

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 27 NOVEMBER 2024

Ashleigh Sherry
Manager Business System and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 27 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 13 NOVEMBER 2024

RECOMMENDATION

That the Panel note that the minutes of the Development Determination Panel Meeting held on 13 November 2024 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	DA2024/1165 - 31 ALEXANDRA CRESCENT BAYVIEW - CONSTRUCTION OF A DWELLING HOUSE INCLUDING SWIMMING POOL
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PURPOSE

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

RECOMMENDATION

THAT Council as the consent authority **refuses** Development Consent to DA2024/1165 for construction of a dwelling house including swimming pool on land at Lot 6 DP 27991, 31 Alexandra Crescent BAYVIEW, for the reasons for refusal set out in the Assessment Report.

Reporting manager	Adam Richardson
TRIM file ref	2024/829228
Attachments	↓1 Assessment Report ↓2 Site Plan and Elevations

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/1165
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Responsible Officer:	Stephanie Gelder
Land to be developed (Address):	Lot 6 DP 27991, 31 Alexandra Crescent BAYVIEW NSW 2104
Proposed Development:	Construction of a dwelling house including swimming pool
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Cohesive Planning

Application Lodged:	29/08/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	06/09/2024 to 20/09/2024
Advertised:	Not Advertised
Submissions Received:	5
Clause 4.6 Variation:	Nil
Recommendation:	Refusal

Estimated Cost of Works:	\$ 1,587,771.00
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EXECUTIVE SUMMARY

This development application seeks consent for construction of a dwelling house including swimming pool.

The application is referred to the Development Determination Panel (DDP) due to five (5) objections received during the notification period required by the Northern Beaches Community Participation Plan.

Concerns raised in the objections predominantly relate to compliance with the Zone C4 Environmental Living, view impacts, size and scale of development, coastal heritage and character of Pittwater, building colours and materials, tree removal, landscaped area, building envelope, height of buildings, and excavation.

The proposed height of dwelling is measured at 8.8m, which is non-compliant with the maximum building height requirement of 8.5m, with the development application not accompanied by a written Clause 4.6 variation request. Council's Bushland and Biodiversity Officer and Council's Landscape Officer are not supportable of the proposal based on the proposed tree removal, and deficient landscaped area. Further non-compliances that are not supportable include proposed earthworks, excavation, landscaping impacts, building envelope variation, and character of the development within the C4 Environmental Living zone.

This report concludes with a recommendation that the DDP **refuse** the development application, for the reasons outlined at the end of this report.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development seeks consent for the construction of a dwelling house including swimming pool.

Specifically, the works comprises of the following:

Level 1

- Open plan dining and kitchen;
- Mezzanine living room;
- Butlers pantry;
- Laundry;
- Bathroom;
- Master suite with ensuite and walk in robe;
- A cabana, 60 kL pool and associated deck is accessed from this level

Level 2

- 3 bedrooms;
- 5th bedroom or study/home office;
- Ensuites and bathrooms;
- Balconies to bedrooms 2 and 4

Ground Level

- Garage;
- WC; and
- Storage.

In the accompanying Statement of Environmental Effects the Applicant outlined that the existing dwelling and ancillary structures will be demolished and, demolition will be sought under a separate Complying Development Certificate.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

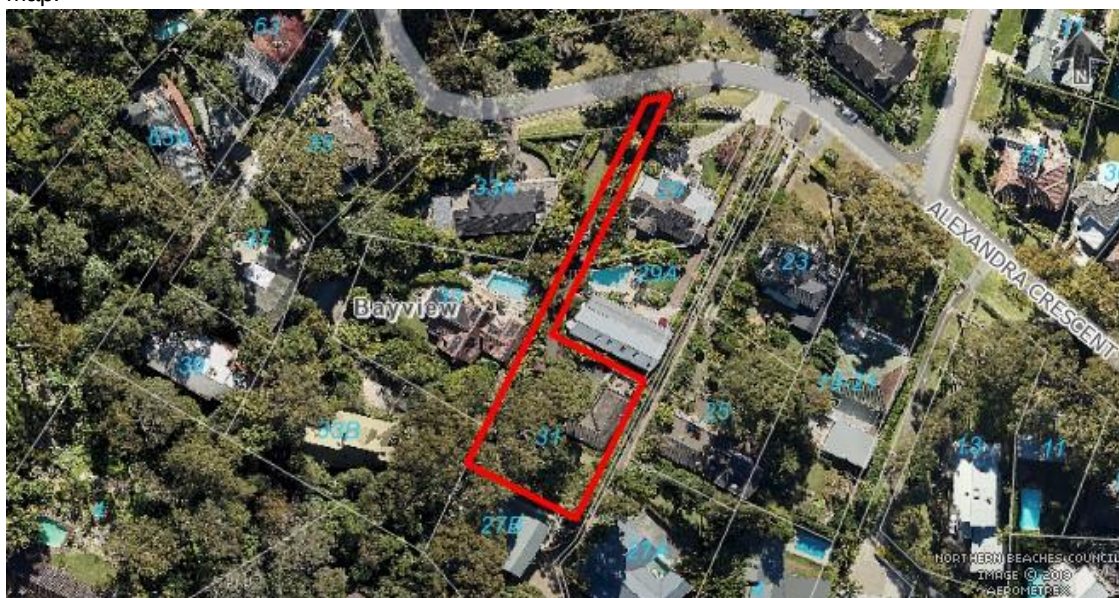
Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living
Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
Pittwater 21 Development Control Plan - A4.4 Church Point and Bayview Locality
Pittwater 21 Development Control Plan - B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community
Pittwater 21 Development Control Plan - B8.1 Construction and Demolition - Excavation and Landfill
Pittwater 21 Development Control Plan - C1.1 Landscaping
Pittwater 21 Development Control Plan - C1.3 View Sharing
Pittwater 21 Development Control Plan - C1.4 Solar Access
Pittwater 21 Development Control Plan - C1.23 Eaves
Pittwater 21 Development Control Plan - D4.3 Building colours and materials
Pittwater 21 Development Control Plan - D4.8 Building envelope
Pittwater 21 Development Control Plan - D4.10 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 6 DP 27991 , 31 Alexandra Crescent BAYVIEW NSW 2104
Detailed Site Description:	The subject site consists of one (1) battle-axe allotment located on the southern side of Alexandra Crescent. The site is irregular in shape with a frontage of approximately 6.0m along Alexandra Crescent and a depth of 96.42m. The site has a surveyed area of 1348.8m². The site is located within the C4 Environmental Living zone from Pittwater Local Environmental Plan 2014 and accommodates a dwelling house, attached carport,

	detached carport, and detached shed currently on the site. The site slopes from the front northern boundary upwards to the rear southern boundary over approximately 25 metres. The site contains lawn areas, plantings, and significant trees. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by one and two storey dwelling houses varying in architectural style and design.
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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:

N0726/99

Development Application for Construction of car port of existing car parking position.
Approved on 30 August 1999.

APPLICATION HISTORY

Following the preliminary assessment of the application, additional information was requested on 30 September 2024 in relation to the following:

- Comments from Council's Bushland and Biodiversity Officer
- Comments from Council's Landscape Officer
- Statement of Environmental Effects

- Zone C4 Environmental Living of Pittwater Local Environmental Plan 2014
- Clause 4.3 Height of buildings of Pittwater Local Environmental Plan 2014
- Clause 7.2 Earthworks of Pittwater Local Environmental Plan 2014
- Clause B8.1 Construction and Demolition - Excavation and Landfill of Pittwater 21 Development Control Plan
- Clause A4.4 Church Point and Bayview Locality of Pittwater 21 Development Control Plan
- Clause C1.3 View Sharing of Pittwater 21 Development Control Plan
- Clause C1.4 Solar Access of Pittwater 21 Development Control Plan
- Clause D4.3 Building colours and materials of Pittwater 21 Development Control Plan
- Clause D4.6 Side and rear building line of Pittwater 21 Development Control Plan
- Clause D4.8 Building Envelope of Pittwater 21 Development Control Plan
- Clause D4.10 Landscaped Area - Environmentally Sensitive Land of Pittwater 21 Development Control Plan
- Clause D4.13 Construction, Retaining walls, terracing and undercroft areas of Pittwater 21 Development Control Plan
- Owners Consent from No.29A Alexandra Crescent for proposed demolition works and driveway works

On 23 October 2024, amended Master Plans, amended Landscape Plans, an amended Statement of Environmental Effects, a Window Schedule Report and Applicant Response to RFI was submitted. The amended plans constitute a reduced environmental impact and therefore, the application was not required to be re-notified, in accordance with the Northern Beaches Community Participation Plan (CPP). Notwithstanding the provisions of the CPP, the objectors were informed on 25 October 2024 of the amended plans via written email correspondence.

On 1 October 2024, amended Landscape Plans, a BDAR Report, amended Master Plans, and a Response to RFI Letter was submitted. The Response to RFI Letter detailed that the proposed works on the adjoining site at No.29A Alexandra Crescent were amended so that the works are wholly within the subject site. The amended plans constitute a reduced environmental impact and therefore, the application was not required to be re-notified, in accordance with the Northern Beaches Community Participation Plan (CPP). Notwithstanding the provisions of the CPP, the objectors were informed on 5 November 2024 of the amended plans via written email correspondence.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<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 Comments from Council's Bushland and Biodiversity Officer, Comments from Council's Landscape Officer, Statement of Environmental Effects, Zone C4 Environmental Living of Pittwater Local Environmental Plan 2014 (PLEP 2014), Clause 4.3 Height of buildings of PLEP 2014, Clause 7.2 Earthworks of PLEP 2014, Clause B8.1 Construction and Demolition - Excavation and Landfill of Pittwater 21 Development Control Plan (P21 DCP), Clause A4.4 Church Point and Bayview Locality of P21 DCP, Clause C1.3 View Sharing of P21 DCP, Clause C1.4 Solar Access of P21 DCP, Clause D4.3 Building colours and materials of P21 DCP, Clause D4.6 Side and rear building line of P21 DCP, Clause D4.8 Building Envelope of P21 DCP, Clause D4.10 Landscaped Area - Environmentally Sensitive Land of P21 DCP, Clause D4.13 Construction, Retaining walls, terracing and undercroft areas of P21 DCP, and Owners Consent from No.29A Alexandra Crescent for proposed demolition works and driveway works. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter can be addressed via a condition of consent, if the application were to be approved. <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 can be addressed via a condition of consent, if the application were to be approved. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter can be addressed via a condition of consent, if the application were to be approved.

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed development as the proposed development is considered to be an over-development of the site.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant requirements of the Clause 1.2 Aims of Plan of Pittwater Local Environmental Plan 2014 (PLEP 2014), Zone C4 Environmental Living of PLEP 2014, Clause 4.3 Height of buildings of PLEP 2014, Clause 7.2 Earthworks of PLEP 2014, Clause 7.6 Biodiversity protection of PLEP 2014, Clause A4.4 Church Point and Bayview Locality of Pittwater 21 Development Control Plan (P21 DCP), Clause B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community of P21 DCP, Clause B8.1 Construction and Demolition - Excavation and Landfill of P21 DCP, Clause C1.1 Landscaping of P21 DCP, Clause C1.3 View Sharing of P21 DCP, Clause D4.8 Building envelope of P21 DCP, and Clause D4.10 Landscaped Area - Environmentally Sensitive Land of P21 DCP. As such, the proposal will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 06/09/2024 to 20/09/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Douglas Albert Wheeler	27 A Alexandra Crescent BAYVIEW NSW 2104
Mr Ian Thomas Ritchie	25 Alexandra Crescent BAYVIEW NSW 2104
Mr Stephen James Simpson	29 A Alexandra Crescent BAYVIEW NSW 2104
Ms Kerrie-Ann Rosati Chris Links	27 B Alexandra Crescent BAYVIEW NSW 2104
Kate Shanks	41 Collaroy Street COLLAROY NSW 2097

The following issues were raised in the submissions:

- **Zone C4 Environmental Living**

The submissions raised concerns that the proposed dwelling is not in keeping with low impact residential requirements in this C4 zone or that it meets the unique characteristics of Pittwater.

Comment:

A detailed assessment has been conducted under Zone C4 Environmental Living of Pittwater Local Environmental Plan 2014 contained in this report. In summary, it is considered that the proposal does not meet the objectives of Zone C4 Environmental Living and this will form part of the reasons for refusal.

- **Views**

The submissions raised concerns surrounding view impacts from the proposed development.

Comment:

A detailed assessment has been conducted under Clause C1.3 View Sharing of Pittwater 21 Development Control Plan contained in this report. In summary, the proposed development is not considered to be of a skillful design, and further design amendments could result in an improved view impact outcome. The inconsistency with this control will form part of the reasons for refusal.

- **Size and Scale of Development**

The submissions raised concerns surrounding the size and scale of development.

Comment:

The proposal presents variations to the height of buildings development standard, building envelope control, and landscaped area control that all contribute to the unacceptable size and scale of the proposed development. This inconsistency with these standards and controls will form part of the reasons for refusal.

- **Shadows**

The submissions raised concerns that the proposed development will result in shadowing to adjoining sites.

Comment:

A detailed assessment has been conducted under Clause C1.4 Solar Access of Pittwater 21 Development Control Plan contained in this report. Concern is raised in relation to the wall adjoining the swimming pool along the north-east elevation, and the impact on shadowing. In summary, the proposed development is compliant with the requirements of the control, and the proposed development would not result in adverse shadow impacts to adjoining sites.

- **Coastal Heritage and Character of Pittwater**

The submissions raised concerns that the overall design of the dwelling reflects the coastal heritage and character of Pittwater.

Comment:

A detailed assessment has been conducted under Clause A4.4 Church Point and Bayview Locality of Pittwater 21 Development Control Plan contained in this report. In summary, the proposed development is not representative of the desired future character of the Church Point and Bayview Locality. The inconsistency with this control will form part of the reasons for refusal.

- **Building Colours and Materials**

The submissions raised concerns surrounding the proposed white colours of the dwelling house.

Comment:

A detailed assessment has been conducted under Clause D4.3 Building colours and materials of Pittwater 21 Development Control Plan contained in this report. During the assessment of the application, the applicant provided a response to the request for further information detailing the proposed colour scheme would be amended. It is noted that the Master Plans were not updated to reflect this proposed amendment. Notwithstanding, if the application were to be approved a suitable condition would be included to ensure the external colours and materials shall be dark and earthy tones. Furthermore, a specific condition for the roof colour would be recommended to ensure the roof has a Solar Absorptance (SA) greater than 0.43 to minimise solar reflections to neighbouring properties.

- **Geotechnical Report**

The submissions raised concerns that the proposal's Geotechnical Report shows unacceptable risks during the construction phase which must be mitigated either by following the recommendations in that Report, which will result in unacceptable disturbance to neighbours.

Comment:

If the application were to be approved, the recommendations within the Geotechnical Report would be required to be adhered to including relevant inspections to mitigate any unacceptable risk.

- **Tree Removal**

The submissions raised concerns that several mature native trees will be removed to facilitate the development on the basis that according to the Arborist Report "may be in decline".

Comment:

Council's Landscape Officer and Council's Bushland and Biodiversity Officer have reviewed the proposal and provided comments under the Internal Referrals section of this report. In summary, the proposed removal of trees is not supportable, and the applicant failed to provide an updated Arborist Report as requested by Council during the assessment phase. The inconsistency with B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community of Pittwater 21 Development Control Plan and C1.1 Landscaping of Pittwater 21 Development Control Plan will form part of the reasons for refusal.

- **Landscaped Area**

The submissions raised concerns that the land is zoned C4 - environmental living and requires a minimum of 60% soft landscaped area. Does the DA comply with local landscaping controls.

Comment:

A detailed assessment has been conducted under Clause A4.10 Landscaped Area - Environmentally Sensitive Land of Pittwater 21 Development Control Plan contained in this report. In summary, the proposed development presents a deficient landscaped area that is not supportable. The inconsistency with the requirements of this control will form part of the reasons for refusal.

- **Building Envelope**

The submissions raised concerns surrounding compliance with the side building envelope control that is 3.5m high with a 45 degree height plane in from the boundary.

Comment:

A detailed assessment has been conducted under Clause D4.8 Building envelope of Pittwater 21 Development Control Plan contained in this report. In summary, the proposed development is not compliant with the requirements of the building envelope control. The inconsistency with the requirements of this control will form part of the reasons for refusal.

- **Height of Buildings Compliance**

The submissions raised concerns surrounding the height compliance given the existing ground levels on the sections aren't shown.

Comment:

During the assessment of the application Council requested section plans to include the existing ground level to accurately represent the proposed height of buildings. A detailed assessment has been conducted under Clause 4.3 Height of buildings of Pittwater Local Environmental Plan 2014. In summary, the proposal presents a height variation that is not accompanied by a written Clause 4.6 variation request, and without this, the application cannot be considered for approval in the absence of compliant building height.

- **Excavation**

The submissions raised concerns surrounding the the extent of excavation to the rear of our

property (No.29A Alexandra Crescent) please might we seek assurances around the potential issues of land slippage and run off from the development.

Comment:

A detailed assessment has been conducted under Clause 7.2 Earthworks of Pittwater Local Environmental Plan and Clause B8.1 Construction and Demolition - Excavation and Landfill of Pittwater 21 Development Control Plan contained in this report. In summary, the proposed development is not compliant with the requirements of the earthworks and excavation controls. The inconsistency with the requirements of these controls will form part of the reasons for refusal.

- **Damage to Adjoining Sites**

The submissions raised concerns surrounding assurances around potential damage to the stability of our property (No.29A Alexandra Crescent).

Comment:

If the application were to be approved, suitable conditions for Pre and Post Dilapidation Reports could be included to ensure no unacceptable damages occur to the adjoining site to the north.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	Unsupported - The proposal is unacceptable The proposal is not supported with regard to landscape issues. <u>Additional Information Comment 06/11/24:</u> The amended reports and plans are noted. An updated Arboricultural Impact Assessment has not been submitted and as such the information required to confirm the impact of the works on tree 2 remains outstanding. Impacts may include the level 1 building footprint and the landscape works in the side setback, which are within the tree protection zone of tree 2. The Arborist must assess impact against all current plans; landscape, architectural etc. as outlined in Council's Development Application and Modification Lodgement Requirements. Landscaped area is defined under PLEP as "<i>means a part of a site used for growing plants, grasses and trees, but does not include any building, structure or hard paved area</i>". The current proposals landscaped area calculations remain inconsistent with the PLEP definition and with the outcomes and controls under the PDCP section D4.10. If tall canopy trees are proposed to be removed they shall be replaced with suitable species commensurate to those which are to be removed, and in accordance with the outcomes and controls

Internal Referral Body	Comments
	under PDCP section C1.1. <i>Cupaniopsis anacardioides</i> is on Council's exempt tree species list and shall not be used as a replacement tree. <u>Original Comment:</u> <i>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.</i> <i>Landscape referral notes the comments from Council's Bushland and Biodiversity team regarding further tree retention, which is supported, and further comments can be made upon confirmation of which trees will be retained and removed. It is noted the Arboricultural Impact Assessment (AIA) refers to plans dated 05/03/24 (Figure 1 page 5 of the AIA) and the current architectural plans are dated 26/06/24. Tree 2 will likely suffer encroachment into its tree protection zone from the footprint of Level 1 and no comments have been provided in the AIA regarding this. The Arborist shall provide updated comments relevant to the current plans or any changes to the plans resulting from comments provided by Council.</i> <i>The landscaped area for the site is unclear as the Statement of Environmental Effects does not address this requirement and drawing Site Plan (SP02) by Edwina Stuart does not include the access handle and total site area; please clarify. It should be noted that when a new dwelling is proposed there is opportunity for compliance with the relevant controls.</i> <i>If tall canopy trees are proposed to be removed they shall be replaced with suitable species commensurate to those which are to be removed, and in accordance with the requirements under the PDCP. <i>Cupaniopsis anacardioides</i> is on Council's exempt tree species list and shall not be used as a replacement tree.</i>
NECC (Bushland and Biodiversity)	Unsupported - The proposal is unacceptable Original Comments (25th September 2024) Council's Biodiversity Referrals team have assessed the Development Application for compliance against the following applicable provisions: • NSW Biodiversity Conservation Act 2016 • NSW Biodiversity Conservation Regulation 2017 • Pittwater LEP 2014 cl. 7.6 Biodiversity Protection • Pittwater 21 DCP cl. B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community The following documentation is noted:

Internal Referral Body	Comments
	• Biodiversity Report (TJ Hawkeswood Scientific Consulting, August 2024) • Arboricultural Impact Statement (Advanced Arborist Reporting, March 2024) • Survey (Surv3D Pty Ltd, October 2023) The Arboricultural Impact Statement assessed 8 trees located within the property and has recommended the removal of 7 trees including Tree 1 (<i>Eucalyptus fibrosa</i>), 3 (<i>Eucalyptus fibrosa</i>), 4 (<i>Corymbia maculata</i>), 5 (<i>Eucalyptus microcorys</i>), 6 (<i>Eucalyptus microcorys</i>), 7 (<i>Eucalyptus microcorys</i>) and 8 (<i>Eucalyptus fibrosa</i>). Only 1 tree is proposed for retention, Tree 2 (<i>Corymbia maculata</i>). <i>Corymbia maculata</i> and <i>Eucalyptus fibrosa</i> are important locally native tree species contributing to the local ecology of the area as part of the local occurrence of Pittwater Spotted Gum Forest which is listed as an Endangered Ecological Community under the BC Act. It is noted that <i>Eucalyptus microcorys</i> is native to NSW however not locally native to the Sydney Region. A site visit was conducted by Council's Biodiversity Officers on 13 September 2024. Review of the Arborist Report and Survey indicate that Tree 4 (<i>Corymbia maculata</i>) has not been plotted on the survey and as such may not be correctly located in the Arborist Report. In addition, a <i>Livistona australis</i> has not been included in the Survey and as such not assessed by the Arborist. The Arborist has not provided any justification for the removal of Tree 3 in relation to any impacts from the development, only that it is in poor condition. From review of the Plans and Landscape Plan it appears that the tree may require removal for a retaining wall in the outdoor garden and as such should be retained. Removal of 4 of the 5 locally native trees from the site does not comply with P21DCP cl. B4.7 which requires that development shall result in no significant onsite loss of canopy cover or a net loss in native canopy trees. As such, it is recommended that alternative designs be investigated to increase locally native tree retention, therefore minimising impacts to native tree removal for compliance with P21DCP cl. B4.7. It is recommended that Trees 2, 3, 8 and the large <i>Livistona australis</i> be retained. Furthermore, the Biodiversity Report does not provide adequate justification of how the Biodiversity Offset Scheme (BOS) has not been triggered. The rear of the site is located on the BV Map, and as such, a GIS map identifying the survey locations of native canopy trees (including the <i>Livistona australis</i>) is required to be provided with an overlay of the Biodiversity Values Map to determine whether the BOS is triggered. Council's Biodiversity referrals team will recommence assessment of the application upon receipt of amended documentation.

Internal Referral Body	Comments
	Additional Comments (4th November 2024) Additional information was requested by Council's Biodiversity Referrals team in the comments above. It is noted that a Biodiversity Development Assessment Report (BDAR) (Enviro Ecology, October 2024) was submitted and has been reviewed by Council's Biodiversity Referrals team. The BDAR identifies that the BOS is triggered by the BV Map clearing threshold, however no Ecosystem Credits were generated due to the low Vegetation Integrity Score generated by the BAM plot. Credits were not been generated for Large-eared Pied Bat, however suitable habitat may be located within a 2km radius from the site. As such, this species would require reconsideration. An amended Arborist Report has not been submitted with the additional information, and as such Council's Biodiversity Referrals team are unable to complete assessment of the application. Previous comments are still applicable including that removal of 4 of the 5 locally native trees from the site does not comply with P21DCP cl. B4.7 which requires that development shall result in no significant onsite loss of canopy cover or a net loss in native canopy trees. As such, it is recommended that alternative designs be investigated to increase locally native tree retention, therefore minimising impacts to native tree removal for compliance with P21DCP cl. B4.7. It is recommended that Trees 2, 3, 8 and the large <i>Livistona australis</i> be retained. The proposal is not supported in its current design.
NECC (Development Engineering)	<i>Supported - subject to conditions</i> <u>04/11/2024:</u> Amended plans provided. Development Engineering have no objection to approval subject to conditions as recommended. <u>30/09/2024:</u> Development Application is for demolition of existing and construction of a new dwelling house with swimming pool. Access Site is a battle axe lot. New garage is proposed and existing driveway/access handle is proposed to be retained. Stormwater Site falls towards Alexandra Crescent. Onsite Stormwater Detention system is proposed. Stormwater Plans by CAM Consulting, Drawing No C24092-01 to 05, Issue B, Dated 18/07/2024 are satisfactory. Geotech Site is mapped as Geotechnical Hazard H1. Geotech report by White Geotechnical Group, Ref J5550, Dated 25th June 2024 with form 1 and 1A is provided.

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, if the application were to be approved.
Aboriginal Heritage Office	Supported - subject to conditions Development Application No: DA2024/1165 Description: Construction of a dwelling house including swimming pool Address: 31 Alexandra Crescent BAYVIEW Reference is made to the proposed development at the above area and Aboriginal heritage. No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development. Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No.1755899S dated 16

July 2024).

However, the applicant made unrequested amendments to the windows along the west elevation and an amended BASIX Certificate was not submitted. As such, the proposed development does not satisfy the requirements of the *State Environmental Planning Policy (Sustainable Buildings) 2022* and this will form part of the reasons for refusal.

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 condition of consent, if the application were to be approved.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Pittwater Local Environmental Plan 2014

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	No
zone objectives of the LEP?	No

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
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Height of Buildings:	8.5m	8.8m	3.53% (0.3m)	No
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Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	No
7.6 Biodiversity protection	No
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone C4 Environmental Living

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

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

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

Comment:

The proposed development is not considered to be of a built form which is representative of low-impact residential development, given the scale of the proposed development. The proposal presents a built form aesthetic that is inconsistent with the low-impact residential development, due to its significant excavation and scale of development comparative to the site area. As such, it is considered that the proposed development is inconsistent with providing a low-impact residential development.

It is considered that the development **does not** satisfy this objective.

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

Comment:

The residential development may have adverse effects on the special ecological values as a result of the proposed tree removal to accommodate the proposed dwelling house. The proposal is considered to have an adverse effect on the aesthetic values, as the proposal presents as a over-development of the site due to the excessive building footprint.

It is considered that the development **does not** satisfy this objective.

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

Comment:

As outlined above, the proposal is not considered to provide for residential development of a low density, and scale. The proposed dwelling house presents as a dominating scale that does not appropriately integrate with the landform, and landscape given the landscaped area non-compliance presented.

It is considered that the development **does not** satisfy this objective.

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

Comment:

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

It is considered that the development **satisfies** this objective

4.3 Height of buildings

Council's Request for Further Information dated 30 September 2024 contained the following information in relation to Clause 4.3 Height of Buildings of Pittwater Local Environmental Plan 2014.

The Plans – Master Set do not clearly demonstrate the proposed height of buildings.

The Dictionary of Pittwater Local Environmental Plan 2014 details height of buildings as follows:

building height (or height of building) means—

(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or

(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,

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

All Elevation and Sections Plans should detail the ground level (existing) and the 8.5m building height plane. It is unclear on the Section Plans the proposed level of excavation and the proposed altered ground level.

The applicant submitted Proposed Cut & Fill Sections (Drawing No.DA 307-DA 308, Revision A dated 11 October 2024 prepared by Endrim). Whilst the Section Plans do not include a 8.5m building height plane, the plans indicate a proposed height of 8.8m as a result of the existing ground level of the cavity under the existing dwelling house (see Figure 1).

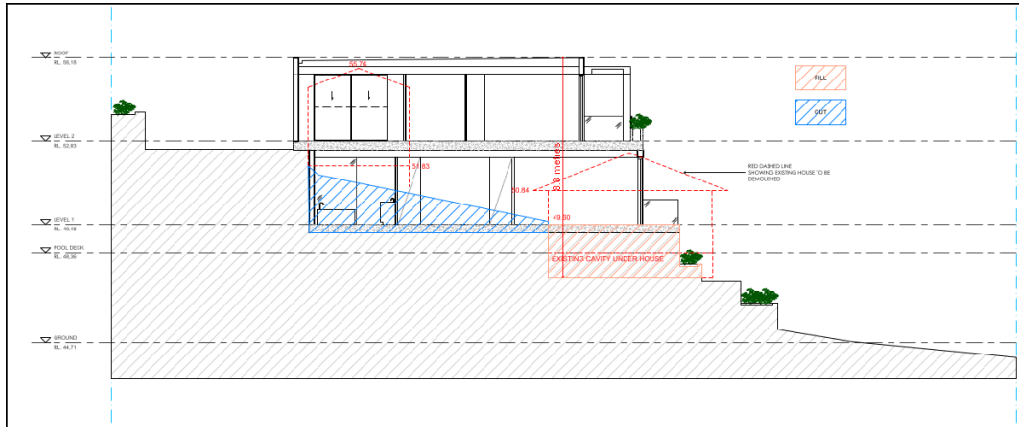


Figure 1. Proposed Cut & Fill Section (Drawing No.DA 308, Revision A dated 11 October 2024 prepared by Endrim)

As such, the proposal is non-compliant with Clause 4.3 Height of buildings and is not accompanied by a written Clause 4.6 variation request. Therefore, as a written Clause 4.6 variation request was not submitted with the development application, and the building height exceeds the maximum prescribed by the LEP, Council cannot be satisfied that compliance with the development standard is unreasonable or unnecessary in the circumstances, and that there are sufficient environmental planning grounds to justify the contravention of the development standard.

As such, the proposed height of buildings variation will form part of the reasons for refusal.

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. Council's Development Engineer has reviewed the proposal and is supportable, subject to recommended conditions that could be imposed if the development was recommended for approval..

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

Comment: The proposal will unreasonably limit the likely future use or redevelopment of the land due to the volume of excavation proposed. It is considered the the proposal will have a detriment impact upon future use and redevelopment of the land.

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

Comment: The excavated material will be processed according to the Waste Management Plan for the

development. If the application were to be approved, a condition could be included requiring any fill to be of a suitable quality, were the development to be approved.

(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 can be included if the application were to be approved to limit impacts during excavation/construction.

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

Comment: The excavated material is to be processed according to the Waste Management Plan for the development. A condition can be recommended if the application were to be approved to require 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 can be included in the consent, if the application were to be approved.

(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: It is considered that appropriate measures have not been considered to avoid, minimise and mitigate the impacts of the development in relation to the proposed volume of excavation. It is considered that the proposal unreasonable results in excessive earthworks that are contrary to the requirements of the control.

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

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

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the aims and objectives of PLEP 2014 and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is unsupported, in this particular circumstance and will form part of the reasons for refusal.

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 raise objections to approval as detailed in the Internal Referrals section of this report. As such the assessment fails to demonstrate 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 not 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 Bushland and Biodiversity Officer who raises objections to approval as detailed in the Internal Referrals section of this report. As such, the proposal fails to include appropriate measures to avoid, minimise, or mitigate the impacts of the development.

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

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

Comment:

The development has been assessed by Council's Bushland and Biodiversity Officer who raises objections to approval as detailed in the Internal Referrals section of this report. Therefore, the development has not been designed, sited and will be managed to any significant adverse environmental impact.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the aims and objectives of PLEP 2014 and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is unsupported, in this particular circumstance and will form part of the reasons for refusal.

7.7 Geotechnical hazards

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

- (a) site layout, including access,*
- (b) the development's design and construction methods,*
- (c) the amount of cut and fill that will be required for the development,*
- (d) waste water management, stormwater and drainage across the land,*

- (e) the geotechnical constraints of the site,
(f) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Comment:

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

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

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

Comment:

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

- (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 if the application were to be approved. As such, the proposed development has been designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of PLEP 2014 and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line*	6.5m	N/A	-	N/A
Rear building line	South - 6.5m	7.4m	-	Yes
Side building line	West - 2.5m	4.4m	-	Yes
	East - 1m	2.5m	-	Yes
	North - 1m	2.5m	-	Yes
Building envelope	West - 3.5m	Outside envelope	11.39% (0.9m)	No
	East - 3.5m	Outside envelope	15.0% (0.9m)	No

	North - 3.5m	Outside envelope	16.67% (1.0m)	No
Landscaped area	60% (809.28m ²)	39.21% (528.9m ²)	34.65% (280.38m ²)	No

*Note: As the site has a battle-axe frontage, there is no front building line that is applicable, but 3 side building lines instead.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.4 Church Point and Bayview Locality	No	No
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	No	No
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	No	No
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	No	No
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	No	No
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.23 Eaves	No	Yes
D4.1 Character as viewed from a public place	Yes	Yes
D4.2 Scenic protection - General	Yes	Yes
D4.3 Building colours and materials	No	Yes
D4.5 Front building line	N/A	N/A
D4.6 Side and rear building line	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D4.8 Building envelope	No	No
D4.10 Landscaped Area - Environmentally Sensitive Land	No	No
D4.12 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D4.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

A4.4 Church Point and Bayview Locality

The Church Point and Bayview Locality Statement notes as follows:

"The Church Point and Bayview locality will remain a low-density residential area with dwelling houses a maximum of two storeys in any one place in a natural landscaped setting, integrated with the landform and landscape. Secondary dwellings can be established in conjunction with another dwelling to encourage additional opportunities for more compact and affordable housing with minimal environmental impact in appropriate locations. Any dual occupancy dwellings will be located on lowlands in the locality on land that has less tree canopy coverage, species and habitat diversity and fewer other constraints to development. Retail, community and recreational facilities will serve the community".

Comment:

The proposal presents variations to the height of buildings development standard, landscaped area control, and building envelope control that is representative of an over-development of the site. It is considered that the scale of the proposed development does not integrate with the landform, or landscape, but dominates the landform and landscaped area given the non-compliances presented.

It is considered the proposal **does not** satisfy this section of Desired Character of the Church Point and Bayview Locality.

"Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport. The locality is characterised by steeply sloping blocks so the provision of facilities such as inclinator, driveways and carparking need to be sensitively designed. The shared use of vehicular/pedestrian access, and the use of rooftops as parking areas can be solutions that minimise the physical and visual impact on the escarpment or foreshore".

Comment:

The proposal includes a new garage, that can accommodate four (4) car parking spaces. It is considered however, the width and depth of the garage presents an unreasonable amount of excavation that is beyond the required dimensions for car parking in accordance with Clause B6.3 Off-Street Vehicle Parking Requirements of P21 DCP. Therefore, it is considered that the provision of car parking has not been sensitively designed.

It is considered the proposal **does not** satisfy this section of Desired Character of the Church Point and Bayview Locality.

"The locality is visually prominent particularly from Scotland Island, Bilgola Plateau, and the Pittwater

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

Comment:

The proposal includes the removal of trees, that are not supportable by Council's Bushland and Biodiversity Officer and Council's Landscape Officer. The proposal does not maintain an appropriate balance between the built form and existing landform, landscape and natural environment. It is considered the proposal results in the unreasonable removal of trees that will detract from the natural environment and may result in adverse impacts to wildlife corridors.

It is considered the proposal **does not** satisfy this section of Desired Character of the Church Point and Bayview Locality.

"Heritage items and conservation areas indicative of the Guringai Aboriginal people and of early settlement in the locality will be conserved".

Comment:

The Aboriginal Heritage Office have reviewed the proposal and raise no objections to the development, subject to conditions if the application were to be approved.

It is considered the proposal **satisfies** this section of Desired Character of the Church Point and Bayview Locality

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

Comment:

Vehicular and pedestrian access to the site will be provided via Alexandra Crescent. Council's Development Engineer has reviewed the proposal and is supportable of the proposal, if the application were to be approved.

It is considered the proposal **satisfies** this section of Desired Character of the Church Point and Bayview Locality

"Pedestrian/cycle access around the foreshore and to areas of open space will be upgraded and maintained".

Comment:

The proposal is not located around the foreshore and will not compromise pedestrian/cycle access around the foreshore area, or to areas of open space.

It is considered the proposal **satisfies** this section of Desired Character of the Church Point and Bayview Locality

"Church Point will remain an important link to the offshore communities".

Comment:

The site is distanced from the Church Point Wharf, and as such the proposed development will not impact the link from Church Point to the offshore communities.

It is considered the proposal **satisfies** this section of Desired Character of the Church Point and Bayview Locality

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant outcomes of the P21 DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported due to the inconsistency with the Desired Future Character of the Church Point and Bayview Locality and this will form part of the reasons for refusal.

B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community

Description of non-compliance

Council's Bushland and Biodiversity Officer has provided detailed comments under the Internal Referrals section contained within this report.

In summary, the comments detail the following:

Removal of 4 of the 5 locally native trees from the site does not comply with P21DCP cl. B4.7 which requires that development shall result in no significant onsite loss of canopy cover or a net loss in native canopy trees. As such, it is recommended that alternative designs be investigated to increase locally native tree retention, therefore minimising impacts to native tree removal for compliance with P21DCP cl. B4.7.

An assessment against the outcomes of the control has been conducted, and it is found that the removal of the trees on site is inconsistent with the outcomes of the control that is to retain and conserve the trees on site.

Merit consideration

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

- ***Conservation of intact Pittwater Spotted Gum Forest EEC. (En)***
- ***Regeneration and/or restoration of fragmented and / or degraded Pittwater Spotted Gum Forest EEC. (En)***
- ***Reinstatement of Pittwater Spotted Gum Forest to link remnants. (En)***
- ***Long-term viability of locally native flora and fauna and their habitats through conservation, enhancement and/or creation of habitats and wildlife corridors. (En)***

Comment:

The proposed development results in the removal of trees that is inconsistent with the outcomes of the control as detailed above. The proposal presents an unacceptable impact to the existing trees on site, and the removal of the trees is inconsistent with the intent of the control, that is to conserve, retain, reinstate and enhance the native flora and fauna within Pittwater.

The proposal **does not** satisfy the outcomes of the control.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant outcomes of the P21 DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not

supported, in this particular circumstance and will form part of the reasons for refusal.

B8.1 Construction and Demolition - Excavation and Landfill

Description of non-compliance

The proposed development includes significant excavation for the provision of four (4) car spaces in the proposed garage.

It is considered that the proposed excavation is excessive, given the requirement for car parking spaces under Clause B6.3 Off-Street Vehicle Parking Requirements of Pittwater 21 Development Control Plan is two (2) car spaces.

It should also be noted that the existing carport that accommodates (1) car space is proposed to be retained.

As such, it is considered that the proposal is inconsistent with the outcomes of the control as detailed below and as such the proposal results in unacceptable excavation.

Merit consideration

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

- ***Site disturbance is minimised.***

Comment:

The proposal results in significant site disturbance for the provision of a four (4) car space garage. It is considered that the amount of excavation, that is detailed to be 60m³ in the submitted Waste Management Report has not been minimised, and the proposed volume of excavation is excessive.

The proposal **does not** satisfy the outcomes of the control.

- ***Excavation, landfill and construction not to have an adverse impact.***

Comment:

The proposal includes excavation that may result in adverse impacts to the surrounding bushland and biodiverse environment, noting that the site is located within a C4 Environmental Living Zoning.

The proposal **does not** satisfy the outcomes of the control.

- ***Excavation and landfill operations not to cause damage on the development or adjoining property.***

Comment:

The proposal is accompanied by a Geotechnical Report (dated 25 June 2024, prepared by White Geotechnical Group). The report details that if the recommendations within the report are adhered to, that the proposed excavation works are of an acceptable risk.

The proposal **satisfies** the outcomes of the control.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant outcomes of the P21 DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal overall is not supported, in this particular circumstance and will form part of the reasons for refusal.

C1.1 Landscaping

Description of non-compliance

Clause C1.1 Landscaping of Pittwater 21 Development Control Plan requires the following:

All canopy trees, and a majority (more than 50%) of other vegetation, shall be locally native species. Species selection and area of landscape to be locally native species is determined by extent of existing native vegetation and presence of an Endangered Ecological Community. Note if the land is within an Endangered Ecological Community there will be a Development Control specifically covering the requirements for Landscaping in an Endangered Ecological Community.

In all development a range of low-lying shrubs, medium-high shrubs and canopy trees shall be retained or provided to soften the built form.

Council's Landscape Officer has provided detailed comments under the Internal Referrals section contained within this report. In summary, Council's Landscape Officer has detailed the following:

If tall canopy trees are proposed to be removed they shall be replaced with suitable species commensurate to those which are to be removed, and in accordance with the outcomes and controls under PDGP section C1.1. Cupaniopsis anacardioides is on Council's exempt tree species list and shall not be used as a replacement tree.

Council's Bushland and Biodiversity Officer has provided detailed comments under the Internal Referrals section contained within this report. In summary, Council's Bushland and Biodiversity Officer has detailed the following:

The Arboricultural Impact Statement assessed 8 trees located within the property and has recommended the removal of 7 trees including Tree 1 (Eucalyptus fibrosa), 3 (Eucalyptus fibrosa), 4 (Corymbia maculata), 5 (Eucalyptus microcorys), 6 (Eucalyptus microcorys), 7 (Eucalyptus microcorys) and 8 (Eucalyptus fibrosa). Only 1 tree is proposed for retention, Tree 2 (Corymbia maculata). Corymbia maculata and Eucalyptus fibrosa are important locally native tree species contributing to the local ecology of the area as part of the local occurrence of Pittwater Spotted Gum Forest which is listed as an Endangered Ecological Community under the BC Act.

It is considered the proposed removal of trees and replacement trees are not acceptable, and as such the proposal is not supportable. An assessment has been conducted against the outcomes of the control as detailed below, and it is considered that the proposal is inconsistent with the outcomes of the control.

Merit consideration

With regard to the consideration of a variation, the proposed development is considered against the

underlying Outcomes of the Control as follows:

- *A built form softened and complemented by landscaping. (En)*
- *Landscaping reflects the scale and form of development. (En)*
- *Retention of canopy trees by encouraging the use of pier and beam footings. (En)*
- *Development results in retention of existing native vegetation. (En)*
- *Landscaping results in the long-term retention of Pittwater's locally native tree canopy. (En)*
- *Landscaping retains and enhances Pittwater's biodiversity by using locally native plant species (En)*
- *Landscaping enhances habitat and amenity value. (En, S)*
- *Landscaping results in reduced risk of landslip. (En, Ec)*
- *Landscaping results in low watering requirement. (En)*

Comment:

The proposed development proposes the removal of 7 trees, that results in the built form being dominant rather than recessive to the natural environment. The proposed landscaping does not reflect the scale and form of development, and the proposed number of trees for removal is not supportable. The proposed landscaping does not consider the retention of the native canopy trees, and the retention of Pittwater's locally native tree canopy. The proposal would result in the detriment to the Pittwater biodiversity and may impact on the native habitat and amenity value of the area. It is considered that the proposed removal of trees is inconsistent with the outcomes of the control, and this will form part of the reasons for refusal.

The proposal **does not** satisfy the outcomes of the control.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant outcomes of the P21 DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance and will form part of the reasons for refusal.

C1.3 View Sharing

Concerns were raised from surrounding neighbours at No.27A Alexandra Crescent, BAYVIEW and No.27B Alexandra Crescent, BAYVIEW in relation to view loss impacts.

On 12 November 2024, site visits were conducted at No.27A Alexandra Crescent, BAYVIEW and No.27B Alexandra Crescent, BAYVIEW.

It should be noted that the applicant installed height poles, and this was not a request from Council. Furthermore, there was no detail submitted from the applicant to confirm that the height poles were installed accurately or surveyed.

A detailed view loss assessment has been conducted and it is found that the proposed development No.27A Alexandra Crescent are negligible and the view impacts to No.27B Alexandra Crescent are minor.

Merit consideration

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

- A reasonable sharing of views amongst dwellings.

Comment:

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

1. Nature of the views affected

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

Comment to Principle 1:

The views obtained from No.27A Alexandra Crescent and No.27B Alexandra Crescent comprise of water views, that include interface between land and water (see Figures 2-5). The view include Pittwater Waterway and No.27A Alexandra Crescent obtains partial views of Scotland Island to the north-west.



Figure 2. View from No.27A Alexandra Crescent facing North from Living Room



Figure 3. View from No.27A Alexandra Crescent facing North from Terrace adjoining Living Room



Figure 4. View from No.27B Alexandra Crescent facing North from Ground Floor Pool Area



Figure 5. View from No.27B Alexandra Crescent facing North from First Floor Balcony adjoining Kitchen/Living Room

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

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

Comment to Principle 2:

The views from No.27A Alexandra Crescent are obtained across the north-western side boundary, and can be obtained from a sitting and standing position from both the living room and terrace adjoining the living room (see Figure 2 and Figure 3). The views from No.27B Alexandra Crescent are obtained across the north-eastern rear boundary, and are obtained from a standing and sitting position from the ground floor that include the entryway, pool area, and master bedroom (see Figure 4). The views from the first floor of the water from No.27B Alexandra Crescent are unaffected by the proposed development as the development will likely sit below the water. However as detailed earlier, as the height poles have not been surveyed, it is uncertain towards the accuracy of the height of the poles.

3. Extent of impact

“The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued

because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating”.

Comment to Principle 3:

The views from No.27A Alexandra Crescent are obtained from the living areas that includes the kitchen and adjoining terrace. The views from No.27B Alexandra Crescent are obtained from the ground floor level that comprises of the swimming pool and associated pool coping that includes pool chairs, the entryway to the dwelling house, and the main bedroom. It is considered the views from the first floor of No.27B Alexandra Crescent will largely be unaffected and this level comprises of the kitchen, living area, dining table and associated balcony adjoining these areas. As such, it is considered that the view impacts to No.27A Alexandra Crescent are negligible and the view impacts to No.27B Alexandra Crescent are minor.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

It is considered that a more skilful design could reduce the view impact as the presently the proposal breaches the height of buildings development standard, and building envelope control. Therefore, the proposal is considered to be unreasonable as detailed elsewhere in the report and a compliant design would assist to reduce the view impacts to the adjoining sites at No.27A Alexandra Crescent and No.27B Alexandra Crescent.

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

Comment:

The views and vistas from roads and public places will not be impacted by the proposed development.

- ***Canopy trees take priority over views.***

Comment:

The proposal includes the removal of canopy trees that is not supportable by Council's Bushland and Biodiversity Officer and Council's Landscape Officer. Notwithstanding, the proposal does not remove trees to obtain further views on the subject site, however if the removal of trees were to be undertaken, the adjoining sites would obtain greater views.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of P21 DCP and the objectives specified in s1.3 of the Environmental

Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance and will form part of the reasons for refusal.

C1.4 Solar Access

Under Clause C1.4 Solar Access of Pittwater 21 Development Control Plan, the controls state the following:

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

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

The applicant has submitted Shadow Diagrams (prepared by Cad Draft P/L dated 28 June 2024) to detail the proposed shadows. Concern was raised from No.25 Alexandra Crescent in relation to the proposed shadows on neighbouring dwellings at No.25 Alexandra Crescent and No.27A Alexandra Crescent.

As detailed in the accompanying Shadow Diagrams, the proposed development will provide a minimum of 3 hours of sunlight between 9am and 3pm on 21st June to the private open space of adjoining dwellings, and to the windows of principal living area of adjoining areas. It should be noted that the proposed development will not result in any additional shadowing to the private open space or windows to the principal living areas between 9am-12pm on 21st June to No.25 Alexandra Crescent and No.27A Alexandra Crescent.

Therefore, the proposed development is compliant with the requirements of Clause C1.4 Solar Access of Pittwater 21 Development Control Plan.

C1.23 Eaves

Description of non-compliance

Clause C1.23 Eaves of Pittwater 21 Development Control Plan requires dwellings to incorporate eaves on all elevations with a minimum width of 450mm. The proposed dwelling house does not include eaves on the elevations.

The underlying Outcomes of this clause are as follows:

- ***Housing that reflects the coastal heritage and character of Pittwater.***
- ***Optimise roof forms.***
- ***Appropriate solar access and shading is achieved.***

Merit consideration

It is considered that the proposed housing may have the ability to reflect a dwelling that is consistent with the coastal heritage and character of Pittwater, however this is subject to overcoming varying built form non-compliances. The proposed roof form is flat is considered suitable, and the accompanying Shadow Diagrams demonstrate that appropriate solar access and shading is achieved to the subject site and adjoining sites.

Notwithstanding, the variation to the eaves will not form part of the reasons for refusal, as it is considered that subject to overcoming the varying non-compliances, there are no significant concerns surrounding the omission of eaves.

D4.3 Building colours and materials

In the Request for Further Information sent to the Applicant on 30 September 2024, clarification was sought in relation the the proposed roof colour and wall colour.

The Applicant submitted an Applicant Response to RFI Report on 23 October 2024 detailing proposed changes to the Material Schedule (Drawing No.500, Revision A, dated 21 June 2024. However, the amended Architectural Plans did not include an amended Materials Schedule as detailed in the Report. No further information was submitted from the Applicant surrounding the proposed roof colour.

The proposed changes in the Applicant Response to RFI Report include the following: *The façade scheme now relies on stacked stone cladding with elements of lime render and timber cladding to give a more natural tone to the development.*

An extract from the Applicant Response to RFI Report is detailed in Figure 6 below.

BEFORE



AFTER



Figure 6. Before and After Proposed Material Schedule

Whilst the applicant did not provide an amended Materials Schedule, if the application were to be approved a suitable condition would be recommended to ensure the external colours and materials shall be dark and earthy tones. Furthermore, a specific condition for the roof colour would be recommended to ensure the roof has a Solar Absorptance (SA) greater than 0.43 to minimise solar reflections to neighbouring properties.

D4.8 Building envelope

Description of non-compliance

Under Clause D4.8 Building envelope of Pittwater 21 Development Control, the control outlines buildings are to be sited within planes projected at 45 degrees from a height of 3.5 metres above ground level (existing) at the side boundaries to the maximum building height of 8.5 metres.

The proposed dwelling house encroaches outside of the building envelope on the north elevation by an approximate maximum height of 1.0 metres for a horizontal length of 0.2 metres, resulting in a maximum variation of 16.67% as outlined in Figure 7.

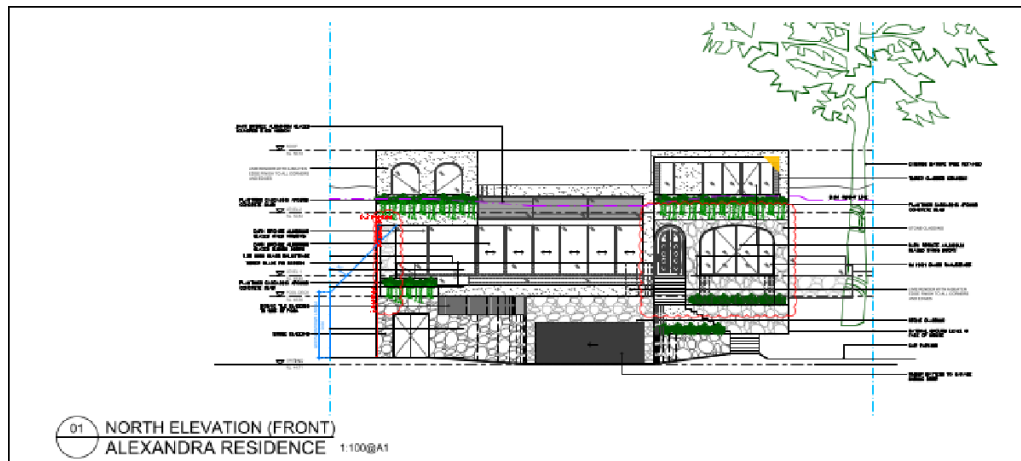


Figure 7. North Elevation (red highlighting building envelope variation)

The proposed dwelling house encroaches outside of the building envelope on the east elevation by an approximate maximum height of 0.9 metres for a horizontal length of 5.4 metres, resulting in a maximum variation of 15.0% as outlined in Figure 8.

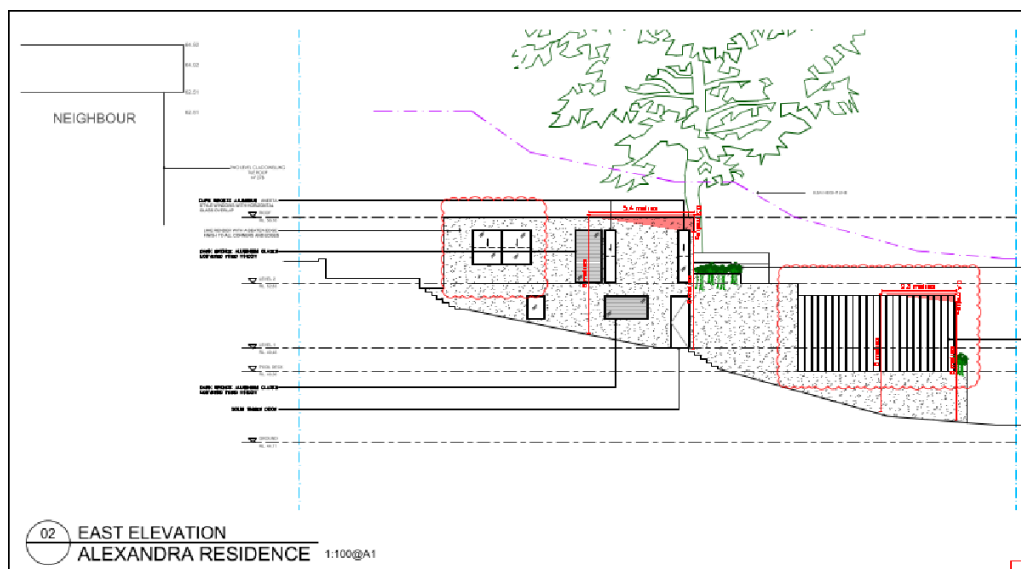


Figure 8. East Elevation (red highlighting building envelope variation)

The proposed dwelling house encroaches outside of the building envelope on the west elevation by an approximate maximum height of 0.9 metres for a horizontal length of 3.0 metres, resulting in a maximum variation of 11.39% as outlined in Figure 9.

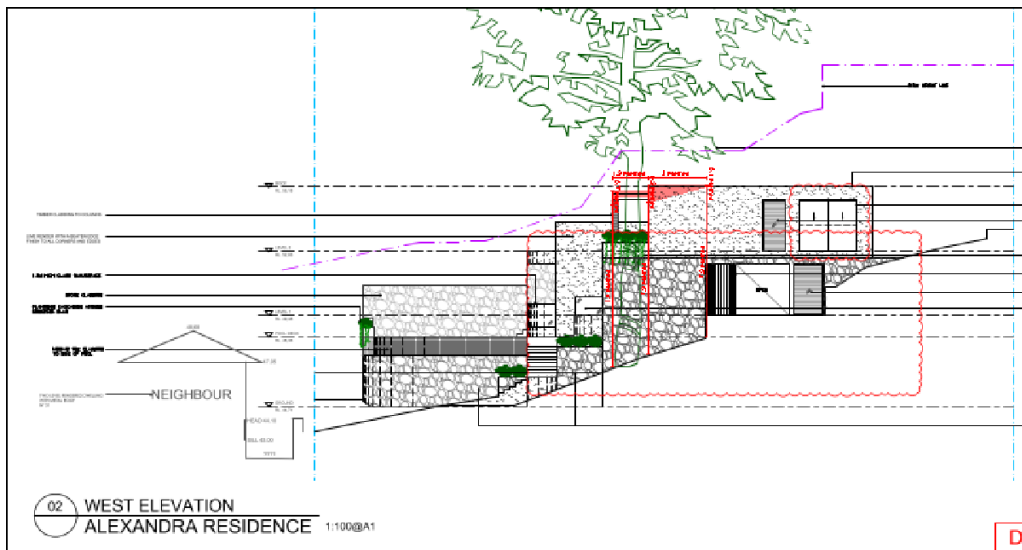


Figure 9. West Elevation (red highlighting building envelope variation)

It is important to note the non-compliance with the building envelope control was raised with the applicant, however no changes were made to the architectural plans.

A detailed assessment has been conducted against the outcomes of the control as detailed below and it is considered that the proposal is overall inconsistent with the outcomes of the control. As such, the proposed variations to the building envelope control is not supportable.

Merit consideration

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

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

Comment:

The proposal is inconsistent with the desired future character of the Church Point and Bayview Locality that stipulates the following: *The Church Point and Bayview locality will remain a low-density residential area with dwelling houses a maximum of two storeys in any one place in a natural landscaped setting, integrated with the landform and landscape.* It is considered that the proposed dwelling house is not appropriately integrated with the landform and landscape setting of the site as noted by the deficient landscaped area proposed.

The proposal **does not** satisfy this outcome.

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

Comment:

The proposed dwelling house is located at the rear of a battle-axe handle and as such does not have a street frontage. Notwithstanding, the proposed dwelling house is of a scale and density that is below the height of the trees of the natural environment as the existing trees on site are large canopy trees that are dominate features of the site.

The proposal **satisfies** this outcome.

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

Comment:

The proposed development does not respond appropriately to the sensitive characteristics of the existing natural environment, as the application proposes to removal of 7 trees. It is considered that the development has not responded appropriately to the existing site and natural environmental features that could be retained.

The proposal **does not** satisfy this outcome.

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

Comment:

The proposal does not minimise the bulk and scale of the built form as evident by the large building footprint that results in a deficient landscaped area. Furthermore, the building envelope variations further outline the over-development of the site with portions of the elevations outside the building envelope control. As such, it is considered that the bulk and scale of the development is unacceptable.

The proposal **does not** satisfy this outcome.

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

Comment:

The proposal will provide for an impact to the preservation of views and vistas to and from public places as detailed under Clause C1.3 View Sharing of Pittwater 21 Development Control Plan within this report.

The proposal **does not** satisfy this outcome.

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

Comment:

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

The proposal **satisfies** this outcome.

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

Comment:

The proposal includes significant vegetation to be removed, and this will not assist to visually reduce the built form. The proposed vegetation removal is not supportable, and will exacerbate the built form.

The proposal **does not** satisfy this outcome.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of P21 DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance and will form part of the reasons for refusal.

D4.10 Landscaped Area - Environmentally Sensitive Land

Description of non-compliance

Under Clause D4.10 Landscaped Area - Environmentally Sensitive Land of Pittwater 21 Development Control Plan, the total landscaped area shall be 60% (809.28m²) of the site area.

The proposal presents a numerically non-compliant landscaped area of 39.21% (528.9m²) resulting in a 34.65% (280.38m²) variation to the control.

Under Clause D4.10 of P21 DCP, variations can be made in the following circumstances:

Provided the outcomes of this control are achieved, the following may be permitted on the landscaped proportion of the site:

- i) impervious areas less than 1 metre in width (e.g. pathways and the like);*
- ii) for single dwellings on land zoned R2 Low Density Residential or E4 Environmental Living, up to 6% of the total site area may be provided as impervious landscape treatments providing these areas are for outdoor recreational purposes only (e.g. roofed or unroofed pergolas, paved private open space, patios, pathways and uncovered decks no higher than 1 metre above ground level (existing)).*

It is considered in this instance that the outcomes of the control have not been achieved, and therefore there is no concession for the 6% variation.

The applicant has argued that as the site is a battle-axe allotment, and that the battle-axe handle should be excluded. Even with the battle-axe handle excluded, the site area required to be landscaped would be 60% (639.1m²) of 1063.5m². The total landscaped area excluding the battle-axe handle is 38.89% (413.6m²), that presents a greater variation of 35.28% (225.5m²).

Furthermore, the applicant has argued that the use of a permeable driveway (using Stoneset) is included in the landscaped area calculation. In accordance with the Dictionary of Pittwater Local Environmental Plan 2014, landscaped area is defined as follows:

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

Therefore, the inclusion of the permeable driveway is not included in the landscaped area calculation.

It should also be noted that the applicant has included the existing carport area on the Landscaped Plans (prepared by Edwina Stuart Landscape Design, dated 31 October 2024) as part of the landscape calculation, and as such the calculations detailed in this section are excluded as this area does not constitute landscaped area.

A detailed assessment has been conducted and it is considered that the proposal does not demonstrate consistency with the outcomes of the control, and as such this non-compliance will form part of the reasons for refusal

Merit consideration

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

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

Comment:

The proposal is inconsistent with the desired future character of the Church Point and Bayview Locality that stipulates the following: The Church Point and Bayview locality will remain a low-density residential area with dwelling houses a maximum of two storeys in any one place in a natural landscaped setting, integrated with the landform and landscape. It is considered that the proposed dwelling house is not appropriately integrated with the landform and landscape setting of the site as noted by the deficient landscaped area proposed.

The proposal **does not** satisfy this outcome.

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

Comment:

The proposal presents an excessive bulk and scale that is attributed by the oversized building footprint that results in a deficient landscaped area. The proposed development is considered to be of an unacceptable bulk and scale that is resultant due to the reduced landscaped area, and non-compliant building envelope proposed.

The proposal **does not** satisfy this outcome.

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

Comment:

The proposal will provide a reasonable level of amenity and solar access to the site and adjoining sites.

The proposal **satisfies** this outcome.

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

Comment:

The proposal results in the removal of vegetation that will not assist with visually reducing the built form. Council's Bushland and Biodiversity Officer, and Council's Landscape Officer have reviewed the proposal and are not supportable of the proposed development as detailed in the Internal Referrals section contained within this report.

The proposal **does not** satisfy this outcome.

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

Comment:

The proposal results in the removal of natural vegetation and biodiversity. Council's Bushland and Biodiversity Officer has reviewed the proposal and is not supportable of the proposed development as detailed in the Internal Referrals section contained within this report.

The proposal **does not** satisfy this outcome.

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

Comment:

The reduction in landscaped area may result in an increase of stormwater runoff, that may result in soil erosion and siltation of natural drainage channels.

The proposal **does not** satisfy this outcome.

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

Comment:

The proposal results in the reduction and removal of proposed vegetation that will disturb the rural and bushland character of the area.

The proposal **does not** satisfy this outcome.

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

Comment:

The proposal does not meet the required landscaped area and therefore does not maximise the soft surface on the site to assist with infiltration of water to the water table and minimisation of run-off to assist with stormwater management.

The proposal **does not** satisfy this outcome.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of P21 DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance and will form part of the reasons for refusal.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

Refer to Assessment by Council's Natural Environment Unit elsewhere within this report.

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 2024

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2024.

A monetary contribution of \$15,878 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,587,771.

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, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

PLANNING CONCLUSION

This proposal, for construction of a dwelling house including swimming pool has been referred to the Development Determination Panel (DDP) due to five (5) objections received.

Concerns raised in the objections predominantly relate to compliance with the Zone C4 Environmental Living, view impacts, size and scale of development, coastal heritage and character of Pittwater, building colours and materials, tree removal, landscaped area, building envelope, height of buildings, and excavation. It is considered that the objections have raised concerns that are similar to those of Council, and as such some of these concerns form part of the reasons for refusal.

The critical assessment issues included the proposed height of buildings that is non-compliant and is not accompanied by a 4.6 written request. Council's Bushland and Biodiversity Officer and Council's Landscape Officer are not supportable of the proposal based on the proposed tree removal, and deficient landscaped area. Further non-compliances that are not supportable include proposed earthworks, excavation, landscaping impacts, building envelope variation, and character of the development within the C4 Environmental Living zone.

Overall, the proposal indicates an over-development of the subject site that does not perform well against the relevant Clauses and Controls of the Pittwater Local Environmental Plan 2014 and Pittwater 21 Development Control Plan will result in unreasonable amenity impacts upon adjoining, and nearby properties.

REASON FOR DETERMINATION

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2024/1165 for the Construction of a dwelling house including swimming pool on land at Lot 6 DP 27991,31 Alexandra Crescent, BAYVIEW, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.3 Height of buildings of the Pittwater Local Environmental Plan 2014.

Particulars:

- i) The proposed development presents a non-compliant height of 8.8m that exceeds the required 8.5m height of buildings development standard.
- ii) In the absence of a Clause 4.6 variation request, development consent cannot be granted as no written request has been provided to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

2. Pursuant to Section 4.15(1)(a)(i) and Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of and Clause Zone C4 Environmental Living of the Pittwater Local Environmental Plan 2014 and Clause 1.2 Aims of The Plan of Pittwater 21 Development Control Plan.

Particulars:

- i) The proposed development fails to achieve consistency with the objectives of Clause 1.2 Aims of the Plan of the Pittwater Local Environmental Plan 2014 in that the proposal is inconsistent with the desired character of Pittwater's localities.
- ii) The proposed development is inconsistent with the objectives of the C4 Environmental Living of the Pittwater Local Environmental Plan 2014, specifically as the proposed development is not considered to be low-impact residential development and presents an adverse impact on the aesthetic values as a result of the multiple non-compliances to the built form.

3. Pursuant to Section 4.15(1)(a)(i) and Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 7.2 Earthworks of the Pittwater Local Environmental Plan 2014 and Clause B8.1 Construction and Demolition - Excavation and Landfill of Pittwater 21 Development Control Plan.

Particulars:

- i) The proposal will unreasonably limit the likely future use or redevelopment of the land due to the volume of excavation proposed. It is considered the proposal will have a detriment impact upon future use and redevelopment of the land.
- ii) It is considered that appropriate measures have not been considered to avoid, minimise and mitigate the impacts of the development in relation to the proposed volume of excavation. It is

considered that the proposal results in excessive earthworks that are contrary to the requirements of the Pittwater Local Environmental Plan 2014 and Pittwater 21 Development Control Plan.

4. Pursuant to Section 4.15(1)(a)(i) and Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 7.6 Biodiversity protection of the Pittwater Local Environmental Plan 2014 and Clause B4.7 Pittwater Spotted Gum Forest – Endangered Ecological Community of Pittwater 21 Development Control Plan.

Particulars:

- i) The proposed development has not been designed, sited and managed to avoid significant adverse environmental impact.
- ii) The Biodiversity Report (prepared by Enviro Ecology, dated 31 October 2024) submitted with the application provides no Ecosystem Credits generated due to the low Vegetation Integrity Score generated by the BAM plot. Credits have not been generated for Large-eared Pied Bat, however suitable habitat may be located within a 2km radius from the site. As such, this species would require reconsideration.
- iii) An amended Arborist Report as requested has not been submitted, and therefore there is not adequate justification to the proposed tree removal, and it is considered that alternative designs could be investigated to increase locally native tree retention.

5. Pursuant to Section 4.15(1)(a)(iii) & Section 4.15(1)(b)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the following controls within the Pittwater 21 Development Control Plan: Clause A4.4 Church Point and Bayview Locality, Clause C1.1 Landscaping, Clause C1.3 View Sharing, Clause D4.1 Character as viewed from a public place, Clause D4.8 Building envelope, and Clause D4.10 Landscaped Area - Environmentally Sensitive Land.

Particulars:

- i) The proposed bulk, and scale is inconsistent with the desired future character of the locality as the proposed development does not integrate with the landform, or landscape, but dominates the landform and landscaped area given the non-compliances presented.
- ii) The proposed development presents unacceptable environmental impacts due to the proposed tree removal and inconsistency with the landscaping controls.
- iii) The proposed development fails to meet the numerical requirements of the building envelope, and landscaped area controls. The numerical non-compliances result in a cumulative impact, that presents a significant building footprint, resulting in an over-development of the site.

6. Pursuant to Section 2.1(5) of the State Environmental Planning Policy (Sustainable Buildings) 2022 the proposal is inconsistent with the provisions of the standards specified in Schedule 1.

Particulars:

- i) The proposal does not include an amended BASIX Certificate to reflect the changes to the windows along the west elevation.
- ii) As such, in accordance with Section 2.1(5) of the State Environmental Planning Policy (Sustainable Buildings) 2022, development consent must not be granted to development to which the standards specified in Schedule 1 or 2 apply unless the consent authority is satisfied the embodied emissions attributable to the development have been quantified.

7. Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act

1979 the proposed development is unsuitable for the site.

Particulars:

- i) The proposed development is not appropriate for the site due to the proposed scale of the development.
- ii) The proposed development would be better suited to a larger site that does not require significant tree removal to accommodate a large dwelling house.

8. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not within the public's interest.

Particulars:

- i) The extent of non-compliances of relevant clauses within the Pittwater Local Environmental Plan 2014, and controls within the Pittwater 21 Development Control Plan result in unreasonable amenity impacts upon adjoining and surrounding properties. As such, an approval of the proposed development would not be within the public's interest.

01 SITE ANALYSIS
ALEXANDRA RESIDENCE 1:100@A1

DEVELOPMENT APPLICATION

Notes: Do not scale from drawings. All discrepancies to be reported to Endrim immediately. All dimensions to be verified by contractor on site prior to any works.

Design Architect

endrim
HOME OF EXPERIENTIAL DESIGN

Client
MRS S ZARANTONELLO
LOT 6, DP 27991, 31 ALEXANDRA CRESCENT, BAYVIEW NSW 2104

Sheet Status
DEVELOPMENT APPLICATION

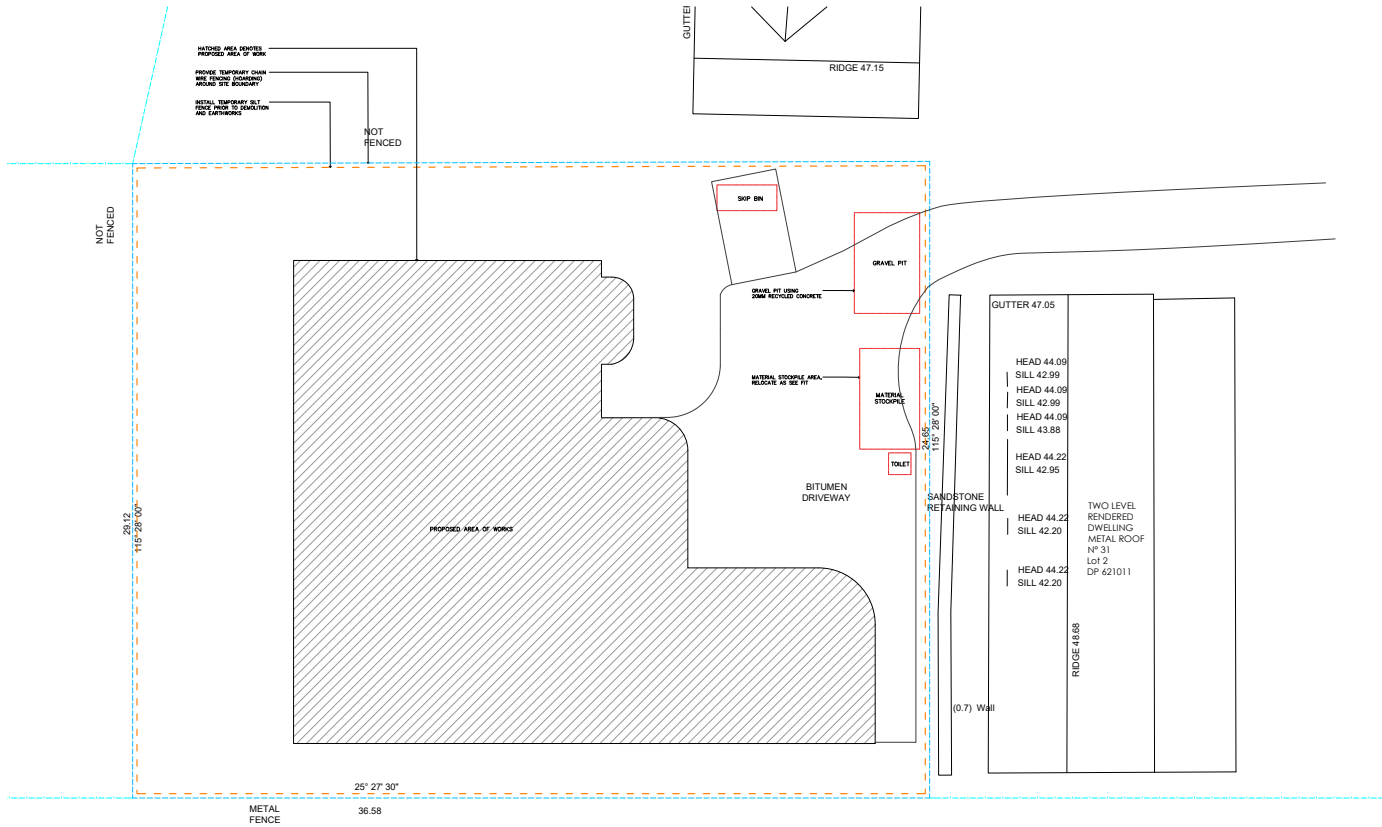
Project Name
ALEXANDRA RESIDENCE

Project Number
2303

Scale Issue Date Drawn Checked
1:100@A1 21/06/24 CS AT

Drawing Number Revision
DA 215 A

Drawing Title
SITE ANALYSIS PLAN



Notes: Do not scale from drawings. All discrepancies to be reported to Endrim immediately. All dimensions to be verified by contractor on site prior to any works.

Design Architect



Revision

Issue	Description	Date	Drawn
A	ISSUE FOR INFORMATION	21/06/24	CS

Client

MRS S ZARANTONELLO
LOT 6, DP-27991, 31 ALEXANDRA
CRESCENT, BAYVIEW NSW 2104



Sheet Status

DEVELOPMENT APPLICATION

Project Name

ALEXANDRA RESIDENCE

Project Number

2303

Scale

1:100@A1

Issue Date

21/06/24

Drawn

CS

Checked

AT

Drawing Number

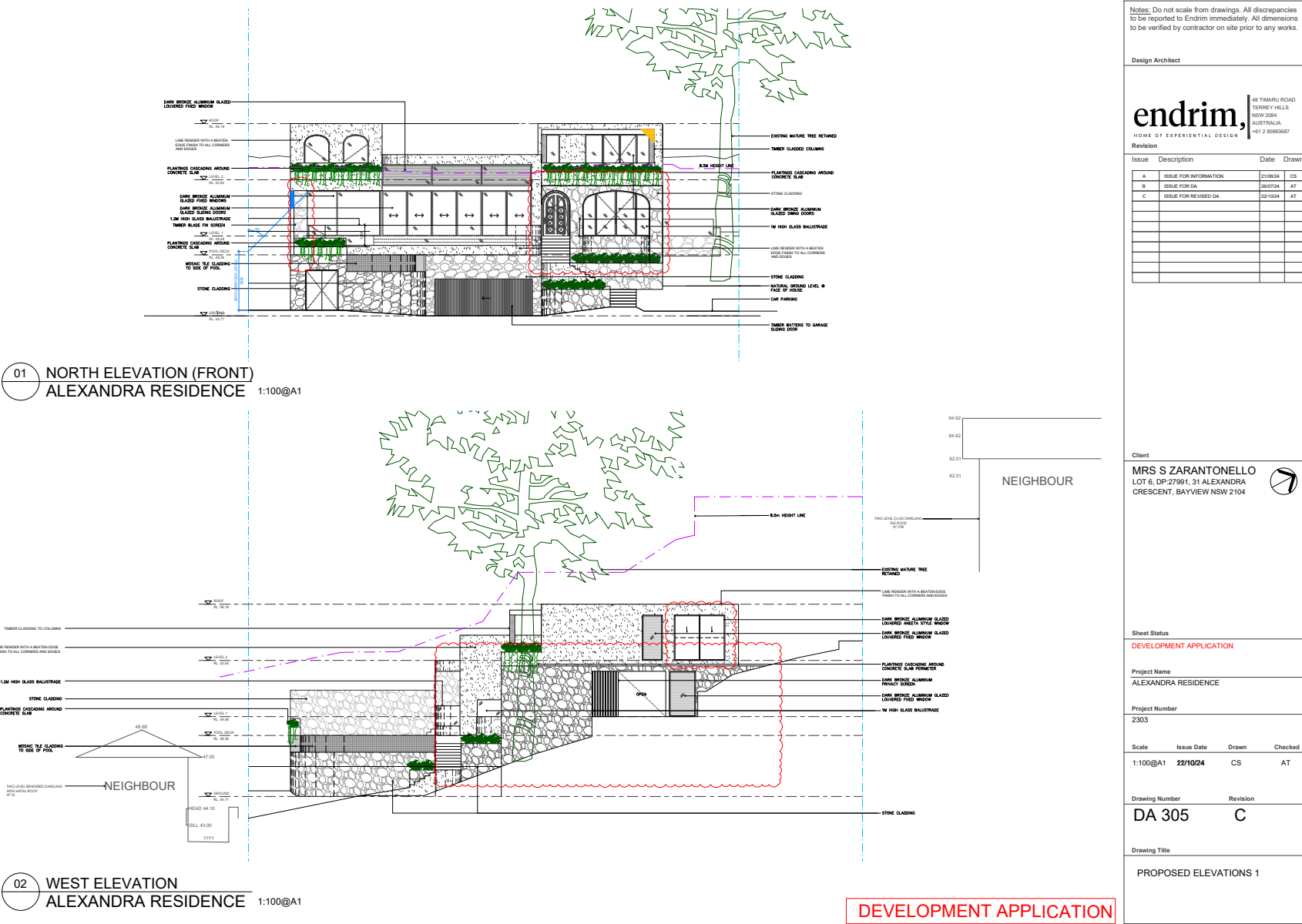
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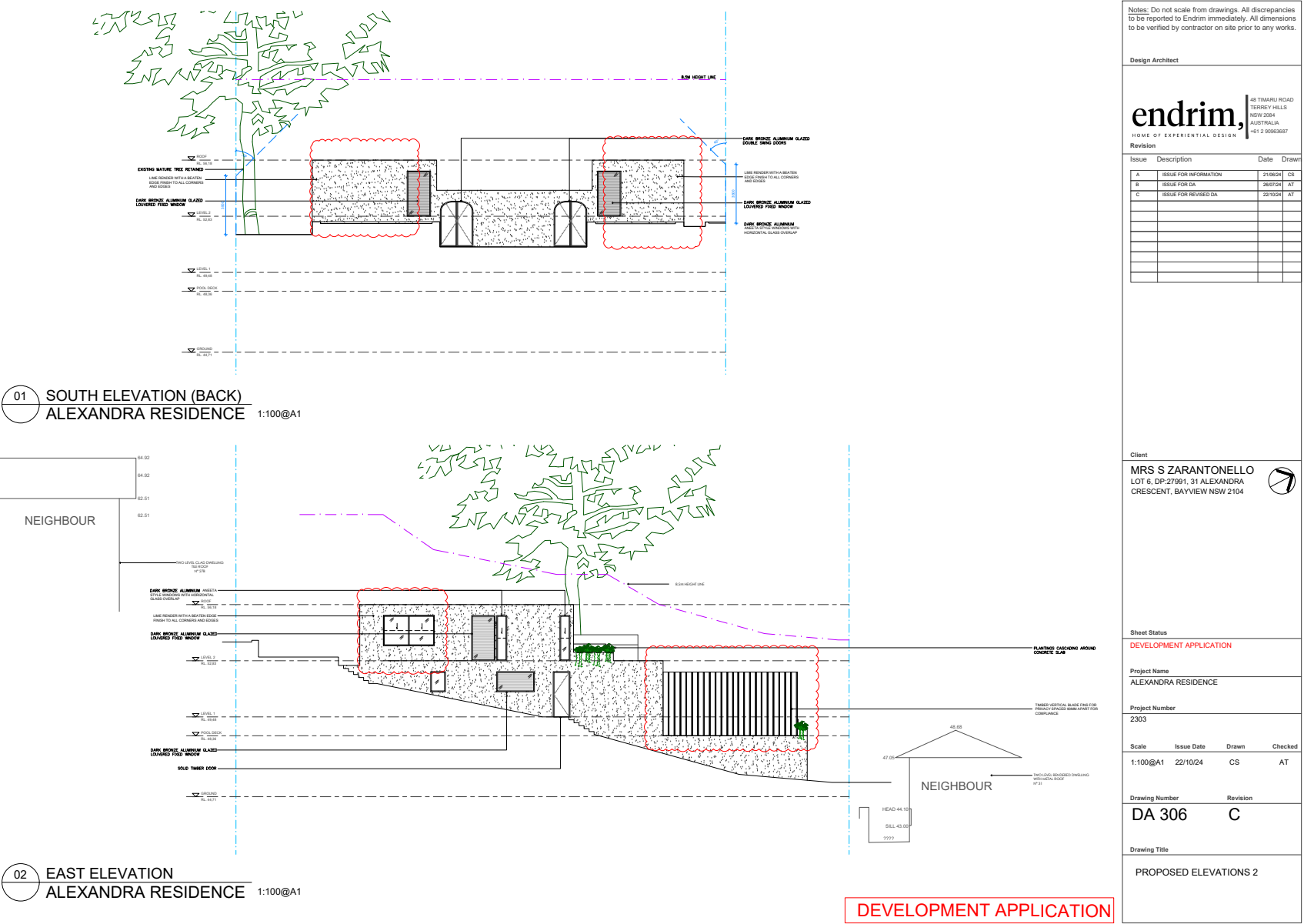
Revision

A

Drawing Title

WASTE MANAGEMENT
SITE PLAN





**ITEM 3.2 DA2024/0635 - 20 BEATTY STREET BALGOWLAH HEIGHTS -
DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING
HOUSE INCLUDING A SWIMMING POOL**

PURPOSE

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

RECOMMENDATION

- A.** That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 and Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B.** THAT Council as the consent authority **approves** Development Consent to DA2024/0635 for demolition works and construction of a dwelling house including a swimming pool on land at Lot 2 DP 554948, 20 Beatty Street BALGOWLAH HEIGHTS, subject to the conditions set out in the Assessment Report.

Reporting manager	Rodney Piggott
TRIM file ref	2024/836574
Attachments	1 Assessment Report 2 Site Plan and Elevations 3 Clause 4.6 - HOB 4 Clause 4.6 - FSR

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/0635
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Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 2 DP 554948, 20 Beatty Street BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Demolition works and construction of a dwelling house including a swimming pool
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Samuel Paul Allen

Application Lodged:	04/06/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	08/10/2024 to 22/10/2024
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	4.3 Height of buildings: 15.77% 4.4 Floor space ratio: 13.8%
Recommendation:	Approval

Estimated Cost of Works:	\$ 2,127,273.00
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EXECUTIVE SUMMARY

This development application seeks consent for demolition works and construction of a dwelling house, with detached double garage and swimming pool at No. 20 Beatty Street, Balgowlah Heights.

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

The application was notified in accordance with Council's Community Participation Plan (**CPP**) and received three (3) submissions. Concerns raised in the objection largely relate to bulk and scale and

amenity impacts (solar access, privacy and view loss). This reports includes a detailed assessment of the objection, and finds that the totality of impact does not warrant the refusal of the application.

The Manly Local Environmental Plan (**MLEP**) 2013 prescribes a maximum FSR of 0.4:1 (338.6sqm) for the site and the application proposes 0.45:1 (385.6sqm) a departure of 13.8% from the control. The application is accompanied by a written Clause 4.6 variation request which explains that the variation to the FSR standard is consistent with the existing and desired character of the area.

The 4.6 request for the non-compliance with the Height of Buildings development standard (8.5m) arises from the site being previously excavated to allow for the existing lower floor and from the sloping topography of the site. The application proposes a maximum building of 9.841m, a 15.77% variation to the numeric standard.

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

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for demolition works and construction of a three storey dwelling house with a double garage, spa and swimming pool.

APPLICATION HISTORY

Following a preliminary assessment of the application Council wrote to the applicant on 4 September 2024, outlining concerns that would not allow for Council to support the application in its current form.

The issues raised included:

- Building Height non-compliance
- Floor Space Ratio non-compliance
- Built form (DCP) non-compliance
- Privacy
- Internal Referral - Environmental Health

The applicant lodged amended plans and additional information to address concerns raised on 26 September 2024 and 1 October 2024. The proposed amendments can be summarised as follows:

- First floor side setback increased 1.5m to 2.5m;
- First floor office window deleted;
- Roof alterations;
- Window alterations;
- Reduced excavation; and
- Garage and access alterations.

The proposed amendments will have a reduced environmental impact on the adjoining properties and public open space than the original proposal. The amended plans result in a reduced development.

However, the application was incorrectly nominated as alterations and additions to a dwelling house when first notified by Council. As such the amended plans were re-notified and the description of works corrected to "Demolition works and construction of a dwelling house including a swimming pool" from 8 October 2024 - 22 October 2024.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - Zone R2 Low Density Residential
 Manly Local Environmental Plan 2013 - 4.3 Height of buildings
 Manly Local Environmental Plan 2013 - 4.4 Floor space ratio
 Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Local Environmental Plan 2013 - 6.2 Earthworks
 Manly Local Environmental Plan 2013 - 6.4 Stormwater management
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Local Environmental Plan 2013 - 6.12 Essential services
 Manly Development Control Plan - 3.1 Streetscapes and Townscapes
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
 Manly Development Control Plan - 4.1.10 Fencing

SITE DESCRIPTION

Property Description:	Lot 2 DP 554948 , 20 Beatty Street BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	The subject site consists of one (1) allotment located on the eastern side of Beatty Street, Balgowlah Heights. The site is irregular in shape with a frontage of 24.83m

	along Beatty Street and a depth of 59m. The site has a surveyed area of 846.5m². The site is located within the R2 Low Density Residential zone and accommodates a dwelling house. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by detached 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	There are no current draft environmental planning instruments.

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

Section 4.15 Matters for Consideration	Comments
	impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 08/10/2024 to 22/10/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 3 submission/s from:

Name:	Address:
Mr Robert Semsarian	24 Beatty Street BALGOWLAH HEIGHTS NSW 2093
Mr Victor Frank Hazir	22 A Beatty Street BALGOWLAH HEIGHTS NSW 2093
Ms Janet Ladlow Mr Geoffrey Alan Watkinson iObject	16 Beatty Street BALGOWLAH HEIGHTS NSW 2093

The following issues were raised in the submissions:

- **Height of Buildings and FSR non-compliance**
- **Bulk and scale**
- **DCP built form non-compliance**
- **Privacy**
- **Solar Access**
- **View loss**
- **On-site parking**
- **Scenic Protection**
- **Streetscape**

The above issues are addressed as follows:

- **Height of buildings and Floor Space Ratio non-compliance**

A number of submissions raised concerns with the height of the proposed development.

Comment:

As discussed in detail within this report under clause 4.6 of MLEP 2013, the application seeks consent for a variation to both the Height of buildings and FSR development standards. The application proposed a maximum height of 9.841m, representing of a 15.77% departure from the 8.5m control. The application also seeks a total FSR of 0.4:1 (338.6sqm), representing of a 13.8% departure from the 0.45:1 (385.6sqm) control. The non-compliant portion of the development does not result in any unreasonable impacts upon the amenity of adjoining properties and the height of the development as a whole is compatible with surrounding built form. The non-compliant height and FSR of the proposal is supported in this instance.

- **Bulk and scale**

Concern is raised in regards to the overall bulk of the dwelling house.

Comment:

This matter is discussed in detail throughout the report. In summary, the bulk and scale of the proposed development is satisfactory given the constraints of the site, the level of impact on adjoining properties and size and scale of neighbouring properties. The proposed built form non-compliance and resultant bulk and scale are appropriate in this residential context and satisfy the requirements and objectives of the MDCP 2013. All relevant provisions of MDCP 2013 have been assessed in this report, with the bulk and scale of the proposed dwelling house deemed satisfactory.

- **MDCP built form non-compliance**

Concern is raised in regards to general non-compliance with controls (Wall height, setbacks, storeys) under the MDCP 2013.

Comment:

This matter is addressed in detail elsewhere within this report (refer to the respective assessments in relation to 4.1 of Manly DCP 2013 section of this report). With specific regard to the MDCP 2013, Clause 4.15(3A) of the EP&A Act requires Council to be flexible in the application of DCP provisions and allow reasonable alternative solutions that achieve the objects of those standards dealing with that aspect of the development. As such, where the proposal does not achieve strict compliance with an aspect of the DCP, an assessment of the proposal against the objectives of the control has been undertaken.

- **Privacy**

Concern was raised about privacy impacts (acoustic and visual) from the proposed building particularly to outdoor living areas and living room windows of adjoining properties. A detailed assessment has been undertaken against the privacy provisions under Clause 3.4.2 of the

MDCP within this report. The proposal results in satisfactory privacy outcomes.

Comment:

A detailed assessment has been undertaken against the provisions of MDCP 2013 within this report. In summary, the proposal generally complies with the relevant provisions of MDCP 2013 where reasonable and adequate privacy is retained, subject to conditions.

- **Solar Access**

Comment:

The development does not unreasonably overshadow living room windows or private open space of adjoining properties, adequate sunlight is retained to neighbouring properties. The proposal complies with clause 3.4.1 of the MDCP 2013. This matter does not warrant the refusal of the application.

- **View Loss**

Concern was raised in regards to loss of views from private open space from the adjoining properties to the south.

Comment:

The proposal has been assessed against the view loss provisions under Clause 3.4.3 of the Manly DCP and the Land and Environment Court Planning Principle '*Tenacity Consulting Pty Ltd v Warringah Council* (2004) NSWLEC 140' in this report (refer to Cl. 3.4.3 Maintenance of Views under the MDCP 2013 section of this report). In summary, the proposed development does not cause unreasonable view loss to and from public and private open spaces.

- **On-site parking**

Concern is raised in regards to traffic and the potential loss of on-street parking due to

Comment:

The amended development proposal has reduced the driveway width to ensure adequate on-street parking is maintained, without compromising driveway access to the new development.

- **Scenic Protection**

Concern is raised regarding the visual impact of the proposal when viewed from surrounding vantage points.

Comment:

The proposal will not have any discernible impact when viewed from the foreshore (See full comments under Clause 6.9 of the MLEP 2013).

- **Streetscape**

Concern is raised regarding the visual impact of the proposal when viewed from street.

Comment:

With the exception of the proposed garage, the dwelling house complies with the front setback control. The scale of the development when viewed from the street/public open space is consistent with neighbouring residential development within the Beatty Street.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Solid Fuel/Oil Heater)	Supported, without conditions The applicant has provided additional information relating to a number of building elements associated with the proposal. With particular reference to the previous referral response by Environmental Health in relation to the potential inclusion of a solid fuel heater, the amended plans now note the following: "FIREPLACES NOTED TO BE GAS" Environmental Health has no objection to gas fireplaces Recommendation SUPPORTED - without conditions
Landscape Officer	Supported, with conditions Council's Landscape Referral section have considered the application against the Manly Local Environment Plan (MLEP), and the following Manly DCP 2013 (MDCP) controls (but not limited to): 3.3.1 Landscaping Design; 3.3.2 Preservation of Trees or Bushland Vegetation; 4.1.5 Open Space and Landscaping, including 4.1.5.2 (c) Minimum Tree Plantings where applicable. An Arboricultural Impact Assessment (AIA) report is submitted and recommends removal of the following prescribed trees impacted by the proposed development: tree 14 and 15 (Camellia), 16 and 21 (Angophora) located within the property and should the proposed development be approved, it is noted that there is no design alternative for retention. Additionally tree 6 (Camphor Laurel) located within the road reserve shall be removed. Exempt species listed in the AIA are able to be managed or removed without Council consent, except for any located on common boundaries. All existing trees, except tree 6, within the road reserve (trees 1 to 5, 7 to 10, and 27) shall be retained and protected. All existing trees in proximity to the development works within adjoining residential properties shall be retained and protected. Within the development property, the following existing prescribed trees are listed for retention: 24, 28, 31 and 39, and conditions shall be imposed for protection.

Internal Referral Body	Comments
	The loss of both Angophora trees (16 and 21) shall be replaced within the front of the property in locations in proximity to the removed trees as this shall not hinder any existing views, that are not currently available with the existence of the two Angophora's, and conditions shall be imposed for tree replacement to accord to Manly DCP Schedule 4 - Part B - Native Tree Selection. The submitted Landscape Plan raises no concerns with Landscape Referral. On structure planting shall be supported by appropriately constructed planters and conditions shall be imposed.
NECC (Bushland and Biodiversity)	Supported, with conditions The comments in this referral relate to the following applicable controls and provisions: SEPP (Resilience and Hazards) 2021 - Coastal Environment Area The proposal has been submitted with an arboricultural impact assessment which has assessed the condition of a total of 47 trees. A total of 36 trees have been given a retention value of "Remove". A total of 4 prescribed trees (14, 15, 16 and 21) are proposed for removal from the site. Removal of prescribed trees 16 and 21 can be supported as no alternative designs are available, however, conditions will be recommended to ensure appropriate like for like tree replacements are considered. The submitted landscape plan includes a number of trees, shrubs and groundcovers. Amendments will be conditioned to ensure that species selection as well as the number of trees included are appropriate to compensate for the loss of prescribed trees. Additionally, species identified as weeds in the Northern Beaches Local Priority Weeds Management Plan and/or under the Biosecurity Act 2015 will have to be replaced with a suitable native alternative (i.e. <i>Raphiolepis indica</i>). The development is designed, sited and will be managed to avoid any significant adverse environmental impact.
NECC (Coast and Catchments)	Supported, with conditions This Development Application is to seek consent for demolition of the existing site structures and the construction of a new dwelling house with detached garage accommodation and a swimming pool. The application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, State Environmental Planning Policy (Resilience & Hazards) 2021, Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity &

Internal Referral Body	Comments
	Conservation) 2021 and Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005. It has also been assessed against requirements of the Manly LEP and DCP. Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>. State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA. Clauses 2.10 (coastal environment area) and 2.11 (coastal use area) do not apply as the site is also located within the Sydney Harbour catchment area. Hence, only Clause 2.12 of the SEPP R & H apply for this DA. Comment: On internal assessment, the DA satisfies requirements under clause 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. Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity & Conservation) 2021 Foreshores & Waterways Area The subject site is located within the Sydney Harbour Catchment and is identified as being within the Foreshores and Waterways Area. Hence Part 6.3 of the Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity & Conservation) 2021 will apply in assessing this DA. Development consent, among others, must consider clause 6.28.

Internal Referral Body	Comments
	On internal assessment, it is determined that the relevant clauses of the Part 6.3 including the clause 6.28 have been followed. Manly LEP 2013 and Manly DCP Foreshores Scenic Protection Area Management The subject site is also shown to be as “Manly Foreshores Scenic Protection Area” on Council’s Foreshores Scenic Protection Area in Manly LEP 2013. As such, Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013 will apply to proposed development on the site. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Boston Blyth Fleming Pty. Ltd. dated May 2024, the DA satisfies requirements under Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013. As such, it is considered that the application does comply with the requirements of the Manly DCP 2013.
NECC (Development Engineering)	<i>Supported, with conditions</i> Amended plans with the deletion of the new access path and widening of the driveway has been reviewed. No objections to approval subject to conditions as recommended.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No. 1746865S_03 dated 25 September 2024).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.841m	15.77%	No
Floor Space Ratio	FSR: 0.4:1 (338.6sqm)	FSR: 0.45:1 (385.6sqm)	13.8%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

Zone R2 Low Density Residential

Land use definition: MLEP 2013	Permitted or Prohibited
Dwelling House	Permitted with consent

The underlying objectives of the R2 Low Density Residential zone:

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

Comment:

The proposed development is for residential purposes, being construction of a dwelling house.

It is considered that the development satisfies this objective.

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

Comment:

N/A

It is considered that the development satisfies this objective.

4.3 Height of buildings

Description of non-compliance

Clause 4.3 (2) stipulates that height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. The subject site is located within Area 'I' of the Height of Buildings Map which has a maximum height of 8.5m.

The height of the proposed development has been measured at maximum height of 9.841m from existing ground level. This represents a variation of 15.77%.

Merit consideration

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

Comment:

The proposed building height and roof form are consistent with the topography and prevailing building heights and streetscape character. The vast majority of the proposed dwelling will be under the 8.5m requirement and the areas of height and wall non-compliance predominately relate to the rear of the site, where the site has been previously excavated. The roof form will be generally consistent with the existing building and surrounding, more modern development in the vicinity and the development will be below the ridge height of adjoining development.

b) To control the bulk and scale of buildings.

Comment:

The proposed development is well articulated and modulated such that the visual dominance of the built form is broken up as a result. As above, the dwelling is appropriately articulated using recessed and modulated walls, fenestration, balconies, eaves and planters to break up built form. Furthermore, the development incorporates a terraced style design that steps down with the slope of the land, which provides further visual relief. The proposal also includes sufficient open space landscape treatment, which in turn will contribute to the softening and screening of the development.

c) To minimise disruption to the following:

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

Comment:

The proposed breache will not unreasonably impact views to, from or between nearby residential development and public spaces, including the harbour and foreshores.

- d) To provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings.*

Comment:

The proposal will not cause excessive overshadowing of adjoining properties or the public domain. The development satisfies this objective.

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

Comment:

The development is not within a recreation or environmental protection zone.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance

4.4 Floor space ratio

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.4:1 (338.6sqm)
Proposed:	0.45:1 (385.6sqm)
Percentage variation to requirement:	13.8%

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

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

Comment:

The proposed development is articulated and modulated so as to break down the visual appearance of the built form. The subject site allows for a presentation of landscaping and vegetation that is complementary to the area. The proposal will not unreasonably impact upon the streetscape.

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

Comment:

No important landscape features within the close vicinity of the subject site will be unreasonably impacted by the proposed works. In regards to townscape features, there are no townscape features within the close vicinity of the subject site.

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

Comment:

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

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

Comment:

The solar impacts of this aspect of the development are minimal and acceptable in terms of the impacts on habitable rooms of the adjoining properties and public open spaces.

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

Comment:

N/A

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance

4.6 Exceptions to development standards

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

Development standard: Clause 4.3 (Height of Buildings)

Requirement: 8.5m

Proposed: 9.841m

Percentage of variation: 15.77%

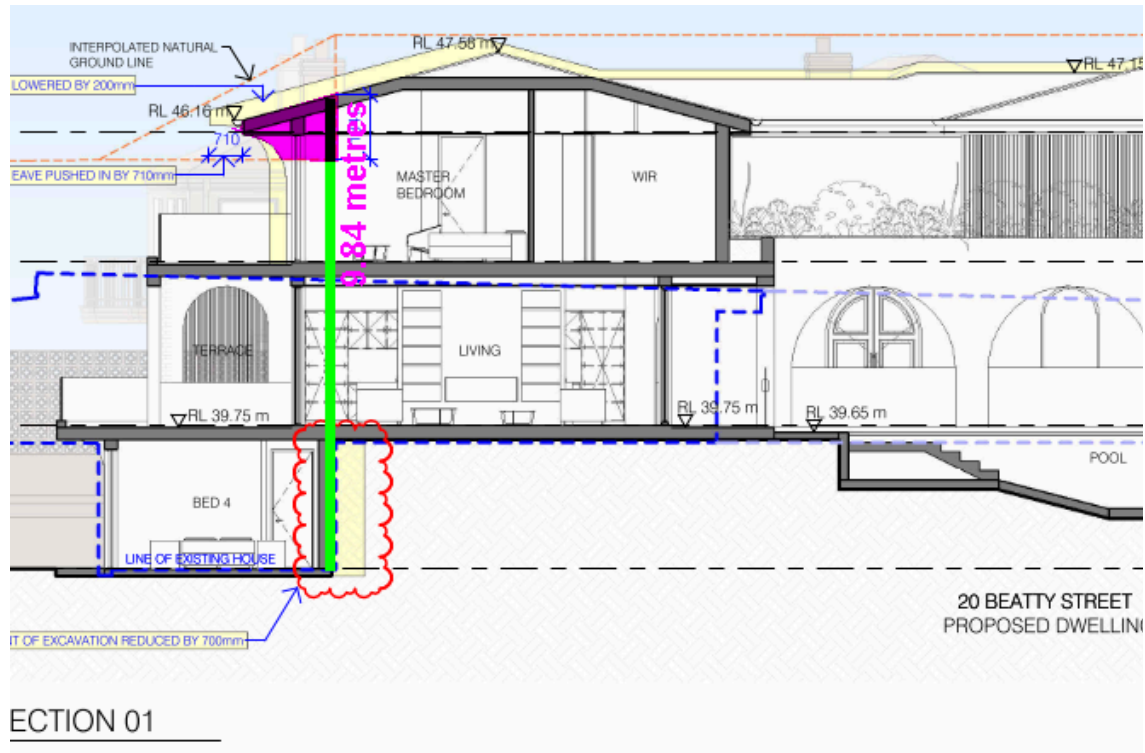


Figure 1: Section plan - Height of building variation in pink.

With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is accompanied by a document that sets out the grounds on which the Applicant seeks to demonstrate the matters set out in Clause 4.6(3)(a) and (b) of the MLEP 2013 (the 'Clause 4.6 Request').

Subclause (1) of this clause provides that:

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

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

Comment:

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

Subclause (2) of this clause provides that:

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

Comment:

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

Subclause (3) of this clause provides that:

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

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

Comment:

In order to demonstrate that compliance with the development standard is unreasonable or unnecessary, in the circumstances of the case, the Five (5) Part Test established in *Winten v North Sydney Council* and expanded by Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827 was considered by the Applicant. The Applicant relies on the 'First Way' test, arguing that the objectives of the standard are achieved notwithstanding non-compliance with the standard. The Applicant provides justification for the proposed development against each objective of the Height of Buildings development standard, arguments that are generally concurred with, including:

- The building height of the proposed development is consistent with that of surrounding development and development within the visual catchment of the site. The non-compliance occurs as a result of historical excavation in a minor area of the site, which is not representative of the topographic landscape of the locality. In this respect, it is noted that the proposed development is otherwise compliant with the height plane, excluding the anomaly of the ground plane created by the existing excavation.*
- The proposed development is well articulated with a bulk and scale that is commensurate with surrounding and nearby development. The development has been designed to step down the slope of the site and is responsive to the natural topography of the site. Non-compliance with the 8.5m height plane is limited to a minor portion of the development that does not contribute to excessive bulk and scale.*
- Having inspected the site and its immediate surrounds to identify potential view lines across the site I am satisfied that the building height breaching elements will not result in the disruption of public or private views to the extent that a view sharing outcome is not maintained. This objective is achieved notwithstanding the building height breaching elements proposed.*
- Notwithstanding the building height non-compliant element of the development compliant solar access is maintained to adjacent dwellings. This objective is achieved notwithstanding the building height breaching elements proposed.*
- The height of the proposed development does not result in any adverse impacts upon existing vegetation or topography. This objective is achieved notwithstanding the building height breaching elements proposed.*
- The proposal presents a compatible height and scale to the surrounding development and the articulation to the building facades and low pitch roof form will suitably distribute the bulk of the additional floor area.*

(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:

"Ground 1 - Topography of the land

The portion of the site over which the building height breach occurs is steeply sloping with the topography contributing towards the extent of the building height breach proposed.

Ground 2 - Contextually responsive building design

Despite non-compliance with the 8.5m building height development standard, the proposed development is consistent and compatible with the height of surrounding development. Council's acceptance of the proposed height variation will ensure the orderly and economic development of the site, in so far as it will ensure conformity with the scale and character established by other existing development within the visual catchment of the site, consistent with Objective 1.3(c) of the EP&A Act. The proposed development has been sensitively designed to respond to both the location of the site and also the form and massing of adjoining development. The building is of high design quality with the variation facilitating a height that provides for contextual built form compatibility, consistent with Objective 1.3(g) of the Act.

Ground 3 – Existing Excavation

*The proposed height breach is a direct consequence of existing excavation. As demonstrated on the Height Plane Diagram at Figure 3 on the following page, the proposed development is compliant with 8.5m height plane when measured to existing ground levels along the perimeter of the building and when the area of existing excavation is excluded. Consistent with the findings of Commissioner O'Neill in *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582, 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.*

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

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 new dwelling is a necessary upgrade of the ageing development.

Public Interest:

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

Conclusion:

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

It is considered on balance, that having regard to the particular circumstances of the breach of the building height development due to the existing site constraints and topography, the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

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

Development standard: Clause 4.4 (Floor Space Ratio)

Requirement: 0.4:1 (338.6sqm)

Proposed: 0.45:1 (385.6sqm)

Percentage of variation: 13.8%

With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is accompanied by a document that sets out the grounds on which the Applicant seeks to demonstrate the matters set out in Clause 4.6(3)(a) and (b) of the MLEP 2013 (the 'Clause 4.6 Request').

Subclause (1) of this clause provides that:

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

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

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

Comment:

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

Subclause (2) of this clause provides that:

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

Comment:

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

Subclause (3) of this clause provides that:

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

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

Comment:

In order to demonstrate that compliance with the development standard is unreasonable or unnecessary, in the circumstances of the case, the Five (5) Part Test established in *Winten v North Sydney Council* and expanded by Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827 was considered by the Applicant. The Applicant relies on the 'First Way' test, arguing that the objectives of the standard are achieved notwithstanding non-compliance with the standard. The Applicant provides justification for the proposed development against each objective of the FSR development standard, arguments that are generally concurred with, including:

- *The proposed dwelling is set back between 10.534m and 26.042m from the splayed front boundary with the relatively wide road reserve at the frontage of the site occupied by dense landscaping with landscaping within the subject site also providing substantial screening to the proposed dwelling. In this regard, the proposed dwelling house will be screened to a significant extent as viewed from the street with the two storey form and setbacks proposed ensuring that it will not be perceived as inappropriate or jarring in streetscape contact.*
- *Having inspected the site and its immediate surrounds to identify potential view lines across the site I am satisfied that the building, by virtue of its density and bulk will not obscure important landscape and townscape features. This objective is achieved notwithstanding the FSR non-compliance proposed*
- *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 in a streetscape context or as viewed from the adjoining properties. The proposed development is compatible with the existing streetscape and the character of the wider R2 Low Density Residential zone. Furthermore, despite non-compliance with the maximum FSR prescribed, the proposed development achieves consistency with the landscaped area controls of MDCP 2013, enabling the provision of a high-quality landscaped solution for the site.*
- *The proposed development does not result in any unreasonable impacts upon neighbouring properties with regards to overshadowing, visual or acoustic privacy. The proposed built form is highly articulated, by virtue of recessed elements, varied setbacks, differing materials and landscaping, and will not be overly dominant as seen from the street or adjoining properties. The non-compliant FSR does not detract from consistency with this objective.*

(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:

"Ground 1 – Superior architectural design

The apparent size of 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 floor space that provides for contextual built form compatibility, consistent with Objectives 1.3(c) and (g) of the Act.

There is no specific portion of the floor plan that can be pinpointed as attributing to the noncompliance, nor any area that warrants redesign or amendment due to impacts to adjoining dwellings.

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 Low Density Residential zone.

Ground 2 – Established Precedence

As demonstrated in this request, Council has regularly approved variations to the floor space ratio development standard prescribed by MLEP 2013 along Bower Street involving variations to the floor space ratio development standard to differing degrees.

As established in SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112 and Woollahra Municipal Council v SJD DB2 Pty Limited [2020] NSWLEC 115, and as reinforced in HPG Mosman Projects Pty Ltd v Mosman Municipal Council [2021], adjacent development which also exceeds the floor space ratio control should be considered when determining desired future character.

With a floor space ratio of 0.45:1, the proposed development is entirely consistent and compatible with the bulk and scale of surrounding development, which seemingly range between 0.4:1 and 0.57:1.

Support of a variation generally consistent with recent development consents issued by Council within the sites visual catchment is consistent with Object 1(c) of the EP&A Act, in so far as it reflects the orderly development of the land and promotes consistency in Council's decision making process."

Planner's Comment:

The applicant has satisfactorily demonstrated that the works are consistent with the objects of the EP&A Act, specifically the following objects of the EP&A Act:

- The development promotes the orderly and economic use and development of the land, in so far as the proposed development upgrades the useability of the existing dwelling and such building is an orderly response to the development of the site, thereby satisfying objects 1.3(c) of the EPA Act.
- The development promotes good design and amenity of the built environment, noting that the works will not contribute to any unreasonable impact on amenity considerations (i.e solar access, privacy and view loss) to neighbouring properties, thereby satisfying objects 1.3(g) of the EPA Act.

Public Interest:

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

Conclusion:

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

It is considered on balance, that having regard to the particular circumstances the proposed departure from the FSR development standard is acceptable and it is reasonable that flexibility to the standard be applied. The surrounding area is predominantly characterised by two – three storey development.

6.2 Earthworks

The objectives of Clause 6.2 - 'Earthworks' require development:

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

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

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

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

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

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

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

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

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

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

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

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

(f) the likelihood of disturbing relics

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

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

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

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

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

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

6.4 Stormwater management

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

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

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

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

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

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

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

6.9 Foreshore scenic protection area

Under this clause, development consent must not be granted to development on land to which this

clause applies unless the consent authority has considered the following matters:

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

Comment:

The proposed development will not have any unreasonable impact upon the streetscape. The proposed dwelling house is in keeping with the bulk and scale of development that is visible from the foreshore. The proposed development does not have a shadowing impact upon the foreshore. The dwelling house will not unreasonably compromise views from public realm.

6.12 Essential services

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

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

Comment:

All of the services listed above will be available for the development.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 846.5sqm	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	North: 7.3m (based on gradient 1:7.5)	6.2m - 9m	23%	No
	South: 7.3m (based on gradient 1:7.5)	6.1m - 8m	4.2%	No
4.1.2.2 Number of Storeys	2	3	50%	No
4.1.2.3 Roof Height	Height: 2.5m	1.68m	-	Yes
	Pitch: maximum 35 degrees	15 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line/ 6m	Garage: 1.6m - 8.4m Dwelling: 19.8m	up to 74%	See comments below
4.1.4.2 Side Setbacks and Secondary Street Frontages	2.06m - 3m (based on northern wall height)	Ground floor: 1m - 1.9m	up to 51%	No

		First Floor: 1m -2.1m		
	2.03m - 2.66m (based on southern wall height)	Ground floor: 1m First Floor: 1m - 2.5m	up to 51%	No
	Windows: 3m	1m - 2.5m	up to 66%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% (507.9sqm) of site area	51.7% (437.8sqm)	13.8%	No
	Open space above ground 25% of total open space	109.45% (86sqm)	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% (175.12sqm) of open space	56% 246.5sqm	-	Yes
	3 native trees	3 trees (conditioned)	-	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	6.7m	8%	No
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	Ground level	-	Yes
	1m curtilage/1.5m water side/rear setback	1m, 2.8m	-	Yes
4.1.10 Fencing	1m or 1.5m with 30% transparency	Wall - 1.8m	80%	No
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	No	Yes
3.1.1 Streetscape (Residential areas)	No	Yes
3.3.1 Landscaping Design	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
4.1.1.1 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)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	Yes	Yes
4.1.10 Fencing	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.1 Streetscapes and Townscapes

Description of non-compliance

The Manly DCP 2013 permits front fences to a maximum height of 1.5m where the area fence above 1m is 30% transparent. The proposed development includes a front boundary wall with a maximum height of 1.8m.

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 minimise any negative visual impact of walls, fences and carparking on the street frontage.

Comment:

The proposal includes the addition of a 1.8m masonry wall. The proposed height of the front fence in conjunction with the carport to the front of the dwelling house is not consistent with other development within the street. A condition of consent have been included in this recommendation to mitigate the visual impact of this development. The condition is as follows:

"The maximum fence height is not to exceed 1.5m from ground level on the street side of the fence.

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

Reason: To maintain consistency within the streetscape"

Objective 2) To ensure development generally viewed from the street complements the identified streetscape.

Comment:

Subject to condition of consent included above, the proposal will complement other development within the streetscape

Objective 3) To encourage soft landscape alternatives when front fences and walls may not be appropriate.

Comment:

The proposed front fence is satisfactory in this circumstance

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP 2013 and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

3.4.2 Privacy and Security

Concern is raised by the adjoining property to the south (No. 16 Beatty Street) regarding the visual and acoustic privacy impacts of the proposed development. Of particular concern is the first floor terrace.

Concern has also been raised with regards to the southern facing windows.

Merit consideration:

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

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

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

Comment:

Terrace

The proposed first floor terrace is located off the first floor bedroom and home office and orientated to

the rear (east) of the site. The terrace is setback 2.5m from the southern property boundary. From a view of what is visible from the existing dwelling it is evident there are some sight lines into the terrace and rear yard including swimming pool of the adjoining southern property. However, the sightlines are not the dominant views (which is directly to the rear of the subject site to the east) and inevitable given the sloping topography and residential use of the area. The expectation of complete privacy is not reasonable in this circumstance. Reasonable visual privacy is maintained between the subject site and neighbouring properties.

Having regard to noise, as noted above the terrace is located off a bedroom and study. The noise associated with the use of the terrace is not unreasonable in this residential setting.

Windows

Concern is raised in regards to the suitability of the windows at first floor level along southern elevation. The windows are located off the bedroom and home office to the rear of the first floor of the dwelling. The amended plan have deleted the home office window and increased the sill height to the bedroom window to 1.7m above finished floor level.

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

Comment:

The provision of a privacy screen on the southern elevation of the dwelling (ground floor) will not compromise significant view lines from the subject site or adjacent properties, nor will the screen exacerbate overshadowing towards the adjacent development.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposed development will allow for the passive surveillance of the street.

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.

3.4.3 Maintenance of Views

As a result of the public exhibition of the development application Council received one submission (16 Beatty Street, Balgowlah Heights) raising view loss as a concern.

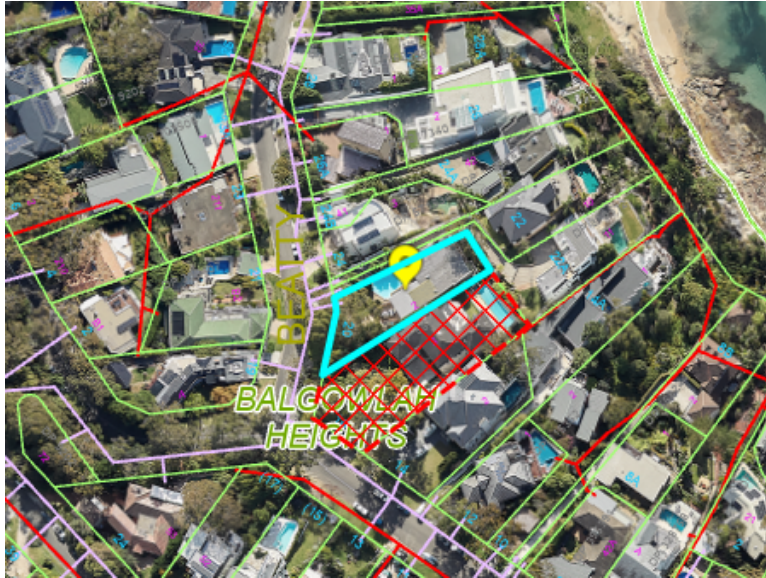


Image 1 - Location of objecting property (Red) and proximity to subject site.

Merit consideration:

The development is considered against the Objectives of the Control:

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

Comment:

The proposed development will result in a loss of district views from neighbouring properties. The loss of views is not unreasonable and will maintain adequate view sharing between properties.

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

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

1. Nature of the views affected

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

Comment to Principle 1:

No. 16 Beatty Street, Balgowlah Heights

A view sharing analysis was undertaken from the adjoining property to the south of the subject site at (No. 16 Beatty Street, Balgowlah Heights). The nature of the view affected from this property would be skyline and district views. The views in question are not highly valued, having regard to this principle.

No. 16 Beatty Street, currently enjoys views over the rear property boundary of North Harbour, the ocean and the land water interface. These views are not impacted by the proposed development.

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

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

Comment to Principle 2:

No. 16 Beatty Street, Balgowlah Heights

Views are obtained from the ground floor living rooms and terrace off the living room, first floor bedrooms, study and terrace. Views are taken over the side boundary.

3. Extent of impact

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

Comment to Principle 3:



Photo 1 - Ground floor terrace



Photo 2 - Ground floor living room



Photo 3 - First floor terrace



Photo 4 - First floor internal



Photo 5 - First floor terrace looking east

No. 16 Beatty Street, Balgowlah Heights

The internal rooms and terrace at ground and first floor levels will be impacted to a severe extent as a result of the proposed works. These areas are high use living areas, however, while there may be loss of district views as a result of the upper floor addition of the dwelling house, it is noted that views in question are not highly valued. Additionally the views are severely susceptible to any significant development on site. As noted previously, the primary views available from this property over the rear property boundary of North Harbour and the ocean are maintained in full.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

In considering the totality of impact it is noted that the dwelling house is non-compliant with the Height of buildings and FSR development standards under MLEP 2013. While it acknowledged that district views will be highly impacted, the view in question is not deemed to be highly valued and is severely vulnerable to development on the subject site. Further, the current view to the rear of the property of North harbour, which is highly valued is retained in full. The total severity of impacts upon water views is not considered to be unreasonable. A more skillful design is not likely to be able to achieve the same development potential and amenity while reducing view impacts to neighbouring properties.

Given the above, it is considered that the proposal is acceptable and view sharing is achieved.

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

Comment:

The proposed works will not cause unreasonable loss of view. In regards to 'view creep' the proposal does not include any unreasonable bulk which could result in unreasonable future view loss.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.3 Floor Space Ratio (FSR)

A detailed assessment of the FSR variation has been undertaken within the section of this report under Clause 4.4 of the Manly Local Environmental Plan 2013 (MLEP 2013). In summary, the applicant has adequately justified that compliance with the Clause 4.4 Floor Space Ratio Development Standard is unreasonable and unnecessary, and that there are sufficient environmental planning grounds to contravene the development standard.

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

Description of non-compliance

Clause 4.1.4.2 of the MDCP requires development be setback at least one third of the adjoining wall height. The development proposes multiple variations to the numeric requirement at the ground and first floor along both the eastern and western elevations.

The clause requires the first floor western wall be setback 2.7m-3.1m at the highest point. The application proposes a setback of 1.1m - 2.7m, non-compliant with the numeric control. This represents a 60% variation to the numeric control.

The clause requires the first floor eastern wall be setback 2.7m-3.1m. The application proposes a setback of 1.2m - 2.7m non-compliant with the numeric control. This represents a variation up to 66%.

Clause 4.1.4.2 requires windows from habitable rooms of dwellings that face the side boundary to be setback at least 3m from side boundaries. The proposed window altered along the eastern setback 1.2m from the side property boundary, will be non-compliant with the numerical control.

Merit consideration:

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

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

Comment:

The proposal maintains the prevailing pattern of front setbacks in the street, with parking towards the

frontage and the front of the dwelling aligning with the prevailing line of neighbouring dwellings. The proposal also involves an area of landscaping between the garage and dwelling as well as landscaping in front of the garage structure. This ensures the proposal provides for appropriate spatial proportions and suitable landscape character.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposal provides suitable design for privacy with suitable physical separation and screening (subject to conditions). The proposal also complies with the solar access provisions under the DCP and provides open corridors to surround the development to assist in the provision of equitable amenity.

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

Comment:

Flexibility to allow the numerical non-compliance with the setback controls is warranted given the complementary nature of the structure with the established character of the street, and the lack of unreasonable amenity impact including sufficient physical separation from neighbouring living spaces.

Objective 4) To enhance and maintain natural features by:

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

Comment:

Adequate planting is provided across the site.

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

Comment:

The subject site is not located in a bush fire zone.

Having regard to the above assessment, it is concluded that the proposed development is consistent

with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.5 Open Space and Landscaping

Description of non-compliance

Clause 4.1.5.2 of the Manly DCP requires at 60% (507.9sqm) of the site be total open spaces.. The development proposes 51.7% (437.8sqm), non-compliant with the numeric control (13.8% variation).

Merit consideration:

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

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

Comment:

The application does not propose the removal of any important landscape features (Trees, plants or rock formations).

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

Comment:

The proposed development provides suitable landscape open space on site, compliant with the numeric control.

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

Comment:

Amenity considerations including sunlight, privacy and views have been suitably mitigated to a reasonable standard as part of this application, despite the non-compliance with the numeric control.

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

Comment:

The proposed development provides ample soft open spaces for the purpose of onsite water infiltration to minimise stormwater runoff.

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

Comment:

The proposal is not likely to lead to a significant spread of weeds.

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

Comment:

The development will not affect any existing wildlife habitat and potential for wildlife corridors.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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

Description of non-compliance

The proposed garage is 6.7m in width, 8% non compliance to the control requiring a maximum width of 6.2m.

Merit consideration:

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

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

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

Comment:

The proposed development retains two parking spaces on the site in an accessible location, as required by Schedule 3 Part A1 of the Manly DCP. This is sufficient in supporting the vehicular access needs of the occupants of the site. In this way, the proposed development does not result in reliance on street parking.

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

Comment:

The proposed garage is adequately setback from the front boundary line. The front boundary setback is clear of structures and will have adequate landscaping to minimise the visual impact of the development

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

Comment:

The proposal only requires a small amount of excavation for the garage and it is not expected to have

any adverse impacts on site stability or ground water flows.

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

Comment:

The vehicular crossing has appropriately minimised to maximise off-street parking.

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

Comment:

The proposal provides adequate landscaping within the front setback to provide screening of internal accesses from public views.

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

Comment:

N/A - the proposal is located within a residential zone.

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

4.1.10 Fencing

This clause relies upon the objectives of clause 3.1 under Manly DCP 2013. An assessment of the proposal against the objectives under clause 3.1 has been provided within this report. The assessment found the proposal to be consistent with the objectives of clause 3.1, subject to conditions.

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 2024

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2024.

A monetary contribution of \$21,273 is required for the provision of new and augmented public

infrastructure. The contribution is calculated as 1% of the total development cost of \$2,127,273.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

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

PLANNING CONCLUSION

This proposal, for demolition works and construction of a dwelling house has been referred to the Development Determination Panel (DDP) as the application requests a greater than 10% variation to both the FSR and Height of Buildings development standards.

The concerns raised in the objections have been addressed and resolved by way of amended plans,

reducing the overall bulk and scale of the development.

The critical assessment issues included the assessment of the proposed variation of the FSR and Height of Buildings development standard, as well as assessment of amenity impacts on adjoining properties to the east and west of the subject site.

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

REASON FOR DETERMINATION

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

RECOMMENDATION

That Northern Beaches Council as the consent authority permits a contravention of clause 4.3 Height of Building and 4.4 Floor Space Ratio development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2024/0635 for Demolition works and construction of a dwelling house including a swimming pool on land at Lot 2 DP 554948, 20 Beatty Street, BALGOWLAH HEIGHTS, 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
A1012	E	Site Plan	BJB Architects	24 October 2024
A1021	E	Demolition Plan	BJB Architects	24 October 2024

A1022	E	Erosion and Sediment Control Plan	BJB Architects	24 October 2024
A1023	E	Excavation Plan	BJB Architects	24 October 2024
A1102a	E	Lower Ground Floor Plan - Front	BJB Architects	24 October 2024
A1101b	E	Lower Ground Floor Plan - Rear	BJB Architects	24 October 2024
A1102a	E	Upper Ground Floor Plan - Front	BJB Architects	24 October 2024
A1102b	E	Upper Ground Floor Plan - Rear	BJB Architects	24 October 2024
A1103a	E	First Floor Plan - Front	BJB Architects	24 October 2024
A1103b	E	First Floor Plan - Rear	BJB Architects	24 October 2024
A1104a	E	Roof Plan - Front	BJB Architects	24 October 2024
A1104b	E	Roof Plan - Rear	BJB Architects	24 October 2024
A1201	E	Sections	BJB Architects	24 October 2024
A1202	E	Sections	BJB Architects	24 October 2024
A1301	E	East and North Elevation	BJB Architects	24 October 2024
A1302	E	West and South Elevation	BJB Architects	24 October 2024
A1303	E	Streetscape Elevation	BJB Architects	24 October 2024
A1601	E	West Management Plan	BJB Architects	24 October 2024
L-02	B	Site Plans	Site Design and Studios	9 May 2024
L-04	B	Existing Tree Plan	Site Design and Studios	9 May 2024
L-10	B	First Ground Floor Plan - Rear	Site Design and Studios	9 May 2024
L-11	B	Planting Details	Site Design and Studios	9 May 2024
1/C	-	Stormwater Management Plan	Taylor Consulting	9 May 2024

Approved Reports and Documentation	
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Document Title	Version Number	Prepared By	Date of Document
Arboricultural Report	-	Jacksons Nature Works	10 May 2024
Geotechnical Investigation Report	-	Core Geotech	21 April 2024
BASIX Certificate No. 1746865S_03	-	Integreco Consulting	25 September 2024

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

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

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

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	N/A

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

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

3. **Approved Land Use**

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

dwelling house means a building containing only one dwelling

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

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

4. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon

- plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- (i) showing the name, address and telephone number of the Principal Certifier for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.
- Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

5. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
- 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday,
 - No work on Sundays and Public Holidays.
- Demolition and excavation works are restricted to:
- 8.00 am to 5.00 pm Monday to Friday only.
- (Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).
- (b) Construction certificate plans are to be in accordance with all finished levels identified on approved plans. Notes attached to plans indicating tolerances to levels are not approved.
- (c) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (d) At all times after the submission of the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (e) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (f) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (g) Prior to the release of the Construction Certificate, payment of the following is required:
- i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
 - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
 - iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The

amount payable is subject to indexation at the time of payment.

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

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

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018

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

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

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2024

A monetary contribution of \$21,272.73 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$2,127,273.00.

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

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

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

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

7. Security Bond

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

8. On Slab Landscape Works

Details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over structures, upon which soil and planting is being provided. Landscape treatment details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, and services connections. The following soil depths are required to support planting as proposed: 300mm for groundcovers, perennials, ornamental grasses.

Design certification shall be submitted to the Certifier by a qualified Structural Engineer, that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

Reason: To ensure appropriate soil depth for planting and ensure waterproofing and drainage is installed.

9. No Clearing of Vegetation

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

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

Reason: To protect native vegetation.

10. Amendment of Landscape Plans

The submitted Landscape Plan is to be amended in accordance with the following:

- Inclusion of two *Angophora costata* trees to compensate for the loss of prescribed trees 16 and 21 as these are hollow bearing trees.
- Removal of all exempt species as identified on Council's website (<https://www.northernbeaches.nsw.gov.au/environment/trees/exempt-tree-species-list>) and replacement with a suitable native alternative
- Removal of all species identified as weeds on the Northern Beaches Local Priority Weed Management Plan and replacement with a suitable native alternative

- Removal of all species identified as weeds under the Biosecurity Act 2015 (i.e. *Murraya paniculata*) and replacement with a suitable native alternative

The Landscape Plan is to be amended by a qualified landscape architect and provided to the Certifier prior to issue of the Construction Certificate.

Reason: To maintain and replace habitat on the site.

11. **On-Site Stormwater Detention Details**

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by Taylor Consulting, drawing number Storm 1/C, Storm 2/A, dated 9/5/2024. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering.

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

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

12. **Vehicle Crossings Application**

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing maintaining existing width in accordance with Northern Beaches Council Standard Drawing Maximum High in accordance with Section 138 of the Roads Act 1993.

Note, driveways are to be in plain concrete only.

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

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

Reason: To facilitate suitable vehicular access to private property.

13. **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 2.6 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.

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

15. **Boundary Identification Survey**

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

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

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

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

16. **Front Fence**

The maximum fence height is not to exceed 1.5m from ground level on the street side of the fence.

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

Reason: To maintain consistency within the streetscape

17. **Compliance with Standards**

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

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

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

18. **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.

19. **Sydney Water "Tap In"**

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

20. **Project Arborist**

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged prior to any commencement of works on site to provide tree protection measures in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment. The Project Arborist shall be in attendance and supervise all demolition, excavation and construction works in proximity to existing trees retained, and works as nominated in section 4. Recommendations.

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

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

Reason: Tree protection.

21. **Tree Removal Within the Property**

This consent approves the removal of existing prescribed trees on the subject site as identified in the Arboricultural Impact Assessment, approved Plans, or as listed below:

- a) tree 14 and 15 (Camellia), 16 and 21 (Angophora),
- b) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised development works.

22. **Tree Removal Within the Road Reserve**

This consent approves the removal of existing trees within the road reserve as identified in the Arboricultural Impact Assessment, or as listed below:

- a) tree 6,

b) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Removal of the approved tree/s in the road reserve shall only be undertaken by a Council approved tree contractor, as engaged by the applicant. Details of currently approved tree contractors can be obtained from Northern Beaches Council's Trees Services business unit prior to removal.

Reason: Public liability.

23. **Pre-Construction Dilapidation Report**

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifier prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

Properties: Nos. 16, 22A, 24 Beatty Street, Balgowlah Heights

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifier and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifier must be satisfied that the requirements of this condition have been met prior to commencement of any works. If access is denied, then no dilapidation report is required.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

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

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site

DURING BUILDING WORK

25. **Protection of Rock and Sites of Significance**

All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works. Should any Aboriginal sites be

uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council (MLALC) are to be contacted.

Reason: Preservation of significant environmental features.

26. Protection of Existing Street Trees

All existing street trees in the vicinity of the works shall be retained during all construction stages, and the street tree(s) fronting the development site shall be protected by tree protection fencing in accordance with Section 4 of AS4970-2009 Protection of trees on development sites. As a minimum the tree protection fencing for street tree(s) fronting the development site shall consist of standard 2.4m panel length to four sides and in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings, unless otherwise directed by an Arborist with minimum AQF Level 5 in arboriculture. All fencing shall be located to allow for unrestricted and safe pedestrian access upon the road verge.

All street trees within the road verge are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree(s) is prohibited. No excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of street trees.

Reason: Street tree protection.

27. Tree and Vegetation Protection

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

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

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-

2009 Protection of trees on development sites,

ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,

x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,

xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

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

Reason: Tree and vegetation protection.

28. **Pre-clearance Survey**

Any habitat for native wildlife (including tree hollows) approved for removal is to be inspected for native wildlife prior to its removal. If native wildlife is found within habitat to be removed, a licensed wildlife rescue and rehabilitation organisation must be contacted for advice.

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

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

Reason: To protect native wildlife.

29. **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.

30. **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.

31. **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.

32. **Geotechnical Requirements**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

33. **Demolition Works - Asbestos**

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifier, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

34. **Survey Certificate**

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

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

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

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

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

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

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

35. **Landscape Completion**

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

- a) landscape works are to be contained within the legal property boundaries,
- b) tree, shrub and groundcover planting shall be installed as indicated on the approved Landscape Plans, unless otherwise imposed by conditions,
- c) two (2) locally native trees selected from Manly DCP Schedule 4 - Part B - Native Tree Selection, to achieve at least 10 metres height at maturity shall be planted within the front of

the property in locations in proximity to the removed trees as this shall not hinder any existing views, that are not currently available with the existence of the two Angophora's; shall meet the requirements of Australian Standard AS2303 - Tree Stock for Landscape Use; planted into a prepared planting hole 1m x 1m x 600mm depth generally, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings and other trees or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,

d) the nominated *Raphiolepis indicaspecies* shall not be planted and shall be replaced with a non self-seeding species of similar size and form,

e) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces,

f) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone.

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

Reason: Environmental amenity.

36. **Condition of Retained Vegetation**

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Principal Certifier, assessing the health and impact on all existing trees required to be retained on the approved Plans or as listed in the Arboricultural Impact Assessment, including the following information:

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

Reason: Tree and vegetation protection.

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

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

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

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

38. **Post-Construction Dilapidation Report**

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

- Compare the post-construction report with the pre-construction report,
- Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- Should any damage have occurred, suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

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

Reason: To maintain proper records in relation to the proposed development.

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

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

Written certification is to be provided to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

40. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**

The Applicant shall lodge the Legal Documents Authorisation Application with Council. The application shall include the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan prepared by a registered surveyor), and Civil Engineers' certification.

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

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

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

41. **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 2.6 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

42. Landscape Maintenance

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting. If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plans and any conditions of consent.

The approved landscape area shall in perpetuity remain as planting under the development consent, and shall not be replaced with any hard paved surfaces or structures.

Reason: To maintain local environmental amenity.

43. Control of Domestic Dogs/Cats

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

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

Reason: To protect native wildlife and habitat.

44. Geotechnical Recommendations

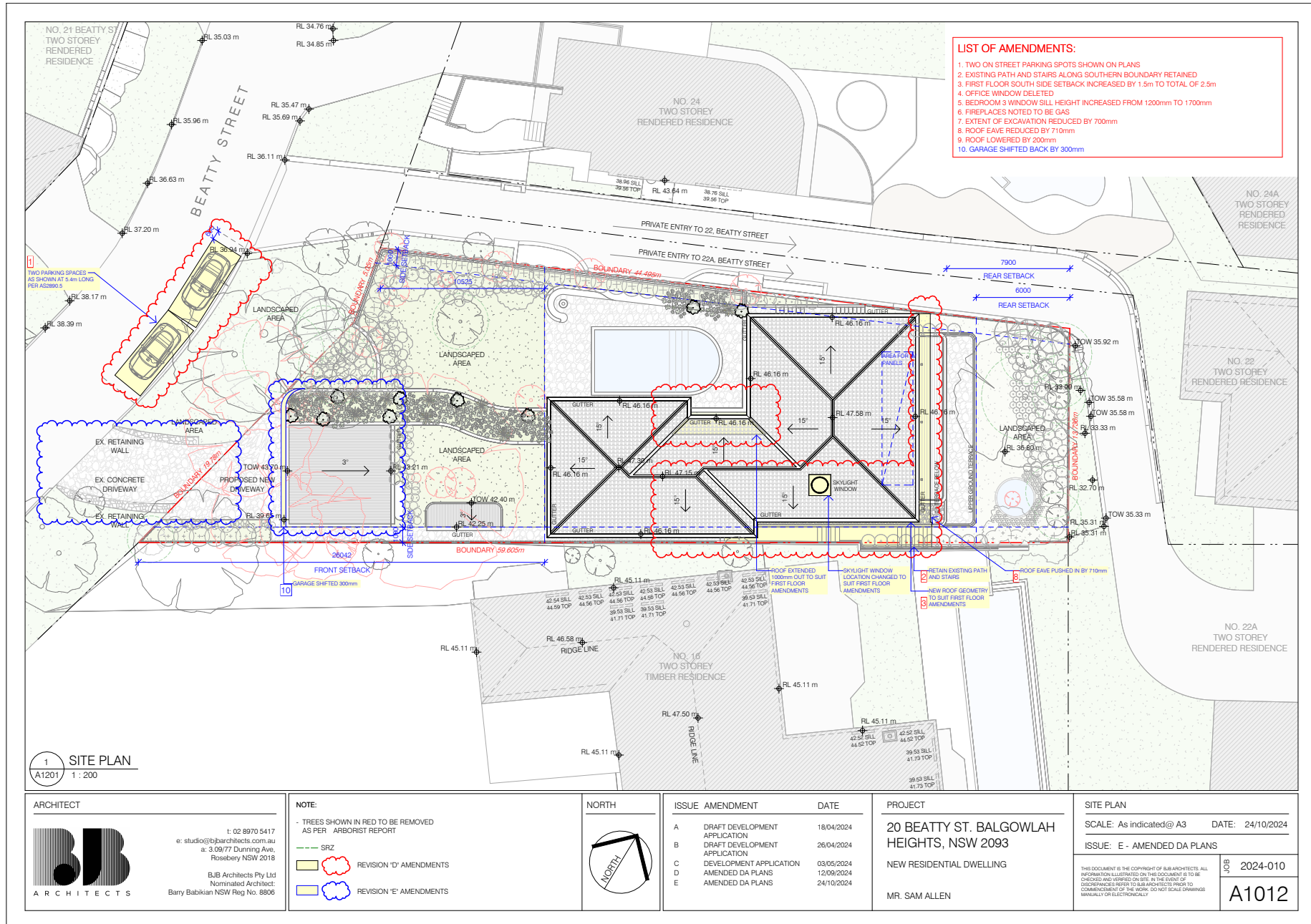
Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

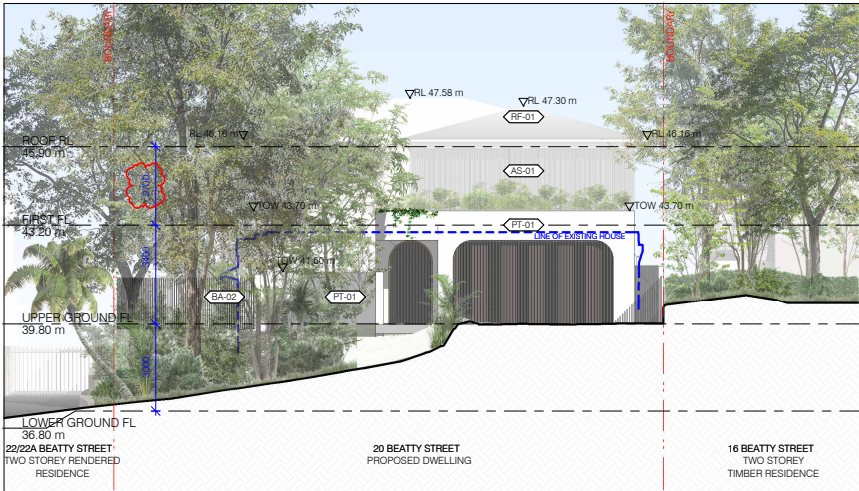
Reason: To ensure geotechnical risk is mitigated appropriately.

45. 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.

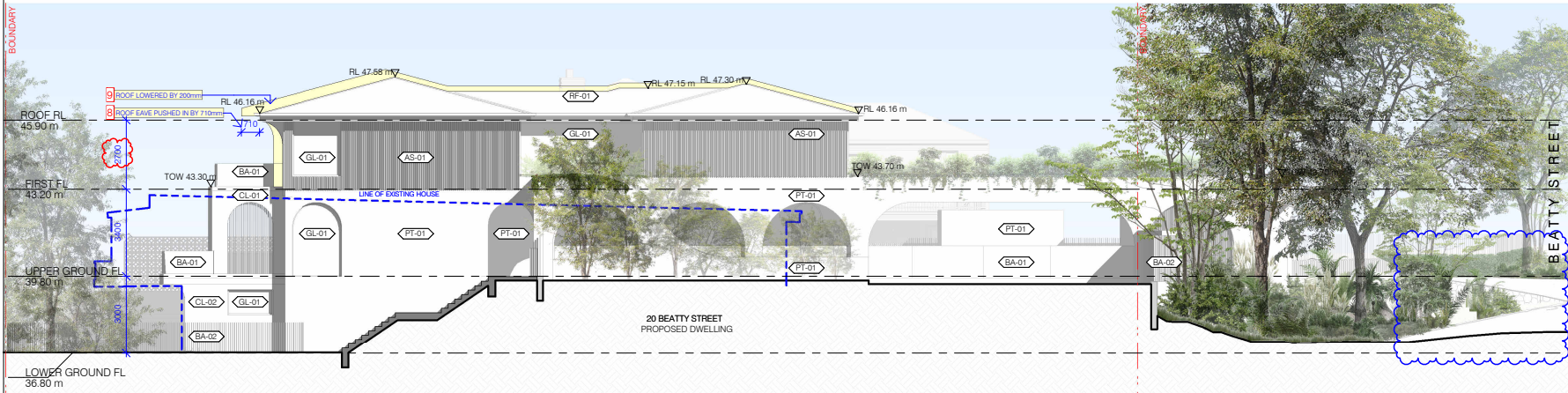
Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.





1 EAST (FRONT) ELEVATION
1 : 150

- LIST OF AMENDMENTS:**
1. TWO ON STREET PARKING SPOTS SHOWN ON PLANS
 2. EXISTING PATH AND STAIRS ALONG SOUTHERN BOUNDARY RETAINED
 3. FIRST FLOOR SOUTH SIDE SETBACK INCREASED BY 1.5m TO TOTAL OF 2.5m
 4. OFFICE WINDOW DELETED
 5. BEDROOM 3 WINDOW SILL HEIGHT INCREASED FROM 1200mm TO 1700mm
 6. FIREPLACES NOTED TO BE GAS
 7. EXTENT OF EXCAVATION REDUCED BY 700mm
 8. ROOF EAVE REDUCED BY 710mm
 9. ROOF LOWERED BY 200mm
 10. GARAGE SHIFTED BACK BY 300mm



2 NORTH ELEVATION
1 : 150

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BBJ Architects Pty Ltd
Nominated Architect:
Barry Babikian NSW Reg No. 8806

EXTERNAL FINISHES SCHEDULE:

PT-01 RENDER & PAINT COLOUR NATURAL WHITE (or similar)	CL-02 WHITE LIMESTONE OR SIMILAR	BA-01 GLASS BALUSTRADE	RF-01 ROOF TILES COLOUR CHARCOAL	ST-01 CONCRETE STONE COMBUSTION
CL-01 STUCCO RENDER	GL-01 ALUMINIUM FRAMED GLAZING COLOUR MONUMENT	BA-02 WHITE POWDER COATED METAL BALUSTRADE	AS-01 ALUMINIUM SCREENS COLOUR CLASSIC CREAM (or similar)	ST-02 WALKWAY STONE CRAZY PAVERS

ISSUE	AMENDMENT	DATE
A	DRAFT DEVELOPMENT APPLICATION	18/04/2024
B	DRAFT DEVELOPMENT APPLICATION	26/04/2024
C	DEVELOPMENT APPLICATION	03/05/2024
D	AMENDED DA PLANS	12/09/2024
E	AMENDED DA PLANS	24/10/2024

PROJECT

20 BEATTY ST. BALGOWLAH
HEIGHTS, NSW 2093

NEW RESIDENTIAL DWELLING

MR. SAM ALLEN

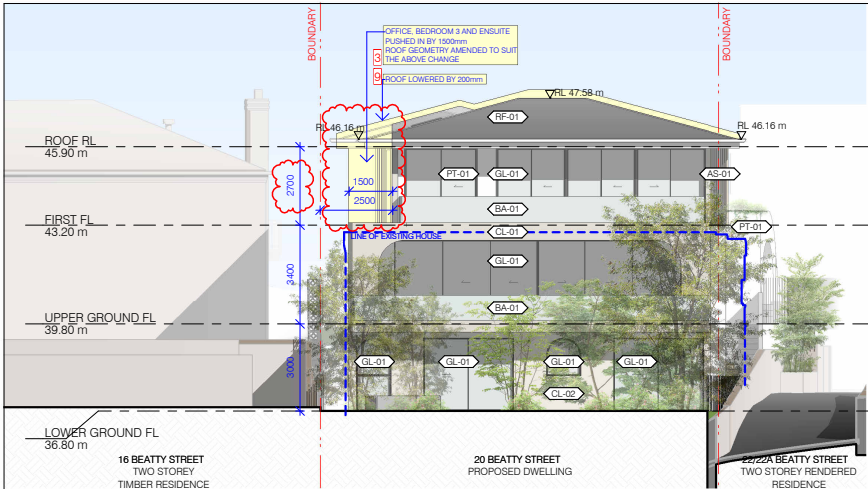
EAST AND NORTH ELEVATION

SCALE: As indicated @ A3 DATE: 24/10/2024

ISSUE: E - AMENDED DA PLANS

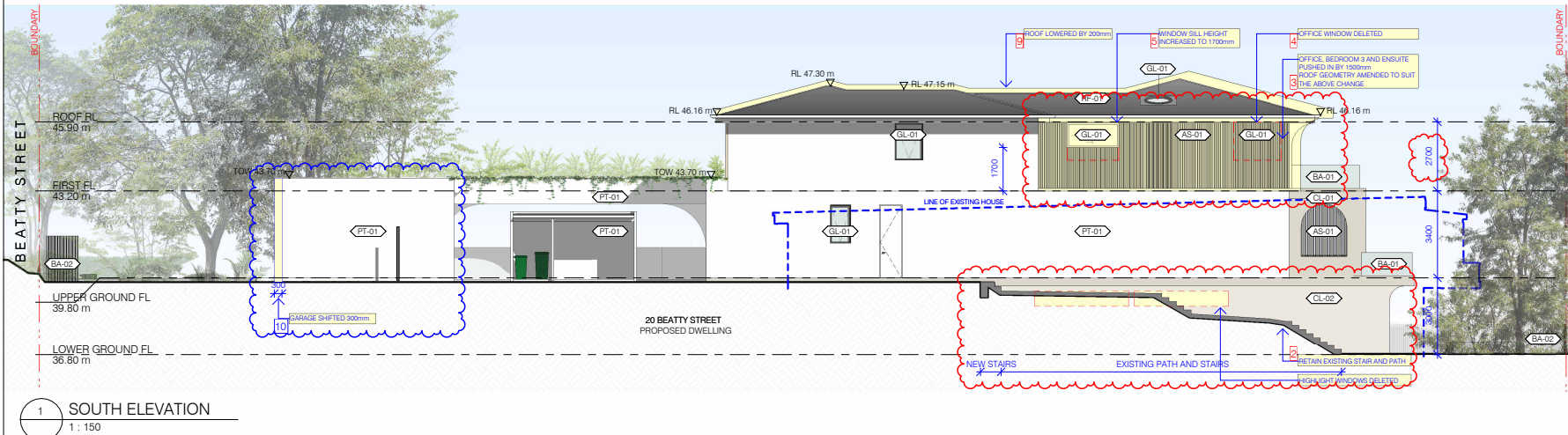
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JOB NO. 2024-010
A1301



LIST OF AMENDMENTS:

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9. ROOF LOWERED BY 200mm
10. GARAGE SHIFTED BACK BY 300mm



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Nominated Architect:
Barry Babikian NSW Reg No. 8806

EXTERNAL FINISHES SCHEDULE:

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CL-01 STUCCO RENDER	GL-01 ALUMINIUM FRAMED GLAZING COLOUR MONUMENT	BA-02 WHITE POWDERCOATED METAL BALUSTRADE	AS-01 ALUMINIUM SCREENS COLOUR CLASSIC CREAM (or similar)	ST-02 WALKWAY STONE, CRAZY PAVERS

ISSUE	AMENDMENT	DATE
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E	AMENDED DA PLANS	24/10/2024

PROJECT
20 BEATTY ST. BALGOWLAH
HEIGHTS, NSW 2093
NEW RESIDENTIAL DWELLING
MR. SAM ALLEN

WEST AND SOUTH ELEVATION

SCALE: As indicated @ A3 DATE: 24/10/2024
ISSUE: E - AMENDED DA PLANS

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JOB 2024-010
A1302

1 Updated Clause 4.6 variation request – Height of Buildings

Proposed dwelling house

20 Beatty Street, Balgowlah Heights

1.1 Introduction

This updated clause 4.6 variation request has been prepared having regard to Revision E plans prepared by BJB Architects.

This clause 4.6 variation has been prepared with respect to a proposed new dwelling at 55 Bower Street, Manly, having regard to the Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

1.2 Manly Local Environmental Plan 2013 (MLEP 2013)

1.2.1 Clause 4.3 – Height of Buildings

Pursuant to Clause 4.3 of MLEP 2013, the height of buildings on the subject land is not to exceed 8.5m. The objectives of this control are as follows:

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

Building height is defined as follows:

building height (or height of building) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like

Ground level existing is defined as follows:

ground level (existing) means the existing level of a site at any point.

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

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

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

Whilst the vast majority of the proposed development is maintained at or below the 8.5m height plane, an area at the north-eastern end of the building protrudes above the height plane, with a maximum building height of 9.841m. The non-compliance is limited to an area located above an area of historical excavation. The non-compliance is representative of a maximum 1.341m or 15.7% variation of the 8.5m building height prescribed. The extent of non-compliance is demonstrated in the following images.

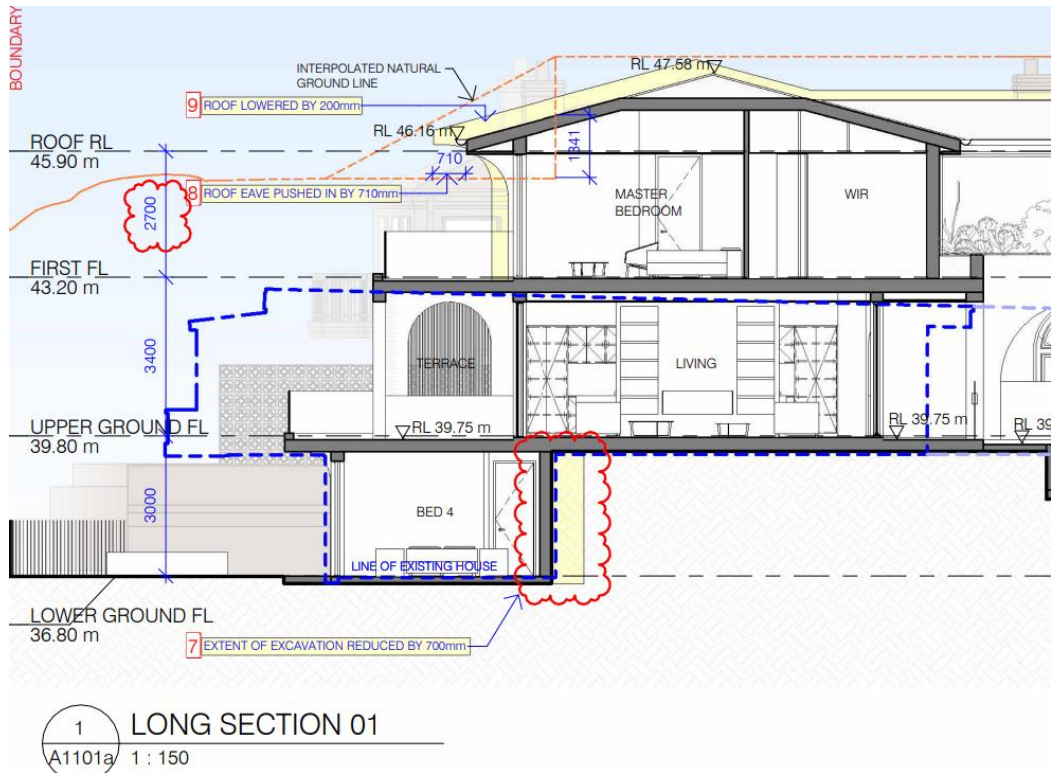


Figure 1 Plan extract showing building height breach in section

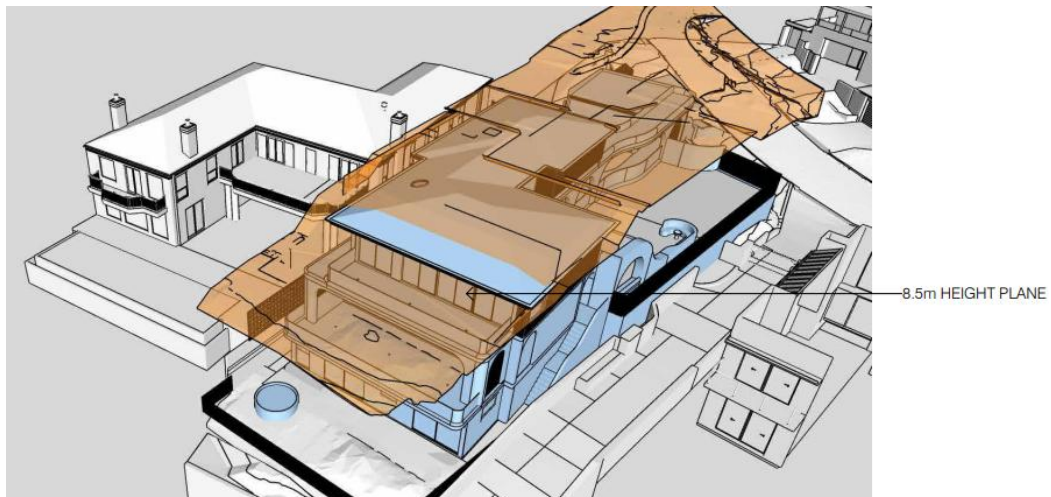


Figure 2 Height blanket diagram (ground level existing)

1.2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of MLEP 2013 provides:

The objectives of this clause are:

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

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

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner. At [90] of *Initial Action* the Court held that:

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

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

Clause 4.6(2) of MLEP 2013 provides:

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

This clause applies to the building height development standard in clause 4.3 of MLEP 2013.

Clause 4.6(3) of MLEP 2013 provides:

Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

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

The proposed development does not comply with the building height development standard at clause 4.3 of MLEP 2013 which specifies a building height of 8.5m. However, strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

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

1.3 Relevant Case Law

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

The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].

A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].

A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].

A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].

A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.

These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

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

1. Is clause 4.3 of MLEP 2013 a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard.

1.4 Request for variation

1.4.1 Is clause 4.3 of MLEP 2013 a development standard?

The definition of “development standard” at clause 1.4 of the EP&A Act includes a provision of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

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

Clause 4.3 of MLEP 2013 prescribes a height limit for development on the site. Accordingly, clause 4.3 of MLEP 2013 is a development standard.

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

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

The first approach is relevant in this instance, being that compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Consistency with objectives of the building height development standard

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

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

Comment: The building height of the proposed development is consistent with that of surrounding development and development within the visual catchment of the site. The non-compliance occurs as a result of historical excavation in a minor area of the site, which is not representative of the topographic landscape of the locality. In this respect, it is noted that the proposed development is otherwise compliant with the height plane, excluding the anomaly of the ground plane created by the existing excavation.

The non-compliance with the height plane when measured to existing ground level does not detract from consistency with this objective.

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

Comment: The proposed development is well articulated with a bulk and scale that is commensurate with surrounding and nearby development. The development has been designed to step down the slope of the site and is responsive to the natural topography of the site. Non-compliance with the 8.5m height plane is limited to a minor portion of the development that does not contribute to excessive bulk and scale.

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

This objective is achieved notwithstanding the building height breaching elements proposed.

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

Comment: Having inspected the site and its immediate surrounds to identify potential view lines across the site I am satisfied that the building height breaching elements will not result in the disruption of public or private views to the extent that a view sharing outcome is not maintained. This objective is achieved notwithstanding the building height breaching elements proposed.

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

Comment: Notwithstanding the building height non-compliant element of the development compliant solar access is maintained to adjacent dwellings. This objective is achieved notwithstanding the building height breaching elements proposed.

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

Comment: The height of the proposed development does not result in any adverse impacts upon existing vegetation or topography. This objective is achieved notwithstanding the building height breaching elements proposed.

The non-compliant development, as it relates to building height, demonstrates consistency with objectives of the zone and the building height development standard objectives. Adopting the first option in *Wehbe*, strict compliance with the height of buildings standard has been demonstrated to be unreasonable and unnecessary in the circumstances of this application.

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

In *Initial Action* the Court found at [23]-[25] that:

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

The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.

The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].

Sufficient environmental planning grounds

Ground 1 - Topography of the land

The portion of the site over which the building height breach occurs is steeply sloping with the topography contributing towards the extent of the building height breach proposed.

Ground 2 - Contextually responsive building design

Despite non-compliance with the 8.5m building height development standard, the proposed development is consistent and compatible with the height of surrounding development.

Council's acceptance of the proposed height variation will ensure the orderly and economic development of the site, in so far as it will ensure conformity with the scale and character established by other existing development within the visual catchment of the site, consistent with Objective 1.3(c) of the EP&A Act.

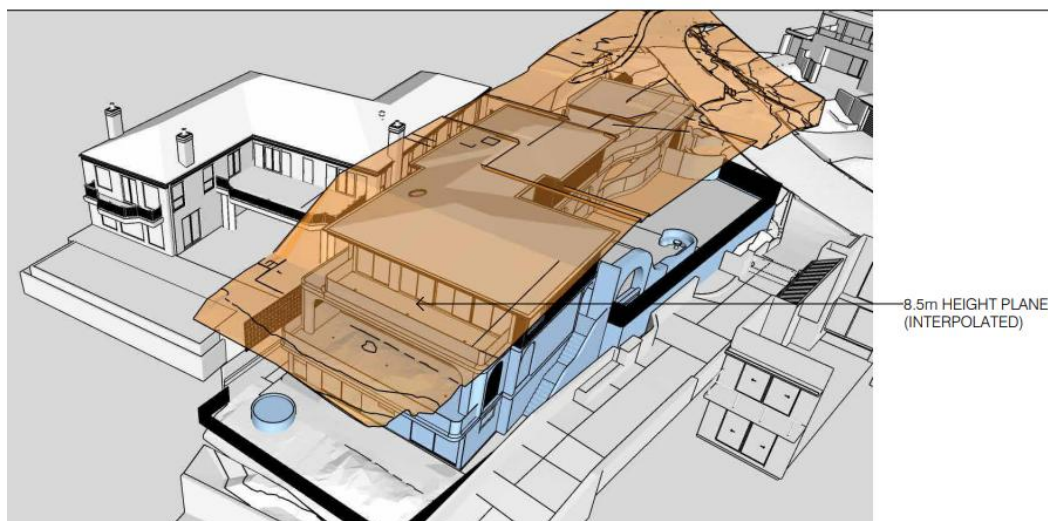
The proposed development has been sensitively designed to respond to both the location of the site and also the form and massing of adjoining development. The building is of high design quality with the variation facilitating a height that provides for contextual built form compatibility, consistent with Objective 1.3(g) of the Act.

Ground 3 – Existing Excavation

The proposed height breach is a direct consequence of existing excavation. As demonstrated on the Height Plane Diagram at Figure 3 on the following page, the proposed development is compliant with 8.5m height plane when measured to existing ground levels along the perimeter of the building and when the area of existing excavation is excluded.

Consistent with the findings of Commissioner O'Neill in *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582, 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.

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



**Figure 3: Height Plane Diagram based on assumed natural ground level
(excluding existing excavation)**

1.5 Conclusion

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

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

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

Boston Blyth Fleming Pty Limited

Greg Boston

B Urb & Reg Plan (UNE) MPIA

Director

11.11.24

1. Updated Clause 4.6 variation request - Floor space ratio

Proposed dwelling house

20 Beatty Street, Balgowlah Heights

1.1 Introduction

This updated clause 4.6 variation request has been prepared in relation to the Revision E plans prepared by BJB Architects.

This clause 4.6 variation has been prepared with respect to a proposed new dwelling at 55 Bower Street, Manly, having regard to the Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

1.2 Manly Local Environmental Plan 2013 (MLEP 2013)

1.2.1 Clause 4.4 – Floor Space Ratio

Pursuant to Clause 4.4 of MLEP 2013, the floor space ratio of development on the subject land is not to exceed 0.4:1. The objectives of this control are as follows:

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

In accordance with the provisions of clause 4.5(2) of MLEP 2013, floor space ratio is defined as follows:

*The **floor space ratio** of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area.*

The accompanying plans nominate a gross floor area of 385.6m², resulting in a FSR of 0.45:1, representative of a variation to the development standard of 47m² or 13.8%.

1.2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of MLEP 2013 provides:

The objectives of this clause are:

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

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

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner. At [90] of *Initial Action* the Court held that:

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

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

Clause 4.6(2) of MLEP 2013 provides:

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

This clause applies to the floor space ratio development standard in clause 4.4 of MLEP 2013.

Clause 4.6(3) of MLEP 2013 provides:

Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (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 floor space ratio development standard at clause 4.4 of MLEP 2013 which specifies a maximum floor space ratio of 0.4:1. However, strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

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

1.3 Request for variation

1.3.1 Is clause 4.4 of MLEP 2013 a development standard?

The definition of “development standard” at clause 1.4 of the EP&A Act includes a provision of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- (d) *the cubic content or floor space of a building,*

Clause 4.4 of MLEP 2013 prescribes a bulk and scale provision that seeks to control the floor space ratio of certain development. Accordingly, clause 4.4 of MLEP 2013 is a development standard.

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

The common approach for an applicant to demonstrate that compliance with a development standard is unreasonable or unnecessary are set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827. The first approach is relevant in this instance, being that compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Consistency with objectives of the floor space ratio development standard

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

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

Comment: The proposed dwelling is set back between 10.534m and 26.042m from the splayed front boundary with the relatively wide road reserve at the frontage of the site occupied by dense landscaping with landscaping within the subject site also providing substantial screening to the proposed dwelling.

In this regard, the proposed dwelling house will be screened to a significant extent as viewed from the street with the two storey form and setbacks proposed ensuring that it will not be perceived as inappropriate or jarring in streetscape contact.

The proposed new dwelling is well articulated, with a height, bulk and scale that is appropriately responsive to that of surrounding and nearby development. As shown in Figures 1 the massing of the building is consistent and compatible with that of other development along Beatty Street.



Figure 1: Extract of Front Elevation

I have undertaken an analysis of the floor space ratio of surrounding and nearby development within the site's visual catchment and subject to the same 0.4:1 floor space ratio development standard approved by Council in the past 9 years, being development approved under the provisions of MLEP 2013 and to the extent that information is available on Council's DA Tracker. This information is detailed in Figure 2 over page.

With this in mind, Council can be reasonably satisfied that the bulk and scale of the proposed development, as expressed as a floor space ratio, is consistent with the existing and desired character of the area. This objective is achieved notwithstanding the FSR non-compliance proposed.

With a floor space ratio of 0.5:1, the proposed development is entirely consistent and compatible with the bulk and scale of surrounding development, which seemingly range between 0.4:1 and 0.57:1.

20 BEATTY STREET, BALGOWLAH HEIGHTS**Adjoining property DA (with documentation available)**

- No. 8B:** Approved DA 2022
- increased FSR to 0.48:1
- No. 11:** Approved DA 2023
- increased FSR 0.476:1
- No. 13:** Approved DA 2020
- increased FSR 0.57:1
- increased max building height of 9.58m
- No. 14A:** Approved DA 2020
- increase FSR to 0.46:1
- increase max. height of 9.34m
- No 19:** Approved Da 2015
- increased FSR 0.53:1
- increased building height to 9.7m
- No. 24A:** Approved DA 2022
- increased FSR to 0.5:1 on provision that existing FSR was above council allowance
- increased max. height of 13.54m
- No. 26:** Refusal. Non compliance with bldg height control, visual character + impact on privacy, views and outlooks of neighbouring properties.
- No. 28:** Approved DA 2019. No Change to FSR
- No. 31:** Approved DA 2022. No change to FSR, building height
- No.34:** Approved DA 2019
- increased FSR 0.53: 1
- increased max. height of 9.138
- No. 20 Fisher (15 Beatty):** Approved DA 2021
- increased FSR 0.438:1
- increased max. building height to 8.9m

**Figure 2: Approved FSR Analysis**

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

Comment: Having inspected the site and its immediate surrounds to identify potential view lines across the site I am satisfied that the building, by virtue of its density and bulk will not obscure important landscape and townscape features. This objective is achieved notwithstanding the FSR non-compliance proposed.

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

Comment: 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 in a streetscape context or as viewed from the adjoining properties.

The proposed development is compatible with the existing streetscape and the character of the wider R2 Low Density Residential zone.

Furthermore, despite non-compliance with the maximum FSR prescribed, the proposed development achieves consistency with the landscaped area controls of MDCP 2013, enabling the provision of a high-quality landscaped solution for the site.

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

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

Comment: The proposed development does not result in any unreasonable impacts upon neighbouring properties with regards to overshadowing, visual or acoustic privacy. The proposed built form is highly articulated, by virtue of recessed elements, varied setbacks, differing materials and landscaping, and will not be overly dominant as seen from the street or adjoining properties. The non-compliant FSR does not detract from consistency with this objective.

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

Comment: Not Applicable.

The non-compliant development, as it relates to floor space ratio, demonstrates consistency with objectives of the zone and the floor space ratio development standard objectives. Adopting the first option in *Wehbe*, strict compliance with the floor space ratio development standard has been demonstrated to be unreasonable and unnecessary in the circumstances of this application.

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

In *Initial Action* the Court found at [23]-[25] that:

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

The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.

The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].

Sufficient environmental planning grounds

Ground 1 – Superior architectural design

The apparent size of 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 floor space that provides for contextual built form compatibility, consistent with Objectives 1.3(c) and (g) of the Act.

There is no specific portion of the floor plan that can be pinpointed as attributing to the non-compliance, nor any area that warrants redesign or amendment due to impacts to adjoining dwellings.

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 Low Density Residential zone.

Ground 2 – Established Precedence

As demonstrated in this request, Council has regularly approved variations to the floor space ratio development standard prescribed by MLEP 2013 along Bower Street involving variations to the floor space ratio development standard to differing degrees.

As established in *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 and *Woollahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115, and as reinforced in *HPG Mosman Projects Pty Ltd v Mosman Municipal Council* [2021], adjacent development which also exceeds the floor space ratio control should be considered when determining desired future character.

With a floor space ratio of 0.45:1, the proposed development is entirely consistent and compatible with the bulk and scale of surrounding development, which seemingly range between 0.4:1 and 0.57:1.

Support of a variation generally consistent with recent development consents issued by Council within the sites visual catchment is consistent with Object 1(c) of the EP&A Act, in so far as it reflects the orderly development of the land and promotes consistency in Council's decision making process.

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

1.4 Conclusion

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

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

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

Boston Blyth Fleming Pty Limited



Greg Boston

B Urb & Reg Plan (UNE) MPIA

Director

11.11.24

ITEM 3.3	DA2024/0448 - 17 MOORE STREET CLONTARF - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL
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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 DA2024/0448 for alterations and additions to a dwelling house including a swimming pool on land at Lot 9 DP 2610, 17 Moore Street CLONTARF, subject to the conditions set out in the Assessment Report.

Reporting manager	Rodney Piggott
TRIM file ref	2024/836429
Attachments	↓1 Assessment Report ↓2 Site Plan and Elevations ↓3 Clause 4.6

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/0448
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Responsible Officer:	Julie Edwards
Land to be developed (Address):	Lot 9 DP 2610, 17 Moore Street CLONTARF NSW 2093
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Evan Peters

Application Lodged:	26/04/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	02/05/2024 to 16/05/2024
Advertised:	Not Advertised
Submissions Received:	5
Clause 4.6 Variation:	4.4 Floor space ratio: 47.96%
Recommendation:	Approval

Estimated Cost of Works:	\$ 916,025.00
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EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) due to the proposed variation to the Floor Space Ratio (FSR) development standard.

The proposed variation to the FSR development standard equates to 47.96%. The non-compliance with the FSR development standard arises due to an existing floor space ratio variation and increased floor area proposed under this application. The site has an existing FSR of 0.54:1 (264.9m²) the proposal will be increasing this by 25.4m² to 290.3m² or an FSR of 0.59:1.

Five submission were received in relation to this application, raising concern with solar access,

privacy, stormwater, the rear fence and view loss. Each issue has been addressed within the report and where appropriate conditions have been recommended.

Critical assessment issues relate to the request to vary the floor space ratio development standard, visual privacy, view loss, solar access, wall height, side and front setbacks, total open space, swimming pool and fencing. These issues have been addressed within the assessment report. Overall, in consideration of the variations and noncompliant elements proposed, the development is acceptable on merit.

The 4.6 request for the non-compliance with FSR standard arises due to an undersized allotment. It is noted that the FSR does achieve compliance with the FSR variations permitted within Manly Development Control Plan 2013 (MDCP) for undersized allotments. The additional floorspace does not increase the bulk or scale of the building.

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

PROPOSED DEVELOPMENT IN DETAIL

The application seeks approval for alterations and additions to a dwelling house including a swimming pool and carport. The works include the following:

Proposed Lower Ground Floor:

- Internal lift and stair access,
- Plant rooms,
- Covered barbecue area,
- Landscape works, and
- Swimming pool and spa.

Existing Ground Floor:

- Formal entry,
- Four bedrooms,
- Study,
- Workshop,
- Laundry,
- Two bathrooms,
- Family room,
- Rear terrace with spiral staircase,
- Double carport with green roof accessed via a new driveway,
- Bin area,
- Fence with pedestrian gate, and
- Internal stair and lift access is provided to the levels above and below.

Existing First floor:

- Open plan kitchen, living and dining area opening onto a rear facing terrace,
- Master bedroom with ensuite and walk-in robe with a small street facing balcony accessed from the bedroom,
- Bathroom, and

- Internal stair and lift access is provided to the levels below.

Planners note:

The application, as lodged, was inconsistent with the requirement of the MLEP and MDCP in regards to the carport, driveway, swimming pool location, excavation of lower ground floor and floor space utilisation, privacy, stormwater, landscaping and view loss. The applicant was requested to provide amended plans and information that satisfied Council's concerns.

The applicant submitted amended plans that addressed Council's Landscape Officer, Development Engineer and the development assessment officers' concerns.

The application was not re-notified as it was reducing the environmental impact. However, those that submitted submissions, were notified of the changes and allowed time to provide additional comments on the amendments. Four additional submissions were submitted.

The application was assessed based on the amended plans by Hobbs Jamieson Architecture dated 17.09.24.

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 - 6.2 Earthworks

Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 3.4.3 Maintenance of Views

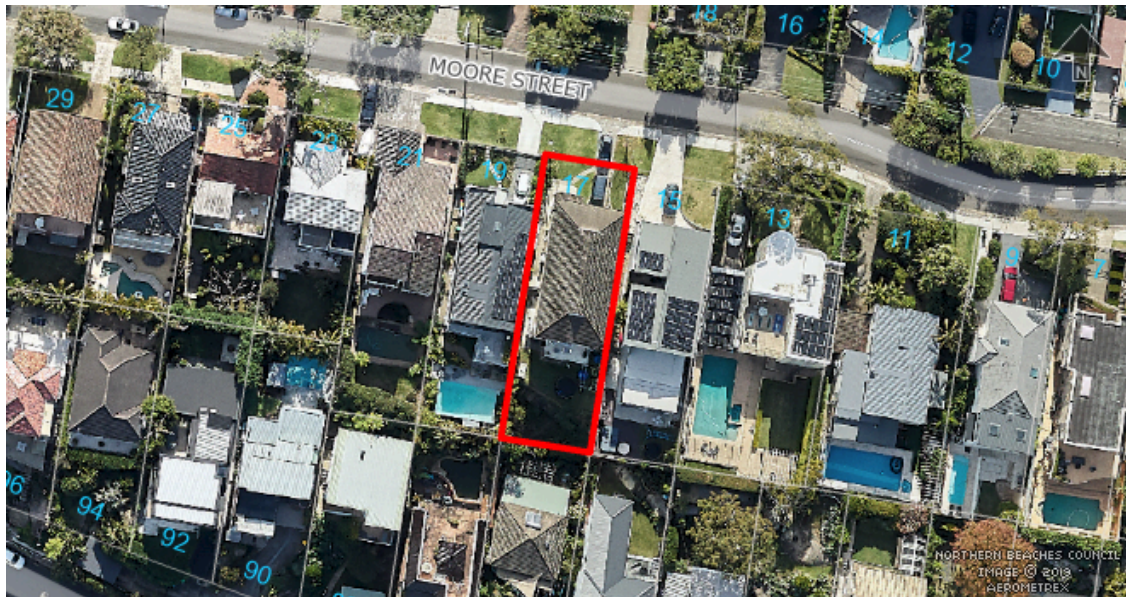
Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features
 Manly Development Control Plan - 4.1.10 Fencing
 Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

SITE DESCRIPTION

Property Description:	Lot 9 DP 2610 , 17 Moore Street CLONTARF NSW 2093
Detailed Site Description:	The subject site consists of one allotment located on the southern side of Moore Street. The site is regular in shape with a frontage of 12.19m along Moore Street and a depth of 40.23m. The site has a surveyed area of 490.5m². The site is located within the R2 Low Density Residential zone and accommodates a two storey brick dwelling with attached garage. The site is located on the low side of the Moore Street and falls from the front northern boundary to the rear southern boundary. The rear yard has a level lawn area directly off the house, that drops away from a 2.5m high sandstone rock face. A garden area is located between the rock face and the rear boundary. The site has lawn area at the front and back and an overgrown garden along the rear boundary. There are no known threatened species on the site. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by one to three storey residential dwellings of varying architectural styles. Site Inspection A site inspection was undertaken 23 September 2024.

Map:



SITE HISTORY

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

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration	Comments
Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	These matters have been addressed via a condition of consent. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to carport, driveway, swimming pool location, excavation of lower ground floor, floor space, stormwater, landscaping and view loss. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 02/05/2024 to 16/05/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Mr Christopher James Hayes	86 Cutler Road CLONTARF NSW 2093
Mr Malcolm George Saunders	20 Moore Street CLONTARF NSW 2093
Mr Andrew Peter Bolton	18 Moore Street CLONTARF NSW 2093
Mr Trevor James White	84 Cutler Road CLONTARF NSW 2093
Lucy Bolton	18 Moore Street CLONTARF NSW 2093

The following issues were raised in the submissions:

- Overshadowing and solar access
- Privacy
- Stormwater
- Rear fence and retaining wall
- View loss

The above issues are addressed as follows:

- **Overshadowing and solar access**
The submissions raised concerns that the proposal would result in unreasonable overshadowing of the private open space and the glazed dining room door of the rear adjoining property at no. 84 Cutler Road.
Comment:
This matter has been addressed in detail under part 3.4.1 Sunlight Access and Overshadowing. In summary, due to the orientation of the site and the elevational height differences between the site and the adjoining allotment to the rear, no. 84 Cutler Road is particularly vulnerable to overshadowing and the maintenance of the existing solar access is, difficult to achieve. As a result of the site constraints and amount of loss of solar access to the glazed door of no. 84 Cutler Road, Council is satisfied the proposed development will provide equitable access to light and sunshine to the private open space and windows/doors to internal living areas of adjoining properties.
- **Privacy**
The submissions raised concerns that the proposed rear terraces and swimming pool would result in unreasonable over looking and privacy impacts to nos. 84 and 86 Cutler Road.

Comment:

Privacy has been discussed in detail under part 3.4.2 Privacy and Security of this report. In summary, subject to conditions, the spatial separation, along with the proposed landscaping will help to mitigate any potential privacy impacts as a result of the development.

- **Stormwater**

The submissions raised concerns with stormwater runoff from the existing site. The submission requested that stormwater be pumped to Moore Street and that no OC be issued until all stormwater infrastructure is built and certified.

Comment:

The application was referred to Councils Development Engineers, who support the proposed stormwater drainage system subject to conditions.

Stormwater is not able to be pumped to Moore Street. The site is a low level property, charged or pump out systems are restricted within the Northern Beaches LGA. Pump out systems and charged systems are restricted because:

- Potential failure of the pump-out system and consequent stormwater related damage to property and adjacent properties.
- Diverting flows from one catchment (or sub-catchment) to another catchment (or subcatchment) will burdened that catchment (or sub-catchment) with additional stormwater flows that may cause nuisance flooding or exasperate existing flooding problems.
- The public road drainage system fronting the low level property was not designed to adequately cope with the additional stormwater flows from these pump-out systems or charged drainage lines.

The application is subject to standard conditions of consent which require all stormwater drainage requirements to be done in accordance with submitted plans.

- **Rear fence and retaining wall**

A submission raised concern with the proposed rear fence to be constructed on the retaining wall facing no. 84 Cutler Road.

Comment:

The existing rear retaining wall, has a height a 2.3m from the ground level of no. 84 Cutler Road. The proposed 1m high fence would increase the height of the wall to 3.3m and would dominate the rear yard of no. 84 Cutler Road and create a walled-in effect. After discussions with the applicant, a condition is recommended for the fence to be located on the inside of the retaining wall and be of an open style to allow for planting to grow through. This will minimise the impact of the fence, retain the look of the existing retaining wall and still provide safety and security to no. 17 Moore Street.

- **View loss**

Two submissions were received from nos. 18 and 20 Moore Street, which raised concerns with view loss as a result of the development.

Comment:

View loss has been addressed in detail under part 3.4.3 Maintenance of Views of this report. In summary, it was found that the amended development achieves a satisfactory outcome after having been assessed in detail against the four (4) planning principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd v Warringah Council (2004) NSWLEC 140*. The extent of qualitative impact upon view sharing is considered to be "moderate/minor" and the amended design (more skillful design) provides appropriate view sharing opportunities.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<i>Supported subject to conditions</i> Council's Landscape Referral section have considered the application against the Manly Local Environment Plan (MLEP), and the following MDCP controls (but not limited to): 3.3.1 Landscaping Design; 3.3.2 Preservation of Trees or Bushland Vegetation; 4.1.5 Open Space and Landscaping, including 4.1.5.2 (c) Minimum Tree Plantings where applicable. Landscape Plans are submitted indicating the proposed landscape setting outcome and no concerns are raised generally, subject to conditions for substituting selected tree species to ensure that existing view corridors from surrounding properties are not impacted upon. Any tree planting shall be limited to the height of the approved roof level horizontally. There are no prescribed trees within the property. Within the road reserve one deciduous Robinia tree that is small and in poor condition exists, and this is proposed to be removed and replaced. Landscape Referral raise no concerns with the street tree replacement proposal to introduce tree canopy cover subject to selection of species that will not affect existing view corridors from surrounding properties. Should the application be approved, Landscape Referral provide landscape conditions.
NECC (Development Engineering)	<i>Supported subject to conditions</i> The proposal is for alterations and additions to the existing dwelling. <u><i>Stormwater</i></u> The site falls to the rear. Easement refusal letter has been provided. The submitted stormwater plan proposes discharge to a level spreader via an OSD system located under the pool. The location of the level spreader with only 600mmm setback form the rear boundary is not supported. The level spreader shall have a minimum 3m setback in accordance with Council's Water management for Development Policy. The location of the sewer line is noted. It is recommended that the proposed pool be relocated to the western boundary to ensure sufficient setback is provided for the level spreader. Additionally the Geotechnical Engineer's assessment of the proposed stormwater system dated 16/10/2023 states that the proposed location is not suitable for a level spreader. Further recommendations are provided regarding the flow rate and the

Internal Referral Body	Comments
	stability of the retaining wall along the rear boundary which are to be addressed prior to further assessment. Please note amended plans will require concurrence from the Geotechnical Engineer. <u>Access</u> A carport in the front setback and widening of the existing vehicular crossing are proposed. Insufficient information has been provided regarding the level of the carport. The grade of the proposed parking area must not exceed 5% in accordance with AS2890.1. The applicant shall provide long sections at both edges of the proposed driveway to the proposed carport to demonstrate compliance with AS2890.1. Additional Information Provided on 10/10/2024 & 4/11/2024 The driveway plans have been reviewed and are acceptable subject to conditions. <u>Stormwater</u> Amended stormwater plans have been provided and the relocation of the level spreader is acceptable. However the calculations have not addressed the Geotechnical engineer's requirement. The geotechnical report states " <i>as the proposed spreader will only be placed across ~40% of the width of S common boundary, the calculated rate will need to be reduced to account for this (i.e. ~40% of the natural runoff rate for the site)</i>". However the current amended stormwater plan proposes a spreader that is approximately only 25% of the width of the boundary. Hence the post developed flow is to be controlled such that the discharge from the spreader is only 25% of the state of nature flows. As previously requested amended plans will require concurrence from the Geotechnical Engineer. Additional Information Provided on 8/11/2024 Amended stormwater plans and concurrence from the geotechnical engineer have been provided. No objections to approval subject to conditions as recommended.
External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No. A489881_07 dated 30 September 2024).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Existing	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.2m	7.95m	N/A	Yes
Floor Space Ratio	FSR: 0.4:1 (196.2m ²)	FSR: 0.54:1 (264.9m ²)	FSR: 0.59:1 (290.3m ²)	47.96%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	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:
N/A

It is considered that the development satisfies this objective.

4.4 Floor space ratio

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.4 to 1
Proposed:	0.59 to 1
Percentage variation to requirement:	47.96%

4.4 Floor space ratio

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

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

Comment:

The proposed development, despite its non-compliance with a number of built form controls, is of a bulk and scale consistent and compatible with surrounding developments. The dwelling is of a similar scale to other dwellings in the area.

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

Comment:

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

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

Comment:

The proposed development provides a suitable balance between new development and retention of the existing character and is compatible with the surrounding bulk and scale of development. The proposal will also improve landscaping on the site.

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

Comment:

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

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

Comment:

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

4.6 Exceptions to development standards

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

Development standard: Clause 4.4 Floor Space Ratio

Requirement: 0.4:1

Proposed: 0.59:1

Percentage of variation: 47.96%

With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is accompanied by a document that sets out the grounds on which the Applicant seeks to demonstrate the matters set out in Clause 4.6(3)(a) and (b) of the MLEP (the 'Clause 4.6 Request').

Subclause (1) of this clause provides that:

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

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

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

Comment:

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

Subclause (2) of this clause provides that:

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

Comment:

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

Subclause (3) of this clause provides that:

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

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

Comment:

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

- The proposal presents a 2 storey building height to Moore Street with the building form acknowledging (consistent with) the topographic landscape of the land which falls away towards its rear boundary.
- The 298.14m² of gross floor area proposed, representing an FSR of 0.39:1 (based on 750m²), is below the maximum prescribed gross floor area of 300m² and as such complies with the MDCP variation provision applicable to undersized allotments.

- The application does not require the removal of any significant trees or vegetation with a building footprint maintained which is compliant with the landscaped area MDCP control. The building will sit within a landscaped setting.
- The application is accompanied by a schedule of materials and finishes which will enable the development to blend into the vegetated escarpment which forms and backdrop to the site.
- The development does not raise any unreasonable amenity impacts with regard to overshadowing, privacy or view loss.
- Shadow diagrams demonstrate that the proposal does not result in unreasonably overshadowing of adjoining properties.
- Surrounding properties are orientated to the south to take advantage of views towards Middle Harbour. This spatial relationship prevents direct overlooking between the living areas of these properties with a degree of mutual overlooking of private open space areas anticipated where all properties are orientated to take advantage of views.
- The height, bulk and scale of the development, as reflected by floor space, is compatible with the built form characteristics established by adjoining development and development generally within the site's visual catchment.

(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:

'I have formed the opinion that sufficient environmental planning grounds exist to justify the variation including the compatibility of the height, bulk and scale of the development, as reflected by floor space, with the built form characteristics established by adjoining development and development generally within the site's visual catchment.

Further, the variation provisions contained at clause 4.1.3.1 of Manly DCP reflect an acceptance that the FSR standard on undersized allotments does not provide for the orderly and economic use and development of the land and in my opinion represents an abandonment of the FSR standard on undersized allotments. The proposal satisfies such provisions.'

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

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

The proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect 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.

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

6.2 Earthworks

The objectives of Clause 6.2 - 'Earthworks' require development:

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

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

(f) the likelihood of disturbing relics

Comment:

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

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

Comment:

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

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

Comment:

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

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

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 490m ²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	E: 7.1m (based on gradient 1:10)	5.5 - 7.5m	0 - 5.6%	No
	W: 6.9m (based on gradient 1:15)	6.4 - 7.7m	0 - 11.5%	No
4.1.2.2 Number of Storeys	2	3	N/A	No
4.1.2.3 Roof Height	Parapet Height: 0.6m	0.4m	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Carport - 0.6m Dwelling 6.4m	90% N/A	No Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	East - 2.6m West - 2.7m	East - 1.51m West - 1.51m	41.9% 44.1%	No No
	Windows: 3m	East - 1.51m West - 1.51m	49.6% 49.6%	No No
4.1.4.4 Rear Setbacks	8m	Dwelling - 11.2m	N/A	Yes

4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area	56.21% (275.7m ²)	6.4%	No
	Open space above ground 25% of total open space	11.1% (30.7m ²)	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% (117.72m ²) of open space	47.4%	N/A	Yes
4.1.5.3 Private Open Space	18m ² per dwelling	18m ²	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	5.8m	N/A	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	1.9m	90%	No
	1m curtilage/1.5m water side/rear setback	Side - 1.2m/1.5m Rear - 2m/2.4m	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.3.3 Footpath Tree Planting	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	No	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.6 Energy efficiency/conservation requirements for non-residential developments	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

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.10 Safety and Security	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.1.10 Fencing	No	Yes
4.4.5 Earthworks (Excavation and Filling)	No	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

Description of non-compliance

3.4.1.1 Overshadowing Adjoining Open Space

This control requires all development (including alterations and additions) must not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties from 9am to 3pm on the Winter Solstice (being 21 June). The shadow diagrams provided indicate that the proposed alterations and additions to the existing dwelling achieves compliance with the requirements of this control.

3.4.1.2 Maintaining Solar Access into Living Rooms of Adjacent Properties

This control stipulates that, for adjacent buildings with an a north-south orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors of living rooms for a period of at least 4 hours from 9am to 3pm on the winter solstice. Additionally, for all adjacent buildings, regardless of the orientation of the allotments, there must be no reduction in solar access to any window where existing windows enjoy less than the minimum number of sunlight hours as previously specified.

Shadow diagrams for the Winter Solstice have been provided with this application, which indicates overshadowing to no. 84 Cutler Road (the property to the south) at 9am, 12noon and 3pm on the winter solstice. Due to the orientation of the allotments and the slope of the land (no. 84 Cutler Road sits approximately 6.5m below the exiting rear ground level of the site), properties sited to the south of an adjacent building are more vulnerable to overshadowing.

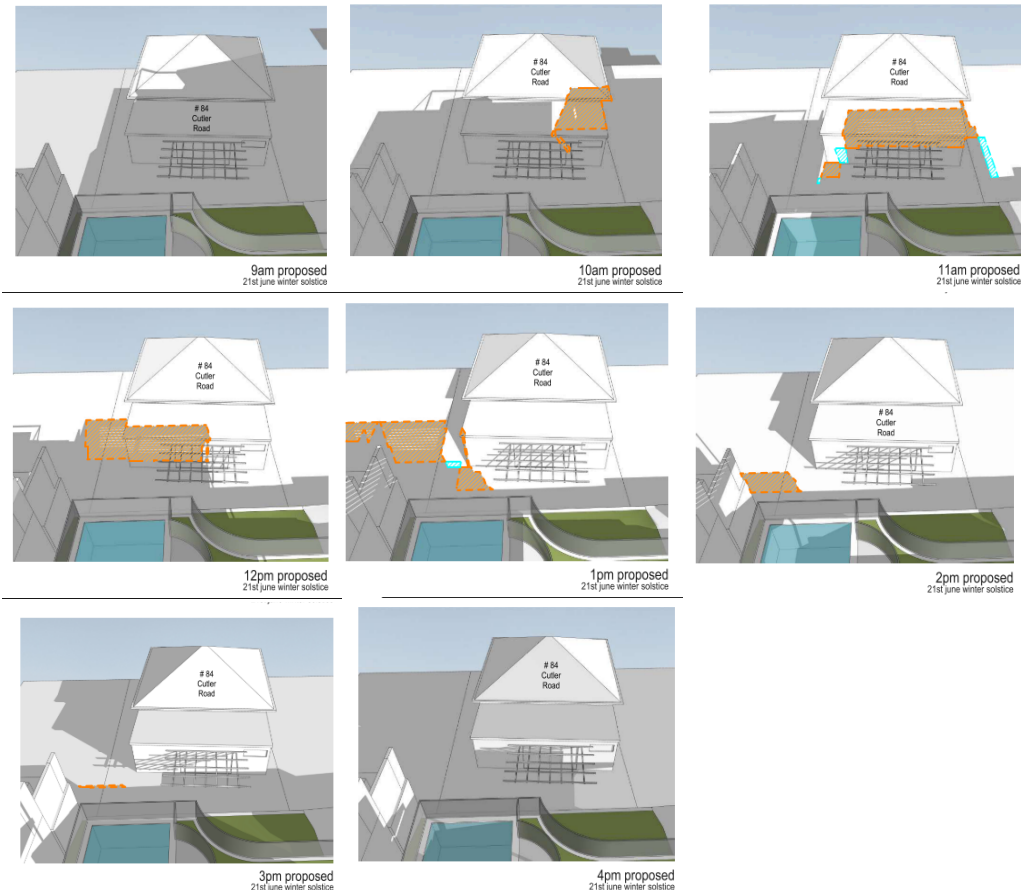


Figure 1: Proposed overshadowing of no. 84 Cutler Road shown in orange

The shadow diagrams submitted with this application indicates that the glazed door on the northern elevation of no. 84 Cutler Road does not receive 4 hours of sunlight on the winter solstice. The proposed development will result in a reduction of the sunlight receive to the dining room glazed door between 11am and 1pm on the winter solstice, which does not comply with the requirement of the control.

Merit consideration:

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

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

Comment:

No. 84 Cutler Road is highly susceptible to overshadowing as it is a north-south orientated site and located on the downward slope from the proposal. The rear courtyard/private open space of no. 84 Cutler Road has been excavated below natural ground level and is 6.5m lower than the existing rear yard of the subject site. Furthermore, the northern elevation of the dwelling (where the glazed door is located) at no. 84 Cutler Road has a reduced rear setback of 4.6 - 5.1m from the rear boundary.

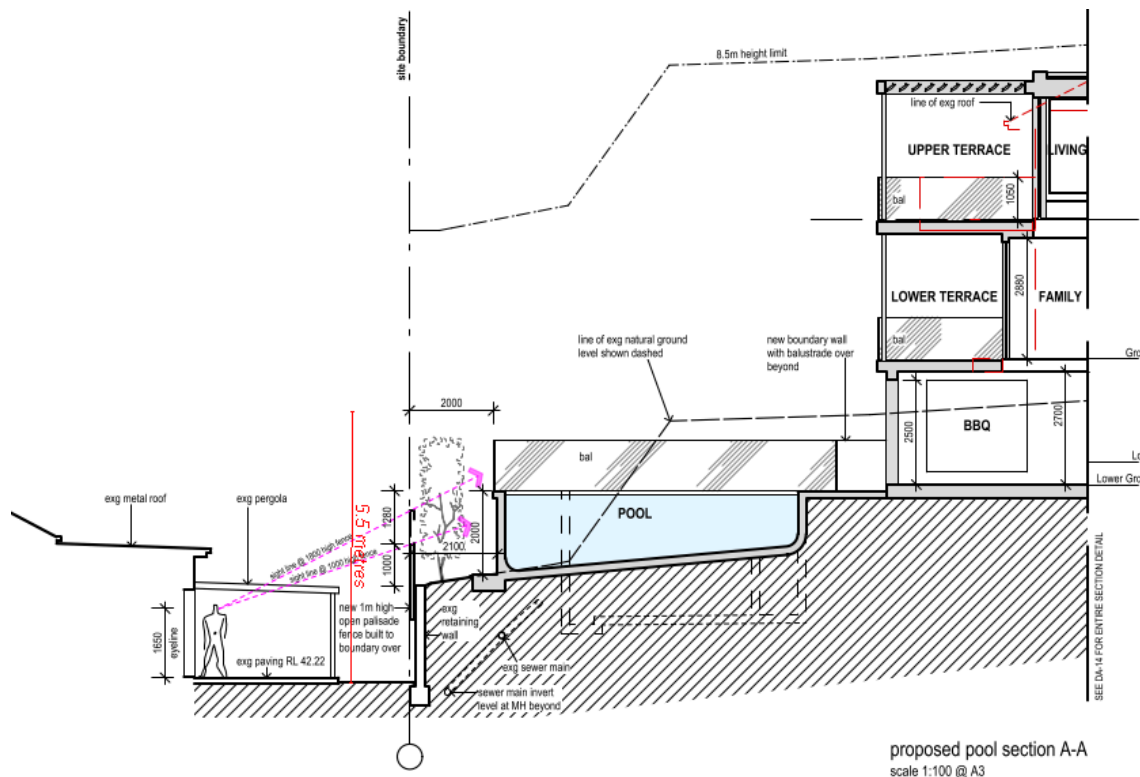


Figure 2: Section showing the height difference between the subject site and the rear courtyard of no. 84 Cutler Road

Whilst there are minor numeric variations to this control, it is considered that the level of solar access maintain to adjacent properties is equitable. As mentioned above, the southern adjacent site is particularly vulnerable to shadowing due to the topography of the sites and site orientation.

The proposed development has been appropriately sited and of a scale to minimise overshadowing to the adjacent property. This includes complying with the height of buildings development standards, the rear elevation is setback 11.2m from the rear boundary and is well in excess of the numeric requirement of 8m.

Objective 2) To allow adequate sunlight to penetrate:

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

Comment:

As detailed above, the proposed development results in additional overshadowing to the rear dining room glazed door of no. 84 Cutler Road. Due to the location of the adjoining property, to the south of the subject site, it would be unreasonable to expect complete compliance with the requirements of this control considering the proposal is well below the building height and rear setback requirements and complies with the solar access requirements for POS. On balance, it is considered that adequate solar access is able to penetrate the rear living areas of the adjoining properties to the rear at no. 84 Cutler Road.

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

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

Comment:

The dwelling house of the subject site is considered to be acceptably articulated and maintains a considerate rear setback of 11.2m. The proposal also is well under the 8.5m height requirement of the MLEP and is lower in height than the existing dwelling.

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.

3.4.2 Privacy and Security

The proposed development includes a new first floor 'upper terrace' to replace the existing balcony and a new ground floor lower terrace. The proposal also includes a partially raised swimming pool and terraced rear yard.

Two submissions were received from nos. 84 and 86 Cutler Road. The submissions raised concern that the location of the swimming pool, upper and lower terraces and lowered rear yard will result in over looking of the private open space, swimming pool area and rear rooms of the rear adjoining properties.

There are a number of new windows within 3m of the side boundaries. However, these windows contain narrow openings, are offset from neighbouring windows serving habitable rooms and contain screening where appropriate to ensure that a reasonable level of visual privacy is maintained between buildings.

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 minimise loss of privacy to adjacent and nearby development by:

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

Comment:

Upper and Lower Terrace

The upper terrace will be replacing the existing first floor balcony and the lower terrace is a new addition. The terraces are designed to allow the enjoyment of views towards the south and south-west, and intended for entertainment and passive recreation purposes.

Both terraces are setback 11.2m from the rear boundary shared with no. 84 Cutler Road. The terraces

are approximately 16m from the swimming pool area and 23m from the dwelling of no. 86 Cutler Road.

Nos 84 and 86 Cutler Road sit much lower than the site, which make them particularly vulnerable to overlooking. Furthermore, the dwelling of no. 84 Cutler Road is setback less than the required 8m from the rear boundary and the swimming pool of no. 86 Cutler takes up a large portion of the rear setback of that site. Substantial screen planting is proposed between the rear boundary, swimming pool and lowered rear yard of the site. Due to the height difference between the site and no. 84 Cutler Road, the proposed landscaping at the rear should mitigate any new privacy impacts from the proposal.

An existing tree (shown below in photo 1) in the south-west corner of the site, partially blocks views of the private open space of no. 86 Cutler Road from the existing dwelling. This tree is proposed to be removed as part of works and replaced with screen planting. It should be noted that the tree is below 5m in height and can be removed without Council approval at any time. The proposed landscaping and screen planting towards the rear of the subject site will be of a height and density to screen the lower rear yard, lower terrace and partially screen the upper terrace, which will help to mitigate privacy impacts as a result of the new works.

It is considered that the proposal will maintain privacy between buildings, through appropriate conditions, landscape buffers and substantial spatial separation.



Photo 1: View from the private open space of no. 86 Cutler Road looking north-east towards the existing dwelling of no. 17 Moore Street. The tree/shrub that currently provides a screen between the sites is circled in yellow.

Swimming pool

The swimming pool is setback 2m from the rear boundary. The southern edge of the swimming pool is non-trafficable, as is the edge of the lower rear yard. The proposed landscaping between the swimming pool area and rear boundary will allow for views outwards and not down towards no. 84 Cutler Road (see figure 2 for privacy analysis).



Photo 2: View from the existing rear terrace looking down towards no. 84 Cutler Road in the location of the proposed swimming pool.

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

Comment:

The proposal will not adversely or unreasonably compromise access to light and air, and is considered to balance outlook and views from habitable rooms and private open space.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposed development retains the existing neighbourhood security outcome for the site.

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.

3.4.3 Maintenance of Views

Merit consideration:

Two submissions were received from nos. 18 and 20 Moore Street who raised view loss from their properties as a concern.

Following an initial site inspection at no.18 and 20 Moore Street, a request was made to the applicant to reduce the overall height of the proposal to improve the views from nos. 18 and 20 Moore Street.

Amended plans were received 10 October 2024. The amended plans were sent to the nos. 18 and 20 Moore Street for review and comment. A further view loss inspection was undertaken on 28 October 2024. The below view loss assessment is based on the amended plans dated 17 September 2024.

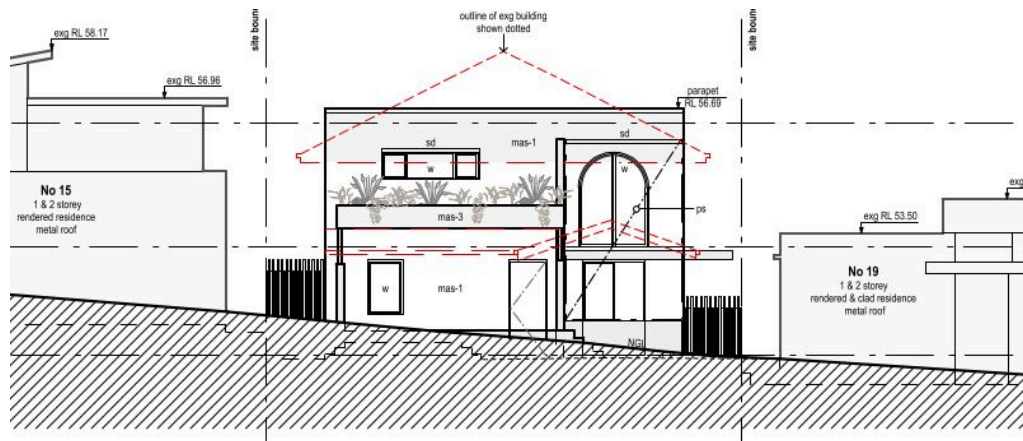


Figure 3: Proposed north elevation with existing dwelling outlined in red.

The development is considered against the Objectives of the Control:

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

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

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

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

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

Comment:

No. 18 Moore Street

The site has partially obstructed views from the ground floor of the dwelling of Balmoral Beach including moored boats, unobstructed views of Rocky Point Island, partially obstructed views of Edwards Beach and Wyargine Point to the south, unobstructed views of the Sydney City skyline including Centre Point Tower to the south and unobstructed views of Chinaman's Beach to the south west. The site has unobstructed views of Balmoral Beach, Rocky Point Island, Edwards Beach, Wyargine Point to the south, unobstructed views of the Sydney City skyline including Centre Point Tower to the south and partially obstructed (vegetation and powerlines) views of Chinaman's Beach to the south west from the first floor.

No. 20 Moore Street

The site has obstructed views of Balmoral Beach including moored boats, unobstructed views of Rocky Point Island and Edwards Beach to the south, views of Wyargine Point to the south-west that are partially obstructed by vegetation, unobstructed views of the Sydney City skyline including Centre Point Tower to the south-west and partially obstructed views of Chinaman's Beach to the south-west. A view loss assessment was not undertaken from the first floor of the site, but it is assumed that it will have similar views to that of no. 18 Moore Street.

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

Comment:

No. 18 Moore Street

Views from no. 18 Moore Street are obtained from a seated and standing position from the ground floor balcony which serves the main living area, from the dining room, living room, breakfast bar and kitchen and the first floor south facing balcony and bedroom.

No. 20 Moore Street

Views from no. 20 Moore Street are obtained from a seated and standing position from the ground floor balcony which serves the main living area, living room, dining room and the from the first floor south and south-west facing windows and balcony.

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

Comment:

18 Moore Street

Dining room - The dining room will lose views of the sand of Rocky Point Island and Edwards Beach from a sitting position. The dining room will lose water views from a standing position but gain additional views of Edwards Beach and Wyargine Point.



Photo 3: View from dining room in a sitting position - October 2024.



Photo 4: View from dining room in a standing position - October 2024.

- **Living room** - At the time of the view loss assessment, views of Edwards Beach from the living room are partially obstructed by vegetation. From a sitting position the proposal will result in the loss of obstructed water views and will gain further views of Wyargine Point. The proposal will result in the loss of views of Wyargine Point and obstructed water views in front of Rocky Point Island and Edwards Beach in a standing position. No. 18 Moore Street will gain further views of Wyargine Point and obstructed views of Edwards Beach over the top of the dwelling.



Photo 5: View from living room sitting position - October 2024.



Photo 6: View from living room in a standing position - July 2024.

- **Breakfast bar and Kitchen** - The proposal will result in the loss of water views, including a small portion of the interface between land and water of Wyargine Point. No. 18 Moore Street will gain views over the top of the dwelling of Wyargine Point, Edwards Beach including the interface between land and water.



Photo 7: View from breakfast bar in sitting position - October 2024.



Photo 8: View from Kitchen, looking south in a standing position - October 2024.



Photo 9: View from west facing kitchen window in standing position - October 2024.

- **Ground floor balcony** - The proposal will result in the loss of water views, including a small portion of the interface between land and water of Wyargine Point and obstructed water views below Rocky Point Island and Edwards Beach from a sitting position. No. 18 Moore Street will gain views over the top of the dwelling of Wyargine Point in a sitting position. The proposal will result in the loss of water views, including a small portion of the interface between land and water of Wyargine Point. No. 18 Moore Street will gain views over the top of the dwelling of Wyargine Point, Edwards Beach, including the interface between land and water in a standing position (see figure 4 below).



Photo 10: View from Ground floor balcony in a sitting position looking south.



Photo 11: View from Ground floor balcony in a sitting position looking south-west.



Photo 12: View from south facing first floor balcony looking south-west in standing position - October 2024.



Photo 13: View from south facing first floor balcony looking south in standing position - October 2024.

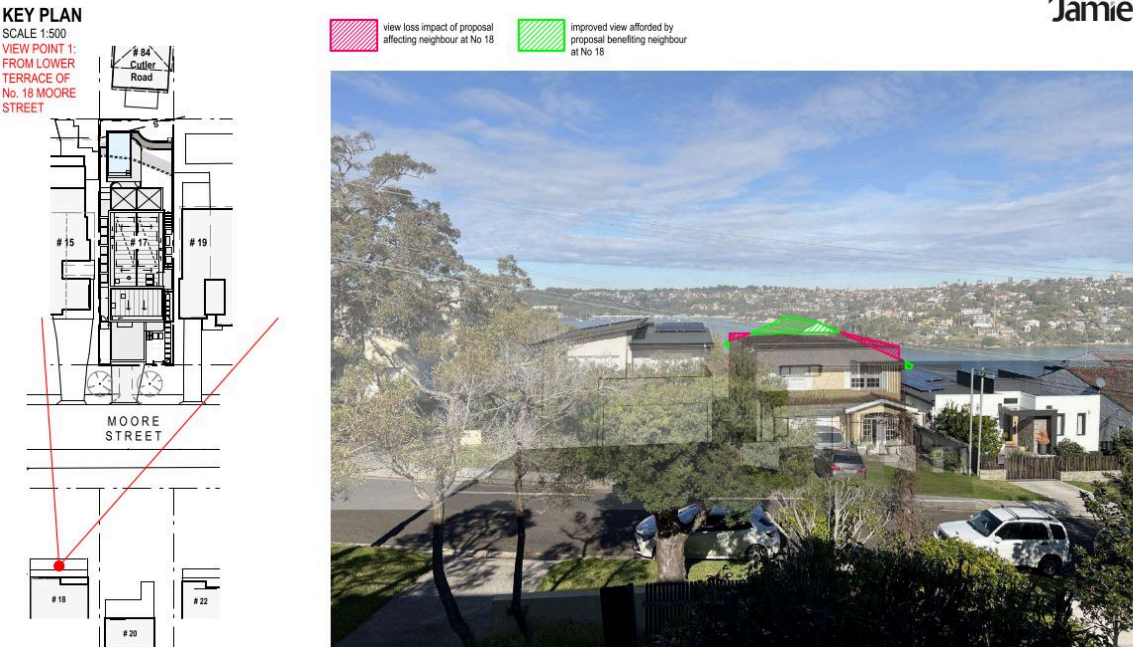


Figure 4: View loss analysis from ground floor south facing balcony in a standing position.

- **First floor balcony and bedroom** - The proposal will result in the loss of water views from a sitting and standing position.



Photo 14: View from first floor bedroom in standing position - July 2024.

Overall the view loss is considered minor to moderate as it will be losing water views and a small portion of views with the interface between land and water. However, the proposal will be gaining additional water views and views with the interface between land and water. Furthermore, no. 18 will be retaining the City Skyline views, which are considered iconic, district views and views of Balmoral Beach and Chinaman's Beach from the ground and first floor.

No. 20 Moore Street

- **Dining Room** - The proposal will result in the partial loss of water views, partial views of Balmoral Beach and Edwards Beach, including the interface between land and water from a sitting position. The site will gain additional district views over the roof of no. 17 Moore Street from a seated position. From a standing position, similar views to the seated position, will be lost from the dining room. No. 20 Moore Street will gain additional views of the Balmoral Beach as a result of the alterations.



Photo 15: View from dining room in sitting position.



Photo 16: View from dining room in standing position.

- **Living Room** - From a seated position, the proposal will result in a loss of water views and partial views of Balmoral Beach and Rocky Point Island, including the interface between land and water. The site will gain additional district views over the roof of no. 17 Moore Street from a seated position. The site will lose water views and partial views of Balmoral Beach, including the interface between land and water and views of Rocky Point Island from a standing position. From a standing position the proposal will gain views of Balmoral Beach including the interface between land and water.



Photo 17: View from living room in sitting position.



Photo 18: View from living room in a standing position.

- **Ground floor balcony in front of living area** - The proposal will result in the loss of water views and partial views of Balmoral Beach and Rocky Point Island including the interface between land and water. The site will gain additional district views over the roof of no. 17 Moore Street from a seated position. From a standing position, the balcony will lose partial views of Rocky Point Island and water views. The below view loss analysis (see figure 5) demonstrates that the proposal will gain views of Balmoral Beach, including the interface between land and water and partial views of Rocky Point Island.



Photo 19: View from balcony directly in front of living area from a sitting position.



Photo 20: View from balcony directly in front of living area from a standing position.

KEY PLAN

SCALE 1:500

VIEW POINT 2:

FROM LOWER

TERRACE OF

No. 20 MOORE

STREET



view loss impact of proposal affecting neighbour at No 20

improved view afforded by proposal benefiting neighbour at No 20

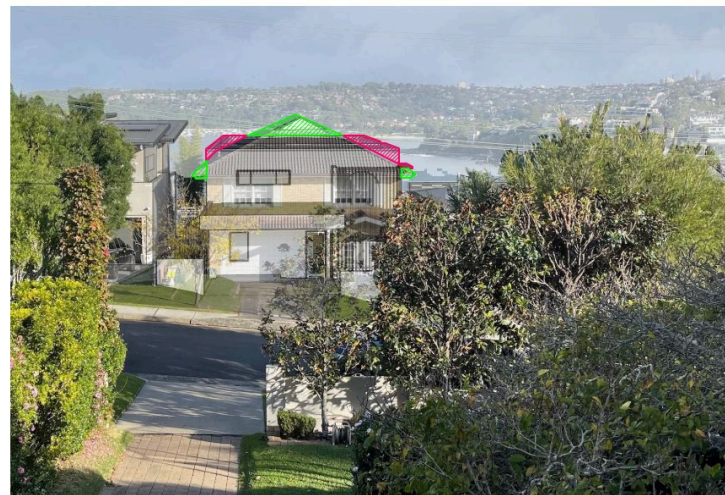


Figure 5: View loss analysis from south facing ground floor balcony in a standing position.

- **Ground floor balcony western side** - The works will result in loss of water views and views of Balmoral Beach, including the interface between land and water in a seated position. From a standing position the proposal will result in the loss of water views to the south and will gain views of Balmoral Beach, including the interface between land and water.



Photo 21: View from south facing balcony in a sitting position.



Photo 22: View from south facing balcony in a standing position.

- **Ground floor landing** - The landing will lose water views, but gain additional views of Balmoral Beach, including the interface between land and water from a standing position but gain views of Balmoral Beach.



Photo 23: View from ground floor stairwell.

The view loss from no. 20 Moore Street is considered moderate. The site will lose partial views of Balmoral Beach including the interface between land and water. However, the view loss of Balmoral Beach is mostly from a seated position, which is difficult to retain. The proposal will be gaining additional water views and views of Balmoral Beach, including the interface between land and water. Furthermore, no. 20 will be retaining all City Skyline views, district views and views of Edwards Beach

and Chinaman's Beach. Views from the first floor are likely to be improved as a result of the development.

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

Comment:

The proposed non-compliances related to the view loss are numeric breaches to the FSR development standard and MDCP wall height and side setback provision.

In regards to the FSR non-compliance, it is noted that the site is an 'undersized allotment', as defined by the MDCP, and that the gross floor area complies with the MDCP undersized allotment provision and is located within the existing building footprint. In this case, the applicant has demonstrated that compliance with the FSR standard is not reasonable in the circumstances of the case and that there are sufficient environmental planning grounds to justify the variation.

In regards to the wall height non-compliance, as a result of the existing slope of the land, the eastern elevation has a wall height requirement of 7.1m and the western elevation 6.9m. The works are retaining the existing side elevations of the dwelling but increasing the height of the walls to accommodate a flat roof and increase the floor to ceiling height of the first floor. Despite the non-compliance, the development remains compliant with the 8.5m statutory height limit with a height of 8m. The wall height non-compliance is minimal and located towards the rear of the dwelling. While, the proposal does result in view loss from nos. 18 and 20 Moore Street, the development opens up additional view corridors from these properties and still retains significant and iconic views.

Whilst the proposal involves variations to the side setback provisions, the alterations to the dwelling are within the existing building footprint and maintains the existing side boundary setbacks of the building.

Furthermore, a flat roofline has been employed to further negate the view impacts.

Overall, due to the minor/moderate nature of the view impacts, coupled with the fact that appropriate design treatments have been employed to minimise the extent of the view impacts and that the resulting height, bulk and scale of the development corresponds with surrounding residential development on Moore Street, it is considered that a reasonable view sharing outcome has been achieved.

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

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

Description of non-compliance

4.1.2.1 Wall Height

Clause 4.1.2.1 of the MDCP relies on the slope of the land to determine the maximum external wall height. In calculating the slope of the land, the maximum wall height is as follows:

East elevation:

Required - 7.1m (based on gradient 1:10)

Proposed - 5.5 - 7.5m

West elevation:

Required - 6.9m (based on gradient 1:15)

Proposed - 6.4 - 7.7m

Note: wall height is measured from the underside of the ceiling on the uppermost floor to the existing ground level. The parapet height is excluded, in accordance with the MDCP wall height definition.

The proposed first floor extension results in non-compliant wall heights on the eastern and western elevations, with respective external wall heights with a maximum height of of 7.5m and 7.7m. As a consequence, the proposed development fails to comply with the requirements of the control.

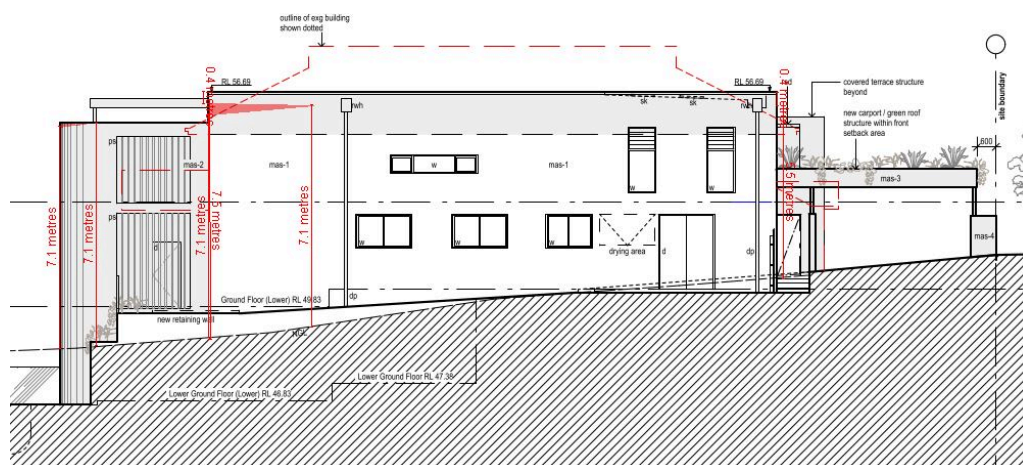


Figure 6: East elevation with wall height non-compliance shaded in red.

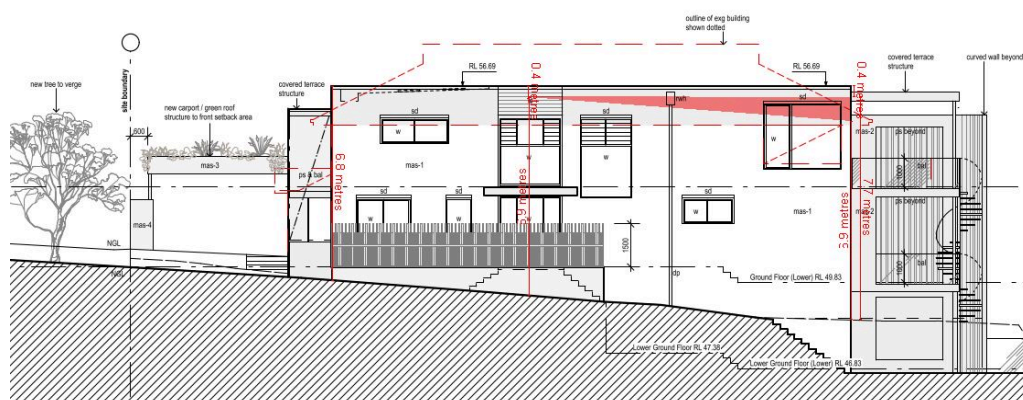


Figure 7: West elevation with wall height non-compliance shaded in red.

4.1.2.2 Number of Storeys

The abovementioned control states:

a) Buildings must not exceed 2 storeys, except on land in areas 'L' and 'N1' on the MLEP Height of Building Map and notwithstanding the wall and roof height controls in this plan.

The proposal results in 2-3 storeys, reflecting a variation from the requirement. It is noted that the 3 storey element being the lower ground floor is located below the existing dwelling at the rear of site and cannot be seen from the streetscape.

Merit consideration

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

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

Comment:

The development complies with the building height requirement of the MLEP. The majority of the works are within the existing building footprint. The rear terraces do extend beyond the existing footprint but are replacing the existing first floor balcony and adding additional balcony/terrace to the ground floor, directly below the first floor terrace.

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

Comment:

The proposal will present as a part 2-3 storey dwelling, which is consistent with the height and scale of nearby dwellings within the visual catchment of the site. The height of the proposed dwelling is substantially less than the existing dwelling. As such, the bulk and scale of the proposed dwelling is considered to be appropriate in the context of the site and surrounds.

(c) to minimise disruption to the following—

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

(iii) views between public spaces (including the harbour and foreshores),

Comment:

The non-compliant wall height does not result in any unreasonable impacts upon views to/from adjoining properties or the public domain as detailed in part 3.4.3 Maintenance of Views of this report.

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

Comment:

The proposed development does not result in unreasonable impacts upon solar access to adjoining development, as detailed under part 3.4.1 Sunlight Access and Overshadowing of this report.

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

Comment:

The clause is not relevant to the application.

4.1.3 Floor Space Ratio (FSR)

MDCP provides guidance in assessing the floor space ratio of undersized allotments.

The site is located in 'Area T' on the MLEP 2013 Lot Size Map, meaning that, based on an actual lot size of 490.5m², calculation of the floor space ratio can be made as if the lot size were 750m².

As such, the floor space ratio of the proposed development is 0.38:1, which complies with the maximum permitted 0.4:1 floor space ratio.

A detailed assessment of the FSR variation has been undertaken within the section of this report relating to Clause 4.6 of the MLEP. In summary, the applicant has adequately justified that compliance with the Clause 4.4 Floor Space Ratio Development Standard is unreasonable and unnecessary, and that there are sufficient environmental planning grounds to contravene the development standard.

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

Description of non-compliance

4.1.4.1 Street Front setbacks

The control requires front setbacks to relate to the front building line of neighbouring properties and the prevailing building lines in the immediate vicinity of the site. Where the street front building lines of neighbouring properties are variable, and there is no prevailing building line in the immediate vicinity, a minimum 6m front setback generally applies.

In this instance, there is no prevailing building line in the immediate vicinity of the site, however, there are several examples of carports within the front setback. The proposed carport is setback 0.6m from the front boundary and the dwelling will be retaining the existing setback to the front boundary.

4.1.4.2 Side setbacks and secondary street frontages

Clause 4.1.4.2 of the MDCP requires development be setback at least one third of the adjoining wall height. The development proposes to extend the height of the existing external walls, maintaining the existing setback to the side boundary of 1.5m, to both side boundaries.

Clause 4.1.4.2 of the MDCP requires windows from habitable dwellings that face the side boundary to be setback at least 3m from side boundaries. The proposal will be replacing and adding new windows along the east and west elevation and are setback 1.5m from both boundaries.

Merit consideration:

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

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

Comment:

The proposed carport will not detract from the existing streetscape, or impact upon the desired spatial proportions of the street, street edge, and landscape character of the street. The existing streetscape comprises of multiple variations to the street front setback, and as such the addition of the proposed carport is consistent with the sites along Moore Street.

Objective 2) To ensure and enhance local amenity by:

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*

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

Comment:

The proposed alterations are generally within the footprint of the existing building and will result in a minor change to the built form. The development is considered to provide reasonable amenity including privacy, solar access and view sharing for the occupants and those of adjoining and surrounding properties. The development is also considered to appropriately respond to the site constraints and prevailing pattern of development seen within the vicinity of the site, whilst maintaining safe and adequate parking by providing two onsite car parking spaces.

The proposed windows that are non-compliant with the 3m setback requirement, will replace existing windows along the ground and first floor. These windows contain narrow openings, are offset from neighbouring windows serving habitable rooms and contain screening where appropriate to ensure that a reasonable level of visual privacy is maintained between buildings.

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

Comment:

Flexibility is afforded in this circumstance, as the siting of the buildings is considered appropriate, and will not result in any unacceptable amenity impacts.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposed development results in a compliant landscaped area that provides opportunity for plantings, and enhancement of vegetation. The subject site does not detract from the context of the site and the site does not directly adjoin open space lands, national parks, or urban bushland.

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

Comment:

N/A - the site is not located within a bushfire prone zone.

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

4.1.5 Open Space and Landscaping

Description of non-compliance

The control requires at least 60% of the site to consist of total open space (TOS). To be included as

TOS open space areas must be at least 3x3m in dimension and must not relate to parking structures or vehicular access (i.e. the driveway and hardstand parking space with carport above is excluded).

The application proposes 56.21% (275.7m²) of the site as TOS, which does not satisfy the numeric requirement.

Merit consideration:

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

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

Comment:

The existing site has minimal landscaping, with lawn area at the front and rear and an overgrown garden located along the rear boundary. The development does not result in the removal of significant canopy trees, which would result in the character of the site being compromised or impact populations of flora and fauna. The proposed landscape plan include canopy trees and will improve the landscaping on the site.

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

Comment:

The proposed development includes deep soil landscaped areas within the rear yards to ensure an appropriate landscaping outcome. No significant vegetation is proposed for removal.

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

Comment:

The proposed development does not result in unacceptable amenity impacts, specifically with regard to view sharing, solar access, privacy and visual bulk. Sufficient TOS is provided on the site, particularly within the rear yard, to meet the recreational needs of the occupants of the dwelling.

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

Comment:

The site contains sufficient pervious areas to assist in water infiltration, in turn minimising stormwater runoff. Furthermore, suitable conditions have been included with this consent to ensure that stormwater is managed and disposed of in an acceptable manner.

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

Comment:

The proposal will not lead to a significant spread of weeds.

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

Comment:

The proposed development does not have an adverse impact upon wildlife corridors.

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.

4.1.9 Swimming Pools, Spas and Water Features

Description of Non-compliance

Clause 4.1.9.1 Height above ground stipulates that swimming pools should not be elevated more than 1m above natural ground level.

Consideration of any exception to exceed the height above ground must demonstrate that the swimming pool/ spa pool and their curtilage and/or concourse more than 1m above natural ground level:

- i) would not detract from the amenity or character of the neighbourhood; and*
- ii) is a minimum distance from any side boundary equivalent to the height of the swimming pools and/or spa and their curtilage and/or concourse at any point above existing ground level.*

The proposed swimming pool meets the requirements for an exception. The proposed swimming pool is 2m above existing ground level at its southern end and 2m from the rear boundary. It has been demonstrated throughout the report, that the swimming pool will not unreasonably impact on the amenity or character of the neighborhood.

4.1.10 Fencing

Description of non-compliance

Clause 4.1.10 Fencing requires the following:

- *Freestanding walls and fences between the front street boundary and the building are to be no more than 1m high above ground level at any point.*
- *In relation to open/ transparent fences, height may be increased up to 1.5m where at least 30 percent of the fence is open/ transparent for at least that part of the fence higher than 1m.*

In this case, the proposed front fence is not transparent and has a maximum height of 1.5m. The site currently has no front fence.

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying objectives of the control. The control relies upon the objectives of Clause 3.1 - Streetscapes and Townscapes within the Manly DCP 2013.

Objective 1) To minimise any negative visual impact of walls, fences and carparking on the street frontage.

Comment:

The fence exceeds the height requirement of 1m or 1.5m with 30% transparency above 1m in height. However, less than half the fence line is solid. There is no gate across the driveway and several section of fence use materials which provide transparency and break up wall. This design feature minimises any negative visual impacts and provides design that compliments the proposed dwelling.

Objective 2) To ensure development generally viewed from the street complements the identified streetscape.

Comment:

It is noted that Moore Street has an inconsistent fence heights and designs with a mix of fence styles and materials or no fences at all. There is no identified fence streetscape, however, most of fence compliment the dwelling they are associated with. There are several other examples of solid fences along Moore Road. As mentioned above the majority of the fence line is open or transparent and will

compliment the proposed dwelling and will not result a walled-in streetscape.

Objective 3) To encourage soft landscape alternatives when front fences and walls may not be appropriate.

Comment:

The proposed fence is appropriate for the site.

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

4.4.5 Earthworks (Excavation and Filling)

Description of non-compliance

The proposal involves excavation and fill within the rear yard. The excavation ranges from 3 -2.7m under the existing dwelling to 1 - 2m within the rear yard. The fill ranges from 0.3 - 2m in height, which exceeds the 1m requirement.

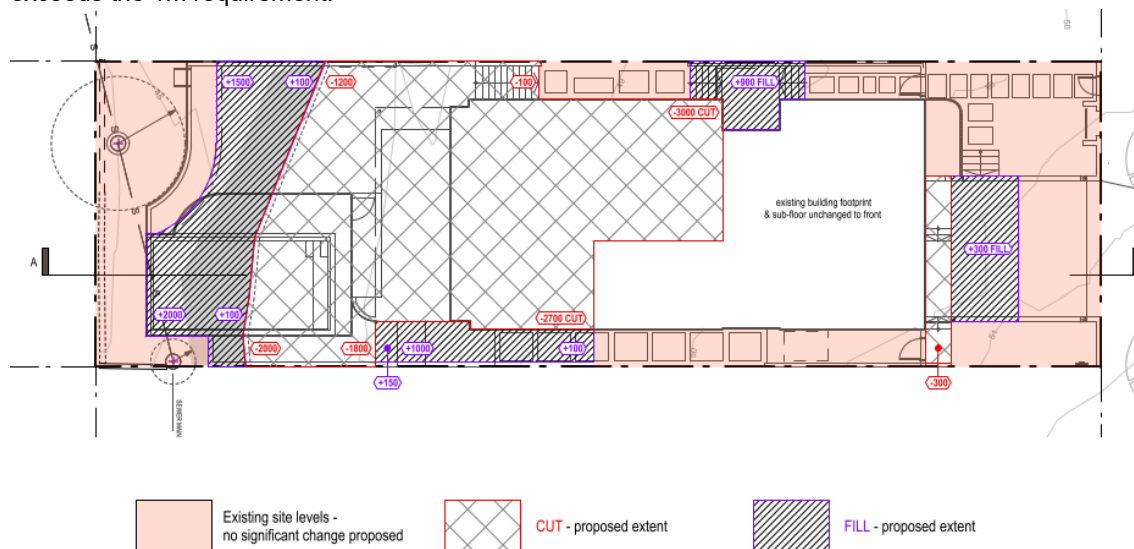


Figure 6: proposed cut and fill plan.

Merit consideration

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

Objective 1) To retain the existing landscape character and limit change to the topography and vegetation of the Manly Local Government Area by:

- Limiting excavation, "cut and fill" and other earthworks;
- Discouraging the alteration of the natural flow of ground and surface water;
- Ensuring that development not cause sedimentation to enter drainage lines (natural or otherwise) and waterways; and
- Limiting the height of retaining walls and encouraging the planting of native plant species to soften their impact.

Comment:

The excavation works and fill are not considered to be excessive and are reasonable within the R2 Low Density Residential zone. The excavation works do not significantly alter the site topography or compromise the ability to establish the proposed landscape treatment on the site. The application has been accompanied by a Geotechnical Report (prepared by White Geotechnical Group, dated 31 August 2023) which states that the proposal will achieve an acceptable level of risk, subject to adherence to the recommendations stipulated within the report. A condition has been included with this consent to ensure compliance with the recommendations within the Geotechnical Report.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2024

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2024.

A monetary contribution of \$9,160 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$916,025.

CONCLUSION

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

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

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

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

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

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

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

PLANNING CONCLUSION

This proposal, for Alterations and additions to a dwelling house including a swimming pool and carport has been referred to the Development Determination Panel (DDP) due to the proposed variation to the floor space ratio development standard.

The concerns raised in the objections have been addressed and where required resolved by conditions of consent.

Critical assessment issues relate to the request to vary the floor space ratio development standard, visual privacy, view loss, solar access, wall height, side and front setbacks, total open space, swimming pool and fencing. These issues have been addressed within the assessment report. In consideration of the variations and noncompliant elements proposed, the development is acceptable on merit.

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

REASON FOR DETERMINATION

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

RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2024/0448 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 9 DP 2610, 17 Moore Street, CLONTARF, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA 02	A	Existing Floor Plans - Demolition Works	Hobbs Jamieson Architecture	16/04/24
DA 03	A	Existing Elevations - Demolition Works	Hobbs Jamieson Architecture	16/04/24
DA 04	B	Proposed Site Plan	Hobbs Jamieson Architecture	17/09/24
DA 05	B	Proposed Pool Plan	Hobbs Jamieson Architecture	17/09/24
DA 06	B	Proposed Lower Ground Floor Plan	Hobbs Jamieson Architecture	17/09/24
DA 07	B	Proposed Ground Floor Plan	Hobbs Jamieson Architecture	17/09/24
DA 08	B	Proposed First Floor Plan	Hobbs Jamieson Architecture	17/09/24
DA 09	B	Proposed Roof Plan	Hobbs Jamieson Architecture	17/09/24
DA 10	B	Proposed North Elevation	Hobbs Jamieson Architecture	17/09/24
DA 11	B	Proposed East Elevation	Hobbs Jamieson Architecture	17/09/24
DA 12	B	Proposed West Elevation	Hobbs Jamieson Architecture	17/09/24
DA 13	B	Proposed South Elevation	Hobbs Jamieson Architecture	17/09/24
DA 14	B	Proposed Section A-A part 1	Hobbs Jamieson Architecture	17/09/24

DA 17	B	Proposed External Materials - Front	Hobbs Jamieson Architecture	17/09/24
DA 18	B	Proposed External Materials - Rear	Hobbs Jamieson Architecture	17/09/24
DA 21	B	Proposed Section A-A part 2	Hobbs Jamieson Architecture	17/09/24
SA 22	B	Proposed Cut & Fill Plan	Hobbs Jamieson Architecture	17/09/24

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
LCP-01 - Concept Plan - GFL	B	Fifth Season Landscapes	02/10/24
LCP-02 - Concept Plan - LGFL	B	Fifth Season Landscapes	02/10/24
LCP-03 - Concept Plan - FFL	B	Fifth Season Landscapes	02/10/24
PLT-01 - Planting Plan - GFL	B	Fifth Season Landscapes	02/10/24
PLT-02 - Planting Plan - LGFL	B	Fifth Season Landscapes	02/10/24
PLT-04 - Planting Plan - FFL	A	Fifth Season Landscapes	02/10/24
BASIX Certificate	Certificate number: A489881_07	Efficient Living Pty Ltd	30/09/24
17 Moore Street, Clontarf Assessment of Proposed Stormwater System	J4815A	White Geotechnical Group	16/10/23
Waste Management Plan	-	-	-
GEOTECHNICAL INVESTIGATION: Alterations and Additions at 17 Moore Street, Clontarf	J4815	White Geotechnical Group	31/08/23
D01 - Stormwater Drainage General Notes	C	NB Consulting Engineers	07/11/24
D02 - Stormwater Management Drainage Plans	C	NB Consulting Engineers	07/11/24
D03 - Stormwater Management Drainage Plans	B	NB Consulting Engineers	24/09/24
D10 - Stormwater Management Drainage Details	B	NB Consulting Engineers	24/09/24
D11 - Stormwater Management Drainage Details	B	NB Consulting Engineers	24/09/24

D06 - Stormwater Management Drainage Plans	A	NB Consulting Engineers	24/09/24
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In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

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

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

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	17 May 2024

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

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

3. **Prescribed Conditions**

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

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:

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

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

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

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

Reason: Legislative requirement.

4. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Construction certificate plans are to be in accordance with all finished levels identified on approved plans. Notes attached to plans indicating tolerances to levels are not approved.
- (c) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian

Standards.

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

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

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

- (m) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (n) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (o) 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 2024

A monetary contribution of \$9,160.25 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 \$916,025.00.

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. **On Slab Carport Green Roof**

Details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to the carport green roof over slab, upon which soil and planting is being provided. Landscape treatment details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, and services connections. The following soil

depths are required to support landscaping as proposed: 300mm for groundcovers, perennials, grasses and lawn.

Design certification shall be submitted to the Certifier by a qualified Structural Engineer, that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

Reason: To ensure appropriate soil depth for planting and ensure waterproofing and drainage is installed.

8. **On-Site Stormwater Detention Details**

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by NB Consulting Engineers, job number 2301041, drawing number D01 to D05, dated 7/11/2024. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

- i. No structures downstream of the level spreader are to impede the overland flow.

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

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

9. **Vehicle Crossings Application**

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing 4 metres wide at the kerb in accordance with Northern Beaches Council Standard Drawing Extra Low in accordance with Section 138 of the Roads Act 1993.

Note, driveways are to be in plain concrete only.

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

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

Reason: To facilitate suitable vehicular access to private property.

10. **Amendments to the approved plans**

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

- The 'new 1m high open palisade fence built to boundary over' is to be located on the inside/northern edge of the existing retaining wall. The fence is to be in the style of metal pool fencing.

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

Construction Certificate.

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

11. **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.

12. **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.

13. **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.

14. **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.

15. 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.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

16. Pre-Construction Dilapidation Report

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifier prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

Properties:

- 19 Moore Street, Clontarf
- 15 Moore Street, Clontarf
- 82 Cutler Road, Clontarf
- 84 Cutler Road, Clontarf
- 86 Cutler Road, Clontarf

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifier and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifier must be satisfied that the requirements of this condition have been met prior to commencement of any works. If access is denied, then no dilapidation report is required.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

DURING BUILDING WORK

17. **Road Reserve**

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

Reason: Public safety.

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

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

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

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

19. **Geotechnical Requirements**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

20. **Demolition Works - Asbestos**

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifier, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

21. **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.

22. **Survey Certificate**

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

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

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

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

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

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

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

23. **Street Tree Planting**

Street tree planting (x 2) shall be installed in location as shown on the approved Landscape Plans. The street tree shall be selected to achieve a mature height of no more than 6 metres.

All street trees shall be a minimum pre-ordered planting size of 75 litres unless otherwise scheduled at a large container size, and shall meet the requirements of Australian Standard AS2303 - Tree Stock for Landscape Use. All street trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, including a four post and top and mid rail timber tree guard, and watered until established, and shall be generally located at least 2.0 metres from driveways, and shall generally be centralised within the road verge.

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

Reason: To maintain environmental and streetscape amenity.

24. **Landscape Completion**

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

- a) landscape works are to be contained within the legal property boundaries,
- b) tree, shrub and groundcover planting shall be installed as indicated on the approved Landscape Plan(s), unless otherwise imposed by conditions,
- c) all tree planting within the property shall achieve a mature height of no more than 6 metres;

shall be a minimum pre-ordered planting size of 75 litres or as otherwise scheduled if greater in size; meet the requirements of Australian Standard AS2303 - Tree Stock for Landscape Use; planted into a prepared planting hole 1m x 1m x 600mm depth generally, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and located either within garden bed or within a prepared bed within lawn,

d) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces,

e) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone.

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

Reason: Environmental amenity.

25. **Post-Construction Dilapidation Report**

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

- Compare the post-construction report with the pre-construction report,
- Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- Should any damage have occurred, suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

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

Reason: To maintain proper records in relation to the proposed development.

26. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**

The Applicant shall lodge the Legal Documents Authorisation Application with Council. The application shall include the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan prepared by a registered surveyor), and Civil Engineers' certification.

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

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

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

27. Swimming Pool Requirements

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

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

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

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

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

(d) A warning sign stating 'YOUNG CHILDREN SHOULD BE ACTIVELY SUPERVISED WHEN USING THIS POOL' has been installed.

(e) Signage showing resuscitation methods and emergency contact

(f) All signage shall be located in a prominent position within the pool area.

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

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

Reason: To protect human life.

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

28. Landscape Maintenance

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting. If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plans and any conditions of consent.

The approved landscape area shall in perpetuity remain as planting under the development consent, and shall not be replaced with any hard paved surfaces or structures.

Reason: To maintain local environmental amenity.

29. **Geotechnical Recommendations**

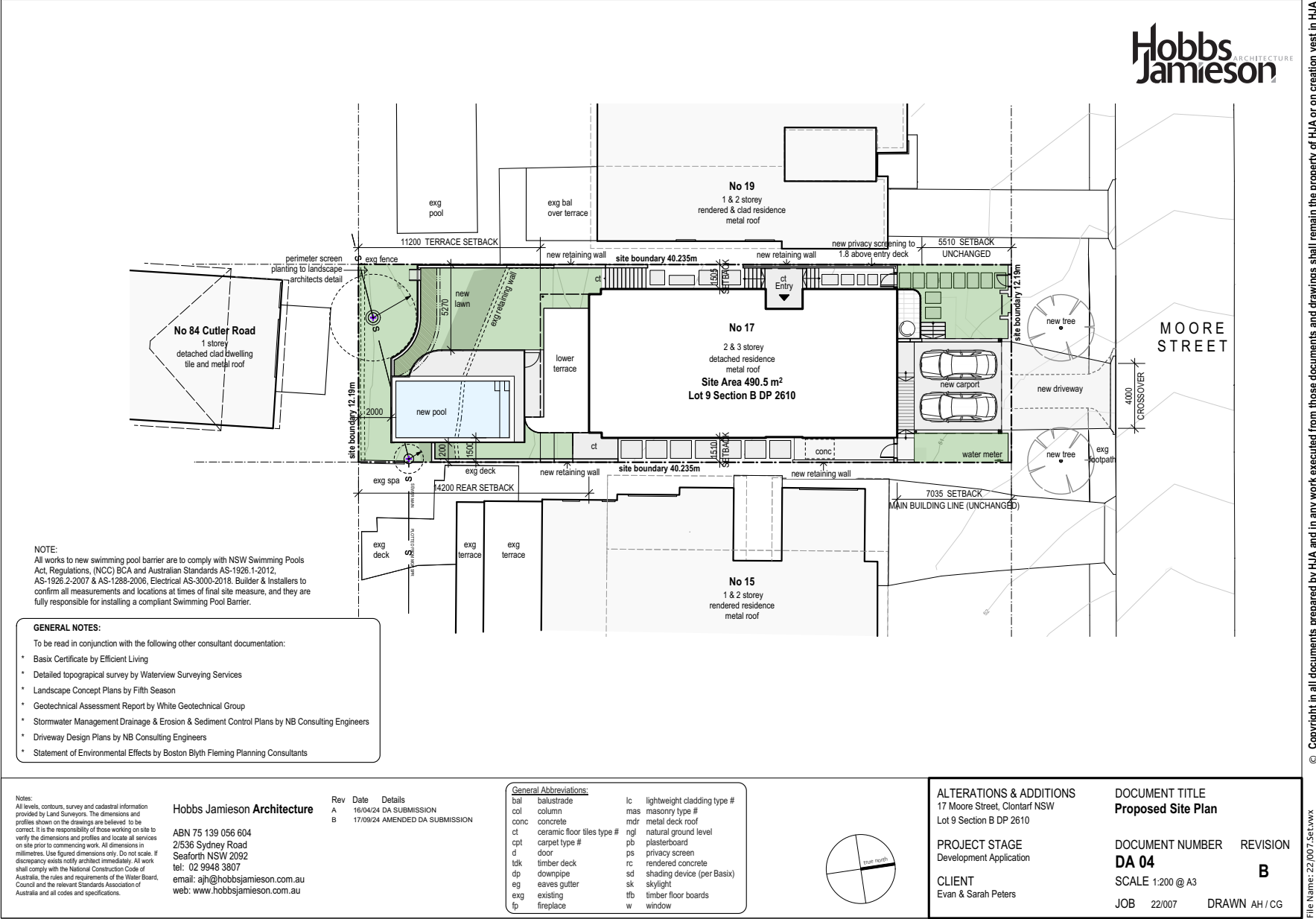
Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

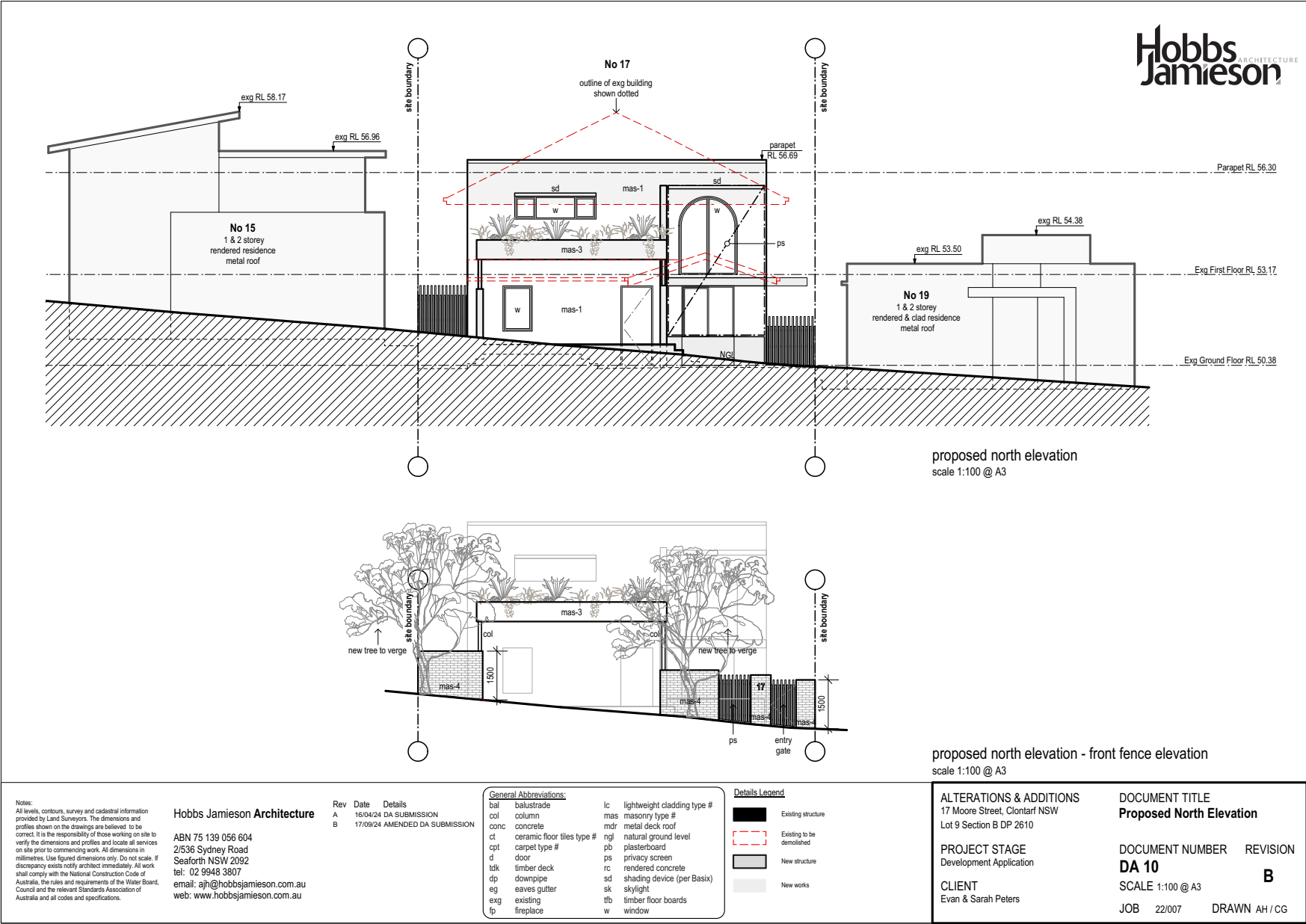
Reason: To ensure geotechnical risk is mitigated appropriately.

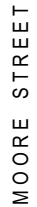
30. **Swimming Pool/Spa Motor Noise**

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.

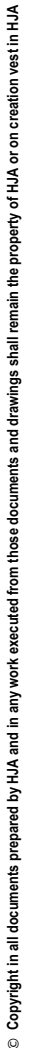






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Attachment 1 – Updated clause 4.6 Variation Request – FSR

Alterations and additions to a dwelling house including a swimming pool 17 Moore Street, Clontarf

1.0 Introduction

This updated clause 4.6 variation request has been prepared having regard to the following plans prepared by Hobbs Jamieson Architecture:

Architectural Drawing List		
No.		TITLE
DA 01	A	Existing Site Analysis Plan
DA 02	A	Existing Floor Plans - Demolition works
DA 03	A	Existing Elevations - Demolition works
DA 04	B	Proposed Site Plan
DA 05	B	Proposed Pool Plan & Section
DA 06	B	Proposed Lower Ground Floor Plan
DA 07	B	Proposed Ground Floor Plan
DA 08	B	Proposed First Floor Plan
DA 09	B	Proposed Roof Plan
DA 10	B	Proposed North Elevation
DA 11	B	Proposed East Elevation
DA 12	B	Proposed West Elevation
DA 13	B	Proposed South Elevation
DA 14	B	Proposed Section A - A part 1
DA 15	B	Area Calculations
DA 16	B	View Analysis Diagram
DA 16.1	A	View Analysis Photomontage from No 18
DA 16.2	A	View Analysis Photomontage from No 20
DA 17	B	Proposed External Materials - Front
DA 18	B	Proposed External Materials - Rear
DA 19	B	Shadow Diagrams - Plan
DA 20	B	Shadow Diagrams - Elevational Front
DA 20.1	A	Shadow Diagrams - Elevational Rear
DA 21	B	Proposed Section A - A part 2
DA 22	A	Proposed Cut & Fill Plan

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

2.0 Manly Local Environmental Plan 2013 (MLEP)

2.1 Clause 4.4 – Floor space ratio

Pursuant to Clause 4.4 MLEP 2013 the maximum FSR for development on the site is 0.4:1 representing a gross floor area of 196.2 square metres. The stated objectives of this clause are:

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

It has been determined that the proposal result in a total gross floor area on the site of 296.7 square metres. This represents a floor space ratio of 0.6:1 and therefore non-compliant with the FSR standard by 100.5 square metres or 51.2%.

I note that clause 4.1.3 of Manly Development Control Plan 2013 contains FSR exemption provisions applicable to land where the site area is less than the minimum Lot size required on the LEP Lot size map provided the relevant LEP objectives and the provisions of the DCP are satisfied.

The Lot size map identifies the subject site as being in sub zone “T” in which a minimum Lot area of 950m² is required. The site having an area of only 490.5m² is well below the minimum Lot area provision and accordingly the clause 4.1.3 Manly DCP FSR variation provisions apply.

Clause 4.1.3.1 states that the extent of any exception to the LEP FSR development standard pursuant to clause 4.6 of the LEP is to be no greater than the achievable gross floor area for the lot indicated in Figure 30 of the DCP. We confirm that pursuant to Figure 30 the calculation of FSR is to be based on a site area of 750m² with an achievable gross floor area of 300m².

In this regard, the 296.7m² of gross floor area proposed, representing an FSR of 0.39:1 (based on 750m²), is below the maximum prescribed gross floor area of 300m² and as such complies with the DCP variation provision. We note that such provision contains the following note:

Note: FSR is a development standard contained in the LEP and LEP objectives at clause 4.4(1) apply. In particular, Objectives in this plan support the purposes of the LEP in relation to maintaining appropriate visual relationships between new development and the existing character and landscape of an area as follows:

Objective 1) To ensure the scale of development does not obscure important landscape features.

Objective 2) To minimise disruption to views to adjacent and nearby development.

Objective 3) To allow adequate sunlight to penetrate both the private open spaces within the development site and private open spaces and windows to the living spaces of adjacent residential development.

As the proposed GFA/ FSR complies with clause 4.1.3.1 MDCP numerical provision it is also “deemed to comply” with the associated objectives as outlined which, if complied with, demonstrate the maintenance of an *appropriate visual relationships between new development and the existing character and landscape of an area.*

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of MLEP provides:

(1) The objectives of this clause are:

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

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

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

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

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

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

Clause 4.6(2) of MLEP provides:

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

This clause applies to the clause 4.4 Floor Space Ratio Development Standard.

Clause 4.6(3) of MLEP provides:

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

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

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

Clause 4.6(4) of MLEP provides:

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

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

The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest ***because*** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice dated 5th May 2020, attached to the Planning Circular PS 20-002 issued on 5th May 2020, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of MLEP provides:

- (5) *In deciding whether to grant concurrence, the Director-General must consider:*

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

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.4 of MLEP from the operation of clause 4.6.

3.0 Relevant Case Law

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

17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the*

development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51].

The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.

22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

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

1. Is clause 4.4 of MLEP a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.4 and the objectives for development for in the zone?
4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.4 of MLEP?

4.0 Request for variation

4.1 Is clause 4.4 of MLEP a development standard?

The definition of “development standard” at clause 1.4 of the EP&A Act includes:

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

Clause 4.4 MLEP prescribes a floor space height provision which seeks to limit the bulk, scale and density of the development. Accordingly, clause 4.4 MLEP is a development standard.

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

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

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

Consistency with objectives of the floor space ratio standard

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

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

Response: This objective relates to streetscape character and in this regard the proposal presents a 2 storey building height to Moore Street with the building form acknowledging (consistent with) the topographic landscape of the land which falls away towards its rear boundary. Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191, I have formed the considered opinion that most observers would not find the bulk and scale of the proposed development, as viewed from Cutler Road, to be offensive, jarring or unsympathetic in a streetscape context.

This objective is satisfied, notwithstanding the non-compliant FSR proposed, as 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,*

Response: Having regard to clause 4.1.3.1 Manly DCP FSR provisions, which inform the 298.14m² of gross floor area proposed, representing an FSR of 0.397:1 (based on 750m²), is below the maximum prescribed gross floor area of 300m² and as such complies with the DCP variation provision applicable to undersized allotments. We note that Objective 1 of the DCP provision, which relates to establishing building density and bulk, as reflected by FSR, in relation to site area (undersized allotments) is similar to this LEP objective namely:

Objective 1) To ensure the scale of development does not obscure important landscape features.

As previously indicated the proposed FSR complies with the DCP numerical FSR control applicable to undersized allotments and is therefore deemed to comply with this objective.

That said, neither the LEP or DCP identify and important landscape or townscape features either on or within proximity of the subject site. My own observations did not identify and landscape or townscape features that I would consider important in terms of their visual significance.

I am satisfied that the proposal, notwithstanding the FSR non-compliance, achieves this objective as the building density and bulk, in relation to a site area, satisfies Objective 1 of the clause 4.1.3.1 DCP provision applicable to undersized allotments, with the development not obscuring any important landscape and townscape features.

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

Response: This objective is the same as the primary purpose/ objective outlined at clause 4.1.3 of the DCP as confirmed in the note such provision namely:

Note: FSR is a development standard contained in the LEP and LEP objectives at clause 4.4(1) apply. In particular, Objectives in this plan support the purposes of the LEP in relation to maintaining appropriate visual relationships between new development and the existing character and landscape of an area as follows:

Objective 1) To ensure the scale of development does not obscure important landscape features.

Objective 2) To minimise disruption to views to adjacent and nearby development.

Objective 3) To allow adequate sunlight to penetrate both the private open spaces within the development site and private open spaces and windows to the living spaces of adjacent residential development.

As the proposed GFA/ FSR complies with clause 4.1.3.1 MDCP numerical provision it is also “deemed to comply” with the associated objectives as outlined which, if complied with, demonstrate the maintenance of an *appropriate visual relationships between new development and the existing character and landscape of an area.*

That said, it has previously been determined that the proposal achieves objective (a) of the clause 4.4 MLEP FSR standard namely to *ensure the bulk and scale of development is consistent with the existing and desired streetscape character.* Accordingly, I am satisfied that the development, notwithstanding the FSR non-compliance, maintains an appropriate visual relationship between new development and the existing built form character of the area.

In relation to landscape character, the application does not require the removal of any significant trees or vegetation with a building footprint maintained which is compliant with the landscaped area MDCP control. The building will sit within a landscaped setting. The application is accompanied by a schedule of materials and finishes which will enable the development to blend into the vegetated escarpment which forms and backdrop to the site. An appropriate visual relationship between new development and the existing landscape of the area is maintained.

I am satisfied that the development, notwithstanding its FSR non-compliance, achieves the objective as it maintains an appropriate visual relationship between new development and the existing character and landscape of the area.

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

Response: In responding to this objective. I have adopted views, privacy, solar access and visual amenity as environmental factors which contribute to the use and enjoyment of adjoining public and private land.

Views

Having inspected the site and its immediate surrounds I am satisfied that the proposal will not give rise to adverse public or private view affectation. In fact, the alterations to the roof form will potentially enhance private views available over the site. I have formed the considered opinion that a view sharing scenario is maintained between adjoining properties in accordance with the principles established in *Tenacity Consulting Pty Ltd v Warringah Council* [2004] NSWLEC140 and *Davies v Penrith City Council* [2013] NSWLEC 1141.

Notwithstanding the non-compliant FSR, the proposal achieves the objective of minimising view impact as demonstrated by the view sharing outcome achieved.

Privacy

Having regard to clause 4.1.3.1 Manly DCP FSR provisions, which inform the 296.7m² of gross floor area proposed, representing an FSR of 0.39:1 (based on 750m²), is below the maximum prescribed gross floor area of 300m² and as such complies with the DCP variation provision applicable to undersized allotments. We note that the privacy objectives at clause 3.4.2 are also referenced in relation to these provisions namely:

See also objectives for privacy at paragraph 3.4.2 of this plan.

3.4.2 Privacy and Security

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

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

As previously indicated the proposed FSR complies with the DCP numerical FSR control applicable to undersized allotments and is therefore deemed to comply with the clause 3.4.2 privacy objectives to the extent that it can be demonstrated that the development *minimises loss of privacy to adjacent and nearby development*.

Notwithstanding, we note that all surrounding properties are orientated to the south to take advantage of views towards Middle Harbour. This spatial relationship prevents direct overlooking between the living areas of these properties with a degree of mutual overlooking of private open space areas anticipated where all properties are orientated to take advantage of views.

Given the spatial separation maintained between the balance of surrounding properties, and the primary orientation of living areas to the south towards available views, I am satisfied that the design, although non-compliant with the FSR standard, minimises adverse environmental impacts in terms of privacy and therefore achieves this objective.

Solar access

The shadow diagrams demonstrate that the building, although non-compliant with the FSR standard, will not give rise to any unacceptable shadowing impact to the existing north facing living room and open space areas of the adjoining residential properties with compliant levels of solar access maintained.

Visual amenity/ building bulk and scale

As indicated in response to objective (a), I have formed the considered opinion that the bulk and scale of the building is contextually appropriate with the floor space appropriately distributed across the site to achieve acceptable streetscape and residential amenity outcomes.

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

I have formed the considered opinion that the building, notwithstanding the FSR non-compliance, achieves the objective through skilful design that minimises adverse environmental impacts on the use and enjoyment of adjoining land and the public domain.

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

Response: This objective is not applicable.

Having regard to the above, the proposed building form which is non-compliant with the FSR standard will achieve the objectives of the standard to at least an equal degree as would be the case with a development that complied with the FSR standard. Given the developments consistency with the objectives of the FSR standard strict compliance has been found to be both unreasonable and unnecessary under the circumstances.

Consistency with zone objectives

The subject site is zoned R2 Low Density Residential pursuant to the provisions of MLEP. Dwelling houses are permissible in the zone with the consent of council. The stated objectives of the zone are as follows:

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

Response: The development seeks legitimate alterations and additions to an existing dwelling house on the site which will provide for the housing needs of the community within a low density residential environment. The proposal is consistent with this objective.

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

Response: N/A

The proposed works are permissible and consistent with the stated objectives of the zone.

The non-compliant development, as it relates to FSR, demonstrates consistency with objectives of the R2 Low Density Residential zone and the FSR standard objectives. Adopting the first option in *Wehbe* strict compliance with the FSR standard has been demonstrated to be unreasonable and unnecessary.

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

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

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

The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.

The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].

Sufficient environmental planning grounds

I have formed the opinion that sufficient environmental planning grounds exist to justify the variation including the compatibility of the height, bulk and scale of the development, as reflected by floor space, with the built form characteristics established by adjoining development and development generally within the site's visual catchment.

Further, the variation provisions contained at clause 4.1.3.1 of Manly DCP reflect an acceptance that the FSR standard on undersized allotments does not provide for the orderly and economic use and development of the land and in my opinion represents an abandonment of the FSR standard on undersized allotments. The proposal satisfies such provisions.

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

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

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

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

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

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

4.3 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 4.4 and the objectives of the R2 Low Density Residential zone

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

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

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

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

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

4.4 Secretary’s concurrence

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

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

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

Concurrence of the Secretary can therefore be assumed in this case.

5.0 Conclusion

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

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

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

Boston Blyth Fleming Pty Limited



Greg Boston
B Urb & Reg Plan (UNE) MPIA
Director

4.10.24

ITEM 3.4	DA2024/0356 – 2-6 SMITH LANE MANLY - USE OF PREMISES AS AN OFFICE PREMISES
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PURPOSE

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

RECOMMENDATION

- A.** That Council as the consent authority, vary the 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 DA2024/0356 for use of premises as an office premises on land at Part Lot 1 & Part Lot 2 Sec 4 DP 2427, 2-6 Smith Lane MANLY , subject to the conditions set out in the Assessment Report.

Reporting manager	Rodney Piggott
TRIM file ref	2024/845070
Attachments	1 Assessment Report 2 Site Plan 3 Clause 4.6

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/0356
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Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Part Lot 1 & Part Lot 2 Sec 4 DP 2427, 2 - 6 Smith Lane MANLY NSW 2095 Part Lot 1 & Part Lot 2 Sec 4 DP 2427, 2 - 6 Smith Lane MANLY NSW 2095
Proposed Development:	Use of premises as an office premises
Zoning:	Manly LEP2013 - Land zoned E1 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Mathew Kevin Quattroville

Application Lodged:	08/04/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	09/09/2024 to 23/09/2024
Advertised:	Not Advertised
Submissions Received:	7
Clause 4.6 Variation:	4.4 Floor space ratio: 3%
Recommendation:	Approval

Estimated Cost of Works:	\$ 0.00
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EXECUTIVE SUMMARY

This development application seeks consent for use of part of the site (currently approved as a garage) as an office premises. No physical works are proposed.

Unauthorised works have been carried out on the site including the a fitout of the approved garage for the purposes of a office premises.

The application is referred to the Development Determination Panel (**DDP**) due to the application receiving more than 5 submissions.

Concerns raised in the objections predominantly relate to loss of off-street parking, inappropriate land use, heritage significance, and insufficient and inaccurate information.

Critical assessment issues included the proposed loss of off-street parking and Floor Space Ratio (**FSR**) development standard non-compliance.

The 4.6 request for the non-compliance with FSR standard arises from a 21.8sqm increase in floorspace. The existing building has an existing floorspace which is 0.8% above compliance with the Manly Local Environmental Plan (MLEP) 2013 development standard based on historical approvals with the proposal increasing this to 3%. The additional floorspace does not increase the bulk or scale of the building.

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

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for use of an existing single car garage as an office premise. No physical works are proposed under this application.

Works have been undertaken without consent, with the fitout of the office already constructed. The application seeks consent for the use only. While consent for works undertaken cannot be approved retrospectively, the use and location of the office premise can be considered and assessed in this application.

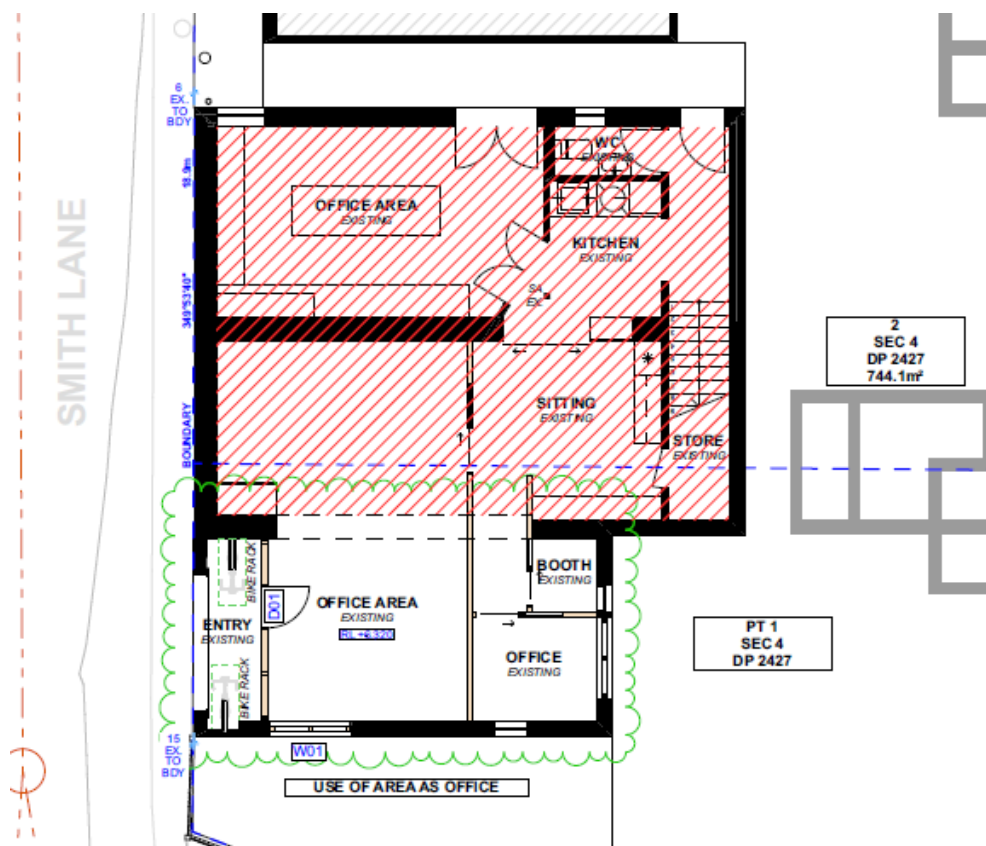


Image 1 - Proposed office area circled in green

Proposed Operational Details:

Hours of Operation

- Monday to Friday: 7am to 10pm
- Saturday and Sunday: 7am to 8pm

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 E1 Local Centre

Manly Local Environmental Plan 2013 - 4.4 Floor space ratio

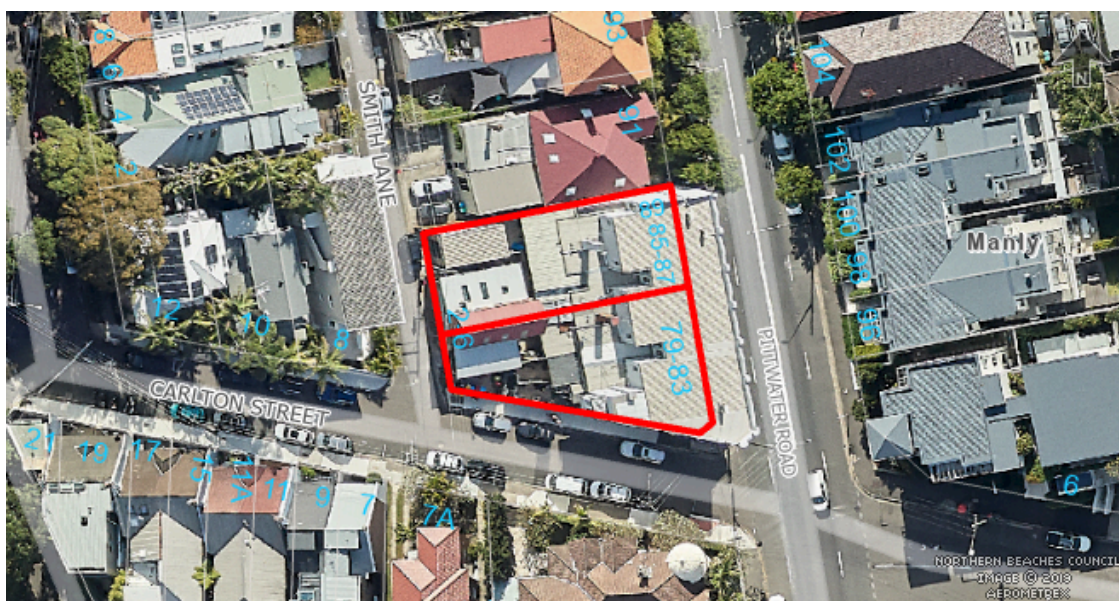
Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Development Control Plan - 4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor

SITE DESCRIPTION

Property Description:	Part Lot 1 & Part Lot 2 Sec 4 DP 2427 , 2 - 6 Smith Lane MANLY NSW 2095 Part Lot 1 & Part Lot 2 Sec 4 DP 2427 , 2 - 6 Smith Lane MANLY NSW 2095
Detailed Site Description:	The subject site consists of two (2) allotments (Lot 2 Sec 4 DP2427 and Part Lot 1 Sec 4 DP 2427) located on the western side of Pittwater Road and eastern side of Smith Lane. The site is also known as known as 79-89 Pittwater Road, Manly. The site is irregular in shape with a frontage of 18.9m along Smith Lane, 30.975m along Carlton Street and 28.345m along Pittwater Road. The site has a surveyed area of 744.1m². The site is located within the E1 Local Centre zone and accommodates 6 shops to the Pittwater Road Frontage and an existing office and on site parking to the Smith Lane frontage. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by commercial premises and residential development.

Map:



SITE HISTORY

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

DA2021/2215 - Use of Premises (Shop 89) as a take away food and drink premises including fit out and signage. (Approved 20 February 2021)

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent.

Section 4.15 Matters for Consideration	Comments
Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	These matters have been addressed via a condition of consent. <u>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 traffic and floor plans. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This 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 clause is not relevant to this application. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 09/09/2024 to 23/09/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 7 submission/s from:

Name:	Address:
Mr Kieran John Dolly	12 Smith Street MANLY NSW 2095
Camille Vachon	6 Smith Street MANLY NSW 2095
Mr Allan John Butler	93 Pittwater Road MANLY NSW 2095
Ms Catherine Maree Santos	2 Smith Street MANLY NSW 2095
Ms Louise Ann Clark	12 Smith Street MANLY NSW 2095
Mr Fernando Miguel Lulli	15 Carlton Street MANLY NSW 2095
Mr John Douglas Beveridge	12 Carlton Street MANLY NSW 2095

The following issues were raised in the submissions:

- **Inaccurate traffic report**
- **Loss of off-street parking**
- **Inappropriate land use**
- **Impact upon Heritage**
- **Notification sign**
- **Insufficient information**

The above issues are addressed as follows:

- **Inaccurate traffic report**

The submissions raised concern that the traffic report is inaccurate.

Comment:

The application was referred to Council's Traffic engineer for comment. Council's Traffic Engineer reviewed the proposal and raised a number of concerns with the proposal and supporting Traffic Report. In response to the concerns raised, the applicant provided an

updated Traffic Report, which was referred back to Council's Traffic engineer who supported the application, subject to conditions.

- **Loss of off-street parking**

The submissions raised concern that the proposed development would lead to a loss of off-street parking in a already congested area.

Comment:

As noted above, Council's Traffic Engineer reviewed the proposal and is supportive of the proposed development, subject to conditions. Most notably is that the previous vehicular access (now proposed as office space) is located in an prohibited location under AS280-.1 (2004) and is therefore recommended to be removed. The access is located to close to the Carlton Street corner and is a safety issue.

- **Inappropriate land use**

The submissions raised concerns that the use of the site for office space, noting that it adjoins residential development. Concern has also been raised regarding anti-social behavior from occupants of the unauthorised office space.

Comment:

A office premise is a type of commercial premise under the MLEP 2013, and commercial premise are permissible use within the E1 Local Centre Zone. While it is acknowledged that site is adjoins a residential zone, the impacts associated with a office premises is not deemed to be unreasonable.

- **Impact upon Heritage**

The submissions raised concerns that the proposed development will have impact upon the heritage significance of the site. One of the objections has included a excerpt from a historic heritage report for the site (prepared by Cecelia Wells, dated 12 July 1996).

Comment:

The proposal was referred to Council's Heritage advisor who raised no concern with the proposed development.

- **Notification sign**

The submissions raised concerns that the notification sign was not correctly displayed for the length of the notification period.

Comment:

Following the amended material being lodged by the applicant, the application was officially renotified to ensure the notification sign was displayed on site for the whole notification period.

- **Insufficient information**

The submissions raised concerns that insufficient information (traffic, heritage, BCA) has been provided to allow for a full assessment of the development application.

Comment:

Adequate information has been provided by the applicant to allow for a thorough assessment of the development application.

REFERRALS

Internal Referral Body	Comments			
Building Assessment - Fire and Disability upgrades	<i>Supported, with conditions</i> The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below. Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage. Planning comment: Council's building officer have recommended a number of conditions that are imposed for construction works. Given that the application does not propose any physical works, these conditions have been deleted.			
NECC (Flooding)	<i>Supported, without conditions</i> This proposal is for the conversion of a garage into an office space. This proposal is outside of the Flood Planning Area and as such is not subject to any flood related controls. This proposal is generally compliant with Section 5.4.3 of the Manly DCP and Clause 5.21 of the Manly LEP.			
Strategic and Place Planning (Heritage Officer)	<table><tr><th>HERITAGE COMMENTS</th></tr><tr><th>Discussion of reason for referral</th></tr><tr><td> <i>Supported, without conditions</i> The proposal has been referred to Heritage as the subject property is located within a conservation area and in the vicinity of a heritage item: C1 - Pittwater Road Heritage Conservation Area Item I201 - House - 77 Pittwater Road, Manly </td></tr></table>	HERITAGE COMMENTS	Discussion of reason for referral	<i>Supported, without conditions</i> The proposal has been referred to Heritage as the subject property is located within a conservation area and in the vicinity of a heritage item: C1 - Pittwater Road Heritage Conservation Area Item I201 - House - 77 Pittwater Road, Manly
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<i>Supported, without conditions</i> The proposal has been referred to Heritage as the subject property is located within a conservation area and in the vicinity of a heritage item: C1 - Pittwater Road Heritage Conservation Area Item I201 - House - 77 Pittwater Road, Manly				

Internal Referral Body	Comments		
	Details of heritage items affected		
	Details of the conservation area and the heritage item as contained within the Manly inventory is as follows:		
	C1 - Pittwater Road Heritage Conservation Area		
	<u>Statement of Significance</u>		
	This street pattern is distinctive and underpins the urban character of the area. The streets remain unaltered in their alignment, although the names of Malvern, Pine and North Steyne are now names for what were Whistler, Middle Harbour and East Steyne respectively.		
	<u>Physical Description</u>		
	The streetscape of Pittwater Road is a winding vista of late 19th and early 20th century commercial and residential architecture of generally one or two floors - although there are exceptions such as the four storey private hotel. The streetscape provides a 19th century atmosphere due to it's scale, width and the number of extant Victorian structures. Within the streetscape there are a number of individually signigant buildings which are listed seperately. Adjacent streets generally comprise a consistant pattern of one and two story residential cottages, with the occasional terrace. Some streets have intermittent street plantings and remnant stone kerbs. The flat topography is accentuated by the escarpment to the west which provides an important visual, vertical and vegetated backdrop.		
	Item I201 - House		
	<u>Statement of Significance</u>		
	An unusual landmark corner building in Federation Queen Anne Style.		
<u>Physical Description</u>			
Substantial 2-storey Federation Queen Anne style house with unusual round corner tower with onion dome. Hipped and gabled roof. Tower fixtures elaborate 1920's style leadlight windows. Features a pair of oriel windows to Carlton Street elevation with gables above. First floor roughcast stuccoed, ground floor face brick. Front fence sandstone with curved pillars and picket infill.			
Other relevant heritage listings			
SEPP (Biodiversity and Conservation) 2021	No		
Australian Heritage Register	No		
NSW State Heritage Register	No		
National Trust of Aust (NSW) Register	No		
RAIA Register of 20th Century Buildings of Significance	No		

Internal Referral Body	Comments		
	Other	No	
	Consideration of Application		
	The proposal seeks consent for the change of use from a garage to office space. The site is subject to a Building Information Certificate (149D Unauthorised) Application - BC2024/0079 for demolition and construction works undertaken to convert the existing garage into an office space. The existing property is not a heritage listed item however it is located in the Pittwater Road Conservation Area and identified as a contributory item. The two storey mid section is considered to have high significance. Therefore, any works impacting the heritage significance of the property require consent.		
	Given the proposal is for the change of use only and does not involve any physical works, which are subject to a Building Information Certificate (149D Unauthorised) Application, the impact of the proposal upon the significance of the conservation area is considered manageable.		
	Therefore, no objections are raised on heritage grounds and no conditions required.		
	<u>Consider against the provisions of CL5.10 of Manly LEP 2013.</u>		
	Is a Conservation Management Plan (CMP) Required? No		
	Has a CMP been provided? No		
	Is a Heritage Impact Statement required? No		
	Has a Heritage Impact Statement been provided? No		
Traffic Engineer	<i>Supported, with conditions</i>		
	Amended Comments relating to Amended Traffic report (21/08/2024)		
	The amended Traffic and Parking Assessment (Response to Request for Information) prepared by Traffix, dated 05 August 2024 and the report (Response to RFI) prepared by Four Towns Planning dated 3 August 2024 have been reviewed by the Traffic team.		
	The applicant has provided further information in relation to the concerns raised in Traffic Referral Response on 27 June 2024. Some of the information includes as follows:		
	- The additional proposed Gross Floor Area has been revised down from 27.14m² (original proposal) to 21.8m² (current proposal). - The consultant acknowledges and accepts that any approval for a change of use at this location will be subject to a condition of consent. This condition states that parking permits will not be available for any		

Internal Referral Body	Comments
	businesses, with the aim of reducing reliance on car travel and promoting the use of active travel and public transport. • In the RFI letter, it is stated that there is a maximum of 12 staff members on-site at any given time. This is considered a worst-case scenario because staff are allowed to work from home, and most meetings with clients take place off-site or through online platforms. Additionally, the letter mentions that some staff members live within walking or cycling distance of the site, which reduces the need for using private vehicles even further. • A survey was conducted and included in the RFI to assess the travel habits of the staff. The results showed that 13% (2 out of 15) of staff members currently drive to work and park on surrounding streets. According to the analysis, the proposed increase in commercial space from 97.23m² to 119.03m² to accommodate up to 12 staff members at a time would mean an additional 2.7 staff members on-site. Based on the 13% of staff who currently drive and park, this would result in a demand for approximately 0.34 (0) additional parking spaces for the extra 2.7 staff members. • The current access is located in a prohibited area as shown in Figure 3.1 of AS2890.1 (2004). The proposal aims to eliminate the existing non-compliant access, which will enhance the safety of the intersection of Smith Lane and Carlton Street in compliance with current Australian Standards. • It is noted that the proposed increase in GFA will lead to only minimal additional demands for waste or servicing requirements compared to the current (approved) levels. All waste and servicing demands will still comply with the existing Consent, and the proposal is not seen as an intensification of waste and servicing demands. • The traffic impact of the proposal on the surrounding road network has been included in the traffic report. The proposal will generate minimal traffic during peak periods; therefore, it will not have any unacceptable implications in terms of road network capacity performance. Conclusion Subject to conditions, the application can be supported on traffic grounds. Planning comment: Council's traffic engineer have recommended a number of conditions that are imposed for construction works. Given that the application does not propose any physical works, these conditions have been deleted.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)**Housing and Productivity Contribution**

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

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

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

Comment:

The subject site is a commercial premise and is sited within the Greater Sydney region. As such, the contribution is \$30 dollars per sqm of commercial gross floor area. The proposed area of the mezzanine is 22.34. As such, the contribution payable is \$706.18.

Proposed property address

Contributions amount is estimated based on the following address:

- 2-6 SMITH LANE MANLY 2095

Below outlines the inputs that you have entered:

Proposed

Development	Total number of units	Unit of charge
Office Premise	22.34	SQM of GFA

Housing and Productivity Contribution

Housing and Productivity contribution amount is estimated based on the following contributions plan/s:

- Greater Sydney-Base HPC

Base Housing and Productivity Contribution	\$706.18
Total Housing and Productivity Contribution :	\$706.18
Estimated total infrastructure contributions	\$706.18

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 commercial purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1) (b) and (c) of this Chapter and the land is considered to be suitable for the commercial land use.

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?	
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Floor Space Ratio	1:1 (744.1sqm)	1.03:1 (766.44sqm)	3%	No

Compliance Assessment

Clause	Compliance with Requirements
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
6.12 Essential services	Yes
6.21 Noise impacts—licensed premises	Yes
Schedule 5 Environmental heritage	Yes

Detailed Assessment

Zone E1 Local Centre

The underlying objectives of the E1 Local Centre zone

- To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.*

Comment:

The proposed development retains the use of the building as office. This supports the needs of the people who live in, work in, and visit the local area.

- To encourage investment in local commercial development that generates employment opportunities and economic growth.*

Comment:

As above, the proposed development is for an extension of a office premises at ground level, which will provide employment opportunities. The subject site is accessible in that it is located within short walking distance of regular transport services

- *To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.*

Comment:

N/A

- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*

Comment:

As noted above the proposed development is at ground level and for a non-residential use.

- *To minimise conflict between land uses in the zone and adjoining zones and ensure amenity for the people who live in the local centre in relation to noise, odour, delivery of materials and use of machinery.*

Comment:

The proposed office space will not lead to unreasonable acoustic impacts to the adjoining residential zone.

- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*

Comment:

No physical change proposed to the existing building.

- *To create urban form that relates favourably in scale and in architectural and landscape treatment to neighbouring land uses and to the natural environment.*

Comment:

No physical change to the building proposed.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the E1 Local Centre zone.

4.4 Floor space ratio

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	1:1 (744.1sqm)
Proposed:	1.03:1 (766.44sqm)
Percentage variation to requirement:	3%

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

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

Comment:

The proposal will not alter the existing bulk and scale of the development, with the increase in gross floor area contained within the approved footprint of the building. The increased bulk will not impact upon the appearance of the existing dwelling as viewed from the street.

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

Comment:

No important landscape features within the close vicinity of the subject site will be unreasonably impacted by the proposed use.

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

Comment:

The increase to floor space does not unreasonably impact on the visual relationship between new development and the existing character and landscape of the area.

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

Comment:

The increase in gross floor area will not significantly increase visual and aural impacts on adjoining development, nor will it lead to unreasonable levels of overshadowing to adjoining properties.

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

Comment:

N/A

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance

4.6 Exceptions to development standards

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

Development standard: Clause 4.4 (Floor Space Ratio)

Requirement: 1:1 (744.1sqm)

Proposed: 1.03:1 (766.44sqm)

Percentage of variation: 3%

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

Subclause (1) of this clause provides that:

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

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

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

Comment:

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

Subclause (2) of this clause provides that:

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

Comment:

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

Subclause (3) of this clause provides that:

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

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

Comment:

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

- *The proposal relates to a change of use only to existing gross floor area with no changes to the building footprint or external façade. Therefore, the proposal is consistent with the existing and desired streetscape character.*

- *The proposal is for a change of use to existing floor space which does not change the density and bulk applicable to the site and does not change existing landscaping within the site, therefore retaining the important landscape features.*
- *The proposal controls building density and bulk with no impact to important landscape and townscape features.*
- *The proposal relates to the use of existing floor space which was derelict and underutilised due to the area not complying with relevant Australian standards to park a car. The proposal allows for opportunities to enhance the building which is an appropriate visual relationship with the adjoining properties within the local centre zone and the surrounding area. The proposal maintains the existing roller door which keeps the appearance of the building.*
- *The proposal is for the use of an additional 22.34sqm of the existing building for office space. The additional use is inconsequential to the existing development and will have no adverse environmental impacts on the use or enjoyment of adjoining land.*
- *The proposal relates to the use of a previous garage area that in our opinion didn't comply with relevant Australian standards and was unusable. The proposed use of the area retains the bulk, scale and appearance of the building with the roller door retained. The intention is to utilise the space which is underused, not functional and derelict. The proposal enhances the commercial viability of the site enhancing the diversity of business activities that create economic growth and support other uses within the site. Further, the minor increase to floor space links in with the existing approved use as office premises. The proposal allows the retention of local services within the business zone.*

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

Comment:

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

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

The Clause 4.6 Request argues, in part:

"There is an absence of environmental harm arising from the contravention and positive planning benefits arising from the proposed development as outlined in detail above. From a planning perspective, there is sufficient grounds to justify the variation to the FSR development standard for the following reasons:

- *The objectives of the development standard are achieved, notwithstanding the non-compliance with the standard in the circumstances described in this variation report and summarised as follows:*
 - *The proposal is consistent with the bulk and scale of the existing and desired streetscape character of the area, noting the proposal does not change the existing building footprint or change the external appearance of the building.*

- *The proposal utilises an existing derelict area which is within the existing building footprint. The use of the area which is currently excluded from GFA calculations will have minimal impact.*
- *The variation has been reviewed against relevant LEC court principles in regards to FSR, and the proposal is considered suitable in the context of the site and the merit analysis required given the existing scale, adjoining developments and the proposed development.*
- *The desired future character of the locality is not jeopardised by the proposal and is consistent with Council's objectives for this precinct in regards to the E1 Local Centre zone.*
- *The area of non-compliance does not give rise to any adverse environmental impacts to the amenity of the neighbouring properties. The area of non-compliance does not contribute to any adverse overshadowing impacts to adjoining developments.*
- *Having regard to Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, and further to the proposal's consistency with the above strategic and statutory environmental planning provisions, the proposal is consistent with the following objectives under Section 1.3 of the Environmental Planning and Assessment Act 1979 (the Act):*
(c) to promote the orderly and economic use and development of land; and
(g) to promote good design and amenity of the built environment,

1. In response to (c), the proposal will facilitate the orderly and economic use and development of the land, in a highly appropriate location, in a manner that is desired by the planning controls because it will facilitate the use of additional area associated with the existing use of the building as office premises. In considering the contrary (refusal of the DA), retention of the building in its current form would not promote the orderly and economic use and development of land in the manner that council's strategic and statutory planning provisions seek. Retention of the building in its current form makes no advancement towards achieving the goal of creating functional development opportunities of run-down sites.

2. In response to (g) the proposal has been designed to promote good design and amenity of the built environment, noting the retention of the external facades and roller door which maintain the streetscape appearance."

Planner's Comment:

The applicant has satisfactorily demonstrated that the works are consistent with the objects of the EP&A Act, specifically the following objects of the EP&A Act:

- The development promotes the orderly and economic use and development of the land, in so far that the proposed development changes the use of a existing non-compliant Australian standard parking space to a commercial use, thereby satisfying objects 1.3(c) of the EPA Act.
- The development promotes good design and amenity of the built environment, noting that the works will not contribute to any unreasonable impact on amenity considerations (i.e solar access, privacy and view loss) to neighbouring properties, thereby satisfying objects 1.3(g) of the EPA Act.

Public Interest:

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

Conclusion:

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

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

Manly Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.2 Heritage Considerations	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.2.1 FSR (Consideration of Exceptions including Arcades)	N/A	N/A
4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor	No	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.3 Flood Prone Land	Yes	Yes

Detailed Assessment

4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor

The proposed development involves change of use of an approved parking space to a office premise. The parking requirements for the change of use comprising an additional 21.8sqm office premises are 0.55 space (round up to 1 space), and removing an existing car space. Therefore resulting in a shortfall of two (2) parking spaces.

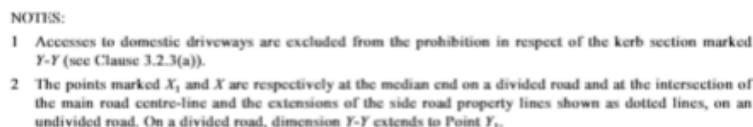
The objectives of the control are addressed as follows:

Objective 1) To ensure there is adequate provisions for car parking access and loading in future development and redevelopment in all business zones.

Comment:

The proposed loss of the off-street parking for a commercial premise is generally not supported and desirable of the area. However, as noted by Councils Traffic Engineer, the current access is located in a prohibited access area pursuant to the current Australian Standard AS2890.1 (2004).

With regard to the above, the proposed parking variation is acceptable and supportable.



Objective 2) To minimise conflicts between pedestrian and vehicular movement systems within the business areas.

The proposed development will not result in any adverse conflicts between pedestrian and vehicular movement systems with the business area.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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 2024

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.

PLANNING CONCLUSION

This proposal, for use of an existing garage for the purpose of office space has been referred to the

Development Determination Panel (DDP) as the proposal attracted more than 5 submissions by way of objection.

The concerns raised in the objections have been addressed through the recommendation of conditions requiring the implementation of appropriate traffic management conditions.

The critical assessment issues were loss of off-street parking and insufficient information.

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

REASON FOR DETERMINATION

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

RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2024/0356 for Use of premises as an office premises on land at Part Lot 1 & Part Lot 2 Sec 4 DP 2427, 2 - 6 Smith Lane, MANLY, Part Lot 1 & Part Lot 2 Sec 4 DP 2427, 2 - 6 Smith Lane, MANLY, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA04	A	Site/Roof/Sediment Erosion/ Waste Management	Action Plans	20 March 2024

		Stormwater Concept Plan		
DA05	A	Ground Floor Plan	Action Plans	20 March 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BCA Compliance Assessment	-	BCA Vision	19 February 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. **No Approval for physical works**
Consent is only granted for use of the proposed office space circled in green below only. Existing physical works are not approved.

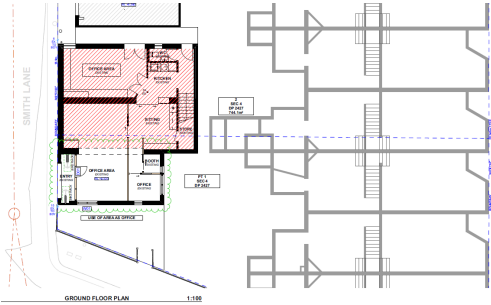


Image 1 - Approved office space circled in green.

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

3. **Approved Land Use**
Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a office premises, in accordance with the Dictionary of the Manly Local Environmental Plan 2013, as follows:

office premises means a building or place used for the purpose of administrative, clerical, technical, professional or similar activities that do not include dealing with members of the public at the building or place on a direct and regular basis, except where such dealing is a minor activity (by appointment) that is ancillary to the main purpose for which the building or place is used.

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

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

4. **No Approval for Land Use**

No approval is granted under this Development Consent for any land use outside of the proposed office premises nominated on the approved plans.

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

FEES / CHARGES / CONTRIBUTIONS

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

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

Contribution Type	Amount
Housing and Productivity Contribution	\$ 706.18
Total:	\$ 706.18

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

highest PPI number

consent PPI number

where—

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

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

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

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

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

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

4. The HPC must be paid using the NSW planning portal (<https://pp.planningportal.nsw.gov.au/>).

5. If the Minister administering the Environmental Planning and Assessment Act 1979 agrees, the HPC (apart from any transport project component) may be made, instead of as a monetary contribution, in the following ways:
 - a) the dedication or provision of land for the purpose of regional infrastructure in the region in which the development will be carried out,
 - b) the carrying out of works for the purpose of regional infrastructure in the region in which the HPC development will be carried out.

If the HPC is made partly as a monetary contribution, the amount of the part payable is the amount of the part adjusted in accordance with condition 2 at the time of payment.

6. Despite condition 1, a housing and productivity contribution is not required to be made to the extent that a planning agreement excludes the application of Subdivision 4 of Division 7.1 of the Environmental Planning and Assessment Act 1979 to the development, or the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023 exempts the development from the contribution. The amount of the contribution may also be reduced under the order, including if payment is made before 1 July 2025.

Reason: Statutory requirement.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

6. **Fire Safety Matters**

At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and Fire and Rescue NSW.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of a part Occupation Certificate or Occupation Certificate. Each year the Owners must send to the Council and Fire and Rescue NSW, an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement under Parts 10, 11 & 12 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021.

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

7. **Traffic Management**

Traffic management procedures and systems must be in place and practised during the course of the project to ensure safety and minimise the effect on adjoining pedestrian and vehicular traffic systems.

These procedures and systems must be in accordance with AS 1742.3 2009 Manual of Uniform Traffic Control Devices and Council's Development Control Plans.

Note: A traffic management plan is to be submitted to Council for approval.

Reason: To ensure appropriate pedestrian and traffic control and continued efficient network operation.

8. **Deliveries, waste and recycling collection hours**

Deliveries, waste and recycling collection from the site is to be carried out between 7am and 6pm only to minimise noise Monday to Friday.

Reason: To minimise noise to residential receivers.

9. **Hours of Operation**

The hours of operation are to be restricted to:

- Monday to Friday – 7:00am - 10:00pm
- Saturday, Sunday and Public Holidays – 7:00am - 8:00pm

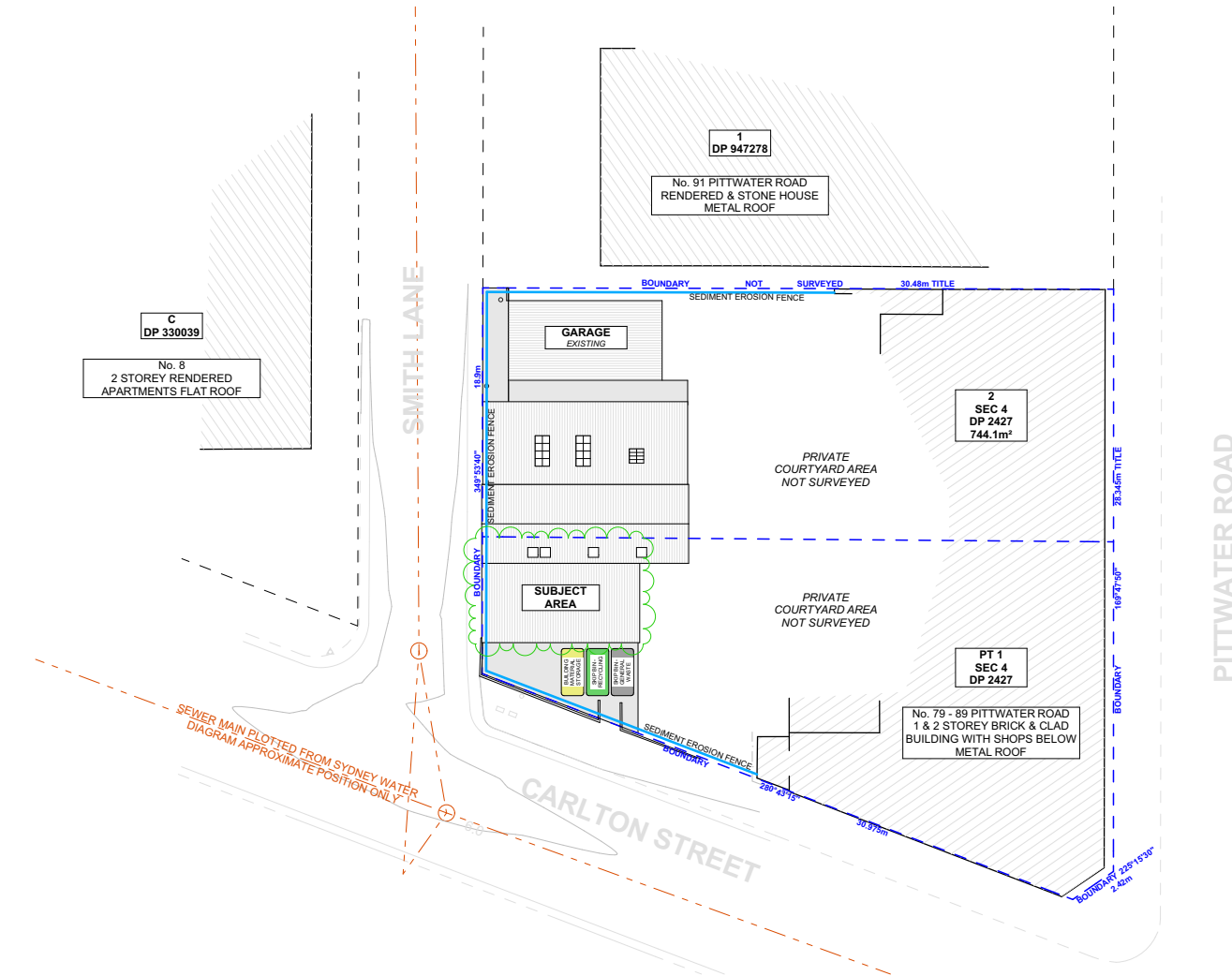
Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

Reason: Information to ensure that amenity of the surrounding locality is maintained.

10. **Commercial Premises Parking Permits**

Any businesses and/or tenants of the subject site are not eligible for business parking permits. This condition is to be provided on the property Title.

Reason: to ensure businesses premises/tenants are aware that they are not entitled to permits irrespective of the location of the development within a permit parking area.



NOTE: SITE BOUNDARY IS TO BE IDENTIFIED BY A REGISTERED SURVEYOR AND CLEARLY MARKED ON SITE PRIOR TO COMMENCEMENT OF ANY CONSTRUCTION WORKS.

NOTES REGARDING BOUNDARY
THE INFORMATION SHOWN ON THIS PLAN IS FOR DESIGN PURPOSES ONLY. THE POSITION OF BOUNDARY LINES HAVE BEEN ESTABLISHED BY A SURVEY TO MEET THE IDENTIFICATION REQUIREMENTS FOR COUNCIL AND NOT FOR REGISTRATION WITH THE LAND REGISTRATION SERVICES NSW NOR MAY THIS PLAN BE USED FOR ANY OTHER PURPOSE. SUBSEQUENT REGISTERED OR OTHER SURVEYS MAY AFFECT THE DEFINED BOUNDARY POSITIONS IN THIS AREA. ANY DIFFERENCES OF THIS NATURE ARE BEYOND THE PURPOSES OF THIS PLAN. THIS PLAN IS FOR THE ABOVE STATED PURPOSES ONLY. RESTRICTIONS ON THE TITLE HAVE NOT BEEN INVESTIGATED. IF FURTHER DEVELOPMENT IS CONTEMPLATED OR CONSTRUCTION INTENDED THEN IT IS IMPORTANT THAT A SURVEY SET OUT IS CARRIED OUT.

SEDIMENT NOTE :
1. ALL EROSION AND SEDIMENT CONTROL MEASURES TO BE INSPECTED AND MAINTAINED DAILY BY THE SITE MANAGER.
2. MINIMISE DISTURBED AREAS, REMOVE EXCESS SOIL FROM EXCAVATED AREA AS SOON AS POSSIBLE.
3. ALL MATERIAL STOCKPILE TO BE CLEAR FROM DRAINS, GUTTERS AND FOOTPATHS, OR WITHIN SEDIMENT FENCE AREA.
4. DRAINAGE TO BE CONNECTED TO STORMWATER AS SOON AS POSSIBLE. IF STORED ON SITE, IT MUST BE FILTERED BEFORE RELEASING INTO STORMWATER SYSTEM OR WATERWAYS.
5. ROADS AND FOOTPATHS TO BE SWEEPED DAILY.

STOCKPILES :
ALL STOCKPILES ARE TO BE KEPT ON-SITE WHERE POSSIBLE. ANY MATERIALS PLACED ON THE FOOTPATHS OR NATURE STRIPS REQUIRE COUNCIL'S PERMISSION.
ALL STOCKPILES ARE TO BE PLACED AWAY FROM THE DRAINAGE LINES AND STREET GUTTERS. IT IS BEST TO LOCATE THESE ON THE HIGHEST PART OF THE SITE IF POSSIBLE. PLACE WATERPROOF COVERING OVER STOCKPILES.
IF REQUIRED PROVIDE DIVERSION DRAIN & BANK AROUND STOCKPILES.

GUTTER PROTECTION :
PROVIDE PROTECTION TO DOWNHILL GRATE IN GUTTER BY MEANS OF SAND BAGS OR BLUE METAL WRAPPED IN GEOTEXTILE FABRIC. WHEN SOIL OR SAND BUILDS UP AROUND THIS SEDIMENT BARRIER, THE MATERIAL SHOULD BE RELOCATED BACK TO THE SITE FOR DISPOSAL.

NOTE: ALL PROPOSED STORMWATER TO CONNECT WITH EXISTING

1 SITE / ROOF / SEDIMENT EROSION / STORM WATER CONCEPT / WASTE MANAGEMENT PLAN 1:200



ACTION PLANS

m: 0426 957 518
e: operations@actionplans.com.au
w: www.actionplans.com.au

REV.	DATE	COMMENTS	DRWN
A	20/03/2024	DEVELOPMENT APPLICATION	JW

NOTES
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Do not scale measure from drawings. Figure dimensions are to be used only.
The Builder/Contractor/owner is to ensure that the approved boundary setbacks and approved levels are confirmed and set out by a registered Surveyor prior to construction, the boundary setbacks take precedence over all other dimensions. The Builder/Contractor shall check and verify ALL dimensions on site prior to commencement of any work, creation of shop drawings, or fabrication of components.
All errors and omissions are to be verified by the Builder/Contractor/owner and referred to the designer prior to the commencement of works.

	EXISTING
	EXISTING OFFICE SPACE NO CHANGE
	SUBJECT AREA
	DEMOLISHED
	AS BUILT

CLIENT
Action Plans Building Design Pty Ltd

PROJECT ADDRESS
2-6 Smith Lane Manly, NSW, 2095

DRAWING NO.
DA04

DATE
Monday, 22 April 2024

DRAWING NAME
SITE / ROOF / SEDIMENT EROSION / WASTE MANAGEMENT / STORMWATER CONCEPT PLAN
SCALE
1:200 @A3





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

**VARIATION OF A DEVELOPMENT
STANDARD REGARDING THE
MAXIMUM FLOOR SPACE RATIO AS
DETAILED IN CLAUSE 4.4 OF MANLY
LOCAL ENVIRONMENTAL PLAN 2013**

Change of Use to Office Premises

**2-6 Smith Lane,
Manly NSW 2095**

✉ mathew@fourtowns.com.au

☎ 0425232018

www.fourtowns.com.au

PO Box 361, Balgowlah NSW 2093

Change of use to office premises

This report has been prepared to support a Development Application under the *Environmental Planning and Assessment Act 1979*.

Report prepared by:
Mathew Quattroville
Director – Four Towns Pty Ltd

17 May 2024

Disclaimer

This report has been prepared with due care and thoroughness by Four Towns Pty Ltd. The statements and opinions are given in good faith and in confidence that they are accurate and not misleading. In preparing this document, Four Towns Pty Ltd has relied upon information and documents provided by the Client or prepared by other Consultants. Four Towns Pty Ltd does not accept responsibility for any errors or omissions in any of the material provided by other parties.

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Change of use to office premises

1. Introduction

The nature and extent of the contravention is as follows:

Requirement	1:1 744.1sqm
Existing	1.007:1 744.64sqm
Proposed	1.03:1 766.44sqm
Is the planning control in question a development standard?	Yes
Is the non-compliance with to the clause requirement a numerical/or performance based variation?	Numerical
If numerical enter a % variation to requirement	3%

Manly Local Environmental Plan 2013 ("MLEP")**2.1 Clause 2.2 and the Land Use Table**

Clause 2.2 and the Land Zoning Map provide that the subject site is zoned E1 – Local Centre (the E1 zone) and the Land Use Table in Part 2 of MLEP 2013 specifies the following objectives for the E1 zone:

- *To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.*
- *To encourage investment in local commercial development that generates employment opportunities and economic growth.*
- *To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*
- *To minimise conflict between land uses in the zone and adjoining zones and ensure amenity for the people who live in the local centre in relation to noise, odour, delivery of materials and use of machinery.*
- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*
- *To create urban form that relates favourably in scale and in architectural and landscape treatment to neighbouring land uses and to the natural environment.*

2.2 Clause 4.4 Floor Space Ratio

Clause 4.4 Floor Space Ratio is set out below:

- (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,*

Change of use to office premises

- (d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,
- (e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

(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](#).

(2A) Despite subclause (2), the floor space ratio for a building on land in Zone B2 Local Centre may exceed the maximum floor space ratio allowed under that subclause by up to 0.5:1 if the consent authority is satisfied that at least 50% of the gross floor area of the building will be used for the purpose of commercial premises.

The maximum floor space ratio for the site is 1:1.

Development standards' is defined in section 1.4 of the EP&A Act 1979 as:

*development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which **requirements are specified or standards are fixed** in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:*

- (d) the cubic content or floor space of a building,

2.3 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of MLEP provides:

(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.

The latest authority in relation to the operation of clause 4.6 is the decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 ("*Initial Action*"). *Initial Action* involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

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

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

Change of use to office premises

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

Clause 4.6(2) of MLEP provides:

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

Clause 4.4 is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of MLEP.

Clause 4.6(3) of MLEP provides:

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

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

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

The proposed development does not comply with the floor space ratio standard pursuant to clause 4.4 of the Manly Local Environmental Plan 2013 which specifies a floor space ratio of 1:1, however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

Clause 4.6(4) of MLEP notes *consent authority must keep a record of its assessment carried out under subclause (3).*

Clause 4.6(5) of MLEP has been repealed.

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

Clause 4.6(7) of MLEP has been repealed.

Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.4 of the MLEP2013 from the operation of clause 4.6.

3. Relevant Caselaw

The grounds of objection are based upon the various tests of the recent judgements in the *NSW Land and Environment Court Case Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827, 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.*

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

1. Is clause 4.4 of MLEP2013 a development standard?

Change of use to office premises

2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:

- (a) compliance is unreasonable or unnecessary; and
- (b) there are sufficient environmental planning grounds to justify contravening the development standard?

4. Request for Variation

4.1 Is clause 4.4 of MLEP2013 a development standard?

- (a) The definition of “development standard” in clause 1.4 of the EP&A Act includes:

“(d) the cubic content or floor space of a building”

- (b) Clause 4.4 relates to the floor space ratio or floor space of a building. Accordingly, clause 4.4 is a development standard.

4.2 Is compliance with clause 4.4 unreasonable or unnecessary?

- (a) This request relies upon the 1st, 2nd and 4th ways identified by Preston CJ in *Wehbe*.
- (b) The first way in *Wehbe* is to establish that the objectives of the standard are achieved. The second way in *Wehbe* is to establish that an objective is not relevant to the development. The fourth way in *Wehbe* is to establish that the development standard has been abandoned by Council’s own actions in approving development that does not comply with the standard.
- (c) Each objective of the standard and reasoning why compliance is unreasonable or unnecessary is set out below. Firstly, an analysis of the objectives is provided:

In determining a merits-based assessment for the floor space ratio of the development due consideration has been given to the above objectives and the planning principles set by the Land and Environment Court of NSW, Planning Principle – floor space ratio (*Salanitro-Chafei V Ashfield Council* (2005) NSWLEC 366) and *Project Venture Developments v Pittwater Council* (2005) NSW LEC 91).

It is acknowledged that the purpose of Clause 4.6 is to provide an appropriate degree of flexibility in applying certain development standards. In this regard the FSR of the site should be assessed on a greater numerical figure, noting the sites constraints and the unique nature of the locality in a varying degree of development types. Given the proposed application is minor and consistent with similar approvals granted in the area, Council’s assessment should be focused on this numerical allowance as opposed to the variation to the specific standard. By providing flexibility in this regard, the subject proposal is capable of achieving a better development and design outcome which adequately caters for the existing mixed-use development.

The proposal is consistent with the objectives of Clause 4.4, as outlined below:

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

Change of use to office premises

The proposal relates to a change of use only to existing gross floor area with no changes to the building footprint or external façade. Therefore, the proposal is consistent with the existing and desired streetscape character. The proposal meets this objective.

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

The proposal is for a change of use to existing floor space which does not change the density and bulk applicable to the site and does not change existing landscaping within the site, therefore retaining the important landscape features.

The proposal controls building density and bulk with no impact to important landscape and townscape features. The proposal therefore meets this objective.

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

The proposal relates to the use of existing floor space which was derelict and underutilised due to the area not complying with relevant Australian standards to park a car. The proposal allows for opportunities to enhance the building which is an appropriate visual relationship with the adjoining properties within the local centre zone and the surrounding area. The proposal maintains the existing roller door which keeps the appearance of the building. The proposal meets this objective.

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

The proposal is for the use of an additional 22.34sqm of the existing building for office space. The additional use is inconsequential to the existing development and will have no adverse environmental impacts on the use or enjoyment of adjoining land, therefore the proposal meets this objective.

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

The proposal relates to the use of a previous garage area that in our opinion didn't comply with relevant Australian standards and was unusable. The proposed use of the area retains the bulk, scale and appearance of the building with the roller door retained. The intention is to utilise the space which is underused, not functional and derelict. The proposal enhances the commercial viability of the site enhancing the diversity of business activities that create economic growth and support other uses within the site. Further, the minor increase to floor space links in with the existing approved use as office premises. The proposal allows the retention of local services within the business zone, therefore, the proposal meets this objective.

As outlined above, the proposed development is consistent with the underlying objectives of the FSR standard, notwithstanding the proposed variation, and therefore compliance with the control is unreasonable and unnecessary and the variation should be supported and approved.

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

There are sufficient environmental planning grounds to justify contravening the development standard. Whilst there is no requirement that the development comply with the objectives set out in clause 4.6(1) it is relevant to note that objective (b) provides:

Change of use to office premises

*“to achieve better outcomes **for and from** development by allowing flexibility in particular circumstances.”*

There is an absence of environmental harm arising from the contravention and positive planning benefits arising from the proposed development as outlined in detail above. From a planning perspective, there is sufficient grounds to justify the variation to the FSR development standard for the following reasons:

- The objectives of the development standard are achieved, notwithstanding the non-compliance with the standard in the circumstances described in this variation report and summarised as follows:
 - The proposal is consistent with the bulk and scale of the existing and desired streetscape character of the area, noting the proposal does not change the existing building footprint or change the external appearance of the building.
 - The proposal utilises an existing derelict area which is within the existing building footprint. The use of the area which is currently excluded from GFA calculations will have minimal impact.
 - The variation has been reviewed against relevant LEC court principles in regards to FSR, and the proposal is considered suitable in the context of the site and the merit analysis required given the existing scale, adjoining developments and the proposed development.
 - The desired future character of the locality is not jeopardised by the proposal and is consistent with Council’s objectives for this precinct in regards to the E1 Local Centre zone.
 - The area of non-compliance does not give rise to any adverse environmental impacts to the amenity of the neighbouring properties. The area of non-compliance does not contribute to any adverse overshadowing impacts to adjoining developments.
- Having regard to *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, and further to the proposal’s consistency with the above strategic and statutory environmental planning provisions, the proposal is consistent with the following objectives under Section 1.3 of the Environmental Planning and Assessment Act 1979 (the Act):
 - (c) to promote the orderly and economic use and development of land; and*
 - (g) to promote good design and amenity of the built environment,*
 1. In response to (c), the proposal will facilitate the orderly and economic use and development of the land, in a highly appropriate location, in a manner that is desired by the planning controls because it will facilitate the use of additional area associated with the existing use of the building as office premises. In considering the contrary (refusal of the DA), retention of the building in its current form would not promote the orderly and economic use and development of land in the manner that council’s strategic and statutory planning provisions seek. Retention of the building in its current form makes no advancement towards achieving the goal of creating functional development opportunities of run-down sites.
 2. In response to (g) the proposal has been designed to promote good design and amenity of the built environment, noting the retention of the external facades and roller door which maintain the streetscape appearance.

Change of use to office premises

The above environmental planning grounds are not general propositions, they are unique circumstances to the proposed development. These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the floor space ratio.

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

Based on the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed floor space ratio non-compliance in this instance.

Summary

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

**ITEM 3.5 DA2024/1157 - 89 POWDERWORKS ROAD NORTH NARRABEEN -
ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE**

PURPOSE

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

RECOMMENDATION

THAT Council as the consent authority **refuses** Development Consent to DA2024/1157 for alterations and additions to a dwelling house on land at Lot 40B DP 404871, 89 Powderworks Road NORTH NARRABEEN, for the reasons for refusal set out in the Assessment Report.

Reporting manager	Steve Findlay
TRIM file ref	2024/837338
Attachments	↓1 Assessment Report ↓2 Site Plan and Elevations ↓3 Clause 4.6

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/1157
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Responsible Officer:	Simon Ferguson Tuor
Land to be developed (Address):	Lot 40B DP 404871, 89 Powderworks Road NORTH NARRABEEN NSW 2101
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Michel-Marc Le Vieux

Application Lodged:	16/09/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	25/09/2024 to 09/10/2024
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 15%
Recommendation:	Refusal

Estimated Cost of Works:	\$ 165,000.00
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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 (15%).

No submissions were received.

Within this report, detailed assessment is given to the request to vary the height of building development standard, the proposed non-compliant front building line, building envelope and landscaping controls. Overall, in consideration of the variations and non-compliant elements proposed,

the development is unacceptable on merit.

The non-compliance with the building height development standard arises from the proposed extension of the first floor over an existing excavated subfloor, which creates a 15% variation.

The application has been supported with a Clause 4.6 written request for this non-compliance. It is considered that the environmental planning grounds advanced are insufficient, insofar that they largely promote the benefits of the breach. The non-compliance with the development standard is also inter-related with other non-compliances and with other development controls relating to: front building line, landscaping and building envelope and in wholistic terms represents a proposed development that is inadequate to meet the objectives of Council's policies.

The proposal is also inconsistent with objectives of the C4 zone. Therefore, the Clause 4.6 variation is not well founded and is not supported.

This report concludes with a recommendation that the DDP should refuse the development application, for the reasons recommended in this report.

PROPOSED DEVELOPMENT IN DETAIL

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

- Increase of first floor gross floor area (into front building line)
- Extension of ground floor footprint towards front boundary
- Internal reconfigurations
- Relocation of internal staircase

There is no tree removal proposed.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living
 Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
 Pittwater 21 Development Control Plan - A1.7 Considerations before consent is granted
 Pittwater 21 Development Control Plan - A4.11 North Narrabeen Locality
 Pittwater 21 Development Control Plan - C1.1 Landscaping
 Pittwater 21 Development Control Plan - D11.1 Character as viewed from a public place
 Pittwater 21 Development Control Plan - D11.6 Front building line
 Pittwater 21 Development Control Plan - D11.9 Building envelope

SITE DESCRIPTION

Property Description:	Lot 40B DP 404871 , 89 Powderworks Road NORTH NARRABEEN NSW 2101
Detailed Site Description:	The subject site consists of one (1) allotment located on the north eastern side of Powderworks Road. The site is irregular in shape with a frontage of 20.725m along Powderworks Road and a depth of 77.725m. The site has a surveyed area of 1184.5m². The site is located within the C4 Environmental Living zone and accommodates a two storey dwelling house, carport and swimming pool. The site slopes down over 15m from the front (south west) to the rear (north east). The site contains grassed areas, shrubs, hedges and some trees. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by one and two storey dwellings of varying architectural styles.

Map:



SITE HISTORY

A search of Council's records has revealed the following relevant history:

- **N0118/09:** Construction of a sunroom/cabana to the rear of the existing dwelling. Approved by Pittwater Council 20 May 2009.

Note: The whole of the front setback area has been paved and there is no record of any approval of this being granted. The latest approval listed above (N0118/09) shows the front setback as being landscaped.

The 'carport' shown on the plans for this application, also cannot be confirmed as being approved.

Application History

A Request for Information (RFI) was sent to the Applicant on 31 October 2024, which detailed issues identified in the assessment of the proposal.

The RFI noted issues in relation to the Height of Building development standard of PLEP 2014 and C1.1 Landscaping, D11.6 Front building line and D11.9 Building Envelope of Pittwater 21 DCP.

The issues were further communicated via phone calls and emails between the Assessment Officer and the Applicant.

Conceptual plans to address the issues and concerns were not provided. The Applicant was informally provided with the opportunity to withdraw the application and receive a partial refund.

An email was received from the Applicant on 14 November 2024 confirming that no amendments would be provided and for the application to proceed to be determined by the DDP.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration	Comments
including environmental impacts on the natural and built environment and social and economic impacts in the locality	natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant requirement(s) of the Pittwater 21 Development Control Plan C1.1 Landscaping, D11.1, Character as viewed from a public place, D11.6 Front building line and will result in a development which will have a detrimental impact on the streetscape and the character of the area, and create an undesirable precedent, such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 25/09/2024 to 09/10/2024 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)	Council's Biodiversity Referrals team have assessed the Development Application for compliance against the following applicable provisions: • NSW Biodiversity Conservation Act 2016 • NSW Biodiversity Conservation Regulation 2017 • Pittwater 21 DCP cl. B4.3 Flora and Fauna Habitat Enhancement Category 2 Land Portions of the subject site are located within the NSW Government's Biodiversity Values Map (BV Map). In accordance with the Biodiversity Conservation Act (BC Act), any development which results in impacts to native vegetation within the BV Map will trigger entry into the NSW Biodiversity Offsets Scheme (BOS) and the requirement for a Biodiversity Development Assessment Report (BDAR). Review of the submitted reports and plans confirm that the application will not result in the removal of any native vegetation within the BV Map and as such the BOS is not triggered and a BDAR is not required. As the application does not require the removal of any native prescribed trees or vegetation, nor will it impact upon native fauna habitat, there are no objections in relation to biodiversity, subject to conditions.

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

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. A1763269 dated 6

September 2024).

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who raised no objections.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

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?	No
zone objectives of the LEP?	No

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.8m	15%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.6 Exceptions to development standards	No
7.7 Geotechnical hazards	Yes

Detailed Assessment

Zone C4 Environmental Living

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

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

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

Comment:

Due to the non-compliances discussed throughout this report, the proposed bulk of the dwelling would impact on the aesthetic of the area.

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

Comment:

As above, the proposal is inconsistent with the objective to provide low-impact residential development in areas with aesthetic values.

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

Comment:

The proposal will not provide a development of a low density and scale that will integrate with the landform, and landscape. The proposed bulk, height breach, front setback non-compliance and lack of any landscaping would result in a built form that is not adequately integrated with the landform and landscape.

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

Comment:

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

The proposed development is inconsistent with the provisions of Clause Zone E4 Environmental Living of the *Pittwater Local Environmental Plan 2014*, and this forms a reason for refusal.

4.6 Exceptions to development standards

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

Development Standard: Clause 4.3 Height of buildings

Requirement: 8.5m

Proposed: 9.8m

Percentage of Variation: 15%

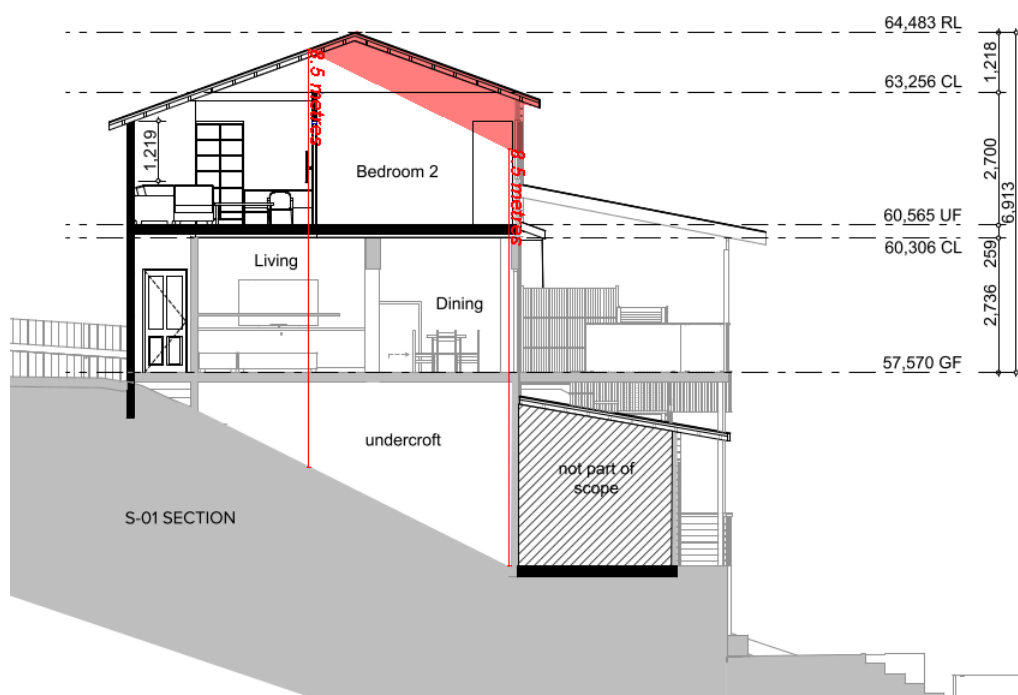


Figure 1. Section S-01 (red shaded area highlighting extent of variation)

With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is accompanied by a document that sets out the grounds on which the Applicant seeks to demonstrate the matters set out in Clause 4.6(3)(a) and (b) of the PLEP 2014 (the 'Clause 4.6 Request').

Subclause (1) of this clause provides that:

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

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

Comment:

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

Subclause (2) of this clause provides that:

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

Comment:

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

Subclause (3) of this clause provides that:

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

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

Comment:

Council is not satisfied that the Applicant has demonstrated that compliance with Clause 4.3 Height of buildings is unreasonable or unnecessary in the circumstances of this application for the following reasons:

- the proposed works will represent an unreasonable bulk and scale when viewed from the adjoining public domain;
- the overall visual presentation of the proposal will be inconsistent with the desired future streetscape character in the locality.

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

Comment:

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

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

The Clause 4.6 Request argues, in part:

The proposed alterations and additions to the dwelling promotes good development and built form for the immediate and surrounding environment. The scope of works to retain and improve the existing residence would not be considered an over development on the property. Rationally, in its current form, the proposal is believed to contribute to the desirable future character for the locality.

The design has suitably addressed all site-specific constraints and been designed for consistency with the prevailing streetscape character in the area. Considering this, to requirement to comply with the height of the building to purely achieve technical compliance with a numerical control would be a poor planning outcome, an inefficient use of the site.

Therefore, strict compliance with the height of the building for the development would hinder the attainment of the objects of the Act, the standard and the C4 zone. Requiring strict compliance would not result in the orderly and economic use and development of land or a positive environmental planning outcome on the site and for the broader area.

As demonstrated, there are sufficient environmental planning grounds to justify contravening this development standard in the unique situation of this site and this development.

In response to these grounds:

- The existing first floor levels and excavation at the site is not a reason exacerbate the existing non-compliant elements of the built form
- The existing topography of the site is not of a nature that would in itself justify setting aside the numerical control
- There is ample room at the site for alterations and additions to not add bulk within the front building line
- It is not agreed that the proposal contributes to the desirable future character for the locality.
- The height, in combination with the 9m long unarticulated wall, results in a development that would be inconsistent with the streetscape character.

As a result of these considerations, Council is **not satisfied** that the applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of Clause 4.3 Height of Buildings.

Public Interest:

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

Conclusion:

Council is **not satisfied** as to the matters set out in Clause 4.6 of the PLEP 2014.

It is considered on balance, that having regard to the particular circumstances of Clause 4.3 Height of buildings that the proposed development is not acceptable.

As such, the proposed departure from the development standard is **not acceptable** and it is not reasonable that flexibility in the application of the standard be applied in this case.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	3.6m	45%	No (see comments)
Rear building line	6.5m	>6.5m	N/A	Yes
Side building line	2.5m (NW)	5.8m	N/A	Yes
	1m (SE)	1.5m	N/A	Yes
Building envelope	3.5m (NW)	Within envelope	N/A	Yes
	3.5m (SE)	Outside envelope	N/A	No (see comments)
Landscaped area	60%	existing unchanged	N/A	N/A

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	No	No
A4.11 North Narrabeen Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B4.3 Flora and Fauna Habitat Enhancement Category 2 Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
C1.1 Landscaping	No	No
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.23 Eaves	Yes	Yes
D11.1 Character as viewed from a public place	No	No
D11.3 Building colours and materials	Yes	Yes
D11.6 Front building line	No	No

Clause	Compliance with Requirements	Consistency Aims/Objectives
D11.7 Side and rear building line	Yes	Yes
D11.9 Building envelope	No	No
D11.11 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D11.15 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

A1.7 Considerations before consent is granted

Before granting development consent, Council must be satisfied that the development is consistent with:

- *Pittwater Local Environment Plan 2014*; and
- the desired character of the Locality; and
- the development controls applicable to the development; and
- relevant matters of consideration under Section 4.15 Evaluation of the *Environmental Planning and Assessment Act 1979*.

As detailed under the relevant sections of this report, the development is assessed as being inconsistent with the following planning controls:

- cl. 4.6 Exceptions to development standards of the PLEP 2014;
- cl. A4.11 North Narrabeen Locality of the P21 DCP;
- cl. C1.1 Landscaping of the P21 DCP;
- cl. D11.1 Character as viewed from a public place of the P21 DCP;
- cl. D11.6 Front building line of the P21 DCP, and
- cl. D9.10 D11.9 Building envelope of the P21 DCP

Having regard to the above, the development is inconsistent with this clause and therefore does not satisfy the relevant matters of consideration of the EP&A Act 1979 - Section 4.15 Evaluation and is recommended refusal on this basis.

A4.11 North Narrabeen Locality

The site is located within the North Narrabeen locality. The proposed development would not be consistent with the desired future character of the area as it would not be in 'a landscaped setting, integrated with the landform and landscape'. Furthermore, the proposal does not 'minimise bulk and scale', does not incorporate adequate vegetation, and does not utilise adequate facade modulation.

The proposed encroachment into the front setback area without any landscaping to screen or offset the non-compliance is not consistent with the desired future character of the area.

C1.1 Landscaping

Description of Non-Compliance

Under Clause C1.1 Landscaping of Pittwater 21 Development Control Plan, the following requirements

apply:

The front of buildings (between the front boundary and any built structures) shall be landscaped to screen those buildings from the street as follows:

- *60% for a single dwelling house, secondary dwelling, rural workers' dwellings, or dual occupancy*

The proposal seeks to increase the building footprint towards the front boundary.

Note: The existing front of buildings area has nil landscaping. Council cannot find any approval for the removal of deep soil landscaping in the front setback area and the laying of concrete. Hence, the proposed works further increase built form elements in the front setback, and no landscaping was proposed to soften the proposed bulk of the proposal.

Merit Assessment

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

- *A built form softened and complemented by landscaping.*
- *Landscaping reflects the scale and form of development.*
- *Retention of canopy trees by encouraging the use of pier and beam footings.*
- *Development results in retention of existing native vegetation.*
- *Landscaping results in the long-term retention of Pittwater's locally native tree canopy.*
- *Landscaping retains and enhances Pittwater's biodiversity by using locally native plant species*
- *Landscaping enhances habitat and amenity value.*
- *Landscaping results in reduced risk of landslide.*
- *Landscaping results in low watering requirement.*

Comment:

The increased ground floor footprint prevents the inclusion of adequate deep soil area and volume to accommodate substantial planting. Furthermore, the proposed first floor addition adds considerable bulk to the proposal and is non compliant with the front setback control. Hence, the nil landscaping proposed in the front of buildings area does not sufficiently soften or complement the built form, reflect the scale of the development, or enhance habitat and amenity value.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant outcomes of the control.

Accordingly, this assessment finds that the proposal is **not supported**, in this particular circumstance, and this form forms a reason for refusal.

D11.1 Character as viewed from a public place

A requirement of Part D11.1 states:

- *Walls without articulation shall not have a length greater than 8 metres to any street frontage.*

- *Landscaping is to be integrated with the building design to screen the visual impact of the built form. In residential areas, buildings are to give the appearance of being secondary to landscaping and vegetation.*

Comment

The proposed first floor extension removes the existing articulation and compliant front setback (existing first floor setback is 7.3m). The proposal includes an extension of the existing ground floor footprint and a first floor extension that comes to within 3.6m of the front boundary. Furthermore, the proposal includes a 9m long wall without articulation, setback 3.6m from the front boundary. The proposal is not a satisfactory solution for the site and comes at an unreasonable expense at the quality of the streetscape. The proposal involves additional built structures in the front setback and no landscaping to soften or screen the increased bulk.

It is concluded that the proposed development is inconsistent with the relevant outcomes of the control.

Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance, and this form forms a reason for refusal.

D11.6 Front building line

Description of non-compliance

The proposed first floor is located 3.6m from the front building line, presenting a variation of 45% to the required 6.5m.

The proposed ground floor building extension introduces an additional 8m² of built structure into front setback, increasing the existing non-compliance of the ground floor level.

Merit consideration

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

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

Comment:

The proposal is inconsistent with the desired future character of the North Narrabeen Locality. The proposal does not minimise bulk and scale, does not incorporate adequate vegetation, and does not utilise adequate facade modulation.

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

Comment:

The proposal will not result in any significant impacts to views and vistas to and/or from public/private places.

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

Comment:

The subject site is not located on a main road. Therefore this outcome is not relevant.

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

Comment:

The proposal involves no vegetation or landscaping in the front setback and results in a non-compliance with C1.1 Landscaping. It is not considered that the proposal retains or enhances vegetation to visually reduce the built form.

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

Comment:

There are no changes to the existing car parking on site. Therefore, this outcome is not relevant.

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

Comment:

The reduction in existing articulation and compliant setbacks at the first floor level, by proposing a 9m long, unarticulated wall with a 3.6m setback will not enhance the existing streetscape.

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

Comment:

The front setback non-compliance would not encourage an attractive street frontage or improve pedestrian amenity.

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

Comment:

The proposal has not demonstrated willingness to explore other alternative locations at the site. The RFI letter advised the applicant to seek other alternatives, including siting the first floor addition towards within the permitted building envelope at the site. No landscaping has been proposed to soften the built form and non-compliant elements of the proposal. Hence, the proposal does not respond to the spatial characteristics of the existing urban environment.

Having regard to the above assessment it is concluded that the proposed development is not consistent with the relevant objectives of P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported in this particular circumstance. This forms part of a reason for refusal.

D11.9 Building envelope

Description of non-compliance

The control requires a building envelope to be projected 45 degrees from a height of 3.5 metres above ground level at the side boundaries to the maximum building height.

The proposed first floor extension encroaches into the building envelope along part of the south eastern elevation to a height of 1.3 metres over a length of 6.6 metres:

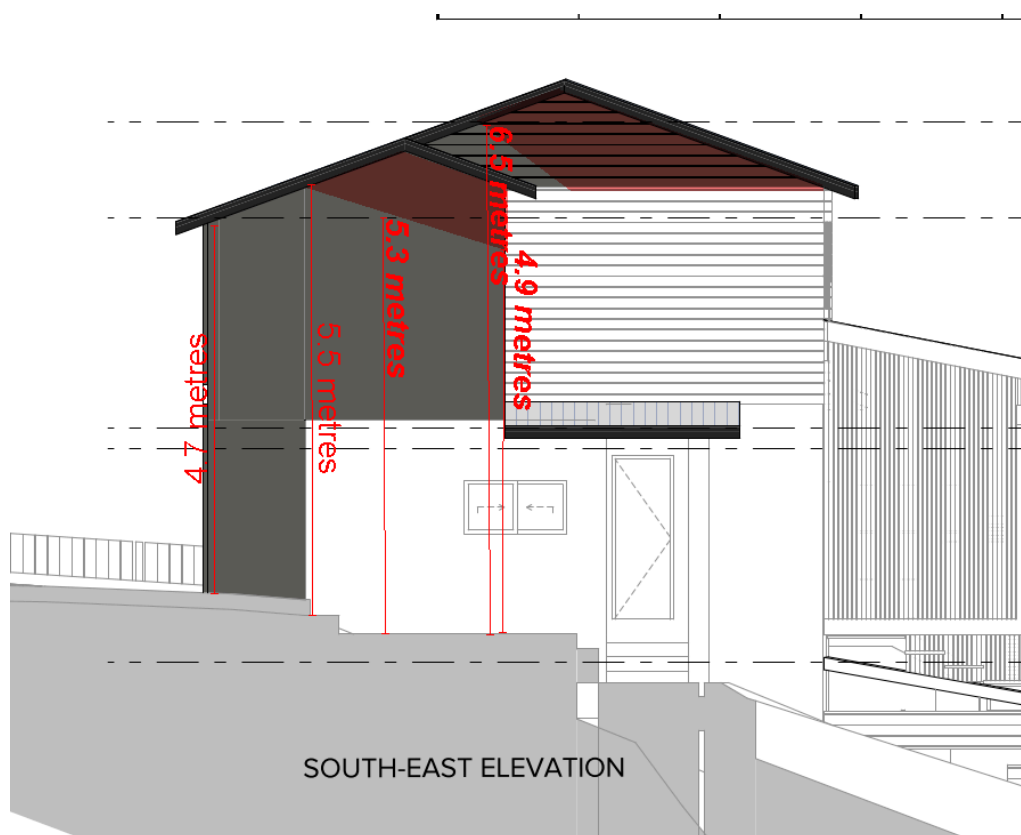


Figure 2. South Eastern boundary envelope encroachment.

Merit consideration

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

- To achieve the desired future character of the Locality.

Comment:

The proposal is inconsistent with the desired future character of the North Narrabeen Locality. The proposal does not minimise bulk and scale, does not incorporate adequate vegetation,

and does not utilise adequate facade modulation.

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

Comment:

The proposed encroachment is located towards the front of the site, and part of the encroachment is located within the front building line. It is not considered that the proposed first floor addition with a non-compliant front setback will contribute to the streetscape.

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

Comment:

The proposal has not demonstrated willingness to explore other alternative locations at the site. The RFI letter advised the applicant to seek other alternatives, including siting the first floor addition towards within the permitted building envelope at the site. No landscaping has been proposed to soften the built form and non-compliant elements of the proposal. Hence, the proposal does not respond to the spatial characteristics of the existing urban environment.

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

Comment:

The proposed dwelling does not provide sufficient articulation and would present as a 9m long wall within the front front building line. Furthermore, the proposal does not include any landscaping to minimise the visual impact of the development from adjoining properties and the public realm. Overall, the proportions of the encroaching elements are considered to be unreasonably scaled and bulky.

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

Comment:

No views or vistas will be unreasonably impacted as a result of the proposed development.

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

Comment:

A reasonable level of privacy, amenity and solar access is provided.

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

Comment:

The proposal involves no vegetation or landscaping in the front setback and results in a non-compliance with C1.1 Landscaping. It is not considered that the proposal retains or enhances vegetation to visually reduce the built form.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported in this particular circumstance. This forms part of a reason for refusal.

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 2024

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2024.

A monetary contribution of \$ 825 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 165,000.

CONCLUSION

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

Council is not satisfied that the Applicant's written request under Clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking to justify variation of the development standard contained within

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

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

PLANNING CONCLUSION

This proposal, for alterations and additions to a dwelling house has been referred to the DDP due to the application proposing a greater than 10% variation to the Height of Buildings development standards (15%).

No submissions were received.

Within this report, detailed assessment is given to the request to vary the height of building development standard, the proposed non-compliant front building line setback, building envelope and landscaping controls. Overall, in consideration of the variations and non-compliant elements proposed, the development is unacceptable on merit.

The non-compliance with the building height development standard arises from the proposed extension of the first floor over an existing excavated subfloor, which creates a 15% variation.

The proposal is also inconsistent with objectives of the C4 zone. Therefore, the Clause 4.6 variation is not well founded and is not supported.

The critical assessment issues as they relate to the recommendation of this report are identified as follows:

- Significant variation / escalation of the building height of the existing dwelling;
- Failures to comply with various development controls of P21DCP , most notably Front building line, Landscaping and Building envelope, which contributes to an adverse bulk and scale;
- Inconsistent with the desired future character of the area of the North Narabeen locality.

The proposed works represent a substantial modification to the existing dwelling in a way that has an inadequate response to the adjoining streetscape and fails to mitigate its adverse impact on the the streetscape and desired future character of the area. In this regard, there is no adequate justification for the degree of the variations sought to the relevant development standards and controls.

As a consequence of this assessment, it is therefore recommended that the development application be refused.

REASON FOR DETERMINATION

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2024/1157 for the Alterations and additions to a dwelling house on land at Lot 40B DP 404871,89 Powderworks Road, NORTH NARRABEEN, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Pittwater Local Environmental Plan 2014.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause Zone C4 Environmental Living of the Pittwater Local Environmental Plan 2014.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to development standards of the Pittwater Local Environmental Plan 2014.

Particulars:

The consent authority is not satisfied that the applicant's variation request under Clause 4.6 of PLEP 2014 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately demonstrated that:

- i. compliance with the standard is unreasonable or unnecessary,
 - ii. there are sufficient environmental planning grounds to justify the contravention.
4. Pursuant to Clause A1.7 of the Pittwater 21 Development Control Plan, Council is not satisfied that the proposal is consistent with the following:
 - Pittwater Local Environment Plan 2014; and
 - the desired character of the Locality; and
 - the development controls applicable to the development; and
 - relevant matters of consideration under Section 4.15 Evaluation of the *Environmental Planning and Assessment Act 1979*.
 5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause A4.11 North Narabeen Locality.
 6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C1.1 Landscaping of the Pittwater 21 Development Control Plan.
 7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D11.1 Character as viewed from a public place of the Pittwater 21 Development Control Plan.
 8. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D11.6 Front building line of

the Pittwater 21 Development Control Plan.

9. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D11.9 Building envelope of the Pittwater 21 Development Control Plan.
10. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.

LEGEND:

	ground floor existing footprint
	ground floor proposed footprint extension

Certificate number: A1763269
Date of issue: Friday, 06 September 2024

The site plan for Powderworks No. 89 illustrates the proposed footprint extension in purple. The plan includes various annotations for sun orientation: 'WINTER' (top left), 'AFTERNOON SUN' (top center), 'SUMMER' (center left), 'MID DAY' (center right), 'MORNING SUN' (bottom center), and 'WINTER' (bottom right). Wind orientation is indicated by blue arrows: 'SOUTH-WESTERLY PREVAILING WIND' (top left), 'SOUTHERLY PREVAILING WIND' (bottom center), and 'NORTH-EASTERLY PREVAILING WIND' (bottom right). The plan also shows the 'POWDERWORKS NO. 89' building, a 'carport', 'deck', 'Pond', 'In Ground Pool', and 'DECK'. Surrounding context includes 'POWDERWORKS OF ROAD' to the left, 'BALCONY, R.L. 55.66' and 'GUTTER R.L. 55.63' to the top, and 'ONE AND TWO STOREY CLAD HOUSE' to the bottom. The plan is bounded by 'DP 1177119' to the top and 'DP 23066' to the right. A 'FENCE' and 'TIMBER' are shown along the bottom boundary. The plan also includes a 'ROAD' and 'LANE' on the left side. The plan is titled 'Council Approval' at the bottom right.

4	Update on BASIX	SAL	06/09/24
3	Calc on Plans	SAL	18/06/24
2	Initial Concept Plans	SAL	20/03/24
1	Initial Concept Plans	SAL	08/02/24
Rev	Description	Drft	Issued

Client: Michel Le Vieux	Town Planner: RB Drawn By: SAL Checked By: GC	Revision: 4 Scale: 1:100 @ A2	1300 008 138 info@councilapproval.com.au www.councilapproval.com.au
Project: Proposed Development Application For Alteration and Addition of the Upper Floor	Drawing Name: PROP SITE PLAN	Approvals Pty Ltd as Trustee for The Council Approval Group Trust ABN: 2351242369	
Pondwicks Road 89 North Narrabeen NSW 2201	Drawing Number: DA-011 Nominated Architect: Giuseppe Calabrese 8079		

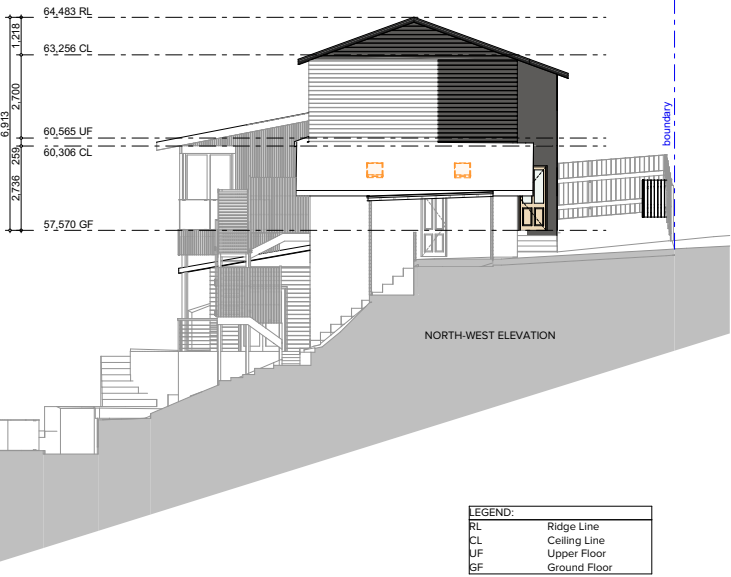
Flowed dimensions take precedence over scale dimensions. Contractors must verify all dimensions on site before commencing any work or making shop drawings.



Window/door number	Orientation	Area of glass including frame (m ²)	Overshadowing height (m)	Overshadowing distance (m)	Shading device	Frame and glass type
W-01	N	1.32	0	0	eave/ verandah/ pergola/balcony >=450 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)
W-02	S	2.81	0	0	eave/ verandah/ pergola/balcony >=450 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)
W-03	S	0.96	0	0	eave/ verandah/ pergola/balcony >=450 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)
W-03	S	0.96	0	0	eave/ verandah/ pergola/balcony >=450 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)
W-03	S	0.96	0	0	eave/ verandah/ pergola/balcony >=450 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)
W-03	S	0.96	0	0	eave/ verandah/ pergola/balcony >=450 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)

BASIX Certificate
Building Sustainability Index www.basix.nsw.gov.au
Alterations and Additions

Certificate number: A3763269
Date of issue: Friday, 06 September 2024



LEGEND:	
RL	Ridge Line
CL	Ceiling Line
UF	Upper Floor
GF	Ground Floor

Rev	Description	Date	Issued
4	Update on BASIX	SAL	06/09/24
3	Calc on Plans	SAL	06/06/24
2	Initial Concept Plans	SAL	20/03/24
1	Initial Concept Plans	SAL	08/02/24

Client: Michel Le Vieux	Town Planner: RB Drawn By: SAL Checked By: GC	Revision: 4 Scale: 1:100 @ A2	1300 008 138 info@councilapproval.com.au www.councilapproval.com.au
Project: Proposed Development Application For Alteration and Addition of the Upper Floor Powderworks Road 89 North Narrabeen NSW 2201	Drawing Name: PROP ELEVATION 1 Drawing Number: DA-015 Nominated Architect: Giuseppe Calabrese 8079		Approvals Pty Ltd as Trustee for The Council Approval Group Trust ABN: 2351242969

Figured dimensions take precedence over scale dimensions. Contractors must verify all dimensions on site before commencing any work in making shop drawings.

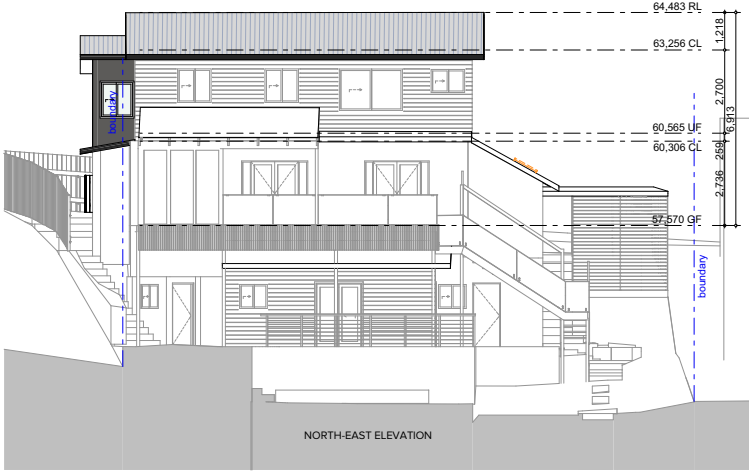
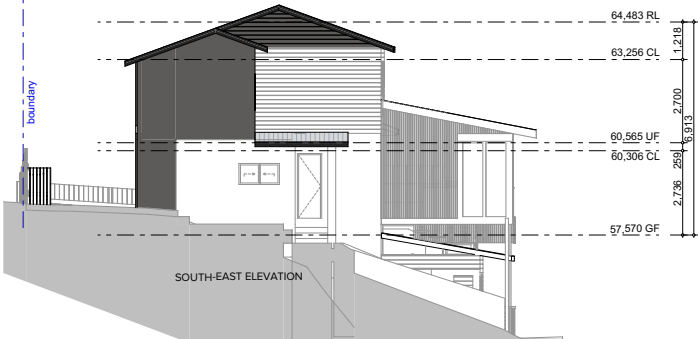
ATTACHMENT 2 : SITE PLAN AND ELEVATIONS - ITEM 3.5 - DEVELOPMENT DETERMINATION PANEL - 27 NOVEMBER 2024

BASIXCertificate
Building Sustainability Index www.basix.nsw.gov.au

Alterations and Additions

Certificate number: A1762369
Date of issue: Friday, 06 September 2024

Window/floor number	Orientation	Area of glass including frame (m ²)	Overshading height (m)	Overshading distance (m)	Shading device	Frame and glass type
W-G1	N	1.32	0	0	eave/verandah/pergola/balcony >=450 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)
W-G2	S	2.81	0	0	eave/verandah/pergola/balcony >=450 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)
W-G3	S	0.96	0	0	eave/verandah/pergola/balcony >=450 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)
W-G4	S	0.96	0	0	eave/verandah/pergola/balcony >=450 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)
W-G5	S	0.96	0	0	eave/verandah/pergola/balcony >=450 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)
W-G6	S	0.96	0	0	eave/verandah/pergola/balcony >=450 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)



LEGEND:	
RL	Ridge Line
CL	Ceiling Line
UF	Upper Floor
GF	Ground Floor

Rev	Description	Date	Issued
4	Update on BASIX	SAL	06/09/24
3	Calc on Plans	SAL	06/09/24
2	Initial Concept Plans	SAL	20/03/24
1	Initial Concept Plans	SAL	08/02/24

Client: Michel Le Vieux	Town Planner: RB Drawn By: SAL Checked By: GC	Revision: 4 Scale: 1:100 @ A2	1300 008 138 info@councilapproval.com.au www.councilapproval.com.au
Project: Proposed Development Application For Alteration and Addition of the Upper Floor Powderworks Road 89 North Narrabeen NSW 2101	Drawn Name: PROP ELEVATION 2 Drawing Number: DA-016 Nominated Architect: Giuseppe Calabrese 8079	Approvals Pty Ltd as Trustee for The Council Approval Group Trust ABN: 2351242969	

Figured dimensions take precedence over scale dimensions. Contractors must verify all dimensions on site before commencing any work in making shop drawings.



Clause 4.6 Variation Request Report

89 Powderworks Road
North Narrabeen NSW

20 August 2024

Created By:	RE
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Approvals Pty Ltd as Trustee for The Council Approval Group Trust



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1 Introduction

1.1 Report purpose

Development consent is being sought for Alterations and additions to existing dwelling, at 89 Powderworks Road, North Narrabeen. The development exceeds the 8.5 metre Height of buildings and, as such, a variation is sought under Clause 4.6.

This development standard variation request has been prepared under Clause 4.6 of the Pittwater Local Environmental Plan 2014 (LEP) to justify the departure from development standard for Height of Building in Clause 4.3 of the PLEP 2014.

Clause 4.6 aims to provide an appropriate degree of flexibility in applying certain development standards. It is a facilitative clause which enables the consent authority to grant consent to a development although it contravenes a development standard. This is subject to the consent authority being satisfied that there are proper planning grounds to justify the contravention.

This report contends that in the unique circumstances of this development being on this particular site the appropriate height of the building applicable to the site should be 8.5 metres. Once applied it is considered that the height of the building proposed under the development allows for the orderly and economic use of the land in an appropriate manner.

1.2 Variation Request Summary

This Clause 4.6 Variation Request demonstrates that:

- That compliance with the relevant development standard is unreasonable or unnecessary in the circumstances as the development achieves the objectives of the development standard in Clause 4.3 of the LEP notwithstanding the non-compliance;
- That there are sufficient environmental planning grounds to justify contravening the development standard;
- That this written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3);
- That the proposed development would be in the public interest because it is consistent with the objectives of Clause 4.3 and the objectives for development within the zone;
- That the height of the building is not considered to be an overdevelopment;
- That the proposal is keeping with the character, context and setting of the development types in the locality and has responded to the capability of the land to achieve the proposal; and
- That the proposal readily achieves compliance with all other development standards of the LEP, controls of the DCP, servicing, access, and amenity for the existing onsite and offsite residences, notwithstanding the non-compliance of the height of the building mapped for this site.

In conclusion, the positive outcomes of the departure from the standard outweigh the negatives which would result from strict adherence to the standard as set out under Clause 4.3.

2 Planning Context

2.1 Clause 4.6

Clause 4.6 of the Pittwater Local Environmental Plan 2014 (LEP) permits departures from development standards in certain circumstances. It is necessary to consider if compliance with the development standard is consistent with the aims of the LEP and whether compliance with the development standard hinders the attainment of the Objects of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* which are:

- a) *to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- b) *to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- c) *to promote the orderly and economic use and development of land,*
- d) *to promote the delivery and maintenance of affordable housing,*
- e) *to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- f) *to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- g) *to promote good design and amenity of the built environment,*
- h) *to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- i) *to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- j) *to provide increased opportunity for community participation in environmental planning and assessment.*

The aims and objectives of the PLEP 2014 , Clause 4.6 are as follows:

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

Under Clause 4.6(3) and (4) of the PLEP 2014, consent for a development that contravenes a development standard must not be granted unless the consent authority is satisfied 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, and*
 - (b) *there are sufficient environmental planning grounds to justify the contravention of the development standard.*
- (4) *The consent authority must keep a record of its assessment carried out under subclause (3).*

These matters, along with case law judgements from the NSW Land and Environment Court, are addressed below.

2.2 Case Law

Several key NSW Land and Environment Court (NSW LEC) judgements have refined the manner in which variations to development standards are required to be approached. The key findings and directions from these cases are summarised below and the relevant cases referenced.

Wehbe v Pittwater [2007] NSW LEC 827

This case is the pinnacle decision on how to establish that compliance with a development standard is unreasonable or unnecessary. The decision of Justice Preston in *Wehbe v Pittwater [2007] NSW LEC 827* (**Wehbe**), expanded on the findings in *Winten v North Sydney Council*, and identified the now well known, five (5) ways in which the applicant might establish that compliance with a development standard is unreasonable or unnecessary. It was not suggested that a request must satisfy all five ways, or that they were the only ways that a development standard could be shown to be unreasonable or unnecessary.

The five (5) ways outlined in **Wehbe** include:

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

Other key cases and their findings

Since the **Wehbe** decision and five (5) ways were established, case law over the last few years has refined and given greater clarification around the writing and assessing of a Clause 4.6 variation request. These cases include:

- *Four2Five Pty Ltd v Ashfield Council [2014] NSW LEC 90* (**Four2five**);
- *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSW LEC 7* (**Micaul**);
- *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* (**Initial Action**);
- *Rebel MH Neutral Bay Pty Ltd v North Sydney Council [2018] NSW LEC 191* (**Rebel Neutral Bay**); and
- *Thompson Health Care Pty Limited v Northern Beaches Council [2020] NSW LEC 1363* (**Thompson Health Care**).

In summary these cases have helped to establish that:

- It is necessary to demonstrate compliance with the Clause 4.6, with particular regard to the provisions of subclauses (3)(a) and (3)(b) of the LEP;
- It is necessary to provide clear argument as to why adherence to the standard is unreasonable and unnecessary specific to the proposal and the aspect of the proposal which is non-compliant;
- It is necessary that the argument is founded on environmental planning grounds and does not necessarily need to facilitate a neutral or better outcome;
- It is necessary to provide adequate justification and assessment of the ability of the development to achieve the objectives of the standard and zone, notwithstanding the non-compliance;
- It is satisfactory that the consent authority need only be indirectly satisfied that the written request adequately addresses the non-compliance;
- In contrast to the indirect satisfaction with the adequacy of the written request, the consent authority must then be directly satisfied that the proposed development, contravening the development standard, will be in the public interest;
- Satisfying all these ensure compliance with the requirement that all three elements of Clause 4.6 must be met.

Each of these matters have informed the preparation of this request and the opinion that the variation of the Height of Building in Clause 4.3 of the Pittwater Local Environmental Plan 2014 is justified in the case of the proposed development.

2.3 Balancing development standards and environmental planning outcomes

Clause 4.6 provides an opportunity for the efficient administration of planning law through the ability to balance technical development standard compliance with good environmental planning outcomes that can be achieved through varying a development standard. As noted in the ongoing use of Clause 4.6, and the case law mentioned above, it is possible to meet planning objectives and promote positive, rather than negative, environmental planning outcomes when departing from a development standard when balancing planning law with the merits of a site, the needs of owners, and the broader context and setting.

The departure supported by this Clause 4.6 variation request highlights how, in this particular instance, the positive outcomes specific to this site and locality outweigh any negatives perceived to result from departures to development standards.

Importantly, support for the proposed departure will not set a precedent as the uniqueness of this site and the proposal demonstrate that while strict adherence to the set development standard is desirable generally, there is the opportunity to achieve a better environmental planning outcome on this site, through the development as proposed. This is notwithstanding the non-compliance of the height of the building compared to the Development Standard of 8.5 metres.

3 Development Overview

3.1 The Subject Site

The subject site is located at 89 Powderworks Road North Narrabeen NSW 2070 within the Northern Beaches Council area. It is legally described as Lot 40B in Deposited Plan 404871 having a site area of 1,184.5m² (by survey). **Figures 1 and 2** show the location of the property in the context of the broader area.

The site is improved with a dwelling house, inground pool and other ancillary development. Access is taken from Powderworks Road and the land slopes down to the rear at an average of 1:3. It is a regular shaped lot with a frontage of 20.725 metres (by survey) with a dominant slope of about 13.6 metres north-easterly toward the rear boundary. The area is a mix of low-density residential development, predominantly freestanding residences.

The site is not encumbered by any registered easements or restrictions. A sewer manhole is located within the rear yard adjacent to the north/ north-eastern boundary. All other services are located outside the subject site. The street view of the subject site is shown in **Figure 3**.



Figure 1: Site location

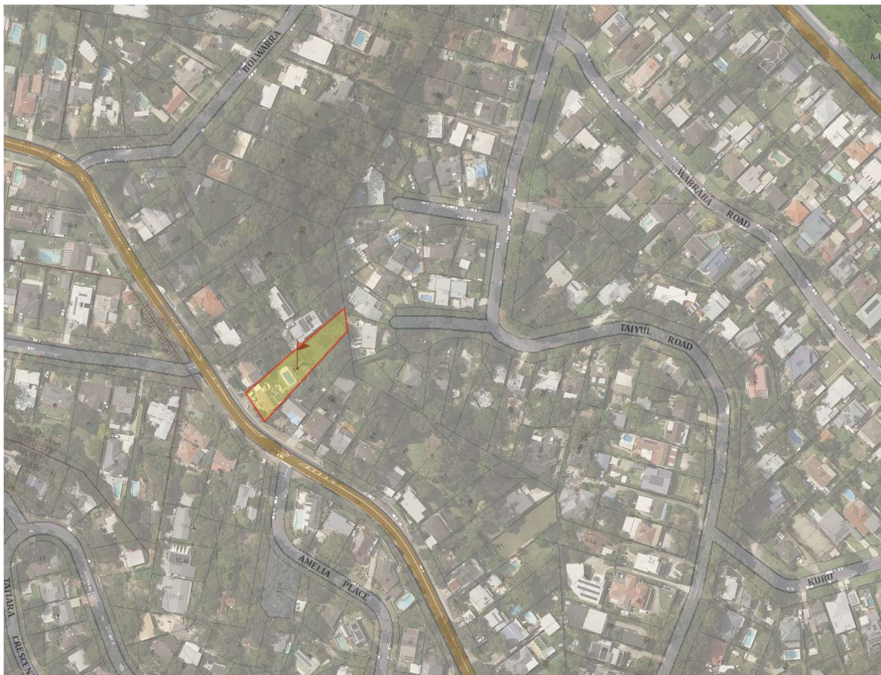


Figure 2: Site aerial. Source: Sixmaps



Figure 3: Google Street View Source: Google Maps (image date 2021)

3.2 Proposed Development

The proposal is for the alterations and additions to the existing residence, including an increase in gross floor area whilst maintaining the footprint of the building on the property. The upper floor of the residence currently occupies approximately half of the lower floor level footprint, and the proposal would be for the alignment of the upper and lower floor walls, to accommodate for the upper floor layout adjustment. The proposal would also include the relocation of the internal stairs for improved access.

The architectural plans are included in **Appendix B** and BASIX Certificate in **Appendix D**.

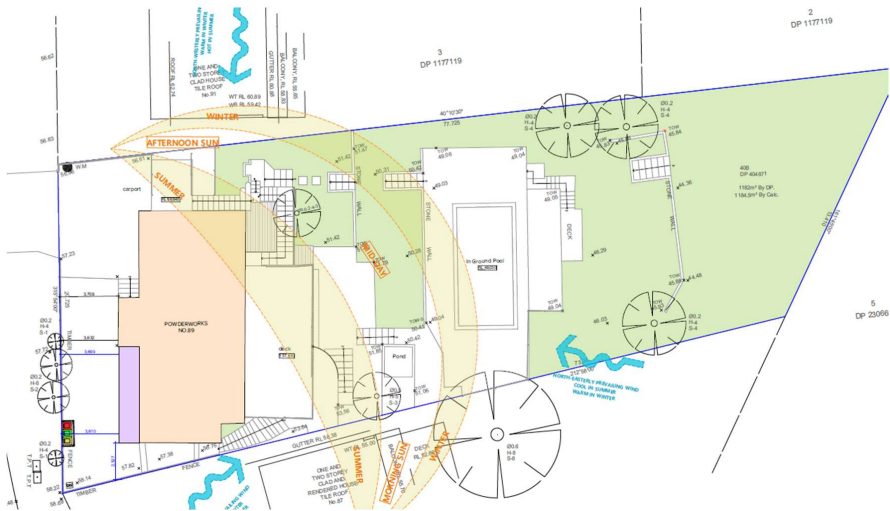


Figure 4. Proposed site plan. Source: Architectural Plans

3.2.1 Access and Traffic

Access to the site is maintained via the site’s driveway, and pedestrian access is unobstructed along the front boundary, as depicted on the architectural plans in **Appendix B**. Being alterations to the existing dwelling there is no requirement for additional car parking spaces.

3.2.2 Stormwater and Sewerage

Stormwater and sewerage infrastructure is located within the site which serves the existing dwelling and it is believed that there will not be any changes to the existing connection due to the nature of the scope of the proposal. Any necessary works would be described in the civil engineering plans.

3.3 Context and setting

When considering the broader area as it relates to the context and setting of this site and proposal, **Figure 5** demonstrates the nature of the fall across several local properties.

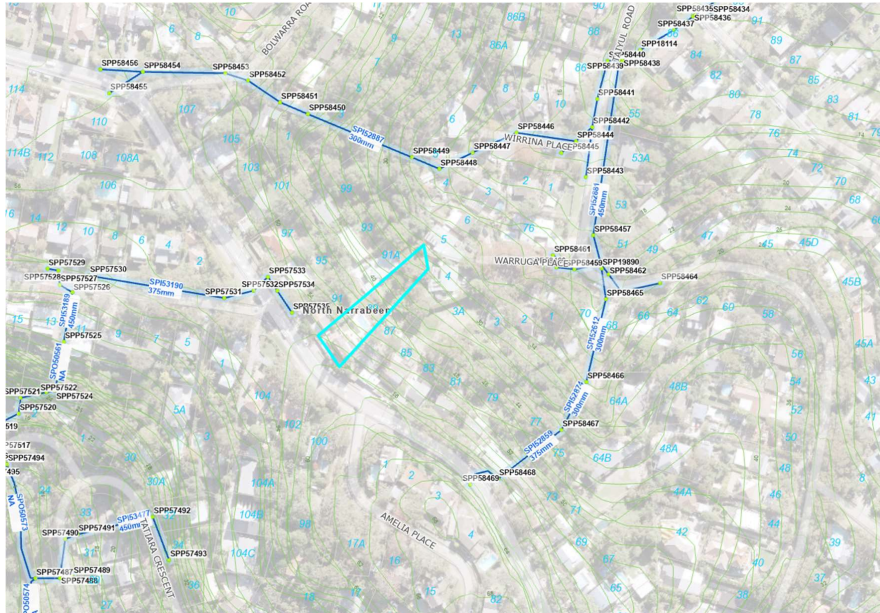


Figure 5. Subject site (boundaries in red). Source: Northern Beaches Council Online Map Viewer

The proposal is not out of character and is not incompatible with this context and setting. It is also observed that the wide variation in the sizes of lots and the significant slope toward the rear (north western boundary) is evident across several properties within the area.

The proposed alterations and additions to the dwelling improves functionality and purpose on the current land use. This improvement proposes a development at best capacity, promoting good development and desirable future character for an environmentally constrained site.

Density of the site does not is not questionable with this proposal as it promotes an extension to the existing residence only. The design, siting and presentation of the dwelling is complimentary for the area and maintains the existing amenity, environmental quality, and character of this part of North Narrabeen.

4 Clause 4.6 Variation Assessment

4.1 Environmental Planning Instrument details

4.1.1 What is the name of the environmental planning instrument that applies to the land?

Pittwater Local Environmental Plan 2014 (LEP)

4.1.2 What is the zoning of the land?

The site is zoned Zone C4 Environmental Living as shown under **Figure 6**.

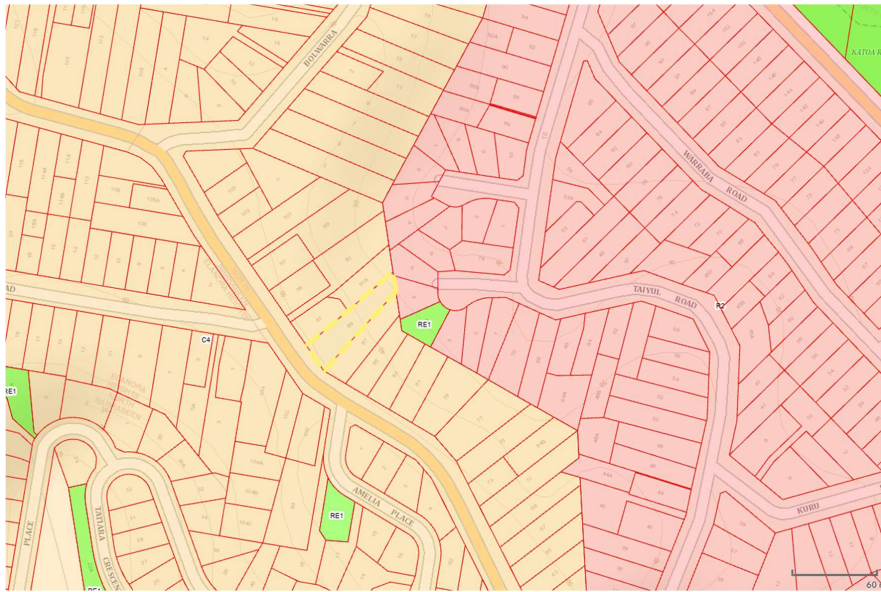


Figure 6. Pittwater LEP 2014– Zone C4 Environmental Living

4.1.3 What are the objectives of the zone?

- To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.
- To ensure that residential development does not have an adverse effect on those values.
- To provide for residential development of a low density and scale integrated with the landform and landscape.
- To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.

4.1.4 What is the development standard being varied?

Clause 4.3 Height of Buildings.

4.1.5 Under what clause is the development standard listed in the environmental planning instrument?

Clause 4.3, subclause (2). The Clause states as follows:

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

The Height of Buildings Map applicable to the site is shown under **Figure 7**.

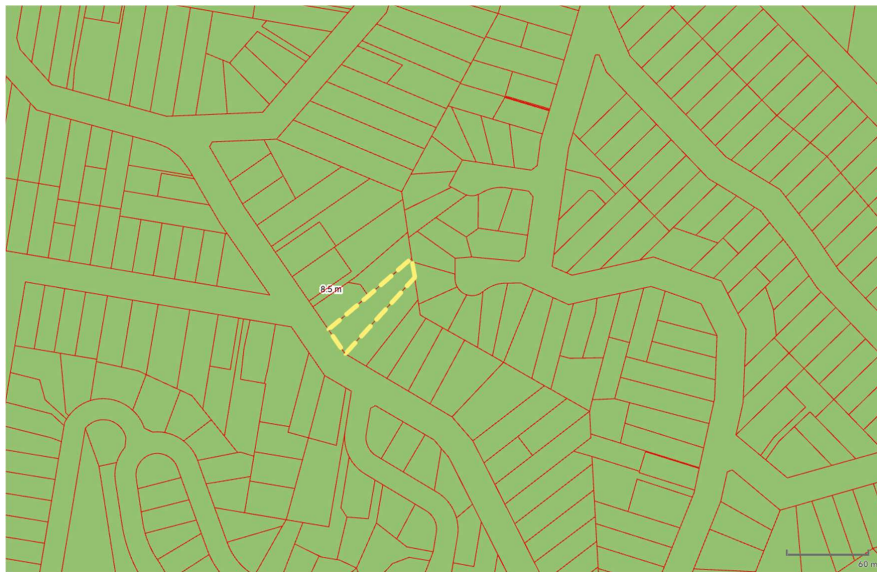


Figure 7. Pittwater LEP 2014– Height of buildings.

4.1.6 What are the objectives of the development standard?

- (a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*
- (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (c) to minimise any overshadowing of neighbouring properties,*
- (d) to allow for the reasonable sharing of views,*
- (e) to encourage buildings that are designed to respond sensitively to the natural topography,*
- (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*



4.1.7 What is the numeric value of the development standard in the environmental planning instrument?

As shown above, the site is mapped with a maximum height of building on the Height of Buildings Map of 8.5 metres.

4.1.8 What is proposed numeric value of the development standard in your development application?

The building is believed to be within the limit of 8.5 metres, however it is unknown what the depth of the subfloor would be. The indicative depth as depicted on the sections of the Architectural Plans show a height of 9.9 metres and therefore would exceed the height of the building by 1.4 metres.

4.1.9 What is the percentage variation (between your proposal and the environmental planning instrument)?

The variation being sought is 16.4% from the development standard.

4.1.10 Does Clause 4.6 include a provision that would prohibit the application for variation of the development standard?

No. Clause 4.6 does not exclude this development standard from being considered for variation.

4.2 Clause 4.6 Assessment – Height of Buildings

The following section addresses the provisions of Clause 4.6 of the Pittwater LEP 2014 together with principles established in the NSW Land and Environment Court Case Law outlined above.

4.2.1 Clause 4.6(3)(a)

Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (and is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case)?

In order to demonstrate that compliance with the development standard is unreasonable or unnecessary, in the circumstances of the case, Way Number 1 established in **Wehbe** is considered and addressed as follows.

First Way

The objectives of the standard are achieved notwithstanding non-compliance with the standard.

The objective of the standard is:

- (a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*
- (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (c) to minimise any overshadowing of neighbouring properties,*
- (d) to allow for the reasonable sharing of views,*
- (e) to encourage buildings that are designed to respond sensitively to the natural topography,*
- (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*

It is considered that the proposal is consistent with the objective of the standard for the following reasons:

- The building is consistent with the desired character of the locality and its scale is appropriate given the significant slope within the site;
- The building is compatible with the height and scale of surrounding developments;
- The new development has not caused any additional overshadowing to neighbours;
- The sharing of views has not been compromised from the new development;
- The design of the building is sensitive to the site's natural topography; and
- The proposal offers minimal visual impact of development on the natural environment.

4.2.2 Clause 4.6(3)(b)

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

Strict compliance with the standard would hinder the attainment of the objects specified in Section 1.3 of the EPA Act, which are as follows:

- a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
- b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
- c) to promote the orderly and economic use and development of land,
- d) to promote the delivery and maintenance of affordable housing,
- e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
- f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
- g) to promote good design and amenity of the built environment,
- h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
- i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
- j) to provide increased opportunity for community participation in environmental planning and assessment.

Compliance has been readily achieved with the following relevant objectives of the EPA Act:

Environmental Planning and Assessment Act 1979: Section 1.3	
Objective	Assessment
b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,	The proposal for alterations and additions promotes an ecologically sustainable development and ensures a continued residential living space without the need to neutralise the land for redevelopment.
c) to promote the orderly and economic use and development of land,	The alterations and additions promotes the orderly use of the land. It contributes to the economic use of the land through the physical improvements of the existing built form and current land use.
d) to promote the delivery and maintenance of affordable housing,	Affordable housing is achieved by better utilising existing housing stock in established areas. By retaining the existing dwelling and improving its functionality and purpose, the proposal achieves both objectives.

Strict compliance with Clause 4.3, Height of buildings, of the Pittwater LEP 2014 would hinder the attainment of the objectives of Clause 4.3 on the basis that:

- The proposal readily achieves compliance with the development standards of the LEP, controls of the DCP, servicing, access, and amenity for the existing onsite and offsite residences, notwithstanding the non-compliance of the Height of building mapped for this site;
- The retention of the dwelling contributes positively the established area;
- The proposal contributes to the economic use of the land through the physical improvements of the existing built form and current land use; and
- The environmental qualities of this area, and the residential amenity of the locality will not be reduced by the development.



The proposed alterations and additions to the dwelling promotes good development and built form for the immediate and surrounding environment. The scope of works to retain and improve the existing residence would not be considered an over development on the property. Rationally, in its current form, the proposal is believed to contribute to the desirable future character for the locality.

The design has suitably addressed all site-specific constraints and been designed for consistency with the prevailing streetscape character in the area. Considering this, to requirement to comply with the height of the building to purely achieve technical compliance with a numerical control would be a poor planning outcome, an inefficient use of the site.

Therefore, strict compliance with the height of the building for the development would hinder the attainment of the objects of the Act, the standard and the C4 zone. Requiring strict compliance would not result in the orderly and economic use and development of land or a positive environmental planning outcome on the site and for the broader area.

As demonstrated, there are sufficient environmental planning grounds to justify contravening this development standard in the unique situation of this site and this development.

In summary:

- The non-compliance will not raise any matter of State or Regional Significance;
- The proposed development is not contrary to the public interest, as detailed above; and
- The applicant is happy to address any other matter required to be considered by the Planning Secretary.

5 Conclusion

In summary, this Clause 4.6 variation request to the Height of Buildings in the Pittwater Local Environmental Plan 2014 satisfies the four tests imposed by Clause 4.6 being:

1. That compliance with the relevant development standard must be unreasonable or unnecessary in the circumstances of the case;
2. That there are sufficient environmental planning grounds to justify contravening the development standard;

Clause 4.3 contains the development standards to be applied to height of the building for development in the Northern Beaches LGA. Subclause (2) states that the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. The Height of buildings for the alterations and additions to the existing development at 89 Powderworks Road North Narrabeen is 8.5 metres. The dwelling, proposes a height of building that appears to be 9.9 metres, a variation being sought for 16.47% from the development standard. Although numerically non-compliant the height of building otherwise achieves compliance with the development standards and controls for the Northern Beaches LGA.

Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, as the proposal complies with the *First Way* of the *Five Part Test* outlined in *Wehbe*, in that the objectives of the standard are achieved, notwithstanding non-compliance with the standard.

In considering the balance between technical development standard compliance or support for this request to vary the set development standard, it is submitted that, in the proposed form, this unique development and site can achieve the following positive environmental planning outcome/s:

- The proposal readily achieves compliance with the development standards of the LEP, controls of the DCP, servicing, access, and amenity for the existing onsite and offsite residences, notwithstanding the non-compliance of the Height of building mapped for this site;
- The height of the building is appropriate given the significant slope within the site and the retention of the dwelling contributes positively the established area;
- The proposal offers minimal visual impact of development on the natural environment;
- The scale and depth of the proposal promotes good development given that the physical improvement of the existing residence is not considered an over-development; and
- The environmental qualities of this area, and the residential amenity of the locality will not be reduced by the development.

Importantly, it is considered that a precedent will not be set by supporting the proposed departure as this proposal is responding to the uniqueness of this site. Also, while strict adherence to the set development standard is desirable generally, on the merits of this specific case there is the opportunity to achieve a better environmental planning outcome on this site, through the development as proposed.



It is considered that this written request adequately addresses all relevant required matters. It demonstrates that the proposed development is in the public interest because:

- it is consistent with the objectives of the particular standard,
- it is consistent with the objectives for development within the zone,
- it is consistent with the aims of Pittwater LEP 2014, and
- it is consistent with the Objects of the EP&A Act.

On the basis of the above, the Northern Beaches Council is able to support the proposed variation to the development standard under the provisions of Clause 4.6 of the LEP and favourably endorse the Development Application as lodged.