (DA2023/1658)

The reasons for refusal of DA2023/1658 (being the subject of this review application) are addressed

by REV2024/0024 as follows:

1. The proposed works will have an adverse impact on the sense of territory and visual privacy of the adjoining property at No. 946 Barrenjoey Road, per Clause C1.5 Visual Privacy of the Pittwater 21 Development Control Plan.

Comment:

The proposed development is acceptable with respect to visual privacy for the reasons detailed in the section of this report relating to Clause C1.5 Visual Privacy of the Pittwater 21 Development Control Plan. In short, the landings are not considered to result in unreasonable visual privacy impacts, and a condition of consent has been included in the recommendation of this report requiring the outer (southern) elevation of the incline passenger lift carriage to be fitted with opaque materials so as to prevent direct viewing to the neighbouring property to the south at 946 Barrenjoey Road.

2. The proposed works will result in an unacceptable visual disturbance to the adjoining property as a result of the non-compliance with the minimum 2m side setback control, per Clause C1.19 Incline Passenger Lifts and Stairways of the Pittwater 21 Development Control Plan.

Comment:

Detailed assessment of the proposed development is provided in the section of this report relating to Clause C1.19 Incline Passenger Lifts and Stairways of the Pittwater 21 Development Control Plan. The assessment finds that the proposed development is not of unreasonable built form or amenity impact, and is acceptably designed in consideration of the existing site constraints.

3. The close proximity of the proposed incline passenger lift to the adjoining property at No. 946 Barrenjoey Road will have an adverse impact on the amenity of this property with regard to visual impact / amenity and visual privacy, per Clause D12.6 Side and rear building line of the Pittwater 21 Development Control Plan.

Comment:

Detailed assessment of the proposed development is provided in the section of this report relating to Clause D12.6 Side and Rear Building Lines of the Pittwater 21 Development Control Plan. The assessment finds that the proposed development is not of unreasonable bulk and scale or amenity impact, and is acceptably designed in consideration of the existing site constraints.

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

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 REV2024/0024 for Review of Determination of Application DA2023/1658 for alterations and additions to a dwelling house including the replacement and extension of an incline passenger lift on land at Lot 1 DP 13686, 948 Barrenjoey Road, PALM BEACH, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
A2 2265 00C	C	Cover Sheet / Section 3	Peter Downes Designs	15 July 2024
A2 2265 01C	C	Site Plan / Notes / ESCP	Peter Downes Designs	15 July 2024
A2 2265 02C	C	Rail Plan	Peter Downes Designs	15 July 2024
A2 2265 03C	C	Sections 1 & 2	Peter Downes Designs	15 July 2024

Approved Reports and Documentation	
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Document Title	Version Number	Prepared By	Date of Document
Acoustic Design Report - Mechanical Plant	nss24154	Noise and Sound Services	February 2024
Bush Fire Assessment Report	A	Bushfire Consultancy Australia	28 August 2023
Geotechnical Investigation J5044	-	White Geotechnical Group	6 October 2023
Waste Management Plan	-	Applicant	Undated

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

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

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

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	2 October 2024
NSW Rural Fire Service	NSW Rural Fire Service Referral Response	20 September 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 \$2,072.10 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 \$207,210.08.

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

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

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

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

6. Security Bond

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

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

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

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is

located on Council's website at www.northernbeaches.nsw.gov.au).

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

7. **No Clearing of Vegetation**

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

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

Reason: To protect native vegetation.

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by White Geotechnical Group dated 6/10/2023 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

9. **Amendments to the Incline Passenger Lift**

The outer (southern) elevation of the incline passenger lift carriage is to be fitted with opaque screening materials for its full height so as to prevent direct viewing to the neighbouring property at 946 Barrenjoey Road. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To protect the privacy of the occupants of 946 Barrenjoey Road.

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

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

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

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

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

waterways.

11. **Acoustic Report Requirements**

Certification shall be provided from a suitably qualified professional that the acoustic noise requirements have been implemented into the development to ensure compliance with noise requirements.

Acoustic Report prepared by Noise and Sound Services dated February 2024, Report No. nss24154 – Final.

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

Reason: To ensure noise control measures have been implemented.

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 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.

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.

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. **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.

17. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all structural elements 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. **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

19. **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.

20. **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.

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

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

22. **Acoustic Requirements - On-going**

Compliance with the recommendations within the Acoustic Assessment by Noise and Sound Services dated February 2024 Report No. nss24154 – Final and any additional requirements at OC review stage.

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

23. **Inclinor Management**

The inclinor and all its associated parts are to be serviced and maintained as per manufacturers requirements.

Reason: To ensure potential offensive noise sources are managed.

24. **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.

25. **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.

26. **Incline Passenger Lift Motor Noise**

The incline passenger lift motor shall not result in offensive noise as defined by the *Protection of the Environment Operations Act 1997*, and shall not produce noise levels that exceed 60dB(A) when measured 1 metre from any adjoining property.

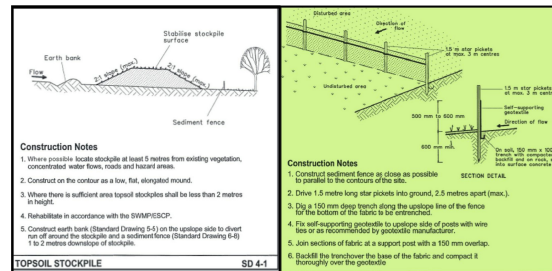
Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.

27. **Incline Passenger Lift Screen**

The opaque screening on the outer (southern) elevation of the incline passenger lift carriage is to be maintained for the life of the lift.

Reason: To ensure privacy for the occupants of 946 Barrenjoey Road in perpetuity.

1. All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.
2. All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.
3. Where excavations extend below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must preserve and protect the building from damage and, if necessary, underpin and support the adjoining building in an approved manner.
4. Temporary sedimentation and erosion controls are to be constructed prior to commencement of any work to eliminate the discharge of sediment from the site.
5. Adequate measures shall be undertaken to remove clay from vehicles leaving the site so as to maintain public roads in a clean condition.
6. Builder to confirm the locations of barner fences and stockpiles onsite, see suggested main barner fence location on site plan.
7. Sediment fences and stockpiles to be constructed in accordance with modern standards and the diagrams seen to the night.
8. Due to the steeply sloping site, special care will be taken to prevent soil runoff into existing drains or the roadway.
9. Note that due to the constraints of the site, barniers may need to be relocated during construction.
10. All ESCP measures are to be installed and managed in accordance with Landcom's Managing Urban Stormwater: Soils and Construction 2004.



All work to be carried out by suitably licensed and qualified tradesmen, and to comply with all relevant standards and Councils requirements.

An approved sedimentation control system is to be installed and maintained for the duration of the contract.

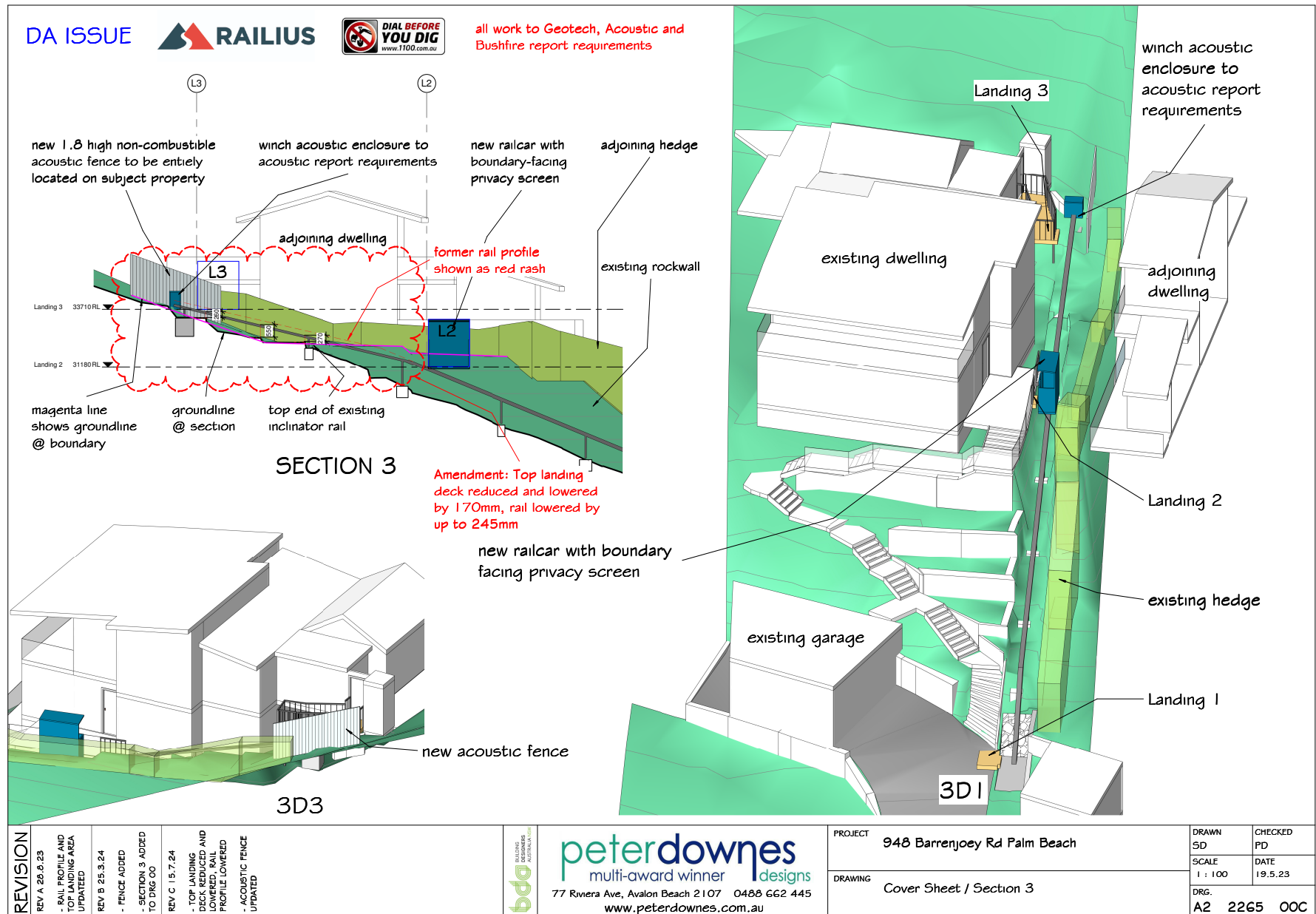
Asbestos (if encountered) is to be removed and disposed of by a suitably qualified contractor.

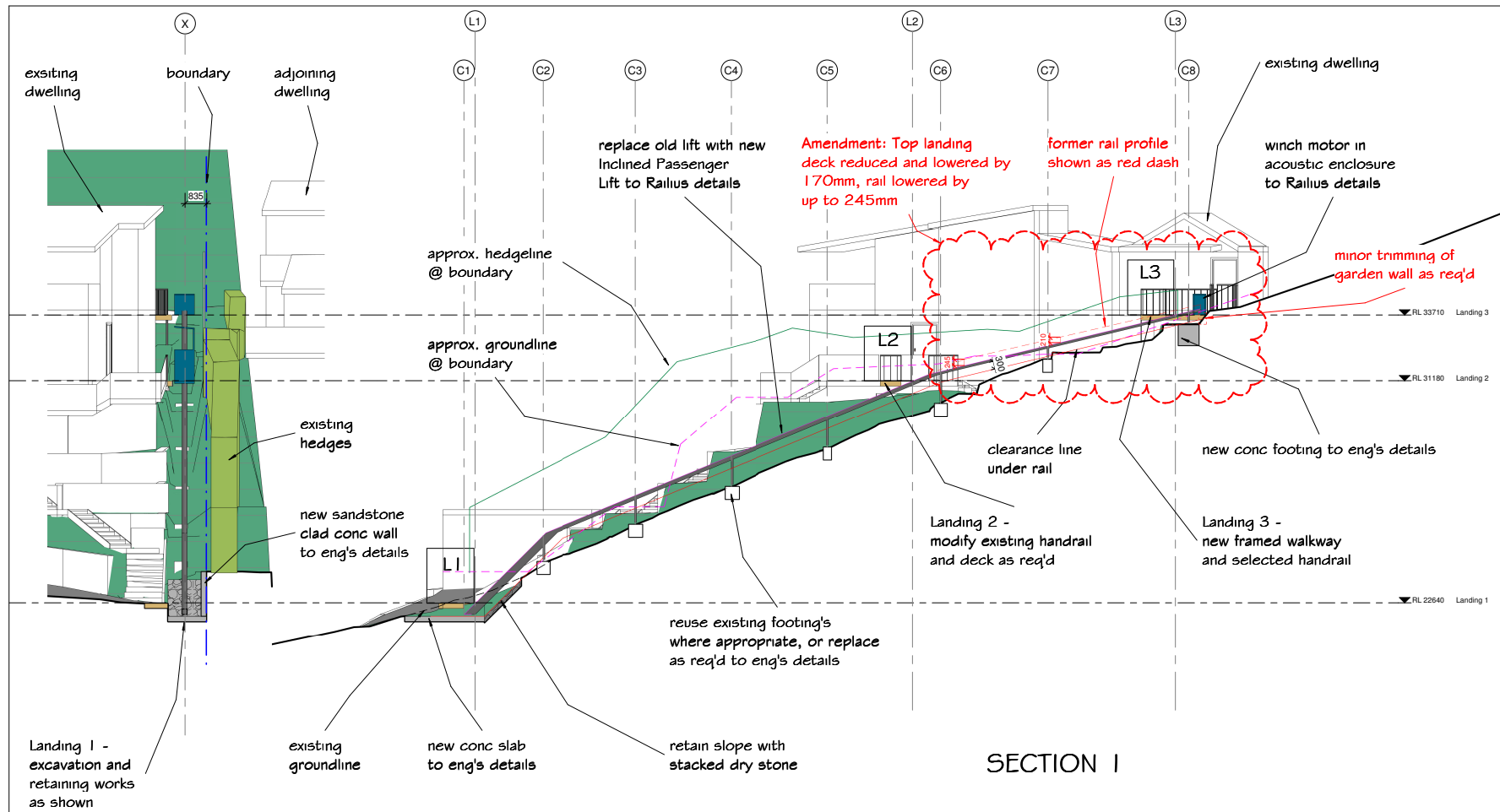
Lift noise level shall not exceed 60dB(A) when measured 1 meter from any adjoining premises.

Proposed Incline Passenger Lift and associated gates and safety mechanisms to Railius details and designed and constructed to NZS 5270-2005.

All handrails and gates are to be non-climbable and installed in accordance with BCA Housing Provisions Part 11.3.

REVISION	REV A 28.6.23 - RAIL PROFILE AND TOP LANDING AREA UPDATED	BDG BUILDING DESIGN GROUP AUSTRALIA peterdownes multi-award winner designs 77 Riviera Ave, Avalon Beach 2107 0488 662 445 www.peterdownes.com.au	PROJECT	948 Barrenjoey Rd Palm Beach		DRAWN	SD	CHECKED	SD
	REV B 25.3.24 - FENCE ADDED - SECTION 3 ADDED TO DRG 00		DRAWING	Site Plan / Notes / ESCP		SCALE	1 : 200	DATE	19.5.23
	REV C 15.7.24 - TOP LANDING DECK REDUCED AND LOWERED, RAIL PROFILE LOWERED - ACOUSTIC FENCE UPDATED				DRG.	A2 2265 OIC			





SECTION 2

SECTION 1

DA ISSUE



all work to Geotech, Acoustic and Bushfire report requirements

REVISION	
REV A 26.6.23	- RAIL PROFILE AND TOP LANDING AREA UPDATED
REV B 25.3.24	- FENCE ADDED
- SECTION 3 ADDED TO DRG 00	
REV C 15.7.24	- TOP LANDING DECK REDUCED AND LOWERED, RAIL PROFILE LOWERED
	- ACOUSTIC FENCE UPDATED



peterdownes
multi-award winner designs
77 Riviera Ave, Avalon Beach 2107 0488 662 445
www.peterdownes.com.au

PROJECT 948 Barrerjoey Rd Palm Beach

DRAWING Sections 1 & 2

DRAWN SD	CHECKED SD
SCALE 1 : 100	DATE 19.5.23
DRG. A2 2265	03C

ITEM 3.2	DA2024/0922 - 9 SONIVER ROAD NORTH CURL CURL - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
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PURPOSE

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

RECOMMENDATION

- 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 DA2024/0922 for alterations and additions to a dwelling house on land at Lot 6 DP 20825, 9 Soniver Road NORTH CURL CURL, subject to the conditions set out in the Assessment Report.

Reporting manager	Rodney Piggott
TRIM file ref	2024/766662
Attachments	1 Assessment Report 2 Site Plan and Elevations 3 Clause 4.6 - BHS



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/0922
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Responsible Officer:	Julie Edwards
Land to be developed (Address):	Lot 6 DP 20825, 9 Soniver Road NORTH CURL CURL NSW 2099
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Gartner Architecture Pty Ltd

Application Lodged:	16/07/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	23/07/2024 to 06/08/2024
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 17.64%
Recommendation:	Approval

Estimated Cost of Works:	\$ 979,000.00
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EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) due to the application proposing a greater than 10% variation to the Height of Buildings development standards.

No submissions were received.

Critical assessment issues included height of building, side boundary envelope, side boundary setback and landscaped open space.



The Clause 4.6 request for the non-compliance with height standard arises from the excavation of the garage level which results in a 17.64% variation.

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

PROPOSED DEVELOPMENT IN DETAIL

The application is seeking approval for alterations to a dwelling house. The proposal includes the following:

Basement level

- New stairs,
- Gym and sauna, and
- New parking area with turntable.

Ground floor

- New kitchen with pantry, dining and living,
- New media room, study, office and cellar,
- Alterations to games room, laundry and powder room, and
- New stairs.

First floor

- Remodeling of the entire first floor, and
- Addition of a bedroom (Bedroom 4) to the upper floor facing the street, over the existing ground floor below.

Roof Terrace

- Replaced existing roof light and replace with new smaller roof light, and
- New facade and terraces to replace existing.

External

- Remodelling of the south rear façade and addition of eaves to the roof,
- A general reduction in floor plate and increased setback to the ground and first floor at the south elevation,
- Remodelling of the northern street front façade with covered decks and new roofs, and
- New swimming pool, spa and soft landscape to the rear yard to replace hard paved surfaces and existing swimming pool.

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 Local Environmental Plan 2011 - 6.4 Development on sloping land
 Warringah Development Control Plan - B3 Side Boundary Envelope
 Warringah Development Control Plan - B5 Side Boundary Setbacks
 Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting

SITE DESCRIPTION

Property Description:	Lot 6 DP 20825 , 9 Soniver Road NORTH CURL CURL NSW 2099
Detailed Site Description:	The subject site consists of one allotment located on the southern side of Soniver Road, North Curl Curl. The site is irregular in shape with a frontage of 12.19m along Soniver Road and a depth of 63.7m. The site has a surveyed area of 904m². The site is located within the R2 Low Density Residential zone and accommodates a two and three storey dwelling with swimming pool and roof terrace. The site has a gentle cross fall from east to west of approximately 1.5m or 8-12%. The site has minimal vegetation with lawn area and trees and shrubs at the front of the site. There are no known threatened species on the site.



Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by two to three storey residential 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:

Development Application No. 4094DA

Dwelling and swimming pool
Determined 1 June 2000

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft	There are no current draft environmental planning instruments.



Section 4.15 Matters for Consideration	Comments
environmental planning instrument	
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	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>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to a bushfire report and clause 4.6 height of building. <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 Warringah Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.



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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application that included a certificate (prepared by Bush Fire Planning Services, dated 1 October 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 23/07/2024 to 06/08/2024 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 of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	<i>Supported - subject to conditions</i> <u>Amended comments</u> An amended bushfire report has been submitted with the application indicating that the Asset Protection Zone will be contained within the property boundary. No vegetation removal or tree removal is being proposed as part of the proposed works. The development is designed, sited and will be managed to avoid any significant adverse environmental impact. <u>Original comments</u> The comments in this referral relate to the following applicable controls and provisions: • Planning for Bushfire Protection 2019 • Warringah DCP - Clause E4 Wildlife Corridors • Warringah DCP - Clause E6 Retaining Unique Environmental Features



Internal Referral Body	Comments
	It should be noted that historical clearing has taken place outside of the property boundary without Council's consent and is now being required as part of the Asset Protection Zone management and this matter is deferred to the property management referral body. The proposal would take place in a previously disturbed site and is unlikely to impact upon native flora and fauna. No vegetation removal or tree removal is being proposed as part of the proposed works. 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 applicant seeks development consent to undertake the following: Alterations and Additions to an existing dwelling including • Internal modification of the floor plan layouts over all three levels. • Addition of an internal stair for access from the basement garage to the upper levels of the dwelling by stair in addition to the existing lift. • Remodelling of the south rear façade and addition of eaves to the roof • A general reduction in floor plate and increased setback to the ground and first floor at the south elevation. • Remodelling of the northern street front façade with covered decks and new roofs, and a • Addition of a bedroom (Bedroom 4) to the upper floor facing the street, over the existing ground floor below. • No increase in building footprint, No increase in building height • Addition of a spa and soft landscape to the rear yard to replace hard paved surfaces in the rear yard. This application was assessed in consideration of: • Supplied plans and reports; • Coastal Management Act (2016) • State Environmental Planning Policy (Resilience and Hazards) 2021 (section 2.10, 2.11 & 2.12); • Relevant LEP and DCP clauses. <u>Comment:</u> SUPPORTED WITH CONDITIONS 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,



Internal Referral Body	Comments
	Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA. <u>Comment:</u> On internal assessment, the Statement of Environmental Effects (SEE) by Gartnerrovato Architects Pty Ltd satisfies the requirements under clause 2.10, 2.11 & 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. WLEP and WDCP 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 WLEP and WDCP.
NECC (Development Engineering)	<i>Supported - subject to conditions</i> The proposed connection of stormwater to the existing system is acceptable. Development Engineering support the proposal, subject to conditions as recommended.
Parks, reserves, beaches, foreshore	<i>Supported - subject to conditions</i> <u>Amended comments:</u> An amended Bushfire report is submitted that determines fuel loads on the adjoining land, whereby a 8 metre separation from the building to the rear property boundary becomes the Inner Protection Zone for bushfire protection. Parks Reserves and Foreshores Referral raise no concerns as the previous reliance on public land for the Asset Protection Zone is no longer required as per the Bushfire report assessment Method-2 calculations. Public access to the reserve is not impacted by the proposed development and the development is not detrimental to the landscape character of the adjoining Reserve, and as such Parks, Reserves and Foreshores raise no concerns with the development proposal. <u>Original comments:</u> <i>The development site adjoins Dee Why Headland Reserve that is located downslope of the property. All development works must ensure that surface sediment runoff and/or erosion is controlled, managed and contained within the site boundaries and prevented from travelling across the boundary and into the Reserve. Warringah DCP control E7 Development on land adjoining public open space applies.</i> <i>No physical encroachments over the site boundaries are permitted, and structures and built elements are not permitted beyond the site</i>



Internal Referral Body	Comments
	<i>boundaries. It is noted that the rear of the property the subject of proposed alterations and additions works is existing as hard pavement and existing pool, and the pavement is to be replaced with a spa and lawn area.</i> <i>For information purposes it is noted that existing encroachments occur into the public reserve (lawn, gardens and walling), as shown on the Survey Plan. Any approval of this development application does not regularise any unauthorised encroachments within the public reserve.</i> <i>The following concern is raised by Parks Reserves and Foreshores Referral, that requires attention and alteration to the planning of proposed development works:</i> <i>• the proposed encroachment into public land for the Asset Protection Zone is not supported, and the defensible zone shall be wholly contained within the residential property.</i>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Rural Fire Service - Local Branch - EP&A Act, s4.14	The proposal was referred to NSW RFS who provided a response stating that the proposal is acceptable subject to conditions. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	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. A1749279 dated 28 May 2024).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

- 1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:



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

Comment:

The proposed works are located wholly within the site and visually and physically separated from the foreshore, beach, headland or rock platform. The works are for standard residential development and will not cause an unreasonable impact on the coastal environment area and meet the requirements of this clause.

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

Comment:

The proposed works are located wholly within the site and visually and physically separated from the foreshore, beach, headland or rock platform. The works are for standard residential development and will not cause an unreasonable impact on the coastal environment area.

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) foreshores,
 - iv) the visual amenity and scenic qualities of the coast, including coastal headlands,
 - v) Aboriginal cultural heritage, practices and places, cultural and built environment heritage, and
 - b) is satisfied that:
 - i) the development is designed, sited and will be managed to avoid an
 - 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 has considered whether the proposed development is likely to cause an adverse impact on that listed in (a) and is satisfied that the development has been designed, sited and will be managed to avoid any adverse impact. Council is also satisfied that the bulk, scale and size of the development is appropriate when considering the surrounding coastal and built environment.

Division 5 General

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

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

Comment:

The proposed development is contained wholly within the subject site and is considered to be standard alterations and additions to an existing dwelling house. The works are not likely to cause any increased risk of coastal hazards on that land or other 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.

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	10m	17.64%	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 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.
- To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*
Comment:
The height variation does not impact on the landscape setting of the site and the surrounding setting. The proposed alterations and additions incorporate suitable colours and materials consistent with the existing and surrounding development. No substantial vegetation is required for removal to facilitate the proposed works. Therefore, the proposal is characterised by landscaped settings that are in harmony with the natural environment of Warringah.

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:	17.64%

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 existing development and surrounding dwellings on the southern side of Soniver Road.

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

Comment:

The height breach as a result of the replacement roof light and front extension is lower than the maximum height of the existing dwelling and is in a location that 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.

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: 10m

Percentage of variation: 17.64%

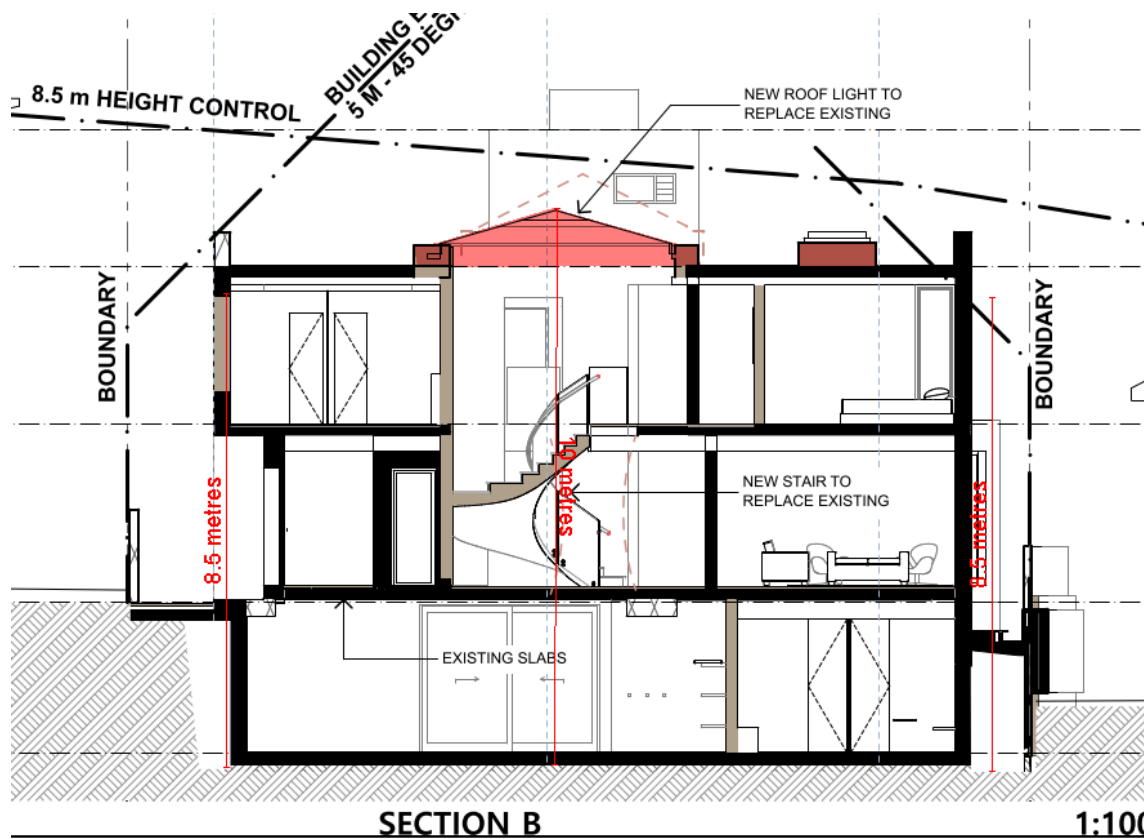


Figure 1: Height variation shaded in red

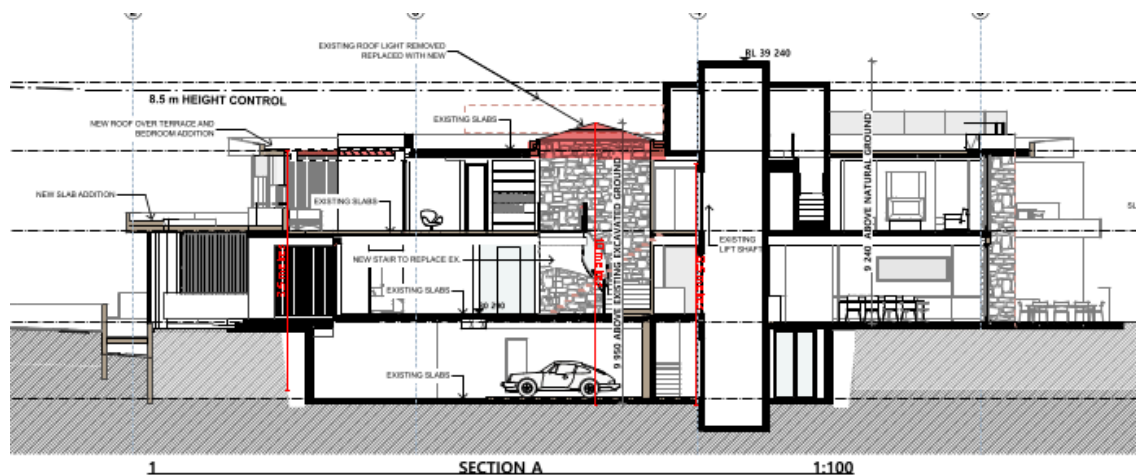


Figure 2: height variation shaded in red

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:

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 breach only occurs above excavated ground with the maximum height of 10m, due to the existing excavation being approximately 3m below natural ground. The extent of the breach is 1.45m or 17% of the building height development standard.
- Although the maximum height technically breaches the standard, the dwelling remains consistent with the desired character of the locality and compatible with the height and scale of surrounding and nearby development.
- The proposed development is limited to a maximum of two storeys in height above natural ground and is no higher than the existing dwelling or the neighbouring dwellings.
- The non-compliance has no visual impact as it maintains the existing heights of the dwelling and skylight.
- There is no loss of view, no loss of privacy or loss of solar access due to the replacement of the existing skylight with a smaller skylight at the same height.

(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:

'Clause 4.6 (3)b requires demonstration that there are sufficient environmental planning grounds to justify contravention of the standard. These grounds are as follows:

Existing Excavation.

The proposed height breach is a direct consequence of existing excavation at the basement garage level. As demonstrated in Figure 1, the proposed upper floor is maintained below the 8.5m height plane when measured to extrapolated/assumed pre-existing ground levels.

Consistent with the findings of Commissioner O'Neill in Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582, the prior excavation within the building footprint that distorts the height of buildings development standard plane can be properly described as an environmental planning ground within the meaning of clause 4.6(3)(b) of the LEP.

Superior Architectural Design

The design of a replacement skylight is proposed to retain all existing building levels and the proposed development will be compatible with dwellings in the visual catchment of the site, which features a number of buildings of significantly greater bulk and scale. The building is of exceptional design quality with the variation facilitating a building height that provides for contextual built form compatibility, consistent with Objectives 1.3(c) and (g) of the Act.'

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:

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 WLEP 2011.

It is considered on balance, that having regard to the particular circumstances the proposed departure from height of buildings development standard is acceptable and it is reasonable that



flexibility to the standard be applied.

6.4 Development on sloping land

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

(a) the application for development has been assessed for the risk associated with landslides in relation to both property and life, and

Comment:

The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective and therefore, Council is satisfied that the development has been assessed for the risk associated with landslides in relation to both property and life.

(b) the development will not cause significant detrimental impacts because of stormwater discharge from the development site, and

Comment:

The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective. The application has also been assessed by Council's Development Engineers in relation to stormwater. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development will not cause significant detrimental impacts because of stormwater discharge from the development site.

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

Comment:

The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective. The application has also been assessed by Council's Development Engineers in relation to stormwater. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development will not result in adverse impacts or effects on the existing subsurface flow conditions.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	6.7m	N/A	Yes
B3 Side Boundary Envelope	East - 5m	No change	N/A	Yes
	West - 5m	Envelope non-compliance Height - 0 - 0.9m Length - 3.8m	N/A	No
B5 Side Boundary Setbacks	West - 0.9m	Ground floor existing - 0.845m Ground floor new - 1.5m First floor - 0.845m	6.7% N/A 6.7%	Yes - existing Yes No



	East - 0.9m	Ground floor existing 0.9m	N/A	Yes
B7 Front Boundary Setbacks	6.5m	17m	N/A	Yes
B9 Rear Boundary Setbacks	6m	Swimming pool - nil Spa and deck - nil Ground floor - 8m First floor - 6m	100% 100% N/A N/A	Yes* Yes* Yes Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	20.8% (187.8m ²)	48%	No

* Where the minimum rear building setback is 6 metres, exempt development, swimming pools and outbuildings that, in total, do not exceed 50% of the rear setback area, provided that the objectives of this provision are met are an exception to the setback requirement. The swimming pool and spa only cover 44.3% of the rear setback area.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	No	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
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D16 Swimming Pools and Spa Pools	Yes	Yes
D20 Safety and Security	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B3 Side Boundary Envelope

Description of non-compliance

The control requires buildings to be sited within a building envelope which is determined by projecting planes at 45° from a height of 5m above the ground level at the side boundary.

The proposed extension to the first floor is sited outside of the building envelope along the western elevation.

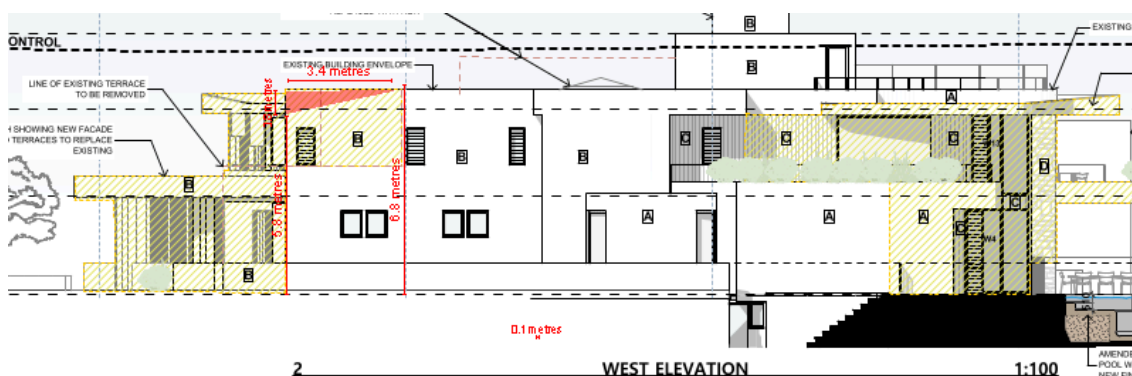


Figure 3: Side boundary envelope non-compliance shaded in red

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 non-compliance with the building envelope control is not found to cause any unreasonable visual impacts. The dwelling is beneath the maximum permissible building height. The extension is retaining the existing setback to the side boundaries and is appropriately setback from the front and rear boundaries. Canopy trees and landscaping at the front of the site will further screen the development when viewed from the street and adjoining dwellings. The overall built form is generally consistent with that of surrounding modernised development.

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

The proposed development ensures adequate light, solar access and privacy is obtained between dwellings. The proposal complies with the requirements of the D6 - Access to Sunlight



control and has been designed so that there are no unreasonable impacts on the privacy of the adjoining neighbours to the west. Adequate physical separation between the proposed development and habitable areas of the adjoining property to protect the privacy and amenity of the site and adjoining properties is achieved.

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

Comment:

The proposed addition does not require alteration to the natural topography of the site. The side boundary non-compliance is a result of the irregular shape of the block, which is narrower at the front boundary than the rear and the location of the existing dwelling. The non-compliance with the side boundary envelope complies with the building height control of the WLEP and the front, rear and wall height controls of the WDCP. It is considered that the addition is appropriately located to respond to the site topography. No unreasonable streetscape or amenity impacts are expected to arise as a consequence of the development.

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

The proposed first floor addition has a very minor encroachment into the side setback, with a setback of 0.8m to the western side boundary.

The control requires a minimum of 0.9m setback to side boundaries.

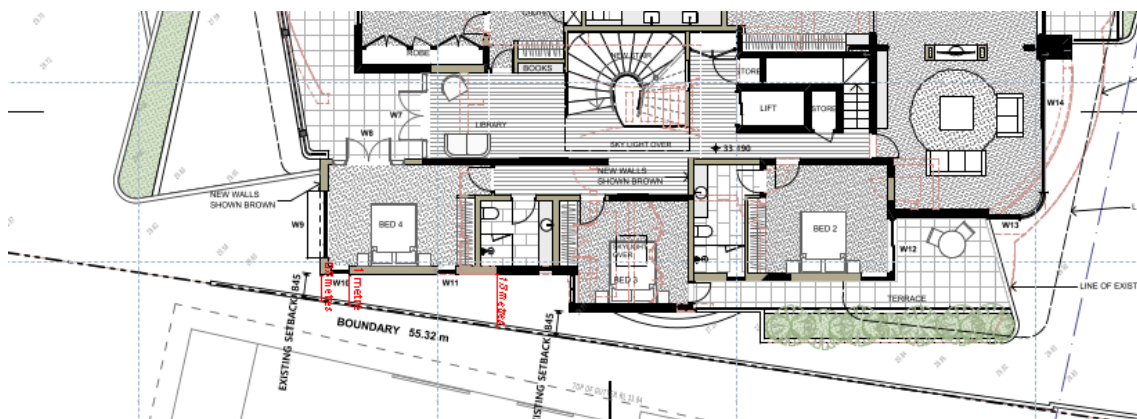


Figure 4: Western side boundary boundary setback

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:
While the site does not meet the Landscaped Open Space requirements of the WDCP, the proposed development will increase the deep soil landscaping on the site. It is considered that adequate opportunities for deep soil landscaped areas are provided for elsewhere on the site.
- *To ensure that development does not become visually dominant.*
Comment:
The proposal extension is within the existing building footprint and the flat roof minimises the bulk of the proposal when viewed from the street and adjoining dwellings. The proposal is consistent with the surrounding development and the design of the proposal is consistent with the existing dwelling will ensure the development does not become visually dominant.
- *To ensure that the scale and bulk of buildings is minimised.*
Comment:
The proposed encroachment into the side setback is wholly within the existing building footprint. The proposed first floor extension has been designed to compliment the existing dwelling and the flat roof helps to minimise the bulk and scale of the proposal when viewed from the street and adjoining dwellings. The location and design of the proposed extension will ensure that the bulk and scale is minimised.
- *To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.*
Comment:
The proposed addition provides adequate separation between buildings and ensures a reasonable level of privacy, amenity and solar access is maintained.
- *To provide reasonable sharing of views to and from public and private properties.*
Comment:
The encroachment into the western side boundary setback will not exacerbate any view loss from adjoining properties and will provide a reasonable sharing of views 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.

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

The control requires the site to have a minimum landscape open space (LOS) of 40%.

The proposed development includes 20.8% (187.8m²) LOS, which is a variation of 48%.

It is noted, that the site as existing site has a LOS of 15.8% (143.2m²) LOS, meaning the proposal increases the amount of LOS by 44.6m².



Merit consideration

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

- *To enable planting to maintain and enhance the streetscape.*
Comment:
The proposal provides a sufficient area of soft landscaped and deep soil at the front of the site to enhance the existing streetscape.
- *To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.*
Comment:
The site has been altered over the residential history of the allotment. There are no known threatened species or significant vegetation identified on site. There is also no significant topographical features found on the site.
- *To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.*
Comment:
Sufficient LOS is provided at the front of the site to establish vegetation to mitigate the visual bulk of the proposed development. There is adequate room for canopy trees and vegetation that is of a scale to reduce the dominance of the built form.
- *To enhance privacy between buildings.*
Comment:
Acceptable levels of privacy are achieved between dwellings.
- *To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.*
Comment:
Adequate private open space is provided to accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.
- *To provide space for service functions, including clothes drying.*
Comment:
Acceptable space for service functions is provided.
- *To facilitate water management, including on-site detention and infiltration of stormwater.*
Comment:
Conditions of consent will be imposed, which ensure stormwater from the new development is disposed of to an existing approved system or in accordance with Northern Beaches Council's Water Management Policy and comply with the relevant Australian Standards and Codes. It is not considered the non-compliance will result in adverse stormwater runoff.



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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$9,790 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$979,000.

CONCLUSION

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

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

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

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

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

Council is satisfied that the Applicant's written request under Clause 4.6 of the Warringah Local



Environmental Plan 2011 seeking to justify variation of the development standard contained within Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

PLANNING CONCLUSION

This proposal, for alterations and additions to 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 WLEP.

The critical assessment issues that were addressed, in detail, within the assessment report include height of building, side boundary envelope, side boundary setback and landscaped open space.

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 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 DA2024/0922 for Alterations and additions to a dwelling house on land at Lot 6 DP 20825, 9 Soniver Road, NORTH CURL CURL, 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
A01	A	Site Plan	Gartner Trovato Architects	22.05.24
A02	A	Basement Plan	Gartner Trovato Architects	22.05.24
A03	B	Ground Floor Plan	Gartner Trovato Architects	30.09.24
A04	A	First Floor Plan	Gartner Trovato Architects	22.05.24
A05	A	Roof Terrace Plan	Gartner Trovato Architects	22.05.24
A06	A	North & South Elevation	Gartner Trovato Architects	22.05.24
A07	B	East & West Elevation	Gartner Trovato Architects	30.09.24
A08	B	Sections	Gartner Trovato Architects	30.09.24

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Preliminary Landslip Assessment for 9 Soniver Road, North Curl Curl	Project No.: 2024-095	Crozier Geotechnical Consultants	31.05.24
Waste Management Plan	-	-	-
BASIX Certificate	Certificate number: A1749279	Sean Gartner	28.05.24
Bushfire Risk Assessment	Reference number 4697	Bushfire Planning Services	01.10.24

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	23/07/24
Rural Fire Service NSW	Referral RFS	18/10/24

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

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

3. Prescribed Conditions

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

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



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

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

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

Reason: Legislative requirement.

4. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Construction certificate plans are to be in accordance with all finished levels identified on approved plans. Notes attached to plans indicating tolerances to levels are not approved.
- (c) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (d) At all times after the submission of the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (e) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area



affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

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

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



- (m) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (n) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (o) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

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

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$9,790.00 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 \$979,000.00.

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. **No Clearing of Vegetation**

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

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

Reason: To protect native vegetation.

8. **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 kerb in Soniver Road. Details by an appropriately qualified and practicing Civil Engineer demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with Council's policy are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.



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

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

9. **Boundary Identification Survey**

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

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

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

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

10. **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.

11. **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.

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.

13. Waste Management Plan

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

14. Installation and Maintenance of Sediment and Erosion Control

Prior to commencement of works on site, sediment and erosion controls must be installed along the immediate downslope of the works area in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). 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

15. Wildlife Protection

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

Reason: To protect native wildlife.

16. 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.

17. 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.

18. 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.

19. **Protection of Council's Public Assets**

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

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

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

20. **Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

21. **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

22. **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.

23. **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.



24. **Waste Management Confirmation**

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

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

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

25. **Maintenance of Asset Protection Zones**

Vegetation clearing for ongoing APZ maintenance must only occur within the surveyed and marked APZ boundaries. No clearing is to be undertaken outside of the APZ boundaries.

Reason: To protect native vegetation and wildlife.

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. **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.

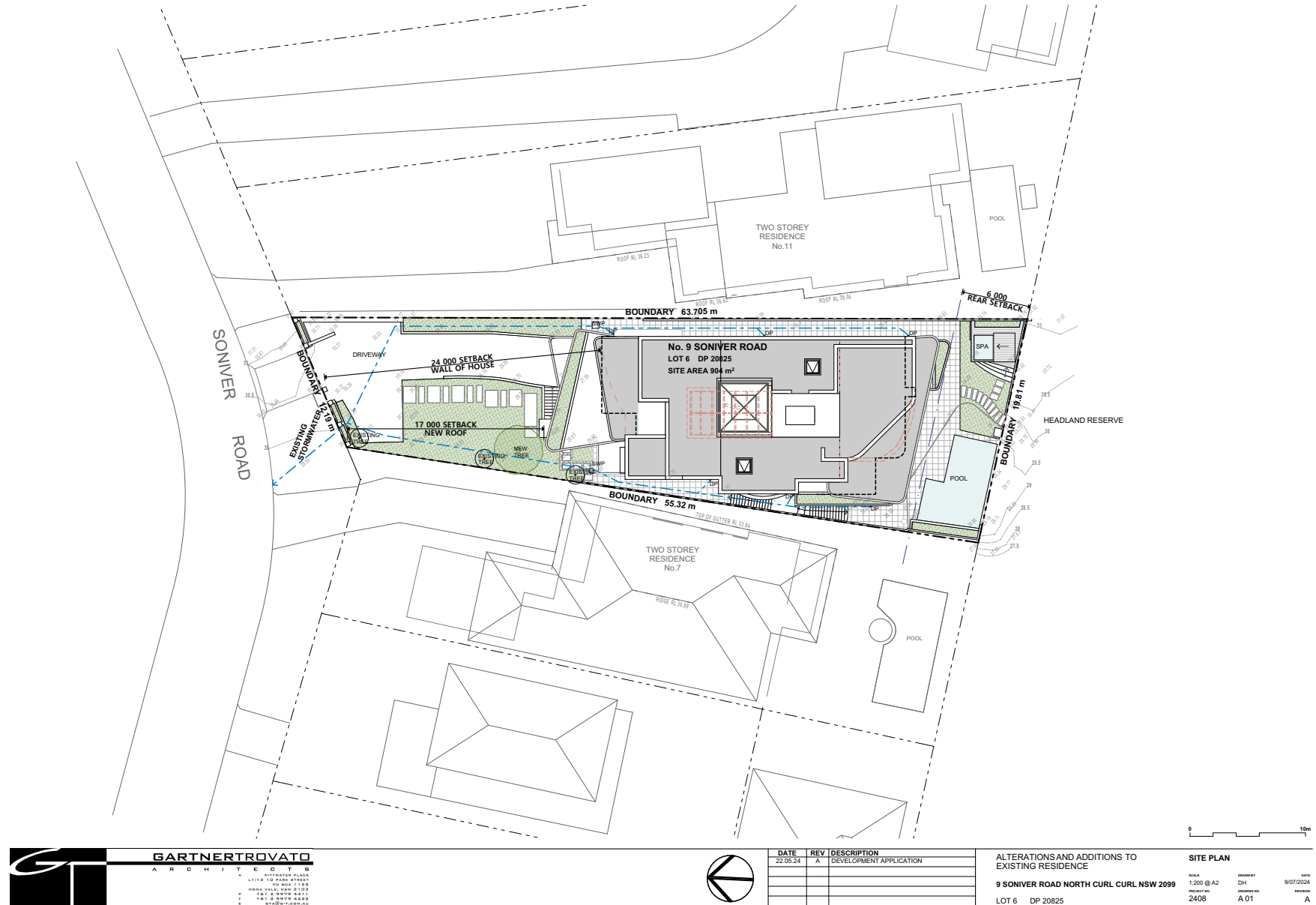
In signing this report, I declare that I do not have a Conflict of Interest.

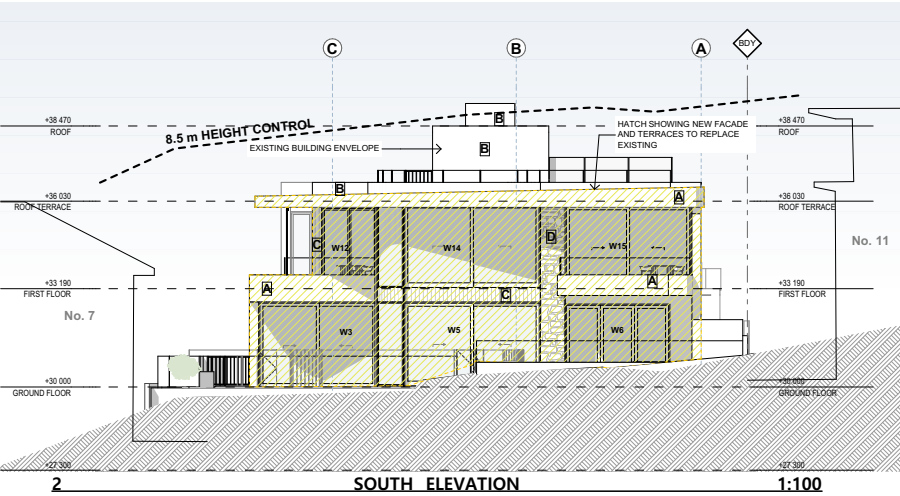
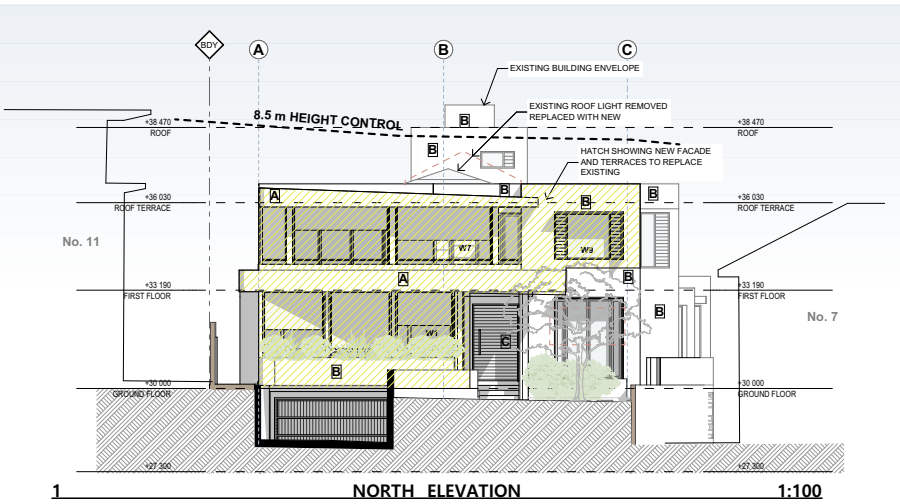
Signed

Rodney Piggott, Manager Development Assessments

The application is determined on //, under the delegated authority of:

Rodney Piggott, Manager Development Assessments





EXTERIOR FINISHES LEGEND

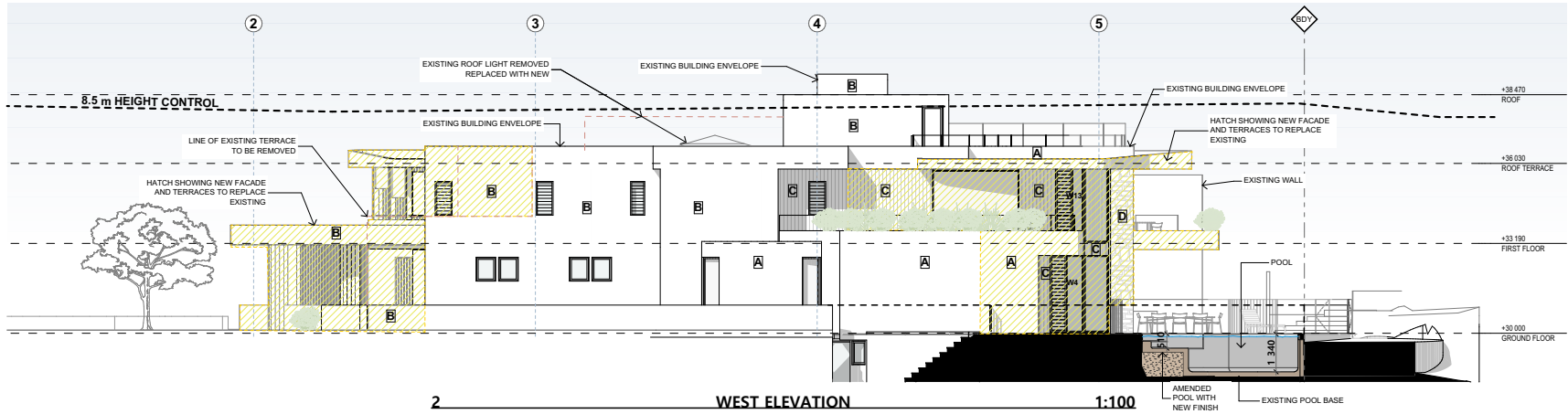
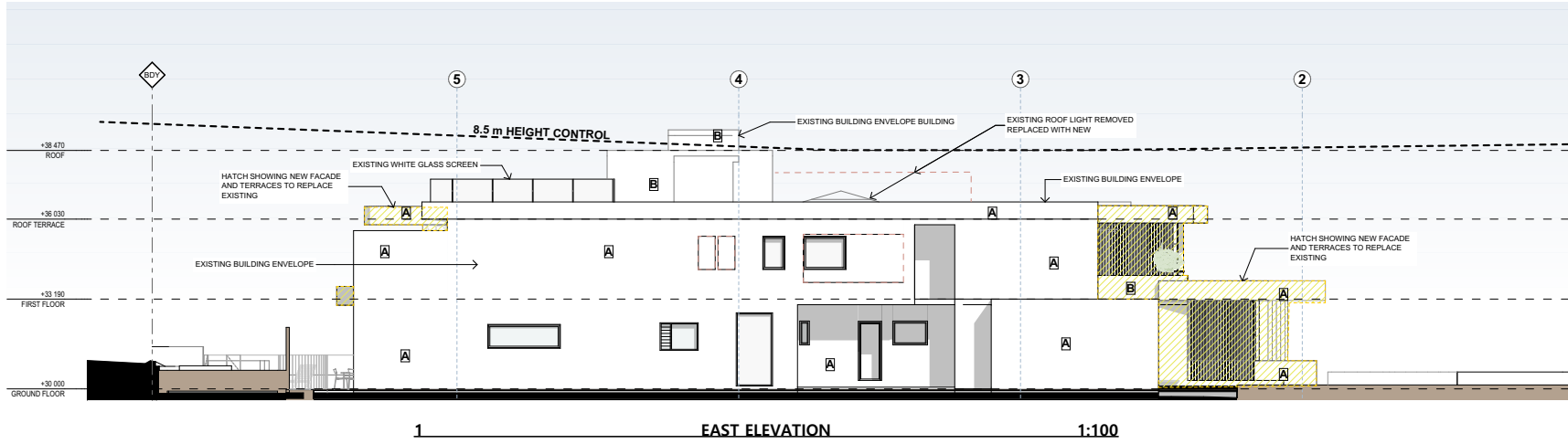


GARTNERTROVATO
ARCHITECTS
L1/12 10 PARK STREET
SYDNEY NSW 2158
MOBILE 0412 110 000
F 02 9550 7411
E info@gartnertrovato.com.au

DATE	REV	DESCRIPTION
22.05.24	A	DEVELOPMENT APPLICATION

ALTERATIONS AND ADDITIONS TO
EXISTING RESIDENCE
9 SONIVER ROAD NORTH CURL CURL NSW 2099
LOT 6 DP 20825

NORTH & SOUTH ELEVATION
SCALE: 1:100 @ A2
DRAWN BY: DH
CHECKED BY: A OG
DATE: 9/07/2024
PROJECT NO: 2408



EXTERIOR FINISHES LEGEND



GARTNER TROVATO

ARCHITECTS
L1112 10 PARK STREET
PO BOX 1100
MUSGRAVE PARK NSW 2110
TEL 02 9070 4411
TEL 02 9070 4400
STUDIO@GARTNERTROVATO.COM

DATE	REV	DESCRIPTION
22.05.24	A	DEVELOPMENT APPLICATION
30.09.24	B	POOL SECTION ADDED

ALTERATIONS AND ADDITIONS TO
EXISTING RESIDENCE
9 SONIVER ROAD NORTH CURL CURL NSW 2099
LOT 6 DP 20825

EAST & WEST ELEVATION
SCALE: 1:100 @ A2
DRAWN BY: DH
CHECKED BY: A.07
DATE: 30/09/2024
REVISION: B

Clause 4.6 Variation to a Development Standard – Building Height



Alterations & Additions to an Existing Dwelling @
9 Soniver Road, North Curl Curl



GARTNERTROVATO Architects
Pty Ltd

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ACN 115 186 206

Suite 13, Level 1
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(PO Box 1122)
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NSW, 2103

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F +612 9979 4422
E gta@g-t.com.au

Nominated Architects
Sean Gartner # 6072
Luke Trovato # 7094

Prepared For S & J Agnew

project no 2408
date September 2024
issue A

1.0 INTRODUCTION

This request to vary a development standard has been prepared on behalf of S & J Agnew, owners of the property at 9 Soniver Road, North Curl Curl in relation to a development application for alterations and additions to an existing dwelling and pool.

This request is made pursuant to clause 4.6 of Warringah Local Environmental Plan (WLEP 2011) and with regard to relevant case law including Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

2.0 STANDARD TO BE VARIED

The standard in the WLEP 2011 that is proposed to be varied, is Clause 4.3 Height of Buildings.

Clause 4.3 (2) requires *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 map indicated that the height on any land is not to exceed 8.5m in height. Building Height is defined as:

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

Ground Level (existing) is defined as:

the existing level of a site at any point.

The stated objectives of such control, Clause 4.3 (1) 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*

3.0 EXTENT OF THE PROPOSED BREACH

The application seeks consent for skylight replacement as part of the alterations and additions to the existing dwelling. The proposal retains the existing level of the lift overrun as the maximum level and retains the level of the skylight from that of the existing to the new proposed replacement skylight.

The alterations and additions above ground provide compliance with the height standard and remain below 8.5m above ground. The proposed replacement of the skylight sits below 8.5m above natural ground, but the existing and replacement skylight do not sit below 8.5m above *existing ground* due to the existing excavated basement car park which is completely underground on a relatively flat site.

The proposed maximum height above *existing ground* being the excavated garage floor, is 9.95m

The breach occurs only because the skylight is being replaced. The breach only occurs above excavated ground as shown in the section below with the maximum height of 9.95m, due to the existing excavation being approximately 3m below natural ground. The extent of the breach is 1.45m or 17% of the building height development standard.

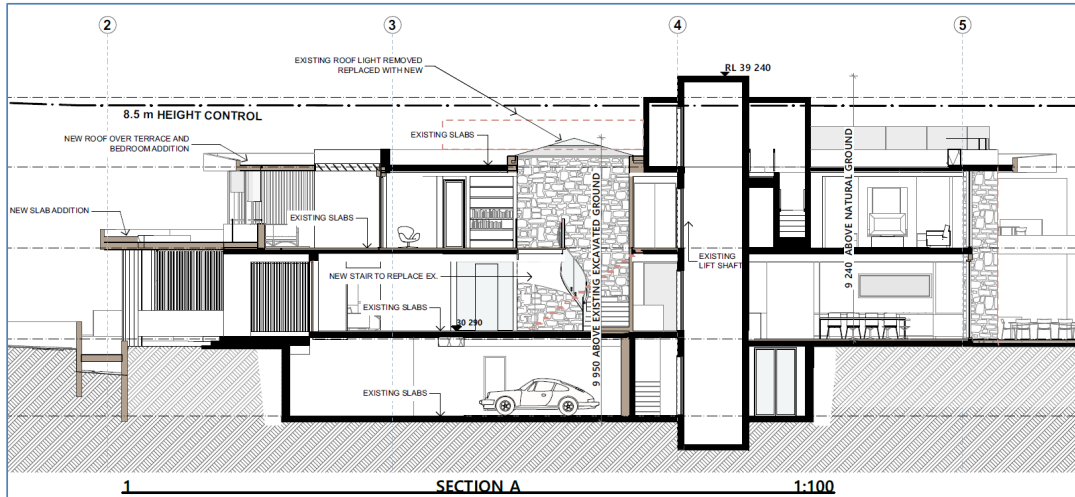


Figure 1. Extract of Section drawing from drawing A08 (B)

Although the maximum height technically breaches the standard, the dwelling remains consistent with the desired character of the locality and compatible with the height and scale of surrounding and nearby development, satisfying the objectives of the standard.

Figure 2. 3D montage of the proposal in context with adjoining properties, subject site in the centre of image.



4.0 CLAUSE 4.6 – EXCEPTIONS TO DEVELOPMENT STANDARDS

The objectives of Clause 4.6 are:

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

Reference is drawn to the court precedent of *Initial Action* where the conclusion was that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operation provisions.

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

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

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

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

The proposed development does not comply with the height of buildings development standard at clause 4.3 of WLEP 2011 which specifies a maximum height of 8.5m. However, strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

Clause 4.6(4) states....*"consent must not be granted for development that contravenes a development standard unless:*

- a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- b) *the concurrence of the Planning Secretary has been obtained.*

Reference is drawn to *Initial Action* for 4.6a(i), where the test of unreasonable or unnecessary, and sufficient environmental planning grounds, are dealt with below in section 5 of this report.

Reference is further drawn to *Initial Action* for 4.6a(ii), where the proposed development will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development in the zone, also dealt with in section 5 of this report.

In terms of satisfying clause 4.6 (4)b), we refer to section 5 of this report.

The remaining clauses 4.6 (5) through (8) are not relevant to this application.

5.0 REQUEST FOR VARIATION

Unreasonable or Unnecessary

Clause 4.6 (3)a) requires demonstration that compliance with the development standard is unreasonable or unnecessary in the circumstance.

In accordance with the decision of the NSW LEC in the matter of *Wehbe v Pittwater Council* [2007] NSWLEC 827, one way in which strict compliance with a development standard may be found to be unreasonable or unnecessary is if it can be demonstrated that the objectives of the standard are achieved, despite non-compliance with the development standard. The proposed development is consistent with the objectives of the Building Height development standard, as prescribed by clause 4.3 of WLEP 2011, as follows:

- *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
Comment: The non-compliance arises as a consequence of existing excavation on the garage floor. The proposed development is limited to a maximum of two storeys in height above natural ground and is no higher than the existing dwelling or the neighbouring dwellings. The proposal achieves this outcome.
- *to minimise visual impact, disruption of views, loss of privacy and loss of solar access*
Comment: The non-compliance has no visual impact as it maintains the existing heights of the dwelling and skylight. There is no loss of view, no loss of privacy or loss of solar access due to the replacement of the existing skylight with a smaller skylight at the same height.
- *to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments*
Comment: The proposal has no impact on scenic quality as it does not increase the existing height of the dwelling.
- *to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities*
Comment: There is no impact when viewed from public places as it does not increase the existing height of the dwelling.

Figure 4. Aerial View showing the skylight in the centre of the roof, replacing an existing skylight



As demonstrated above, the proposal achieves the objectives and as such, strict compliance with the building height development standard is unreasonable and unnecessary in the circumstances of this case.

Sufficient Environmental Planning Grounds

Clause 4.6 (3)b) requires demonstration that there are sufficient environmental planning grounds to justify contravention of the standard. These grounds are as follows:

1. Existing Excavation.

The proposed height breach is a direct consequence of existing excavation at the basement garage level. As demonstrated in Figure 1, the proposed upper floor is maintained below the 8.5m height plane when measured to extrapolated/assumed pre-existing ground levels.

Consistent with the findings of Commissioner O'Neill in *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582, the prior excavation within the building footprint that distorts the height of buildings development standard plane can be properly described as an environmental planning ground within the meaning of clause 4.6(3)(b) of the LEP.

2. Superior Architectural Design

The design of a replacement skylight is proposed to retain all existing building levels and the proposed development will be compatible with dwellings in the visual catchment of the site, which features a number of buildings of significantly greater bulk and scale. The building is of exceptional design quality with the variation facilitating a building height that provides for contextual built form compatibility, consistent with Objectives 1.3(c) and (g) of the Act.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments*, most observers would not find the proposed development offensive, jarring or unsympathetic as seen from adjoining properties or as viewed from the waterway. The proposed development is compatible with other development in the visual catchment of the site, and the character of the wider R2 Zone.

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

Public Interest

Clause 4.6 (4)a) requires that consent must not be granted to a proposal that contravenes a development standard unless the proposed development will be in the public interest. A development can be considered in the public interest if it is consistent with the objectives of the particular standard to be varied and the objectives of the zone.

As identified above, the proposed development is consistent with the objectives the R2 zone:

- *to provide for the housing needs of the community within a low density residential environment*
Comment: The proposal achieves this objective, by retaining a single dwelling in 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 achieves this objective by providing housing.
- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah*
Comment: The proposal achieves the objective as the alterations and additions are within the existing footprint and the design seeks to increase landscaped area on the site with additional planting

Council can be satisfied that the proposal is in the public's interest, in so far as it is consistent with both the objectives of the zone and the objectives of the Height of Buildings standard.

Secretary's Concurrence

Pursuant to clause 4.6(4) of WLEP 2011, development consent must not be granted to a development that contravenes a development standard unless the concurrence of the Secretary has been obtained.

In terms of satisfying clause 4.6 (4)b), advice is provided by the Department of Planning, Industry & Environment by letter dated 2 November 2021;

Development applications for Class 1 buildings (single dwelling houses) with a Clause 4.6 variation greater than 10% to building height within the Warringah Local Environment Plan 2011, Manly Local Environment Plan 2013 and Pittwater Local Environment Plan 2014 and floor space ratio under the Manly Local Environment Plan 2013, may be determined by Council staff under delegation in accordance with Council procedures

6.0 CONCLUSION

Pursuant to clause 4.6 of WLEP 2011, the consent authority can be satisfied that this written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

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

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



Sean Gartner
B.Arch | Registered Architect #6072 (BoA, NSW)

Director
Gartner Trovato Architects Pty Ltd

ITEM 3.3	DA2024/0873 - 17 DALWOOD AVENUE SEAFORTH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING CARPORT
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PURPOSE

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

RECOMMENDATION

- A.** That Council as the consent authority, vary the Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B.** THAT Council as the consent authority **approves** Development Consent to DA2024/0873 for Alterations and additions to a dwelling house including carport on land at Lot 2A DP 17157, 17 Dalwood Avenue SEAFORTH, subject to the conditions set out in the Assessment Report.

Reporting manager	Rodney Piggott
TRIM file ref	2024/766626
Attachments	1 Assessment Report 2 Site Plan and Elevations 3 Clause 4.6 - FSR



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/0873
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Responsible Officer:	Reeve Cocks
Land to be developed (Address):	Lot 2A DP 17157, 17 Dalwood Avenue SEAFORTH NSW 2092
Proposed Development:	Alterations and additions to a dwelling house including 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:	Westley Franz Owers

Application Lodged:	23/07/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	31/07/2024 to 14/08/2024
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.4 Floor space ratio: 13.7%
Recommendation:	Approval

Estimated Cost of Works:	\$ 48,700.00
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EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to an existing dwelling house including the construction of a carport.

The application is referred to the Development Determination Panel (DDP) due to the proposed breach to Clause 4.4 Floor Space Ratio of 13.7%.

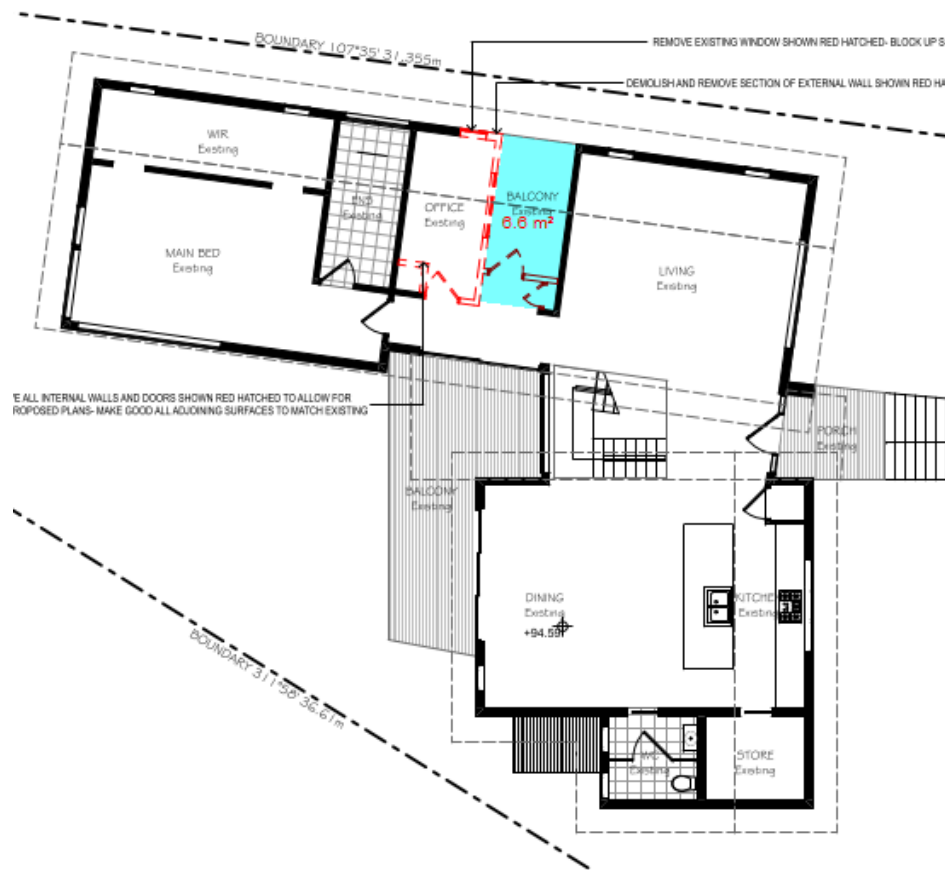
One submission (letter of support) was received. No other objections were raised or submissions received.



Critical assessment issues included

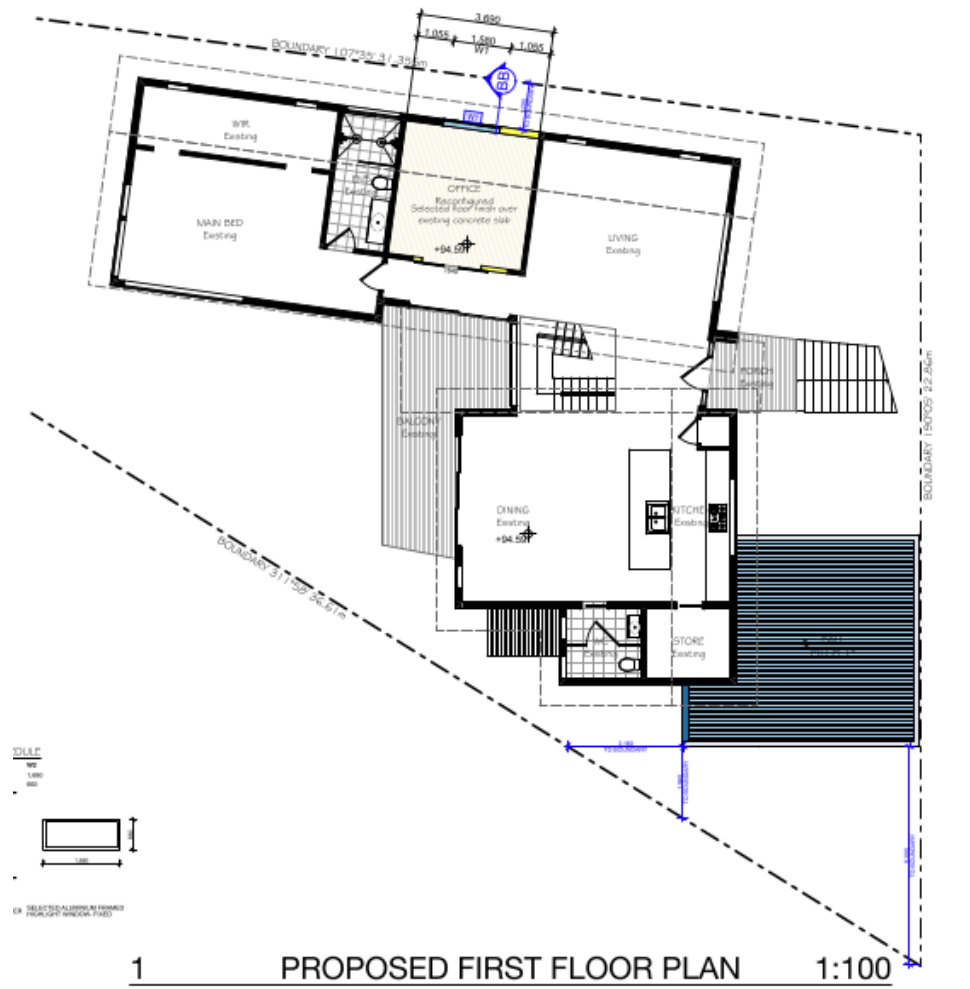
- Front Setback Non-compliance
- Bulk and Scale (consistency with existing and desired streetscape character)
- Amenity Impacts

The 4.6 request for the non-compliance with FSR standard arises from a 6.6m² increase in floorspace. The existing building has an existing floorspace which is at 10% (0.44:1) above compliance with the LEP based on historical approvals with the proposal increasing this to 13.7% (0.455:1). The additional floorspace does not increase the bulk or scale of the building.





northern
beaches
council



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

PROPOSED DEVELOPMENT IN DETAIL

The development seeks consent for

Specifically the following works:

Ground Floor

- extension to existing car parking hardstand (southern space only)
- Installation of two (2) car space carport

First Floor



- Extension of study to enclose the existing open reflection area.
- Addition of two (2) windows (W1 and W2).

Amended Plans Provided on the 17 September 2024

Council received amended plans which made minor alterations to the carport structure including the deletion of the originally proposed carport door. The amended plans were not re-notified in accordance with Councils Community Participation Plan due to the amended design being considered to be of a lesser environmental impact to the originally proposed design.

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 - 4.4 Floor space ratio
 Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

SITE DESCRIPTION

Property Description:	Lot 2A DP 17157 , 17 Dalwood Avenue SEAFORTH NSW 2092
Detailed Site Description:	The subject site consists of one (1) allotment located on the western side of Dalwood Avenue. The site is irregular in shape with a frontage of 22.86m along Dalwood Avenue and a depth of 36.61m. The site has a surveyed area of 473.7m².



	The site is located within the R2 Low Density Residential zone and accommodates an existing two (2) storey detached residential dwelling house with an integrated single car garage and in-ground swimming pool on site. The site slopes from its north eastern boundary to the south western boundary with an approximate 3 metre fall across the site (as measured from the provided survey). The site has existing landscaped areas within the eastern (front), northern (side), and western (rear) setbacks. No threatened species are identified on-site. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by one (1) and two (2) storey residential dwelling houses.
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Map:



SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site.

The land has been used for residential purposes for an extended period of time.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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



Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended architectural plans and a revised statement of environmental effects. <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 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	(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 classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the application that included a certificate (prepared by Building Code & Bushfire Hazard Solutions, dated 28 June 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 31/07/2024 to 14/08/2024 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 David Bruce Nimmo Ms Naomi Rochelle Nimmo	2 Gurney Crescent SEAFORTH NSW 2092



It is noted that Council received one (1) submission which was a letter of support from an adjoining neighbour. This has been taken into consideration by Council in the assessment of this application.

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	Supported Subject to Conditions The proposal is for a double carport at the frontage of the site. A roller door is proposed at the frontage of the carport which is not supported. Carports must be open on both sides and at the front in accordance with Clause 4.1.6 of Manly DCP. Additionally the dimensions and grades of any proposed parking are to be in accordance with AS2890.1. Additional Information Provided on 17/9/2024 Amended plans have been reviewed. No objections to approval subject to conditions as recommended.
External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP (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	5.4m	-	Yes
Floor Space Ratio	FSR: 0.4:1 (189.48m ²)	FSR: 0.455:1 (215m ²)	13.7%	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



Clause	Compliance with Requirements
4.6 Exceptions to development standards	Yes
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	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 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 development proposes to utilize the existing space on site to provide greater housing and vehicular space.

It is considered that the development satisfies objective.

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

Comment:

The development results in an increased office space and additional car parking space. It is considered that these additions are proposed to meet the day to day needs of residents.

It is considered that the development satisfies this objective.

4.4 Floor space ratio

The underlying objectives of Clause 4.4 Floor Space Ratio:

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

Comment:



The development is consistent with the existing and desired streetscape character as demonstrated in the detailed assessment provided in section 4.1.4 of this Assessment Report. The bulk and scale increase of the dwelling house is minor and will have no impact as viewed from the public realm. The carport addition is of a bulk and scale that is consistent with the desired streetscape character.

- *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 development will have no impact on important landscape and townscape features. The development is largely located within the existing building footprint.

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

Comment:

The carport addition will not result in an inappropriate visual between the site and the existing character and landscape of the area.

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

Comment:

The development has been designed and situated to avoid adverse impact on the use or enjoyment of adjoining land and the public domain.

- *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 development is not located within an E1 zone and will have no impact on local centres.

It is considered that the development is consistent with the underlying objectives of Clause 4.4 Floor Space Ratio of the Manly Local Environmental Plan 2013.

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 Development Standard
Requirement: 0.4:1 (0.44:1 existing)
Proposed: 0.455:1
Percentage of variation: 13.7%

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 is unreasonable or unnecessary in the circumstances of this application for the following reasons:

- The existing building is currently above the floor space development standard, meaning that any increase (minor or otherwise) in floor space results is a non-compliance. Notwithstanding this, the existing dwelling is considered to integrate into the street-scape and does not result in an adverse impact on the amenity of surrounding properties. The design of the existing



dwelling is considered to provide the opportunity for an increase in floor space (at a certain location) while retaining the character and nature of the dwelling.

- The Proposal would result in a generally minor increase in floor space to a discrete area of the dwelling. This results in a minor alteration to the northern façade, covering in a balcony, below the existing roof line and achieving a consistent and unbroken façade.
- The Proposal would retain the beneficial elements of the existing built-form (the dwelling) with only minor floor space additions. In consideration of the existing design (and floor space) and the ability of the dwelling to be altered (with additional floor space) without adverse impact on the surrounding locality this additional floor space is considered acceptable and appropriate.
- Further, albeit the Proposal does not comply with the FSR development standard of the MLEP 2013, it complies with the FSR control within the DCP 2013. The DCP 2013, allows for a variation to the FSR control where blocks are undersized, which is relevant to the Site. Therefore, the MDCP 2013 provides an alternative approach to calculating FSR, enabling the Proposal to be compliant (with the DCP).

In summary, under the circumstances and in this instance, the development standard, for floor space, is considered unreasonable and its application for the Proposal is unnecessary. Therefore, the Proposal is consistent with clause 4.6(3)(a) of the MLEP 2013.

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

Comment:

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

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

The Clause 4.6 Request argues, in part:

The proposal is considered to exhibit sufficient environmental planning grounds consistent with the planning principals established in *Initial Action Pty Ltd v Wool/ahra Municipal Council [2018] NSWLEC 118* and *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7* in that:

It would have a neutral or better environmental planning outcome for the Site, namely:

Views – the Site and buildings (neighbouring property to the north) are separated by dense vegetation



and are at considerably differing ground levels (due to topography – residential dwelling is generally below the ground level of the neighbouring buildings). There would be extremely limited, to no views from neighbouring buildings to the addition. The addition would be below the existing established roofline and retain the existing setback and character of the dwelling.

Privacy - the addition would result in a positive impact on privacy within the dwelling (i.e. the conversion of a balcony into a room). There would be a minor decrease in noise, with there no longer being a balcony on this façade. There would be no adverse impacts on privacy of surrounding dwellings or land uses.

Character - the Proposal would not adversely alter the presence of the dwelling. It would be under the roof line, have the same articulation as the existing façade and utilise the same materials to integrate into the dwelling.

Planner Comment

The development is minor in bulk and scale and seeks to enclose an existing internally facing balcony. The proposal will not result in the dwelling becoming unreasonable in bulk and scale, nor will it result in an adverse impact on adjoining neighbours amenity and the amenity of the public realm.

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

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

Public Interest:

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

Conclusion:

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

It is considered on balance, that having regard to the particular circumstances, the proposed departure from the Clause 4.4 development standard is acceptable and it is reasonable that flexibility to the standard be applied.

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 development is located significantly away from the harbour and coastal foreshore. It is considered that the development is unlikely to result in an adverse impact and is consistent with the above objectives.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 473.7m²	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 unit per 1150m ²	1	-	Yes
4.1.2.1 Wall Height	N: 6.9m (based on gradient 1:16)	5.5m	-	Yes
4.1.2.3 Roof Height	Height: 2.5m	0.45m	-	Yes
	Pitch: maximum 35 degrees	>35 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	nil setback (carport) 5m (dwelling house - existing)	100% 16.6%	No
4.1.4.2 Side Setbacks and Secondary Street Frontages	N: 1.83m (dwelling house)	1.28m (consistent with existing wall setback)	32.7%	No
	N: 830mm (carport)	11.22m	-	Yes
	S: 830mm (carport)	2.71m	-	Yes
	Windows: 3m	(W1) 1.28m	57.3%	No
4.1.4.4 Rear Setbacks	8m	9.95m	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area	60% (284.5m ²)	-	Yes
	Open space above ground 25% of total open space	3.75% (10.5m ²)	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space	82.4% (234m ²)	-	Yes
	2 native trees	>2 native trees	-	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	-	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	5.84m (25.5%)	-	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	-	Yes

Compliance Assessment



Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.3.3 Footpath Tree Planting	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 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
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	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
4.4.1 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
Schedule 1 – Maps accompanying the DCP	Yes	Yes



Detailed Assessment

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

Description of non-compliance

The development seeks to vary the minimum front setback control, to allow for the construction of a double carport compliant with the NCC and Australian Standards. The carport, located over an existing double car space concrete slab, is proposed to have a nil setback to the front property boundary. A variation to the control has been considered in the below 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:

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:

Generally along Dalwood Avenue and surrounds, car parking structures have a non-compliant front setback (less than 6 metres). With reference to 4.1.4.1 a) of the Manly DCP, the subject site is adjoined by one (1) property on its southern boundary (2 Gurney Crescent) which has an existing 1.3m building line setback from Dalwood Avenue and 1.8 metre tall concrete fencing along Dalwood Avenue.



2 Gurney Crescent (near) - 17 Dalwood Avenue (far)

Other properties within the locality including 12 Dalwood Avenue (corner allotment), 13 Dalwood Avenue, 14 Dalwood Avenue (corner allotment), and 100 Peacock Street have existing nil setbacks to enclosed garage structures, with 16, 20-22, 24 and 28 Dalwood Avenue having setbacks less than 6m to parking structures. This is largely the result of the subdivision pattern of Dalwood Avenue which sets back property boundaries from the street pathway and nature strip. Because of this, although the proposed carport has a nil setback to the property boundary, it will remain to have a 1m strip of permeable grass area between the carport and public pathway, and a total 3.6m setback from Dalwood Avenue.



12 Dalwood Avenue







13 Dalwood Avenue



100 Peacock Street (near) - 14 Dalwood Avenue (far)



Dalwood Avenue Subdivision Pattern

It is considered that the proposed open carport structure is consistent in setback with properties within the immediate locality and is representative of the desired bulk and scale of developments within the front setback. The non-compliant setbacks within Dalwood Avenue are aided by the wider than average nature strips which provide for added buffering between the public road and private properties.



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 development is an open style carport which will provide reasonable amounts of privacy, equitable access to light, sunshine and air movement. The development will not result adverse impacts on view sharing, building separation, impacts on views and vistas to and from private and public spaces. The setback, bulk, and scale, are consistent with the immediately adjoining property and with properties within the surrounding streets. Timber screening has been included on the southern and western elevation to ensure the safety of the residents and to mitigate the existing fall hazard created by the raised concrete slab (approximately a 1 metre drop).

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

Comment:

The development does not unreasonably limit the siting of buildings.

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 development mostly builds on the existing building and driveway concrete slab. It is considered that the existing natural features are maintained with the carport structure providing additional opportunities for planting.

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

Comment:

The observations and recommendations provided in the Bushfire Report have been included in the conditions of consent. It is considered that the development will reasonably assist in appropriate bush fire asset protection zones.



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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

CONCLUSION

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

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

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

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

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

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.

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 4.4 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 DA2024/0873 for Alterations and additions to a dwelling house including carport on land at Lot 2A DP 17157, 17 Dalwood 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
DA02		Site Analysis	R & R Building Design	9 September 2024
DA04		Proposed Ground Floor Plan	R & R Building Design	9 September 2024



DA05		Proposed First Floor Plan	R & R Building Design	9 September 2024
DA06		Proposed Roof Plan	R & R Building Design	9 September 2024
DA07		Sections	R & R Building Design	9 September 2024
DA08		North & South Elevation	R & R Building Design	9 September 2024
DA09		East & West Elevation	R & R Building Design	9 September 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Clause 4.6 Report	-	Westley Owers	17 September 2024
Bushfire Report	-	Building Code & Bushfire Hazard Solutions	28 June 2024
Waste Management Plan	-	-	Received by Council 28 June 2024

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

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

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

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	16 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 (Demolition):

- (a) 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 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
 - (ii) 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.

- (b) 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.

- (c) 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.

Reason: Legislative Requirement.

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 (Demolition):

(a) Unless authorised by Council:

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) At all times after the submission a Notice of Commencement to Council, a copy of the Development Consent is to remain onsite at all times until completion of demolition works. The consent shall be available for perusal of any Authorised Officer.

(c) 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.

(d) 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.

(e) The applicant shall bear the cost of all works that occur on Council's property.

(f) No building, demolition, excavation or material of any nature 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 will not exceed more than 5dB(A) above the background level when measured from any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy.)

(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.

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

6. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether



- the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).
- (b) Construction certificate plans are to be in accordance with all finished levels identified on approved plans. Notes attached to plans indicating tolerances to levels are not approved.
 - (c) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
 - (d) At all times after the submission of the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
 - (e) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
 - (f) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
 - (g) Prior to the release of the Construction Certificate, payment of the following is required:
 - i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
 - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
 - iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.
 - (h) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
 - (i) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
 - (j) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
 - (k) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.



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

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

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

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



FEES / CHARGES / CONTRIBUTIONS

7. 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. 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.

9. Boundary Identification Survey

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

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

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

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



10. **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 (Demolition):**

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 Council prior to the commencement of demolition works.

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

12. **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.

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. **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

15. **Stormwater Disposal**

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

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



development.

16. 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.

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

17. Driveway Access to Garage

Vehicular access to the existing single car garage is to be maintained at all times except where the driveway is in use to enter and exit the site.

This approval/consent relates only to the new work nominated on the approved consent plans and does not approve or regularise any existing buildings or structures within the property boundaries or within Council's road reserve. Additionally, no approval/consent is granted for car parking spaces except where specifically designated as shown on the 'Proposed Ground Floor Plan'.

Reason: To ensure that adequate parking facilities and access to these facilities are maintained.

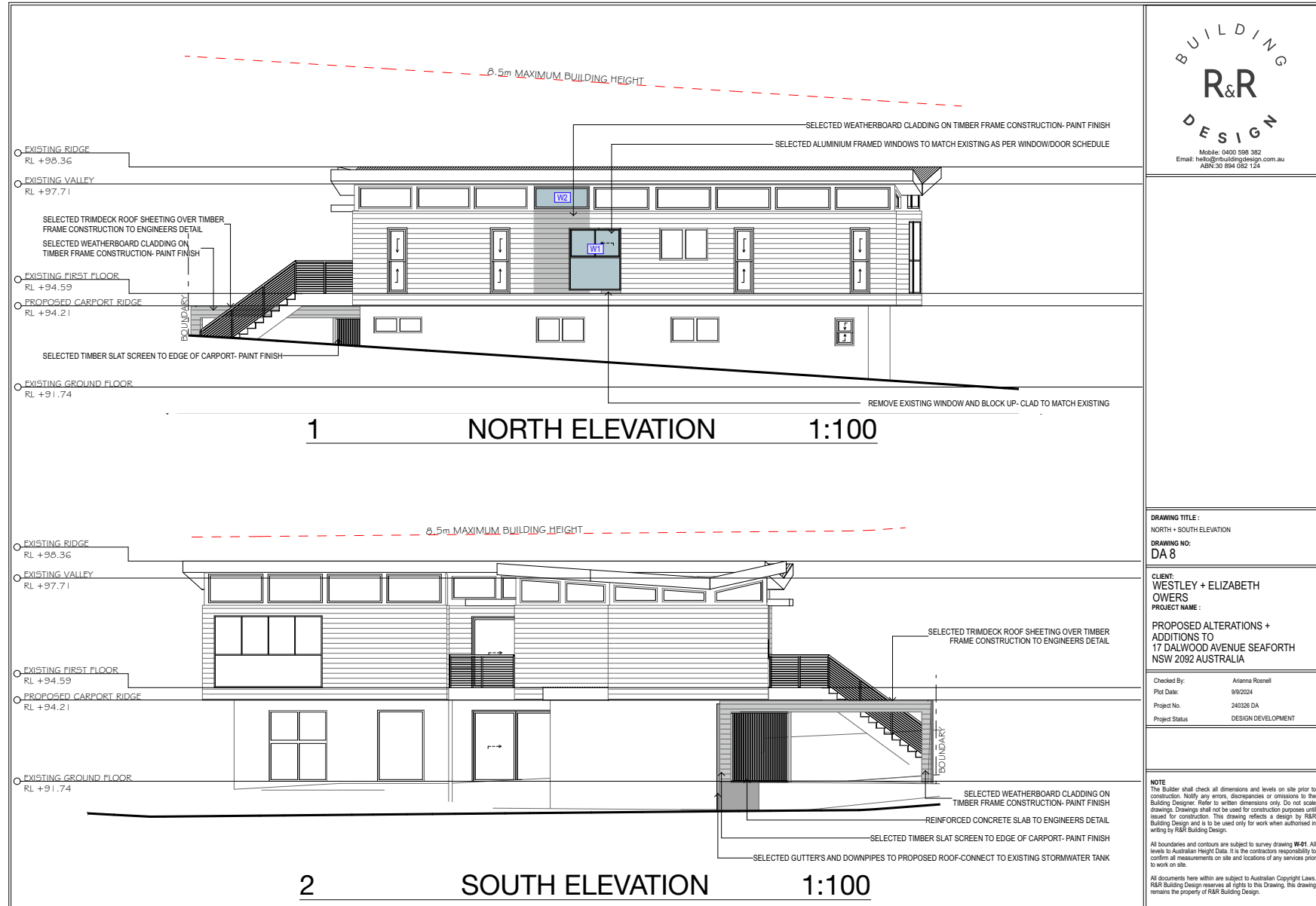
In signing this report, I declare that I do not have a Conflict of Interest.

Signed

Rodney Piggott, Manager Development Assessments

The application is determined on //, under the delegated authority of:

Rodney Piggott, Manager Development Assessments



BUILDING
R&R
DESIGN

Mobile: 0400 598 382
Email: hello@rbuildingdesign.com.au
ABN:30 894 082 124

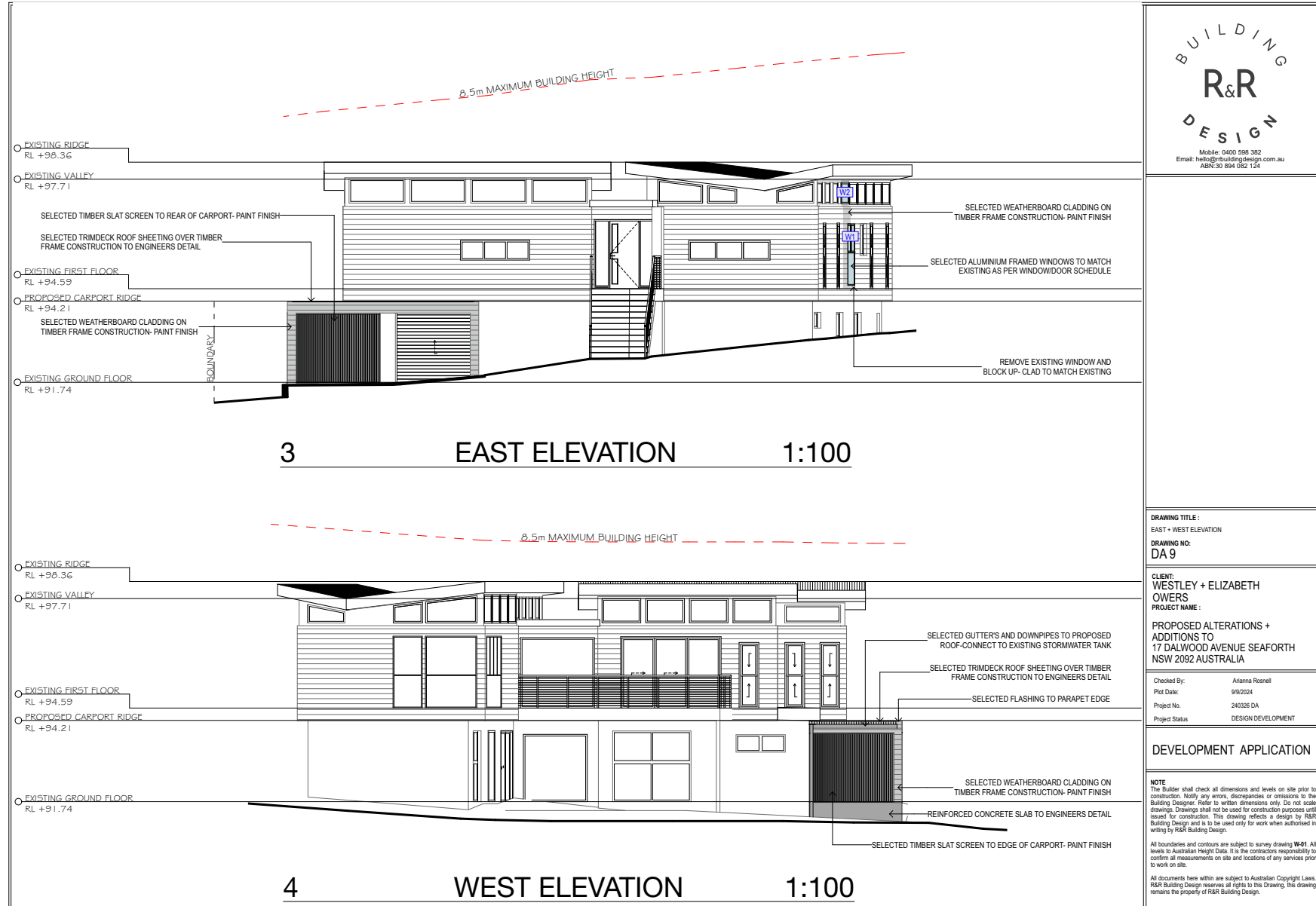
DRAWING TITLE:
NORTH + SOUTH ELEVATION
DRAWING NO:
DA 8

CLIENT:
WESTLEY + ELIZABETH
OWERS
PROJECT NAME:

PROPOSED ALTERATIONS +
ADDITIONS TO
17 DALWOOD AVENUE SEAFORTH
NSW 2092 AUSTRALIA

Checked By: Arianna Rosell
Plot Date: 9/9/2024
Project No. 240326 DA
Project Status DESIGN DEVELOPMENT

NOTE
The Builder shall check all dimensions and levels on site prior to construction. Notify any errors, discrepancies or omissions to the Building Designer. Refer to written dimensions only. Do not scale drawings. Drawings shall not be used for construction purposes until issued for construction. This drawing reflects a design by R&R Building Design and is to be used only for work when authorised in writing by R&R Building Design.
All boundaries and contours are subject to survey drawing W-01. All levels to Australian Height Data. It is the contractors responsibility to confirm all measurements on site and locations of any services prior to work on site.
All documents here within are subject to Australian Copyright Laws. R&R Building Design reserves all rights to this Drawing. this drawing remains the property of R&R Building Design.



17 DALWOOD AVE SEAFORTH

The General Manager
Northern Beaches Council
1 Belgrave St, Manly NSW 2095

17/09/2024

Statement of Development Standard Exception – minor alterations and additions, 17 Dalwood Avenue, Seaforth

Dear Sir

This Statement of Development Standard Exception (SDSE) has been prepared to seek development consent for alterations and additions to the existing dwelling (the Proposal) at 17 Dalwood Avenue, Seaforth (the Site) in accordance with Part 4 of the *Environmental Planning and Assessment Act 1979* (the EP&A Act).

This SDSE has been prepared, in accordance with clause 4.6 of the Manly *Local Environmental Plan 2013* (MLEP 2013) as a result of the Proposal including a floor space ratio (additional floor space) above the development standard (clauses 4.4 and 4.4A of the MLEP 2013).

Of note is that albeit the Proposal does not comply with the FSR development standard of the MLEP 2013, it complies with the FSR control within the DCP 2013. The DCP 2013, allows for a variation to the FSR control where blocks are undersized, which is relevant to the Site. Therefore, the MDCP 2013 provides an alternative approach to calculating FSR, enabling the Proposal to be compliant.

This SDSE is structured in accordance with the requirements of clause 4.6 of the MLEP 2013. The purpose of this SDSE is to illustrate that the addition to floor space would not result in adverse impacts on the locality or neighbouring properties. This SDSE's primary focus is the impact of the additional floor space not the potential impacts of other aspects of the Proposal, which are addressed within the Statement of Environmental Effects.

1. Development standards to be varied

The development standards for which an exception is sought are clauses 4.4, 'Floor space ratio' of the MLEP 2013. Clause 4.4 of the MLEP 2013 provides standards for the floor space ratio of certain buildings within the Northern Beaches Council Local Government Area (LGA). This clause is shown in Table 1. In addition to this Table 1 identifies the FSR requirement for this clause based on the site area.

Table 1 Floor space ratio development standards for exception

Development Standard	Details	Control
Floor space (Clause 4.4)	(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) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.	0.4:1

Clause 4.5 of the MLEP 2013 provides details in relation to the calculation of floor space ratio and site area. Further guidance for the determination of floor space ratio is through the definition of 'gross floor area' (GFA) which is included within the Dictionary of the MLEP 2013 and is as follows:

"gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:

- (a) the area of a mezzanine, and
 - (b) habitable rooms in a basement or an attic, and
 - (c) any shop, auditorium, cinema, and the like, in a basement or attic,
- but excludes:
- (d) any area for common vertical circulation, such as lifts and stairs, and
 - (e) any basement:
 - (i) storage, and
 - (ii) vehicular access, loading areas, garbage and services, and
 - (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
 - (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
 - (h) any space used for the loading or unloading of goods (including access to it), and
 - (i) terraces and balconies with outer walls less than 1.4 metres high, and
 - (j) voids above a floor at the level of a storey or storey above."

2. Proposed variation

The Proposal includes alterations and additions to an existing dwelling. The proposed alterations and additions are to be undertaken to improve the amenity and usability of the dwelling for the intended residents and also to soften the appearance of the building and maximise its integration into the surrounding streetscape. An overview of the proposed changes to the built-form, and their compliance with the key planning controls (MLEP 2013 and MDCP 2013) are provided in Table 2.

Table 2 Built-form alterations and additions numeric summary

Detail	Existing	Proposed
Site area	473.7m ²	473.7m ²
GFA	209.5m ²	215.58m ²
FSR (site area) – LEP (c4.4) – 0.4:1	0.44:1 (above control)	0.455:1 (above control)
FSR (750m ²) DCP (s4.1.3) – 0.4:1	0.264:1 (compliant)	0.272:1 (compliant)

Additional floor space is proposed to be added to enclose the existing outdoor reflection area and extend the existing study area. The location where this additional floor space is proposed has been selected based upon its ability to ensure no negative impacts on either the immediate neighbours or the surrounding streetscape. The additions are generally considered minor in nature. This additional floor space would be below the existing roof line, consistent with the current setback of the dwelling and not be viewed from neighbouring properties or the streetscape.

A comparison of the development standard (clause 4.4 of the MLEP 2013) and the existing and proposed GFA and FSR is provided within Table 2, above. As is shown in Table 2, the existing dwelling is currently above the existing development standard. The Proposal includes only a minor increase in floor space above the existing dwelling, approximately 6m. Overall this additional floor space is considered minor (when combined with the existing floor space non-compliance) in the context of the existing dwelling and locality.

3. Clause 4.6 Assessment

This statement of variation has been prepared in accordance with the requirements of clause 4.6 of the MLEP 2013. Clause 4.6 (3) of the MLEP 2013 states that “*consent must not be granted for a 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.”*

An assessment of the additions to floor space in consideration of the requirements of clause 4.6 of the MLEP 2013 is provided below. The Department of Planning and Environment (now Department of Planning, Housing and Infrastructure) “Guide to exclusion from clause 4.6 of the Standard Instrument” (November 2023) has also been considered in preparing this report.

3.1 Is the development standard unreasonable or unnecessary in this circumstance?

The Court decision in *Wehbe v Pittwater Council* [2007] NSWLEC 827 provides the five part test to determine if compliance with a development standard is unreasonable or unnecessary with only one test needing to be satisfied. In our opinion, the Proposal satisfies Test 1 as the objectives of the development standard are achieved notwithstanding the non-compliance (refer to Section 3.3).

Further, the existing building is currently above the floor space development standard, meaning that any increase (minor or otherwise) in floor space results is a non-compliance. Notwithstanding this, the existing dwelling is considered to integrate into the street-scape and does not result in an adverse impact on the amenity of surrounding properties. The design of the existing dwelling is considered to provide the opportunity for an increase in floor space (at a certain location) while retaining the character and nature of the dwelling.

The Proposal would result in a generally minor increase in floor space to a discrete area of the dwelling. This results in a minor alteration to the northern façade, covering in a balcony, below the existing roof line and achieving a consistent and unbroken façade.

The Proposal would retain the beneficial elements of the existing built-form (the dwelling) with only minor floor space additions. In consideration of the existing design (and floor space) and the ability of the dwelling to be altered (with additional floor space) without adverse impact on the surrounding locality this additional floor space is considered acceptable and appropriate.

Further, albeit the Proposal does not comply with the FSR development standard of the MLEP 2013, it complies with the FSR control within the DCP 2013. The DCP 2013, allows for a variation to the FSR control where blocks are undersized, which is relevant to the Site. Therefore, the MDCP 2013 provides an alternative approach to calculating FSR, enabling the Proposal to be compliant (with the DCP).

In summary, under the circumstances and in this instance, the development standard, for floor space, is considered unreasonable and its application for the Proposal is unnecessary. Therefore, the Proposal is consistent with clause 4.6(3)(a) of the MLEP 2013.

3.2 Are there sufficient environmental planning grounds to justify the variation to the development standard?

In considering whether there are sufficient environmental planning grounds to justify the FSR non-compliance, the following principles are relevant:

In Initial Action Pty Ltd v Wool/ahra Municipal Council [2018] NSWLEC 118, Preston CJ further clarified the correct approach in the consideration of clause 4.6 requests. This advice further confirms 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.

As held in Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7 at [39], Preston CJ confirmed (at[25]) that the test in 4.6 (4)(a)(i) does not require the consent authority to directly form the opinion of satisfaction regarding the matters specified. Rather, it needs to do so only indirectly in forming its opinion of satisfaction that the applicant's written request has adequately addressed the matters required to be demonstrated.

By contrast, the test in cl4.6(4)(a)(ii) requires that the consent authority must be directly satisfied about the matter in that clause (at[26]); namely that the development will be in the public interest because it is consistent with the objectives of the development standard and the objectives of the zone in which the development is proposed to be carried out.

The Proposal is considered to exhibit sufficient environmental planning grounds consistent with these principles in that:

- It would have a neutral or better environmental planning outcome for the Site, namely:
 - Views – the Site and buildings (neighbouring property to the north) are separated by dense vegetation and are at considerably differing ground levels (due to topography – residential dwelling is generally below the ground level of the neighbouring buildings). There would be extremely limited, to no views from neighbouring buildings to the addition. The addition would be below the existing established roofline and retain the existing setback and character of the dwelling.
 - Privacy - the addition would result in a positive impact on privacy within the dwelling (i.e. the conversion of a balcony into a room). There would be a minor decrease in noise, with there no longer being a balcony on this façade. There would be no adverse impacts on privacy of surrounding dwellings or land uses.
 - Character - the Proposal would not adversely alter the presence of the dwelling. It would be under the roof line, have the same articulation as the existing façade and utilise the same materials to integrate into the dwelling.

The Proposal also meets the objectives of the development standard and zone and therefore is considered in the public interest (refer to Section 3.3).

The proposed additions to floor space and departure from the development standard is therefore considered sufficient and justified on environmental planning grounds and complies with clause 4.6(3)(b) of the MLEP 2013.

3.3 Is the development consistent with the objectives of the standard and zone, and therefore within the public interest?

The additions to floor space are considered to be consistent with the objectives for the floor space development standard (clause 4.4 of the MLEP 2013) and the zone 'R2 Low Density' (under the MLEP 2013). Table 3 identifies the compliance of the additions to floor space with these objectives.

Table 3 additions to floor space compliance with development standard and zone objectives

Development Standard	Details	Discussion
Development standard		
Floor space (Clause 4.4)	(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	The additions to floor space are considered consistent with these objectives in that: ▪ The bulk and scale of the dwelling as viewed from the streetscape would not be altered ▪ There would be no change to important landscape and townscape features

Development Standard	Details	Discussion
	<i>important landscape and townscape features,</i> <i>(c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,</i> <i>(d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,</i> <i>(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.</i>	▪ The additions would be consistent with the character of the existing dwelling ▪ There would be no adverse impacts on the public domain or adjoining land.
Zone		
Zoning (Land Use Table)	The objectives of the Zone R2 Low Density are as follows: ▪ <i>To provide for the housing needs of the community within a low-density residential environment.</i> ▪ <i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i>	The additions to floor space are considered consistent with these objectives in that: ▪ They would allow for the provision of housing in accordance with the needs of the community while maintain the principles of a low-density residential environment ▪ They would not preclude the development of other land uses (in the locality) that service the residential area.

In summary, the additions to floor space, are considered consistent with the objectives of the development standard (clause 4.4 of the MLEP 2013) and the zone (Land Use Table of the MLEP 2013). The additions to floor space are therefore considered in the public interest.

3.4 Does the exception raise matters of significance for State or regional environmental planning?

The additions to floor space and the resulting exception does not result in an impact on any matters of State or regional environmental planning significance. In particular, it has been designed to be consistent with the principles of State and regional planning legislation and policy, namely:

- **Policy-** the floor space addition (and the Proposal) would implement the key objectives of State and regional policy in particular facilitating for the provision of housing as identified within the 'Greater Sydney Regional Plan, A Metropolis of Three Cities'.
- **Legislation-** the floor space additions (and the Proposal) would not impact on the implementation of any relevant State Environmental Planning Policies (SEPPs).

In summary, the exception to the development standard included within the Proposal would support state policy and legislation and therefore not raise any matters of

significance for State or regional environmental planning. The additions to floor space therefore comply and are considered suitable for the concurrence of the Secretary.

3.5 What is the public benefit of maintaining the development standard?

As discussed above, the additions to floor space have been discretely located to result in no adverse impacts on the immediate neighbouring property and the locality. The addition to floor space do not result in unacceptable adverse impacts on key environmental values of the area.

In this circumstance the maintenance of the development standard is not considered to increase the public benefits to the locality. In the instance that this development standard is maintained the public benefit of improving the functionality and presence of the dwelling (included with the Proposal) would not be realised.

On this basis, and the generally positive public benefit provided by the additions to floor space, to not proceed (i.e. maintain the development standard) would not be within the public interest.

3.6 Is there any other matters to be taken into consideration?

No other matters are considered suitable to be taken into consideration. Further information is provided within the SEE for the Proposal. Overall, the additions to floor space would result in a positive contribution to the streetscape and not unreasonably adversely impact on surrounding properties.

4. Conclusion

The Proposal includes the alteration and addition to a residential dwelling on the Site. The Proposal (and the included additions to floor space) seek an exception to the floor space development standard (clauses 4.4 of the MLEP 2013) in accordance with clause 4.6 'exceptions to development standards' of the MLEP 2013. This report has been prepared to support the Development Application (DA) prepared for the Proposal under Part 4 of the EP&A Act.

This report illustrates that the Proposal, although including a departure from the floor space development standard, provides a positive outcome which would be realised through an improved presence and aesthetics of the dwelling. There would be extremely minor to no visual change from surrounding residential properties.

In consideration of the benefits provided by the additional floor space (and the Proposal) and the absence of unreasonable adverse impacts as a result of this variation from the development standard, the requirements of clause 4.6 are considered to be satisfied and it is recommended that this exception be approved.

Please do not hesitate to contact the undersigned should you have any questions regarding any of the above.

Yours sincerely



Westley Owers
0451 105 610 / westleyfowers@gmail.com