

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 4 DECEMBER 2024

Ashleigh Sherry
Manager Business System and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 4 December 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 27 NOVEMBER 2024

RECOMMENDATION

That the Panel note that the minutes of the Development Determination Panel Meeting held on 27 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	DA2024/0151 - 22 CUTLER ROAD CLONTARF - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL, PERGOLA AND LANDSCAPING
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PURPOSE

To refer the attached application for determination due to directions provided by the Department of Planning & Environment in relation to applications with a clause 4.6 variation to the building height standard 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 DA2024/0151 for alterations and additions to a dwelling house including a swimming pool, pergola and landscaping on land at Lot 29 DP 758044, 22 Cutler Road CLONTARF, subject to the conditions set out in the Assessment Report.

Reporting manager	Rodney Piggott
TRIM file ref	2024/846031
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:	DA2024/0151
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Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 29 DP 758044, 22 Cutler Road CLONTARF NSW 2093
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool, pergola and landscaping
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:	Boston Blyth Fleming Pty Ltd

Application Lodged:	04/03/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	08/03/2024 to 22/03/2024
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	4.3 Height of buildings: 34.1% 4.4 Floor space ratio: 7.05%
Recommendation:	Approval

Estimated Cost of Works:	\$ 2,703,000.00
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EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to the existing dwelling house at No. 22 Cutler Street, Clontarf.

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 standard.

The application was notified in accordance with Council's Community Participation Plan (**CPP**) and received one (1) submission. Concerns raised in the objection predominantly relate to 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 application has proposed variations to the Height of Buildings and Floor Space Ratio (**FSR**) development standards.

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 ground floor (labelled as L1 on the plans) and from the sloping topography of the site. The application proposes a maximum building of 11.4m.

The Manly Local Environmental Plan (**MLEP**) 2013 prescribes a maximum FSR 0.4:1 of (285.56sqm) for the site and the application proposes 0.418:1 (305.7sqm) a departure of 7.05% from the control. The application is accompanied by a written Clause 4.6 variation request which explains that the variation to the FSR standard arises due to the site being undersized.

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 alterations and additions to a dwelling, including:

Level L1 (Ground)

- Internal alterations including removal of internal walls to allow for two car tandem garage
- Glass lift
- External alterations including removal of windows and door

Level L2

- 7.8sqm extension
- Internal alterations

Level 3

- 15.7sqm extension
- Balcony enclosure
- New southern side deck
- Retractable roof awning over deck
- Internal alterations

Other

- New stair access from street and driveway
- Associated landscaping
- Swimming pool and decking.

AMENDED PLANS

Following a preliminary assessment of the application Council wrote to the applicant on 28 June 2024 outlining concerns that would not allow for Council to support the application in its current form. The issues raised included:

- Building Height and FSR non-compliance
- View Loss
- Internal Referral - Landscape
- Internal Referral -Parks and Reserve

Following a meeting with the applicant to discuss outstanding issues, height poles were erected on site to understand the extent of the view loss of the proposed development. A site inspection from the objecting property revealed that the proposed development would lead to a loss of harbour views, the extent of which was not supported given that the impacts where as a direct result of non-compliance with the Height of Buildings and FSR development standards. The applicant chose to amend the application to address the ongoing concerns on 4 October 2024.

The proposed amendments can be summarised as follows:

- Level 3 western extension deleted and replaced with deck and pergola
- Minor extension to the level footprint.

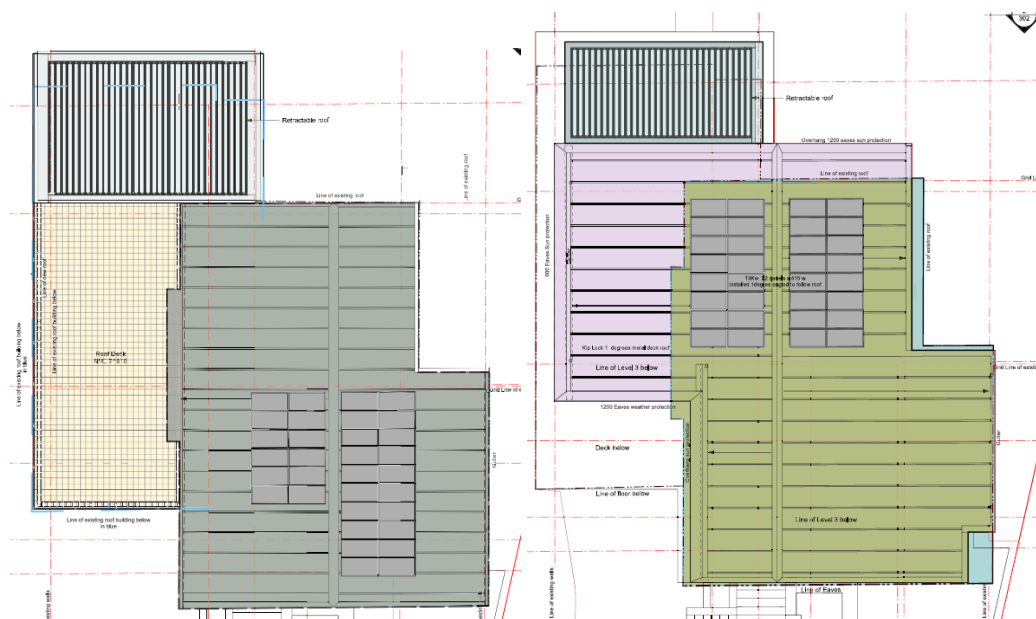


Figure 1 - Amended Roof Plan

Figure 2 - Original Roof plan

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. Therefore, re-notification was not required in accordance with Northern Beaches Community Participation Plan. Notwithstanding this the amended plans were sent to the neighbouring properties to review.

Stair Access

The proposed stair access and retaining wall is partially located within the road reserve. No owners consent has been provided for these works. Therefore a condition has been imposed deleting these works from the consent, if the application is to be approved.

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 - 3.4.3 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 - 4.1.9 Swimming Pools, Spas and Water Features

SITE DESCRIPTION

Property Description:	Lot 29 DP 758044 , 22 Cutler Road CLONTARF NSW 2093
Detailed Site Description:	The subject site consists of one (1) allotment located on the north-eastern side of Cutler Road, Clontarf. The site is irregular in shape with a frontage of 15.85m along Cutler Road and a depth of 38m. The site has a surveyed area of 713.9m². The site is located within the R2 Low Density

	Residential zone and accommodates a dwelling house. The site slopes steeply from the rear to the front appositely 10m. Detailed Description of Adjoining/Surrounding Development The site adjoins Mulgowrie Crescent Reserve to the west.
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Map:



SITE HISTORY

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

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This 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 Matters for Consideration	Comments
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application that included a certificate (prepared by Bushfire Consulting Services, dated 12 July 2023) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 08/03/2024 to 22/03/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Mrs Sally Myeela Beeton	43 Boyle Street BALGOWLAH NSW 2093
Mrs Gabriella Mattea Rogers Mr Mark Rogers	24 Artarmon Road WILLOUGHBY NSW 2068
Corona Projects Pty Ltd	PO Box 1062 BONDI JUNCTION NSW 1355

The following issues were raised in the submissions:

- **View Loss**
- **Height of landscaping**
- **Insufficient information**
- **Visual Bulk**

- **Acoustic privacy**
- **Construction, noise, dust and vibration issues**
- **Non-compliances with the Manly Local Environmental Plan (MLEP) 2013 and the Manly Development Control Plan (MDCP) 2013**

The above issues are addressed as follows:

- **View Loss**

Concern was raised in regard to loss of water views from private open space from the adjoining property to the north (No. 3 Mulgowrie Crescent, Balgowlah).

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.

The proposed swimming pool pergola (RL75.08) and deck roof (RL74.76) are proposed below the height of the existing rear boundary fence and do not protrude forward of the existing dwelling house roof.

- **Height of landscaping**

The submissions raises concern with the height of the proposed landscaping across the site. The submission recommends the following condition to ensure landscaping does not contribute to view loss from the neighbouring property.

Comment:

In response to the concern the following condition is to be imposed as part of condition 'landscape completion':

"The nominated screen planting at the rear property boundary indicated as a hedge shall be maintained to a maximum height of 3 metres or less to ensure no impacts to neighbouring view corridors"

- **Insufficient information**

The submissions raised concerns that insufficient information 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.

- **Visual bulk**

The submissions raised concerns that that the extent of view loss is unreasonable.

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 Manly DCP 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.

- **Acoustic privacy**

The submissions raised concerns that the proposed swimming pool and entertaining area will lead to unreasonable acoustic impacts.

Comment:

The swimming pool and entertaining area are suitable in a residential setting. A condition has been imposed to ensure the swimming pool does not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

- **Construction, noise, dust and vibration issues**

The submissions raised concerns that the proposed development will cause unreasonable construction impacts.

Comment:

Significant development of any site will undoubtedly cause disruption to adjoining properties. In order to reduce the potential disruption, standard conditions have been included as part of recommendation to ensure compliance with the relevant Australia standards and to allow for respite for neighbouring properties by imposing set operation/construction hours.

- **Non-compliances with the Manly Local Environmental Plan (MLEP) 2013 and the Manly Development Control Plan (MDCP) 2013**

Concern is raised in regard to general non-compliance with controls under the MLEP 2013 and MDCP 2013.

Comment:

This matter is addressed in detail elsewhere within this report (refer to the respective assessments in relation to MLEP 2013 and 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.

REFERRALS

Internal Referral Body	Comments
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. A Landscape Plan as amended and a Arboricultural Impact Assessment (AIA) is submitted for consideration by Landscape Referral. The Landscape Plan is noted and no concerns are raise subject to completion and conditions shall be imposed. The Landscape Plan indicates a widened planter along the pool at the north western boundary whilst Architectural plans have not been updated to match as conditions shall be imposed including that the nominated screen planting achieves at least 2 metres in height at maturity. The proposed screen planting at the rear of the property indicated as a hedge shall be maintained to a maximum height of 3 metres or less to ensure no impacts to neighbouring view corridors. The property supports two existing native trees and under 4.1.5.2 (c) Minimum Tree Plantings, three native trees are required. In consideration of the increased built form, a condition for one additional native tree shall be imposed, and located to not impact upon any existing view corridors from adjoining properties. The AIA report is noted and the observations and recommendations raise no concerns. The recommended requirements in proximity to existing tree 1 as identified in the AIA are noted and a Project Arborist shall be engaged to attend to the recommendations for tree sensitive works near tree 1. No existing trees are assessed for removal. Conditions shall be imposed for tree protection of existing trees within the property, within adjoining properties in proximity to any proposed works, and within the public reserve.
NECC (Development Engineering)	Supported, with conditions The proposed development is in Region 3. On-site detention is not required. Vehicle crossing construction is not proposed. A geotechnical report has been provided. Development engineering raises no objections to the proposed development, subject to conditions.
Parks, reserves, beaches, foreshore	Supported, with conditions The development site adjoins Mulgowrie Crescent Reserve. The Public Reserve is a bushland reserve with existing landscape features (existing trees, understory planting and rock outcrops) worthy of preservation. The proposed Landscape Plan as amended indicates a physical and

Internal Referral Body	Comments
	visual transition between private land and public land. Public access to the reserve is not impacted by the proposed development and the development is not detrimental to the prevailing landscape character when viewed from the adjoining reserve, and as such Parks, Reserves and Foreshores raise no concerns with the development proposal. All development works must ensure that surface sediment runoff and/or erosion is controlled, managed and contained within the site boundaries and prevented from travelling across the boundary and into the Reserve. No physical encroachments over the site boundaries are permitted, and structures and built elements are not permitted beyond the site boundaries. For information purposes it is noted that existing encroachments exist into the Public Reserve, as sighted and as shown on the Survey Plan. Any approval of this development application does not regularise any unauthorised encroachments within the Public Reserve.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No. A1767072).

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	11.4m	34.1%	No
Floor Space Ratio	FSR: 0.4:1 (285.56sqm)	FSR: 0.43:1 (305.7sqm)	7.05% (20.14sqm)	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 proposal maintains its residential use as 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 11.4m from existing ground level. This represents a variation of 34.1%.

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 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. 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.

b) To control the bulk and scale of buildings.

Comment:

The proposal will also maintain 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 breaches 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 (285.56sqm)
Proposed:	0.43:1 (305.7sqm)
Percentage variation to requirement:	7.05%

(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 well 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: 11.4m

Percentage of variation: 34.1%

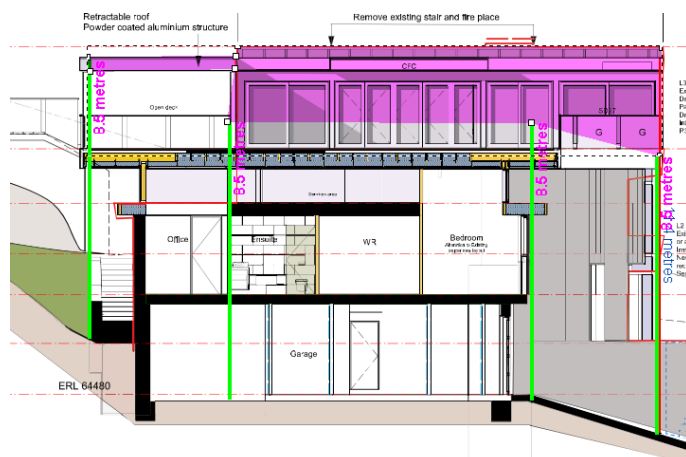


Figure 1: Section plan - Height of building variation in pink.

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 proposal will maintain its overall height with the new works to the upper level to match the established height. The prevailing height is preserved and will remain consistent with the streetscape character. 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 roof form and building height offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the sites visual catchment. In forming this opinion, I note that the street facing façade is comfortably below the 8.5 metre height standard with the streetscape presentation depicted in Figure 5 below.*
- This objective is explanatory of the purpose of the height of building standard. The objective is not an end in itself. By fixing different upper limits for the height of buildings on land in different areas by means of the building height map the clause does seek to control bulk and scale of buildings. The establishment of upper limit for height is not the end to be achieved by the clause rather it is a means to achieve the other objectives of the standard that are dealt with above and below (Baron Corporation Pty Limited –v- the City of Sydney Council [2019])*

NSWLEC 61 at [48]-[49]). Notwithstanding, the works maintain the existing 3 storey built form and overall height. The bulk and scale of the existing dwelling is not substantially altered with the works proposed.

- The dwellings to the rear of the site sit higher than the subject site. The dwellings will continue to access views over the dwelling. The dwellings to the rear of the site sit higher than the subject site. The dwellings will continue to access views over the dwelling. The amended plans will maintain the existing view sightlines from the property at 3 Mulgowrie Crescent, Balgowlah Heights, thereby achieving an improved view sharing outcome than the original DA plans.
- The building form and height has been appropriately distributed across the site to minimise disruption of views between public spaces. The site adjoins a public reserve however it is not frequented by the public due to it being densely vegetated and sloping.
- The shadow diagrams provided within the architectural set demonstrate that the building height breaching portion of the development will not give rise to any unacceptable shadowing impact to the property to the south.

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

Comment:

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

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

The Clause 4.6 Request argues, in part:

"Sufficient environmental planning grounds exist to justify the height of buildings variation which include:

- *The steep topography makes strict compliance with the building height standard challenging in this instance.*
- *The additions of the dining room at the upper level is set back from the front building alignment which ensures that it will not be readily visible from the street. In this regard, the 3 storey built form and height of the dwelling will not have a discernible difference when viewed from the street or from the foreshore areas associated with the scenic protection mapping within the LEP.*
- *The overall height of the dwelling is preserved as per existing with the new roof to replace the existing flat roof built form.*
- *No adverse amenity impacts with regard to privacy, overshadowing or view loss occur due to breaching elements of the new works.*

Planner's Comment:

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

- The development promotes good design and amenity of the built environment, noting that the proposed development will not unreasonably compromise the amenity of adjoining residential and other development within the immediate vicinity.
- The development promotes the proper construction and maintenance of buildings, in so far as the proposed alterations and additions is a necessary upgrade of the ageing development.

Public Interest:

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

Conclusion:

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

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

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

Development standard: Clause 4.4 (Floor Space Ratio)

Requirement: 0.4:1 (285.56qm)

Proposed: 0.43:1 (305.7sqm)

Percentage of variation: 7.05%

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 works to the existing dwelling will maintain its 3 storey built form and overall height of the dwelling. The additional area of floor space will not significantly alter the existing bulk and scale that it would now be inconsistent within the streetscape. 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 form, massing or scale (as reflected by FSR), offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the site's visual catchment.*
- The additional areas of floorspace does not obscure any landscape or townscape features. The dwelling will continue to sit below the tree canopy and maintains its 3 storey form and height.*
- The development maintains an appropriate visual relationship with the character of development in the area. Landscaping treatments are proposed to provide further softening and screening of the built form when viewed from the street. The site benefits from being adjacent to the nature reserve with large canopy trees which provide a high level of screening of the dwelling.*
- The works would not result in any impact on the use or enjoyment of adjoining land and the public domain. The proposal maintains appropriate levels of amenity with regard to view loss, overshadowing and privacy despite the FSR variation.*

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

Comment:

In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ

provides the following guidance (para 23) to inform the consent authority's finding that the Applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

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

The Clause 4.6 Request argues, in part:

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

- The site is an undersized allotment based on clause 4.1 of the LEP and 4.1.3.1 of the DCP. The 713.9m² site area is 436.1m² / 38% under the minimum lot size for the area which is 1150 m², compromising the ability to achieve compliance with the (numerical aspect) of the development standard.*
- The proposed works seek to refine and improve the amenity of the dwelling for the occupants which is made challenging due to the existing dwelling being over the FSR control. The GFA added at the lower and ground floor levels is minorly comprising approximately 4.5m² and 2.39m² respectively.*
- The upper level addition will remain at a reduced scale from the lower levels with the addition of the dining room stepped back further from the front alignment of the building. The addition will not be readily discernible from the street and directly adjoins the nature reserve. As such, the additional floor space has no material impacts on the streetscape nor surrounding dwellings.*
- The works maintain its 3 storey built form and continue to sit comfortably within the context of existing development in the local area which is characterised by 2 and 3 storey dwellings that reflect the sloping topography. The dwelling will not be seen as jarring or offensive within the landscape nor will it adversely impact on the scenic value of the area when viewed from the foreshore.*
- 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, and the fact that the existing GFA/FSR is reduced as a consequence of the works proposed.*
- The developments compliance with the objectives of the FSR standard and the general paucity of adverse environmental impact also giving weight to the acceptability of the variation sought."*

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.

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 subject site is within the foreshore scenic protection area and is not foreshore land. The proposed development:

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

6.12 Essential services

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

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

Comment:

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

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 713.9sqm	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	West: 8m (based on gradient 1:4)	11m	37.5%	No
	East: 8m (based on gradient 1:4)	7.7m	-	Yes
4.1.2.2 Number of Storeys	2	3	50%	No

4.1.2.3 Roof Height	Height: 2.5m	0.7m	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Stairs - 0m Dwelling - 5.5m	up to 100%	No
4.1.4.2 Side Setbacks and Secondary Street Frontages	up to 3.6m (based on wall height)	0.9m - 5.5m	up to 72%	No
	up to 2.56m (based on wall height)	Lift - 1.74m	up to 32%	No
	Windows: 3m	1.5m - 5.5m	50%	No
4.1.4.4 Rear Setbacks	8m	Dwelling - 15.4m Pool deck - 1.9m	- 77%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS1/2/3/4	Open space 60% (428.34sqm) of site area	72.46% (517.9sqm)	-	Yes
	Open space above ground 25% (129.32) of total open space	14.3% (74.5sqm)	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% (207.16sqm) of open space	60.37% (312.7sqm)	-	Yes
	3 native trees	3 trees	-	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	-	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	3.7m	-	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	0.8m	-	Yes
	1m curtilage/1.5m water side/rear setback	0.8m, 0.9m	60%	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	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.3.3 Footpath Tree Planting	Yes	Yes
3.4.1 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

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.1 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)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.3 Maintenance of Views

As a result of the public exhibition of the development application Council received a number one submissions raising view loss as a concern.

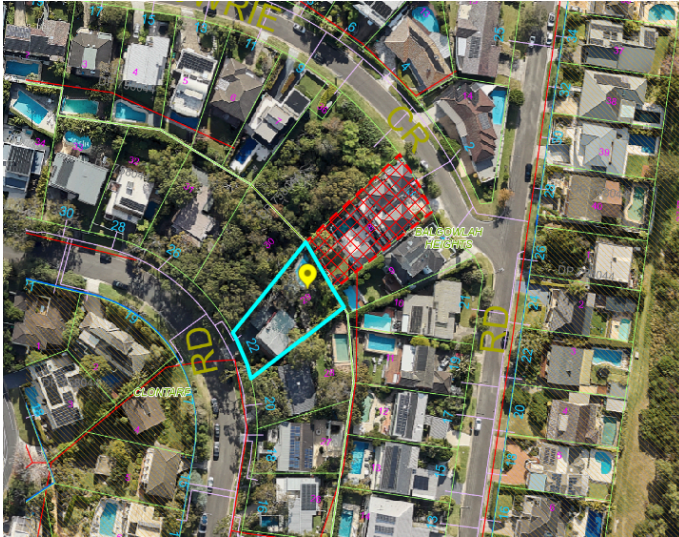


Image 1 - Location of objecting property (cross-hatched in Red) and proximity to subject site.

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 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. 3 Mulgowrie Crescent, Balgowlah Heights

The nature of the view affected from this property would be harbour views. The existing views are filtered through existing development and vegetation.

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. 3 Mulgowrie Crescent, Balgowlah Heights

The views that would be affected from this property are obtained over the rear boundary. The property currently enjoys views over the rear boundary, with the dominant view being over the rear boundary from the ground living rooms and rear terrace and first floor bedrooms. View are taken from both a standing and sitting position.

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 rear yard



Photo 3 - Ground floor terrace

No. 3 Mulgowrie Crescent, Balgowlah Heights

No. 3 Mulgowrie Crescent, Clontarf currently have substantial views to the harbour. Views are taken from the living rooms and private open space to the rear of the site at ground level. In regards to the living rooms and terraces of this dwelling all water views will be retained. The occupants will continue to enjoy ocean views from this property. Qualitatively and considering the existing provision of views available from No. 3 Mulgowrie Crescent, Clontarf, the overall extent of view loss proposed is negligible.

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-complaint with the Height of buildings and FSR development standards under MLEP 2013. The current view over the rear property boundary of Middle 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 warranted as no harbour views will be impacted by the proposed built-form.

Given the above, it is considered that the proposal is acceptable and view sharing is achieved, subject to conditions reducing screen planting along the rear property boundary to 3m to match the existing height of planting.

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.

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

Description of non-compliance

Clause 4.1.2 Height of Buildings stipulates that walls are not to exceed 8m based on the slope of land. The western elevation contravenes the 7.5m control by up to 37.5% (3m).

Furthermore, in accordance with Clause 4.1.2.2 of the MDCP, buildings are restricted to a maximum of two storeys. The proposed development would result in three storeys.

Merit consideration

There are no underlying objectives of this control under which to consider the merits of this variation. This control instead relies on the objectives for the Height of Buildings at clause 4.3 in the Manly LEP 2013. The proposal has been assessed against these objectives under clause 4.3, above in this report. In summary, the variation is deemed to be reasonable and supported in this circumstance.

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 u' on the MLEP 2013 Lot Size Map, meaning that, based on an actual lot size of 713.9sqm, calculation of the floor space ratio can be made as if the lot size were 750sqm.

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 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 along the western elevation.

The clause requires the first floor western wall be setback 3.6m at the highest point. The application proposes a setback of 0.9 - 5.5m, non-compliant with the numeric control. This represents a 72% variation to the numeric control.

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 1.5m from the side property boundary, will be non-compliant with the numerical control. A 50% variation to the numeric control.

Merit consideration:

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

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

Comment:

The proposed dwelling maintains the existing 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.). 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.

4.1.9 Swimming Pools, Spas and Water Features

Description of non-compliance

Clause 4.1.9 of the Manly DCP requires swimming pool be setback 1m from the pool curtilage and 1.5m from the waters edge. The proposed swimming pool is setback 0.8m from the swimming pool coping and 0.9m from the water edge, non-compliant with the numeric control.

Merit consideration

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

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

Comment:

Despite the numeric non-compliance, there will not be opportunities for overlooking into the adjoining properties to the east or north. To ensure suitable acoustic privacy a condition has been included with this consent limiting the noise of sound producing plant to no more than 5dB(A) above the background level, which will minimise the impact of the filter noise on adjoining properties. Overall, the proposal meets this objective.

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

Comment:

The swimming pool will not be readily visible from the street. The resulting impact on the streetscape is negligible.

Objective 3) To integrate landscaping.

Comment:

Adequate landscaping is proposed to the north off the pool to help offset the visual impact of the swimming pool.

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

Comment:

The subject site is not located in a bush fire asset protection zone, however the pool may be a viable water resource during bushfire emergencies.

Conclusion

Based on the above assessment, it is concluded that the objectives of the control are 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 \$27,030 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,703,000.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

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 alterations and additions to a dwelling house has been referred to the Development Determination Panel (DDP) as the application requests a greater than 10% variation to the 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, particularly view loss on adjoining properties to the north 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 DA2024/0151 for Alterations and additions to a dwelling house including a swimming pool, pergola and landscaping on land at Lot 29 DP 758044, 22 Cutler Road, 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

DA001	B	Site Analysis	pg.A. Architectural Services	25 September 2024
DA100E	-	L1 Plan	pg.A. Architectural Services	30 January 2024
DA101E	-	L2 Plan	pg.A. Architectural Services	30 January 2024
DA102E	B	Level 3	pg.A. Architectural Services	22 September 2024
DA103	D	L4 Roof Plan - Site Plan	pg.A. Architectural Services	27 September 2024
DA200	D	Section BB	pg.A. Architectural Services	24 September 2024
DA201	C	Section AA	pg.A. Architectural Services	24 September 2024
DA300	D	Western Elevation	pg.A. Architectural Services	22 September 2024
DA301	C	North and South Elevation	pg.A. Architectural Services	22 September 2024
DA302	B	Eastern Elevation	pg.A. Architectural Services	22 September 2024
DA500	A	External Finishes	pg.A. Architectural Services	27 September 2024
-	-	Storm - 1	Taylor Consulting	7 December 2023
-	-	Storm - 2	Taylor Consulting	7 December 2023
-	-	Storm - 2	Taylor Consulting	7 December 2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Geotechnical Investigation	0	Crozier Geotechnical Consultants	December 2023
Bushfire Assessment Report	-	Bushfire Consulting Services	21 June 2023
Waste Management Plan	D01	Salt	1 December 2023
BASIX Certificate No. A1767072	-	Bonnefin Consulting	2 October 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. **No Approval for Land Use**

No approval is granted under this Development Consent for any land use. A separate Development Application must be submitted to Council for approval prior to the use of the premises.

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

5. **Prescribed Conditions**

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

hours, and

(iii) stating that unauthorised entry to the work site is prohibited.

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

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

(i) in the case of work for which a principal contractor is required to be appointed:

- A. the name and licence number of the principal contractor, and
- B. the name of the insurer by which the work is insured under Part 6 of that Act,

(ii) in the case of work to be done by an owner-builder:

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

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

(e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

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

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

Reason: Legislative requirement.

6. General Requirements

(a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

- (j) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (k) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (l) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

7. **Policy Controls**

Northern Beaches Section 7.12 Contributions Plan 2024

A monetary contribution of \$27,030.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$2,703,000.00.

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

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

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

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

8. **Security Bond**

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

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

All bonds and fees shall be deposited with Council prior to Construction Certificate or

demolition work commencing, and details demonstrating payment are to be submitted to the Certifier prior to the issue of the Construction Certificate.

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

9. **Stormwater Disposal**

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent in accordance with AS/NZS 3500 and Council's Water Management for Development Policy, prepared by an appropriately qualified and practicing Civil or Hydraulic Engineer who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG), indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to the street.

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

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

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

The recommendations 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 the construction certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

11. **Amendments to the approved plans**

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

- The 'new stair access from street' and 'retaining wall' are to be deleted from the plans. No works are approved in the Council road reserve.

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

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

12. **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.

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. 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.

15. Sydney Water "Tap In"

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

16. Installation and Maintenance of Sediment and Erosion Control

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

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

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

DURING BUILDING WORK

17. **Project Arborist**

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged to provide tree protection measures in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, and in particular:

- a) section 9.3 and 9.3.1,
- b) section 11 and section 12.

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

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

Reason: Tree protection.

18. **Tree and Vegetation Protection**

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

- i) all trees within the site, 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.

19. Condition of Trees

- During the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to, or by seeking arboricultural advice from an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture during the works. In this regard all protected trees shall not exhibit:
- a) a general decline in health and vigour,
 - b) damaged, crushed or dying roots due to poor pruning techniques,
 - c) more than 10% loss or dieback of roots, branches and foliage,
 - d) mechanical damage or bruising of bark and timber of roots, trunk and branches,
 - e) yellowing of foliage or a thinning of the canopy untypical of its species,
 - f) an increase in the amount of deadwood not associated with normal growth,
 - g) an increase in kino or gum exudation,
 - h) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
 - i) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

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

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

Reason: Protection of trees.

20. **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.

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

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

Reason: Public safety, landscape amenity and tree protection.

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

The dumping or storage of building materials, spoil, vegetation, green waste or any other material in land owned or managed by Council is prohibited.

Reason: Public safety and environmental protection.

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

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

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

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

24. **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.

25. **Survey Certificate**

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

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

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

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

26. **Landscape Completion**

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

- a) landscape works are to be contained within the legal property boundaries,
- b) the width of the planter along the pool at the north western boundary shall be as dimensioned on the Landscape Plan,
- c) tree, shrub and groundcover planting shall be installed as indicated on the approved Landscape Plan, unless otherwise imposed by conditions,
- d) one native tree shall be installed within the property, at a minimum pre-ordered planting size of 75 litres; generally selected from Northern Beaches Council's Native Plant Species Guide - Manly Ward, Manly DCP Schedule 4 - Part B - Native Tree Selection, or Council's Tree Guide; meet the requirements of Australian Standard AS2303 - Tree Stock for Landscape Use; planted into a prepared planting hole 1m x 1m x 600mm depth generally, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings or more, at least 1.5 metres from common boundaries; located to not impact upon any existing view corridors from adjoining properties; and located either within garden bed or within a prepared bed within lawn,
- e) the nominated screen planting to the planter along the pool at the north western boundary shall be selected to achieve at least 2 metres in height at maturity,
- f) the nominated screen planting at the rear property boundary indicated as a hedge shall be maintained to a maximum height of 3 metres or less to ensure no impacts to neighbouring view corridors,
- g) 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,
- h) where the property is certified Bush Fire Prone Land, any new planting may be managed in accordance with Planning for Bushfire Protection 2019.

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.

27. **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.

28. **Stormwater Disposal**

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

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

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

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

30. **Swimming Pool Requirements**

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

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

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2009;
- (iii) Swimming Pools Regulation 2008
- (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 Certifying Authority, 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 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 Certifying Authority prior to the issue of an Interim / Final Occupation Certificate.

Reason: To protect human life (DACPLF09)

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

31. **Landscape Maintenance**

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

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

Reason: To maintain local environmental amenity.

32. **Geotechnical Recommendations**

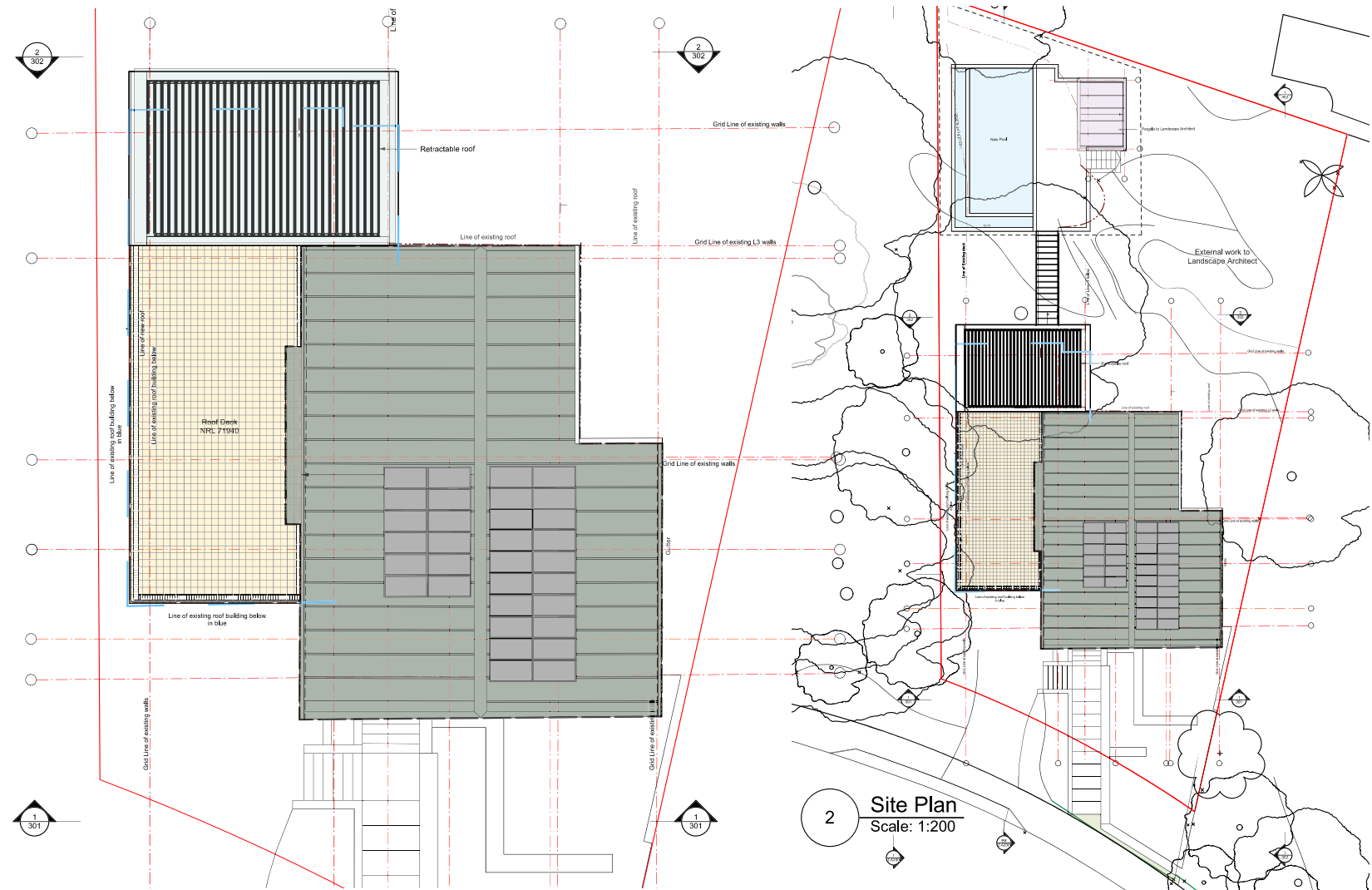
Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

33. **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 Roof Plan
Scale: 1:100

Roof construction
Steel & Timber frame structural Level 3 building
Portal Steel Frame roof - Cold formed Z section
Low profile roof 1degree Kloplok Colubond roofing
Southerly Grey Colour (Light grey)
All accessories to match-Flashing, concealed gutters, ridge capping
Amicon Bradford insulation +3.5 rated bulk insulation
16mm Fire rated plasterboard
32 x 415 PV Solar panels system 13Kw
All decks to be lined with waterproof membrane
All external decks to be tiled finished on spacers

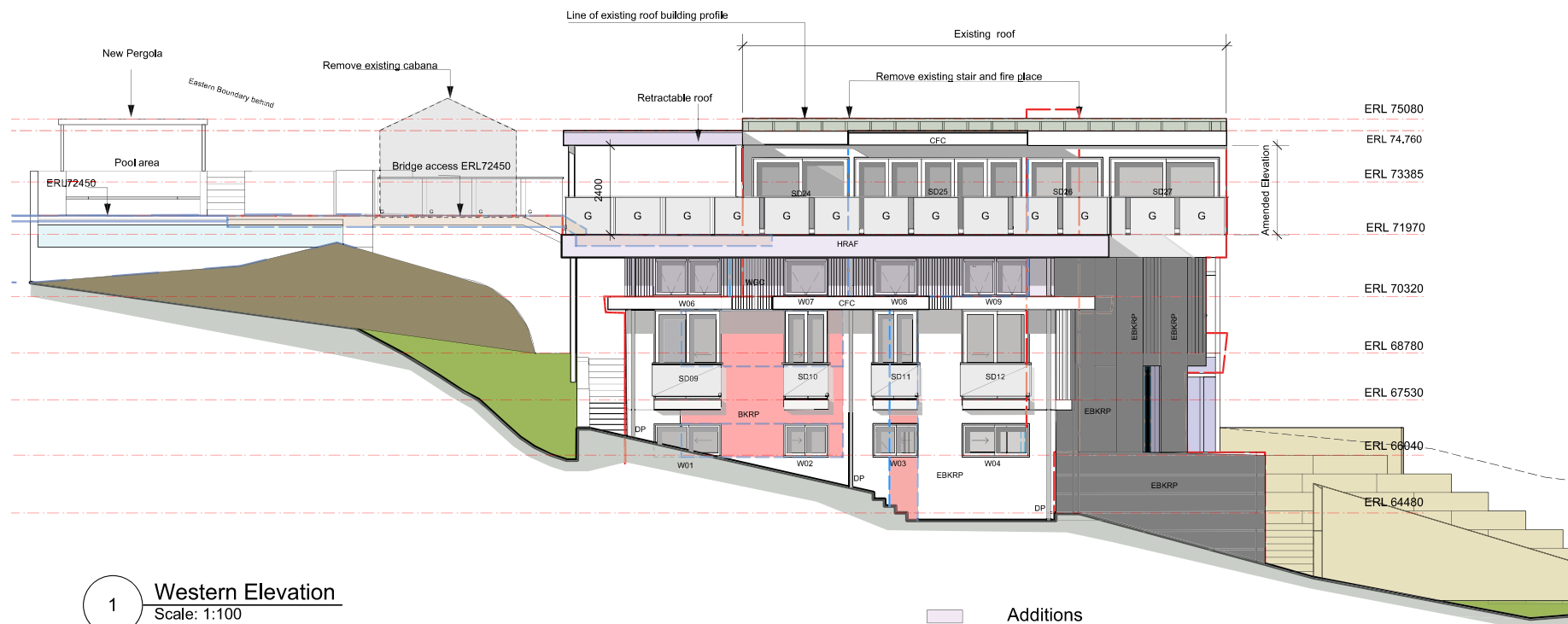
Existing Roof area
Elevated roof area
Retractable roof area

2 Site Plan
Scale: 1:200



D 22/09/2024 L3 roof amended
C 10/09/2024 Eaves reduction moved 800mm to the north
B 26/01/2024 Clarifications

REVISION	DATE	NOTE	PROJECT	PROJECT #
			Murphy's Residence - 22Cutler Rd Clontarf -2093	174
CLIENT	Mrs Corinne & Mr Paul Murphy		DATE #	27/09/2024
DWG	L4 Roof Plan-Site Plan		SCALE	as shown
			DRAWN	PG
			CHKD	PG
			REVIEW	B
pg.A.architectural services - Architect Reg NSW 5512				
8 Carvers rd Oyster Bay NSW 2225 Mob 61 492808261 E: philippe.goriaux@gmail.com				



1 Western Elevation
Scale: 1:100

Notes

BKRP - All existing brick facade to be filled where shown , rendered and applied finished
CFC PF - Compressed Fibro cement sheets fascia and eaves lining painted finish
HRAF - Hebel Panels Fascia applied finished
WGC - Weather groove smooth 75mm weathertex cladding painted finish.
All existing openings to be bricked and rendered in where required
New opening as per elevation.
All windows and doors to comply to NCC & Basix rating.
All windows and doors to be clear anodised aluminium.
Solar control motorised sliding screens to be installed to opening
All balustrades to be clear glass .

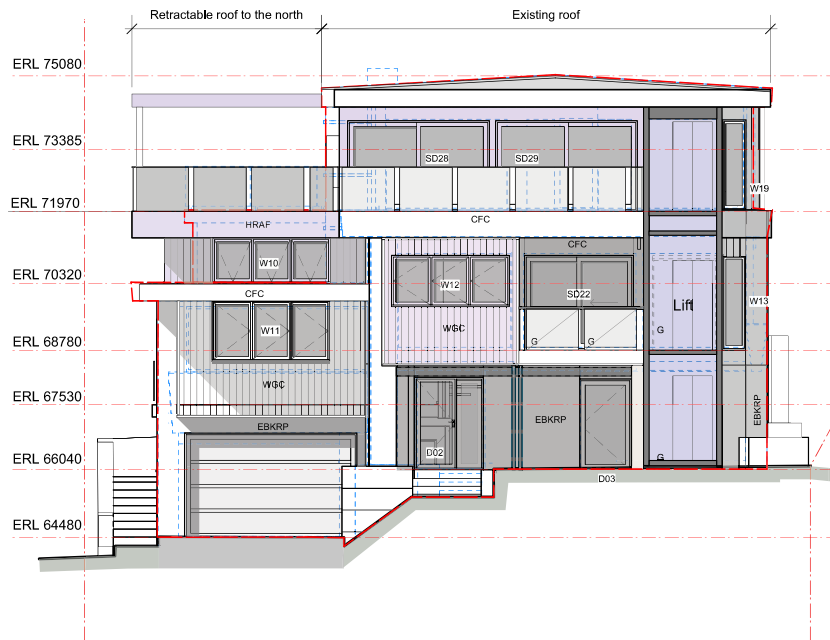
External work to Landscape Architect

- | | |
|---|---|
|  | Additions |
|  | All windows / doors new to comply with Basix report |
|  | Brickwork Additions |
|  | CFC Cladding Panels |
|  | Weathergroove Cladding Panels |
|  | Line of existing building |
|
 | |
| ERL | Existing levels |
| NRL | New Levels |
|  | New landscape walls as per Landscape Architect specifications |
|  | Existing deck to be removed |

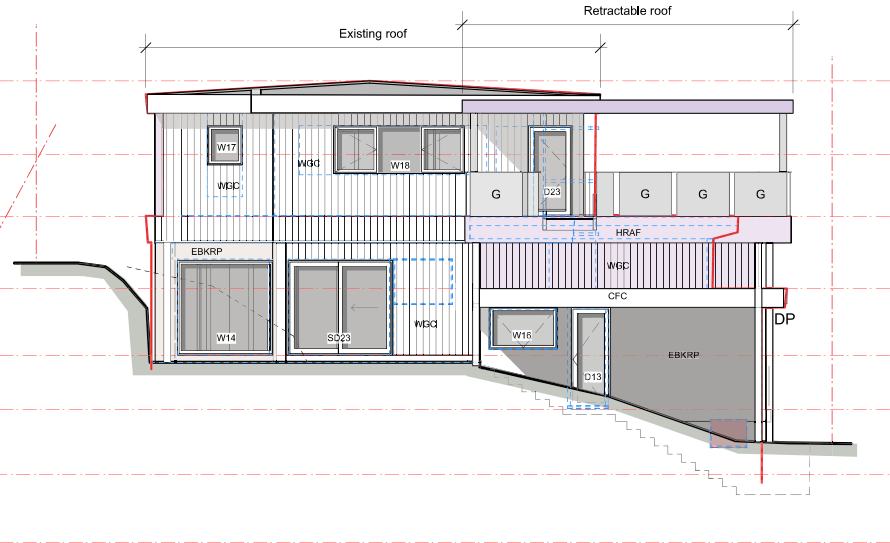
D	21/09/2024	Amended western Elevation
C	10/09/2024	Eaves reduction moved 800mm to the north
B	26/01/2024	Clarifications

	REVISION	DATE	NOTE	PROJECT # 174 DWG # DA300 DRAWN PG CHKD PG
	PROJECT			
	CLIENT			
	DWG			
Murphy's Residence - 22Cutler Rd Clontarf -2093 Mrs Corrine & Mr Paul Murphy Western Elevation				

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1 **South Elevation**
Scale: 1:100



2 North Elevation
Scale : 1:100

Notes

BKRP - All existing brick facade to be filled where shown , rendered and applied finished

CFC PF - Compressed Fibro cement sheets fascia and eaves lining painted finish

HRAF - Hebel Panels Fascia applied finished

WGC - Weather groove smooth 75mm weathertex cladding painted finish.

All existing openings to be bricked and rendered in where required

New opening as per elevation.

All windows and doors to comply to NCC & Basix rating.

All windows and doors to be clear anodised aluminium.

Solar control motorised sliding screens to be installed to opening

All balustrades to be clear glass .

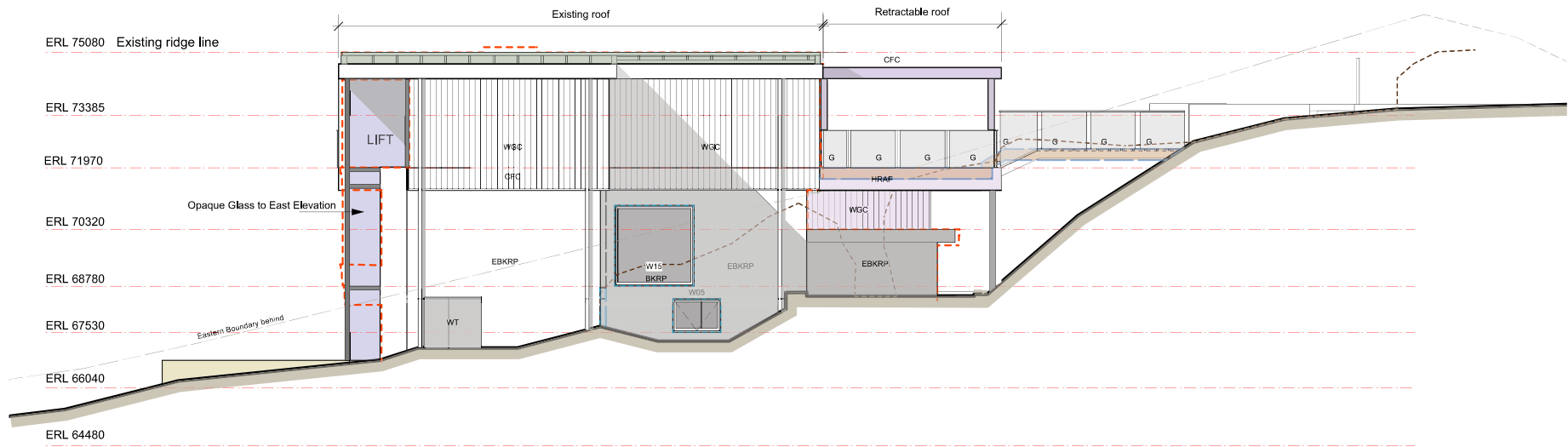
External work to Landscape Architect

- | | |
|---|--|
|  | All existing brick facade to be filled where shown , rendered and applied finished |
|  | Additions |
|  | All windows / doors new to comply with Basix report |
|  | New Brickwork Additions |
|  | CFC Cladding Panels |
|  | New Weathergroove Cladding Panels |
|  | Line of existing perimeter building |
|  | Line of existing building feature-windows |
| ERL | Existing levels |
| NRL | New Levels |
|  | New landscape walls as per Landscape Architect specifications |
|  | Existing deck to be removed |

C	21/09/2024	North and South amended Elevations
B	26/01/2024	Clarification
A	9/12/2023	DA issue

REVISION	DATE	NOTE		
PROJECT	Murphy's Residence - 22Cutler Rd Clontarf -2093			PROJECT # 174
CLIENT	Mrs Corrine & Mr Paul Murphy		DATE # 22/09/2024	DWG # DA301
			SCALE as shown	
DWG	North & South Elevations		DRAWN PG	
			CHKD PG	

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1 Eastern Elevation
Scale: 1:100

Notes

BKRP - All existing brick facade to be filled where shown , rendered and applied finished
CFC PF - Compressed Fibro cement sheets fascia and eaves lining painted finish
HRAF - Hebel Panels Fascia applied finished
WGC - Weather groove smoth 75mm weathertext cladding painted finish.
All existing openings to be bricked and rendered in where required
New opening as per elevation.
All windows and doors to comply to NCC & Basix rating.
All windows and doors to be clear anodised aluminium.
Solar control motorised sliding screens to be installed to opening
All ballustrades to be clear glass .

External work to Landscape Architect

- EBKRP All existing brick facade to be filled where shown , rendered and applied finished
- Additions
- All windows / doors new to comply with Basix report
- New Brickwork Additions
- CFC Cladding Panels
- New Weathergroove Cladding Panels
- Line of existing perimeter building
- Line of existing building feature-windows
- ERL Existing levels
- NRL New Levels
- Existing deck to be removed

B	22/09/2024	Eastern elevation amendments
A	9/12/2023	DA issue
REVISION	DATE	NOTE
PROJECT	Murphy's Residence - 22Cutler Rd Clontarf -2093	
CLIENT	Mrs Corrine & Mr Paul Murphy	DATE # 22/09/2024
DWG	Eastern Elevation	SCALE as shown
CHKD	PG	PG
PG	PG	PG
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CLAUSE 4.6 REQUEST

Height of buildings (clause 4.3 MLEP 2013)

22 Cutler Road, Clontarf

Amended: 4 October 2014

1.0 Introduction

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

2.0 Manly Local Environmental Plan 2013 (“MLEP”)

2.1 Clause 4.3 - Height of buildings

Pursuant to Clause 4.3 of Manly Local Environmental Plan 2013 (MLEP) the height of a building on the subject land is not to exceed 8.5 metres in height. 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

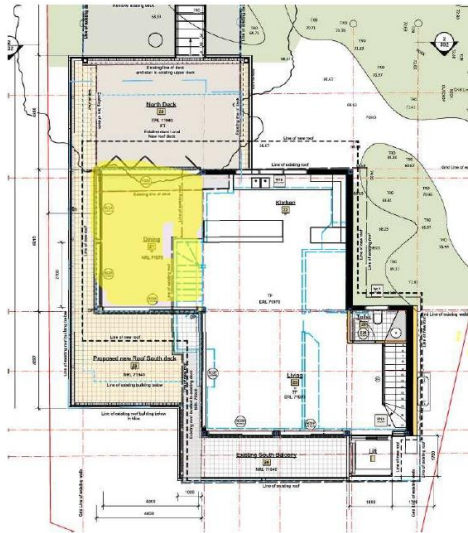
Ground level existing is defined as follows:

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

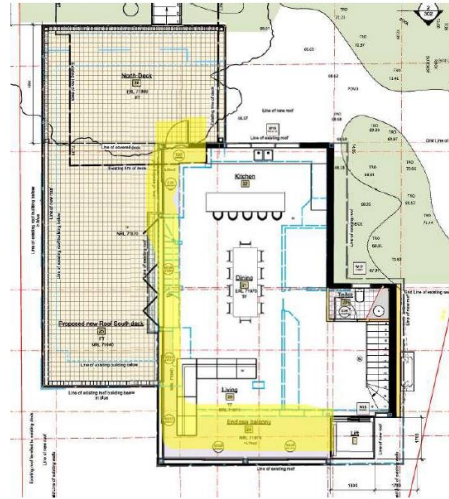
Based on the architectural plans, the proposal has a maximum building height of 10.82m which is the existing height of the dwelling. New works are proposed above the 8.5m.

The amended plans have reduced the building height of the proposed alterations and additions (see comparison below). Specifically, the western section of the proposed alterations (incorporating the dining room at the upper level) has been deleted and the proposed structure has been lowered by approximately 3.2 metres. The previously proposed extension to the west has been reduced, increasing the level 3 western setback to the existing building alignment.

Former proposal



New proposal



Existing and proposed level 3

The change is significant in that it will maintain the existing view sightlines from the property at 3 Mulgowrie Crescent, Balgowlah Heights, thereby achieving an improved view sharing outcome.

The height is taken from existing ground level.

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of MLEP provides:

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

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 4.3 Height of Buildings Development Standard.

Clause 4.6(3) of MLEP provides:

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

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

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

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

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

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 2021*, the Secretary has given written notice dated 5 May 2020, attached to the Planning Circular PS 20-002, 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 4.3 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 4.3 of MLEP a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.3 and the objectives for development for in the zone?
4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.3 of MLEP?

4.0 Request for variation

4.1 Is clause 4.3 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 4.3 MLEP prescribes a height provision that relates to certain development. Accordingly, clause 4.3 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 height of buildings standard

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

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

Response: The proposal will maintain its overall height with the new works to the upper level to match the established height. The prevailing height is preserved and will remain consistent with the streetscape character.

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 roof form and building height offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the sites visual catchment. In forming this opinion, I note that the street facing façade is comfortably below the 8.5 metre height standard with the streetscape presentation depicted in Figure 5 below.

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

Response: This objective is explanatory of the purpose of the height of building standard. The objective is not an end in itself. By fixing different upper limits for the height of buildings on land in different areas by means of the building height map the clause does seek to control bulk and scale of buildings. The establishment of upper limit for height is not the end to be achieved by the clause rather it is a means to achieve the other objectives of the standard that are dealt with above and below (*Baron Corporation Pty Limited –v- the City of Sydney Council* [2019] NSWLEC 61 at [48]-[49]).

Notwithstanding, the works maintain the existing 3 storey built form and overall height. The bulk and scale of the existing dwelling is not substantially altered with the works proposed.

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 sites visual catchment.

The proposal achieves this objective.

(c) *to minimise disruption to the following:*

i. views to nearby residential development from public spaces (including the harbour and foreshores),

Response: The dwellings to the rear of the site sit higher than the subject site. The dwellings will continue to access views over the dwelling.

The proposal achieves this objective.

ii. views from nearby residential development to public spaces (including the harbour and foreshores),

Response: The dwellings to the rear of the site sit higher than the subject site. The dwellings will continue to access views over the dwelling.

The amended plans will maintain the existing view sightlines from the property at 3 Mulgowrie Crescent, Balgowlah Heights, thereby achieving an improved view sharing outcome than the original DA plans.

(iii) views between public spaces (including the harbour and foreshores),

Response: The building form and height has been appropriately distributed across the site to minimise disruption of views between public spaces. The site adjoins a public reserve however it is not frequented by the public due to it being densely vegetated and sloping.

The proposal achieves this objective.

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

Response: The shadow diagrams provided within the architectural set demonstrate that the building height breaching portion of the development will not give rise to any unacceptable shadowing impact to the property to the south.

The proposal achieves this objective.

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

Response: This objective is not applicable.

Having regard to the above, the non-compliant component of the building 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 building height standard. Given the developments consistency with the objectives of the height of buildings standard strict compliance has been found to be both unreasonable and unnecessary under the circumstances.

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.*

25. *The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to*

be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].

Sufficient environmental planning grounds exist to justify the height of buildings variation which include:

- The steep topography makes strict compliance with the building height standard challenging in this instance.
- The additions of the dining room at the upper level is set back from the front building alignment which ensures that it will not be readily visible from the street. In this regard, the 3 storey built form and height of the dwelling will not have a discernible difference when viewed from the street or from the foreshore areas associated with the scenic protection mapping within the LEP.
- The overall height of the dwelling is preserved as per existing with the new roof to replace the existing flat roof built form.
- No adverse amenity impacts with regard to privacy, overshadowing or view loss occur due to breaching elements of the new works.



The height and scale of the existing dwelling house establishes a context for the proposed exception

In this regard, I consider the proposal to be of a skilful design which responds appropriately and effectively to the above constraints by appropriately distributing floor space, building mass and building height across the site in a manner which provides for

appropriate streetscape and residential amenity outcomes including a view sharing scenario.

Such outcome is achieved whilst realising the reasonable development potential of the land.

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

- The proposal promotes the orderly and economic use and development of land (1.3(c)).
- The development represents good design (1.3(g)).
- 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 4.3A 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 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 20 May 2020, the Secretary of the Department of Planning & Environment advised that consent authorities can assume the concurrence to clause 4.6 request except in the circumstances set out below:

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

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

Concurrence of the Secretary can therefore be assumed in this case.

5.0 Conclusion

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

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

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



Clause 4.6 for Height

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

Yours Sincerely

A handwritten signature in black ink, appearing to read 'William Fleming', written in a cursive style.

William Fleming
BS, MPLAN
Boston Blyth Fleming Pty Ltd
Director



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CLAUSE 4.6 REQUEST TO VARY THE FLOOR SPACE RATIO

22 Cutler Road, Clontarf
Amended: 4 October 2014

1.0 Introduction

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

2.0 Manly Local Environmental Plan 2013 (“MLEP”)

2.1 Clause 4.4 – Floor Space Ratio

Pursuant to Clause 4.4 of Manly Local Environmental Plan 2013 (MLEP) the floor space ratio control applicable to the site is 0.4:1. 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.*

The initial DA plans proposed a GFA/FSR of 306m² or 0.43:1 translating to a variation of 20.44m² or 7.15%.

The amended plans have altered the proposed building configuration.

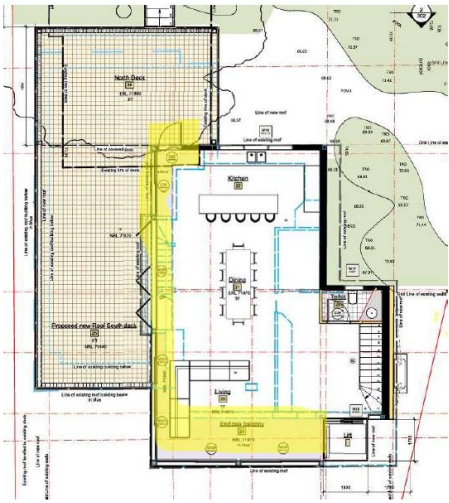
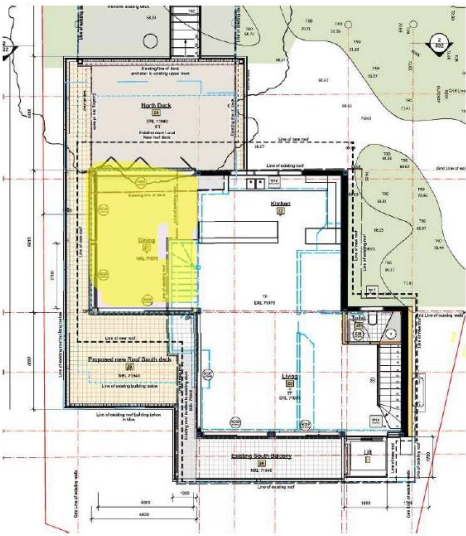
The amended plans have reduced the building height of the proposed alterations and additions. Specifically, the western section of the proposed additions (incorporating the dining room at the upper level) has been deleted and the proposed structure has been lowered by approximately 3.2 metres. The previously proposed extension to the west has been reduced, increasing the level 3 western setback to the existing building alignment.

The additional FSR proposed is now within the existing building envelope. The amendments result in a small reduction in the FSR of the proposed alterations and additions.

The proposed GFA/FSR as amended is 305.7m² or 0.43:1. This is a variation of 20.14m² or 7.05%.

Former proposal

New proposal



Existing and proposed level 3

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of MLEP provides:

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

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

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

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

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

Clause 4.6(2) of MLEP provides:

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

This clause applies to the clause 4.4 FSR Development Standard.

Clause 4.6(3) of MLEP provides:

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

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

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

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

Clause 4.6(4) of MLEP provides:

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

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

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

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

Under cl 64 of the *Environmental Planning and Assessment Regulation* 2021, the Secretary has given written notice dated 5 May 2020, attached to the Planning Circular PS 20-002, 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 Clause 4.6(3)(a) – Whether compliance with the development standard is unreasonable or unnecessary.

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

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

Consistency with objectives of the Floor Space Ratio standard

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

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

Response: The works to the existing dwelling will maintain its 3 storey built form and overall height of the dwelling. The additional area of floor space will not significantly alter the existing bulk and scale that it would now be inconsistent within the streetscape.

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 form, massing or scale (as reflected by FSR), offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the site's visual catchment.

This objective is achieved as the bulk and scale of development is entirely 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: The additional areas of floorspace does not obscure any landscape or townscape features. The dwelling will continue to sit below the tree canopy and maintains its 3 storey form and height.

The proposal meets this objective.

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

Response: The development maintains an appropriate visual relationship with the character of development in the area. Landscaping treatments are proposed to provide further softening and screening of the built form when viewed from the street. The site benefits from being adjacent to the nature reserve with large canopy trees which provide a high level of screening of the dwelling.

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

Response: The works would not result in any impact on the use or enjoyment of adjoining land and the public domain. The proposal maintains appropriate levels of amenity with regard to view loss, overshadowing and privacy despite the FSR variation.

- e) *to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic*

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

Response: N/A

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

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

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

24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.*

The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].

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

Undersized allotment

The site is an undersized allotment based on clause 4.1 of the LEP and 4.1.3.1 of the DCP. The 713.9m² site area is 436.1m² / 38% under the minimum lot size for the area

which is 1150 m², compromising the ability to achieve compliance with the (numerical aspect) of the development standard.

In relation to undersized allotments the Manly DCP states:

“Note: On existing sites in Residential LEP Zones (including E3 & E4) with a site area less than the minimum lot size required on the LEP Lot Size (LSZ) Map, Council may consider exceptions to the maximum FSR under LEP clause 4.6 when both the relevant LEP objectives and the provisions of this DCP are satisfied. See LEP clause 4.6(4)(a).

The undersized nature of a lot is a matter that Council may consider in determining whether ‘compliance with the standard is unreasonable or unnecessary in the circumstances of the case’ and ‘there is sufficient environment planning grounds to justify contravening the development standard’ under LEP clause 4.6(3)”.

Contextually appropriate to the low density residential setting

A modest GFA/FSR is proposed, that is contextually appropriate to the low density residential zone / setting of the site, noting the proposal involves 345.7m² of GFA or and an FSR of 0.48:1, which is less than 0.5 to 1. The proposal therefore maintains a suburban character as per the planning principle for ‘Compatibility in a suburban context’ established in *Salanitro-Chafei v Ashfield Council* [2005] NSWLEC 366 at 23-28. At 27, it states:

27 ‘.... there is a general acceptance by the planning profession that an open suburban character is most easily maintained when the FSR of buildings does not exceed 0.5:1.

The proposed works seek to refine and improve the amenity of the dwelling for the occupants which is made challenging due to the existing dwelling being over the FSR control. The GFA added at the lower and ground floor levels is minorly comprising approximately 4.5m² and 2.39m² respectively.

The upper level addition will remain at a reduced scale from the lower levels with the addition of the dining room stepped back further from the front alignment of the building. The addition will not be readily discernible from the street and directly adjoins the nature reserve. As such, the additional floor space has no material impacts on the streetscape nor surrounding dwellings.

The works maintain its 3 storey built form and continue to sit comfortably within the context of existing development in the local area which is characterised by 2 and 3 storey dwellings that reflect the sloping topography. The dwelling will not be seen as jarring or offensive within the landscape nor will it adversely impact on the scenic value of the area when viewed from the foreshore.

We note that Council has applied the FSR development standard flexibility in this locality and have approved variations provided that the undersized lot provisions within the DCP can be met.

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, and the fact that the existing GFA/FSR is reduced as a consequence of the works proposed.

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

Objects 3 of the Act

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

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

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

Concurrence of the Secretary can therefore be assumed in this case.

5.0 Conclusion

Having regard to the clause 4.6 variation provisions we have formed the considered opinion:

- (a) that the contextually responsive development is consistent with the zone objectives, and
- (b) that the contextually responsive development is consistent with the objectives of the FSR standard, and
- (c) that there are sufficient environmental planning grounds to justify contravening the development standard, and
- (d) that having regard to (a), (b) and (c) above that compliance with the FSR development standard is unreasonable or unnecessary in the circumstances of the case, and
- (e) that given the developments ability to comply with the zone and FSR standard objectives that approval would not be antipathetic to the public interest, and
- (f) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning; and
- (g) Concurrence of the Secretary can be assumed in this case.

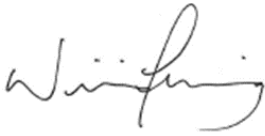
Pursuant to clause 4.6(4)(a), the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

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

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

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

Yours Sincerely



William Fleming
BS, MPLAN
Boston Blyth Fleming Pty Ltd
Director

ITEM 3.2	DA2024/1211 - 2 LOMBARD STREET BALGOWLAH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
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PURPOSE

To refer the attached application for determination due to directions provided by the Department of Planning & Environment in relation to applications with a clause 4.6 variation to the 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 DA2024/1211 for alterations and additions to a dwelling house on land at Lot D DP 314588, 2 Lombard Street BALGOWLAH, subject to the conditions set out in the Assessment Report.

Reporting manager	Rodney Piggott
TRIM file ref	2024/864693
Attachments	1 Assessment Report 2 Site Plan and Elevations 3 Clause 4.6

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/1211
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Responsible Officer:	Lachlan Rose
Land to be developed (Address):	Lot D DP 314588, 2 Lombard Street BALGOWLAH NSW 2093
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Approveall Town Planning Pty Ltd

Application Lodged:	11/09/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	18/09/2024 to 02/10/2024
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.4 Floor space ratio: 17.4%
Recommendation:	Approval

Estimated Cost of Works:	\$ 148,500.00
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EXECUTIVE SUMMARY

This development application seeks consent for

The application is referred to the Development Determination Panel (DDP) due to a Clause 4.6 variation greater than 10% to the floor space ratio.

No concerns raised during the assessment period.

There are no critical assessment issues in this proposal.

The 4.6 request for the non-compliance with FSR standard arises from a 2.4m² increase in floorspace. The increase to the FSR is due to the use of an existing entrance way as a bathroom. The existing

building has an existing floorspace which is at 16% above compliance with the LEP based on existing plans with the proposal increasing this to 17.4%. 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 development is described as Alterations and additions to a dwelling house.

The proposal includes:

- Replacement of the existing carport roof and associated roof modifications
- Construction of front porch and roof
- Replace the front windows with new entry doors
- Construction of a new powder room over existing entry
- Front landscape works including a front fence

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

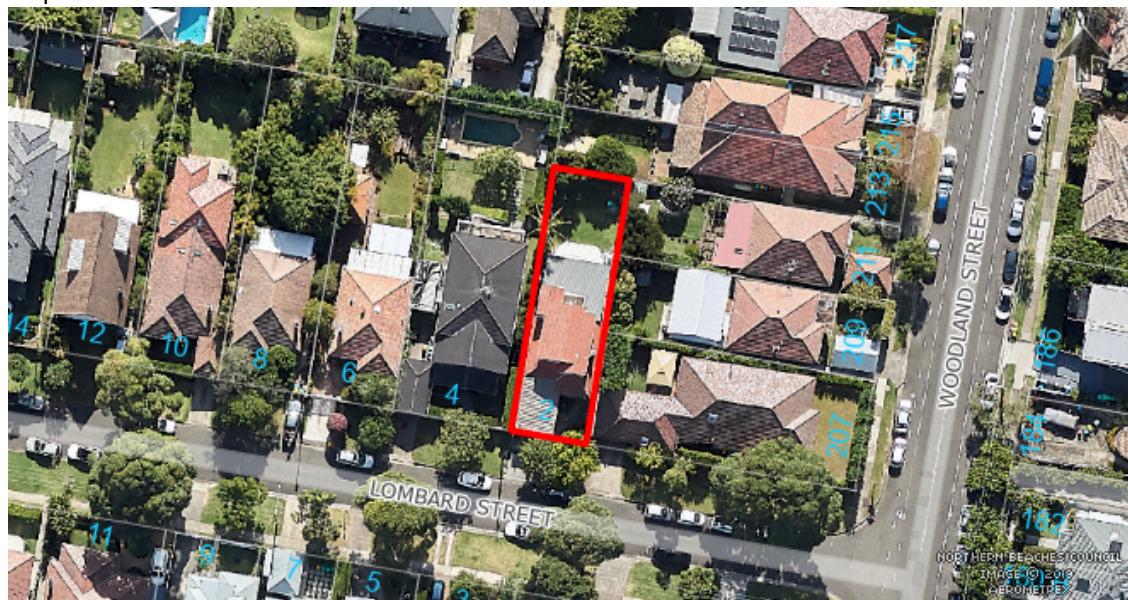
Manly Local Environmental Plan 2013 - Zone R1 General Residential
Manly Local Environmental Plan 2013 - 4.4 Floor space ratio
Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
Manly Development Control Plan - 4.1.5 Open Space and Landscaping

Manly Development Control Plan - 4.1.10 Fencing
Manly Development Control Plan - Schedule 3 - Part A1 - Parking Rates and Requirements for Vehicles

SITE DESCRIPTION

Property Description:	Lot D DP 314588 , 2 Lombard Street BALGOWLAH NSW 2093
Detailed Site Description:	The subject site consists of an allotment located on the northern side of Lombard Street. The site is regular in shape with a frontage of 10.06m along Lombard Street and a depth of 34.44m. The site has a surveyed area of 346m². The site is located within the R1 General Residential zone and accommodates a dwelling on site. The site has a slope of approximately 3 metres from Lombard Street to the rear of the property. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by a mix of residential development.

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's

records has revealed the following relevant history:

- DA333/2005- Alterations and Additions to the existing dwelling including 1st storey addition and deck. Approved on 9.12.05. Multiple Modification Applications have been approved under the delegated authority, subject to this DA333/2005.
- DA2018/1286- Alterations and additions to an existing dwelling. Approved on 28/09/2018.

AMENDED PLANS

Following a preliminary assessment of the application and site inspection of the subject site and adjoining properties Council wrote to the applicant on 29/10/2024 outlining concerns that would not allow for Council to support the application in its current form. The concerns related to Architectural plans and 4.6 variation report. The applicant lodged amended plans on 1/11/2024 to address the concerns raised.

The amended plans incorporate the following changes:

- FSR calculation plan
- TOS calculation plan
- 4.6 variation report

The proposed plans were unsatisfactory and included an amendment of a roofed area to the rear balcony which resulted in an additional variation to a development standard. The applicant was informed that due to the application resulting in an additional breach of a development standard, and would result in an increase in the environmental impact of the proposal, the amendment is unacceptable at this stage of the assessment. Therefore, requesting the rear balcony works are to be removed from the plans of the original proposal with updated plans requested on 04/11/2024. The applicant lodged amended plans on 22/11/2024 to address the concerns raised.

The amended plans incorporate the following documents:

- Revised architectural plans to remove the rear balcony works to match the existing proposal with shadow diagrams and FSR calculations
- New Clause 4.6 Report

The proposed amendments will have a reduced environmental impact on the adjoining properties and public open space than the original proposal. Therefore, re-notification was not required in accordance with Northern Beaches Community Participation Plan.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any	See discussion on “Environmental Planning Instruments” in this report.

Section 4.15 Matters for Consideration	Comments
environmental planning instrument	
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to Clause 4.6 Report and Architectural 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 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 Matters for Consideration	Comments
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 18/09/2024 to 02/10/2024 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		
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS		
	Discussion of reason for referral		
	The proposal has been referred to Heritage as the subject site adjoins a heritage item:		
	Item I19 - Street trees- Lombard Street, Balgowlah		
	Details of heritage items affected		
	Details of the heritage item, as contained within the inventory are:		
	Item I19 - Street trees		
	<u>Statement of Significance</u>		
	Listed for its aesthetic importance to the streetscape.		
	<u>Physical Description</u>		
Brush Box (Lophostemon Confertus) and Ficus Hillii. Avenue effect created c.1920's.			
Other relevant heritage listings			
SEPP (Biodiversity and Conservation) 2021	No		
Australian Heritage Register	No		

Internal Referral Body	Comments		
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	
	Consideration of Application		
	The proposal seeks consent for alterations and additions to the existing two storey building, featuring some building elements from the Inter-war period on the ground floor, such as windows, doors, fire place and ceiling decorations. The proposal involves modifications to the existing carport roof, construction a new front porch and roof, and removal of the original front window with leadlight details, to replace it with a new entry door. The proposed works to the new entry porch involves new posts and roof, a new paved area with new fencing along the front boundary. The subject site adjoins the heritage listed street trees along its front boundary. Given the minor scale of the proposed works and the proposal does not involve any works to the existing driveway crossover it is considered that there will be no adverse impact upon the significance of the heritage listed street trees. However, the street tree, located in the road reserve outside this property, is required to be protected during the construction. Therefore, no objections are raised on heritage grounds subject to one condition. <u>Consider against the provisions of CL5.10 of MLEP.</u> Is a Conservation Management Plan (CMP) No Required? Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No		
External Referral Body	Comments		
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	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. A1763014 dated 04 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	3.7m (proposed roof)	N/A	Yes (no change to dwelling height)
Floor Space Ratio	FSR: 0.5:1 (173.2sqm)	FSR: 0.59:1 (203.37sqm)	17.4% (30.137sqm)	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
6.12 Essential services	Yes

Detailed Assessment

Zone R1 General Residential

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

The underlying objectives of the R1 General Residential zone:

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

Comment:

The proposed works are for alterations and additions to an existing dwelling.

It is considered that the development satisfies this objective.

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

Comment:

The proposed works are for alterations and additions to an existing dwelling.

It is considered that the development satisfies this objective.

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

Comment:

Not applicable

It is considered that the development satisfies this objective.

4.4 Floor space ratio

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 development does not result in an increase to the size of the existing dwelling. The bulk and scale of the 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,

Comment:

The increase to the FSR is due to the use of an existing entrance way as a bathroom and will not lead to an unreasonable increase in the dwelling.

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

Comment:

The proposed FSR increase will not impact the existing character or landscape and will maintain an appropriate visual relationship.

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

Comment:

The proposal will not result in 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,

Comment:

The proposed subject site is not located within a business zone or local centre.

It is considered that the development satisfies the objectives of Clause 4.4 Floor space ratio.

4.6 Exceptions to development standards

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

Development standard: Clause 4.4 Floor Space Ratio

Requirement: 0.5:1

Proposed: 0.59:1

Percentage of variation: 17.4%

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:

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

The proposed development achieves the objectives of the standard notwithstanding the non-compliance. The proposed development achieves the desired general residential character of the area and will not alter the height, bulk and scale of the existing development. The proposal is not considered to give rise to unreasonable amenity impacts in terms of privacy, view loss or overshadowing to surrounding properties. The existing site has a floor space ratio of 0.58:1, which exceeds the Council's 0.5:1 maximum requirement. The increase of 2.4 sqm is considered minimal in relation to the existing scale of the development and is due to the addition of a powder room.

(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 non-compliance involves a very minimal increase in actual floor area (2.4 sqm) This minor variation has negligible impact on the overall bulk, scale, or intensity of the development, ensuring that the proposal remains consistent with the intended character of the locality and compatible with surrounding development.

The proposed non-compliance facilitates the relocation of the entry to the front of the house, enhancing legibility and access to the property. This design refinement improves the visual clarity of the entry point, creating a stronger sense of address.

The minor variation aligns with the existing built form and subdivision pattern in the area. The adjustment does not result in any discernible increase in bulk or visual prominence, ensuring that the development remains sympathetic to its surroundings and consistent with the established character of the locality."

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

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

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

Public Interest:

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

Conclusion:

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

It is considered on balance, that having regard to the particular circumstances, the Clause 4.4 Floor Space Ratio variation arising due to the minor increase in providing a powder room and existing non-compliance, the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

Mainly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 346.4sqm	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	N: based on gradient	No change	N/A	N/A
	S: based on gradient	No change	N/A	N/A
4.1.2.3 Roof Height	Height: 2.5m	0.6m	N/A	Yes
	Pitch: maximum 35 degrees	15 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	0.4m	93% (5.6m)	No
4.1.4.2 Side Setbacks and Secondary Street Frontages	W: 1.23m (ground floor wall) 0.87m (roof columns) E: No change (based on wall height)	0.7m (ground floor wall) 0.9m (roof columns)	43% (0.53m) N/A	No Yes

	Windows: 3m	1 window: 0.7m	77% (2.3m)	No
4.1.4.4 Rear Setbacks	8m	No change	N/A	N/A
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% (190.52sqm) of site area	54.15% (187.6sqm)	1.5% (2.92sqm)	No (no change)
	Open space above ground 25% of total open space	15%	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	55% (103.7sqm)	N/A	Yes
	2 native trees	3 trees	N/A	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	4m	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	1 spaces	N/A	Yes (as two spaces may adversely impact the streetscape).

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	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)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.10 Fencing	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
Schedule 3 - Part A1 - Parking Rates and Requirements for Vehicles	No	Yes

Detailed Assessment

4.1.3 Floor Space Ratio (FSR)

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

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

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

Description of non-compliance

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

The following setbacks are required and exhibited:

E: 1.23m (ground floor wall-based on wall height of 3.7m) - 0.7m exhibited - variation of 43% (0.53m).
0.87m (roof column- based on wall height of 2.6m)- 0.9m and therefore, compliant.

W: no change to western elevation.

This control also stipulates that any additional windows must be setback 3.0 metres from boundaries. The proposal includes a new window along the eastern elevation to the proposed powder room. The proposed window distance to the eastern boundary is 0.7m, representing a non-compliance of 77% (2.3m). The window to the powder room is high sill and located to a room characterised as low use. Therefore, it is considered that the new window within 3m will not lead to unreasonable privacy impacts to the adjacent neighbouring property.

The proposal is non-compliant with Control **4.1.4.1 Street Front setbacks**. The front setback is located at 0.4m with the control being either 6m or the prevailing building line. It should be noted that there are no changes proposed to the existing carport roof columns and they are located in the same location. Although, the proposed roof reflects a increase toward the front boundary from 0.7m to 0.4m. It should be noted that there are multiple structures located within the front setback along Lombard Street and the minor increase into the front setback is considered acceptable in this circumstance.

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 is compliant with the control for width at the street frontage under clause 4.1.6.1b), open in nature and maintains the existing landscaping on site. Given the context of the street and area, this provides an outcome that is desirable in terms of spatial proportions and 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 proposed powder room will meet the existing side setback to maintain appropriate physical separation to neighbouring properties and adequately minimise amenity impact. The proposal will not result in unreasonable overshadowing impacts and will maintain the existing setbacks to limit impacts on views and vistas from private and public spaces. As mentioned above, the proposed new window will not result in unreasonable overlooking between properties.

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

Comment:

The proposed development is appropriately sited predominantly within the similar footprint of existing structures and accommodates existing landscaped areas.

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 proposal maintains natural features and does not propose to remove existing trees or vegetation. Additionally, the proposal complies with the landscaped area requirements.

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

Comment:

The site is not located on bushfire prone land.

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

4.1.5 Open Space and Landscaping

The proposed development application does not result in any change to previously approved non-compliance regarding total open space. The proposal results in a non-compliant total open space of 54.15% (187.6sqm), representing a variation of 1.5% from the 55% (190.52sqm) requirement. Additionally, there are no proposed changes to the existing compliant landscaped area of 55% (103.7sqm) to the 35% requirement.

Therefore, as the outcomes development will not impact the existing non-compliant total open space, a detailed merit assessment is not required in this instance.

4.1.10 Fencing

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

The proposed development includes fencing along approximately half of the frontage of the proposed lot. The fencing along the frontage is compliant with this control, being 1.2 metres in height, with more than 30% transparency.

The proposed fence achieves the intentions of this control, whereby the fence will not result in negative visual impacts, retain an open street frontage and reduce the visual impact of front fencing.

Schedule 3 - Part A1 - Parking Rates and Requirements for Vehicles

Schedule 3 requires dwelling houses to provide a minimum of 2 parking spaces.

The proposal seeks minor alterations and additions to the existing 1 parking space. While this represents a shortfall of 1 parking space, the proposal does not seek to reduce or increase the number of parking spaces.

Pursuant to Section 4.1.6.1 of the MDCP, Council may consider the provision of only 1 space where adherence to the requirement for 2 spaces would adversely impact on the streetscape or on any heritage significance identified on the land or in the vicinity.

Given the site and proposed works, it is considered acceptable for the provision of 1 car parking space.

Therefore, the variation is considered acceptable and a detailed merit assessment is not required in this instance.

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 \$ 743 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 148,500.

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 has been referred to the Development Determination Panel (DDP) due to a Clause 4.6 variation greater than 10% to the floor space ratio.

No submissions were received during the assessment period.

There are no critical assessment issues.

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 DA2024/1211 for Alterations and additions to a dwelling house on land at Lot D DP 314588, 2 Lombard Street, BALGOWLAH, 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
A02	F	PROPOSED SITE PLAN	Approve All	22/11/2024
A04	F	DEMOLITION PLAN		
A05	F	PROPOSED PLAN		
A06	F	ROOF PLAN		
A07	F	ROOF PLAN		
A10	F	PROPOSED ELEVATION		
A011	F	PROPOSED ELEVATION		
A014	F	WINDOW SCHEDULE		
A015	F	LANDSCAPE PLAN		

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX CERTIFICATE (A1763014)	-	APPROVEALL TOWN PLANNING PTY LTD	04 September 2024
WASTE MANAGEMENT PLAN	-	APPLICANT	04/09/2024

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	18/09/2024

(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 \$742.50 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$148,500.00.

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

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

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

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

6. **Security Bond**

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

7. **Stormwater Drainage Disposal**

The stormwater drainage systems for the development are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy.

All stormwater drainage systems must comply with the requirements of Council's Water Management for Development Policy. Any recommendations identified within a Geotechnical Report relevant to the development are to be incorporated into the design of the stormwater drainage system. Details demonstrating compliance from a qualified and practising Civil Engineer and where relevant a Geotechnical Engineer must be submitted to and approved by the Certifier prior to the issue of a Construction Certificate.

When the proposed discharge point for the development in this consent cannot strictly comply with the Water Management for Development Policy, the Applicant must apply to verify the proposed discharge point by gaining Council approval via a Stormwater Drainage Application. Council approval must be provided to the Certifier prior to the issue of a Construction Certificate when a Stormwater Drainage Application is required. The Stormwater Drainage Application form can be found on Council's website.

Compliance with this condition must not result in variations to the approved development or additional tree removal.

Reason: To ensure satisfactory management of stormwater.

8. **Boundary Identification Survey**

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

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

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

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

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

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

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

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

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

10. **Compliance with Standards**

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

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

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

11. **Sydney Water "Tap In"**

The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets

and/or easements. The appropriately stamped plans must then be submitted to the Certifier demonstrating the works are in compliance with Sydney Water requirements.

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

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

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

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

DURING BUILDING WORK

12. **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.

13. **Survey Certificate**

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

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

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

14. **Maintenance of Sediment and Erosion Controls**

Erosion and sediment controls must be adequately maintained and monitored at all times, particularly surrounding periods of rain, and shall remain in proper operation until all development activities have been completed and the site is in a state where no substance other than rainwater can enter the stormwater system and waterways.

All sediment control measures must be maintained at, or above, their design capacity.

Where more than 2500 square metres of land are disturbed or if the site has a slope of more than 20%, a self-auditing program must be developed for the site. A site inspection using a log book or inspection test plan (ITP) must be undertaken by the site supervisor:

- at least each week
- immediately before site closure
- immediately following rainfall events that cause runoff.

Details demonstrating compliance must be provided to the Certifier during demolition and building works.

Reason: Protection of the receiving environment and to ensure no substance other than rainwater enters the stormwater system and waterways.

15. Protection of heritage listed street tree

The heritage listed street tree on Lombard Street, outside this property, is to be protected at all times during construction.

Reason: To ensure that construction works do not adversely affect the health of this heritage listed tree.

16. Waste Management During Development

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

17. Stormwater Drainage Disposal Certification

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

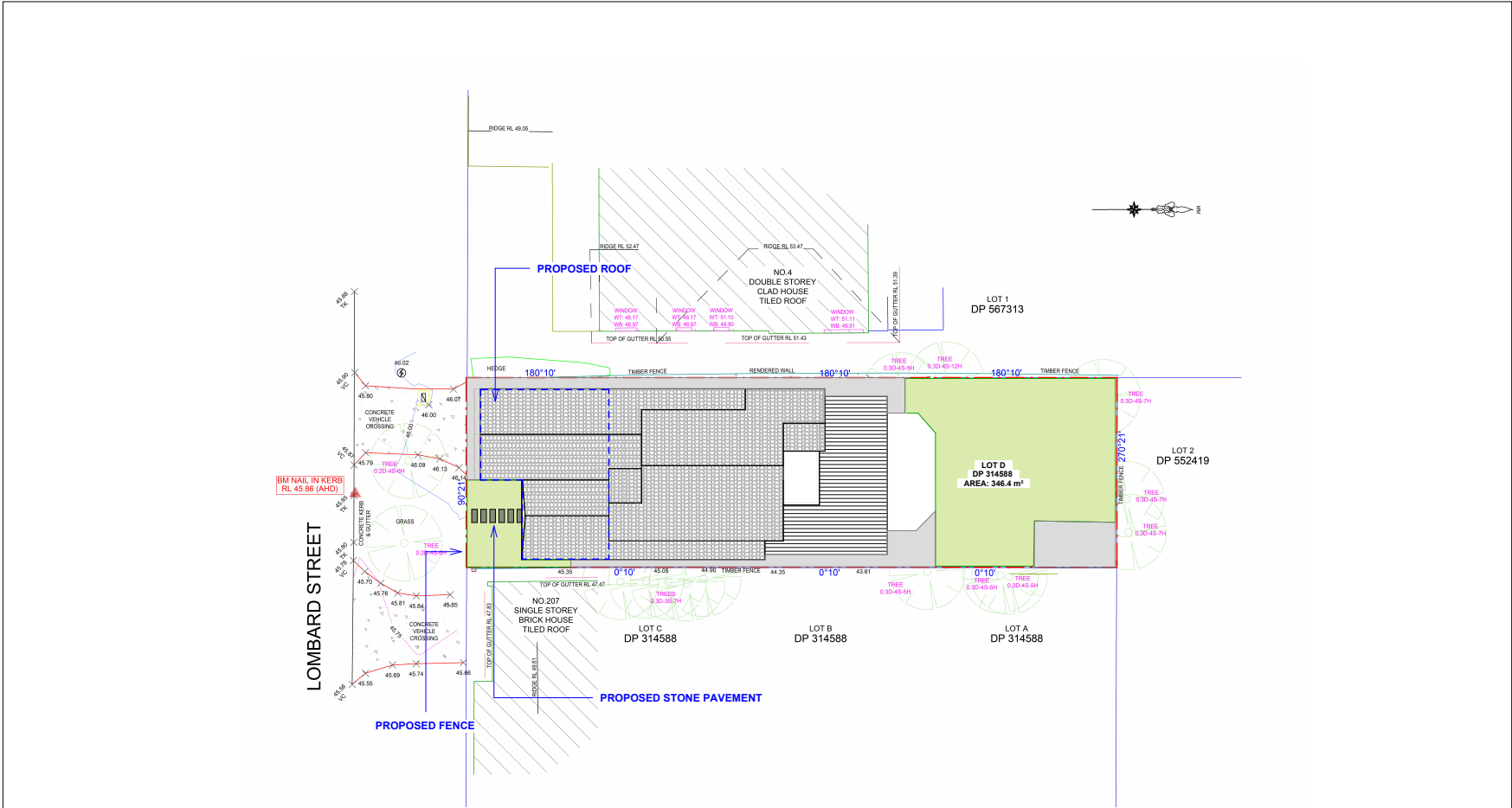
If any on site stormwater detention system is installed the Applicant shall lodge the Legal Documents Authorisation Application with Council.

The application is to include the completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification. A guide to the process and associated Legal Document Authorisation Application form can be found on Council's website. The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater detention system within this development consent.

The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the authority to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user for the on-site stormwater detention system is to be submitted.

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

Reason: To ensure satisfactory management of stormwater.



1 PROPOSED SITE PLAN
A02 1 : 200

A: LEVEL 1, 1-5 LINK ROAD, 136 EPSOM ROAD
ZETLAND NSW 2017
P: (02) 8600 9150
E: PROJECTS@APPROVEALL.COM.AU
W: APPROVEALL.COM.AU



The Builder shall check all dimensions and levels on site prior to construction. Notify any errors, discrepancies or omissions to the Architect. Refer to written dimensions only. Do not scale drawings. Drawings shall not be used for construction purposes until issued for construction. This drawing reflects a design for information only. Planning and is to be used only for work where authorised in writing by Approved Town Planning.

All boundaries and contours are subject to detailed site survey. All levels to Australian Height Data. It is the contractors responsibility to confirm all measurements on site and location of any services prior to work on site.

All documents here within are subject to Australian Copyright Laws.



DATE
22/11/2024
PROJECT NUMBER
AA191
SCALE
1 : 200

CLIENT
LINH NGUYEN
PROJECT ADDRESS
**2 LOMBARD STREET,
BALGOWLAH 2093**

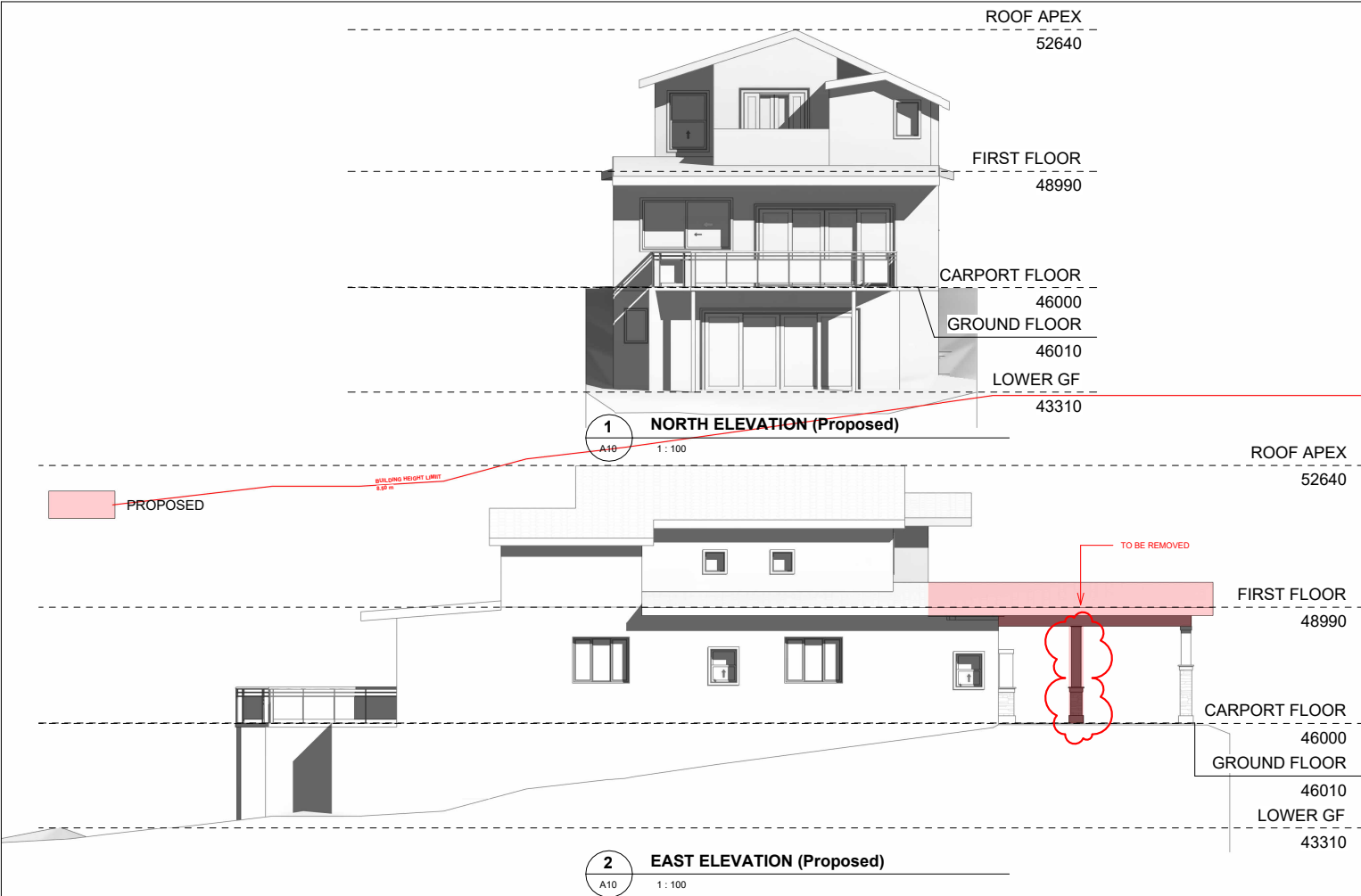
DRAWING ISSUE	REVISION	DATE ISSUED
ISSUE FOR DA APPROVAL	A	23/09/2024
ISSUE FOR DA APPROVAL	B	09/09/2024
ISSUE FOR DA APPROVAL	C	30/10/2024
ISSUE FOR DA APPROVAL	D	31/10/2024
ISSUE FOR DA APPROVAL	E	15/11/2024
ISSUE FOR DA APPROVAL	F	22/11/2024

DRAWING
PROPOSED SITE PLAN

PROJECT
PROPOSED ALTERATIONS

PROJECT STATUS
ISSUE FOR DA APPROVAL

DRAWING ID
A02
REVISION
F



A: LEVEL 1, 1-5 LINK ROAD, 136 EPSOM ROAD
ZETLAND NSW 2017
P: (02) 8000 9150
E: PROJECTS@APPROVEALL.COM.AU
W: APPROVEALL.COM.AU

ApproveAll

Town Planning

The Builder shall check all dimensions and levels on site prior to construction. Notify any errors, discrepancies or omissions to the Architect. Refer to written dimensions only. Do not scale drawings. Drawings shall not be used for construction purposes until issued for construction. This drawing remains a design for approval. Town Planning and is to be used only for work where authorized in writing by Approved Town Planning.

All boundaries and contours are subject to detailed site survey. All levels to Australian Height Data. It is the contractors responsibility to confirm all measurements on site and locations of any services prior to work on site.

All documents here within are subject to Australian Copyright Laws.

DATE

22/11/2024

PROJECT NUMBER

AA191

SCALE

1 : 100

CLIENT

LINH NGUYEN

PROJECT ADDRESS

2 LOMBARD STREET,
BALGOWLAH 2093

DRAWING ISSUE

ISSUE FOR DA APPROVAL

REVISION

A

DATE ISSUED

23/09/2024

DRAWING

PROPOSED ELEVATION

PROJECT

PROPOSED ALTERATIONS

PROJECT STATUS

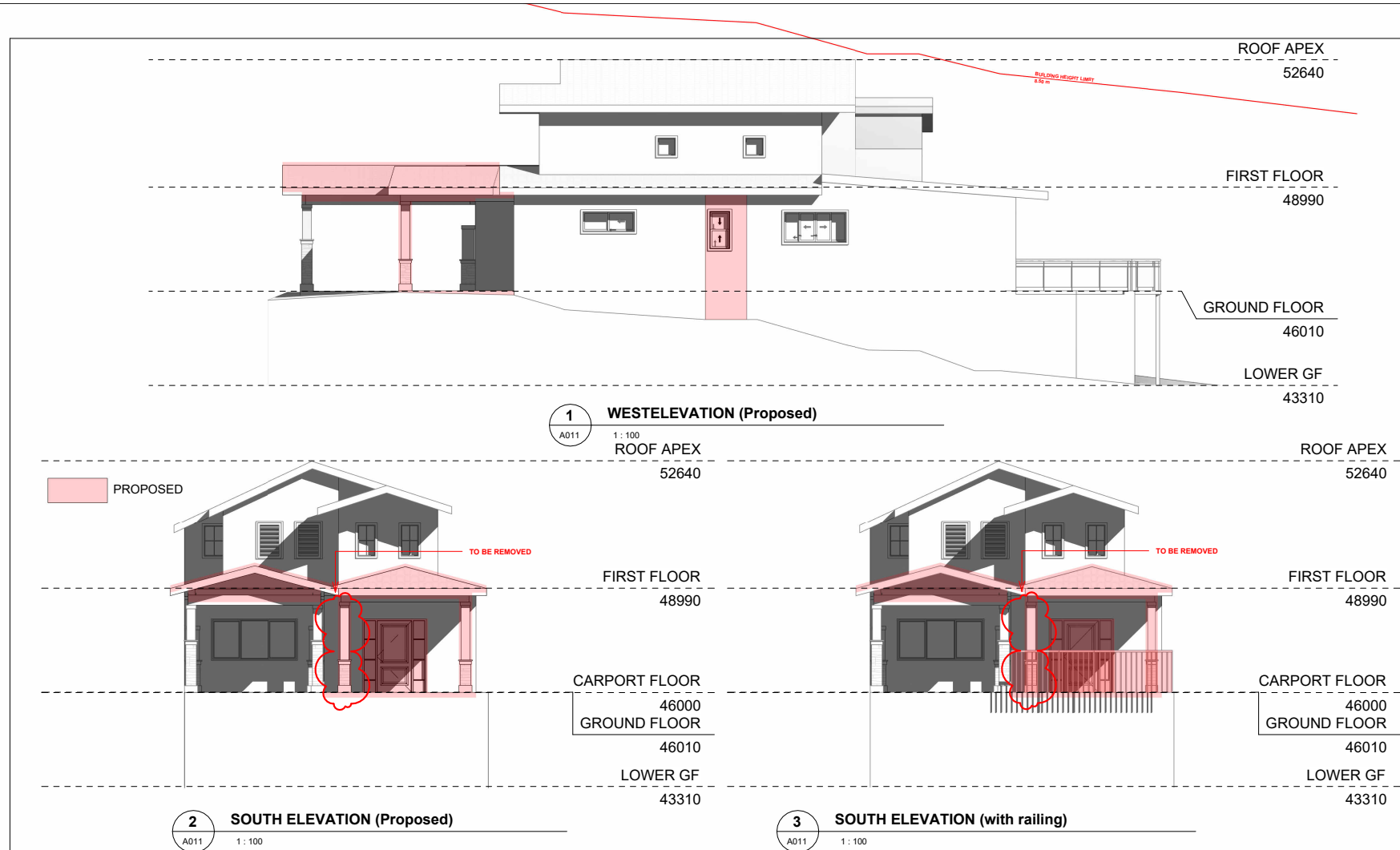
ISSUE FOR DA APPROVAL

DRAWING ID

A10

REVISION

F



A: LEVEL 1, 1-5 LINK ROAD, 136 EPSOM ROAD
ZETLAND NSW 2017
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All boundaries and contours are subject to detailed site survey. All levels to Australian Height Data. It is the contractors responsibility to confirm all measurements on site and locations of any services prior to work on site.

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DATE
22/11/2024
PROJECT NUMBER
AA191
SCALE
1 : 100

CLIENT
LINH NGUYEN
PROJECT ADDRESS
**2 LOMBARD STREET,
BALGOWLAH 2093**

DRAWING ISSUE

ISSUE FOR DA APPROVAL
ISSUE FOR DA APPROVAL
ISSUE FOR DA APPROVAL
ISSUE FOR DA APPROVAL
ISSUE FOR DA APPROVAL
ISSUE FOR DA APPROVAL

REVISION	DATE ISSUED
A	23/08/2024
B	09/09/2024
C	30/10/2024
D	31/10/2024
E	15/11/2024
F	22/11/2024

DRAWING

PROPOSED ELEVATION

PROJECT

PROPOSED ALTERATIONS

PROJECT STATUS	
ISSUE FOR DA APPROVAL	
DRAWING ID	REVISION
A011	F

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Town Planning

Clause 4.6 Variation to Development Standards (Floor Space Ratio)

2 Lombard Street, Balgowlah NSW 2093

Rev D

Proposed Alterations and Additions to Existing Dwelling



OVERVIEW

Clause 4.6 exists within the Manly Local Environmental Plan 2013 (*MLEP2013*) and the standard Instrument to allow for consideration of variations specific to development standards contained within the LEP. Given the large and varied demographic and topographic within NSW differing variations are allowed within LEP's to allow for exceptions of development standards.

The objectives of the 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.*

It is requested that a Clause 4.6 variation at 2 Lombard Street, Balgowlah is considered by council when considering Clause 4.4 Floor Space Ratio. The minor variation of the floor space ratio will result in an improved planning outcome when compared to the existing limit of 0.5:1. The variation of 17.4% still allows the development to achieve the underlying purpose of the standard. It is to note that the proposed increase of floor space is only **2.4sqm** due to the existing non-compliance.

CLAUSE 4.6 VARIATION TO DEVELOPMENT STANDARDS

Exceptions to development standards	
4.6	The objectives of this clause are as follows— (1) (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.
	(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
	(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that— (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and (b) there are sufficient environmental planning grounds to justify the contravention of the development standard.
	(4) The consent authority must keep a record of its assessment carried out under subclause (3).
	(5) (Repealed)
	(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if— (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
	(7) (Repealed)
	(8) This clause does not allow development consent to be granted for development that would contravene any of the following— (a) a development standard for complying development, (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which <i>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</i> applies or for the land on which such a building is situated, (c) clause 5.4, (caa) clause 5.5, (ca) clause 6.15,

		(cb) a development standard on land to which clause 6.19 applies.
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This application therefore submits a written request, as detailed below, seeking to justify the contravention of Clause 4.4 of *MLEP2013*. The NSW Department of Planning and Infrastructure has provided guidance on how to prepare Clause 4.6 variations, this document has been based on these guidelines.

1. Describe the site

The site is at 2 Lombard Street, Balgowlah NSW 2093 and can be legally identified as Lot D in DP 314588. The site spans approximately 346.4 sqm.

The site is bounded by residential properties to the north, south, and east, with Lombard Street forming the western boundary. The existing dwelling occupies a central position on the site, with sufficient setbacks from the front, side, and rear boundaries, ensuring compliance with local setback controls. Vehicular access to the site is via a driveway located on the north-western corner, leading to an existing carport. Pedestrian access is provided directly from Lombard Street to the main entrance of the dwelling.

2. Describe the proposed development

The proposed development is the alteration and additions to existing dwelling including the replacement of carport roof and new front porch.

3. What is the environmental planning instrument/s you are seeking to vary?

Manly Local Environmental Plan 2013

4. What is the site's zoning

The site is zoned R1 – General Residential.

5. Identify the development standard to be varied

Clause 4.4 (2) the maximum floor space ratio.

Floor Space Ratio		
4.4		(a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,
	(1)	(b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features, (c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area, (d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,

	(e) to provide for the viability of Zone E1 and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.
(2)	The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.
(2A)	Despite subclause (2), the floor space ratio for a building on land identified as “Gross Floor Area for Certain Commercial Premises” on the <i>Key Sites Map</i> 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.

6. Identify the type of development standard

Numerical

7. What is the numeric value of the development standard in the environmental planning instrument?

The maximum floor space ratio for the subject site is **0.5:1**.

8. What is the difference between the existing and proposed numeric values? What is the percentage variation (between the proposal and the environmental planning instrument)?

Floor Space Ratio (FSR)			
Current FSR	Maximum FSR under MLEP2013	Proposed FSR	Percentage Variation
0.58:1 (200.94sqm)	0.5:1 (173.2sqm)	0.59:1 (203.37sqm)	17.4%

9. Visual representation of the proposed variation (if relevant)

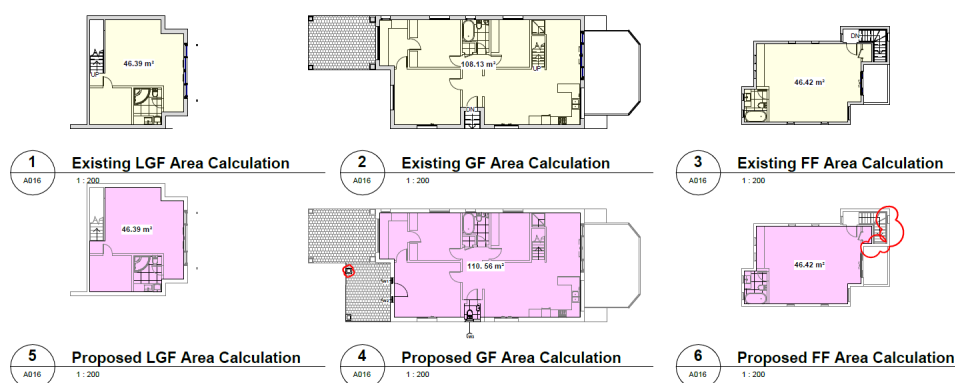


Figure 1 – Screenshot of section of the Floor Space Ratio Calculation

10. How is the compliance with the development unreasonable or unnecessary in the circumstances of this particular case?

- a. *Are the objectives of the development standard achieved notwithstanding the non-compliance? (Give details if applicable)*

The objective of this clause is:

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

Comment: The proposed addition of floor space is located over the existing side entry to the dwelling, which is an indent to the side wall. The proposed development will relocate the entry to the front of the building façade to better enhance the streetscape character. The additional floor space will not affect the bulk and scale of the existing development as setbacks remains unaffected. Moreover, the addition will be invisible from the street. Hence, satisfies 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,

Comment: As mentioned above, the proposed increase of floor space over the existing side entry does not affect any landscape or townscape features as it is building over the existing indent between the walls while remains invisible from the street. The relocation of entry to the dwelling enhances the streetscape with a formal entry proposed on the façade fronting Lombard Street.

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

Comment: The proposed powder room will have no impact on the existing character and landscape of the area as it remains hidden from the street and it is built over existing side entry.

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

Comment: The proposed addition of floor space does not create any additional shadow or impact the privacy of the adjoining land as it is located on ground floor. The proposed increase of floor space is also considered to be very minimal (2.4sqm). Hence, the non-compliance satisfies the objective.

- (e) to provide for the viability of Zone E1 and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

Comment: Not applicable.

- b. *Are the underlying objectives or purpose of the development standard not relevant to the development? (Give details if applicable)*

Comment: Not applicable.

- c. *Would the underlying objective or purpose be defeated or thwarted if compliance was required? (Give details if applicable)*

Comment: Not applicable.

- d. *Has the development standard been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard? (Give details if applicable)*

Comment: There is an existing non-compliance of floor space ratio for the subject site. The existing site has a floor space ratio of 0.84:1, which exceeds the Council's 0.5:1 maximum requirement. The increase of 2.4 sqm is considered extremely minimal in relation to the existing scale and site of the development. The additional floor space is for an additional powder room to provide amenity for the residents of the dwelling.

- e. *Is the zoning of the land unreasonable or inappropriate so that the development standard is also unreasonable or unnecessary? (Give details if applicable)*

Comment: Not applicable.

It is to note that not all 5 conditions listed above a) – e) must be satisfied for a Clause 4.6 written request. Satisfaction of one condition is sufficient. The purpose of this written request is focusing on the objectives of the development standard and how they are achieved notwithstanding the non-compliance of this proposal.

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

The proposed non-compliance involves a very minimal increase in actual floor area (2.4 sqm). This minor variation has negligible impact on the overall bulk, scale, or intensity of the development, ensuring that the proposal remains consistent with the intended character of the locality and compatible with surrounding development.

The proposed non-compliance facilitates the relocation of the entry to the front of the house, enhancing legibility and access to the property. This design refinement improves the visual clarity of the entry point, creating a stronger sense of address. In doing so, it contributes to the streetscape by:

- Promoting clear and logical pedestrian movement.

- Improving the relationship between the building and the public domain.
- Strengthening the presentation of the property within its context, consistent with principles of good urban design, as outlined in Section 1.3(c) of the EP&A Act: "to promote the orderly and economic use and development of land."

The minor variation aligns with the existing built form and subdivision pattern in the area. The adjustment does not result in any discernible increase in bulk or visual prominence, ensuring that the development remains sympathetic to its surroundings and consistent with the established character of the locality. The variation enhances internal and external amenity by:

- Allowing the entry to be more functional and accessible.
- Improving the usability of internal spaces without compromising privacy, overshadowing, or views for adjoining properties.
- Ensuring the development integrates seamlessly with the existing streetscape, enhancing neighbourhood amenity.

The proposed contravention of the FSR development standard is justified on sufficient environmental planning grounds. The minimal nature of the variation, coupled with the enhanced streetscape, access, and amenity outcomes, aligns with the objectives of the EP&A Act and promotes orderly and sustainable development. The variation results in no adverse impacts and instead achieves a better planning outcome consistent with the character of the locality and the broader public interest.

ITEM 3.3	DA2024/0745 - 33 QUINTON ROAD MANLY - ALTERATIONS AND ADDITIONS TO A SEMI-DETACHED DWELLING INCLUDING A CARPORT
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PURPOSE

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

RECOMMENDATION

- | | |
|-----------------------------------|--|
| <p>A.</p> <p>B.</p> | <p>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.</p> <p>THAT Council as the consent authority approves Development Consent to DA2024/0745 for alterations and additions to a semi-detached dwelling including a carport on land at Lot B DP 314191, 33 Quinton Road MANLY, subject to the conditions set out in the Assessment Report.</p> |
|-----------------------------------|--|

Reporting manager	Rodney Piggott
TRIM file ref	2024/836456
Attachments	1 Assessment Report 2 Site Plan and Elevations 3 Clause 4.6

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/0745
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Responsible Officer:	Julie Edwards
Land to be developed (Address):	Lot B DP 314191, 33 Quinton Road MANLY NSW 2095
Proposed Development:	Alterations and additions to a semi-detached dwelling including a carport
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Nicola Stephanie Mcgrath

Application Lodged:	13/06/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	21/06/2024 to 05/07/2024
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	4.4 Floor space ratio: 19.5%
Recommendation:	Approval

Estimated Cost of Works:	\$ 500,500.00
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EXECUTIVE SUMMARY

This development application seeks consent for Alterations and additions to a semi-detached dwelling including a carport.

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

Concerns raised in the objections predominantly relate to privacy, solar access, non-compliances with Manly Local Environment Plan 2013 (MLEP) and Manly Development Control Plan 2013 (MDCP) built form requirements, building bulk, visual dominance, impact on streetscape and impact on party wall.

Critical assessment issues included FSR, solar access, privacy, streetscape, setbacks, open space and landscaping, parking, first floor and roof additions and fencing.

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 MDCP for undersized allotments.

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 an existing semi-detached dwelling. The proposal includes the following:

Ground Floor Level:

- Demolition of rear portion of the dwelling,
- Construction of new dwelling addition to accommodate new living area, with a new common wall of minimum FRL 60/60/60 masonry construction,
- New bathroom, laundry and kitchen facilities with new windows,
- Removal of several large windows facing the side boundary and replacement of highlight windows to existing Bedroom 1,
- Addition of stairs to proposed First Floor Level.

First Floor Addition:

- Demolition of existing roof, and
- New bedroom, study and bathroom.

External works:

- Removal of external rear paving and planters,
- New timber deck from new rear living area,
- New operable roof/ covered pergola over the proposed deck,
- Demolition of existing carport and replacement of new gable roof carport,
- New fence and gate to carport,
- Removal of existing metal roof sheeting to front verandah and replacement with new colorbond roof.

Planners note:

The application, as lodged, was missing information such as shadow diagrams, plans were unclear or had mistakes, the proposed materials were inconsistent with the existing dwelling and streetscape. The applicant was requested to provide amended plans and information that satisfied Councils concerns.

The applicant submitted amended plans that addressed 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. Two additional submissions were submitted.

The application was assessed based on the amended plans by Beth Hodgson Design dated 12.09.24.

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

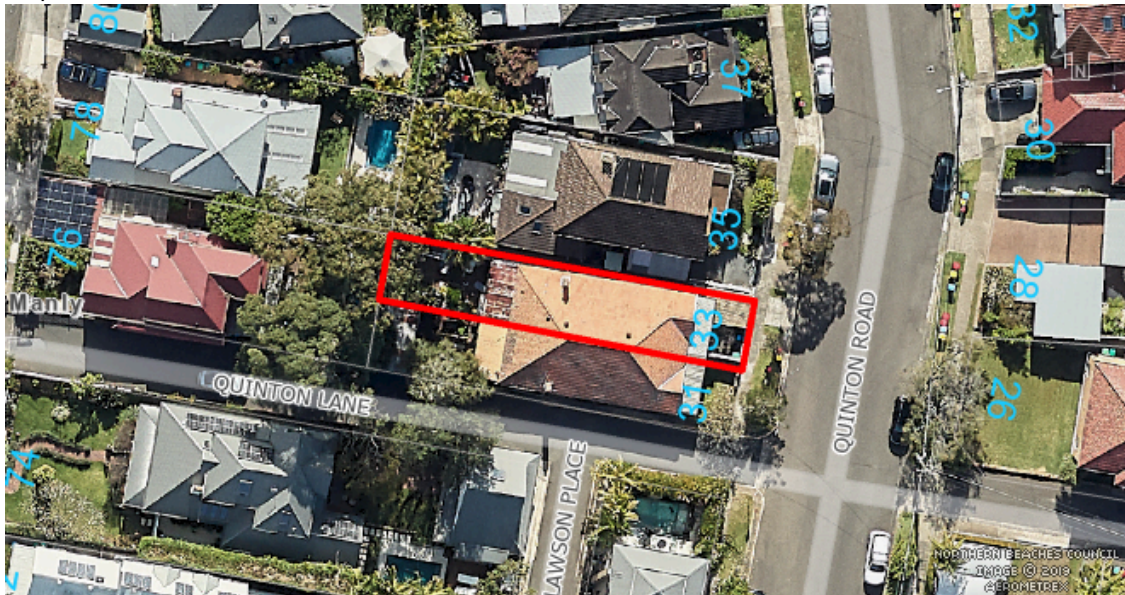
Manly Local Environmental Plan 2013 - Zone R1 General Residential
 Manly Local Environmental Plan 2013 - 4.4 Floor space ratio
 Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 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 - 4.1.7 First Floor and Roof Additions
 Manly Development Control Plan - 4.1.10 Fencing

SITE DESCRIPTION

Property Description:	Lot B DP 314191 , 33 Quinton Road MANLY NSW 2095
Detailed Site Description:	The subject site consists of one allotment located on the western side of Quinton Road MANLY. The site is regular in shape with a frontage of 6.09m along Quinton Road and a depth of 32.6m. The site has a surveyed area of 198.7m². The site is located within the R1 General Residential zone and accommodates semi-detached brick cottage with

	carport . The site is generally flat. The site has minimal landscaping and no known threatened species. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by a mix of residential development of varying architectural styles. Site Inspection A site inspection was undertaken 14 August 2024.
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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:

- DA no. 12/2015 - Alterations and additions to a semi-detached dwelling - approved 2 September 2015,
- Modification DA no. 12/2015 - Alterations and additions to a semi-detached dwelling - approved 23 March 2016.

The approved works were never undertaken and have now lapsed. Other approved applications on the site include:

- DA 236/79 - Alterations to dwelling house - Approved 20 August 1979,
- DA 351/79 - Erection of Carport - approved 1979.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to building design and materials, overshadowing and corrections to measurements. <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	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 21/06/2024 to 05/07/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Ms Lynette Vicki Golin Bill Tulloch	31 Quinton Road MANLY NSW 2095
Mr David George Thompson	35 Quinton Road MANLY NSW 2095
Mrs Margaret Thompson	35 Quinton Road MANLY NSW 2095

The following issues were raised in the submissions:

- Excessive building height and lack of a clause 4.6
- Excessive FSR
- Aims of the LEP

- Objectives of the R1 General Residential zone
- Building bulk / visual dominance / streetscape
- Excessive wall height
- Insufficient setbacks
- Parking
- Party wall and easement of support
- Stormwater
- Insufficient information and errors
- Overshadowing
- Privacy Impacts
- Public interest / precedent
- Separate dwelling
- Previous approved Development Application
- Loss of outlook
- Previously approved application
- Access through neighboring sites
- Noise
- Landscaping

The above issues are addressed as follows:

- **Excessive Building height and lack of a clause 4.6**
The submissions raised concerns that the building exceeds the height of building requirement of the MLEP and did not provide a clause 4.6 Exception to Development Standards to support this non-compliance.
Comment:
The applicant has provided amended plans clearly demonstrating the development has a maximum height of 8.3m. The building height is below the requirement of 8.5m and does not require a clause 4.6 Exception to Development Standards.
- **Excessive FSR**
The submissions raised concerns that the proposed building bulk was excessive and non-compliant with the FSR development standard. The submissions also stated that the submitted 4.6 request to vary the development standard was not well founded / inadequate.
Comment:
An assessment of the proposed variation to the FSR development standard is provided within this report in the sections relating to Clause 4.4 Floor Space Ratio and Clause 4.6 Exceptions to Development Standards of the MLEP. The assessment concludes that the written request is well-founded and that the variation is supported in the circumstances of the case.
- **Aims of the LEP**
The submissions raised concern that the proposed development is inconstant with the aims of the MLEP.
Comment:
The application has been assessed against the relevant provisions of the MLEP and this assessment found the proposal to be consistent with the aims of the MLEP.
- **Objectives of the R1 General Residential zone**
The submissions raised concerns that proposed development is inconsistent with the

objectives of the R1 General Residential zone.

Comment:

The objectives of the R1 zone have been addressed under part R1 General Residential Zone of this report. In summary, this assessment found the proposal to be consistent with the zone objectives.

- **Building bulk / visual dominance / streetscape**

The submissions raised concerns that the proposed development represents excessive bulk, scale and height, is visually dominate, and would negatively impact the streetscape. Furthermore, concern was raised that the materials proposed are inconsistent with the existing and adjoining dwellings.

Comment:

The proposed development is satisfactory, given the constraints of the site, the level of impact on adjoining properties, compliance with the undersized allotment control and character of development within the area. All relevant provisions of MDCP have been assessed in this report, with the bulk and scale of the proposed dwelling deemed satisfactory.

Amended plans have been received which change the roofing material at the front of the dwelling from metal sheeting to tiles. The remainder of the building is proposed to have metal sheeting. The roof of the dwelling will be visible from multiple streets and a condition is recommended that the roof of the first floor addition have tile roofing that is consistent with the existing and adjoining dwelling. The remainder of the proposed materials for the addition will not deter from the streetscape or negatively impact on the streetscape.

- **Excessive wall height**

The submissions raised concern that the proposal had excessive wall height and did not comply with the requirements of the MDCP.

Comment:

The required wall height for the site is 6.5m and the proposal provides a wall height of 6.4m. The wall height complies with the built form control and does not unreasonably impact on the amenity of the adjoining properties or streetscape.

- **Insufficient setbacks**

The submissions raised concerns that the proposal is non-compliant with rear and side setbacks.

Comment:

This matter is addressed in detail under part 4.1.4 Setbacks (front, side and rear) and Building Separation of this report. In summary, the assessment has found that the proposed non-compliance is reasonable and is unlikely to cause any unreasonable impacts to the amenities of the adjoining properties. Furthermore, clause 4.1.7 First Floor and Roof Additions allows for first floor additions to follow the existing ground floor wall setbacks, providing adjoining properties are not adversely impacted by overshadowing, view loss or privacy issues. The proposal meets the requirements for clause 4.1.7, which allows the development to have a reduced side setback.

- **Parking**

The submissions raised concerns that only one car parking space was being provided, when two spaces are required.

Comment:

Car parking is addressed in detail under part 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities) of this report. In summary, the site will be maintaining the existing car parking arrangements on the site. This is considered sufficient for the site and location.

- **Party wall and easement of support**

The submissions raised concerns that the proposal may impact on the party wall and insufficient information had been provided to determine the level of works proposed to the party wall.

Comment:

Details regarding the party wall are not required till the construction certificate phase of the development. A condition is recommended that all the works are to be independently supported without the reliance on the existing party wall.

The site and adjoining property are subject to an easement of support.

The property is subject to an Easement for Support and has an Easement for Support over the brick party wall along the southern boundary. These Easements are noted on the Title and are more fully described in Instruments numbered L.958166 and L.958167.

A condition is recommended that the works be built in accordance with the Easement for support.

A submission has been received raising concern with regard to potential impacts to adjacent building during construction. The proposal is for standard residential development and unlikely to unreasonably impact on the adjoining properties. However, due to the age of the buildings, a condition of consent is recommended for the preparation of pre and post construction dilapidation reports for the adjoining dwelling at no. 31 Quinton Road.

- **Stormwater**

The submissions raised concerns with stormwater drainage from the site and roof and requested additional information to address concerns.

Comment:

The information provided is considered satisfactory for the assessment of the development application. The plans have been reviewed by Councils Development Engineers who support the proposal subject to conditions. However, due to the site being a semi-detached dwelling, a condition is recommended that the roof, gutters, downpipes and footings are to be wholly located within the subject site.

- **Insufficient information and errors**

The submission raised concerns that insufficient information has been submitted with the application and that there are several errors with the plans.

Comment:

The application when lodged did not include a shadow diagrams. The applicant was requested to provide a shadow diagrams and a elevational shadow diagrams that met councils DA lodgement requirements. Once the shadow diagrams were submitted the objectors were notified and provided time to review and make further comments on the proposal. Concern was raised in the revised submission that the shadow diagrams were inaccurate. Further review of the shadow diagrams by the assessing officer and a principal planner have determined that the shadow diagrams are accurate and meet lodgement requirements. Furthermore, the applicant has submitted a statement certifying that the shadow diagrams are accurate.

Council undertakes their own assessment of the application to determine if the impacts on

the neighbouring properties are reasonable. In this instance, the plans, SEE and reports provided with the application along with view loss and site inspections conducted by Council provided a satisfactory level of information for the assessment of the application, and to understand the full impacts on the neighbouring properties. While there have been some minor errors they do not impact on the assessment of the application and a condition is recommended to fix all numerical discrepancies with the plans prior to the release of the Construction Certificate.

- **Overshadowing**

The submissions raised concerns that the proposed development would result in unreasonable overshadowing of the adjoining property at no. 31 Quinton Road.

Comment:

This matter has been discussed under part 3.4.1 Sunlight Access and Overshadowing of this report. In summary, the proposal complies with parts 3.4.1.1 Overshadowing Adjoining Open Space and 3.4.1.2 Maintaining Solar Access into Living Rooms of Adjacent Properties.

Concern was raised in the submission that proposal did not comply with clause 3.4.1.4 Overshadowing Clothes Drying Areas, which requires a minimum of 6 hours solar access be retained to a suitable clothes drying area. The existing drying area does not receive 6 hours of solar access. The proposal will result in a minor loss of solar access to the clothes drying area and is considered acceptable due to the overall compliance with the requirement of the control.

- **Privacy Impacts**

The submissions raised concerns that the proposed development would result in unreasonable privacy impacts on surrounding properties.

Comment:

Privacy has been addressed in detail under Clause 3.4.2 Privacy and Security of this report. In summary, subject to conditions, the proposed development meets the requirements of the MDCP in regard to the design and location of windows.

- **Public interest / precedent**

The submissions contend that the approval of this development would create an undesirable precedent and be against the public interest.

Comment:

All development applications received by Council are assessed against relevant planning controls, policies and procedures on their own merit. The proposal has been found to meet the objectives of the MLEP and MDCP.

- **Separate dwelling**

The submission raised concern that the first floor addition will be used as a separate self contained unit.

Comment:

The application is for alterations and addition to a semi-detached dwelling. There is no separate access for the first floor and no other evidence that part of the proposal will be used as a separate dwelling.

- **Previous approved Development Application**

The submission suggested that the previous approval provided a better planning outcome for the site and adjoining properties.

Comment:

While the proposed development exceeds the FSR requirement of the MLEP, the proposal meets the requirements of the under size allotment clause of the MDCP and is consistent with

other modernised semi-detached dwelling in the surrounding area. Furthermore, as has been addressed throughout the report, the proposal provides an acceptable planning outcome and subject to conditions will not unreasonably impact on the amenity of the adjoining properties and streetscape.

- **Loss of outlook**

A submission raised concern that the addition would result in loss of outlook from no. 31 Quinton Road.

Comment:

The outlook that will be affected by the proposed development, being the sky and trees, while important to the residents of this property, are not considered to be highly valued views and do not contain anything iconic. The majority of the current view/outlook will remain unaffected.

- **Access through neighboring sites**

The submission requested that no access is gained through no. 31 Quinton Road.

Comment:

No access through no. 31 Quinton Road has been requested as part of the development application. If access is required then this is a matter between the applicant and no. 31 Quinton Road.

- **Noise**

The submission requested that the stairs to the first floor addition be carpeted to reduce noise transmission.

Comment:

Requesting carpet on the stairs is not a planning consideration. The application is to be designed and built in accordance with Australian Standards and Building Code of Australia.

- **Landscaping**

The submission raised concern that there isn't enough soft landscaping at the front of the site.

Comment:

The proposal complies with the landscaping requirements of part 4.1.5 Open Space and Landscaping. The proposal maintains the existing landscaped area at the front of the site and is not inconsistent with other semi-detached dwellings in the surrounding area.

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	<i>Supported subject to conditions</i> The proposed development does not require OSD and connection of stormwater to the existing kerb outlet is acceptable. The existing driveway crossing is to remain which is acceptable. Development Engineering support the proposal, subject to conditions as recommended.
External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of

External Referral Body	Comments
	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. A1747040 dated 10 May 2024).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 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	8.3m	N/A	Yes
Floor Space Ratio	FSR: 0.6:1(119.22m ²)	FSR: 0.71:1 (142.51m ²)	19.5%	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
6.12 Essential services	Yes

Detailed Assessment

Zone R1 General Residential

The underlying objectives of the R1 General Residential zone:

- *To provide for the housing needs of the community.*
Comment:
The existing semi-detached dwelling is to remain.

It is considered that the development satisfies this objective.

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

Comment:

The proposed development does not alter the existing low density residential land use.

It is considered that the development satisfies this objective.

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

Comment:

The use of the site is to remain as a residential dwelling.

It is considered that the development satisfies this objective.

4.4 Floor space ratio

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.6 to 1
Proposed:	0.71 to 1
Percentage variation to requirement:	19.5%

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 is considered to be reasonable in terms of bulk and scale.

The existing overall height and setbacks of the dwelling are to be maintained.

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 will not result in a bulk and scale that threatens to 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,

Comment:

The proposed development is considered to be in keeping with the low density residential character of the locality and maintains existing landscape elements on the site.

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

Comment:

The proposed development is not expected to cause any unreasonable environmental impact on the use and enjoyment of nearby public open space.

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.

4.6 Exceptions to development standards

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

Development standard: Clause 4.4 Floor Space Ratio

Requirement: 0.6:1

Proposed: 0.71:1

Percentage of variation: 19.5%

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:

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 site is a small site with a semi-detached dwelling in a street that comprises predominantly detached dwellings on larger allotments, with a small number of semi-detached dwellings within the area. Dwellings in this residential precinct are medium to large family size dwellings of 2 storeys in height.
- The resultant gross floor area at 142.5 m² approx. is not considered a large dwelling by contemporary dwellings and proposes to accommodate 3-4 bedrooms or 3 bedrooms + study.
- MDCP provides an Exception to FSR for undersized lots (Section 4.1.3.1 of MDCP) that states for sites with site areas less than the minimum lot size required in MLEP Lot Size map, an exception to the FSR requirements is permissible.
- The site is located within a precinct with Minimum Lot Size of 250m² (Area C). This section allows a variation to the FSR for undersized lots that permits the site to have its maximum permissible FSR calculated on the site area of 250m². Applying this variation, the maximum permissible FSR, based on the site area of 250m² x 0.6 = 150m².
- The proposed development, with a resultant GFA of 142.5 m² complies with the MDCP allowance.

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

Comment:

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

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

The Clause 4.6 Request argues, in part:

'Compliance with the development standard of "Floor Space Ratio" is unreasonable in the circumstances of this proposal in that:

- *The site is a small site with a semi-detached dwelling in a street that comprises predominantly detached dwellings on larger allotments, with a small number of semi-detached dwellings within the area. Dwellings in this residential precinct are medium to large family size dwellings of 2 storeys in height.*
- *The resultant gross floor area at 142.5 m² approx. is not considered a large dwelling by contemporary dwellings and proposes to accommodate 3-4 bedrooms or 3 bedrooms + study.*
- *Manly DCP 2013 provides an Exception to FSR for undersized lots (Section 4.1.3.1 of MDCP 2013) that states for sites with site areas less than the minimum lot size required in MLEP 2013 Lot Size map, an exception to the FSR requirements is permissible*

The site is located within a precinct with Minimum Lot Size of 250m² (Area C). This section allows a variation to the FSR for undersized lots that permits the site to have its maximum permissible FSR calculated on the site area of 250m². Applying this variation, the maximum permissible FSR, based on the site area of 250m² x 0.6 = 150m².

The proposed development, with a resultant GFA of 142.5 m² complies with the MDCP 2013 allowance...

The proposed works justify contravening the development standard on environmental planning grounds as:

- *The addition of a second storey is within the maximum permissible height of MLEP 2013 (8.5m). The majority of dwellings within this residential precinct is 2 storeys in height.*
- *The siting of the development, its footprint, bulk and built form are similar to 2 storey dwellings within this residential precinct and consistent with its pattern of development.*
- *The proposed development, 2 storeys in height, will not impact on the amenity of surrounding properties in terms of solar access, undue overshadowing, privacy and views.*
- *The proposed upper storey addition is in character with dwellings in the surrounding neighbourhood and will not adversely impact on the streetscape character of Quinton Road.'*

Planner's Comment:

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

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

Public Interest:

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

Conclusion:

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

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

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 198.7m ²	Requirement	Proposed	% Variation*	Complies
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4.1.2.1 Wall Height	N: 6.5m	6.4m	N/A	Yes
4.1.2.2 Number of Storeys	2	2	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	2.1m	N/A	Yes
	Pitch: maximum 35 degrees	33 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line	Carport - Nil Entry - 3.6m Ground floor - 5.4m First floor - 7.4m consistent with prevailing setback	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	2.1m (based on wall height)	Ground floor - 0.9m First floor - 1.03 - 1.8m	N/A 51-14.3%	Yes - no change No
	Windows: 3m	First floor - 1.8m	40%	No
4.1.4.4 Rear Setbacks	8m	Ground floor - 7.3m Patio - 4.4m First floor - 11.6m	8.75% 45% N/A	No No Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% (109.3m ²) of site area	40% (79.6m ²)	27.3%	No
4.1.5.2 Landscaped Area	Landscaped area 35% (27.86m ²) of open space	32.9% (36m ²)	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	3m	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	1 spaces	50%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	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
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.10 Fencing	No	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

Description of non-compliance

The following requirements are relevant to the assessment of this application with respect to solar access:

3.4.1.1 Overshadowing Adjoining Open Space

In relation to sunlight to private open space of adjacent properties:

a) New development (including alterations and additions) must not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties from 9am to 3pm at the winter solstice (21 June).

Shadow diagrams have been provided with this application. With regards to adjoining open space, the proposal achieves compliance with these requirements. The location and the height of the development will not result in unreasonable overshadowing to the adjoining property at No. 31 Quinton Road. While the proposal will result in additional overshadowing to the rear yard of no. 31 Quinton

Road, the orientation of the site's and the location and design of the proposal, will not not eliminate more than one third of the existing sunlight accessing the private open space (POS) of adjacent properties from 9am to 3pm at the winter solstice (21 June).

3.4.1.2 Maintaining Solar Access into Living Rooms of Adjacent Properties

In relation to sunlight to the windows or glazed doors to living rooms of adjacent properties:

a) for adjacent buildings with an east-west orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors to living rooms for a period of at least 2 hours from 9am to 3pm on the winter solstice (21 June).

Elevational shadow diagrams have been provided with this application. The west facing rear window is located off a bathroom and the door is located off the dining room. The plans demonstrate the the proposal achieves compliance with these requirements as it does not reduce solar access to the glazed door.

3.4.1.4 Overshadowing Clothes Drying Areas

A minimum of 6 hours solar access be retained to a suitable clothes drying area.

The existing clothes drying area at no. 31 Quinton Road currently does not receive 6 hours of solar access. The proposed development will result in a minor loss of sunlight to this area between 9am to 3pm on the winter solstice (21 June).

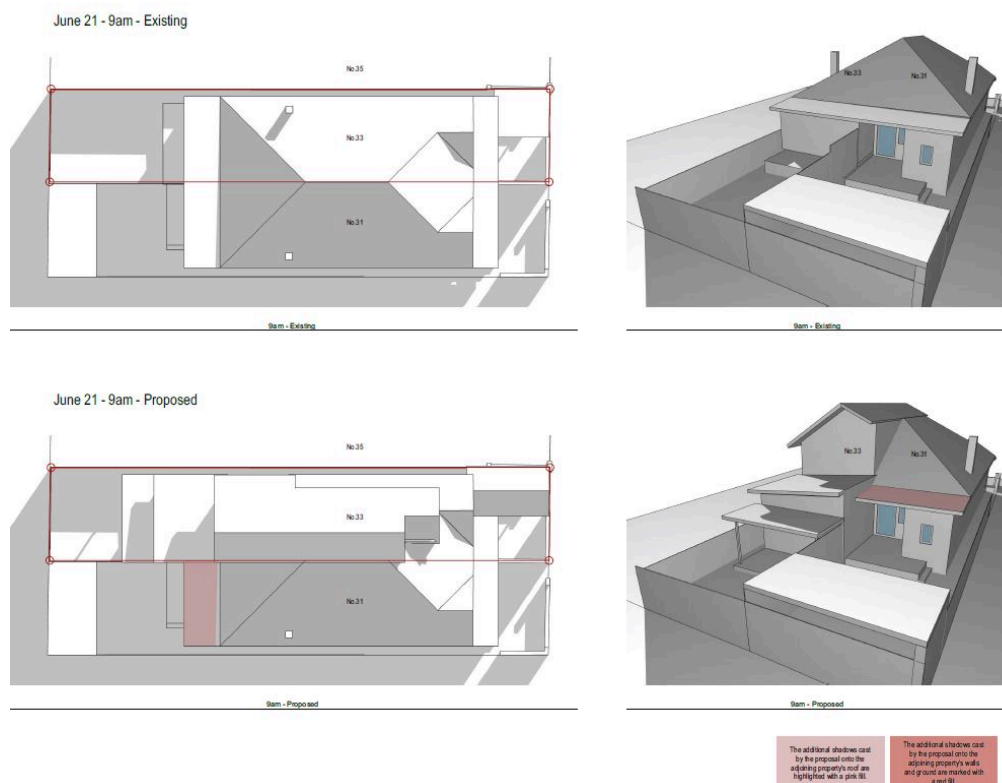


Figure 1: Proposed and existing shadow diagram and elevational shadow diagram for 9am.

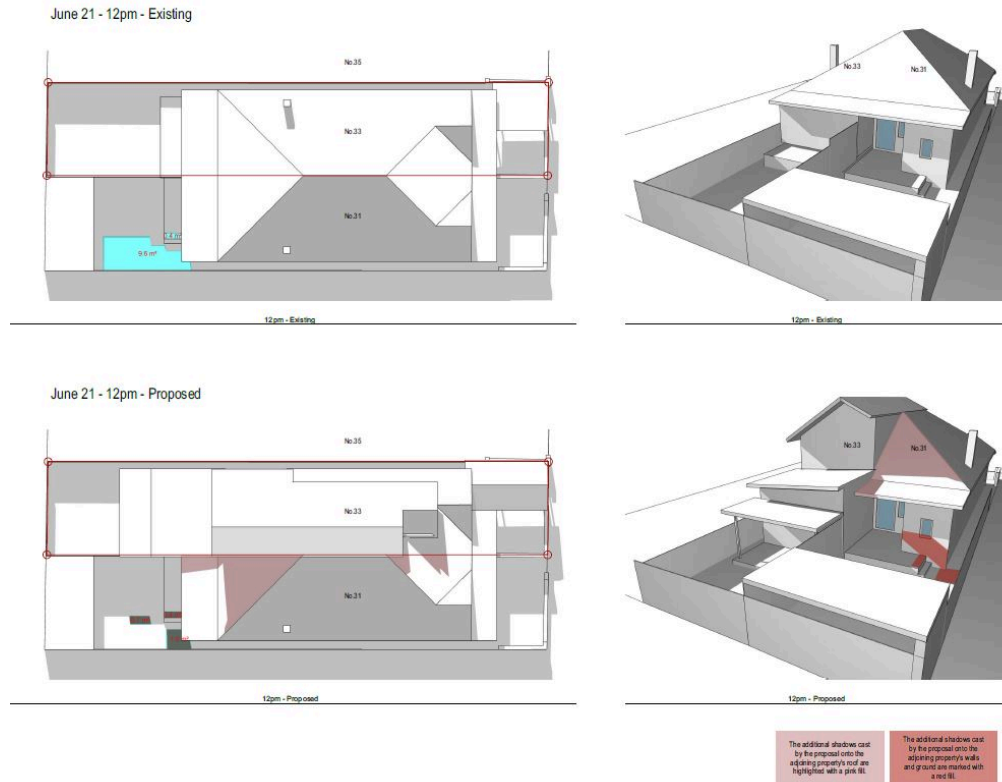


Figure 2: Proposed and existing shadow diagram and elevational shadow diagram for 12pm.

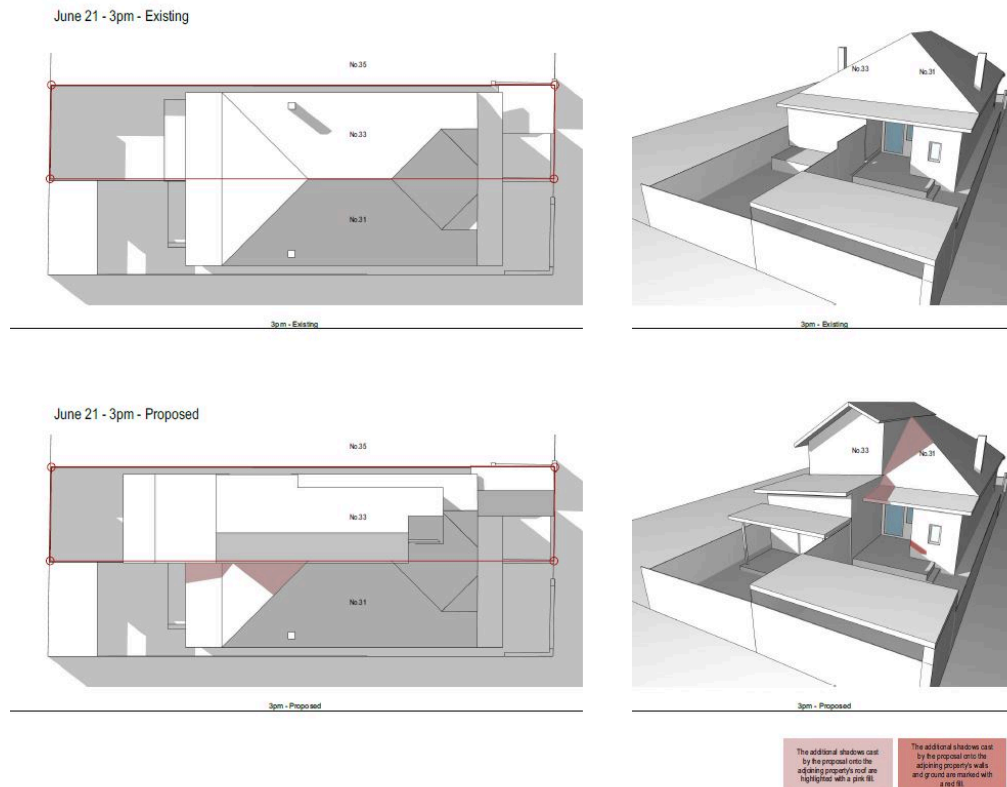


Figure 3: Proposed and existing shadow diagram and elevational shadow diagram for 3pm.

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:

For the reasons detailed below, it is established that the proposed development is designed and sited so as to retain equitable and acceptable solar access for the adjoining property to the south at no. 31 Quinton Road.

- *Objective 2) To allow adequate sunlight to penetrate:*
- private open spaces within the development site; and
- private open spaces and windows to the living spaces/ habitable rooms of both the development and the adjoining properties.

Comment:

The proposed development results in additional overshadowing to the rear private open space of no. 31 Quinton Road. Clause 3.4.1.4 of the MDCP requires a minimum of 6 hours solar access be retained to a suitable clothes drying area which it currently does not receive. Concern is raised that the proposed additions will unreasonably overshadow the clothes drying area located at No. 31 Quinton Road, which is located in the southern side of the rear

yard. Due to the location of the adjoining property, to the south of the subject site, it is difficult to maintain full compliance with Clause 3.4.1.4, particularly as the first floor addition is well below the building height, rear setback requirements and complies with the solar access requirements for POS and living room windows. The overshadowing of the clothes drying area is considered minor, as this area will retain reasonable sunlight from 11am-2pm. It is considered that adequate solar access is able to penetrate the POS of the adjoining property at no. 31 Quinton 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 proposal sits well below the maximum allowable building height for the site and achieves reasonable compliance with the relevant built form controls. As such, the proposed development demonstrates suitable setbacks, modulation and articulation in respect of the adjoining buildings.

Having regard to the above assessment, it is concluded that the objectives of the control have not been achieved. Therefore, this matter forms a recommended reason for refusal.

3.4.2 Privacy and Security

Description of non-compliance

Under Clause 3.4.2.1 Window Design and Orientation of MDCP 2013, the following applies:

- a) *Use narrow, translucent or obscured glass windows to maximise privacy where necessary.*
- b) *When building close to boundaries, windows must be off-set from those in the adjacent building to restrict direct viewing and to mitigate impacts on privacy.*

Two submissions were received citing privacy impacts as a result of the first floor windows - W13, W15 and W16 on the northern side elevation and W17 and W18 on the rear western elevation.

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:

Northern Elevation

A submissions raised concern that the western facing windows would result in unreasonable privacy impacts due to there location to the windows and front courtyard of no. 35 Quinton Road.

Window W13 is located off a bedroom and is more than 5m from the nearest first floor window of no. 35 Quinton Road, which is a bathroom window that has opaque glass. Window W13 is located behind

the front building line of no. 35 Quinton Road and unlikely to compromise the privacy of no. 35 Quinton Road as it will not provide direct or close views of the front courtyard. Furthermore, the privacy of the front courtyard is already compromised as a result of being viewable from the street.

Window W15 is located off a bathroom, with a highlight window. A condition is recommended that it have opaque/translucent glass.

Window W16 is a east facing window located off a study/bedroom. The window will have fixed louvers to comply with BASIX requirements. This is considered sufficient to mitigate any privacy concerns from this window.

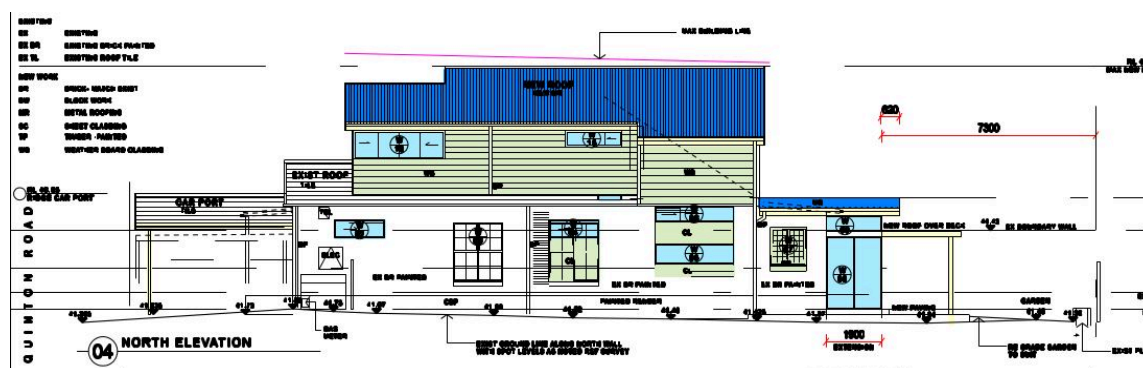


Figure 4: North elevation showing locations on windows W13 and W15.



Photo 1: View from subject site of the front courtyard of no. 35 Quinton Road.



Photo 2: View from subject site of the southern elevation of no. 35 Quinton Road showing the windows that will impacted by the proposed development.

West Elevation

Concern was raised in a submission that the west facing, first floor windows would result in overlooking of the private open space of the adjoining attached dwelling at no. 31 Quinton Road.

Windows W17 and W18 are floor to ceiling windows with a 1m high balustrade in front. The window is 1.3m from the eastern boundary, 2.2m from the rear building line of no. 31 Quinton Road and 11.6m from the rear boundary. The window is located off a study/bedroom which is predominantly used in a sitting and lying position and is considered a low use room. However, due to the close proximity of the two dwellings, a condition is recommended increasing the height of the balustrade to 1.2m and a privacy screen perpendicular to the southern edge of window W18. These privacy measures will allow for views outwards from the windows, as opposed to down towards the adjoining POS of no. 31 Quinton Road.



Figure 5: West elevation showing location of windows W17 and W18.

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

Comment:

As amended via recommended condition, the proposal will provide appropriate privacy measures without compromising access to light and air. The proposal will balance outlook and views from habitable rooms and private open space.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposed development will allow for the casual 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.

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 C' on the MLEP Lot Size Map, meaning that, based on an actual lot size of 198.7m², calculation of the floor space ratio can be made as if the lot size were 250m².

As such, the floor space ratio of the proposed development is 0.57:1, which complies with the maximum permitted 0.6:1 FSR.

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

4.1.4.2 Side setbacks and secondary street frontages

Clause 4.1.4.2 Side setbacks and secondary street frontages stipulates that the setbacks between any part of a building and the side boundary must not be less than one third of the height of the building. The wall height of the western façade of the proposed extension is 6.4m, thereby requiring a side setback of 2.1m. The proposed first floor addition is setback 1.03 - 1.8m, presenting a variation of 51-14.3 % to the clause requirements.

Clause 4.1.7 First Floor and Roof Additions allows for first floor additions to follow the existing ground floor wall setbacks, providing adjoining properties are not adversely impacted by overshadowing, view loss or privacy issues. The proposal meets the requirements for clause 4.1.7, which allows the development to have a reduced side setback.

Under the above mentioned clause, the requirements for all new windows that face the side boundary are to be setback at least 3m. The proposal exhibits several new windows to the ground floor which is setback at a minimum of 0.9m and the first floor with a minimum setback of 1.2 - 1.8m to the northern side boundary, presenting a maximum variation of 60% to the clause requirements.

4.1.4.4 Rear Setbacks

This control requires development to be setback 8m from the rear boundary line.

The proposed development provides for the following rear setback distances:

- Patio: 4.4m (presenting a variation of 45%)
- Ground floor: 7.3m (presenting a variation of 8.75%)
- First floor: 11.6m - complies

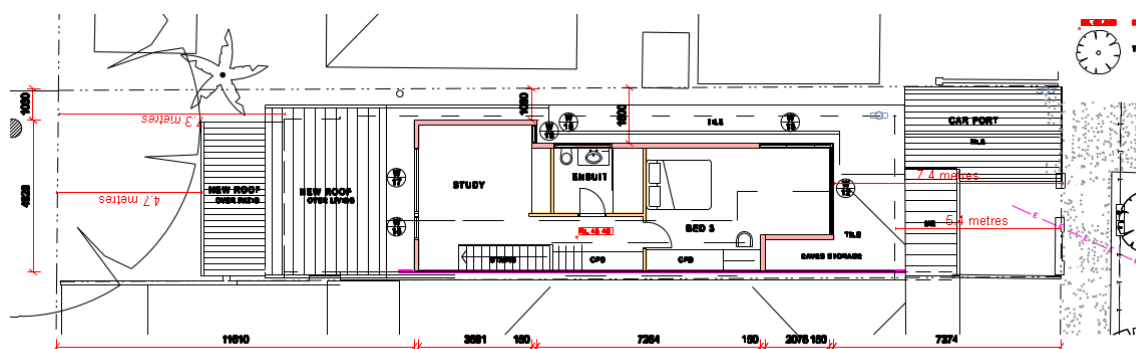


Figure 6: First floor plan showing front, side and rear boundary setbacks.

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 works are retaining the existing setbacks to the front boundary. The proposal will not detrimentally impact upon the existing character or visual aesthetic of the immediate vicinity.

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:

Despite the numerical non-compliance to the required side setbacks of the proposed works and accompanying windows, an acceptable level of privacy (subject to conditions for privacy treatments to windows W15, W17 and W18) will be maintained. The new windows on the ground floor are appropriately located to not provide direct views into the windows or POS of the adjoining property at no. 35 Quinton Road.

The rear addition, does not result in over looking of the adjoining properties due to the existing boundary fence. The western side of Quinton Road has varying rear setbacks and the proposed rear setback is consistent with other semi detached dwellings in the area.

The proposal also does not result in unreasonable overshadowing of adjacent properties or obscure any significant view lines from surrounding private and public land. The carport structure will also not preclude adequate traffic conditions along the street. Overall, the proposal achieves this objective.

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

Comment:

Flexibility is afforded in this circumstance, as the window, side and rear setback variations will not result in unreasonable amenity impacts to adjoining sites and allow for a modernised home.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The existing topography of the land will be unaltered, with no significant forms of vegetation being proposed for removal. Acceptable dimensions of landscaped open space is provided on site to accommodate for plantings, deep soil zones, and vegetation.

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

Comment:

The subject site is not located within bush fire prone land and therefore this objective is not relevant.

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

4.1.5 Open Space and Landscaping

Description of non-compliance

The control requires at least 55% 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 40% (79.6m²) 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:

Existing prescribed vegetation on the site is proposed for retention.

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 yard 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.

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

For semi-detached dwellings, this Clause requires the provision of two car parking spaces.

The existing semi-detached provides one (1) off-street parking space and this arrangement is not proposed to be changed. The provision of an additional parking space is not achievable within the existing context of the site.

Whilst the proposal is numerically non-compliant with Schedule 3 of the MDCP, the proposal does not change the existing off-street parking arrangements, nor is it expected in this instance, considering the nature of the proposed alterations and additions and site constraints.

4.1.7 First Floor and Roof Additions

Merit Assessment

Clause 4.1.7.1 First Floor Additions states that:

a) First floor additions must complement the architectural style of the ground floor and where possible retain existing roof forms. Notwithstanding setback provisions, the addition may follow the existing ground floor wall setbacks providing adjoining properties are not adversely impacted by overshadowing, view loss or privacy issues.

b) The dwelling and the form of alterations and additions must retain the existing scale and character of the street and should not degrade the amenity of surrounding residences or the aesthetic quality of the former Manly Council area. In this regard, it may be preferable that the addition be confined to the rear of the premises or be contained within the roof structure.

Comment:

The proposal is considered sympathetic to the design of the existing architectural style, with the use of the gable roof form in the carport and first floor addition. The proposed works retain the existing scale and character of the street while, modernising the existing dwelling. It has been demonstrated throughout the report that the proposal does not degrade the amenity of surrounding residences or the aesthetic quality of the area.

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.*

The proposal is to maintain the existing front fence and provide a new pedestrian gate and panel lift gate to the carport. The new additions to the fence line, is solid and ranges in height from 1.2 - 1.6m, which does not comply with the requirement of the clause.

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 MDCP.

Objective 1) To minimise any negative visual impact of walls, fences and carparking on the street frontage.

Comment:

The new elements of the fence exceed the height requirement of 1m or 1.5m with 30% transparency. However, the proposed fence will be maintaining part of the existing fence line and will not be inconsistent with the existing streetscape.

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

Comment:

Quinton Road has an inconsistent fence height and design. There is a mix in fence styles and materials. The existing front fence is a solid brick wall which is consistent with the adjoining property at no. 31 Quinton Road. The addition of the pedestrian gate and panel lift timber slat gate to the carport will provide visual interest and the retention of the existing fence will complement the identified streetscape

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

Comment:

The proposal will be maintaining the existing front fence on the site and will be providing landscaping within the front setback.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2024

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

A monetary contribution of \$5,005 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$500,500.

CONCLUSION

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

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

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

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

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

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

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

PLANNING CONCLUSION

This proposal, for Alterations and additions to a semi-detached dwelling including a carport has been referred to the Development Determination Panel (DDP) due to the application proposing a greater than 10% variation to the Floor Space Ratio development standard.

Three submissions were received in relation to this application. The issues raised within the submissions relate to building bulk and scale, view loss, privacy impacts, stormwater management, solar access, non-compliances with MLEP and MDCP, impact on streetscape, parking and impact on

party wall. These issues have been considered during this assessment of the applicant and conditions have been recommended when deemed appropriate.

The proposal, demonstrates an acceptable level of compliance with the applicable built form controls and ensures that the proposed height, scale, and density of the development is compatible with both the existing and desired future character of the locality. The proposed design also provides a reasonable level of amenity for occupants of the development and adjoining properties as envisaged by the controls

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The 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 DA2024/0745 for Alterations and additions to a semi-detached dwelling including a carport on land at Lot B DP 314191, 33 Quinton Road, MANLY, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA 03	B	Demolition Plan	Beth Hodgson Design	12/09/2024
DA 06	B	Roof Plan	Beth Hodgson Design	12/09/2024
DA 07	B	Ground Floor Plan	Beth Hodgson Design	12/09/2024

DA 08	B	First Floor Plan	Beth Hodgson Design	12/09/2024
DA 09	B	Proposed Elevations Front Back - North & South	Beth Hodgson Design	12/09/2024
DA 10	B	Proposed Elevations North & South	Beth Hodgson Design	12/09/2024
DA 11	B	Proposed Section	Beth Hodgson Design	12/09/2024
DA 14	B	Window Shedule	Beth Hodgson Design	12/09/2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
DA 13 - Stormwater Management	B	Beth Hodgson Design	1.05.24
Waste Management Plan	-	-	-
BASIX Certificate	Certificate number: A1747040	ELIZABETH HODGSON	10/05/2024

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	25/06/24

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

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

3. Prescribed Conditions

- All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);

- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- (i) showing the name, address and telephone number of the Principal Certifier for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

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

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

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

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

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

Reason: Legislative requirement.

4. General Requirements

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

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

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

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2024

A monetary contribution of \$5,005.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$500,500.00.

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

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

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

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

6. Security Bond

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

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

All bonds and fees shall be deposited with Council prior to Construction Certificate or

demolition work commencing, and details demonstrating payment are to be submitted to the Certifier prior to the issue of the Construction Certificate.

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

7. Stormwater Disposal

The applicant is to submit stormwater drainage plans for the new development within this development consent prepared by an appropriately qualified and practicing Civil Engineer who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG), indicating all details relevant to the collection and disposal of stormwater from the proposed alterations and additions. Stormwater shall be conveyed from the site to the existing kerb outlet in Quinton Road.

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

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

8. Amendments to the approved plans

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

- Translucent glazing for Window W15 of western elevation first floor Ensuite Window,
- The Balustrade located off the first floor western elevation Study is to have a minimum height of 1.2m.
- The 'New Roof' as shown on plan DA 06 - Roof Plan is to be composed of tile which match colour and style of the existing Tiles on the roof and of the adjoining roof at no. 31 Quinton Road.
- Correct the Carport Ridge height on the plans DA 02 and DA 06 with RL45.65.

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.

9. Boundary Identification Survey

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

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

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

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

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

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

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

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

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

11. **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.

12. **Compliance with Standards**

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

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

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

13. **Sydney Water "Tap In"**

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

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

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

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

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

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

14. Structural Certificate

The proposed new works are to be independently supported without any reliance on the existing party wall.

A Structural Certificate from a Registered Engineer certifying that the works do not rely on the party wall for vertical and lateral support is to be submitted to the Council/Accredited Certifier prior to issue of Construction Certificate.

Reason: To ensure the long term structural integrity of the party wall for both semidetached dwellings is maintained.

15. Stormwater Management

The proposed ground and first floor dwelling addition with any associated roof, gutter, downpipes and footings are to be wholly located within the subject site. Plans demonstrating compliance with this condition along with a Certificate from a Registered Surveyor are to be submitted to the Council/Accredited Certifier prior to issue of Occupation Certificate.

Reason: To ensure that all proposed structures are contained within the property boundary.

16. Privacy Screen

A 1.65 metre high privacy screen (measured from finished floor level) is to be erected perpendicular to the outermost southern edge of the window W18 located off the Study shown on the approved plans. The privacy screen is to project 500mm from the external face of the wall and shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.

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

Reason: In order to maintain privacy to the adjoining / nearby property.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

17. 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.

Property: 31 Quinton Road, Manly.

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

18. 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.

19. 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.

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. Survey Certificate

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

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

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

22. 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.

23. Compliance with the terms of the easement (Easement for Support)

Compliance with the terms of easement (Easement for Support) must be undertaken during construction works.

Reason: To ensure there is no impact upon easement (Easement for Support).

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

24. Stormwater Disposal

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

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

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.

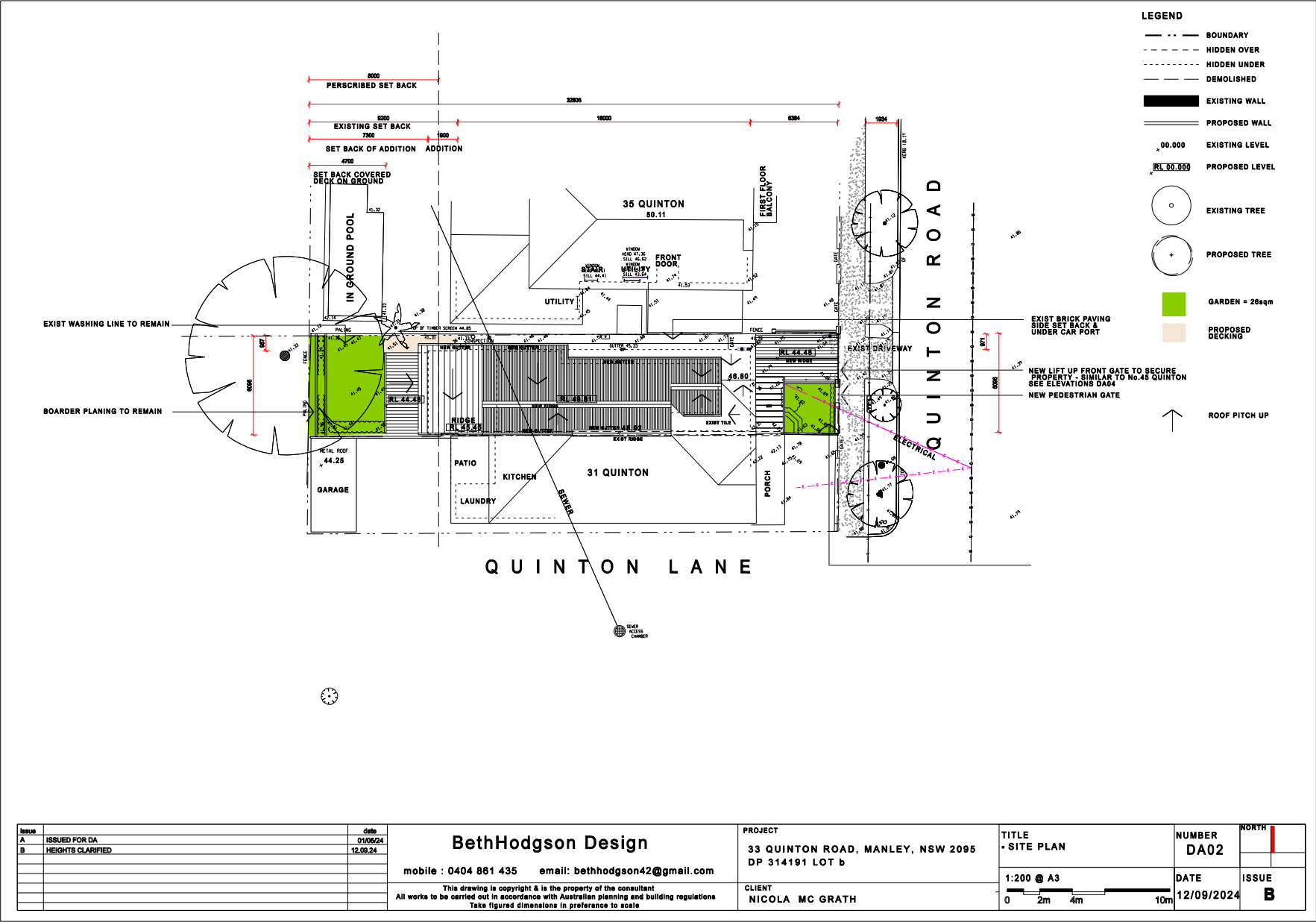
Reason: To maintain proper records in relation to the proposed development.

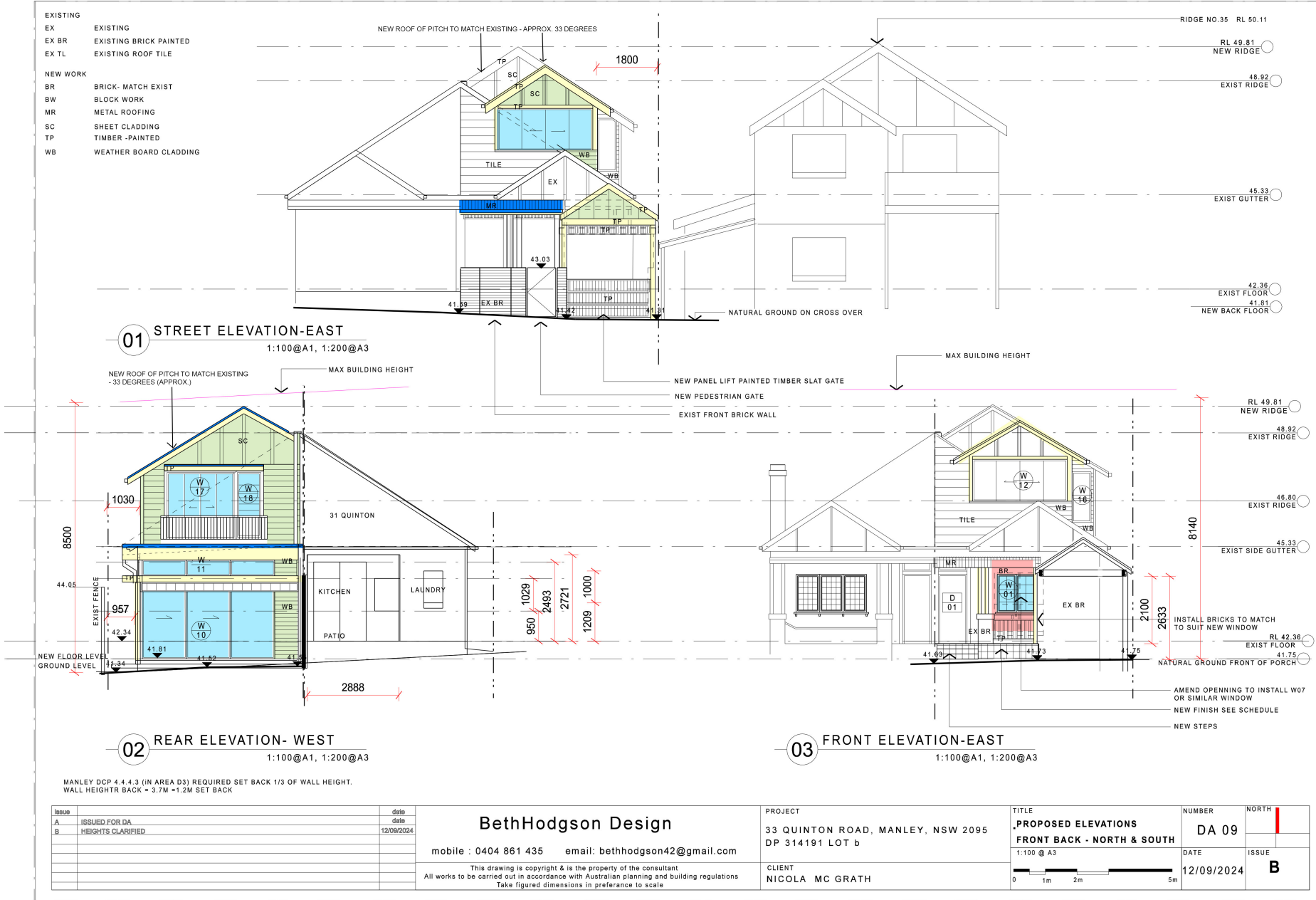
26. **Satisfaction of the terms of easement (Easement for Support)**

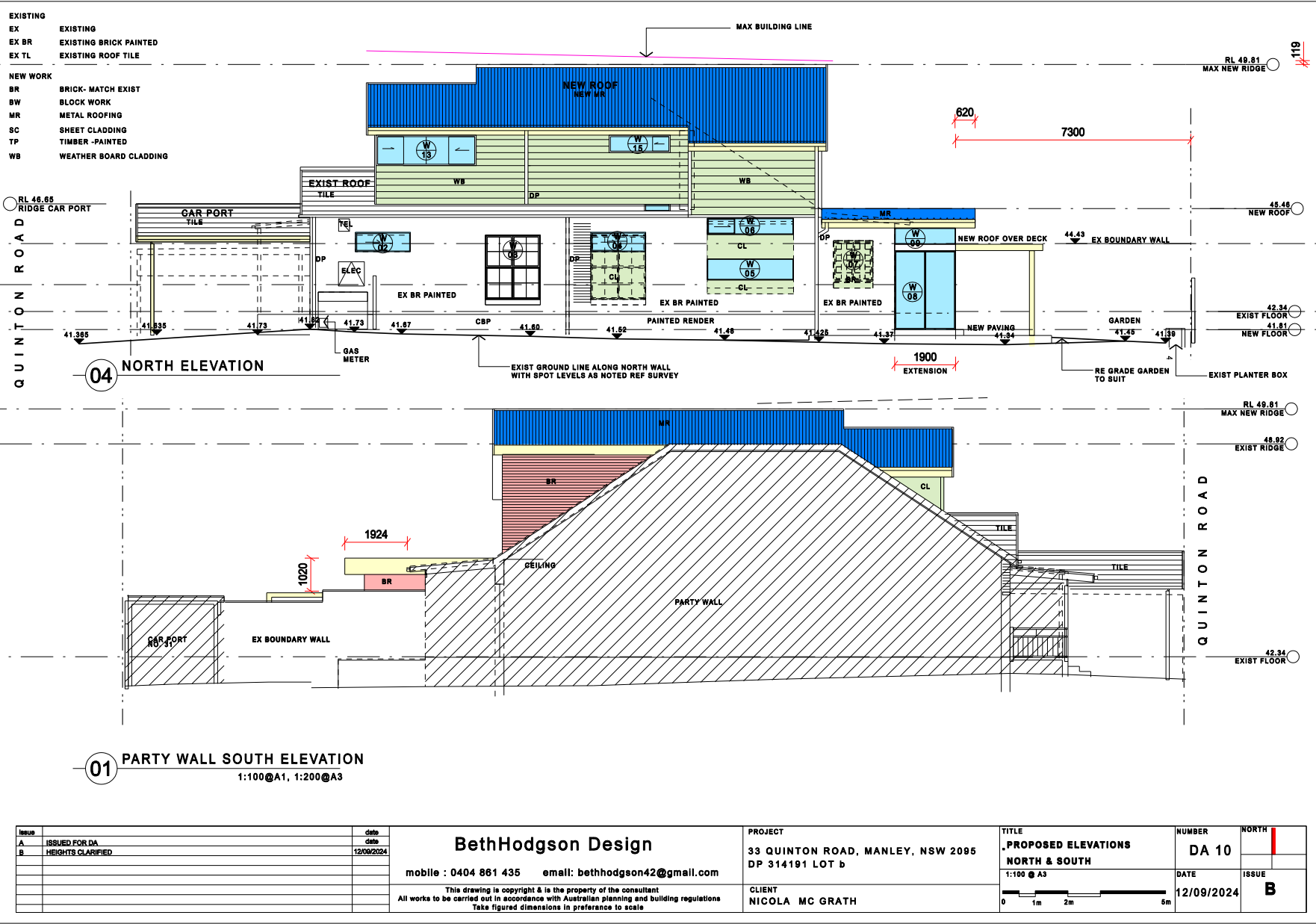
A suitably qualified person must be satisfied that the works have been constructed in accordance with the terms of easement (Easement for Support).

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

Reason: To ensure compliance with the terms of easement (Easement for Support).







CLAUSE 4.6 – EXCEPTIONS TO DEVELOPMENT STANDARD: FLOOR SPACE RATIO VARIATION REQUEST

Project: Proposed Additions and Alterations to dwelling

Address: 33 Quinton Road, Manly, NSW

1.0 INTRODUCTION

This is an application to seek an Exemption to Development Standards under Clause 4.6 of the *Manly Local Environmental Plan 2013* (MLEP 2013), to accompany the Development Application for the Additions and Alterations to existing dwelling at 33 Quinton Road Manly, NSW

The proposed gross floor area exceeds the maximum permissible Floor Space Ratio of MLEP 2013.

The development standard for which the variation is sought is:

- Clause 4.4 of MLEP 2013 – Floor Space Ratio.

2.0 PROPOSED DEVELOPMENT

The proposed works to the existing dwelling comprise:

- Extension to Ground Floor level: 9.16 m² (GFA)
- Additions to First Floor level: 49.85 m² (GFA)
- Existing GFA (Gross Floor Area): 83.5 m²
- **Total GFA of proposed development: 142.51 m²**

Site area: 198.7 m².

3.0 PLANNING PARAMETERS

3.1 Applicable environmental planning instruments

- *Manly Local Environmental Plan 2013*
- *Manly Development Control Plan 2013*

3.2 Land use zoning

R1 General Residential zone under MLEP 2013.

4.0 VARIATION TO DEVELOPMENT STANDARD

4.1 Development standard being varied

Clause 4.4 of MLEP 2013 – Floor Space Ratio (FSR)

4.2 FSR development standard (cl. 4.4)

4.2.1 Objectives of the development standard

The objectives of the development standard are as follows:

- To ensure the bulk and scale of development is consistent with the existing and desired streetscape character.
- To control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features.
- To maintain an appropriate visual relationship between new development and the existing character and landscape of the area.
- To minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain.

4.2.2 Numeric value of the development standard

Clause 4.4 (2) states that:

*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, being: **FSR of 0.6 : 1**. (Figure 1)*



Figure 1: Floor space ratio map (source: MLEP 2013)

4.3 Proposed variation to the FSR development standard

Site area: 198.7 m².

- Maximum permissible FSR: 0.6:1
- Maximum permissible GFA: 119.22 m²

- Existing GFA: 83.5 m²
- Additional GFA to Ground Floor level: 9.16 m²
- Additional GFA to First Floor level: 49.85 m²
- **Total GFA of proposed development: 142.51 m²**

Variation in GFA to maximum permissible GFA: Additional 23.29 m² (19.5353 %).

5.0 JUSTIFICATION OF THE PROPOSED FLOOR SPACE RATIO VARIATION UNDER MLEP 2013, CLAUSE 4.6 – Exceptions to development standards

5.1 Clause 4.6 Objectives (Cl. 4.6 (1))

The objectives of the clause are:

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

5.1.1 Compliance with achieving better outcomes for and from development (cl. 4.6 (1)(b))

The proposed extension increases the size of the existing 2 bedroom and 1 bathroom dwelling of 83.5 m² to a 3 bedroom + study/ 4 bedroom dwelling of approx. 142.5 m² – improving the residential accommodation for a family within a small site.

5.2 Addressing Matters for Consideration under Clause 4.6 (3)

Matters for consideration under Cl. 4.6 (3) to justify the contravention of the development standard, are:

- (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.*

5.2.1 Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl. 4.6 (3)(a))

Compliance with the development standard of "Floor Space Ratio" is unreasonable in the circumstances of this proposal in that:

- The site is a small site with a semi-detached dwelling in a street that comprises predominantly detached dwellings on larger allotments, with a small number of semi-detached dwellings within the area. Dwellings in this residential precinct are medium to large family size dwellings of 2 storeys in height.
- The resultant gross floor area at 142.5 m² approx. is not considered a large dwelling by contemporary dwellings and proposes to accommodate 3-4 bedrooms or 3 bedrooms + study.
- Manly DCP 2013 provides an *Exception to FSR for undersized lots* (Section 4.1.3.1 of MDCP 2013) that states for sites with site areas less than the minimum lot size required in MLEP 2013 Lot Size map, an exception to the FSR requirements is permissible. (Figure 2)



Figure 2:
Minimum Lot Size map
(source:MLEP 2013)

The site is located within a precinct with Minimum Lot Size of 250m² (Area C). This section allows a variation to the FSR for undersized lots that permits the site to have its maximum permissible FSR calculated on the site area of 250m². Applying this variation, the **maximum permissible FSR**, based on the site area of 250m² x 0.6 = **150m²**.

The proposed development, with a resultant GFA of 142.5 m² complies with the MDCP 2013 allowance.

5.2.2 Compliance on environmental planning grounds to justify contravening the development standard (cl. 4.6 (3)(b))

The proposed works justify contravening the development standard on environmental planning grounds as:

- The addition of a second storey is within the maximum permissible height of MLEP 2013 (8.5m). The majority of dwellings within this residential precinct is 2 storeys in height.
- The siting of the development, its footprint, bulk and built form are similar to 2 storey dwellings within this residential precinct and consistent with its pattern of development.
- The proposed development, 2 storeys in height, will not impact on the amenity of surrounding properties in terms of solar access, undue overshadowing, privacy and views.
- The proposed upper storey addition is in character with dwellings in the surrounding neighbourhood and will not adversely impact on the streetscape character of Quinton Road.

**ITEM 3.4 DA2024/1062 - 18 PARADISE AVENUE AVALON BEACH -
ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE AND
BOAT SHED INCLUDING A NEW BOAT RAMP**

PURPOSE

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

RECOMMENDATION

- A.** That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of PLEP 2014 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B.** THAT Council as the consent authority **approves** Development Consent to DA2024/1062 for alterations and additions to a dwelling house and boat shed including a new boat ramp on land at Lot LIC 301848 & Lot 42 DP 17910, 18 Paradise Avenue AVALON BEACH, subject to the conditions set out in the Assessment Report.

Reporting manager	Adam Richardson
TRIM file ref	2024/845957
Attachments	↓1 Assessment Report ↓2 Site Plan and Elevations ↓3 Clause 4.6

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/1062
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Responsible Officer:	Brittany Harrison
Land to be developed (Address):	Lot 42 DP 17910, 18 Paradise Avenue AVALON BEACH NSW 2107 Lot LIC 301848, 18 Paradise Avenue AVALON BEACH NSW 2107
Proposed Development:	Alterations and additions to a dwelling house and boat shed including a new boat ramp
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:	Matthew Towner

Application Lodged:	13/08/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	21/08/2024 to 04/09/2024
Advertised:	21/08/2024
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 40.8%
Recommendation:	Approval

Estimated Cost of Works:	\$ 878,589.48
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EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to a dwelling house and boat shed including a new boat ramp.

The application is referred to the Development Determination Panel (DDP) as the proposed development results in a variation of more than 10.0% to Clause 4.3 Height of buildings of the *Pittwater Local Environmental Plan 2014* (PLEP 2014). Clause 4.3 of the PLEP 2014 stipulates a maximum building height of 8.5 metres. The proposed development results in a maximum building height of 11.971 metres, which presents a variation of 40.8%. In support of the variation is a detailed

Clause 4.6 written request which argues that compliance with Clause 4.3 is considered both unreasonable and unnecessary, in this particular circumstance. The variation arises from the proposed mezzanine level which alters the existing roof form at the front of the dwelling house, however the overall maximum building height of 12.62 metres, is not altered by the proposed works.

The proposal results in multiple variations to the built form controls under the Pittwater 21 Development Control Plan (P21DCP), these being - C1.4 Solar Access, D1.9 Side and rear building line, D1.11 Building envelope, D15.13 Lateral limits to development seaward of mean high water mark, D15.14 Minimum frontage for waterfront development, and D15.15 Waterfront development. The variations to these controls does not give rise to any unreasonable environmental and/or amenity impacts upon the subject site or adjoining properties (including Pittwater Waterway).

The proposed development was notified in accordance with the Northern Beaches Community Participation Plan (CPP) for fourteen (14) days. One (1) submission was received which raised concern regarding proposed solar access to the adjoining property.

Based on a detailed assessment of the proposal against the applicable planning controls of the PLEP 2014 and P21DCP, it is considered that the proposal is a suitable and acceptable development for the subject site and for the reasons as outlined within this assessment report.

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

PROPOSED DEVELOPMENT IN DETAIL

This development application seeks consent for alterations and additions to the existing residential dwelling and existing boatshed.

The proposed works include:

Lower Floor Level

- Removal of:
 - existing stairs (both internal and external), handrail to the existing balcony, BBQ bench, doors and windows and some internal walls
- Reconfiguration of the floor plan to include:
 - Entertainment and games room
 - Laundry
 - Bathroom
 - Cellar
 - Timber deck added to the western elevation of the existing balcony

Middle Floor Level

- Removal of:
 - existing internal stairs, handrail to the existing balcony, doors and windows and some internal walls and bedroom 4
- Reconfiguration of the floor plan to include:
 - Open plan kitchen and dining area
 - Formal dining area
 - Living area
 - Lobby entrance with internal staircase
 - Powder room

- Addition of bedroom 6 with powder room
- Study

Upper Floor Level

- Removal of:
 - internal stairs and external covered walkway from existing carport to dwelling, doors and windows, some internal walls, handrail to existing balcony
- Reconfiguration of the floor plan to include:
 - New covered walkway from carport to dwelling
 - New porch, entry way to the dwelling
 - Internal gallery
 - Internal staircase
 - Bedroom 3 with en-suite
 - Bedroom 4 with en-suite
 - Bedroom 1 with two (2) en-suites, walk-in robe

Mezzanine Level

- Internal staircase to lower levels
- Bedroom 2 with storage and en-suite
- Voids to lower level

Boatshed

- New doors to the northern and western elevations
- Fibreglass ramp (retention of existing metal rails)
- New cladding to external walls
- New 30 degree pitched roof
- Patio to the northern elevation

Without request from Council, amended plans were provided which reduced the scope of the dormer window along the southern elevation as well as the inclusion of a front and southern side boundary fence for a portion of the side boundary. The front boundary fence ranges in height from 1.08 metres to 2.13 metres and will be constructed of concrete stone cladding. Also included is a vehicular gate. The site boundary fence ranges in height from 1.08 metres to 1.5 metres and will be constructed of a concrete block retaining wall base with a timber paling fence on top.

Owners Consent / Agency referrals

The Department

Owner's Consent from the Department of Planning, Housing and Infrastructure – Crown Lands and Public Spaces (the department) to the making of a Development Application with Northern Beaches Council has been received (dated: 19 June 2024), for Lot 42 DP17910 known as 18 Paradise Avenue, Avalon Beach.

Department of Primary Industries - Fisheries

DPI Fisheries have reviewed the proposal in light of relevant provisions, a response was submitted with the application, with no objections (dated: 18 January 2024). The proposal is not considered to constitute Integrated Development under s. 91 of the EP&A Act 1979.

Transport for NSW (TfNSW)

TfNSW reviewed the proposal and confirm that there are no navigational concerns, a response was

submitted with the application (dated: 8 November 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

Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living
Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 7.1 Acid sulfate soils
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area
Pittwater 21 Development Control Plan - C1.4 Solar Access
Pittwater 21 Development Control Plan - D1.9 Side and rear building line
Pittwater 21 Development Control Plan - D1.11 Building envelope
Pittwater 21 Development Control Plan - D1.14 Landscaped Area - Environmentally Sensitive Land
Pittwater 21 Development Control Plan - D1.16 Fences - Flora and Fauna Conservation Areas
Pittwater 21 Development Control Plan - D15.13 Lateral limits to development seaward of mean high water mark
Pittwater 21 Development Control Plan - D15.14 Minimum frontage for waterfront development
Pittwater 21 Development Control Plan - D15.15 Waterfront development

SITE DESCRIPTION

Property Description:	Lot 42 DP 17910 , 18 Paradise Avenue AVALON BEACH NSW 2107 Lot LIC 301848 , 18 Paradise Avenue AVALON BEACH NSW 2107
Detailed Site Description:	The subject site consists of one (1) allotment located on the western side of Paradise Avenue.

The site is irregular in shape with a frontage of 15.24m along Paradise Avenue and a maximum depth of 85.955m. The site has a surveyed area of 1227.0m².

The site is located within the C4 Environmental Living zone of the *Pittwater Local Environmental Plan 2014* (PLEP 2014) and accommodates a three storey residential dwelling with detached four (4) vehicle carport, swimming pool and boat shed within a landscaped setting.

The site has an easterly orientation towards Paradise Avenue and a westerly orientation toward Pittwater Waterway. The site falls steeply from the street frontage toward the mean high water mark (MHW) of approximately 27.38 metres (or 31.75%).

The site is not known to have any threatened species. The site is included within Council's Pittwater Spotted Gum Forest map, as well as being partially located within the Department of Environment's Biodiversity Value map.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by residential developments to the north, south and east. Toward the west is immediate access to Pittwater Waterway.

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	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case. However, the Applicant provided amended plans and a written request to vary multiple controls within the Pittwater 21 Development Control Plan. This information did not warrant renotification in accordance with Council's Community Participation Plan (CPP). However, the objector was advised, via email, that amended information was provided and was given seven (7) days to provide an additional submission, should they wish to do so. <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

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 21/08/2024 to 04/09/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Mr Laurence Anthony Eastwood	16 Paradise Avenue AVALON BEACH NSW 2107

The following issues were raised in the submissions:

- **Solar Access**

The submission raised concerns that the proposed development would cause unreasonable overshadowing to an area of the adjoining property that already experiences overshadowing. The submission also notes that the Applicant agreed to provide amended plans to reduce the proposed dormer window and pitched roof.

Comment

The proposed development is accompanied by shadow diagrams. The shadow diagrams indicate overshadowing to a portion of the rear open space to No.14 Paradise Avenue, and the front portion of the site of No.16 Paradise Avenue at 9.00am; increased solar access to the dwelling of No.16 Paradise Avenue, but overshadowing to the rear private open space of No.14 Paradise Avenue at 12.00pm; and, additional overshadowing to the rear private open space of No.14 Paradise Avenue at 3.00pm. There is no additional overshadowing to 16 Paradise Avenue at 3.00pm.

A merit assessment of the proposal against the requirements of Control C1.4 Solar Access has been undertaken within this assessment report. The assessment has found that the proposed development, while creating additional overshadowing to No.16 and No.14 Paradise Avenue, provides a reasonable level of solar access to the subject site and adjoining properties.

This issue does **not** warrant reason for refusal of this application.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Acid Sulfate)	Supported, no conditions recommended. General Comments The Applicant has submitted an Acid Sulfate Soils Report, revealing no acid sulfate soils in the subject site of the proposal.
NECC (Bushland and Biodiversity)	Supported, subject to recommended conditions. The comments in this referral relate to the following applicable controls and provisions: • NSW Biodiversity Conservation Act 2016 • NSW Biodiversity Conservation Regulation 2017

Internal Referral Body	Comments
	• Pittwater LEP Clause 7.6 Biodiversity Protection • Pittwater DCP Clause B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community Portions of the site are identified on the Department of Climate Change, Energy, the Environment and Water (DCCEEW) Biodiversity Values Map (BV Map). Under the NSW Biodiversity Conservation Act 2016, any removal of native vegetation from within mapped areas will trigger the Biodiversity Offsets Scheme (BOS) and the requirement for a Biodiversity Development Assessment Report (BDAR). However, the submitted plans and documentation indicate that the proposed works are located outside of the BV Map area and therefore will not trigger entry into the BOS. The proposed alterations and modifications would take place on areas of hardstand and will not require the removal of any vegetation or trees and no landscaping works are being proposed. Therefore, no objections are raised. Impact to the marine environment from the proposed boat ramp will need to be assessed by the appropriate referral body. The development is designed, sited and will be managed to avoid any significant adverse environmental impact.
NECC (Coast and Catchments)	<i>Supported, subject to recommended conditions.</i> This application was assessed in consideration of: • Supplied plans and reports; • State Environmental Planning Policy (Resilience and Hazards) 2021 (section 2.10, 2.11 & 2.12); • Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity & Conservation) 2021 • Relevant LEP and DCP clauses. State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA. Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Corona Projects dated July 2024, the DA satisfies requirements under clauses 2.10, 2.11 and 2.12 of the SEPP R&H. As such, it is considered that the application does comply with the

Internal Referral Body	Comments
	requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021. Pittwater LEP 2014 and Pittwater 21 DCP Estuarine Risk Management The subject property has also been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site. In accordance with the submitted Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated October 2023, estuarine planning levels (EPLs) would apply to proposed development within the subject site as follows: For a design life of 60 years, the adopted Estuarine Planning Level (EPL) is 2.8m AHD, which is well below the lowest floor level of the dwelling and well below the deck. Therefore, the focus of the report herein has been on the proposed boatshed and ramp. If the recommendations in Section 7 are followed, the risk of the proposed development being adversely affected by estuarine processes would be suitably mitigated. As noted in Section 7.1, the boatshed should be structurally designed to resist hydrostatic and wave forces up to the EPL of 2.8m AHD, and these forces can be provided by a coastal engineer as part of detailed design. Only items that can withstand inundation should be stored below the EPL, and no items that could be a source of pollution if inundated should be stored below the EPL. Any electrical equipment etc should be able to withstand inundation if below the EPL, or located above the EPL. The proposed development satisfies the requirements of Chapter B3.7 and Chapter D15.15 of the Pittwater 21 DCP, the Estuarine Risk Management Policy for Development in Pittwater, Clause 7.8 of Pittwater Local Environmental Plan 2014, and State Environmental Planning Policy (Resilience and Hazards) 2021 for the matters outlined herein. The proposed development is therefore able to satisfy the relevant estuarine risk management requirements of P21 DCP. Development on Foreshore Area A section of the subject property is within the foreshore building line. Part 7, Clause 7.8 –Limited development on foreshore area of the Pittwater LEP 2014 applies for any development within the foreshore area. The DA proposes alteration works on existing structures in the foreshore area including the boat shed and slipways. On internal

Internal Referral Body	Comments
	assessment and as assessed in the submitted Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated October 2023, the DA satisfies the objectives and requirements of Part 7, Clause 7.8 of the Pittwater LEP 2014. Chapter D of the Pittwater 21 DCP: D15.15: Waterfront Development - Boatshed iv) Boatsheds cannot be used for any other purpose than the storage of small boats and/or boating equipment. The incorporation of any internal kitchen facilities, habitable rooms, shower or toilet facilities shall not be permitted. Roof areas of boatsheds shall not be used for recreational or observational purposes. Appropriate general conditions have also been applied to address the coastal relevant requirements of SEPP (R&H) and Pittwater 21 DCP. No other coastal issues identified.
NECC (Riparian Lands and Creeks)	<i>Supported, subject to conditions.</i> This application was assessed in consideration of: • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Resilience and Hazards) 2021; and • Relevant LEP and DCP clauses. The site abuts Pittwater estuary and as such the development must not significantly impact on the biophysical, hydrological or ecological integrity of the estuary, or the quantity and quality of surface and ground water flows that it receives. The proposal includes removal of existing steel slip rails and replacement with a fibreglass boat ramp and landing on concrete piers. It is noted that referral has been made to NSW DPI Fisheries. Fisheries does not consider the proposal to be Integrated Development because it does not include any dredging, reclamation, harm to marine vegetation, or blockage of fish passage. This determination by DPI Fisheries does not negate the Pittwater DCP section B4.19 requirement that a Marine Habitat Survey/Aquatic Ecology report be provided for all works below the Mean High Water. An Aquatic Ecology report has not been provided. Upon review of the proposal, it is considered that the works are relatively low risk to aquatic ecology provided environmental safeguards are put in place. As such, this referral body is supportive with the condition that referral be made to an Aquatic Ecologist prior to construction, and any environmental safeguards recommended in the referral be adopted. The boat ramp must be designed as per the DPI Fisheries requirement.
NECC (Water Management)	<i>Supported, subject to recommended conditions.</i>

Internal Referral Body	Comments
	This application was assessed in consideration of: • Supplied plans and reports; • Northern Beaches Water Management for Development Policy (WMD Policy); and • Relevant LEP and DCP clauses NECC Water Management has no objection to the proposal. Subject to conditions.
Parks, reserves, beaches, foreshore	Supported, no conditions recommended. The property adjoins Pittwater waterway downslope. All development works must ensure that surface sediment runoff and/or erosion is controlled, managed and contained within the site boundaries and prevented from travelling across the boundary and into the Pittwater waterway. The development is not detrimental to the landscape character of the adjoining Pittwater waterway, and as such Parks, Reserves and Foreshores raise no concerns with the development proposal.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	Supported, subject to recommended conditions. The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	Supported, subject to recommended conditions. 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.
Nominated Integrated Development - DCCEEW -	Supported, without conditions.

External Referral Body	Comments
Water - Water Management Act 2000, s91 - Controlled Activity Approval for works within 40m of watercourse	The Department of Planning and Environment-Water has reviewed documents for the proposed development application and considers that, for the purposes of the <i>Water Management Act 2000</i> , the proposed works are exempt from the need to obtain a controlled activity approval and no further assessment by this agency is necessary.

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. A497112_03 dated 1 July 2024).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been

included in the recommendation of this report.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

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

Comment

This Clause applies to the subject site. Council's Coast and Catchments Officer has reviewed the proposed development and no concerns were raised, noting that the consent authority has considered the matters prescribed in subclause (1)(a)-(g).

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

Comment

This Clause applies to the subject site. Council's Coast and Catchments Officer has reviewed the proposed development and no issues were raised with regards to the proposed development, therefore the consent authority has considered the matters prescribed in subclause (a).

Division 4 Coastal use area

2.11 Development on land within the coastal use area

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

Comment

This Clause applies to the subject site. Council's Coast and Catchments Officer has reviewed the proposed development and no issues were raised with regards to the proposed development, noting that the consent authority has considered the matters prescribed in subclause (a) and is subsequently satisfied that the proposed development achieves subclause (b)(i) and subclause (c).

Division 5 General

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

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

Comment

The proposed development is unlikely to cause an increased risk of coastal hazards as the works are sited entirely over the existing building footprint.

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

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

Comment

For the reasons as detailed above, the proposed development does not require the provision of a coastal management program.

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

Chapter 4 – Remediation of Land

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

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	8.5m	11.971m	40.8%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.7 Development below mean high water mark	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone C4 Environmental Living

C4 Environmental Living zone objectives are addressed as follows:

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

Comment

The proposed development predominantly relates to the existing residential dwelling and boat shed. The proposed works to the dwelling and boat shed are generally internal, with minor external works. In this instance, the proposal is considered to provide for low-impact residential development in an area that has special ecological, scientific or aesthetic values.

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

Comment

As detailed above, the proposed development will not have an unreasonable or adverse effect upon those values prescribed above.

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

Comment

As detailed above, the proposed development is generally sited to the existing built form of the dwelling and boat shed and does not require extensive excavation to the landform. In this instance, the proposed development provides for residential development of a low density and scale that is appropriately integrated with the landform and landscape.

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

Comment

While elements of the proposal are sited within the foreshore area and extend beyond the mean high water mark (MHWM), the proposal does not seek the substantial removal of significant or native vegetation within the foreshore area. As such, the foreshore vegetation is retained. As detailed above, the proposal is generally sited to the existing built form of the dwelling and boat shed, as such, the existing vegetation and canopy trees throughout the site will continue to provide wildlife corridors.

4.6 Exceptions to development standards

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

Development standard: Clause 4.3 Height of buildings

Requirement: 8.5 metres

Proposed: 11.971 metres

Percentage of variation: 40.8%

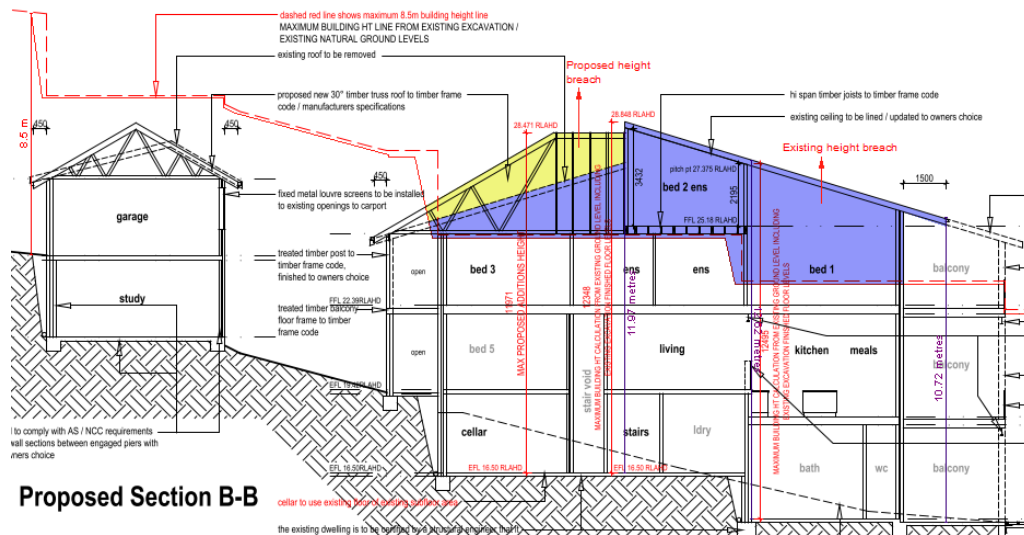


Figure 1. Proposed maximum building height (extent of breach indicated by yellow shading). Existing building height non-compliance indicated by blue shading.

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 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:

- **Prior excavation of the site**
- **Reduction of existing height non-compliance**
- **Proposed works remain under the existing ridge height**

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

Comment:

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

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

The Clause 4.6 Request argues, in part:

- *'The proposed development has a maximum building height of 11.971m...[resulting in a] 40.8% variation to the development standard and non-compliance of 3.471m.*
- *However...the proposed works remain under the existing building height. Specifically, the maximum existing building height is 12.495m with a corresponding non-compliance of 3.995m or 47%. Accordingly, the proposed works are located 0.524m under the existing maximum height. Furthermore, an equitable portion of the existing building bulk above the 8.5m maximum building height is proposed to be removed within this application.*
- *While the slope of the land under the building footprint is not in excess of 16.7 degrees, the slope of the land, being approximately 14 degrees, still warrants a degree of variation to the maximum permissible height to accommodate for the fall in topography.*
- *The proposal is of a reasonable scale and provides a high quality and durable development which will assist to meet the high demand for additional housing in the Avalon Beach locality.*
- *The development is commensurate in scale and character with other properties in the streetscape. The variation results in the substantial increase in amenity for the subject site without producing any adverse impacts on the privacy, views, solar access and overall amenity of surrounding properties.*

- The variation does not alter the overall maximum building height and largely retains the existing roof form. As such, the proposal will not alter the established scale and overall character of dwellings present within the locality.
- As evidenced in the provided shadow diagrams, the proposal will not increase overshadowing to adjoining properties to an unreasonable extent, retaining in excess of 3 hours of solar access to the rear private open space on the 21st June. Furthermore, an equitable amount of additional solar access is provided to the adjoining properties with the proposed deletion of the rear roof overhang.
- The minor increase in roof height is not anticipated to obstruct any views across the site, noting that dwellings along the north western side of Paradise Avenue capture view to the rear of the respective sites, towards the waterfront.
- The proposal will continue to step with the terrain and present as a two-storey building from Paradise Avenue which aligns with the character of the surrounding streetscape. No further excavation is proposed.
- The variation does not impact upon any natural features, given it is located upon an already built upon area. Overall, existing vegetation is protected by the proposal.
- [The proposal] is consistent with the objectives of the development standard and an appropriate degree of flexibility is warranted...strict compliance with the development standard is unreasonable or unnecessary in this particular case.
- The term 'environmental planning grounds' is not defined and may be interpreted with wide scope as has been the practice of the Land and Environment Court. The environmental planning grounds supporting variation are on the basis of:
 - **Prior excavation of the site:** The site current features a deeply excavated lower ground floor footprint that serves to step the development down the site. Specifically, the cellar is 2.92m below natural ground level, and the bathroom is 1.62m below the natural ground level. This excavation is attributed to the topography of the site with a gradient of approximately 14%. The existing and proposed numerical height non-compliance can be in part attributed to this existing excavation that results in a sharp drop of 2.92m in the height plane towards the front of the dwelling, which does not reflect in the natural topography of the site. The resultant numerical high non-compliance can be partly attributed to the distorted height plane that has been created from prior excavation.
 - **Reduction of existing height non-compliant bulk:** The proposal involves the demolition of a portion of the existing roof overhang to the rear of the dwelling to provide for a rear balcony...this will significantly reduce the portion of the existing roof that exceeds the height limit, thereby reducing the bulk impact and improving solar access to adjoining properties. This proposed demolition removes an equitable portion of bulk above the height line to that which is proposed.
 - **Proposed works remain under the existing ridge height:** The proposed works are located 0.524m under the existing maximum ridge height, towards the midpoint of the dwelling. Accordingly, the proposal will not set a new height precedent for the site, rather, it works within the existing previously approved maximum height.
- The proposal provides low-impact residential development in areas with no anticipated adverse effects on special ecological, scientific, or aesthetic values. The development proposes alterations and additions that are suitable in scale and integrate with the existing landform and landscape. Riparian, foreshore vegetation and wildlife corridors will be retained in the process.
- The variation to the Height of Buildings does not render the development incompatible with the zone objectives.
- The proposed development is in the public interest as it is consistent with the objectives of the development standard and the C4 Environmental Living zone. For these reasons, the proposal and the aforementioned variation does not undermine the integrity of the Height of Buildings development standard and its objectives, as well as the zoning objectives which have been adopted by Council as being in the public interest.'

It is considered that the Applicant's written request to vary development standard Clause 4.3 Height of buildings of the PLEP 2014 is acceptable given that the proposed resultant built form will be commensurate with surrounding and nearby residential developments sited on a sloping topography. The existing excavation on the subject site has altered the existing ground level, thus establishing site constraints that make strict compliance with this requirement difficult. The overall site experiences a fall from the front boundary line toward the mean high water mark (MHWM) of approximately 27.38 metres (or 31.75%); and the building footprint is located on a natural slope of approximately 20.9%. As indicated in the figure above, the extent of breach is sited to the proposed roof form to the front of the dwelling.

Based on the existing excavation of the site, the maximum building height has been measured in accordance with *Merman Investments Pty Ltd Woollahra v Municipal Council* [2021] NSWLEC 1582 (*'Merman Investments'*) which is to the existing ground level. The existing dwelling extends beyond the prescribed maximum building height at 12.495 metres. As asserted in the Clause 4.6 written request, the proposed works do not extend beyond the existing maximum building height and will remain below the maximum ridge line of the detached garage (which is sited forward of the dwelling house, creating a built obstruction of the dwelling house when viewed from the street frontage). In this instance, the extent of non-compliance to the proposed new roof form of the dwelling will not be discernible from the street frontage, nor will it create unreasonable or adverse amenity and environmental impacts upon adjoining properties. Furthermore, the proposed extent of non-compliance to this development standard will not be discernible when viewed from Pittwater Waterway as the existing dwelling provides a visual obstruction.

Notwithstanding the numeric non-compliance to the requirements of Clause 4.3 of the PLEP 2014, the proposed development can achieve the objectives of both Clause 4.3 and the C4 Environmental Living zone. As is evidenced throughout this assessment report, the extent of non-compliance to Clause 4.3 of the PLEP 2014 does not cause any unreasonable environmental or amenity impacts upon adjoining properties, particularly noting that the proposed architectural plans have shown all efforts to minimise adverse or unreasonable amenity impacts upon adjoining properties. Detailed assessments against the requirements of C1.4 Solar Access, D1.9 Side and rear building line, D1.11 Building envelope and D1.14 Landscaped Area - Environmentally Sensitive Land have been undertaken within this assessment report, regardless of whether the proposal achieves compliance with the requirements of these controls.

The proposed alterations and additions to the existing dwelling house is considered appropriate for the context of the subject site and that strict compliance with the requirements of Clause 4.3 of PLEP 2014, when measured in accordance with *Merman Investments*, would result in a disjointed built form and impact upon the internal amenity of the existing dwelling.

For the reasons as detailed above, Council is satisfied that the Applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of Clause 4.3 of the PLEP 2014.

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

Public Interest:

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

Conclusion:

Council is satisfied as to the matters set out in Clause 4.6 of the PLEP 2014.

It is considered that, with regard to the above and the particular circumstances of this proposed development, the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

7.1 Acid sulfate soils

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

The site is located in an area identified as Acid Sulfate Soil Class 1 and Class 5, as indicated on Council's Acid Sulfate Soils Planning Map, as indicated in the figure below.

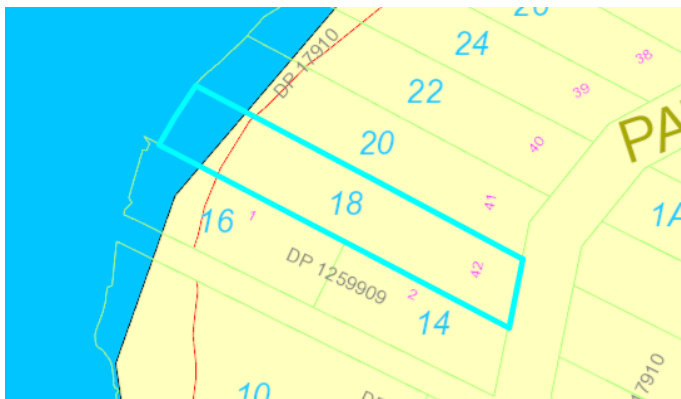


Figure 2. Class 1 (indicated by blue shading) and Class 5 (indicated by yellow shading) of the Pittwater Acid Sulfate Soils map in accordance with the PLEP 2014. Subject site indicated by blue outline.

For any works within a Class 1 acid sulfate soil area, an assessment is required to determine if any impact will occur; and, for any works within Class 5, works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land is required to be assessed to determine if any impact will occur.

An Acid Sulfate Soil Assessment Report (prepared by Larry Cook Consulting Pty Ltd, dated 16 July 2024) has been provided with this application. This report indicated that no acid sulfate soils were in the location of the proposed works. Council's Environmental Health (Acid Sulfate) Officer has reviewed the proposed development and no issues were raised with the proposal, and no recommended conditions were provided.

7.2 Earthworks

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

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

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

Comment

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

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

Comment

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

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

Comment

Any 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

Any 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

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

(f) the likelihood of disturbing relics

Comment

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

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

Comment

The subject site is a waterfront allotment with direct access to Pittwater Waterway and the site is environmentally sensitive (being in the C4 Zone). Compliance with all recommended conditions will ensure that the proposed development will not have any unreasonable or adverse impacts upon the waterway or the C4 Zone.

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

development.

Comment

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

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

Comment

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

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of PLEP 2014, Pittwater 21 DCP 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.

7.6 Biodiversity protection

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

(a) whether the development is likely to have:

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

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

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

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

Comment

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

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

Comment

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

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

(a) the development is designed, sited and will be managed to avoid any significant adverse

environmental impact, or

(b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or

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

Comment

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

7.7 Geotechnical hazards

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

(a) site layout, including access,

(b) the development's design and construction methods,

(c) the amount of cut and fill that will be required for the development,

(d) waste water management, stormwater and drainage across the land,

(e) the geotechnical constraints of the site,

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

Comment

The proposed development is supported by a Geotechnical Report (prepared by Rapid Geo, dated 16 August 2023) and architectural plans that demonstrate all geotechnical risks have been taken into account. Relevant conditions have been recommended to ensure compliance with any recommendations made within the Geotechnical Report.

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

Stormwater Plans have not been provided with this application. Notwithstanding, conditions have been recommended to ensure appropriate stormwater management throughout the site so as to minimise adverse impacts of stormwater runoff and drainage across the land.

(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

Appropriate conditions have been recommended to ensure the proposed development adheres to (b) (i) as prescribed above.

7.8 Limited development on foreshore area

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

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

Comment

The proposed development is for alterations of an existing boat shed wholly in the foreshore area, but will not result in the footprint of the building extending further into the foreshore area.

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

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

Comment

The proposed development is consistent with the objectives of the C4 Environmental Living zone of the PLEP 2014. The appearance of the proposed boatshed will be compatible with other boat sheds in the immediate visual catchment and surrounding area. Council's Coast and Catchments Officer, as well as Council's Bushland and Biodiversity Office, have reviewed the proposed development and they are both satisfied that the proposed development will not cause environmental harm in relation to pollution, siltation, surrounding uses, marine habitat, wetland areas, flora or fauna habitats, drainage patterns or remnant riparian vegetation. The proposed development will not cause congestion or generate conflict between people using the adjacent open space or waterway. The proposed development retains public access along the foreshore. The proposed development will not result in

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

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

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

Comment

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

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	Dwelling: >6.5m Fence: Nil	N/A 100%	Yes No
Rear building line	N/A FSBL Applies	N/A FSBL Applies	N/A	N/A
Side building line	North-eastern Boundary 2.5m	Lower Floor Level Dwelling: 1.4m (existing & unchanged) Timber Deck: 1.4m	44% 44%	No No
		Middle Floor Level Dwelling: 0.29m - 1.4m (existing & unchanged)	44%	No
		Upper Floor Level Carport: 0.29m (existing & unchanged) Dwelling: 1.4m (existing & unchanged)	88.4% 44%	No No
		Mezzanine Level Dwelling: 1.4m	44%	No
	South-western Boundary 1m	Lower Floor Level Dwelling: 1.5m (existing & unchanged) Timber Deck: 1.6m	N/A N/A	Yes Yes

		Middle Floor Level Dwelling: 1.5m - 1.6m (existing & unchanged)	N/A	Yes
		Upper Floor Level Carport: 1.5m (existing & unchanged) Dwelling: 1.6m - 5.85m (existing & unchanged)	N/A N/A	Yes Yes
		Mezzanine Level Dwelling: 1.6m	N/A	Yes
		Fence: Nil	100%	No
Building envelope	North-eastern Elevation 3.5m	Outside envelope	N/A	No
	South-western Elevation 3.5m	Outside envelope	N/A	No
Landscaped area	60% (736.2m ²)	Existing & Proposed (without variation) 38% (466.6m ²)	36.6%	No
		Proposed with variation 44% (540.22m ²)	26.6%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	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
C1.23 Eaves	Yes	Yes
D1.1 Character as viewed from a public place	Yes	Yes
D1.5 Building colours and materials	Yes	Yes
D1.8 Front building line	Yes	Yes
D1.9 Side and rear building line	No	Yes
D1.11 Building envelope	No	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	No	Yes
D1.16 Fences - Flora and Fauna Conservation Areas	No	Yes
D1.20 Scenic Protection Category One Areas	Yes	Yes
D15.12 Development seaward of mean high water mark	Yes	Yes
D15.13 Lateral limits to development seaward of mean high water mark	No	Yes
D15.14 Minimum frontage for waterfront development	Yes	Yes
D15.15 Waterfront development	Yes	Yes

Detailed Assessment

C1.4 Solar Access

Description of Non-compliance

This control stipulates that 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 9.00am and 3.00pm 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 9.00am and 3.00pm on June 21st (that is, to at least 50% of the glazed area of those windows).*
- *Solar collectors for hot water or electricity shall receive at least 6 hours of sunshine between 8.00am and 4.00pm during mid winter.*
- *Developments should maximise sunshine to clothes drying areas of the proposed development or adjoining dwellings.*

Shadow diagrams have been provided with this development application. There is additional overshadowing, as well as an increase in solar access, at 9.00am, 12.00pm and 3.00pm to adjoining properties to the south-west (being 14 and 16 Paradise Avenue). The proposal, however, provides a reasonable level of solar access to these properties.

No. 14 Paradise Avenue

The main private open space of this property is sited between the rear building line and the rear boundary line (which adjoins 16 Paradise Avenue). The proposed development results in additional overshadowing at 9.00am, 12.00pm and 3.00pm to the main private open space. However, there is no additional overshadowing to the dwelling.

No. 16 Paradise Avenue

The main private open space of this property is sited between the rear building line and the foreshore building line. The proposed development provides additional solar access at 9.0am to the site's main private open space. However, from 12noon and 3pm, the main private open space of this property is not impacted by the proposed development and thus the existing solar access is maintained. The existing dwelling overshadows the dwelling at 9.00am, 12.00pm and 3.00pm. The proposed development does not worsen or improve this existing non-compliance.

Due to the orientation of the subject site, any lot to the south will be vulnerable to overshadowing. It would be unreasonable to expect properties to the north to achieve strict compliance with the requirements of this control. Amended plans were provided to Council on 12 November 2024 which reduced the proposed dormer window along the southern elevation as a way to increase solar access to the adjoining properties to the south. Upon review of the amended shadow diagrams it is evident that there is a negligible change to the solar access of 14 and 16 Paradise Avenue. As the proposal effectively maintains the extent of solar access to adjoining properties as existing, the proposal is acceptable in this regard.

Merit Consideration

- ***Residential development is sited and designed to maximise solar access during mid-winter. (En)***

Comment

The proposed works have been sited and designed to ensure solar access is maximised during mid-winter.

- ***A reasonable level of solar access is maintained to existing residential properties, unhindered by adjoining development. (En)***

Comment

As detailed above, a reasonable level of solar access is maintained to existing residential properties, unhindered by adjoining development.

- ***Reduce usage and/dependence for artificial lighting. (En)***

Comment

The proposed development provides a reasonable level of solar access to the subject site and adjoining properties, given the siting of the allotments and the subsequent vulnerability for overshadowing. Therefore, the proposed works do not increase reliance or dependence upon artificial lighting.

Having regard to the above assessment, it is considered that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D1.9 Side and rear building line

Description of non-compliance

This control stipulates the following requirements:

- **Side boundaries:**
 - 1.0 metre to one side boundary (south-western boundary)
 - 2.5 metres to the other side boundary (north-eastern boundary)
- **Rear boundary:**
 - 6.5 metres

However, the subject site is constrained by the foreshore building line and therefore the 6.5 metre rear setback requirement does not apply.

The proposed development achieves compliance with the 1.0 metre side setback requirement to the south-western boundary.

The existing dwelling does not meet the 2.5 metre minimum requirement to the north-eastern boundary with a distance of 1.4 metres. The proposed alterations and additions maintain the existing side setback distance to the north-eastern boundary on the lower, middle, upper and mezzanine levels. This control stipulates that *where alterations and additions to existing buildings are proposed, maintenance of existing setbacks less than as specified may be considered where it is shown that the outcomes of this clause are achieved.*

As such, a merit consideration of the proposal against the outcomes of this control has been undertaken below.

Merit Consideration

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

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

Comment

Under A4.1 Avalon Beach Locality of the P21 DCP, the proposal is consistent with the objectives of the desired future character of Avalon Beach.

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

Comment

While the existing dwelling retains a less than desired side setback distance to the 2.5m minimum requirement, the proposed works do not seek to worsen this existing non-compliance. In this instance, the maintenance of the existing side setback distance does not

give rise to an unreasonable built form.

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

Comment

The proposed maintenance of the existing side setback distance does not give rise to any unreasonable impacts upon the equitable preservation of views and vistas to and/or from public/private places.

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

Comment

As detailed above, the proposed maintenance of the existing side setback distance does not cause unreasonable view sharing impacts between properties. Therefore, the proposed works are appropriately sited in a responsive design. The proposal doesn't include additional landscaping.

- ***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 maintenance of the existing side setback to the north-eastern boundary line does not cause any unreasonable amenity impacts upon the adjoining property as no new windows are proposed. Further, by virtue of the orientation of the subject site and adjoining properties, there is no additional overshadowing arising from the retention of the existing non-compliance to the north-eastern side setback requirement.

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

Comment

The proposed works does not include additional landscaping, nor does it include the removal of existing landscaping throughout the site. The maintenance of the existing non-compliance will not be easily discernible from the street frontage. In this instance, the site's substantial landscaping, mature tree canopy and attractive streetscape will be maintained.

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

Comment

The extent of non-compliance does not impact upon access throughout the site. As such, access throughout the site shall remain.

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

Comment

As above, the proposed works do not include the removal of vegetation or canopy trees throughout the site. The existing built form will generally be retained and thus the retention of existing vegetation and canopy trees throughout the site will continue to be dominant features throughout the site, with the existing dwelling appearing as secondary.

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

Comment

The subject site is not adjacent to a commercial zone. As such, this outcome does not apply.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D1.11 Building envelope

Description of Non-compliance

This control requires development to be sited within a building envelope which is measured from the side boundaries at a height of 3.5 metres and then angled inward at 45 degrees.

The proposed development results in a breach to the side boundary envelope along the north-eastern and south-western elevations, as shown in the figures below.

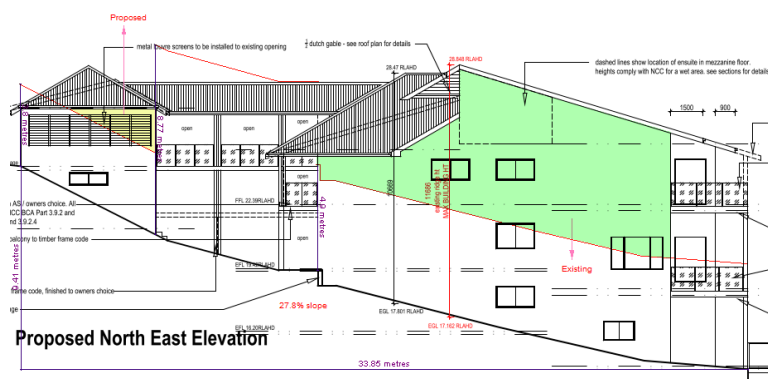


Figure 3. North-eastern elevation envelope breach. Extent of proposed breach indicated by yellow shading. The green shading indicates the existing breach.

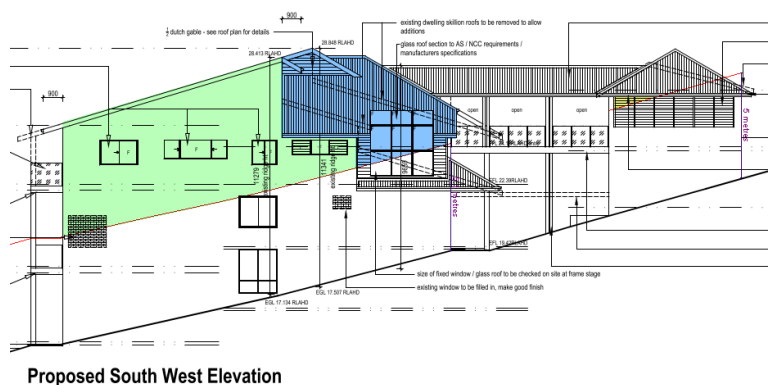


Figure 4. South-western elevation envelope breach. Extent of proposed breach indicated by yellow shading. The green shading indicates the existing breach, and the blue shading indicates the proposed roof form.

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

Under A4.1 Avalon Beach Locality of the P21 DCP, the proposal is consistent with the objectives of the desired future character of Avalon Beach.

- ***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

Notwithstanding the extent of non-compliance to this control, the proposed development does not increase the existing built form in such a way that would result in any unreasonable amenity impacts upon adjoining properties or the street frontage. While the proposed works are sited beyond the prescribed maximum building height, the overall development is sited well below the surrounding canopy trees within the natural environment. In this instance, the proposed works will maintain a building scale and density that is appropriate for the context of the site.

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

Comment

The proposed works do not extend beyond the existing building footprint. Therefore, the proposal responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.

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

Comment

As evidenced in the figures above, the bulk of the existing dwelling extends beyond the prescribed side boundary envelope, with the proposed works resulting in a minor encroachment from the carport. The resultant built form of both the carport and dwelling house will be commensurate with other dwellings along the western side of Paradise Avenue simply by virtue of the steeply sloping topography from the east to the west. Furthermore, the proposed works do not include the removal of any significant vegetation and canopy trees throughout the site, thus allowing the built form to appear as secondary to the surrounding natural environment. In this instance, the proposed bulk and scale of the built form is consistent within the immediate locality, and thus the bulk and scale is appropriately minimised.

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

Comment

The extent of non-compliance to this control does not give rise to any unreasonable impacts upon the equitable preservation of views and vistas to and/or from public/private places.

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

Comment

As amended, the window along the south-western elevation is now part of the roof form and therefore, does not extend beyond the prescribed side boundary envelope. Notwithstanding, this window is adjacent to an internal void. In this instance, there are no unreasonable privacy impacts arising from the extent of non-compliance to this control. As has been detailed elsewhere in this report, the proposed works, notwithstanding numeric non-compliances to the built form controls, does not result in an unreasonable impact upon solar access to the subject site and adjoining properties.

In this instance, the proposed development results in a reasonable level of amenity for the occupants of the subject site and adjoining properties.

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

Comment

The proposed development does not involve the removal of existing vegetation or canopy trees throughout the site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D1.14 Landscaped Area - Environmentally Sensitive Land

The subject site is located within Area 1 of the P21DCP Landscaped Area Map. As such, at least 60% (736.2m²) of the site area is to be landscaped.

The site, as existing, has a landscaped area of 38% (or 466.6m²), which presents a variation of 36.6%. The proposed development is sited entirely over the existing building footprint and thus does not impact upon the existing, and less than required, landscaped area.

In this particular instance, a merit consideration of the proposal against the outcomes of this control is not required.

D1.16 Fences - Flora and Fauna Conservation Areas

Description of Non-compliance

This control requires the following:

a. Front fences and side fences (within the front building setback)

Front and side fences (within the front building setback) shall:

- *not exceed a maximum height of 1 metre above existing ground level,*
- *shall be compatible with the streetscape character, and*
- *not obstruct views available from the road.*

Fences are to be constructed of open, see-through, dark-coloured materials.

Landscaping is to screen the fence on the roadside. Such landscaping is to be trimmed to ensure clear view of pedestrians and vehicles travelling along the roadway, for vehicles and pedestrians exiting the site.

Original stone fences or stone fence posts shall be conserved.

Comment

Amended plans were provided which included reconstruction of the existing front boundary fence and vehicular gate and the southern boundary fence forward of the front building line.

Due to the slope of the land, the proposed front fence has a height ranging between 1.08 metres and 2.13 metres. This presents a variation to the numeric requirement of (a) above. However, the proposed front fence will be compatible with the existing streetscape, noting that a number of properties on the western side of Paradise Avenue have front fences, ranging in height and materials (as indicated in the figure below).



As indicated in the figure, views are not obtained from the street frontage as the existing fence and dwelling provides obstruction. The current front fence of the subject site, and that of the adjoining and nearby properties to the north, being 20 Paradise Avenue and 22 Paradise Avenue, is constructed of a variety of materials, including a timber lapped, capped fence, solid brick and large sandstone retaining walls with timber brush on top - none of which meet the requirement of being an open structure. The proposed front fence will be consistent with the existing front fences (in that it is a solid structure) in the immediate visual catchment of the subject site. Due to the narrow nature of Paradise Avenue, requiring landscaping to be forward of the proposed front fence would likely impede upon vehicular movement along Paradise Avenue.

The proposed reconstruction of a the southern side boundary fence will be consistent with the existing side boundary fence in both height and materials to be used. However, owners consent has not been provided from the adjoining property, being 14 Paradise Avenue. In this circumstance, a condition will be recommended to either retain the existing southern side boundary fence or to delete the proposed southern side boundary fence as fencing along side boundaries is a matter to be dealt with between neighbouring properties under the *Dividing Fences Act 1991*.

f. Fencing in Category 1 and 2 areas

No front fences will be permitted.

Vegetation is preferred to any fencing.

Side and rear fences where necessary are to be constructed of dark coloured materials and shall not obstruct the passage of wildlife and shall have opening(s) with minimum dimensions of 150mm x 150mm every 5 metres accessible to ground dwelling animals.

Fencing required for the containment of companion animals should be minimised.

Comment

The subject site is located within the Avalon Flora and Fauna Category 1 and 2 area. In accordance with the above requirements, front fencing is not permitted. However, as discussed above, the subject site has an existing front and side boundary fence, which is proposed for reconstruction under this amended development application. For the reasons as detailed above, the proposed front fence is considered to be reasonable in the context of the subject site and existing streetscape of Paradise Avenue, subject to a merit consideration of the proposal against the outcomes of this control, which has been undertaken below.

Merit consideration

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

Comment

Under A4.1 Avalon Beach Locality of the P21 DCP, the proposal is consistent with the objectives of the desired future character of Avalon Beach.

- ***An open streetscape that allows casual surveillance of the street. (S)***

Comment

Casual surveillance of the street from the dwelling house is not currently available due to the siting of the dwelling and detached carport. The proposed front fence will not worsen this.

- ***Fences, where provided, are suitably screened from view from a public place. (S)***

Comment

As detailed above, the existing front fence for the subject site and those of the adjoining and nearby properties are not screened from view by landscaping. The proposal does not seek to include additional landscape forward of the proposed front fence. The proposed materials and colour scheme of the front fence will ensure it suitably integrates into the surrounding natural environment.

- ***Safe and unhindered travel for native animals. (En)***

Comment

A condition will be recommended to ensure the proposed new vehicular gate will have a openings of at least 20 millimetres to allow for the safe and unhindered travel of native animals throughout the subject site. As conditioned, the proposal can achieve this outcome.

- ***To ensure fences compliment and conserve the visual character of the street and neighbourhood.***

Comment

As detailed above, the proposed front fence will be appropriately integrated into the existing surrounding natural environment and will be commensurate with the existing streetscape of Paradise Avenue and the wider neighbourhood of Avalon Beach.

- ***To define the boundaries and edges between public and private land and between areas of different function.***

Comment

The proposed front fence will reasonably define the subject site's boundary's and edges between public and private land, and between areas of different function.

- ***To contribute positively to the public domain.***

Comment

The proposal will contribute positively to the public domain in that it will define the boundary for the subject site while continuing to remain compatible with the existing streetscape with no unreasonable amenity or environmental impacts upon adjoining properties.

- ***To enhance safe sight distances and clear view of the street (including to and from driveways) for motorists and pedestrians. (S)***

Comment

The proposed front fence will generally be consistent with the existing front fence. In this instance, the proposed development ensures safe sight distances and a clear view of Paradise Avenue for both motorists and pedestrians.

- ***To ensure heritage significance is protected and enhanced. (S)***

Comment

The subject site and surrounding properties are not heritage items, nor are these sites located within a heritage conservation area.

- ***To ensure an open view to and from the waterway is maintained. (S)***

Comment

The existing site constraints does not allow for the waterway to be easily viewed from Paradise Avenue. Therefore, the proposed new front fence will not worsen this. Views of the waterway from adjoining properties will not be impacted by the proposed front fence.

- ***To ensure native vegetation is retained (En)***

Comment

Vegetation on the site is not required to be removed to facilitate the proposed front fence.

- ***To ensure any fencing provides for the safe and unhindered travel of native animals. (En)***

Comment

This has been addressed above.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D15.13 Lateral limits to development seaward of mean high water mark

Description of non-compliance

This control stipulates the following:

- *Waterfront development shall be constructed perpendicular to the shoreline and within the defined lateral limit lines to development, regardless of the orientation of waterfront properties, where practicable. This is to maximise equitable access to the waterway. (Diagrams 1 and 2).*
- *Waterfront development shall be set back a minimum of 2.0 metres along the full length of the lateral limit lines to development to minimise conflict and the possibility of inaccurate location of structures during construction (Diagram 3). This may be varied where shared facilities are proposed where the adjoining property will benefit from the shared facility.*
- *This setback shall also apply to any vessel that is to be berthed at a wharf or boating facility, marina, water recreation structure or the like. Vessels which cannot meet this criterion are considered to be inappropriate for the site and should be accommodated elsewhere.*

The proposed reconstruction of the existing boat ramp will be setback 1.37 metres from the lateral limit lines to the south, which does not achieve compliance with the second point above. However, the proposed boat ramp will remain entirely within the lateral limit lines applicable to the subject site.

Merit Consideration

- ***To ensure that fair and equitable enjoyment of the waterway is achieved between neighbouring waterfront landowners through restricting unreasonable encroachment of waterfront development in front of adjoining properties. (S)***

Comment

Notwithstanding the setback distance to the southern lateral limit line, the proposal will maintain fair and equitable enjoyment of the waterway between neighbouring waterfront landowners.

D15.14 Minimum frontage for waterfront development

The width of the site at the mean high water mark (MHWM) is 15.5 metres. Therefore, the retention of the boat shed and the proposed new boat ramp is permitted, under this control.

D15.15 Waterfront development

Description of non-compliance

This control stipulates the following:

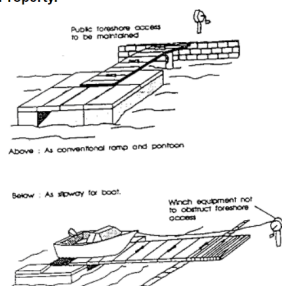
d) Slipways and Launching Ramps

Slipways and launching ramps are generally not favoured.

However, a variation within this control stipulates that *Council may consider slipways and launching ramps where structures are unlikely to detract from the visual character of the foreshore, will not affect marine vegetation and will not restrict public foreshore access.* And that in such instances, the following criteria will apply:

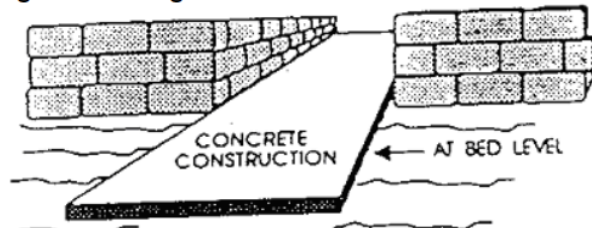
- i) *Innovative design which incorporates slipping facilities with other existing or proposed structures is encouraged (Diagram 5 below).*

Diagram 5: Suggested Dual Purpose Pontoon/Ramp and Slipway Structure for Boat Storage on Private Property.



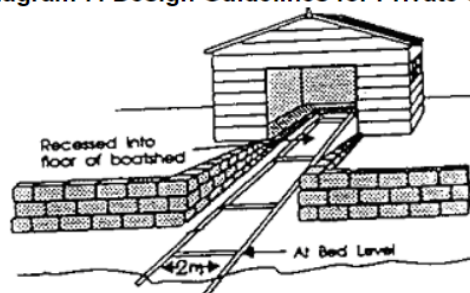
- ii) *Structures, the storage of lightweight boats, and any winch equipment shall be entirely on private freehold land and shall not obstruct public foreshore access.*
- iii) *Structures shall be at ground level, where possible. Slipways from boatsheds, or reclamation must be recessed into the subject structure or work to minimise the height of the sliprails or boat ramp above the bed of the Pittwater Waterway. (Diagram 6 below).*

Diagram 6: Design Guidelines for Private Boat Ramps



- iv) *Sliprails are to be in the form of two parallel rails, no more than 2 metres width apart, with either locking spreaders between the rails or bolted directly to the surface of the concrete without the use of spreaders or embedded in concrete to facilitate free access. (Diagram 7 below).*

Diagram 7: Design Guidelines for Private Slipways



- v) *Timber construction is preferred for proposed boat ramps. Concrete ramps may be considered at bed level in certain locations such as at Crystal Bay, Winji Jimmi Bay, Palm Beach and Careel Bay or where it can be shown, to the satisfaction of Council, that the aims of this clause are not compromised. Other materials such as steel with bonded rust proof coating will also be considered.*

Comment

The proposal seeks to reconstruct the existing slipway rails with a fibreglass ramp (which will be consistent with the existing boat ramp to the adjoining property, being 16 Paradise Avenue) (see figures below). While a slipway or boat ramp may not be favoured, the proposed boat ramp can achieve the above criteria in the following ways:

- i. The proposed design of the boat ramp is consistent with adjoining existing waterfront structures
- ii. The proposed boat ramp does not obstruct public foreshore access.
- iii. The proposed boat ramp is elevated at a height ranging from 600mm - 1.0 metre (where it aligns with the existing boat shed ground level). This height above ground level does not detract from the visual character of the foreshore area as it is minor and will be consistent with adjoining and nearby boat ramps.
- iv. Based on the proposed floor plan of the boat shed and boat ramp, it appears the existing metal sliprails are being retained. The width between the sliprails is 1.4 metres.
- v. The proposed boat ramp will be constructed of fibreglass. This control does not expressly exclude such a material and the use of fibreglass may be supported.

Merit Consideration

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

- ***Waterfront development does not have an adverse impact on the water quality and estuarine habitat of Pittwater. (En)***

Comment

An Estuarine Risk Management Report (prepared by Horton Coastal Engineering, dated 4 October 2023) has been provided with this application. The recommendations made within this report have been included within Condition 1 of this assessment report. Further, Council's Coast and Catchment Officer has reviewed this application and raised no objection to the proposed boatshed and associated works. Relevant conditions of consent have been recommended to ensure the water quality and estuarine habitat of Pittwater Waterway is not negatively or adversely impacted as a result of the proposal.

- ***Public access along the foreshore is not restricted. (S)***

Comment

The proposed boat ramp does not restrict public access along the foreshore area.

- ***Waterfront development does not encroach on navigation channels or adversely affect the use of ferries and service vessels or use of the waterway by adjoining landowners. (S, Ec)***

Comment

Transport for New South Wales (TfNSW) reviewed the proposed development and provided a

letter of consent, dated 30 October 2023. TfNSW is satisfied that the proposed boat ramp does not encroach on navigation channels of Pittwater Waterway, nor does it adversely affect the use of ferries and/or services vessels along the waterway, and use of the waterway by adjoining landowners is maintained.

- ***Structures blend with the natural environment. (S)***

Comment

The proposed schedule of colours and materials does not reference the proposed boat ramp. However, the proposed boat ramp will be consistent with the adjoining and nearby boat ramps in terms of colour and materials.

- ***Structures are not detrimental to the visual quality, water quality or estuarine habitat of the Pittwater Waterway. (En, S)***

Comment

The proposed boat ramp is minor in nature and it is considered that the proposal will not result in a reduced or detrimental visual quality, water quality or estuarine habitat of the Pittwater Waterway.

- ***To promote a mix of commercial waterfront development for the accommodation of boats, their repair and maintenance, and for organised waterfront development. (Ec)***

Comment

The proposal is for residential development. As such, this outcome does not apply.

- ***Waterfront development which does not comply with the outcomes of this clause are removed. (En, S, Ec)***

Comment

As detailed above, the proposed boat ramp achieves compliance with the outcomes of this control.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2024

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

A monetary contribution of \$8,786 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$878,589.

CONCLUSION

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

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

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

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

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

Council is satisfied that the Applicant's written request under Clause 4.6 of the *Pittwater Local Environmental Plan 2014* seeking to justify variation of the development standard contained within Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

PLANNING CONCLUSION

This proposal, for alterations and additions to a dwelling house and boat shed including a new boat ramp, has been referred to the Development Determination Panel (DDP) as the proposed development results in a variation of more than 10% to Clause 4.3 Height of buildings of the *Pittwater Local Environmental Plan 2014* (PLEP 2014). The Clause 4.6 written request to vary development standard Clause 4.3 Height of buildings provides adequate reason that compliance with the requirement of Clause 4.3 is both unreasonable and unnecessary, in this circumstance, and thus the variation can be supported.

The proposed development was notified in accordance with the Northern Beaches Community Participation Plan (CPP) for fourteen (14) days. One (1) submission was received which raised concern regarding proposed solar access to the adjoining property. A detailed assessment of the proposal against the requirements of control C1.4 Solar Access found that the proposal provides for a reasonable level of solar access and thus amended plans were not requested to resolve this submission.

The proposal results in multiple variations to the built form controls under the Pittwater 21 Development Control Plan (P21DCP), these being - C1.4 Solar Access, D1.9 Side and rear building line, D1.11 Building envelope, D15.13 Lateral limits to development seaward of mean high water mark, D15.14 Minimum frontage for waterfront development, and D15.15 Waterfront development. The variations to these controls does not give rise to any unreasonable environmental and/or amenity impacts upon the subject site or adjoining properties (including Pittwater Waterway).

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** to the DDP.

REASONS FOR DETERMINATION

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

RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2024/1062 for Alterations and additions to a dwelling house and boat shed including a new boat ramp on land at Lot 42 DP 17910, 18 Paradise Avenue, AVALON BEACH, Lot LIC 301848, 18 Paradise Avenue, AVALON BEACH, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
2c/21	-	Site Setout Plan	Havanah Building Design	November 2024
06/21	-	Existing Lower Floor Demolition Plan	Havanah Building Design	November 2024
07/21	-	Existing Middle Floor Demolition Plan	Havanah Building Design	November 2024
08/21	-	Existing Dwelling Upper Floor Demolition Plan	Havanah Building Design	November 2024
09/21	-	Proposed Lower Floor Plan	Havanah Building Design	November 2024
10/21	-	Proposed Middle Floor Plan	Havanah Building Design	November 2024
11/21	-	Proposed Upper Floor Plan	Havanah Building Design	November 2024
12/21	-	Proposed Mezzanine Floor Plan	Havanah Building Design	November 2024
13/21	-	Proposed Boat Shed Alterations and Additions Floor Plans, Elevations and Section	Havanah Building Design	November 2024
13a/21	-	Proposed Fencing Plan	Havanah Building Design	November 2024
15/21	-	Proposed Roof Plan	Havanah Building Design	November 2024
16/21	-	Proposed Elevations	Havanah Building Design	November 2024
17/21	-	Proposed Elevations	Havanah Building Design	November 2024
18/21	-	Proposed Elevation and Section	Havanah Building Design	November 2024
19/21	-	Proposed Sections	Havanah Building Design	November 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Waste Management	-	-	-
Estuarine Risk Management Report on 18 Paradise Avenue Avalon Beach	-	Horton Coastal Engineering Pty Ltd	4 October 2023

Geotechnical Report (No. RG633-GR-1-1)	-	Rapid Geo Pty Ltd (	16 August 2023
BASIX Certificate (No. A497112_03)	-	Illawarra Drafting	1 July 2024
Acid Sulfate Soil Assessment (No. 24153-A)		Larry Cook Consulting Pty Ltd	16 July 2024

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

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

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

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Referral - Ausgrid	30 September 2024
NSW Department of Planning and Environment—Water	NSW Department of Planning and Environment—Water Response	30 September 2024
Transport for NSW	Report - Transport for NSW	8 November 2023

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

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

3. **No Approval for Secondary Dwelling**

No approval is granted or implied under this Development Consent for the use of any part of the dwelling house or studio below the existing carport for the purpose of a secondary dwelling or separate occupancy. Built in cooking facilities are not permitted to be installed, other than those shown in the designated kitchen area.

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

4. **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 *Pittwater Local Environmental Plan 2014*, 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.

5. Prescribed Conditions

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

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

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

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

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.

- (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

6. General Requirements

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

- applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
 - iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.
- (h) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
 - (i) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
 - (j) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
 - (k) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
 - (l) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

7. Department of Primary Industries - Fisheries

As per the Department of Primary Industries - Fisheries letter dated 18 January 2024 (Ref. C23/711), the boat ramp is to be constructed of the following:

- The boat ramp and landing is to be constructed with a light penetrating meshed decking material in perpetuity.

Reason: To satisfy the condition requested by the Department of Primary Industries - Fisheries.

FEES / CHARGES / CONTRIBUTIONS

8. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2024

A monetary contribution of \$8,785.89 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 \$878,589.48.

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.

9. 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

10. 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.

11. Erosion and Sediment Control Plan

An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:

- Site Boundaries and contours
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)

- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities)
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls that must include sediment fences, stabilised site access, materials and waste stockpiles locations, location of any stormwater pits on the site and how they are going to be protected.
- North point and scale.

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

Reason: To protect the receiving environment.

12. **Stormwater Drainage Disposal**

The stormwater drainage systems for the development are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy.

All stormwater drainage systems must comply with the requirements of Council's Water Management for Development Policy. Any recommendations identified within a Geotechnical Report relevant to the development are to be incorporated into the design of the stormwater drainage system. Details demonstrating compliance from a qualified and practising Civil Engineer and where relevant a Geotechnical Engineer must be submitted to and approved by the Certifier prior to the issue of a Construction Certificate.

When the proposed discharge point for the development in this consent cannot strictly comply with the Water Management for Development Policy, the Applicant must apply to verify the proposed discharge point by gaining Council approval via a Stormwater Drainage Application. Council approval must be provided to the Certifier prior to the issue of a Construction Certificate when a Stormwater Drainage Application is required. The Stormwater Drainage Application form can be found on Council's website.

Compliance with this condition must not result in variations to the approved development or additional tree removal.

Reason: To ensure satisfactory management of stormwater.

13. **Amendments to the approved plans**

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

- The new vehicular gate is not permitted to be solid, it shall have minimum spacings of 20 millimetres.
- The existing southern boundary fence between the front building line and front boundary line is either to be retained or removed from the architectural plans.

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

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

14. **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.

Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Certifier.

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. **Aquatic ecology letter**

A letter must be provided from a suitably qualified aquatic ecologist supporting that the proposal is unlikely to have any adverse impacts on the aquatic environment. Any recommendations provided in the letter to prevent potential impacts must be incorporated into the construction plans.

The letter and documentation demonstrating compliance with its recommendations if any shall be submitted to the Certifier prior to the release of the Construction Certificate.

Reason: Protection of the receiving environment.

17. **Flood Compatible Materials**

All structural elements below the coastline planning level of 2.8 m AHD as defined in the approved Coastal Risk Management Report shall be comprised of flood compatible materials.

Reason: To ensure potential impact of coastal inundation is minimised.

18. **Estuarine Planning Level Requirements**

An Estuarine Planning Level (EPL) of 2.8m AHD has been adopted by Council for the subject site and shall be applied to all development proposed below this level as follows:

1. All structural elements below 2.8 m AHD shall be of flood compatible materials;

2. All electrical equipment, wiring, fuel lines or any other service pipes and connections must be located either above 2.8 m AHD or waterproofed to this level; and
3. The storage of toxic or potentially polluting goods, chemicals or materials, which may be hazardous or pollute the waterway, is not permitted below 2.8 m AHD.
4. All interior power supplies (including electrical fittings, outlets and switches) must be located at or above 2.8 m AHD. All exterior power supplies (including electrical fittings, outlets and switches) shall be located at or above 2.8 m AHD to avoid the likelihood of contact with splashing waves and spray.

NOTE: Boatsheds cannot be used for any other purpose than the storage of small boats and/or boating equipment. The incorporation of any internal kitchen facilities, habitable rooms, shower or toilet facilities shall not be permitted. Roof areas of boatsheds shall not be used for recreational or observational purposes.

Reason: To ensure vulnerable components of the development are built at the appropriate level.

19. **Compliance with Estuarine Risk Management Report**

The development is to comply with all recommendations of the approved Estuarine Risk Management Report prepared by Horton Coastal Engineering dated October 2023 and these recommendations are to be incorporated into construction plans and specifications and maintained over the life of the development.

Reason: To minimise potential hazards associated with development in an estuarine habitat.

20. **Structural Engineering for Estuarine Risk**

Structural engineering design for the development shall be prepared, with input as necessary from a chartered professional engineer with coastal engineering as a core competency, to ensure that for its design life (taken to be 100 years unless otherwise justified and accepted by Council) the development is able to withstand the wave impact forces and loadings identified in the approved Estuarine Risk Management Report prepared by Horton Coastal Engineering dated October 2023

The potential for component fatigue (wear and tear) should be recognised for the less severe, but more frequent, wave impact loadings.

Reason: To ensure structural engineering is prepared by an appropriately qualified professional

21. **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.

22. **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.

23. **Sydney Water "Tap In"**

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

24. **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. **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.

26. **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.

27. **Installation and Maintenance of Sediment and Erosion Controls**

Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan prior to commencement of any other works on site.

Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and vegetation cover has been re-established across the site, with any remaining areas stabilised with ongoing measures such as jute mesh or matting.

Reason: To protect the receiving environment.

28. **Aquatic environment protection**

Environmental safeguards are to be used during construction to protect the aquatic environment. Appropriate methods must be installed and secured to ensure damage to the aquatic environment is minimised. Actions and recommendations of the aquatic ecology report must be followed.

Reason: To protect the aquatic environment.

29. **Use of equipment and vessels in the vicinity of seagrass**

No equipment is to be placed on any seagrass beds.

Inshore infrastructure for mooring vessels and plant must be used where suitable. Where mooring lines or cables are required, they shall be suitably buoyed prior to laying and kept buoyed once laid to prevent cable drag or swing damage (scalping). Where this is impractical, contractors should use a floating rope.

Vessels must have adequate clearance over seagrass beds, including allowance for tidal movement, swell/wind wave heights and vessel propulsion.

Reason: Protection of seagrass.

30. **Installation and Maintenance of Sediment and Erosion Controls**

Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan prior to commencement of any other works on site.

Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: Protection of the receiving environment.

31. **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.

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 is to be provided demonstrating all perimeter walls columns and or other structural elements, floor levels and the finished roof/ridge height are in accordance with the approved plans.

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

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

35. **Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

36. **Stockpiling materials**

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

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

37. **Geotechnical Issues**

All conditions outlined in Geotechnical Investigation prepared by Rapid Geo dated August 2023 are to be complied with and adhered to throughout development.

Reason: To ensure excavation, foundations, footings, etc is undertaken in an appropriate manner and structurally sound.

38. **Aboriginal Heritage**

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

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

Reason: Aboriginal Heritage Protection.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

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

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

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

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

40. **Stormwater Drainage Disposal Certification**

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

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

The application is to include the completed request forms (NSW Land Registry standard forms

13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification. A guide to the process and associated Legal Document Authorisation Application form can be found on Council's website. The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater detention system within this development consent.

The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the authority to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user for the on-site stormwater detention system is to be submitted.

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

Reason: To ensure satisfactory management of stormwater.

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

42. **Waste Management Confirmation**

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

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

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

43. **Protection of Habitat Features**

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

Reason: To protect wildlife habitat.

44. **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.

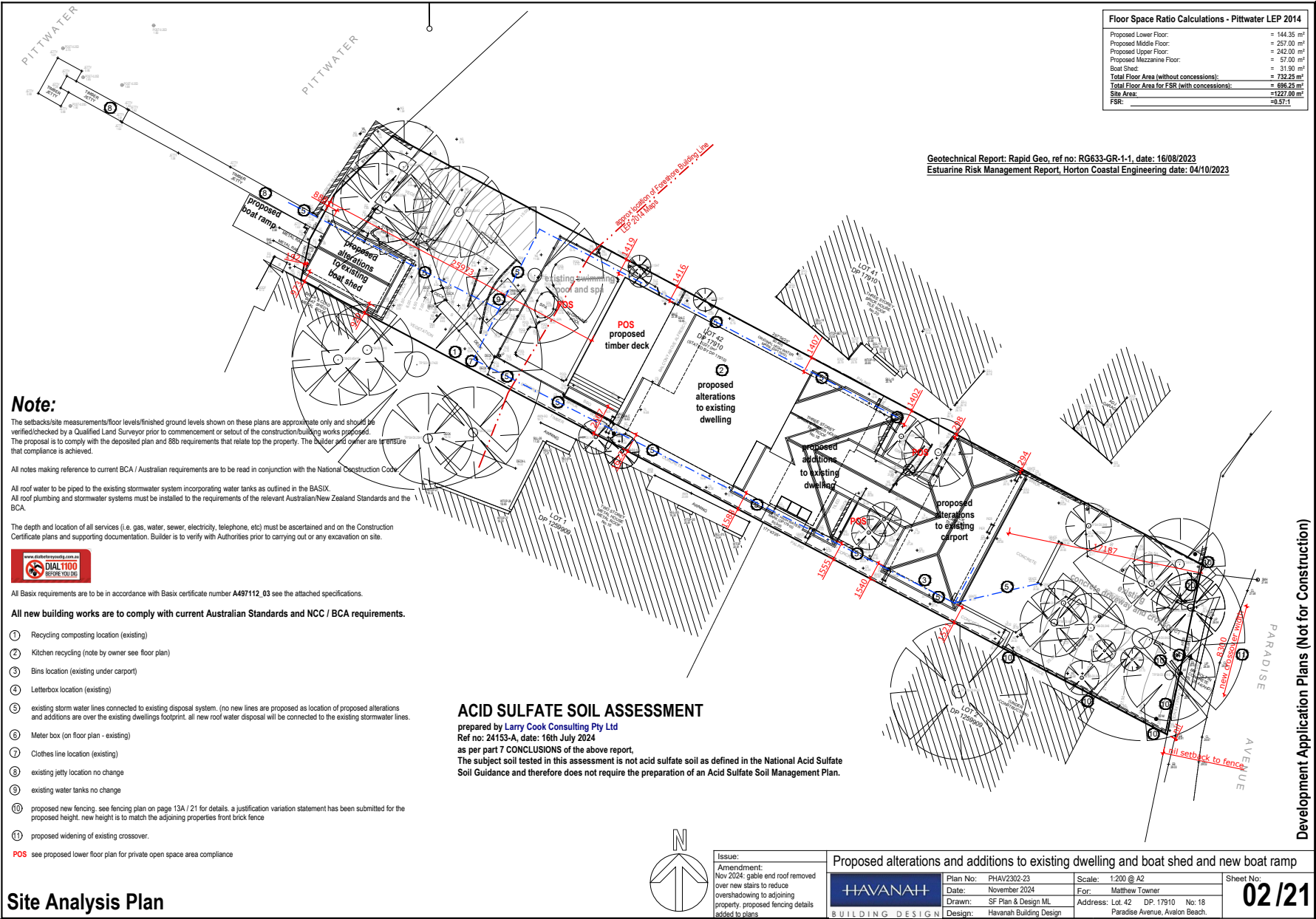
Reason: To protect native wildlife and habitat.

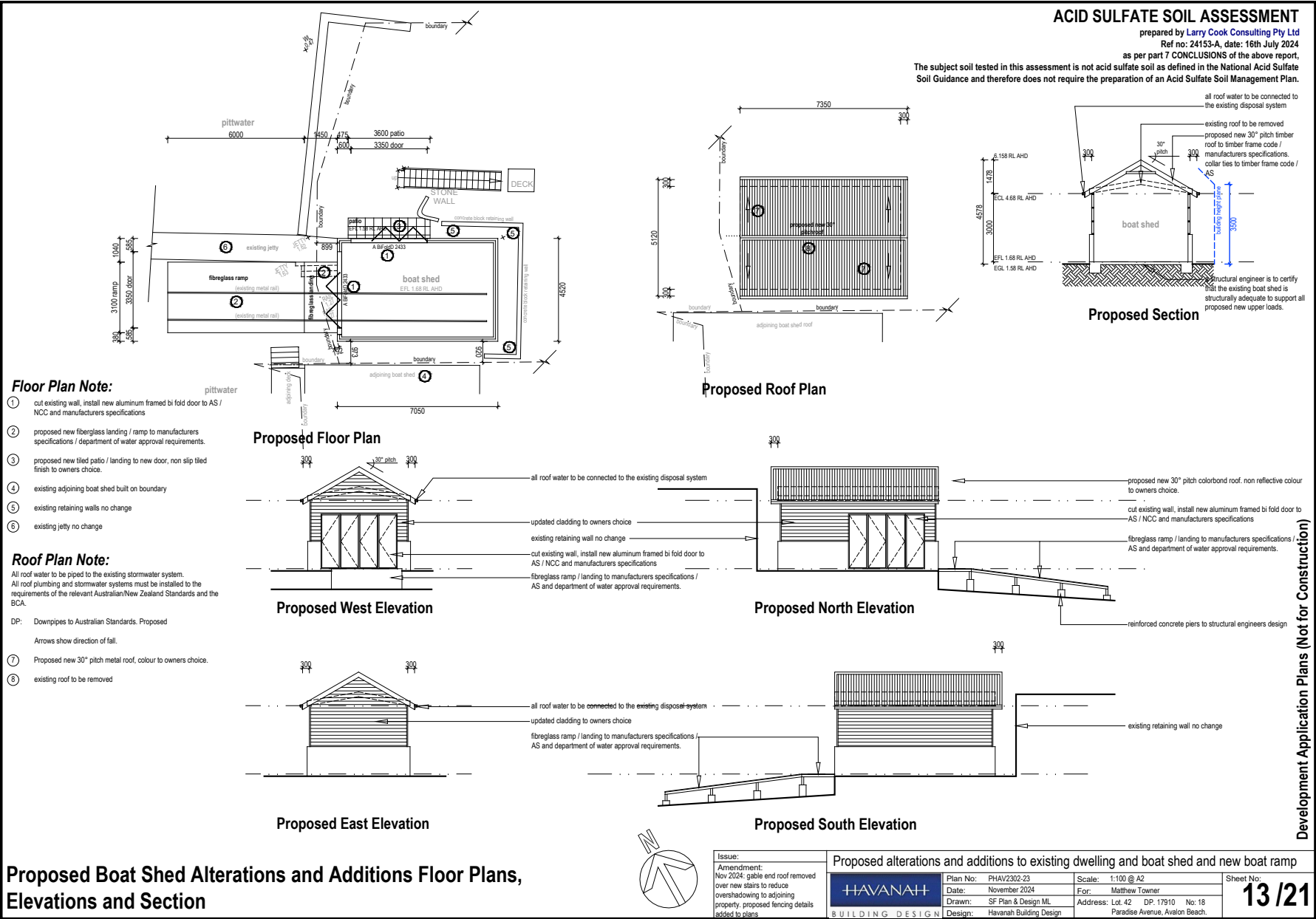
45. **Geotechnical Recommendations**

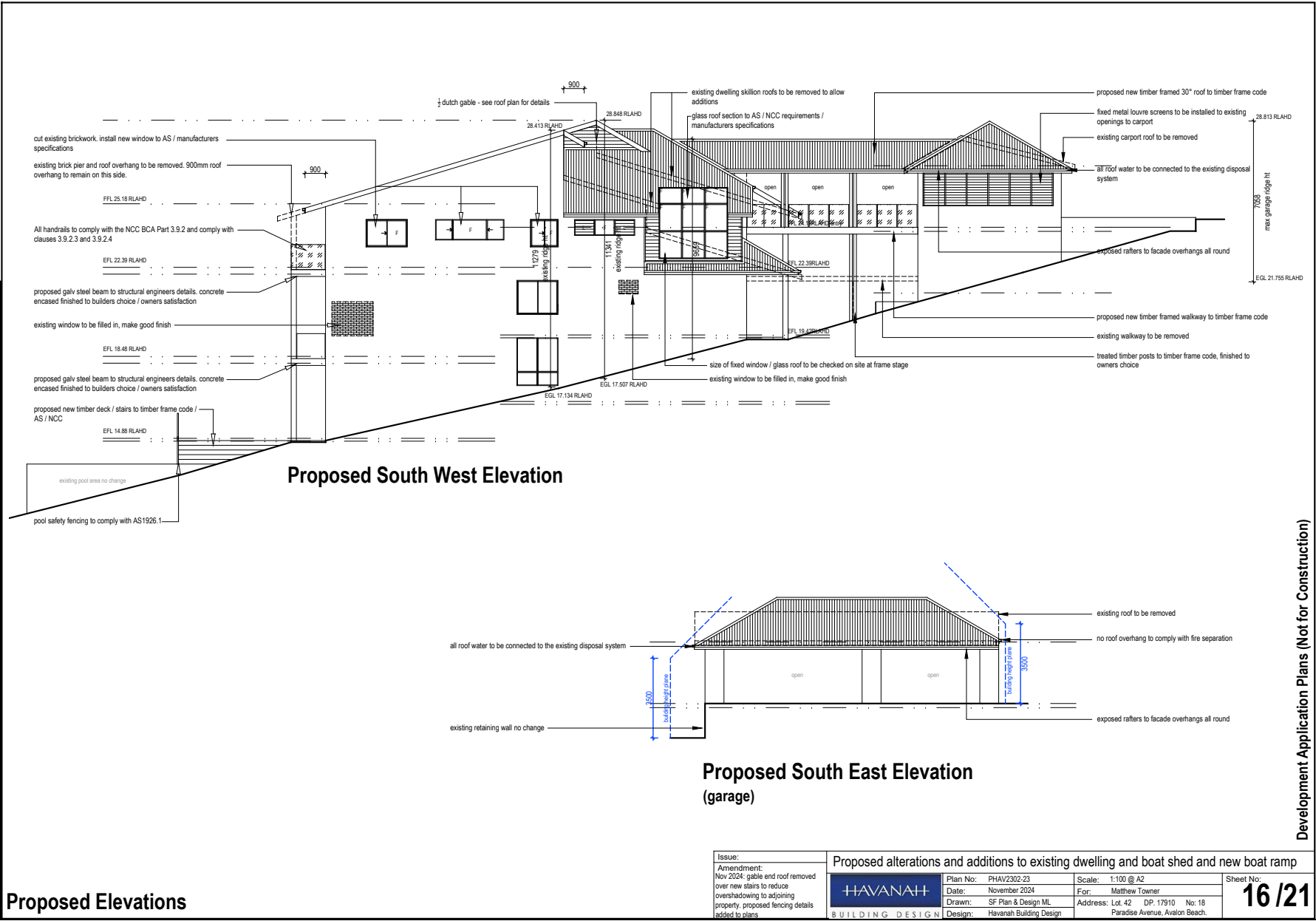
Any ongoing recommendations of the risk assessment required to manage the hazards

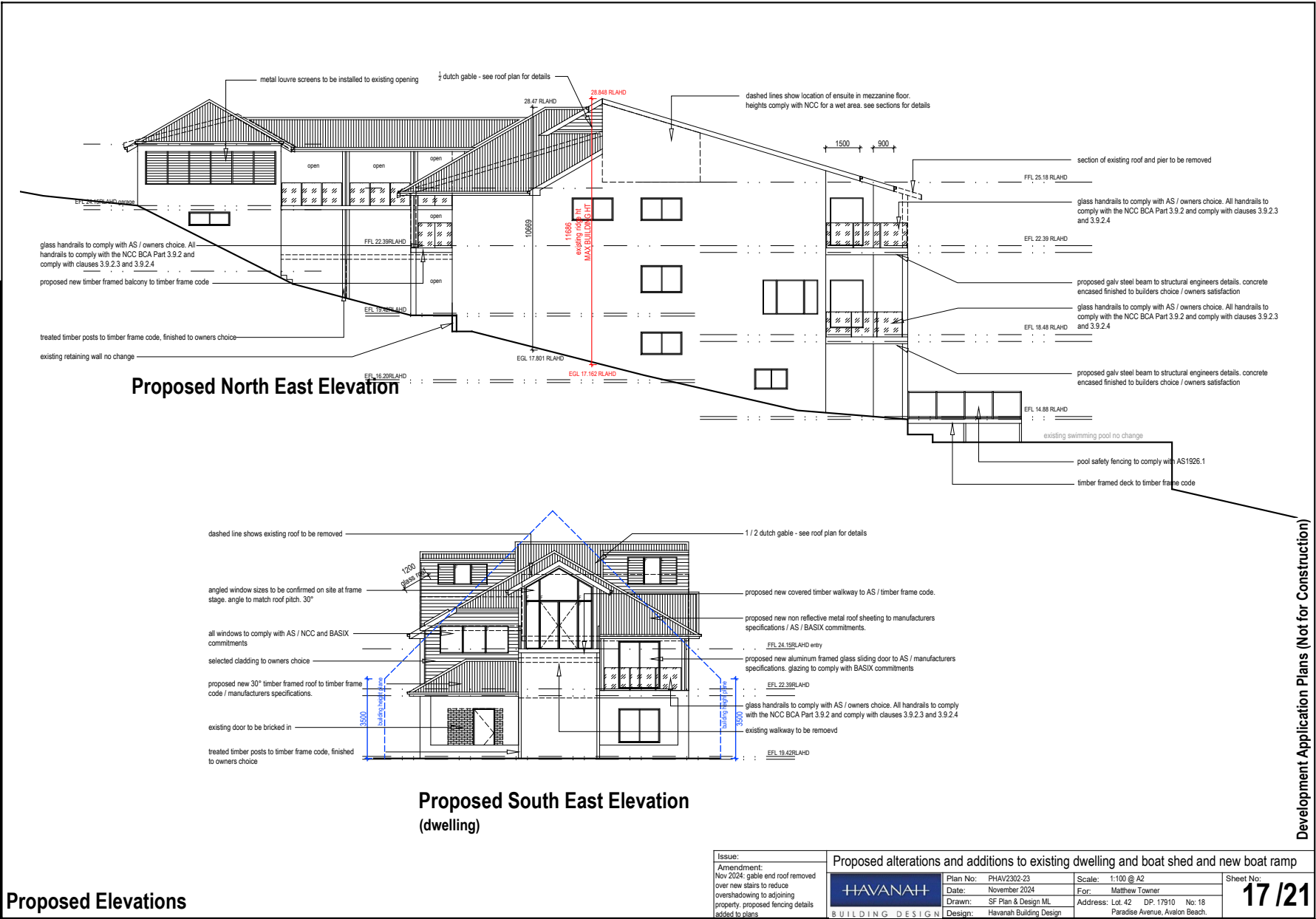
identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.











Corona Projects

DEVELOPMENT APPLICATION **CI4.6 VARIATION REQUEST**

Alterations and additions to an existing dwelling, carport, and boat shed
and the construction of a new deck and boat ramp.

18 Paradise Avenue, Avalon Beach

August 2023

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PROJECT DETAILS

Client: Havanah Pty Ltd
 Subject land: 18 Paradise Avenue, Avalon Beach
 Lot Description: Lot 42 / Deposited Plan 17910
 Proposed development: Alterations and additions to an existing dwelling, carport, and boat shed and the construction of a new deck and boat ramp
 Clause to be varied: Clause 4.3 - Height of Buildings

The report is prepared by Mathew Fortunato
 Bachelor of Architecture and Environments (USYD)

The report is reviewed by Madeline Maric
 Bachelor of Planning (MQU)
 Planning Institute of Australia (PIA)



I certify that the contents of the Clause 4.6 Variation request to the best of my knowledge, has been prepared as follows:

- In accordance with Section 4.12 of the Environmental Planning and Assessment Act 1979 and Clause 24 of the Environmental Planning and Assessment Regulation 2021;
- The statement contains all available information that is relevant to the environmental impact assessment of the proposed development;
- To the best of my knowledge the information contained in this report is neither false nor misleading.

Quality Management

	Name	Date	Signature
Prepared by	Mathew Fortunato	02.08.2023	
Reviewed by	Madeline Maric	07.08.2023	

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1.0 BACKGROUND

This Clause 4.6 variation is a written request to vary a development standard to support a development application for the ‘alterations and additions to an existing dwelling, carport, and boat shed and the construction of a new deck and boat ramp’ at 18 Paradise Avenue, Avalon Beach. The proposal is in direct response to the growing housing needs of the Avalon Beach locality. The design is commensurate in scale, bulk, site coverage, and materiality to many of the buildings located in the immediate locality.

The proposed alterations and additions comprise of the following:

- **Removal (Lower Floor)** of existing stairs adjoining balcony, windows, and doors;
- **Removal (Middle Floor)** of existing kitchen, existing stairs/walkway, existing wall and windows, and internal stairs;
- **Removal (Upper Floor)** of existing floor to allow new entry level, existing windows / doors to be removed and internal stairs;
- **Proposed** walkway area adjoining carport;
- **Alterations** to existing roof, dwelling, boat shed and carport;
- **Construction** of new timber deck in existing private open space area; and the
- **Construction** of new boat ramp on the existing sliprail, adjacent to boat ramp.

Clause 4.3 of Pittwater Local Environmental Plan (LEP) 2014 relates to the maximum **building height** requirements and 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 map stipulates that the maximum height for 18 Paradise Avenue, Avalon Beach is 8.5 metres.

The architectural plans submitted with the Development Application at 18 Paradise Avenue, Avalon Beach indicate that the proposed development has a maximum building height of 11.971m. This results in a 40.8% variation to the development standard and non-compliance of 3.471m.

However, it is to be noted that the proposed works remain under the existing building height. Specifically, the maximum existing building height is 12.495m with a corresponding non-compliance of 3.995m or 47%. Accordingly, the proposed works are located 0.524m under the existing maximum height. Furthermore, an equitable portion of the existing building bulk above the 8.5m maximum height is proposed to be removed within this application. See figures 1 and 2 below illustrating this.

18 Paradise Avenue, Avalon Beach – CI4.6 Variation Request Report – Clause 4.3 – Height of Buildings

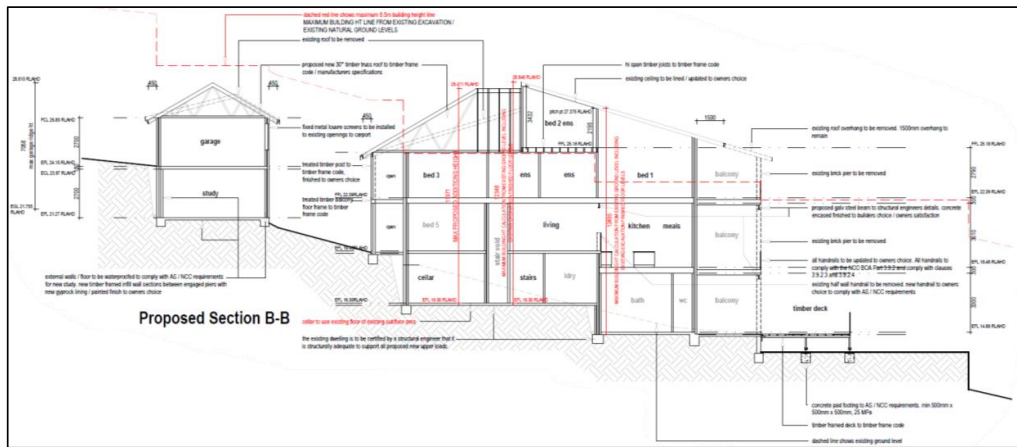


Figure 1: Section B-B (Havanah Building Design, 2023)

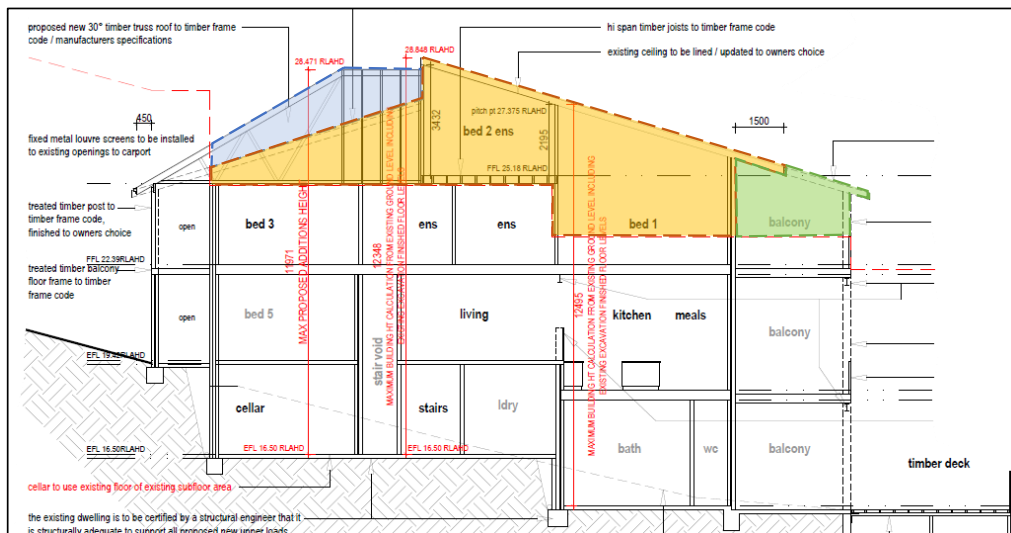


Figure 2: Extract from Section B-B. Proposed elements over 8.5m in height shaded in blue. Existing height non-compliant area in yellow. Reduced height non-compliant area in green. (Havanah Building Design, 2023)

Clause 2D states that:

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

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

Whilst the slope of the land under the building footprint is not in excess of 16.7 degrees, the slope of the land, being approximately 14 degrees, still warrants a degree of variation to the maximum permissible height to accommodate for the fall in topography.

The proposal is of a reasonable scale and provides a high quality and durable development which will assist to meet the high demand for additional housing in the Avalon Beach locality. The development is commensurate in scale and character with other properties in the streetscape. The variation results in the substantial increase in amenity for the subject site without producing any adverse impacts on the privacy, views, solar access and overall amenity of surrounding properties.

2.0 IS THE STANDARD A DEVELOPMENT STANDARD?

Subject to Clause 4.3 of the Pittwater Local Environmental Plan 2014 (LEP 2014), Clause 4.3(2) provides:

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.

A development standard is defined in Section 1.4 of the Environmental Planning and Assessment Act 1979 ("EPA Act") to mean:

"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:

- a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,
- b) the proportion or percentage of the area of a site which a building or work may occupy,
- c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,**
- d) the cubic content or floor space of a building,
- e) the intensity or density of the use of any land, building or work,
- f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,
- g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,
- h) the volume, nature and type of traffic generated by the development,
- i) road patterns,
- j) drainage,
- k) the carrying out of earthworks,
- l) the effects of development on patterns of wind, sunlight, daylight or shadows,
- m) the provision of services, facilities and amenities demanded by development,
- n) the emission of pollution and means for its prevention or control or mitigation, and
- o) such other matters as may be prescribed."

The Height of Buildings control falls under subsection (c); therefore, the control is a development standard and Clause 4.6 of the Pittwater Local Environmental Plan 2014 is applicable.

3.0 CLAUSE 4.6 OF THE PITTWATER LOCAL ENVIRONMENTAL PLAN 2014

The Standard Instrument LEP contains its own variations clause (Clause 4.6) to allow the variation of development standards. Clause 4.6 of the Standard Instrument is similar in tenor to the former State Environmental Planning Policy No. 1; however, the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) and case law suggests a similar approach to SEPP 1 may be taken in part.

There is abundant judicial guidance on how variations under Clause 4.6 variations should be assessed. Some of these cases are taken into consideration in this request for variation.

While it is not necessary to refer to case law, we do so as it has become customary in sustaining requests under Clause 4.6.

4.0 THE ONUS ON THE APPLICANT

Under Clause 4.6(3)(a), it is the onus of the applicant to demonstrate: -

- 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 judgement by Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* clarified the correct approach to Clause 4.6 variation requests, including that:

Paragraph 13 -15 of the judgement states: -

The permissive power in cl 4.6(2) to grant development consent for a development that contravenes the development standard is, however, subject to conditions. Clause 4.6(4) establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard

The first precondition, in cl 4.6(4)(a), is that the consent authority, or the Court on appeal exercising the functions of the consent authority, must form two positive opinions of satisfaction under cl 4.6(4)(a)(i) and (ii). Each opinion of satisfaction of the consent authority, or the Court on appeal, as to the matters in cl 4.6(4)(a) is a jurisdictional fact of a special kind: see Woolworths Ltd v Pallas Newco Pty Ltd (2004) 61 NSWLR 707; [2004] NSWCA 442 at [25]. The formation of the opinions of satisfaction as to the matters in cl 4.6(4)(a) enlivens the power of the consent authority to grant development consent for development that contravenes the development standard.

The first opinion of satisfaction, in cl 4.6(4)(a)(i), is that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by cl 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b)). The written request needs to demonstrate both of these matters.

Accordingly, the matters required to be demonstrated by cl 4.6(3) are set out below using the relevant principles established by the Court.

Clause 4.6 (3) (a) - Compliance with the development standard is unreasonable or unnecessary in this particular case

Pursuant to clause 4.6(3)(a) of the LEP, and the applicable principle within *Wehbe v Pittwater Council* (2007) 156 LGERA 446, the variation to the Height of Buildings development standard is acceptable in the circumstances of this case and compliance with the development standard is considered unreasonable and unnecessary because the proposed development is consistent with the objectives of the Height of Buildings standard, notwithstanding non-compliance with the standard.

Consistency with the objectives of the standard:

The objectives of Clause 4.3 are articulated at Clause 4.3(1): The objectives of this clause are as follows—

Objectives of Clause 4.5 of the PLEP 2014	Comment
(a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,	The variation does not alter the overall maximum building height and largely retains the existing roof form. As such the proposal will not alter the established scale and overall character of dwellings present within 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,	As evidenced in the provided shadow diagrams, the proposal will not increase overshadowing to adjoining properties to an unreasonable extent, retaining in excess of 3 hours of solar access to the rear private open space on the 21 st June. Furthermore, an equitable amount of additional solar access is provided to the adjoining properties with the proposed deletion of the rear roof overhang.
(d) to allow for the reasonable sharing of views,	The minor increase in roof height is not anticipated to obstruct any views across the site, noting that dwellings along the north western side of Paradise Avenue capture view to the rear of the respective sites, towards the waterfront.
(e) to encourage buildings that are designed to respond sensitively to the natural topography,	The proposal will continue to step with the terrain and present as a two-storey building from Paradise Avenue which aligns with the character of the surrounding streetscape. No further excavation is proposed.
(f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.	The variation does not impact any natural features, given it is located upon an already built upon area. Overall, existing vegetation is protected by the proposal.

For the above reasons, I am of the view that the variation requested and the resultant development is consistent with the objectives of the development standard and an appropriate degree of flexibility is warranted. Consequently, I conclude that strict compliance with the development standard is unreasonable or unnecessary in this particular case.

Clause 4.6 (3) (b) - That there are sufficient environmental planning grounds to justify contravening the development standard

Satisfaction as to sufficient environmental planning grounds is a matter for the Council to determine and can be site specific as set out in the judgement of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

Paragraph 23 -24 of the judgement states: -

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].

The term 'environmental planning grounds' is not defined and may be interpreted with wide scope as has been the practice of the Land and Environment Court. The environmental planning grounds supporting variation are on the basis of:

- Prior excavation of the site. The site currently features a deeply excavated lower ground floor footprint that serves to step the development down the site. Specifically, the cellar is 2.92m below natural ground level the bathroom is 1.62m below the natural ground level. This excavation is attributed to the topography of the site with a gradient of approximately 14%. Refer to the provided long section figures 1 and 2.

The existing and proposed numerical height non-compliance can be in part attributed to this existing excavation that results in a sharp drop of 2.92m in the height plane towards the front of the dwelling, which does not reflect in the natural topography of the site. The resultant numerical high non-compliance can be partly attributed to the distorted height plane that has been created from prior excavation.

In the judgement of *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582, a similar variation to maximum building height was proposed that included pre-existing excavation. The court stated at [74] that –

“the prior excavation of the site within the footprint of the existing building, which distorts the height of the 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.”

It is considered that this application proposes a height variation under similar conditions and is consistent with this aspect of the judgment, given the prior excavation on site.

- Reduction of existing height non-compliant bulk. The proposal involves the demolition of a portion of the existing roof overhang to the rear of the dwelling to provide for a new rear balcony. As illustrated in figure 2, this will significantly reduce the portion of the existing roof that exceeds the height limit, thereby reducing bulk impact and improving solar access to adjoining properties. This proposed demolition removes an equitable portion of bulk above the height line to that which is proposed.

- Proposed works remain under the existing ridge height. The proposed works are located 0.524m under the existing maximum ridge height, towards the midpoint of the dwelling. Accordingly, the proposal will not set a new height precedent for the site, rather, it works within the existing previously approved maximum height.

As set out in *'Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118'*, the aforementioned environmental planning grounds do not rely on the benefits of the development as a whole, but rather they directly relate to the proposed Height of Buildings aspect that contravenes the development standard.

For the reasons detailed in this request, I am of the opinion that there are sufficient environmental planning grounds for Council to be satisfied that the request is adequate and to allow appropriate flexibility.

5.0 DEVELOPMENT IN THE PUBLIC INTEREST

Under Clause 4.6(4)(a) & (b), development consent must not be granted for development that contravenes a development standard unless:

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

Pursuant to Cl.4.6(4)(a), the Council must form the positive opinion of satisfaction that the applicant's written request has adequately addressed both of the matters required to be demonstrated by Clause 4.6(3)(a) and (b) and that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out as set out in *'Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118'*.

As demonstrated in section 4 above, the proposed development has satisfied the matters required to be demonstrated in Clause 4.6(3) by providing a written request that demonstrates:

1. Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, by establishing that the objectives of the development standard are achieved notwithstanding the non-compliance.
2. The environmental planning grounds relied on are sufficient to justify the development standard.

In accordance with the findings of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, the Consent Authority under Clause 4.6(4)(a)(i) must only be satisfied that the request addresses Clause 4.6(3). Under Clause 4.6(4)(a)(i) the Consent Authority is not to determine in their opinion whether the request satisfies the requirements of Clause 4.6(3)(a) and (b), just that the request has been made and that these items have demonstrated. The relevant items in Clause 4.6(3) have been demonstrated above.

Clause 4.6 (4)(a)(ii) – The Public Interest

In relation to clause 4.6(4)(a)(ii) of the LEP, the proposed development is in the public interest because it is consistent with the objectives of the applicable Height of Buildings standard under clause 4.3 as provided above in section 4, and the objectives for development in the C4 Environmental Living zone as set out below.

The land upon which the height non-compliant works are located are located in the C4 Environmental Living zone. The objectives of the C4 Environmental Living zone are: -

- *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.*

The development is compatible with the zone objectives as:

The proposal provides low-impact residential development in areas with no anticipated adverse effects on special ecological, scientific, or aesthetic values. The development proposes alterations and additions that are suitable in scale and integrate with the existing landform and landscape. Riparian, foreshore vegetation and wildlife corridors will be retained in the process.

The variation to the Height of Buildings does not render the development incompatible with the zone objectives, in accordance with the approach of the former Chief Judge, Justice Pearlman in *Schaffer Corporation v Hawkesbury City Council* (1992) 77 LGRA 21, in Paragraph [27]:

‘The guiding principle, then, is that a development will be generally consistent with the objectives, if it is not antipathetic to them. It is not necessary to show that the development promotes or is ancillary to those objectives, nor even that it is compatible.’

Taking into consideration the above, the proposed development is in the public interest as it is consistent with the objectives of the development standard and the C4 Environmental Living zone. For these reasons, the proposal and the aforementioned variation does not undermine the integrity of the Height of Buildings development standard and its objectives, as well as the zoning objectives which have been adopted by Council as being in the public interest.

Clause 4.6 (4)(b) - The Concurrence of the Planning Secretary

Clause 4.6(4)(b) of the LEP requires the concurrence of the Secretary (of the Department of Planning, Industry and Environment) before the consent authority can exercise the power to grant development consent for development that contravenes a development standard.

The judgement by Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 clarifies the requirements pursuant to clause 4.6 (4)(b), stating that:

Paragraph 28 - 29 of the judgement states: -

The second precondition in cl 4.6(4) that must be satisfied before the consent authority can exercise the power to grant development consent for development that contravenes the development standard is that the concurrence of the Secretary (of the Department of Planning and the

Environment) has been obtained (cl 4.6(4)(b)). Under cl 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

On appeal, the Court has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), without obtaining or assuming the concurrence of the Secretary under cl 4.6(4)(b), by reason of s 39(6) of the Court Act. Nevertheless, the Court should still consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: Fast Buck\$ v Byron Shire Council (1999) 103 LGERA 94 at 100; Wehbe v Pittwater Council at [41].

Accordingly, the matters in clause 4.6(5) of the LEP should still be considered when exercising the power to grant development consent for development that contravenes a development standard (Fast Buck\$ v Byron Shire Council (1999) 103 LGERA 94 at 100 and Wehbe at [41]).

Clause 4.6 (5) states that:

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

The proposal is not likely to raise any matter of significance for State or regional environmental planning. As addressed above, the non-compliance with the Height of Buildings standard is considered to be in the public interest, and accordingly the public benefit, because the proposed development is consistent with the objectives of the Height of Buildings standard and the objectives of the C4 Environmental Living zone. Accordingly, the proposal is consistent with the matters required to be taken into consideration before concurrence can be granted under clause 4.6(5) of the LEP. The exceedance of the standard will not result in adverse amenity impacts and is in the public interest.

6.0 CONCLUSION

The nature of the proposal necessitates a variation to the Height of Buildings development standard; however, the proposal will be commensurate in bulk and siting to surrounding development within the locality. As development standards tend to be strictly numerical in nature, they fail to take into consideration the nature of the development, any site constraints, or qualitative aspects of the development or of the particular circumstances of the case. Clause 4.6 of the standard instrument LEP allows such an analysis to be carried out.

It has been demonstrated in this request that strict compliance with the Height of Buildings development standard is both unreasonable and unnecessary and that there are sufficient environmental planning grounds to allow Council to form the opinion of satisfaction that this written request has adequately addressed the matters required to be demonstrated by Cl.4.6(3)(a) and (b).

Therefore, I request that council support the variation on the basis that this Clause 4.6 variation demonstrates that strict compliance with the development standard is both unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify a variation to the development standard.



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