

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 5 FEBRUARY 2025

Ashleigh Sherry
Manager Business System and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 5 February 2025
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 11 DECEMBER 2024

RECOMMENDATION

That the Panel note that the minutes of the Development Determination Panel Meeting held on 11 December 2024 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1 DA2024/0790 - 4 HARVEY ROAD INGLESIDE - DEMOLITION WORKS AND CONSTRUCTION OF A SHED, HARDSTAND AND ASSOCIATED WORKS FOR USE AS A HORSE ARENA

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 DA2024/0790 for Demolition works and construction of a shed, hardstand and associated works for use as a horse arena on land at Lot 169 DP 752046, 4 Harvey Road INGLESIDE, subject to the conditions set out in the Assessment Report.

Reporting manager	Steve Findlay
TRIM file ref	2025/021487
Attachments	↓1 Assessment Report ↓2 Site Plan and Elevations

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/0790
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Responsible Officer:	Thomas Burns
Land to be developed (Address):	Lot 169 DP 752046, 4 Harvey Road INGLESIDE NSW 2101
Proposed Development:	Demolition works and construction of a shed, hardstand and associated works for use as a horse arena
Zoning:	RU2 Rural Landscape
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Shannon Adams

Application Lodged:	21/06/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Other
Notified:	05/07/2024 to 19/07/2024
Advertised:	Not Advertised
Submissions Received:	7
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 302,500.00
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EXECUTIVE SUMMARY

This Development Application is for demolition works and construction of a shed, hardstand and associated works for use as a horse arena.

The application is referred to the DDP for determination due to the development receiving seven (7) individual submissions by way of objection, which triggers the criteria for referral to the DDP under Council's delegation protocols.

The key issues raised within the public submissions relate to; the potential use of the development for industrial or commercial activities, prior unauthorised works / land uses on the site, the size of the development, the extent of earthworks proposed, construction impacts, stormwater impacts, land contamination and impacts on the natural environment. These issues have been considered as part of

the assessment and do not constitute matters that would warrant refusal of the application.

During the assessment process, Council requested additional information to enable a full assessment of the potential stormwater impacts, land contamination / site suitability and geotechnical impacts. The additional information submitted by the applicant pursuant to section 37 of the Environmental Planning and Assessment Regulation 2021 has resolved initial concerns in relation to potential stormwater impacts, land contamination / site suitability scheme and geotechnical impacts.

Overall, the development is considered to be consistent with all applicable environmental planning instruments and regulatory provisions. Therefore, the development is in the public interest.

Several conditions of consent are recommended to mitigate any residual impacts of the development in relation to visual impacts, construction noise and traffic, stormwater and wastewater management, biodiversity impacts and land contamination.

Accordingly, it is recommended that the DDP approve the application, subject to the recommended conditions attached to this report.

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for demolition works and construction of a shed, hardstand and associated works for use as a horse arena. The development is confined to the western portion of the site.

Specifically, the proposed works are comprised of:

- Demolition of existing shed in north-west corner of the property.
- Earthworks comprising of approximately 2.9 metres (m) of filling and 3.8m of cut to facilitate a level building pad (these measurements are based off the Geotechnical Report submitted with this application).
- Construct new shed that is 50m x 20m in area in north-west corner of the property.
- Construct hardstand to the south of shed.
- Construct a new outdoor horse arena that is 61m x 21m in area to the south of shed and hardstand.
- Installation of a new aerated wastewater treatment system and associated absorption beds.
- Installation of a stormwater management system that disperses stormwater on-site via a surface dissipator via on-site detention tanking.
- Removal of three non-exempt trees comprising of 1x *Tristaniopsis laurina* (11m tall), 1 x *Melaleuca lineariifolia* (6m tall) and 1 x *Callistemon viminalis* (7m tall) of Medium retention value.

It is noted that no lighting is proposed for the structures and a condition has been recommended to preclude any outdoor lighting from being placed on the horse arena and shed.

Important Note: As the proposed development is located over 40m from Wirreanda Creek and is ancillary to a dwelling house, the development does not constitute integrated development within the meaning of section 4.46 of the Environmental Planning and Assessment Act 1979 (EP&A Act) and does not require a controlled activity approval from DPE Water under the Water Management Act 2000.

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 RU2 Rural Landscape
 Pittwater Local Environmental Plan 2014 - 7.1 Acid sulfate soils
 Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
 Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection
 Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
 Pittwater Local Environmental Plan 2014 - 7.10 Essential services
 Pittwater 21 Development Control Plan - D6.3 Building colours and materials
 Pittwater 21 Development Control Plan - D6.8 Landscaped Area - Non Urban General

SITE DESCRIPTION

Property Description:	Lot 169 DP 752046 , 4 Harvey Road INGLESIDE NSW 2101
Detailed Site Description:	The subject site consists of one large rural allotment that can be accessed via the northern side of Harvey Road or the north-western corner of Wirreanda Road North, which is a cul-de-sac. The site is rectangular in shape with a surveyed area of 2.914 hectares (ha). The site is located within the RU2 Rural Landscape zone pursuant to the Pittwater Local Environmental Plan 2014 (PLEP) and development on the site is separated via an escarpment that runs through the site diagonally within a south-east/north-west direction. On the eastern (higher) side of the escarpment lies a two storey dwelling house with a swimming pool including a large hardstand parking area, while on the western (lower) side of the escarpment lies a disturbed area that was previously used as a nursery but

now is occupied by sheds, shipping containers and a studio. This lower portion of the site has been subject to numerous environmental compliance actions by Council for unauthorised storage of machinery and earthworks (this is discussed in more detail under the site history section of this report).

The site falls away from the south-eastern corner towards the north-western corner of the site, representing an overall fall of approximately 40 metres (m). Apart from the disturbed areas of the site, the remainder of the site is largely densely vegetated with canopy trees and several rock outcrops.

The site is environmentally constrained with bushfire hazards, while the rock escarpment through the centre of the site is mapped on the PLEP Geotechnical Risk Map. The site is also mapped on the PLEP Biodiversity Map.

The site is not serviced by reticulated water or sewer infrastructure.

Located to the north, east and south of the site is land zoned RU2 Rural Landscape, which generally accommodates rural residential development. Located to the west of the site is Wirreanda Road is Wirreanda Creek and further to the west of this riparian zone is the Ku-ring-gai Chase National Park.

Map:



SITE HISTORY

A search of Council's records has revealed the following history:

Development Consent 82/160

In 1982, Council granted development consent for a retail plant nursery on the site. The site is no longer used as a retail plant nursery.

Building Application P0648/96

On 1 October 1996, Council approved Building Application P0648/96 for the erection of a swimming pool.

Development Control Order EPA2022/0309

On 21 August 2023, Council issued a Development Control Order to the applicant for the unauthorised use of the site as a transport depot and/or waste or resource transfer station.

This compliance action is still on-going at the time of writing this report. However, this compliance action does not preclude the assessment and determination of the subject development application, being Development Application DA2024/0790.

Development Application DA2022/0809

The applicant lodged a development application seeking approval for the use of the site as a landscaping materials supply yard. However, the application was subsequently withdrawn by the applicant.

Building Certificate BC2022/0291

On 13 November 2024, Council issued Building Information Certificate BC2022/0291, which retrospectively approved two sandstone retaining walls that were constructed on the western portion of the site within the footprint of the development that is proposed under Development Application DA2024/0790. It is noted that these retaining walls will be filled in by the development proposed under Development Application DA2024/0790.

APPLICATION HISTORY

Following the preliminary assessment of the application, which included a site inspection at the property, Council wrote to the applicant requesting the following information pursuant to section 36 of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation):

- A Preliminary Site Investigation (PIS) to assess potential contamination, given the historic use of the site as a plant nursery.
- A Geotechnical Report (GR) to assess geotechnical risk, given the extent of filling and excavation that was proposed.
- Stormwater Management Plans to demonstrate how stormwater will be managed on-site.

The applicant subsequently submitted the following information pursuant to section 37 of the EP&A Regulation:

- A PSI (prepared by Environmental Consulting Services, dated 25 September 2024).

- A GR (prepared by White Geotechnical Group, dated 11 November 2024).
- Stormwater Management Plans and Report (Peninsula Consulting, dated 28 November 2024).

The additional information did not alter the environmental impacts of the proposed development. As such, the application was not required to be re-notified, in accordance with the Northern Beaches Community Participation Plan (CPP).

On 19 December 2024, Council requested that the PSI be updated as the original document stipulated that the site was suitable for commercial/industrial development. Council notes that the development is ancillary to residential development and therefore, the site must be suitable for residential development to satisfy the requirements of Chapter 4 of State Environmental Planning Policy (Resilience and Hazards) 2021.

Subsequently, the applicant submitted an amended PSI (prepared by Environmental Consulting Services, dated 20 December 2024), which concluded that the site is suitable for residential development following the implementation of the following recommendations:

- The preparation of a waste classifications for any material to be excavated and disposed of off-site. The waste classifications must be prepared in accordance with EPA guidelines; and
- All waste must be managed and disposed of in accordance with current guidelines and regulations.

These recommendations have been included as recommended conditions of consent.

The amended PSI did not alter the environmental impacts of the development and therefore, the application was not required to be re-notified, in accordance with the CPP.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.

Section 4.15 Matters for Consideration	Comments
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 a PSI, GR and stormwater management plans. This information was received to Council's satisfaction. <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 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	See discussion on "Notification & Submissions Received" in this report.

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection 2019 (PBP).

A Bush Fire Assessment Report (BFAR) (prepared by Bushfire Consultancy Australia, dated 12 March 2024) was submitted with this application. The BFAR notes that section 8.3.2 of the PBP states that there are no bushfire requirements for Class 10a buildings that are located more than 6m from a dwelling in bushfire prone areas.

Noting that the proposed shed and horse arena are Class 10a buildings and located more than 6m from the existing dwelling house on the site and surrounding dwelling houses on other properties, there are no specific bushfire protection requirements for the development.

In this regard, the development complies with the requirements of the PBP.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 05/07/2024 to 19/07/2024 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 7 submission/s from:

Name:	Address:
Anonymous	N/A
John Loch	3 Bungendore Street INGLESIDE NSW 2101
Talal Rossi	1 Badcoe Road CROMER NSW 2099
George Bromwich	8 Monterey Street ST IVES NSW 2075
Bernard Hart	Address Unknown
Joel Griffin	Address Unknown
Mrs Gaye Lee	11 Bungendore Street INGLESIDE NSW 2101

Numerous pieces of correspondence amounting to seven (7) individual submissions by way of objection were received following the public exhibition period.

The issues raised within the submissions are addressed below as follows:

- **Potential Unauthorised Land Use**

The submissions raised concerns that the applicant will use the proposed horse arena and shed for the storage of heavy machinery and trucks associated with their earthmoving business, which is an unauthorised use within the RU2 Rural Landscape zone.

Comment:

The applicant has sought consent for a horse arena and shed as an ancillary function of the existing dwelling house on the site. As these structures do not contain a specific land use definition and are ancillary functions of the primary land use on the site, being a dwelling house which is permissible within the RU2 Rural Landscape zone, the proposed development is permissible with consent on the subject site. A condition is recommended to prevent the horse arena and shed from being used for any commercial or industrial purposes. In the event that the applicant used these structures outside of the parameters of the conditions of consent, Council's Compliance department can issue environmental compliance orders.

- **Previous Unauthorised Works and Land Use**

The submissions raised concerns that the applicant has undertaken prior unauthorised land uses and works on the site.

Comment:

Council's Compliance department have undertaken investigations and compliance action for prior unauthorised activities on the site. Additionally, a Building Information Certificate (BC2022/0291) has been issued for two sandstone retaining walls on the western portion of the property where the proposed development is located. This is discussed in more detail within the 'Site History' section of this report. The prior unauthorised works and land uses on the site do not prevent consent from being granted for the proposed development.

- **Traffic/Road Safety Impacts**

The submissions raised concerns in relation to potential safety issues as a result of trucks accessing the site.

Comment:

The horse arena and shed are proposed to be used in association with the existing dwelling house on the site. A condition is recommended to prevent these structures from being used for industrial and commercial purposes. As such, the development will not generate significant on-going vehicular movements once these structures are erected.

In regard to construction traffic impacts, a condition has been recommended requiring the applicant to prepare a Construction Traffic Management Plan (CTMP) prior to the commencement of works and have the CTMP endorsed by Council's Traffic Department. This condition will ensure that appropriate measures are in place to alleviate construction traffic

impacts within the locality. It is noted that construction traffic impacts will also be temporary, as they will be limited to the duration of construction works on the site.

- **Sediment Migration into Wirreander Creek**

The submissions raised concerns that trucks entering and leaving the site will migrate debris and dirt into the public road, which will then migrate into Wirreander Creek.

Comment:

Several conditions have been recommended to mitigate sediment migration into Wirreander Creek. This includes requirements for trucks to be cleaned and loads covered when entering and leaving the site and for sediment and erosion fencing to be erected around the site during construction works.

- **Findings and Conclusions of Preliminary Site Investigation (PSI)**

The submissions raised concerns that the PSI submitted with this application concluded that the site is suitable for commercial and industrial land uses, rather than residential land uses. Additionally, the submissions argued that the soil sampling undertaken within the PSI are not sufficient and that the sampling location should be increased.

Comment:

The applicant has submitted an updated PSI to assess whether the site is suitable for residential land uses based off the soil sampling undertaken. The revised PSI concludes that the site is suitable for the proposed horse arena and shed as ancillary components to the principal residential land use on the site.

In terms of the soil sampling locations, the PSI undertook soil sampling within the location where the development is proposed to be located. The PSI noted that the site inspection revealed no evidence of significant imported fill material at the development area (western end of the site) and asbestos containing material was not observed across the surface or found within the test pits excavated for sampling this area. The PSI further stated that the analysis did not indicate concentrations of organochlorine pesticides or petroleum hydrocarbon compounds within the surface soil which could represent contamination from past land use or application of pesticides to nursery plants.

The PSI concluded that the site is suitable for residential development following the implementation of the following recommendations:

- The preparation of a waste classifications for any material to be excavated and disposed of off-site. The waste classifications must be prepared in accordance with EPA guidelines; and
- All waste must be managed and disposed of in accordance with current guidelines and regulations.

Council's Environmental Health Officer has also reviewed the PSI and raised no concerns in relation to the soil sampling undertaken on the property.

Overall, it is considered that that the soil sampling locations undertaken within the PSI are adequate, as they are located on the portion of the site that previously accommodated the plant nursery, which accords with the location of the proposed development (i.e. the western

portion of the site). The recommendations of the PSI have been included as recommended conditions of consent.

- **Extent of Earthworks**

The submissions raised concerns in relation to the extent of excavation and fill that is proposed on the site.

Comment:

The impacts of the proposed earthworks are assessed in detail within the section of this report relating to clause 7.2 'earthworks' of the PLEP. Overall, the assessment has concluded that the earthworks are acceptable. The Geotechnical Report submitted with this application also concludes that the proposed earthworks are acceptable from a geotechnical perspective, subject to recommendations which have been adopted as recommended conditions of consent.

- **Non-Compliance with State Environmental Planning Policy (Exempt and Complying Development) 2008 (Codes SEPP)**

The submissions raised concerns that the proposed development does not comply with development standards pertaining to rural development within the Codes SEPP.

Comment:

The application has been lodged pursuant to Division 4.3 of the Environmental Planning and Assessment Act 1979 (EP&A Act), which is the appropriate part of the EP&A Act that applies to development that requires development consent by way of a development application. This part of the EP&A Act does not apply to complying development, to which the Code SEPP applies.

As such, the standards within the Code SEPP are not applicable to the proposed development.

- **Landscaped Area Numerical Non-Compliance**

The submissions raised concerns that the proposed development does not comply with the numerical landscaped area requirement under section D6.8 of the Pittwater 21 Development Control Plan (P21DCP).

Comment:

This matter has been discussed in detail within the section of this report relating to section D6.8 'Landscaped Area - Non Urban' of the P21DCP.

While the development proposes 24,386.6sqm of the site as landscaped area, which represents an 11.56% variation to the numerical requirement of 27,574.4sqm, a merit assessment against the outcome of section D6.8 of the P21DCP has concluded that the proposed development achieves the outcomes, notwithstanding the numeric noncompliance.

In particular, the variation does not result in unreasonable amenity impact impacts or significantly alter the existing landscaped setting on the site, noting that the development is located on a part of the site that has been historically disturbed by the former nursery

operations of the site. Section 4.15(3A)(b) of the Environmental Planning and Assessment Act 1979 requires Council to be flexible in applying numerical / prescriptive requirements within a Development Control Plan, if it can be demonstrated that the objects of such provisions can be achieved. In this case, the outcomes of the landscaped area provision are achieved, notwithstanding the numeric noncompliance. Therefore, flexibility is afforded in this circumstance, consistent with section 4.15(3A)(b) of the EP&A Act.

- **Size of the Development**

The submissions raised concerns that the size and scale of the development is excessive.

Comment:

The development is located on a low point of the site that is substantially screened from key public vantage points and well separated from surrounding residential receivers. As a result, the development will not result in any significant visual impacts or change the visual amenity of the locale as a consequence of the bulk and scale of the development. The development also complies with the height of buildings development standard within the PLEP and the P21DCP setback and side building envelope requirements, which are key controls that govern the bulk and scale of development on the site.

A condition is recommended to ensure that the external colours and materials of the development contain dark and earthy tones to harmonise with the natural environment. A separate condition is recommended to preclude outdoor lighting on the building. These conditions will also mitigate visual impacts to surrounding land.

- **Construction Noise**

The submissions raised concerns that the proposed construction noise will adversely impact upon the amenity of the locality.

Comment:

Standard construction noise conditions are recommended to limit construction activities to 7.00am - 5.00pm Monday to Friday and to 8.00am - 1.00pm on Saturdays. This will mitigate the construction noise impacts to a reasonable level.

- **Impacts on Local Wildlife**

The submissions raised concerns that the proposed development will have adverse impacts upon local wildlife.

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval and has recommended conditions to mitigate impacts on flora and fauna. Therefore, Council can be satisfied that the proposal includes appropriate measures to avoid, minimise, or mitigate the impacts of the development.

- **Stormwater Impacts**

The submissions raised concerns that the proposed development will result in adverse off-site impacts from stormwater being dispersed onto adjoining land.

Comment:

The proposed stormwater management scheme involves dispersing stormwater on-site via a dispersion trench, with the stormwater being conveyed to the dispersion trench via on-site detention tanking. Council's Development Engineer has reviewed the stormwater management scheme and raised no concerns in relation to the stormwater management scheme, subject to recommended conditions. In this regard, it is considered that stormwater will be appropriately managed on-site and will not result in adverse off-site impacts.

- **Consultation with National Parks and Wildlife Service and Department of Crown Lands**

The submissions have requested that consultation be undertaken with National Parks and Wildlife Service and the Department of Crown Lands.

Comment:

There is no legislative requirement for Council to consult with these State agencies during the assessment process based off the nature, location and typology of this development application.

The concerns raised within the submissions have been addressed above and resolved through conditions where necessary. The concerns do not warrant refusal of the application.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Contaminated Lands)	Supported - Subject to Recommended Conditions General Comments The proposed works will comprise: Demolition of existing shed in northwest corner of the property Level western end of property to height of second retaining wall (approx. RL 97.90) Construct new shed in northwest corner (50m x 20m) Construct hardstand to the south of shed New outdoor horse arena to the south of shed / hardstand Installation of a new aerated wastewater treatment system and associated absorption beds (reference in a previous referral response by Environmental Health) The statement of Environmental Effects notes: <i>"Given the history of residential use of the land and also that the proposed new shed is being carried out in a disturbed portion of the</i>

Internal Referral Body	Comments
	<i>site with no real excavation, the site is not considered to be subject to contamination and further investigation is not required at this stage."</i> Despite this, Council records (supported by aerial photographic history) indicate the area of the property upon which the development is proposed has been used for many years as a plant nursery. It is acknowledged that there appears to be minimal earthworks proposed, however there are concerns that any soil disturbance in this regard represents a risk. As no preliminary investigation has been undertaken in relation to potential land contamination, the proposal is not supported at this time. <u>Update 1/10/2024</u> The applicant has supplied further information by way of a Preliminary Environmental Site Investigation report. The report has provided information which clarifies the potential for current and historical contaminants within the area of the site proposed to be developed. The report includes also soil sampling and laboratory testing for contaminants typically found as the result of the use of the premises as a plant nursery. It is concluded in the report that: "Site is suitable for development and commercial land use following the implementation of the following recommendations: • The preparation of a waste classifications for any material to be excavated and disposed of off-site. The waste classifications must be prepared in accordance with EPA guidelines; and • All waste must be managed and disposed of in accordance with current guidelines and regulations." Accordingly, the proposal is supported. Recommendation SUPPORTED - Subject to conditions
Environmental Health (Unsewered Lands)	<i>Supported - Subject to Recommended Conditions</i> General Comments The development proposes the following:

Internal Referral Body	Comments
	Demolition of existing shed in northwest corner of the property Level western end of property to height of second retaining wall (approx. RL 97.90) Construct new shed in northwest corner (50m x 20m) Construct hardstand to the south of shed New outdoor horse arena to the south of shed / hardstand Installation of a new aerated wastewater treatment system and associated absorption beds The following comments are provided in relation to the installation of a new aerated wastewater treatment system and associated absorption beds. The proposed new aerated wastewater treatment system and associated absorption bed is intended to service the proposed shed. Additionally, a new absorption bed is intended to be used in conjunction with an existing aerated wastewater treatment system that currently services the existing studio and office. If the development is approved, this will result in three wastewater systems at the property. A report by a wastewater consultant supplied with the proposal documentation appears to adequately address the requirements of both the proposed system and the new disposal area for the existing system. Environmental Health supports the proposal with a recommendation to include appropriate conditions of consent. Recommendation SUPPORTED- subject to conditions
Landscape Officer	<i>Supported - Subject to Recommended Conditions</i> The application seeks consent for: Demolition works and construction of a shed, hardstand and associated works for use as a horse arena. The Arborist's Report prepared by Raintree Consulting is noted. The Report indicates that 2 exempt trees are to be removed and 3 non-exempt trees are required to be removed. The non-exempt tree comprise 1 x <i>Tristaniopsis laurina</i> (11m) of Low retention value, 1 x <i>Melaleuca lineariifolia</i> (6m) of Medium retention value, and 1 x <i>Callistemon viminalis</i> (7m) of Medium retention value. All other trees on the site are to be retained.

Internal Referral Body	Comments
	The trees proposed for removal are not considered significant and no objections are raised subject to replanting. I would defer to comments from Council's Bushland and Biodiversity section for issues related to biodiversity impacts.
NECC (Bushland and Biodiversity)	Supported - Subject to Recommended Conditions The comments in this referral relate to the following controls and provisions: • Planning for Bushfire Protection 2019 • Pittwater LEP - Clause 7.6 Biodiversity Protection The proposal would take place in areas that have previously been cleared and impacts to native flora and fauna would be unlikely. However, the submitted architectural plans show areas that will be rehabilitated and no details have been provided in relation to the proposed rehabilitation works. Therefore, conditions will be recommended. The submitted arborist report recommends the removal of trees 4 (exempt by height), 7 (prescribed), 10 (dead), 13 (prescribed) and 28 (prescribed). No objections are raised subject to replacement of the prescribed trees (7, 13 and 28) with like for like locally native trees. This will be conditioned. The submitted bushfire report has indicated that the proposed structures are considered exempt from the requirements of PBP 2019 given that no habitable buildings are within 6 metres of the development and they are class 10a and 10b structures. No objections are raised.
NECC (Development Engineering)	Supported - Subject to Recommended Conditions Revised Comments 18/12/2024 The applicant has now submitted stormwater drainage plans that provide on site stormwater detention for all the new proposed impervious areas. No objections to the development subject to conditions. Previous Comments The application for a horse stable , arena and driveway access has been reviewed and not supported as there is no stormwater management plan submitted with the application. A stormwater management plan is required in accordance with Councils water management for development policy. On site stormwater detention is required for the footprint of the new development . State of nature conditions are to apply for to restrict post development flows for all storm events up to the 1/100 AEP event . A DRAINS model is to be submitted to Council for review.

Internal Referral Body	Comments
	The proposed porous concrete driveway area is to be treated as impervious for the purpose of the calculation of on site stormwater detention storage calculations. The proposed discharge point is to be directed to the natural fall of the land and scour is to be prevented with the appropriate treatments.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP (Transport and Infrastructure) 2021

Chapter 2 - Infrastructure

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.

With these conditions in place, the development satisfies the jurisdictional requirements under State Environmental Planning Policy (Transport and Infrastructure) 2021.

SEPP (Biodiversity and Conservation) 2021

Chapter 3 - Koala habitat protection 2020

While the site is mapped within the RU2 Rural Landscape zone, where Chapter 3 of State Environmental Planning Policy (Biodiversity and Conservation) 2021 (BC SEPP) would typically apply, section 3.3(1) of the BC SEPP states that Chapter 3 of the BC SEPP does not apply to local government areas marked with an * in Schedule 2 of the BC SEPP.

Northern Beaches Council is identified as a local government area marked with an * in Schedule 2 of the BC SEPP. Therefore, no further consideration of Chapter 3 of the BC SEPP is required for the purpose of this application.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of State Environmental Planning Policy (Resilience and Hazards) 2021 (RH SEPP) requires the consent authority to consider whether land is contaminated.

As noted earlier within this report, the applicant submitted a PSI during the assessment process. This is due to the western portion of the site (where the development is located) formally accommodating a plant nursery, which is listed as a potentially contaminated land use within Schedule 1 of the Contaminated Land Planning Guidelines.

The PSI undertook soil sampling within the location where the development is proposed to be located. The PSI noted that the site inspection revealed no evidence of significant imported fill material at the development area and asbestos containing material was not observed across the surface or found within the test pits excavated for sampling this area. The PSI further stated that the analysis did not indicate concentrations of organochlorine pesticides or petroleum hydrocarbon compounds within the surface soil which could represent contamination from past land use or application of pesticides to nursery plants.

The PSI concluded that the site is suitable for residential development following the implementation of the following recommendations:

- The preparation of a waste classifications for any material to be excavated and disposed of off-site. The waste classifications must be prepared in accordance with EPA guidelines; and
- All waste must be managed and disposed of in accordance with current guidelines and regulations.

These recommendations have been included as recommended conditions of consent.

Council's Environmental Health Officer has reviewed the PSI and concurs with the findings and recommendations of the PSI.

The PSI did not recommend the submission of a Detailed Site Investigation.

Based on the above assessment, it is concluded that the development satisfies the requirements within Chapter 4 of the RH SEPP.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.46m	-	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
7.1 Acid sulfate soils	Yes

Clause	Compliance with Requirements
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone RU2 Rural Landscape

The proposed development is ancillary to a dwelling house that currently exists on the site. Dwelling houses are permissible land uses within the RU2 Rural Landscape zone under the PLEP and therefore, the proposed horse arena and shed are permissible as ancillary uses to the dwelling house, noting that the PLEP does not include any specific land use definition for a horse arena or shed.

The development is also consistent with the objectives of the RU2 zone, insofar as the development will:

- maintain the rural character of the land as the development is located within a low point of the site that is not visible from key public vantage points and it is also located in a part of the site that has been historically disturbed by the former nursery land use,
- not increase the demand for public services and facilities within the locality as it will be used by the owners of the site as an ancillary component to the dwelling house,
- not cause unreasonable amenity impacts to surrounding residential receivers in terms of noise intrusion, visual impacts, air quality impacts or traffic impacts.

7.1 Acid sulfate soils

The site is identified within the 'Class 5' area on the PLEP Acid Sulfate Soils Map. Accordingly, clause 7.1 of the PLEP is applicable.

In assessing impacts arising from potential acid sulfate soils, it is noted that the development takes place on parts of the site that are elevated above RL94m AHD and located approximately 3 kilometres from the nearest Class 1, 2, 3 or 4 land, being McCarrs Creek Reserve.

As such, the development will not lower the water table on Class 1, 2, 3 or 4 land and will not expose acid sulfate soils. Hence, the development complies with the requirements of clause 7.1 of the PLEP.

7.2 Earthworks

The development includes earthworks comprising of approximately 2.9m of filling and 3.8m of cut to facilitate a level building pad.

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 as the development and associated earthworks are well separated from buildings on adjoining properties. Conditions have been included in the recommendation of this report to limit impacts during excavation/construction, while further conditions are recommended to mitigate construction noise, dust and erosion impacts.

(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 (AHO), who concluded that the development is not likely to disturb any Aboriginal relics. The AHO has recommended a condition requiring the relevant public authorities to be notified in the event that any unexpected remains are identified during works, which has been included as a recommended condition of consent.

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

Comment:

Suitable conditions are recommended to prevent sediment migration towards the Wirreanda Creek riparian corridor.

(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 does not contain a heritage item, is not located within a heritage conservation area and is not located in close proximity to a heritage item. Moreover, the site does not contain any archaeological sites.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the jurisdictional matters under clause 7.2 of the PLEP, subject to recommended conditions.

7.6 Biodiversity protection

The site is identified on the PLEP Biodiversity Map. Therefore, clause 7.6 of the PLEP is applicable to this application.

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

(a) whether the development is likely to have:

- (i) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and***
- (ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and***
- (iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and***
- (iv) any adverse impact on the habitat elements providing connectivity on the land, and***

Comment:

The development is located on a portion of the site that has been subject to historical disturbance from the former nursery operation and therefore, is strategically located on a part of the site that will mitigate impacts on vegetation and local biodiversity as this part of the site is significantly cleared of vegetation.

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

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

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval and has recommended conditions to mitigate impacts on flora and fauna. Therefore, Council can be satisfied that the proposal includes appropriate measures to avoid, minimise, or mitigate the impacts of the development.

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

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

Comment:

It is considered that the proposed development is located on the most appropriate portion of the site to mitigate impacts on flora and fauna, given this portion of the site has been subject to historical disturbance by development and is largely cleared of vegetation. The conditions in the recommendation of this report will also mitigate impacts on flora and fauna. In this regard, it is concluded that the development has been appropriately designed, sited and will be managed to avoid significant environmental impacts.

Having regard to the above assessment, it is concluded that the development meets the jurisdictional requirements under clause 7.6 of the PLEP, subject to recommended conditions.

7.7 Geotechnical hazards

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

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

Comment:

The development application has been accompanied by a GR, which has assessed the geotechnical risk associated with the development and concluded that the development will not pose unacceptable geotechnical risk to land and life, subject to several recommendations that require the geotechnical consultant to inspect the development at various phases of construction. The recommendations of the GR have been included as recommended conditions of consent. Council's Development Engineer has also reviewed the application and raised no concerns in relation to geotechnical risk. In this regard, it is considered that the geotechnical risks associated with the development can be managed, subject to the recommended conditions of consent.

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

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

Comment:

Council's Environmental Health Officer and Development Engineer have assessed the application with respect to on-site wastewater and stormwater management and are satisfied that appropriately measures will be in place to manage wastewater and stormwater on the site and that there will be no adverse off-site impacts as a result of water leaving the site, subject to recommended conditions.

(b) the consent authority is satisfied that:

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

Comment:

Based on the findings above, it is concluded that the development is designed, sited and will be managed to avoid adverse geotechnical risks, subject to recommended conditions.

Having regard to the above assessment, it is concluded that the development satisfies the jurisdictional requirements under clause 7.7 of the PLEP, subject to recommended conditions.

7.10 Essential services

The assessment has concluded that the development will have the following essential services available to service the development:

- the supply of water,
- the supply of electricity,
- the disposal and management of sewage,
- stormwater drainage or on-site conservation, and
- suitable vehicular access.

In this regard, the development complies with clause 7.10 of the PLEP.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	20m (West)	20.1m	-	Yes
Rear building line	7.5m (East)	246.7m	-	Yes
Side building line	7.5m (North)	7.5m	-	Yes
	20m (South)	21.3m	-	Yes
Building envelope	3.5m / 45 degrees (North)	Within envelope	-	Yes
	3.5m / 45 degrees (South)	Within envelope	-	Yes
Landscaped area	96% of site area minus 400sqm (27,574.4sqm)	83% (24,386.6sqm)	11.56%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.6 Ingleside Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.2 Bushfire Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated 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
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	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
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
D6.1 Character as viewed from a public place	Yes	Yes
D6.3 Building colours and materials	No	Yes
D6.5 Front building line	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D6.6 Side and rear building line	Yes	Yes
D6.7 Building envelope	Yes	Yes
D6.8 Landscaped Area - Non Urban General	No	Yes
D6.12 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

D6.3 Building colours and materials

Section D6.3 of the Pittwater 21 Development Control Plan (P21DCP) requires development to have dark and earthy external finishes that accord with the colour pallet below.



Figure 1 - P21DCP Colour Pallet

The application has not stipulated the proposed external finishes of the horse arena and shed. Consequently, it cannot be determined that the development would comply with section D6.3 of the P21DCP.

Due to the rural and bushland character of the locale, it is considered that the use of dark and earthy tones is essential to ensure that the development harmonises with the natural environment and to mitigate adverse visual impacts from private and public vantage points. Accordingly, a condition is recommended to ensure that the external finishes to the development entail dark and earthy tones that meet the P21DCP colour pallet stipulated in **Figure 1**.

With this condition in place, the visual impacts of the development will be appropriately mitigated and the development will comply with the requirements and outcomes of section D6.3 of the P21DCP.

D6.8 Landscaped Area - Non Urban General

Description of non-compliance

Section D6.8 of the P21DCP requires at least 27,574.4sqm of the site to comprise of landscaped area. This is based off a calculation that specifies 96% of the site area minus 400sqm.

The development provides 24,386.6sqm (83%) of the site area as landscaped area, which represents a 11.56% variation to the numerical requirement. It is noted that the proposal is located on a previously disturbed area of the site and therefore, the development does not significantly alter the existing

landscaped setting.

Merit Assessment

Having regard to the above technical non-compliance, a merit assessment against the underlying outcomes of section D6.8 of the P21DCP is provided below as follows:

To achieve the desired future character of the Locality.

Comment:

The development achieves the principles within the Ingleside Desired Future Character Statement for the following reasons:

- The high visual significance of escarpments within the locality will be maintained, noting that the development is located on a low point of the site that will not be visually prominent front significant public vantage points or private property.
- Conditions are recommended to ensure that the external colours and materials comprise of dark and earthy tones, which will ensure that the development harmonises with the natural environment.
- Council's Development Engineer and Environmental Health Officer are satisfied that stormwater and wastewater will be appropriately managed on-site, thereby mitigating adverse off-site impacts on riparian areas and bushland.
- The development is located on a portion of the site that has been subject to historical disturbance from the former nursery operation and therefore, is strategically located on a part of the site that will mitigate impacts on flora and fauna as the development requires minimal land clearing due to its location. Given the location within a previously disturbed part of the site, the development will not substantially alter the existing landscape setting.

To enhance the existing streetscapes and promote a scale and density that is in scale with the height of the natural environment.

Comment:

The development is substantially setback from Harvey Road and Wirreanda Road and will be screened by existing vegetation along the southern boundary off the site. The development is also located well below the existing canopy cover.

To ensure that development does not unreasonably diminish sunlight to neighbouring properties and within the development site.

Comment:

The development does not result in any overshadowing of private open space or living rooms within the subject site or adjoining properties.

To preserve and enhance vegetation to visually reduce the built form.

Comment:

The development does result in the removal of three prescribed trees; however, conditions are

recommended that require these trees to be replaced. Sufficient vegetation is retained and will be provided to ensure that the built form is appropriately reduced and softened.

To minimise the impact of development on Pittwater's biodiversity by minimising the removal of indigenous vegetation and naturally occurring soils, conserving existing significant indigenous and native trees, and encouraging planting of indigenous and native plants and trees on private property.

Comment:

As discussed earlier within this report, Council's Biodiversity Officer has assessed the application and is satisfied that the development will not result in any significant impacts on local biodiversity.

To conserve significant natural features of the site and contribute to effective management of biodiversity.

Comment:

The development is located on a portion of the site that has been subject to historical disturbance from the former nursery operation and therefore, is strategically located on a part of the site that will mitigate impacts on flora and fauna as the development requires minimal land clearing. Given the location within a previously disturbed part of the site, the development will not substantially alter the existing landscape setting.

To provide for infiltration of water to the water table, minimise stormwater runoff and assist with stormwater management to reduce and prevent soil erosion and the siltation of natural drainage channels.

Comment:

Significant portions of the site will remain landscaped, which will assist in water infiltration. Council's Development Engineer has also assessed the proposed stormwater management scheme, which will disperse stormwater on-site via a dispersion trench which includes an on-site detention tanking, and is satisfied that stormwater can be appropriately managed on the subject site and that the stormwater management system will not result in adverse off-site impacts.

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

Comment:

As discussed above, the stormwater management scheme is assessed as being satisfactory.

To preserve and enhance the rural and bushland character of the non-urban area of the locality.

The development will not detract from the rural character of the locality, subject to compliance with the recommended conditions of consent.

Having regard to the above assessment, it is concluded that the development satisfies the underlying outcomes of section D6.8 of the P21DCP. As such, a variation to the numerical requirements of this control is supportable, consistent with section 4.15(3A)(b) of the Environmental Planning and Assessment Act 1979.

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 \$3,025 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$302,500.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- 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 Development Determination Panel (DDP) for the consideration of a development application involving demolition works and construction of a shed, hardstand and

associated works for use as a horse arena.

The application was publicly exhibited for 14 days and received a total of seven (7) submissions by way of objection. The key issues raised within the public submissions relate to the potential use of the development for industrial or commercial activities, prior unauthorised works / land uses on the site, the size of the development, the extent of earthworks proposed, construction impacts, stormwater impacts, land contamination and impacts on the natural environment. These issues have been considered as part of the assessment and do not constitute matters that would warrant refusal of the application.

The initial concerns raised in relation to stormwater management, land contamination / site suitability and geotechnical hazards have been resolved by the additional information submitted by the applicant. Several conditions of consent are recommended to mitigate any residual impacts of the development in relation to visual impacts, construction noise and traffic, stormwater and wastewater management, biodiversity impacts and land contamination.

Overall, the development is considered to be consistent with all applicable environmental planning instruments and regulatory provisions.

Therefore, the development is suitable for the site and is consistent with maintaining the public interest.

Accordingly, it is recommended that the DDP **approve** the application, subject to the recommended conditions 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 Council as the consent authority grant Development Consent to DA2024/0790 for Demolition works and construction of a shed, hardstand and associated works for use as a horse arena on land at Lot 169 DP 752046, 4 Harvey Road, INGLESIDE, 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
003/a	N/A	Proposed Site Plan & Landscaped Area Calculation	Roost Architecture	10 May 2024
100/b	N/A	Proposed Site Plan West & Floor Plan	Roost Architecture	10 May 2024
101/a	N/A	Proposed Bulk Excavation Plan	Roost Architecture	10 May 2024
102/a	N/A	Site Analysis, Erosion and Sediment Control, Stormwater Management Plan, Waste Management Plan	Roost Architecture	10 May 2024
200/a	N/A	Proposed Sections & Elevations 1	Roost Architecture	10 May 2024
201/a	N/A	Proposed Sections & Elevations 2	Roost Architecture	10 May 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Stormwater Management Plans drawing numbers 24-1009 H01-H04	A	Peninsula Consulting Engineers	28 November 2024
Preliminary Environmental Site Investigation titled '4 Harvey Road Ingleside NSW 2101'	2	Environmental Consulting Services	20 December 2024
Geotechnical Investigation titled 'New Horse Arena, Shed and Driveway at 4 Harvey Road, Ingleside'	J5790	White Geotechnical Group	11 November 2024
Bush Fire Assessment Report titled '4 Harvey Road, Ingleside, NSW'	4Har-02	Bushfire Consultancy Australia	12 March 2024
Development Proposal Arboricultural Impact Assessment titled '4 HARVEY ROAD INGLESIDE, NSW'	3824	Raintree Consulting	22 May 2024
On-Site Wastewater Report titled '4 Harvey Road Ingleside NSW'	3573-WW-A-01	Broadcrest Consulting Pty Ltd	12 April 2024
Waste Management Plan titled '4 Harvey Road Ingleside 2101'	N/A	N/A	N/A

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. Prescribed conditions (Demolition):

(a) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- (i) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (ii) stating that unauthorised entry to the work site is prohibited.

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

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

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

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

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

- (i) protect and support the adjoining premises from possible damage from the excavation, and
- (ii) where necessary, underpin the adjoining premises to prevent any such damage.
- (iii) must, at least 7 days before excavating below the level of the base of the footings of

a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

(iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

Reason: Legislative Requirement.

4. Prescribed Conditions

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

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

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

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

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and

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

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

Reason: Legislative requirement.

5. General requirements (Demolition):

(a) Unless authorised by Council:

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

(c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

(d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

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

(f) No building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

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

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

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

fences, hoardings or other temporary works.

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

6. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

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

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

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety

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

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

7. Horse Arena and Shed not to be used for Commercial or Industrial Purposes

The approved horse arena and shed is to be used as an ancillary use to the existing dwelling house and is not to be used for commercial or industrial purposes. Additionally, the horse arena and shed is not permitted to store any industrial machinery associated with any commercial or industrial enterprises.

Reason: To ensure that the horse arena and shed are not used for commercial and industrial purposes.

8. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2024

A monetary contribution of \$3,025.00 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 \$302,500.00.

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

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

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

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

9. Construction, Excavation and Associated Works Security Bond(s)

The applicant is to lodge a bond with Council for the following:

Security Bond

As security against damage to Council's roads fronting the site caused by the transport and disposal of materials and equipment to and from the site a bond of \$10,000.

Details confirming payment of the bond(s) are to be submitted to the Principal Certifier prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

10. **No Clearing of Vegetation**

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

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

Reason: To protect native vegetation.

11. **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 Peninsula Consulting Engineers Consulting, drawing number 24-1009 H01-H04, dated 28/11/2024. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

i. The finished surface of the level spreader is to be at or below the orifice plate invert level or the level of the orifice is to be raised to be above the finished surface of the level spreader the OSD storage volume is to be maintained at approximately 39.5 cumecs.

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 that stormwater is appropriately managed.

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Investigation 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.

13. 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.

14. Specification of wastewater system to be installed

The NSW Health certificate of accreditation of the Aerated Wastewater Treatment System (AWTS) to be installed must be provided to the Principal Certifier and Council for its records prior to the release of the Construction Certificate.

Reason: To ensure the wastewater system to be installed is accredited for domestic use.

15. Compliance with Standards

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

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

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

16. External Finishes to the Horse Arena and Shed

The external walls and roof of the horse arena and shed must have dark and earthy tones that accord with the colour pallet specified within Section D6.3 of the Pittwater 21 Development Control Plan.

Additionally, the external finish to the roof and external walls of the horse arena and shed must have a Solar Absorptance (SA) rating greater than 0.43 (NCC Classification) to minimise solar reflections to neighbouring properties.

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. 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.

DURING BUILDING WORK

18. 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.

Reason: Preservation of significant environmental features.

19. Tree and Vegetation Protection

- a) Existing trees and vegetation shall be retained and protected, including:
 - i) all trees within the site not indicated for removal 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 the Arboricultural Impact Assessment dated 22 May 2024 prepared by Raintree Consulting and 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 and compliant to AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

Reason: Tree and vegetation protection.

20. **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 with minimum AQF Level 5 in arboriculture during the works.

In this regard all protected trees shall not exhibit:

- i) a general decline in health and vigour,
- ii) damaged, crushed or dying roots due to poor pruning techniques,
- iii) more than 10% loss or dieback of roots, branches and foliage,
- iv) mechanical damage or bruising of bark and timber of roots, trunk and branches,
- v) yellowing of foliage or a thinning of the canopy untypical of its species,
- vi) an increase in the amount of deadwood not associated with normal growth,
- vii) an increase in kino or gum exudation,

- viii) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
- ix) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the 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.

21. **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.

22. **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.

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 Investigation referenced in Condition 1 of this consent are required to be complied with during works.

Reason: To ensure geotechnical risk is mitigated appropriately.

26. **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.

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. **Site filling - Virgin Excavated Natural Material (VENM)**

Where site fill material is necessary, fill materials must:

1. Be Virgin Excavated Natural Material (VENM) only, as defined in The Protection of the Environment Operations Act 1997.
2. Be free of slag, hazardous, contaminated, putrescibles, toxic or radioactive excavated material and soil, rock or similar material. Putrescibles and non-putrescibles solid waste (including demolition material) is not permitted.

The Applicant shall provide certification by a N.A.T.A. approved laboratory to the Principal Certifier for approval prior to importation of material.

Reason: To ensure protection of the natural environment.

30. **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.

31. **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.

32. **Off-site Disposal of Contaminated Soil/Waste - Chain of Custody**

'Chain of Custody' documentation shall be kept and submitted for the transport of the validated soil/waste material from the subject site to a lawful waste.

Note: waste classifications must be prepared in accordance with Environment Protection Authority (EPA) guidelines.

Details demonstrating compliance are to be submitted to the Principal Certifier and Council

within seven (7) days of transport.

Reason: For protection of environment.

33. Dust Minimisation

The applicant must take all reasonable measures to minimise dust generated during all works authorised by this consent. During construction, the applicant must ensure that:

- a) All trucks entering or leaving the site with loads have their loads covered.
- b) Trucks associated with the development do not track dirt onto the public road network.
- c) Public roads used by these trucks are kept clean.
- d) Land stabilisation works are carried out progressively on site to minimise exposed surfaces.

Reason: To minimise the environmental impacts of construction works.

34. Compliance with Preliminary Site Investigation

The recommendations of the Preliminary Site Investigation referenced in Condition 1 of this consent must be complied with at all times during demolition, excavation and construction works.

Details demonstrating compliance must be submitted to the Certifying Authority.

Reason: Compliance with State Environmental Planning Policy (Resilience and Hazards) 2021.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

35. Wastewater system installation approved by a suitably qualified person

Prior to the release of the Occupation Certificate evidence must be supplied to the Principal Certifier from a suitably qualified person that the on-site wastewater management system has been installed according to requirements listed in the certificate of accreditation for the wastewater system and wastewater report by Broadcrest Consulting Pty Ltd referenced REF: 3573-WW-A-01 and dated April 2024

Reason: To ensure the wastewater system has been installed correctly to minimise the potential for harm.

36. Approval to Operate - Existing Wastewater System

Prior to the issuing of an Occupation Certificate, a copy of a section 68 (Local Government Act 1993) approval to operate the wastewater system for the existing studio and office, and the wastewater system must be activated and effectively operating to the satisfaction of the Principal Certifier.

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

Reason: To ensure the premises are maintained in an appropriate manner in perpetuity.

37. Required Tree Planting

Trees shall be planted in accordance with the following:

- a) 3 x locally native trees shall be planted within the property to achieve at least 8 metres height at maturity, and in accordance with the following:
 - i) tree planting shall be a minimum pre-ordered planting size of 75 litres; may be selected from Northern Beaches Council's Native Plant Species Guide, or

Council's Tree Guide; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1 metre x 1 metre x 600 millimetres depth, backfilled with a sandy loam mix or approved similar, mulched to 75 millimetres depth minimum and maintained, and watered until established; and shall be located at least 3 metres from buildings or more, at least 1.5 metres from common boundaries;

- ii) 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,
- b) Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of any Occupation Certificate.

Reason: To maintain environmental amenity.

38. Fencing for Wildlife Passage

Any new permanent fencing (with the exception of swimming pool fencing) is to be made passable to native fauna through the provision of access gaps or raised fencing to provide appropriate ground clearance. Any access gaps are to be a minimum of 150mm wide x 100mm high at ground level and spaced at a minimum of 6m intervals.

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

Reason: To preserve wildlife corridors.

39. Native Landscaping

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

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

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

40. 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.

41. Priority Weed Removal and Management

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

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

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

42. **Stormwater Disposal**

The stormwater drainage/ on site detention works shall be certified as compliant with the approved construction certificate plans and Councils Water Management for Development policy by the design engineer. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

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

43. **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.

44. **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 (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.

45. **Approval to Operate - New Wastewater System**

Prior to the issuing of an Occupation Certificate, a copy of a section 68 (Local Government Act 1993) approval to operate the wastewater system, and the wastewater system must be activated and effectively operating to the satisfaction of the Principal Certifier.

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

Reason: To ensure the premises are maintained in an appropriate manner in perpetuity.

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

46. **Existing studio not for separate occupancy**

The existing studio on the western side of the site is not permitted to be used, or be adapted to be used, for separate occupancy or habitation.

Reason: To protect the amenity of the area.

47. **Protection of Habitat Features**

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

Reason: To protect wildlife habitat.

48. **Control of Domestic Dogs/Cats**

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

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

Reason: To protect native wildlife and habitat.

49. **Geotechnical Recommendations**

Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Investigation 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.

50. **No Outdoor Lighting Permitted**

No outdoor lighting is permitted to be installed on the horse arena or shed.

Reason: To mitigate glare or reflectivity impacts at surrounding residential receivers.

51. **Horse Washing with Stables Area**

If the activity of horse washing is undertaken within the stables area a capture net will need to be provided to prevent horse hair and other material not suitable for the wastewater system, from entering the wastewater system.

Reason: To protect the wastewater system and disposal area from damage and failure.

LEGEND

	new shed	- 1000m ²
	existing structures	- 125.4m ²
	existing dwelling	- 283m ²
	driveway to dwelling	- 272.6m ²
	porous concrete driveway	- 1885m ²
	structure or hard surface to be removed / compact ground to be ripped and replanted	
	landscaped area	- see total
	site area	- 29,140m ²
	landscaped area requirement	- 27,574.4m ² (96% - 400m ²)
	total landscaped area	- 27,457.4m² (includes all areas shaded green, sand arena, and porous concrete driveway shaded yellow)



ROOST ARCHITECTURE

PO Box 135, Church Point, NSW, 2105
email: info@roostarchitecture.com.au
www.roostarchitecture.com.au
registered architect: Lachlan Whitford no. 10878

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NOT FOR CONSTRUCTION

Project 4 Harvey Rd, Ingleside, NSW 2101

Lot 169 D.P. 752046

Client Shannon Adams

Title Proposed Site Plan & Landscaped Area Calculation

Scale 1:1000 @ A3

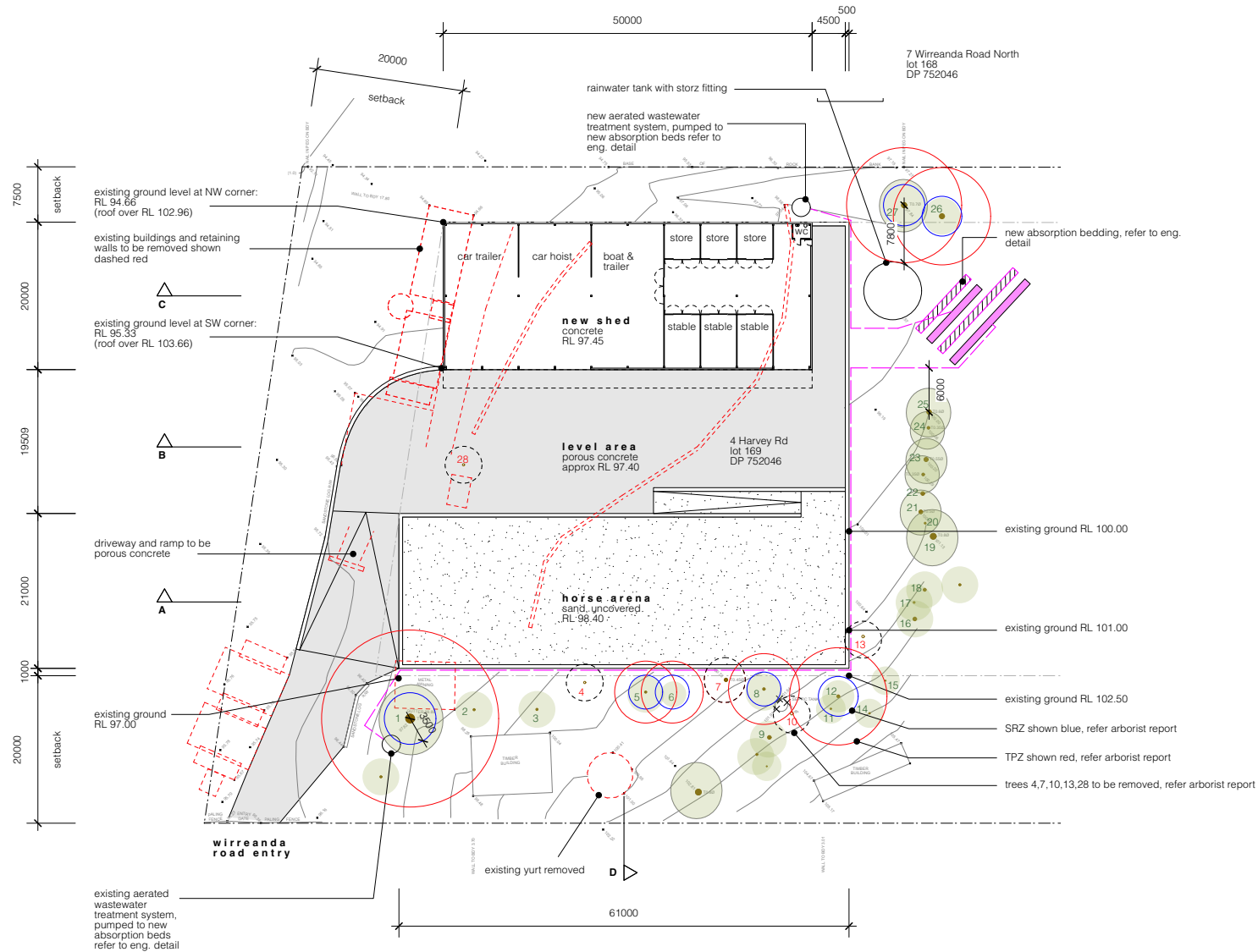


Drawing No./Issue

003/a

Project Stage
Date Issued

DA
10.05.2024



ROOST ARCHITECTURE

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NOT FOR CONSTRUCTION

Project 4 Harvey Rd, Ingleside, NSW 2101

Lot 169 D.P. 752046

Client Shannon Adams

Title Proposed Site Plan West & Floor Plan

Scale 1:500 @ A3

0 5 25m

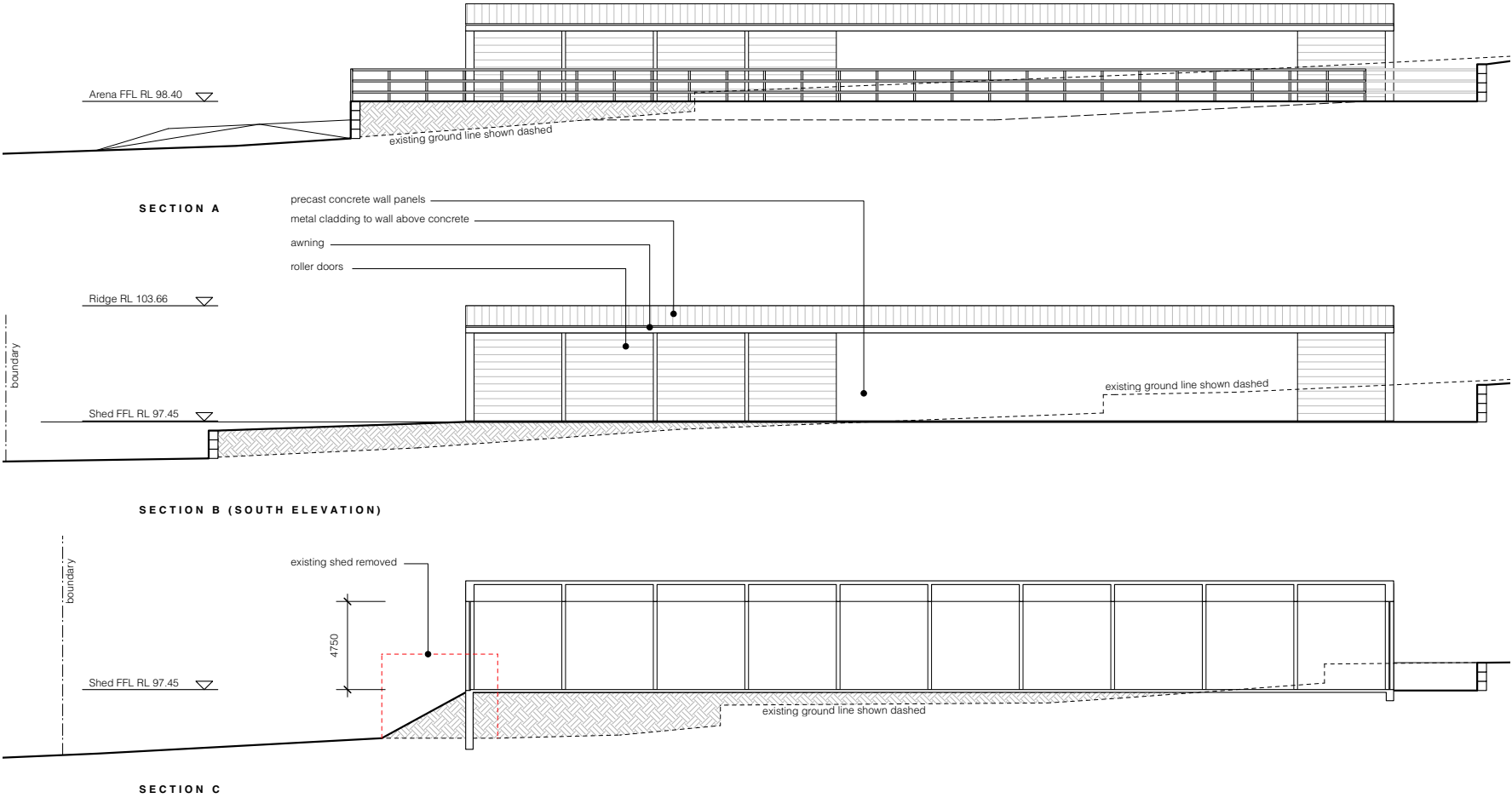


Drawing No./Issue

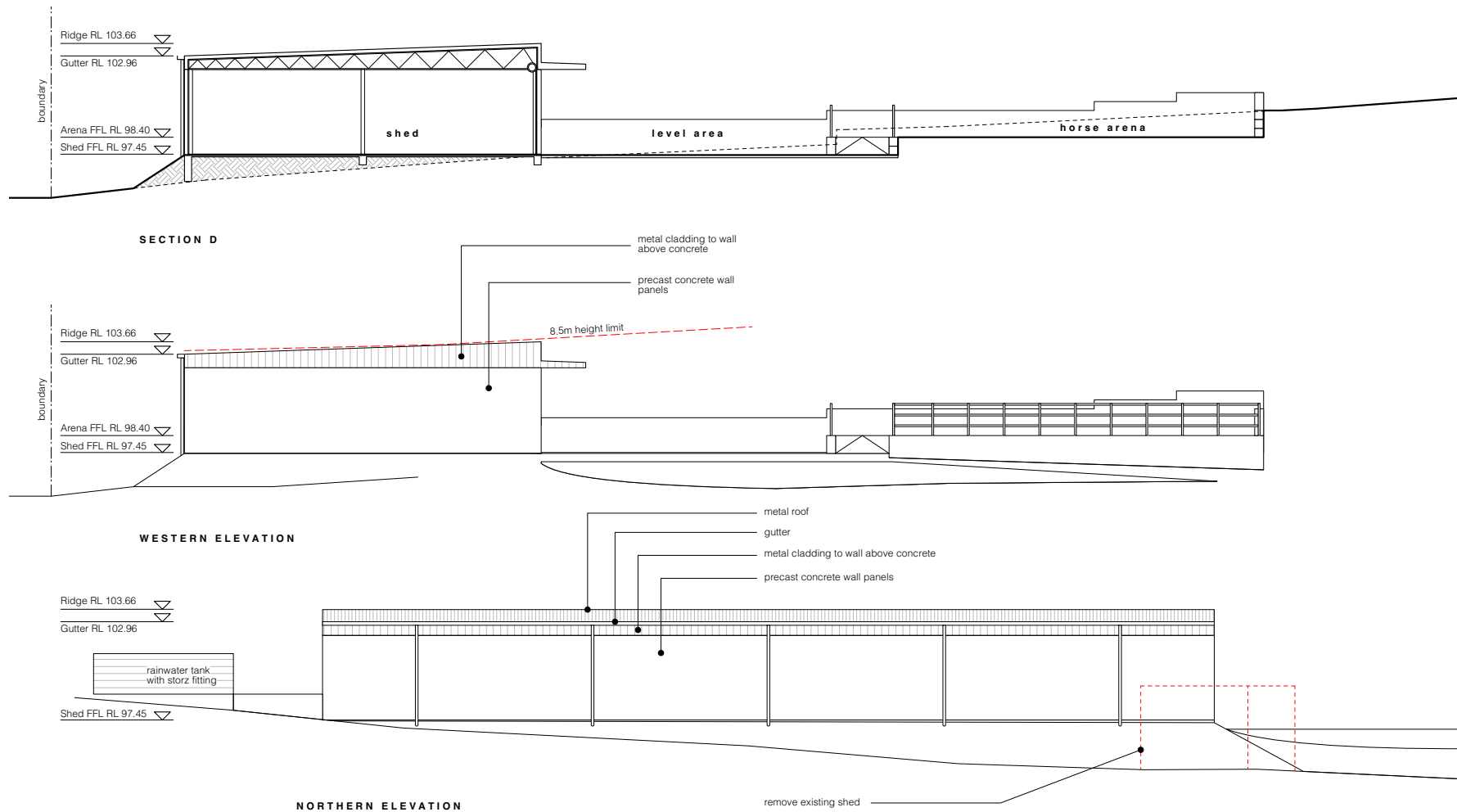
100/b

Project Stage
Date Issued

DA
12.06.2024



ROOST ARCHITECTURE PO Box 135, Church Point, NSW, 2105 email: info@roostarchitecture.com.au www.roostarchitecture.com.au registered architect: Lachlan Whitford no. 10878	The proposed building works must comply with all relevant Australian Standards and the National Construction Code. Do not scale from drawings. Verify all dimensions and levels on site. Roost Architecture is the owner of the copyright subsisting in these drawings and specifications. They must not be used, reproduced or copied in whole or part, nor may the information, ideas and concepts therein contained be disclosed to any person without the prior written consent of Roost Architecture. NOT FOR CONSTRUCTION	Project	4 Harvey Rd, Ingleside, NSW 2101	Title	Proposed Sections & Elevations 1	Drawing No./Issue	200/a
			Lot 169 D.P. 752046			Project Stage	DA
		Client	Shannon Adams	Scale	1:200 @ A3	Date Issued	10.05.2024



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registered architect: Lachlan Whitford no. 10878

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NOT FOR CONSTRUCTION

Project **4 Harvey Rd, Ingleside, NSW 2101**

Lot 169 D.P. 752046

Client **Shannon Adams**

Title **Proposed Sections & Elevations 2**

Scale **1:200 @ A3**



Drawing No./Issue

201/a

Project Stage
Date Issued

DA
10.05.2024

**ITEM 3.2 DA2024/0154 - 42 CASTLE CIRCUIT SEAFORTH - DEMOLITION
WORKS AND CONSTRUCTION OF A DWELLING HOUSE INCLUDING
SWIMMING POOL AND ASSOCIATED LANDSCAPING**

PURPOSE

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

RECOMMENDATION

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 and Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to DA2024/0154 for Demolition works and construction of a dwelling house including swimming pool and associated landscaping on land at Lot 23 DP 20458, 42 Castle Circuit SEAFORTH, subject to the conditions set out in the Assessment Report.

Reporting manager	Rodney Piggott
TRIM file ref	2025/021500
Attachments	1 Assessment Report 2 Site Plan and Elevations 3 Clause 4.6 - HOB 4 Clause 4.6 - FSR

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/0154
----------------------------	-------------

Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot 23 DP 20458, 42 Castle Circuit SEAFORTH NSW 2092
Proposed Development:	Demolition works and construction of a dwelling house including swimming pool and associated landscaping
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Robert Ursino Design Pty Ltd

Application Lodged:	23/02/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	29/02/2024 to 14/03/2024
Advertised:	Not Advertised
Submissions Received:	5
Clause 4.6 Variation:	4.3 Height of buildings: 4% 4.4 Floor space ratio: 9.8%
Recommendation:	Approval

Estimated Cost of Works:	\$ 2,673,000.00
---------------------------------	-----------------

EXECUTIVE SUMMARY

This development application seeks consent for demolition of existing structures and the construction of a new dwelling house.

The application is referred to the Development Determination Panel (DDP) due to receiving 5 submissions.

Concerns were raised in the submissions that predominantly relate to the height of the building, the number of storeys, and amenity impact (privacy and views). These matters have been addressed in the body of the assessment report. Notably, amended plans provided improvements to the design by reducing the presentation of bulk and scale at the western elevation, and by lowering the height of rear

section of the dwelling to provide a suitable view corridor.

The 4.6 request for the non-compliance with FSR standard arises from a gross floor area that is 28.4sqm greater than the standard (9.8% variation). In consideration of the 'undersized lot' provisions that apply under the Manly DCP, this variation is reduced to 16.4sqm (5.4% variation). There is 57.5sqm of gross floor area in the understory, being area not excluded from the gross floor area calculation. This includes a third car parking space in the garage. Despite this area contributing to overall 'gross floor area', the contribution it provides to the overall bulk and scale of the building is minor, in that it is largely below the natural topography. It has also been found in this report that there will not unreasonable amenity, environmental or visual impact that arises from the variation.

The 4.6 request for the non-compliance with height standard arises from a minor section of the building toward the western end of the site that is up to 8.84m in height (4%). This section of the building site above a steep drop off in natural topography, and also above previously excavated levels of the site. Based on extrapolated natural ground levels, the proposal would full comply with the Building height development standard. It has also been found in this report that there will not unreasonable amenity, environmental or visual impact that arises from the variation.

Other variations with Manly DCP numerical controls have been assessed and found to be acceptable throughout this report. In relation to the distribution of built form across the site, it is pertinent to note that the main section of the dwelling provides a rear setback that is well in excess of the control, and that the landscaped open space is well in excess of the control. This contributes to providing an effective control and bulk and scale to result in an acceptable merit outcome.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal is for demolition of the existing dwelling and construction of a new dwelling. In detail this involves:

Garage Level

- Garage
- Storage, plant and services
- Laundry, rumpus room and bathroom.
- Covered terrace
- Stair and lift access

Ground Floor Plan

- Kitchen, living room, dining room and sitting room.
- One bedroom with ensuite
- Powder room.
- Stair and lift access

First Floor Plan

- Three bedrooms
- Ensuite
- Bathroom
- Study

- A balcony at street boundaries and rear boundary

External

- Terrace
- Swimming Pool
- Spa
- Fire pit

Amended plans

Amended plans were accepted by Council on 20 December 2024. These plans involved the following changes:

- Reduction in the height of building for the main section of the dwelling by 800mm (9.64m to 8.84m)
- Reduction in the height of the kitchen wing by 1000mm (3.7m to 2.7m)
- Reduction in terrace area at Ground Floor Level, replaced with floor space (wall shifted 500mm)
- Increase to setback of upper level from western boundary (2m to 3m)
- Increase to setback of upper balcony from western boundary (500mm to 900mm)
- Increase to setback of upper roof slab from western boundary (500mm to 1.8m)
- Change to roof slab type (thinning at the edge)
- Reduction in height of garage

Below is a visual representation of the amendments (perspectives provided by applicant):

Original Scheme



Amended Scheme



The plans did not require re-notification, in accordance with Council's Community Participation Plan.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - Zone R2 Low Density Residential
Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Local Environmental Plan 2013 - 6.2 Earthworks
Manly Local Environmental Plan 2013 - 6.8 Landslide risk
Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area

Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
 Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features
 Manly Development Control Plan - 4.1.10 Fencing

SITE DESCRIPTION

Property Description:	Lot 23 DP 20458 , 42 Castle Circuit SEAFORTH NSW 2092
Detailed Site Description:	The subject site consists of a corner allotment located on a bend of Castle Circuit. The northern and western boundaries of the site adjoin Castle Circuit. The site is regular in shape with a frontage of 15.24m along northern boundary and a 36.57m along the western boundary. The site has a surveyed area of 720m². The site is located within the R2 Low Density Residential zone and accommodates a dwelling house on site. The site slopes from east to west with an approximate crossfall of 3m-4m The site is located to the east of a rock overhang, and contains areas of vegetation and landscaping to the front and rear. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by residential development.

Map:



SITE HISTORY

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

- DA201/2016 - Alterations and additions to the existing dwelling house approved by Northern Beaches Independent Assessment Panel (NBIAP) on 17 November 2016. This consent was not undertaken.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning	None applicable.

Section 4.15 Matters for Consideration	Comments
agreement	
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the 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 classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document

entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the application that included a certificate (prepared by Bushfire Code and Bushfire Hazard Solutions, dated 29 January 2024) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 29/02/2024 to 14/03/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Mr James Michael Hone Aquestra Stott	43 - 45 Castle Circuit SEAFORTH NSW 2092
Mr Donald Alfred Harris	41 E Castle Circuit SEAFORTH NSW 2092
Mr Michael William Howorth	35 Castle Circuit SEAFORTH NSW 2092
Ms Amy Gye	PO Box 447 BEROWRA NSW 2081
Mr Michael Wicks	40 Castle Circuit SEAFORTH NSW 2092

The issues raised in submissions are addressed as follows:

- **Three storey nature and Building height**

The submissions raised concerns with the height of the building and the three storey nature. In particular, concern is raised with the three storey presentation at the western interface, where there is a steep fall in topography.

Comment:

Amended plans were provided to reduce the height of the building, and provide a greater western setback to the upper level. This has reduced the presentation and impact of the building height and number of storeys to an acceptable level.

As further discussed throughout the report, the stepping at the upper level, articulation, substantial quantum of open space, and large rear setback (to the upper level), contribute to providing a supportable merit outcome.

- **Impact on privacy**

The submissions raised concerns that with privacy including with overlooking and noise.

Comment:

An assessment under Clause 3.4.2 Privacy and Security of this report has found there will be no unreasonable impact on privacy, subject to conditions.

In summary it has been found the design provides suitable physical separation to the rear property, and orientates away from the eastern neighbour. This ensures acoustic and visual privacy impacts are suitably minimised.

- **Impact on views**

A submission raised concern with the impact to views for the existing dwelling and proposed dwelling at 40 Castle Circuit.

Comment:

An assessment with consideration of the Land and Environment Court established planning principle for view sharing under *Clause 3.4.3 Maintenance of Views* has found view sharing to be reasonable.

The proposal was amended to reduce the height of the single storey element of the dwelling at the rear of the site. This was a 1 metre reduction in height to ensure a view corridor toward Middle Harbour could be maintained.

Overall, the proposal (as amended) provides a reasonable outcome for view sharing.

- **Measurement of Building Height and FSR.**

The submissions raised concerns with the applicant measurement of Building height and FSR. Further, concern is raised that the Clause 4.6 applications are reliant on these measurements.

Comment:

Council's Assessment officer has conducted an independent measurement and assessment of Building Height and Floor Space ratio. The Clause 4.6 applications are supported for the reasons outlined in this report.

- **Solar panels orientating south**

A submission suggests that an error has been made in the plans due to the Solar Panels facing south. The submission further raises concern there may be other errors in the plans.

Comment:

A condition has been imposed to allow the plans to be amended for the solar panels to face north.

In the assessment of the application, no errors relating to any other matters have been found.

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	The proposed development is in Zone 1 of Region 3. On-site detention is required. Vehicle crossing construction is proposed. A geotechnical report has been provided. Development engineering raises no objections to the proposed development, subject to conditions. Engineering Comments 18.01.25 OSD and vehicle crossing conditions amended to reference current plans.

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. 1736044S_02).

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 (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 Development Engineer who has raised no objection to the works and their impacts to the adjoining waterway (subject to conditions). Further, the proposal is well separated from the waterway and the extent of ground disturbance and excavation is reasonable for a residential site.

6.7 Aquatic ecology

(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 direct, indirect or cumulative adverse impact on terrestrial, aquatic or migratory animals or vegetation,*
- (b) whether the development involves the clearing of riparian vegetation and, if so, whether the development will require—*
 - (i) a controlled activity approval under the Water Management Act 2000, or*
 - (ii) a permit under the Fisheries Management Act 1994,*
- (c) whether the development will minimise or avoid—*
 - (i) the erosion of land abutting a natural waterbody, or*
 - (ii) the sedimentation of a natural waterbody,*
- (d) whether the development will have an adverse impact on wetlands that are not in the coastal wetlands and littoral rainforests area,*
- (e) whether the development includes adequate safeguards and rehabilitation measures to protect aquatic ecology,*
- (f) if the development site adjoins a natural waterbody—whether additional measures are required to ensure a neutral or beneficial effect on the water quality of the waterbody.*

(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 direct, indirect or cumulative adverse impact on terrestrial, aquatic or migratory animals or vegetation will be kept to the minimum necessary for the carrying out of the development,*
- (b) the development will not have a direct, indirect or cumulative adverse impact on aquatic reserves,*
- (c) if a controlled activity approval under the Water Management Act 2000 or a permit under the Fisheries Management Act 1994 is required in relation to the clearing of riparian vegetation—the approval or permit has been obtained,*
- (d) the erosion of land abutting a natural waterbody or the sedimentation of a natural waterbody will be minimised,*
- (e) the adverse impact on wetlands that are not in the coastal wetlands and littoral rainforests area will be minimised.*

Comment:

The proposal has been reviewed Development Engineer who has raised no objection to the works and their impacts to the adjoining waterway (subject to conditions).

Further, the proposal is well separated from the waterway and does not involve an extent of works that would have any unreasonable impact on the above matters.

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 proposal will not have any impact on public or recreational access of the catchment.

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:

The proposal has been reviewed Development Engineer who has raised no objection to the works and their impacts to the adjoining waterway (subject to conditions). 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.

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	8.84m	4%	No (see comments)
Floor Space Ratio	FSR: 0.4:1 (288sqm)	FSR: 0.44:1 (316.4sqm)	9.8%	No (see comment)
Site area: 720sqm				

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

Detailed Assessment

Zone R2 Low Density Residential

The proposal is consistent with the following R2 Zone objectives:

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

Comment: The new dwelling house provides for the needs of the community within a low density residential environment by providing new housing stock.

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

Comment: N/A as the proposal is for a dwelling house

4.6 Exceptions to development standards

Building height

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

Development standard: Clause 4.3 Height of Buildings

Requirement: 8.5m

Proposed: 8.84m

Percentage of variation: 4%

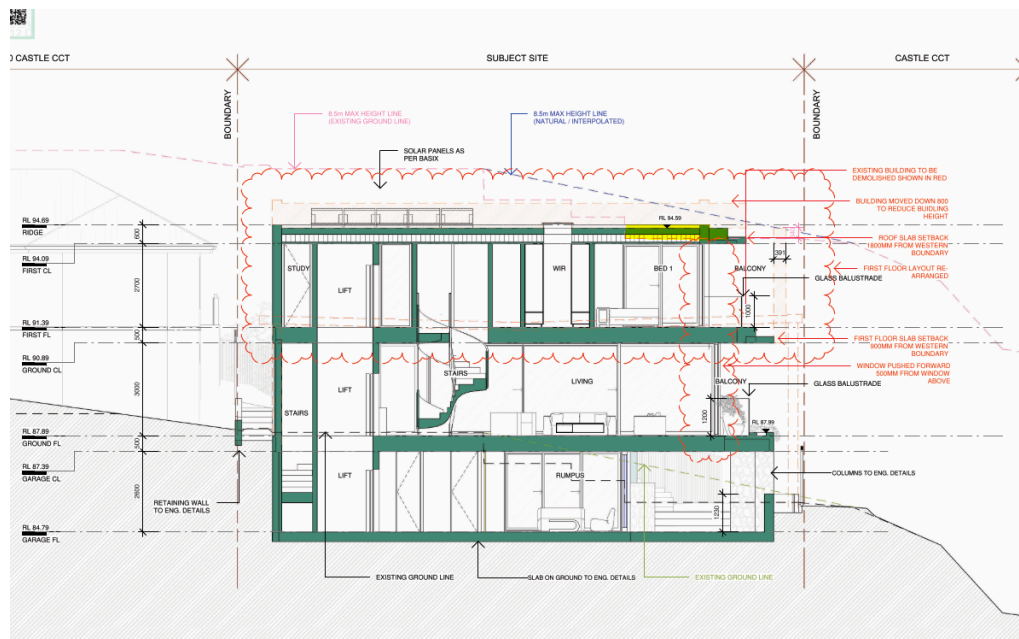


Figure 1: Representation of height non-compliance (shown highlighted in yellow)

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

Subclause (1) of this clause provides that:

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

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

Comment:

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

Subclause (2) of this clause provides that:

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

Comment:

Clause 4.3 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 of the MLEP is unreasonable or unnecessary in the circumstances of this application as the applicant has demonstrated that the objectives of Clause 4.3 of the PLEP are achieved, notwithstanding the contravention of the development standard. The matter of *Wehbe v Pittwater Council* [2007] NSWLEC 827 has established that this is an appropriate method to demonstrate that compliance with the development standard is unreasonable or unnecessary.

Council's assessment against the objectives of Clause 4.3 of the MLEP is provided below:

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

Comment:

The proposal substantial articulation along suitable landscaping at the primary frontage. Further, the presentation from the majority of the primary frontage is that of a two storey building that complies with the building height standard.

At the secondary street frontage there is a steep fall in topography, so stepping has been provided at the upper level to satisfactorily reduce the presentation of visual bulk. The design also involves a rear setback to the upper level (22.8m) that is well in excess of the numerical control. This provides a large open corridor to contribute to a form that meets desired future streetscape character.

The proposed development satisfies this objective.

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

Comment:

The proposed dwelling provides sufficient landscaping, articulation, and setbacks to the street and neighbours to ensure that the presentation of bulk and scale is appropriate. The dwelling is also surrounded by landscaping and proposed planting. This includes a quantum of landscaped area that is well in excess of the numerical control. This minimises the presentation of bulk and scale.

The proposed development satisfies this objective.

(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 large rear setback and single storey nature of the rear element ensure that a large corridor for views is maintained over the site boundary. This is further discussed under *Clause 3.4.3 Maintenance of Views* section of this report.

The proposed development satisfies this objective.

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

Comment:

The proposed dwelling involves suitable articulation and adequate setbacks so that the proposal would have no unreasonable impact on solar access. The proposal also complies with the numerical requirements for Sunlight Access and Overshadowing under the Manly DCP.

The proposed development satisfies this objective.

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

Comment:

Not applicable.

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

Comment:

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

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written

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

The Clause 4.6 Request argues, in part:

"Sufficient environmental planning grounds exist to justify the height of buildings variation including the design constraints imposed due to the sites undersized area, irregular geometry, irregular topography and sweeping corner location.

In this regard, I consider the proposal to be of a skilful design which responds appropriately and effectively to the above constraints by appropriately distributing floor space, building mass and building height across the site in a manner which provides for appropriate streetscape and residential amenity outcomes including a view sharing scenario. Such outcome is achieved whilst realising the reasonable development potential of the land.

Further, I note that the prior excavation 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 extent of building height variation would be reduced as depicted in the image below (see clause 4.6 request).

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. Whilst strict compliance could be achieved by reducing ceiling heights and reducing building height, such outcome would not represent good design and would result in an inferior amenity outcome for occupants. Such outcome would thwart compliance with objective 1.3(g) of the Act. Such outcome would also not represent the orderly development of the land given the reduced design quality and amenity afforded should strict compliance be enforced and to that extent would also thwart compliance with objective 1.3(c) of the Act. Such outcome would also not represent the orderly development of the land given the reduced design quality and amenity afforded should strict compliance be enforced and to that extent would also thwart compliance with objective 1.3(c) of the Act.

The minor nature of the building height breach and paucity of adverse streetscape or residential amenity impacts is also an environmental planning ground in support of the variation sought. There are sufficient environmental planning grounds to justify contravening the development standard."

Council is satisfied that the applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of Clause 4.3 for the following reasons:

- It is agreed that built form and building height has been distributed in such a way to provide an appropriate presentation in the street and a minimisation of amenity impact.
- It is agreed that historical excavation distorts the height of building plane as compared to natural undisturbed topography, and that the proposal would comply with the standard if measured from natural interpolated topography.

As such, the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the

surrounding built environment, thereby satisfying objects 1.3(c) and (g) of the EPA Act.

Public Interest:

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

Conclusion:

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

It is considered on balance, that having regard to the particular circumstances that the extent of variation is relatively minor, the proposed height responds well to natural topography and there is an absence of unreasonable impact, the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied. The application seeks consent to vary a development standard as follows:

Floor Space ratio

Development standard: Clause 4.4 Floor Space Ratio

Requirement: 0.4:1 (288sqm)

Proposed: 0.44:1

Percentage of variation: 9.8%

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

Subclause (1) of this clause provides that:

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

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

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

Comment:

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

Subclause (2) of this clause provides that:

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

Comment:

Clause 4.4 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 of the MLEP is unreasonable or unnecessary in the circumstances of this application as the applicant has demonstrated that the objectives of Clause 4.3 of the PLEP are achieved, notwithstanding the contravention of the development standard. The matter of *Wehbe v Pittwater Council* [2007] NSWLEC 827 has established that this is an appropriate method to demonstrate that compliance with the development standard is unreasonable or unnecessary.

Council's assessment against the objectives of Clause 4.4 of the MLEP is provided below:

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

Comment:

As above, the proposed dwelling provides sufficient landscaping, articulation, and setbacks to the street and neighbours to ensure that the presentation of bulk and scale is appropriate. The dwelling is also surrounded by landscaping and proposed planting. This includes a quantum of landscaped area that is well in excess of the numerical control. This minimises the presentation of bulk and scale.

The proposed development satisfies this objective.

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

Comment:

The proposed dwelling provides an effective distribution of built form including a large open corridor to maintain views toward North Harbour. The design also has a landscaped frontage to maintain openness and ensure appropriate vistas toward landscape and townscape features.

The proposed development satisfies this objective.

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

Comment:

The proposal provides a quantum of landscaped area and open space that is well in excess of the numerical controls. This provides appropriate opportunity for planting and a good balance between the built and natural form.

The proposed development satisfies this objective.

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

Comment:

The proposed design involves a large open corridor at the rear of the site to maintain views, and also provide substantial physical separation to minimise privacy impact. Deck areas and large windows are also orientated away from the side neighbour. The proposal also complies with the numerical requirements for Sunlight Access and Overshadowing under the Manly DCP.

The proposed development satisfies this objective.

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

Comment:

Not applicable

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

Comment:

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

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

The Clause 4.6 Request argues, in part:

"I have formed the opinion that sufficient environmental planning grounds exist to justify the variation including the compatibility of the height, bulk and scale of the development, as reflected by floor space, with the built form characteristics established by adjoining development and development generally within the site's visual catchment.

Further, the variation provisions contained at clause 4.1.3.1 of Manly DCP reflect an acceptance that the FSR standard on undersized allotments does not provide for the orderly and economic use and development of the land and in my opinion represents an abandonment of the FSR standard on undersized allotments. The proposal satisfies such provisions"

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

- The proposed height, bulk and scale is reflective of characteristics of adjoining and nearby development.
- Although it is not agreed the proposal complies with the numerical provisions of *Clause 4.1.3.1*, the variation under this clause is minor, and it is agreed that there is an absence of unreasonable impact as purported throughout the Clause 4.6 request.

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

Public Interest:

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

Conclusion:

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

It is considered on balance, that having regard to the particular circumstances the proposal is compatible with surrounding development and character and will not cause any unreasonable amenity impact, the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

6.2 Earthworks

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

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

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

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

Comment: The proposal does not involve an extent of earthworks that is likely to 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 does not involve an extent or depth of excavation that would unreasonably limit the likely future use or redevelopment of the land.

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

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

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

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

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

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

(f) the likelihood of disturbing relics

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

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

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

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

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

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

6.8 Landslide risk

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

- (a) matches the underlying geotechnical conditions of the land, and*
- (b) is restricted on unsuitable land, and*
- (c) does not endanger life or property.*

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

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

Comment:

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

Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and that—

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

Comment:

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

6.9 Foreshore scenic protection area

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

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

Comment:

The proposal will not have any unreasonable impact upon the harbour or foreshore. The works proposed are generally consistent with that of other residential development within the foreshore area. The proposal is also well separated from the foreshore and the scale of development is commensurate with what can be reasonably expected given the planning controls and established character.

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

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 720sqm	Requirement	Proposed	% Variation*	Complies
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4.1.2.1 Wall Height	East: 6.9m (based on gradient 1:15)	6.6m	N/A	Yes
	West: 8m (based on gradient 1:4+)	8.3m	3.75	No (see comments)
4.1.2.2 Number of Storeys	2	3	50	No (see comments)
4.1.2.3 Roof Height	Height: 2.5m	600mm	N/A	Yes
4.1.4.1 Street Front Setbacks	6m	6m	N/A	Yes
	Prevailing building line	Inconsistent with prevailing		No (see comments)
4.1.4.2 Side Setbacks and Secondary Street Frontages	1.9m-2.3m (based on wall height)	1.2m-1.3m	N/A	No (see comments)
	Windows: 3m	1.2m-1.3m	N/A	No (see comments)
	Secondary street frontage: 1.76m- 2.76m	0.9m-3m	N/A	No (see comments)
4.1.4.4 Rear Setbacks	8m	13.8m	N/A	Yes
		1.7m-6.9m (fire pit/terrace)		
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area (432sqm)	60.4% (435sqm)	N/A	Yes
	Open space above ground 25% of total open space (108.75sqm)	41% (179.4sqm)	43	No (see comments)
4.1.5.2 Landscaped Area	Landscaped area 40% of open space (174sqm)	57.3% (249.3sqm)	N/A	Yes
	3 native trees	2 trees	N/A	No (see comments)
4.1.5.3 Private Open Space	18sqm	80sqm	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	6.8m (37%)	N/A	No (see comments)
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	0.8m-1.5m	N/A	No (see comments)
	1m curtilage/1.5m water side/rear setback	1.3m (curtilage)	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	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
4.1.9 Swimming Pools, Spas and Water Features	Yes	Yes
4.1.10 Fencing	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

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 proposal involves a suitable physical separation from the neighbouring development, and provides a design that orientates away from the neighbouring development including narrow windows at the ground level and no windows at the upper level for the eastern elevation.

Conditions are also imposed to assist in minimising noise impacts from Mechanical equipment related to the swimming pool.

As such, there is an appropriate minimisation in the loss of privacy to adjacent and nearby development.

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

Comment:

The proposal provides a design that both suitably minimises privacy loss and provides suitable access to light and air. The substantial rear setback provides a large open corridor for views, light and air, and also provides a terrace area that is well separated from neighbours.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal involves openings, decks and balconies at each street frontage to provide appropriate opportunity for passive surveillance and awareness of neighbourhood security.

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.

3.4.3 Maintenance of Views

Merit consideration:

The development is considered against the Objectives of the Control:

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

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

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

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

40 Castle Circuit

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

Comment:

The site has views toward middle harbour over the side boundary and predominantly to the rear of the existing dwelling at 42 Castle Circuit. There are also some less extensive views toward the over the front of 42 Castle Circuit.

There are also distant views available of the city.



Photo 1: View from living area in 40 Castle Circuit (amended height poles reflecting amended plans)

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:

The subdivision pattern and angle of the view provides a situation in which the view is predominantly over the side boundary. Views can be obtained from various locations along the side of the site (inside and outside the dwelling) from sitting and standing position.

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

Comment:

Through the submittal of amended plans, the rear section of the dwelling (shown above with height poles) was lowered by one metre. This resulted in a proposed design that maintains a expansive water view over proposed built form from a standing position. There will be some impact to views, particuallry from a seated position. Views to the city will generally be maintained.

As such, the overall impact is assessed as being moderate.

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:

Despite a moderate impact occurring, the element rear element of the dwelling is single storey in nature and fully complies with all planning controls. Further to this, amended plans lowered the height of the building by a metre to provide a skilful design that allows a large open view corridor to be satisfactorily maintained.

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

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

Description of non-compliance

At the western section of the proposed dwelling, the design is in part 3 storeys. This does not comply with the numerical control (2 storeys).

It is noted that much of the understorey is defined as a basement, and meets the following exception under this clause:

"to allow an additional understorey where that storey satisfies the meaning of basements in the LEP."

Merit consideration

There are no underlying objectives of this control under which to consider the merits of this variation. This control instead relies on the objectives for the Height of Buildings at clause 4.3 in the Manly LEP 2013. The proposal has been assessed against these objectives under clause 4.6, above in this report. In summary, it has been found the height, bulk and scale of the building fits well with the natural topography, and will not cause any unreasonable visual or amenity impact.

4.1.3 Floor Space Ratio (FSR)

Clause 4.1.3.1 provides for exceptions to FSR for undersized lots is relevant and the control is outlined below:

DCP FSR Control (for Area I)	Requirement	Proposed	Variation	Complies
Calculation of FSR based on 750sqm lot size/ site area	0.4:1 (300sqm)	0.42:1 (316.4sqm)	5.4%	No

This control does not override the Manly LEP development standard and a full assessment can be found under the Clause 4.6 assessment in this report. However, the lesser extent of the percentage variation under this clause provides further context.

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

Description of non-compliance

The proposal involves a front setback that complies with the numerical control of 6m but does not comply with the 'prevailing building line' control.

The proposal involves varied side setbacks 1.2m-1.3m. This does not comply with the numerical control which varies from 1.9m-2.3m. The proposal also does not comply with the 3m setback control for side windows.

The proposal involves a varied setback to the secondary street frontage 0.9m-3m. Parts of the balcony do not comply with the numerical control 1.76m-2.76m, however, the walls to the western elevation fully comply with the control.

The rear setback to the dwelling is 13.8m which complies with the control. The rear setback to the fire pit/terrace (1.7m-6.9m) does not comply with the control.

Merit consideration

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

Objective 1) To 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:

Despite the proposed dwelling being set further forward than the neighbouring dwellings, the design provides appropriate opportunity for landscaping within the frontage, and provides a well articulated form for the front facade. This ensures the proposal provides for appropriate spatial proportions and suitable landscape character.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposal provides suitable design for privacy with suitable physical separation, screening and general orientation of the dwelling away from neighbouring living spaces. The proposal also complies with the requirements Sunlight Access under the DCP and provides a large open corridors to the rear of development to assist in the provision of equitable amenity.

The proposal would also have no unreasonable impact on views, traffic or streetscape character.

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

Comment:

The siting of the dwelling toward the front of the site allows for a large view corridor to be maintained at the rear of the site. The siting also allows for suitable physical separation from the rear neighbour, provide openness at the rear to minimise presentation of built form from the west and south. On merit, the siting and design of the building achieves a good outcome.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposal complies with the numerical requirement for landscaped area and provides various planting across the site. This allows for an appropriate balance between natural features and built form.

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

Comment:

Not applicable.

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

4.1.5 Open Space and Landscaping

Description of non-compliance

The proposal involves a total open space above ground that is 41% of the total open space (179.4sqm). This does not comply with the control (25% of total open space).

The proposal also provides 2 new trees (in excess of 5 metres). The control requires 3 trees.

The proposal fully complies with the total open space and landscaped area controls.

Merit Consideration

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

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

Comment:

The proposal provides for a compliant landscaped area under the Manly DCP. This provides suitable opportunity for landscape features and vegetation. Despite not providing 3 trees (over 5m), the proposal provides various lower level planting to surround the site. This is characteristic of the area, and effectively retains and augment landscape features 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 proposal provides for a compliant landscaped area under the Manly DCP, and involves vegetation to surround the front of the site. The proposal ensures significant vegetation is retained, and also has vegetation within the street reserve.

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

Comment:

The proposal provides suitable design for privacy with suitable physical separation, screening and general orientation of the dwelling away from neighbouring living spaces. The proposal also complies with the requirements Sunlight Access under the DCP and provides a large open corridors to the rear of development to assist in the provision of equitable amenity.

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

Comment:

The proposal provides compliant landscaped area and subject to conditions which remain on the consent for stormwater, this objective is satisfied.

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

Comment:

The proposal provides no unreasonable opportunity for the spread of weeds.

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

Comment:

The proposal provides compliant landscaped area under the Manly DCP and provides a large open corridor at the rear of the site. This maximises potential for wildlife in this circumstance.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent 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 not supported, in this particular circumstance.

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

Description of non-compliance

The proposal involves a garage with a width of 6.8m. This does not comply with the numerical control of 6.2m.

Merit consideration:

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

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

Comment:

The proposal involves a garage structure with car parking spaces and access to the dwelling. The structure is also complementary with the built form in the street. As such, this is an adequate form of parking for 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 and,
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 provides 3 spaces which complies with the requirement (2 spaces) under the Manly DCP. An exception to the requirement in the width of the car parking space is warranted in this circumstance as the form will be partly underground and is also screened by and integrated with landscaping in the frontage.

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

Comment:

The proposed excavation is limited to a reasonable extent (generally less than a storey). Further, the application and supported by a Geotechnical report, and Council's Engineer is satisfied with the design, subject to conditions.

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

Comment:

There is only one crossing proposed and it provides adequate width for two car parking spaces.

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:

In conjunction with the access for parking, the proposal provides landscaped area to the remainder of the frontage to allow appropriate opportunity for planting and vegetation.

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

Comment:

Not applicable.

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

4.1.9 Swimming Pools, Spas and Water Features

Description of non-compliance

The proposal is does not comply with the control which requires swimming pool to be no more than 1m

above ground. The proposed pool varies from being 0.8m-1.5m above ground.

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

Comment:

The proposed pool area is well separated from neighbouring dwellings by virtue of its position within the subdivision pattern and orientation toward the street. A condition has also been imposed to minimise the noise of any pool motor. As such, the design is suitable for visual and aural privacy.

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

Comment:

The pool is located in the rear setback and is well separated from the secondary frontage. This provides a situation in which openness and landscaped presentation to the street is maintained to provide appropriate streetscape character.

Objective 3) To integrate landscaping; and

Comment:

The proposal provides for sections of landscaping to surround the swimming pool and includes a total landscaped area that is well in excess of the numerical control under the DCP. This results in an appropriate integration of landscaping.

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

Comment:

The swimming pool would be capable of being used as an emergency water resource .

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.

4.1.10 Fencing

The proposed fence along the western boundary is in a prominent position well above the height of the road. As such, a condition is imposed to restrict the height of the fence to be no more than 1.5m to minimise visual impact of the fence.

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 \$26,730 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,673,000.

CONCLUSION

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

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

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

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

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

Council is satisfied that the Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify variation of the development standard contained within Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

PLANNING CONCLUSION

The proposal seeks consent for demolition of existing structures and the construction of a new dwelling.

The application has been referred to the Development Determination Panel (DDP) due receiving 5 submissions.

The concerns raised in the objections have been addressed and where appropriate resolved by amended plans and conditions.

Overall, the development is an acceptable design that an acceptable merit outcome and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment.

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

Accordingly Council as the consent authority grant Development Consent to DA2024/0154 for Demolition works and construction of a dwelling house including swimming pool and associated landscaping on land at Lot 23 DP 20458, 42 Castle Circuit, SEAFORTH, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

Approved Plans

Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
A202	C	Site Plan	Ursino Architects	3/12/2024
A203	A	Demolition Plan	Ursino Architects	13/02/2024
A301	C	Driveway Plan	Ursino Architects	3/12/2024
A302	C	Garage Floor Plan	Ursino Architects	3/12/2024
A303	C	Ground Floor Plan	Ursino Architects	3/12/2024
A304	C	First Floor Plan	Ursino Architects	3/12/2024
A305	C	Roof Plan	Ursino Architects	3/12/2024
A306	C	Pool Plan & Section	Ursino Architects	3/12/2024
A401	C	Section AA	Ursino Architects	3/12/2024
A402	C	Section BB	Ursino Architects	3/12/2024
A403	C	Section CC	Ursino Architects	3/12/2024
A404	C	Section FF	Ursino Architects	3/12/2024
A407	C	Section DD	Ursino Architects	3/12/2024
A408	C	Section EE	Ursino Architects	3/12/2024
A501	C	North Elevation	Ursino Architects	3/12/2024
A502	C	West Elevation	Ursino Architects	3/12/2024
A503	C	South Elevation	Ursino Architects	3/12/2024
A504	C	East Elevation	Ursino Architects	3/12/2024
A901	C	Materials and Window Schedules	Ursino Architects	3/12/2024
L01-L02	C	Landscape Plan	Ecodesign	12/12/2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Geotechnical Investigation Report	0	Geo-environmental Engineering	21 January 2024
Bushfire Assessment Report	240503	Building Code and Bushfire Hazard Solutions	29 January 2024

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

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

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

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	28/02/2024

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

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

3. Prescribed Conditions

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

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

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

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

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

Reason: Legislative requirement.

4. General Requirements

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

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).
- (b) Construction certificate plans are to be in accordance with all finished levels identified on approved plans. Notes attached to plans indicating tolerances to levels are not approved.
- (c) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (d) At all times after the submission of the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (e) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (f) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1

per 20 persons.

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

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

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2024

A monetary contribution of \$26,730.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$2,673,000.00.

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 \$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

7. 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 Cates Consulting Engineers, drawing number 23138 C1.00 rev B dated 14.02.2024, 23138 C2.00 rev C dated 11.12.2024, 23138 C3.00 rev C dated 11.12.2024, 23138 C3.01 rev C dated 11.12.2024, 23138 C3.02 rev C dated 11.12.2024, 23138 C4.00 rev C dated 11.12.2024, 23138 C5.00 rev C dated 11.12.2024. 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.

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

The recommendations identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the construction certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

9. **Vehicle Crossings Application**

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing 6 metres wide in accordance with Northern Beaches Council Standard Drawing A4 3330/2 NH in accordance with Section 138 of the Roads Act 1993.

Note, driveways are to be in plain concrete only.

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

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

Reason: To facilitate suitable vehicular access to private property.

10. **Amendments to the approved plans**

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

- The fence along the western boundary is to be reduced to be no more than 1.5m in height at any point (measured from existing ground 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.

11. **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.

12. **Boundary Identification Survey**

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

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

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

13. 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.

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.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

15. 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 : 40 Castle Circuit, Seaforth.

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.

16. **Sediment and Erosion Controls**

For developments that include more than 2500sqm of disturbance:

A Soil and Water Management plan (SWMP), in accordance with section 2.3 of the Blue Book, must be prepared and certified by a suitably qualified professional.

For sites larger than 250sqm and less than 2500sqm of disturbance:

An Erosion and Sediment Control Plan (ESCP) must be prepared by a suitably qualified person in accordance with the following considerations and documents:

- Sites that have slopes exceeding 20% (measured in any direction across the site), and/or where works are within the high-water mark or adjacent to a waterway or watercourses are considered environmentally sensitive areas. These sites require a site-specific ESCP which must be prepared and certified by a suitably qualified professional,
- The guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate – Volume 1, 4th Edition (2004)' (the Blue Book), and
- The 'Guidelines for Erosion and Sediment Control on Building Sites' (Department of Planning, Housing and Infrastructure).

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 area 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,
- Type of erosion control measures to divert and slow run-off around and within the site.

Environmentally sensitive areas (i.e. Sites that have slopes exceeding 20% and/or where works are within the high-water mark or adjacent to a waterway or watercourses) must also consider:

- Identify and mark any environmentally sensitive areas on and immediately next to the site and how you will protect these, including any appropriate buffer zones (for example, marking them out as 'no-go' areas),
- Details on vegetation you will clear, as well as areas of vegetation you will keep (mark no go areas),

- Detail on soil information and location(s) of problem soil types, especially dispersive soils and potential or actual acid sulfate soils,
- Location of any natural waterways that could receive run-off and how these will be protected these from run-off.

For sites smaller than 250sqm or where the disturbance is less than 50sqm:

Run-off and erosion controls must be implemented to prevent soil erosion, water pollution or the discharge of loose sediment on the surrounding land by:

- Diverting uncontaminated run-off around cleared or disturbed areas, and
- Erecting a silt fence and providing any other necessary sediment control measures that will prevent debris escaping into drainage systems, waterways or adjoining properties, and
- Preventing the tracking of sediment by vehicles onto roads, and
- Stockpiling top soil, excavated materials, construction and landscaping supplies and debris within the lot.
- Identifying any environmentally sensitive areas on and immediately next to the site, and demonstrating how these will be protected (for example, by designation as no-go areas).

Details demonstrating compliance with the relevant requirements above are to be submitted to the Certifier, and the measures implemented, prior to the commencement of works.

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

DURING BUILDING WORK

17. Road Reserve

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

Reason: Public safety.

18. Removing, Handling and Disposing of Asbestos

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

- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

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

19. Geotechnical Requirements

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

Reason: To ensure geotechnical risk is mitigated appropriately.

20. **Demolition Works - Asbestos**

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

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

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

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

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

21. **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.

22. **Imported Fill**

Prior to the importation of any landfill material onto the site, a validation report prepared in accordance with the Department of Planning and Environment guidelines, the validation report shall state in an end statement that the fill material is suitable for the proposed use on the land.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the fill being imported to the site.

Reason: To ensure that imported fill is of an acceptable standard.

23. **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.

24. **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

25. **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.

26. **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.

27. **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.

28. **Reinstatement of Kerb**

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

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

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

29. **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 (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.

30. **Swimming Pool Requirements**

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

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

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

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

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

(d) A warning sign stating 'YOUNG CHILDREN SHOULD BE ACTIVELY SUPERVISED WHEN USING THIS POOL' has been installed.

(e) Signage showing resuscitation methods and emergency contact

(f) All signage shall be located in a prominent position within the pool area.

(g) Swimming pools and spas must be registered with the *Division of Local Government*.

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

Reason: To protect human life.

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

31. **Geotechnical Recommendations**

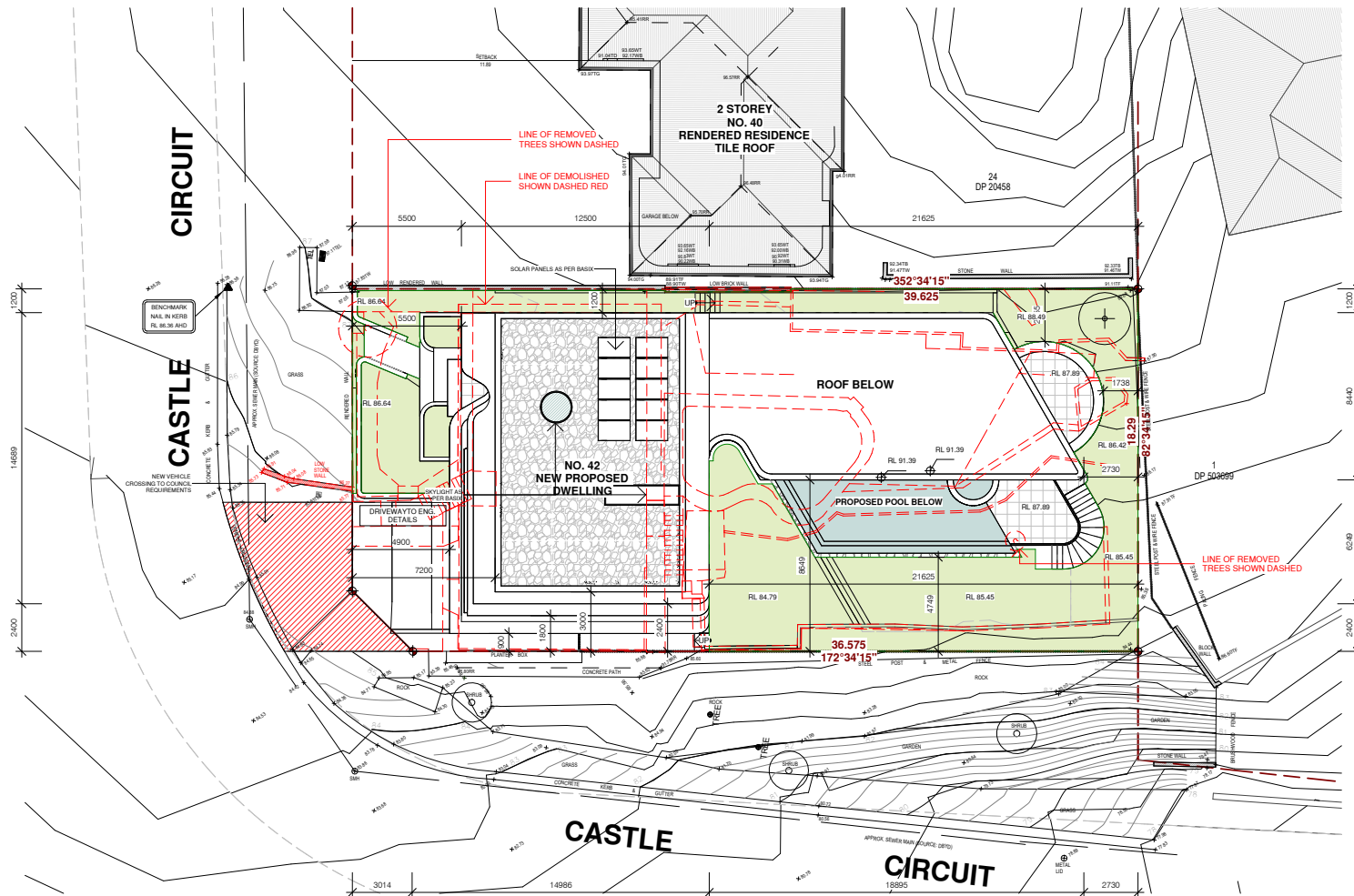
Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

32. **Swimming Pool/Spa Motor Noise**

The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

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



1 SITE PLAN
1 : 200



**URSINO
ARCHITECTS**

Suite 46, 99 Moore St, Leichhardt NSW 2040
(02) 8970 2421 / PO Box 981 Five Dock NSW 2046
www.ursino.com.au

NOMINATED ARCHITECT: Robert Ursino NSW ARB No: 10565

REVISION DESCRIPTION
A DEVELOPMENT APPLICATION - NOT FOR CONSTRUCTION
C RFI 01 - ADDITIONAL INFORMATION

DATE
13.02.2024
03.12.2024

LEGEND & NOTES



GENERAL NOTES ALL DIMENSIONS TO BE VERIFIED BY BUILDER PRIOR TO COMMENCEMENT OF WORKS. // BOUNDARY DIMENSIONS & ALL LEVELS SUBJECT TO CONFIRMATION BY BUILDER. USE FIGURED DIMENSIONS ONLY. DO NOT SCALE FROM PLANS. // ALL WORKS TO COMPLY WITH THE RELEVANT AUSTRALIAN STANDARDS. // ALL WORKS ARE TO BE CARRIED OUT IN ACCORDANCE WITH THE REQUIREMENTS OF THE BUILDING CODE OF AUSTRALIA. // ALL DRAWINGS ARE DESIGN INTENT ONLY AND NOT FOR CONSTRUCTION.
COPYRIGHT THIS DRAWING AND DESIGN IS SUBJECT TO COPYRIGHT AND SHALL NOT BE COPIED IN WHOLE OR IN PART WITHOUT THE WRITTEN PERMISSION FROM URSINO ARCHITECTS.

CLIENT
AVADI REZAIE

SCALE: @ A3
1 : 200
DRAWING TITLE
SITE PLAN

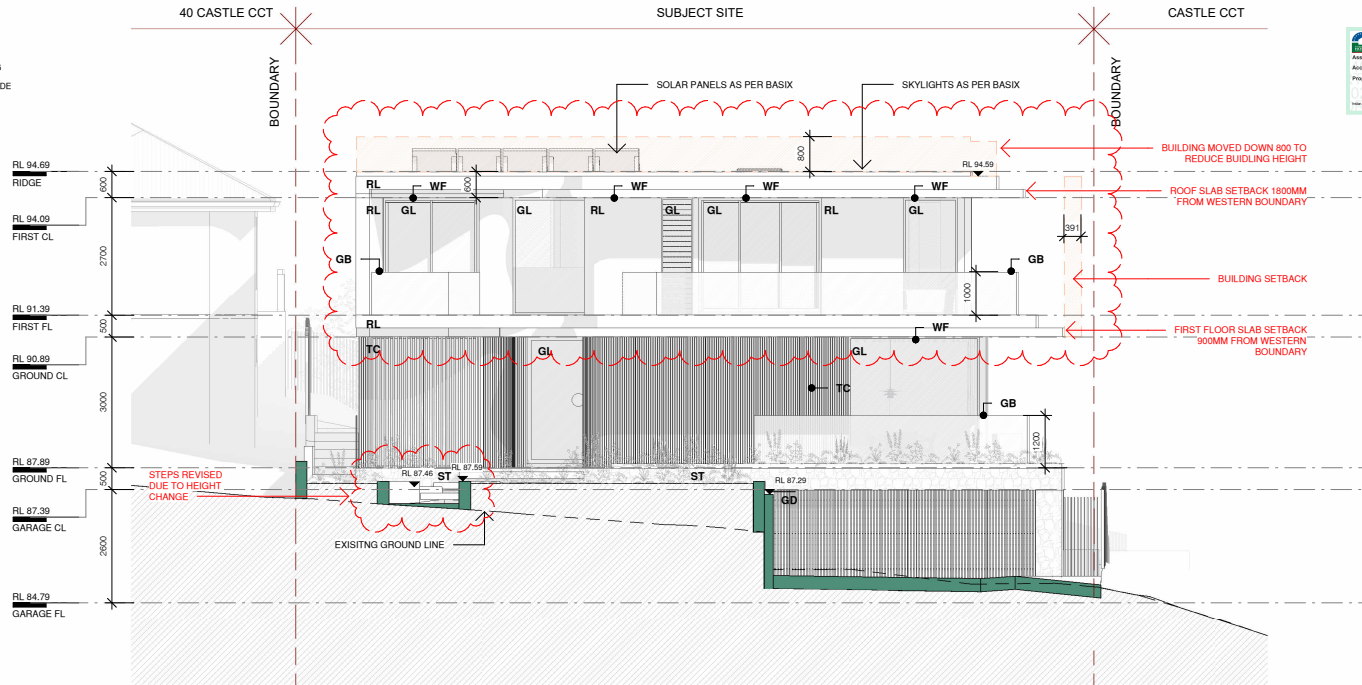
ADDRESS
**42 CASTLE CIRCUIT,
SEAFORTH NSW 2092**

DRAWN BY: **RU**
DESIGNED BY: **RU**
PROJECT NO: **23.07**
REV: **C**
TRUE NORTH
DATE
03.12.2024
DRAWING NO.
A202

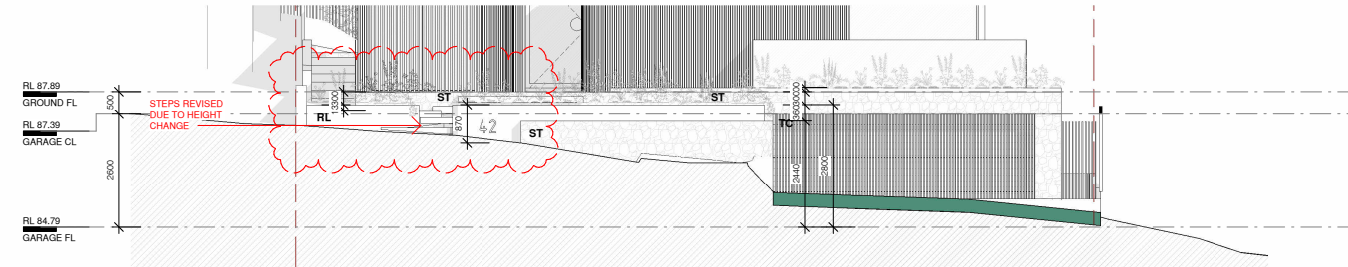
MATERIALS LEGEND
(REFER TO DA901)

RL - RENDER LIGHT
MB - METAL BALUSTRADE
GL - GLASS
GD - GARAGE DOOR
PO - PEBBLE ROOF

ST - STONE CLADDING
WF - WINDOW FRAMES
TC - TIMBER CLADDING
OT - OUTDOOR TILES
GB - GLASS BALUSTRADE



1 NORTH ELEVATION
1 : 100



2 FENCE ELEVATION
1 : 100

RFI 01 - NOT FOR CONSTRUCTION



**URSINO
ARCHITECTS**

Suite 46, 99 Moore St, Leichhardt NSW 2040
(02) 8970 2421 / PO Box 981 Five Dock NSW 2046
www.ursino.com.au

NOMINATED ARCHITECT: Robert Ursino NSW ARB No: 10565

REVISION	DESCRIPTION	DATE
A	DEVELOPMENT APPLICATION - NOT FOR CONSTRUCTION	13.02.2024
C	RFI 01 - ADDITIONAL INFORMATION	03.12.2024

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LEGEND & NOTES	
	EXISTING
	DEMOLISHED
	NEW
	RFI CHANGES

	SMOKE DETECTOR
	WASHING MACHINE
	DRYER
	SKYLIGHT
	NEW WORK SHOWN HATCHED

CLIENT
AJVADI REZAIE

ADDRESS
**42 CASTLE CIRCUIT,
SEAFORTH NSW 2092**

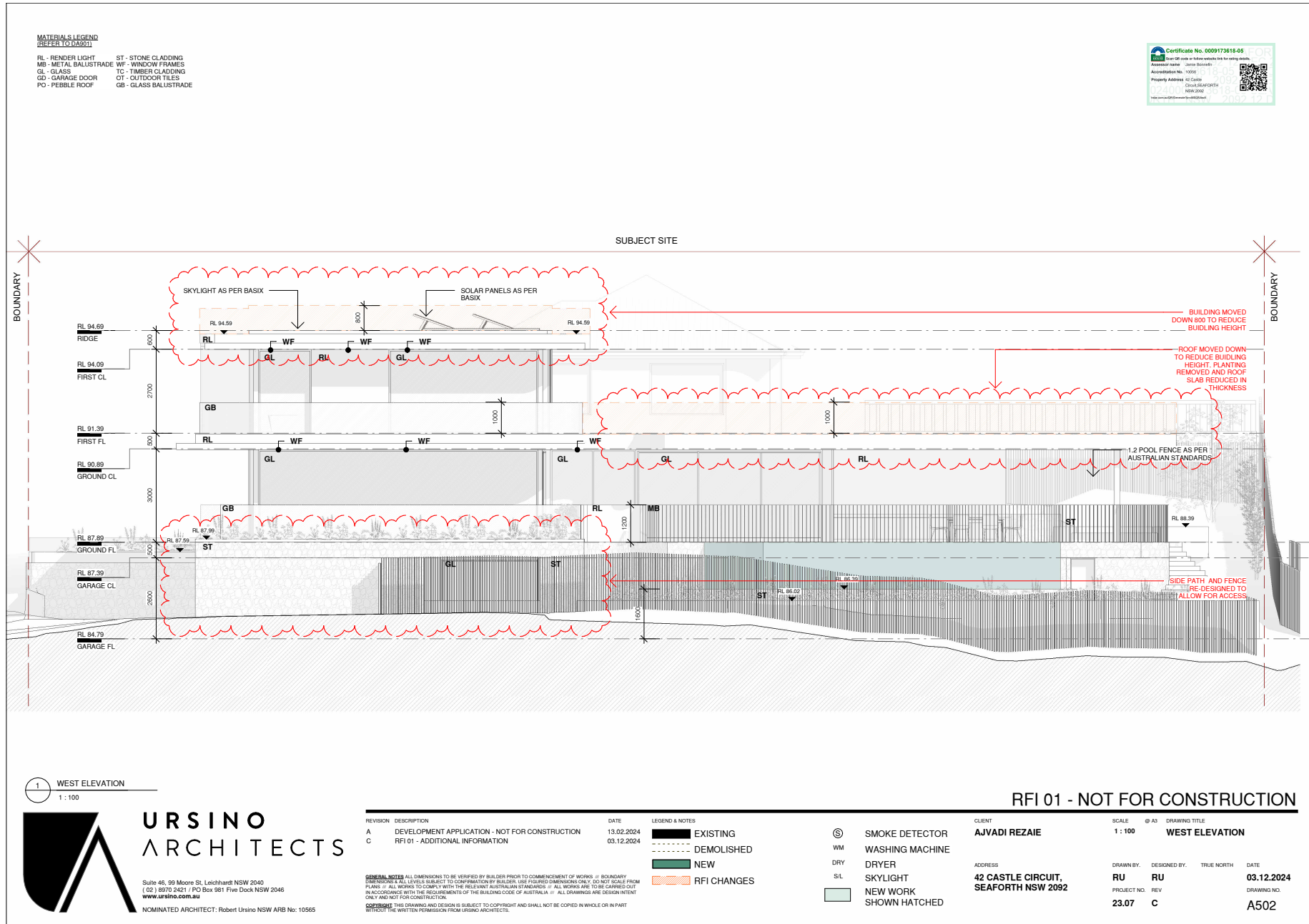
SCALE
1 : 100

DRAWING TITLE
NORTH ELEVATION

DRAWN BY: **RU** DESIGNED BY: **RU** TRUE NORTH: **03.12.2024** DATE

PROJECT NO: **23.07** REV: **C** DRAWING NO: **A501**

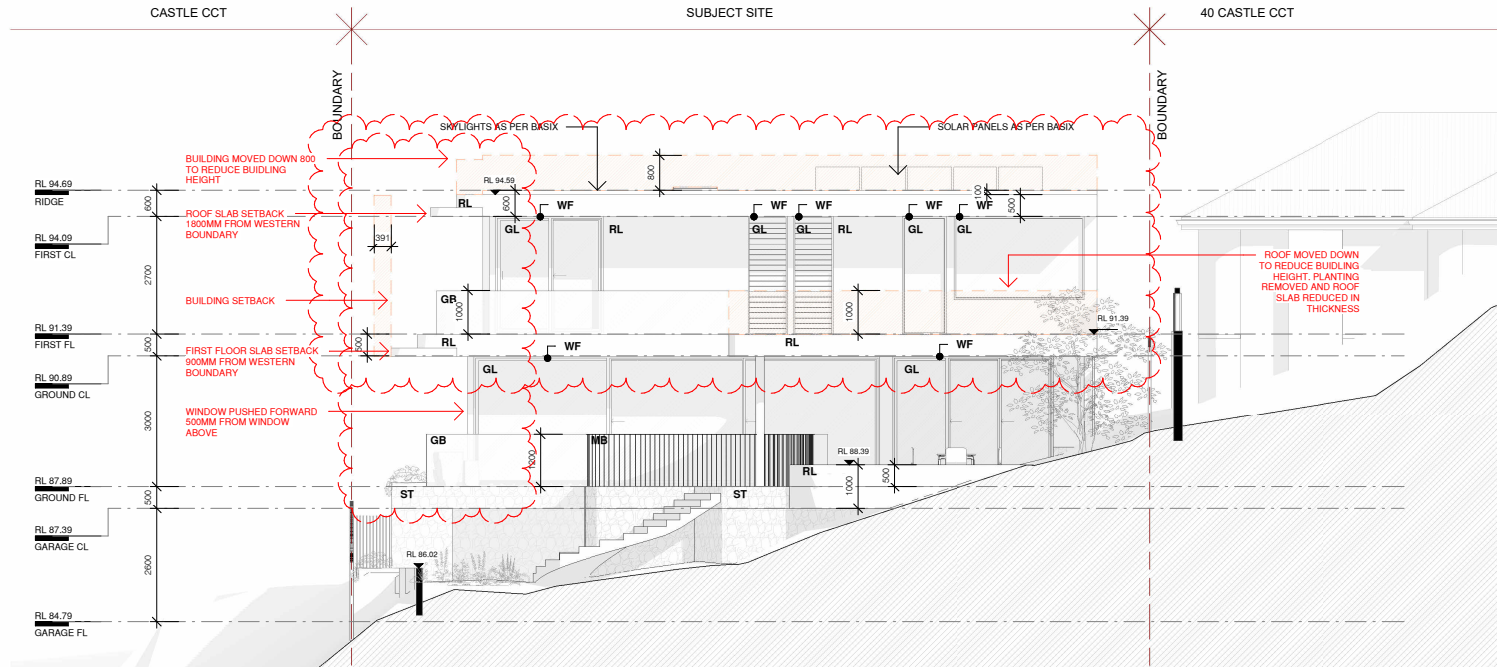




MATERIALS LEGEND
(REFER TO DA901)

RL - RENDER LIGHT
MB - METAL BALUSTRADE
GL - GLASS
GD - GARAGE DOOR
PO - PEBBLE ROOF

ST - STONE CLADDING
WF - WINDOW FRAMES
TG - TIMBER CLADDING
OT - OUTDOOR TILES
GB - GLASS BALUSTRADE



1 SOUTH ELEVATION
1 : 100



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ARCHITECTS**

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NOMINATED ARCHITECT: Robert Ursino NSW ARB No: 10565

REVISION	DESCRIPTION	DATE
A	DEVELOPMENT APPLICATION - NOT FOR CONSTRUCTION	13.02.2024
C	RFI 01 - ADDITIONAL INFORMATION	03.12.2024

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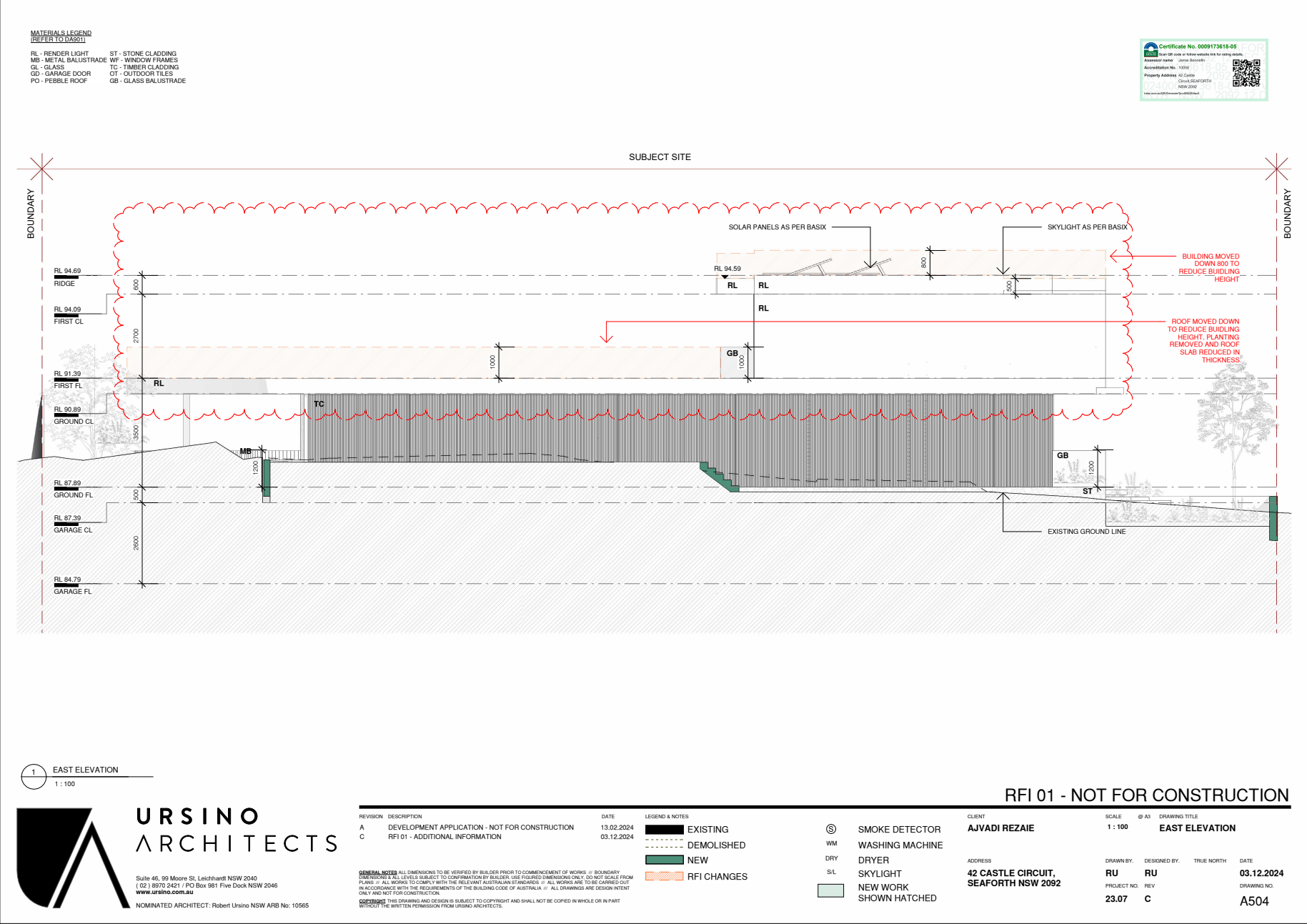
ADDRESS
**42 CASTLE CIRCUIT,
SEAFORTH NSW 2092**

SCALE
1 : 100

DRAWING TITLE
SOUTH ELEVATION

DRAWN BY: **RU** DESIGNED BY: **RU** TRUE NORTH: **03.12.2024** DATE

PROJECT NO: **23.07** REV: **C** DRAWING NO: **A503**



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**Updated clause 4.6 variation request – Height of buildings
Alterations and additions to an existing dwelling house
42 Castle Circuit, Seaforth
10.12.24**

1.0 Introduction

This updated clause 4.6 variation request has been prepared having regard to the Revision C architectural plans prepared by Ursino Architects.

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

2.0 Manly Local Environmental Plan 2013 (“MLEP”)

2.1 Clause 4.3 - Height of buildings

Pursuant to Clause 4.3 of Manly Local Environmental Plan 2013 (MLEP) the height of a building on the subject land is not to exceed 8.5 metres in height. The objectives of this control are as follows:

- (a) *to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*
- (b) *to control the bulk and scale of buildings,*
- (c) *to minimise disruption to the following:*
 - (i) *views to nearby residential development from public spaces (including the harbour and foreshores),*
 - (ii) *views from nearby residential development to public spaces (including the harbour and foreshores),*
 - (iii) *views between public spaces (including the harbour and foreshores),*

- (d) *to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*
- (e) *to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

Building height is defined as follows:

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

Ground level existing is defined as follows:

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

It has been determined that the western edge of the proposed upper-level roof form breaches the building height standard by a maximum of 340mm or 4%. The balance of the development is compliant with the building height standard as depicted in the height blanket diagram below.

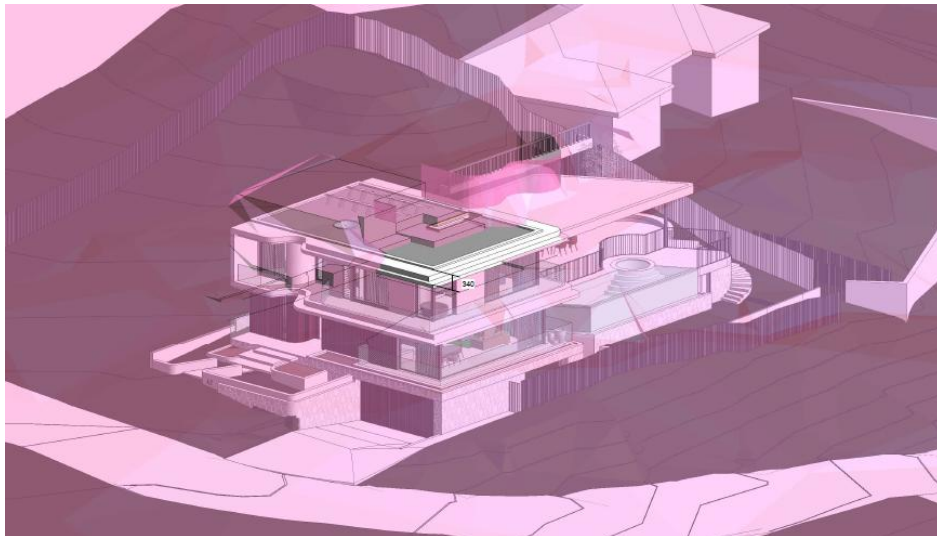


Figure 1 - Plan extract showing extent of building height breaching elements.

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of MLEP provides:

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

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

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

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

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

Clause 4.6(2) of MLEP provides:

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

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

Clause 4.6(3) of MLEP provides:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

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

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

3.0 Relevant Case Law

In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827* continue to apply as follows:

- 17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
- 18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
- 19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*

20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*
22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 4.3 of MLEP a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard

4.0 Request for variation

4.1 Is clause 4.3 of MLEP a development standard?

The definition of "development standard" at clause 1.4 of the EP&A Act includes:

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

Clause 4.3 MLEP prescribes a height provision that relates to certain development. Accordingly, clause 4.3 MLEP is a development standard.

4.2A Clause 4.6(3)(a) – Whether compliance with the development standard is unreasonable or unnecessary

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

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

Consistency with objectives of the height of buildings standard

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

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

Response: The building height and flat roof forms proposed are consistent with the built form characteristics established by surrounding development and development generally within the site's visual catchment.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council (2005) NSW LEC 191* I have formed the considered opinion that most observers would not find the proposed development by virtue of its roof form and building height offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the site's visual catchment. In forming this opinion, I note that a majority of the street facing façade is compliant with the 8.5 metre height standard with the non-compliance predominantly associated with the roof form.

The development achieves this objective as it displays a building height and roof form that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality. The proposal achieves this objective notwithstanding the building height breaching elements.

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

Response: This objective is explanatory of the purpose of the height of building standard. The objective is not an end in itself. The objective is explanatory of the central purpose of the standard. By fixing different upper limits for the height of buildings on land in different areas by means of the building height map the clause does seek to control bulk and scale of buildings.

The establishment of upper limit for height is not the end to be achieved by the clause rather it is a means to achieve the other objectives of the standard that are dealt with above and below (*Baron Corporation Pty Limited –v- the City of Sydney Council [2019] NSWLEC 61 at [48]-[49]*).

In any event, for the reasons outlined in relation to objective (a) above I have formed the considered opinion that the bulk and scale of the building, having regard to the elements of the building exceeding the 8.5 metre height standard, is contextually appropriate with the floor space appropriately distributed across the site to achieve acceptable streetscape and residential amenity outcomes.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council (2005) NSW LEC 191* I have formed the considered opinion that most observers would not find the proposed development by virtue of its non-compliant building height elements offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the site's visual catchment.

The proposal achieves this objective notwithstanding the building height breaching elements.

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

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

Response: Having viewed the subject property from number of vantage points I am satisfied that the building height breaching elements will not disrupt views to nearby residential development from public spaces.

The proposal achieves this objective notwithstanding the building height breaching elements.

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

Response: An analysis of potential view impacts on surrounding having regard to the view sharing principles established by the Land and Environment Court of NSW in the matter of *Tenacity Consulting v Warringah* [2004] NSWLEC 140 is as follows.

First Step - Assessment of views to be affected

An assessment of the view to be affected. The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg 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, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

40 Castle Circuit, Seaforth

The views currently obtained from the ground floor west facing windows are depicted in Figures 2 and 3 and include views across middle harbour towards the land-water interface at Sugar Loaf Point, Sugar Loaf Bay, Peach Tree Bay and district views towards St Leonards Skyline, Norths Sydney Skyline and the CBD Skyline.

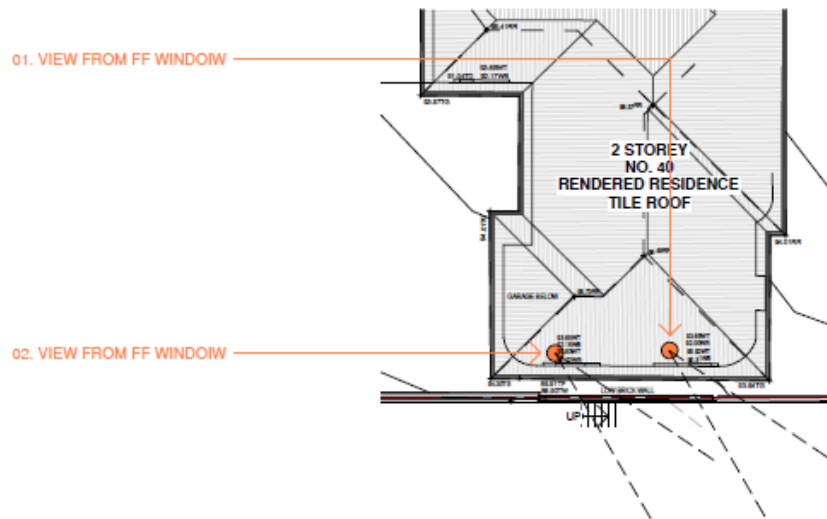


Figure 2 - View point 01 showing available views



Figure 3 - View point 02 showing available views

Second Step - From what part of the 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.

The images available from realestate.com.au conform that view point 01 is a living room and viewpoint 02 the master bedroom.

The views are available from both a seated and standard position with the views obtained directly across the side boundary of the property.

Third Step – Assessment of extent of the 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.

The view montages on plans A803 and A804 depicted the view impact from the single storey building element proposed extract of which are below.

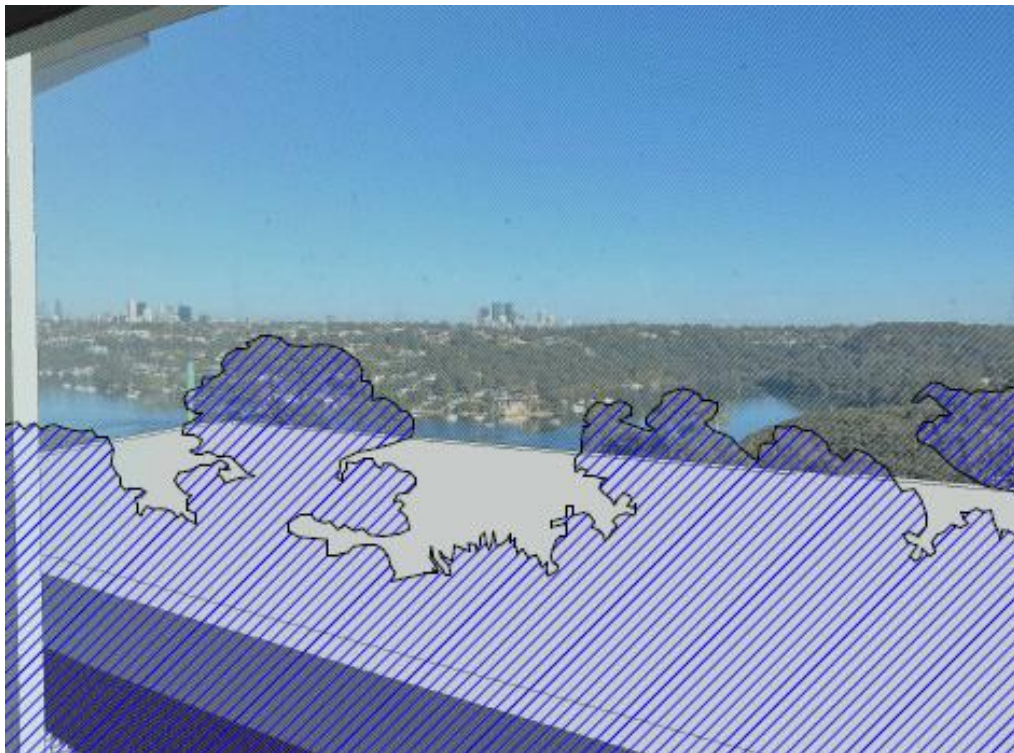


Figure 4 - View impact from view point 01 being the living room window

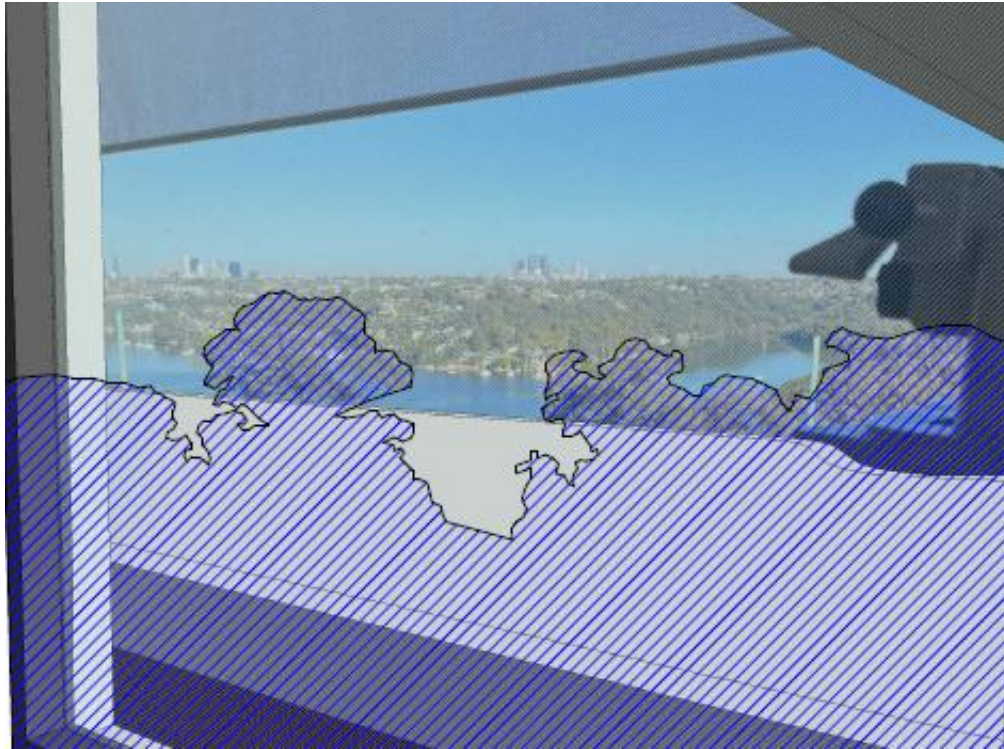


Figure 5 - View impact from view point 02 being the master bedroom window

These images demonstrate all critical view elements are retained being the land water interface with Middle Harbour, Sugar Loaf Point, Sugar Loaf Bay, Peach Tree Bay and district views towards St Leonards Skyline, Norths Sydney Skyline and the CBD Skyline.

Given the totality of retained view including all critical view elements I consider the view impact to be appropriately described as moderate.

Fourth Step – Reasonableness of the proposal

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.

These images also demonstrate that the view impact does not arise from any non-compliant building height element of the development with strict compliance with the building height standard over this portion of the site resulting in devastating view impact. That is, height and floor space has been appropriately distributed to achieve a view sharing outcome.

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: N/A

Having reviewed the detail of the proposal we have formed the considered opinion that a view sharing scenario is maintained between adjoining properties in accordance with the view sharing provisions at clause C1.3 PDCP and the principles established in *Tenacity Consulting Pty Ltd v Warringah Council* [2004] NSWLEC140.

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

Response: The building form and height has been appropriately distributed across the site to minimise disruption of views between public spaces. The proposal achieves this objective notwithstanding the building height breaching elements.

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

Response: The accompanying shadow diagrams demonstrate that the building height breaching portion of the development will not give rise to any unacceptable shadowing impact to the living areas of private open space areas of 40 Castle Circuit between 9am and approximately 2pm on 21st June.

I am also of the opinion that the extent of overshadowing cast by the building height breaching element will not prevent the orderly and economic use and development of any adjacent and nearby properties with skilful design ensuring compliant levels of solar access are able to be achieved should any surrounding properties be redeveloped notwithstanding that the primary living and private open space areas are likely to be orientated to the west to take advantage of available views.

The proposal achieves this objective

The proposal achieves this objective notwithstanding the building height breaching elements.

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

Response: This objective is not applicable.

Having regard to the above, the non-compliant component of the building will achieve the objectives of the standard to at least an equal degree as would be the case with a development that complied with the building height standard. Given the developments consistency with the objectives of the height of buildings standard strict compliance has been found to be both unreasonable and unnecessary under the circumstances.

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

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

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be “environmental planning grounds” by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.*

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

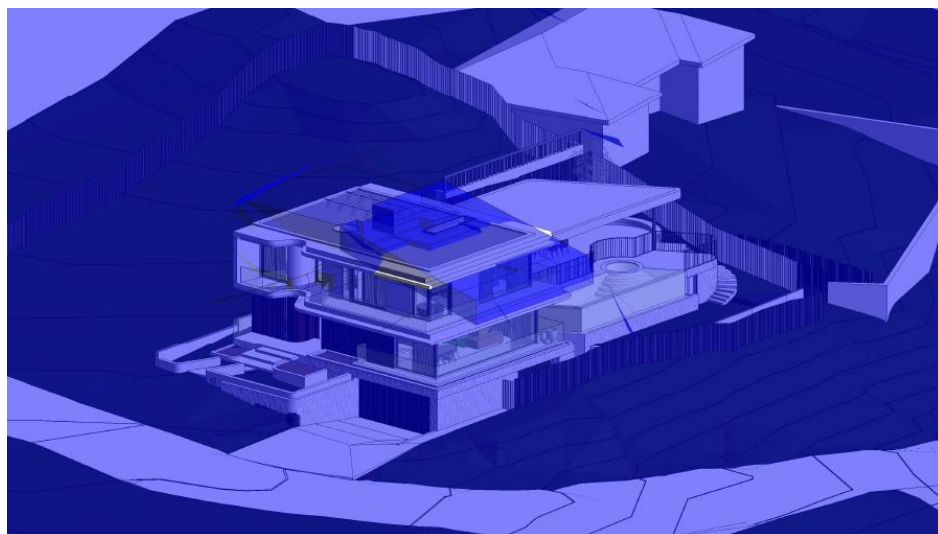
Sufficient environmental planning grounds

Sufficient environmental planning grounds exist to justify the height of buildings variation including the design constraints imposed due to the sites undersized area, irregular geometry, irregular topography and sweeping corner location.

In this regard, I consider the proposal to be of a skilful design which responds appropriately and effectively to the above constraints by appropriately distributing floor space, building mass and building height across the site in a manner which provides for appropriate streetscape and residential amenity outcomes including a view sharing scenario.

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

Further, I note that the prior excavation 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 extent of building height variation would be reduced as depicted in the image below.



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.

Whilst strict compliance could be achieved by reducing ceiling heights and reducing building height, such outcome would not represent good design and would result in an inferior amenity outcome for occupants. Such outcome would thwart compliance with objective 1.3(g) of the Act. Such outcome would also not represent the orderly development of the land given the reduced design quality and amenity afforded should strict compliance be enforced and to that extent would also thwart compliance with objective 1.3(c) of the Act.

Such outcome would also not represent the orderly development of the land given the reduced design quality and amenity afforded should strict compliance be enforced and to that extent would also thwart compliance with objective 1.3(c) of the Act.

The minor nature of the building height breach and paucity of adverse streetscape or residential amenity impacts is also an environmental planning ground in support of the variation sought.

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

5.0 Conclusion

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

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

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

Boston Blyth Fleming Pty Limited



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Town Planners

**Updated clause 4.6 variation request – FSR
Alterations and additions to existing dwelling house
42 Castle Circuit, Seaforth
10.12.24**

1.0 Introduction

This updated clause 4.6 variation request has been prepared having regard to the Revision C architectural plans prepared by Ursino Architects.

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

2.0 Manly Local Environmental Plan 2013 (“MLEP”)

2.1 Clause 4.4 – Floor space ratio

Pursuant to Clause 4.4 MLEP 2013 the maximum FSR for development on the site is 0.4:1 representing a gross floor area of 288m². The stated objectives of this clause are:

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

It has been determined that the proposal provides for 300m² of GFA which equates to an FSR of 0.416:1. This represents a variation of 12m² square metres or 4.1%.

I note that clause 4.1.3 of Manly Development Control Plan 2013 contains FSR exemption provisions applicable to land where the site area is less than the minimum Lot size required on the LEP Lot size map provided the relevant LEP objectives and the provisions of the DCP are satisfied.

The Lot size map identifies the subject site as being in sub zone "U" in which a minimum Lot area of 750m² is required. The site having an area of only 720m² is below the minimum Lot area provision and accordingly the clause 4.1.3 Manly DCP FSR variation provisions apply.

Clause 4.1.3.1 states that the extent of any exception to the LEP FSR development standard pursuant to clause 4.6 of the LEP is to be no greater than the achievable gross floor area for the lot indicated in Figure 30 of the DCP. We confirm that pursuant to Figure 30 the calculation of FSR is to be based on a site area of 750m² with an achievable gross floor area of 300m².

In this regard, the 300m² of gross floor area proposed, representing an FSR of 0.4:1 (based on 750m²), is compliant with the maximum prescribed gross floor area of 300m² and as such complies with the DCP variation provision. We note that such provision contains the following note:

Note: FSR is a development standard contained in the LEP and LEP objectives at clause 4.4(1) apply. In particular, Objectives in this plan support the purposes of the LEP in relation to maintaining appropriate visual relationships between new development and the existing character and landscape of an area as follows:

- Objective 1) To ensure the scale of development does not obscure important landscape features.*
- Objective 2) To minimise disruption to views to adjacent and nearby development.*
- Objective 3) To allow adequate sunlight to penetrate both the private open spaces within the development site and private open spaces and windows to the living spaces of adjacent residential development.*

As the proposed GFA/ FSR complies with clause 4.1.3.1 MDCP numerical provision it is also "deemed to comply" with the associated objectives as outlined which, if complied with, demonstrate the maintenance of an *appropriate visual relationships between new development and the existing character and landscape of an area.*

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of MLEP provides:

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

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

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

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

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

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

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

Clause 4.6(2) of MLEP provides:

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

This clause applies to the clause 4.4 Floor Space Ratio Development Standard.

Clause 4.6(3) of MLEP provides:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

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

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

3.0 Relevant Case Law

In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 continue to apply as follows:

- 17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
- 18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
- 19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*

20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51].*

The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.

22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 4.4 of MLEP a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard

4.0 Request for variation

4.1 Is clause 4.4 of MLEP a development standard?

The definition of “development standard” at clause 1.4 of the EP&A Act includes:

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

Clause 4.4 MLEP prescribes a floor space height provision which seeks to limit the bulk, scale and density of the development. Accordingly, clause 4.4 MLEP is a development standard.

4.2 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.

Consistency with objectives of the floor space ratio standard

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

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

Response: This objective relates to streetscape character and in this regard the proposal presents a predominantly 2 storey stepped building height to Castle Circuit with the stepped building form acknowledging (consistent with) the topographic landscape of the land which falls away towards its western boundary.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191, I have formed the considered opinion that most observers would not find the bulk and scale of the proposed development, as viewed from Bligh Crescent, to be offensive, jarring or unsympathetic in a streetscape context. In this regard, I rely on the plan extract over page.



Figure 1 – Plan extract of proposed development as viewed from Castle Circuit

This objective is satisfied, notwithstanding the non-compliant FSR proposed, as the bulk and scale of development is consistent with the existing and desired streetscape character.

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

Response: Having regard to clause 4.1.3.1 Manly DCP FSR provisions, which inform the 300m² of gross floor area proposed, representing an FSR of 0.4:1 (based on 750m²), is compliant with the maximum prescribed gross floor area of 300m² and as such complies with the DCP variation provision applicable to undersized allotments. I note that Objective 1 of the DCP provision, which relates to establishing building density and bulk, as reflected by FSR, in relation to site area (undersized allotments) is similar to this LEP objective namely:

- Objective 1) To ensure the scale of development does not obscure important landscape features.*

As previously indicated the proposed FSR complies with the DCP numerical FSR control applicable to undersized allotments and is therefore deemed to comply with this objective.

That said, neither the LEP or DCP identify and important landscape or townscape features either on or within proximity of the subject site. My own observations did not identify and landscape or townscape features that I would consider important in terms of their visual significance.

I am satisfied that the proposal, notwithstanding the FSR non-compliance, achieves this objective as the building density and bulk, in relation to a site area, satisfies Objective 1 of the clause 4.1.3.1 DCP provision applicable to undersized allotments, with the development not obscuring any important landscape and townscape features.

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

Response: This objective is the same as the primary purpose/ objective outlined at clause 4.1.3 of the DCP as confirmed in the note such provision namely:

Note: FSR is a development standard contained in the LEP and LEP objectives at clause 4.4(1) apply. In particular, Objectives in this plan support the purposes of the LEP in relation to maintaining appropriate visual relationships between new development and the existing character and landscape of an area as follows:

Objective 1) To ensure the scale of development does not obscure important landscape features.

Objective 2) To minimise disruption to views to adjacent and nearby development.

Objective 3) To allow adequate sunlight to penetrate both the private open spaces within the development site and private open spaces and windows to the living spaces of adjacent residential development.

As the proposed GFA/ FSR complies with clause 4.1.3.1 MDCP numerical provision it is also “deemed to comply” with the associated objectives as outlined which, if complied with, demonstrate the maintenance of an *appropriate visual relationships between new development and the existing character and landscape of an area.*

That said, it has previously been determined that the proposal achieves objective (a) of the clause 4.4 MLEP FSR standard namely to *ensure the bulk and scale of development is consistent with the existing and desired streetscape character.* Accordingly, I am satisfied that the development, notwithstanding the FSR non-compliance, maintains an appropriate visual relationship between new development and the existing built form character of the area.

In relation to landscape character, the application does not require the removal of any significant trees or vegetation with a building footprint maintained which is compliant with the landscaped area MDCP control. The building will sit within a landscaped setting. The application is accompanied by a schedule of materials and finishes which will enable the development to blend into the vegetated escarpment which forms and backdrop to the site. An appropriate visual relationship between new development and the existing landscape of the area is maintained.

I am satisfied that the development, notwithstanding its FSR non-compliance, achieves the objective as it maintains an appropriate visual relationship between new development and the existing character and landscape of the area.

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

Response: In responding to this objective. I have adopted views, privacy, solar access and visual amenity as environmental factors which contribute to the use and enjoyment of adjoining public and private land.

Views

An analysis of potential view impacts on surrounding having regard to the view sharing principles established by the Land and Environment Court of NSW in the matter of *Tenacity Consulting v Warringah* [2004] NSWLEC 140 is as follows.

First Step - Assessment of views to be affected

An assessment of the view to be affected. The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg 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, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

40 Castle Circuit, Seaforth

The views currently obtained from the ground floor west facing windows are depicted in Figures 2 and 3 and include views across middle harbour towards the land-water interface at Sugar Loaf Point, Sugar Loaf Bay, Peach Tree Bay and district views towards St Leonards Skyline, Norths Sydney Skyline and the CBD Skyline.

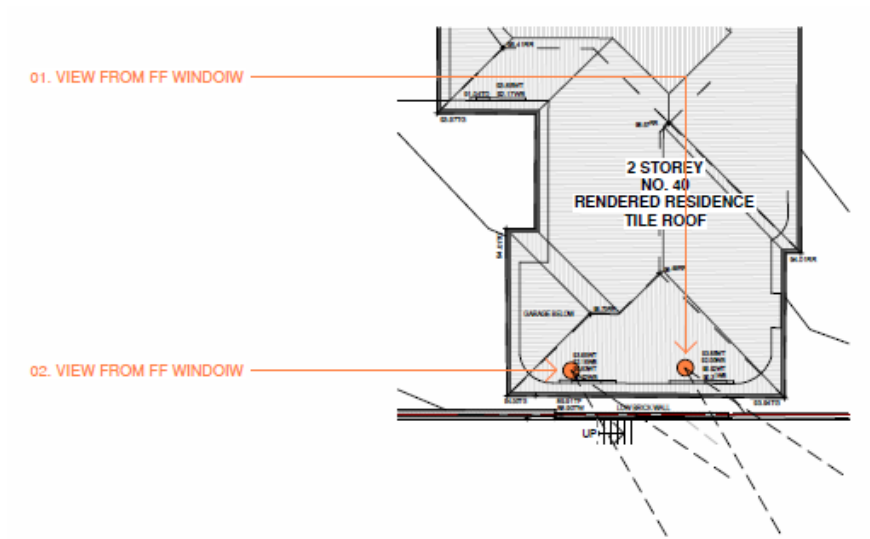


Figure 2 - View point 01 showing available views



Figure 3 - View point 02 showing available views

Second Step - From what part of the 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.

The images available from realestate.com.au conform that view point 01 is a living room and viewpoint 02 the master bedroom.

The views are available from both a seated and standard position with the views obtained directly across the side boundary of the property.

Third Step – Assessment of extent of the 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.

The view montages on plans A803 and A804 depicted the view impact from the single storey building element proposed extract of which are below.

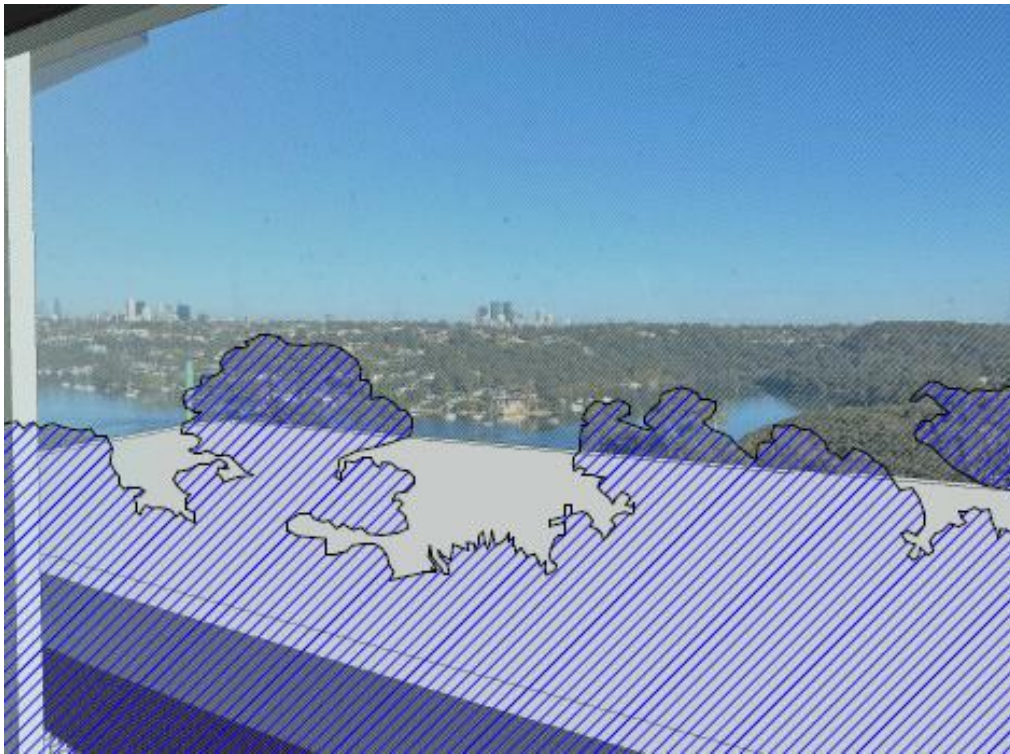


Figure 4 - View impact from view point 01 being the living room window

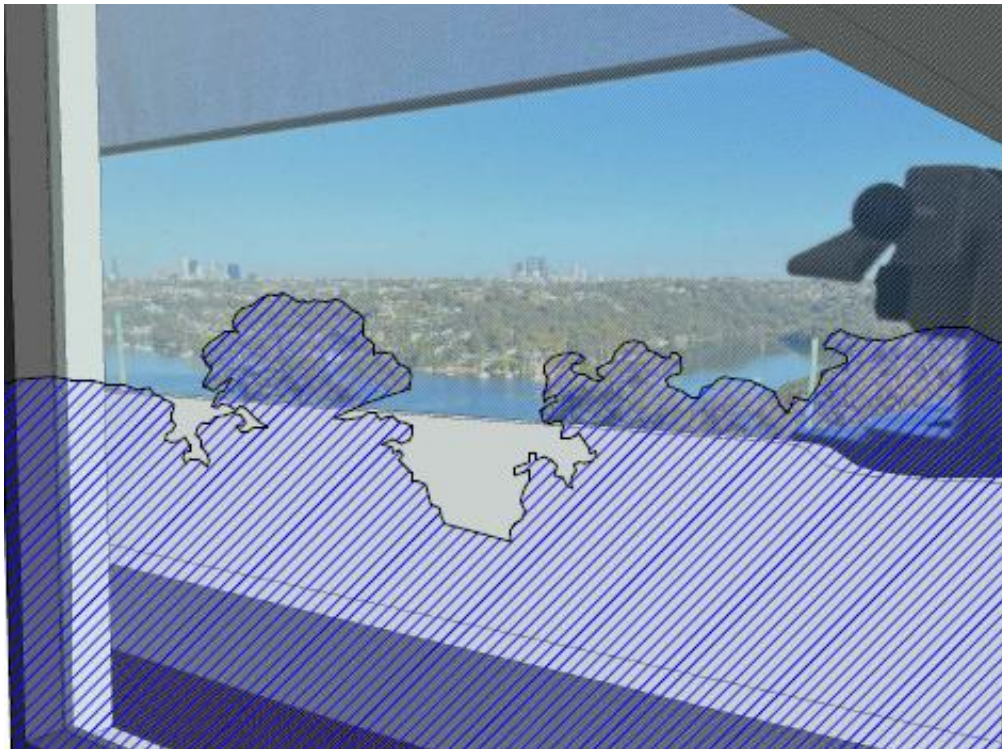


Figure 5 - View impact from view point 02 being the master bedroom window

These images demonstrate all critical view elements are retained being the land water interface with Middle Harbour, Sugar Loaf Point, Sugar Loaf Bay, Peach Tree Bay and district views towards St Leonards Skyline, Norths Sydney Skyline and the CBD Skyline.

Given the totality of retained view including all critical view elements I consider the view impact to be appropriately described as moderate.

Fourth Step – Reasonableness of the proposal

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.

These images also demonstrate that the view impact does not arise from any non-compliant building height element of the development with strict compliance with the building height standard over this portion of the site resulting in devastating view impact. That is, height and floor space has been appropriately distributed to achieve a view sharing outcome.

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: N/A

Having reviewed the detail of the proposal we have formed the considered opinion that a view sharing scenario is maintained between adjoining properties in accordance with the view sharing provisions at clause C1.3 PDGP and the principles established in *Tenacity Consulting Pty Ltd v Warringah Council* [2004] NSWLEC140.

Notwithstanding the non-compliant FSR, the proposal achieves the objective of minimising view impact as demonstrated by the view sharing outcome achieved.

Privacy

Having regard to clause 4.1.3.1 Manly DCP FSR provisions, which inform the 300m² of gross floor area proposed, representing an FSR of 0.4:1 (based on 750m²), is compliant with the maximum prescribed gross floor area of 300m² and as such complies with the DCP variation provision applicable to undersized allotments. We note that the privacy objectives at clause 3.4.2 are also referenced in relation to these provisions namely:

See also objectives for privacy at paragraph 3.4.2 of this plan.

3.4.2 Privacy and Security

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

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

As previously indicated, the proposed FSR complies with the DCP numerical FSR control applicable to undersized allotments and is therefore deemed to comply with the clause 3.4.2 privacy objectives to the extent that it can be demonstrated that the development *minimises loss of privacy to adjacent and nearby development*.

Notwithstanding, I note that all surrounding properties are orientated to take advantage of views with such outcome resulting in a trade-off between absolute privacy and views. That is, a significant number of properties obtain views across other properties where direct line of sight is available into living areas and private open spaces.

This is the case for No. 40 Castle Circuit where views are obtained directly across the side boundary shared with the subject property. This significantly compromises the privacy of the subject site. The proposed dwelling house design seeks to orientate principal living and open space areas towards the street and available views and effectively turns its back on No. 40 Castle Circuit to maintain appropriate visual and aural privacy to this immediately adjoining property.

Given the spatial separation maintained between the balance of surrounding properties, and the primary orientation of living areas to the west towards available views, I am satisfied that the design, although non-compliant with the FSR standard, minimises adverse environmental impacts in terms of privacy and therefore achieves this objective.

Solar access

The accompanying shadow diagrams demonstrate that the building, although non-compliant with the FSR standard, will not give rise to any unacceptable shadowing impact to the existing living room and open space areas of the adjoining residential properties with compliant levels of solar access maintained.

Visual amenity/ building bulk and scale

As indicated in response to objective (a), I have formed the considered opinion that the bulk and scale of the building is contextually appropriate with the floor space appropriately distributed across the site to achieve acceptable streetscape and residential amenity outcomes.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council (2005) NSW LEC 191*, I have formed the considered opinion that most observers would not find the proposed development by virtue of its visual bulk and scale offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the site's visual catchment.

I have formed the considered opinion that the building, notwithstanding the FSR non-compliance, achieves the objective through skilful design that minimises adverse environmental impacts on the use and enjoyment of adjoining land and the public domain.

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

Response: This objective is not applicable.

Having regard to the above, the proposed building form which is non-compliant with the FSR standard will achieve the objectives of the standard to at least an equal degree as would be the case with a development that complied with the FSR standard. Given the developments consistency with the objectives of the FSR standard strict compliance has been found to be both unreasonable and unnecessary under the circumstances.

The non-compliant development, as it relates to FSR, demonstrates consistency with objectives of the FSR standard objectives. Adopting the first option in *Wehbe* strict compliance with the FSR standard has been demonstrated to be unreasonable and unnecessary.

4.3 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 environmental planning grounds

I have formed the opinion that sufficient environmental planning grounds exist to justify the variation including the compatibility of the height, bulk and scale of the development, as reflected by floor space, with the built form characteristics established by adjoining development and development generally within the site's visual catchment.

Further, the variation provisions contained at clause 4.1.3.1 of Manly DCP reflect an acceptance that the FSR standard on undersized allotments does not provide for the orderly and economic use and development of the land and in my opinion represents an abandonment of the FSR standard on undersized allotments. The proposal satisfies such provisions.

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

- The proposal promotes the orderly and economic use and development of land (1.3(c)).
- The development represents good design (1.3(g)).
- The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (1.3(h)).

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

87. *The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment).*

Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

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

5.0 Conclusion

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

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

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

Boston Blyth Fleming Pty Limited



Greg Boston
B Urb & Reg Plan (UNE) MPIA
Director

ITEM 3.3	DA2024/1386 - 19 BEATTY STREET BALGOWLAH HEIGHTS - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
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PURPOSE

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

RECOMMENDATION

- A. That Council as the consent authority, vary the Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to DA2024/1386 for alterations and additions to a dwelling house on land at Lot A DP 362751, 19 Beatty Street BALGOWLAH HEIGHTS, subject to the conditions set out in the Assessment Report.

Reporting manager	Rodney Piggott
TRIM file ref	2025/021531
Attachments	1 Assessment Report 2 Site Plan and Elevations 3 Clause 4.6 - FSR

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/1386
Responsible Officer:	Reeve Cocks
Land to be developed (Address):	Lot A DP 362751, 19 Beatty Street BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Kathy Marie Joyce
Application Lodged:	16/10/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	23/10/2024 to 06/11/2024
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.4 Floor space ratio: 32.5%
Recommendation:	Approval
Estimated Cost of Works:	\$ 175,000.00

EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to a dwelling house including the construction of two ensuites and minor external alterations to meet Basix requirements.

The application is referred to the Development Determination Panel (DDP) due to a variation of Clause 4.4 Floor Space Ratio of 32.5% (increased from the existing non-compliance of 29.3%)

No objections were received during the assessment of this application.

Critical assessment issues included:

- Secondary street frontage setback.
- Floor Space Ratio Non-compliance.
- Final Occupation Certificate granted with works not completed.

The 4.6 request for the non-compliance with FSR standard arises from a 8.51m² increase in floorspace. The existing building has an existing floorspace which is at 0.517:1 where the control requires 0.4:1. The development seeks to increase this to 0.53:1. The additional floorspace does not unreasonably increase the bulk or scale of the building and will have minimal impacts on adjoining sites, the established streetscape character and public amenity.

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

PROPOSED DEVELOPMENT IN DETAIL

The development seeks consent for alterations and additions to a dwelling house.

Specifically the following works:

Lower Ground Floor

- Conversion of existing storage area to ensuite for bedroom 3.

Ground Floor

- Conversion of existing terrace space to ensuite for bedroom 1.

Additional Information

Council requested additional information related to inconsistencies between what is existing on-site and previous approvals. This determination relates only to the works proposed under this application and does not provide retrospective approval to any works completed or not completed under previous approval processes. A Condition of consent has been included to reflect this.

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

SITE DESCRIPTION

Property Description:	Lot A DP 362751 , 19 Beatty Street BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	The subject site consists of one (1) allotment located on the corner of Geddes and Beatty Street Balgowlah. The site is irregular in shape with a frontage of 13.26m along Beatty Street and a depth of 52.285m. The site has a surveyed area of 770.1m². The site is located within the R2 Low Density Residential zone and accommodates an existing two storey dwelling house, in-ground swimming pool, detached double car garage and attached studio. The site is generally flat with a slope from the west of the site to the east, resulting in a total height change across the site of 1.09m (as measured from boundary to boundary on the provided survey) The site provides two large landscaped areas located off of the southern and western elevations of the dwelling house. These landscaped areas are significantly lawn with some garden areas providing space for low lying shrubs and mature trees. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by residential dwellings almost entirely composed of multi storey detached dwelling houses.

Map:



SITE HISTORY

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

Development Application DA 210/2015

Alterations and additions to an existing dwelling house including second floor addition, new first floor front balcony, new doors, windows and internal stairs (Approved 17 December 2015).

Section 455 Modifications Mod2019/0055

Modification of Development Consent DA0210/2015 granted for alterations and additions to a dwelling house (Approved: 20 May 2019).

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.

Section 4.15 Matters for Consideration	Comments
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 the clarification of architectural plans and previous approvals. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (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 of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
NECC (Coast and Catchments)	This application was assessed in consideration of: • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Resilience and Hazards) 2021 (section 2.10, 2.11 & 2.12); • State Environmental Planning Policy (Biodiversity & Conservation) 2021 • Relevant LEP and DCP clauses. SUPPORTED: WITHOUT CONDITIONS Proposed works - Alterations and additions to the dwelling including an ensuite addition over an existing terrace in the southeast elevation 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:

Internal Referral Body	Comments
	On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by House Plans by Design dated 11th September 2024 the DA satisfies requirements under clauses 2.10, 2.11 and 2.12 of the SEPP R&H. As such, it is considered that the application is generally consistent with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021. State Environmental Planning Policy (Biodiversity & Conservation) 2021 Foreshores & Waterways Area The subject site is located within the Sydney Harbour Catchment and is identified as being within the Foreshore and Waterways Area. Hence Part 6.3, Division 3 of the State Environmental Planning Policy (Biodiversity & Conservation) 2021 applies in assessing this DA. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by House Plans by Design dated 11th September 2024 , it is determined that the Planning Principles and Matters for Consideration of the Area have been met. The subject site is located adjacent to the W2 (Environmental Protection) Zone. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by House Plans by Design dated 11th September 2024, it is determined that the objectives and assessment criteria of the zone have been met. Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005 The subject site is located within a foreshore area identified on the map and therefore the DCP applies to the proposed development. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by House Plans by Design

Internal Referral Body	Comments
	dated 11th September 2024 it is determined that the proposed development satisfies the requirements of the DCP. Manly LEP 2013 and Manly DCP Foreshores Scenic Protection Area Management The subject site is also shown to be as "Manly Foreshores Scenic Protection Area" on Council's Foreshores Scenic Protection Area in Manly LEP 2013. As such, Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013 will apply to proposed development on the site. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by House Plans by Design dated 11th September 2024 the DA satisfies requirements under Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013. As such, it is considered that the application is generally consistent with the requirements of the Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013.

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. A1767708 dated 8 October 2024).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

- 1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:
 - a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
 - b) coastal environmental values and natural coastal processes,
 - c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,

- d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
- e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
- f) Aboriginal cultural heritage, practices and places,
- g) the use of the surf zone.

Comment:

It is considered by Council that the proposed development is not likely to have an adverse impact on any items raised in subsection (1) above. The development represents a reasonable and orderly development of the site which has taken into consideration potential impacts on environmental factors.

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

Comment:

Council is satisfied that the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1).

Division 4 Coastal use area

2.11 Development on land within the coastal use area

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

Comment:

It is considered by Council that the development is not likely to result in an adverse impact on items raised in paragraph (a). Council is satisfied that the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a).

Division 5 General

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

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

Comment:

The development is located significantly away from the foreshore (approximately 165 metres from the water) and does not propose to remove, alter or impact threatened flora or valuable site features. Council is satisfied that the development is not likely to increase risk of coastal hazards on the land or other land.

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

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

Comment:

The Northern Beaches Council as of writing this report has two (2) active Coastal Zone Management Plans (CZMP's), CZMP for Bilgola Beach (Mona Vale) and CZMP for Collaroy-Narrabeen Beach and Fishermans Beach 2016. No CZMP's relate to the subject site.

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

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5mm	6.06m	-	Yes
Floor Space Ratio	FSR: 0.4:1	FSR: 0.53:1 (407.03m ²)	32.5%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.40:1
Proposed:	0.53:1
Percentage variation to requirement:	32.5%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.4 - Floor space ratio development standard, has taken into consideration the recent judgement contained within *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.

Clause 4.6 Exceptions to development standards:

(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.

(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 development standard is not expressly excluded from the operation of this clause.

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

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

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

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Secretary has been obtained.

Clause 4.6 (4)(a)(i) (Justification) assessment:

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

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

Comment:

The Applicant's written request has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

(b) that 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.'

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The applicants written request argues, in part:

The development meets the objectives without strict adherence to the controls.

- The proposed addition is consistent with the form and design of the existing dwelling and that of more recent development in the locality.
- The proposed addition is contained within the existing footprint of the dwelling. The location of the addition well behind the Beatty Street frontage means it does not impede views to North Harbour from surrounding dwellings or public domain areas.
- The minor nature of the non-compliant addition maintains the existing visual relationship between the dwelling and surrounding development.
- The non-compliance does not result in any adverse impacts (loss of sunlight; loss of privacy) on the amenity of neighbouring development or adjoining public lands.

Planner Comment

- The proposed ensuite at ground level makes use of an existing space and does not contribute to additional bulk and scale. The first storey ensuite will infill part of the existing terrace/balcony. The first storey ensuite will reduce the capabilities of the terrace/balcony to be used as an entertaining area that is located in close proximity to the boundary and to public spaces. The ensuite will provide additional visual privacy for the site owners by reducing viewing angles into the terrace/balcony and bedrooms from the street.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3) (b).

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

Clause 4.6 (4)(a)(ii) (Public Interest) assessment:

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.4 – 'Floor space ratio' of the MLEP 2013 are:

(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 bulk and scale of the development are considered to be consistent with the existing and desired streetscape character. The development will not result in adverse view impacts, privacy impacts and amenity impacts on adjoining neighbours.

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 development is located generally within the existing building footprint and is considered to be reasonable in bulk and scale in relation to the site area. The development will not obscure any known 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 development is minor in bulk and scale and does not seek to increase the building height or reduce setbacks to boundaries more than what is existing. It is considered that the visual relationship between the new development and existing character and landscape of the area is maintained.

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

Comment:

The development will not have an adverse impact on the use or enjoyment of adjoining land and the public domain. The development is located significantly within the existing building footprint and will not have an adverse environmental impact.

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

Comment:

The development is not located within a local centre and has no impact on local services and employment opportunities.

Zone objectives

The underlying objectives of the R2 Low Density Residential zone are:

The underlying objectives of the R2 Low Density Residential zone:

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

Comment:

It is considered that the development reasonably provides for the housing needs of the community.

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 development provides for additional wet room facilities that meet the day to day needs of the residents.

It is considered that the development satisfies this objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone.

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

Exception to Development Standards conclusion

The submitted written Clause 4.6 variation request is considered to be well founded having regard to the circumstances of the development and it is therefore considered appropriate that in this instance, flexibility in the application of the development standard Clause 4.4 Floor Space Ratio be applied. In this context the proposal meets the Objects of the Environmental Planning and Assessment Act 1979, contained in Section 1.3, having considered the relevant provisions under s.4.15 of the Act. Consequently, the development is considered to be in the public interest, subject to conditions..

Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, and in accordance with correspondence from the Deputy Secretary on 2 November 2021, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Floor space ratio Development Standard associated with a single dwelling house (Class 1 building).

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.

Mainly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 770.1m²	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 Unit per 750m ²	1 Unit per 770.1m ²	-	Yes
	Minimum Dwelling Size: 112m ²	361.6m ²	-	Yes

4.1.2.1 Wall Height	SW: 6.5m (based on gradient 0)	5.4m	-	Yes
	SE:: 6.5m (based on gradient 0)	5.23m	-	Yes
4.1.2.3 Roof Height	Height: 2.5m	0m (roof incorporated into wall height)	-	Yes
	Pitch: maximum 35 degrees	0 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m		-	as existing
4.1.4.2 Side Setbacks and Secondary Street Frontages	1.8m (based on wall height)	1.55m (consistent with street frontage)	13.8%	Yes, on merit
4.1.4.4 Rear Setbacks	8m	corner allotment	-	N/A
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area	65% (500.86m ²)	-	Yes
	Maximum Open space above ground 25% of total open space	22% (111m ²)	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space	49.6% (248.5m ²)	-	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	>18m ²	-	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	-	-	as existing
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	-	-	as existing
	1m curtilage/1.5m water side/rear setback	-	-	as existing
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	-	as existing

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.3.3 Footpath Tree Planting	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	No	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
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

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

Description of compliance

In accordance with the Manly Development Control Plan 4.1.4.2 Side setbacks and secondary street frontages (d) *"For secondary street frontages of corner allotments, the side boundary setback control will apply unless a prevailing building line exists. In such cases the prevailing setback of the neighbouring properties must be used. Architecturally the building must address both streets."*

Merit Consideration

The site is unique within the locality and sets the precedent for the prevailing setback, as it is the only

property that borders the Y intersection of Beatty Street and Geddes Street (see image below). The development matches the existing building setback to Geddes Street being setback a minimum of 1.5m. This setback gradually increases to a maximum of 9 metres moving in an northeastern direction towards the intersection with Beatty Street, and a maximum setback of 5.4m moving in a northwestern direction continuing on Geddes Street. The adjoining property to the northwest 2 Geddes Street has a front setback of approximately 6 metres, and the property opposite the site 24 Fisher Street has a minimum setback to Geddes Street of 3.8m. It is considered that the proposed setback is reasonable given the irregular site and setbacks of neighbouring sites.



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 \$ 875 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 175,000.

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 dwelling house has been referred to the Development Determination Panel (DDP) due to a variation of Clause 4.4 Floor Space Ratio in excess of 10%.

No objections were received during the assessment of this development application.

The critical assessment issues include;

- Secondary street frontage setback.
- Floor Space Ratio non-compliance.
- Final Occupation Certificate granted with works not completed.

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

REASON FOR DETERMINATION

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

RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2024/1386 for Alterations and additions to a dwelling house on land at Lot A DP 362751, 19 Beatty Street, BALGOWLAH HEIGHTS, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

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

Approved Plans			
Plan Number	Revision Number	Plan Title	Drawn By
01	STG 3	Cover Sheet/ Basix Certificate	House Plans by c
02	STG 3	Site Analysis/ Exist SW/ SWMP/ WMP	House Plans by c
03	STG 3	Proposed Site Plan	House Plans by c
05	STG 3	Proposed Ground Floor Plan	House Plans by c
06	STG 3	Proposed Roof	House Plans by c
08	STG 3	Proposed Lower Floor Plan	House Plans by c
09	STG 3	Southwest & Southeast Elevations	House Plans by c
10	STG 3	Northeast & Northwest Elevations	House Plans by c
11	STG 3	Sections	House Plans by c
-	-	Schedule of Colours and Materials	House Plans by c

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document

Basix Certificate	A1767708	House Plans by design	8 October 2024
Waste Management Plan	-	-	Received by Council 10 October 2024
Clause 4.6 Report	-	House Plans by design	12 November 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	31 October 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. **No Approval for Works not completed**

This approval/consent relates only to the new work nominated on the approved consent plans and does not approve or regularise any existing buildings or structures within the property boundaries or within Council's road reserve.

Reason: To ensure works not related to the application are not approved or regularised through this application.

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 sewerred areas or managed on-site in unsewerred 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 \$875.00 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 \$175,000.00.

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.

7. **Security Bond**

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

8. **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.

9. **Compliance with Standards**

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

10. Sediment and Erosion Controls

For developments that include more than 2500sqm of disturbance:

A Soil and Water Management plan (SWMP), in accordance with section 2.3 of the Blue Book, must be prepared and certified by a suitably qualified professional.

For sites larger than 250sqm and less than 2500sqm of disturbance:

An Erosion and Sediment Control Plan (ESCP) must be prepared by a suitably qualified person in accordance with the following considerations and documents:

- Sites that have slopes exceeding 20% (measured in any direction across the site), and/or where works are within the high-water mark or adjacent to a waterway or watercourses are considered environmentally sensitive areas. These sites require a site-specific ESCP which must be prepared and certified by a suitably qualified professional,
- The guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate – Volume 1, 4th Edition (2004)' (the Blue Book), and
- The 'Guidelines for Erosion and Sediment Control on Building Sites' (Department of Planning, Housing and Infrastructure).

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 area 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,
- Type of erosion control measures to divert and slow run-off around and within the site.

Environmentally sensitive areas (i.e. Sites that have slopes exceeding 20% and/or where works are within the high-water mark or adjacent to a waterway or watercourses) must also consider:

- Identify and mark any environmentally sensitive areas on and immediately next to the site and how you will protect these, including any appropriate buffer zones (for example, marking them out as 'no-go' areas),
- Details on vegetation you will clear, as well as areas of vegetation you will keep (mark no go areas),
- Detail on soil information and location(s) of problem soil types, especially dispersive soils and potential or actual acid sulfate soils,
- Location of any natural waterways that could receive run-off and how these will be protected these from run-off.

For sites smaller than 250sqm or where the disturbance is less than 50sqm:

Run-off and erosion controls must be implemented to prevent soil erosion, water pollution or the discharge of loose sediment on the surrounding land by:

- Diverting uncontaminated run-off around cleared or disturbed areas, and
- Erecting a silt fence and providing any other necessary sediment control measures that will prevent debris escaping into drainage systems, waterways or adjoining properties, and
- Preventing the tracking of sediment by vehicles onto roads, and
- Stockpiling top soil, excavated materials, construction and landscaping supplies and debris within the lot.
- Identifying any environmentally sensitive areas on and immediately next to the site, and demonstrating how these will be protected (for example, by designation as no-go areas).

Details demonstrating compliance with the relevant requirements above are to be submitted to the Certifier, and the measures implemented, prior to the commencement of works.

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

DURING BUILDING WORK

11. **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.

12. **Survey Certificate**

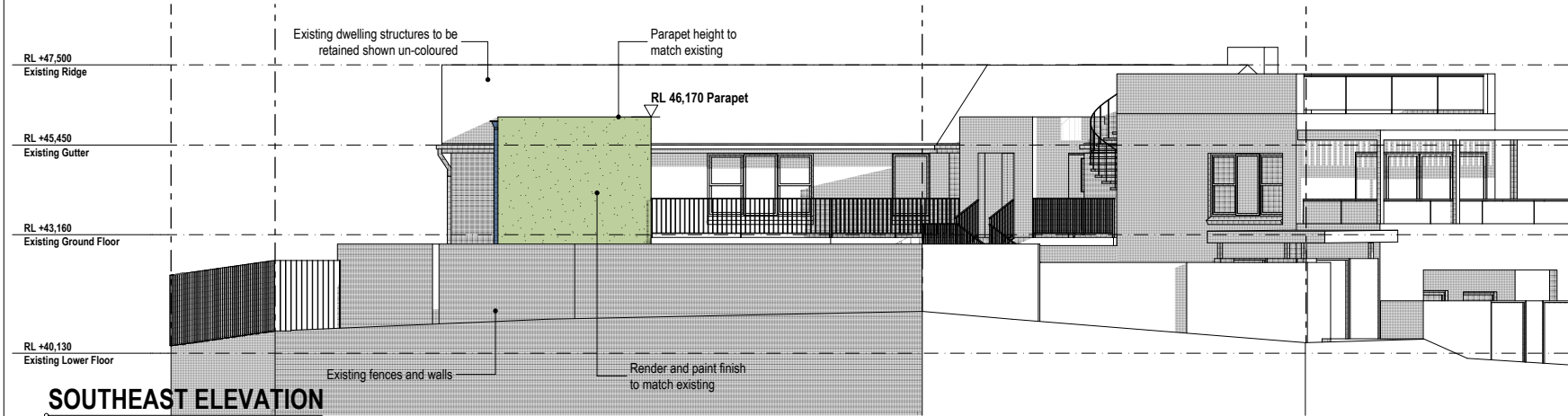
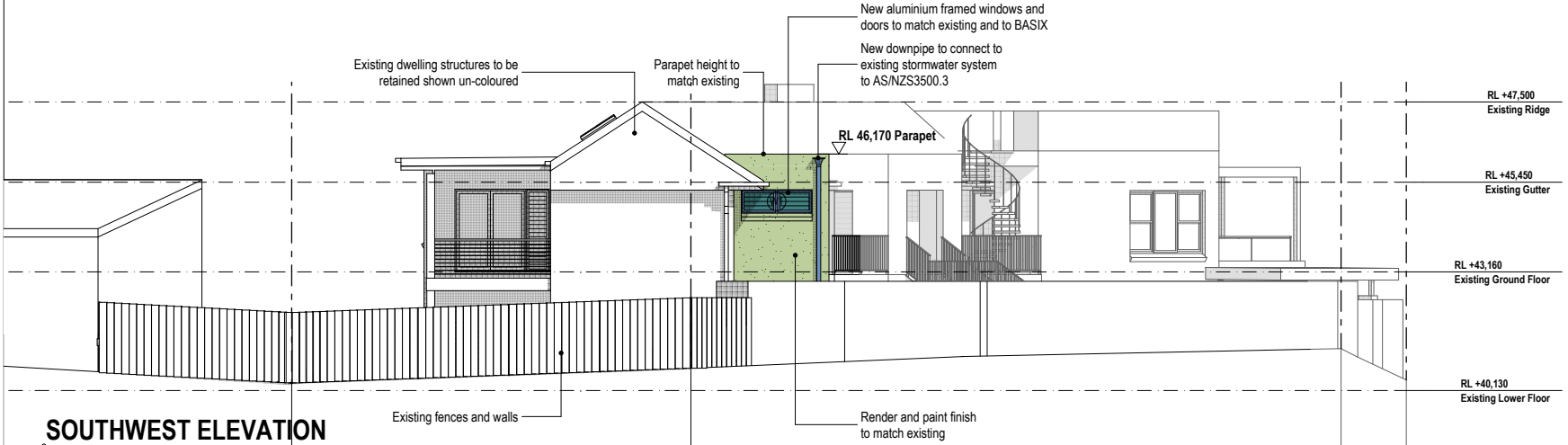
A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all perimeter walls columns and or other structural elements, floor levels and the finished roof/ridge height are in accordance with the approved plans.

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.



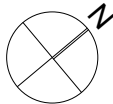
STAGE 3 DA PREPARATION - NOT FOR CONSTRUCTION



bdag
ACCREDITED
BUILDING DESIGNER

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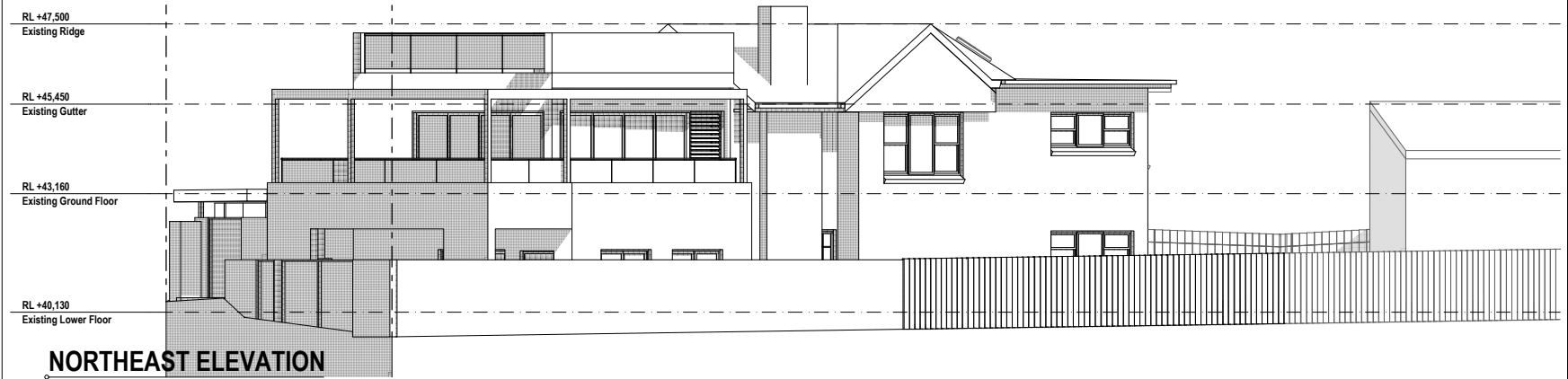
ISSUE	DATE	PURPOSE	DRWN	CHKD
STG 3	12/11/24	DA Updated	NP	NP
STG 3	08/10/24	DA Issue	NP	NP
STG 3	11/09/24	Stage 3 90% Completed	NP	NP
STG 2	08/08/24	Stage 2 Completed	NP	NP
STG 1	05/06/24	Stage 1 Completed	NP	NP

09
SOUTHWEST &
SOUTHEAST
ELEVATIONS 1:100

PROPOSED ALTERATIONS & ADDITIONS at
19 BEATTY STREET BALGOWLAH HEIGHTS NSW 2093
for MR & MRS JOYCE
LOT A, DP 362751
Ref:23P2145
Tuesday, 12 November 2024

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plans
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STAGE 3 DA PREPARATION - NOT FOR CONSTRUCTION





A3

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ISSUE	DATE	PURPOSE	DRWN	CHKD
STG 3	12/11/24	DA Updated	NP	NP
STG 3	08/10/24	DA Issue	NP	NP
STG 3	11/09/24	Stage 3 90% Completed	NP	NP
STG 2	08/08/24	Stage 2 Completed	NP	NP
STG 1	05/06/24	Stage 1 Completed	NP	NP

10

NORTHEAST & NORTHWEST ELEVATIONS 1:100

PROPOSED ALTERATIONS & ADDITIONS at

19 BEATTY STREET BALGOWLAH HEIGHTS NSW 2093

for MR & MRS JOYCE

LOT A, DP 362751

Ref:23P2145

Tuesday, 12 November 2024

house plans by design

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Request to vary Clause 4.4 in Manly LEP 2013

Address: 19 Beatty Street Balgowlah Heights

Date: 12/11/2024

Site and proposed development

1. Describe the site.

The site occupies the corner of Beatty and Geddes Streets. The block is irregular in shape with an overall length of 52.285 metres, overall width of 18.29 metres and is 770.1m² in area. The land has an east-west orientation and falls toward the north.

The property contains a two storey rendered brick dwelling, a detached garage and studio, and an inground spa pool.

The site is accessed by vehicular crossings from both Beatty and Geddes Streets. Mature trees and established gardens surround the property and dwelling.

2. Describe the proposed development.

Alterations and additions to the dwelling including an ensuite addition over an existing terrace in the southeast elevation.

Planning instrument, development standard and proposed variation

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

Manly Local Environmental Plan 2013

4. What is the site's zoning?

R2 Low Density Residential

5. Identify the development standard to be varied.

Clause 4.4 Floor Space Ratio

6. Identify the type of development standard.

Numeric

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

The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map. In this case the maximum FSR is 0.4:1, or 308.04m².

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

The total floor area of the existing dwelling and including the detached studio is 398.79m² which is an FSR of 0.52:1. The existing floor area exceeds the maximum by 90.75m², or a variation of 29.5%.

The proposed ensuite addition increases the total floor area by 8.51m² which results in a FSR of 0.53:1, or a variation of an additional 2.7% (32.2%).

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

A plan of the proposed addition is included in Figure 1 below:

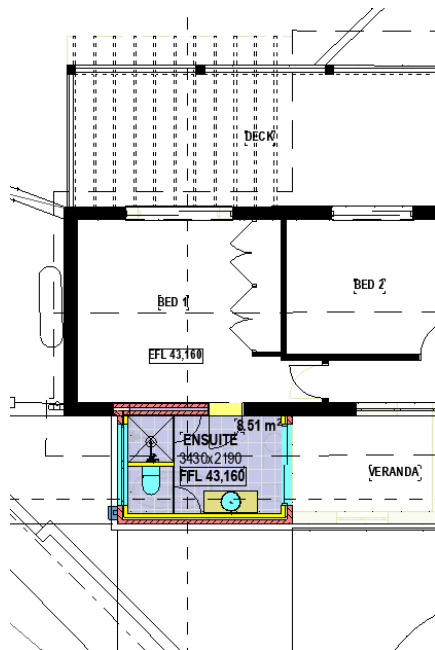


Figure 1 – Ensuite addition resulting in further breach of the FSR control

Justification for the proposed variation

Clause 4.6 (3) of the Manly LEP states that:

*“(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—
 (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and
 (b) there are sufficient environmental planning grounds to justify the contravention of the development standard.”*

As required by clause 4.6(3)(a) and (b), the proposal must demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances, and that there are sufficient planning grounds to justify the breach of the standard by outlining how the 4.6 Request falls within one or more of the following justifications (raised in *Wehbe v. Pittwater Council* 2007):

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

Are the objectives of the development standard achieved notwithstanding the non-compliance?

The proposal achieves the objectives of the clause as follows:

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

The proposed addition is consistent with the form and design of the existing dwelling and that of more recent development in the locality.

(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 proposed addition is contained within the existing footprint of the dwelling. The location of the addition well behind the Beatty Street frontage means it does not impede views to North Harbour from surrounding dwellings or public domain areas.

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

The minor nature of the non-compliant addition maintains the existing visual relationship between the dwelling and surrounding development.

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

The non-compliance does not result in any adverse impacts (loss of sunlight; loss of privacy) on the amenity of neighbouring development or adjoining public lands.

(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.

Not applicable in this case.

Are the underlying objectives or purpose of the development standard not relevant to the development?

The underlying objectives of the standard are relevant to the development, but as previously argued the proposal in its current form satisfies the objectives of Clause 4.4 of LEP 2013 despite the existing numerical non-compliance.

Would the underlying objective or purpose be defeated or thwarted if compliance was required?

If strict compliance of the standard was required, partial demolition of the existing dwelling to remove 90.75m² of floor area would result.

Has the development standard been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard?

There are numerous instances where Council have given consent to a variation of the Floor Space Ratio control in excess of 20% and approved under MLEP 2013. It can therefore be concluded that the standard has been 'abandoned' by Council in these instances.

Is the zoning of the land unreasonable or inappropriate so that the development standard is also unreasonable or unnecessary?

The objectives of the R2 Low Density Residential zone are as follows:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposal maintains provision of a single dwelling for a family within a low density environment. The zoning of the land is therefore not unreasonable or unnecessary.

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

The environmental planning grounds to justify the departure of the Floor Space Ratio standard in this instance are as follows:

- There is no loss to any significant views resulting from exceeding the FSR standard;
- Existing building bulk is not substantially altered and the addition does not result in any overlooking or loss of privacy for neighbouring properties;
- The proposed design and materials are consistent with the existing dwelling and with surrounding high quality development that reflect the coastal setting.

Although the proposal results in a further breach of the standard, the additional gross floor area is minor in nature (8.51m²) and will have minimal effect on the public domain and no impact on the amenity of adjoining properties.

12. Is there any other relevant information relating to justifying a variation of the development standard?

The breach to the Floor Space Ratio development standard does not result in an increase in the overall building footprint; in loss of vegetation or of views; nor does it encroach on existing building alignments to boundaries.

In addition, the proposal complies with the LEP maximum height control.

The variation is justified because the proposal is appropriate to the site and its context; has minimal impact upon the amenity of surrounding development; and achieves an appropriate transition between new development and buildings in the residential zone.

Prepared by
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**ITEM 3.4 MOD2024/0608 - 41 RADIO AVENUE BALGOWLAH HEIGHTS -
MODIFICATION OF DEVELOPMENT CONSENT DA2023/1240
GRANTED FOR DEMOLITION WORKS AND CONSTRUCTION OF A
DWELLING HOUSE INCLUDING SWIMMING POOL AND
ASSOCIATED WORKS**

PURPOSE

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

RECOMMENDATION

- A. That Council as the consent authority, vary the Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to Mod2024/0608 for Modification of Development Consent DA2023/1240 granted for Demolition works and construction of a dwelling house including swimming pool and associated works on land at Lot 16 DP 13468, 41 Radio Avenue BALGOWLAH, subject to the conditions set out in the Assessment Report.

Reporting manager	Rodney Piggott
TRIM file ref	2025/021569
Attachments	1 Assessment Report 2 Site Plans and Elevations

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2024/0608
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Responsible Officer:	Reeve Cocks
Land to be developed (Address):	Lot 16 DP 13468, 41 Radio Avenue BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Modification of Development Consent DA2023/1240 granted for Demolition works and construction of a dwelling house including swimming pool and associated works
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Daniel John Phillips

Application Lodged:	11/11/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	19/11/2024 to 03/12/2024
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

EXECUTIVE SUMMARY

This modification application seeks consent for modification of development consent DA2023/1240. Specifically, alterations and additions to the approved dwelling house resulting in increased excavation, minor reduction in the southern side setback, internal alterations, addition of privacy screening and changes in finished floor levels.

The application is referred to the Development Determination Panel (DDP) due to Clause 4.4 Floor Space Ratio non-compliance.

No objections were received during the assessment of this application.

The non-compliance with FSR standard arises from a 31.7m² increase in floorspace. The existing

building has an existing floorspace which is compliant with the LEP (0.449:1/227.02m²) based on historical approvals with the proposal resulting in a variation of 13.7%. The additional floorspace does not increase the bulk or scale of the building.

It should be noted that the increase in FSR is due to the internal redesign of the garage level. The bulk and scale of the development are unchanged.

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

PROPOSED DEVELOPMENT IN DETAIL

The development seeks consent for modification of development consent DA2023/1240 granted for demolition works and construction of a dwelling house including swimming pool and associated works.

Specifically the following works:

Garage Floor Level

- Increase excavation to basement storage area and reduce southern side setback to 2.35m (inline with ground level above)
- Internal basement configuration changes.
- Lowering of floor level from FFL71.2 to FFL70.67.
- Western wall increased to enclose water tank area.

Ground Floor Level

- Addition of privacy screen to front balcony northern side.
- Change to floor level with proposed lowering from approved FFL74.17 to proposed FFL73.77.
- Addition of corner sliding door to atrium.

First Floor Level

- Change to floor level with proposed lowering from approved FFL77.67 to proposed FFL77.37.
- Addition of planter box to eastern façade.

Roof Level

- Concrete roof changed to timber framing.

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

SITE DESCRIPTION

Property Description:	Lot 16 DP 13468 , 41 Radio Avenue BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	The subject site consists of one (1) allotment located on the western side of Radio Avenue. The site is regular in shape with a frontage of 14.325m along Radio Avenue and a depth of 35.28m. The site has a surveyed area of 505.4m². The site is located within the R2 Low Density Residential zone under the MLEP 2013. The site is currently occupied by a one and two storey dwelling and a swimming pool in the rear yard. The site slopes down from the western rear towards the eastern street frontage. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by residential dwellings of varying sizes and styles.

Map:



SITE HISTORY

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

Development Application DA2023/1240 for demolition works and construction of a dwelling house including swimming pool and associated works approved on 12 January 2024.

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 DA2023/1240, 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 DA2023/1240 for the following reasons: • The development does not seek to change the use. • The development makes minor alterations to an approved dwelling house. • The development does not result in unreasonable bulk and scale variations to what has been approved.
(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 DA2023/1240 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 of applications for modification	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 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.	No submissions were received in relation to this application.

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)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 19/11/2024 to 03/12/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The application is for modification to development consent DA2023/1240. The proposed amendments will not change the landscape outcome approved in DA2023/1240, and as such the original conditions remain. No further conditions are imposed.
NECC (Bushland and Biodiversity)	There are no applicable biodiversity-related controls on the subject site. As such, there are no objections from a biodiversity perspective
NECC (Development Engineering)	I have reviewed the Statement of Modification and amended stormwater management plans. I have no objections to the proposed modification, subject to the removal of the following condition of consent: 8. On-Site Stormwater Detention Details, the retention of all other engineering conditions of consent, and the inclusion of the following condition:
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. 1393489S_05 dated 13 September 2024).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.5	-	-	as approved
Floor Space Ratio	FSR: 0.45:1	0.449:1	0.512:1 (258.72m ²)	13.7%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

Detailed Assessment

4.4 Floor space ratio

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.45:1
Proposed:	0.512:1
Percentage variation to requirement:	13.7%

Assessment of request to vary a development standard:

Whilst the modification application will result in a floor space ratio that exceeds the maximum permitted by Clause 4.4 of the Manly LEP 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 (EPA) Act 1979, which is a free standing provision that in itself authorises the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own

stand-alone tests (such as the substantially the same test and consideration of all relevant Section 4.15 matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application.

Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications. As such, the applicant is not required to submit a written request adequately addressing the matters required to be demonstrated by cl 4.6(3).

Notwithstanding that Clause 4.6 does not apply to Section 4.55 modification applications, the merits of the variation have been assessed with regard to the objectives of the floor space ratio development standard and the underlying objectives of the R2 Low Density Residential zone. Notwithstanding that Clause 4.6 does not strictly apply, the assessment has also taken into consideration the relevant tests of the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,

Comment:

Compliance with the development standard is unreasonable in the circumstances of the case for the following reasons;

1. The additional floor space does not result in the bulk and scale of development being increased.
2. No additional car parking spaces above the required two (2) spaces are proposed or approved.
3. The usability of the additional floor space is limited given its location between the proposed car parking spaces and the garage door entrance.

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

Comment:

It is considered that the development is consistent with objectives (c) and (g) of the Environmental Planning and Assessment Act 1979 No 203.

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

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 additional floor space area does not result in a change to the approved bulk and scale of

the development.

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

Comment:

The additional floor space area is located entirely within the approved building footprint and will not obscure 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 development will maintain the visual relationship between the development and the existing character and landscape of the area.

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

Comment:

The development does not result in additional excavation works and does not cause unreasonable environmental impacts. The use of adjoining land and the public domain are unimpacted by the additional floor 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:

This objective is not relevant to the development.

Zone objectives

The underlying objectives of the R2 Low Density Residential zone:

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

Comment:

The development provides for the housing needs of the community and is consistent with the desired development of the R2 Low Density Residential zone.

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:

It is considered that the development reasonably provides facilities and services to meet the day to day needs of residents.

It is considered that the development satisfies this objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone.

Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Comment:

The subject application is made under Section 4.55 of the EPA Act. As such, Clause 4.6 does not strictly apply and the concurrence of the Secretary is not required to be obtained.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 505.4m²	Requirement	Approved	Proposed	Complies
4.1.2.1 Wall Height	N/: 7.2m (based on gradient 1:9.4)	5.8m-7.6m	-	as approved
	S: 7.3m (based on gradient 1:7.6)	5.5m-7.6m	-	as approved
4.1.2.3 Roof Height	Height: 2.5m	0.5m	0.3m - 0.65m	Yes
	Pitch: maximum 35 degrees	3 degrees	-	as approved
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	7.9m	-	as approved
4.1.4.2 Side Setbacks and Secondary Street Frontages	North: Garage Floor: 0.5m Ground Floor: 1.5m First Floor rear: 1.9m First Floor front: 2.5m	Garage Floor: 1.0m Ground Floor: 1.0m First Floor rear: 2.1m First Floor front: 2.4m	Garage Floor: 0.76m	Yes
	South: Garage Floor: 0.4m	Garage Floor: 3.5m	Garage Floor:	Yes

	Ground Floor: 1.5m First Floor: 2.5m	Ground Floor: 2.4m First Floor: 2.7m	2.35m	
	Windows: 3m	2.1m	-	as approved
4.1.4.4 Rear Setbacks	8m	Alfresco: 6.0m Dwelling: 8.0m	-	as approved
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area	60% (303.4m ²)	-	Yes
	Open space above ground 25% of total open space	11.1% (33.6m ²)	-	as approved
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	51.5% (156.2m ²)	-	as approved
	3 native trees	3 trees	-	as approved
4.1.5.3 Private Open Space	18m ² per dwelling	>18m ²	-	as approved
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	5.5m	-	as approved
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	0.9m	-	as approved
	1m curtilage/1.5m water side/rear setback	North side Curtilage: 1.1m Water: 1.3m Rear Curtilage: 1.9m Water: 2.1m	-	as approved
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	-	as approved

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.3.3 Footpath Tree Planting	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	No	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
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 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 proposal, for Modification of Development Consent DA2023/1240 granted for Demolition works and construction of a dwelling house including swimming pool and associated works has been referred to the Development Determination Panel (DDP) due to Floor Space Ratio non-compliance.

No objections were received during the assessment of this application.

The critical assessment issues

- FSR non-compliance.

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. Mod2024/0608 for Modification of Development Consent DA2023/1240 granted for Demolition works and construction of a dwelling house including swimming pool and associated works on land at Lot 16 DP 13468,41 Radio Avenue, BALGOWLAH HEIGHTS, 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 - 484384 Council Mod2024/0608	The date of this notice of determination	Modification of Development Consent DA2023/1240 granted for Demolition works and construction of a dwelling house including swimming pool and associated works. Add Condition No.1A - Modification of Consent - Approved Plans and supporting documentation. Add Condition 18A - On-Site Stormwater Detention Details.

Modified conditions

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

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
Mod04	A	Site/ Roof/ Sediment Erosion/ Waste Management/ Stormwater Concept Plan	Action Plans	3 September 2024

Mod05	A	Proposed Garage Floor Plan	Action Plans	3 September 2024
Mod06	A	Proposed Ground Floor Plan	Action Plans	3 September 2024
Mod07	A	Proposed First Floor Plan	Action Plans	3 September 2024
Mod08	A	Proposed North Elevation - Side	Action Plans	3 September 2024
Mod09	A	Proposed East Elevation - Primary Road	Action Plans	3 September 2024
Mod10	A	Proposed South Elevation - Side	Action Plans	3 September 2024
Mod11	A	Proposed West Elevation - Rear	Action Plans	3 September 2024
Mod12	A	Long Section	Action Plans	3 September 2024
Mod13	A	Cross Section	Action Plans	3 September 2024
Mod14	A	Proposed Pool Long Section	Action Plans	3 September 2024
Mod17	A	Sample Board	Action Plans	3 September 2024
Storm-1/C	C	Stormwater Management Plan	Taylor Consulting	14 October 2024
Storm-2/C	C	Stormwater Management Details	Taylor Consulting	14 October 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Geotechnical Report	-	Ascent Geo	25 September 2024
NatHERS and Basix Assessment	B	efficient Living	13 September 2024

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

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

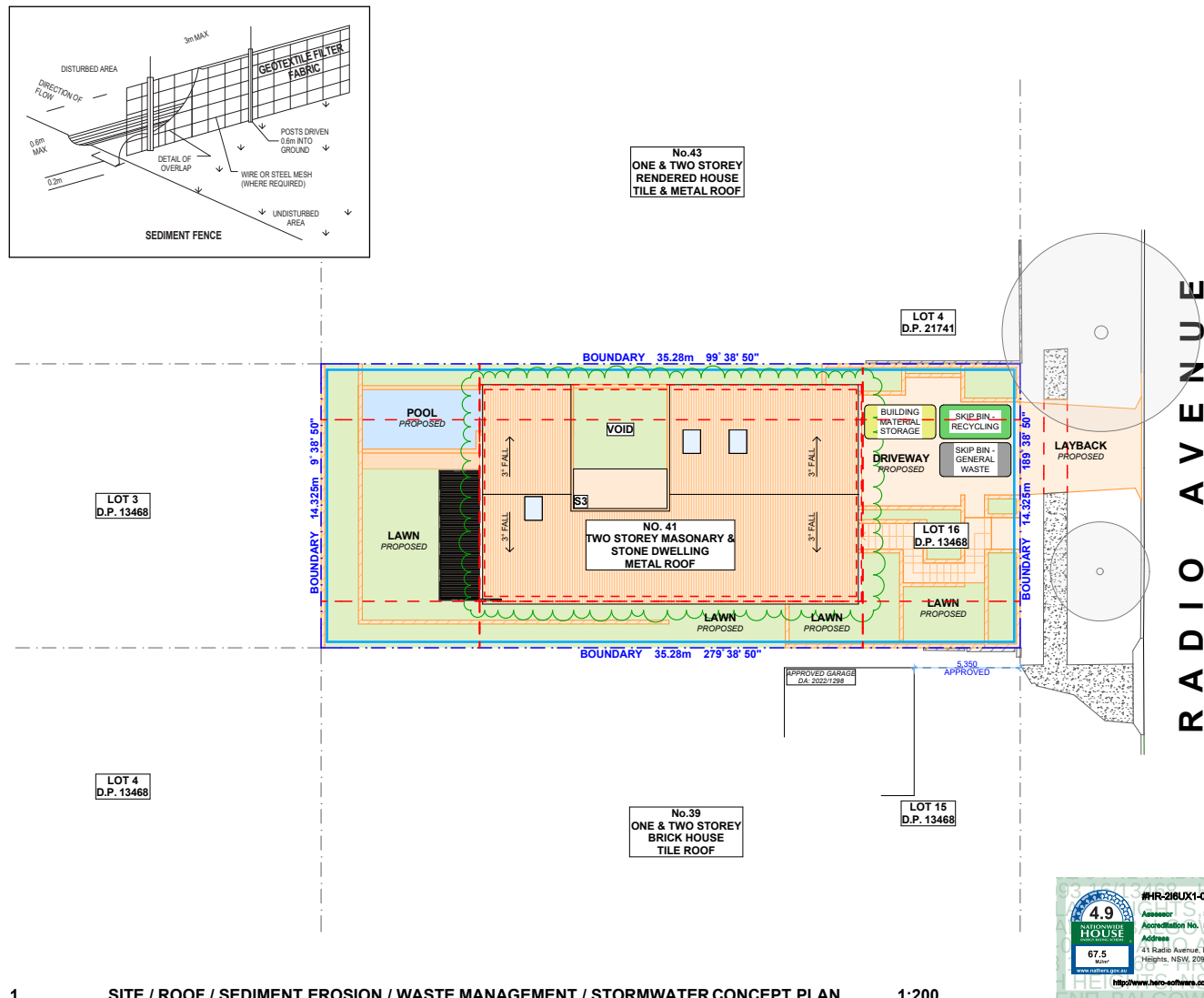
Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

B. Add Condition 18A - On-Site Stormwater Detention Details to read as follows:

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by Taylor Consulting, drawing number Storm 1/C, Storm 2/C, dated 14.10.2024. 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: Ensure consistency with Councils Water Management for Development Policy.

**NOTES REGARDING BOUNDARY**

THE INFORMATION SHOWN ON THIS PLAN IS FOR DESIGN PURPOSES ONLY. THE POSITION OF BOUNDARY LINES HAVE BEEN ESTABLISHED BY A SURVEY TO MEET THE IDENTIFICATION REQUIREMENTS FOR COUNCIL AND NOT FOR REGISTRATION WITH THE LAND REGISTRATION SERVICES NSW NOR MAY THIS PLAN BE USED FOR ANY OTHER PURPOSE. SUBSEQUENT REGISTERED OR OTHER SURVEYS MAY AFFECT THE DEFINED BOUNDARY POSITIONS IN THIS AREA. ANY DIFFERENCES OF THIS NATURE ARE BEYOND THE PURPOSES OF THIS PLAN. THIS PLAN IS FOR THE ABOVE STATED PURPOSES ONLY. RESTRICTIONS ON THE TITLE HAVE NOT BEEN INVESTIGATED. IF FURTHER DEVELOPMENT IS CONTEMPLATED OR CONSTRUCTION INTENDED THEN IT IS IMPORTANT THAT A SURVEY SET OUT IS CARRIED OUT.

DUST CONTROL :

TO REDUCE DUST GENERATED BY WIND ACTION, THE REMOVAL OF THE TOP SOIL IS TO BE MINIMISED. TO PREVENT DUST GENERATION, WATERING DOWN OF THE SITE, ESPECIALLY DURING THE MOVEMENT OF MACHINERY IS REQUIRED. WHERE EXCAVATING INTO ROCK, KEEP THE SURFACE MOIST TO MINIMISE DUST. CONSTRUCT A GRAVEL ENTRY/EXIT POINT USING BLUE METAL AND RESTRICT ALL VEHICLE MOVEMENTS WITHIN THE SITE TO A MINIMUM. ENSURE WIND BREAKS, SUCH AS EXISTING FENCES ARE MAINTAINED DURING THE CONSTRUCTION PHASE UNTIL NEW LANDSCAPING IS PROVIDED OR REINSTATED. PREVENT DUST BY COVERING STOCKPILES

SEDIMENT NOTE :

1. ALL EROSION AND SEDIMENT CONTROL MEASURES TO BE INSPECTED AND MAINTAINED DAILY BY THE SITE MANAGER.
2. MINIMISE DISTURBED AREAS, REMOVE EXCESS SOIL FROM EXCAVATED AREA AS SOON AS POSSIBLE.
3. ALL MATERIAL STOCKPILE TO BE CLEAR FROM DRAINS, GUTTERS AND FOOTPATHS, OR WITHIN SEDIMENT FENCE AREA.
4. DRAINAGE TO BE CONNECTED TO STORMWATER AS SOON AS POSSIBLE. IF STORED ON SITE, IT MUST BE FILTERED BEFORE RELEASING INTO STORMWATER SYSTEM OR WATERWAYS.
5. ROADS AND FOOTPATHS TO BE SWEEPED DAILY.

STOCKPILES :

ALL STOCKPILES ARE TO BE KEPT ON-SITE WHERE POSSIBLE. ANY MATERIALS PLACED ON THE FOOTPATHS OR NATURE STRIPS REQUIRE COUNCIL'S PERMISSION.

ALL STOCKPILES ARE TO BE PLACED AWAY FROM THE DRAINAGE LINES AND STREET GUTTERS. IT IS BEST TO LOCATE THESE ON THE HIGHEST PART OF THE SITE IF POSSIBLE. PLACE WATERPROOF COVERING OVER STOCKPILES.

IF REQUIRED PROVIDE DIVERSION DRAIN & BANK AROUND STOCKPILES.

GUTTER PROTECTION :

PROVIDE PROTECTION TO DOWNHILL GRATE IN GUTTER BY MEANS OF SAND BAGS OR BLUE METAL WRAPPED IN GEOTEXTILE FABRIC. WHEN SOIL OR SAND BUILDS UP AROUND THIS SEDIMENT BARRIER, THE MATERIAL SHOULD BE RELOCATED BACK TO THE SITE FOR DISPOSAL.

NOTE: SITE BOUNDARY IS TO BE IDENTIFIED BY A REGISTERED SURVEYOR AND CLEARLY MARKED ON SITE PRIOR TO COMMENCEMENT OF ANY CONSTRUCTION WORKS.

NOTE: ALL PROPOSED STORMWATER TO CONNECT WITH EXISTING

1 SITE / ROOF / SEDIMENT EROSION / WASTE MANAGEMENT / STORMWATER CONCEPT PLAN 1:200

**ACTION PLANS**

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e: operations@actionplans.com.au
w: www.actionplans.com.au

REV.	DATE	COMMENTS	DRWN
A	03.09.2024	S4.55	AP

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The Builder/Contractor shall check and verify ALL dimensions on site prior to commencement of any work, creation of shop drawings, or fabrication of components.

All errors and omissions are to be verified by the Builder/Contractor/owner and referred to the designer prior to the commencement of works.

LEGEND

- EXISTING
- DEMOLISHED
- PROPOSED
- S4.55 MODIFICATION

CLIENT

CLIENT NAME

PROJECT ADDRESS

41 RADIO AVENUE,
BALGOWLAH HEIGHTS,
NSW, 2093

DRAWING NO.

MOD04

DATE

Friday, 13 September
2024

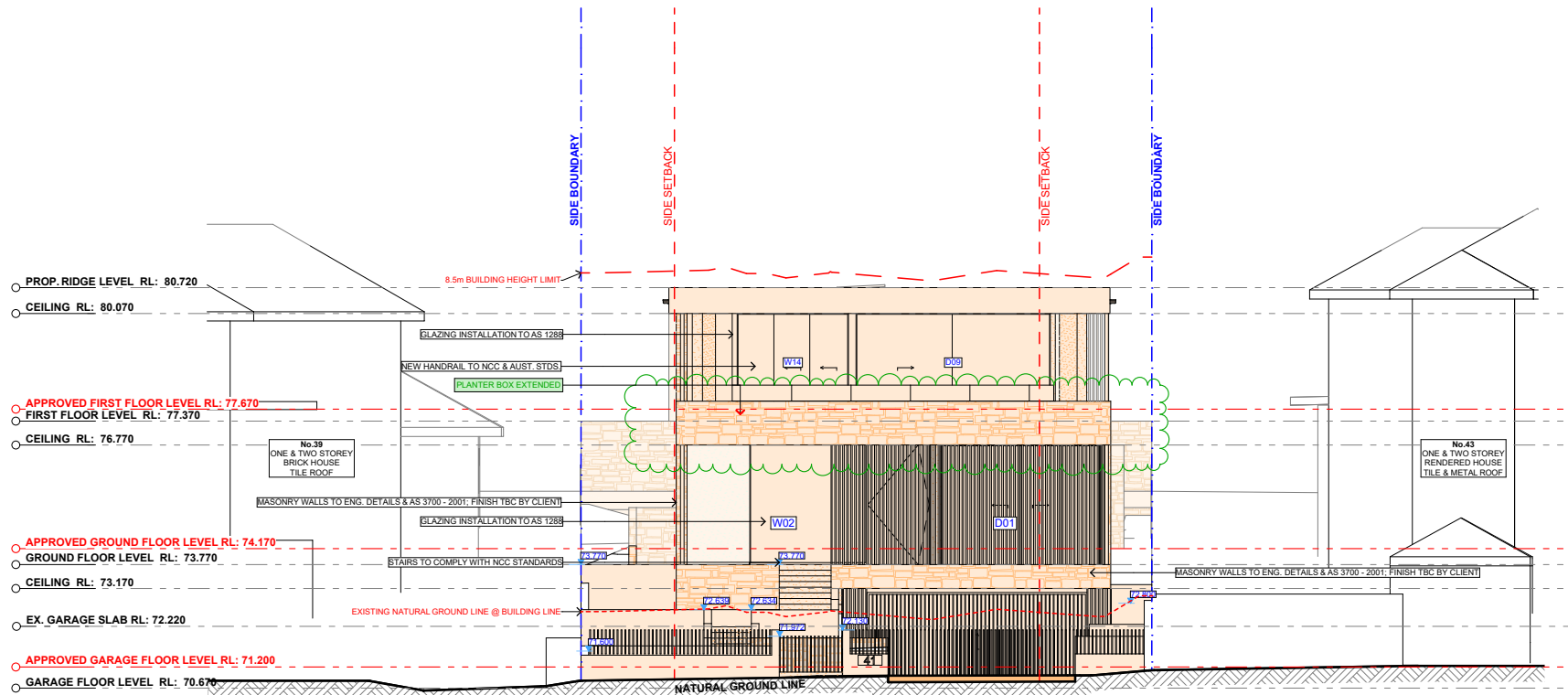
DRAWING NAME

SITE / ROOF / SEDIMENT
EROSION / WASTE
MANAGEMENT / STORMWATER
CONCEPT PLAN

SCALE

1:200 @A3





1 PROPOSED EAST ELEVATION - PRIMARY ROAD 1:100



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LEGEND

METAL ROOFING
TILED ROOFING
TIMBER CLAD
BRICKWORK
CONCRETE

EXISTING
S4.55
MODIFICATION

CLIENT
CLIENT NAME

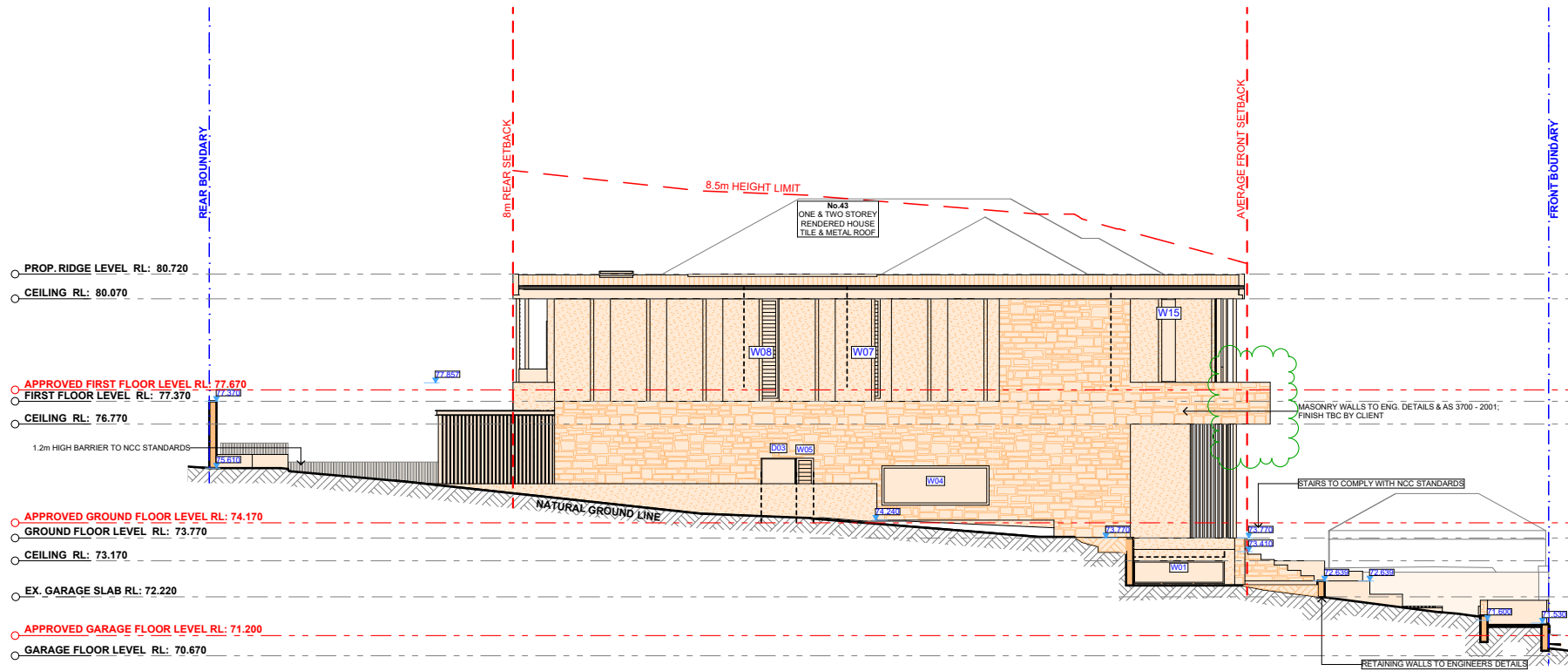
PROJECT ADDRESS
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BALGOWLAH HEIGHTS,
NSW, 2093

DRAWING NO.
MOD09

DATE
Friday, 13 September
2024

DRAWING NAME
EAST ELEVATION - PRIMARY
ROAD

SCALE
1:100 @A3



1

PROPOSED SOUTH ELEVATION - SIDE

1:100



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A	03.09.2024	S4.55	AP

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LEGEND

	METAL ROOFING		EXISTING
	TILED ROOFING		S4.55 MODIFICATION
	TIMBER CLAD		
	BRICKWORK		
	CONCRETE		

CLIENT
CLIENT NAME

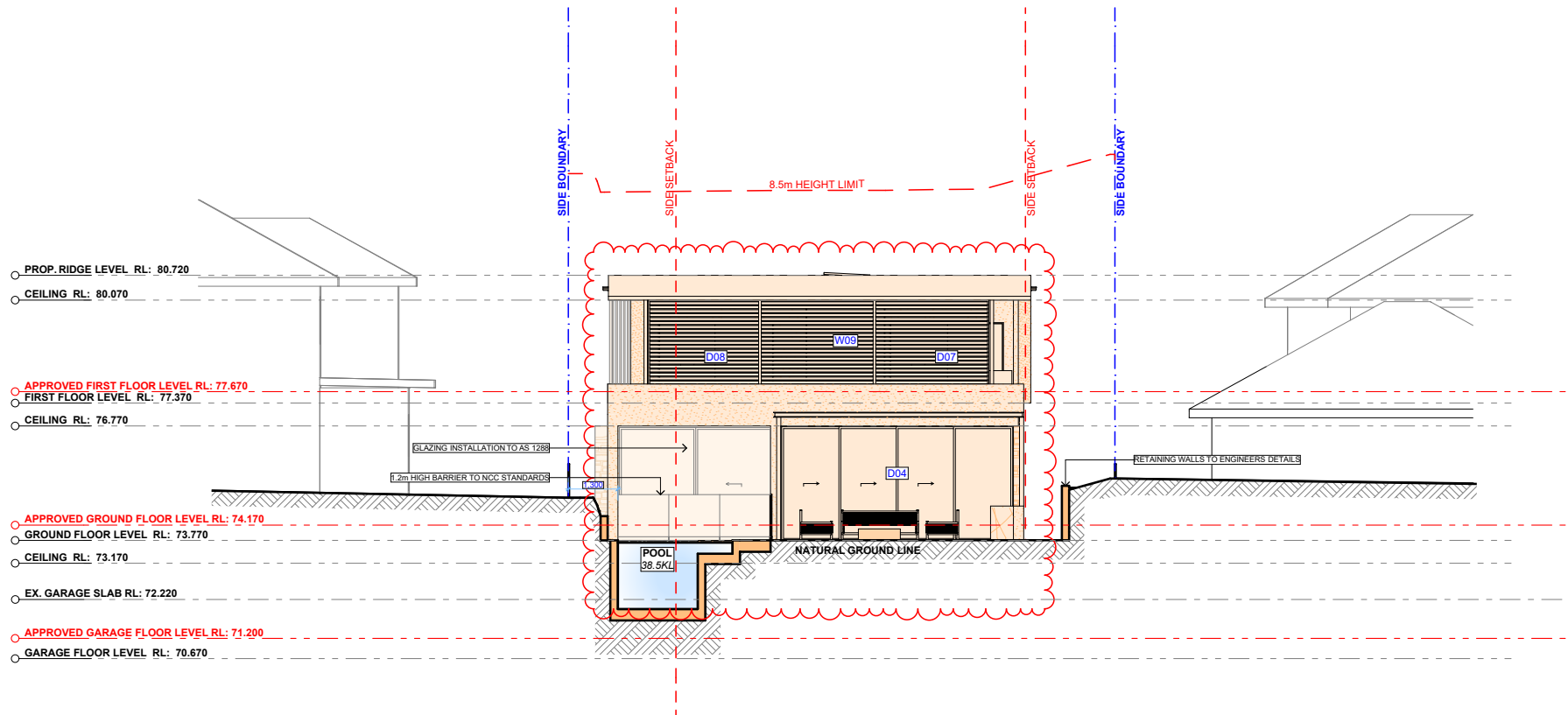
PROJECT ADDRESS
41 RADIO AVENUE,
BALGOWLAH HEIGHTS,
NSW, 2093

DRAWING NO.
MOD10

DATE
Friday, 13 September
2024

DRAWING NAME
SOUTH ELEVATION - SIDE

SCALE
1:100 @A3



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REV.	DATE	COMMENTS	DRWN
A	03.09.2024	S4.55	AP

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LEGEND
METAL ROOFING
TILED ROOFING
TIMBER CLAD
BRICKWORK
CONCRETE
EXISTING
S4.55 MODIFICATION

CLIENT
CLIENT NAME

PROJECT ADDRESS
41 RADIO AVENUE,
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DRAWING NO.
MOD11

DATE
Friday, 13 September
2024

DRAWING NAME
WEST ELEVATION - REAR

SCALE
1:100 @A3