

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 11 DECEMBER 2024

Ashleigh Sherry
Manager Business System and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 11 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	MOD2024/0547 - 33 BEATRICE STREET CLONTARF - MODIFICATION OF CONSENT NO.DA2021/2661 GRANTED FOR ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL
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PURPOSE

- A) To refer the attached application for determination as required under adopted delegations of the Charter.
- B) 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 Mod2024/0547 for Modification of Consent No.DA2021/2661 granted for alterations and additions to a dwelling house including a swimming pool on land at Lot 81 DP 9517, 33 Beatrice Street CLONTARF, subject to the conditions set out in the Assessment Report.

Reporting manager	Rod Piggott
TRIM file ref	2024/870446
Attachments	↓1 Assessment Report ↓2 Site Plan and Elevations

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2024/0547
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Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 81 DP 9517, 33 Beatrice Street CLONTARF NSW 2093
Proposed Development:	Modification of Consent No.DA2021/2661 granted for alterations and additions to a dwelling house including a swimming pool
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	Yes
Applicant:	Castlepeake Consulting Pty Ltd

Application Lodged:	16/10/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	23/10/2024 to 06/11/2024
Advertised:	Not Advertised
Submissions Received:	6
Clause 4.6 Variation:	4.3 Height of buildings: 90.58% 4.4 Floor space ratio: 9.58%
Recommendation:	Approval

EXECUTIVE SUMMARY

This modification application seeks to modify Development Consent DA2021/2661, which granted approval for alterations and additions to a dwelling house including a swimming pool.

The application is referred to the Development Determination Panel (DDP) due to an increased variation to the height of buildings development standard within Clause 4.3 of the Manly Local Environmental Plan 2013 (MLEP). The numerical extent of the variation appears substantial (90.58%), though is the result of new minor works at the approved upper level, sitting above the existing steeply sloping site. The overall increase in building height is minor, with the roof being raised from RL 72.42 to RL 72.56 equating to 140mm.

The application is also referred to DDP as it has received six submissions.

It should be noted that the development includes an increased variation to the floor space ratio development standard within Clause 4.4 of the MLEP, though this is the result of reconfiguration only, and is of a minor numerical extent that does not trigger referral to DDP in itself. Numerically this is 0.43:1 (299.7sqm) increased to 0.438:1 (304.9sqm) equating to an additional 5.2sqm.

Concerns raised in the objections predominantly relate to increased height and bulk, character, amenity concerns (solar access, view sharing, and privacy), construction traffic concerns, and loss of property value.

Within this report, detailed consideration is given to the proposed height of buildings and floor space ratio variations, and the amenity concerns. The report demonstrates that, despite its non-compliance with built form controls, the modified development is reasonable in its context and does not result in any unreasonable amenity outcomes.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks to modify Development Consent DA2021/2661, granted for alterations and additions to a dwelling house including a swimming pool. The proposed modifications are as follows:

- Increased garage width to the south,
- Extension of the dwelling entry towards the front boundary (east),
- Extension of the mid-level front deck,
- Reconfiguration of the internal stairs,
- Minor internal room reconfiguration,
- Altered lower floor level,
- Changes to windows and doors,
- Addition of a flue for the living room fireplace,
- Extension of the approved rear (western) balconies to the north and addition of planter boxes,
- Extension of the roof forms and raising of the roof by 200 millimetres,
- Relocation of approved skylights (and deletion of one skylight),
- Addition of an open pergola over the approved upper level balcony,
- Changes to external finishes,
- Addition of a letterbox and front gate,
- Deletion of the bin store room,
- Extension of the southern landing, and
- New slab to laundry.

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 - 6.1 Acid sulfate soils
 Manly Local Environmental Plan 2013 - 6.2 Earthworks
 Manly Local Environmental Plan 2013 - 6.4 Stormwater management
 Manly Local Environmental Plan 2013 - 6.8 Landslide risk
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Local Environmental Plan 2013 - 6.12 Essential services
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 3.4.3 Maintenance of Views

SITE DESCRIPTION

Property Description:	Lot 81 DP 9517 , 33 Beatrice Street CLONTARF NSW 2093
Detailed Site Description:	The subject site consists of one allotment located on the western side of Beatrice Street, Clontarf. The site is regular in shape with a frontage of 15.24 metres along Beatrice Street and a depth of 45.72 metres. The site has a surveyed area of 695.6m². The site is located within the R2 Low Density Residential zone and accommodates a two-storey detached dwelling house with attached double garage. Works for the approved development (per DA2021/2661) are underway. The site steeply slopes down approximately 20 metres from east (front) to west (rear) and contains some mature vegetation to the rear. The site is also burdened by a sewer main across the rear, located approximately 1.2 metres from the rear boundary. Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by two- and three-storey detached dwelling houses.

Map:



SITE HISTORY

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

- DA2021/2661 for alterations and additions to a dwelling house including a swimming pool was approved by the Development Determination Panel on 14 March 2023. Works for this development have commenced.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2021/2661, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2021/2661, as the works retain the approved use as a single detached dwelling house, and involve reconfiguration and additions to approved elements.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA2021/2661 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.

Section 4.55 (2) - Other Modifications	Comments
of applications for modification of a development consent, and	
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 (2) the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

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

Section 4.15 'Matters for Consideration'	Comments
	<u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 2001: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 23/10/2024 to 06/11/2024 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 6 submission/s from:

Name:	Address:
Mr Stephen Page	18 - 20 Beatrice Street BALGOWLAH HEIGHTS NSW 2093
Mr Frerk-Malte Benjamin Feller	2 Grandview Grove SEAFORTH NSW 2092
Elaine Zheng-Chen	35 Beatrice Street CLONTARF NSW 2093
Mrs Suzanne Margaret O'Brien	26 Beatrice Street CLONTARF NSW 2093
Mrs Lisa Caroline Leigh Young	24 Beatrice Street CLONTARF NSW 2093
Mrs Louise Melanie King	31 Beatrice Street CLONTARF NSW 2093

The following issues were raised in the submissions:

- Objection to further building height increase, including solar panels, the raised skylight, and new flue.
- Concern that the facade materials are not in character with the locality.
- Concern that the modifications result in amenity impacts:
 - Increased and unreasonable view loss to 24, 26, and 35 Beatrice Street.
 - Additional overshadowing impact to 31 and 35 Beatrice Street.
 - Loss of privacy to 31 and 35 Beatrice Street.
- Concern that the proposed planter boxes and rainwater tank on the southern elevation unreasonably increase building bulk.
- Concern about traffic and parking impacts during construction.
- Concern that the modifications will further reduce the value of surrounding properties.

The above issues are addressed as follows:

Building Height

Submissions objected to further building height increase and expanse of roof structure, including solar panels, the raised skylight, and new flue.

Comment:

It is noted that chimney flues and solar panels are not included in the definition of building height per the Dictionary of the *Manly Local Environmental Plan 2013*, so do not contribute to the calculation of the building height variation for the development. The raised skylight is no higher than the proposed maximum roof height (RL 72.56). The proposed maximum height is assessed in the sections of this report relating to Clause 4.3 Height of Buildings and Clause 4.6 Exceptions to Development Standards of the *Manly Local Environmental Plan 2013*.

Facade Materials

Submissions raised concern that the facade materials are not in character with the locality.

Comment:

Visits to the subject site and surrounding properties revealed that a wide variety of housing types and architectural styles exist in the visual catchment of the site. This includes use of stone, rendering, timbers and brickwork. The proposed facade materials are compatible with the character of the surrounding area.

Amenity - View Sharing / Overshadowing / Visual Privacy

Submissions raised concern that the modifications result in amenity impacts:

- Increased and unreasonable view loss to 24, 26, and 35 Beatrice Street.
- Additional overshadowing impact to 31 and 35 Beatrice Street.
- Loss of privacy to 31 and 35 Beatrice Street.

Comment:

The proposed modifications are acceptable with respect to view sharing for the reasons detailed in the section of this report relating to Clause 3.4.3 Maintenance of Views of the Manly Development Control Plan 2013.

The proposed modifications retain a compliant level of solar access to 31 Beatrice to the south. It is noted that 35 Beatrice Street is to the north of the subject site, where shadow from the subject site does not fall.

The proposed modifications are acceptable with respect to visual privacy for the reasons detailed in the section of this report relating to Clause 3.4.2 Privacy and Security of the Manly Development Control Plan 2013. The exception to this is Window W104, which is recommended to be amended by way of a condition of consent so that the glass louvres are translucent and fitted such that they cannot be opened more than 45 degrees.

Building Bulk

Submissions raised concern that the proposed planter boxes and rainwater tank on the southern elevation unreasonably increase building bulk.

Comment:

The proposed planter boxes and rainwater tank are located such that they retain a similar building form to that of the approved development. The increased building height and wall height are acceptable for the reasons detailed in the relevant sections of this report. The rainwater tank is well-located below the living levels of the subject site and adjoining site to the south, such that it will generally not be visible. It is also noted that such a rainwater tank can be constructed without approval per the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

Construction Traffic Impacts

Submissions raised concern about traffic and parking impacts during construction.

Comment:

It is noted that construction of the approved development subject of this modification application (DA2021/2661) is underway and that the development application was approved without need for a construction traffic management plan (CTMP). The modifications proposed under this application do not result in a development of a scale that now warrants preparation of a CTMP.

Property Value

Submissions raised concern that the modifications will further reduce the value of surrounding properties.

Comment:

Impact of a development on property value is not a planning matter for consideration under the *Environmental Planning and Assessment Act 1979*.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Solid Fuel/Oil Heater)	Supported, subject to conditions <u>Updated Comments (25 November 2024):</u> Additional information on the proposed flue has been received and is acceptable subject to recommended conditions of consent. <u>Original Comments (17 October 2024):</u> The proposal includes the following: <i>"Install flue from fireplace in living room below</i> <i>A solid fuel heater is to be used in the living room, which requires fluing through the roof garden. The height of the flue is to meet the manufacturers installation requirements. It will be visible from the street, but will not have any meaningful impact on view as demonstrated in the attached view analysis.</i> <i>There is no environmental impact as a result of this modification."</i> In regard to the above, it is not clear from the plans how the height of the flue will relate to the nearest building and whether the requirements of Australian Standard 2918:2018 will be met in regard to buildings within a 6 meters horizontal plane about the flue exit, amongst other possible considerations as well. Additionally, the potential for compliance or otherwise with Australian Standard 4013 cannot be assessed at this time, as it is unknown as to what type of appliance the flue will be connected to.
Landscape Officer	Supported without additional conditions The application is for modification to development consent DA2021/2661 as described in reports and as illustrated on plans. The approved landscape outcomes under the development consent are not altered and thus no concerns are raised.
NECC (Development Engineering)	Supported without additional conditions The proposed modification does not alter the original assessment of the application by Development Engineering. A review of the original consent indicates that there is a condition of consent that relates to the certification of the relining of the existing drainage line that traverses the site which is not required and should be deleted.

Internal Referral Body	Comments
	Development Engineering support the proposal subject to the deletion of condition 25 of consent DA2021/2661.
NECC (Flooding)	<i>Supported without additional conditions</i> The proposal is for Modification of Development Consent DA2021/2661. This proposal includes alterations to each floor of the development and the roof. The proposal is not affected by the 1% AEP or PMF and as such is not subject to any flood related controls. The proposal generally complies with Section 5.4.3 of the Manly DCP and Clause 5.21 of the Manly LEP.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No. A441623_03 dated 20 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 provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings	Max. 8.5m	3.3 to 15m (Max. RL 72.42)	16.2m* (Max. RL 72.56)	90.58%	No
Floor Space Ratio	0.4:1 (278.24m ²)	0.43:1 (299.7m ²)	0.438:1 (304.9m ²)	9.58%	No

* It should be noted that the maximum roof height under this modification application is not raised by 1.2 metres. The modified development includes an additional pergola over the upper level terrace, which results in a greater numerical building height calculation.

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

Zone R2 Low Density Residential

With respect to the proposed increased variations to the height of buildings and floor space ratio development standards of the *Manly Local Environmental Plan 2013*, the objectives of the R2 Low Density Residential zone are addressed as follows:

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

Comment:

The proposed modifications retain the existing use of the site for a detached dwelling house, which provides housing for the community in the low density context of the site.

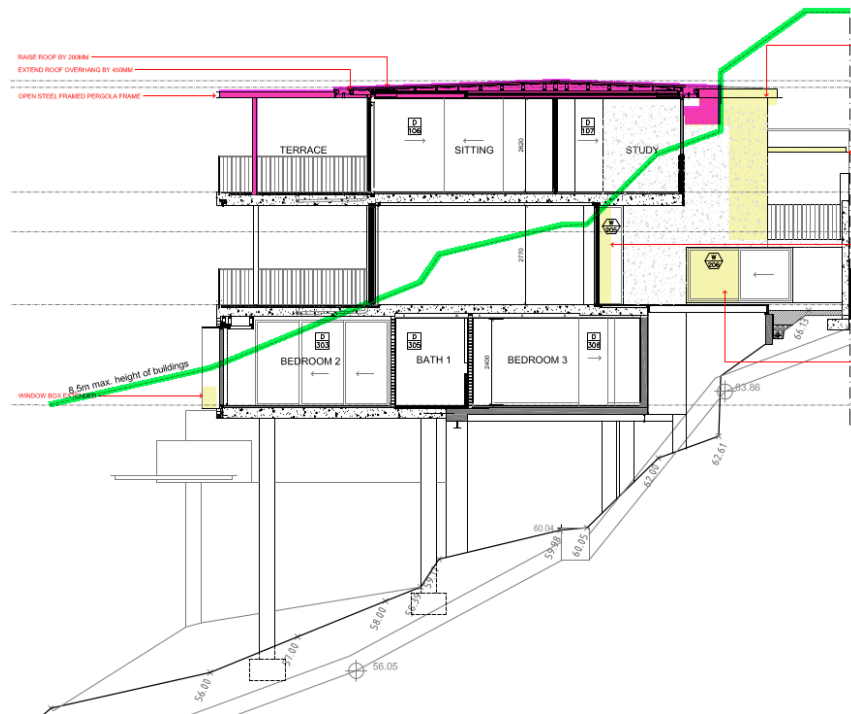
To enable other land uses that provide facilities or services to meet the day to day needs of residents.

Comment:

Not applicable. The proposed modifications retain the residential use of the site.

4.3 Height of buildings

The proposed modifications result in a building height of 16.2 metres (maximum RL of 72.56), where the control allows for a maximum of 8.5 metres. The approved development reached a maximum height of RL 72.42.



Above: The new works above the height limit, marked in pink.

With respect to the proposed increased variation to the height of buildings development standard of the Manly Local Environmental Plan 2013 and the non-compliance Clause 4.1.2.1 Wall Height of the Manly Development Control Plan 2013, the objectives of Clause 4.3 are addressed as follows:

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

Comment:

Despite the height of buildings variation, the modified development will retain a roof height and form that is consistent and compatible with the street and surrounding properties, which is characterised by multi-storey detached dwelling houses of generous proportions. It is noted that the roof area is proposed to be expanded to the front (east) above the garage, and marginally to the rear (west). From the street, the proposed development will appear as a single-storey development, given the steep drop of the site away from the street. In this way, the expanded and raised roof form and the other proposed modifications are not unreasonable in the streetscape.

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

Comment:

As demonstrated throughout this report, the proposed modified development remains of acceptable bulk and scale. Detailed assessment of Clause 4.4 Floor Space Ratio of the *Manly Local Environmental Plan 2013* (which controls bulk and scale) is provided in the corresponding section of this report.

The additional overall building height is necessitated by compliance with Building Code of Australia requirements, and is marginal beyond the approval. The works do not result in any unreasonable impacts to adjoining or surrounding sites with respect to bulk and scale, in that the portion of the development where the increase has most impact is to the rear, where the slope of the land steeply falls away. The proposed additional height does not unreasonably impact upon views, shadowing or

privacy for adjoining properties.

It is noted that the proposed modifications also include a new pergola structure above the approved upper level rear terrace, which results in a variation to the height of buildings development standard. The proposed pergola is open in its form, being posts and beams only. The pergola does not include any enclosing shade structures and is intended to act as a trellis for planting in order to assist with amenity on the terrace, considering its western orientation. As such, while the pergola is numerically significantly non-compliant, it does not result in unreasonable bulk and scale.

(c) to minimise disruption to the following—

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

Comment:

The proposed development allows for suitable view sharing, as detailed in the section of this report relating to Clause 3.4.3 Maintenance of Views of the Manly Development Control Plan 2013.

(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:

Despite the height of buildings variation, the proposed modifications retain compliant solar access to adjoining properties, as demonstrated by the submitted shadow diagrams.

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

Comment:

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

4.4 Floor space ratio

The modified development includes a floor space ratio of 0.438:1 (304.9m²), where the maximum allowable is 0.4:1 (278.24m²). The approved development included a floor space ratio of 0.43:1 (299.7m²). As such, the proposed modifications result in an additional 5.2m². With respect to the proposed increased variation to the floor space ratio development standard of the *Manly Local Environmental Plan 2013*, the objectives of Clause 4.4 are addressed as follows:

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

Comment:

The proposed modifications increase the floor space ratio, given the additional 5.2m² of gross floor area. This increase is due to reconfiguration of the approved floor plans, rather than due to increased bulk and scale. It is noted that the proposed modifications also include additional building height, and the resultant development is not compliant with the height of buildings development standard. Despite this, the proposed modifications retain a development that is of consistent bulk and scale in the streetscape. From Beatrice Street, the development will still appear as a single-storey dwelling house, given the steep drop of the site away from the street.

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

Comment:

The proposed modifications do not result in unreasonable view sharing impacts, as detailed in the section of this report relating to Clause 3.4.3 Maintenance of Views of the Manly Development Control Plan 2013.

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

Comment:

The proposed modifications are designed and sited so as to generally retain the same visual relationship between the development and the character of the surrounding area. It is noted that less landscaped area is provided in the front yard than in the approved development, but that this area is set behind a masonry wall (as approved), so is not visible from the streetscape. As such, that modification does not change the approved landscaped character of the site as viewed from the street. The proposed additional height is not of a scale that is unreasonable in consideration of the types and sizes of dwellings in the surrounding area, and the resultant development will remain compatible with the built form character of the street.

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

Comment:

The proposed modifications are designed and sited so as not to result in adverse impact on the use or enjoyment of adjoining land or the public domain, in that the resultant development does not unreasonably impact on amenity, as detailed throughout this report.

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

Comment:

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

4.6 Exceptions to development standards

Whilst the modification will result in a building height and gross floor area that contravenes the maximum permitted by Clauses 4.3 and 4.4 of the MLEP 2013, the application does not strictly need to address the requirements of Clause 4.6.

The application has been made under Section 4.55 of the *Environmental Planning and Assessment Act 1979*, which authorises the development for which consent was granted to be modified, notwithstanding any breach of development standards. As such, no document pursuant to Section 35B of the *Environmental Planning and Assessment Regulation 2021* or Clause 4.6 is required.

The matters set out in Section 4.55(3) are addressed in the relevant sections of this report.

6.1 Acid sulfate soils

Clause 6.1 Acid Sulfate Soils requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works. The site is located in an area identified as Acid Sulfate Soil Class 5, as indicated on Council's Acid Sulfate Soils Planning Map. The development is not anticipated to result in risk associated with acid sulfate soils.

6.2 Earthworks

The objectives of Clause 6.2 Earthworks require development:

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

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

- (f) the likelihood of disturbing relics*

Comment:

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

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

Comment:

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

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

Comment:

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

6.4 Stormwater management

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

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

Comment:

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

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

Comment:

It is not necessary to incorporate on-site stormwater retention into the development.

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

Comment:

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

6.8 Landslide risk

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

(a) matches the underlying geotechnical conditions of the land, and

(b) is restricted on unsuitable land, and

(c) does not endanger life or property.

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

(a) site layout, including access,

(b) the development's design and construction methods,

(c) the amount of cut and fill that will be required for the development,

(d) waste water management, stormwater and drainage across the land,

(e) the geotechnical constraints of the site,

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

Comment:

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

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

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

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

Comment:

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

6.9 Foreshore scenic protection area

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

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

Comment:

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

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

6.12 Essential services

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

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

Comment:

The subject site is supplied with the above essential services. The approved development and proposed modifications retain and rely upon these services.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 695.6m ²	Requirement	Approved	Proposed	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: Max. 1 dwelling per 1,150m ²	1 dwelling on 695.6m ² site (existing)	Unchanged	Existing
	Dwelling Size: Min. 117m ²	299.7m ²	304.9m ²	Yes
4.1.2.1 Wall Height (based on gradient >1:4)	N: Max. 8m	Max. 9.2m*	9.8m	No
	S: Max. 8m	Max. 13.3m*	13.5m	No
4.1.2.2 Number of Storeys	Max. 2 storeys	3 storeys	Unchanged	As approved
4.1.2.3 Roof Height	Height: Max. 2.5m	500mm	Unchanged	Yes
	Pitch: Max. 35 degrees	3 degrees	Unchanged	Yes
4.1.4.1 Street Front Setbacks	Prevailing Building Line or Min. 6m	Upper Level: Prevailing (Nil to 4.7m)	Unchanged	Yes
		Mid Level: Prevailing (Nil to 6.7m)	Prevailing (Nil to 7m)	Yes
		Lower Level: Existing (4.4m to 5.5m)	Unchanged	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages (based on wall height)	North: 1 to 2.7m	Lower Ground: 1.1m	Unchanged	As approved
		Mid Level: 1.1m		
		Upper Level: 0.9m to 1.1m		
	South: 1.8 to 4m	Lower Ground: 0.9m to 1.2m	Unchanged	Yes
		Mid Level: 0.9m to 1.2m		
		Upper Level: 1.8m		
	Windows: Min. 3m	N: Min. 900mm	Min. 1m	Improvement on approval
		S: Min. 960mm	Min. 1m	Improvement on approval
4.1.4.4 Rear Setbacks	Min. 8m	Upper Level: Min. 25.4m	Min. 27.9m	Yes

		Mid Level: Min. 28m	Min. 27.9m	Yes
		Lower Level: Min. 28m	Min. 24m	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Total Open Space Min. 60% of site area (417.36m ²)	78.9% (549m ²)	95.5% (664.4m ²)	Yes
	Above Ground: Max. 25% of TOS (166.1m ²)	16.92% (92.9m ²)	23.5% (156.2m ²)	Yes
4.1.5.2 Landscaped Area	Landscaped Area: Min. 40% of TOS (265.76m ²)	85.5% (469.6m ²)	72.5% (481.7m ²)	Yes
	Min. 3 native trees	3 trees	Unchanged	Yes
4.1.5.3 Private Open Space	Min. 18m ²	>18m ²	>18m ²	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Max. 50% of frontage, up to 6.2m	39.4%, 6m	40%, 6.1m	Yes
4.1.9 Swimming Pools, Spas and Water Features	Max. 1m above ground	Max. 7m	Max. 6.7m	Improvement on approval
	Min. 1m to coping	N: 1.2m	Unchanged	Yes
	Min. 1.5m to water	N: 1.5m	Unchanged	Yes
Schedule 3 Parking and Access	Min. 2 spaces	2 spaces	Unchanged	Yes

* The previous assessment noted the maximum wall heights to be 8.4 metres (north) and 12.8 metres (south). It appears that the previous assessment calculated wall height to finished ground level, where it is to be calculated to natural ground level, per Clause 4.1.2.1 of the Manly DCP. The wall heights have been corrected above, based on the stamped plans of DA2021/2661.

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
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

Submissions from 31 Beatrice Street (to the south) and 35 Beatrice Street (to the north) raised concern about loss of privacy as a result of the modified development, given changes are proposed the approved windows and balconies. The modified development is addressed with respect to privacy as follows:

On the northern elevation of the upper level, the modified development retains the approved garage door, and reconfigures the three approved windows and the western balcony, as follows:

- W103: This modified window is of similar dimensions, proposed to be shifted along the wall towards the east, and does not present an unreasonable privacy concern, as the window is to the garage.
- W104: This modified window is proposed to be of greater dimensions and is proposed to be constructed of glass louvres. Given the window is to the main bedroom ensuite, a condition of consent has been included in the recommendation of this report requiring that the louvres be translucent and fitted such that they cannot be opened more than 45 degrees. This will allow ventilation without resulting in unreasonable privacy impacts for occupants of the subject site or 35 Beatrice Street to the north.

- W105: This modified window is proposed to be of the same dimensions in a slightly different location, and does not present an unreasonable privacy concern.
- Balcony: The balcony is proposed to be extended towards the north beyond the approved footprint, though provides sufficient separation to 35 Beatrice Street (6.9 metres to the common boundary, and minimum 9.1 metres to the pool paving at 35 Beatrice Street).

On the northern elevation of the middle level, the modified development retains the approved side access door, and reconfigures the three approved windows and the western balcony, as follows:

- W201 and W202: These modified windows are proposed to be of greater dimensions, but do not present an unreasonable privacy concern as they are associated with the laundry and pantry rooms.
- W203: This modified window is of reconfigured dimensions, though a similar (slightly larger) glazed area. The window is associated with a kitchen, but does not present an unreasonable privacy outcome, given the window is lower in the wall, sitting above the kitchen bench. In this way, the window provides view downwards towards the side boundary fence and undercroft area of 35 Beatrice Street.
- Balcony: The balcony is proposed to be extended towards the north beyond the approved footprint, though provides sufficient separation to 35 Beatrice Street (6.9 metres to the common boundary, and minimum 9.1 metres to the pool paving at 35 Beatrice Street).

The northern elevation of the lower level remains generally unchanged with respect to privacy impact.

On the southern elevation of the upper middle levels, the modified development generally retains the approved window and balcony configuration, such that there is no increased privacy concern. It is noted that the southern window to the media/utility room at the middle level (W206) is of much the same dimensions, shifted along the wall slightly towards the west.

On the southern elevation of the lower level, the modified development reconfigures the dimensions of W303 (bathroom) and W304 (bedroom) and deletes privacy screening. These changes are offset by the use of translucent glazing to W303 and a high sill level of 1.8 metres to W304, so do not present an unreasonable privacy outcome.

Subject to the recommended amendment to W104 above, the modified development remains acceptable with respect to privacy.

3.4.3 Maintenance of Views

Submissions from 24, 26 and 35 Beatrice Street raised concern about view loss specific to their properties as a result of the modified development. The development is considered against the underlying objectives of the control as follows:

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

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

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

Comment:

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

1. Nature of the views affected

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

Comment to Principle 1:

The views from the objecting properties are as follows:

- 24 and 26 Beatrice Street: These properties have views to the front (eastern) elevation of the subject site, and look out over the subject site to the harbour, the Spit and Spit Bridge, Mosman and its interface with the harbour, Chinamans Beach, and the skylines of North Sydney and Chatswood CBDs. The views do not contain icons and are partially obscured in each direction by existing dwellings and vegetation.
- 35 Beatrice Street: The property has views to the subject site (south), the harbour, the Spit, Mosman and its interface with the harbour, Chinamans Beach, and the skylines of North Sydney and Chatswood CBDs. The view does not contain icons and is partially obscured in each direction by existing dwellings 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:

The views from the objecting properties are obtained as follows:

- 24 Beatrice Street: The available views are obtained from the front yard pool area and associated terrace, the ground floor entry way and patio, and the first floor living room and adjoining western balcony. The views are generally obtained from both standing and seated positions across the front (western) boundary.
- 26 Beatrice Street: The available views are obtained from the front yard pool area and associated terraces, the ground floor living room and adjoining western terrace, and the first floor main bedroom and adjoining western terrace. The views are generally obtained from both standing and seated positions across the front (western) boundary.
- 35 Beatrice Street: The available views are obtained from the ground floor bedrooms, living area and pool area, and the first floor main bedroom and associated balcony, and living area. The views are generally obtained from both standing and seated positions across the southern side boundary and the rear (western) boundary (noting that the subject site is to the south only).

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:

For context regarding the below photos from 24 and 26 Beatrice Street, the solid grey wall shown to the left of the photographs (marked by a green line) has a maximum height of RL 72.98. The proposed maximum height of the roof at the subject site is RL 72.56. That is, the proposed raised roof is minimum 420 millimetres lower than that wall, and does not span the full width of the site.

24 and 26 Beatrice Street:

The overall extent of the impact to 24 and 26 Beatrice Street is minor, with portions of the properties that will experience moderate view loss, as follows:

- From the front yard pool areas and associated terraces of both properties, the impact on the view will be moderate. The development is likely to result in the loss of a portion of the existing water and marina views. However, the increase in view loss beyond that of the approved development is minor.
- From the ground floor living room and associated terrace as well as the first floor main bedroom and associated balcony of 24 Beatrice Street, and from the first floor living room and associated western balcony of 26 Beatrice Street, the impact on the views will be minor (given the difference in levels), with the modified development obscuring views to the distant trees only, with a portion of those views retained. From these points, it is expected the properties will retain all views to the harbour and its interface with the land, the Spit and Spit Bridge, and the other distant important features.



Above: The view from the western edge of the pool terrace at 24 Beatrice Street (the worst affected point), from a standing position towards the west.



Above: The view from the southern edge of the pool terrace at 26 Beatrice Street (the worst affected point), from a standing position towards the south-west.

35 Beatrice Street:

The overall extent of the impact to 35 Beatrice Street is minor, as follows:

- From the ground floor bedrooms, living area, and pool area, the impact on views will be minor. The modified development is expected to obscure view to other existing dwellings and vegetation to the south, with potential loss of a small and distant corridor to water to the south that is currently predominantly obscured by vegetation (marked in blue below).
- From the first floor main bedroom and associated balcony, and living area, the impact on the views will be minor. The modified development is expected to obscure views to other existing dwellings, with potential loss of a small and distant corridor to water to the south that is currently predominantly obscured by vegetation (marked in blue below).
- It is expected the property will retain all views to the harbour and its interface with the land, the Spit and Spit Bridge, and the other distant important features.



Above: The view from the balcony adjoining the main bedroom at 35 Beatrice Street, from a standing position towards the south-east.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

It is noted that the proposed modifications result in an increased variation to the height of buildings development standard, due to the increased roof height, roof expansion, and the addition of the pergola above the approved upper level rear balcony. The resultant development is demonstrably acceptable for the reasons detailed in the section of this report relating to Clause 4.3 Height of Buildings of the *Manly Local Environmental Plan 2013*.

Despite the resulting height non-compliance, the proposed modifications are shown above to retain reasonable view sharing for each objecting property. The modified development will retain the majority of views to the harbour and its interface with the land. It should be noted that for 24 and 26 Beatrice Street, the view is most affected from their respective pool areas and associated terraces, being spaces where the intention is not necessarily to look at the view, but generally (not exclusively) to participate in active recreation. From the living rooms and associated balconies of 24 and 26 Beatrice Street, where occupants may spend more time observing the view, the impact of the modified development on views will not be readily perceptible beyond the approved development.

Given the above, the proposed modifications are reasonable with respect to view sharing without amendment.

The impact on the views from the objecting properties does not warrant refusal of the application.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2024

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- 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

PLANNING CONCLUSION

This modification application sought to modify Development Consent DA2021/2661, which granted approval for alterations and additions to a dwelling house including a swimming pool.

The application was referred to the Development Determination Panel (DDP) due to an increased variation to the height of buildings development standard, being the result of new minor works at the approved upper level, sitting above the existing steeply sloping site.

Concerns raised in the six objections predominantly relate to increased height and bulk, character, amenity concerns (solar access, view sharing, and privacy), construction traffic concerns, and loss of property value.

Within this report, detailed consideration was given to the proposed height of buildings and floor space ratio variations, and the amenity concerns. The report demonstrated that, despite its non-compliance with built form controls, the modified development is reasonable in its context and does not result in any unreasonable amenity outcomes.

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

REASON FOR DETERMINATION

It is considered that the proposed development satisfies the appropriate controls and that all

processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2024/0547 for Modification of Consent No.DA2021/2661 granted for alterations and additions to a dwelling house including a swimming pool on land at Lot 81 DP 9517,33 Beatrice Street, CLONTARF, subject to the conditions printed below:

Modification Summary

The development consent is modified as follows:

MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
PAN-474718 Mod2024/0547	The date of this notice of determination	Internal and external modifications, including increased building height and floor space. Additional Conditions: - Condition 1A Modification of Consent - Approved Plans and Supporting Documentation - Condition 13A Amendment to Window W104 - Condition 26A Installation and Certification of Solid Fuel Burning Heater - Condition 30 Operation of Solid Fuel Burning Heater - Condition 31 Maintenance of Solid Fuel Burning Heater Deleted Conditions: - Condition 25 Certification of Council Drainage Works and Works as Executed Data Amended Conditions: - Condition 2 Compliance with Other Department, Authority or Service Requirements

Modified conditions

A. Add Condition 1A Modification of Consent - Approved Plans and Supporting Documentation, to read as follows:

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA01	S4.55(1)	Proposed Site Plan	Castlepeake Consulting	25 November 2024
DA02	S4.55	Proposed Upper Level Floor Plan	Castlepeake Consulting	30 September 2024
DA03	S4.55	Proposed Mid-Level Floor Plan	Castlepeake Consulting	30 September 2024
DA04	S4.55	Proposed Lower Level Floor Plan	Castlepeake Consulting	30 September 2024
DA05	S4.55	Proposed Lower Level Terrace Plan	Castlepeake Consulting	30 September 2024
DA06	S4.55	Proposed Roof Plan	Castlepeake Consulting	30 September 2024
DA07	S4.55	Proposed Elevation - North	Castlepeake Consulting	30 September 2024
DA08	S4.55	Proposed Elevation - South	Castlepeake Consulting	30 September 2024
DA09	S4.55	Proposed Elevations - East & West	Castlepeake Consulting	30 September 2024
DA10	S4.55	Proposed East Elevation	Castlepeake Consulting	30 September 2024
DA11	S4.55	Proposed Section A	Castlepeake Consulting	30 September 2024
DA12	S4.55	Proposed Section B	Castlepeake Consulting	30 September 2024
DA13	S4.55	Proposed Section C	Castlepeake Consulting	30 September 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate A441623_03	-	Martin Hall	20 September 2024
Geotechnical Investigation Addendum J4015B	-	White Geotechnical Group	11 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 with the approved plans and a condition of this consent, the condition prevails.

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

B. Modify Condition 2 Compliance with Other Department, Authority or Service Requirements to read as follows:

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	27 November 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.

C. Add Condition Condition 13A Amendment to Window W104 to read as follows:

Window W104 on the northern elevation is to be amended as follows:

- The glass louvres are to be translucent, and
- The louvres are to be fitted such that they cannot be opened more than 45 degrees.

Details demonstrating compliance with this condition are to be submitted to the satisfaction of the Certifier prior to the issue of the Construction Certificate.

Reason: To provide reasonable privacy to the adjoining property to the north.

D. Delete Condition 25 as follows:

DELETED

E. Add Condition Condition 26A Installation and Certification of Solid Fuel Burning Heater to read as follows:

Installation work must be carried out by an appropriately experienced and qualified person and in accordance with the relevant provisions of AS2918 – Domestic Solid Fuel Burning Appliances – Installation. Certification that the heater has been installed by an appropriately experienced and qualified person in accordance with AS2918 and that the heater complies with Australian Standards 4012 and 4013 is to be provided to the satisfaction of the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: To ensure the installation is completed in a legislatively compliant manner.

F. Add Condition 30 Operation of Solid Fuel Burning Heater to read as follows:

The owner/operator must take all practicable measures to prevent the likelihood of causing smoke and/or odour nuisances. Such measures must include:

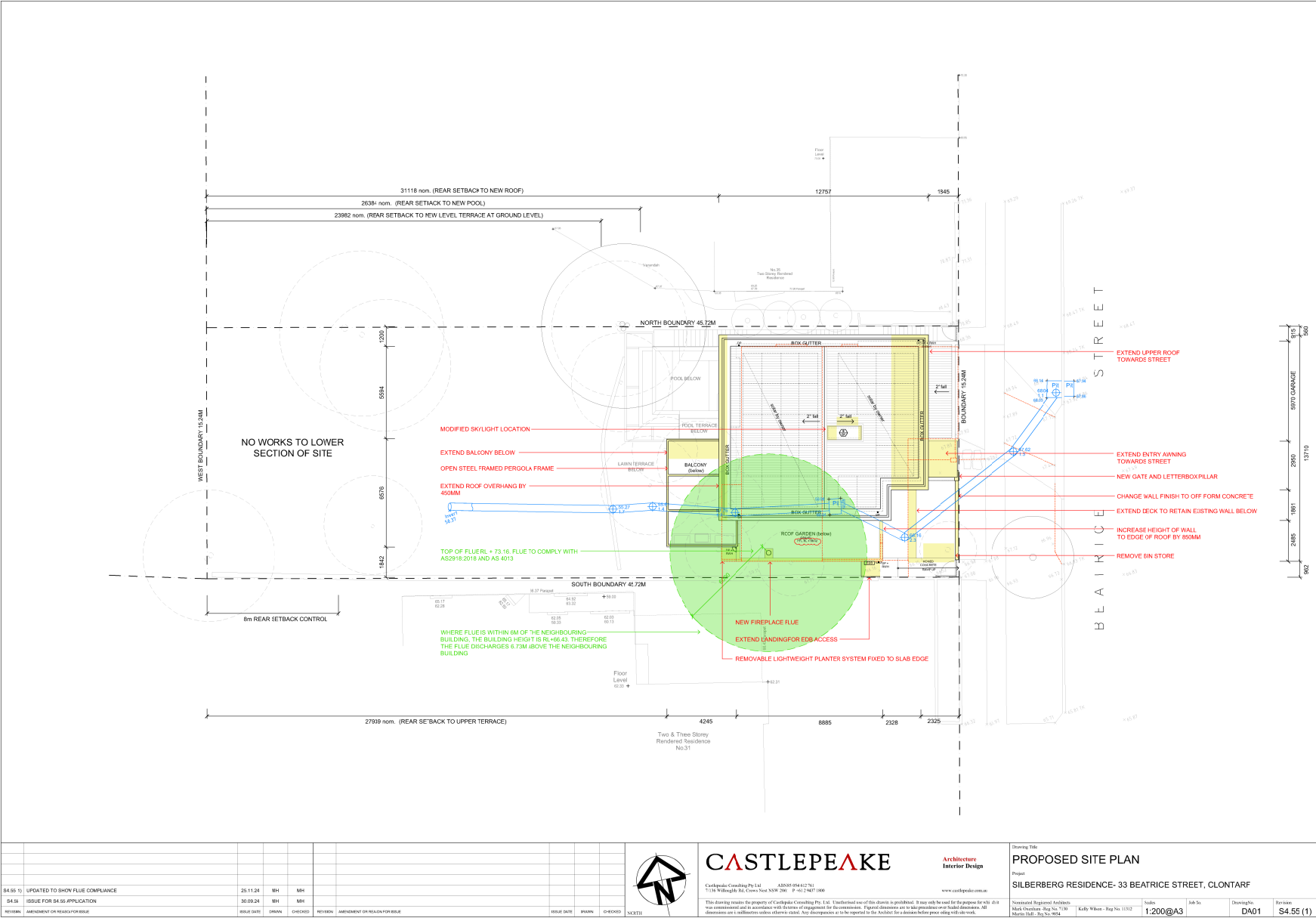
- Using dry seasoned hardwood
- Storing wood in a dry well-ventilated place
- Having a hot and well oxygenated fire
- Ensuring that the chimney flue is clean
- Checking the chimney at different stages of the fire to see if there is any smoke
- Maintenance according to the manufacturer's specifications

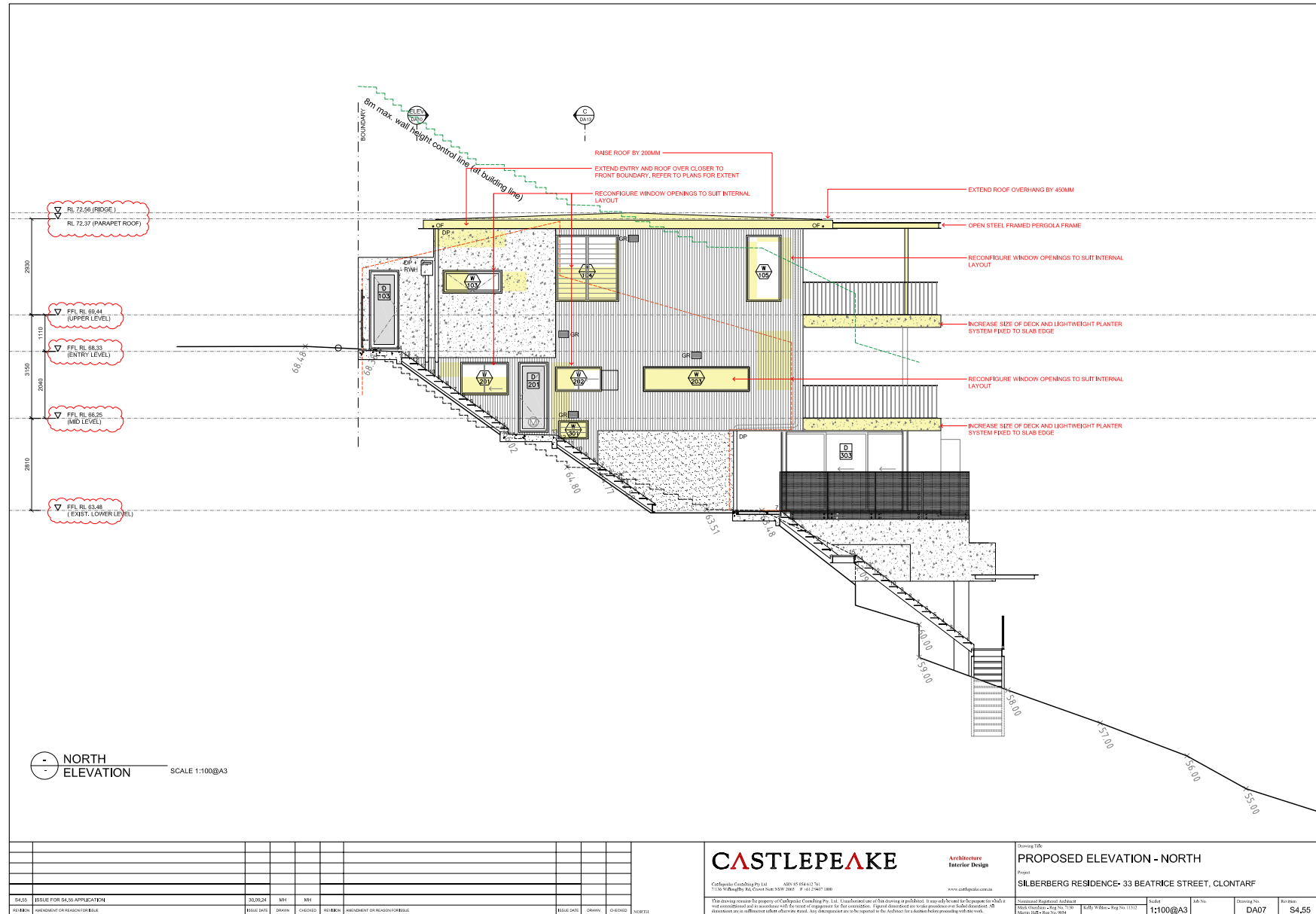
Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

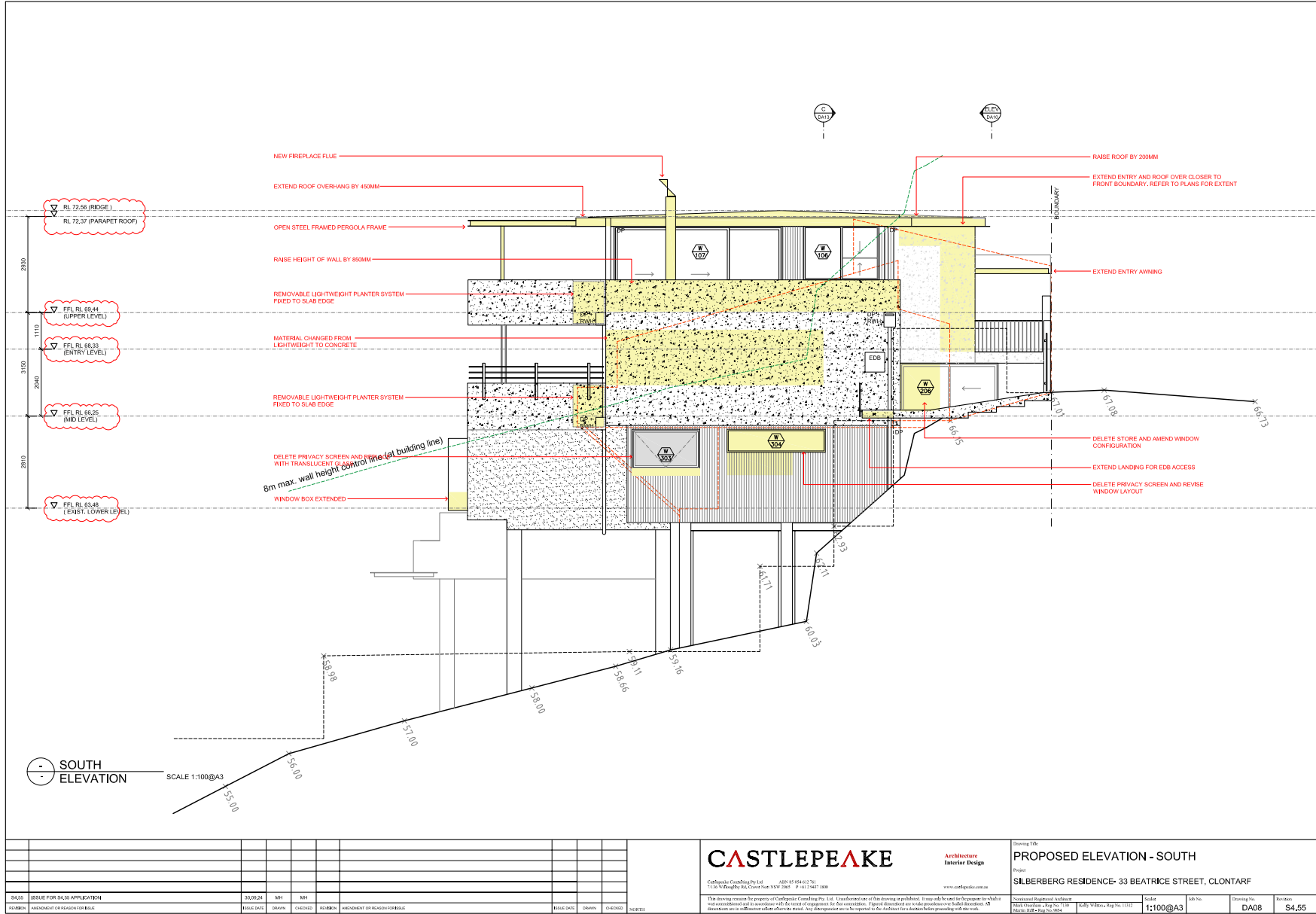
G. Add Condition 31 Maintenance of Solid Fuel Burning Heater to read as follows:

The owner/occupier shall ensure servicing of the heater is maintained according to the manufacturer's specifications.

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







ITEM 3.2	DA2024/0458 - 53 STUART STREET MANLY - ALTERATIONS AND ADDITIONS TO A RESIDENTIAL FLAT BUILDING INCLUDING A CAR STACKER AND FENCING
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PURPOSE

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

RECOMMENDATION

THAT Council as the consent authority **approves** Development Consent to DA2024/0458 for Alterations and additions to a residential flat building including a car stacker and fencing on land at Lot 1 SP 9319, 1, Lot 2 SP 9319, 2, Lot 3 SP 9319, Lot 6 SP 9319, Lot 4 SP 9319, Lot 8 SP 73721, Lot CP SP 9319, 1/53,2/53,3/53,4/53,6/53,8/53 Stuart Street MANLY and 53 Stuart Street MANLY NSW 2095, subject to the conditions set out in the Assessment Report.

Reporting manager	Rod Piggott
TRIM file ref	2024/877242
Attachments	1 Assessment Report 2 Site Plan and Elevations

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/0458
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Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 1 SP 9319, 1 / 53 Stuart Street MANLY NSW 2095 Lot 2 SP 9319, 2 / 53 Stuart Street MANLY NSW 2095 Lot 3 SP 9319, 3 / 53 Stuart Street MANLY NSW 2095 Lot 6 SP 9319, 3 / 53 Stuart Street MANLY NSW 2095 Lot 4 SP 9319, 4 / 53 Stuart Street MANLY NSW 2095 Lot 8 SP 73721, 5 / 53 Stuart Street MANLY NSW 2095 Lot CP SP 9319, 53 Stuart Street MANLY NSW 2095
Proposed Development:	Alterations and additions to a residential flat building including a car stacker and fencing
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:	Domenico Morello

Application Lodged:	21/05/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	29/05/2024 to 12/06/2024
Advertised:	Not Advertised
Submissions Received:	9
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 99,900.00
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EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to a residential flat building including new car stacker at 53 Stuart Avenue, Manly.

The application is referred to the Development Determination Panel (**DDP**) due to the application receiving more than 5 submissions, with a total of 9 submissions received.

Concerns raised in the objections predominantly relate to visual impact, traffic and parking, alleged unauthorised works, acoustic impacts, built-form non-compliance (setbacks), excavation works, stormwater management and Insufficient/Inaccurate information. The concerns listed generally relate to the suitability of the proposed car stacker. The issues raised generally form the critical assessment issues of the development application.

A detailed assessment has been undertaken within this report regarding the amenity impacts on the immediately adjoining residential development to the north, south and east and the assessment finds the reasonable retention of amenity for these properties, subject to conditions. The applicant has provided sufficient information from a qualified geotechnical engineer to address geotechnical risk for the excavation and general works during construction. The recommendations of the geotechnical report will be referenced in the proposed conditions.

The assessment is made against the Manly Local Environmental Plan (**MLEP**) 2013 and Manly Development Control Plan (**MDCP**) 2013. Part 4 of State Environmental Planning Policy (Housing) does not apply to this application.

On the balance, the assessment finds that the proposal is acceptable for the site and concludes with a recommendation that the DDP, as the consent authority, grant approval to the development application, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for alterations and additions to an existing residential flat building.

Specifically, the proposal incorporates the following works:

- Proposed car stacker the north-east corner of the site accommodating 2 cars in the location that a 1 car hardstand currently occupies.
- Internal alterations to the sub-floor level including installation of water proofing and sub-floor drainage.
- Fencing around proposed car stacker.

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

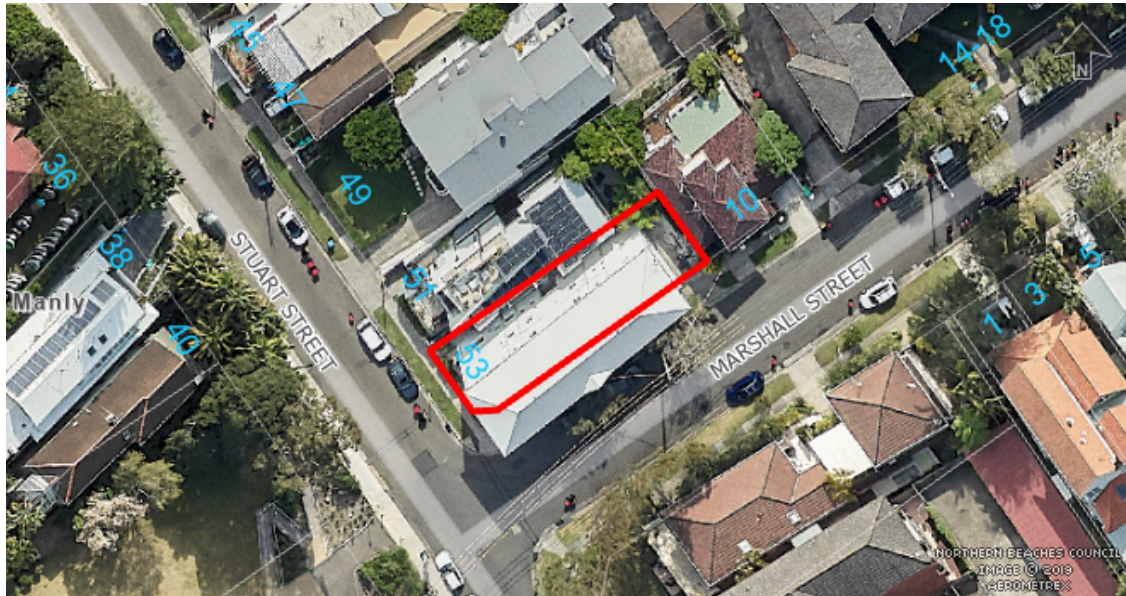
Manly Local Environmental Plan 2013 - 4.4 Floor space ratio
 Manly Local Environmental Plan 2013 - 6.1 Acid sulfate soils
 Manly Local Environmental Plan 2013 - 6.2 Earthworks
 Manly Local Environmental Plan 2013 - 6.4 Stormwater management
 Manly Local Environmental Plan 2013 - 6.5 Terrestrial biodiversity
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Local Environmental Plan 2013 - 6.12 Essential services
 Manly Development Control Plan - 3.1 Streetscapes and Townscapes
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 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 - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
 Manly Development Control Plan - 4.1.10 Fencing
 Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

SITE DESCRIPTION

Property Description:	Lot 1 SP 9319 , 1 / 53 Stuart Street MANLY NSW 2095 Lot 2 SP 9319 , 2 / 53 Stuart Street MANLY NSW 2095 Lot 3 SP 9319 , 3 / 53 Stuart Street MANLY NSW 2095 Lot 6 SP 9319 , 3 / 53 Stuart Street MANLY NSW 2095 Lot 4 SP 9319 , 4 / 53 Stuart Street MANLY NSW 2095 Lot 8 SP 73721 , 5 / 53 Stuart Street MANLY NSW 2095 Lot CP SP 9319 , 53 Stuart Street MANLY NSW 2095
Detailed Site Description:	The subject site consists of one (1) corner allotment located on the eastern side of Stuart Street and Northern side of Marshall Street. The site is regular in shape with a frontage of 8.28m along Stuart Street and 30m along Marshall Street. The site has a surveyed area of 304.9m². The site is located within the R1 General Residential zone and accommodates a residential flat building. The site is on moderately sloping ground with a approximate gradient of 15 degrees, with a southwestern aspect Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by

residential development to the north, south and east. The site adjoins Little Manly Reserve.

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:

EPA2022/0235 - Development Control Order

DA74/04 - Alts to existing Residential Flat Building - combining units 1 & 5.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to insufficient information and fencing. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the 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 29/05/2024 to 12/06/2024 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 9 submission/s from:

Name:	Address:
Mrs Diane Deane	1 / 43 Stuart Street MANLY NSW 2095
Mr Paul Kenneth Hatton	11 / 14 Marshall Street MANLY NSW 2095
Miss Susan Janis Rice	3 / 57 Stuart Street MANLY NSW 2095
Mrs Neralee Chic Carruthers	2 / 57 Stuart Street MANLY NSW 2095
Guy Henry Falconer Flint Miss Hannah Buck	10 Marshall Street MANLY NSW 2095
Ms Michele Manson Mr Robert Gervais Manson	51 Stuart Street MANLY NSW 2095
Mr Anthony Godwin Larcombe Mrs Susan Yvonne Larcombe	2 / 49 Stuart Street MANLY NSW 2095
Miss Emanuele Paletto	11 Marshall Street MANLY NSW 2095
Mr Nicholas Anton Ewald	3 Marshall Street MANLY NSW 2095

The following issues were raised in the submissions:

- **Visual impact**
- **Traffic and parking**
- **Unauthorised works**
- **Acoustic impact**
- **Built form non-compliance (Setbacks)**

- **Excavation works**
- **Stormwater management**
- **Insufficient/Inaccurate information**

The above issues are addressed as follows:

- **Visual Impact**

The submissions raised concerns that the proposed car stacker will have a unreasonable visual impact on the streetscape.

Comment:

The visual impact of the proposed car stacker which is 2.2m high above the existing parking area and an open type structure adjoining 1.8m side boundary fencing is not unreasonable in this residential context.

- **Traffic and Parking**

The submissions raised concerns that the proposed car stacker will lead to unreasonable traffic and parking impacts.

Comment:

The proposed car stacker will allow for more efficient carparking on site and add an additional formal on-site space. The current area can only accommodate 1 space at a minimum of 5.4m in length as the property is 10.06m in width. Council's Traffic engineer has conditioned that parking spaces are to be allocated to the same residential units to avoid parking conflicts.

- **Unauthorised works**

The submissions raised concerns about the history of unauthorised works. Submissions also raise concern that the proposed development will allow for an additional apartment as part of future development.

Comment:

The history of alleged unauthorised works has been noted. The additional parking space and proposed works to the sub-floor does not authorise or consent to an additional apartment to the lower ground floor, with the lower ground floor as subfloor. Any variation to this use would require a further assessment under a new application.

- **Acoustic impact**

The submissions raised concerns that the proposed development will lead to unreasonable acoustic impacts on adjoining residential development.

Comment:

A acoustic report was lodged with the amended application following a request for information letter being sent to the applicant. The report (prepared by Noise and Sounds Services, dated September 2024) notes that, subject to a 1.8m acoustic fence is proposed (as proposed on the

plans) reasonable acoustic privacy will be retained. The proposal will be conditioned to ensure a reasonable acoustic environment will be maintained. The recommendations of the report have been incorporated as part of the consent conditions.

- **Built form non-compliance (Setbacks)**

The submissions raised concerns that the proposed development does not comply with the setback and excavation controls.

Comment:

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.

- **Excavation works**

Concern was raised in regard to the extent of the proposed car stacked level and the potential impacts from excavation works including vibration, soil stability and waste disposal.

Comment:

These matters have been considered against Clause 6.2 (Earthworks) of the MLEP 2013 and Clause 4.4.5 of the Manly DCP- Earthworks (Excavation and Filling). In summary, the proposal is consistent with the relevant underlying objectives, subject to conditions. Further, the recommendations proposed under the Geotechnical report (prepared by Ascentgeo dated 3 May 2024) are imposed as part of this report/recommendation. The report considers issues related to the proposed excavation during and post construction. Pre and post construction dilapidation reports are conditioned for adjoining properties.

- **Stormwater management**

The submissions raised concerns with the management of stormwater.

Comment:

The application was referred to Council's Development Engineers for comment in regard to stormwater management. Suitable conditions have been recommended to ensure adequate stormwater management for the Residential flat building, car stacker and adjoining properties.

- **Insufficient/Inaccurate information**

The submissions raised concerns that insufficient information has been provided to allow for a full assessment of the development application.

Comment:

Insufficient supporting documentation was provided with the initial application to allow for a full assessment of the application. The additional information lodged on 5 September 2024, allows for thorough assessment of the application.

REFERRALS

Internal Referral Body	Comments
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.
Traffic Engineer	Supported, with conditions Amended Comments relating to the Revised SEE and Amended Plans (03/10/2024) The traffic team has reviewed the revised <i>Statement of Environment Effects (SEE)</i> prepared by GGA Architects dated September 2024 and the amended Plans (Master Set), Revision C – designed by GGA Architects, dated 18/09/2024. All of the Council's comments dated 11/09/2024 on the initial version of the report have been addressed. • Below is the information about how the car stackers operate: - o The car stacker will usually be in the down position, providing access to the parking space like any other hardstand area. This will not block the public footpath when entering or leaving the premises. - o Another rare-case scenario involves when the lower space needs to be accessed. There will be a short period of time when a car will need to park momentarily. This can be done either on the side street before turning in or across the driveway crossing. If a car blocks the public footpath, it would only be for a short period of time. - o The stacker is capable of reaching a speed of 0.3 m/s and can operate for a maximum of 55 seconds to lift a car onto the stacker. The time to lower a car is slightly less. When leaving, the user will need to lift the car on the stacker, open the gate, reverse the car, and then lower the stacker again. Upon arrival, the steps will be the inverse of the departure process. This is a less common scenario. • The amended plan has included swept path plots demonstrating satisfactory access to and from the car stacker to and from the street.

Internal Referral Body	Comments
	Conclusion Subject to conditions, the application can be supported on traffic grounds. ----- Comments dated 11/09/2024 <u>Proposal description:</u> Alterations and additions to a residential flat building including a car stacker and fencing The traffic team has reviewed the following documents: • The <i>Statement of Environment Effects (SEE)</i> prepared by GGA Architects dated March 2024, • Plans (Master Set), Revision A – designed by GGA Architects, dated 14/03/2024, and • Waste Management Plan, prepared by GGA Architects dated 05/04/2024. <u>Notes/comments</u> • The site contains four residential units, each of the units has three bedrooms, with the exception of one unit (units 1 and 5 being amalgamated), which has four bedrooms. As outlined in the SEE, the site does not accommodate any on-site car parking. • It is noted that a number of resident parking and multi-use parking permits have been issued to residents at units at this address, i.e. the existing site contributes to significant demand for on-street parking in the area. • There is a small hardstand area at the rear of the site that is accessible via a concrete driveway from Marshall Street, and this can currently accommodate one car space. • The hardstand area is a location for the proposed car stacker and this proposal will increase the number of available on-site car parking to three spaces. This is considered an improvement on the existing situation in terms of parking requirements. • The stacked space pair will need to be allocated to the same residential unit. • To encourage the use of public transport and active travel and to restrict private car ownership, a new condition is to be applied to the consent to prevent tenants with off-street parking from obtaining resident parking permits.

Internal Referral Body	Comments
	- It is not clear how the car stacker would operate. Will vehicles pull onto the street-side crossover while the driver opens the gate and operates the car stacker to a vacant position, and then the vehicle would pull into the car stacker, potentially leaving the car running during the operation? This could result in blocking the pedestrian path, idling vehicles, and exposing the car stacker during operation, posing safety concerns to the general public. Some information on the operational aspects of the car stackers should be included in the SEE. - Swept path plots for access to and from the car stacker to/from the street should be provided and demonstrate that access to the car stacker is possible. - It is noted a new fence is proposed as part of this proposal to ensure a safety barrier between people and the moving car stacker, to obscure the view of the stacker from the street and to protect the existing streetscape. - As outlined in the SEE, the proposed alterations and additions will not increase the waste generated by the household. Any generated waste can be collected and stored in the existing garbage bins onsite. <u>Traffic Impact</u> - The proposal will generate minimal vehicular traffic during the peak, and it will not have any unacceptable implications in terms of road network capacity performance. <u>Conclusion</u> The SEE report in its current form is unacceptable for the reasons outlined above.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs),

Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

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

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

SEPP (Housing) 2021

Application of Chapter

Clause 144 of State Environmental Planning Policy Housing 2021 (SEPP Housing) stipulates that:

(1) This chapter applies to development only if:

- (a) the development consists of:
 - (i) the erection of a new building,
 - (ii) the substantial redevelopment or the substantial refurbishment of an existing building, or
 - (iii) the conversion of an existing building, and
- (b) the building concerned is at least 3 or more storeys, not including underground car parking storeys, and
- (c) the building contains at least 4 dwellings.

As previously outlined the proposed development is for the alterations and additions to a residential flat building. The works are not an substantial redevelopment or the substantial refurbishment of an existing building and as such the SEPP does not apply to this development application.

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 (Biodiversity and Conservation) 2021

Chapter 6 – Water catchments

The subject property is located within the Sydney Harbour Catchment and Sydney Harbour Foreshores and Waterways Area therefore the provisions of Chapter 6 Water catchments of *State Environmental Planning Policy (Biodiversity and Conservation) 2021* apply to this development. Accordingly, an assessment under Chapter 6 has been carried out as follows:

Part 6.2 Development in regulated catchments - Division 2 Controls on development generally

6.6 Water quality and quantity

(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the following—

- (a) whether the development will have a neutral or beneficial effect on the quality of water entering a waterway,*
- (b) whether the development will have an adverse impact on water flow in a natural waterbody,*
- (c) whether the development will increase the amount of stormwater run-off from a site,*
- (d) whether the development will incorporate on-site stormwater retention, infiltration or reuse,*
- (e) the impact of the development on the level and quality of the water table,*
- (f) the cumulative environmental impact of the development on the regulated catchment,*
- (g) whether the development makes adequate provision to protect the quality and quantity of ground water.*

(2) Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied the development ensures—

- (a) the effect on the quality of water entering a natural waterbody will be as close as possible to neutral or beneficial, and*
- (b) the impact on water flow in a natural waterbody will be minimised.*

Comment:

The proposal has been reviewed by Council's Development Engineer who have raised no objection to the works and their impacts to adjoining waterways (subject to conditions).

6.8 Flooding

(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the likely impact of the development on periodic flooding that benefits wetlands and other riverine ecosystems.

(2) Development consent must not be granted to development on flood liable land in a regulated catchment unless the consent authority is satisfied the development will not—

- (a) if there is a flood, result in a release of pollutants that may have an adverse impact on the water quality of a natural waterbody, or*
- (b) have an adverse impact on the natural recession of floodwaters into wetlands and other riverine*

ecosystems

Comment:

The site is not located within a flood prone area.

6.9 Recreation and public access

(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider—

- (a) the likely impact of the development on recreational land uses in the regulated catchment, and*
- (b) whether the development will maintain or improve public access to and around foreshores without adverse impact on natural waterbodies, watercourses, wetlands or riparian vegetation.*

(2) Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied of the following—

- (a) the development will maintain or improve public access to and from natural waterbodies for recreational purposes, including fishing, swimming and boating, without adverse impact on natural waterbodies, watercourses, wetlands or riparian vegetation,*
- (b) new or existing points of public access between natural waterbodies and the site of the development will be stable and safe,*
- (c) if land forming part of the foreshore of a natural waterbody will be made available for public access as a result of the development but is not in public ownership—public access to and use of the land will be safeguarded.*

Comment:

The proposed development will not have any impact upon public access along the adjoining foreshore. The proposed works are located entirely within the subject site.

6.9 Recreation and public access

(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider—

- (a) the likely impact of the development on recreational land uses in the regulated catchment, and*
- (b) whether the development will maintain or improve public access to and around foreshores without adverse impact on natural waterbodies, watercourses, wetlands or riparian vegetation.*

(2) Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied of the following—

- (a) the development will maintain or improve public access to and from natural waterbodies for recreational purposes, including fishing, swimming and boating, without adverse impact on natural waterbodies, watercourses, wetlands or riparian vegetation,*
- (b) new or existing points of public access between natural waterbodies and the site of the development will be stable and safe,*
- (c) if land forming part of the foreshore of a natural waterbody will be made available for public access as a result of the development but is not in public ownership—public access to and use of the land will be safeguarded.*

Comment:

The works are minor and will not have any impact upon access to nearby natural waterbodies, watercourses, wetlands or riparian vegetation. The works are entirely within the subject site.

6.10 Total catchment management

In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consult with the council of each adjacent or downstream local government area on which the development is likely to have an adverse environmental impact.

Comment:

Based on the expert advice provided and conditions imposed, the proposed works are not considered to have an adverse environmental impact. As such consultation with adjoining local government areas was not undertaken in this instance.

6.11 Land within 100m of natural waterbody

In deciding whether to grant development consent to development on land within 100m of a natural waterbody in a regulated catchment, the consent authority must consider whether—

- (a) the land uses proposed for land abutting the natural waterbody are water-dependent uses, and
- (b) conflicts between land uses are minimised.

Comment:

The works for residential purposes will not have any substantial impacts on the nearby waterbody (Little Manly).

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	Car stacker - 2.2m Fencing - 1.8m	-	Yes
Floor Space Ratio	FSR: 0.6:1 (182.94sqm)	FSR 1.23:1 (377.31sqm) no change to existing	No change	N/A

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	N/A
5.8 Conversion of fire alarms	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.4 Floor space ratio

The existing development varies the FSR control of 0.6:1 (182.94sqm) with an existing FSR of 1.23:1 (377.31sqm). The proposed waterproofing of the eastern side of the lower ground floor does not result in a increased level of gross floor area. The floor level maintains its use as subfloor and plant room. Any change to the use of the lower ground floor for the purposes of that would meet the definition of GFA, would require a new development application.

6.1 Acid sulfate soils

Clause 6.1 - 'Acid sulfate soils' requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

The site is located in an area identified as Acid Sulfate Soil Class 5, as indicated on Council's Acid Sulfate Soils Planning Map.

Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum (AHD) 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.. The application does not proposed works 5 metres below the AHD.

6.2 Earthworks

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

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

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

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

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

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

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

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

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

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

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

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

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

- (f) the likelihood of disturbing relics*

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

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

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

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

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

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of 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.

6.5 Terrestrial biodiversity

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

(a) protecting native fauna and flora, and

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

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

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

(a) whether the development is likely to have:

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

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

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

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

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

Comment:

The development will not have adverse impact on the matters above and appropriate measures have been taken to avoid, minimise and mitigate the impacts of the development.

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

(a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or

(b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or

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

Comment:

The development is designed, sited and will be managed to avoid any significant adverse environmental impact.

6.9 Foreshore scenic protection area

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

(a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,

(b) measures to protect and improve scenic qualities of the coastline,

(c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,

(d) measures to reduce the potential for conflict between land-based and water-based coastal activities.

Comment:

The subject site 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: 304.9sqm	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	6.5m	2.2m	-	Yes
4.1.4.1 Street Front Setbacks	Stuart Street - Prevailing building line / 6m	No change	N/A	N/A
4.1.4.2 Side Setbacks and Secondary Street Frontages	0.73m (based on north-west wall height)	Car stacker - 0.3m Fence - 0m	58% - 100%	No
4.1.4.4 Rear Setbacks	8m	Car stacker - 0.65m Fence - 0m	81.75% - 100%	No
Schedule 3 Parking and Access	Dwelling 9 spaces	2 spaces	78%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 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
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	N/A	N/A

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.10 Fencing	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	No	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

Detailed Assessment

3.1 Streetscapes and Townscapes

Description of non-compliance

Clause 4.1.10 of the Manly DCP requires front fences be a maximum height of 1m or 1.5m with 30 percent transparency.

The proposed front fence has a maximum height of 1.5m -1.8m non-compliant with the relevant 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 minimise any negative visual impact of walls, fences and carparking on the street frontage.

Comment:

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

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

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

Reason: To maintain consistency within the streetscape"

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

Comment:

As above, the proposed front fence will appropriately, and positively, complement the identified streetscape, subject to the condition above reducing the height.

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

Comment:

As detailed above, the proposed front fence is appropriate in the context of the subject site and locality. In this instance, soft landscaping alternatives are not required.

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

3.4.2 Privacy and Security

The proposed development seeks consent for a residential car-stacker. Concerns have been raised from neighbouring residential properties regarding the resulting acoustic impacts to neighbouring residential receivers.

The applicant was advised to provide an acoustic assessment to undertake a full assessment of the potential noise impacts from proposed car stacker. The applicant provided an Acoustic report (prepared by Noise and Sounds Services, dated September 2024).

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:

The acoustic report states that noise emissions should not exceed 44 dBA at the development boundary or the most sensitive location within neighbouring properties for day and evening operation. The report states that subject to acoustic fencing being provided around the car stacker, the car stacker will not exceed 44 dBA at the development boundary or the most sensitive location within neighbouring properties for day and evening operation.

The use of the car stacker would result in a 56 dBA at the boundary, non-compliant with the numeric control. However, the report further notes that construction of an acoustic fence will reduce the noise levels by 12dBA, meeting the 44 dBA requirement.

The application proposes a 1.8m high fence that surrounding to the north and east of the site for acoustic purposes. A condition has been imposed to ensure the fence is fit for acoustic purposes.

Given the locality and other mechanical uses such as electrical garage openings being commonly used on a number of other properties in the area, it is concluded that the expected noise produced by the car stacker would be reasonable during the day and up to 11pm, therefore a condition is recommended which confirms that the car stacker is not to be operated before 8am on Sundays and public holidays, or before 6am on any other day.

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

Comment:

The aforementioned condition will not significantly compromise access to light and air, nor will it compromise any potential views

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposed development will not compromise neighbourhood security or casual surveillance of the street frontage.

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

4.1.3 Floor Space Ratio (FSR)

There is no change proposed to the existing gross floor area.

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

Description of non-compliance

Clause 4.1.4.2 of the Manly DCP requires any part of a building and the side boundary must not be less than one third of the height of the adjacent external wall of the proposed building.

Clause 4.1.4.4 of the MDCP requires any part of a building and the rear boundary must not be less than 8m.

North side setback- car stacker 0.5m

Rear Setback (East): car stacker - 0.65m

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 setbacks are consistent with the existing development within the immediate vicinity, and introduces an improved landscape treatment to the rear setback area. As such, the proposed development maintained the existing desired spatial proportions of the street, the street edge and the landscape character of the street, despite the non-compliant side and front setbacks.

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 side boundary non-compliance does not directly attribute to unreasonable privacy and solar impacts on adjoining properties. No significant view impacts arise from the proposal. The proposal maintains appropriate building separation that is consistent with the street and envisaged by the DCP

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

Comment:

The proposed setbacks allow a reasonable building footprint, compliant with the floor space ratio to provide for five functional dwellings for the site.

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 application proposes a compliant level of landscape open space. Landscaping is able to be provided down along both the front and rear of the dwelling to soften the built form and assist in privacy. There are adequate deep soil zones in the front and rear setbacks to provide canopy trees as shown in the landscape plan.

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

Comment:

The subject site is not located in a bushfire 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.

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

Description of non-compliance

The application seeks consent for a 2 vehicle car-stacker to the rear of the site. The car-stacker will replace the existing hardstand area which accommodates 1 space.

The MDCP parking rate for a Residential Flat Buildings (RFB) in MLEP Residential Zones and all other Zones except LEP Business Zones:

- 1 resident parking space for each dwelling (irrespective of number of bedrooms), plus
- 0.2 resident parking spaces for each 2 bedroom dwelling, plus
- 0.5 resident parking space for each 3 (or more) bedroom dwelling, and plus
- 0.25 visitor parking space for each dwelling (irrespective of number of bedrooms).

The proposed RFB comprises of 4 x three or more bedroom dwellings. As such, the required car parking spaces, rounded up, is 7. The site contains two car parking spaces, This results in a technical shortfall of 5 spaces. It is noted that the existing subject site contains a hardstand area capable of 2 tandem parking spaces informally and 1 space formally with minimum length of 5.4m.

Merit consideration:

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

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

Comment:

The whilst the parking allocation is not compliant with the current required car spaces for a residential flat building, the sites size, slope and location of the existing residential flat building does not allow for any further increases in car spaces. Therefore, the alterations and additions to the parking would result in providing the two car spaces, and are adequately accessed from the street. Therefore, the proposal provides adequate parking for the use of the site.

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

Comment:

These spaces reduce demand for on street parking and would sufficiently reduce demand for on-street car parking.

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

Comment:

The proposal displays reasonable scale and is compatible with the surrounding parking arrangement within this section of Stuart and Marhsall Street. The car stacker will provide parking spaces with an efficient safe and convenient design. No concerns were raised by Council's Engineer in regards to the car stacker and the proposal does not alter the approved location of the driveway crossing to the site.

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

Comment:

The proposal does not include any significant excavation and will not result in site instability or the interruption of ground water flows.

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

Comment:

The proposed size and location of the driveway crossing is not amended as a result of the proposal. The existing driveway crossover provides an adequate size access for two cars to each of the proposed garage, to ensure width and number of footpath crossings is minimised.

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

Comment:

The proposal is suitably integrated into the design of the development to limit the amount of impervious surfaces. No further landscape treatment is required.

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

Comment:

N/A - The subject site is not located in a Centre.

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

4.1.10 Fencing

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

4.4.5 Earthworks (Excavation and Filling)

Description of Non-compliance

The MDCP 2013 requires development maintain natural ground level within 0.9m of the side boundary. The proposal includes excavation within 0.9m of the side boundary.

Merit Consideration

With regard to the consideration of the variation the development is considered under the objectives of the control below.

Objective 1) To retain the existing landscape character and limit change to the topography and vegetation of the Manly Local Government Area by:

- *Limiting excavation, “cut and fill” and other earthworks;*
- *Discouraging the alteration of the natural flow of ground and surface water;*
- *Ensuring that development not cause sedimentation to enter drainage lines (natural or otherwise) and waterways; and*
- *Limiting the height of retaining walls and encouraging the planting of native plant species to soften their impact.*

Comment

The proposed excavation is a direct requirement of the development and the provision of suitable parking on the site. The proposal was accompanied by a geotechnical report that provided recommendations to ensure the development would not have any unreasonable impacts within the locality. A condition has been included to ensure the development complies with the recommendations of this report.

The proposal is not expected to significantly or detrimentally alter the natural flow of ground and surface water. The proposed development is not expected to cause excessive sedimentation to enter drainage lines. Overall, the proposed excavation, for the purposes of a partial parking level, is considered to be acceptable on merit, given the topography, design and minimal impact.

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

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

CONCLUSION

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

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

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

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

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

PLANNING CONCLUSION

This proposal, for seeks consent for alterations and additions to a residential flat building including new car stacker at 53 Stuart Avenue, Manly has been referred to the Development Determination Panel (DDP) due to the application received more than 5 submissions, with a total of 9 received.

The concerns raised in the objections have been addressed and resolved by amended plan and additional information. Moreover, conditions have been imposed to ensure reasonable level of acoustic privacy is maintained.

The critical assessment included the suitability of the car stacker and the resulting amenity impacts. Conditions have also been imposed to ensure that the subfloor area is not utilised as gross floor area or capable being used as an additional apartment.

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

REASON FOR DETERMINATION

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2024/0458 for Alterations and additions to a residential flat building including a car stacker and fencing on land at Lot 1 SP 9319, 1 / 53 Stuart Street, MANLY, Lot 2 SP 9319, 2 / 53 Stuart Street, MANLY, Lot 3 SP 9319, 3 / 53 Stuart Street, MANLY, Lot 6 SP 9319, 3 / 53 Stuart Street, MANLY, Lot 4 SP 9319, 4 / 53 Stuart Street, MANLY, Lot 8 SP 73721, 5 / 53 Stuart Street, MANLY, Lot CP SP 9319, 53 Stuart Street, MANLY, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA05	B	Site	GGA	29 August 2024
DA06	C	Ground - Proposed	GGA	3 December 2024
DA08	B	Elevations - Proposed	GGA	29 August 2024
DA09	B	Sections - Proposed	GGA	29 August 2024
DA11	B	Cut and Fill Plan	GGA	29 August 2024

DA12	B	Materials Finishes Schedule	GGA	29 August 2024
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Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Acoustic Design Report – Mechanical Plant	September 2024	Noise and Sound Services	September 2024
Geotechnical Report	1	Ascentgeo	3 May 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 **residential flat building**, in accordance with the Dictionary of the Manly Local Environmental Plan 2013, as follows:

residential flat building means a building containing 3 or more dwellings, but does not include an attached dwelling, co-living housing or multi dwelling housing.

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

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

4. **Prescribed Conditions**

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

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

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

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

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

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

Reason: Legislative requirement.

5. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Construction certificate plans are to be in accordance with all finished levels identified on approved plans. Notes attached to plans indicating tolerances to levels are not approved.
- (c) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (d) At all times after the submission of the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (e) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (f) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (g) Prior to the release of the Construction Certificate, payment of the following is required:
- i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
 - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that

applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.

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

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

- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

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

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

FEES / CHARGES / CONTRIBUTIONS

6. Security Bond

A bond (determined from cost of works) of \$5,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

7. Stormwater Disposal

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent in accordance with AS/NZS 3500 and Council's Water Management for Development Policy, prepared by an appropriately qualified and practicing Civil 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 an existing approved system.

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. Front Fence

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

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

Reason: To maintain consistency within the streetscape

9. 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.

10. Extent of consent

All works are to be located wholly within the subject site. No approval is given for works on adjoining properties.

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

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

11. Compliance with standards (Demolition):

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

Details demonstrating compliance with the relevant Australian Standard are to be submitted to Council prior to the commencement of demolition works.

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

12. **Acoustic Fence**

The fence proposed to the north-eastern and north-western side of the site (as noted on plan DA 06- Ground Floor Plan) is to be amended and constructed in accordance with the definition of 'Acoustic Fence' defined within the Acoustic Report prepared by noise and Sound Services dated September 2024.

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

Reason: To mitigate noise impacts

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

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

14. **Work Zones and Permits**

Prior to commencement of the associated works, the applicant shall obtain a Work Zone Permit where it is proposed to reserve an area of road pavement for the parking of vehicles associated with a construction site.

A separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane and a Roads and Maritime Services Work Zone Permit shall be obtained for State Roads.

Reason: To ensure Work zones are monitored and installed correctly.

15. **Road Occupancy Licence**

Prior to commencement of the associated works, the applicant shall obtain a Road Occupancy License from Transport Management Centre for any works that may impact on traffic flows.

Reason: Requirement of TMC for any works that impact on traffic flow.

16. **Pre-Construction Dilapidation Report**

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

Properties:
10 Marshall Street, Manly
51 Stuart Street, 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

17. **Road Reserve**

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

Reason: Public safety.

18. **Implementation of Demolition Traffic Management Plan**

All works and demolition activities are to be undertaken in accordance with the approved Demolition Traffic Management Plan (DTMP). All controls in the DTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate TfNSW accreditation. Should the implementation or effectiveness of the DTMP be impacted by surrounding major development not encompassed in the approved DTMP, the DTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved DTMP is to be kept onsite at all times and made available to the accredited certifier or Council on request.

Reason: To ensure compliance and Council's ability to modify the approved Construction Traffic Management Plan where it is deemed unsuitable during the course of the project.

19. **Implementation of Construction Traffic Management Plan**

All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate TfNSW accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to

Council on request.

Reason: To ensure compliance of the developer/builder in adhering to the Construction Traffic Management procedures agreed and are held liable to the conditions of consent.

20. **Ongoing Management**

The applicant shall be responsible in ensuring that the road reserve remains in a serviceable state during the course of the demolition and building works.

Reason: To ensure public safety.

21. **Demolition Works - Asbestos**

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

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

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

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

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

22. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor 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

23. **Stormwater Disposal**

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

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

24. **Stacked Parking Spaces (residential)**

Stacked parking spaces are to be assigned as the same residential unit. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of any Occupation Certificate.

Reason: To minimise conflicts regarding parking areas.

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. **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.

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

27. **Fencing Height/ Vegetation**

All fencing and/or vegetation along the frontage road(s) shall not impede pedestrian or driver visibility. This requires that vegetation does not exceed one (1) metre in height. Appropriate plants shall be selected within the 2.0 x 2.5m splay to ensure this condition is met.

Reason: To ensure maximum vehicular and pedestrian visibility.

28. **Landscaping adjoining vehicular access**

The applicant must ensure that the planting chosen for any land immediately adjacent to the driveway and adjacent to any driveway intersections must not exceed a height of 1m.

Reason: To maintain unobstructed sight distance for motorists.

29. **Allocation of Spaces**

Car parking spaces provided shall be provided, made accessible and maintained at all times. The spaces shall be allocated as follows:

2 - Residential

Car-parking provided shall be used solely in conjunction with the uses contained within the development. Each car parking space allocated to a particular unit / tenancy shall be line marked and numbered or signposted to indicate the unit / tenancy to which it is allocated.

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

Reason: To ensure that adequate parking facilities to service the development are provided on site.

30. **Hours of Operation**

The hours of operation of the car stacker are to be restricted to:

- Monday to Saturday - 6:00am - 11:00pm
- Sunday and Public Holidays – 8:00am - 11:00pm

Reason: Information to ensure that amenity of the surrounding locality is maintained.

31. **Resident Parking Permits**

Any residents and/or tenants of the subject site with off-street parking spaces are not eligible for resident parking permits even if they reside in a Permit Parking Scheme area. This condition is to be provided on the property Title.

Reason: to encourage sustainable transport alternatives and ensure that residents/tenants are aware that they are not entitled to a permit

B	Amendments to four levels and unit plans	28/08/2024
A	Initial DA drawing set completed	14/03/2024
Name	Amendment	Date

Alterations and Additions
at
53 Stuart St,
Manly
for
Domenic Morello



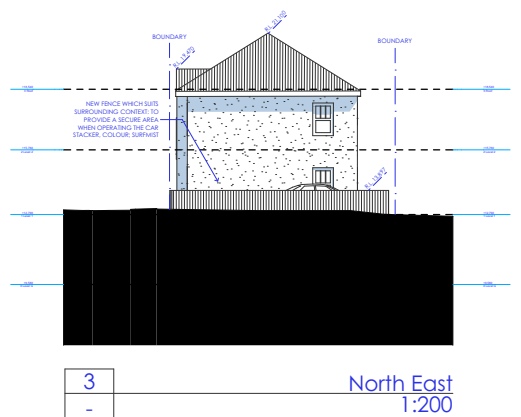
Level 2 19-23 Bridge Street PYMBLE NSW 2073 AUSTRALIA
t: (02) 9440 2455 e: info@gelder.com.au w: gelder.com.au
ABN 48 090 878 827 NSWARB REG ARCHITECT: GELDER # 6126

Site Plan

The property in this drawing and in the concepts remain with Art2 2 Design Pte, trading as Golder Architects. Any unauthorised use of this drawing, as to the whole or part may render the user liable to an action for damages. Consequential events or damages arising from unauthorised or unauthorised use shall not render Art2 2 Design Pte, trading as Golder Architects or its associated companies liable.

Project No:	2108	Date:	Jan 2024	Issue B
Drawing No:	DA 05	Scale:	1:100	
		Date Plotted:	18/09/2024	

AS ORIGINAL SIZE



Revisions	By	Date
1. Alterations to floor levels and setbacks	DA 08	18/06/2024
2. New fence and gate	DA 08	18/06/2024
3. Alterations to floor levels and setbacks	DA 08	18/06/2024

Alterations and Additions
at:
53 Stuart St,
Manly
for
Domenic Morello



Level 2 19-23 Bridge Street PYMBLE NSW 2073 AUSTRALIA
t: (02) 9440 2455 e: info@gelder.com.au w: gelder.com.au
ABN 48 000 878 627 NSW A/RB REG ARCHITECT: GELDER # 6126

Elevations - Proposed

The property is shown in this drawing and is the subject of a development application DA 08/2024. It is a proposed development. Any construction of this drawing, or to the extent of any other drawing, is for information only and is not to be used for any other purpose. Construction of any building, or any other structure, shall be in accordance with the approved development application DA 08/2024.

Project No:	2108	Date:	Jan 2024
Drawing No:	DA 08	Scale:	1:200
Project Name:	53 Stuart St, Manly	Project Date:	18/06/2024

B

A3 ORIGINAL SIZE

ITEM 3.3 DA2024/0737 - 55 QUINTON ROAD MANLY - ALTERATIONS AND ADDITIONS TO A SEMI-DETACHED DWELLING INCLUDING A CARPORT

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. 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 DA2024/0737 for alterations and additions to a semi-detached dwelling including a carport on land at Lot 34A DP 442217, 55 Quinton Road MANLY, subject to the conditions set out in the Assessment Report.

Reporting manager	Rod Piggott
TRIM file ref	2024/846056
Attachments	↓1 Assessment Report ↓2 Site Plan and Elevations ↓3 Clause 4.6

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/0737
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Responsible Officer:	Julie Edwards
Land to be developed (Address):	Lot 34A DP 442217, 55 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:	Amanda Lillian Williams

Application Lodged:	17/06/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	25/06/2024 to 09/07/2024
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	4.4 Floor space ratio: 29%
Recommendation:	Approval

Estimated Cost of Works:	\$ 870,000.00
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EXECUTIVE SUMMARY

This development application seeks consent 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 (visual and acoustic), solar access, bulk and scale and Floor Space Ratio (FSR).

Critical assessment issues included FSR, privacy, wall height, 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 development application seeks consent for alterations and additions to the existing semi-detached dwelling. The proposal includes the following:

Ground floor plan

- Carport and front fence,
- Internal alterations for stairs connecting to the new level,
- New kitchen, dining and living room,
- Study, and
- Deck to rear and landscaping.

First floor plan

- Stairs connecting to the new level,
- Master bedroom, ensuite and wardrobe, and
- Two bedrooms and bathroom.

Roof plan

- External terrace.

Planners note:

The application, as lodged, was inconsistent with the requirements of the MLEP and MDCP. The applicant was requested to provide amended plans and information that satisfied Council's 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 Fortythree Design Studio dated 11.11.24.

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

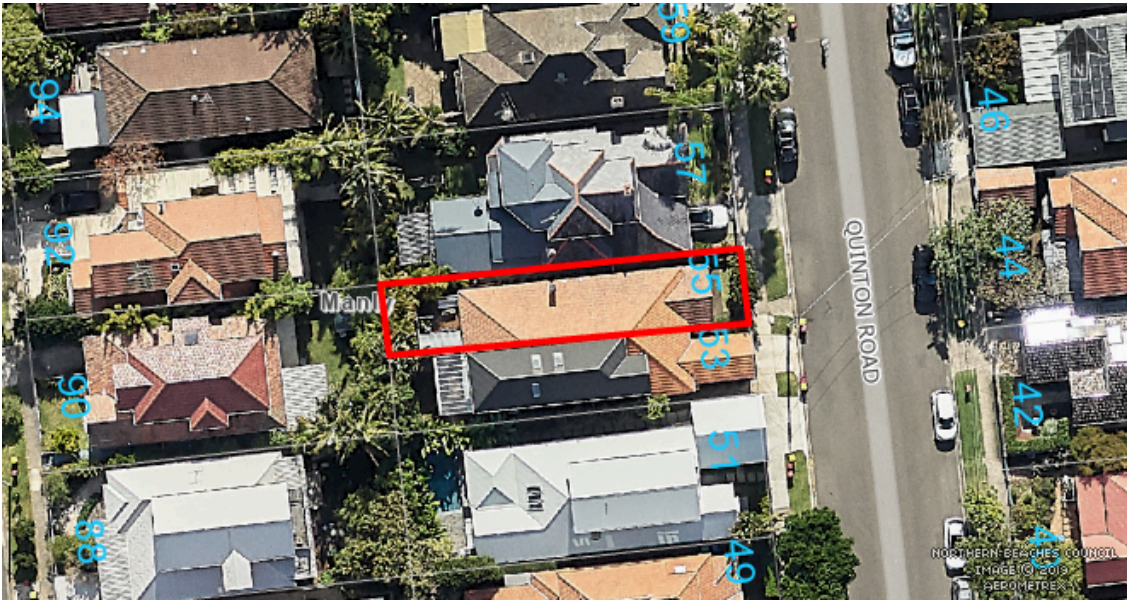
Manly Local Environmental Plan 2013 - Zone R1 General Residential
 Manly Local Environmental Plan 2013 - 4.4 Floor space ratio
 Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.6 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 34A DP 442217 , 55 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 6.135m along Quinton Road and a depth of 30.48m. The site has a surveyed area of 186m². The site is located within the R1 General Residential zone and accommodates a single storey semi-detached brick cottage. The site has a slight slope across the site, falling to the south.

	The site has minimal vegetation with a small grassed area at the front and vegetation along the rear boundary. The site has no known threatened species. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by mixed residential development of varying architectural styles. Site Inspection A site inspection was undertaken 14 August 2024.
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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 Matters for Consideration	Comments
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to floor space ratio, streetscape, roof structure, access to sunlight and first floor addition requirements. <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 25/06/2024 to 09/07/2024 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 2 submission/s from:

Name:	Address:
Mr Louis Michael O'Loughlin	53 Quinton Road MANLY NSW 2095
Mr David Norman Tallack Mrs Kylie Robyn Tallack	57 Quinton Road MANLY NSW 2095

The following issues were raised in the submissions:

- Privacy
- Roof terrace - noise
- Excessive bulk and scale
- FSR non-compliance
- Maintenance of local character
- Overshadowing
- Materials on shared boundary

The above issues are addressed as follows:

- **Privacy**
The submissions raised concerns that the ground floor north facing windows W04 and W05 are opposite the living room windows of no. 57 Quinton Road and result in unreasonable privacy impacts.

Comment:

Privacy has been addressed in detail under part 3.4.2 Privacy and Security of this report. In summary, the location of window W04, which is located off a bathroom, is directly opposite the south facing window of no. 57 Quinton Road. Window W05 is slightly offset from the south facing window and is located off a kitchen. A condition is recommended requiring Windows W04 to have opaque glass to a height of 1.65m above finished floor level. Window W05 is unlikely to cause privacy impacts, as it is not directly opposite the living room window of no. 57 Quinton Road and is separated by a 1.8m high fence, that screen most of the window.

- **Roof Terrace - noise**

The submissions raised concerns that proposed roof terrace would result in unreasonable noise impacts due to its location.

Comment:

Privacy (acoustic) has been addressed in detail under part 3.4.2 Privacy and Security of this report. In summary, the proposed roof terrace is not anticipated to produce noise above standard residential use. The location of the roof terrace being higher than that of the adjoining properties and not directly opposite any windows will minimise the noise impact. Furthermore, the size and access limits the number of people able to use the roof terrace, further limiting noise impact to adjoining properties.

- **Excessive bulk and scale**

The submissions raised concerns that proposal has excessive bulk and scale that results in adverse impacts on the street character. Concern was also raised with the non-compliance with the Floor Space Ratio (FSR) requirement and with the setback of the first floor addition from the front boundary, as it was not consistent with the adjoining properties.

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.

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 and 4.1.3 Floor Space Ratio of the MDCP. The non-compliance and is considered appropriate for the site and is consistent with other similar development which does not comply with the FSR, such as no. 53 Quinton Road.

The setback of the first floor addition is considered acceptable. There is no consistent front setback for first floors along the western side of Quinton Road. Having the first floor forward of no. 53 Quinton Road will maintain privacy between the dwellings and does not unreasonably impact on solar access to the first floor. While the proposal is forward of no. 53 Quinton Road it meets the 6m requirement of the MDCP and is considered acceptable.

- **Maintenance of local character**

The submissions raised concerns that proposal was not in keeping with the local character.

Comment:

The applicant provided amended plans. These plans were reviewed by the submitter who raised the initial concern. The submitter was satisfied with the changes and withdraw there submission regarding the concerns with local character.

- **Shadowing**

The submissions raised concerns that the proposed development resulted in unreasonable overshadowing of the adjoining property at no. 53 Quinton Road.

Comment:

Clause 3.4.1.1 Overshadowing Adjoining Open Space requires new development (including alterations and additions) to 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). The shadow diagrams submitted with the application demonstrate that, while the proposal results in additional overshadowing to the rear of no. 53 Quinton Road, the amount complies with the requirement of the control.

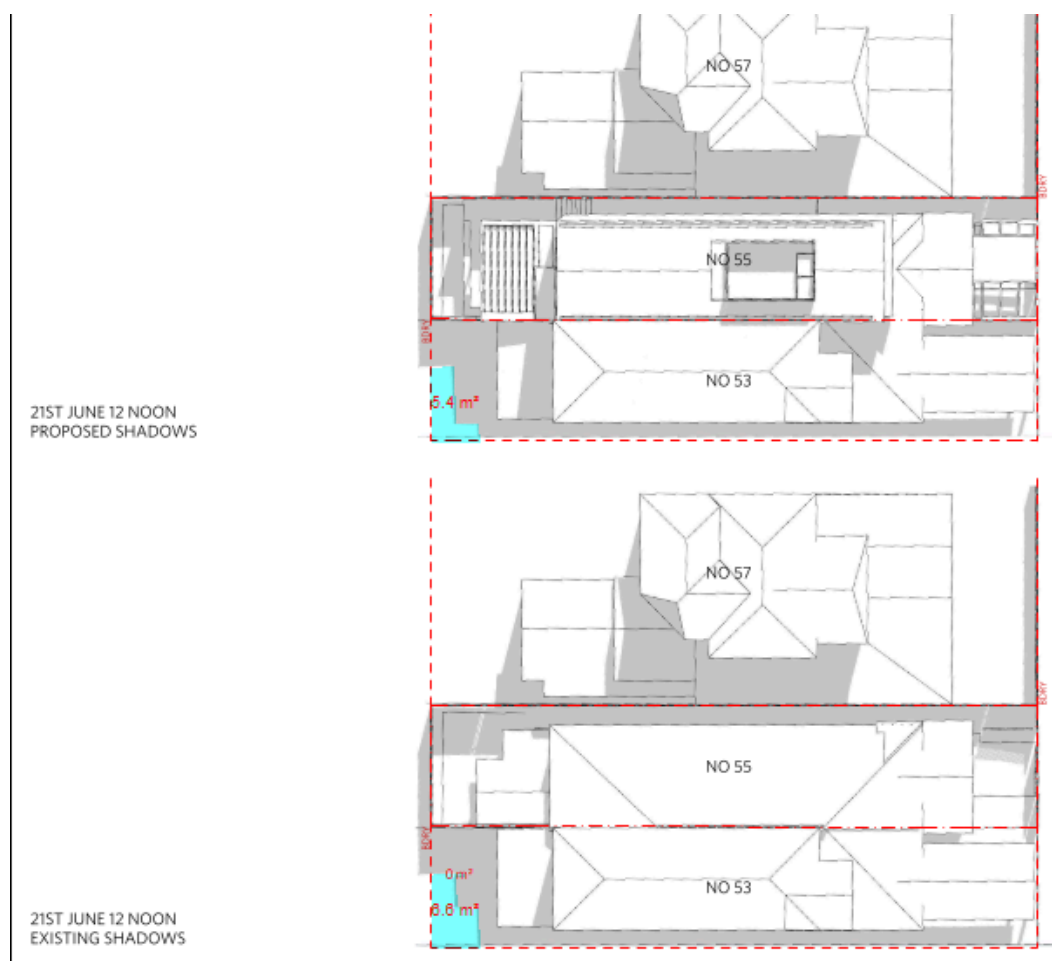


Figure 1: Shadow diagram for 12pm, showing the proposed and existing overshadowing.

There is no change to the overshadowing at 9am and 3pm. At 12pm the proposal results in a lost solar access but as shown in figure 1, it is less than 1/3 of the solar access that is received.

- **Materials on shared boundary**

A submissions raised concern with the proposed materials on the shared boundary with no. 53

Quinton Road.

Comment:

The applicant provided amended plans which changed/ removed some of the materials on the shared boundary. These plans were reviewed by the submitter who raised the initial concern. The submitter was satisfied with the changes and withdraw there submission.

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	<i>Supported, subject to conditions</i> The proposed development is in Region 3. On-site detention is not required. Vehicle crossing construction is proposed. Development engineering raises no objections to the proposed development, subject to conditions.
External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	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. A1743099 dated 10 April 2024).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 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	8.5m	N/A	Yes
Floor Space Ratio	FSR: 0.6:1	FSR: 0.77:1 (144.82m ²)	29%	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

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:	0.77 to 1
Percentage variation to requirement:	29%

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 setbacks of the dwelling are to be maintained and the building height is consistent with 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:

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 or 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: 0.77:1

Percentage of variation: 29%

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 local area is built-up containing a diverse mix of residential housing types including, for example, manor house, semi-detached dwelling, duplexes, residential flat buildings, intermixed with dwelling houses. Noting the mixed residential character and variety of housing forms within the local area, the bulk and scale of the proposed development resulting from the FSR exception will be consistent with the existing streetscape character.*
- The proposed first floor addition will be compatible with scale, form, bulk (GFA) setbacks, and configuration of the adjoining 'semi' at 53 Quinton Road, whilst presenting appropriately to the streetscape and adjoining land.*
- The proposal complies with the building height development standard and the DCP control limiting the number of storeys to 2.*
- The front, side, and rear setbacks are compatible with the adjacent semi-detached dwelling, property to the north, and the streetscape.*
- The rear setback is compatible with the adjacent semi-detached dwelling, maintaining appropriate solar access and visual presentation.*
- The proposed development will maintain an appropriate visual relationship with the existing built form and landscape character within the local area.*
- The proposed first floor addition will maintain the rhythm and pattern of spaces between buildings when viewed from the street. The narrow 5m (approx.) width of the proposed first floor addition will result in a recessive building form that will not be visually intrusive and present appropriately to adjoining land.*
- Solar access - It is assessed that, whilst shade onto the adjoining property will be moderately increased above the current levels, the extent of the increase is within reasonable limits.*

- No significant view corridors or vantage points are identified from the site/ location. Outlooks to the north (district) and east (coastal/beach) are generally available from the hillside location.
- Privacy - the proposed north facing windows are appropriately separated from adjoining dwelling house, and sensitive living rooms / open spaces within it, which are positioned at the rear (west) and are away from the southern side of the adjoining dwelling house satisfying privacy.
- Privacy and the roof terrace:
 - The terrace will principally gain an outlook to the east and northeast whilst optimising solar access from the north. The adjoining neighbour's principal open space is to the west / rear of the property.
- Not being at the same level or directly connected to the principal living areas of the dwelling, the proposed terrace will gain occasional use. It is not proposed as the principle private open space for the dwelling.
- Privacy is addressed by the offset location of the roof terrace compared to the adjacent open space area at the rear of 57 Quinton Road. Furthermore, the position of the terrace within the middle of the dwelling footprint. The central location of the terrace on the site avoids potential downward sightlines into the private open space of 57 Quinton Road.
- Privacy is addressed by the significant separation to residential buildings to the east (on the opposite side of Quinton Road) and south, obscured by roof of 53 Quinton Road.

(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:

'In accordance with 4.6 (3)(b) there are sufficient environmental planning grounds to justify the exception to the development standard.

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 186m2 site area is 114 m2 / 38% under the minimum lot size for the area, 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)".

Modest existing and proposed GFA

The existing dwelling house contains a modest 78m² of GFA comprising a small dwelling. The proposed GFA is 147.38m² and remains a modest scale by contemporary standards.

The changes proposed to the existing gross floor area will result in an improved residential amenity for the building occupants, with additional internal spaces to better accommodate contemporary living needs.

Existing, older dwelling

The semi-detached dwelling is estimated to have been constructed in the 1930's or 1940's prior to the introduction of FSR standard which has been in place since approx. 1988. This limits the potential to achieve compliance with the standard.

Compatible with adjoining semi-detached dwelling

The proposed development provides a floor space ratio that is compatible with the property at 53 Quinton Road, the adjacent semi-detached dwelling. It was extended to accommodate a first-floor addition in approximately 2018 via DA169/2017 and Mod 2018/0396 and is reported to have an approved FSR of 0.76 to 1.

Compatible with the bulk, scale, form, and setback pattern

The proposed building form follows the front, rear, and side setbacks that are established on the existing and adjacent property at 53 Quinton Road. The proposed development will be compatible with the bulk, scale, form, and setback pattern of development established on the adjacent property. The proposed FSR is therefore compatible with the established development character despite it exceeding the FSR development standard.

No inappropriate amenity impacts

The proposal will not result in any inappropriate environmental impacts on the adjoining land in relation to solar access, privacy, view sharing, and visual intrusion.'

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 usability 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: 186m²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	N: 6.7m (based on gradient 1:3)	7 - 7.5m	4.4 - 11.9%	No
4.1.2.2 Number of Storeys	2	2	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.5m	N/A	Yes
	Pitch: maximum 35 degrees	24 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line	Carport - Nil Ground floor - 5.7m First floor - 7.7m consistent with prevailing setback	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	2.3 - 2.5m (based on wall height)	Ground floor- 1.2m First floor - 1.2m	47.8 - 52%	No
	Windows: 3m	Ground floor- 1.2m First floor - 1.2m	60%	No
4.1.4.4 Rear Setbacks	8m	Deck - 1.6m Dwelling - 5.3m First floor - 6.3m	80% 33.75% 21.25%	No No No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% (102.3m ²) of site area	45% 84m ²	18%	No
4.1.5.2 Landscaped Area	Landscaped area 35% (29.4m ²) of open space	20.4% (38m 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	2.3m	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	Yes	Yes
3.4.2 Privacy and Security	No	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)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	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
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

Description of non-compliance

3.4.2.1 Window Design and Orientation

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.*

One submissions were received citing privacy impacts as a result of the ground floor windows - W04 and W05 on the northern side elevation.

3.4.2.3 Acoustical Privacy (Noise Nuisance)

A submission raised concerns with noise from the roof top terrace. The clause requires the following:

- a) Consideration must be given to the protection of acoustic privacy in the design and management of development.*
- b) Proposed development and activities likely to generate noise including certain outdoor living areas like communal areas in Boarding Houses, outdoor open space, driveways, plant equipment including pool pumps and the like should be located in a manner which considers the acoustical privacy of neighbours including neighbouring bedrooms and living areas.*

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:

Windows

A submission raised concerns with windows W04 and W05 on the ground floor of the north elevation. Window W04 is located off a bathroom and is directly opposite the south facing living room window of no. 57 Quinton Road. Window W05 is located off the Kitchen and is 1.8m from the living room window. Due to the location of window W04 a condition is recommended requiring the window to have opaque glass to a height of 1.65m above finished floor level. This will allow for views out but not down towards the window.

Window W05 is unlikely to cause privacy impacts, as it is not directly opposite the living room window of no. 57 Quinton Road. The window is separated by a 1.8m high fence, that screen most of the window. The location of window W05 will not unreasonably impact on the privacy of no. 57 Quinton Road.

Roof Terrace

A submission raised concern that the roof terrace could result in unreasonable noise impacts to the adjoining properties. The location, size being only 10m² and use of the roof terrace should not produce noise that would unreasonably impact on the adjoining neighbors. The terrace sits well above the first floor levels of the adjoining properties and is setback 5m from no. 57 Quinton Road and 1m from no. 53 Quinton Road. Both properties do not have windows on the elevation that faces the terrace. The size and access to the roof terrace limits the amount of people that can use the terrace at any one time. It is considered that the terrace is unlikely to cause noise impacts above normal residential use.

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.

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

Description of non-compliance

4.1.2.1 Wall Height

Clause 4.1.2.1 of the MDCP relies on the slope of the land to determine the maximum external wall height. In calculating the slope of the land, the maximum wall height is as follows:

North elevation:

Required - 6.7m (based on gradient 1:6)

Proposed - 7.2 - 7.5m



Figure 2: North elevation with wall height non-compliance shaded in red.

The proposed first floor extension results in non-compliant wall heights on the northern elevation, with respective external wall heights with a maximum height of of 7.5m. As a consequence, the proposed development fails to comply with the requirements of the control.

Merit consideration

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

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

Comment:

The proposed development sits below the 8.5m maximum building height development standard and provides a roof form that is consistent with other modernised dwellings in area. The locality includes a variety of roof forms and the dwelling will be maintaining the existing facade/front gable to maintain part of the existing streetscape character of the site. The proposal is consistent with the prevailing building height and will not result in any significant impact on the streetscape character of the locality. The proposal is consistent with this objective.

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

Comment:

The proposed roof form reduces the potential height of the development with a low scillion roof and is below the 8.5m MLEP height requirement. The proposal includes suitable and generous articulation and varied (though complementary) colours and materials, thereby providing visual relief and reducing the visual impact of the bulk and scale of the development. The dwelling is sufficiently set back from all boundaries and the wall height breach is not unreasonable considering how narrow the lot is. The non-compliance with the wall height will not result in any unreasonable amenity impacts on the subject site or adjacent sites.

(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:

Due to the sites location, it is not anticipated that the proposal will give rise to any unreasonable or detrimental view loss from surrounding properties. Therefore, it is considered that views to and from public spaces will not be significantly compromised as a result of the proposed development.

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

Comment:

The proposed development does not result in unreasonable impacts upon solar access to adjoining development. The proposal complies with the requirements of part 3.4.1 Sunlight Access and Overshadowing..

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

Comment:

The clause is not relevant to the application.

4.1.3 Floor Space Ratio (FSR)

MDCP provides guidance in assessing the FSR 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 186m², calculation of the FSR can be made as if the lot size were 250m².

As such, the FSR 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 northern façade of the proposed extension is 7 - 7.5m, thereby requiring a side setback of 2.3 - 2.5m. The proposed first floor addition is setback 1.2m, presenting a variation of 48 - 52% 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. Subject to conditions 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 1.2m and the first floor with a minimum setback of 1.2m 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:

Deck: 1.7m (78.8% variation)

Ground floor: 5.1m (36.3% variation)

First floor: 6.3m (21.2% variation)

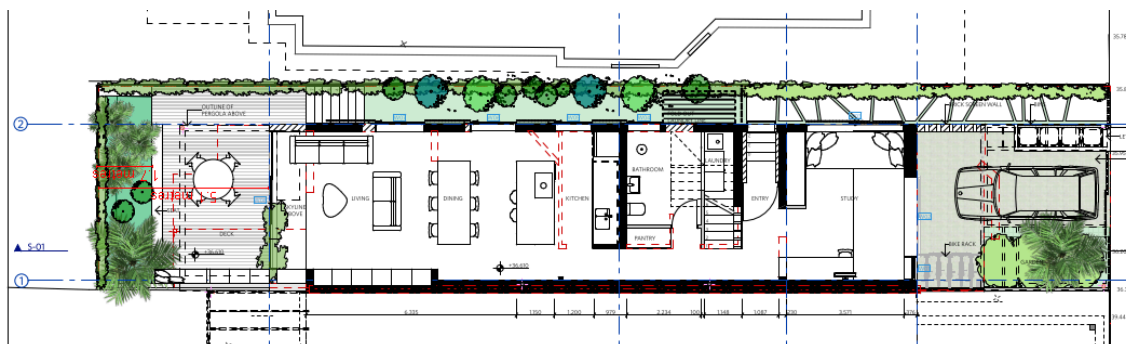


Figure 3: Ground floor plan showing front, side and rear boundary setbacks.

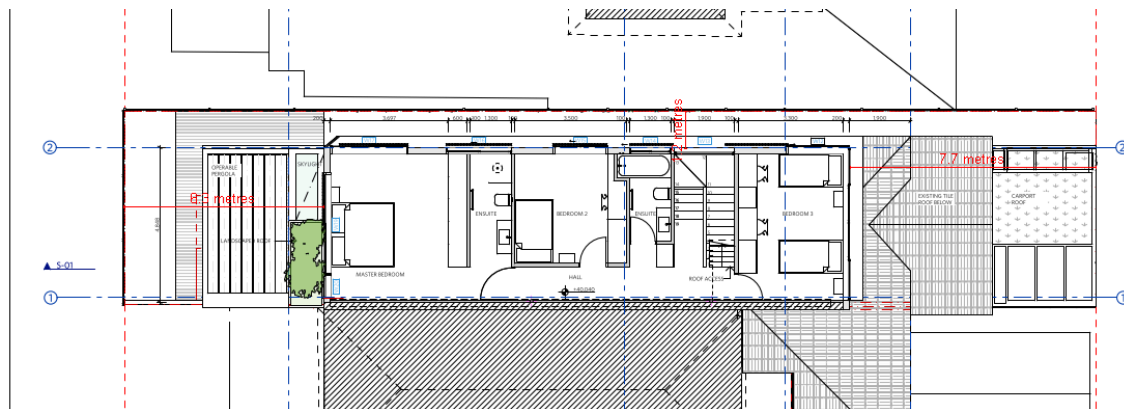


Figure 4: First floor plan showing front, side and rear boundary setbacks.

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 development is consistent with the character of the existing semi-detached dwellings and other dwellings observed in the immediate vicinity. The proposal will provide landscaping at the front of the site to maintain the landscape character of the streetscape.

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 and rear setbacks of the proposed works and accompanying windows, an acceptable level of privacy will be maintained. Subject to conditions, the new windows on the ground and first floor are have privacy treatments or are appropriately located to not provide direct views into the windows or the POS of the adjoining properties. The location of the windows and privacy treatments to the windows will maintain privacy between dwellings.

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 dwellings, including no. 57 Quinton Road.

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

4.1.5 Open Space and Landscaping

Description of non-compliance

The control requires at least 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 45% (84m²) 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:

No significant vegetation is proposed to be removed. The landscape plan provides significant new vegetation to the site which will increase the landscaping on the site.

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

Comment:

The proposed development includes deep soil landscaped areas within the rear yard to ensure an appropriate landscaping outcome. No significant vegetation is proposed to be removed.

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. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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

Description of non-compliance

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

The existing semi-detached dwelling has no onsite carparking and proposes to provide one (1) off-street parking space. The provision of two parking space is not achievable within the existing context of the site. For these reasons the proposal can be considered reasonable subject to the below merit assessment.

Merit consideration:

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

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

Comment:

The development will provide off street parking, which is currently not available on-site. It is considered that the development is reflective of the use and locality.

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

Comment:

The development will reduce the demand for on-street parking by providing additional off-street parking.

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

Comment:

The design of the driveway and parking space is considered to be efficient, safe, and convenient.

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

Comment:

The proposed excavation is minor in nature and will not result in site instability or the interruption to ground water flows.

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

Comment:

The development results in one (1) additional footpath crossing to a total of two (2). It is considered that this is consistent with residential developments in the immediate locality (one (1) for the pathway and one (1) for the driveway).

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

Comment:

Reasonable amounts of landscaped area are maintained within the front setback. It is considered that the development is consistent with the control.

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

Comment:

The subject site is not located within a Centre that is will serviced by public transport.

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.

4.1.7 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 first floor addition and carport. 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 will be replacing the existing front fence and providing a new fence with pedestrian gate and gate to carport. The new fence is solid and ranges in height from 1.4 - 1.8m, which does not comply with the requirement of the clause. However, the fence will be maintaining the height of the existing front fence.

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying objectives of the control. The control relies upon the objectives of Clause 3.1 - Streetscapes and Townscapes within the MDCP.

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

Comment:

The new fence exceeds the height requirement of 1m or 1.5m with 30% transparency. However, the proposed fence will be maintaining the existing fence height 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 with slated panels and is consistent with the adjoining property at no. 31 Quinton Road. The new fence which mostly consists of wooden panels matches the proposed addition and will provide visual interest. The 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 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 \$8,700 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$870,000.

CONCLUSION

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

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

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

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

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

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

Environmental Plan 2013 seeking to justify variation of the development standard contained within Clause 4.4 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.

Two submissions were received in relation to this application. The issues raised within the submissions relate to privacy (visual and acoustic), solar access, bulk and scale and Floor Space Ratio (FSR) 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 / Clause 4.1 Minimum Subdivision Lot Size, 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 DA2024/0737 for Alterations and additions to a semi-detached dwelling including a carport on land at Lot 34A DP 442217, 55 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
101	C	Site Plan	Fortythree Design Studio	11.11.24
110	C	Ground Floor Plan	Fortythree Design Studio	11.11.24
111	C	First Floor Plan	Fortythree Design Studio	11.11.24
112	C	Roof Plan	Fortythree Design Studio	11.11.24
160	C	Driveway Crossover Details	Fortythree Design Studio	11.11.24
200	C	North + South Elevations	Fortythree Design Studio	11.11.24
201	C	East + West Elevations	Fortythree Design Studio	11.11.24
300	C	Sections	Fortythree Design Studio	11.11.24
650	C	Finishes Schedule	Fortythree Design Studio	11.11.24

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
550 - Landscape Plan	C	Fortythree Design Studio	11.11.24
Waste Management Plan	-	A. Williams	28.05.24
BASIX Certificate	Certificate number: A1743099	Fortythree Design Studio	10.04.24
24017 - SW-1	1	Michael Korecky	07.04.24

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

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

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

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

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

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

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

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

3. **Prescribed Conditions**

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

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

- B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

Reason: Legislative requirement.

4. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Construction certificate plans are to be in accordance with all finished levels identified on approved plans. Notes attached to plans indicating tolerances to levels are not approved.
- (c) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.

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

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

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

- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

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

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2024

A monetary contribution of \$8,700.00 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 \$870,000.00.

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

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

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

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

6. **Security Bond**

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

7. **Stormwater Disposal**

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

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

the development.

8. **Vehicle Crossings Application**

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing 3.0 metres wide in accordance with Northern Beaches Council Standard Drawing A4 3330/1 N in accordance with Section 138 of the Roads Act 1993.

Note, driveways are to be in plain concrete only.

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

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

Reason: To facilitate suitable vehicular access to private property.

9. **Amendments to the approved plans**

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

- Window W04 located off the Ground Floor Bathroom is to translucent glazing to a height of 1.65m above the finished floor level.

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.

10. **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.

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

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

1. Council's relevant development control plan,
2. The guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate' (the Blue Book) (as amended from time to time), and

3. The 'Do it Right On-Site, Soil and Water Management for the Construction Industry' (Southern Sydney Regional Organisation of Councils and the Natural Heritage Trust) (as amended from time to time).

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

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

12. **Waste Management Plan**

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

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

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

13. **Compliance with Standards**

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

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

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

14. **Sydney Water "Tap In"**

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

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

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

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

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

15. **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.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

16. **Pre-Construction Dilapidation Report**

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

Property / Properties: 53 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

17. **Road Reserve**

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

Reason: Public safety.

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

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

- Work Health and Safety Act;
 - Work Health and Safety Regulation;
 - Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
 - Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
 - Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005;
- and

- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

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

19. **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.

20. **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.

21. **Property Boundary Levels**

The Applicant is to maintain the property boundary levels. No approval is granted for any change to existing property alignment levels to accommodate the development.

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

Reason: To maintain the existing profile of the nature strip/road reserve.

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.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

23. Stormwater Disposal

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

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

24. 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.

25. Reinstatement of Kerb

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

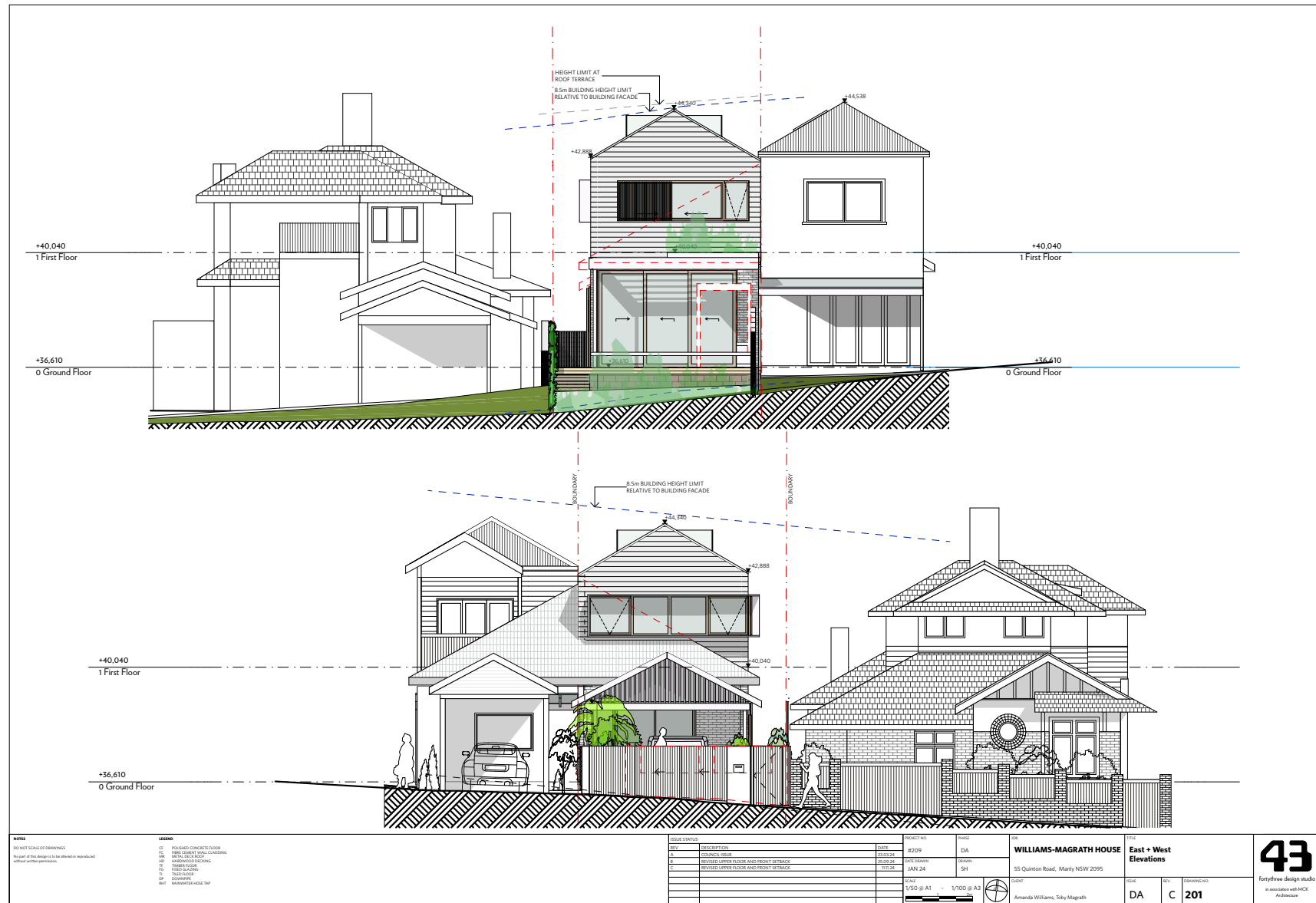
Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

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

26. 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.





CLAUSE 4.6 EXCEPTION REQUEST

**LEP cl 4.4 Floor Space
Ratio**

**55 Quinton Road,
Manly**

Suite 1, 9 Narabang Way Belrose NSW 2085

Phone: (02) 9986 2535 | Fax: (02) 9986 3050 | www.bbfplanners.com.au

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RESPONSIBLE FOR THIS REPORT:

Michael Haynes	Director - BBF Town Planners
	Master Urban and Regional Planning Sydney University

Amended DA - Revised 27 November 2024

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CLAUSE 4.6 EXCEPTION FOR FLOOR SPACE RATIO

1 Clause 4.6 exception for Floor Space Ratio

1.1 Overview

Clause 4.6 of the Manly LEP 2013 (LEP) provides a mechanism for an exception to a development standard.

The proposal involves an exception to LEP Clause 4.4 'Floor space ratio' (FSR), which is a development standard, and an exception is sought.

The FSR applicable to the site is 0.6 to 1, resulting in a gross floor area (GFA) for the site of 111.6m². The existing FSR is 0.40 to 1 (a modest 74.84m² of GFA). The proposed GFA is 140.74m² translating to an FSR is: 0.76 to 1, which exceeds the standard by 29.14m² /26%.

At 186m², the lot is undersized when compared to the minimum lot size for the area which is 250m² (64m² or 26% under). This is addressed further within section 3 of the report.

Drawing 603 of the architectural plan set provides a calculation of proposed gross floor area and floor space ratio for the property.

1.2 Site and location description

The site is located at 55 Quinton Road, Manly and legally described as Lot 34A in Deposited Plan 442217. The site has an area of 186m².

The site is rectangular in shape with an eastern frontage of 6.065m to Quinton Road and a depth of 21.665m. It has an east to west orientation and forms the northern half of 2 semi-detached dwellings.

The home is a modest single storey, brick and tile, semi-detached dwelling containing 2 bedrooms, paved paths, and gardens and no car parking.

There are views generally in an easterly direction towards the coast from the elevated hill side location.

The location is built-up containing a diverse mix of residential housing types including, for example, manor house, semi-detached dwelling, duplexes, residential flat buildings, intermixed with dwelling houses.

There is a diverse mix of property frontages to the street with garages, carports, and car parking areas with nil or minimal street setbacks being dominant.

There are no consistent front setbacks. There is no consistency materials or roof forms with my mix of gable, hip and skillion roofs.

No significant change to the character is foreshadowed by the planning controls. Therefore, the existing character is a relevant consideration in guiding the assessment of the proposed built form.

The figures on the following pages depict the character of the property and its existing development.

CLAUSE 4.6 EXCEPTION FOR FLOOR SPACE RATIO

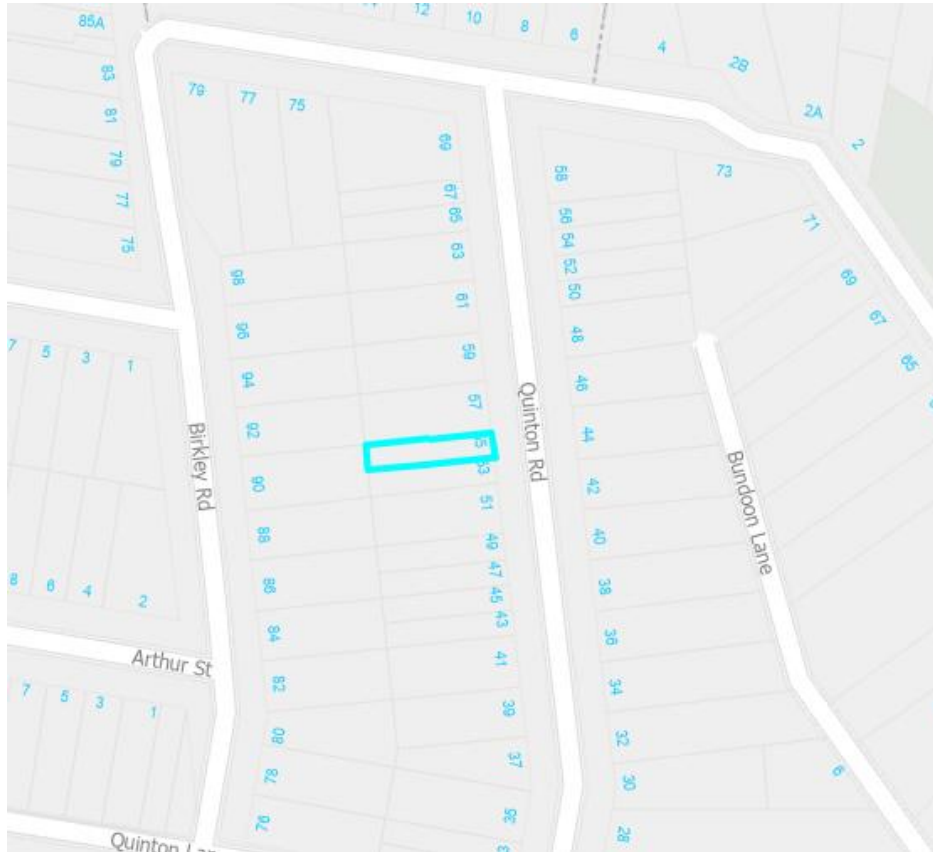
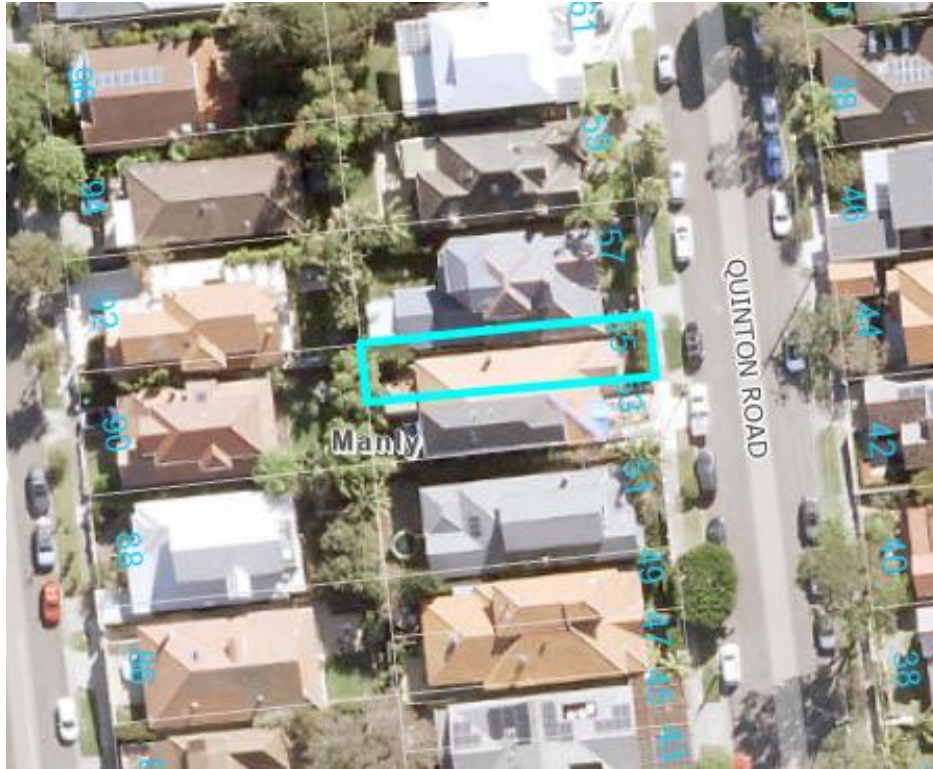


Figure 1 – Location of the site within its local context (courtesy Northern Beaches Council Maps)

CLAUSE 4.6 EXCEPTION FOR FLOOR SPACE RATIO



CLAUSE 4.6 EXCEPTION FOR FLOOR SPACE RATIO



Figure 4 – the adjoining developments to the south on Quinton Road. The subject site is marked.

KEY STATUTORY CONSIDERATIONS

2 Key statutory considerations

2.1.1 Objectives of clause 4.6

The objectives of clause 4.6 are as follows:

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

2.1.2 Objectives of Clause 4.4 Floor space ratio

The objectives of Clause 4.4 Floor space ratio are:

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

2.1.3 Key definitions

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

- (a) the area of a mezzanine, and*
- (b) habitable rooms in a basement or an attic, and*
- (c) any shop, auditorium, cinema, and the like, in a basement or attic,*
but excludes—
- (d) any area for common vertical circulation, such as lifts and stairs, and*
- (e) any basement—*
- (i) storage, and*
- (ii) vehicular access, loading areas, garbage and services, and*

KEY STATUTORY CONSIDERATIONS

- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and*
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and*
- (h) any space used for the loading or unloading of goods (including access to it), and*
- (i) terraces and balconies with outer walls less than 1.4 metres high, and*
- (j) voids above a floor at the level of a storey or storey above.*

ASSESSMENT

3 Assessment

Within the spirit of the objectives of clause 4.6, the matters in support of the proposed exception are demonstrated by the characteristics of the proposal and circumstances of the case as set out below.

As required by clause 4.6 (3) the following is a *written request* for the consent authority's consideration.

3.1 4.6 (3)(a) - compliance with the development standard is unreasonable or unnecessary in the circumstances

Having regard for the decision of *Wehbe vs Pittwater Council (2007) LEC 827*, and in accordance with 4.6 (3)(a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case because the objectives of the FSR standard are satisfied.

In the decision of *Wehbe vs Pittwater Council (2007) LEC 827*, Preston CJ summarised the five (5) different ways in which an objection under SEPP 1 has been well founded and that approval of the objection may be consistent with the aims of the policy. The first possible way is relevant to the subject matter and is repeated below:

1st *'The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.'*

The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable'.

Despite the FSR exception, the proposal satisfies the objectives of the FSR standard for the reasons described below.

Objective (a) –

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

'Desired future character' is a term which is undefined within the LEP and DCP. Therefore, guidance may be taken from the range of environmental planning instruments and DCP provisions applicable to the land.

It is observed that Quinton Road, near the subject site, has no distinguishing or unique streetscape, topographic, or landscape features to warrant special recognition or conservation in terms of the building form on the subject site.

ASSESSMENT

In terms of compatibility with desired future character, three recent court judgements have considered the term 'desired future character'¹. Guidance is therefore taken from the applicable planning controls and these cases.

In the SJD appeal, Justice Preston found that the local environmental plan and other approved development that contravenes the development standard are both relevant to determining desired future character.

In Big Property, Commissioner O'Neill, referencing the SJD cases, found that development standards for building envelopes are frequently generic standards which do not account for existing and approved development or the nuances of an individual site. The Commissioner stated that:

"The presumption that the development standards that control building envelopes determine the desired future character of an area is based upon a false notion that those building envelopes represent, or are derived from, a fixed three-dimensional masterplan of building envelopes for the area and the realisation of that masterplan will achieve the desired urban character. Although development standards for building envelopes are mostly based on comprehensive studies and strategic plans, they are frequently generic, as demonstrated by the large areas of a single colour representing a single standard on Local Environmental Plan maps, and they reflect the zoning map. As generic standards, they do not necessarily account for existing and approved development, site amalgamations, the location of heritage items or the nuances of an individual site. Nor can they account for provisions under other EPLs that incentivise particular development with GFA bonuses or other mechanisms that intensify development. All these factors push the ultimate contest for evaluating and determining a building envelope for a specific use on a site to the development application stage. The application of the compulsory provisions of cl 4.6 further erodes the relationship between numeric standards for building envelopes and the realised built character of a locality" [at 44]'

Furthermore, Commissioner O'Neill in Big Property stated at [57]:

"The desired future character of the locality can be evaluated by reference to matters other than the development standards that determine the building envelope for the site, including the existing development that forms the built context of the site (Woollahra Municipal Council v SJD DB2 Pty Limited [2020] NSWLEC 115 (SJD DB2) at [54]). The desired future character of an area is not determined and fixed by the applicable development standards for height and FSR, because they do not, alone, fix the realised building envelope for a site. The application of the compulsory provisions of cl 4.6 further erodes the relationship between numeric standards for building envelopes and the realised built character of a locality (SJD DB2 at [62]-[63]). Development standards that determine

¹ Big Property Pty Ltd v Randwick City Council [2021] (Big Property),
HPG Mosman Projects Pty Ltd v Mosman Municipal Council [2021] (HPG),
SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 112 and Woollahra Municipal Council v
SJD DB2 Pty Limited [2020] NSWLEC 115 (SJD)

ASSESSMENT

building envelopes can only contribute to shaping the character of the locality (SJD DB2 at [53]-[54] and [59]-[60]).

Based on the above, it is observed that:

- Development standards (FSR in this case) for building envelopes are frequently generic standards which do not account for existing and approved development and the circumstances of an individual site.
- cl4.6 of the LEP is as much a part of LEP as the clauses with development standards. In SJD DB2 at [62]-[63] it states, *'The application of the compulsory provisions of cl 4.6 further erodes the relationship between numeric standards for building envelopes and the realised built character of a locality'*.
- Development standards that determine building envelopes can only contribute to shaping the character of the locality and the existing character should also be considered.
- The FSR standard in the subject matter does not account for existing and approved development within the site's visual catchment where there are various examples of residential developments that are more than 0.6:1 in FSR the development at 53 Quinton Road being a principal example (addressed below).
- The bulk, form and diverse mix of housing within the local area are relevant in considering the exception to the FSR standard.

No significant change to the character is foreshadowed by the planning controls. Therefore, the existing character is a relevant consideration in guiding the assessment of the proposed built form.

The local area is built-up containing a diverse mix of residential housing types including, for example, manor house, semi-detached dwelling, duplexes, residential flat buildings, intermixed with dwelling houses.

53 Quinton Road is the southern half of the pair of semi-detached dwellings. It has been developed with a first-floor addition. There is no remaining symmetry associated with the pair of semi-detached dwellings. The properties exhibit no distinctive character features that are worthy of conservation, retention or replication. The proposed first floor addition (as amended) has increased the proposed development's compatibility with the adjoining semi-detached dwelling, noting that the amendments have:

- inset the proposed first-floor addition 1.9m from the existing front building alignment (originally proposed at 0m), to achieve increased compatibility with the front alignment of the first-floor level of the adjacent semi-detached dwelling.
- retained / incorporated the existing front section of the hip roof within the front elevation. In-setting the 1st floor addition from the front of the dwelling, so that the existing hip roof form is visible has reduced the bulk of the addition to the street. It has also resulted in retention of some of the existing roof form in accordance with 4.1.7.1 of the DCP, meaning that the addition is more complementary the existing roof structure.
- retained the existing front gable roof.

ASSESSMENT

The site has a small visual catchment, due to the narrow width of the lot (6.1m), approx. 5m width of the dwelling, and the built-up character of the area, including the 2-storey character of 53 Quinton Road.

The adjacent semi-detached dwelling visually obscures the property from areas to the south and is already developed with an FSR of 0.76 to 1 (source: Mod2018/0396).

The proposed built form:

- is compliant with the building height development standard and the DCP control limiting the number of storeys to 2. Compliance with these planning controls contribute to the built form being compatible with the development in the local area.
- provides front, side, and rear setbacks are compatible with the adjacent semi-detached dwelling, the property to the north, and the streetscape.
- provides a rear setback that is compatible with adjacent semi-detached dwelling, maintaining appropriate solar access and visual presentation.
- will be compatible with scale, form, bulk (GFA) setbacks, and configuration of the adjoining 'semi' at 53 Quinton Road, whilst presenting appropriately to the streetscape and adjoining land.

Noting the mixed residential character and variety of housing forms within the local area, the bulk and scale of the proposed development resulting from the FSR exception will be consistent with the mixed streetscape character. For these reasons the proposal is assessed as being consistent with objective (a).

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

- The site is distanced from heritage items, conservation areas, public open space, foreshore, and bushland areas.
- The site is distanced from important trees or landscaped areas.
- The proposal will not disrupt views from public spaces to any landmark or sensitive residential development.
- The proposal will not obscure any important landscape and townscape features.

For these reasons the proposal is assessed as being consistent with objective (b).

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

There are no public spaces adjoining the site that will be inappropriately impacted by the proposed FSR exception.

Quinton Road has no distinguishing or unique streetscape or landscape features to warrant special recognition, replication, or conservation in terms of the visual relationship with the subject site and the proposed development. The streetscape is of mixed residential housing character with no consistency of architectural styles forms or housing types.

ASSESSMENT

The proposed development will maintain an appropriate visual relationship with the existing built form and landscape character within the local area.

The proposal maintains the pattern of development in terms of setbacks and will be compatible with the bulk and form of nearby development.

The proposed first floor addition will maintain the rhythm and pattern of spaces between buildings when viewed from the street. The narrow 5m (approx.) width of the proposed first floor addition will result in a recessive building form that will not be visually intrusive and present appropriately to adjoining land.

For these reasons the proposal is assessed as being consistent with objective (c).

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

The proposal is assessed as being consistent with objective (d) noting that:

Solar access

Shadow diagrams showing the existing and proposed shadows accompany and support the proposal. The following key aspects are noted.

The site and the adjoining properties have an east / west orientation to Quinton Road. As a result, shadow diagrams demonstrate that shade will be relatively evenly shared between the rear yard (morning) and front yard (afternoon) of the adjacent property at 53 Quinton Road. This reflects the existing development & shading pattern for properties along the western side of Quinton Road, and provides a relatively even distribution of shade, consistent with the development pattern along the street.

In accordance with the DCP, the sunlight available to the private open space of the adjoining dwelling will not be impacted by more than 3 hours between 9am and 3pm on 22 June.

It is assessed that, whilst shade onto the adjoining property will be moderately increased above the current levels, the extent of the increase is within reasonable limits.

View sharing

No significant view corridors or vantage points are identified from the site/ location. Outlooks to the north (district) and east (coastal/beach) are generally available from the hillside location.

The proposed additions, are not anticipated to unreasonably impede views from surrounding residential properties.

The proposed development will provide views from the property (proposed upper level and roof terrace) that don't currently exist, thereby increasing the extent of views available from the location.

Access has not been gained to nearby properties in assessing this aspect; this may be undertaken when the DA is publicly exhibited to neighbouring properties which may be undertaken during the assessment of the DA.

ASSESSMENT

Privacy

Privacy has been considered in the proposed design and satisfies the DCP's objectives. The following aspects are noted:

- Appropriate side building setbacks are provided by the proposed additions noting the proposed first floor level setbacks align with the lower building level.
- No first-floor level balconies or terraces are proposed adjacent to the principal living areas of the adjacent dwellings,
- The proposed north facing windows at the first-floor level are associated with bedrooms and bathrooms rather than living rooms. They are proposed to achieve improved solar amenity to the dwelling. Obscure glazing may be provided to bathroom windows to enhance privacy (if considered necessary) and may form a condition of consent.
- The proposed north facing windows are significantly separated from the sensitive rooms and private open spaces of the adjoining dwelling house, satisfying privacy.
- Private open spaces are positioned at the rear (west) and are away from the southern side of the adjoining dwelling house satisfying privacy.

The proposed roof terrace appropriately addresses privacy, noting:

- The amended DA has reduced the area of the roof terrace from 18.5m² to 10m² limiting its potential use.
- The terrace will principally gain an outlook to the east and northeast whilst optimising solar access from the north.
- Privacy is addressed by the offset location of the roof terrace compared to the adjacent open space area at the rear of 57 Quinton Road, Furthermore, the position of the terrace within the middle of the dwelling footprint. The central location of the terrace on the site avoids potential downward sightlines into the private open space of 57 Quinton Road.
- Not being at the same level or directly connected to the principal living areas of the dwelling, the proposed terrace will gain occasional use. It is not proposed as the principle private open space for the dwelling.
- Privacy is also addressed by the significant separation to residential buildings to the east (on the opposite side of Quinton Road) and south, obscured by roof of 53 Quinton Road.

For these reasons, the proposal is assessed as being consistent with objective (d).

ASSESSMENT

3.2 4.6 (3)(b) sufficient environmental planning grounds to justify contravening the development standard

In accordance with 4.6 (3)(b) there are sufficient environmental planning grounds to justify the exception to the development standard.

Undersized allotment

The site is an undersized allotment based on clause 4.1 of the LEP, which sets a minimum lot size of 250m². The 186m² site area is 64m² / 26% under the minimum lot size for the area, compromising the ability to achieve numerical compliance with the development standard.

In relation to undersized allotments, 4.1.3.1 of 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)".

If calculated under 4.1.3.1 of the Manly DCP, applying a site area of 250m², the FSR is 0.56 to 1 and within the limits set by the DCP control.

For the various reasons stated herein, strict numerical compliance with the standard is unreasonable or unnecessary in the circumstances of the proposed development and there are sufficient environment planning grounds to justify contravening the development standard, thereby satisfying the undersized allotment control in the Manly DCP.

Modest existing and proposed GFA

The existing dwelling house contains a modest 74.84m² of GFA comprising a small dwelling. The proposed GFA is 140.74m² and remains of modest scale by contemporary standards.

The changes proposed to the existing gross floor area will result in an improved residential amenity for the building occupants, with additional internal spaces to better accommodate contemporary living needs.

Existing, older dwelling

The semi-detached dwelling is estimated to have been constructed in the 1930's or 1940's prior to the introduction of FSR standard which has been in place since approx. 1988. This limits the potential to achieve compliance with the standard.

Compatible with the bulk, scale, form, and setback pattern adjoining semi-detached dwelling

ASSESSMENT

The proposed development provides a floor space ratio that is compatible with the property at 53 Quinton Road, the adjacent semi-detached dwelling the mixed residential development character in the street / local area.

The semi at 53 Quinton Road was extended to accommodate a first-floor addition in approximately 2018 via DA169/2017 and Mod 2018/0396 and is reported to have an approved FSR of 0.76 to 1.

The amended design has increased the proposed development's compatibility with the adjoining semi-detached dwelling, noting that the amendments have:

- inset the proposed first-floor addition 1.9m from the existing front building alignment (originally proposed at 0m), to achieve increased compatibility with the front alignment of the first-floor level of the adjacent semi-detached dwelling.
- retained / incorporated the existing front section of the hip roof within the front elevation, increasing the compatibility with the configuration and materials of the adjoining semi-detached dwelling.
- retained the existing front gable roof.

In-setting the 1st floor addition from the front of the dwelling, so that the existing hip roof form is visible has reduced the bulk of the addition to the street. It has also resulted in retention of some of the existing roof form in accordance with 4.1.7.1 of the DCP, meaning that the addition is more complementary the existing roof structure.

Figures 5 and 6 below show a comparison between the original and amended designs.

The proposed building form, as amended, will be compatible with the setbacks, form bulk, scale, and that are established on the adjacent property at 53 Quinton Road.

The proposed FSR is therefore compatible with the established development character despite it exceeding the FSR development standard.

No inappropriate amenity impacts

The proposal will not result in any inappropriate environmental impacts on the adjoining land in relation to solar access, privacy, view sharing, and visual intrusion.

ASSESSMENT

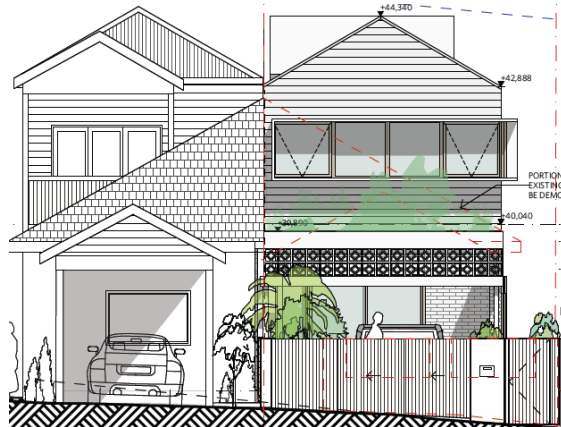


Figure 5 – original eastern / front elevation

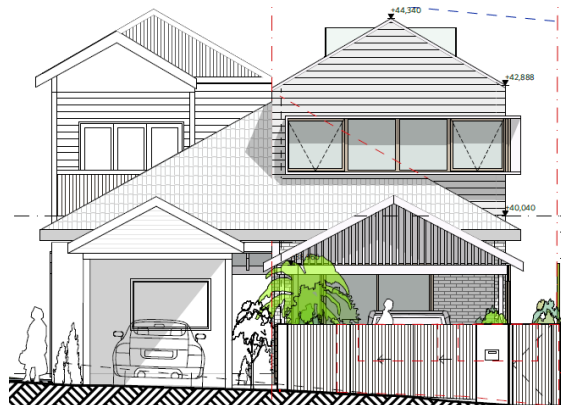


Figure 6 – amended eastern / front elevation. The increased first-floor front setback, retention of the gable roof and part of the hip roof achieve a more recessive first-floor addition and increased compatibility with the adjoining semi-detached dwelling

ASSESSMENT



Figure 7 – existing street frontage showing the existing gables and hip roof forms

3.2.1 The proposal satisfies the relevant objectives of the Environmental Planning and Assessment Act

Having regard to *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, the proposal is consistent with the following objectives at under Section 1.3 of the Environmental Planning and Assessment Act 1979 (the Act):

(c) to promote the orderly and economic use and development of land; and

(g) to promote good design and amenity of the built environment, through consistent streetscape alignment and increased landscaping at the street edge.

In response to (c), the proposal will facilitate the orderly and economic use and development of the land, in an appropriate location, in a manner that is desired by the prevailing planning provisions because it will facilitate additional accommodation, with high residential amenity, in a highly desirable location, and meet the contemporary living needs of the dwelling occupants.

In response to (g), the proposal results in a residential development that will promote good design and amenity of the built environment.

The built form outcome has been developed through detailed site, context, privacy, view sharing and shadow analysis to ensure an appropriate contextual and streetscape fit.

The proposed development is designed to reflect the siting and setbacks of existing development and be compatible with the surrounding built form.

The proposed first floor addition is successful in minimising its impacts. It incorporates a narrow volume with compatible setbacks. It will be compatible with scale, form, setbacks, and configuration of the adjoining 'semi' at 53 Quinton Road, presenting appropriately to the streetscape and adjoining land.

ASSESSMENT

The proposed building addition, inclusive of its FSR exception will maintain the dwelling house's streetscape alignment, and in doing so maintain an appropriate streetscape presentation.

3.3 Secretary's considerations

With regards to the Secretary's considerations the proposed variation of the development standard:

- Does not raise any matter of significance for State or regional environmental planning consistent with 4.6 (5)(a).
- The public benefit is not served by maintaining the development standard consistent with 4.6 (5)(b).

CONCLUSION

4 Conclusion

The variation proposed to the FSR development standard has been appropriately acknowledged and the circumstances assessed, having regard to the objectives of the control.

In conclusion, Council can be satisfied that:

- the proposed FSR exception will result in a contextually responsive development.
- there are sufficient site-specific circumstances and environmental planning grounds to justify the exception to the development standard.
- the proposal is consistent with the objectives of the FSR standard and will result in an appropriate amenity outcome to neighbouring land.
- compliance with the FSR development standard is unreasonable or unnecessary in the circumstances of the case.

The proposal succeeds when assessed against the Heads of Consideration pursuant to clause 4.6 and should be granted development consent.

ITEM 3.4	DA2023/1463 - 96 CABARITA ROAD AVALON BEACH - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE INCLUDING SWIMMING POOL
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PURPOSE

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

RECOMMENDATION

THAT Council as the consent authority **approves** Development Consent to DA2023/1463 for demolition works and construction of a dwelling house including swimming pool on land at Pt Lot 21 DP 1302239, Pt Lot 22 DP 1302239, 96 Cabarita Road AVALON BEACH, subject to the conditions set out in the Assessment Report.

Reporting manager	Steve Findlay
TRIM file ref	2024/845977
Attachments	1 Assessment Report 2 Site Plan and Elevations

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/1463
Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Pt Lot 21 DP 1302239 Pt Lot 22 DP 1302239, 96 Cabarita Road AVALON BEACH NSW 2107
Proposed Development:	Demolition works and construction of a dwelling house including swimming pool
Zoning:	C4 Environmental Living
Development Permissible:	Yes - Zone C4 Environmental Living Yes - Zone W1 Natural Waterways
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	Yes
Applicant:	Meraki Developments Pty Ltd
Application Lodged:	19/10/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	26/10/2023 to 09/11/2023
Advertised:	Not Advertised
Submissions Received:	7
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 12,164,980.00

EXECUTIVE SUMMARY

The proposal seeks consent for demolition of the existing dwelling, construction of a dwelling-house in the form of pavilions, a swimming pool, driveway and tree removal.

The application has been referred to the Development Determination Panel (DDP) due to seven (7) submissions being received in objection to the application.

The original scheme involved works within the foreshore area which triggered the need to be referred to the Northern Beaches Local Planning Panel (NBLPP), but has since been amended to delete those elements triggering the referral to NBLPP.

The application was referred internally to the Natural Environment and Landscape sections, who provided review comments throughout the assessment and amended plans process on the impact of the development on a major grouping of native trees on the lower section of the site.

A Request for Information letter raised a number of critical issues that have since been addressed through the submission of amended plans and additional information. Notably, the application was amended on a number of occasions to; reduce the extent of the multiple footprints making up the built form, to reduce the impact on native trees and to reduce the extent of encroachments into the foreshore area.

The amended application complies with all relevant development standards, and there is no Clause 4.6 associated with the application.

The proposal performs well in relation to the built form controls under the Pittwater 21 DCP, complying with all setback, landscaped area and envelope controls.

Various concerns have been raised in the submissions made by local residents. In particular, the concerns relate to biodiversity and landscaping issues, impacts on the natural environment generally, and the size, bulk and scale of the development.

The amended scheme reduces the size, scale and extent of the built form elements making up the development (mainly by reduction from 3 to 2 pavilions) and has minimised the impacts on the natural environment, and the low density character of the locality and the foreshore character of Pittwater. Special and standard conditions have been imposed relating to mitigating and managing impacts on the site, adjoining properties and the public road.

The final outcome is satisfactory from a planning perspective, and has addressed the concerns raised in Council's natural environment assessments.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal involves demolition of the existing dwelling and construction of a new dwelling-house in the form of two pavilions, a main dwelling pavilion and a secondary pavilion.

In detail, the proposal involves:

Main Pavilion

- Pool level with open plan living, games and bar area
- Ground level including 4 space garage, open plan living and dining, media room, cellar, laundry and workshop
- First Floor including 3 bedrooms

Secondary Pavilion

- Four bedrooms, four bathrooms and four studies
- Two garages

External

- A covered pedestrian link connecting the main pavilion to the secondary pavilion
- Swimming pool
- New fencing
- New driveway
- Removal of trees

Amended Plans

Amended plans were provided throughout the application process and included the following changes:

- Deletion of the "third pavilion" (which was originally proposed on the upper part of the site and closer to the street)
- Deletion of works in the foreshore area (all works deleted except for swimming pool)
- Amendment to the floor layout of the secondary pavilion and a physical connection provided to the main pavilion was added, to ensure the development will function as a single residence only
- Amendment to the driveway design, including providing a setback to the power pole
- Reduction in the size of the rear deck area
- A significant increase in number of major trees to be retained in the lower portion of the site (between the main pavilion and the foreshore), which increased from 39 trees to 48 trees

In accordance with Council's Community Participation Plans, the amended plans did not require re-notification as they involved a lesser environmental impact.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
Pittwater 21 Development Control Plan - D1.20 Scenic Protection Category One Areas

SITE DESCRIPTION

Property Description:	Pt Lot 21 DP 1302239 Pt Lot 22 DP 1302239 , 96 Cabarita Road AVALON BEACH NSW 2107
Detailed Site Description:	The subject site consists of an allotment located on the northern side of Cabarita Road. The site is irregular in shape with a frontage of 14.1m along Cabarita Road and a depth of approximately 100m. The site has a surveyed area of 4260m². The site is located within the C4 Environmental Living zone and accommodates a dwelling house.

	The site is a recently formed Lot (Lot 22 DP 1302239), and contains access from Cabarita Road down to an existing dwelling on the waterfront at Careel Bay. The site is heavily vegetated with vegetation surrounding the existing dwelling Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by residential dwellings and some vacant lots adjoining Careel Bay.
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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:

DA2023/0839
Development Application for Subdivision of two lots into two lots (boundary adjustment).
Deferred Commencement Approval on 11 January 2024.

Mod2024/0076
Modification of consent to DA2023/0839 granted for subdivision of two lots into two lots (boundary adjustment).
Approved on 5 March 2024.

SC2024/0011
Subdivision Certificate for Boundary Adjustment.
Approved on 1 May 2024.
This application included the creation of the subject lot (Lot 22).

DA2024/0567
Torrens title subdivision of one lot into two lots.
Approved 14 October 2024.
This was a subdivision of the newly formed neighbouring lot (Lot 21).

APPLICATION HISTORY

A Request for Information letter (RFI) was sent for the application on 11 March 2023.

Plans submitted on 21 May 2024 addressed the concerns related to works within the Foreshore Building area.

Various plans submitted in June 2024 and July 2024, addressed issues raised by Council's Development Engineer.

Since the date of the RFI, various information was submitted to address the concerns raised by Council's Biodiversity team.

On 13 September 2024, a site meeting was held between the applicant, Council Assessment officers and Council Biodiversity Officers to discuss issues the remaining concerns regarding the loss of trees.

Further plans and information was then submitted to Council's Biodiversity officer, and support was subsequently provided from Council's Biodiversity team (subject to conditions).

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	Pittwater Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 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 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 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 26/10/2023 to 09/11/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 7 submission/s from:

Name:	Address:
Mr Andrew John Kerr Mrs Karen Felicia Kerr	80 Cabarita Road AVALON BEACH NSW 2107
Alison Guesdon	724 Barrenjoey Road AVALON BEACH NSW 2107
Ms Jacquelyn Frances Turner Sonny Vandevelde	6 Joseph Street AVALON BEACH NSW 2107
Amiee Edwards	146 Avalon Parade AVALON BEACH NSW 2107
Mrs Chelsey Baker	24 Old Barrenjoey Road AVALON BEACH NSW 2107
Ms Anna Maria Monticelli	11 Ebor Road PALM BEACH NSW 2108
Mr David John Goudie Mrs Susannah Lisa Goudie	45 Careel Head Road AVALON BEACH NSW 2107

The issues raised in submissions are addressed as follows:

- **Removal of trees**

The submissions raised concerns with the extent of tree removal. Concern is also raised with regard the context of historical subdivision and historical tree removal due to subdivision.

A request is also made for tree removal to be undertaken only after a Construction Certificate is issued and prior to commencement of any works.

Comment:

Council's Natural Environment Officer's are supportive of the application (as amended), subject to conditions. This follows the submission of a number of amended schemes and additional information. The changes in the amended plans are discussed under the 'Amended Plans' section of the report, and the 'Application History' section of the report.

Overall, Council's Natural Environment Officer's are satisfied as to the retention of native trees within the foreshore area, retention of trees at the top of the site (deletion of the 3rd pavilion), and tree retention between the main pavilion and the foreshore (noting that amendments were also made via reduction of the deck area to provide for further retention).

In regard to the request for the timing of tree removal, Council's Landscape Officer has reviewed this request and advised that conditions imposed are consistent with standard practice.

- **Biodiversity impacts**

The submissions raised concerns with impacts on the biodiversity values of the site. This includes impacts to habitats and the natural environment.

Comment:

As above, Council's Biodiversity Officer is satisfied with the application (as amended), and subject to special conditions. This is the result of various amended schemes and additional information, including a reduction of the overall built form footprint on the site. Further discussion is provided under the Biodiversity Officer section of this report.

- **Bulk and Scale**

The submissions raised concerns with the proposed bulk and scale.

Comment:

The proposal has been amended to delete the originally proposed 3rd pavilion (reducing the total number of pavilions from 3 to 2) The proposal (as amended) performs well against the relevant planning controls, and also involves a built form that is well articulated, well modulated, and steps down with the topography of the site. The proposal also complies with the development standard for building height and built form is well separated from neighbours and the public domain. As such, the proposed bulk and scale is deemed to be reasonable and is satisfactory.

- **Inconsistent with controls and zone objectives**

The submissions raised concerns in relation to the proposal's inconsistency with controls and objectives.

Comment:

An assessment in this report has been made against the relevant zone objectives.

The proposal performs well against built form controls, and this is identified in the Built Form Controls section of this report.

- **Stormwater impacts**

The submissions raised concerns with Stormwater impacts.

Comment:

Council's Development Engineer is satisfied with the design for stormwater, subject to conditions.

- **Foreshore Building line**

The submissions raised concerns that the proposal does not comply with the Foreshore Building Line control.

Comment:

As amended, the proposal fully complies with the Foreshore Building Line control, with the proposed new works relating to only exceptions (a swimming pool) that are allowed under Clause 7.8 of the Pittwater LEP.

- **Soil Erosion and Sedimentation**

The submissions raised concerns with regard to Soil Erosion and Sedimentation.

Comment:

Conditions have been imposed to require a impacts related to Soil Erosion and Sedimentation are minimised.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	SUPPORTED (WITH CONDITIONS) Council's Landscape Referral is assessed against the Pittwater Local Environment Plan (PLEP) clause C4 zone Environmental Living, and the following Pittwater 21 Development Control Plan (PDCP) controls (but not limited to): B4.22 Preservation of Trees and Bushland Vegetation; C1.1 Landscaping; and D1 Avalon Locality. The site is located in the C4 Environmental Living zone, requiring development to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment with ecological, scientific or aesthetic values, including the retention of natural landscape features and existing trees, to satisfy the landscape objectives of the C4 Environmental Living zone. Landscape Plans and a Arboricultural Impact Assessment are submitted with the development application. Updated comments: Amended plans are submitted altering the proposed building footprint with a reduction in the size of the deck. The previous assessment that thirty nine existing trees were recommended for retention and management is now increased to forty eight existing trees to be retained and managed, as listed in the Addendum to the Arboricultural Impact Assessment dated September 2024, following review of the amended plans. A total of eighteen existing prescribed trees are required for removal should the application be approved and this is reduced from the previous total of twenty six existing prescribed trees. It is noted that the Addendum to the Arboricultural Impact Assessment additionally identifies twenty seven existing trees that are exempt that may be managed or removed without Council consent under the PDCP exempt provisions. Landscape Referral raise no concerns with the recommendations of the Addendum to the Arboricultural Impact Assessment, as the removal of the nominated existing trees is unavoidable should the proposed building footprint be approved. As recommended in the Addendum to the Arboricultural Impact Assessment and as detailed in the Arboricultural Impact Assessment (AIA) dated January 2023, tree sensitive construction methods for excavation within the tree protection zone of existing trees identified in the AIA report require Project Arborist supervision, and conditions shall be imposed. The Biodiversity Report is noted with the intent to restore the native vegetation through replanting of Pittwater Spotted Gum Forest vegetation association, as nominates and documented in the submitted Landscape Plans which provide replanting throughout the property. The Landscape Plans proposal provides, when established, additional tree canopy coverage and the re-introduction of understorey native plants. A total of twenty five new native trees are proposed including seventeen Spotted Gum, two Sydney Red Gum, three Red Bloodwood, and three Cabbage Tree Palms, all at tube stock planting size which Landscape Referral will condition to be at a larger container size at planting. Understorey native mass planting is also scheduled at tube stock sizes and likewise conditions shall be imposed for larger container sizes at planting, as tube stocks readily fail due to lack of moisture in the container and due to trampling by persons. To ensure the success of the proposals as shown on the Landscape Plans, a co-ordinated Vegetation Management Plan shall be submitted at Construction Certificate documenting the implementation of the native vegetation rehabilitation works including works program, schedules, supervision and monitoring. Should the application be approved, Landscape Referral provide conditions of consent. Previous comments: <i>It is noted the property falls within the Biodiversity Values Map (BVM) under the Biodiversity Conservation Act, and any tree removal within the BVM may trigger the Biodiversity Offsets Scheme (BOS). This specific matter is deferred to Council's Bushland & Biodiversity Referral team. The residual impacts that cannot be avoided or minimised must be offset, as detailed within the Biodiversity Development Assessment Report (BDAR). The concerns of Council's Bushland & Biodiversity Referral are noted.</i> <i>The Arboricultural Impact Assessment (AIA) includes the following recommendations:</i> • retention of 12 prescribed trees that have nil impact: trees numbered 104C, 104F, 105 106C, 108B, 115D 119B, 125, 135 136, UN1, UN4. • retention of 22 prescribed trees with tree management measures: trees numbered 108, 108A, 108J 115, 115A, 120 121, 123, 125C 126, 128B, 130 130B, 131, 140 145A, 146A, 147A, 150A2, 151A, 152A, 153A. • prescribed trees requiring design intervention (thus considered for removal) x 5: trees numbered 105A, 106B, 108D, 114, 122. • removal of 27 prescribed trees: 106, 106A, 106D 106E, 107, 107B 107C, 107D, 107F 108C, 108E, 110, 111, 111A, 111B, 112, 113, 113A, 124B, 125B, 127A 128, 129, 129D, 133, 148B, and 144A. Thus total removed is 32. • removal of 27 exempt species as listed in the AIA. <i>Landscape Referral consider that the site planning layout results in numerous Pittwater Spotted Gum Forest EEC trees (all but one) being removed, including seventeen Spotted Gum species, and concern is raised that the requirements of the C4 Environmental Living zone objectives are not satisfied by such extensive tree removal. Additionally the loss of such trees impacts upon the biodiversity value of the site. The proposed Landscape Plans include minimal tree replacement typical of the Pittwater Spotted Gum Forest EEC, with one replacement Spotted Gum, two NSW Xmas Bush, three Lilly Pilly, and three</i>

Internal Referral Body	Comments
	<i>Cabbage Tree Palms as replacement. The extent of Spotted Gum replacement is inadequate to re-establish the biodiversity value of the existing vegetation association present on the site.</i>
NECC (Bushland and Biodiversity)	SUPPORTED (WITH CONDITIONS) Original Referral Comments (16th January 2024) Areas of the site are identified on the NSW Department of Climate Change, Energy, the Environment and Water's (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 Offset Scheme (BOS) and the requirement for a Biodiversity Development Assessment Report (BDAR). As the proposed development is located within the BV Map, and the proposal requires the removal of native vegetation, the BOS is triggered and a BDAR is required to be prepared by an accredited assessor. A BDAR has been prepared by Kingfisher Urban Ecology & Wetlands (September 2023) under the accreditation of accredited assessor Kat Duchatel (BAAS17054). It is noted that the BDAR has not been certified and signed by the accredited assessor in accordance with clause 6.15 of the Biodiversity Conservation Act 2016. Without access to the case on the Biodiversity Offsets and Agreement Management System (BOAMS), Council's Biodiversity referrals team cannot complete assessment of the application. Despite several requests from Council's Biodiversity referrals team, Northern Beaches Council are yet to be added as a case party and as such do not have access to the required information necessary to undertake an assessment of the application. Upon receiving notice from the applicant or accredited assessor that Council have been added as a case party, Council's Biodiversity referrals team will recommence assessment of the application. It is noted that the upon review of the full application, additional comments may be provided and/or additional information may be requested as part of the assessment. Additional Referral Comments (6th June 2024) Council's Biodiversity Referrals team have assessed the Development Application for compliance against the following applicable provisions: • NSW Biodiversity Conservation Act 2016 • NSW Biodiversity Conservation Regulation 2017 • Pittwater LEP 2014 cl. 7.6 Biodiversity Protection • Pittwater 21 DCP cl. B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community • SEPP (Resilience and Hazards) 2021 cl. 2.10 Development within the Coastal Environment Area BDAR (Kingfisher Urban Ecology & Wetlands, May 2024) An amended BDAR (Kingfisher Urban Ecology & Wetlands, May 2024) has been submitted and reviewed by Council's Biodiversity Officer. The Biodiversity Credit Reports in Appendix VI of the BDAR identify that the Accredited Assessor is Geraldene Susan Dalby-Ball (BAAS19008), who is currently not accredited under the scheme. As the case is registered under Kat Duchatel (BAAS17054) accreditation, the credit reports require amending. Within the BDAR, the Ecologist has identified and mapped the presence of PCT 3234 which forms Pittwater and Wagstaffe Spotted Gum Forest which is listed as an Endangered Ecological Community (EEC) under the Biodiversity Conservation Act 2016 (BC Act). Council's Biodiversity Officers attended the site on 23rd May 2024. Review of the Arboricultural Impact Assessment (Growing My Way Tree Services, January 2023) and vegetation on site, revealed that the Ecologist has misidentified a key canopy species in the BAM Plot conducted within Pittwater Spotted Gum Forest on site. The Ecologist has identified that there were 9 <i>Eucalyptus paniculata</i> (Grey Ironbark) within the plot, however Council's site visit confirmed that the vegetation was dominated by <i>Corymbia maculata</i> (Spotted Gum). Given the discrepancies in species identification, and that it has been almost three years since the initial plot survey, Council would require the BAM plot be undertaken again to reflect the current conditions of the site. The Ecologist has mapped Vegetation Zones (VZs) in Figure 3.4 of the BDAR, as three separate MZs: existing cleared areas, areas to be landscaped and areas to be cleared. In accordance with the BAM Operational Manual Stage 1, A vegetation zone is an area of the same PCT with the same broad condition state. There seems to be confusion in the BDAR between Vegetation Zones and Management Zones, as it is stated in the report that "the site consisted of a single vegetation zone which covers the area in which native vegetation is proposed for removal and/or modification", which contradicts the mapping in Figure 3.4. The Ecologist then applies three Management Zones (MZs) relating to the proposed works in each zone. This requires amendment. The Ecologist has calculated 0.06ha of native vegetation removal, however it is unclear how this has been calculated, as the BDAR has not provided a map with the development overlay. In accordance with the Architectural Plans, a group of trees are proposed for removal as they are within the footprint of the proposed pavilion (T127, 127A, 128, 128C, 129, 129A, 129C, 129D, 133) which have not been included in the vegetation removal calculations and therefore no credits have been generated to offset their removal. Furthermore, it also appears that the Ecologist has overestimated the existing cleared areas. This should be mapped in accordance with the submitted survey and architectural plans. AIA (Growing My Way Tree Services, January 2023) The Arborist has recommended the removal of 31 native prescribed trees. Five trees identified for removal on the architectural plans (MHDP Architects April 2021) are not listed in the AIA, including T127, 128C, 129A, 129C and 139B and as such should be included in the AIA. New drainage lines in accordance with the proposed Stormwater Plan (MHDP Architects, 2023) indicate new channels within proximity to T115A and T115 however this has not been discussed in relation to the retention/removal of

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	the tree. Tree 115 is a significant tree which is not supported for removal. Landscape Plan (Rolling Stone Landscapes, December 2022) Given the extent of removal of EEC from within the Subject Site (31 native trees), the proposed replacement of only 1 x <i>Corymbia maculata</i> is grossly insufficient to comply with the BC Act, PLEP cl. 7.6 and P21DCP cl. B4.7 to avoid and minimise environmental impacts and ensure no net loss of canopy trees from within the site. The majority of landscaping proposed within the site is through shrubs and groundcovers, or areas of lawn. To achieve no net loss of canopy within the site, the Landscape Plan would require amendments to replace native canopy trees proposed for removal at a ratio of 1:1. Furthermore, many species listed in the Landscape Plan as part of PSGF EEC are not actually part of the community, including <i>Banksia robur</i>, <i>Callistemon citrinus</i>, <i>Eriostemon australasius</i>, <i>Westringia fruticosa</i>, and <i>Carpobrotus glaucescens</i>. As such, the Landscape Plan is not compliant with P21 DCP cl. B4.7. Avoid and Minimise in Accordance with BAM (2020) Council's Biodiversity Referrals team do not support the removal of Pittwater Spotted Gum Forest EEC for the proposed dwelling residence as there has been no attempt to demonstrate that alternative designs have been considered to achieve the principles of avoid and minimise, as required in accordance with BAM (2020). The BDAR states that "the location of the proposed development footprint is situated, for the most part, in the existing cleared and developed areas of the site. This location was selected to minimise impacts to PWSGF by retaining as many trees as possible". The removal of 30 trees native to Pittwater Spotted Gum Forest EEC does not support this statement. Given the size of the lot and the existing cleared areas, Council's Biodiversity Referrals team believe there is ample scope to amend the design to retain as much of the EEC on site as possible, while still achieving a dwelling house with associated pool and landscaping etc. This may require reducing the size of the components of the proposal, or shifting the dwelling upslope and removing landscaped areas or driveways between the dwelling and the pavilion. At this stage, Council's Biodiversity referrals team do not support the proposal as it does not comply with the NSW State Legislation nor relevant local planning controls as listed above. Until it can be demonstrated that the proposal has investigated alternative solutions that include avoiding and minimising impacts to the EEC, the proposal is not supported. Final Referral Comments (22nd August 2024) Amended documentation was submitted on the 31st July 2024 by the applicant and has been reviewed by Council's Biodiversity Referrals team, including: • Amended BDAR (Kingfisher Urban Ecology & Wetlands, August 2024) • Amended Biodiversity Plans: A004, SK30, SK31, SK32, SK33 (MHDP Architects, July 2024) • Arborist Response to Council Biodiversity Assessment feedback (Growing My Way Tree Consultants, July 2024) • Avoid and Minimise Response Letter (MHDP Architects, 26th July 2024) • Amended Stormwater Drainage Proposal Maps (Bekker Engineers Design Buro P/L, 17th July 2024) The amended application is not supported by Council's Biodiversity Referrals team on the following basis: 1. The BDAR does not comply with the requirements of the Biodiversity Conservation Act 2016, the Biodiversity Assessment Methodology (BAM) (2020) and the Guidance for local government on undertaking a critical review of a Biodiversity Development Assessment Report (DCCEEW 2024), as: a) the report has been submitted in Draft format; and, b) the report has not been signed and certified by the Accredited Assessor; and, c) the finalised biodiversity credit report from the BAM Calculator (BAM-C) has not been attached and submitted with the report; and, d) Council have not been added as a case party in BOAMS, therefore assessment of the BDAR cannot be completed. 2. Whilst additional information has been provided in relation to avoid and minimise, justification largely focuses on the restoration of Pittwater Spotted Gum Forest EEC on site post-construction. This is not considered an effective avoid and minimise strategy as required by the BC Act and Pittwater LEP, and therefore Council's Biodiversity Officers are not satisfied that the development has adequately avoided and minimised impacts to biodiversity before relying on offsets. 3. Amendments to the proposed development do not demonstrate an adequate reduction of impacts to biodiversity. Tree 148B (<i>Casuarina glauca</i>) is the only additional tree proposed for retention as a result of the design amendments. Whilst this species is native, it is not part of the Pittwater Spotted Gum Forest EEC. 4. The Arborist has identified a number of trees as requiring design intervention or supporting evidence to sustain due to the SRZ/TPZ of the trees being significantly impacted (>10%). Such trees are located in areas likely to be impacted by the development, for example, within the roof line of the development, however are marked on the plans as being retained. Without an amended Arborist Report, it is unclear how these trees could be retained. Final Amended Comments (30th October 2024) Amended documentation was submitted by the applicant and has been reviewed by Council's Biodiversity Referrals team, including:

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	- Amended BDAR (Kingfisher Urban Ecology & Wetlands, October 2024) - Amended Architectural Plans (MHDP Architects, 26 September 2024) - Addendum to Tree Assessment and Development Impact Report (Growing My Way Tree Consultants, September 2024) The final designs reflect a reduced impact to Pittwater Spotted Gum Forest Endangered Ecological Community within the site as a result of detailed design discussions between the applicants project team and Council's Planners and Biodiversity referrals team. The final application details the use of avoid and minimise in accordance with the BC Act and as such is supported by Council's Biodiversity Referrals team. The final proposal will require the removal of 17 native prescribed trees (T107D, 107F, 108C, 108E, 110, 111, 111A, 111B, 112, 113, 113A, 124B, 125B, 127A, 128, 129, 133). The proposal will require the following offset credit obligation in accordance with the Biodiversity Offset Scheme: - Retirement of 3 Ecosystem Credits to offset the loss of 0.14ha of PCT 3234 – Hunter Coast Lowland Spotted Gum Moist Forest which forms part of Pittwater and Wagstaffe Spotted Gum Forest in the Sydney Basin Bioregion Endangered Ecological Community. - Retirement of 5 Species Credits for <i>Chalinolobus dwyeri</i> - Retirement of 5 Species Credits for <i>Vespadelus troughtoni</i> A Landscape Plan (Rolling Stone Landscapes, July 2024) has been prepared to offset the loss of native vegetation within the site, and includes sufficient replacement canopy trees including 2 x <i>Angophora costata</i>, 3 x <i>Corymbia gummifera</i>, 17 x <i>Corymbia maculata</i> and 3 x <i>Livistona australis</i>, as well as a variety of native shrubs and groundcovers. A Biodiversity Management Plan (BMP) is to be prepared by a suitably qualified professional and in accordance with Guideline 3 of Council's Biodiversity Requirements for Development Applications. The BMP will assist in the protection and management of Pittwater Spotted Gum Forest EEC within the site and is to be prepared noting the Landscape Plan prepared for the site. No objections subject to recommended conditions.
NECC (Coast and Catchments)	SUPPORTED (WITH CONDITIONS) The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Resilience & Hazards) 2021 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP. The application proposes the demolition of the existing dwelling house and the construction of a new contemporary dwelling house with integrated car parking accommodation, swimming pool, inclinator, tunnel and an enhanced site landscape regime. Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>. State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA. Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by BBF Town Planners Pty. Ltd. dated September 2023 and also as assessed in the submitted Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 8 December 2023, 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 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

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	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 8 December 2023, a base estuarine planning level (EPL), considering design life of 60 years, of RL 2.4m AHD would apply at the subject site. As assessed in the submitted Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 8 December 2023, the level for the proposed additions and alterations is above the applicable for the site. The proposed development is therefore, subject to conditions, satisfies 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 pool, access tunnel and inclinator within the foreshore area. The submitted Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 8 December 2023 justifies these works to be consistent with Clause 7.8(2)(b). Incline Passenger Lift Controls As per the clause C1.19 of the Pittwater DCP, Incline passenger lifts and stairways shall: i. be designed and located so they do not involve excessive excavation, or the removal of natural rock or trees, and ii. be erected as near as possible to the ground level (existing) of the site, and shall not involve the erection of high piers or visible retaining structures, and iii. be located and designed to minimise the effects of noise from the motor and overlooking of adjoining dwellings, and iv. be painted to blend in with surrounding vegetation and screened by landscaping and v. be set back two (2) metres from the side boundary to the outer face of the carriage vi. be located wholly on private land, and vii. have a privacy screen where there is a direct view within 4.5m to a window of a habitable room of another dwelling. The noise level shall not exceed 60dB(A), when measured one metre from any adjoining premises. These requirements are conditioned in approving the DA.
NECC (Development Engineering)	SUPPORTED (WITH CONDITIONS) The proposed development includes the construction of a new driveway crossing, driveway access to multiple garage and parking areas, stormwater management including on-site stormwater detention and a new outlet pipe to Careel Bay and the construction of a new dwelling, office and other habitable areas on a proposed new lot which is yet to be created. Planning will need to provide a suitable condition for deferred commencement subject to the creation of the lot. In terms of the proposed driveway crossing and internal driveway, the applicant's engineer has provided a plan and section for these works. The plan indicates that the driveway crossing will be constructed in the location of an existing power pole which is not supported. In this regard the driveway will need to be relocated to ensure there is a minimum offset of 1 metre from the edge of the pole to the driveway crossing. The drawing also includes a section of the driveway but there are no existing or design levels shown for each of the chainages. Also as there has been a new footpath constructed along the frontage of the site, the profile for the crossing must be in accordance with Council's Extra Low profile. The internal driveway is to provide transitions with a maximum grade of 1 in 4 (25%) to match the required levels for the

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	proposed parking areas. The architectural drawings also indicate a structure that appears to encroach the front boundary. It is unclear what this structure is but no encroachment is permitted. The submitted stormwater report and plans have been assessed and the stormwater management system including OSD is acceptable. The proposal includes the provision of a new 300mm outlet pipe through the existing seawall at the rear of the site. A review of the Coastal report indicates that this new outlet has not been considered in the assessment. As this outlet may require new scour protection works within the bay, it is considered that this issue must be assessed by Council's Coast and Catchment Team. The submitted Geotechnical report addresses the relevant DCP controls. Development Engineering cannot support the proposal, due to insufficient information to address vehicular access in accordance with Clause B6 of the DCP. Review 28/5/2024 Note to Planner: Awaiting updated engineering plans addressing the above comments. Additional Information Provided on 12/6/2024 The amended driveway plans showing a setback from the power pole is acceptable subject to conditions. No objections to approval subject to conditions as recommended.

Internal Referral Body	Comments
NECC (Riparian Lands and Creeks)	SUPPORTED (WITH CONDITIONS) This application was assessed in consideration of: - Supplied plans and reports; - Coastal Management Act 2016; - State Environmental Planning Policy (Resilience and Hazards) 2021; - Relevant LEP and DCP clauses; and - Northern Beaches Council Water management for development policy. <i>Riparian</i> The site abuts Pittwater and as such proposed development must not significantly impact on the biophysical, hydrological or ecological integrity of Pittwater or the quantity and quality of surface and ground water flows that it receives. <i>Seagrass</i> The site is 35m from a DPI mapped <i>Posidonia australis</i> (seagrass) Endangered Population. The development must not significantly affect seagrass beds (PDCP B4.16). No filling, dredging or other disturbance shall be undertaken within a 50m buffer area of seagrass beds. Seagrass beds are sensitive to sedimentation and sediment plumes as such the sediment and erosion controls must be sufficient to prevent sedimentation or sediment plumes from entering Pittwater, especially given the scale of land which is proposed to be cleared. <i>Mangroves</i> A large mangrove approximately 10m from the site, and any other nearby mangroves or mangrove saplings, must not be impacted by this development (PDCP B4.12). All development with potential to impact on Mangroves must be referred to NSW Fisheries as required under the Fisheries Management Act 1994 and may require a permit. <i>Caulerpa taxifolia</i> <i>Caulerpa taxifolia</i> is mapped within 16m of the site and actions must be undertaken to prevent the spread of <i>Caulerpa</i> if/when using the jetty as part of the proposed development (i.e. delivering or removing materials from building site). <i>Sediment Management</i> Sediment and erosion controls must be installed prior to any disturbance of soil on site and maintained until all work is complete and groundcover re-established. <i>Disposal of swimming pool water</i> The existing swimming pool must be drained into the sewerage system via an established connection. The new spa must be connected to the sewerage system. <i>Sediment pits</i> As per the Water Management for Development policy, the applicant must install a filtration devices that remove organic matter and coarse sediments from stormwater prior to discharge from the land. All stormwater treatment measures must make provision for convenient and safe regular inspection, periodic cleaning, and maintenance. <i>Stormwater outlet</i> The stormwater outlet discharging directly to the waterway is permitted as per the Northern Beaches Council Water Management for Development Policy. The outlet structure design must comply with Guidelines for Outlet Structures on Waterfront land prepared by the NSW Office of Water and Council's Protection of Waterways and Riparian Land Policy for additional requirements. Any new, modified or upgraded stormwater outlet or headwall in the bank or bed of the estuary is subject to a controlled activity permit.
NECC (Water Management)	SUPPORTED (WITH CONDITIONS) 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; The stormwater quality and balance proposed is satisfactory. Any new, modified or upgraded stormwater outlet or headwall in the bank or bed of the estuary is subject to a controlled activity permit from DPE.
Parks, reserves, beaches, foreshore	SUPPORTED (WITH CONDITIONS) The development site adjoins Pittwater waterway that is located downslope of the property. All development works must ensure that surface sediment runoff and/or erosion is controlled, managed and contained within the site boundaries and prevented from travelling across the boundary and into the waterway. No physical encroachments over the site boundaries are permitted, and structures and built elements are not permitted beyond the site boundaries. Public access to the waterway is not impacted by the proposed

Internal Referral Body	Comments
	development and the development is not detrimental to the landscape character of the adjoining 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	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	Council's Aboriginal Heritage officer provided the following comments: <i>"Reference is made to the proposed development at the above area and Aboriginal heritage. There are known Aboriginal sites in the area. No sites are recorded in the current development area, however, the area of the proposed development is identified as having high potential for unrecorded Aboriginal sites, as it lies within 200m of water.</i> <i>The Aboriginal Heritage Office recommends a preliminary inspection ('due diligence' under the National Parks and Wildlife Act 1974) by a qualified Aboriginal heritage professional. The assessment would provide information on what potential Aboriginal heritage issues exist on the land and recommendations for any further action if required.</i> <i>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."</i>

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 (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1336852M_02).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	51

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 1 Coastal Wetlands and littoral rainforest area

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

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

Comment:

The proposed application is seeking development consent for development including earthworks.

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

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

Comment:

The proposed dwelling is well separated from Pittwater and provides significant areas for landscaping within the foreshore area. Council's Natural Environment officer's are also satisfied with the proposal in terms of its impact to the above, subject to conditions.

As such, the proposal will not significantly impact on the above.

Division 2 Coastal Vulnerability Area

2.9 Development on land within the coastal vulnerability area

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

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

Comment:

The separation of the dwelling from the coastline, the minimisation of excavation in the foreshore area and the reasonable bulk and scale ensures that the proposal is consistent with the above.

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

- a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or
- b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
- c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

The satisfactory bulk and scale, minimisation of ground disturbance, and separation of the dwelling from the foreshore will ensure consistency with the above.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

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

Comment:

The satisfactory bulk and scale, minimisation of ground disturbance, and separation of the dwelling from the foreshore will ensure consistency with the above.

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:

For the reasons above, the the proposed development is not likely to cause increased risk of coastal hazards.

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?	Zone C4 : Yes Zone W1 : Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Zone C4 : Yes Zone W1 : Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	8.5m	8.5m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes

Clause	Compliance with Requirements
5.4 Controls relating to miscellaneous permissible uses	Yes
5.7 Development below mean high water mark	Yes
5.10 Heritage conservation	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

An assessment of the proposal has been made against the objectives of the C4 Environmental Living zone as follows:

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

Comment:

The proposal involves a new dwelling house and ancillary development that responds well to the topography of the land, provides significant areas of landscaping, and maintains a substantial amount of native vegetation within the foreshore area (to the satisfaction of Council's Natural Environment Officer's). This is achieved by providing a good landscape scheme, a dwelling that is well setback from the foreshore and by providing a design that has a compliant building height (below the canopy of trees). As such, the proposal development is considered to be sufficiently low impact and provides an appropriate character, design and external appearance when viewed from the waterway, neighbouring properties and public domain.

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

Comment:

The proposal involves the retention of existing planting, new planting and a dwelling is well separated from the foreshore, and is also well articulated and stepped on the site. This ensures the development will not have adverse impact on the above values.

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

Comment:

The proposal complies with the development standard for building height, steps well with the topography of the site, and is well articulated. As such, the proposal is of an appropriate density and scale.

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

Comment:

As above, the proposal provides new opportunities for enhanced and improved foreshore planting and native vegetation which will provide the opportunity for more natural form to visually predominate.

7.2 Earthworks

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

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

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

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

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

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

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

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

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

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

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

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

(f) the likelihood of disturbing relics

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

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.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	45m	N/A	Yes
Rear building line	FBL	Behind FBL (except allowable exceptions)	N/A	Yes
Side building line	2.5m	6.2m	N/A	Yes
	1m	4.9m	N/A	Yes
Building envelope	3.5m	Within	N/A	Yes
	3.5m	Within	N/A	Yes
Landscaped area	60%	65% (2801sqm)	N/A	Yes

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
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	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
C1.14 Separately Accessible Structures	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	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	Yes	Yes
D1.11 Building envelope	Yes	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D1.16 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D1.17 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D1.20 Scenic Protection Category One Areas	Yes	Yes
D1.21 Masterplan - Careel Bay	Yes	Yes
D15.11 Waterfront lighting	Yes	Yes
D15.22 Masterplan - Careel Bay	Yes	Yes

Detailed Assessment

D1.20 Scenic Protection Category One Areas

The proposal (as amended) has maintained compliance with the standard for Foreshore Building Line and the Foreshore Area, with the exception of the swimming pools, which is permitted.

This provides a situation in which there is suitable separation of the dwelling from the foreshore, and substantial opportunity for planting and natural features in this area.

The proposed rear deck has also been designed to avoid and minimise impacts on surrounding trees and vegetation facing the foreshore.

The built form also performs well against the planning controls, provides articulation, and complies with the development standard for building height.

Overall, the proposal will provide a presentation that integrates well with the natural land form, and respects the scenic qualities of the area.

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 \$121,650 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$12,164,980.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;

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

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

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

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

PLANNING CONCLUSION

The application is referred to the DDP for determination as there were 7 submissions received in response to the public notification.

The concerns raised in the resident objections have been addressed and where appropriate resolved by amended plans and conditions, particularly in relation to tree loss and impacts on the biodiversity values of the site.

Critical assessment issues related to the natural environment (tree loss) and building size, bulk and scale, have been addressed via amended plans, additional information, and conditions. In particular, one pavilion (3rd pavilion) was deleted, the main pavilion (fronting the waterway) was amended in its setback to the foreshore, and the secondary pavilion was amended to modify its floor layout and link it physically to the main pavilion.

A significant issue in the assessment of this application has been to ensure the development functions only as a single residence, considering the multi-pavilion nature of the design and layout. It is considered that the modifications made to the proposal will achieve that, however conditions have been imposed to restrict the use to a single dwelling only.

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

In particular, the compliant nature of the height, footprint and envelope, combined with the good levels of articulation and harmonious external finishes, will ensure the building will make a positive contribution to the foreshore character and the broader locality, providing substantial areas of landscaped open space and preservation of the tree canopy.

The proposal has therefore been recommended for **approval**.

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2023/1463 for Demolition works and construction of a dwelling house including swimming pool on land at Pt Lot 21 DP 1302239 Pt Lot 22 DP 1302239, 96 Cabarita Road, 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
A001	E	Site Plan	MHDP Architects	26/9/2024
A003	C	Excavation Plan	MHDP Architects	26/9/2024
A004	B	Trees to be Removed/Retained	MHDP Architects	26/9/2024
A101	D	Main House Pool Level Plan	MHDP Architects	26/9/2024
A102	D	Main House Ground Floor Plan	MHDP Architects	26/9/2024
A103	D	Main House First Floor Plan	MHDP Architects	26/9/2024
A104	D	Main House Roof Plan	MHDP Architects	26/9/2024
A105	C	Pavilion Garage Plan	MHDP Architects	2/10/2024
A106	C	Pavilion Floor Plan	MHDP Architects	14/5/2024

A107	C	Pavilion Roof Plan	MHDP Architects	14/5/2024
A108	D	Swimming Pool	MHDP Architects	26/9/2024
A201	C	Main House South and East Elevations	MHDP Architects	26/9/2024
A202	D	Main House North and West Elevations	MHDP Architects	26/9/2024
A203	C	Pavilion Elevations	MHDP Architects	14/5/2024
A204	B	Pavilion Elevations	MHDP Architects	18/4/2024
A221	C	Main House Sections	MHDP Architects	26/9/2024
A222	B	Pavilion Sections	MHDP Architects	18/04/2024
SK30	B	Building Siting/ Open Space Diagram	MHDP Architects	26/09/2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Geotechnical Assessment	Rev 3	JK Geotechnics	15 December 2022
Construction Management Plan	-	Bingo Group	August 2023
Sediment Control Plan	B	Bekker Engineers Design Buro Pty Ltd	July 2021
Tree Assessment and Development Impact Report	-	Growing My Way Tree Services	January 2023
Addendum to Tree Assessment and Development Impact Report	-	Growing My Way Tree Services	September 2024
Biodiversity Development Assessment Report	-	Kingfisher	28 October 2024
Estuarine Risk management Report	-	Horton Coastal Engineering	8 December 2023

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

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

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

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	7/11/2023

(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 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 means a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile.

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**

- 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.

6. General Requirements

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

Demolition and excavation works are restricted to:

 - o 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

7. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2024

A monetary contribution of \$121,649.80 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 \$12,164,980.00.

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. **Amended Landscape Plans / Vegetation Management Plans**
Amended Landscape Plans shall be issued to the Principal Certifier prior to the issue of a Construction Certificate to include the following details:
- a) co-ordinated layout to match the approved architectural plans,
 - b) all tree planting shall be nominated as a minimum pre-ordered planting size of 45-75 litres; and shall be located at least 3.0 metres from buildings or more, at least 1.5 metres from common boundaries;
 - c) mass shrub planting shall be installed at a minimum 200mm container size, and groundcovers and native grasses at a minimum 140mm container size,
 - d) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces,
 - e) the Amended Landscape Plans shall be co-ordinated with Vegetation Management Plan prepared by a qualified Ecologist. The Vegetation Management Plan shall document the implementation of the native vegetation rehabilitation works including works program, schedules, supervision and monitoring.

Certification shall be submitted to the Principal Certifier that these amendments have been documented.

Reason: Environmental amenity.

10. **Preparation of Biodiversity Management Plan**
A Biodiversity Management Plan (BMP) is to be prepared by an appropriately qualified Ecologist in accordance with the Biodiversity Requirements for Development Applications available on Council's website.
- The BMP is to be provided via email to Council's Biodiversity Planning Team via email at biodiversity.planning@northernbeaches.nsw.gov.au and to the Principal Certifier prior to the issue of the commencement of works.

Reason: To protect native vegetation, wildlife and habitats.

11. **Compliance with Ecologist's Recommendations – Pre-construction**
All impact mitigation measures specified in the approved Biodiversity Development Assessment Report (Kingfisher Urban Ecology & Wetlands, 28 October 2024) are to be implemented at the appropriate stage of development.
- Compliance with these measures is to be certified by the Project Ecologist in writing to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures.

12. **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 Principal Certifier prior to issue of Construction Certificate.
- Reason: To protect native vegetation.

13. **Like for like credit retirement conditions - Ecosystem credit retirement conditions**
Prior to issue of the relevant Construction Certificate the class and number of ecosystem credits in the Table below must be retired to offset the impacts of the development.
- The requirement to retire credits outlined in the Table below may be satisfied by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of ecosystem credits, as calculated by Biodiversity Conservation Fund (BCF) Charge System.
- Evidence of the retirement of credits or payment to the Biodiversity Conservation Fund in satisfaction of the requirements in the Table below, must be provided to the Manager Bushland and Biodiversity of Northern Beaches Council and to the Principal Certifier prior to release of construction certification.
- Evidence will be in the form of:
- o A copy of the confirmation email (from the BOS Credits team) to show that the correct type and number of credits have been retired, and from a relevant IBRA sub-region as per the offset rules, or
 - o If paid into the Biodiversity Conservation Fund, a copy of the section 6.33 statement.

Ecosystem credits required to be retired – like for like

Impacted Plant Community Type	TEC	Number of ecosystem credits	Containing HBT	IBRA sub-region	Plant community type(s) that can be used to offset the impacts from development

PCT 3234-Hunter Coast Lowland Spotted Gum Moist Forest	Pittwater and Wagstaffe Spotted Gum Forest in the Sydney Basin Bioregion	3	YES	Pittwater, Cumberland, Sydney Cataract, Wyong and Yengo. or Any IBRA subregion that is within 100 kilometers of the outer edge of the impacted site.	3234, 3437
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Reason: To offset the residual biodiversity impacts of the development in accordance with the NSW Biodiversity Offset Scheme.

14. **Like for like credit retirement conditions - Species credit retirement conditions**

Prior to issue of the relevant Construction Certificate the class and number of species credits in the Table below must be retired to offset the impacts of development.

The requirement to retire credits outlined in the Table below may be satisfied by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of species credits, as calculated by Biodiversity Conservation Fund (BCF) Charge System.

Evidence of the retirement of credits or payment to the Biodiversity Conservation Fund in satisfaction of the requirements in the Table below, must be provided to the Manager Bushland and Biodiversity of Northern Beaches Council and to the Principal Certifier prior to release of construction certification.

Evidence will be in the form of:

- A copy of the confirmation email (from the BOS Credits team) to show that the correct type and number of credits have been retired, and from a relevant IBRA sub-region as per the offset rules, or
- If paid into the Biodiversity Conservation Fund, a copy of the section 6.33 statement.

Species credits required to be retired – like for like

Impacted species credit species	Number of species credits	IBRA sub-region
Chalinolobus dwyeri/Large-eared Pied Bat	5	Any in NSW
Vespadelus troungtoni/Eastern Cave Bat	5	Any in NSW

Reason: To offset the residual biodiversity impacts of the development in accordance with the NSW Biodiversity Offset Scheme.

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

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by Bekker Engineers Design Buro Pty Ltd, drawing number 64027-DCP1, 64027-DCP2 dated 17/7/2024. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering.

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

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

16. **Traffic Management and Control**

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

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

17. **Vehicle Crossings Application**

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing 3.0 metres wide in accordance with Northern Beaches Council Standard Drawing Extra Low in accordance with Section 138 of the Roads Act 1993.

Note, driveways are to be in plain concrete only.

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

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

Reason: To facilitate suitable vehicular access to private property.

18. **Off Street Parking Design**

The Applicant shall submit a design for the parking facility in accordance with the relevant provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical Controls and Section 2.6 Design of Domestic Driveways.

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

Reason: Compliance with this consent.

19. **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.

20. Stormwater Outlet Structure to Waterway

Stormwater outlet structures to the waterway must be designed in accordance with DPE Water's Guidelines for Outlet Structures on Waterfront land. Guidelines can be found on the DPE website.

No mortar is to be used on the outlet. Rocks must be placed using an interlocking system with varying rock sizes (rip rap). The surface should be a textured finish to break up and dissipate sheet flows.

This design is to be submitted to the Principal Certifier prior to the release of the Construction Certificate.

Reason: To protect the surrounding creek bank from the effects of localised erosion.

21. 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 Certifier for approval prior to the issue of the Construction Certificate.

Reason: Protection of the receiving environment.

22. Stormwater Treatment Measures

The applicant must install a filtration device (such as a sediment control pit or absorption trench) that captures organic matter and coarse sediments prior to discharge of stormwater from the land. All stormwater treatment measures must make provision for convenient and safe regular inspection, periodic cleaning, and maintenance.

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

Reason: Protection of the receiving environment.

23. Aboriginal Heritage due diligence

A preliminary inspection ('due diligence' under the National Parks and Wildlife Act 1974) by a qualified Aboriginal heritage professional. The assessment would provide information on what potential Aboriginal heritage issues exist on the land and recommendations for any further action if required.

Details (and plan for any further actions) are to be provided prior to the issue of a Construction Certificate.

Reason: To protect Aboriginal Heritage

24. Amendments to the approved plans

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

- A notation is to be provided so that the front fence is no higher than 1.8m at any point (the front setback to the fence is to be consistent with what is shown on the plans). The fence elevation is to be designed to be consistent with architectural plan: *SK20 A View sharing Analysis dated August 2023 prepared by MHDP Architects.*

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.

25. 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.

26. **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.

27. **Controlled activity approval**

Controlled activities refer to work or action done on waterfront land, as defined by the [Water Management Act 2000](#). These activities must be designed in a way to protect our waterways and ensure minimal harm as a result of the work carried out on the land. Waterfront land includes the bed of rivers, lakes, or estuaries, as well as land on each side within 40 metres of a riverbank.

A controlled activity approval is required before undertaking any work or development on waterfront land if an exemption does not apply.

A control activity permit for waterfront land is required with the inclusion of any new, modified or upgraded stormwater outlet or headwall in the bank or bed of the watercourse.

Reason: Protect the downstream environment

28. **Estuarine Hazard Design Requirements**

All development or activities must be designed and constructed such that they will not increase the level of risk from estuarine processes for any people, assets or infrastructure in surrounding properties; they will not adversely affect estuarine processes; they will not be adversely affected by estuarine processes.

To ensure Council's recommended flood evacuation strategy of 'shelter-in-place', it will need to be demonstrated that there is safe pedestrian access to a 'safe haven' above the Estuarine Planning Level.

Reason: To minimise risks associated with coastal hazards for development in an estuarine environment.

29. **Estuarine Planning Level Requirements**

An Estuarine Planning Level (EPL) of 2.4m AHD has been recommended in the submitted Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 8 December 2023 for the subject site and shall be applied to all development proposed below this level as follows:

1. All structural elements below 2.4m 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 2.4m 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 2.4m AHD.
4. All interior power supplies (including electrical fittings, outlets and switches) must be located at or above 2.4m AHD. All exterior power supplies (including electrical fittings, outlets and switches) shall be located at or above 2.4m AHD to avoid the likelihood of contact with splashing waves and spray.

Reason: To ensure vulnerable components of the development are built at the appropriate level.

30. **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 Pty. Ltd. dated 8 December 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.

31. **Engagement of Project Ecologist**

A Project Ecologist is to be employed for the duration of the approved works to ensure all biodiversity protection measures are carried out in accordance with the Biodiversity Development Assessment Report (Kingfisher Urban Ecology & Wetlands, 28 October 2024).

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

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

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

Reason: To protect native vegetation and wildlife.

32. **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.

33. **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.

34. **Construction and Traffic Management Plan**

A Construction Traffic Management Plan (CTMP) and report shall be prepared by a Transport for NSW accredited person and submitted to Council via an application for a Permit to Implement Traffic Control. The application form can be accessed via <https://www.northernbeaches.nsw.gov.au/council/forms>. Approval of the permit application by the Northern Beaches Council Traffic Team is required prior to issue of any Construction Certificate.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase.
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken.
- Make provision for all construction materials to be stored on site, at all times.
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period.
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed.
- Where access is required across private property not in the direct ownership of the proponent, such as a private road/driveway, community title road or right of way, the CTMP is to include:
 - Evidence of the legal right and terms to use the access route or provide owners consent from the owners/strata/community association.
 - Demonstrate that direct access from a public space/road is not viable for each stage of works.
 - An assessment to be carried out of the physical constraints of the Right of Carriageway to determine the maximum size of vehicle that may access the site via the Right of Carriageway during construction.
 - Unless owner/strata/community associations consent is obtained, vehicles are not to exceed 24 tonnes or 7.5 metres in length (an assessment must be undertaken that the surface is capable of supporting up to 24 tonnes, otherwise the weight limit should be reduced in the CTMP). If consent is obtained, a copy must be included in the CTMP.
 - No construction vehicles, materials or plant are to be located or parked in the private road/driveway, community title road or right of way.
 - How any disruption to other users of the private road/driveway, community title road or right of way will be minimised and all users kept informed of likely disruption where the access will be closed or blocked for any given time.
 - If trees are located within or overhang the access route, a tree protection plan prepared by an Arborist with minimum AQF Level 5 in arboriculture demonstrating how any trees within the Right of Carriageway will be protected from damage by construction vehicles. Should any tree protection measures be required on private land in accordance with AS4970-2009 Protection of trees on development sites, owner's consent must be obtained.
 - A Dilapidation report, including photographic surveys, of the private road/driveway/right of way must be included prior to any works commencing on the site. The report must detail the physical condition of the private road/driveway/right of way, and any other adjacent private property assets (including trees) or adjacent public property that may be adversely affected by vehicles servicing the development site to undertake works or activity during site works.
 - A requirement for Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, to be submitted after the completion of works and prior to the Occupation certificate. The report must:
 - Compare the post-construction report with the pre-construction report,
 - Clearly identify any recent damage or change to the private road/driveway/right of way and whether or not it is likely to be the result of the development works,
 - Should any damage have occurred, identify remediation actions taken.
 - Be submitted to Council with the Occupation Certificate.
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site.
- Make provision for parking onsite. All Staff and Contractors are to use any basement parking once available.
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior.
- **[For use only when near a school zone] Specify that, due to the proximity of the site adjacent to ##### School, no heavy vehicle movements or construction activities effecting vehicle and pedestrian traffic are permitted in school zone hours (8:00am-9:30am and 2:30pm-4:00pm weekdays).**
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety.
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees.
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to)

concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site.

- o The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site.
- o Specify that the public roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council.
- o The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent.
- o Proposed protection for Council and adjoining properties.
- o The location and operation of any on site crane.

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

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

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

The development is to be undertaken in accordance with the Construction Traffic Management Plan approved by Northern Beaches Council Traffic Team.

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

35. 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:

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

36. Tree Removal Within the Property

This consent approves the removal of existing prescribed trees on the subject site as identified in the Arboricultural Impact Assessment dated January 2023, approved Plans, or as listed below:

- a) tree ID numbers 107D, 107F, 108C, 108E, 110, 111, 111A, 111B, 112, 113, 113A, 124B, 125B, 127A, 128, 129, 129D, and 133,
- b) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised development works.

37. 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.

38. Imported Fill

Landfill shall be of a suitable quality, consistent with and relevant NSW EPA Guidelines.

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.

39. 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

40. Project Arborist

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged to attend during excavation within the tree protection zone of nominated existing trees to be retained. Sensitive tree protection measures as recommended and described in the Arboricultural Impact Assessment dated January 2023 shall be undertaken and supervised by a Project Arborist, and in accordance with AS4970-2009 Protection of trees on development sites.

The Project Arborist shall be in attendance and supervise all works as nominated in section 5 Discussion and section 6 Recommendations part (c) and (f) of the Arboricultural Impact Assessment dated January 2023, and in particular:

- a) excavation using hand tools or non-destructive tree-sensitive methods such as hydro-excavation for nominated trees numbered 105A, 106B, 108, 108D, 114, 115, 115A, 122 and 153A,
- b) excavation using hand tools or non-destructive tree-sensitive methods for pier and beam works near nominated trees numbered 108A, 108J, 126, 130, 130B, 131 and 140,
- c) any other recommendation of the Project Arborist.

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.

41. Tree and Vegetation Protection

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

- i) all trees within the site not approved for removal, including trees and vegetation nominated for retention in the Addendum to the Arboricultural Impact Assessment dated September 2024, and 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 dated January 2023, and the Addendum to the Arboricultural Impact Assessment dated September 2024,
- 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 the Project Arborist as applicable.

Reason: Tree and vegetation protection.

42. 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.

43. **Compliance with Ecologist's Recommendations – During Construction**
All impact mitigation measures specified in the approved Biodiversity Development Assessment Report (Kingfisher Urban Ecology & Wetlands, 28 October 2024) are to be implemented at the appropriate stage of development.

Compliance with these measures is to be certified by the Project Ecologist in writing to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures.
44. **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.
45. **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.
46. **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.
47. **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: To protect the receiving environment.
48. **Management of *Caulerpa taxifolia***
The invasive marine alga *Caulerpa taxifolia* is present on this site. Site personnel must be able identify *Caulerpa*. All tools, machinery and environmental control devices must be inspected and cleaned thoroughly prior to leaving the site to prevent the spread of *Caulerpa* to other sites.

Any *Caulerpa* removed from the waterway should be tightly sealed in a plastic bag and lawfully disposed in general waste.

Reason: *Caulerpa taxifolia* is listed under the Biosecurity Act 2015 for all NSW waters.
49. **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.
50. **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.
51. **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.
52. **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.

53. 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.

54. 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.

55. Survey Certificate

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

- (a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.
- (b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.
- (c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

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

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

56. 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.

57. Traffic Control During Road Works

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

Reason: Public Safety.

58. 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

59. Landscape Completion

Landscape works are to be implemented in accordance with the approved Amended Landscape Plans, and inclusive of the following conditions:
a) landscape works are to be contained within the legal property boundaries,

- b) tree, shrub and groundcover planting shall be installed as indicated on the approved Amended Landscape Plans, unless otherwise imposed by conditions,
- c) all tree planting shall be a minimum pre-ordered planting size of 45-75 litres or as otherwise scheduled if greater in size; meet the requirements of Australian Standard AS2303 - Tree Stock for Landscape Use; planted into a prepared planting hole 1m x 1m x 600mm depth generally, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,
- d) mass shrub planting shall be installed at a minimum 200mm container size at planting, and groundcovers / native grasses at a minimum 140mm container size at planting, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,
- e) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces.

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

Reason: Environmental amenity.

60. 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 Addendum to the Arboricultural Impact Assessment dated September 2024, 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.

61. Compliance with Ecologist's Recommendations – Post Construction

All impact mitigation measures specified in the approved Biodiversity Development Assessment Report (Kingfisher Urban Ecology & Wetlands, 28 October 2024) are to be implemented at the appropriate stage of development.

Written and photographic evidence of compliance is to be prepared by the Project Ecologist and provided to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures.

62. Protection of Habitat Features – Certified by Ecologist

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

Written details demonstrating compliance are to be certified by the Project Ecologist and provided to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To protect wildlife habitat.

63. Replacement of Canopy Trees

At least 25 locally native canopy trees are to be planted on the site to replace protected trees approved for removal. Species are to have a minimum mature height of 8.5m and be consistent with the Native Planting Guide available on Council's website.

Tree plantings are to be retained for the life of the development and/or for their safe natural life. Trees that die or are removed must be replaced with another locally native canopy tree.

Replacement plantings are to be certified as being completed in accordance with these conditions of consent by a qualified landscape architect, and details submitted to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To establish appropriate native landscaping.

64. 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.

65. 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.

66. 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.

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

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

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

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

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

68. **Certification of Off Street Parking Works**

The Applicant shall submit a certificate from a suitably qualified person certifying that the parking facility was constructed in accordance within this development consent and the relevant provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical Controls and Section 2.6 Design of Domestic Driveways.

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

Reason: Compliance with this consent.

69. **Swimming Pool Requirements**

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

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

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

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

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

(d) A warning sign stating 'YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL' has been installed.

(e) Signage showing resuscitation methods and emergency contact

(f) All signage shall be located in a prominent position within the pool area.

(g) Swimming pools and spas must be registered with the *Division of Local Government*.

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

Reason: To protect human life.

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

70. **Landscape Maintenance**

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

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

Reason: To maintain local environmental amenity.

71. **Compliance with Ecologist's Recommendations – Ongoing**

All impact mitigation measures specified in the approved Biodiversity Development Assessment Report (Kingfisher Urban Ecology & Wetlands, 28 October 2024) are to be implemented at the appropriate stage of development.

Successful establishment/initiation of ongoing biodiversity measures is to be certified by the Project Ecologist in writing to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures.

72. **Maintenance of Stormwater Treatment Measures**

Stormwater treatment measures must be maintained at all times in accordance with manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

Northern Beaches Council reserves the right to enter the property and carry out appropriate maintenance of the device at the cost of the property owner.

Reason: Protection of the receiving environment.

73. **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.

74. **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.



FOR DEVELOPMENT APPLICATION ONLY

ISSUED FOR DEVELOPMENT APPLICATION
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MARK HURDLEMAN - Reg. No. 5665
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NEW RESIDENCE
100 CABARITA ROAD AVALON BEACH

SITE PLAN

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26/10/24 C
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EXTERNAL FINISHES SCHEDULE

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FOR DEVELOPMENT APPLICATION ONLY

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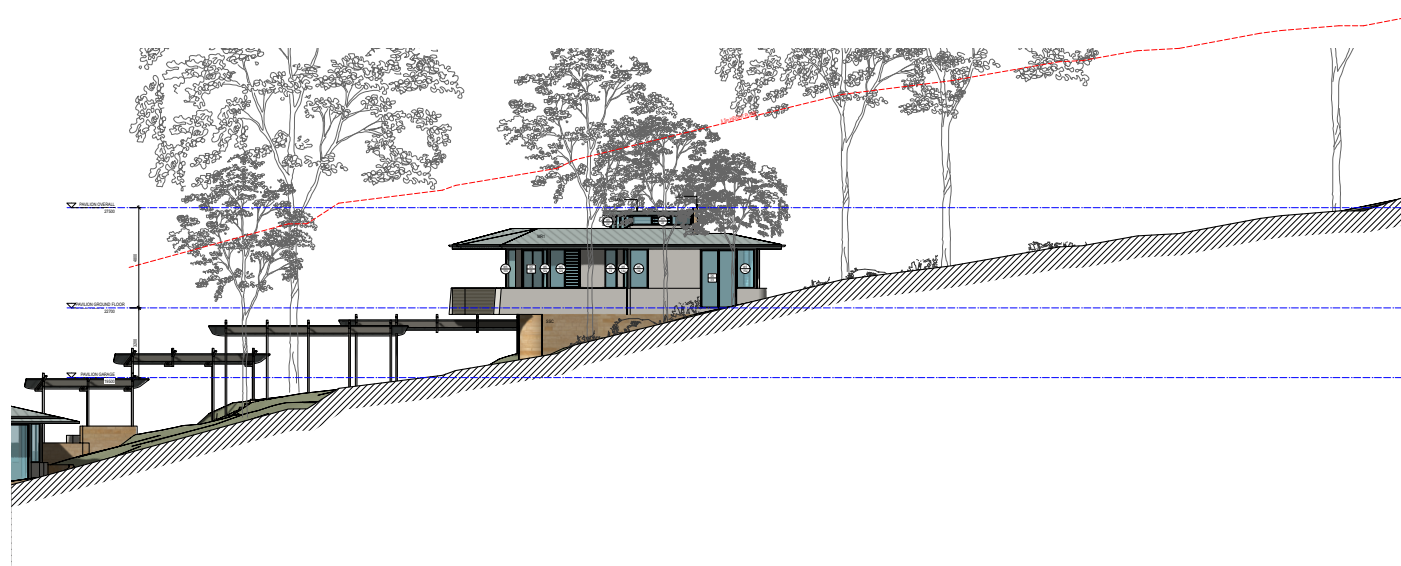
NEW RESIDENCE
100 CABARITA ROAD AVALON BEACH

PAVILION ELEVATIONS

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EXTERNAL FINISHES SCHEDULE

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NEW RESIDENCE
100 CABARITA ROAD AVALON BEACH

PAVILION ELEVATIONS

2208
JULY 2022

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ITEM 3.5 DA2024/0263 - 10 FITZROY ROAD CROMER - DEMOLITION WORKS AND CONSTRUCTION OF A NEW DWELLING HOUSE INCLUDING A SWIMMING POOL

PURPOSE

- a) To refer the attached application for determination as required under adopted delegations of the Charter.
- b) To refer the attached application for determination due to directions provided by the Department of Planning & Environment in relation to applications with a clause 4.6 variation to the building height standard.

RECOMMENDATION

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of WLEP 2011 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to DA2024/0263 for demolition works and construction of a new dwelling house including a swimming pool on land at Lot 5 DP 241272, 10 Fitzroy Road CROMER, subject to the conditions set out in the Assessment Report.

Reporting manager	Steve Findlay
TRIM file ref	2024/846042
Attachments	1 Assessment Report 2 Site Plan and Elevations 3 Clause 4.6

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/0263
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Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 5 DP 241272, 10 Fitzroy Road CROMER NSW 2099
Proposed Development:	Demolition works and construction of a new dwelling house including a swimming pool
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Boston Blyth Fleming Pty Ltd

Application Lodged:	19/03/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	26/03/2024 to 09/04/2024
Advertised:	Not Advertised
Submissions Received:	9
Clause 4.6 Variation:	4.3 Height of buildings: 10.59%
Recommendation:	Approval

Estimated Cost of Works:	\$ 3,441,627.00
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EXECUTIVE SUMMARY

The proposal seeks consent for demolition works and the construction of a new dwelling and a swimming pool.

The application is referred to the Development Determination Panel as it attracted more than 5 submissions in objection to the proposal and also involves a variation to the height of buildings development standard exceeding 10%.

The proposed dwelling has a maximum height of 9.4m, equating to a variation of 10.59% to the building height standard. The applicant has submitted a Clause 4.6 written request in support of the proposed variation. As detailed in this report, it is considered that the applicant's written request is

well-founded and adequately justifies the variation sought. In this regard, the total volume of the built form that breaches the height standard is relatively minor and occurs largely due to the sloping and previously altered topography of the site.

The proposal exhibits a high level of compliance with the Warringah Development Control Plan (WDCP) built form controls. The proposal, as amended, predominantly complies with the planning controls, and exceeds the requirements of the building envelope and front setback controls, notwithstanding minor breaches assessed in this report. The proposed wall height breaches are also considered against the objectives of the control and are found to be acceptable. The proposed swimming pool does not comply with the numerical rear setback requirement, but is consistent with the permitted exceptions to the control.

The application was publicly exhibited in accordance with Council's Community Participation Plan, whereby the proposal was notified to a total of 11 surrounding residents/owners. In response to Council's exhibition, a total of 9 submissions were received in objection to the proposal. It is noted that one additional submission was received on behalf of several surrounding properties, all of whom also made individual submissions. The issues raised in the submissions are addressed in this report and are broadly categorised as follows:

- Building height variation and supporting Clause 4.6 variation request,
- Built form compliance, bulk and scale,
- Geotechnical and stormwater impacts,
- Amenity impacts,
- Landscaping impacts,
- Plan details, and
- Construction traffic and noise.

The issues raised in the submissions have been sufficiently addressed where necessary by the amendments made to the proposal (described below) and the conditions of consent included in the recommendation of this report. An assessment of each of the concerns raised in the submissions is undertaken in this report and none of these matters are found to justify the refusal of the application in the public interest.

On balance, the proposal is considered to satisfy the relevant planning controls and has sufficient merit to be recommended for **approval** by the DDP, subject to the conditions listed in the recommendation.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for demolition works and construction of a new dwelling comprising:

Basement level

- 2 x car parking spaces

Ground floor

- Entry foyer and stairs
- Media room
- Laundry

- Kitchen, pantry, living & dining
- Terrace & balcony
- Bathroom
- Mud room, storage & bin store

First floor

- Bed 1 with ensuite & robe
- Bed 2 with robe & shared ensuite
- Guest bed with shared ensuite
- Study
- Rear terrace

Upper floor

- Master bed with ensuites & robe
- Study
- Rear balcony

External

- New driveway & pedestrian path
- New pool & terrace
- New front fence
- Landscaping works including tree removal and new planting
- Stormwater works

Amendment of Application

Following lodgement, the proposal was amended as follows:

- Delete gym from basement level and increase setback to rear wall, reducing extent of excavation
- Amend swimming pool and terrace design
- Reduce ground floor rear balcony depth
- Reduce first floor terrace width and incorporate planter boxes
- Reduce upper floor balcony width and incorporate planter box
- Increase first floor study southern side setback and reconfigure stair landing
- Amend stormwater design
- General amendment of drawings to improve clarity

The amendments made to the proposal result in a reduction in the environmental impacts of the development and therefore did not require re-notification, in accordance with Council's Community Participation Plan.

The amended plans were informally notified to surrounding residents.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Local Environmental Plan 2011 - 6.2 Earthworks
Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - B9 Rear Boundary Setbacks
Warringah Development Control Plan - D6 Access to Sunlight
Warringah Development Control Plan - D7 Views
Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - D9 Building Bulk
Warringah Development Control Plan - D13 Front Fences and Front Walls
Warringah Development Control Plan - D15 Side and Rear Fences
Warringah Development Control Plan - E10 Landslip Risk

SITE DESCRIPTION

Property Description:	Lot 5 DP 241272 , 10 Fitzroy Road CROMER NSW 2099
Detailed Site Description:	The subject site consists of one allotment located on the eastern side of Fitzroy Road. The site is irregular in shape with a frontage of 31.59m along Fitzroy Road and a depth of 45.55m. The site has a surveyed area of 885.3m². The site is located within the R2 Low Density Residential zone and accommodates an existing three-storey dwelling house.

	The site slopes approximately 7.6m from front to rear. The site contains one significant tree and a variety of palms and planted vegetation. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by detached dwelling houses.
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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:

DA2022/0704 - Alterations and additions to a dwelling house - Refused by the DDP for reasons related to building height, a Clause 4.6 variation and inadequate architectural plans in relation to height.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in the form of amended plans addressing concerns raised by Council. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 26/03/2024 to 09/04/2024 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 10 submission/s from:

Name:	Address:
Mr Guy Henderson Grunwald Robyn Joy Grunwald	31 Fitzroy Road CROMER NSW 2099
Mrs Jennifer Margaret O'dell	14 Daisy Street NORTH BALGOWLAH NSW 2093
Mr Matthew O'Neill	6 Fitzroy Road CROMER NSW 2099
Mr Michael Elias Diamond	29 Fitzroy Road CROMER NSW 2099
Dr Ian Edward John Evanson Mrs Laura Carole Evanson	12 Fitzroy Road CROMER NSW 2099
Mr Richard Hooker	27 Fitzroy Road CROMER NSW 2099
Mr Norman Tang Chiu Ho	8 Fitzroy Road CROMER NSW 2099
Shane Patrick McLoughlin Mrs Kathryn Gwendoline McLoughlin	33 Fitzroy Road CROMER NSW 2099
Alan Stanley Bain	35 Fitzroy Road CROMER NSW 2099

The issues raised in the submissions are addressed as follows:

- **Building height variation**

The submissions raised concerns that the proposed building height variation is not well-founded, would be inconsistent with the character of the locality and would cause adverse visual and amenity impacts upon surrounding properties.

Comment:

The proposed building height variation is assessed in detail in the Clause 4.6 section of this report. The volume of the proposed building above the height control is not substantial and does not result in a building height or scale that is unreasonable in the context of the site, adjoining properties or the surrounding area. The applicant's written request is found to be adequate in justifying the variation sought by the amended development.

- **Built form compliance, bulk and scale**

The submissions raised concerns that by virtue of its height, bulk and scale, the proposal would be inconsistent with the character of the locality and represents an overdevelopment of the site. Concerns were also raised that the proposed building envelope breaches cause excessive bulk and scale.

Comment:

The desired character of the locality, including the appropriate bulk and scale of development, is determined by the suite of planning controls applying. As assessed in this report, the height, bulk and scale of the proposal responds appropriately to the controls and is compatible with surrounding development. The proposed building height and wall height variations along with the minor building envelope and front setback breaches have been assessed against the relevant WDCP objectives and are found to be acceptable. The proposed swimming pool location is consistent with the exceptions to the rear setback control under by WDCP B9 and is sufficiently set back from the adjoining property to the east. The existing and proposed vegetation within the rear setback provide supplementary privacy screening.

- **Geotechnical and stormwater impacts**

The submissions raised concerns that the proposal would cause adverse impacts in relation to geotechnical stability and stormwater drainage.

Comment:

No significant landfill works are proposed and the excavation is limited to areas of the dwelling, driveway and swimming pool footprints. The amended application involves a significant reduction in the depth of excavation in proximity to the northern boundary of the site. The geotechnical report advises that these works can be carried out in accordance with the recommendations included in the report, which are incorporated into the conditions of consent. It is noted that DA drawings are not required to include structural design details of buildings or associated retaining walls, which would form part of a future Construction

Certificate application in the event that the DA is approved. Conditions are also recommended requiring the preparation of dilapidation surveys of the adjoining properties to identify any damage caused by excavation and construction works.

No easement for the purpose of stormwater disposal was granted by any adjoining property. As such, stormwater disposal must be managed on-site as proposed. Council's Development Engineers have assessed the amended stormwater design and confirm that the method of disposal complies with the requirements of the Water Management for Development Policy.

- **Amenity**

The submissions raised concerns that the proposal would cause adverse impacts in relation to privacy, solar access and view loss.

Comment:

This assessment includes a detailed analysis of privacy, solar access and view loss against the relevant WDCP controls. While the sloping topography and irregular shape of the subject site and adjoining properties contribute to some level of overlooking between adjoining properties, the proposed dwelling is sited and designed in accordance with the requirements of WDCP D8 Privacy in order to reasonably minimise the level of impact.

The adjoining property to the south, 8 Fitzroy Road, is most-affected by the proposal in relation to solar access. Based on the relative siting of the proposed dwelling, the level of solar access to the rear private open space area of 8 Fitzroy Road is largely unaffected by the proposal and complies with the requirements of WDCP D6 Access to Sunlight.

The extent of view loss resulting from the proposal is assessed in detail under D7 Views in this report. The extent of view loss is assessed as moderate based on the nature, quality and vulnerability of the available views. The proposal has been amended to provide an increased southern side setback to the upper floor, resulting in substantial view corridors on either side of the dwelling. Based on the assessment undertaken, the view sharing outcome is found to be reasonable.

- **Landscaping**

The submissions raised concerns in relation to tree removal and impacts upon existing vegetation.

Comment:

The submitted landscape plans depict the proposed removal, retention and planting of trees and vegetation across the site. The application has been referred to Council's Landscape team with suitable conditions recommended in relation to tree retention and protection. The proposal must be undertaken in accordance with the landscape plans and the recommended conditions.

- **Plan details**

The submissions raised concerns that the submitted plans include various inaccuracies.

Comment:

The subject application, as amended, properly and accurately depicts the existing ground levels of the subject site and enables an accurate calculation of the proposed dwelling's compliance with the applicable built form controls, including building height. The amended plans have been prepared with regard to additional survey work undertaken on the site and are sufficient for assessment purposes.

- **Construction traffic and noise**

The submissions raised concerns that the proposed works would adversely impact traffic safety and the amenity of surrounding properties.

Comment:

Conditions are recommended in relation to construction traffic management and the minimisation of disturbance caused to nearby residents during works.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	Supported with conditions. The application is assessed by Landscape Referral against Warringah Local Environmental Plan 2011 and the following Warringah Development Control Plan 2011 controls (but not limited to): D1 Landscaped Open Space and Bushland Setting; E1 Preservation of Trees or Bushland Vegetation; and E2 Prescribed Vegetation. A Arboricultural Impact Assessment (AIA) and Landscape Plans are submitted for review and assessment by Landscape Referral. The existing property contains one existing prescribed Sydney Red Gum and otherwise contains existing managed gardens that are proposed for retention. Two existing Brushbox street trees are located within the road reserve verge. The AIA report provides tree protection measures and recommendations for development works within the tree protection zone of trees T1 (Brushbox) and T2 (Sydney Red Gum) based on tree root investigations undertaken and reported in the AIA report. The Landscape Plans includes identification of existing trees and garden vegetation to be retained and additional landscape works including planting at grade and on structure to enhance the existing landscape setting. Landscape Referral raise no concerns subject to conditions.
NECC (Development Engineering)	Supported with conditions. <u>3/09/2024</u> <u>Development Engineering 3rd Referral Comments:</u>

Internal Referral Body	Comments
	The amended stormwater plans are generally satisfactory subject to conditions. <u>2/08/2024</u> <u>Development Engineering 2nd Referral Comments:</u> Council's Development Engineer cannot support this proposal due to the stormwater design. Stormwater An easement refusal letter has been received from 58 Grover Avenue, which is satisfactory. A copy of DRAINS model has been provided for assessment. A pump-out pit is provided to collect basement flows and sub-soil drainage. A 2.5m long level spreader has been provided, which is insufficient in length considering the discharge rate per lineal meter. Council's Development Engineer cannot support the stormwater design due to the below. • The level spreader of 2.5m long is too short considering the discharge rate per lineal meter, resulting in the concentration of surface flows downstream of the property, which is not compliant with Council's Water Management for Development Policy. A longer level spreader shall be provided, or otherwise the post-development discharge rate to the level spreader shall be reduced. • How time of concentrations are derived in DRAINS Model shall be submitted to Council, in particular the time of concentration for paved areas in 1% AEP storm events shall be smaller. <u>19/04/2024:</u> <u>Development Engineering 1st Referral Comments:</u> Development Application is for construction of a new dwelling. Access New driveway is proposed leading to garage in basement, access plans seems satisfactory. Stormwater Site falls to rear, stormwater Plans by Taylor Consulting, proposing an onsite-stormwater detention tank with level spreader at rear are provided. Level spreader to be at least 3m away from any site boundary. However, Council Maps shows that there is an existing council easement running behind (within Grover Avenue) No 6 Fitzroy Road.

Internal Referral Body	Comments
	An easement refusal letter dated Nov 2022, is provided, which is related to previous DA2022/0704. Applicant is advised to: 1. Provide easement refusal/acceptance letters based on current submission from owners of 8 & 6 Fitzroy Road and 58 Grover Avenue based on current submission 2. In case easement is granted then, connect site stormwater discharge to Council pipe within Grover Ave via an easement from 8 & 6 Fitzroy Road or 58 Grover Avenue and provide stormwater plans showing this connection. 3. In case, easement is refused from owners of 8 & 6 Fitzroy Road and 58 Grover Avenue, then submit amended stormwater plans showing level spreader at least 3m away from any site boundary. Geotech Excavations more than 2m deep are proposed for basement, Geoetch Report by White Geoetchnical Group, Ref: J5267, Dated 23rd Feb 2024 is provided. In case this DA is approved, please implement the use of Geotech Report at design and construction phase.

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. 1737127S dated 23 February 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.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	8.5m	9.4m	10.59%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

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

Proposed: 9.4m

Percentage of Variation: 10.59%

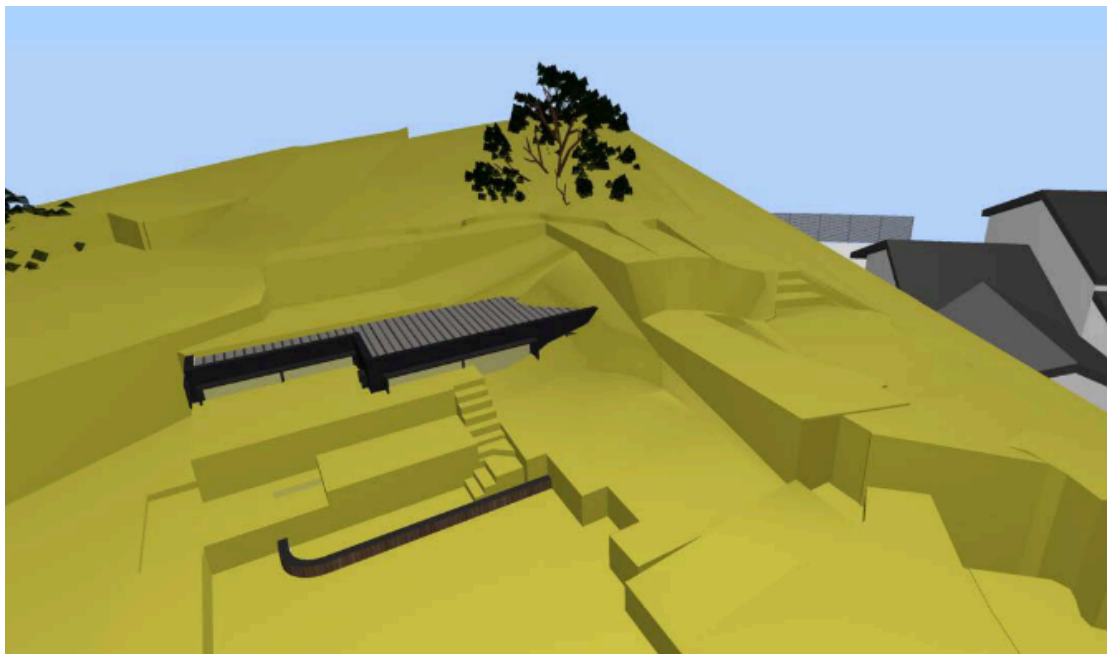


Figure 1. Applicant's illustration of the proposed building height breach as measured from existing ground levels.

The above height plane diagram is not certified, however the portions of buildings projecting above the

height plane are generally in alignment with Council's assessment, and are presented in a more practical format than a two dimensional sectional drawing. On that basis, the diagram is included for illustrative purposes. Figure 2 below illustrates Council's calculation of the proposed maximum building height breach.

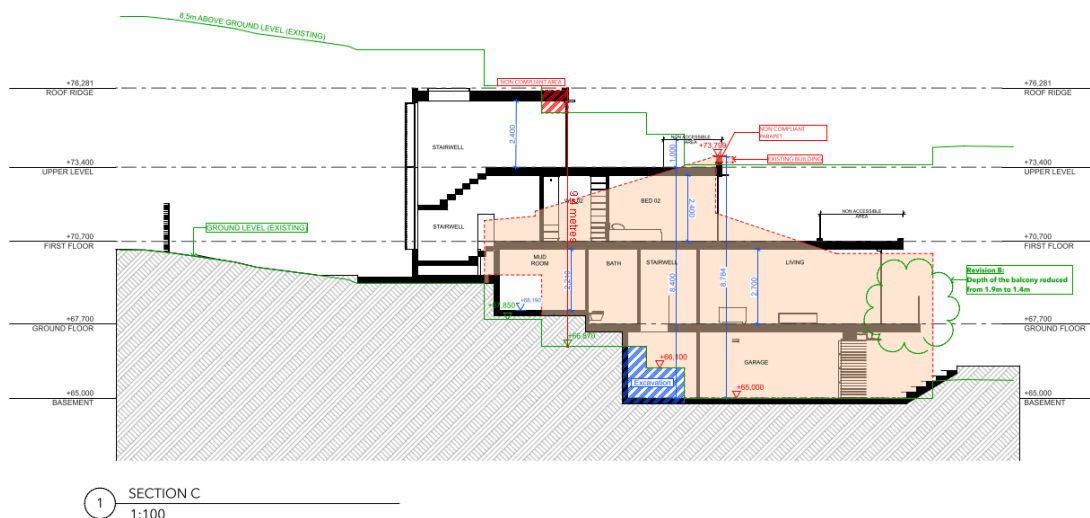


Figure 2. Council calculation of maximum building height breach - 9.4m

Assessment of request to vary a development standard:

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 WLEP 2011 (the 'Clause 4.6 Request').

Subclause (1) of this clause provides that:

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

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

Comment:

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

Subclause (2) of this clause provides that:

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

Comment:

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

Subclause (3) of this clause provides that:

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

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

Comment:

Council is satisfied that the Applicant has demonstrated that compliance with Clause 4.3 Height of buildings is unreasonable or unnecessary in the circumstances of this application because the proposal achieves the objectives of the standard, as assessed below:

The objectives of this clause are as follows:

- *To ensure that buildings are compatible with the height and scale of surrounding and nearby development,*

Comment:

The proposal presents to the street frontage as a two-storey dwelling and is designed to step with the sloping and previously modified topography, thereby not exceeding three storeys in any place. The total proportion of the dwelling projecting above the 8.5m height plane is relatively minor, as demonstrated in Figures 1 and 2 above. These height breaching elements are not considered to cause excessive height or bulk that would be incompatible with the character of the locality.

- *To minimise visual impact, disruption of views, loss of privacy and loss of solar access,*

Comment:

As illustrated above, the elements of the proposed building that breach the height standard are the rear of the upper floor and a small section of the first floor roof. The total volume of the built form above the height plane is minor and will not cause unreasonable impacts in relation to visual bulk, views, privacy or solar access. A detailed assessment of these matters is undertaken in this report.

- *To minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*

Comment:

Based on the location of the height-breaching elements and the limited volume of the building above the height plane as noted above, the proposal will not result in unacceptable impacts upon the scenic quality of the surrounding environment.

- *To manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

Comment:

For the reasons outlined above, the proposed design adequately manages the visual impact of the development as viewed from the public domain.

(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:

1. **"Steep and artificially modified topography of the land**
Sufficient environmental planning grounds exist to justify the height of buildings variation including the steep and artificially modified topography of the land which makes strict compliance difficult to achieve whilst distributing height and floor space in a contextually appropriate manner on this particular site.
In this regard, I note that the prior disturbed levels of the site within the footprint of the existing building distorts the height of buildings development standard plane overlaid above the site when compared to the natural undisturbed topography of the land. When the original undisturbed levels of the site are interpolated across the building footprint the proposed development is minorly above the 8.5m by approximately 100mm."

Comment:

It is agreed that the slope of the site from front to rear and north to south, along with the previous disturbance of the natural topography, contribute to the proposed building height breach. Given the existence of these constraints and the minor nature of the resulting height breach, this environmental planning ground is accepted as sufficient.

2. **"Superior architectural design**
The apparent size of the proposed development will be compatible with dwellings in the visual catchment of the site, which features a number of buildings of comparable bulk and scale. The building is of exceptional design quality with the variation facilitating a building height that provides for contextual built form compatibility, consistent with Objectives 1.3(c) and (g) of the Act."

Comment:

The proposed building height breach does not cause the dwelling to become excessive in height or bulk such that it would be incompatible with the character of surrounding developments. Given the constraints presented by the topography as described above, it is agreed that the proposal is well-designed and minimises impacts upon adjoining properties and the locality. Accordingly, this environmental planning ground is accepted as sufficient in the specific circumstances.

Council is satisfied that the Applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of Clause 4.3 Height of buildings because:

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

Public Interest:

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

Conclusion:

Council is satisfied as to the matters set out in Clause 4.6 of the WLEP 2011.

The submitted Clause 4.6 written request in support of the proposed height of buildings variation is considered to be **well founded** having regard to the circumstances of the development.

It is therefore considered appropriate to allow flexibility in the application of the height of buildings development standard.

6.2 Earthworks

The proposed excavation footprint and retaining walls, as amended, are sufficiently set back from the property boundaries and are not expected to adversely impact adjoining properties or the natural environment, subject to the recommendations included in the submitted geotechnical assessment. It is noted that the recommendations include further inspection and approvals by the geotechnical consultant at various stages of the works.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	8.1m	12.5%	No
B3 Side Boundary Envelope	North: 4m	Within envelope	N/A	Yes
	South: 4m	Outside envelope	N/A	No
B5 Side Boundary Setbacks	North: 0.9m	Pool: 0.9m - 1.7m	N/A	Yes
		Basement: 4.4m - 5.3m	N/A	Yes
		Terrace (GF): 1m - 2.2m	N/A	Yes

	South: 0.9m	Ground: 5.8m - 7.9m	N/A	Yes
		First: 6.9m - 7.7m	N/A	Yes
		Upper: 7.3m - 7.9m	N/A	Yes
		Pool: 0.9m	N/A	Yes
		Basement: 0.9m - 3.8m	N/A	Yes
		Ground: 0.9m - 5m	N/A	Yes
		First: 2.7m - 4.8m	N/A	Yes
		Upper: 5.1m - 7m	N/A	Yes
B7 Front Boundary Setbacks	6.5m	5.9m - 10.6m	9.2%	No
B9 Rear Boundary Setbacks	6m	Pool: 1.2m - 5.2m	88.3%	No
		Dwelling: 14.3m - 22.2m	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% 354.12m ²	43.3% 383.5m ²	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D13 Front Fences and Front Walls	Yes	Yes
D14 Site Facilities	Yes	Yes
D15 Side and Rear Fences	Yes	Yes
D16 Swimming Pools and Spa Pools	Yes	Yes
D20 Safety and Security	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of Non-compliance

The control permits a maximum wall height of 7.2m measured from the existing ground level below the wall to the underside of the ceiling.

The proposed southern elevation has a maximum wall height of 8.1m at the first floor level and 7.4m at the upper level. The non-compliant wall areas are illustrated on Figure 3 below.

Notes:

- As the alignment of the southern elevation plan is not parallel to the southern side boundary, various areas of the rear (eastern) walls are visible on the southern elevation plan. For clarity, south facing walls are those below the red line overlaid on the Figure 3, while rear (east) facing walls are those above the red line.
- The control specifies that the wall height is to be measured to the existing ground level. As such, the wall heights shown on Figure 3 are measured to the surveyed ground levels at the point below each wall.

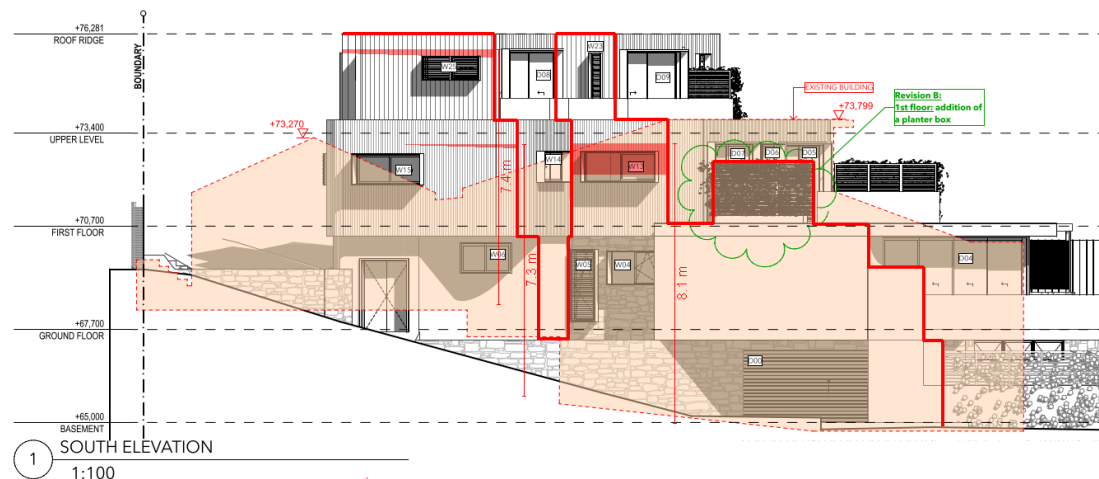


Figure 3. Proposed wall height breaches at the southern elevations shown shaded red

Merit Consideration

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

- To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

Comment:

The proposed southern elevation is sufficiently articulated and set back to minimise the resulting visual impact as viewed from the surrounding properties and public domain. At the first floor level, the bed wall 2 is set back 4.2m-5.6m and the guest bed wall is set back 2.7m-4.8m. The upper level study wall is set back 5.1m-7m. These substantial setbacks are considered sufficient to ameliorate building bulk and amenity impacts.

- To ensure development is generally beneath the existing tree canopy level*

Comment:

The proposed wall and dwelling heights remain below the level of the surrounding tree canopy.

- To provide a reasonable sharing of views to and from public and private properties.*

Comment:

The proposal achieves a reasonable view sharing outcome as assessed in this report.

- *To minimise the impact of development on adjoining or nearby properties.*

The proposed dwelling will not give rise to unreasonable visual or amenity impacts upon surrounding properties.

Comment:

- *To provide sufficient scope for innovative roof pitch and variation in roof design.*

The proposal incorporates a flat roof to minimise the overall height of the dwelling.

Accordingly, this assessment finds that the proposal is **supported** in this particular circumstance.

Description of non-compliance

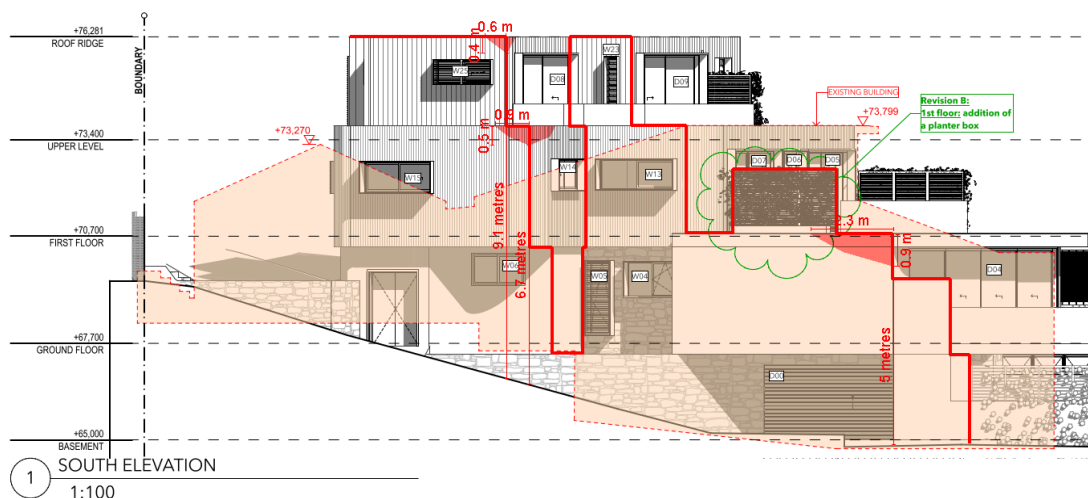


Figure 4. Southern elevation building envelope breaches shaded red.

Note: As the alignment of the southern elevation plan is not parallel to the southern side boundary, various areas of the rear (eastern) walls are visible on the southern elevation. For clarity, south facing walls are those below the red line overlaid on the above Figure 4, while rear (east) facing walls are those above the red line.

Merit consideration

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

- *To ensure that development does not become visually dominant by virtue of its height and bulk.*
- *To ensure adequate light, solar access and privacy by providing spatial separation between buildings.*
- *To ensure that development responds to the topography of the site.*

Comment:

Each of the three proposed building envelope breaches are minor in extent and do not contribute to visual dominance or excessive height and bulk. The proposed dwelling provides generous side setbacks, particularly at the upper floors, to ensure adequate spatial separation and facilitate solar access, privacy and view corridors between the site and adjoining properties. The topography of the site slopes moderately from front to rear and north to south and has been subject to previous modification; the proposal is designed appropriately in response to the topography through the stepping of the built form at the rear and southern elevations.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the control. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

B7 Front Boundary Setbacks

Description of Non-compliance

The proposed minimum front setback of 5.9m at the southern side of the facade is non-compliant with the 6.5m control.

Merit Consideration

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

- *To create a sense of openness.*

Comment:

The proposed front setback ranges from 5.9m up to 10.6m at the northern side and provides a

substantially open and landscaped site frontage. The proposal also results in the removal of the existing driveway and carport located predominantly within the front setback.

- *To maintain the visual continuity and pattern of buildings and landscape elements.*

Comment:

The proposed front setback is compatible with those of surrounding dwellings to maintain the pattern of buildings and landscape elements.

- *To protect and enhance the visual quality of streetscapes and public spaces.*

Comment:

The proposed dwelling is appropriately articulated, set back and landscaped to maintain and enhance the visual quality of the streetscape.

- *To achieve reasonable view sharing.*

Comment:

The proposed front setback variation is not relevant to any resulting view impacts.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the control.

Accordingly, this assessment finds that the proposal is **supported** in this particular circumstance.

B9 Rear Boundary Setbacks

Description of Non-compliance

The control states that *"the rear setback area is to be landscaped and free of any above or below ground structures."*

The exception to the control allows exempt development, swimming pools and outbuildings that, in total, do not exceed 50% of the rear setback area to encroach within the rear setback, provided that the objectives of this provision are met.

The proposed swimming pool, terrace and stair encroach within the rear setback, with a minimum setback of 1.2m, but do not occupy more than 50% of the setback area.

Merit Consideration

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

- *To ensure opportunities for deep soil landscape areas are maintained.*

Comment:

The location of the proposed pool and terrace maintains sufficient deep soil area to accommodate boundary screen planting.

- *To create a sense of openness in rear yards.*

Comment:

The proposed pool and terrace generally maintain the levels of the existing pool and yard area, and provide an increased rear setback relative to the existing pool deck.

- *To preserve the amenity of adjacent land, particularly relating to privacy between buildings.*

Comment:

The proposal does not substantially alter the existing pool location and will not unreasonably impact the amenity of adjoining properties.

- *To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.*

Comment:

As noted above, the existing pool location is not substantially altered and the proposal will maintain the existing pattern of structures and landscaped areas.

- *To provide opportunities to maintain privacy between dwellings.*

Comment:

The proposed rear setback to the pool and terrace is increased relative to the existing and enables the provision and retention of supplementary screen planting.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the control.

Accordingly, this assessment finds that the proposal is **supported** in this particular circumstance.

D6 Access to Sunlight

Compliance with Control

Requirements

1. Development should avoid unreasonable overshadowing any public open space.

Comment:

The proposal will not unreasonably overshadow the adjoining road reserve, noting the demolition of the existing carport adjacent to the street frontage.

2. At least 50% of the required area of private open space of each dwelling and at least 50% of the required area of private open space of adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21.

Comment:

The proposal does not significantly increase the overshadowing of the rear yard of the adjoining property to the south, No. 8 Fitzroy Road and will maintain a compliant a compliant level of solar access to the private open space area of that property in accordance with the control.

Merit Consideration

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

- *To ensure that reasonable access to sunlight is maintained.*
- *To encourage innovative design solutions to improve the urban environment.*
- *To promote passive solar design and the use of solar energy.*

Comment:

Sufficient sunlight access is maintained to all adjoining properties by virtue of the siting, setbacks and articulation of the proposed dwelling. The proposal incorporates suitable design solutions to minimise overshadowing and promote passive solar design.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the control.

Accordingly, this assessment finds that the proposal is **supported** in this particular circumstance.

D7 Views

Merit Consideration

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

- *To allow for the reasonable sharing of views.*

Comment:

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

1. Nature of the views affected

"The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North

Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured".

Comment to Principle 1:

An inspection of Nos. 27 and 29 Fitzroy Road was undertaken as part of the assessment. The inspection identified the existence of limited ocean views from both properties, which are heavily obscured by existing developments and vegetation to the east. No land-water interface or iconic views are visible from either property.

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:

27 Fitzroy Road

The views are accessed across a front boundary primarily from the first floor front balcony and adjoining living area at the northern side of the dwelling. The views are more obscured from a sitting position and from the southern side of the front balcony. The views available from the front yard/driveway area are less valuable and will be minimally affected.



Figure 5. Available views from 27 Fitzroy Road first floor balcony (north)



Figure 6. Available views from 27 Fitzroy Road first floor balcony (south)

29 Fitzroy Road

The views are accessed across a front boundary primarily from the ground floor living area and kitchen and from the first floor bedrooms. The views are available from a standing position, and to a lesser extent, from a sitting position. The views from the first floor are unaffected by the proposal.



Figure 7. Available views from 29 Fitzroy Road ground floor living area



Figure 8. Available views from 29 Fitzroy Road first floor level

3. Extent of impact

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

Comment to Principle 3:

The proposed upper floor level, which will cause the loss of views, is approximately 2.4m higher than the existing roof ridge and approximately the same width as the existing roof. Accordingly, it is expected that the proposed dwelling will project above the horizon and block the majority of the first floor views from 27 Fitzroy Road and the entirety of the ground floor views from 29 Fitzroy Road. Despite this, the extent of the impact is assessed as **moderate** based on the following considerations:

- The limited extent, quality and value of the views;
- The high vulnerability of the views, being obtained through the developable 3D building envelope (based on the DCP/LEP controls) of the subject site; and

- The loss of the views despite the provision of substantial view corridors by the substantial side setbacks to the proposed upper floor.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

The proposed building height variation relates to the rear portion of the upper floor and is primarily a result of the prior modification of the sloping topography. The level of view impact caused by this non-compliant rear portion of the upper floor is the same as that caused by the fully compliant front elevation. Similarly, the proposal could potentially be re-designed to strictly comply with the height standard by moving the dwelling forward towards the front boundary (while maintaining the currently proposed roof RL), however this would result in generally the same level of view impact and would cause further disturbance of the site (excavation) and so is not considered warranted.

The proposed building envelope breaches at the ground and first floor levels do not impact the available views. The southern boundary envelope breach at the rear of the upper floor is minimal in height and length, and the remainder of the wall is well-within the permitted building envelope. Further, the proposed upper level side setbacks of 7m-7.7m (north) and 5.1m-7m ensure that adequate view corridors are maintained through both side setback areas as intended by the control. The height of the dwelling has been minimised through the siting of the basement (garage) level at the same level as existing and by limiting the floor to ceiling heights to 2.4m for the basement and bedroom levels and 2.7m for the living room level. The proposed flat roof design also assists in controlling the overall height.

The amended proposal includes an increased southern side setback to the upper floor to minimise the resulting building envelope breach. The retention of the available views from 27 and 29 Fitzroy Road would effectively require the removal of the entire upper floor, which would significantly diminish the development potential of the site. Given the limited extent and nature of the views, the necessary reduction in development potential would be unreasonable and unwarranted in this case.

- *To encourage innovative design solutions to improve the urban environment.*

Comment:

The amended proposal incorporates suitable design solutions that minimise impacts upon surrounding properties.

- *To ensure existing canopy trees have priority over views.*

Comment:

Despite its impact upon the views available from the surrounding properties, the existing canopy tree within the road reserve is to be retained.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the control.

Accordingly, this assessment finds that the proposal is **supported** in this particular circumstance.

D8 Privacy

Compliance with Control

Requirements

- 1. Building layout should be designed to optimise privacy for occupants of the development and occupants of adjoining properties.*
- 2. Orientate living areas, habitable rooms and windows to private open space areas or to the street to limit overlooking.*

Comment:

The siting and layout of the proposal successfully limits privacy impacts between the site and the adjoining properties. The proposed side boundary-facing windows are sufficiently set back and generally service bedrooms. The living areas and balconies are orientated to the rear of the site and incorporate privacy screens where necessary. The northern ground floor terrace is located at/below the existing ground level and is separated from the adjoining property by a privacy screen, the existing boundary fence and screening vegetation.

- 3. The effective location of doors, windows and balconies to avoid overlooking is preferred to the use of screening devices, high sills or obscured glass.*

Comment:

The proposed doors, windows and balconies are suitably located, with privacy screening and planter boxes provided for additional privacy.

- 4. The windows of one dwelling are to be located so they do not provide direct or close views (ie from less than 9 metres away) into the windows of other dwellings.*

Comment:

The proposal does not include any windows or un-screening balconies/terraces within 9m of windows of adjoining dwellings.

- 5. Planter boxes, louvre screens, pergolas, balcony design and the like are to be used to screen a minimum of 50% of the principal private open space of a lower apartment from overlooking from an upper apartment.*

Comment:

N/A

Merit Consideration

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

- *To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.*

- *To encourage innovative design solutions to improve the urban environment.*
- *To provide personal and property security for occupants and visitors.*

Comment:

There is a degree of overlooking between the subject site and adjoining properties due to the sloping topography and the tapering widths of the properties. However, the proposal ensures an acceptable level of visual and acoustic privacy through the setbacks, design and additional privacy measures, as assessed above.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the control.

Accordingly, this assessment finds that the proposal is **supported** in this particular circumstance.

D9 Building Bulk

Compliance with Control



Figure 9. Applicant's illustration of the proposed dwelling as viewed from the south-east

Requirements

1. *Side and rear setbacks are to be progressively increased as wall height increases.*
2. *Large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief.*

Comment:

As demonstrated in Figure 9 above, the proposed side and rear setbacks are stepped with the

topography and wall height, thereby avoiding continuous wall planes and ensuring adequate articulation of building bulk.

3. *On sloping land, the height and bulk of development (particularly on the downhill side) is to be minimised, and the need for cut and fill reduced by designs which minimise the building footprint and allow the building mass to step down the slope. In particular:
The amount of fill is not to exceed one metre in depth.
Fill is not to spread beyond the footprint of the building.
Excavation of the landform is to be minimised.*
4. *Building height and scale needs to relate to topography and site conditions.*
Comment:
As noted above, the stepping of the rear elevation minimises the bulk of the development as viewed from the downhill side. The proposal does not include substantial fill and the proposed excavation is generally limited to the building footprint, driveway and swimming pool. The proposed dwelling design responds appropriately to the topography and site context.
5. *Orientate development to address the street.*
6. *Use colour, materials and surface treatment to reduce building bulk.*
Comment:
The dwelling design addresses the street and incorporates a variety of materials and finishes, as illustrated in Figure 9 above, to assist in minimising visual bulk.
7. *Landscape plantings are to be provided to reduce the visual bulk of new building and works.*
Comment:
The proposal includes a detailed landscape design to provide visual screening and complement the dwelling.
8. *Articulate walls to reduce building mass.*
Comment:
The proposal incorporates extensive articulation of the dwelling to facilitate separation between buildings and reduce the perceived bulk of the development.

Based on the above assessment, the proposal is found to comply with the requirements of the control and is supported.

D13 Front Fences and Front Walls

The proposed front fence consists of horizontal battens and is consistent with the height and character of fences within the visual catchment, particularly on the low side of Fitzroy Road.

D15 Side and Rear Fences

No new side or rear boundary fencing is proposed.

E10 Landslip Risk

The site is mapped as Landslip Risk Area B and a geotechnical report has been prepared in relation to the proposal, the recommendations of which are incorporated into the conditions of consent.

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 \$34,416 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$3,441,627.

CONCLUSION

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

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

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

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

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

Council is satisfied that the Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify variation of the development standard contained within Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

PLANNING CONCLUSION

The application seeks consent for demolition works and construction of a new dwelling and a swimming pool.

The proposal, as amended, demonstrates an acceptable level of compliance with the applicable built form controls and ensures that the proposed height, bulk and scale of the dwelling is compatible with the character of the surrounding locality.

The proposed design provides a reasonable level of amenity for occupants of the subject site and adjoining properties as envisaged by the planning controls.

This assessment finds that the submitted Clause 4.6 variation request is well founded and adequately demonstrates that the proposal is consistent with the objectives of the building height standard and provides sufficient environmental planning grounds for the variation.

In response to Council's notification, a total of 9 submissions were received in objection to the proposal. The amendments made to the application are materially beneficial to the outcome and will result in a development that is compatible with the surrounding context and that will not unreasonably impact adjoining properties. The issues raised in the submissions are addressed in detail in this report and are not considered to warrant refusal of the application in the public interest.

The assessment concludes with a recommendation that the DDP should **approve** the application, subject to the conditions contained in the recommendation attached to this report. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

That Northern Beaches Council, as the consent authority, vary the development standard contained within Clause 4.3 Height of Buildings, pursuant to Clause 4.6 of the Warringah Local Environmental Plan 2011 because the Applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) of Clause 4.6.

Accordingly Council as the consent authority grant Development Consent to DA2024/0263 for Demolition works and construction of a new dwelling house including a swimming pool on land at Lot 5 DP 241272, 10 Fitzroy Road, CROMER, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA01	C	Site Plan	Carole Huard	31 October 2024
DA02	C	Basement Floor Plan	Carole Huard	31 October 2024
DA03	C	Ground Floor Plan	Carole Huard	31 October 2024
DA04	C	First Floor Plan	Carole Huard	31 October 2024
DA05	C	Upper Floor Plan	Carole Huard	31 October 2024
DA06	C	Roof Plan	Carole Huard	31 October 2024
DA07	C	Section A	Carole Huard	31 October 2024
DA08	C	Section B	Carole Huard	31 October 2024
DA09	C	Section C	Carole Huard	31 October 2024
DA10	C	Section D	Carole Huard	31 October 2024
DA11	C	Section - E & F	Carole Huard	31 October 2024
DA12	C	Section - G & H	Carole Huard	31 October 2024
DA13	C	Pool Sections - P1 & P2	Carole Huard	31 October 2024
DA14	C	Pool Elevation - East	Carole Huard	31 October 2024
DA15	C	Pool Elevation - South	Carole Huard	31 October 2024
DA16	C	East & West Elevation	Carole Huard	31 October 2024
DA17	C	North & South Elevation	Carole Huard	31 October 2024
DA18	C	Street Elevation	Carole Huard	31 October 2024
DA33	C	External Finishes	Carole Huard	31 October 2024
DA34	C	Demolition Plan	Carole Huard	31 October 2024

DA35	C	Waste Management Plan	Carole Huard	31 October 2024
001	F	Landscape Site Plan	Formed Gardens	-
002	F	Planting Plan & Schedule	Formed Gardens	-

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate	-	Efficient Living Pty Ltd	23 February 2024
Geotechnical Investigation Report	-	White Geotechnical Group	23 February 2024
Arboricultural Impact Assessment	-	Complete Arborcare	19 November 2024
Waste Management Plan	-	-	-

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	5 April 2024

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

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

3. Approved Land Use

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a *dwelling house*, in accordance with the Dictionary of the Warringah Local Environmental Plan 2011, as follows:

dwelling house means a building containing only one dwelling.

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

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

4. **Prescribed Conditions**

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

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

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

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

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and

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

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

Reason: Legislative requirement.

5. General Requirements

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

Demolition and excavation works are restricted to:

 - 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).
- (b) Construction certificate plans are to be in accordance with all finished levels identified on approved plans. Notes attached to plans indicating tolerances to levels are not approved.
- (c) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (d) At all times after the submission of the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (e) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (f) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (g) Prior to the release of the Construction Certificate, payment of the following is required:
 - i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a

Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

- ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
 - iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.
- (h) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (i) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (j) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (k) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (l) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

methods is to be undertaken in accordance with the recommendations of a suitably qualified ecologist.

- (p) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

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

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

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2024

A monetary contribution of \$34,416.27 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 \$3,441,627.00.

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

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

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

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

7. **Security Bond**

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

8. **On Slab Landscape Planters**

Details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided. Landscape treatment details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, and services connections. The following soil depths are required to support landscaping: 300mm for groundcovers, perennials, grasses; 600mm for shrubs.

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

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

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

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by Taylor Consulting, drawing number Storm - 1/C and Storm - 2/C, dated 23/08/2024. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia

(RPENG) and registered in the General Area of Practice for civil engineering.

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

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

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by White Geotechnical Group, dated 23/02/2024 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. Vehicle Crossings Application

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing 2.7m wide at the kerb and 3m wide at the boundary in accordance with Northern Beaches Council Standard Drawing Extra Low in accordance with Section 138 of the Roads Act 1993.

Note, driveways are to be in plain concrete only.

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

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

Reason: To facilitate suitable vehicular access to private property.

12. Off Street Parking Design

The Applicant shall submit a design for the parking facility and the associated driveway in accordance with the relevant provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.6 Design of Domestic Driveways.

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

Reason: Compliance with this consent.

13. Construction Traffic Management Plan

A Construction Traffic Management Plan (CTMP) and report shall be prepared by a suitably qualified person and submitted to the Certifying Authority prior to issue of any Construction Certificate.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase.
- Make provision for all construction materials to be stored on site, at all times.
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period.
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site.
- Make provision for parking onsite. All Staff and Contractors are to use any basement parking once available.
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior.
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure.
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the person preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to the Certifier prior to work commencing on site.

A copy of the approved CTMP must be kept on-site at all times while work is being carried out and provided to adjoining property owners a minimum of Fourteen (14) days prior to the commencement of works on-site.

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

14. **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.

15. **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.

16. 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.

17. Waste Management Plan

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

18. Project Arborist

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

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

- a) supervision of excavation for the driveway construction in proximity to T1 and for excavation

- in proximity to T2,
- b) tree fencing protection for both T1 and T2,
- c) certification of compliance with section 9.1 and 9.2 of the Arboricultural Impact Assessment.

All tree protection measures specified must: be in place before work commences on the site; be maintained in good condition during the construction period; 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.

19. Pre-Construction Dilapidation Report

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

Properties:

- 8 Fitzroy Road, Cromer
- 12 Fitzroy Road, Cromer
- 58 Grover Avenue, Cromer

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

20. Protection of Landscape Features and Sites of Significance

All natural landscape features including natural rock outcrops, natural vegetation, soil and watercourses are to remain undisturbed during demolition, excavation and construction works except where affected by works detailed on approved plans.

Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office contacted to assess the finds.

Under Section 89a of the NPW Act should the objects be found to be Aboriginal, NSW Biodiversity and Conservation Division, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

Reason: Preservation of significant environmental features.

21. Protection of Existing Street Trees

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

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

Reason: Street tree protection.

22. Tree and Vegetation Protection

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

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

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an

Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,
viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,
ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

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

Reason: Tree and vegetation protection.

23. **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.

24. **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.

25. **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.

26. **Implementation of Construction Traffic Management Plan**

All works and construction activities are to be undertaken in accordance with the Construction Traffic Management Plan (CTMP). A copy of the CTMP is to be kept onsite at all times.

Reason: To ensure compliance of the developer/builder in adhering to the Construction Traffic Management.

27. **Survey Certificate**

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

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

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

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

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

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

28. **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.

29. **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

30. **Landscape Completion**

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

- a) landscape works are to be contained within the legal property boundaries,
- b) tree, shrub and groundcover planting shall be installed as indicated on the approved Landscape Plans, unless otherwise imposed by conditions.

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.

31. **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.

32. **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.

33. **Reinstatement of Kerb**

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

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

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

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

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

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

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

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

35. **Certification of Off Street Parking Works**

The Applicant shall submit a certificate from a suitably qualified person certifying that the parking facility and the associated driveway constructed in accordance within this development consent and the relevant provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.6 Design of Domestic Driveways.

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

Reason: Compliance with this consent.

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

The Applicant is to submit a final geotechnical certificate certifying that the construction works were completed in accordance with the geotechnical recommendations to the Principal Certifier prior to issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

37. **House / Building Number**

House/building number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings.

38. **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

39. **Landscape Maintenance**

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

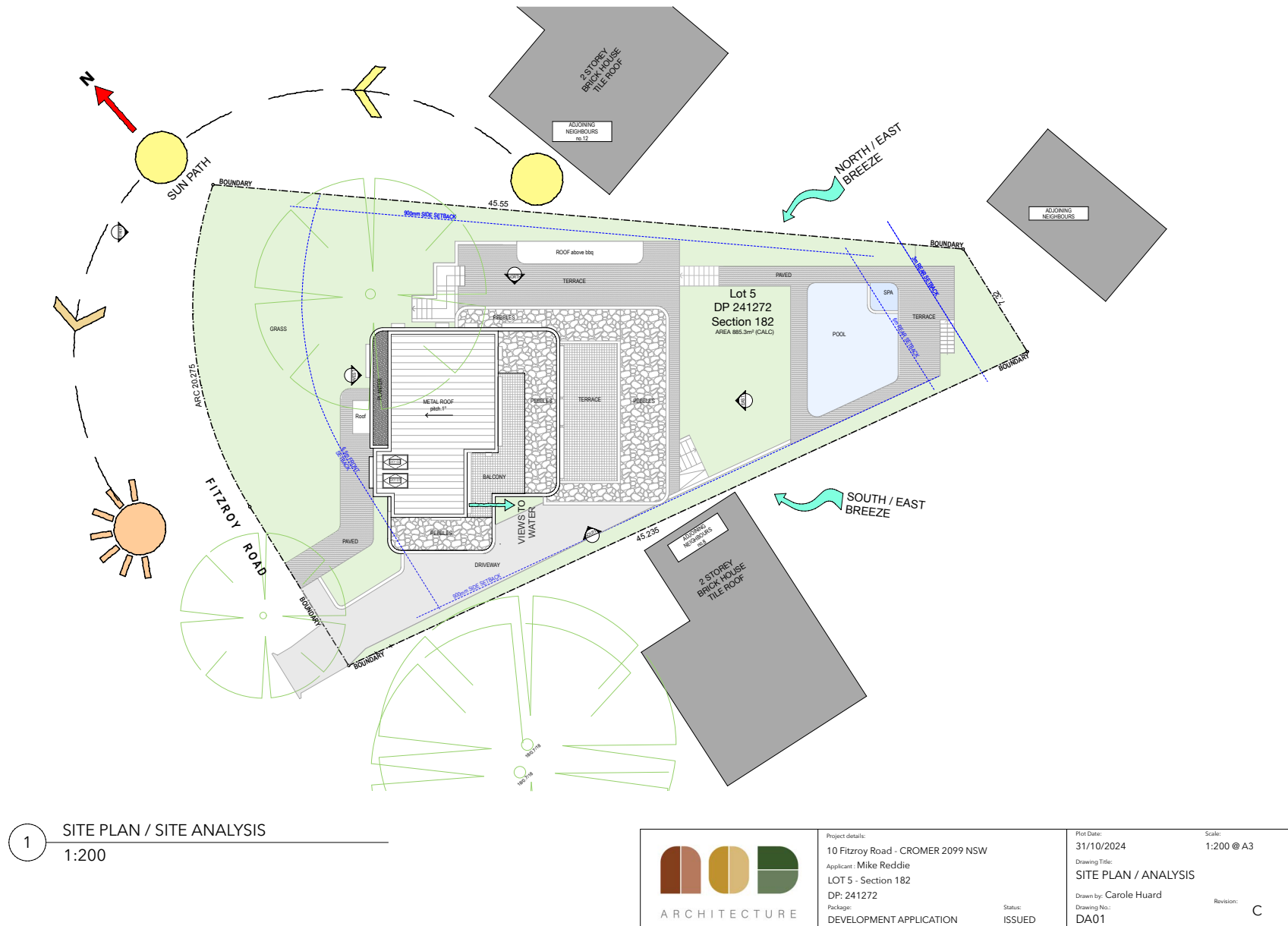
The approved landscape area shall in perpetuity remain as planting under the development consent, and shall not be replaced with any hard paved surfaces or structures.

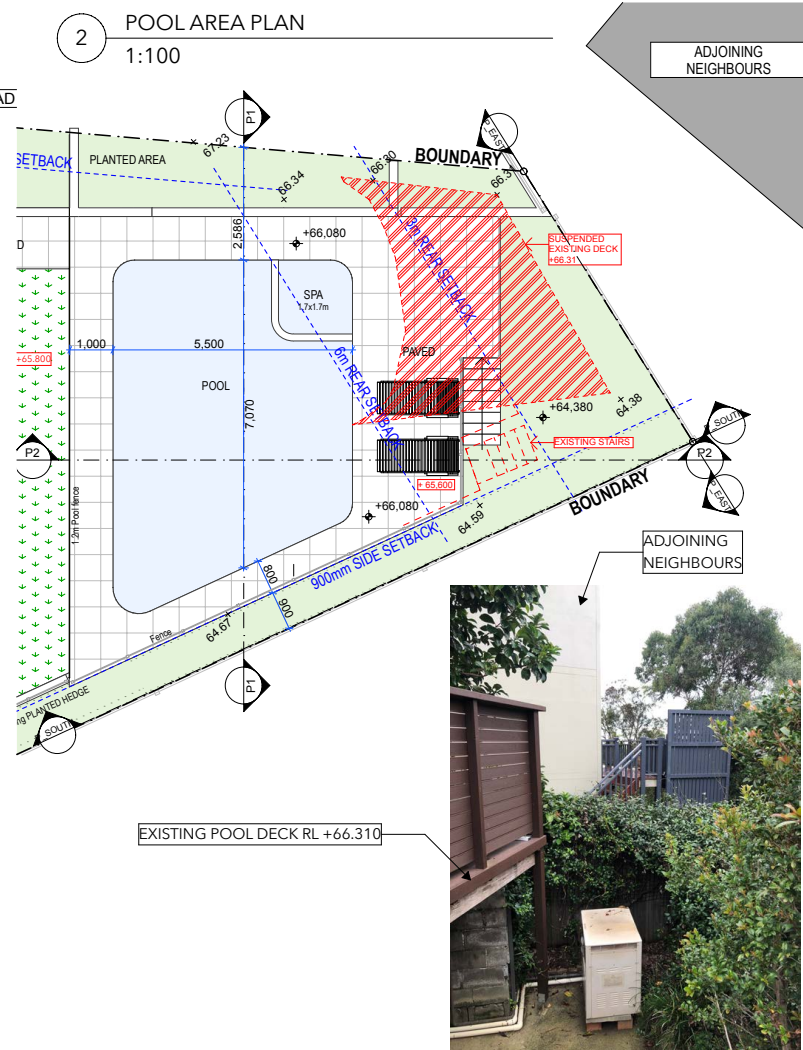
Reason: To maintain local environmental amenity.

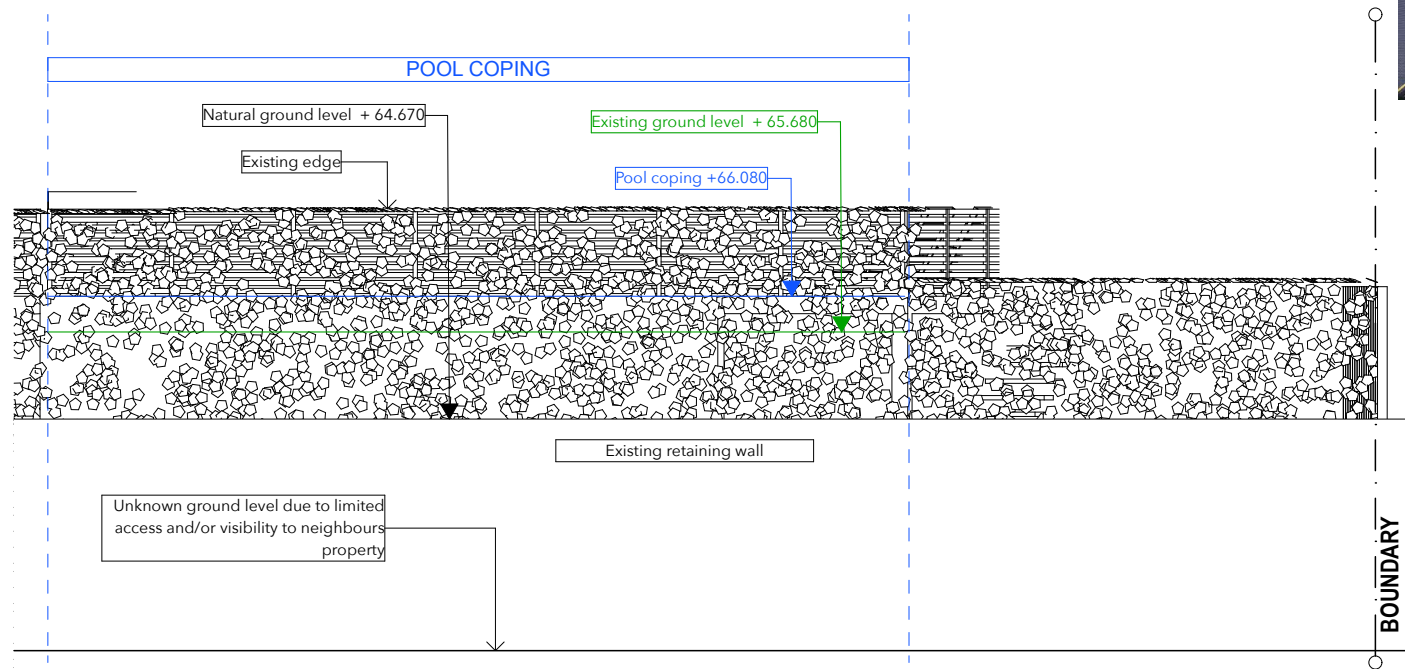
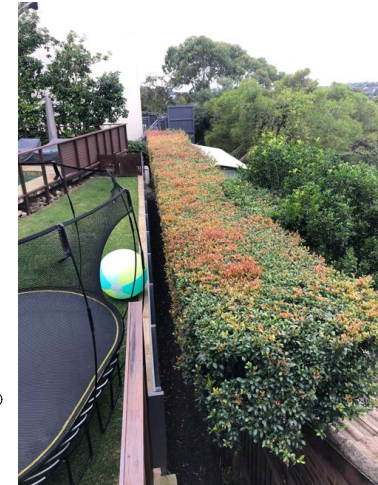
40. **Mechanical Plant**

Any mechanical plant equipment, including 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.

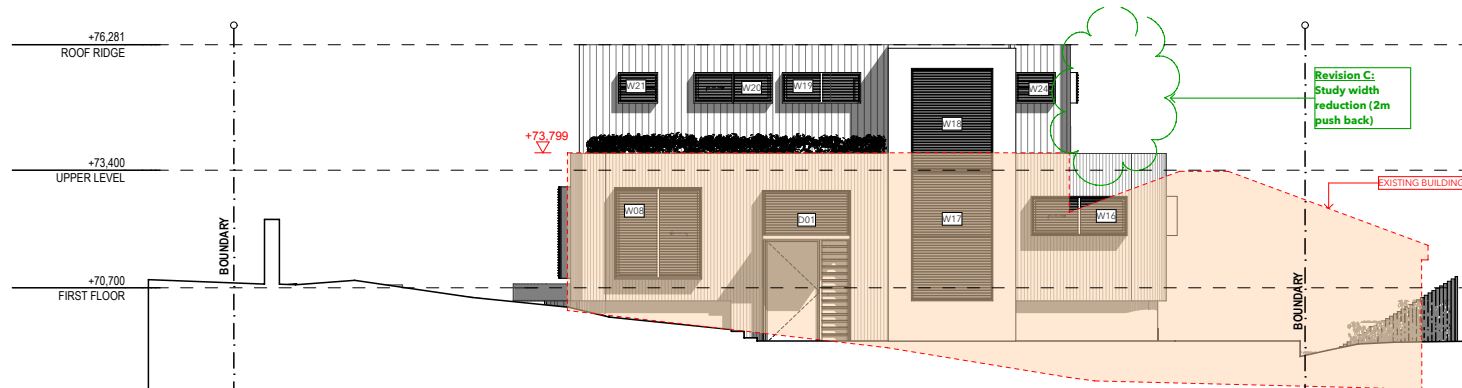




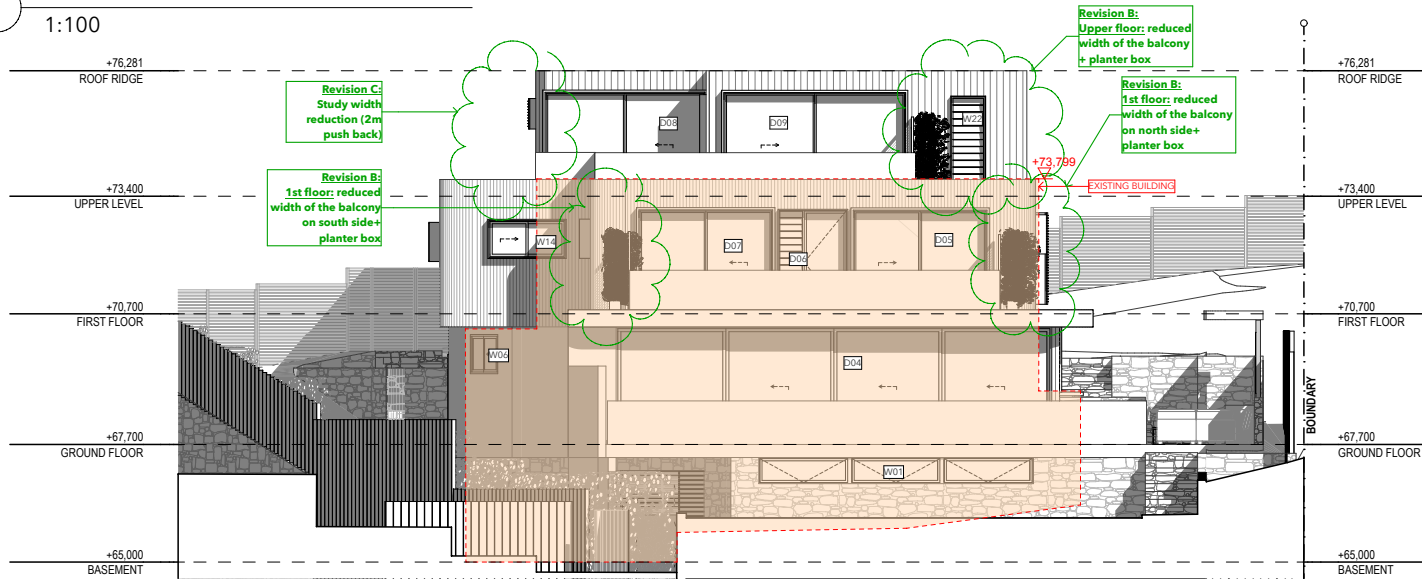


1 POOL - SOUTH ELEVATION
1:50

	Project details:	Plot Date:	Scale:
	10 Fitzroy Road - CROMER 2099 NSW	31/10/2024	1:50 @ A3
	Applicant : Mike Reddie	Drawing Title:	
	LOT 5 - Section 182	POOL ELEVATION - SOUTH	
	DP: 241272	Drawn by: Carole Huard	Revision:
	Package:	DA15	C
	DEVELOPMENT APPLICATION	Status:	
		ISSUED	

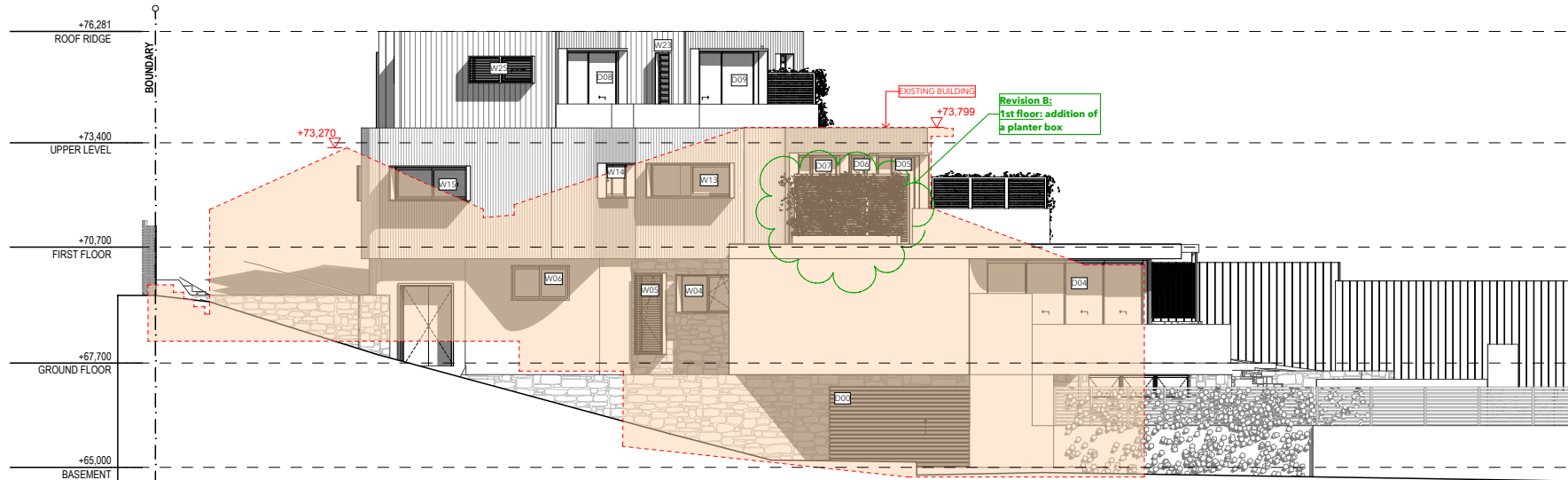


1 WEST ELEVATION
1:100

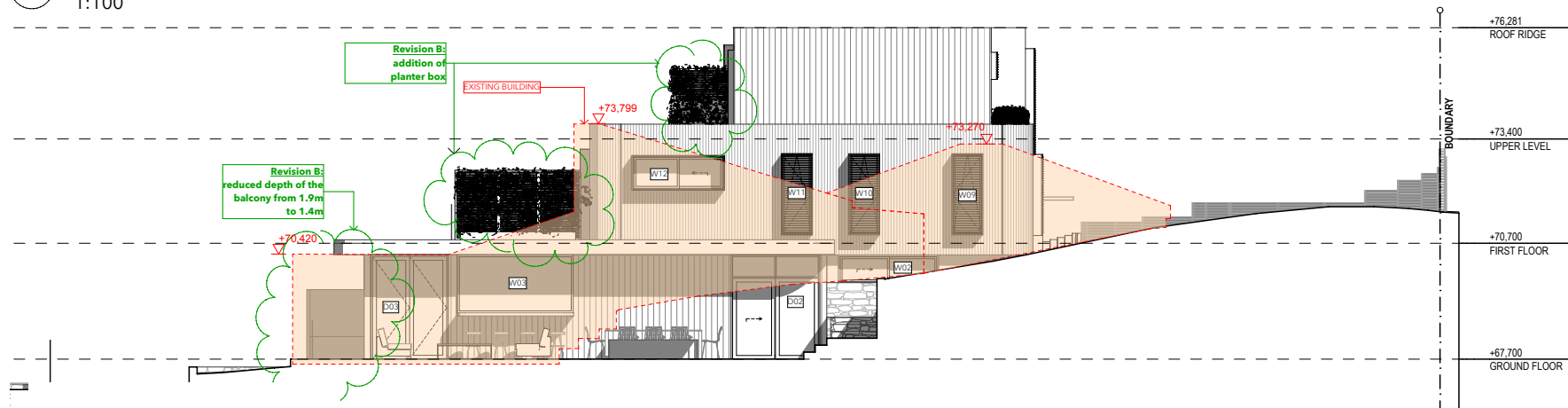


2 EAST ELEVATION
1:100

 ARCHITECTURE	Project details:		Plot Date:	Scale:
	10 Fitzroy Road - CROMER 2099 NSW		31/10/2024	1:100 @ A3
	Applicant : Mike Reddie		Drawing Title:	
	LOT 5 - Section 182		EAST & WEST ELEVATION	
	DP: 241272		Drawn by: Carole Huard	Revision: C
Package:	DEVELOPMENT APPLICATION	Status: ISSUED	Drawing No.: DA16	

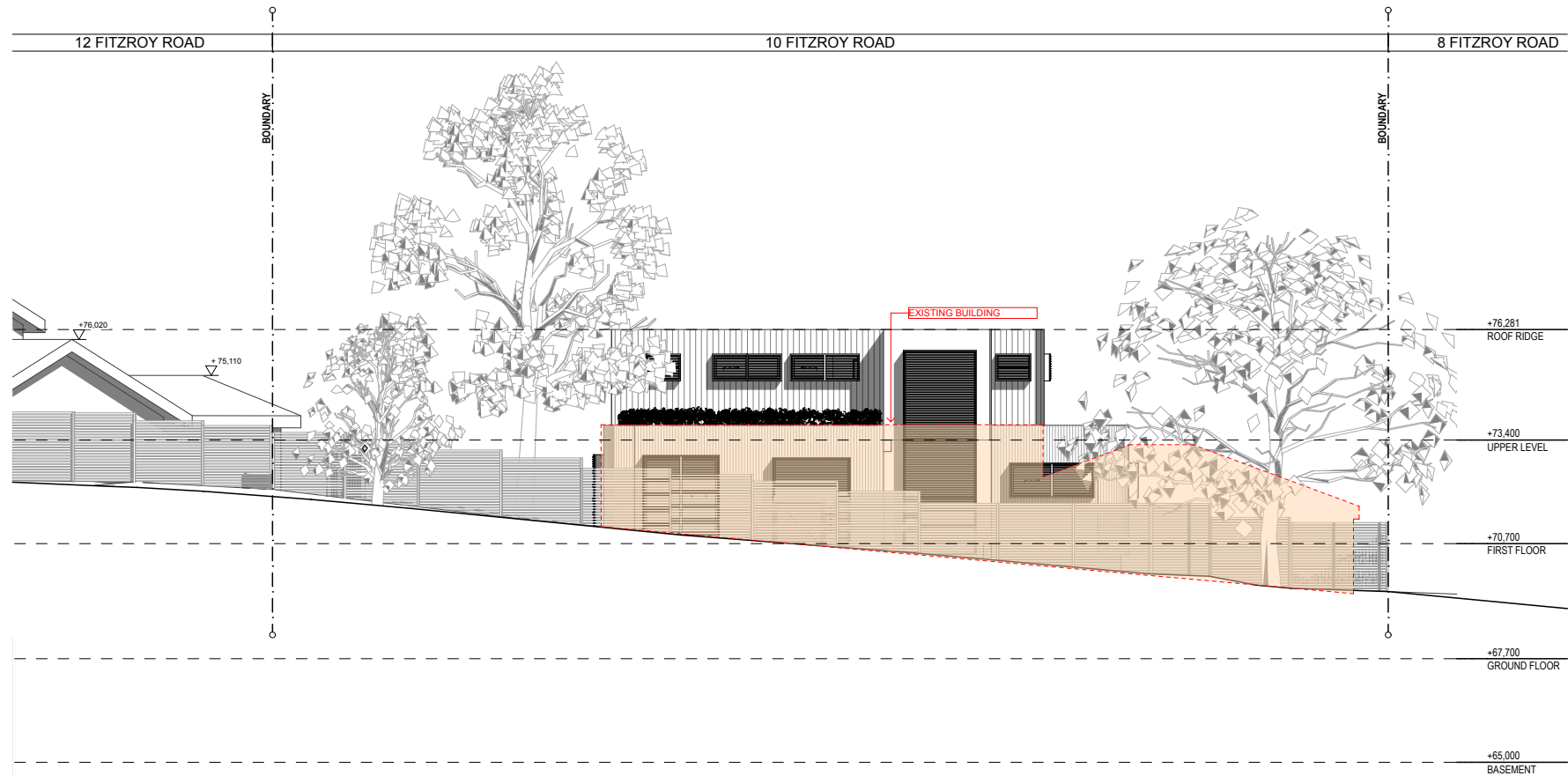


1 SOUTH ELEVATION
1:100



2 NORTH ELEVATION
1:100

	Project details:		Plot Date:	Scale:
	10 Fitzroy Road - CROMER 2099 NSW		31/10/2024	1:100 @ A3
	Applicant : Mike Reddie		Drawing Title:	
	LOT 5 - Section 182		NORTH AND SOUTH ELEVATION	
	DP: 241272		Drawn by: Carole Huard	Revision:
Package:	DEVELOPMENT APPLICATION	Status:	Drawing No.: DA17	C
		ISSUED		

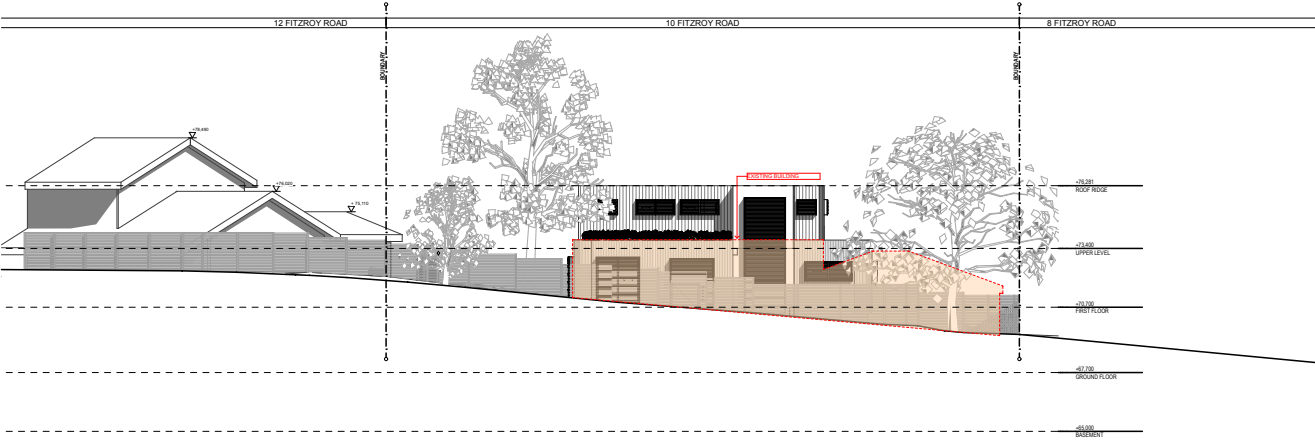


1 STREET ELEVATION
1:100

Notes:

- PROPOSED FENCE HEIGHT TO MATCH WITH ADJOINING NEIGHBOURS 12 FITZROY ROAD - Approx. 1.8m high
- REFER TO LANDSCAPE PLANS PREPARED BY FORMED GARDENS

	Project details: 10 Fitzroy Road - CROMER 2099 NSW Applicant : Mike Reddie LOT 5 - Section 182 DP: 241272 Package: DEVELOPMENT APPLICATION		Plot Date: 31/10/2024 Drawing Title: STREET ELEVATION Drawn by: Carole Huard Drawing No.: DA18	Scale: 1:100 @ A3 Revision: C
	Status: ISSUED			



1 STREET ELEVATION
1:200

Notes:
- PROPOSED FENCE HEIGHT TO MATCH WITH ADJOINING
NEIGHBOURS 12 FITZROY ROAD - Approx. 1.8m high
- REFER TO LANDSCAPE PLANS PREPARED BY FORMED GARDENS

	Project details:	Plot Date:	Scale:
	10 Fitzroy Road - CROMER 2099 NSW	31/10/2024	1:200 @ A3
	Applicant : Mike Reddie	Drawing Title:	
	LOT 5 - Section 182	STREET ELEVATION	
	DP: 241272	Drawn by: Carole Huard	Revision:
	Package:	Drawing No.: DA19	C
	DEVELOPMENT APPLICATION	Status: ISSUED	



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CLAUSE 4.6 REQUEST TO VARY THE HEIGHT OF BUILDINGS DEVELOPMENT STANDARD

10 FITZROY ROAD, CROMER

1. 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. Warringah Local Environmental Plan 2011

2.1. Clause 4.3: Height of Buildings

Pursuant to Clause 4.3 of the LEP the height of any building on the land shall not exceed a height of 8.5 metres. The objectives of this clause are:

- a) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
- c) *to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*
- d) *to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

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.

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

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

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

This request seeks a variation to the 8.5m height limit standard. The nature and extent of the variation is 830mm which equates to a max building height of 9.33m. This breach is measured from the top of the roof to the existing disturbed ground level below and equates to variation of 9.76%.

When measured from the existing basement ground level to the top of the eastern edge of the upper level the building height measures 8.784m which is a variation of 284mm or 3.34%.

The section drawing below identifies the breaching elements of the proposal.

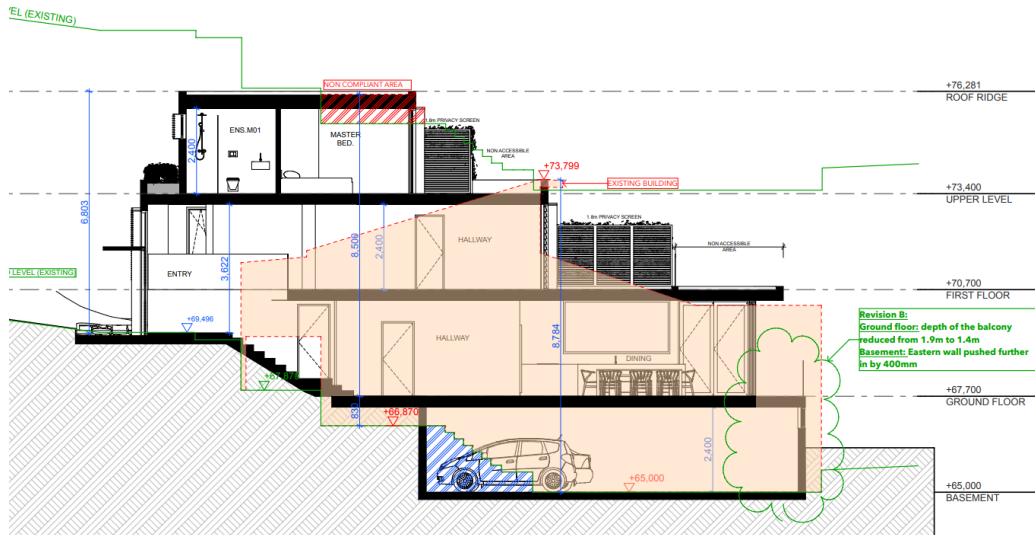


Image 1: Section showing building height breaching elements

We note that the previously disturbed levels of the site within the footprint of the existing building significantly distorts the height of buildings development standard plane overlaid above the site when compared to the topography of the hill.

2.2. Clause 4.6 – Exceptions to Development Standards

Clause 4.6 of LEP provides a mechanism by which a development standard can be varied. The objectives of this clause are:

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

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

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

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

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

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

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

This Clause applies to the Clause 4.3 Height of Buildings Development Standard.

Clause 4.6(3) states that consent must not be granted for development that contravenes a development standard unless the consent authority has considered a 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 LEP which specifies a maximum building height however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

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

3. 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]. Australian

Company Number 121 577 768 Alterations and Additions 10 Aiken Avenue,
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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 4.3A of WLEP 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 the LEP?

Clause 4.6 of LEP provides a mechanism by which a development standard can be varied. The objectives of this clause are:

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

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

4. Request for variation

4.1. Is clause 4.3 of WLEP a development standard?

The definition of “development standard” at clause 1.4 of the EP&A Act includes a provision of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

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

Clause 4.3 of WLEP prescribes a height provision that seeks to control the height of certain development. Accordingly, clause 4.3 of WLEP is a development standard.

4.2. Clause 4.6(3)(a) – Whether compliance with the development standard is unreasonable or unnecessary

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

The first 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.

Height of Buildings Standard and Objectives

Pursuant to Clause 4.3 WLEP the height of any building on the land shall not exceed a height of 8.5 metres. The objectives of this clause are:

- a) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*

Comment: The height and scale of the development is consistent with surrounding development and with the existing streetscape character. The front façade of the dwelling will reach an approximate height of 6.8m with the design of the new dwelling to step down towards the rear. This design reflects the sloping topography and is consistent with the scale of development in the area.

The height breach is a result of existing disturbed areas within the footprint of the proposed dwelling creating a distorted height plane. The non-compliance with the distorted 8.5m height plane is not a reflection of overdevelopment with regard to height.

In this context, consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council (2005) NSW LEC 191*, I am of the opinion that most observers would not find the height of the breaching elements offensive, jarring or unsympathetic in a streetscape context having regard to the built form characteristics of development within the sites visual catchment. Accordingly, it can be reasonably concluded that the proposal is compatible with its surroundings.

The proposal achieves this objective notwithstanding the non-compliant building height elements.

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

Comment: The amenity outcome is considered reasonable despite the height variation. Compliant levels of solar access is achieved. Privacy attenuation measures have been including via privacy screens to the balconies and minimal windows proposed to side elevations. No privacy impacts will occur from the area of non-compliance.

The non-compliant building height breaching elements are unlikely to impact on views available from surrounding properties. As mentioned above, the front elevation will reach a height of 6.8m with the breach occurring at the rear of the upper level due to the existing site disturbance. As such, the impact to views occurs from a compliant height to the front façade which is measured at 6.8m and not the area above the 8.5m.

The proposal achieves this objective notwithstanding the non-compliant building height elements.

- c) *to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*

Comment: No adverse impacts to the coastal areas or Warringah's scenic quality. The proposal achieves this objective notwithstanding the non-compliant building height elements.

- d) *to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

Comment: The dwelling will present as a 2 storey dwelling to the street and consistent with the existing streetscape character. No visual impacts will occur when viewed from the public domain. The front façade of the dwelling is well below the 8.5m height limit.

The proposal achieves this objective notwithstanding the non-compliant building height elements.

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

In Initial Action the Court found at [23]-[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 environment planning grounds

Sufficient environmental planning grounds exist to justify the height of buildings variation as outlined below.

Ground 1 - Steep and artificially modified topography of the land

Sufficient environmental planning grounds exist to justify the height of buildings variation including the steep and artificially modified topography of the land which makes strict compliance difficult to achieve whilst distributing height and floor space in a contextually appropriate manner on this particular site.

In this regard, I note that the prior disturbed levels of the site within the footprint of the existing building distorts the height of buildings development standard plane overlaid above the site when compared to the natural undisturbed topography of the land. When the original undisturbed levels of the site are interpolated across the building footprint the proposed development is minorly above the 8.5m by approximately 100mm.

Consistent with the finding of O'Neill C at paragraph 73 of *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582* such circumstance can properly be described as an environmental planning ground within the meaning of cl 4.6(3)(b) of LEP 2014.

Ground 2 – Superior architectural design

The apparent size of the proposed development will be compatible with dwellings in the visual catchment of the site, which features a number of buildings of comparable bulk and scale. The building is of exceptional design quality with the variation facilitating a building height that provides for contextual built form compatibility, consistent with Objectives 1.3(c) and (g) of the Act.

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

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)).
- Approval of the variation would promote good design and amenity of the built environment (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)).

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

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:

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

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

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

5. Conclusion

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

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

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

Greg Boston
Boston Blyth Fleming Pty Ltd
Director
23.2.24

**ITEM 3.6 DA2024/0882 - 23 & 33 BASSETT STREET MONA VALE -
ALTERATIONS AND ADDITIONS TO A SENIORS HOUSING
DEVELOPMENT (RESIDENTIAL CARE FACILITY)**

PURPOSE

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

RECOMMENDATION

THAT Council as the consent authority **approves** Development Consent to DA2024/0882 for Alterations and additions to a seniors housing development (residential care facility) on land at Lot 2 DP 748426 & Lot 38 DP 7236, 23 & 33 Bassett Street MONA VALE, subject to the conditions set out in the Assessment Report.

Reporting manager	Adam Richardson
TRIM file ref	2024/846050
Attachments	1 Assessment Report 2 Site Plan and Elevations

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/0882
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Responsible Officer:	Anne-Marie Young
Land to be developed (Address):	Lot 2 DP 748426, 33 Bassett Street MONA VALE NSW 2103 Lot 38 DP 7236, 23 Bassett Street MONA VALE NSW 2103
Proposed Development:	Alterations and additions to a seniors housing development (residential care facility)
Zoning:	R2 Low Density Residential
Development Permissible:	Yes, under SEPP (Housing for Seniors or People with a Disability) 2004
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Thompson Health Care Pty Ltd

Application Lodged:	09/07/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Seniors Living
Notified:	04/09/2024 to 02/10/2024
Advertised:	04/09/2024
Submissions Received:	9
Clause 4.6 Variation:	No
Recommendation:	Approval

Estimated Cost of Works:	\$ 5,975,840.00
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EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to a seniors housing development, namely a one hundred and eighteen (118) bed, two storey Residential Care Facility (RCF), approved under DA2020/0816. As the original consent has not been activated, this development application has the affect of amending the previous development consent to the extent that if there is an inconsistency between the two applications this DA prevails. The application is Integrated Development under the Water Act due to dewatering and the General Terms of Approval (GTAs) have been received from the Department of Water NSW.

The principle changes to the approved seniors housing development include the increase of the building footprint and reduction of the rear set back by 5m from 15m to 10m, the infill of internal voids, deletion of the atrium and changes to the roof, as well as changes to the facades including enlarged windows to the rear and the introduction of balconies. There is no change to the density of the development, with the number of approved 118 beds and the car parking complies with the provisions of SEPP Housing.

The application is referred to the Development Determination Panel (DDP) due to more than five (5) submissions having been received to the development during the exhibition period of the application under the Northern Beaches Community Participation Plan. A total of nine (9) unique submissions have been received and concerns raised in the objections predominantly relate to the reduced setbacks, reduced landscaping to the rear, increase in the bulk and scale and an increase in amenity impacts, including privacy and overshadowing.

The original application was assessed under SEPP (Housing for Seniors and Persons with a Disability (HSPD) 2024, whereas the subject application is assessed under SEPP Housing 2021. The proposal complies with the relevant development standards contained in Part 5 of SEPP Housing including the maximum 1:1 FSR, height and Landscape Open Space requirements. The proposal achieves an FSR of 0.98:1, a height of 8.865m above the Flood Planning Level (FPL) and retains 2,127m² of landscape open space.

Whilst there is slightly reduced articulation in the front and rear facade due to the extension of the building envelope and the infill of internal voids, the development character and scale remains generally consistent with the approved development and responds to the character of the area.

The application has been amended to address the concern from Council's Flooding Engineer with regards to the basement and the concerns from the Design Advisory Panel (DSAP) with respect to the layout of the ground floor dining area and access to natural light and ventilation and the landscaping and deep soil zone within the rear setback.

This report concludes with a recommendation that the DDP grant approval to the development application, subject to conditions, including a condition restricting the issue of a Construction Certificate for the current application until the Construction Certificate for the original development is issued and work has commenced.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks development consent for alterations and additions to a Residential Care Facility (RCF) pursuant to the Part 5 provisions of State Environmental Planning Policy (Housing) 2021 (SEPP Housing). The original 118 bed RCF was approved under DA2020/0816, the consent has not been activated, therefore, the application seeks to amend the original application.

The proposal increases the approved building footprint and envelope by reducing the rear setback from 15.0m to approximately 10.0m and infilling voids. The proposal results in a 252m² increase in GFA which equates to an increase in FSR from 0.95:1 to 0.98:1. The proposal also seek consent for a 200mm increase in the height of the development, however, there is no increase in the number of beds.

In detail the proposal includes the following modifications to the original consent:

Basement RL1.500 (as amended)

- Level lower 200mm to RL1.5

- Driveway amended and pump room added
- Car parking reduced by 3 spaces to 36 spaces

Ground Level (RL5.0) and First Floor Level (RL8.3)

- Rear set back reduced from 15.0m to approximately 10.0m
- Atrium and voids deleted
- Internal courtyards increased in area and resident communal areas amended
- Balconies and bay windows added to some rooms
- Internal floor plan modified and rooms reconfigured
- First Floor Level raised 200mm to RL 8.300

External

- Floor level raised 200mm to RL8.300
- External finishes amended to include rendered painted walls and alpine stone cladding
- Change to windows and introduction of balconies
- Glazing to central spine modified
- Extent of roof pitch amended (ridge height = 13.86)

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

Assessment - Concurrence - Roads and Maritime Service - SEPP (Transport and Infrastructure) 2021, s2.118

Pittwater Local Environmental Plan 2014 - Zone R2 Low Density Residential

Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings

Pittwater Local Environmental Plan 2014 - 7.1 Acid sulfate soils

Pittwater 21 Development Control Plan - A4.9 Mona Vale Locality

Pittwater 21 Development Control Plan - C1.4 Solar Access

Pittwater 21 Development Control Plan - C1.5 Visual Privacy

Pittwater 21 Development Control Plan - D9.6 Front building line
Pittwater 21 Development Control Plan - D9.10 Landscaped Area - General

SITE DESCRIPTION

Property Description:	Lot 2 DP 748426 , 33 Bassett Street MONA VALE NSW 2103 Lot 38 DP 7236 , 23 Bassett Street MONA VALE NSW 2103
Detailed Site Description:	The subject site consists of two allotments located on the southern side of Bassett Street, approximately 50m to the east of the intersection of Barrenjoey Road. • 23 Bassett Street, Mona Vale - Lot 38 Sec F DP 7236 • 33 Bassett Street, Mona Vale - Lot 2 DP 748426 No. 23 Bassett Street has a frontage of 15.24m along Bassett Street with a site area of 929m², and accommodates a single-storey dwelling. No. 33 Bassett Street has a frontage of 91.44m² to Bassett Street with a site area of 5574m², and accommodates a two-storey, 63 bed aged care facility known as Mona Vale House Nursing Home. No. 33 also accommodates a single-storey dwelling at the east of the site (formerly No. 25 Bassett Street). The existing facility provides 34 car parking spaces at the rear and an electrical substation is located in the north western corner of the site. When combined, the site is regular in shape with a frontage of 106.68m along Bassett Street and a depth of 60.96m. The site has a surveyed area of 6503m². The site is located within the R2 Low Density Residential zone. The site is generally flat and falls away approximately 1m at the rear of the existing building. The site contains 10 prescribed trees and a further 21 non-prescribed/exempt trees. Detailed Description of Adjoining/Surrounding Development The adjoining property to the east No. 21 Bassett Street is occupied by a dwelling house. The adjoining property to the west No. 37 Bassett Street is occupied by a dual occupancy. Properties adjoining the rear of the subject site are occupied by dwelling houses (6, 12-18 Heath Street) and dual occupancies (8 & 10 Heath Street). Adjoining and surrounding development is characterised by

a range of residential development including dwelling houses, dual occupancies and residential flat buildings.

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:

N0153/05 - Alterations and additions to existing building and change of use to a nursing home - Approved 26 July 2005.

N0153/05 - Modification of Development Consent N0153/05 for alterations and additions to existing building and change of use to a nursing home - Approved 16 March 2007.

A pre-lodgement meeting **PLM2019/0251** was held between the applicant and Council on 3 December 2019 in relation to the demolition of the existing buildings and construction of a two-storey Residential Care Facility, basement car parking and landscape works.

On 24 April 2021, the NBLPP approved **DA2020/0816** for demolition of an existing nursing home and the construction of a new 118 bed residential aged care facility and parking for 39 vehicles.

On 10 October 2022, **Mod2022/0337** approved the deletion of conditions requiring the part construction of a new pedestrian pathway to Barrenjoey Road bus stop.

History of subject application

On 5 November 2024, a Request for Further Information (RFI) was sent to the applicant which raised issues with deep soil, privacy and internal amenity due to limited access to light and ventilation of the ground floor dining areas which were noted to be consistent with the issues raised by DSAP. In addition, issues were raised in respect to flooding and a summary of concerns raised in submissions was provided.

On 14 November 2024, the applicant provided a response to the RFI and uploaded amended plans and additional information on the Planning Portal. The changes included:

Basement level

- Basement Level raised 300mm to RL1.500 lowered at portion of Carpark Entry RL1.200
- Building footprint decreased along Southern boundary to car space edge

Ground level

- Internal layout for Lounge + Dining 1 & 2 amended – opening space to central courtyards.
- Basement egress stairs – levels amended access levels amended above PMF 4.84m AHD
- Concealed floor barrier to loading dock to prevent water ingress to Basement in flood event

First Floor

- Privacy screens added to First Floor ward windows on the western elevation
- 1500 high frosted glazing to “Juliet” balconies on the western elevation

External

- Permeable path shown in 6m wide Deep Soil Zone which provides a deep spoil zone of 1,016m²

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration	Comments
	<u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the 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 04/09/2024 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 process council is in receipt of 9 submission/s from:

Name:	Address:
Mrs Rebecca Berrell	20 Heath Street MONA VALE NSW 2103
Mr Neil Colin Berrell	20 Heath Street MONA VALE NSW 2103
Ms Vanessa Anne Hawkes	18 Heath Street MONA VALE NSW 2103
Mr Nicholas David Shea Bowen	16 Heath Street MONA VALE NSW 2103
Mr Lee Shane Aitken	6 Heath Street MONA VALE NSW 2103
Mr Craig John Berrell	10 A Heath Street MONA VALE NSW 2103
Mr Paul Christopher Breakspear Mrs Christie Marie Breakspear	10 B Heath Street MONA VALE NSW 2103
Mr Kevin Richard Dallas	8 A Heath Street MONA VALE NSW 2103
John Angus Hudson Sherwood	1036 Pittwater Road COLLAROY NSW 2097
Mrs Allira Michelle Bowen	16 Heath Street MONA VALE NSW 2103
Mr Benjamin Philip Wheeler	102 Victor Road NARRAWEENA NSW 2099

The following issues were raised in the submissions and each have been addressed below:

- **Reduced setback results in increased amenity impacts (privacy and overshadowing)**

Privacy - The proposal reduces the rear setback from 15m to 10m and reduces setback of the development to the east for the full height. The reduces setbacks will result in additional unreasonable acoustic and visual privacy impacts to neighbours, including overlooking impacts swimming pools. The size of the windows in the southern elevation have increased which adds to further privacy impacts. There is insufficient space for tree planting to the rear which would help reduce privacy impacts.

Overshadowing - The increase in the bulk and massing of the development and changes to the roof will add to greater overshadowing of neighbouring properties.

Comment

Privacy - southern (rear) setback - Despite the reduced rear setbacks the proposal retains a setback of approximately 10.0m to the rear boundary which allows sufficient space for the retention of mature trees which will be supplemented with additional new planting which will help ensure that there will be no additional or unreasonable amenity impacts in terms of privacy. The 10.0m setback of the external wall is noted to exceeds the privacy requirements of the PDCA which requires a 9.0m separation between habitable windows.

The increase in the size of the window opening is acknowledged, again, due to adequate building separation it is unlikely that this will result in unreasonable additional / new privacy impacts. No windows directly face the swimming pool at No. 18 Heath Street and the 10.0m rear setback combined with the oblique view from the upper floor southern windows and landscape screening will help protect privacy.

Privacy - western setback - The amended plans include privacy treatment, screens and obscure glazing to the windows and juliette balconies, along the western elevation which will help ensure that privacy is protected to the western neighbours.

Privacy eastern setback - With the exception of a fire stair, which is set back 5.4m from the eastern side boundary, the building retains the approved side setback and the length of the building is therefore similar to the approved development with no additional privacy impacts to the eastern neighbour.

In summary, the proposed development is generally acceptable in relation to visual privacy by virtue of the physical separation of the building to the boundaries and landscape screening provided.

There are no new issues in respect to acoustic privacy impacts and the condition imposed on the original development application to ensure that there are no unreasonable acoustic impacts due to noise from plant is still valid.

Shadows- It is agreed that there will be an increase in the amount of shadow cast to neighbouring properties to the rear, particularly at 9:00am, due to the increase in the bulk of the building and changes to the roof. Despite this, the proposal complies with the solar access provisions of Clause C1.4 of the PDCP and the solar access provisions of SEPP Housing and it is considered that the set back retain is sufficient to ensure that there is adequate sunlight access to adjoining properties.

- **Insufficient notification**

The proposal has not been notified correctly and notification has not been received.

Comment:

The application has been notified in accordance with the Community Participation Plan (CPP) and the EP&A Regulations.

- **Height, bulk and scale and character**

The reduced setback and the increase in height and changes to the roof results in an increased in the bulk, scale and density of the development which is out of character.

Comment:

Despite the increase in the size (floor space) of the development and the 200mm increase in the height the proposal achieves an FSR of 0.98:1 and a maximum height of 8.8m above the FPL and complies with 1:1 FSR density control and maximum 9.5m height limited as contained in part 5 of the SEPP (Housing) 2021. The proposal is also compliant with all other built form controls, including setbacks, and landscape open space. The application was referred to DSAP who confirmed that the scale and density of the development is acceptable and in character with the area noting that it replaces a similar large RCF.

- **Road safety and congestion**

The increase in traffic may result in congestion and road safety issues.

Comment:

The proposal does not seek to increase the number of beds and or staff numbers compared to the approved scheme. Therefore, there are no new road safety issues and Council's Transport Engineer raises no objections to the proposal subject to conditions. The proposed car parking and access complies with the requirements for staff, visitors and loading facilities pursuant to SEPP (Housing) 2021 and Council's Traffic Engineer has no objections to the development subject to conditions. Detailed assessments are provided in this report under 'Referrals', and conditions are included as recommended.

- **Essential services**

The proposal will put extra pressure on local infrastructure, roads, water supply and sewage.

Comment:

The proposal is for alteration and additions to an approved 118 bed RCF and will not result in additional demand on local infrastructure.

Re-notification Integrated Development

The application was re-notified on the 29 August 2024 to 2 October 2024 as Integrated Development under the Water Management Act due to dewatering. The application was re-notified for 28 days in accordance with the CPP and the EP&A Regulations. Five (5) additional submissions were received, four (4) submissions were received from people that made submissions to the original application in addition to one (1) new submission. The submissions reiterated the issues discussed above and raised the following new issues:

- **Misleading drawings**

Plan (DA2-01) show different setback to the rear referencing 10,900mm and 15,000mm creating confusion as to what is being proposed. The details in respect of landscape planting is also unclear.

Comment:

Plan DA02-01 is the site analysis and context plan. It is agreed that there is some confusion with the rear setback as annotated on this plan as the reference to 15,000mm appears to be a typographical error. Importantly, the correct setback of the development to the rear boundary is referenced on the ground floor plan and first floor plan.

An amended landscape plan has been received which provide details of the trees to be retained and new planting species.

- **Balconies**

The balconies will add to additional overlooking of neighbouring properties.

Comment:

Small balconies and juliette balconies are proposed to some rooms to improve the internal amenity for the residents. The balconies are small, 800mm deep, and will not allow occupants the opportunity to sit outside. Given the size of the balconies and the 8.8m separation distance of the balconies to the rear boundaries it is unlikely that they will add to unreasonable impacts

on privacy.

- **Landscaping**
The landscaping to the rear shall be mature trees to help reduce the visual bulk and ensure that privacy is protected.

Comment:

A number of mature trees are retained to the rear and conditions have been recommended by Council's Landscape Officer to require new planting with mature species within the rear setback which will help reduce the visual bulk and help protect privacy to neighbours.

In summary, the matter raised in the submission are not considered to warrant refusal of the application.

REFERRALS

Internal Referral Body	Comments
Design and Sustainability Advisory Panel	<i>Supported, subject to conditions</i> The application was presented to DSAP on 22 August 2024 who made the following comments: <u>Strategic context, urban context: surrounding area character</u> The development has been designed to respond to the existing residential streetscape character of the area. Whilst there is slightly reduced articulation in the front and rear facade due to the extension of the building envelope and the infill of voids, the development character and scale remains generally consistent with the approved development and recognises the functional requirements of residential care facilities and the intention to provide larger resident suites. The setback to the rear boundary has been reduced to 10.37m (measured from the external wall) but retains appropriate visual and acoustic privacy is through the provision of adequate spatial separation and the intervening landscaping. <u>Scale, built form and articulation</u> The amended building design articulates the form, scale, façade colour and materials to satisfactorily provide diverse facades to the repetitive room modules. The amended design will not substantially change the character relationship of the approved design to the street context or have a more institutionalised presentation. In terms of changes to the rear façade the change in bulk will not increase to an extent it would overpower the low-density development it faces. <u>Access, vehicular movement and car parking</u> No changes proposed externally to approved development.

Internal Referral Body	Comments
	<u>Landscape</u> The reduction in setback to the rear now presents a significant incursion into trees #5 and #6 to be retained with T6 the Chinese Elm also requiring pruning. The total disturbance is to be calculated which has the potential to be considered a major incursion and needs to be addressed in detail as the tree the tree which in my experience is not achievable on a development of this size. For clarification SEPP (Housing), Part 5 requires 15% of the site to be retained as landscape open space with a minimum dimension of 6m and at least 65% of the deep zone area located to the rear. The only area of deep soil with a minimum dimension of 6m is located within the south-east corner of the site and equates to 290m². The western, internal courtyard area is labelled as deep soil however, it does not wholly comply as there are elements that are not allowed when calculating deep soil areas. Recommendations: 1. The internal courtyard that is labelled and presumably counted as deep soil landscaping however, it contains many hard scape elements that should not be counted in the calculations. 2. The open lawn area beneath T5&T6 should consider the amount of sunlight it will receive as it is on the south side and under significant tree canopy to be retained. 3. More medium to large trees should be added to the plant schedule with up to 5 street trees also proposed with the species for these reflective of what is already growing along the street. 4. The plant species along the eastern boundary should be capable of withstanding a hard pruning and will need to be formative pruned until they reach such a height that the first branching is at a height of not less than 2.1m for pedestrian clearance. 5. A more generous and well thought out landscape response to the front setback should be considered which would further enhance the front façade and help to blend the building into the existing streetscape. 6. The project arborist should reconsider whether it may be better to remove T6 and replace it with one or even two super-advance trees which may yield a better result. 7. The area to the south should reduce the number of elements that do not qualify as deep soil / landscaped area. <u>Planners response:</u> The application has been amended to change the hard paved areas to permeable path which allow for deep soil zone with a minimum dimension of 6m (1,016m²) in compliance with SEPP Housing and it is confirmed that the internal courtyards are excluded from the calculation of deep soil. The setback of the basement to the southern rear boundary has been reduced which will help reduce potential impacts on the roots of trees to be retained. Council's Landscape Officer has no objections to the proposal, subject to conditions.

Internal Referral Body	Comments
	<u>Amenity</u> Windows to the west-facing residents rooms on the first floor present an overlooking and visual privacy impact to current and more importantly to likely future development on the adjoining site to the west. The dining space of the Lounge + Dining 1 on the ground floor has poor amenity and no outlook to external garden spaces. The shared kitchen core serving the separate 'houses' is poorly located and should not be located in a way that it reduces access to windows and gardens from dining and lounge spaces. It is noted that Design Principles 3 in SEPP (Housing) requires the best practicable use of natural ventilation, solar heating and lighting by locating the windows of living and dining areas in a northerly direction. The proposal is inconsistent with this design principle. <u>Recommendations</u> 8. Provide privacy screening to west-facing residents' rooms. The screening needs to be carefully designed to integrate with shading design and to enable views of outside without compromising neighbour privacy. Consider mounting privacy screens well off the facades so that lateral outlooks can be retained. 9. Reconfigure the lounge and dining rooms so that they all enjoy access to external windows. The first floor plan arrangement (Lounge+Dining 3 /4) is superior and consideration should be given to replicating that arrangement on the ground floor. Page 3 10. Re-consideration of the deletion of the central glazed atrium and the modified layout with internal and centralised dining rooms at ground level. <u>Façade treatment/Aesthetics</u> Façade treatment is generally acceptable. It is not clear that sun hoods are provided to north facing windows in the recessed panels of the street elevation. <u>Recommendations</u> 11. Provide appropriate sun control hoods to all north facing and west facing windows including to habitable rooms facing courtyard spaces. 12. Ensure north facing glazed curtain walls at the Entry have appropriate sun protection. <u>Planners Comment:</u> The applicant has confirmed that the internal layout has been modified to allow for the improved functionality of the building in response to the needs of the residents. The glazed atrium was not considered to be the most suitable design for the RCF. The ground floor dining areas has been amended to allow for access to light and ventilation to the internal courtyards in compliance with Design requirements of SEPP Housing. A visual connection from the central ground floor dining area is also provided to the rear garden area.

Internal Referral Body	Comments
	Privacy screens have been added to the first floor windows in the western elevation and obscure glazing to the glass at the top of the Juliette balconies to ensure that there is no overlooking or loss of privacy to neighbours. A condition is recommended to address recommendations 11 in respect of sun hoods. <u>Sustainability</u> With the regulatory environment changing now – for efficiency, electrification, zero emissions and mandatory disclosure – these investments at this time will be worthwhile both for current and future residents, and the developers’ reputation, market position and marketability of the project. <u>Recommendations</u> The following aspects of design and servicing can be easily and cost effectively considered for inclusion: 13. Decarbonisation of energy supply • All services should be electric – gas for cooking, hot water and heating should be avoided. • Heat pump systems for providing electric hot water should be considered. • The storage of hot water can be considered a de facto battery if heated by PVs during the day. • On site battery storage has benefits for the grid and may be a highly desirable back-up during the transition to a de-carbonised grid • Unshaded roof space is a valuable resource for PV installations. Their efficacy can be greatly enhanced when placed over a green roof, which has additional ecological benefits. 14. EV charging: Provide EV charging points in the carpark (Min 15 amp) to suit level 1 charging should be considered. 15. Passive design and thermal performance of building fabric • Since 1 October 2023 an average 7 stars NatHERS, with no unit below 6 stars has been required. This is consistent with the National Construction Code for 2022. There is great wisdom in aiming high with this to ensure passive comfort for residents spending a lot of time in their rooms. Given the coastal location a very comfortable indoor environment should be achievable. • Particular attention is required for the south facing rooms to ensure they meet this requirement. • The inclusion of ceiling fans to all bedrooms and living rooms will provide comfort with minimal energy while reducing the need and energy required for air-conditioning. 16. Water use minimisation • All fixtures and appliances should be water efficient • Water storage for rainwater from the roofs should be included and plumbed to at least the landscaping and toilets • Landscape design and planting should be water tolerant and suitable for the micro-climate <u>Planners Comment:</u>

Internal Referral Body	Comments
	The condition in the original consent in respect to sustainability measures remains valid.
Building Assessment - Fire and Disability upgrades	Supported, subject to conditions Reasons for referral: This application seeks consent for Class 2-9 Buildings (i.e. all buildings except a dwelling, garage, shed, gazebo or swimming pool/spa) which include: Alterations and Additions; or Change of Use And as such, Councils Building Assessment officers are required to consider the likely impacts. Officer comments: The proposal is therefore supported.
Environmental Health (Acid Sulfate)	Supported - without conditions The proposal seeks to construct a nursing home with basement car park on a property mapped as class 3 & 4 Acid Sulfate soils. An acid sulfate soil preliminary assessment accompanied the previous development application. Based on the assessment undertaken by White Geotechnical Group Ref: J2485B Dated 21st July, 2020 advises that an acid sulfate management plan is not required based on low risk of encountering acid sulfate soils indicated by their testing. Recommendation APPROVAL - no conditions
Environmental Health (Contaminated Lands)	Supported - subject to conditions The development does not trigger requirements for remediation of land under SEPP (Resilience and Hazardous) 2021. Previous uses are unlikely to have caused contamination. However in the Geotechnical report the first 1.3 m of soil was indicated to be fill. A condition is to be imposed requiring the reporting of any unexpected contamination finds to Council. As the excavated material consists of historic fill that was used to level the site originally. Any soil taken to a waste facility will require classification. As the soil is being removed as part of the demolition & construction process further testing is not required for the assessment of the development application as the soil is not being retained on-site.

Internal Referral Body	Comments
Environmental Health (Industrial)	<i>Supported - subject to there being no change to the conditions in the original consent</i> This consent is not to remove the Environmental Health conditions listed in DA2020/0816 for the commercial kitchen, hair dresser or noise concerns Recommendation APPROVAL - no conditions <u>Planners Comment:</u> The health conditions in the original application are still valid.
Landscape Officer	<i>Supported - subject to conditions</i> The proposed development is for alterations and additions to a residential care facility pursuant to the Part 5 provisions of State Environmental Planning Policy (Housing) 2021 (SEPP Housing). Council's Landscape Referral has been reviewed against the following policies and controls: • State Environmental Planning Policy (Housing) 2021, Part 5 Housing for seniors and people with a disability: i) Division 3 Development Standards - clause 84 Development standards - general; ii) Division 5 Design requirements - clause 97 Design of seniors housing; iii) Division 7 Non-discretionary development standards - clause 108 for landscape area and deep soil minimum requirements. • Pittwater 21 DCP controls B4.22 Preservation of Trees and Bushland Vegetation, C1.1 Landscaping, C1.21 Seniors Housing, and D9 Mona Vale Locality. An Addendum to the Arboricultural Impact Assessment is submitted in relation to the alterations and additions impact to existing trees identified as tree 5 and tree 6. The Landscape Plans indicate existing tree retention and removal based on the proposed works. It is noted that the previous development application as approved under development consent DA2020/0816 included a full scope Arboricultural Impact Assessment that included all existing trees located upon the property. Upon review it is considered that the existing trees proposed for removal on the Landscape Plan will require removal should the application be approved, including four prescribed trees within the property (trees 1, 3, 29 and 32) and two street trees (trees 11 and 12). Exempt species identified as trees 4, 7, 9, 18-23, 27, 30 and 31 do not require Council consent for management or removal. It is noted on the Landscape Plan that removal of tree 10 within adjoining property is proposed and this is not supported and all trees within adjoining properties shall be protected.

Internal Referral Body	Comments
	The submitted Landscape Plan proposals for hard and soft landscape works raise no concerns and conditions shall to be imposed for completion. The Raphiolepis 'snow maiden' and Pennisetum 'nafray' species shall be substituted for a non self-seeding species. It is noted that the proposed removal of the two street trees (trees 11 and 12) are proposed for like for like replacement in the Landscape Plans. The Landscape Plans provide adequate tree replacement and furthermore the scheme enhances the landscape setting. The proposed Landscape Plan includes mass planting and presumably garden bed edging within the public road reserve and this is not approved under the development application as such works require a Minor Encroachment application to Council for approval or otherwise. The proposed street tree planting however is supported and conditions shall be imposed.
NECC (Development Engineering)	Supported - subject to conditions No objections to approval subject to conditions as recommended. <u>Planners Comment:</u> The engineering conditions in the original application remain relevant therefore only new conditions that specifically relate to the subject application have been included.
NECC (Flooding)	Supported - subject to conditions This proposal is for additions and alterations to a proposed residential care facility. This includes altering the driveway, lowering the basement, increasing the south boundary of the building as well other changes compared to previous DA2020/0816 and Mod2022/0376 at this site. The proposal is located within the Medium risk precinct. The relevant flood characteristics are as follows: Flood Planning Level: 4.84m AHD 1% AEP Flood Level: 4.34m AHD 1% AEP Hydraulic Category: Flood Storage Probable Maximum Flood (PMF) Level: 4.91m AHD Max PMF Life Hazard Category: H4 The proposal reduces the post-developed flood storage on site but

Internal Referral Body	Comments
	there is still an increase compared to the existing pre-construction storage on site. The basement car park is protected to the the PMF. Subject to conditions, this proposal generally complies with Sections B3.11 & B3.12 of the Pittwater DCP and Clause 5.21 & 5.22 of the Pittwater LEP.
NECC (Water Management)	Supported - subject to conditions 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 The proposed stormwater management strategy is based on water conservation, harvesting, reuse and filtration. The combination of the proposed rainwater tank, vegetated swale and stormwater cartridges is satisfactory. To undertake construction dewatering, approvals must be obtained from WaterNSW, refer general Terms of Approval (GTA) DAS1157040. NECC Water Management has no objection to the proposal. Subject to conditions.
Traffic Engineer	Supported - subject to conditions Proposal description: Proposed aged care facility for Thompson Health care at 23-33 Bassett Street East, Mona Vale The Traffic Team has reviewed the following documents: • Plans - Master set (amended) - revision B dated 19/08/24. • Traffic and parking assessment, prepared by Terraffix dated 3rd April 2024 (reference no. 19061) • The Statement of Environmental Effects, prepared by Bloston Blyth Fleming Town Planners, dated 30th April 2024 It is acknowledged that the proposed plans are similar to the previously approved plans under DA2020/0816, except for a few changes such as basement RL, transition ramp grades at the base of the ramp and bin room layout etc. Given the same plan was previously approved subject to conditions , the Traffic team does not oppose approval to this DA proposal with a similar set of traffic conditions to apply. The DA is supported subject to conditions.

Internal Referral Body	Comments
Waste Officer	<i>Supported - subject to conditions</i> Waste Management Assessment Supported - subject to conditions

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<i>Supported, subject to conditions</i> The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Ausgrid - Substation	<i>Supported, subject to conditions</i> The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice and conditions relating to substation requirements. These recommendations will be included as a condition of consent.
Nominated Integrated Development - WaterNSW - Water Management Act 2000, s90(2) - Water management works approval to construct and use a specified water supply/drainage/flood work at a specified location	<i>Supported, subject to conditions</i> The application was referred to Water for NSW due to the proposed dewatering and the General Terms of Approval (GTAs) have been received.

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 (Housing) 2021

Part 5 – Housing for seniors and people with a disability

Division 3 Development Standards

Clause 84 – Development Standards (General)	
Standard	Compliance/Comment
(2) Development consent must not be granted for the development unless:	
(a) The site area of the development is at least 1,000m ² .	Complies.
(b) The frontage of the site area of the development is at least 20m measured at the building line.	Complies.
(c) for development on land in a residential zone where residential flat buildings are not permitted: (i) the development will not result in a building with a height of more than 9.5m, (ii) excluding servicing equipment on the roof of the building, and (iii) if the roof of the building contains servicing equipment resulting in the building having a height of more than 9.5m—the servicing equipment complies with subsection (3), and if the development results in a building with more than 2 storeys—the additional storeys are set back within planes that project at an angle of 45 degrees inwards from all side and rear boundaries of the site.	Complies, a maximum height of 8.86m above the FPL is proposed.
(3) The servicing equipment must:	
(a) be fully integrated into the design of the roof or contained and suitably screened from view from public places.	Complies.
(b) be limited to an area of no more than 20% of the surface area of the roof.	Complies.
(c) not result in the building having a height of more than 11.5m.	Complies.

An assessment against Schedule 4 has been completed in the following tables:

Clause 87 – Additional Floor Space Ratios	
Standard	Compliance/Comment
(1) This section applies to development for the purposes of seniors housing on land to which this Part applies if:	
(a) development for the purposes of a residential flat building or shop top housing is permitted on the land under another environmental planning instrument, or	N/A.

(b) the development is carried out on land in Zone B3 Commercial Core.	
(2) Development consent may be granted for development to which this section applies if:	
(a) the site area of the development is at least 1,500m ² , and	Complies.
(b) The development will result in a building with the maximum permissible floor space ratio plus: (i) for development involving independent living units - an additional 15% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of independent living units, - or (ii) for development involving a residential care facility - an additional 20% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of the residential care facility, or - or (iii) for development involving independent living units and residential care facilities - an additional 25% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of independent living units or a residential care facility, or both, and	There are no FSR controls in the PLEP as such the provisions relating to additional floor space are not relevant.
(c) The development will result in a building with a height of not more than 3.8m above the maximum permissible building height.	Complies.

Clause 88 – Restrictions on Occupation of Seniors Housing	
Standard	Compliance/Comment
(1) Development permitted under this Part may be carried out for the accommodation of only the following:	A condition imposed in the original consent restricting occupation is still valid and ensure compliance.
(a) seniors or people who have a disability,	As above.
(b) people who live in the same household with seniors or people who have a disability,	As above.
(c) staff employed to assist in the administration and provision of services to housing provided under this Part.	As above.
(2) Development consent must not be granted under this Part unless the consent authority is satisfied that only the kinds of people referred to in sub-section (1) will occupy accommodation to which the development relates.	As above.

Clause 91 – Fire sprinkler systems in residential care facilities	
Standard	Compliance/Comment
(1) A consent authority must not grant consent for development for the purposes of a residential care facility unless the facility will include a fire sprinkler system.	Complies.

Division 4 – Site-related requirements

Clause 94 – Location and access to facilities and services (residential care facilities)	
Standard	Compliance/Comment
(1) Development consent must not be granted for development for the purposes of a residential care facility unless the consent authority is satisfied that residents of the facility will have access to facilities and services:	Complies.
(a) on-site, or	Complies, no change to approved development.
(b) by a transport service other than a passenger service.	No change to approved development DA2020/0816.

Clause 95 – Water and sewer	
Standard	Compliance/Comment
(1) A consent authority must not consent to development under this Part unless the consent authority is satisfied the seniors housing will:	
(a) be connected to a reticulated water system, and	Complies, essential services are available.
(b) have adequate facilities for the removal or disposal of sewage.	
(2) If the water and sewerage services will be provided by a person other than the consent authority, the consent authority:	
(a) must consider the suitability of the site in relation to the availability of reticulated water and sewerage infrastructure, or	Complies.
(b) if reticulated services are not available—must satisfy the relevant authority that the provision of water and sewerage infrastructure, including environmental and operational considerations, is satisfactory for the development.	Complies.

Division 5 – Design requirements

Clause 97 - Design of Seniors Housing

Being an application for additions and alterations to a recently approved residential aged care facility, the proposed development has been considered against and is considered to be consistent with the *Seniors Housing Design Guideline*.

An assessment against Schedule 8 has been completed in the following tables:

Schedule 8 - Design principles for seniors housing

1 – Neighbourhood amenity and streetscape	
Standard	Compliance/Comment
Seniors housing should be designed as follows:	
(a) recognise that the operational, functional and economic requirements of residential care facilities typically require a different building shape from other residential accommodation,	DSAP have confirmed that the built form is appropriate, refer to detailed comments in the referral section of this report.
(b) recognise the desirable elements of: i) the location's current character, or ii) for precincts undergoing a transition - the future character of the location so new buildings contribute to the quality and identity of the area,	DSAP have confirm that the proposal is contextually appropriate and recognises the desirable elements of the locations character, refer to discussion under the DSAP referral section of this report.
(c) complement heritage conservation areas and heritage items in the area,	N/A.
(d) maintain reasonable neighbourhood amenity and appropriate residential character by: i) providing building setbacks to reduce ii) bulk and overshadowing, and iii) using building form and siting that relates to the site's land form, and iv) adopting building heights at the street frontage that are compatible in scale with adjacent buildings, and considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours, and	Despite the reduced rear setback sufficient space, approximately 10.0m is retained between the building and the southern boundary. The building separation and existing and new landscaping planting will help reduce the visual bulk and scale and minimise privacy impacts. Despite the increase in the footprint and bulk of the building the proposal complies with the solar access provisions of the PDCP and will not result in unreasonable overshadowing to neighbours.
(e) to set back the front building on the site generally in line with the existing building line,	The proposal retains a minimum 6.7m front setback. Despite some minor infill of the voids to the front setback the proposal is generally consistent with the approved development, the existing RCF building and the predominate setback in the street.
(f) to include plants reasonably similar to other plants in the street,	The landscape plan is assessed as acceptable, subject to conditions.
(g) to retain, wherever reasonable, significant trees,	Significant trees are retained where reasonable.
(h) be designed so no building is constructed in a riparian zone.	Complies.

2 – Visual and acoustic privacy	
Standard	Compliance/Comment
Seniors housing should be designed to consider the visual and acoustic privacy of adjacent neighbours and all residents of the seniors housing by:	

(a) using appropriate site planning, including considering the location and design of windows and balconies, the use of screening devices and landscaping, and	The proposal has been amended to include privacy treatment to the first floor windows in the west elevation. Despite the increase in the size of the windows in the south elevation and the introduction of balconies there is sufficient separation to the boundaries to ensure that privacy is maintained. In addition, existing and new planting will also assist with protecting privacy to neighbours.
(b) ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.	Complies there are no new acoustic issues associated with the proposal and the conditions in the original DA with respect to noise remain valid.

3 – Solar access and design for climate	
Standard	Compliance/Comment
The design of seniors housing should:	
(a) for development involving the erection of a new building—provide residents of the building with adequate daylight in a way that does not adversely impact the amount of daylight in neighbouring buildings, and	As above, despite the increase in the bulk of the development the proposal achieves compliance with the solar access provisions of the PDCP.
(b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation, solar heating and lighting by locating the windows of living and dining areas in a northerly direction.	The proposal has been amended to modify the layout of the ground floor dining areas to ensure that sufficient solar access and ventilation is provided to ensure appropriate amenity for the residents.

4– Stormwater	
Standard	Compliance/Comment
The design of seniors housing should aim to:	
(a) control and minimise the disturbance and impacts of stormwater runoff on adjoining properties and receiving waters by, for example, finishing driveway surfaces with semi-pervious material, minimising the width of paths and minimising paved areas, and	Complies, subject to conditions.
(b) include, where practical, on-site stormwater detention or re-use for second quality water uses.	A rainwater tank is provided.

5 – Crime prevention	
Standard	Compliance/Comment
Seniors housing should:	
(a) be designed in accordance with environmental design principles relating to crime prevention, and	Complies.

(b) provide personal property security for residents and visitors, and	Complies.
(c) encourage crime prevention by: (i) site planning that allows observation of the approaches to a dwelling entry from inside each dwelling and general observation of public areas, driveways and streets from a dwelling that adjoins the area, driveway or street, and (ii) providing shared entries, if required, that serve a small number of dwellings and that are able to be locked, and (iii) providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.	Complies, all rooms have access to windows and the entrance to the RCF is legible and safe.

6 – Accessibility	
Standard	Compliance/Comment
Seniors housing should:	
(a) have obvious and safe pedestrian links from the site that provide access to transport services or local facilities, and	Complies, accessible links are provided to the public street.
(b) provide safe environments for pedestrians and motorists with convenient access and parking for residents and visitors.	Complies, subject to conditions.

7 – Waste management	
Standard	Compliance/Comment
Seniors housing should include waste facilities that maximise recycling by the provision of appropriate facilities.	Complies, subject to conditions including compliance with the waste management plan and conditions recommended by Council Waste Officer.

Division 7 – Non-Discretionary Development Standards

Clause 107 – Non-discretionary development standards for hostels and residential care facilities	
Standard	Compliance/Comment
(2) The following are non-discretionary development standards in relation to development for the purposes of hostels or residential care facilities:	
Height	
(a) no building exceeds a height of 9.5m, excluding servicing equipment on the roof of a building,	Complies, the proposal has a height of 8.86m above the FPL and sits below the 9.5m height limit.
(b) servicing equipment on the roof of a building, which results in the building exceeding a height of 9.5m: (i) is fully integrated into the design of the roof or contained and suitably screened	Complies.

(ii) from view from public places, and (iii) is limited to an area of no more than 20% of the surface area of the roof, and does not result in the building exceeding a height of 11.5m.	
Density and Scale (FSR)	
(c) the density and scale of the buildings when expressed as a floor space ratio is 1:1 or less.	Complies, the FSR is 0.98:1 (6,411m ²).
Communal Open Space	
(d) internal and external communal open spaces with a total area of at least: (i) for a hostel - 8m ² for every bed, or (ii) for a residential care facility - 10m ² for every bed.	Complies, 118 beds x 10 m ² = 1,180m ² required, 1,270m ² proposed.
Landscaped Area	
(e) at least 15m ² of landscaped area for every bed,	Complies Required - 15m ² per bed (118 beds) = 1,770m ² Proposed - 2,127m ²
(f) a deep soil zone on at least 15% of the site area, where each deep soil zone has minimum dimensions of 6m and, if practicable, at least 65% of the deep soil zone is located at the rear of the site.	Complies Required: 15% of the site area with a minimum dimension of 6m = 975.45m ² , 65% of the deep soil area to be located at the rear = 665.6m ² Proposed: A total deep soil area of 1,848m ² is provided, 961.8m ² is provided within the rear with a minimum dimension of 6m which exceeds 65% of the total deep soil zone.
Car Parking	
(g) for a hostel - at least 1 parking space for every 10 beds in the hostel,	N/A
(h) for a residential care facility - at least 1 parking space for every 15 beds in the facility,	Complies 8 required.
(i) at least 1 parking space for every 2 employees who are on duty at the same time,	Complies 25 required A combined total of 33 car parking spaces are required 36 are proposed.
(j) at least 1 parking space for the purpose of ambulance parking.	Complies one space provided.

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.

Transport for NSW (TfNSW)

The site does not have a frontage to Barrenjoey Road, it is located approximately 45m to the east of the classified road. Due to the size of the development, 118 beds, and its proximity to the classified road both the original and subject application were referred to TfNSW. The Department returned the referral on the subject application and confirmed that concurrence / advice is not required. It is noted that there is no increase in the number of beds compared to the approved development and the car parking complies with the provisions of SEPP (Housing).

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. Council's Health Officer notes that the Geotechnical report confirms that the first 1.3m of soil was indicated to be fill. A condition is to be imposed requiring the reporting of any unexpected contamination finds to Council, refer to the detailed comments in the referral section of this report.

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
4.3 (2A) Height of Buildings:	8m above Flood Planning Level (RL12.85 AHD)	8.865m (RL13.86 AHD)	7.69% (0.99m)	No
7.4 Floodplain Risk Management	RL4.91 AHD (Probable Maximum Flood)	RL5.0 AHD	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.4 Floodplain risk management	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone R2 Low Density Residential

The site is zoned R2 Low Density Residential under PLEP 2014, and the proposed residential care facility, being a form of seniors housing, is prohibited development. However, the RCF was approved under DA2020/0816 pursuant to the provisions of SEPP HSPD, which allows for seniors housing on land where it may otherwise be prohibited.

The subject application for alterations and additions to the approved RCF is assessed under SEPP Housing which also allows seniors housing in the R2 zone. The proposal is considered to achieve the objectives of the R2 zone in providing for the housing needs of the Pittwater community at an intensity and scale compatible with the surrounding land uses.

4.3 Height of buildings

Under the provisions of PLEP 2014, buildings shall not exceed a height of 8m above the FPL. In this case the maximum height permitted is RL12.85 AHD, as measured between the FPL (RL4.87) ground and the highest part of the building at any one point. In accordance with the definition of building height as defined by PLEP 2014, the proposed building reaches a maximum height of RL13.86 AHD, exceeding the height limit across a large portion of the upper level by a maximum of 995mm.

However, SEPP Housing applies to the development and prevails where any inconsistencies occur between the two instruments. Under the provisions of SEPP Housing, the maximum height of development is 9.5m, excluding servicing equipment on the roof of a building. In this instance, the maximum permissible height of the development is therefore RL14.37 AHD, which is 9.5m above the FLP.

The proposed building sits below the building height control calculated in accordance with SEPP Housing.

As SEPP Housing prevails over the PLEP 2014 height of buildings control, no Clause 4.6 variation request is required in relation to the height breach.

7.1 Acid sulfate soils

The site is mapped as Class 3 & 4 Acid Sulfate Soils. An Acid Sulfate Report has been provided confirming that no acid sulfate soils were identified on the site and the development will not adversely impact the water table. The Report concludes that no management plan is required.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	Basement Courtyard: 3.0m (approved 3.4m) Ground Floor Courtyard 1.2m Canopy over entrance 0.8m	53.85% 96.93% 87.7%	No
		Basement: 6.5m - 11m (no change)	N/A	Yes
		Building: 6.5m -11.4m (no change)	N/A	Yes
Rear building line	6.5m	Basement: 10.6m - 12m (approved 12m)	N/A	Yes
		Building: 6m to ramp, 8.8m to balcony and 10m to external wall (approved 7m - 15m)	N/A	Yes
Side building line	East: 2.5m	Driveway, Basement: 4m, 10.3m (no change)	N/A	Yes
		Building: 8.83m - 10.3m fire stairs 5.4m	N/A	Yes
	West: 1m	Basement: 4m (no change)	N/A	Yes
		Building: 4m - 5.255m (no change) 3.17m to balcony	N/A	Yes
Building envelope	3.5m	Within envelope	N/A	Yes
	3.5m	Within envelope	N/A	Yes
Landscaped area	50% 3251.5m ²	1366.5m ² (21%) Additional landscaping is providing in planter beds and large central courtyards to equal a total landscape area of 2,2296m ² (35.3%)	Complies with the landscape provisions of SEPP Housing and is therefore assessed as acceptable.	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.9 Mona Vale Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B3.12 Climate Change (Sea Level Rise and Increased Rainfall Volume)	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	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
C1.10 Building Facades	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.20 Undergrounding of Utility Services	Yes	Yes
C1.21 Seniors Housing	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
C5.19 Food Premises Design Standards	Yes	Yes
C5.21 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D9.1 Character as viewed from a public place	Yes	Yes
D9.2 Scenic protection - General	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D9.3 Building colours and materials	Yes	Yes
D9.6 Front building line	No	Yes
D9.7 Side and rear building line	Yes	Yes
D9.9 Building envelope	Yes	Yes
D9.10 Landscaped Area - General	No	Yes
D9.12 Fences - General	Yes	Yes
D9.14 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

A4.9 Mona Vale Locality

Consideration of the development against the Mona Vale Locality desired future character is discussed within the SEPP Housing assessment.

C1.4 Solar Access

Despite the extension of the building to the southern (rear) boundary and changes to the roof profile the shadow diagrams confirm that the proposal complies with the solar access provisions and will not unreasonably overshadow neighbouring properties.

C1.5 Visual Privacy

The proposal retains a sufficient rear setback of between 8.8m and 10m to ensure that there are no privacy impacts. In addition, existing and new landscaping will help protect privacy. Privacy screens are included on the first floor windows in the western elevation and obscure glazing is proposed to the balconies to ensure there are no unreasonable privacy impacts to the western neighbours.

D9.6 Front building line

Description of non-compliance

The proposed building facade largely complies with the 6.5m front building line control. The proposed non-compliances relate to the 3.0m basement courtyard setback, the 0.8m entry awning and the 1.2m courtyard.

Merit Consideration

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

- ***Achieve the desired future character of the Locality.***

Comment:

Under A4.9 of P21 DCP, the proposal is consistent with the objectives of the desired future character of Mona Vale. The proposal will achieve a height that is below the existing tree canopy. Furthermore, the vegetation proposed to be removed as a result of the development is to be replaced with compensatory planting, including locally native species. The bulk and scale of the development is considered to be reasonable in the context and will not unreasonably impact the amenity of surrounding properties.

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

Comment:

Any existing views or vistas are unlikely to be obstructed as a result of the proposed development. Opportunities for casual and unobstructed surveillance of the street from dwellings will be retained.

- ***The amenity of residential development adjoining a main road is maintained.***

Comment:

The subject site adjoins Bassett Street which is a relatively busy local road. The development is sufficiently set back and is suitably screened to the street frontage with suitable landscaping. Further, a compliant number of car parking spaces are proposed in accordance with SEPP Housing.

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

Comment:

Extensive planting is proposed within the front setback and road reserve to help soften the visual bulk of the development when viewed from the street frontage.

- ***Vehicle manoeuvring in a forward direction is facilitated.***

Comment:

The proposed basement carpark and driveways allow for entry and exit in a forward direction.

- ***To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.***

Comment:

The design of the proposal promotes visual improvement of the existing facility and reduces the perceived bulk of the building. The height and scale of the development are acceptable in relation to the natural environment and landscape setting of the site and surrounds.

- ***To encourage attractive street frontages and improve pedestrian amenity.***

Comment:

The proposed building and landscape design contribute to an attractive street frontage and pedestrian links are maintained across the width of the site.

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

Comment:

The site is flood affected and the proposed building design appropriately responds to this constraint. The building generally maintains the footprint of the existing building and generous front, side and rear setbacks are provided to the built form to maintain physical separation to the street frontage and adjoining properties. These setbacks are also suitably landscaped and provide a landscape setting consistent with the surrounding locality.

While the some minor elements of the proposal breach the front setback, it is considered to be consistent with the outcomes of the control and appropriate within the locality. It is therefore determined the variation is applicable based on merit.

D9.10 Landscaped Area - General

Description of non-compliance

The original application retained a landscaped area of 27.4%. The proposal reduces the landscape area to (21%) when calculated in accordance with the PDCP. Additional landscaping is providing in planter beds and large central courtyards to equal a total landscape area of 2,2296m² (35.3%).

Merit consideration

With regard to the consideration for a variation, the merits of the development are considered as follows:

- The landscaped area of the development calculated in accordance with SEPP Housing prevail over the Pittwater DCP.
- The landscape setting of the site is sufficient to provide a range of deep soil areas and outdoor living areas suitable for recreational activities.
- The outdoor terrace areas extend from the internal communal living and dining areas to maximise usability for the high care elderly residents.
- Sufficient deep soil areas are provided to the front, sides and rear of the site to enable suitable vegetation screening of the building, including planting of locally native tree species.

A further assessment of landscaping on the site is provided under SEPP Housing and meets those minimum area and space requirements.

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 \$59,758 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$5,975,840.

CONCLUSION

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

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

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

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

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

PLANNING CONCLUSION

This proposal, for alterations and additions to a Seniors Housing Development, namely a 118 bed Residential Care Facility, approved under DA2020/0816 and assessed under SEPP (HSPD) 2004.

The original application has not been activated, therefore the subject application has the affect of amending the previous consent to the extent that if there is an inconsistency between the two consents the subject DA prevails. The principle changes to the approved RFC include an extension of the building approximately 5.0m to the rear, infill of voids, a reduction in landscape open space, change in the roof form, new balconies and changes to the internal layout for improved functionality and amenity for residents.

The application has been referred to the Development Determination Panel (DDP) due to nine (9) unique submissions having been received which raised issues with the reduced setback, increased building bulk and scale which is considered to be out of character with the locality and additional amenity impacts, such as, privacy and overshadowing.

Despite the increase in the size of the development and the reduction in landscape open space the proposal achieves compliance with the built form controls contained within SEPP Housing 2021, including FSR (1.1 FSR permitted 0.98:1 proposed), height (9.5m permitted 8.86m proposed). The proposal also complies with the setback controls contained within the Pittwater DCP and the Design Advisory and Sustainability Panel (DSAP) confirm that the bulk and scale of the development is acceptable and compatible with the character of the area.

The application has been amended to address concerns from the DSAP in terms of light and ventilation to the ground floor dining room and privacy treatment addresses concerns with overlooking of the western first floor windows. In addition, external paths have been amended to permeable paths and the proposed landscaping and deep soil exceeds the requirements of SEPP (Housing). The application has also been amended to address issues from Council's Flooding Engineer, subject to conditions, and the application is supported by all other referral officers, subject to conditions.

The proposal retains appropriate building separation and will not result in unreasonable privacy impacts and complies with the privacy and solar access provisions of the Pittwater DCP.

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

Accordingly Council as the consent authority grant Development Consent to DA2024/0882 for Alterations and additions to a seniors housing development (residential care facility) on land at Lot 2 DP 748426, 33 Bassett Street, MONA VALE, Lot 38 DP 7236, 23 Bassett Street, MONA VALE, 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. **No Construction Certificate until work has commenced under DA2020/0816**
The Construction Certificate for this application shall not be issued until the Construction Certificate for DA2020/0818 has been issued and work has commenced. Should there be any inconsistencies between the subject development application and DA2020/0816, the consent for the subject development application shall prevail.

Reason: To ensure compliance with the legislative requirements.

2. **Approved Plans and Supporting Documentation**
The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A-01 Site Analysis and Context Plan, Rev C	14 November 2024	Gartner Trovato Architects
A-02 Site and Roof Plan, Rev C	14 November 2024	Gartner Trovato Architects
A-03 Basement Plan, Rev C	14 November 2024	Gartner Trovato Architects
A-04 Ground Floor Level, Rev D	14 November 2024	Gartner Trovato Architects
A-05 First Floor Level, Rev C	14 November 2024	Gartner Trovato Architects
A-06 Elevations - North & South, Rev C	14 November 2024	Gartner Trovato Architects
A-07 Elevations - East & West, Rev C	14 November 2024	Gartner Trovato Architects
A-08 Sections, Rev C	14 November 2024	Gartner Trovato Architects
A-12 Fire and Smoke Compartments Rev C	14 November 2024	Gartner Trovato Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Statement of Compliance - Access for People with a Disability	3 April 2024	Accessible Building Solutions
Water Sensitive Urban Design Report Rev A	26 April 2024	ENTEC
Geotechnical Investigation Ref GG11415.001A	12 March 2024	Green Geotechnics

Arboricultural Impact Assessment	3 April 2024	TREEISM
BCA 2022 Capability Statement, Rev 2	6 May 2024	Philip Chun Building Compliance
Flood Risk Management	19 April 2024	ENTEC
Traffic and Parking Assessment Ref 19061	3 April 2024	TRAFFIC PTY LTD

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

c) The development is to be undertaken generally in accordance with the following:

Landscape Plans		
Drawing No.	Dated	Prepared By
DA-L01 Landscape Site Plan Rev A	22 November 2024	Trish Dobson Landscape Architecture
DA-L02 Tree Retention Plan	22 November 2024	Trish Dobson Landscape Architecture
DA-L03 Planting Plan West	22 November 2024	Trish Dobson Landscape Architecture
DA-L04 Planting Plan East	22 November 2024	Trish Dobson Landscape Architecture
DA-L05 Planting Schedule & Details	22 November 2024	Trish Dobson Landscape Architecture
Elevation, Section, First Floor Planter	28 March 2024	Trish Dobson Landscape Architecture

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

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

3. **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 underground cables and substation	14 August 2024
Ausgrid	Ausgrid Overhead cables	14 August 2024

Water NSW	Water NSW General Terms of Approval (GTAs)	6 September 2024
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(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.

4. **No Construction Certificate until work has commenced under DA2020/0816**

The Construction Certificate for this application, DA2024/0882, shall not be issued until the Construction Certificate for DA2020/0818 has been issued and work has commenced. Should there be any inconsistencies between the subject development application and DA2020/0816, the consent for the subject development application shall prevail.

Reason: To ensure the development complies with the legislative requirements.

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 \$59,758.40 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 \$5,975,840.00.

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. **National Construction Code (BCA) requirements**

The National Construction Code requirements for the building as detailed and recommended in the Building Code of Australia 2022 Capability Statement, dated 6/05/2024, Report Ref. 24-221744_Cap_Stat_Report_R02, including any required Performance Reviews, are to be considered as part of the assessment for any Construction Certificate. Details demonstrating compliance are to be provided to the Certifying Authority, prior to the issue of a Construction Certificate.

Reason: To ensure adequate provision is made for Health, Amenity, access and Fire safety for building occupant health and safety.

10. **National Construction Code (BCA) Access**

Access and facilities to and within the building are to be provided as required for Persons with a Disability in accordance with the National Construction Code and AS1428. In this regard the Statement of Compliance Access for People with a disability report prepared by Accessible Building Solutions, dated 03/04/2024, Job No, 220009, is to be taken into consideration as part of the Construction Certificate assessment. Details are to be provided to the Certifying Authority prior to the issue of the Construction Certificate and be implemented prior to occupation of the building.

Reason: To ensure adequate provision is made for access to and within the building for Persons with a disability.

11. **On-slab landscape planters**

Design certification shall be submitted to the Certifying Authority by a qualified Structural Engineer, that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting). Soil depth shall be a minimum depth as identified on the Landscape Plans.

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

12. **Building components and structural soundness**

B1 - All new development below the Flood Planning Level of 4.84m AHD shall be designed and constructed from flood compatible materials.

B2 - All new development must be designed to ensure structural integrity up to the Probable Maximum Flood level of 4.91m AHD, taking into account the forces of floodwater, debris load, wave action, buoyancy and immersion.

B3 - All new and existing electrical equipment, power points, wiring and connections must be located above the Flood Planning Level of 4.84m AHD, protected from flood water or have residual current devices installed to cut electricity supply during flood events.

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

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

13. **Floor levels**

C2 - New floor levels within the development shall be set at or above the Probable Maximum Flood Level (or Flood Planning Level if higher) of 4.91m AHD.

C3 - The underfloor area of the dwelling below the 1% AEP flood level is to be designed to

allow clear passage of floodwaters. At least 50% of the perimeter of the underfloor area must be of an open design from the natural ground level up to the 1% AEP flood level.

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

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

14. **Car parking**

D7 - All access, ventilation and any other potential water entry points, including entry ramp crests to the basement car park shall be at or above the Probable Maximum Flood Level of 4.91m AHD.

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

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

15. **Emergency response**

E1 - The shelter-in-place refuge must:

- a) Have a floor level at or above the Probable Maximum Flood level of 4.91 m AHD; and
- b) Have a floor space that provides at least 1m² per person; and
- c) Be intrinsically accessible to all people on the site, plainly evident, and self-directing, with sufficient capacity of access routes for all occupants without reliance on electrical means.

E2 - The shelter-in-place refuge must contain emergency power and a practical means of medical evacuation.

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

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

16. **Fencing**

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

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

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

Government policy.

17. **Storage of Goods**

Storage areas for hazardous or potentially polluting materials shall not be located below the Flood Planning Level of 4.84m AHD unless adequately protected from floodwaters in accordance with industry standards.

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

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

18. **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 nearest Council's drainage system.

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.

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by Green Geotechnics dated 12/3/2024 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

20. **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 Certifier for approval prior to the issue of the Construction Certificate.

Reason: Protection of the receiving environment.

21. **Detailed Design of Stormwater Treatment Measures - Major**

A certificate from a Civil Engineer, stating that the stormwater treatment measures have been designed in accordance with the ENTEC Civil Work plan project 230127 revision A dated 17.04.24 detailing the stormwater strategy and Council's Water Management for Development Policy.

The certificate shall be submitted to the Certifier prior to the release of the Construction Certificate.

Reason: Protection of the receiving environment.

22. **Car Parking Standards**

The driveway/access ramp grades, access and car parking facilities must comply with the Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking. The dimensions of car parking bays and aisle widths in the car park are to comply with Australian/New Zealand Standard for Off-Street Parking AS/NZS 2890.1-2004 and the dimensions must be annotated on the plans.

Details demonstrating compliance with this condition are to be submitted to the Principal Certifier prior to the issue of a construction certificate.

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles.

23. **Vehicular Swept Paths**

Vehicular manoeuvring paths must be provided to demonstrate all vehicles can enter or depart the site in a forward direction without encroaching on required car parking spaces. The drawings must be compliant with Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking.

The submitted swept paths must include testing of critical car parking spaces such as parking space number 14 and 32, mini bus and ambulance bay.

Details demonstrating compliance with this condition must be submitted to the Principal Certifier prior to the issue of the construction Certificate.

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and

parking of vehicles.

24. Construction Traffic Management Plan

A Construction Traffic Management Plan (CTMP) and report shall be prepared by a Transport for NSW accredited person and submitted to Council via an application for a Permit to Implement Traffic Control. The application form can be accessed via <https://www.northernbeaches.nsw.gov.au/council/forms>. Approval of the permit application by the Northern Beaches Council Traffic Team is required prior to issue of any Construction Certificate.

The CTMP must address following:

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

(including trees) or adjacent public property that may be adversely affected by vehicles servicing the development site to undertake works or activity during site works.

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

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

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

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

The development is to be undertaken in accordance with the Construction Traffic Management Plan approved by Northern Beaches Council Traffic Team.

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

25. **Bus and Service Vehicle Access (8.8m Medium Rigid Vehicle)**

Access to the on-site loading bay area including ramp grades, transitions and height clearance shall be designed to comply with forward in and forward out access of an 8.8m Medium Rigid Vehicle (MRV), as a minimum requirement. The height clearance required for an MRV truck is minimum 4.5m. Swept path diagrams must include on-street parking and details of the road including, kerb line, line marking, signs, traffic devices, power poles, other structures and neighbouring driveways. Plans showing the ramp grades, transitions and height clearance assessment for access to the basement carpark by the minibus and swept path diagrams and height clearance assessment of an 8.8m MRV accessing the site, the loading bay and turning around on-site to exit in a forwards direction shall be submitted to Council's Traffic Engineer for review and once approved provided to the Principal Certifier prior to the issue of the Construction Certificate.

Reason: To ensure adequate room is available for servicing the site.

26. **Removal of Redundant Driveways**

All redundant driveways shall be removed and reinstated to Council standard kerb and gutter. Suitably prepared plans shall be submitted to for an approval under and approved by Council prior to the issue of the Construction Certificate. All costs associated with the works shall be borne by the applicant.

A plan checking fee (amount to be advised) and lodgement of a performance bond may be required from the applicant prior to the release of the approval.

Reason: To maximise on street car parking by removing driveways that are no longer needed in accordance with Council policy.

27. **Vehicle Access & Parking**

All internal driveways, vehicle turning areas and vehicle parking space/ loading bay dimensions must be designed and constructed to comply with the relevant section of AS 2890 (Off-street Parking standards).

With respect to this, the following revision(s) must be undertaken;

All internal driveways and vehicle access ramps must have ramp grades and transitions complying with AS 2890.1. To ensure the gradient requirements and height clearances are satisfied, a driveway profile must be prepared for all internal ramps showing ramp lengths, grades, surface RL's and overhead clearances, taken from the crest of the ramp to the base. The driveway profile must be taken along the steepest grade of travel or sections having significant changes in grades, where scraping or height restrictions could potentially occur and is to demonstrate compliance with AS 2890 for the respective type of vehicle.

Plans prepared by a suitably qualified Engineer shall be submitted to the Principal Certifier prior to the issue of a Construction Certificate.

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles.

28. **Pedestrian sight distance at property boundary**

A pedestrian sight triangle of 2.0 metres by 2.5m metres, in accordance with AS2890.1:2004 is to be provided at the vehicular access to the property and where internal circulation roadways intersect with footpaths or other pedestrian access areas.

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

Reason: To maintain pedestrian safety.

29. **Boundary Identification Survey**

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

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

Details demonstrating compliance are to be submitted to the Certifying Authority 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.

30. **Services and Fire Hydrant Enclosure**

Prior to the issue of a Construction Certificate for works above ground level, Council's Executive Manager of Development Assessment is to be provided with plans to their satisfaction demonstrating that all Services (Gas meter, water meter & fire hydrant and sprinkler booster valves and the like) are enclosed in a manner that compliments the building, do not visually dominate the streetscape and are in accordance with the requirements of the BCA.

An updated landscape plan is also to be provided to reflect the changes resulting from the fire hydrant and sprinkler booster detailed design.

Reason: To ensure essential services are appropriately screened.

31. **Pre-Construction Stormwater Assets Dilapidation Report**

The Applicant is to submit a pre-construction / demolition Dilapidation Survey of Council's Stormwater Assets prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset, to record the existing condition of the asset prior to the commencement of works. Council's Guidelines are available at: <https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/2009084729guidelineforpreparingadilapidationsurveyofcouncilstormwaterassets2>

The pre-construction / demolition Dilapidation Report must be submitted to Council for approval and the Principal Certifier prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

32. **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.

33. **Amended plans - Sun hoods**

Amended plans shall be submitted showing that sun hoods are provided to north facing windows in the recessed panels of the street elevation and the west facing windows including to habitable rooms facing courtyard spaces.

Plans are to be suitably amended to demonstrate compliance and submitted to the Certifier prior to the issue of a construction certificate.

Reason: To ensure there is suitable sun protection.

34. **Passing on basement access ramp**

A swept path plot showing a B85 vehicle passing a B99 vehicle on the ramp from ground floor to basement must be provided. The proposed ramp is shown to be two-way, however there are concerns that two vehicles may not be able to pass each other at the 90 elbow at the base of the ramp. Hence, it must be demonstrated through swept paths that the proposed ramp is accessible by opposing traffic. If the ramp cannot accommodate two vehicles passing, the ramp width must be increased to facilitate passing. However, if the ramp width cannot be increased then appropriate traffic signals to avoid vehicle to vehicle conflict must be provided. Design details confirming the intended access arrangements must be submitted for review by Council's traffic engineer prior to release of the construction certificate.

Reason: To ensure the curved ramp is appropriately designed for its two-way purpose.

35. **Waste and Recycling Requirements**

Details demonstrating compliance with Northern Beaches Waste Management Guidelines, are to be submitted to and approved by the Certifier prior to the issue of any Construction Certificate.

If the proposal, when compliant with the Northern Beaches Waste Management Guidelines, causes inconsistencies with other parts of the approval i.e. architectural or landscaped plans, a modification(s) to the development may be required.

Reason: To ensure adequate and appropriate waste and recycling facilities are provided.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

36. **Project Arborist**

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged to provide tree protection measures in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites. The Project Arborist is to specify and oversee all tree protection measures such as tree protection fencing, trunk and branch protection, and ground protection. The Project Arborist is to supervise all demolition, excavation and construction works near all trees to be retained, including construction methods near the existing trees to protect tree roots, trunks, branches and canopy. Where required, manual excavation is to occur ensuring no tree root at or >25mm (Ø) is damaged by works, unless approved by the Project Arborist.

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment and the Addendum to Arboricultural Impact Assessment, including the listed Recommendation for tree 5 (Cooks Pine) and tree 6 (Chinese Elm). Additionally any excavation and construction works in proximity to the following trees shall be subject to inspection and approval by the Project Arborist: tree 10 (Umbrella Tree) in adjoining property; group 13 (Swamp She-Oak); group 14 (Brush Cherry), tree 15 (Paperbark), and tree 16 (Common Ash).

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 Certifying Authority that all 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:

- i) A separate permit or development consent may be required if the branches or roots of a protected tree on the site or on an adjoining site are required to be pruned or removed.
- ii) 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.

37. **Tree Removal Within the Property**

This consent approves the removal of the following trees within the property impacted by development: tree number 1 (Prickly Paperbark), 3 (Bangalay), 25 (Pin Oak), 29 (Cabbage Tree Palm), and 32 (Cabbage Tree Palm). A qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: to enable authorised building works.

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

This consent approves the removal of the following trees within the road reserve:
i) tree number 11 and 12 (Banksia).

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

Reason: public liability.

39. **Work Zones and Permits**

Prior to commencement of the associated works, the applicant shall obtain a Work Zone Permit where it is proposed to reserve an area of road pavement for the parking of vehicles associated with a construction site.

A separate application is required with a Traffic Guidance Scheme for standing of construction vehicles in a trafficable lane

Reason: To ensure Work zones are monitored and installed correctly.

40. **Road Occupancy Licence**

Prior to commencement of the associated works, the applicant shall obtain a Road Occupancy License from Transport Management Centre for any works that may impact on traffic flows on Barrenjoey Road or on the signalised intersection of Bassett Street East with Barrenjoey Road.

Reason: Requirement of TMC for any works that impact on traffic flow.

DURING BUILDING WORK

41. **Tree and Vegetation Protection**

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

- i) all trees and vegetation within the site not approved for removal, including trees numbered 5 (Cooks Pine), 6 (Chinese Elm), 13 (group of Swamp She-Oak), 14 (group of Brush Cherry), 15 (Paperbark), and 16 (Common Ash),
- ii) all trees and vegetation located on adjoining properties, including tree numbered 10 (Umbrella Tree).

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an 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 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 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 with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an 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 to the Certifying Authority,
- 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 Australian Standard 4970- 2009 Protection of Trees on Development Sites,
- ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site

x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 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.

c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment and the Addendum to Arboricultural Impact Assessment prepared by Urban Forestry Australia.

The Certifying Authority must ensure that:

d) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

Note: All street trees within the road verge and trees within private property are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree (s) is prohibited.

Reason: tree and vegetation protection.

42. **Dewatering Management**

A permit from Council is required for any temporary dewatering of groundwater for construction activity.

To undertake construction dewatering, approvals must be obtained from WaterNSW, refer general Terms of Approval (GTA) DAS1157040.

Reason: Protection of the receiving environment and groundwater resources.

43. **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 prepared 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.

44. **Substitution of Stormwater Treatment Measures**

The substitution of an "equivalent" device for the stormwater treatment measure approved under the Development Consent must be submitted to the Principal Certifier for approval prior to installation.

Proposed water quality system using vegetation cannot be replaced with other pollutant removal mechanisms.

Reason: To ensure stormwater is appropriately managed and in accordance with the Water Management for Development Policy.

45. **Implementation of Construction Traffic Management Plan**

All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate TfNSW accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to Council on request.

Reason: To ensure compliance of the developer/builder in adhering to the Construction Traffic Management procedures agreed and are held liable to the conditions of consent.

46. **Ongoing Management**

The applicant shall be responsible in ensuring that the road reserve remains in a serviceable state during the course of the demolition and building works.

Reason: To ensure public safety.

47. **Survey Certificate**

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

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

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

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

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

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

48. **Requirement to Notify about New Contamination Evidence**

Any new information revealed during demolition works that has the potential to alter previous conclusions about site contamination or hazardous materials shall be immediately notified to the Council and the Principal Certifier.

Reason: To protect human health and the environment.

49. **Waste/Recycling Requirements (Waste Plan Submitted)**

During demolition and/or construction the proposal/works shall be generally consistent with the Waste Management Plan submitted on 2/7/2024.

Reason: To ensure waste is minimised and adequate and appropriate waste and recycling facilities are provided.

50. **Waste/Recycling Requirements (Materials)**

During demolition and/or construction the following materials are to be separated for recycling: timber, bricks, tiles, plasterboard, metal, concrete, and evidence of disposal for recycling is to be retained on site.

Reason: To ensure waste is minimised and recovered for recycling where possible.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

51. **Fire Safety Matters**

At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and Fire and Rescue NSW.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of a part Occupation Certificate or Occupation Certificate. Each year the Owners must send to the Council and Fire and Rescue NSW, an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement under Parts 10, 11 & 12 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021.

52. **Street Tree Planting**

Street tree planting shall be installed in location as identified in the Landscape Plans, and as imposed by the following requirements:

i) All street trees shall be a minimum pre-ordered planting size of 75 litres, and shall meet the requirements of Australian Standard AS2303 - Tree Stock for Landscape Use. All street trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth generally, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, including a four post and top and mid rail timber tree guard, and watered until established, and shall be generally located at least 2.0 metres from driveways, and shall generally be centralised within the road verge.

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

Reason: To maintain environmental and streetscape amenity.

53. **Landscape Completion**

Landscape works are to be implemented in accordance with the approved Landscape Plans prepared by Trish Dobson landscape Architecture, and inclusive of the following conditions:

a) landscape works are to be contained within the legal property boundaries,
b) tree, shrub and groundcover planting shall be installed as indicated on the approved Landscape Plans, unless otherwise imposed by conditions,
c) all tree planting shall be a minimum pre-ordered planting size of 75 litres or as otherwise scheduled if greater in size; meet the requirements of Australian Standard AS2303 - Tree Stock for Landscape Use; planted into a prepared planting hole 1m x 1m x 600mm depth generally, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and

maintained, and watered until established; and shall be located at least 3.0 metres from buildings or more; and located either within garden bed or within a prepared bed within lawn,
d) mass planting shall be installed as scheduled in the Landscape Plans; and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,
e) the following nominated species shall be substituted for a non self-seeding alternative: *Raphiolepis* 'snow maiden' and *Pennisetum* 'nafray'.
f) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces.

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

Reason: Environmental amenity.

54. 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 as imposed by the conditions, 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.

55. Certification of Works as Executed

A suitably qualified engineer and/or registered surveyor is to certify that the completed works have been constructed in accordance with this consent and the approved plans with respect to the following:

- 1. Floor levels for ground floor and shelter in place refuge are set at or above the required level
- 2. All access, ventilation, driveway crests and any other potential water entry points to the basement car park have been set at or above the required level
- 3. There has been no filling on the land other than what has been approved
- 4. Openings are provided under floor areas where required for the free passage of flood waters
- 5. Openings are provided in fencing where required for the free passage of flood waters

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

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

56. Building Components and Structural Soundness

B2 - A suitably qualified structural engineer is to certify the structural integrity of the new

development up to the Probable Maximum Flood level of 4.91m AHD. The depth, velocity, debris load, wave action, buoyancy and immersion must all be considered.

B3 - A suitably qualified electrician or contractor is to certify that all new and existing electrical equipment, power points, wiring and connections are located above the Flood Planning Level of 4.84m AHD, are protected from flood water or have residual current devices installed to cut electricity supply during flood events.

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

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

57. Post- Construction Stormwater Assets Dilapidation Report (Council stormwater assets)

The Applicant shall submit a post-construction Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset in order to determine if the asset has been damaged by the works. Council's Guidelines are available at <https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/preparingdilapidationsurveyforcouncilstormwaterassets.pdf>

The post-construction / demolition dilapidation report must be submitted to Council for review and approval. Any damage to Council's stormwater infrastructure is to be rectified prior to the release of any Drainage security bonds. Council's acceptance of the Dilapidation Survey is to be submitted to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: Protection of Council's infrastructure.

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

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

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

59. Certification for the Installation of Stormwater Treatment Measures

A certificate from a Civil Engineer, who has membership to Engineers Australia and the National Engineers Register must be provided, stating that the stormwater treatment measures have been installed in accordance with the construction certificate approved plans. The certificate must confirm that stormwater treatment measures are completed, online, in good condition and are not impacted by sediment. Vegetated measures must exhibit an 80 percent survival rate of plantings.

The certificate shall be submitted to the Principal Certifier prior to the release of an Occupation Certificate.

Reason: Protection of the receiving environment.

60. **Positive Covenant, Restriction as to User and Registration of Encumbrances for Stormwater Treatment Measures**

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the stormwater treatment measures in accordance with the standard requirements of Council, the manufacturer and as required by the Stormwater Treatment Measures Operation and Maintenance Plan.

A restriction as to user shall be created on the title over the stormwater treatment measures, restricting any alteration to the measures.

The terms of the positive covenant and restriction as to user are to be prepared to Council's standard requirements (available from Council) at the applicant's expense and endorsed by the Northern Beaches Council's delegate prior to lodgement with the Department of Lands. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user is to be submitted to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: To identify encumbrances on land, ensure ongoing maintenance, and ensure modification to the stormwater treatment measures is not carried out without Council's approval.

61. **Stormwater Treatment Measures Operation and Maintenance Plan**

An Operation and Maintenance Plan is to be prepared to ensure the proposed stormwater treatment measures remain effective.

The Plan must be attached to the Positive Covenant (and the community or strata management statement if applicable) and contain the following:

1. Detail on the stormwater treatment measures:
 - a) Work as executed drawings
 - b) Intent of the stormwater treatment measures including modelled pollutant removal rates
 - c) Site detail showing catchment for each device
 - d) Vegetation species list associated with each type of vegetated stormwater treatment measure
 - e) Impervious area restrictions to maintain the water balance for the site
 - f) Funding arrangements for the maintenance of all stormwater treatment measures
 - g) Identification of maintenance and management responsibilities
 - h) Maintenance and emergency contact information

2. Maintenance schedule and procedure - establishment period of one year following commissioning of the stormwater treatment measure:
 - a) Activity description, and duration and frequency of visitsAdditionally for vegetated devices:
 - b) Monitoring and assessment to achieve an 80 percent survival rate for plantings
 - c) Management of weeds, pests and erosion, with weed and sediment cover limited to a maximum of 5 percent of the total area of the stormwater treatment measure
3. Maintenance schedule and procedure - ongoing
 - a) Activity description, and duration and frequency of visits
 - b) Routine maintenance requirements
 - c) Work Health and Safety requirements
 - d) Waste management and disposal
 - e) Traffic control (if required)
 - f) Renewal, decommissioning and replacement timelines and activities of all stormwater treatment measures (please note that a DA may be required if an alternative stormwater treatment measure is proposed)
 - g) Requirements for inspection and maintenance records, noting that these records are required to be maintained and made available to Council upon request.

Details demonstrating compliance shall be submitted to the Principal Certifier prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.

62. **Works as Executed Drawings - Stormwater Treatment Measures**

Works as Executed Drawings for the stormwater treatment measures must be prepared in accordance with Council's Guideline for Preparing Works as Executed Data for Council Stormwater Assets.

The drawings shall be submitted to the Principal Certifier prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.

63. **Loading Dock Management Plan**

A Loading Dock Management Plan shall be prepared by the applicant and submitted to and approved by the Principal Certifier prior to the issue of any Occupation Certificate.

The Plan will need to demonstrate how loading dock will be managed to ensure that there is no conflict between vehicles needing to access the dock and to ensure that deliveries/servicing vehicles are all able to be accommodated on site. Parking or queuing of service and delivery vehicles on public road(s) is not permitted.

Reason: to ensure the loading dock is managed appropriately and appropriate for use for

delivery and servicing needs of the site

64. **Disabled Parking Spaces**

Where disabled parking spaces are provided they must be in accordance with AS2890.6:2022.

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

Reason: To ensure compliance with Australian Standards.

65. **Shared Zone Bollard**

A bollard is to be provided at the shared zone between disabled spaces in accordance to Australian Standards AS2890.6:2022.

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

Reason: To ensure compliance with Australian Standards.

66. **Environmental Reports Certification**

Written certification from a suitably qualified person(s) shall submit to the Principal Certifier and Northern Beaches Council, stating that all the works/methods/procedures/control measures/recommendations approved by Council in the following reports have been completed:

(a) Statement of Compliance - Access for People with a Disability, dated 3 April 2024, prepared by Accessible Building Solutions

(b) Water Sensitive Urban Design Report Rev A, dated 26 April 2024, prepared by ENTEC

(c) Geotechnical Investigation Ref GG11415.001A, dated 12 March 2024, prepared by Green Geotechnics

(d) Arboricultural Impact Assessment, dated 3 April 2024, prepared by TREEISM

(e) BCA 2022 Capability Statement, Rev 2, dated 6 May 2024, prepared by Philip Chun Building Compliance

(f) Flood Risk Management, dated 19 April 2024, prepared by ENTEC

(g) Traffic and Parking Assessment Ref 19061, dated 3 April 2024, prepared by TRAFFIC PTY LTD

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

Reason: To ensure compliance with standards.

67. **Garbage and Recycling Facilities**

All internal walls of the waste rooms shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.

Waste room floors shall be graded and drained to an approved Sydney Water drainage system.

Waste rooms shall be clear of any other services or utilities infrastructure such as gas, electricity air-conditioning, plumbing, piping ducting or equipment.

Reason: To prevent pollution of the environment, provide a safe workplace for contractors and residents and to protect the amenity of the area.

68. **Waste and Recycling Facilities Certificate of Compliance**

The proposal shall be constructed in accordance with the Northern Beaches Waste Management Guidelines.

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

Reason: To ensure waste and recycling facilities are provided.

69. **Waste/Recycling Compliance Documentation**

Evidence of disposal for recycling from the construction/demolition works shall be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure waste is minimised and recycled.

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

70. **Landscape Maintenance**

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

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

Reason: To maintain local environmental amenity.

71. **Maintenance of Stormwater Treatment Measures**

Stormwater treatment measures must be maintained at all times in accordance with the Stormwater Treatment Measure Operation and Maintenance Plan, manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

Vegetated stormwater treatment measures must maintain an 80 percent survival rate of plantings and limit weed cover to no more than 10 percent of the total area of the stormwater treatment measure.

Where replacement cartridges or other necessary components for the system become unavailable, an alternative system is required to be retrofitted into the development to achieve an equivalent pollutant reduction outcome. Evidence supporting the replacement must be retained on site and made available to Council as required.

Northern Beaches Council reserves the right to enter the property and carry out appropriate maintenance of the device at the cost of the property owner.

Reason: Protection of the receiving environment.

72. **Traffic Management**

Traffic management procedures and systems must be in place and practised during the course of the project to ensure safety and minimise the effect on adjoining pedestrian and vehicular traffic systems. These procedures and systems must be in accordance with AS 1742.3 2009 Manual of Uniform Traffic Control Devices and Council's Development Control Plans.

Note: A plan of traffic management is to be submitted to and approved by the Principal Certifier.

Reason: To ensure pedestrian safety and continued efficient network operation.

73. **Staff and Contractor Parking**

The applicant is to make provision for parking for all construction staff and contractors for the duration of the project. All Staff and Contractors are to use the basement parking once available. All necessary facilities are to be provided to accommodate this requirement including lighting in the basement, security cameras, etc.

Reason: To ensure minimum impact of construction activity on local parking amenity.

74. **Service Vehicle Area**

The area designated as manoeuvring area for delivery or waste truck must be kept clear of obstructions during loading or deliveries and during waste collection. Vehicles must not be required to queue on public roads at any time.

Reason: To ensure the use of loading dock and prevent obstructions to traffic flows.

75. **Parking Enclosure**

No parking spaces, or access thereto, shall be constrained or enclosed by any form of structure such as fencing, cages, walls, storage space, or the like, without prior consent from Council.

Reason: To ensure accessibility is maintained.

76. **Sight lines within carpark**

The required sight lines to pedestrians and other vehicles in and around the carpark and entrance(s) are not to be obstructed by landscaping or signage.

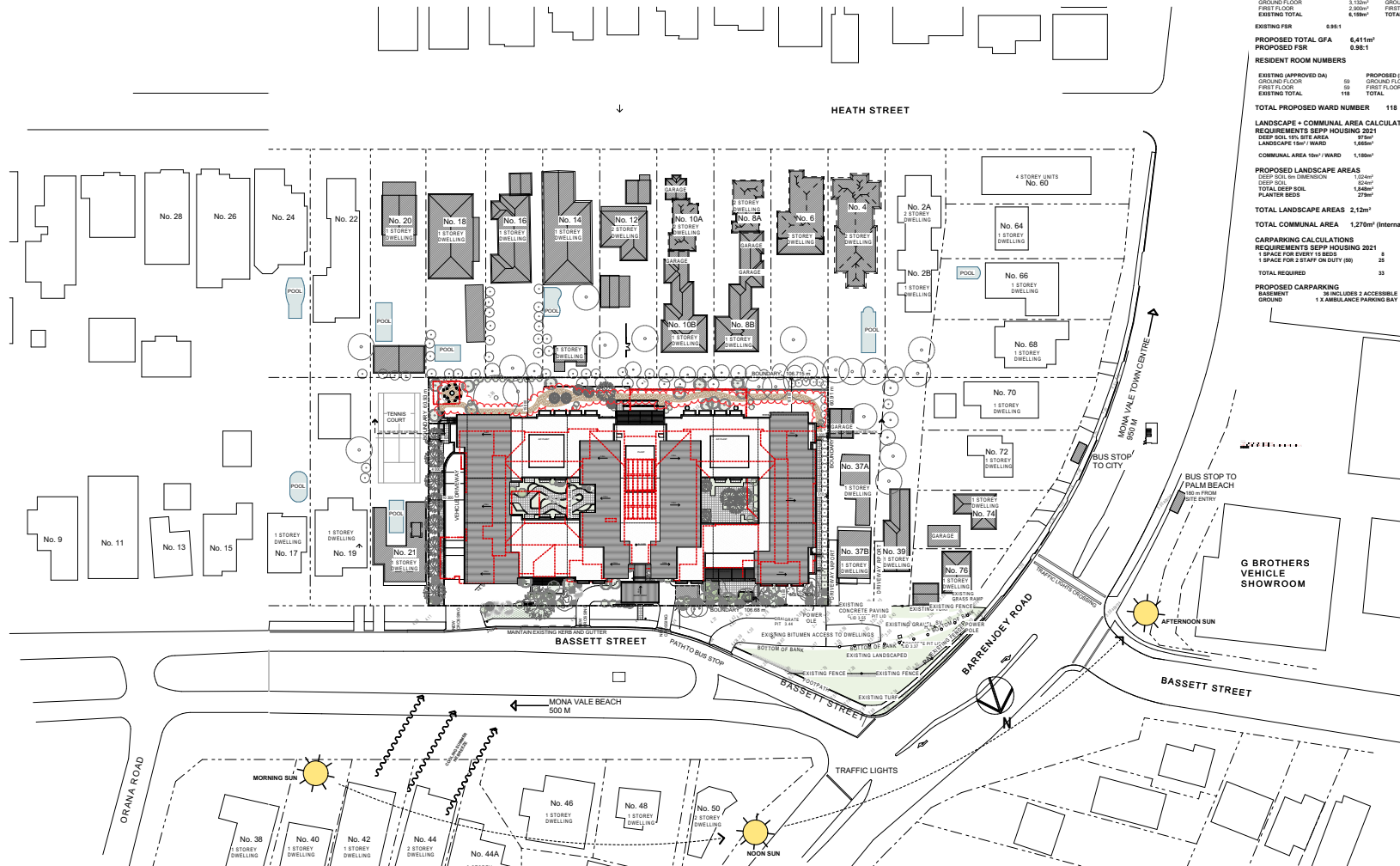
Reason: To maintain unobstructed sight distance for motorists.

77. **Ongoing Flood Requirements**

All underfloor areas which are not associated with the basement car park must be kept open as following. The undercroft must remain open to allow the clear passage of flood waters, and the screening must be flood compatible with a minimum of 50% open from the natural ground level up to the 1% AEP flood level of 4.34m AHD. Openings should be minimum 75 x 75mm.

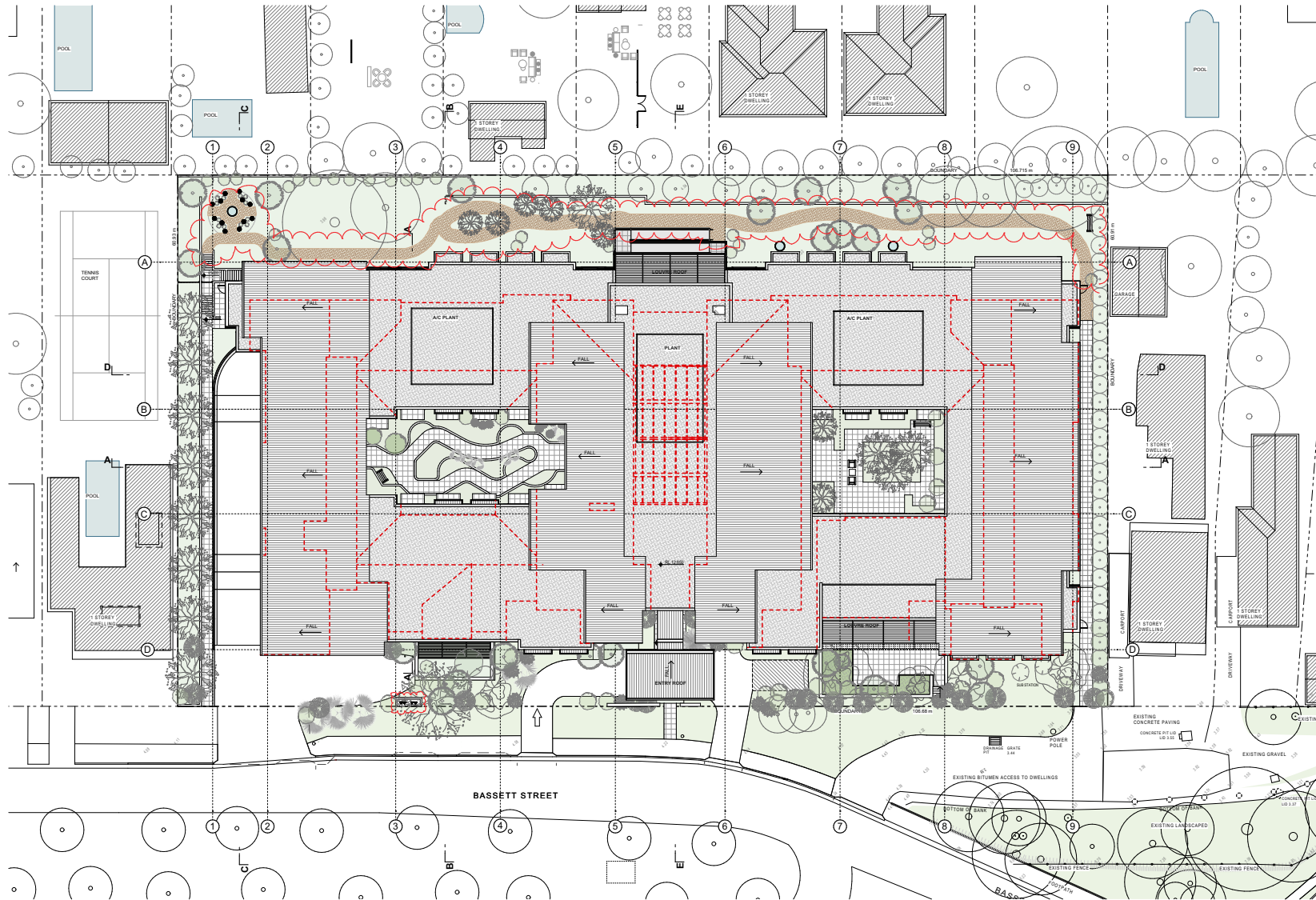
Reason: To ensure the proposed Flood Storage Area on site is not reduced due to enclosure..

ATTACHMENT 2 : SITE PLAN AND ELEVATIONS - ITEM 3.6 - DEVELOPMENT DETERMINATION PANEL - 11 DECEMBER 2024



DEVELOPMENT SCHEDULE RESIDENTIAL AGED CARE FACILITY 23-25 BASSETT STREET, MONA VALE

SITE AREA	6,500m ²		
FIR CALCULATIONS			
EXISTING GFA APPROVED DA		PROPOSED GFA (B4.5)	
BASEMENT	127m ²	BASEMENT	119m ²
GROUND FLOOR	3,120m ²	GROUND FLOOR	3,144m ²
FIRST FLOOR	2,300m ²	FIRST FLOOR	3,144m ²
EXISTING TOTAL	6,187m ²	TOTAL	6,411m ²
EXISTING FSR	0.95:1		
PROPOSED TOTAL GFA	6,411m²		
PROPOSED FSR	0.98:1		
RESIDENT ROOM NUMBERS			
EXISTING APPROVED DA		PROPOSED (B4.5)	
GROUND FLOOR	59	GROUND FLOOR	55
FIRST FLOOR	59	FIRST FLOOR	43
EXISTING TOTAL	118	TOTAL	118
TOTAL PROPOSED WARD NUMBER	118		
LANDSCAPE + COMMUNAL AREA CALCULATIONS			
REQUIREMENTS SEPP HOUSING 2021			
DEEP SOIL 50% SITE AREA	975m ²		
LANDSCAPE 10% 10M ²	1,488m ²		
COMMUNAL AREA 10m ² / WARD	1,188m ²		
PROPOSED LANDSCAPE AREAS			
DEEP SOIL 50% DIMENSION	1,054m ²		
DEEP SOIL	975m ²		
TOTAL DEEP SOIL	1,949m ²		
PLANTER BEDS	275m ²		
TOTAL LANDSCAPE AREAS	2,124m²		
TOTAL COMMUNAL AREA	1,270m² (internal courtyards + spaces)		
CARPARKING CALCULATIONS			
REQUIREMENTS SEPP HOUSING 2021			
1 SPACE FOR EVERY 10 BEDS	8		
1 SPACE FOR 2 STAFF OR DUTY (50)	25		
TOTAL REQUIRED	33		
PROPOSED CARPARKING			
BASEMENT	1 X AMBULANCE PARKING BAY		
GROUND			



[illegible]

DATE	DESCRIPTION	STATUS	OWNER	ADDRESS	APPROVAL	DATE
10/15/2014	REQUEST FOR DEVELOPMENT APPLICATION	COMPLETED	THOMPSON HEALTH CARE	THOMPSON HEALTH BASSETT	APPROVED	10/15/2014
10/15/2014	DA-2014-0001	COMPLETED	THOMPSON HEALTH CARE	PROPOSED ALTERATIONS + ADDITIONS TO AN APPROVED RESIDENTIAL AGEED CARE FACILITY	APPROVED	10/15/2014
10/15/2014	DA-2014-0002	COMPLETED	THOMPSON HEALTH CARE	23-25 BASSETT STREET, MONA VALLE	APPROVED	10/15/2014
10/15/2014	DA-2014-0003	COMPLETED	THOMPSON HEALTH CARE	LOT 2 12P 14452E + LOT 38 DP 7239	APPROVED	10/15/2014
10/15/2014	DA-2014-0004	COMPLETED	THOMPSON HEALTH CARE	THOMPSON HEALTH CARE	APPROVED	10/15/2014

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