AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 26 FEBRUARY 2025

Ashleigh Sherry
Manager Business System and Administration

Agenda for a Meeting of the Development Determination Panel to be held on Wednesday 26 February 2025

Commencing at 10:00 AM

1.0 APOLOGIES & DECLARATIONS OF INTEREST

2.0 MINUTES OF PREVIOUS MEETING

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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 12 FEBRUARY 2025

RECOMMENDATION

That the Panel notes that the minutes of the Development Determination Panel Meeting held on 12 February 2025 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1 DA2024/0492 - 49 BLACKBUTTS ROAD & 21A WARILI ROAD FRENCHS FOREST - NEIGHBOURHOOD TITLE SUBDIVISION COMPRISING OF 13 LOTS AND NEW ROAD ACCESS

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 DA2024/0492 for neighbourhood title subdivision comprising of 13 lots and new road access on land at Lot 1 DP 524083 & Lot 1 DP 1298188, 49 Blackbutts Road & 21A Warili Road FRENCHS FOREST, subject to the conditions set out in the Assessment Report.

Reporting manager	Steve Findlay
TRIM file ref	2025/110788
Attachments	⇩1 Assessment Report ⇩2 Subdivision Plan

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/0492

Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot 1 DP 524083, 21 A Warili Road FRENCHS FOREST NSW 2086 Lot 1 DP 1298188, 49 Blackbutts Road FRENCHS FOREST NSW 2086
Proposed Development:	Neighbourhood title subdivision comprising of 13 lots and new road access
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Sekisui House Services (NSW) Pty Limited

Application Lodged:	01/05/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Subdivision only
Notified:	07/05/2024 to 21/05/2024
Advertised:	Not Advertised
Submissions Received:	8
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	$ 1,538,275.00

EXECUTIVE SUMMARY

The proposal seeks approval for the subdivision of 2 lots into 13 lots, being 12 residential allotments and 1 community title allotment, in the form of a neighbouhood title scheme.

The application is referred to the Development Determination Panel (DDP) due to 8 submissions being received in response to the public exhibition of the application.

The proposal to change the use of the site from a community facility use (disability support services

premises) to residential development was the subject of a prelodgement meeting and the advice provided by Council has been incorporated into the proposed subdivision under this development application.

Concerns raised by adjoining and nearby residents include; natural environment impacts, location and impacts associated with the new internal road, extent of earthworks, and amenity impacts to the surrounding residences.

Amended plans were submitted in response to concerns raised during the assessment, which incorporated improvements to the subdivision layout and design, including; a reduction in the extent of earthworks, a reduction in the height of landfill adjacent to site boundaries and a reduction in the height of retaining walls (and boundary fence heights) on the southern and eastern boundaries. The lot widths were also adjusted to improve the amenity outcome for adjoining properties to the south, with Lot 13 being increased in width.

The internal road which will service the 12 new residential lots is designed to provide a densely planted landscaped buffer between the road and the western boundary, which will result in an improved outcome for the adjoining residential properties compared to the existing situation. The existing disability support services premises, which has been the neighbour to those properties for many decades, is in close to the common boundary and there is very limited landscape screening vegetation. The character of the site presently is dominated by numerous buildings, driveways and hard paving. Furthermore, in order to embellish the landscape buffer zone to the west, a condition is proposed which will delete 3 of the visitor spaces which are shown as indented spaces between the road and the boundary, to ensure maximum visual and noise protection for the neighbouring properties. A condition is also proposed to ensure street lighting on the new internal road is located and designed to not be intrusive and to preserve nighttime amenity.

Council's Natural Environment Officer's have considered the impacts on existing trees and have provided various conditions in relation to tree protection and the completion of the new landscaping scheme for the site. The stormwater management system has also been developed to ensure no adverse impacts to adjoining properties, and suitable conditions are imposed in this regard.

In terms of the planning controls, the proposal complies with the minimum 600sqm lot size requirement under the Warringah LEP, is consistent with the subdivision character of the area, complies with the subdivision requirements under the Warringah DCP in terms of lot width and depth, and demonstrates with indicative building footprints, setbacks, landscaped open space, private open space and vehicular access, that future DA's for the individual dwelling-houses can reasonably satisfy the requirements of the LEP and DCP.

In addition to the well developed landscape treatment of the site, the extent of fill and retaining walls (as amended and subject to conditions) has been refined through the course of assessment, and the final outcome is satisfactory with regard to protecting the amenity of neighbouring properties. Various conditions have also been imposed to protect the natural environment and neighbouring amenity.

The outcome is a subdivision that demonstrates good design and consideration of the constraints on the site and protection of the amenity for surrounding residential properties, and which will provide new housing stock for the area.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks neighbourhood title subdivision for 13 lots, being 12 residential allotments and 1 community title allotment.

The application does not seek consent for any new buildings or dwellings. The proposal involves other subdivision works including:

- Construction of a new road
- 5 on-street visitor parking spaces
- Landscaping
- Removal of trees
- Earthworks and retaining walls
- Stormwater Infrastructure

Amendment to proposal

In response to issues provided in a Request for Information letter sent by Council, the proposal was amended from being a Community Title Subdivision to be a Neighbourhood Title Subdivision.

Further amendments were made to the Stormwater design and earthworks to reduce the height of the retaining walls along the eastern and southern boundaries. The retaining wall along the southern boundary of lot 13 was also setback from the boundary.

In accordance with the Community Participation plan, re-notification was not required.

ASSESSMENT INTRODUCTION

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

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

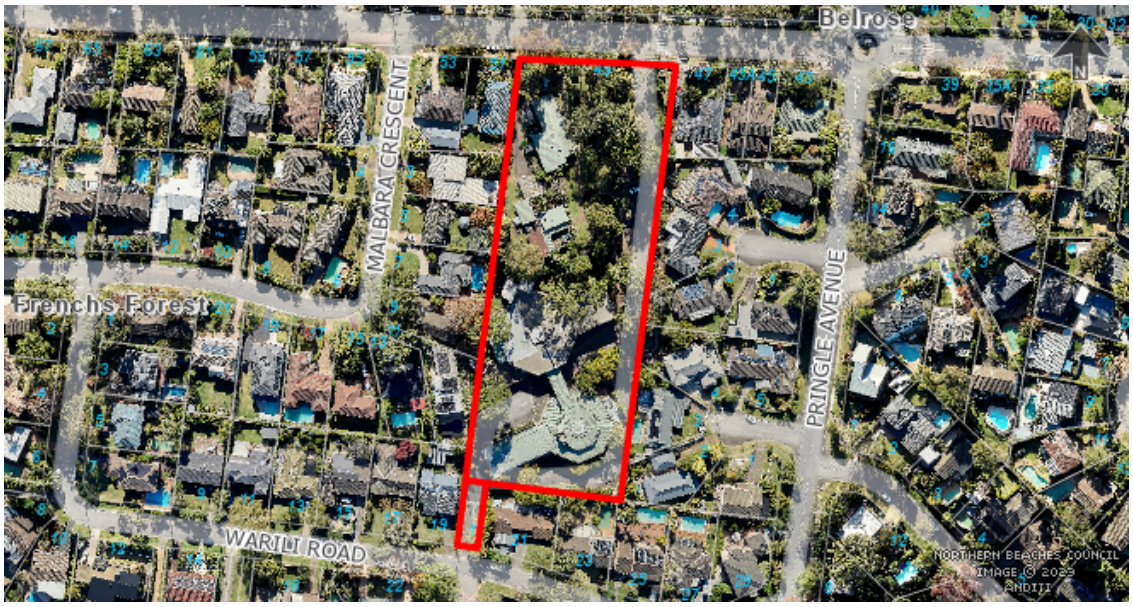
SUMMARY OF ASSESSMENT ISSUES

Warringah Development Control Plan - C1 Subdivision

SITE DESCRIPTION

Property Description:	Lot 1 DP 524083 , 21 A Warili Road FRENCHS FOREST NSW 2086 Lot 1 DP 1298188 , 49 Blackbutts Road FRENCHS FOREST NSW 2086
Detailed Site Description:	The subject site consists of two allotment located on the southern side of Blackbutts Road and northern side of Warili Road. The lot abutting Blackbutts Road is Lot 1 DP 1298188, known as 49 Blackbutts Road, and is the larger of the two lots. The lot abutting Warili Road is Lot 1 DP 524083, know as 21A Warili Road, and is significantly smaller. 49 Blackbutts Road is irregular in shape, with a frontage of 60.637m along Blackbutts Road and a maximum depth of 167.724m. The site has an area of 9970sqm. 21A Warili Road is regular in shape, with a frontage of 8.23m along Warili Road and a depth of 25.406m. The site has an area of 208.6sqm. The site is located within the R2 Low Density Residential zone of the WLEP 2011 and accommodate buildings previously associated with a faciality operated by Aruma Services, a provider of disability services and support. The 49 Blackbutts Road lot contains buildings and internal driveways associated with the facility, with 21A Warili Road connecting the rear of the larger lot to Warili Road through a rear access driveway. The site slopes from the Blackbutts Road frontage (north) to the Warili Road frontage (south), with a fall across the site of approximately 9m. The site contains lawn areas, trees and widespread vegetation amongst the built form. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by low-density residential development. Across Blackbutts Road to the north is Lionel Watts Reserve and Frenchs Forest Showground. A short distance to the north-west is Glenrose Village Mall.

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:

Pre-Lodgment Meeting No. PLM2023/0120

This was held on 5 October 2023 to discuss a 13 lot subdivision of the site.

At this pre-lodgement meeting, two concept options were provided for Council's consideration, being 'Option A' and 'Option B'. Option A included a punch through road (from Blackbutts to Warili). Option B included the design submitted for this development application. This followed after Council had provided comments that this was the preferred option as follows:

"Option B is preferred by all Officers in Council; however, the site planning layout shall be determined following arboricultural investigations and recommendations as any proposal to remove existing trees of moderate to high retention value will not be supported. Indicative plans are required to show the building footprints to indicate where significant trees can be retained. In addition, the indicative plans shall demonstrate compliance with the built form, landscape / open space requirements and solar access controls.

Option B also requires design changes to address the servicing (waste, engineering and transport requirements) including the need for a 7.5m wide carriageway, a redesign turning circle and a need for a 1.5m wide footpath. Should the amendment result in undersized lots it is recommended that the density be reduced as a variation to the 600sqm minimum lot size controls is unlikely to be supported given the lack of physical constraints on the site.

Additional landscape planting is required along the western boundary to protect existing residential amenity and the siting of the dwellings shall consider solar, privacy and view loss impacts to neighbours."

In relation to the removal of trees, Council's Landscape officer has accepted that the removal of trees

in the road area is reasonable, and that trees within the lots shall be considered for removal under future applications. Council's Landscape officer also agrees that the indicative building lots can provide 'appropriate landscape outcomes within the front and rear setbacks including retention of existing trees where feasible.'

As discussed throughout this report, the indicative footprints shoe that future buildings have appropriate potential to comply with controls and provide an acceptable amenity outcome (subject to conditions).

Councils referral officers (including Traffic, Waste and Engineering) support the design (as amended).

The lots also comply with the minimum lot size requirements.

Suitable planting has also been provided along the western boundary adjacent to the road.

Overall, the proposal has responded well to the advice provided in the Pre-lodgement meeting.

Development Application No. DA2024/0081

This was approved on 12 June 2024 for the Demolition of all existing structures on site. This application was in preparation for the further residential use of the site.

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	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application. Clause 69 of the EP&A Regulation 2021 requires the consent

Section 4.15 Matters for Consideration	Comments
	authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (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 07/05/2024 to 21/05/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 8 submission/s from:

Name:	Address:
Mrs Samantha Jane Gavel	4 Rikara Place FRENCHS FOREST NSW 2086
Graham James Payne	9 Malbara Crescent FRENCHS FOREST NSW 2086
Mr Adam Colin Williams	25 Warili Road FRENCHS FOREST NSW 2086
Ms Gail Jennifer Phillips	3 Malbara Crescent FRENCHS FOREST NSW 2086
Mr Robert Charles Scott	7 Malbara Crescent FRENCHS FOREST NSW 2086

Name:	Address:
Mrs Vanessa Gotelee Payne	3 Boronia Avenue DEE WHY NSW 2099
Jennifer Yonge	5 Malbara Crescent FRENCHS FOREST NSW 2086
Miss Rebecca Sally Gotelee	9 Malbara Crescent FRENCHS FOREST NSW 2086

The issues raised in submissions are addressed as follows:

- **Concerns with impacts to Natural Environment (including flora and fauna)**

  The submissions raised concerns with impacts to trees and impact on natural environment.

  Comment:

  Council's Natural Environment Officer's have reviewed the application and are satisfied with the design, subject to conditions.

  Tree removal under this application has only been accepted where necessary for the proposed civil and road infrastructure work. In this regard, Council's Landscape officer has provided a condition that allows the removal of 14 trees.

- **Noise and light spill; Location of the internal road.**

  The submissions raised concerns with noise and light spill due to the subdivision design. A submission also provides potential alternative designs.

  Comment:

  The proposed design ensures an acceptable level of amenity is maintained to surrounding dwellings through appropriate separation and landscaping (subject to conditions). In particular, a substantial landscaped strip is provided to the west of the proposed internal road. This provides suitable screening to the rear private open space areas of dwellings to the west. As such, there is suitable provision in the design to minimised amenity impact (including noise and light spill) to the neighbours.

  The internal road does not provide any through access, will not allow for vehicle travel at high speeds, and will only provide access for the 13 lots within this subdivision. As such, noise impacts from vehicles using this road will be low and within the parameters of what can be expected for an R2 Low Density Residential zone.

  The proposal also provide a sufficient area for landscaping along the road boundary to provide a suitable visual buffer. A condition is also imposed to minimise impacts of street lighting including that lighting will not face the properties to the west.

- **Stormwater/drainage impacts**

  The submissions raised concerns that appropriate provisions have not been put in to place for the minimisation or stormwater/drainage impacts.

Comment:

Council's Development Engineer has reviewed the application and is satisfied with the outcome with Stormwater, subject to conditions.

- **Concerns with information submitted**

  The submissions raised concerns that the documentation submitted with the application is inadequate.

  Comment:

  The information submitted with the application is consistent with Council's Lodgment requirements and has been deemed acceptable to allow a proper assessment in accordance with the *Environmental Assessment Act 1979*.

- **Request for fencing adjacent to 23 and 25 Warili Road**

  A submission requests fencing to replace the existing incinerator to provide privacy.

  Comment:

  There are no dwellings proposed under this application. Screening and fencing that is specific for privacy between dwellings is a matter to be determined under any future application for dwellings. It is noted that the compliant width of the lot provides a reasonable opportunity for a dwelling to provide an acceptable design for privacy.

  Further, amended plans have provided a redesign to provide a setback of the retaining wall from the southern boundary (adjoining 23 Warili Road). This contributes to providing suitable opportunity for appropriate physical separation to a future dwelling on this lot (Lot 13).

- **Concern with safety and traffic impacts for access via 21A Warili Road, Frenches Forest.**

  The submissions raised concerns with the access from Warili Road and the associated traffic and safety impacts.

  Comment:

  Council's Traffic officer has reviewed the application, provided comments under the Traffic officer section of this report, and suitable conditions have been imposed.

- **Concern with asbestos and hazardous debris from incinerator**

  The submissions raised concerns with asbestos and hazardous debris from the existing incinerator.

  Comment:

  Conditions of consent are imposed which require the demolition and removal of asbestos to be carried out in accordance with Work Cover requirements, relevant Australian Standards and

other regulatory requirements.

- **Concern with results of Geotechnical investigation including impacts caused by excavation; Concerns with scale of earthworks.**

  The submissions raised concerns with the results of the Geotechnical Investigation and request requirements to manage and mitigate risk. Specific concern is raised with regard to potential impacts to an existing pool.

  Concern is also raised with the scale of earthworks and potential impact this may have on trees.

  Comment:

  Conditions have been imposed to require compliance with the recommendations of the Geotechnical report.

  A condition has also imposed to require a pre-commencement Dilapidation report.

  In regard to the scale of earthworks, the proposal has been amended to reduce the extent of fill on the eastern and southern boundaries so that retaining walls are generally 1m-2m in height.

  As above, Council's Landscape officer is satisfied with the impact to trees and has placed conditions to ensure protection of trees, where necessary.

- **Concern with safety and traffic impacts for access via 21A Warili Road, Frenches Forest.**

  The submissions raised concerns with the access from Warili Road and the associated traffic and safety impacts.

  Comment:

  Council's Traffic officer has reviewed the application, provided comments under the Traffic officer section of this report, and suitable conditions have been imposed.

- **Concern with asbestos and hazardous debris from incinerator**

  The submissions raised concerns with asbestos and hazardous debris from the existing incinerator.

  Comment:

  Conditions of consent are imposed which require the demolition and removal of asbestos to be carried out in accordance with Work Cover requirements, relevant Australian Standards and other regulatory requirements. Further, a condition has been imposed for further investigations, sampling (and remediation if necessary) to be carried out once the incinerator has been demolished

- **Community consultation**

  The submissions raised concerns with the lack of Community consultation.

Comment:

The community was consulted (via notification) in a way which is consistent with the requirements of the Community Participation Plan.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Contaminated Lands)	**SUPPORTED (with conditions)** **General Comments** This application is seeking consent for a proposed community title subdivision, into 13 allotments, including one (1) community title allotment and 12 residential allotments, including a new road. A Preliminary Site Investigation and a Detailed Site Investigation (DSI) were undertaken by Geotechnique Pty Ltd. The findings of the DSI are summarized as follows: *The general soil profile comprised imported fill materials or topsoil overlying natural clayey soil. The boreholes did not reveal any visual evidence of asbestos or other indicators of significant contamination, such as staining, odours or significant foreign matter. One fibro-cement piece was found on the ground surface at sample location FCP1, which does not contain asbestos containing materials.* *All the laboratory test results satisfied the criteria for stating that the analytes selected are either not present i.e., concentrations less than laboratory limits of reporting, or present in the sampled soil at concentrations that do not pose a risk of hazard to human health or the environment under a "residential with access to soil" form of development,* *Based on this assessment covering sampling and testing of soil at ten limited borehole locations, we consider that the site is suitable for the proposed subdivision into residential allotments, subject to sampling and testing of soils beneath the buildings, loading dock and concrete handstand area at twelve additional sampling locations after demolition and removal of the site features.* Further testing will need to be conducted under the buildings, loading dock and concrete handstand area at twelve additional sampling locations after demolition and removal of the site features, to satisfy sampling requirement for a site area of 1.018 hectares (ha) as per NSW EPA (2022) Contaminated Land Guidelines - Sampling Design part 1 - application. If contamination is found to be present, a further detailed assessment, remediation and validation may be required. The DSI has stated the site can be made suitable for the proposed devlopement therefore Environmental Health recommends approval subject to conditions.

Internal Referral Body	Comments
Landscape Officer	**SUPPORTED (with conditions)** The application proposal is for community title subdivision into thirteen allotments, and the construction of a new road with a single OSD tank under. Twelve residential allotments are proposed under the subdivision plan. Subdivision Plans are submitted that include Indicative Building Layouts and Engineering Plans are submitted illustrating the proposed civil works under the application. Landscape Plans are submitted that cover landscape works associated only with the proposed civil works for the new road, under community lot number 1. The Statement of Environmental Effects indicates that the proposed works under this application include: establishment of a community title road and stormwater system to facilitate subdivision for 12 residential lots; construction of one (1) on-site stormwater detention tank with an inbuilt water quality chamber; connection to Warili Road; implementation of erosion and sediment controls; earthworks for proposed lots and community title road; stormwater management; construction and commissioning of essential utilities; road construction; retaining wall and footpath construction. An Arboricultural Impact Assessment (AIA) is submitted and proposed tree removal shall only be supported for the portion of physical works under the development application that impact upon existing trees and in this case it is the proposed civil works for the construction of a new road and associated works. Existing trees within the proposed residential lots and not affecting the construction of the proposed civil works under this development application are not considered, and shall be considered for removal or otherwise retention as part of separate lot applications. The following existing trees are in proximity to the proposed works under this application, as listed above: • Prescribed trees requiring Council consent include T7, T71, T72, T74 (Corymbia maculata), T10 (Corymbia gummifera), T60 (Magnolia soulangeana), T64, T81, T120 (Callistemon viminalis), T75 (Livistona australis), T77 (Banksia integrifolia), T79 (Backhousia citriodora), T82 (Yucca), and T121 (Acacia decurrens), • Exempt species that may be removed without Council consent: T6, T61, T62, T63, T65, T66, T69, T70, T73, T76, T78, T80, T119, T122, T123, T124, T125, T126, and T127. The AIA report recommends the retention of the following trees near the proposed footpath: T3 (Liquidamber street tree), and within the property T4, T5, T8, T9 (Corymbia maculata) and it is considered that a Project Arborist will be required to guide the retention of these trees, including advice on final location and construction methodology, and a condition shall be imposed. The Statement of Environmental Effects indicates that each residential allotment is able to satisfy the 40% landscape open space area as required under Warringah Development Control clause D1, and Landscape Referral consider that the Indicative Building Layouts are able to either provide for appropriate landscape outcomes within the front and rear setbacks including retention of existing trees where feasible, following relocation of the proposed retaining walling along the eastern boundaries (lots 5 to 13 inclusive).

Internal Referral Body	Comments
	Landscape Referral consider that the above listed prescribed trees proposed for removal will require removal to accommodate the proposed civil works. Landscape Plans are submitted indicating existing trees to be retained, proposed additional tree planting and other mass planting, and Landscape Referral raise no concerns with the landscape outcomes for this portion of proposed works under the development application. The proposed landscape planting includes 14 native trees, 67 native shrubs, and 900 native groundcovers, presenting a suitable landscape outcome along the western boundary adjoining residential properties. All trees and vegetation within adjoining properties shall be retained and Landscape Referral require that along the eastern boundary the proposed retaining walling (lots 5 to 13 inclusive) directly along the boundary in the form of blockwork construction limits the capacity of future landscape setting outcomes to satisfy the requirements of Warringah Development Control clause D1 and to support the application a minimum landscape planting zone of 1.2 metres is required to: support new screen planting alon the boundary, and to support retention of existing trees and vegetation within adjoining properties, and conditions shall be imposed for relocation of the retaining walling and stormwater works to allow for a unobstructed 1.2 metres wide landscape planting zone
NECC (Bushland and Biodiversity)	**SUPPORTED (with conditions)** **AMENDED COMMENTS** The comments in this referral relate to the following applicable controls and provisions: • NSW Biodiversity Conservation Act 2016 • Warringah DCP - Clause E2 Prescribed Vegetation • Warringah DCP - Clause E6 Retaining unique environmental features An amended Flora and Fauna Assessment (Ecological Consultants Australia Pty Ltd TA Kingfisher Urban Ecology and Wetlands, August 2024) has been submitted with the application and confirms that a total of 0.2ha will be cleared and therefore the proposal will not trigger entry into the Biodiversity Offsets Scheme via the clearing pathway. Calculations for area clearing have also been provided and no objections are raised. Furthermore, the FFA has addressed the issues raised in relation to the Avoidance and Minimisation of Impacts to the natural environment satisfying the requirements of the Biodiversity Guidelines for Development Applications. As established in the RFI response from the applicant, amendments to the submitted landscape plan will be required given the findings of the FFA. Historically, the Plant Community Type present on site would have been Sydney Coastal Shale-Sandstone Forest which is related to Duffys Forest Endangered Ecological Community and amendment of the Landscape plan will be conditioned to remove species that are not present in the scientific determination of Duffys Forest (i.e. Tristaniopsis laurina, Banksia robur, Acacia terminalis). It is noted that the Landscape Referral has been completed and only approved tree removals related to direct impacts from the proposed civil works under the application which include the following: 7, 10, 60, 64, 72, 74, 75, 77, 79, 81, 82, 120 and 121. Removal of additional prescribed trees will be dealt with at the time of future applications resulting from the proposed subdivision.

Internal Referral Body	Comments
	Standard conditions will be recommended and will be complemented with conditions recommended in the submitted Flora and Fauna Assessment. The development is designed, sited and will be managed to avoid any significant adverse environmental impact. **AMENDED COMMENTS** The comments in this referral relate to the following applicable controls and provisions: • NSW Biodiversity Conservation Act 2016 • Warringah DCP - Clause E2 Prescribed Vegetation • Warringah DCP - Clause E6 Retaining unique environmental features An Arboricutlural Impact Assessment (AIA) has been prepared and submitted with the application (The Tree Guardian, March 2024). The report has assessed the condition o a total of 149 trees and an additional 52 trees that have been grouped (trees 21 - group of 6 trees, 32 - group of 3 trees, 41 - group of 18 trees, 51 - group of 5 trees, 52 - group of 7 trees, 70 - group of 2 trees, 90 - group of 2 trees, 94 - group of 2 trees, 120 - group of 8 trees, 141 - group of 7 trees, 146 - group of 3 trees) number of trees that could potentially be impacted by the proposed subdivision. The AIA outlines that a separate development application was lodged for demolition of the existing structures on site and recommended the removal of 91 trees with 55 being exempt by species, height and/or location, 20 within the demolition footprint, 8 subject to major encroachments and 8 were in poor health. This application has been determined and therefore trees approved for removal under that separate DA will not b considered as part of this application. The following trees have been proposed for removal under this development application: 7, 14, 15, 16, 17, 18, 19, 20, 22, 25, 27, 29, 30, 31, 34, 35, 36, 37, 38, 39, 41 (grouping of 18 trees), 42, 43, 44, 45, 46, 47, 52 (grouping of 7 trees), 53, 54, 57, 59, 67, 71, 72, 74, 75, 77, 79, 81, 83, 84, 85, 86, 88, 89, 91, 96, 97, 98, 99, 100, 103, 104, 105, 106, 121. As trees 41 and 52 are groupings, it has to be assumed that all trees within those groupings will be removed as specific tree protection measures cannot be conditioned, therefore it is considered that a total of 75 prescribed trees are being proposed for removal. A Flora and Fauna Assessment (Ecological Consultants Australia Pty Ltd TA Kingfisher Urban Ecology and Wetlands, April 2024) has been submitted with the application and concluded that the application would not trigger entry into the Biodiversity Offsets Scheme (BOS) as the proposal does not exceed the clearing threshold (0.2 ha). However: • No map including these calculations has been provided and the inclusion of *Figure 7.2 Trees retained after demolition* would allow for consideration that the total impact of demolition works and subdivision works have been considered separately in the calculation of the clearing thresholds.

Internal Referral Body	Comments
	• The report considers in its results that a total of 88 prescribed trees, 45 exotic trees and a grouping of an additional 18 trees are proposed for removal (total of 151 trees). These numbers are inconsistent with those presented in the AIA. • The report has also failed to adequately address and discuss the Avoidance and Minimisation strategies explored by the development as required in Council's Biodiversity Requirements for Development Applications: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://files-preprod-d9.northernbeaches.nsw.gov.au/nbc-prod-files/media/files/2024-05/Biodiversity%20Requirements%20for%20Development%20Applications%20%202024.pdf?1715582608 Furthermore, a Landscape Plan (Taylor Brammer, April 2024) has been submitted with the application and includes a planting schedule that is consistent with the Native Planting Guide available on Council's website. The Planting guide includes a total of 14 trees to be planted. Council's Biodiversity Referrals team do not support the application in its current form due to the following: • The proposal to subdivide the lot into 13 lots for residential development is found to be inconsistent with the requirements of the Environmental Planning and Assessment Act Section 4.1.5 (1) (b). • The proposal is also inconsistent with the objectives of WDCP cl. E2 and cl. E6 as the majority of trees on site are appear to be proposed for removal. • The information provided with the subdivision application is unclear. The total number of trees to be removed for the purposes of demolition of existing structures and the number of trees proposed to be removed due to the proposed subdivision is inconsistent in the reports (Arboricultural Impact Assessment and Flora and Fauna Assessment) submitted with the application. • The submitted Flora and Fauna Assessment has not adequately demonstrated whether the application exceeds the Biodiversity Offsets Scheme and has failed to adequately address the Avoidance and Minimisation strategies explored to reduce impacts to the natural environment. • The application in its current form would require substantial removal of prescribed trees that are not compensated by the proposed Landscape planting schedule. The applicant is encouraged to retain prescribed vegetation and consider alternative designs that will avoid and minimise impacts to the natural environment. Reports submitted with the application should be consistent with each other for evaluation of impacts to the natural environment to be clearly discernible. In addition to the incorporation of the landscaping elements already included in the application, consideration should be given to the removal of a dwelling within proposed Lot 3 to form a community title lot which would allow for the retention of a number of prescribed trees including trees 15, 16, 17, 18, 19, 20, 21, 22, 29, 30, 34, 36, 37, 43, 45, 46, 47, 48 and 49. **ORIGINAL COMMENTS** The comments in this referral relate to the following applicable controls and provisions:

Internal Referral Body	Comments
	• NSW Biodiversity Conservation Act 2016 • Warringah DCP - Clause E2 Prescribed Vegetation • Warringah DCP - Clause E6 Retaining unique environmental features An Arboricutlural Impact Assessment (AIA) has been prepared and submitted with the application (The Tree Guardian, March 2024). The report has assessed the condition o a total of 149 trees and an additional 52 trees that have been grouped (trees 21 - group of 6 trees, 32 - group of 3 trees, 41 - group of 18 trees, 51 - group of 5 trees, 52 - group of 7 trees, 70 - group of 2 trees, 90 - group of 2 trees, 94 - group of 2 trees, 120 - group of 8 trees, 141 - group of 7 trees, 146 - group of 3 trees) number of trees that could potentially be impacted by the proposed subdivision. The AIA outlines that a separate development application has been lodged for demolition of the existing structures on site and recommended the removal of 91 trees with 55 being exempt by species, height and/or location, 20 within the demolition footprint, 8 subject to major encroachments and 8 were in poor health. This application is yet to be determined and therefore approved tree removals for the purposes of demolition are unconfirmed. Additional information to be noted is the following: • In addition to the 91 trees proposed for removal for the Demolition DA (undetermined), the current DA will require the removal of an additional 42 prescribed trees (17, 22, 25, 27, 30, 31, 34, 35, 36, 37, 38, 41 (grouping of 18), 42, 43, 44, 45, 46, 52, 53, 54, 57, 59, 60, 64, 67, 71, 74, 75, 77, 79, 83, 85, 86, 88, 89, 91, 100, 101, 104, 105, 106 & 114). • An overlap of 24 of these trees are proposed to be removed in the Demolition DA (62, 64, 83, 84, 85, 86, 88, 89, 91, 96, 97, 98, 99, 100, 101, 103, 104, 105, 106, 107, 108, 110, 114 and 137). These trees include grouping 41 where the specific number of trees to be retained has not been confirmed and therefore, for the purpose of calculation of impacts they are assumed to be proposed for removal. A Flora and Fauna Assessment (Ecological Consultants Australia Pty Ltd TA Kingfisher Urban Ecology and Wetlands, April 2024) has been submitted with the application and concluded that the application would not trigger entry into the Biodiversity Offsets Scheme (BOS) as the proposal does not exceed the clearing threshold (0.2 ha). However: • No map including these calculations has been provided and the inclusion of *Figure 7.2 Trees retained after demolition* would allow for consideration that the total impact of demolition works and subdivision works have been considered separately in the calculation of the clearing thresholds. • The report considers in its results that a total of 88 prescribed trees, 45 exotic trees and a grouping of an additional 18 trees are proposed for removal (total o 151 trees). These numbers are inconsistent with those presented in the AIA. • The report has also failed to adequately address and discuss the Avoidance an Minimisation strategies explored by the development as required in Council's Biodiversity Requirements for Development Applications: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://files-preprod-d9.northernbeaches.nsw.gov.au/nbc-prod-files/media/files/2024-

Internal Referral Body	Comments
	05/Biodiversity%20Requirements%20for%20Development%20Applications%20%202024.pdf?1715582608 Furthermore, a Landscape Plan (Taylor Brammer, April 2024) has been submitted with the application and includes a planting schedule that is consistent with the Native Planting Guide available on Council's website. The Planting guide includes a total of 14 trees to be planted. Council's Biodiversity Referrals team do not support the application in its current form due to the following: • The proposal to subdivide the lot into 13 lots for residential development is found to be inconsistent with the requirements of the Environmental Planning and Assessment Act Section 4.1.5 (1) (b). • The proposal is also inconsistent with the objectives of WDCP cl. E2 and cl. E6 as the majority of trees on site are appear to be proposed for removal. • The information provided with the subdivision application is unclear. The total number of trees to be removed for the purposes of demolition of existing structures and the number of trees proposed to be removed due to the proposed subdivision is inconsistent in the reports (Arboricultural Impact Assessment and Flora and Fauna Assessment) submitted with the application. • The submitted Flora and Fauna Assessment has not adequately demonstrated whether the application exceeds the Biodiversity Offsets Scheme and has failed to adequately address the Avoidance and Minimisation strategies explored to reduce impacts to the natural environment. • The application in its current form would require substantial removal of prescribed trees that are not compensated by the proposed Landscape planting schedule. The applicant is encouraged to retain prescribed vegetation and consider alternative designs that will avoid and minimise impacts to the natural environment. Reports submitted with the application should be consistent with each other for evaluation of impacts to the natural environment to be clearly discernible. In addition to the incorporation of the landscaping elements already included in the application, consideration should be given to the removal of a dwelling within proposed Lot 3 to form a community title lot which would allow for the retention of a number of prescribed trees including trees 15, 16, 17, 18, 19, 20, 21, 22, 29, 30, 34, 36, 37, 43, 45, 46, 47, 48 and 49.
NECC (Development Engineering)	**SUPPORTED (with conditions)** Comments 3/2/25 The stormwater/engineering plans have now been amended to reflect the new retaining wall heights and locations. No objections to the subdivision development subject to conditions. **Comments 8/1/2025** **The sketch plans detailing the reduced boundary retaining wall have been**

Internal Referral Body	Comments
	reviewed and it has been determined that the proposed loots including Lot no 13 can drain via gravity to the OSD Tank . The applicant is to amend the stormwater management plans accordingly to reflect the new lot finished levels. **Updated comments 1/11/2** The proposed 12 lot subdivision is supported as the DRAINS model was reviewed and supports the stormwater management plan . The applicant has also submitted a draft neighbourhood management statement however the requirement for by laws covering the operation of OSD/water quality system etc will be conditioned as the statement is generic. The proposed 12 lot subdivision is not supported for the following reasons: **Stormwater management** 1) The proposed stormwater management plan is to be supported by a DRAINS model to determine the OSD storage volumes and post development discharge rates, noting the pre developed condition is to be state of nature. A summary report of the DRAiNS inputs and outputs is to be submitted also. 2) The On Site Detention tank is to be fully located within the footprint of the proposed internal road ,this will limit the current OSD Tanks footprint which impacts open space and landscaping. 3) The stormwater management plans are also to comply with the mininimum information requirements for development as detailed in section 9.7.3 of Councils Wate Management for Development Specificatiion. 4) A catch drain is also to feature of the rear boundaries of Nos 21-23 Warili Road to capture any upstream overland stormwater flows. **Geometric Road Design** The proposed Cu De Sac diameter is 25m in width these seems excessive and is to be reduced to 20m. **Community Management Plan** As the subdivision is proposed to be a Communtity Title enabling a community association to fund and maintain community facilities including the On site detention tank, water quality treatment devices , street lighting , the shared footpath and the private road. A draft community management statement is to be submitted for Councils review together with an Operations and Maintenance Manual for the operation of the OSD Tank and Water Quality treatment devices.
NECC (Water Management)	**SUPPORTED (with conditions)** This application was assessed in consideration of but not limited to: • Supplied plans and reports; • Relevant LEP and DCP clauses; • Northern Beaches Water Management for Development Policy The proposed stormwater management (quality and balance) is satisfactory and meet the General Stormwater Quality Requirements of the Northern Beaches Water Management for Development Policy.

Internal Referral Body	Comments
Strategic and Place Planning (Urban Design)	**SUPPORTED (without conditions)** This advice is provided as an internal referral from the Urban Design Unit to the Development Assessment Officer for consideration and coordination with the overall assessment. The application seeks consent for a proposed Community title subdivision comprising of 13 lots and new road access. Urban Design raises no objection to the proposed development. **Please note:** Regarding any view impacts and any impacts on solar amenity and overshadowing these matters will be dealt with under the evaluation of Council Planning Officer. Any impacts of non-compliances regarding heritage will be dealt with under the evaluation of Council Heritage Officers, and any Landscape non-compliances will be dealt with under the evaluation of Council Landscape Officers.
Traffic Engineer	**SUPPORTED (subject to conditions)** This development application seeks consent for the community title subdivision of 49 Blackbutts Road and 21A Warili Road, Frenchs Forest; into 1 community allotment that includes a new road and stormwater drainage infrastructure, and 12 residential allotments. The Transport Network section has reviewed the proposal with respect to access, parking, and traffic generation impacting the road network. **Traffic Generation and Impact to Road Network** A Traffic Impact Assessment (TIA) has been prepared by SCT Consulting for the proposed subdivision. The Guide to Traffic Generating Developments (GTGD) provide rates for dwelling houses, with daily vehicle trips of 9.0 per dwelling and weekday peak hour vehicle trips of 0.85 per dwelling. The development would result in 108 vehicle trips per day and 10 vehicles per hour during the weekday peak period, equivalent to one car every 6 minutes. The projected future traffic generation is unlikely to result in any significant impacts to the local road network. **Access Road and Parking** Access for the development is provided from Warili Road via a new road, under community Lot number 1; with the exception of Lot 4 which has a separate driveway of Blackbutts Road. The road design should be a minimum 6m wide, and include the road pavement, vertical kerb and gutter, and a 1.5m wide footpath. The Applicant proposes a 5.5m road width from the Warili Road to the property boundary of No.21 Warili Road and Lot 13. This is considered acceptable due to the narrow width and requirement to include a 1.5m footpath. A minimum 6m wide road width has been provided for the straight section of road from the proposed indented parallel parking bay (2.1m wide) to the end of the cul-de-sac. The proposed 12.2m radius for the turning area is supported as it demonstrates access for Council's 10.5m Waste vehicle to turn around in a

Internal Referral Body	Comments
	continuous movement without mounting the kerb, shown on Turning Path Plan Drawing Number 230057-00-DA-C22.01. The proposal to install a “Give-Way” holding line on the bend to control vehicles exiting the subdivision and enable access for a waste vehicle entering from Warili Road is not acceptable and cannot be supported. The curved section of road, between the propert boundary with No.21 Warili Road and the indented parallel parking bay, should be widened to enable both service/delivery vehicles and passenger vehicles to pass simultaneously. The eastern kerbline should be retained with the western kerbline realigned, and the radius on the inside of the curve increased to enable the vehicle passing movements. An updated swept path analysis should be provided to demonstrate compliance with this condition. A 1.5m concrete footpath is provided on the eastern side of the road, from Warili Road, connecting with the existing footpath on Blackbutts Road. The Civil Engineering plans shows the use of a rollover kerb and gutter adjacent to the proposed footpath north of the property boundary with No.21 Warili Road. The use of rollover kerb and gutter raises safety concerns for pedestrians and often leads to illegal parking on the footpath and nature strip. Council therefore requires the use of a vertical faced kerb and gutter only. Two sections of visitor parking (separated by kerb extensions) are proposed on the western side of the road, providing a total of 5 indented parallel parking spaces. The number of visitor spaces is acceptable however the two sections should be consolidated into one continuous parking bay from the cul-de-sac southwards, creating a larger landscaped area on the bend, and improving the transition for access exiting the curve. The Arboricultural Impact Assessment Report states that T140 will be subjected to a 27.8% major encroachment from development of the proposed new road. The current indented parking design shows the works through the SRZ, and a design modification is required to ensure the footprint of the new road is outside of the SRZ. The recommended consolidation of the parking bays would remove the end parking space so the road is outside of the SRZ. The proposed T82 can no longer be planted at the located shown on the Landscape Details plan, Drawing No.LD01; as a result of the consolidation which removes the kerb extension. I have discussed the design changes with Council’s Landscape section who supports the recommended changes. The parallel parking spaces should be linemarked and designed in accordance with AS 2890 (On-street Parking standards). The parking bay should be 2.1m wide and indented with a 45 degree angle transition to facilitate entry and exit. Linemarking of the intermediate spaces should be 6m in length and the end spaces 6.3m in length. The above requirements can be conditioned as part of the Consent with the amended Civil Engineering plans to be submitted to Council for approval prior to the issue of a Construction Certificate. **Signage and Linemarking**

Internal Referral Body	Comments
	The widened road design would still require parking restrictions to prevent on-street parking which reduces the travel lanes for vehicular access. The Applicant has provided Pavement, Signage and Linemarking Plans, Drawing No.230057-00-DA-C11.01 and 230057-00-DA-C11.02 Revision 1, proposing the installation of 'No Stopping' signs for the 5.5m wide section of road and 'No Parking' signs for the remainder of the road. The proposal should instead provide a double dividing barrier line (BB lines) from Warili Road to the start of the turning area. BB lines can be installed for roads with a road width of 5.5m or more. According to the Road Rules, it is illegal to park within 3m of the continuous line, which is enforceable without additional parking signs. The recommended BB lines would restrict parking and also provide delineation along the bend which helps separate the opposing traffic flows. The BB lines can therefore be installed instead of 'No Parking' signs which would otherwise narrow the existing nature strip. The installation of an unbroken yellow 'No Stopping' line (C3 line) would also be required in the turning circle to prevent parking and reduce overall signage clutter. The required changes to the Parking Layout and Signage Plans can be conditioned as part of the Consent, with the amended plans to be submitted to Council's Traffic team for approval prior to the issue of a Construction Certificate. The proposal can only be supported subject to the recommended Conditions.
Waste Officer	**SUPPORTED (subject to conditions)** Waste Management Assessment The Waste Management Plan will need to be corrected to state that bins and bulky goods are to be presented at the kerbside on the community road in front of each dwelling rather than being taken to Blackbutts Road for collection.

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)

Housing and Productivity Contribution

Part 2 Development for which contribution is require and determination of contribution, Division 2 Housing and productivity contribution amounts, Clause 7 Base component.

This Clause details the base component amounts that apply to the calculation of the housing and productivity contribution, as set out in the following table:

Region	HPC class of development	Amount	HPC unit
Greater Sydney	Residential subdivision	$12,000	new dwelling lot
	Residential strata subdivision	$10,000	new strata dwelling lot
	Non-strata multi-dwelling development	$10,000	new non-strata dwelling
	Commercial development	$30	square metre of new GFA
	Industrial development	$15	square metre of new GFA

Comment:

The proposal involves 12 new residential lots and is sited within the Greater Sydney region. As such, the contribution is $144,000 (before adjustment explained in condition).

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.

In response to the above requirements of Chapter 4, the applicant has submitted a Preliminary Environmental Site Investigation dated 31 January 2024 and prepared by Geotechnique Pty Ltd. In its conclusion, the investigation states:

'Based on the information obtained in preparation of this report, it is considered possible that the site has limited potential for contamination due to past and present site activities.'

Therefore, as the Investigation indicates that there is a potential for contaminants to exist on the site, sub-section 4.6 (1)(b) and 7(1)(c) of this chapter must be considered.

Sub-section 4.6(1)(b) stipulates that *"if the land is contaminated, it [Council] is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out"*.

Given the claimed potential of contamination on the site as noted in the Phase 1 Investigation, a Phase 2 Environmental Site Assessment has been provided to confirm contamination present, at what levels and at what locations. A Phase 2 Environmental Site Assessment has been provided which

confirms the location and type of contaminants on the site and provides recommendations for the remediation of the site to enable the development to be safely carried out. In this regard, Council is satisfied that the land can be made suitable for the purpose for which the development is proposed to be carried out and the recommendations included in the investigation are included as conditions in the Recommendation of this report.

Sub-section 4.6 (1)(c) stipulates that *"if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose"*.

Council is satisfied that the land can be made suitable for the purpose for which the development is proposed to be carried out and the recommendations included in the investigation are included as conditions in the Recommendation of this report.

Further, a condition has been imposed to require further sampling (and if necessary remediation). Sampling locations are required to be provided in accordance with NSW EPA (2022) Contaminated Land Guidelines as well as directly adjacent to and within the footprint of the incinerator.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Minimum subdivision lot size:	600sqm	Lot 1: 2599sqm Lot 2: 619sqm Lot 3: 659sqm Lot 4: 620sqm Lot 5: 681sqm Lot 6: 645sqm Lot 7: 625sqm Lot 8: 625sqm Lot 9: 623sqm Lot 10: 607sqm Lot 11: 616sqm Lot 12: 606sqm Lot 13: 655sqm	N/A	**Yes**

Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision - consent requirements	Yes
4.1 Minimum subdivision lot size	Yes
5.3 Development near zone boundaries	Yes

Clause	Compliance with Requirements
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

Built Form Control - Indicative footprints	Requirement	Proposed	% Variation*	Complies
B3 Side Boundary Envelope	4m	Width of lots complies to allow potential for a compliant envelope	N/A	Yes
B5 Side Boundary Setbacks	0.9m	0.9m (minimum)	N/A	Yes
B7 Front Boundary Setbacks	6.5m	6.5m (minimum)	N/A	Yes
B9 Rear Boundary Setbacks	6m	6m (minimum)	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	Potential is shown for at least 40% for each lot	N/A	Yes

Note: Application does not involve any built works (except subdivision works).

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C1 Subdivision	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

C1 Subdivision

Component	Requirement	Proposed	Compliant
Lot requirements	R2 Low Density Residential zone requirements: Proposed new allotments: a) Minimum width: 13 metres b) Minimum depth: 27 metres; and c) Minimum building area: 150m²	a) 13m-17.38m b) 27.6m- 48.05m c) 606sqm-681sqm	Yes
Access	Motor vehicle access to each residential allotment is required from a constructed and dedicated public road. Where access is proposed to a section of unconstructed public road, then the subdivision will need to provide legal, constructed access to the Council's satisfaction. Access for Council service vehicles, emergency vehicles and garbage collection vehicles must be provided. Driveways, accessways, etc, to allotments should have a gradient not exceeding 1:4 and allow for transitions at a minimum length of 1.5m and at a grade no steeper than 1:10. Driveways in excess of 200 metres will not be allowed for residential development.	-Vehicle access is provided from Warili Road to a new internal road within the proposed subdivision. -N/A -Access is provided for service vehicles, emergency vehicles and garbage collection vehicles via the proposed road. -Council's Development Engineer is satisfied with the proposed accessway and driveways. Future applications for the dwellings may be subject to further requirements for the internal driveways. -N/A -N/A (Driveways less than 30m) -N/A	Yes

Driveways that are 30m or more in length require a passing bay to be provided every 30m. To provide a passing bay, driveways shall be widened to 5.0m for a distance of at least 10m.

-N/A

-Suitable access is designed for allow for vehicle turning.

Passing bays should have regard to sight conditions and minimise vehicular conflict.

-Complies (subject to conditions).

Vehicular ingress/egress points to internal lots may be used as passing/turning bays, subject to extension of a right-of-carriageway over the passing/turning bay.

Rights-of-carriageway should be located so as to accommodate all vehicle turning facilities.

-N/A

Width of accessways are to be as follows:

Number of lots to be serviced	Width of clear constructed accessway (m)
1 - 5	3.5
6 - 10	5.0
in excess of 10	Access is to be provided by a private or public road constructed with a width that is in accordance with Council standard specifications for engineering works (AUSPEC 1)

Provision of services in rights of carriageway are as follows:

Number of lots to be serviced	Additional width to be provided in Right of Carriageway (m)
Up to 3 lots	0.5

	4 or more lots | 1.0		
Design and construction	All roads, rights of carriageway, drainage design and construction is to be in accordance with Council's policy requirements including; AUSPEC 1 - Council's Specification for Engineering Works, Development Engineering Minor Works Specification, On Site Stormwater Detention (OSD) Technical Specification and Council's Water Sensitive Urban Design Policy. Additionally, internal roads must be designed in accordance with the relevant Australian Standards. Subdivision design needs to maximise and protect solar access for each dwelling by considering factors such as orientation, shape, size and lot width.	-Suitable conditions of consent are imposed in this regard. -The dimensions and size of the lots (compliant with the requirements above) provide a situation in which design including compliant side boundary envelope can be provided at the southern elevation. Sufficient rear setbacks for lots 5-13 also contribute to providing an acceptable outcome.	Yes
Drainage	Provision should be made for each allotment to be drained by gravity to a Council-approved drainage system. The topography of the land should not be altered to adversely affect the natural drainage patterns. Stormwater should drain directly to a Council-approved drainage system and not via adjoining properties unless via a formalised interallotment drainage system. The proposed allotments are to be drained to the direction of the natural fall of the land. Interallotment drainage easements will be required through adjoining properties to adequately drain land to Council's downstream system.	Council's Development Engineer is satisfied with the proposal and suitable conditions of consent are imposed in this regard.	Yes
Restrictions	Any easement, right-of-carriageway, or other restriction that is placed on the title of any land as a requirement of the approval of the subdivision is to be protected by a positive	Suitable conditions of consent are imposed in this regard.	Yes

	covenant or like instrument with the Council nominated as a party.		
Environmentally constrained land	In areas subject to constraints such as flooding, tidal inundation, threatened species, landslip risk, bushfire or any other matter, adequate safe area for building, where the risk from hazard is minimised, is to be provided within an allotment. Where possible, lot boundaries should utilise natural land features such as creeks, escarpments and rock outcrops.	The site is not subject to any significant environmental constraints. Councils Natural Environment officer have imposed various conditions to mitigate impacts to the natural environment. Constraints are of a nature that can be dealt with under a future application for dwellings.	Yes
Bushfire	Subdivision should be designed to minimise the risk from potential bushfire. Asset protection zones should be contained within the property boundaries of the new subdivision.	The site is not bush fire prone land.	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

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

A monetary contribution of $15,383 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $1,538,275.

CONCLUSION

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

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

- Codes and Policies of Council.

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

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

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

PLANNING CONCLUSION

The proposed subdivision of the site into 13 lots, including 12 residential allotments and 1 community title lot has been the subject of detailed assessment against the provisions of the WLEP 2011, WDCP 2011 and relevant State and Council policies, and this report provides a detailed account of that assessment.

The application is referred to the Development Determination Panel (DDP) due to 8 submissions being received in response to the public exhibition.

Overall, the proposed subdivision performs well against all relevant planning, environment and engineering related controls and will not result in unreasonable or unacceptable impacts on adjoining or nearby properties or the natural environment.

There are a number of special conditions that have been imposed to ensure the final outcome is entirely suitable and appropriate for the site and neighbouring amenity.

The issues and concerns raised by residents in the submissions have been considered, and where appropriate have resulted in amendments to the proposal during the assessment, or special conditions being imposed.

In particular, the original extent of filling of the site on the eastern and southern sides, the height of retaining walls and fencing on those boundary interfaces was interrogated and found to be excessive. Amended plans were sought which reduced the amount of landfilling, reduced the height of retaining walls and consequently the height of boundary fencing. Internal lot widths were also adjusted to provide greater width for Lot 13 and a better interface (including increased setback and lower land levels) with properties at 21, 23 and 25 Warili Road in particular.

In terms of the planning controls, the proposal complies with the relevant provisions of the WLEP and WDCP that relate to subdivision, including minimum lot size, width, depth and the subdivision character. The application has also demonstrated that the proposed lots can be developed for individual dwelling-houses in a manner that complies with the built form controls under the LEP and DCP, as demonstrated by the indicative footprints and associated plans.

Specifically, there have been a number of special conditions imposed that will provide for an improved

outcome for neighbouring amenity, including; a more substantial landscaped strip and buffer zone to the western boundary, and increased setbacks to retaining walls along the east and southern boundaries.

The proposal is recommended for approval.
It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2024/0492 for Neighbourhood title subdivision comprising of 13 lots and new road access on land at Lot 1 DP 524083, 21 A Warili Road, FRENCHS FOREST, Lot 1 DP 1298188, 49 Blackbutts Road, FRENCHS FOREST, 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**
0923/3D	-	Plan Showing Proposed Neighbourhood Scheme	YSCO Geomatics	23/1/2025
C01.41	2	GENERAL ARRANGEMENT PLAN	Enspire Solutions Pty Ltd	23/1/2025
C03.01	3	EROSION AND SEDIMENTATION CONTROL PLAN	Enspire Solutions Pty Ltd	22/01/2025
C03.21	2	EROSION AND SEDIMENTATION CONTROL DETAILS	Enspire Solutions Pty Ltd	15/01/2025
C04.01	3	EARTHWORKS CUT AND FILL PLAN	Enspire Solutions Pty Ltd	22/01/2025
C04.21	2	EARTHWORKS CUT AND FILL SECTIONS	Enspire Solutions Pty Ltd	15/01/2025
C5.01	4	SITEWORKS AND STORMWATER	Enspire Solutions Pty Ltd	22/01/2025

		MANAGEMENT PLAN SHEET 01		
C05.02	4	SITEWORKS AND STORMWATER MANAGEMENT PLAN SHEET 02	Enspire Solutions Pty Ltd	22/01/2025
C06.01	2	ROAD TYPICAL CROSS SECTIONS	Enspire Solutions Pty Ltd	15/01/2025
C07.01	2	ROAD LONGITUDINAL SECTION	Enspire Solutions Pty Ltd	15/01/2025
C11.01	3	PAVEMENT, SIGNAGE AND LINEMARKING PLAN - SHEET 01	Enspire Solutions Pty Ltd	22/01/2025
C11.02	2	PAVEMENT, SIGNAGE AND LINEMARKING PLAN - SHEET 02	Enspire Solutions Pty Ltd	15/01/2025
C13.01	1	SITE SECTIONS	Enspire Solutions Pty Ltd	15/01/2025
C14.01	2	SITEWORKS DETAILS	Enspire Solutions Pty Ltd	15/01/2025
C15.01	1	RETAINING WALL ELEVATIONS - SHEET 01	Enspire Solutions Pty Ltd	15/01/2025
C15.02	1	RETAINING WALL ELEVATIONS - SHEET 02	Enspire Solutions Pty Ltd	15/01/2025
C17.01	3	OSD TANK PLAN AND SECTION	Enspire Solutions Pty Ltd	22/01/2025
C18.01	2	STORMWATER DETAILS	Enspire Solutions Pty Ltd	15/01/2025

Approved Reports and Documentation			
Document Title	**Version Number**	**Prepared By**	**Date of Document**
Operational Waste Management Plan	B	Consulting. An elephant Foot company.	13/03/2024
Preliminary Site Investigation	20499/1-AA	Geotechnique Pty Ltd	31/01/2024
Detailed Site Investigation	20499/2-AA	Geotechnique Pty Ltd	16/08/2024
Geotechnical Investigation Report	1	Crozier Geotechnical Consultants	26/03/2024
Landscape Architecture - DA Package	A	Taylor Brammer	5/04/2024
Civil Engineering and Stormwater Report	3	Enspire	15/01/2025

Traffic Impact Assessment	2.0	SCT Consulting	26 March 2024
Flora and Fauna Assessment	Final	Kingfisher	April then updated July and September 2024
Arboricultural Impact Assessment Report	2.0	The Tree Guardian Arboricultural Consultancy	1 August 2024
Neighbourhood Management Statement	Form 30	Colin Biggers & Paisley Lawyers	06/09/2024

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

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

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

2. **Compliance with Other Department, Authority or Service Requirements**
The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid - UG Cables and Kiosk	Ausgrid Referral Response - UG Cables and Kiosk	16.12.2022
Ausgrid - Subdivision	Ausgrid Referral Response - Subdivision	17.05.2024

(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 $15,382.75 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 $1,538,275.00.

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.

7. **Housing and productivity contribution - Development consents**

1. The housing and productivity contribution (HPC) set out in the table below, but as adjusted in accordance with condition 2, is required to be made:

Contribution Type	**Amount**
Housing and Productivity Contribution	$12,000 per residential lot
Total:	**$144,000 (12 residential lots)**

2. The amount payable at the time of payment is the amount shown in condition 1 as the total housing and productivity contribution adjusted by multiplying it by:

$$\frac{highest\ PPI\ number}{consent\ PPI\ number}$$

where—

highest PPI number is the highest PPI number for a quarter following the June quarter 2023 and up to and including the 2nd last quarter before the quarter in which the payment is made.

consent PPI number is the PPI number last used to adjust HPC rates when consent was granted.

June quarter 2023 and PPI have the meanings given in clause 22 (4) of the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023.

If the amount adjusted in accordance with this condition is less than the amount at the time consent is granted, the higher amount must be paid instead.

3. The HPC must be paid before the issue first construction certificate in relation to the development, or before the commencement of any work authorised by this consent (if no construction certificate is required). However, if development is any of the kinds set out in the table below, the total housing and productivity contribution must be paid as set out in the table:

Development	**Time by which HPC must be paid**

Development consisting only of residential subdivision within the meaning of the HPC Order	Before the issue of the first subdivision certificate
High-density residential development within the meaning of the HPC Order for which no construction certificate is required	Before the issue of the first strata certificate
Development that consists only of residential strata subdivision (within the meaning of the HPC Order) or only of residential strata subdivision and a change of use of an existing building	Before the issue of the first strata certificate
Manufactured home estate for which no construction certificate is required	Manufactured home estate for which no construction certificate is required

4. The HPC must be paid using the NSW planning portal (https://pp.planningportal.nsw.gov.au/).

5. If the Minister administering the Environmental Planning and Assessment Act 1979 agrees, the HPC (apart from any transport project component) may be made, instead of as a monetary contribution, in the following ways:
   a) the dedication or provision of land for the purpose of regional infrastructure in the region in which the development will be carried out,
   b) the carrying out of works for the purpose of regional infrastructure in the region in which the HPC development will be carried out.

   If the HPC is made partly as a monetary contribution, the amount of the part payable is the amount of the part adjusted in accordance with condition 2 at the time of payment.

6. Despite condition 1, a housing and productivity contribution is not required to be made to the extent that a planning agreement excludes the application of Subdivision 4 of Division 7.1 of the Environmental Planning and Assessment Act 1979 to the development, or the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023 exempts the development from the contribution. The amount of the contribution may also be reduced under the order, including if payment is made before 1 July 2025.

Reason: Statutory requirement.

8. **Construction, Excavation and Associated Works Security Bond(s)**
The applicant is to lodge a bond with Council for the following:

Crossing / Kerb & Gutter / Footpath Works
As security against any damage or failure to complete the construction of any vehicular

crossings, kerb and gutter, any footpath works and removal of any redundant driveways required as part of this consent a bond of $50000

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 $40000

Maintenance for Civil Works
A maintenance bond of $15000 for the construction of t[he 1.5m wide footpath for the Blackbutts frontage and vehicle crossings. The maintenance bond will only be refunded upon completion of the six month maintenance period, if work has been completed in accordance with the approved plans and to the satisfaction of Council. The maintenance bond is to be paid prior to Council prior to issuing of practical completion.

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

9. **Amended Plans**
Amended Plans shall be issued to the Certifier prior to the issue of a Construction Certificate to include the following details to be amended:
i) the retaining walling along the along the eastern boundaries of lots 5 to 13 inclusive shall be relocated to provide an unobstructed 1.2 metres wide landscape planting zone,
ii) the stormwater pits and drainage lines shall be relocated accordingly.

Certification shall be provided to the Certifier that these amendments have been documented.

Reason: Provision of landscape setting along the boundary and preservation of existing trees and vegetation in adjoining properties.

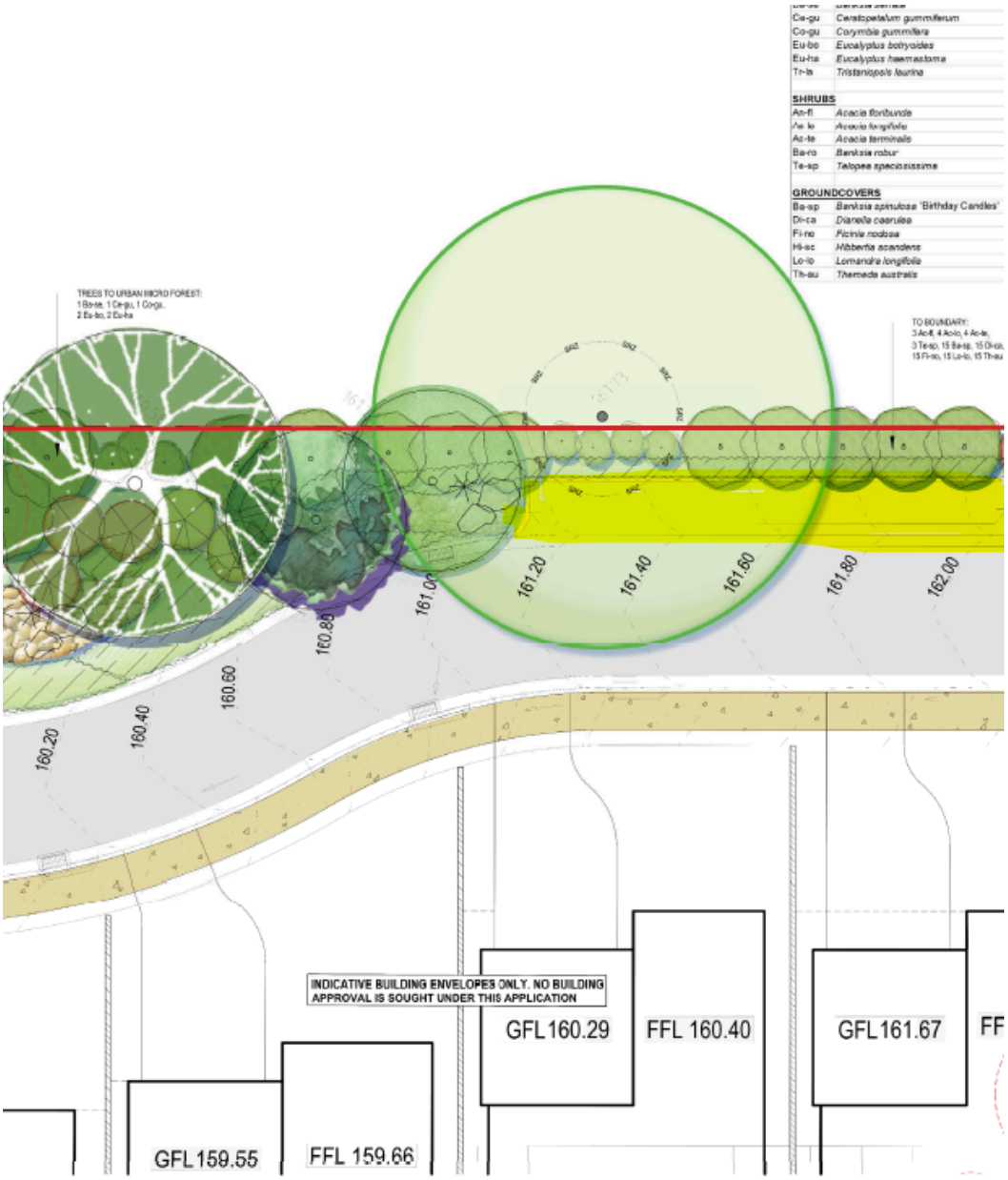
10. **Street Lighting**
Prior to the issue of a Construction Certificate, location and details of street lighting is to be provided to the Certifier.

A suitably qualified professional is to confirm that the design for lighting will minimise impact on neighbouring properties. This includes that all lighting must face away from the neighbouring properties to the west.

Reason: To minimise lighting impacts to neighbouring properties.

11. **Amendments to the approved plans**
The following amendments are to be made to the approved plans:

- The three on-street car parking spaces to the south (highlighted in yellow below) are to be deleted and replaced with landscaping with proposed planting extended.



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.

BEFORE ISSUE OF A SUBDIVISION WORKS CERTIFICATE

12. **On-Site Stormwater Detention**
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 Enspire, drawing number 230057-00-DA C5.01(Rev 4),C5.02(Rev 4),C17.01 (Rev 17.01), dated 22/1/25. 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. Detail the installation of a orifice plate as detailed in the DRAINS model.

ii.Detail the installation of a suitably sized catchdrain upstream of the properties known as 21-23 Warili Road and connected into the on site stormwater system.

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

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

13. **Utilities Services**
Prior to the issue of the Subdivision Works Certificate, written evidence of the following service provider requirements must be provided to the Principal Certifier:

a) a letter from Ausgrid demonstrating that satisfactory arrangements can be made for the installation and supply of electricity,
b) a response from Sydney Water as to whether the proposed works subject to this consent would affect any Sydney Water infrastructure, and whether further requirements need to be met, and
c) other relevant utilities or services - that the development as proposed to be carried out is satisfactory to those other service providers, or if it is not, the changes that are required to make the development satisfactory to them.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Subdivision Works Certificate.

Reason: To ensure relevant utility and service providers' requirements are provided to the Principal Certifier.

14. **Submission of Roads Act Application for Civil Works in the Public Road**
The Applicant is to submit an application for approval for Infrastructure works on Councils roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

1)The application is to include Civil Engineering plans for the design of a 1.5m wide concrete footpath within the Blackbutts footpath reserve to relace the existing concrete footpath for the full frontage of the site.
2) Vehicle crossings in Blackbutts Road and Warili Road.
3) The stormwater connection of the 375mm outlet pipe to Councils stormwater pit in Warili

Road. The stormwater drainage longsection is to detail all service locations to AHD determined by a services locator in the footpath area.

The Plans are to be in accordance with the Council's specification for engineering works - AUS-SPEC #1 and standard engineering drawings. The plans shall be prepared by a qualified Civil Engineer.

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

An approval is to be submitted to the Certifier prior to the issue of the Subdivision Works Certificate

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification.

15. **Pre-Commencement Dilapidation Report**

The applicant must prepare and submit a dilapidation report providing an accurate record of the existing condition of adjoining public property and public infrastructure (including roads, gutter, footpaths, etc). A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties (including all adjacent properties to the west that abut the internal road).

The dilapidation report must be submitted to Council for written approval and the written approval is then to be submitted to the Principal Certifier prior to the issue of the any Subdivision Works Certificate and the commencement of any works including demolition.

Reason: Protection of Council's Infrastructure during construction.

16. **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 and approved by the Northern Beaches Council Traffic Team 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 all Staff and Contractors to use parking onsite.
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior.
- Specify that, due to the proximity of the site in proximity to Mimosa Public School and Davidson High School, no heavy vehicle movements or construction activities effecting vehicle and pedestrian traffic are permitted in school zone hours (8:00am-9:30am and 2:30pm-4:00pm weekdays).
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety.
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to

adjoining property owners prior to the implementation of any temporary traffic control measure.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees.
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site.
- 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.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

17. **Tree Removal Within the Property**
This consent approves the removal of existing prescribed trees on the subject site as listed below:
a) T7, T71, T72, T74 (Corymbia maculata), T10 (Corymbia gummifera), T60 (Magnolia soulangeana), T64, T81, T120 (Callistemon viminalis), T75 (Livistona australis), T77 (Banksia integrifolia), T79 (Backhousia citriodora), T82 (Yucca), and T121 (Acacia decurrens),
b) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised development works.

18. **Work Zones and Permits**
Prior to commencement of the associated works, the applicant shall obtain a Work Zone Permit where it is proposed to reserve an area of road pavement for the parking of vehicles

associated with a construction site.
A separate application is required with a Traffic Guidance Scheme for standing of construction vehicles in a trafficable lane.

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

19. **Land Contamination Assessment**
After demolition and removal of site features, sampling and testing of soils beneath the buildings, loading dock and concrete handstand area at twelve additional sampling locations is to be undertaken by a suitably qualified consultant to satisfy sampling requirements for a site area of 1.018 hectares (ha) as per NSW EPA (2022) Contaminated Land Guidelines - Sampling Design part 1 - application.

In addition to this, sampling locations are required to be provided directly adjacent, and within the footprint of the incinerator.

If contamination is identified, a suitably qualified Environmental Consultant is to provide appropriate remediation and validation, if required. Any remediation recommended by the consultant is to be implemented into the development.

Reason: To ensure the effective management of potential land contamination.

DURING BUILDING WORK

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

The Project Arborist shall be in attendance and supervise all works for the proposed footpath near existing trees T3 (Liquidamber street tree), and within the property T4, T5, T8, T9 (Corymbia maculata), including: advice on final location and construction methodology. The Project Arborist shall provide certification to the Certifier that all tree protection measures under AS4970-2009 have been satisfied, and the recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

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

Reason: Tree protection.

21. **Protection of Existing Street Trees**
All existing street trees in the vicinity of the works shall be retained during all construction stages, and the street tree(s) fronting the development site shall be protected by tree protection fencing in accordance with Section 4 of AS4970-2009 Protection of trees on development sites. As a minimum the tree protection fencing for street tree(s) fronting the development site shall consist of standard 2.4m panel length to four sides and in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings, unless otherwise directed by an Arborist with

minimum AQF Level 5 in arboriculture. All fencing shall be located to allow for unrestricted and safe pedestrian access upon the road verge.

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

Reason: Street tree protection.

22. **Tree and Vegetation Protection**

a) Existing trees and vegetation shall be retained and protected, including:
i) all trees within the site not approved for removal,
ii) all trees and vegetation located on adjoining properties,
iii) all trees and vegetation within the road reserve.

b) Tree protection shall be undertaken as follows:
i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,
viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,
ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

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

Reason: Tree and vegetation protection.

23. **Compliance with Ecologist's Recommendations – During Construction**
All impact mitigation measures specified in the approved Flora and Fauna Assessment Report/Biodiversity Development Assessment Report are to be implemented at the appropriate stage of development.

Compliance with these measures is to be certified by the Project Ecologist in writing to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures.

24. **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.

25. **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.

26. **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.

27. **Installation and Maintenance of Sediment and Erosion Controls**
Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan prior to commencement of any other works on site.

Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: Protection of the receiving environment.

28. **Staff and Contractor Parking**
The applicant is to make provision for parking for all construction staff and contractors for the duration of the project. All Staff and Contractors are to use the available on-site parking.

Reason: To ensure minimum impact of construction activity on local parking amenity.

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

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

30. **Ongoing Management**
Traffic management procedures and systems must be in place and practised during the course of the project to ensure safety and minimise the effect on adjoining pedestrian and vehicular traffic systems. These procedures and systems must be in accordance with AS 1742.3 2009 Manual of Uniform Traffic Control Devices and Council's Development Control Plans.

Note: A plan of traffic management is to be submitted to and approved by the Principal Certifier.

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

Reason: To ensure pedestrian safety and continued efficient network operation.

31. **Traffic Control During Road Works**
Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual (http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf) and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

32. **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.

33. **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.

34. **Removal of Excavated Material**
Any materials to be excavated and removed from the site is to be classified prior to disposal at an appropriately licensed landfill, or potential re-use at other sites, in accordance with:

Waste Classification Guidelines Part 1: Classifying Waste (NSW EPA, 2014);

NSW EPA resource recovery exemptions and orders under the Protection of the Environment Operations (Waste) Regulation 2014; or

Protection of the Environment Operations Act 1997 (POEO Act), for Virgin Excavated Natural Material (VENM).

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

Reason: To ensure that excavated material/fill is of an acceptable standard.

35. **Importation of Fill**
Any imported soil (fill) must be assessed by a qualified environmental consultant prior to importation, to ensure suitability for the proposed use. In addition, the imported fill must, not contain asbestos and ash, be free of unusual odour, not be discoloured and not be acid sulphate soil or potential acid sulphate soil. The imported fill should either be virgin excavated natural material (VENM) or excavated natural material (ENM).

Prior to the importation of any landfill material onto the site, a waste classification report is to be prepared in accordance with the NSW Environment Protection Authority Guidelines, the 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.

Reason: For protection of environment.

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

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

Reason: To maintain local environmental amenity.

37. **Compliance with Ecologist's Recommendations – Ongoing**
All impact mitigation measures specified in the approved Flora and Fauna Assessment Report/Biodiversity Development Assessment Report are to be implemented at the appropriate stage of development.

Successful establishment/initiation of ongoing biodiversity measures is to be certified by the Project Ecologist in writing to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures.

38. **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.

39. **Traffic Management**
Traffic management procedures and systems must be in place and practised during the course of the project to ensure safety and minimise the effect on adjoining pedestrian and vehicular traffic systems. These procedures and systems must be in accordance with AS 1742.3 2009 Manual of Uniform Traffic Control Devices and Council's Development Control Plans.

Note: A plan of traffic management is to be submitted to and approved by the Principal Certifier.

Reason: To ensure pedestrian safety and continued efficient network operation.

40. **Positive Covenant for Council and Contractor Indemnity**
A positive covenant shall be created on the title of the land prior to the issue of a Subdivision Certificate requiring the proprietor of the land to provide access to the waste storage facilities. The terms of the positive covenant are to be prepared to Council's requirements, (Appendix E of the Waste Management Guidelines), at the applicant's expense and endorsed by Council prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

Reason: To ensure ongoing access for servicing of waste facilities.

41. **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.

BEFORE ISSUE OF A SUBDIVISION CERTIFICATE

42. **Nest Boxes**
A minimum of 2 nest boxes are to be installed in retained trees / throughout the trees within areas of retained native vegetation / on the site as recommended in the approved Flora and Fauna Assessment (Ecological Consultants Australia Pty Ltd TA Kingfisher Urban Ecology and

Wetlands, September 2024).

Nest boxes must be attached in accordance with industry best practice (e.g. expandable tree sensitive methods).

Written certification of compliance is to be prepared by the Project Ecologist and submitted to the Certifier prior to issue of the Subdivision Works Certificate.

Reason: To maintain wildlife habitat.

43. **Amendment to Landscape Plan**
The submitted Landscape Plan is to be amended in accordance with the following:

- The submitted landscape plan will have to be consistent with the Duffys Forest Ecological community determination as established within the submitted Flora and Fauna Assessment.

Compliance with these measures is to be certified by the Project Ecologist in writing to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To maintain and replace habitat on the site.

44. **Compliance with Ecologist's Recommendations – Post Construction**
All impact mitigation measures specified in the approved Flora and Fauna Assessment Report/Biodiversity Development Assessment Report are to be implemented at the appropriate stage of development.

Written and photographic evidence of compliance is to be prepared by the Project Ecologist and provided to the Principal Certifier prior to issue of a Subdivision Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures.

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

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

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

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

46. **Authorisation of Legal Documentation Required for Waste Services**
The original completed request form (NSW Land Registry Services standard form 13PC) must be submitted to Council for authorisation prior to the issue of the Subdivision Certificate. A copy of the work-as-executed plan (details overdrawn on a copy of the approved plan) must be included with the above submission. A Compliance Certificate, issued by the Certifying Authority, shall also be provided in the submission to Council.

If Council is to issue the Compliance Certificate for these works, the fee is to be in accordance with Council's Fees and Charges.

Reason: To create encumbrances on the land.

47. **Neighbourhood Management Statement for Waste Services**
Where a development proposes the creation of a neighbourhood scheme, the Neighbourhood Management Statement shall include wording in relation to the provision of waste services in accordance with Appendix D of Northern Beaches Council Waste Management Guidelines

Reason: To ensure ongoing access for servicing of waste facilities.

48. **Positive Covenant for On-site Stormwater Detention**
A positive covenant (under the provisions of Section 88B of the Conveyancing Act 1919) is to be created on the final plan of subdivision and accompanying 88B instrument, requiring the proprietor of the land to maintain the on-site stormwater detention structure in accordance with the standard requirements of Council. The terms of the positive covenant are to be prepared to Council's standard requirements, which are available from Northern Beaches Council. Northern Beaches Council shall be nominated as the sole authority empowered to release, vary or modify such covenant.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Subdivision Certificate

Reason: To ensure ongoing maintenance of the on-site detention system.

49. **Provision of Services for Subdivision**
The applicant is to ensure all services including water, electricity, telephone and gas are provided, located and certified by a registered surveyor on a copy of the final plan of subdivision.

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

Reason: To ensure that utility services have been provided to the newly created lots.

50. **Right of Carriageway**
The Applicant shall create a right of carriageway (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision and accompanying 88B instrument, to include all vehicular access and manoeuvring areas.

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

Reason: Council's subdivision standards and the statutory requirements of the Conveyancing Act 1919.

51. **Restriction as to User (On-site Stormwater Detention)**
The Applicant shall create a restriction as to user (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision and accompanying 88B instrument for the on-site stormwater detention system, restricting any alteration or additions to the system. The terms of such restriction are to be prepared to Council's standard requirements. Council shall

be nominated as the party to release, vary or modify such restriction.

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

Reason: To ensure no modification to the on-site stormwater detention structure without Council's approval.

52. **Certification of Road and Drainage works and the On-site Stormwater Detention System (New Subdivision)**
A Compliance Certificate is to be submitted by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) and has appropriate experience and competence in the related field confirming to the satisfaction of the Principal Certifier that the stormwater drainage system and on-site stormwater detention system ,road contruction works ,retaining walls and associated works have been constructed in accordance with the approved subdivision works certificate and relevant conditions of Development Consent. The Subdivision Certificate will not be released until this certification has been submitted and the Principal Certifier has confirmed that this condition has been satisfied.

Reason: To ensure the Enginneering works have been built in accorance with the appoved plans.

53. **Sydney Water Compliance Certification**
The Applicant shall submit a Section 73 Compliance Certificate under the Sydney Water Act 1994 issued by Sydney Water Corporation. Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au <http://www.sydneywater.com.au> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and fees to be paid. Please make early contact with the coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

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

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

54. **Subdivision Certificate Application**
The Applicant shall submit a Subdivision Certificate Application to Council, which is to include a completed Subdivision Certificate form and checklist, a final plan of subdivision prepared in accordance with the requirements of the Conveyancing Act 1919, the final plan of subdivision and all relevant documents including electronic copies. This documentation is to be submitted to Council prior to the issue of the Subdivision Certificate. All plans of survey are to show connections to at least two Survey Co-ordination Permanent Marks. The fee payable is to be in accordance with Council's fees and charges.

Reason: Statutory requirement of the Conveyancing Act 1919.

55. **Stormwater Treatment Measures Operation and Management Plan**

An Operation and Maintenance Plan is to be prepared to ensure the proposed stormwater treatment
measures remain effective.
The Plan must be attached or refered to in the Neighbourhood Management Statement and contain the following:
1. Detail on the stormwater treatment measures:
a) Work as executed drawings
b) Intent of the stormwater treatment measures including modelled pollutant removal rates
c) Site detail showing catchment for each device
d) Vegetation species list associated with each type of vegetated stormwater treatment measure
e) Impervious area restrictions to maintain the water balance for the site
f) Funding arrangements for the maintenance of all stormwater treatment measures
g) Identification of maintenance and management responsibilities
h) Maintenance and emergency contact information

2. Maintenance schedule and procedure - establishment period of one year following commissioning of the stormwater treatment measure:
a) Activity description, and duration and frequency of visits
Additionally for vegetated devices:
b) Monitoring and assessment to achieve an 80 percent survival rate for plantings
c) Management of weeds, pests and erosion, with weed and sediment cover limited to a maximum of 5 percent of the total area of the stormwater treatment measure
3. Maintenance schedule and procedure - ongoing
a) Activity description, and duration and frequency of visits
b) Routine maintenance requirements
c) Work Health and Safety requirements
d) Waste management and disposal
e) Traffic control (if required)
f) Renewal, decommissioning and replacement timelines and activities of all stormwater treatment measures (please note that a DA may be required if an alternative stormwater treatment measure is proposed)
g) Requirements for inspection and maintenance records, noting that these records are required to be maintained and made available to Council upon request.
Details demonstrating compliance shall be submitted to Council prior to the release of the Subdivision Certificate.

Reason: Protection of the receiving environment.

56. **Erosion and Sediment Control Plan**
An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:

- Site Boundaries and contours
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)

- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities)
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls that must include sediment fences, stabilised site access, materials and waste stockpiles locations, location of any stormwater pits on the site and how they are going to be protected.
- North point and scale.

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

Reason: Protection of the receiving environment.

57. **Preparation of the Neighbourhood Management Statement**
The Neighbourhood management Statement is to contain by laws to cover the maintenance and renewal of the following infrastrure:
1)The on site stormwater detention system and water quality control devices including all filter catridges and pit inserts.
2) Collection of waste by Council in accoradance with Councils standard by law wording.
3)All other infrastructure including the street lighting ,the internal road, drainage and footpaths.
The Neighbourhood management Statement is to be submitted to Council for review and approval prior to release of the subdivision certificate.

Reason: For the ongoing maintenance of the community association infrastructure.

58. **Detailed Design of Stormwater Treatment Measures - Major**
A certificate from a Civil Engineer, stating that the stormwater treatment measures have been designed in accordance with the Enspire Solutions Pty Ltd plans, report listed below and Council's Water Management for Development Policy.
    - Civil Engineering and Stormwater Report, project 230057, dated 08 March 2024
    - 230057-00-DA-C05.02 dated 7/03/2024
    - 230057-00-DA-C05.01 dated 7/03/2024
    - 230057-00-DA-C20.21 dated 7/03/2024
    - 230057-00-DA-C18.01 dated 7/03/2024
    - 230057-00-DA-C17.01 dated 7/03/2024

The certificate shall be submitted to the Certifier prior to the release of the Construction Certificate.

Reason: Protection of the receiving environment.

59. **Positive Covenant, Restriction as to User and Registration of Encumbrances for Stormwater Treatment Measures**
A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the stormwater treatment measures in accordance with the standard requirements of Council, the manufacturer and as required by the Stormwater Treatment Measures Operation and Maintenance Plan.

A restriction as to user shall be created on the title over the stormwater treatment measures, restricting any alteration to the measures.

The terms of the positive covenant and restriction as to user are to be prepared to Council's standard requirements (available from Council) at the applicant's expense and endorsed by the

Northern Beaches Council's delegate prior to lodgement with the Department of Lands. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user is to be submitted to the Principal Certifier prior to the issue of the Subdivision Certificate.

Reason: To identify encumbrances on land, ensure ongoing maintenance, and ensure modification to the stormwater treatment measures is not carried out without Council's approval.

60. **Certification for the Installation of Stormwater Treatment Measures**
A certificate from a Civil Engineer, who has membership to Engineers Australia and the National Engineers Register must be provided, stating that the stormwater treatment measures have been installed in accordance with the certificate approved plans. The certificate must confirm that stormwater treatment measures are completed, online, in good condition and are not impacted by sediment.

The certificate shall be submitted to the Principal Certifier prior to the release of an Subdivision Certificate.

Reason: Protection of the receiving environment.

61. **Stormwater Treatment Measures Operation and Maintenance Plan**
An Operation and Maintenance Plan is to be prepared to ensure the proposed stormwater treatment measures remain effective.

The Plan must be attached to the Positive Covenant (and the community or strata management statement if applicable) and contain the following:

1. Detail on the stormwater treatment measures:
    a) Work as executed drawings
    b) Intent of the stormwater treatment measures including modelled pollutant removal rates
    c) Site detail showing catchment for each device
    d) Vegetation species list associated with each type of vegetated stormwater treatment measure
    e) Impervious area restrictions to maintain the water balance for the site
    f) Funding arrangements for the maintenance of all stormwater treatment measures
    g) Identification of maintenance and management responsibilities
    h) Maintenance and emergency contact information

2. Maintenance schedule and procedure - establishment period of one year following commissioning of the stormwater treatment measure:
    a) Activity description, and duration and frequency of visits

    Additionally for vegetated devices:

b) Monitoring and assessment to achieve an 80 percent survival rate for plantings
c) Management of weeds, pests and erosion, with weed and sediment cover limited to a maximum of 5 percent of the total area of the stormwater treatment measure

3. Maintenance schedule and procedure - ongoing
   a) Activity description, and duration and frequency of visits
   b) Routine maintenance requirements
   c) Work Health and Safety requirements
   d) Waste management and disposal
   e) Traffic control (if required)
   f) Renewal, decommissioning and replacement timelines and activities of all stormwater treatment measures (please note that a DA may be required if an alternative stormwater treatment measure is proposed)
   g) Requirements for inspection and maintenance records, noting that these records are required to be maintained and made available to Council upon request.

Details demonstrating compliance shall be submitted to the Principal Certifier prior to the release of the Subdivision Certificate.

Reason: Protection of the receiving environment.

62. **Works as Executed Drawings - Stormwater Treatment Measures**
Works as Executed Drawings for the stormwater treatment measures must be prepared in accordance with Council's Guideline for Preparing Works as Executed Data for Council Stormwater Assets.

The drawings shall be submitted to the Principal Certifier prior to the release of the Subdivision Certificate.

Reason: Protection of the receiving environment.

63. **Landscape Completion**
Landscape works are to be implemented in accordance with the approved Landscape Plans, and inclusive of the following conditions:
a) landscape works are to be contained within the legal property boundaries,
b) tree, shrub and groundcover planting shall be installed as indicated on the approved Landscape Plans, unless otherwise imposed by conditions,
c) all tree planting shall be pre-ordered to equal the container size as nominated in the Plant Schedule; planted into a prepared planting hole 1m x 1m x 600mm depth generally, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings or more, at least 1.5 metres from common boundaries; and located within garden bed,
d) mass planting shall be installed in accordance with the approved Landscape Plans.

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

Reason: Environmental amenity.

64. **Condition of retained Vegetation**
Prior to the release of a Subdivision Certificate, a report prepared by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Principal Certifier, assessing the health and impact on all existing trees required to be retained, including the following information:
a) compliance to any Arborist recommendations for tree protection generally and during excavation works,
b) extent of damage sustained by vegetation as a result of the construction works,
c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree and vegetation protection.

65. **Engagement of Project Ecologist**
A Project Ecologist is to be employed for the duration of the approved works to ensure all biodiversity protection measures are carried out in accordance with XX Report (reference).

The Project Ecologist must have one of the following memberships / accreditation:
- Practising member of the NSW Ecological Consultants Association (https://www.ecansw.org.au/find-a-consultant/) OR
- Biodiversity Assessment Method Accredited Assessor under the relevant legislation (https://customer.lmbc.nsw.gov.au/assessment/AccreditedAssessor)

Evidence of engagement of the Project Ecologist is to be provided to the Certifier prior to issue of the Subdivision Works Certificate.

Reason: To protect native vegetation and wildlife.

66. **No Clearing of Vegetation and no weeds**
Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Subdivision Works Certificate.

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.

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 Certifier prior to issue of Subdivision Works Certificate.

Reason: To protect native vegetation.

67. **Submission of Engineering Plans**

The application is to include four (4) copies of Civil Engineering plans for the design of a new road and stormwater drainage under community Lot number 1; including footpath, kerb and gutter, and indented parallel parking bay, which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer.

The design must include the following information:

a) Construct a new internal access road, minimum 6m wide; with the exception of the 5.5m wide section from Warili Road to the property boundary of No.21 Warili Road and Lot 13.

b) Kerb and gutter (vertical faced only) and associated stormwater drainage for the full length of the internal access road.

c)The access road driveway crossing at Warili Road is to include a kerb splay to enable access for Council's Waste vehicle.

d) Construct a 1.5m wide concrete footpath on the eastern side of the road, from Warili Road connecting with the existing footpath on Blackbutts Road.

e) Construct a 12.2m radius turning circle for Council's 10.5m Waste vehicle to turn around in a continuous movement.

f) A swept path analysis is required for a widened road design which enables both Council's 10.5m waste vehicle and a B99 design vehicle to pass simultaneously on the curved section of road. The final kerb alignment and road layout must be approved by Council's Traffic Engineer.

g) Construct a single consolidated indented parking bay south of the turning circle providing 5 visitor parking spaces. The parking bay should be 2.1m wide and indented with a 45 degree angle transition to facilitate entry and exit. Linemarking of the intermediate spaces should be 6m in length and the end spaces 6.3m in length. Parking spaces must be designed and constructed to comply with the relevant section of AS 2890 (Off-street Parking standards).

The submitted Signage and Linemarking Plans, Drawing No.230057-00-DA-C11.01 and 230057-00-DA-C11.02 Revision 1, must be amended and submitted to Council's Traffic team prior to the issue of any Construction Certificate:

- Installation of double dividing barrier line (BB lines) from Warili Road to the start of the turning area.
- Installation of an unbroken yellow 'No Stopping' line (C3 line) in the turning circle.
- Removal of proposed signage.
- Removal of proposed 'Give Way' holding line.

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

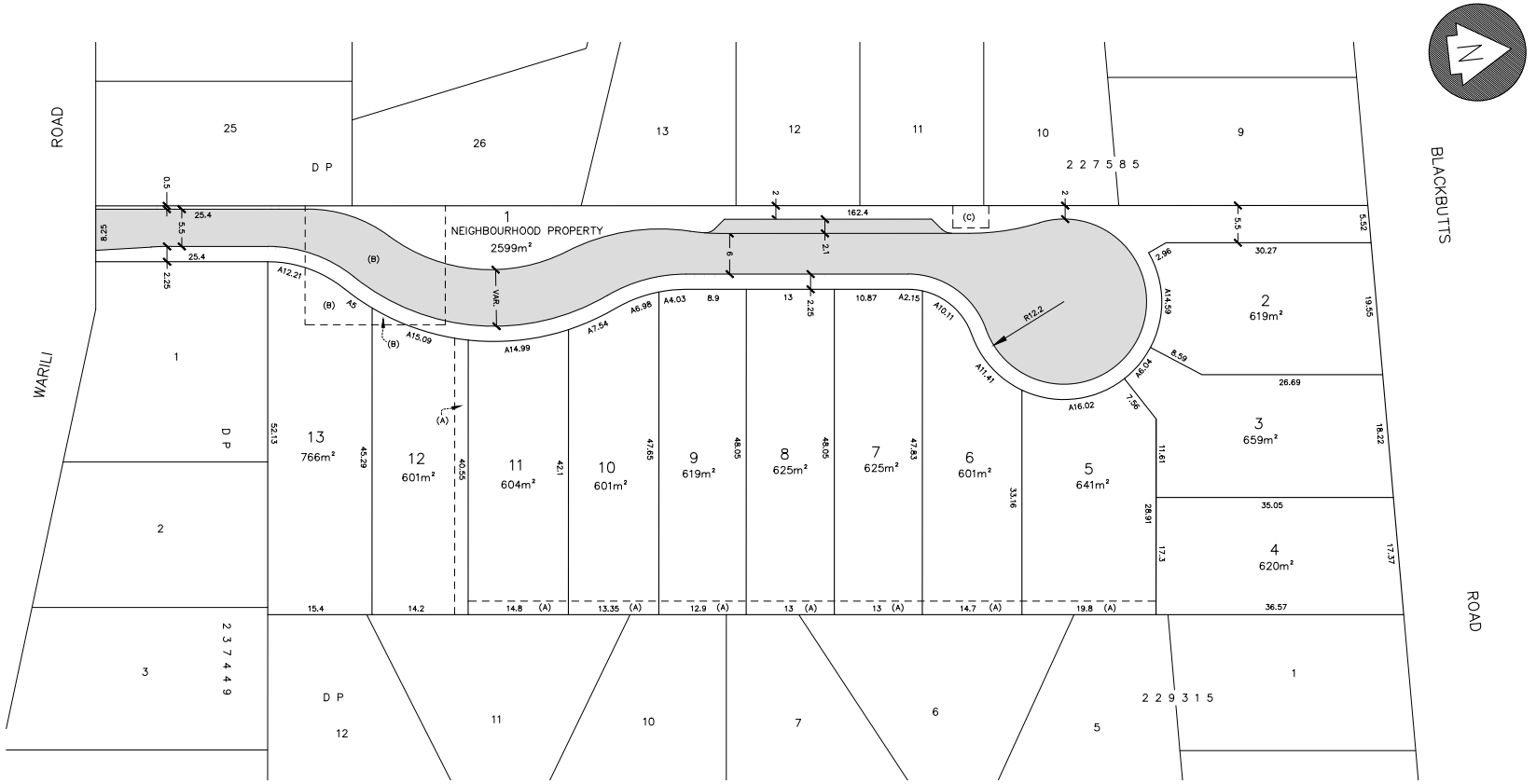
Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification. To prevent parking along the internal access road and reduce signage clutter.

68. **Vehicular Swept Paths and Kerb Splay**
A swept path analysis is required for a widened road design which enables both Council's 10.5m waste vehicle and a B99 design vehicle to pass simultaneously on the curved section of road.
Vehicular manoeuvring paths must also be provided to demonstrate Council's 10.5m waste

vehicle can enter or depart the site onto Warili Road in a forward direction without encroaching on required car parking spaces. Details demonstrating compliance with this condition must be submitted to the Council's Traffic team prior to the issue of the Subdivision Certificate.

A plan showing the modified kerb splay to enable Council’s 10.5m waste vehicle to enter and exit the internal access road onto Warili Road shall be submitted to and approved by Council prior to the issue of the Construction Certificate.

Reason: To ensure access for the development site and compliance with Australian Standards relating to manoeuvring and parking of vehicles and to ensure vehicles do not impact the kerb and gutter and cause ongoing maintenance concerns.



(A) EASEMENT TO DRAIN WATER 2 WIDE
(B) POSITIVE COVENANT (OSD)
(B) RESTRICTION ON THE USE OF LAND (OSD)
(C) EASEMENT FOR PADMOUNT SUBSTATION 3.3 WIDE

NOTES:

1. FOR DA PURPOSES ONLY
2. ALL DIMENSIONS AND AREAS SUBJECT TO REGISTRATION OF THE FINAL PLAN AT NSW LRS

DATE	REVISIONS	BY
23/1/25	EASEMENTS AMENDED	VK
8/1/25	LOTS 5-13 AMENDED	VK
5/9/24	GENERAL AMENDMENTS	VK

YSCO GEOMATICS
LAND RESOURCE CONSULTANTS
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GEOMATIC ENGINEERING
LAND & ENGINEERING SURVEYING
PROJECT MANAGEMENT
SOIL AND WATER MANAGEMENT
ENVIRONMENTAL PLANNING & DESIGN
PROFESSIONAL STANDARDS SCHEME

PLAN SHOWING PROPOSED NEIGHBOURHOOD SCHEME SUBDIVISION OF LOT 1 IN DP1298188 & LOT 1 IN DP524083, BEING No.49 BLACKBUTT RD, FRENCHS FOREST. NORTHERN BEACHES LGA.

DRAWN:	CHECKED:	SCALE:	DATUM:	REFERENCE:
17 JANUARY 2024		1:300 @ A1		0923/3D

ITEM 3.2 MOD2024/0530 - 41 CUMBERLAND AVENUE COLLAROY - MODIFICATION OF DEVELOPMENT CONSENT DA2021/2326 GRANTED FOR ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE

PURPOSE

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

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

RECOMMENDATION

A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of WLEP 2011 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

B. THAT Council as the consent authority **approves** Development Consent to Mod2024/0530 for Modification of Development Consent DA2021/2326 granted for alterations and additions to a dwelling house on land at Lot 25 DP 12985, 41 Cumberland Avenue COLLAROY, subject to the conditions set out in the Assessment Report.

Reporting manager	Steve Findlay
TRIM file ref	2025/110777
Attachments	⇩1 Assessment Report ⇩2 Site Plan and Elevations ⇩3 Clause 4.6

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2024/0530

Responsible Officer:	Kye Miles
Land to be developed (Address):	Lot 25 DP 12985, 41 Cumberland Avenue COLLAROY NSW 2097
Proposed Development:	Modification of Development Consent DA2021/2326 granted for Alterations and additions to a dwelling house
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Matthew Cliffe

Application Lodged:	30/09/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	08/10/2024 to 22/10/2024
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 1.2%
Recommendation:	Approval

EXECUTIVE SUMMARY

The application seeks to modify Development Consent No. DA2021/2326, which was granted for alterations and additions to a dwelling house.

The application is referred to the Development Determination Panel (DDP) due to the owner of the site being a Council employee. Additionally, this assessment report has been the subject of a peer review by an external planning consultant, which is in accordance with Council's adopted practices for applications involving a Council staff member.

The application proposes a variation to the building height development standard of less than 10% and involves a Class 1 Dwelling. The proposed height breach is a consequence of raising the approved first-floor gables to align with the existing ridge. As the breach is centrally located within the

site, it would not be discernible from either the public or private domain.

No submissions have been received in response to neighbour notification.

Assessment issues include compliance with the building height and side boundary envelope controls. On the balance, although the modified development is non-compliant with the building height and envelope controls, it is considered that these are minor and a consequence of the context of the site and the existing built form. Overall, it is considered that the proposed alterations and additions represent a modest increase to the approved built form. The proposed works do not include significant site disturbance or environmental impact to facilitate additional floor area, as the proposed additions are largely sited upon the existing building footprint.

It is considered that the proposal would result in a development that displays reasonable size, bulk and scale that is compatible with the existing dwelling and surrounding development and would not result in unreasonable amenity impacts to surrounding properties.

Accordingly, the application is referred to the DDP with a recommendation for approval.

PROPOSED DEVELOPMENT IN DETAIL

Modification of Development Consent No. DA2021/2326 which was granted for alterations and additions to a dwelling house.

The modifications proposed under the current application comprise:

- Increase the ridge of the approved gables to match existing roof (RL20.45)
- Enclose northern balcony to provide a new study
- Alterations to ground floor kitchen and pantry
- Changes to windows as indicated in elevations

ASSESSMENT INTRODUCTION

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

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

proposal.

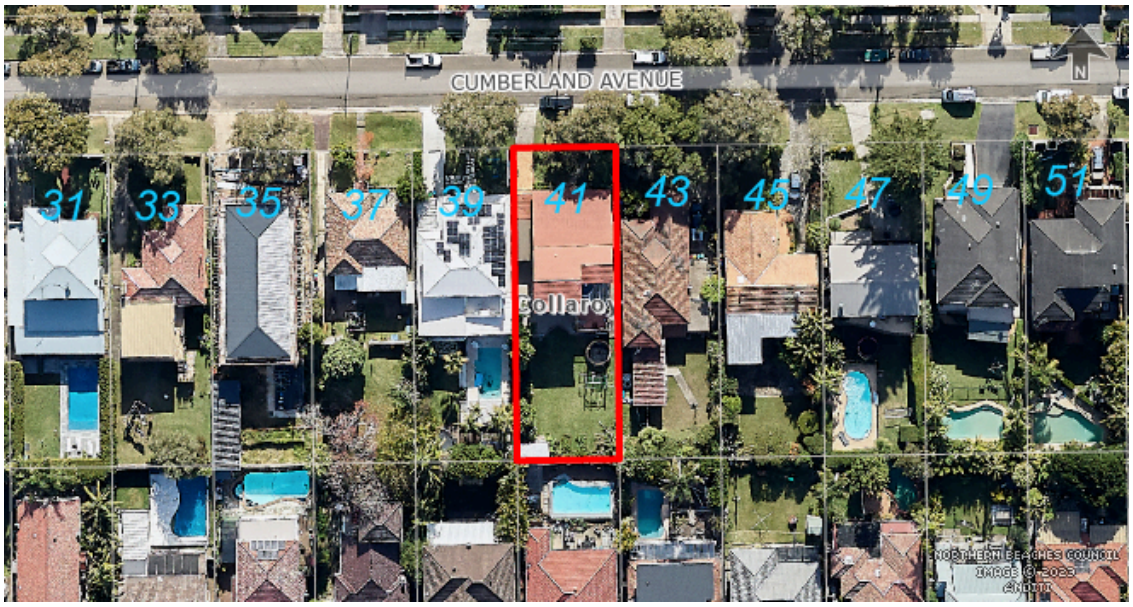
SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - B3 Side Boundary Envelope

SITE DESCRIPTION

Property Description:	Lot 25 DP 12985 , 41 Cumberland Avenue COLLAROY NSW 2097
Detailed Site Description:	The subject site consists of one (1) allotment located on the southern side of Cumberland Avenue. The site is regular in shape with a frontage of 14.935m along Cumberland Avenue and a depth of 45.72m. The site has a surveyed area of 682.8m². The site is located within the R2 Low Density Residential zone and accommodates a part two, part three storey dwelling and shed in the rear garden. The site has a cross-fall of approximately 3m from the northern boundary (street frontage) to the southern boundary (rear). The site does not contain any significant trees or landscape features. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by dwelling houses of varying architectural styles within a landscaped setting.

Map:



SITE HISTORY

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

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

DA2021/2326

Development Application for alterations and additions to a dwelling house was approved by the DDP 27 April 2022.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:
The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2021/2326, in full, with amendments detailed and assessed as follows:

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

Section 4.55 (2) - Other Modifications	**Comments**
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2021/2326 for the following reasons: • The approved use remains unaltered. • The building form remains generally consistent with the approved outcome. • The modifications do give rise to any adverse environmental impacts. • From qualitative and quantitative perspectives, the proposal will not be significantly altered by the proposed modifications.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA2021/2326 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	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
development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions were received in relation to this application.
Section 4.55 (3) In determining an application for modification of a consent under this section, 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 consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.	The original development was approved with a variation to the Warringah LEP 2011 Height of Buildings (HOB) development standard under Clause 4.6 of WLEP2011. This variation was deemed acceptable as it only pertained to a change in roof materials, with no alteration to the overall height of the building. The proposed modification introduces an additional height breach related to the approved front extension, which includes two bedrooms, an ensuite, a walk-in robe (WIR), and a covered balcony. This section was originally approved with variations to the Warringah DCP side boundary envelope and wall height controls. These non-compliances were considered acceptable due to their minor nature—both in scale and impact—and because they largely resulted from the site's context and existing built form. The proposed modification seeks a 1.2% (0.1-metre) variation to the HOB development standard by raising the ridge of the approved gables to match the existing roof (RL20.45). Additionally, the slight increase in building height and the enclosure of the northern balcony will affect compliance with built form controls, including the side boundary envelope and wall height. The merits of these additional non-compliances are discussed in detail within the relevant sections of this report. In summary, the modified development remains consistent with the approved outcome, maintaining a reasonable scale and density that is compatible with the existing dwelling and surrounding development, without causing unreasonable amenity impacts on neighboring properties.

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	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to suitability of modification type and a bushfire cover letter. 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 Warringah Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the original application that included a certificate (prepared by Clarke Dowdle & Associates, dated October 2021) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The applicant has provided an addendum to the original bushfire report (prepared by Clarke Dowdle & Associates, dated January 2025) confirming that the recommendations recommendations outlined in the original Bush Fire Assessment Report remain valid and applicable to the proposed modifications.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	**SUPPORTED** I have reviewed the Statement of Modification and associated documents and raise no objections to the proposed modification, subject to the retention of the existing engineering conditions 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. A436520_02 dated 23 September 2024).

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

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 1 Coastal Wetlands and littoral rainforest area

2.8 Development on land in proximity to coastal wetlands or littoral rainforest

1) Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:
    a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or
    b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.

Comment:

Council is satisfied that the proposed development is not expected to cause significant impact upon the natural integrity of the nearby coastal wetland or impact surface and ground water flows.

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:
Council is satisfied that the proposed development is not expected to cause an increased risk of coastal hazards on the site or surrounding 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:
Not applicable.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

Chapter 4 – Remediation of Land

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.95m	8.6m	1.2%	**No**

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No (see detail under Clause 4.6 below)

Clause	Compliance with Requirements
6.4 Development on sloping land	Yes

Detailed Assessment

4.3 Height of buildings

Description of Non-compliance

Development standard:	Height of Buildings
Requirement:	8.5m
Proposed:	8.6m
Percentage variation to requirement:	1.2%

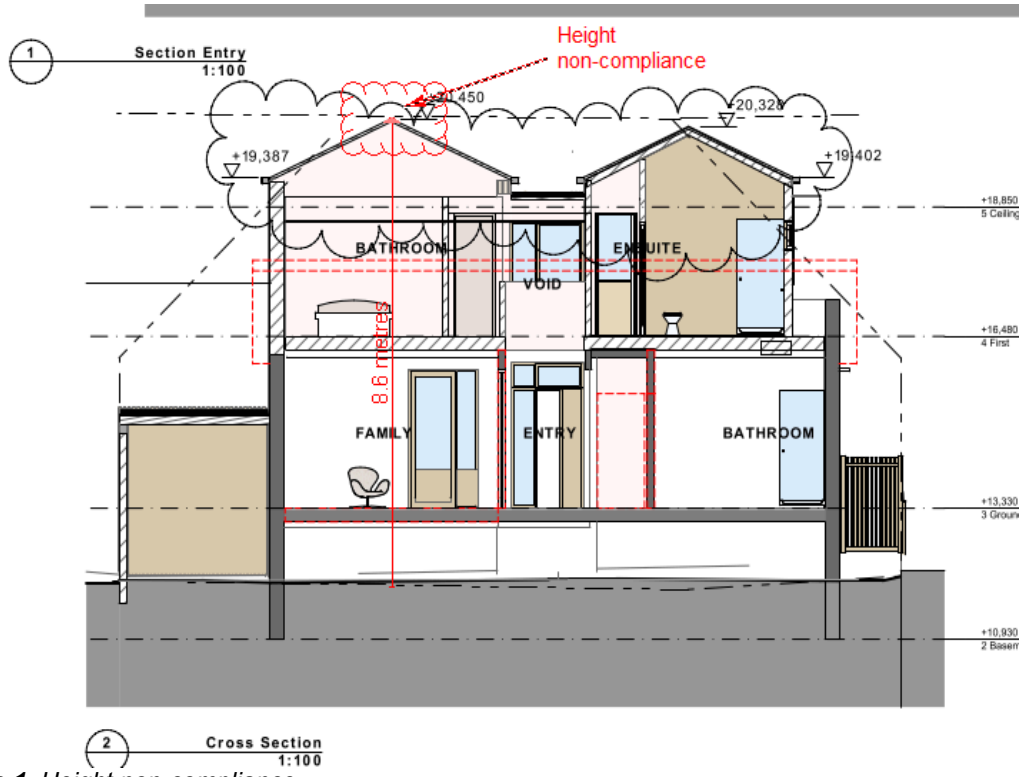


Figure 1. *Height non-compliance.*

Assessment of Request to Vary a Development Standard

Whilst the modification application will result in a building height that exceeds the maximum permitted by Clause 4.3 of the Warringah LEP 2011, 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 height of buildings 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:
The variation is smaller than what was previously approved in the development application, and the maximum RL of the non-compliant roof form aligns with the existing non-compliance. Additionally, the proposed breach of the western gable does not create any unreasonable amenity impacts and remains largely concealed from the street, as it occurs within the central portion of the site.

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

Comment:
The existing dwelling includes a raised ground floor, along with a substantial subfloor and basement area that are not visible from the street. The proposed design remains under 8.5 metres in height relative to most of the existing ground levels within the adjacent front and side setback areas.

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.

Clause 4.3 Height of Buildings

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

a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,

Comment:

The height and bulk of the modified dwelling will remain compatible with the approved development and surrounding dwellings on the southern side of Cumberland Avenue.

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

Comment:

The height breach associated with raising the approved first floor gables by 361mm is minor and centrally located within the site, therefore, will not contribute to any adverse loss of views, privacy or solar access.

c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,

Comment:

The visual appearance of the dwelling is largely unchanged and will remain compatible with the character of the surrounding area. As such, the proposal will not give rise to adverse impacts upon the scenic values of the locality

d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities,

Comment:

The proposed height breach will not cause any adverse visual impacts when viewed from the surrounding public domain.

Zone objectives

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

  Comment:

  The modification provides additional floor space to accommodate the housing needs of the occupants, while retaining the low density character of the locality.

  It is considered that the development satisfies this objective.

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

  Comment:

  Not applicable.

  It is considered that the development satisfies this objective.

- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

  Comment:

  The modification does not involve any additional landscaping works beyond the approved outcome.

It is considered that the development satisfies this objective.

Conclusion

The proposal is found to achieve consistency with the height of buildings objectives and is supported, notwithstanding the minor departure from the development standard.

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.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
B1 Wall Height	7.2m	7.3m	7.5m	**No**
B3 Side Boundary Envelope	4.0m (E)	Outside Envelope	Outside Envelope	**No**
	4.0m (W)	Outside Envelope	No change	N/A
B5 Side Boundary Setbacks	0.9m (E)	1.2m	2.1m (Study)	Yes
	0.9m (W)	Nil (garage additions)	No change	N/A
B7 Front Boundary Setbacks	6.5m	6.35m	7.0m (Study)	Yes
B9 Rear Boundary Setbacks	6.0m	18.0m	No change	N/A
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (273.12sqm)	42.2% (288sqm)	No change	N/A

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C4 Stormwater	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E8 Waterways and Riparian Lands	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of non-compliance

The proposed modified works seek to raise the approved front gables, and subsequently the wall height along both elevations has increased up to 7.5 metres, thus continuing to result in numerical non-compliance with this control.

Merit consideration:

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

- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

  Comment:

  The non-compliance with the wall height control relates to the eastern and western wall planes and is most pronounced toward the rear of the front extension. As such, the proposal will not have a discernible impact upon the streetscape. Overall, the proposed height is considered to

be compatible and commensurate with the existing detached development within the locality and will not give rise to any unacceptable visual impacts.

- *To ensure development is generally beneath the existing tree canopy level*

  Comment:

  The proposed development is located beneath the existing tree canopy level within the locality. In addition, the proposal does not involve any changes to significant landscaping across the site

- *To provide a reasonable sharing of views to and from public and private properties.*

  Comment:

  The proposal will achieve reasonable view sharing.

- *To minimise the impact of development on adjoining or nearby properties.*

  Comment:

  The modification involves a minor increase to the original development and maintains the approved separation between buildings. As detailed within the original assessment report, the numerical non-compliance does not give rise to any unreasonable amenity impacts upon adjoining properties. Overall, the proposed modification retains consistency with the approved outcome in this regard.

- *To ensure that development responds to site topography and to discourage excavation of the natural landform.*

  Comment:

  The proposed development will be sited over the existing building footprint. In this instance, the proposed development appropriately responds to the topography of the subject site.

- *To provide sufficient scope for innovative roof pitch and variation in roof design.*

  Comment:

  The modified roof pitch provides a design that is architecturally interesting and visually consistent with adjoining and nearby properties.

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 s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

B3 Side Boundary Envelope

Description of Non-compliance

Clause B3 of the WDCP 2011 stipulates that buildings are to be projected at 45 degrees from 4m above the existing ground level, measured from the side boundaries.

The modification would result in a minor additional non-compliance to the approved breach to both side boundary envelopes, as the development proposes to enclose northern balcony and raising the ridge of the front gables.

The figures below show the location and extent of the approved and proposed non-compliance.

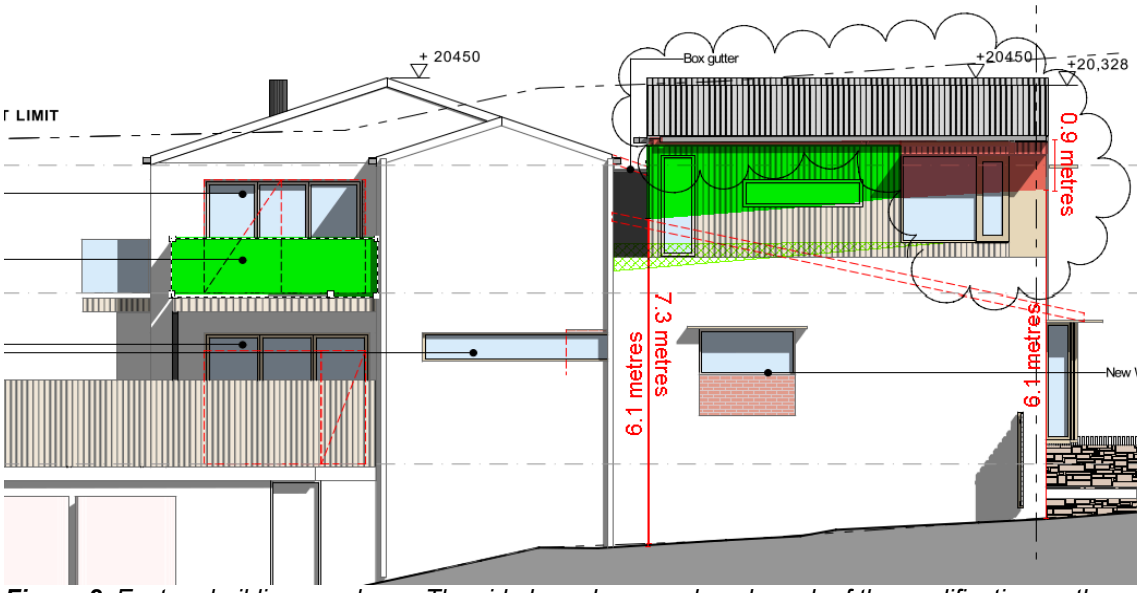


***Figure 2**: Eastern building envelope - The side boundary envelope breach of the modification on the eastern elevation is shown in red. The approved non-compliance is marked in solid green, while hatched green indicates the removed non-compliance resulting from the proposed modification.*

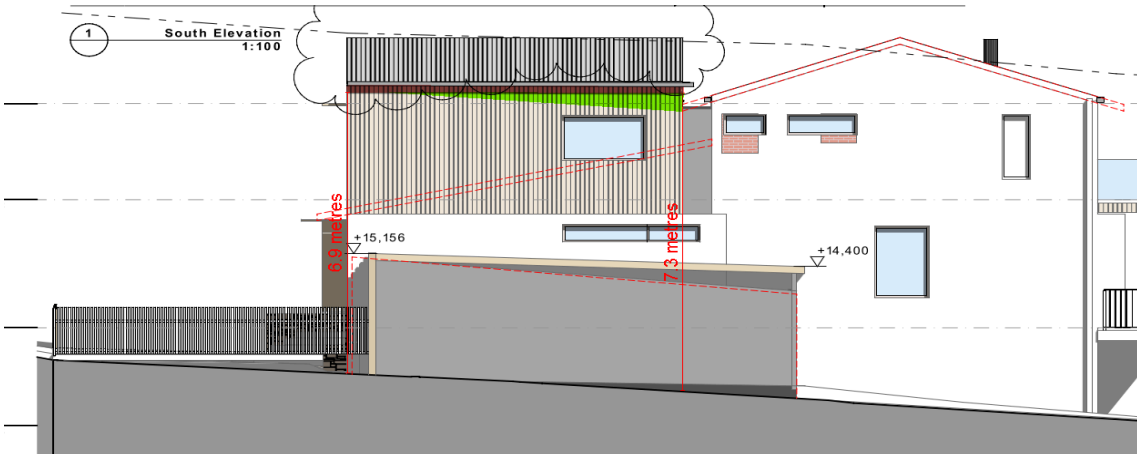


***Figure 3**: Western building envelope - The side boundary envelope breach of the modification on the western elevation is shown in red. The approved non-compliance is marked in solid green.*

Merit Consideration

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

- *To ensure that development does not become visually dominant by virtue of its height and bulk.*

  Comment:
  The apparent size of the modified development is not inconsistent with the size and scale of more recent development throughout the immediate locality. The proposal would present as two storeys from the street and will maintain the overall character of the dwelling as viewed from the streetscape. The modified development maintains a built form that is adequately broken up by changes in materials, roof formation, varied setbacks, fenestration, open balconies, a modulated built form and landscaping.

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

  Comment:
  It is considered that the proposal provides adequate spatial separation between adjoining buildings. The application has demonstrated that the proposal will not have an unreasonable impact with regards to solar access. The proposed envelope non-compliance would not result in unreasonable solar access and privacy impacts.

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

  Comment:
  The development is considered to generally respond to the natural topography of the site. The application does not include any significant excavation.

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

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.

ATTACHMENT 1 - INDEPENDENT ASSESSMENT BY CPS PLANNING CONSULTANTS

As detailed earlier within this report, Creative Planning Solutions (CPS) were engaged to provide a peer review the modification assessment report as per the Management of Conflicts of Interest – Guide to Consistency Development Assessment requirements. CPS's peer review concluding statement is provided below.

CPS have peer reviewed the Council assessment with regard to the statutory matters and requirements prescribed by the Act the Regulation. The peer review has focused on ensuring the appropriate matters were considered, and whether the approach taken to the assessment was sound, having regard to the experience of CPS in development assessment. CPS have sought to provide commentary on the methodology of the assessment undertaken by Council staff, and have provided a discussion of selected relevant matters in order to assist the Panel in its determination.

Comment
The peer review commentary has been considered and applied within the assessment of the 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;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

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

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

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

The assessment of the modification proposal against the provisions of the WLEP 2011 and WDCP 2011 has found that the modified development does not strictly comply with the requirements of the applicable controls related to the height of buildings and side boundary envelope.

It is considered that these non-compliances would not result in unreasonable amenity impacts to surrounding properties or result in a development that is out of character with the style and scale of the existing dwelling or surrounding newer development in the immediate area.

No submissions have been received in response to neighbour notification.

On the balance, although the proposed development is non-compliant with several planning controls, it is considered that these are variations are minor and a consequence of the context of the site and the existing built form. Specifically, the breach of the building height development standard under the WLEP 2011 does not require a Clause 4.6 variation to be provided, however the variation is satisfactory on its merits.

Overall, it is considered that the proposed alterations and additions represent a relatively modest increase to the approved built form. The proposed works do not include significant site disturbance or environmental impact to facilitate additional floor area as the proposed additions are largely sited upon the existing building footprint.

Overall, it is considered that the proposal would result in a development that displays reasonable size, bulk and scale that is compatible with the existing dwelling and surrounding development and would not result in unreasonable amenity impacts to surrounding properties.

This assessment has been the subject of a Peer Review by an independent planning consultant to ensure all relevant assessment considerations have been made in the assessment of the application, based on the site being owned by a Council employee.

The peer review concluded that the assessment report is complete and in accordance with the applicable planning legislation and Council policies.

Accordingly, the application is referred to the DDP with a recommendation for **approval**.

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2024/0530 for Modification of Development Consent DA2021/2326 granted for Alterations and additions to a dwelling house on land at Lot 25 DP 12985,41 Cumberland Avenue, COLLAROY, 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-473014 - Mod2024/0530	The date of this notice of determination	Modification of Development Consent DA2021/2326 granted for Alterations and additions to a dwelling house IAdd Condition No.1A - Modification of Consent - Approved Plans and supporting documentation

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**
DA 02	DA-B	Site Plan	C2 Design	18 September 2024
DA 100	DA-B	Demolition Basement/Ground	C2 Design	18 September 2024
DA 101	DA-B	Demolition Level 1/Roof	C2 Design	18 September 2024
DA 102	DA-B	Proposed Basement/Ground	C2 Design	18 September 2024

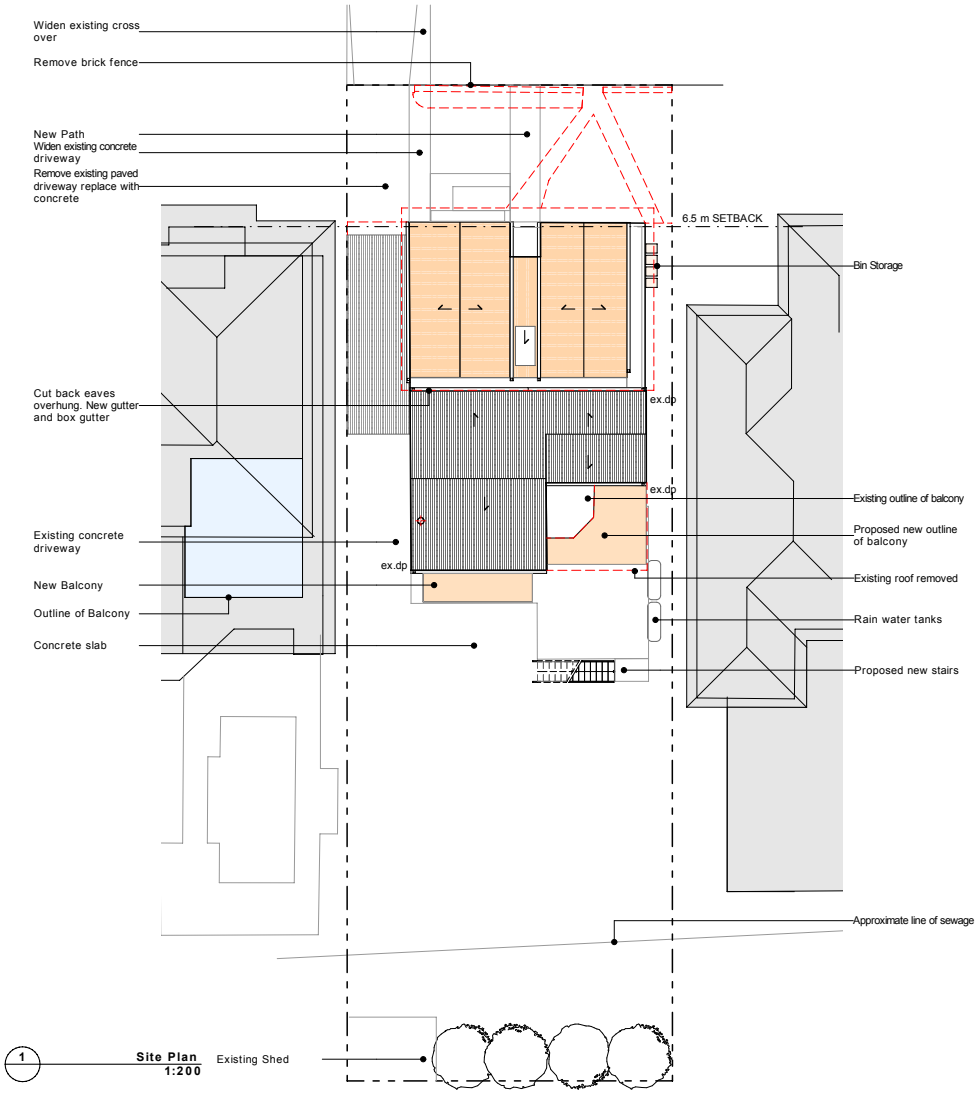
DA 103	DA-B	Proposed Level 1/Roof	C2 Design	18 September 2024
DA 104	DA-B	Proposed Section A	C2 Design	18 September 2024
DA 105	DA-B	Proposed Elevations North & East	C2 Design	18 September 2024
DA 106	DA-B	Proposed Elevations South & West	C2 Design	18 September 2024
DA 502	DA-B	Materials and Colours	C2 Design	18 September 2024

Approved Reports and Documentation			
Document Title	**Version Number**	**Prepared By**	**Date of Document**
BASIX Certificate	A436520_02	C2 Design	23 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.



1 **Site Plan** 1:200



General Notes

The Builder shall check all dimensions and levels on site prior to construction. Notify any errors, discrepancies or omissions to C2 DESIGN. Drawings shall not be used for construction purposes until issued for construction. Do not scale drawings. All boundaries and contours subject to survey.

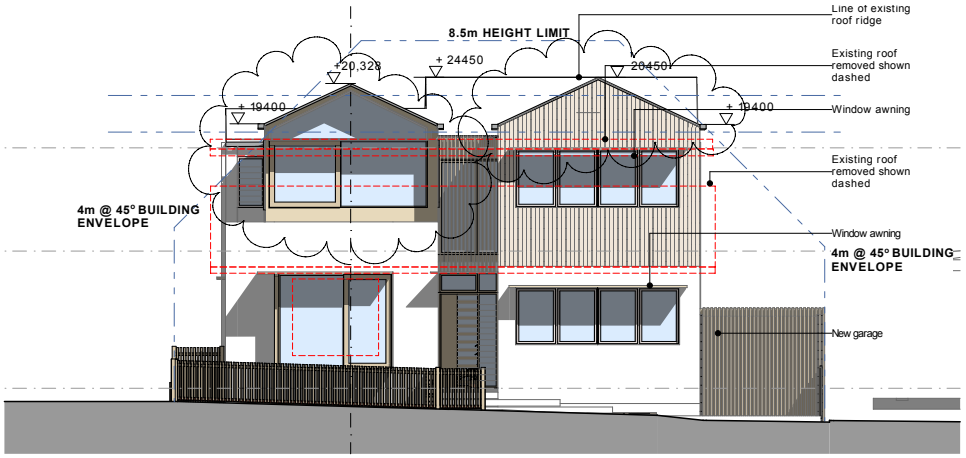
C2 DESIGN
BUILDINGS & INTERIORS
ABN #ABN
#Contact Full Address
P +#Contact Phone Number | E #Contact E-mail |
W #Contact Web

A DEVELOPMENT APPLICATION	23.11.21
B AMENDED APPLICATION	18.09.24

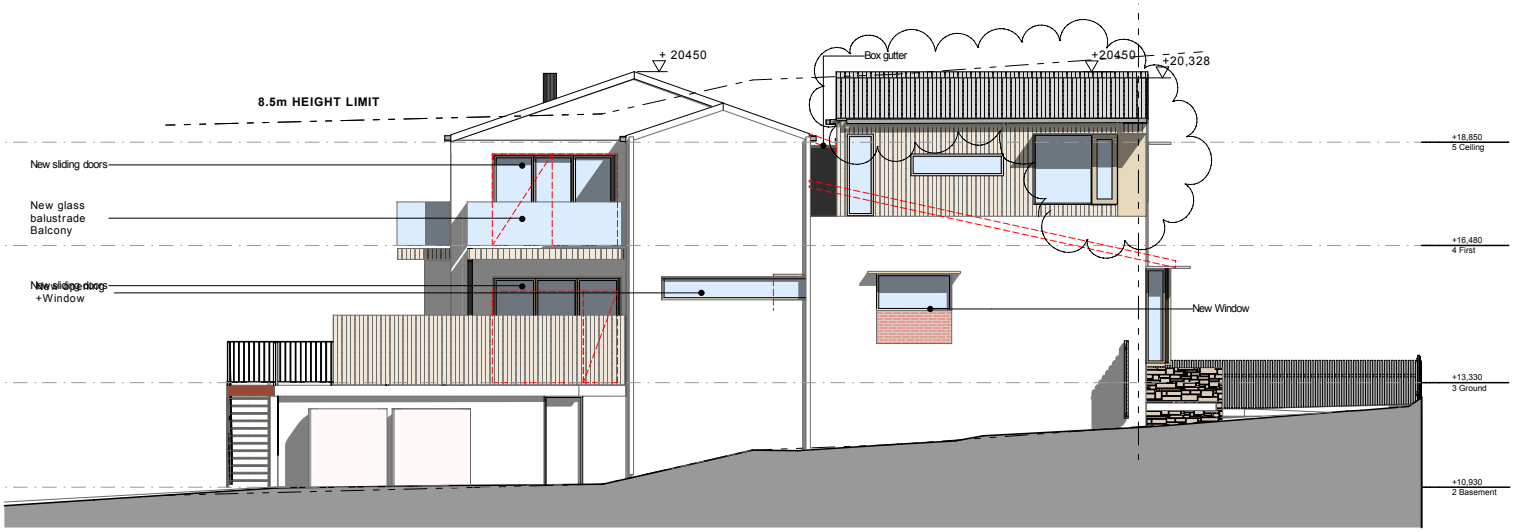
PROJECT NAME: ALTERATIONS AND ADDITIONS
CLIENT: DAVID STOLPER
41 CUMBERLAND AVE COLLAROY
P: -

SITE: 41 CUMBERLAND AVE COLLAROY
DRAWING TITLE: General
Site & Location Plan

PROJECT NO. 178
DRAWING NO. DA02
DRAWN BY:
CHECKED BY:
PLOT DATE: 23/9/2024
REVISION NO. DA -B



1 North Elevation 1:100



2 East Elevation 1:100

General Notes

The Builder shall check all dimensions and levels on site prior to construction. Notify any errors, discrepancies or omissions to C2 DESIGN
Drawings shall not be used for construction purposes until issued for construction.
Do not scale drawings.
All boundaries and contours subject to survey.

C2 DESIGN
BUILDINGS & INTERIORS
ABN #ABN
#Contact Full Address
P +#Contact Phone Number | E #Contact E-mail |
W #Contact Web

A DEVELOPMENT APPLICATION	23.11.21
B AMENDED APPLICATION	18.09.24

PROJECT NAME: ALTERATIONS AND ADDITIONS
CLIENT: DAVID STOLPER
41 CUMBERLAND AVE COLLAROY
P: --

SITE: 41 CUMBERLAND AVE COLLAROY
DRAWING TITLE: Sketch Plans
PROPOSED ELEVATIONS NORTH & EAST

PROJECT NO. 178
DRAWING NO. DA 105
DRAWN BY:
CHECKED BY:
PLOT DATE: 23/9/2024
REVISION NO. DA -B



General Notes

The Builder shall check all dimensions and levels on site prior to construction. Notify any errors, discrepancies or omissions to C2 DESIGN. Drawings shall not be used for construction purposes until issued for construction. Do not scale drawings. All boundaries and contours subject to survey.

C2 DESIGN
BUILDINGS & INTERIORS
ABN #ABN
#Contact Full Address
P +#Contact Phone Number | E #Contact E-mail |
W #Contact Web

A DEVELOPMENT APPLICATION	23.11.21
B AMENDED APPLICATION	18.09.24

PROJECT NAME: ALTERATIONS AND ADDITIONS
CLIENT: DAVID STOLPER
41 CUMBERLAND AVE COLLAROY
P: --

SITE: 41 CUMBERLAND AVE COLLAROY
DRAWING TITLE: Sketch Plans
PROPOSED ELEVATION SOUTH & WEST

PROJECT NO. 178
DRAWING NO. DA106
DRAWN BY:
CHECKED BY:
PLOT DATE: 23/9/2024
REVISION NO. DA -B

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CLAUSE 4.6 VARIATION : HEIGHT OF BUILDINGS AMENDED DEVELOPMENT APPLICATION

41 Cumberland Avenue Collaroy
LOT 25
SEC5
DP12985

18th September 2024

1. Introduction

This clause 4.6 variation request has been prepared by C2 Design on behalf of The property owners. It is submitted to (the Council) in support of a development application (DA) Council for alterations and additions at 41 Cumberland Avenue.

A clause 2.6 variation: Height of buildings dated 7th of December 2021 was submitted with the approved DA. This variation addressed the existing ridged above the second storey running east west being marginally above the height limit. As the roof was being replaced with metal decking a Clause 4.6 was required.

Clause 4.6 of *Warringah Local Environmental Plan 2011*(LEP 2011) enables Northern Beaches Council to grant consent for development even though the development contravenes a development standard. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

This clause 4.6 variation request relates to the development standard for height of buildings under clause 4.3 of LEP 2011, and should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by C2 DESIGN

This clause 4.6 variation request demonstrates that compliance with the height of buildings development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravention of the standard.

This clause 4.6 variation request demonstrates that, notwithstanding the non-compliance with the height development standard, the proposed development:

is consistent with the objectives of both height of buildings development standard and the R2 -Low Density Residential zone;
has an appropriate built form response to the streetscape and surrounding development and results in little to no additional impact;

Therefore, the DA may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of LEP 2010.

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2. Zoning of the Land and Objectives

The Zoning is :_

R2 - Low Density Residential: (pub. 9-12-2011)

Objectives of zone
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.
To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.

3. Development standard being Varied

Clause 4.3 Height of buildings
(1) The objectives of this clause are as follows—
(a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,
(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,
(c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,
(d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.
(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.
(2A) If the Height of Buildings Map specifies, in relation to any land shown on that map, a Reduced Level for any building on that land, any such building is not to exceed the specified Reduced Level.

the numeric value of the development standard in the LEP is 8.5m	8.5m
Existing numeric value of the development standard in the approved development application for the new gable roof extension	8.25m
proposed numeric value of the development standard in your development application	8.60m
percentage variation (between your proposal and the environmental planning instrument)	101%

The height of the proposed Gable ridges is less than 10% over the standard. The gable roof ridge height has been made the same height as the existing ridge in the approved development application.

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3.0 Justification for Contravention of the Development Standard

Clause 4.6(3) of LEP 2010 provides that:

4.6

Exceptions to development standards

(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.*

Further, clause 4.6(4)(a) of LEP 2010 provides that:

(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.*

Assistance on the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the NSW Land and Environment Court and the NSW Court of Appeal in the case of In *Wehbe*, Preston CJ provided relevant assistance by identifying five traditional ways in which a variation to a development standard had been shown as unreasonable or unnecessary.

The five methods outlined in *Wehbe* include:

The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Method**).

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The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Method**).

The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Method**).

The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (**Fourth Method**).

The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (**Fifth Method**).

Of particular assistance in this matter is the First Method.

The existing Roof towards the rear at RL 20.45 is to remain at the same RL. It is proposed that the roof tiles be replaced with metal roof decking and the eaves to be reduced to align with the walls below. Neither of these proposed changes effectives the objectives of the R2 - Low Density Residential and clause 4.3 height of buildings.

Follows is an assessment of the objectives of R2 - Low Density Residential and clause 4.3 height of buildings.

OBJECTIVE	ASSESSMENT	OUTCOME
R2 - Low Density Residential		
To provide for the housing needs of the community within a low density residential environment.	The building remains as single dwelling providing housing needs	None
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	No change is proposed	None
To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.	The extents of the building envelope remains the same where there is a noncompliance. The building remains in harmony with the natural environment of warringah.	None
Clause 4.3 Height of buildings		
To ensure that buildings are compatible with the height and scale of surrounding and nearby development	The height of the roof remains unchanged and remains compatible with the height and scale of surrounding and nearby development	None

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OBJECTIVE	ASSESSMENT	OUTCOME
To minimise visual impact, disruption of views, loss of privacy and loss of solar access	There is no change to visual impact, disruption of view loss of privacy and loss of solar access. The proposal reduces the impact when the eaves are removed	Reduced
To minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments	The scenic quality is unaffected as the overall form and height of the roof remains. The only the eaves are removed and the roof tiles are replaced as part of the proposal	None
To manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.	The visual impact is unaffected as the overall form and height of the roof remains. The eaves are removed reducing the impact. The proposed Metal roofing deck follows the same profile as existing	Reduced
The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map	The ridge of the existing portion of the roof that is over the height limit remains unchanged in the proposal. All other proposed new roofs meet the requirement	Note
If the Height of Buildings Map specifies, in relation to any land shown on that map, a Reduced Level for any building on that land, any such building is not to exceed the specified Reduced Level.	Not Applicable	None

4. Conclusion

The assessment above demonstrates that compliance with the height of buildings development standard, contained in clause 4.3 of Northern beaches LEP 2011, is unreasonable and unnecessary in the circumstances of the case, and that the justification is well-founded

The non-compliance is a result of of raising the gutter level of the gable roofs and increase the roof pitch marginally from 20 degrees to 25degrees. This was to allow for practical building and a gable that has pitch and proportion of surrounding buildings. The existing roof form being 8.95m, 5% over the required 8.5m remains as per the approved development application. The proposed roof gables are level with the existing roof ridge and cause little if any impact to the surrounding properties.

The existing non compliant roof has been established for many years and sits harmoniously with the surrounding properties. The height of the non-compliant portion of the existing roof has been unaltered for the proposal.

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This clause 4.6 variation demonstrates that, notwithstanding the non-compliance with the height of buildings development standard, the proposed development:

Is consistent with the objectives of both height of buildings development standard and the R2 Low Density Residential zone;
Has an appropriate built form response to the streetscape and surrounding development and results no additional impact;
Therefore, the DA may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of LEP 2010.

ITEM 3.3 DA2024/1384 - 91 RICHARD ROAD SCOTLAND ISLAND - DEMOLITION WORKS AND CONSTRUCTION OF A BOATSHED, DECK, RAMP AND ALTERATIONS TO THE EXISTING JETTY

PURPOSE

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

RECOMMENDATION

A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of PLEP 2014 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

B. THAT Council as the consent authority **approves** Development Consent to DA2024/1384 for Demolition works and construction of a boatshed, deck, ramp and alterations to the existing jetty on land at Lot LCL 479933 & Lot 5 DP 12749, 91 Richard Road SCOTLAND ISLAND, subject to the conditions set out in the Assessment Report.

Reporting manager	Adam Richardson
TRIM file ref	2025/101620
Attachments	⇩1 Assessment Report ⇩2 Site Plan and Elevations ⇩3 Clause 4.6

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/1384

Responsible Officer:	Anaiis Sarkissian
Land to be developed (Address):	Lot 5 DP 12749, 91 Richard Road SCOTLAND ISLAND NSW 2105 Lot LCL 479933, 91 Richard Road SCOTLAND ISLAND NSW 2105
Proposed Development:	Demolition works and construction of a boatshed, deck, ramp and alterations to the existing jetty
Zoning:	C3 Environmental Management
Development Permissible:	Yes, under Clause 23 of Schedule 1 Additional Permitted Uses of Pittwater Local Environmental Plan 2014 relating to the use of certain land in Zone W1 Natural Waterways, which states that *development for the purposes of boat sheds, jetties or water recreation structures is permitted with development consent.*
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Christopher Freeburn

Application Lodged:	23/10/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	30/10/2024 to 13/11/2024
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 25%
Recommendation:	Approval

Estimated Cost of Works:	$ 202,950.00

EXECUTIVE SUMMARY

This development application seeks consent for the construction of a new boat shed, deck/walkway, skid ramp and modified jetty at the rear of the site.

The application is referred to the Development Determination Panel (DDP) due to the proposed boat shed having a height of 5m measured from the existing ground level, representing a 25% variation to the 4m maximum height of buildings standard within the W1 zone, as required by Clause 4.3 of the Pittwater Local Environmental Plan, 2014. The variation to the height of buildings development standard has been supported through a written Clause 4.6 variation request for the non-compliance with the height standard, which arises from the design of the boat shed being consistent with Section D15.15(c)(ii) of the Pittwater 21 Development Control Plan, which stipulates that boat sheds shall be no greater than 4.5m in building height above the platform on which it is built. The platform of the boat shed is set at a level with can withstand the forces of estuarine flood.

The proposed development was notified in accordance with the Northern Beaches Community Participation Plan (CPP) for 14 days. No submissions were received.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposal is suitable for the subject site for the reasons outlined in this report.

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

PROPOSED DEVELOPMENT IN DETAIL

This development application is for the construction of a new boat shed, deck/walkway, skid ramp and modified jetty. The existing site condition includes a pontoon, ramp, landing platform and jetty. The proposed works do not require the removal of any trees.

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 C3 Environmental Management
Pittwater Local Environmental Plan 2014 - Zone W1 Natural Waterways
Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 7.1 Acid sulfate soils
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area
Pittwater 21 Development Control Plan - B3.9 Estuarine Hazard - Business, Light Industrial and Other Development
Pittwater 21 Development Control Plan - D15.12 Development seaward of mean high water mark
Pittwater 21 Development Control Plan - D15.13 Lateral limits to development seaward of mean high water mark
Pittwater 21 Development Control Plan - D15.14 Minimum frontage for waterfront development
Pittwater 21 Development Control Plan - D15.15 Waterfront development

SITE DESCRIPTION

Property Description:	Lot 5 DP 12749 , 91 Richard Road SCOTLAND ISLAND NSW 2105 Lot LCL 479933 , 91 Richard Road SCOTLAND ISLAND NSW 2105
Detailed Site Description:	The subject site consists of one (1) allotment located on the south-western side of Richard Road, with the development facing the Pittwater Waterway. The site is regular in shape with a street frontage of 10.67m and a depth of approximately 53.5m. The site has a surveyed area of 623m². The site is located within the C3 Environmental Management zone under the provisions of the Pittwater Local Environmental Plan 2014. The waterfront land adjacent to the site is Crown land and is zoned W1 Natural Waterways. The site accommodates a dwelling house, outbuilding, jetty and pontoon. The site topography slopes downward from north-east to south-west by approximately 18.58m. The site consists of terraced garden areas to the rear (waterfront), with lawn and garden areas to the front of the dwelling. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by waterfront development situated within a landscaped setting. Majority of properties consist of boat sheds, jetties, decking areas and dwellings within the foreshore area.

Map:



SITE HISTORY

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

DA2023/1097
Development application for alterations and additions to a dwelling house.
Approved 6 December 2023

CC2024/1129
Construction Certificate issued for alterations and additions to a dwelling house.
Approved 24 October 2024

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested on 23 January 2025 in relation to justifying the proposed shape and arrangement of the development. 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 Pittwater 21 Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application that included a certificate (prepared by Building Code & Bushfire Hazard Solutions, dated 16 March 2023) stating that the development satisfies the requirements within Planning for Bush Fire Protection by virtue of the section 8.3.2, which states the following:

There is no bush fire protection requirements for Class 10a buildings located more than 6m from a dwelling in bush fire prone areas. Where a Class 10a building is located within 6m of a dwelling it must be constructed in accordance with the NCC.

The proposed boat shed, deck, skid ramp and jetty are non-habitable buildings and structures which will be located greater than 6 metres from any habitable dwelling.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 30/10/2024 to 13/11/2024 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
Environmental Health (Acid Sulfate)	***Supported - subject to conditions*** **General Comments** The site is classified as “Class 5” acid sulphate soils, with “Class 1” extending out to the west of the Mean High Water Mark. A geotechnical report supplied with the proposal documentation has detailed field sampling and testing has been undertaken. The report states (in part): "The soil materials in the area of the proposed work lack the organic material required and were not subject to the reducing environment necessary to permit the formation of Acid Sulfate Soils...Based on the scope of the proposed works and the results of this preliminary assessment, the site and the proposed works present a low risk of the presence of Acid Sulfate soils and the potential for generation of Acid Sulfate Soil conditions during the proposed works was regarded as negligible. No further field or laboratory testing nor the preparation

Internal Referral Body	Comments
	of an Acid Sulfate Soil Management Plan is considered necessary." Based on this findings of this report, Environmental Health supports the proposal with a recommendation to notify should conditions be present during works that would alter previous conclusions in relation to actual or potential acid sulphate soils. **Recommendation** APPROVAL - subject to conditions
Landscape Officer	***Supported - subject to conditions*** The application as described in reports and as illustrated on plans is assessed by Landscape Referral against the Pittwater Local Environment Plan 2014 zone C3 Environmental Management, and the following Pittwater 21 DCP controls (but not limited to): B4.22 Preservation of Trees and Bushland Vegetation; C1.1 Landscaping; D8 Lower Western Foreshores and Scotland Island Locality. Existing trees are in proximity to the proposed development works and a Arboricultural Impact Assessment (AIA) is submitted recommending retention of all trees, and tree protection measures are included in the AIA that shall be included in imposed conditions.
NECC (Bushland and Biodiversity)	***Supported - subject to conditions*** Council's Biodiversity Referrals team have assessed the Development Application for compliance against the following applicable provisions: • NSW Biodiversity Conservation Act 2016 • Pittwater LEP 2014 cl. 7.6 Biodiversity Protection • Pittwater 21 DCP cl. B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community • SEPP (Resilience and Hazards) 2021 cl. 2.10 Development within the coastal environment area Portions of the site are identified on the NSW Governments Biodiversity Values Map (BV Map). Under the NSW Biodiversity Conservation Act, any removal of native vegetation from within mapped areas will trigger the Biodiversity Offsets Scheme (BOS) and the requirement for a Biodiversity Development Assessment Report (BDAR). The proposed development includes the construction of a new boatshed and associated works to the existing jetty and skid ramp. An Arboricultural Impact Assessment (Bradshaw Consulting Arborists, July 2024) was submitted with the application and recommends the protection and retention of all trees within proximity

Internal Referral Body	Comments
	to the proposed works. Furthermore, the Statement of Environmental Effects (Ironbark Architecture, September 2024) states that "the new development is sited over a 1.5m² area that is flat and contains no native vegetation and requires no tree removal". As the proposal does not require the removal of any native vegetation from within the BV Map, the BOS Is not triggered and a BDAR is not required to be prepared. No objections in relation to terrestrial biodiversity, subject to recommended conditions.
NECC (Coast and Catchments)	***Supported - subject to conditions*** This application was assessed in consideration of: • Supplied plans and reports including: • Estuarine Risk Management Report by Horton Coastal Engineering dated 1 July 2024 • Aquatic Ecology Survey & Impact Assessment Report by Marine Pollution Research Pty. Ltd. dated 24 October 2023 • Coastal Management Act 2016; • State Environmental Planning Policy (Resilience and Hazards) 2021; and • Relevant LEP and DCP clauses The application has also been assessed in consideration approval/support of: • Consent to lodge DA from the NSW Department of Planning and Environment – Crown Lands and Public Spaces dated 16 September 2024; • No navigational Concerns from the Transport for NSW- Maritime Division dated 9 July 2024 enclosing dated and signed maps; and • No Objection with conditions from the DPI-Fisheries, a division of the Department of Primary Industries dated 22 April 2024. **State Environmental Planning Policy (Resilience and 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 SEPP (R & H) apply for this DA. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Ironbark Architecture and Design dated September 2024 , the DA satisfies requirements under clauses 2.10, 2.11 and 2.12 of SEPP R&H. As such, it is considered that the application can comply with the provisions of the State Environmental Planning Policy (Resilience & Hazards) 2021 subject to conditions.

Internal Referral Body	Comments
	Pittwater 21 DCP **Estuarine Hazard Management** The subject property has also been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site. In accordance with the submitted Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 1 July 2024, estuarine planning levels (EPLs) would apply to proposed development within the subject site as follows: It is proposed to construct a new boatshed (with surrounding deck) and skid ramp, as well as undertake jetty modifications, at 91 Richard Road Scotland Island. For a design life of 25 years, the adopted Estuarine Planning Level (EPL) is 2.36m AHD at the foreshore. The floor level of the boatshed is below this EPL. If the requirements in Section 7 of the report are followed, the risk of the proposed development being adversely affected by estuarine processes would be suitably mitigated. The proposed development satisfies the requirements of Chapter B3.9 and Chapter D15.15 of the Pittwater 21 DCP, the Estuarine Risk Management Policy for Development in Pittwater, Clause 7.8 of Pittwater Local Environmental Plan 2014, and State Environmental Planning Policy (Resilience and Hazards) 2021 for the matters outlined herein. **Development on Foreshore Area** A large section of the subject property is within the foreshore building line. Part 7, Clause 7.8 –Limited development on foreshore area of the Pittwater LEP 2014 applies for any development within the foreshore area. However, development works proposed are located on the seaward side of the foreshore edge on crown lands, below the Mean High Water Mark (MHWM) consisting of boatshed (with surrounding deck/walkway), skid ramp and jetty modifications. Therefore, the proposed development is not required to satisfy the relevant Clause 7.8 –Limited development on foreshore area of the Pittwater LEP 2014. **D15. Waterways Locality** **D15.12 Development seaward of mean high water mark** Proposed development works are located on crown land below the Mean High Water Mark. Hence, Section D15.12: Development seaward of mean high water mark of the Pittwater 21 DCP applies to

Internal Referral Body	Comments
	proposed development. Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Ironbark Architecture and Design dated September 2024 , the DA satisfies requirements under the Section D15.12: Development seaward of mean high water mark of the Pittwater 21 DCP. An analysis of the proposal demonstrated that the proposed development will not adversely impact on the visual amenity of the foreshore or water quality or estuarine habitat of the Pittwater waterway On estuarine habitat, Aquatic Ecology Survey & Impact Assessment Report by Marine Pollution Research Pty. Ltd. dated 24 October 2023 has assessed that the project can be constructed and used with no measurable alteration of residual risk for the protection of marine fish habitats of Pittwater and can meet the aims of aquatic ecological conservation of the Fisheries Management Act (1994) and of the Northern Beaches Council DCP (Pittwater 21). Provided that section 3.2 Aquatic Ecology CEMP Requirements are meet and included in the overall project. As such, it is considered that the application does comply, on condition with the requirements of the Section D15.12: Development seaward of mean high water mark of the Pittwater 21 DCP. **D15.15 Waterfront Development** Proposed development of berthing areas are located on crown land below the Mean High Water Mark. Hence, Section D15.15: Waterfront development of the Pittwater 21 DCP applies to proposed development. Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Ironbark Architecture and Design dated September 2024, the DA satisfies requirements under the Section D15.15: Waterfront development. As such, it is considered that the application does comply with the requirements of the Section D15.15: Waterfront development of the Pittwater 21 DCP. No other coastal issues identified.
NECC (Riparian Lands and Creeks)	***Supported - subject to conditions*** This application was assessed in consideration of: - Supplied plans and reports; - Coastal Management Act 2016; - State Environmental Planning Policy (Resilience and Hazards)

Internal Referral Body	Comments
	2021; - Relevant LEP and DCP clauses; and - Northern Beaches Council Water management for development policy. This proposal is supported. Details below. Riparian The site abuts Pittwater and as such proposed development must not significantly impact on the biophysical, hydrological or ecological integrity of Pittwater or the quantity and quality of surface and ground water flows that it receives. Sediment Management Sediment and erosion controls must be installed prior to any disturbance of soil on site and maintained until all work is complete and groundcover re-established. Aquatic ecology The site is affected by Caulerpa taxifolia and as such conditions for managing Caulerpa taxifolia apply. Site personnel must be able identify Caulerpa, all tools, machinery and environmental control devices must be inspected and cleaned thoroughly prior to leaving the site to prevent the spread of Caulerpa to other sites.
Parks, reserves, beaches, foreshore	***Supported without conditions*** The development site adjoins Pittwater waterway that is located downslope of the property. The development is not detrimental to the prevailing landscape character when viewed from the adjoining waterway, and as such Parks, Reserves and Foreshores raise no concerns with the development proposal.

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

External Referral Body	Comments		
			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

Ausgrid

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

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).

- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 1 Coastal Wetlands and littoral rainforest area
2.7 Development on certain land within coastal wetlands and littoral rainforests area

1) The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:
   a) the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,
   b) the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,
   c) the carrying out of any of the following:
      i) earthworks (including the depositing of material on land),
      ii) constructing a levee,
      iii) draining the land,
      iv) environmental protection works,
   d) any other development

Comment:
The site is not identified as 'coastal wetlands' or 'littoral rainforests', and therefore this clause is not applicable.

2.8 Development on land in proximity to coastal wetlands or littoral rainforest

1) Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:
   a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or
   b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.

Comment:
The site not identified as as 'proximity area for coastal wetlands' or 'proximity area for littoral rainforest', and therefore this clause is not applicable.

Division 2 Coastal Vulnerability Area
2.9 Development on land within the coastal vulnerability area

Development consent must not be granted to development on land that is within the area identified as "coastal vulnerability area" on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and

b) the proposed development:
   i) is not likely to alter coastal processes to the detriment of the natural environment or
   ii) other land, and
   iii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and

c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.

Comment:
The site is not identified as a 'coastal vulnerability area' and therefore this clause is not applicable.

Division 3 Coastal environment area
2.10 Development on land within the coastal environment area

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

Comment:
The site is identified within the coastal environment area; however, the land has already been developed with a dwelling house and jetty. The proposed boat shed and associated works have been

supported by Council's Coastal Officer, subject to conditions. The proposal is therefore unlikely to cause an adverse impact on a) to g) and is considered to comply with the requirements of this clause.

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

Comment:
The site is identified within the coastal environment area; however, the land has already been developed with a dwelling house and jetty. The proposed boat shed and associated works have been supported by Council's Coastal Officer, subject to conditions. The proposal is therefore considered to comply with the requirements of this clause.

Division 4 Coastal use area
2.11 Development on land within the coastal use area

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

Comment:
The site is identified within the coastal use area; however, the land has already been developed with a dwelling house and jetty. The proposed boat shed and associated works have been supported by Council's Coastal Officer, subject to conditions. The proposal is therefore considered to comply with the requirements of this clause.

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 proposal is unlikely to cause increased risk of coastal hazards on the subject land or other land, and has been supported by Council's Coastal Officer, subject to conditions.

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:
No certified coastal management program applies to the land.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

Chapter 4 – Remediation of Land

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

Pittwater Local Environmental Plan 2014

Is the development permissible?	Zone C3 : Yes Zone W1 : Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Zone C3 : Yes Zone W1 : Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	4m	5m	25% (1m)	No

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.7 Development below mean high water mark	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes
23 Use of certain land in the W1 Natural Waterways Zone	Yes

Detailed Assessment

Zone C3 Environmental Management

The site is located on land zoned C3 Environmental Management under the Pittwater Local Environmental Plan 2014.

The proposal has been assessed against the objectives of the C3 zone and in this instance, the proposal satisfies the objectives, as detailed below.

- ***To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.***

  Comment:
  The proposed boat shed and associated works have been designed and sited to protect the area, in terms of its special ecological, scientific, cultural or aesthetic values. The proposal is supported by Council's Biodiversity, Landscape, Coastal, Foreshores, and Riparian Lands Officers, subject to conditions.

- ***To provide for a limited range of development that does not have an adverse effect on those values.***

  Comment:
  The site already includes a jetty and pontoon and therefore the proposal will not change the nature of the existing development and have no adverse impact on the above values.

- ***To provide for residential development of a low density and scale, integrated with the landform and landscape and not visually prominent.***

Comment:
The proposal will continue to provide for residential development of a low density and scale that is integrated with the landform and landscape.

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

Comment:
The proposed works do not involve removal of significant trees or native vegetation. The proposed development does not negatively impact riparian and foreshore vegetation and wildlife corridors.

- ***To ensure the continued viability of ecological communities and threatened species.***

Comment:
The proposed works do not impact on the viability of ecological communities and threatened species. The proposal is supported by Council's Biodiversity, Landscape, Coastal, Foreshores, and Riparian Lands Officers, subject to conditions.

Zone W1 Natural Waterways

The site is located on land zoned W1 Natural Waterways under the Pittwater Local Environmental Plan 2014.

The proposed works are permissible under Clause 23 of Schedule 1 Additional Permitted Uses of Pittwater Local Environmental Plan 2014 relating to the use of certain land in Zone W1 Natural Waterways, which states that development for the purposes of boat sheds, jetties or water recreation structures is permitted with development consent.

The proposal has been assessed against the objectives of the W1 zone and in this instance, the proposal satisfies the objectives, as detailed below.

- ***To protect the ecological and scenic values of natural waterways.***

Comment:
The proposal will continue to protect the ecological and scenic values of the Pittwater Waterway.

- ***To prevent development that would have an adverse effect on the natural values of waterways in this zone.***

Comment:
The proposed boat shed and associated works have been designed and sited to avoid having

an adverse effect on the natural values of the Pittwater Waterway.

- ***To provide for sustainable fishing industries and recreational fishing.***

  Comment:
  The proposal is for a boat shed and associated works, and therefore does not concern fishing.

- ***To ensure development does not adversely impact on the natural environment or obstruct the navigation of the waterway.***

  Comment:
  The proposed boat shed and associated works have been designed and sited to not adversely impact on the natural environment or obstruct navigation of the waterway.

- ***To provide opportunities for private access to the waterway where these do not cause unnecessary impact on public access to the foreshore.***

  Comment:
  The boat shed and modified jetty provide for improved private access to the waterway without impeding public access to the foreshore.

4.3 Height of buildings

Clause 4.3(2) of the Pittwater Local Environmental Plan 2014 (PLEP) states that the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. The proposed boat shed is located on land mapped 'B' on the Height of Buildings Map, indicating a maximum building height of 4.0m.

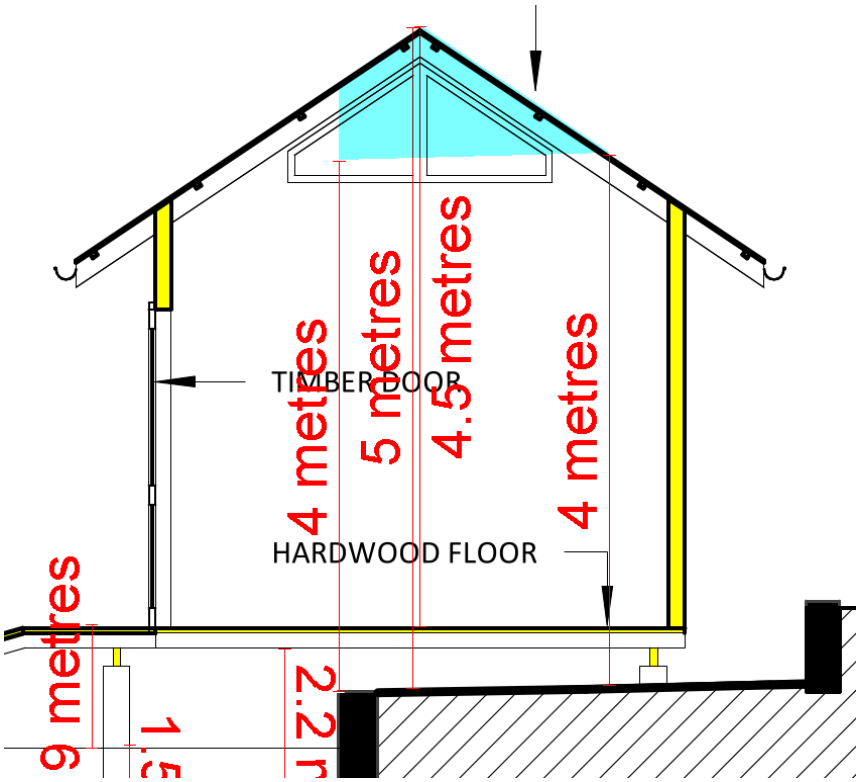
Building height is ordinarily defined as the vertical distance from ground level (existing) to the highest point of the building. The ridge height of the proposed boat shed technically sits above ground level, and therefore the building height is 5m, as measured in accordance with the definition of building height in the PLEP (refer Figure 1 below). Therefore, the proposal presents a building height variation of 25% to the maximum standard of 4m. This height variation is justified under Section 4.6 of this assessment report.

4.6 Exceptions to development standards

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

Development standard: Clause 4.3 Height of Buildings
Requirement: 4m
Proposed: 5m
Percentage of variation: 25%

Figure 1: *Section Plan*



With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is accompanied by a document that sets out the grounds on which the Applicant seeks to demonstrate the matters set out in Clause 4.6(3)(a) and (b) of the PLEP 2014 (the 'Clause 4.6 Request').

Subclause (1) of this clause provides that:

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

Comment:

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

Subclause (2) of this clause provides that:

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

Comment:

Clause 4.3 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 is unreasonable or unnecessary in the circumstances of this application for the following reasons:

- The proposal achieves the objectives of the standard, notwithstanding non-compliance with the standard.
- The proposal is consistent with the desired character of the Pittwater Waterway, and the height and scale of many boat sheds on Scotland Island and Elvina and Lovett Bay.
- The proposal will not result in any view impacts or overshadowing of neighbouring properties due to the location of the boat shed over water, and the rising slope of the adjoining sites where dwellings are located.
- The site is not a heritage item and there are no heritage items within the vicinity of the site.

(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 that there are sufficient environmental planning grounds to justify contravening the development standard:

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

The Clause 4.6 Request argues, in part:

- The proposed boat shed complies with the maximum height stipulated for boat sheds in Section D15.15(c)(ii) of the Pittwater 21 Development Control Plan, being no greater than 4.5m in building height above the platform on which it is built. The platform is built to withstand the estuarine flood level.
- The height variation is a result of designing a boat shed that is fit for purpose with minimal impact on the natural environment.
- The proposal will have minimal visual impact on Pittwater.

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:

The finished floor level of the boat shed is RL 1.80 and the ridge height is RL 6.30. As such, the boat shed has a height of 4.5m above the platform on which it is built, which is consistent with the Pittwater 21 Development Control Plan. The 4.5m height of the boat shed above the platform is also consistent with other boat sheds on Scotland Island. Even if the floor level of the boat shed was directly at existing ground level, the height of the boat shed would still exceed the stipulated 4m height control. It is noted that the proposed boat shed is less than 4m (3.94m) measured from the Estuarine Planning Level, which is RL 2.36. The proposed boat shed is an orderly use and development of the land, and is of a good design that will protect the environment, thereby satisfying objects 1.3(c), (e) and (g) of the EPA Act.

Public Interest:

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

Conclusion:

Council is satisfied as to the matters set out in Clause 4.6 of the PLEP 2014.

It is considered on balance, that having regard to the particular circumstances and the boat shed complying with Council's DCP height requirement of 4.5m above the platform on which it is built, the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

7.1 Acid sulfate soils

Clause 7.1 - 'Acid sulfate soils' requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

The site is located in an area identified as Acid Sulfate Soil Class 5 and Class 1, as indicated on Council’s Acid Sulfate Soils Planning Map.

Any works within a Class 1 acid sulfate soil area are required to be assessed to determine if any impact will occur.

Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land is required to be assessed to determine if any impact will occur.

The development involves minor soil excavation to establish new footings for the boat shed and associated works. As such, a Preliminary Acid Sulfate Soil Assessment has been undertaken by AscentGeo dated 27 February 2023. In the assessment, AscentGeo found that "the soil materials in the area of the proposed work lack the organic material required and were not subject to the reducing environment necessary to permit the formation of Acid Sulfate Soils...Based on the scope of the proposed works and the results of this preliminary assessment, the site and the proposed works present a low risk of the presence of Acid Sulfate soils and the potential for generation of Acid Sulfate

Soil conditions during the proposed works was regarded as negligible."

In this regard, AscentGeo advise that an Acid Sulfate Soil Management Plan (ASSMP) is not considered to be necessary for the development of the site. The Preliminary Assessment was referred to Council's Environmental Health Officer who concurred with the findings and imposed a condition which requires the Applicant to notify the principal certifying authority of any new evidence of the presence of acid sulfate soils.

This condition and the recommendations made in the Preliminary Assessment have been included in the recommendation of this report.

7.2 Earthworks

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

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

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

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

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

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

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

Comment: 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: A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

(f) the likelihood of disturbing relics

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

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

Comment: The development has been supported by Council's Coast and Catchment Officer, Foreshores Officer, Riparian Lands and Creeks Officer and Biodiversity Officer, subject to conditions that have been included in the recommendations of this report.

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

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

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

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

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of PLEP 2014, Pittwater 21 DCP and the objectives specified in s1.3 of the *Environmental Planning and Assessment Act, 1979*. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

7.6 Biodiversity protection

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

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

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, it is considered 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. Furthermore, 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. The proposal includes appropriate measures to avoid, minimise, or mitigate the impacts of the development.

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

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

Comment:

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

7.7 Geotechnical hazards

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

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

Comment:
The proposed development is supported by a geotechnical risk assessment and architectural plans that demonstrate all geotechnical risks have been taken into account.

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

Comment:
The proposed development is supported by a geotechnical risk assessment that demonstrate stormwater and drainage are suitably managed on site.

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

Comment:
The proposed development has been designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development.

7.8 Limited development on foreshore area

Under Clause 7.8 Limited Development on Foreshore Area, development consent must not be granted for development on land in the foreshore area except for the following purposes:

- *the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, but only if the development will not result in the footprint of the building extending further into the foreshore area,*
- *boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*

Comment:
The proposed development is for a boat shed, jetty and slipway, thereby satisfying the exemptions under Clause 7.8.

Development consent must not be granted under this clause unless the consent authority is satisfied that:

- *the development will contribute to achieving the objectives for the zone in which the land is located, and*
- *the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and*
- *the development will not cause environmental harm such as:*
    - *pollution or siltation of the waterway, or*
    - *an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or*
    - *an adverse effect on drainage patterns, or*
    - *the removal or disturbance of remnant riparian vegetation, and*
- *the development will not cause congestion or generate conflict between people using open space areas or the waterway, and*
- *opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and*
- *any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and*
- *in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and*
- *sea level rise, coastal erosion and recession, or change of flooding patterns as a result of climate change have been considered.*

Comment:
The proposed development is consistent with the objectives of the C3 Environmental Management and W1 Natural Waterways zones. The appearance of the proposed development is compatible with the surrounding area. The proposed development will not cause environmental harm in relation to pollution, siltation, surrounding uses, marine habitat, wetland areas, flora or fauna habitats, drainage patterns or remnant riparian vegetation. The proposed development will not cause congestion or generate conflict between people using the adjacent open space or waterway. The proposed development retains public access along the foreshore. The proposed development will not result in adverse impacts to any historic, scientific, cultural, social, archaeological, architectural, natural or

aesthetic significance of the land. The proposed development will not have an adverse impact on the amenity or aesthetic appearance of the foreshore. The proposed development will not impact upon sea level rise, coastal erosion or recession, or change flooding patterns.

In deciding whether to grant consent for development in the foreshore area, the consent authority must consider whether and to what extent the development would encourage the following:

- *continuous public access to and along the foreshore through or adjacent to the proposed development,*
- *public access to link with existing or proposed open space,*
- *public access to be secured by appropriate covenants,agreements or other instruments registered on the title to land,*
- *public access to be located above mean high water mark,*
- *the reinforcing of the foreshore character and respect for existing environmental conditions.*

Comment:
The proposed development will retain continuous public access to and along the foreshore. The proposed development does not impact upon any public access. The proposed development is acceptable in relation to the foreshore character and the existing environmental conditions.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Side building line	NW - 1m	1.6m (boat shed)	N/A	Yes
	SE - 2.5m	8m (boat shed)	N/A	Yes
Rear building line	FSBL	<FSBL (boat shed)	N/A	Yes
Lateral limit	2m	1.9m (boat shed)	5% (0.1m)	**No**
Minimum frontage for waterfront development	15m	13.7m	8.7% (1.3m)	**No**
Building envelope	NW - 3.5m	Within envelope (boat shed)	N/A	Yes
	SE - 3.5m	Within envelope (boat shed)	N/A	Yes
Boat shed height	4.5m (above platform on which it is built)	4.5m	N/A	Yes
Boat shed floor level	Estuarine Planning Level - 2.36m AHD	1.80m AHD	23.7% (0.56m)	**No**

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.8 Lower Western Foreshores and Scotland Island Locality	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
A4.15 Waterways 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
B3.9 Estuarine Hazard - Business, Light Industrial and Other Development	No	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B5.15 Stormwater	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
D15.1 Character as viewed from a public place	Yes	Yes
D15.2 Scenic protection - General	Yes	Yes
D15.3 Building colours and materials	Yes	Yes
D15.11 Waterfront lighting	Yes	Yes
D15.12 Development seaward of mean high water mark	Yes	Yes
D15.13 Lateral limits to development seaward of mean high water mark	No	Yes
D15.14 Minimum frontage for waterfront development	No	Yes
D15.15 Waterfront development	Yes	Yes

Detailed Assessment

B3.9 Estuarine Hazard - Business, Light Industrial and Other Development

Detailed description of non-compliance

Pursuant to Section B3.9 of the Pittwater 21 Development Control Plan, the floor levels of new boat sheds shall be at or above the Estuarine Planning Level. Consideration may be given on a merit basis to a floor level of a boat shed at a level lower than the Estuarine Planning Level where it can be demonstrated through an Estuarine Risk Management Report that the boat shed is structurally designed to withstand periodic wave action and tidal inundation up to the Estuarine Planning Level.

An Estuarine Risk Management Report has been prepared by Horton Coastal Engineering Pty Ltd, dated 1 July 2024. For a design life of 25 years, the adopted Estuarine Planning Level (EPL) is 2.36m AHD at the foreshore. The floor level of the boat shed is below this EPL at 1.8m AHD. However, the report concludes that if the requirements in Section 7 of the report are followed, the risk of the proposed development being adversely affected by estuarine processes would be suitably mitigated.

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

- ***Protection of people.***

  Comment:
  The proposal would not increase the level of risk in surrounding areas as the movement of water and waves over the area seaward of the site would not be significantly altered, thereby protecting people.

- ***Protection of the natural environment.***

  Comment:
  The proposed development will not significantly change estuarine processes and has been supported by Council's Coastal, Biodiversity, Riparian Lands and Foreshores Officers, subject to conditions.

- ***Protection of private and public infrastructure and assets.***

  Comment:
  The proposed development will not affect private and public infrastructure and assets.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the P21DCP and the objectives specified in s1.3 of the *Environmental Planning and Assessment Act, 1979*. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

D15.12 Development seaward of mean high water mark

Section D15.12 of the Pittwater 21 Development Control Plan requires that where development seaward of the mean high water mark is proposed to occur, especially during the refurbishment of existing structures, proponents need to ensure that the structure will not harm marine vegetation, and must consult with the Department of Primary Industries.

The proposal was referred to the Department of Primary Industries, who assessed the proposed work and the Aquatic Ecology Impact Report, and confirmed on 22 April 2024 that they have no objections, subject to several conditions, including that a minimum clearance of 0.2 m is maintained between the base of the skid ramp and the seabed to allow the movement of water and sand/sediment across or under the structure.

D15.13 Lateral limits to development seaward of mean high water mark

Description of non-compliance

Pursuant to Section D15.13 of the Pittwater 21 Development Control Plan, waterfront development shall be set back a minimum of 2m along the full length of the lateral limit lines to development to minimise conflict and the possibility of inaccurate location of structures during construction.

The proposed boat shed has a lateral limit setback of 1.9m, representing a 5% (0.1m) variation to the minimum standard of 2m (refer Figure 2).

It is important to note that the boat shed has been sited to avoid impact to two existing trees adjacent to the waterway (refer Figure 3).

Figure 2: *Site Plan*

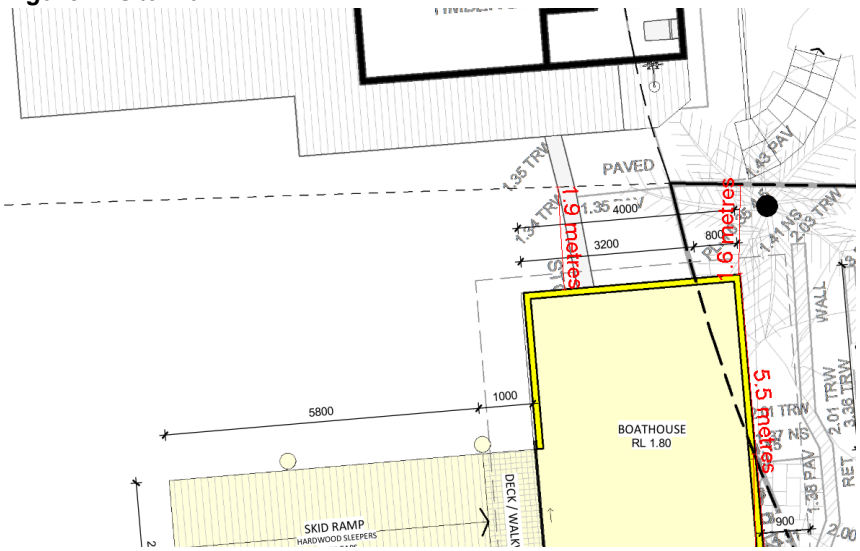


Figure 3: *Site photo showing two existing trees*



Merit consideration

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

- ***To ensure that fair and equitable enjoyment of the waterway is achieved between neighbouring waterfront landowners through restricting unreasonable encroachment of waterfront development in front of adjoining properties.***

Comment:
The proposal will ensure that fair and equitable enjoyment of the waterway is achieved between neighbouring waterfront landowners as the boat shed does not unreasonably encroach

waterfront development in front of adjoining properties, as evident in Figure 2 above.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the P21DCP and the objectives specified in s1.3 of the *Environmental Planning and Assessment Act, 1979*. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

D15.14 Minimum frontage for waterfront development

Description of non-compliance

Pursuant to Section D15.14, where an existing allotment has a water frontage of less than 15.0 metres, limited development such as a jetty, ramp and pontoon will generally only be permitted. Multiple facilities below mean high water mark (i.e. boatsheds, jetty and slipway etc.) will not be permitted. Facilities should be shared with neighbouring waterfront properties to minimise the density and visual impact of foreshore development. Where individual facilities are desired, the applicant must demonstrate, to the satisfaction of Council, that shared facilities are not appropriate and that the objectives of this part would not be compromised.

The proposal includes a boat shed, jetty and slipway, however the site has a water frontage of approximately 13.7m, which is less than 15m.

Merit consideration

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

- ***To minimise the individual and cumulative visual impact of waterfront development.***

  Comment:
  The proposed works are consistent with other waterfront development in the vicinity of the site, including 93 and 95 Richard Road, which include boat sheds and jetties. Therefore, the proposed development does not result in a negative individual or cumulative visual impact.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the P21DCP and the objectives specified in s1.3 of the *Environmental Planning and Assessment Act, 1979*. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

D15.15 Waterfront development

This control stipulates the following:

a) Jetties, Ramps and Pontoons

Where provided, jetties, ramps and pontoons shall meet the following criteria:

i. Handrails are to be located only on one side of the structure.

ii. Structures shall be located where at a maximum permissible water depth of 2.5 metres at low tide

iii. The minimum depth at the end of a jetty/pontoon should be:
600mm at zero tide in the case of a pontoon (as per NSW Department of Primary Industries)
600mm at mean low tide minimum in the case of a fixed jetty end (i.e. no pontoon)

iv. Structures shall generally be no greater in length than existing structures, and shall not impede general navigation or equitable access or use of the waterway by adjoining landowners. The length of any jetty is to be minimised. (Diagrams 2A and 2B)

v. The construction of " L" or " T" ends or other types of elongations or steps at right angles to jetties shall not be permitted.

vi. The erection of structures above the finished surface of a jetty, ramp or pontoon, including sheds, overhead light fittings, benches and sinks, shall not be favoured, other than a small self contained service modules incorporating low voltage, low level lighting.

vii. Gates and like devices shall not be permitted across structures where public access around the foreshore is obstructed, or where such devices are visually obtrusive.

viii. Where considered appropriate, jetties shall be supported on piles. Solid fill structures such as groynes, or similar, shall not be permitted.

ix. The finished jetty deck height shall be a maximum height of 1 metre above mean high water mark or 1.5 metres AHD.

x. The materials used for construction should not be deleterious to marine life, for example antifouling paints or treated woods must not be used;

xi. Structures over Posidonia seagrass or over Zostera, Heterozostera, Halophila and Ruppia species of seagrass beds greater than 5 square metres in area will generally not be permitted unless special circumstances exist. Exemptions may include:
i. works that are clearly in the public interest (e.g. safe access points for boating or swimming, State significant development),
ii. proposed works that, by virtue of design and location, are unlikely to have a significant impact, and where the proponent is willing to undertake works to compensate for any aquatic habitat liable to be lost or damaged,
iii. where property access is only available by water and no other alternative sites exist.

xii. Where applicable, pontoons are to be positioned beyond the outer edge of the seagrass and the portion of the jetty, ramp or pontoon crossing seagrass is to be meshed or constructed of a similar material that transmits light to the seafloor. There is to be no covering on top of the mesh;

xiii. Watercraft are not to be moored over or anchored within seagrass beds, and are not to be stored on the jetty, ramp or pontoon.

Comment:
The proposed jetty does not include a handrail but has been designed with appropriate depths as supported by DPI Fisheries. The length of the proposed jetty is generally consistent with surrounding jetties and is supported by a letter from Transport for NSW stating that there are no navigational concerns. The proposal does not include "L" or "T" ends, or any gates restricting foreshore access. The proposed jetty is supported on piles and sits 0.7m above the mean high water mark, at 1.8m AHD.

The proposal is supported by an Aquatic Ecology Impact Report stating that the proposed works *can be undertaken with no significant impact on marine habitats that support marine vegetation with losses to piling works balanced against gains in additional wetted surface areas suitable for both algae-based and oyster-based fish habitat assemblages. Construction related risks include potential damage to the adjacent Zostera bed and potential transport of mobilised Caulerpa taxifolia pest algae to other estuaries on construction related equipment. These risks can be mitigated and managed by the use of appropriate and specific aquatic habitat protection measures that can be incorporated into the project Construction Environment Management Plan (CEMP).* The report recommends a series of safeguards to manage potential impacts during construction which are included in the recommended conditions. The proposal has been reviewed and supported by Council's Coast and Catchments Team. As such, the proposal is considered to comply with this control and is acceptable.

c) Boatsheds

Boatsheds shall meet the following criteria:

i. Boatsheds shall be located above mean high water mark on freehold land, where practicable. Where this cannot realistically be achieved, as much of the proposed boatshed as is practical must be located above mean high water mark to minimise encroachment onto the littoral zone below mean high water mark.

ii. Boatsheds shall be one storey and no greater than 4.5 metres in building height above the platform on which it is built, 4.0 metres in width and 6.0 metres in length, as illustrated in Diagram 4. The use of lofts or similar design concepts shall not be permitted.

iii. Boatsheds shall not prevent or hinder public foreshore access. Alternative access must be provided where a proposed boatshed is likely to make existing foreshore access below mean high water mark difficult.

iv. Boatsheds cannot be used for any other purpose than the storage of small boats and/or boating equipment. The incorporation of any internal kitchen facilities, habitable rooms, shower or toilet facilities shall not be permitted. Roof areas of boatsheds shall not be used for recreational or observational purposes.

v. Boatsheds shall be constructed of low maintenance materials that are of a tone and colour which is sympathetic to the surrounding setting. Structures proposed along the western foreshores, McCarrs Creek, Horseshoe Cove, Salt Pan Cove, Refuge Cove, Clareville and Careel Bay are to have specific regard for the natural landscaped character of the area. Reflective materials and finishes for private boatsheds shall not be permitted.

vi. The minimum floor level for proposed boatsheds shall be in accordance with the B3 Estuarine Hazard controls for foreshore development around the Pittwater Waterway.

vii. Boatsheds shall be able to be entirely enclosed. Boatsheds which either partially or wholly do not incorporate appropriate wall cladding shall not be permitted, as such structures tend to become visually obtrusive when viewed from the waterway.

viii. All electrical equipment and wiring shall be water tight below the designed flood/tidal inundation level.

Comment:
The proposed boat shed is located largely below the mean high water mark on Crown land given the existing trees and topography of the site. The boat shed is one storey with a height 4.5m above the platform on which it is built, with dimensions of 5.5m by 4m. The proposed boat shed does not hinder public foreshore access. A condition has been included within the recommendations of this report to limit the use of the boat shed to the storage and routine maintenance of boats and/or boating

equipment, with no incorporation of any cooking or bathroom facilities. The boat shed is to be constructed of weatherboard cladding and hardwood windows and doors with dark and neutral colours. A condition has been included within the recommendations of this report to ensure reflective materials and finishes are not used. A detailed assessment against the Estuarine Hazard controls has been undertaken under Section B3.9 of this report. The boat shed is capable of being entirely enclosed with a timber door to the south-western elevation. All electrical equipment and wiring shall be water tight below the Estuarine Planning Level.

d) Slipways and Launching Ramps

Slipways and launching ramps are generally not favoured.

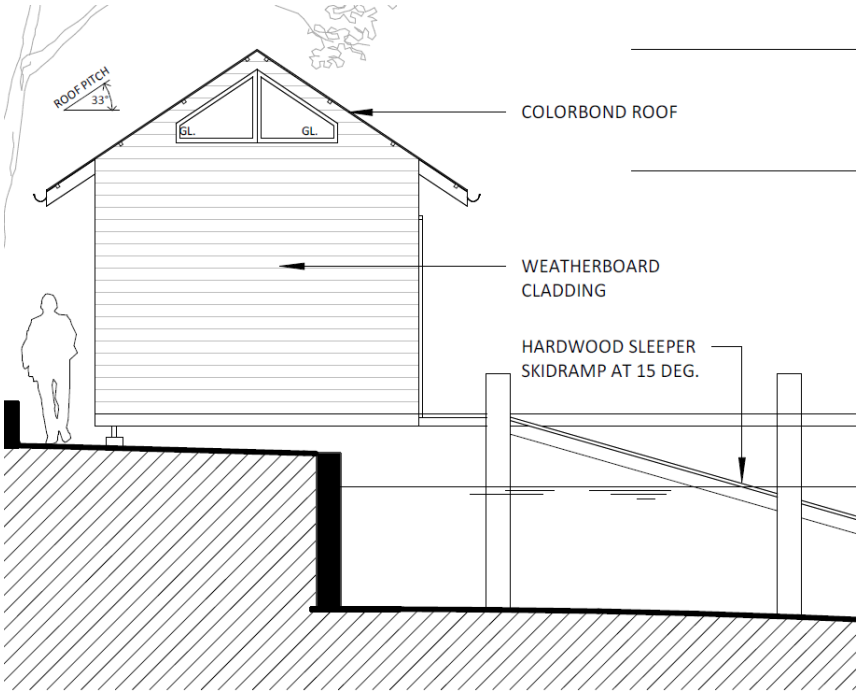
Council may consider slipways and launching ramps where structures are unlikely to detract from the visual character of the foreshore, will not affect marine vegetation and will not restrict public foreshore access.

In such instances, the following criteria shall apply:

i. Innovative design which incorporates slipping facilities with other existing or proposed structures is encouraged.
ii. Structures, the storage of lightweight boats, and any winch equipment shall be entirely on private freehold land and shall not obstruct public foreshore access.
iii. Structures shall be at ground level, where possible. Slipways from boatsheds, or reclamation must be recessed into the subject structure or work to minimise the height of the sliprails or boat ramp above the bed of the Pittwater Waterway.
iv. Sliprails are to be in the form of two parallel rails, no more than 2 metres width apart, with either locking spreaders between the rails or bolted directly to the surface of the concrete without the use of spreaders or embedded in concrete to facilitate free access.
v. Timber construction is preferred for proposed boat ramps. Concrete ramps may be considered at bed level in certain locations such as at Crystal Bay, Winji Jimmi Bay, Palm Beach and Careel Bay or where it can be shown, to the satisfaction of Council, that the aims of this clause are not compromised. Other materials such as steel with bonded rust proof coating will also be considered.

Comment:
The proposed skidramp is entirely on Crown land, however it does not obstruct public foreshore access. The skidramp does not have an excessive height above the bed of the Pittwater Waterway, as shown in Figure 4 below. The skidramp is to be constructed of hardwood sleepers with gaps.

Figure 4: *NW Elevation*



e) Piles

Freestanding or end piles are generally not favoured.

Council may consider freestanding or end piles where structures are unlikely to have a detrimental visual effect when viewed from the waterway, or in areas subject to heavy wave exposure to stabilise jetties, pontoons and berthed vessels.

In such instances, the piles must be a maximum height of 2.67m AHD to stabilise jetty ends and pontoons, and intermediate jetty piles shall not have a height greater than 1.26m AHD.

Structures shall be of timber or fibre reinforced concrete. Timber piles shall have a minimum diameter of 250mm and be stripped bare of bark above mean high water mark and be bound at the top by a metal ring to prevent splitting and be capped to prevent long term deterioration.

Structures shall be treated in dark, natural colours above mean high water mark. End piles or free standing piles shall be painted white along the top 1 metre of the pile to facilitate visual prominence when viewed from the water at night and minimise any hazard to navigation. The use of alternative measures, such as reflective materials, to facilitate visual prominence may also be supported.

Structures should be positioned at least 2 metres away from any Posidonia seagrass.

Comment:
The proposal includes seven new piles to the existing pontoon and landing platform, proposed skidramp and jetty, at a height of approximately 2.4m AHD with a diameter of approximately 300mm. The piles are not considered to have a detrimental visual effect when viewed from the Pittwater Waterway. The submitted Aquatic Ecology Impact Report indicates that the structures are significantly more than 2m away from any Posidonia seagrass.

Having regard to the above assessments, it is concluded that the proposed development is consistent with the relevant outcomes of the P21DCP and the objectives specified in s1.3 of the *Environmental Planning and Assessment Act, 1979*. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2024

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

A monetary contribution of $2,030 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $202,950.

CONCLUSION

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

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

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

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

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

Council is satisfied that the Applicant's written request under Clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking to justify variation of the development standard contained within Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

PLANNING CONCLUSION

This proposal, for a new boatshed, deck/walkway, skid ramp and modified jetty, has been referred to the Development Determination Panel (DDP) due to the proposed boat shed having a 25% variation to the 4m maximum height of buildings standard, at 5m.

The proposed development was notified in accordance with the Northern Beaches Community Participation Plan (CPP) for 14 days. No submissions were received.

The critical assessment included a detailed assessment of the proposed height variation under clause 4.6 of the *Pittwater Local Environmental Plan 2014*. The application has also been assessed against other relevant State Environmental Planning Policies, the *Pittwater Local Environmental Plan 2014*, and the controls under the Pittwater 21 Development Control Plan.

The assessment found that the proposed boat shed was consistent with the maximum boat shed height specified under Section D15.15(c)(ii) of the Pittwater Development Control Plan, and is consistent with the height and scale of other boat sheds in Scotland Island.

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

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

RECOMMENDATION

That Northern Beaches Council, as the consent authority, vary the development standard contained within Clause 4.3 Height of Buildings, pursuant to Clause 4.6 of the Pittwater Local Environmental Plan 2014 because the Applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) of Clause 4.6.

Accordingly Council as the consent authority grant Development Consent to DA2024/1384 for Demolition works and construction of a boatshed, deck, ramp and alterations to the existing jetty on land at Lot 5 DP 12749, 91 Richard Road, SCOTLAND ISLAND, Lot LCL 479933, 91 Richard Road, SCOTLAND ISLAND, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

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

Approved Plans				
Plan Number	**Revision Number**	**Plan Title**	**Drawn By**	**Date of Plan**
DA02	-	Boatshed Site Plan	Ironbark Architecture	26 September 2024
DA03	-	Elevations + Section	Ironbark Architecture	26 September 2024
DA04	-	Existing and Proposed	Ironbark Architecture	26 September 2024

Approved Reports and Documentation			
Document Title	**Version Number**	**Prepared By**	**Date of Document**
Geotechnical Assessment	1	AscentGeo	27 February 2023
Arboricultural Impact Assessment	C	Bradshaw Consulting Arborists	17 July 2024
Estuarine Risk Management Report	-	Horton Coastal Engineering	1 July 2024
Bushfire Assessment Statement & Bushfire Risk Assessment Certificate	Ref: 230730B	Building Code & Bushfire Hazard Solutions	16 March 2023
Schedule of Finishes	-	Ironbark Architecture	4 July 2024
Aquatic Ecology Impact Report	-	Marine Pollution Research	24 October 2023
Waste Management Plan	-	Chris Freeburn	26 September 2024

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

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

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

2. **Compliance with Other Department, Authority or Service Requirements**
The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	7 November 2024
Aboriginal Heritage Office	Aboriginal Heritage Office Referral Response	1 November 2024
Department of Primary Industries Fisheries	Department of Primary Industries Fisheries Referral Response	22 April 2024

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

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

3. **Approved Land Use**

Nothing in this consent shall authorise the use of the boat shed as detailed on the approved plans for any land use of the site beyond the definition of a boat shed, in accordance with the Dictionary of the Pittwater Local Environmental Plan 2014, as follows:

boat shed *means a building or other structure used for the storage and routine maintenance of a boat or boats and that is associated with a private dwelling or non-profit organisation, and includes any skid used in connection with the building or other structure.*

Built in cooking or bathroom facilities are not permitted to be installed.

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

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

4. **Prescribed Conditions**
   (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
   (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
   (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

(i) showing the name, address and telephone number of the Principal Certifier for the work, and

(ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and

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

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

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

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

A. the name and licence number of the principal contractor, and

B. the name of the insurer by which the work is insured under Part 6 of that Act,

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

A. the name of the owner-builder, and

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

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

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

(i) protect and support the adjoining premises from possible damage from the excavation, and

(ii) where necessary, underpin the adjoining premises to prevent any such damage.

(iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

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

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

Reason: Legislative requirement.

5. **General Requirements**

(a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

(b) Construction certificate plans are to be in accordance with all finished levels identified on approved plans. Notes attached to plans indicating tolerances to levels are not approved.

(c) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.

(d) At all times after the submission of the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

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

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

(g) Prior to the release of the Construction Certificate, payment of the following is required:

i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than $250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.

iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.

(h) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

(i) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

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

(k) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

(l) Prior to the commencement of any development onsite for:

i) Building/s that are to be erected

ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place

iii) Building/s that are to be demolished

iv) For any work/s that is to be carried out

v) For any work/s that is to be demolished

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

(m) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

(n) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

(o) Should any construction cranes be utilised on site, they are to be fitted with bird deterrents along the counterweight to discourage raptor (bird) nesting activity. Deterrents are to remain in place until cranes are dismantled. Selection of deterrent methods is to be undertaken in accordance with the recommendations of a suitably qualified ecologist.

(p) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

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

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

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools

(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

(2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

(3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

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

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

FEES / CHARGES / CONTRIBUTIONS

6. **Policy Controls**
Northern Beaches Section 7.12 Contributions Plan 2024

A monetary contribution of $2,029.50 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of $202,950.00.

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.

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

7. **No Clearing of Vegetation**
Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Construction Certificate.

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

Reason: To protect native vegetation.

8. **Erosion and Sediment Control Plan**
An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:

    - Site Boundaries and contours
    - Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
    - Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities)
    - Existing and proposed drainage patterns with stormwater discharge points
    - Locations and methods of all erosion and sediment controls that must include sediment fences, stabilised site access, materials and waste stockpiles locations, location of any stormwater pits on the site and how they are going to be protected.
    - North point and scale.

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

    Reason: To protect the receiving environment.

9. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**
The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

    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.

10. **Erosion and Sediment Control Plan**
An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:
    - Site Boundaries and contours
    - Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
    - Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities);
    - Existing and proposed drainage patterns with stormwater discharge points
    - Locations and methods of all erosion and sediment controls;
    - North point and scale.

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

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

11. **Estuarine Hazard Design Requirements**
All development or activities must be designed and constructed such that they will not increase the level of risk from estuarine processes for any people, assets or infrastructure in surrounding properties; they will not adversely affect estuarine processes; they will not be adversely affected by estuarine processes.

To ensure Council's recommended flood evacuation strategy of 'shelter-in-place', it will need to be demonstrated that there is safe pedestrian access to a 'safe haven' above the Estuarine Planning Level.

Reason: To minimise risks associated with coastal hazards for development in an estuarine environment.

12. **Estuarine Planning Level Requirements**
An Estuarine Planning Level (EPL) of 2.36 m AHD has been adopted by Council for the subject site and shall be applied to all development proposed below this level as follows:

1. All structural elements below 2.36 m AHD shall be of flood compatible materials;
2. All electrical equipment, wiring, fuel lines or any other service pipes and connections must be located either above 2.36m AHD or waterproofed to this level; and
3. The storage of toxic or potentially polluting goods, chemicals or materials, which may be hazardous or pollute the waterway, is not permitted below 2.36m AHD.
4. All interior power supplies (including electrical fittings, outlets and switches) must be located at or above 2.36m AHD. All exterior power supplies (including electrical fittings, outlets and switches) shall be located at or above 2.36m AHD to avoid the likelihood of contact with splashing waves and spray.

Reason: To ensure vulnerable components of the development are built at the appropriate level.

13. **Compliance with Estuarine Risk Management Report**
The development is to comply with all recommendations of the approved Estuarine Risk Management Report prepared by Horton Coastal Engineering, dated July 2024 and these recommendations are to be incorporated into construction plans and specifications and maintained over the life of the development.

Reason: To minimise potential hazards associated with development in an estuarine habitat.

14. **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.

15. **External Finishes to Roof**
The external finish to the roof shall have a Solar Absorptance (SA) greater than 0.43 in accordance with the requirements of the BASIX Certificate to minimise solar reflections to neighbouring properties. Any roof with a reflective finish is not permitted.

Green roofs and areas where solar panels (PV) are installed are excluded from conforming to the SA range.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the construction certificate.

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development.

16. **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

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

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

DURING BUILDING WORK

18. **Requirement to notify about new Acid Sulfate Soils evidence**
Any new information revealed during excavation works that has the potential to alter previous conclusions about Acid Sulfate Soils shall be immediately notified to the Council and the Principal Certifier and a report be obtained from a suitably qualified person. Any recommendations provided by the report are to be complied with during works.

Reason: To protect the environment.

19. **Tree and Vegetation Protection**

a) Existing trees and vegetation shall be retained and protected, including:
i) all trees within the site, including trees and vegetation nominated for retention on the approved Plans,
ii) all trees and vegetation located on adjoining properties,
iii) all trees and vegetation within the road reserve.

b) Tree protection shall be undertaken as follows:
i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment, including in particular section 4 and 5, and appendix B and G,
ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,
viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,
ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

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

Reason: Tree and vegetation protection.

20. **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.

21. **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.

22. **Installation and Maintenance of Sediment and Erosion Controls**
Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan prior to commencement of any other works on site.

Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: To protect the receiving environment.

23. **Management of Caulerpa taxifolia**
The invasive marine alga Caulerpa taxifolia is present on this site. Site personnel must be able identify Caulerpa. All tools, machinery and environmental control devices must be inspected and cleaned thoroughly prior to leaving the site to prevent the spread of Caulerpa to other sites.

Any Caulerpa removed from the waterway should be tightly sealed in a plastic bag and lawfully disposed in general waste.

Reason: Caulerpa taxifolia is listed under the Biosecurity Act 2015 for all NSW waters.

24. **Aquatic environment protection**
Environmental safeguards are to be used during construction to protect the aquatic environment. Appropriate methods must be installed and secured to ensure damage to the aquatic environment is minimised. Actions and recommendations of the aquatic ecology report must be followed.

Reason: To protect the aquatic environment.

25. **Use of equipment and vessels in the vicinity of seagrass**
No equipment is to be placed on any seagrass beds.

Inshore infrastructure for mooring vessels and plant must be used where suitable. Where mooring lines or cables are required, they shall be suitably buoyed prior to laying and kept buoyed once laid to prevent cable drag or swing damage (scalping). Where this is impractical, contractors should use a floating rope.

Vessels must have adequate clearance over seagrass beds, including allowance for tidal movement, swell/wind wave heights and vessel propulsion.

Reason: Protection of seagrass.

26. **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.

27. **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.

28. **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.

29. **Stockpiling materials**
During construction, all material associated with works is to be contained at source, covered and must be within the construction area. All material is to be removed off site and disposed of according to local regulations. The property is to be kept clean and any building debris removed as frequently as required to ensure no debris enters receiving waters.

Reason: To ensure pollution control measures are effective to protect the aquatic habitats within receiving waters throughout the construction period.

30. **Pollution Control**
Any excess materials such as cleaning paintbrushes, lacquers, and any water from cleaning tools must not enter the stormwater network and/or receiving waterways.

Reason: To ensure that building associated chemicals and pollutants don’t enter the surrounding 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.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

32. **Condition of Retained Vegetation**
Prior to the issue of an Occupation Certificate, a report prepared by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Principal Certifier, assessing the health and impact on all existing trees required to be retained on the approved Plans or as listed in the Arboricultural Impact Assessment, including the following information:
a) compliance to any Arborist recommendations for tree protection generally and during excavation works,
b) extent of damage sustained by vegetation as a result of the construction works,
c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree and vegetation protection.

33. **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.

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

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

35. **Lighting Compliance**
Prior to the issue of Occupation Certificate, the Principal Certifier must be satisfied that all outdoor lighting is designed and positioned to minimise any detrimental impact upon the amenity of other premises and adjacent dwellings and that the outdoor lighting complies with the relevant provisions of Australian Standard 4282:2019 Control of the obtrusive effects of outdoor lighting.

Lighting is to be shielded or located to promote safe navigation and minimise any likely adverse visual impact when viewed from the Pittwater Waterway, any adjoining public land, and adjoining residences. Reflection off the water should be eliminated.

Reason: To protect public health and amenity

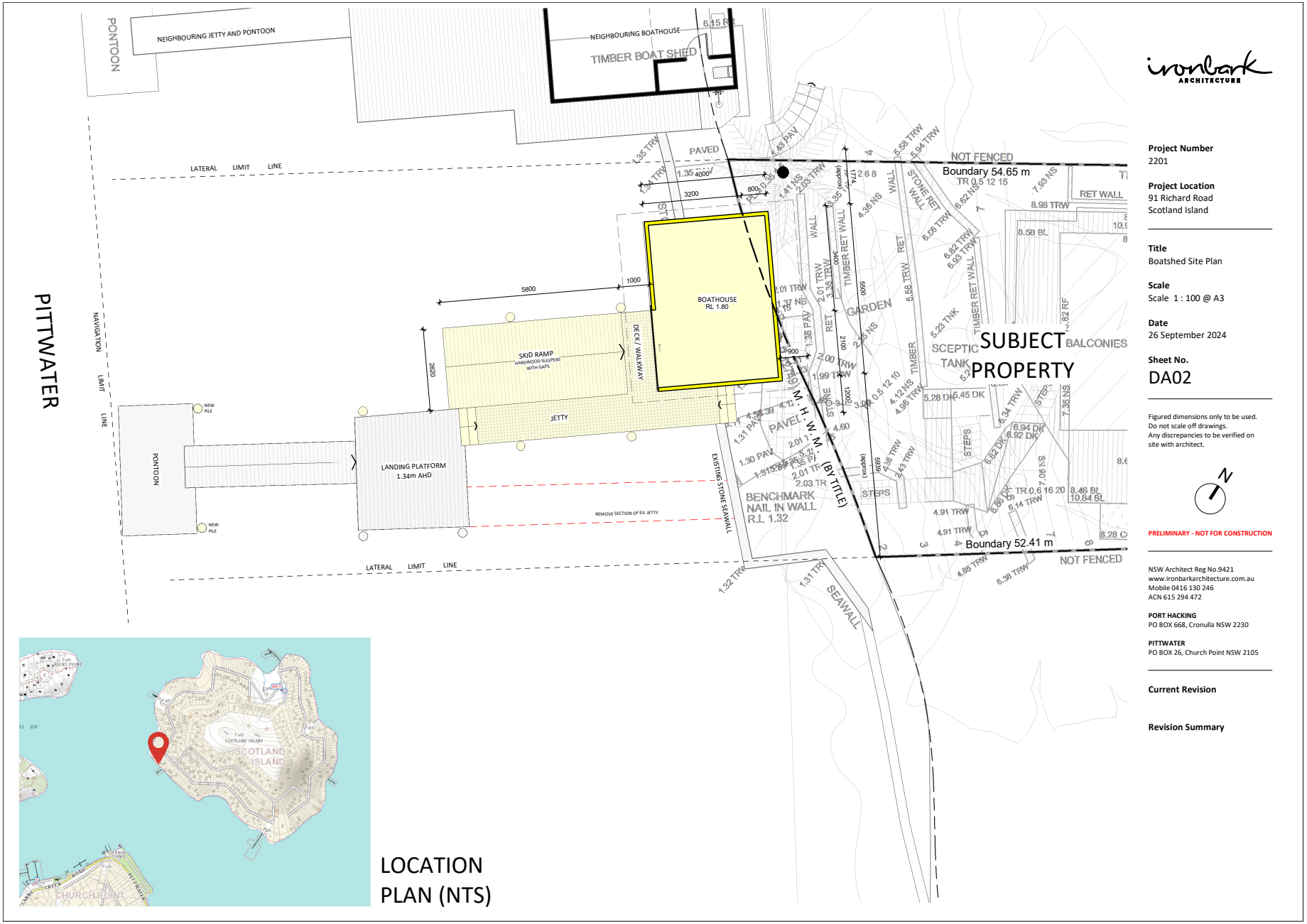
ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

36. **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.

37. **Compliance with Estuarine Risk Management Report**
The development is to comply with all recommendations of the approved Estuarine Risk Management Report prepared by Horton Coastal Engineering, dated July 2024 and these recommendations are to be maintained over the life of the development.

Reason: To ensure preservation of the development and the estuarine environment



LOCATION PLAN (NTS)

ironbark ARCHITECTURE

Project Number
2201

Project Location
91 Richard Road
Scotland Island

Title
Boatshed Site Plan

Scale
Scale 1 : 100 @ A3

Date
26 September 2024

Sheet No.
DA02

Figured dimensions only to be used.
Do not scale off drawings.
Any discrepancies to be verified on site with architect.

PRELIMINARY - NOT FOR CONSTRUCTION

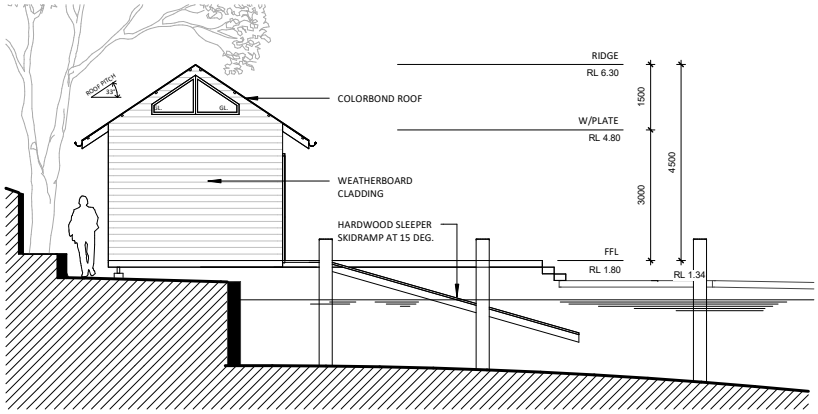
NSW Architect Reg No.9421
www.ironbarkarchitecture.com.au
Mobile 0416 130 246
ACN 615 294 472

PORT HACKING
PO BOX 668, Cronulla NSW 2230

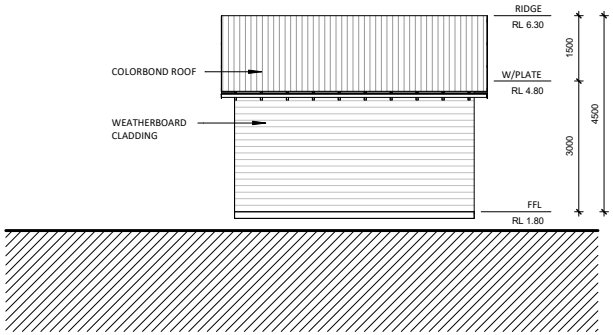
PITTWATER
PO BOX 26, Church Point NSW 2105

Current Revision

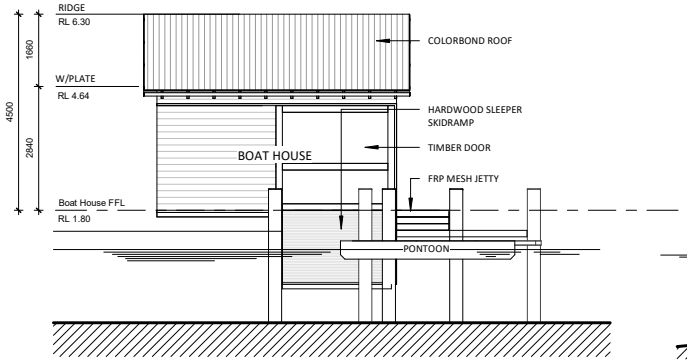
Revision Summary



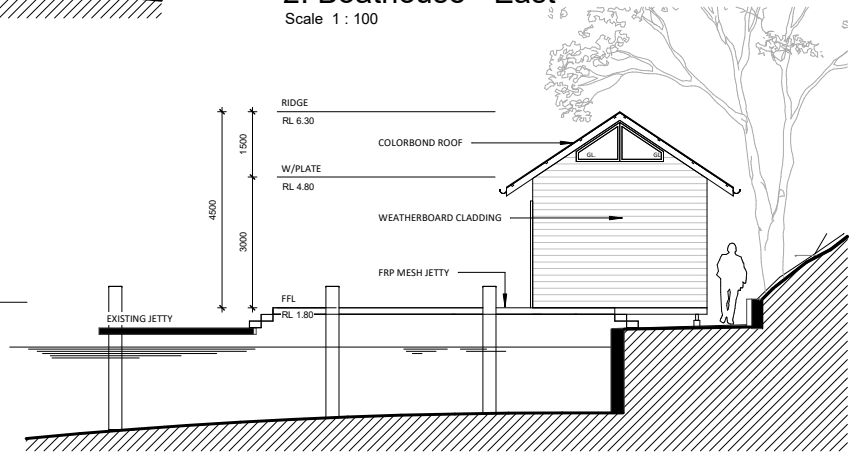
1. Boathouse - North
Scale 1 : 100



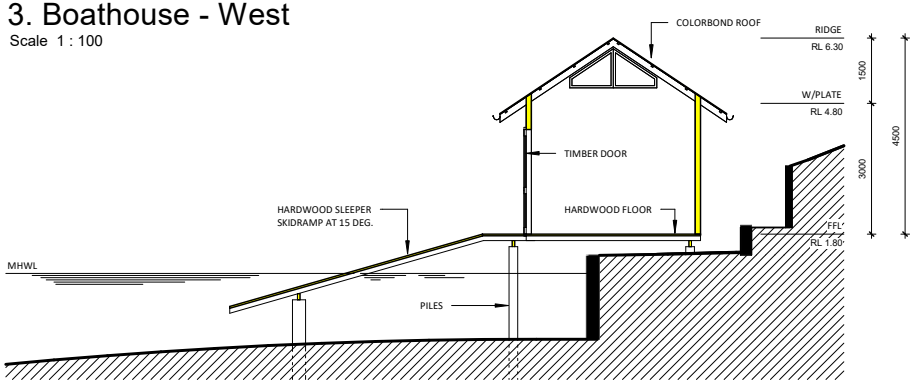
2. Boathouse - East
Scale 1 : 100



3. Boathouse - West
Scale 1 : 100



4. Boathouse - South
Scale 1 : 100



5. Boathouse Section
Scale 1 : 100

ironbark ARCHITECTURE

Project Number
2201

Project Location
91 Richard Road
Scotland Island

Title
Elevations + Section

Scale
Scale 1 : 100 @ A3

Date
26 September 2024

Sheet No.
DA03

Figured dimensions only to be used.
Do not scale off drawings.
Any discrepancies to be verified on site with architect.

PRELIMINARY - NOT FOR CONSTRUCTION

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Current Revision

Revision Summary

APPENDIX A Clause 4.6 Variation Request

Clause 4.3 Height of Buildings

Introduction

Concurrent with the above Development Application we submit this letter addressing the provisions of Pittwater Council LEP 2014, specifically cl. 4.3– Height of buildings regarding development that exceeds the maximum height on Council's Heights of Buildings Map under the provisions of LEP 2014 cl.4.6 Exceptions to development standards.

This document shall demonstrate compliance with the outcomes of LEP control 4.3 Height of buildings with regard to the proposed boat shed to supplement the existing water access only family dwelling.

Clause 4.6 of the Pittwater Local Environmental Plan 2014 enables Northern Beaches Council to grant consent to the development even though the boat shed contravenes a development standard. The clause aims to provide flexibility in applying certain development standards to achieve better outcomes for and from the development.

This clause 4.6 variation request demonstrates that compliance with the height standard is unreasonable and unnecessary in the circumstances of this case, and there are sufficient environmental planning grounds to justify contravention of the standard.

This clause 4.6 variation request demonstrates that the proposed development:

- Satisfies the objectives for development standard clause 4.3 PLEP 2014 Building Height,
- Satisfies the objectives of the W1 Waterways zone under PLEP 2014,
- Is consistent with applicable state and regional planning policies,
- Provides for a better planning outcome,
- Has sufficient environmental planning grounds to permit the variation, and
- Is in the public interest.

The DA may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.3 of the Pittwater LEP 2014.

VARIATION TO CLAUSE 4.3 HEIGHT OF BUILDINGS

The finished floor level of the proposed boat shed is nominated at 1.80m AHD and the ridge is 6.30m AHD. From the LEP Heights of buildings map the maximum height of the boat shed should be be no more than 4.0m above astronomical height tide (1.17m AHD), giving a total of 5.17m AHD. The proposed boat shed ridge exceeds this height by 1.13m.

The location of the boat shed is in accordance with Pittwater Council's DCP P21 Section D15.15 Waterfront Development, Clause c) Boat sheds part i. "Boat sheds shall be located above the MHWM on freehold land, where practicable." The form of the land with the steep embankment behind the reclamation makes it impracticable to locate the boat shed entirely on freehold land.

The height of the boat shed is entirely in accordance with Pittwater Council's DCP P21 Section D15.15 Waterfront Development, Clause c) Boat sheds part ii. "Boat sheds shall be no greater than 4.5m in building height above the platform on which it is built..." In regard to height limits the DCP makes no distinction as to the location of the boat shed.

The nominated Highest Astronomical Tide (HAT) of 1.17m AHD has been in the Council's LEP documents unchanged for over 30 years. As such it takes no account of sea level rise, or the Council's more recent (Cardno 2015) report into sea levels in Pittwater. This Cardno report puts a sea level rise of 0.42m at 2078 (relative to 2010), giving a tide level of 1.59m AHD, with the 1 in 100 year ARI still water level at 1.94m AHD.

JUSTIFICATION FOR CONTRAVENTION OF THE DEVELOPMENT STANDARD

Clause 4.6(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 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) there are sufficient environmental planning grounds to justify contravening the development standard.

Clause 4.6(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicants 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(3)(a) COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY

The objectives of the standard are achieved notwithstanding non-compliance with the standard.

The objectives of the standard are:

(a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,

(b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,

(c) to minimise any overshadowing of neighbouring properties,

(d) to allow for the reasonable sharing of views,

(e) to encourage buildings that are designed to respond sensitively to the natural topography,

(f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

Objective (a): to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality.

The proposed boat shed floor level is entirely consistent in form and height with the guidelines for boat sheds as set down in PDCP21 D15.15, with the ridge level similar to many of these structures built over that last 20 years in Pittwater.

As, such, the proposal's height, whilst seeking a variation to the height control, still results in a development which is consistent with the expectations for boat sheds on Scotland Island and remains consistent with the desired character of the Pittwater waterway.

Objective (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development.

Many of the boat sheds on Scotland Island, as well as in Elvina and Lovett Bays, are similar in height and scale.

Objective (c) to minimise any overshadowing of neighbouring properties.

The proposal will not result in any overshadowing of neighbouring properties due to the location of the boat shed over water, and the rising slope of the adjoining sites where dwellings are located.

Therefore, the variation to the height limit does not result in any overshadowing on neighbouring properties.

Objective (d) to allow for the reasonable sharing of views.

Due to the location of the boat shed being below the lowest floor levels of neighbouring dwellings, the proposed development, and the minor variation to the height limit, do not result in any view impacts, allowing for the reasonable sharing of views.

The proposal does not interrupt or obstruct any significant views to or from the site or Pittwater, making the proposed development consistent with this objective.

Objective (e) to encourage buildings that are designed to respond sensitively to the natural topography.

The proposed development has been designed to respond sensitively to the natural topography, which slopes steeply away from a level area straddling the Mean High Water Mark.

The building sits lightly on the existing terrain.

Objective (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

There are no heritage items affected by the proposal, and the building will have a similar visual impact on the existing environment being entirely consistent with waterfront boat sheds in this area of Pittwater.

Pittwater LEP 2014 cl. 4.6 Exceptions to development standards sets out the parameters for varying a development standard such as cl. 4.3 Height of buildings described above. Compliance with the relevant provisions of cl 4.6 is achieved as follows:

(3) (a) as demonstrated above compliance with the development standard cl.4.3 is unreasonable or unnecessary in this case, and,

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

(4) (a) (i) the proposed modification to the existing development is modest in scale and typical of boat sheds for water access only properties in Pittwater.

CLAUSE 4.6(4)(a)(ii) IN THE PUBLIC INTEREST BECAUSE IT IS CONSISTENT WITH THE OBJECTIVES OF THE ZONE AND DEVELOPMENT STANDARD.

Consistency with the objectives of the development standard.

The proposed development is consistent with the objectives of the height of buildings standard in clause 4.3, for the reasons discussed previously in CLAUSE 4.6(3)(a) COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY.

Consistency with the objectives of the zone.

The proposed development is consistent with the underlying objectives of the W1 Waterways zone. The primary driver of the variation is the result of designing a boat shed fit for purpose with minimal impact on the natural environment. The proposal will have minimal visual impact on the development on neighbouring sites or Pittwater.

The proposed siting and design of the boat shed will not affect public access along the waterfront.

The proposed development is of good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying the requirement that the proposal, and the height limit standard variation, are in the public interest.

Overall public interest.

The proposed development is considered to be in the public interest for the following reasons:

- Boat sheds are a specifically permissible use of the site and consistent with the character of the Scotland Island locality.
- Boat sheds of this traditional form add character to waterways foreshores when viewed by the public using the waterway for recreational purposes.

On the basis of the above, we believe that the consent authority can be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the development standard for building height contained in clause 4.3 of the PLEP 2014, and with the objectives of the W1 Waterways zone under the PLEP 2014.

CONCLUSION

The assessment above demonstrates that compliance with the maximum building height development standard in Clause 4.3 of the PLEP 2014 is unreasonable and unnecessary in the circumstances of this case and that the justification is well founded. It is considered that the variation allows an orderly and economic use and development of the land, and that the structure is of good design that will reasonably protect and improve the amenity of the surrounding built environment.

This clause 4.6 variation demonstrates that, notwithstanding the variation to the maximum building height development standard, the proposed development:
- Satisfies the objectives of the development standard for height of buildings in clause 4.3 of PLEP 2014,
- Satisfies the objectives of the W1 Waterways zone under PLEP 2014,
- Provides for a better outcome,
- Has sufficient environmental planning grounds to permit the variation, and
- Is in the public interest.

As such, the Development Application may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of the PLEP 2014.

ITEM 3.4 DA2024/1164 - 40 NORMA ROAD PALM BEACH - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE INCLUDING SWIMMING POOL

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 DA2024/1164 for Demolition works and construction of a dwelling house including swimming pool on land at Lot 120 DP 1033865 & Lot 298 DP 16362, 40 Norma Road PALM BEACH, subject to the conditions set out in the Assessment Report.

Reporting manager	Adam Richardson
TRIM file ref	2025/107307
Attachments	⇩1 Assessment Report ⇩2 Site Plan and Elevations

northern beaches council

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/1164

Responsible Officer:	Anne-Marie Young
Land to be developed (Address):	Lot 298 DP 16362, 40 Norma Road PALM BEACH NSW 2108 Lot 120 DP 1033865, 40 Norma Road PALM BEACH NSW 2108
Proposed Development:	Demolition works and construction of a dwelling house including swimming pool
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Robert Furey

Application Lodged:	02/09/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	10/09/2024 to 24/09/2024
Advertised:	Not Advertised
Submissions Received:	6
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	$ 3,517,365.00

EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) due to more than five (5) submissions having been received, from the notification period specified by the Northern Beaches Community Participation Plan.

Concerns raised in the submissions predominantly relate to the height, bulk and scale of the proposal

and inconsistencies with the built form controls which result in adverse visual impacts on the streetscape and the desired future character of the Locality. Issues are also raised in respect of unreasonable amenity impacts, including privacy, view loss and overshadowing. Concerns are also raised in respect of excavation and construction. The matters raised during the submissions have been considered as part of the assessment.

In response to the submissions and issues identified during the preliminary assessment, the application has been amended to reduce the height of the development from 9.85m to a compliant 8.5m and changes to the the roof profile to ensure full compliance with the height of building development standard. The side setbacks of the development have increased to reduce the building envelope breach and ensure public view corridors towards the ocean and headland from Norma Road. Despite these changes there is still a breach of the building envelope, particularly to the south-east elevation which relates primarily to the steep slope of the site which is in excess of 40%. The amended design minimises excavation to respond to the landform and topography with the 60% landscape space requirement being satisfied. Subject to a recommended condition requiring a further 0.5m setback of level 2 to the south-east boundary the height, bulk and scale of the proposal, as amended, will not cause unreasonable visual impacts to the neighbour, the streetscape and it responds to the desired future character of the Locality.

Amenity impacts to neighbours, especially visual privacy impacts, have also been a critical issue in the assessment. The amended design removes some windows to habitable rooms and includes some privacy screens to other windows and the side of parts of the elevated terraces. Subject to conditions requiring further privacy treatment to level 2 terrace and parts of the external stairs the proposal will not unreasonable impact the neighbours by way of overlooking. Despite some additional shadow impact to the southern neighbour the proposal complies with the solar access provisions. Finally, view loss impacts from the public street and private properties is assessed as minor.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal, as amended seeks consent for the demolition of existing building and construction of a new four level dwelling with integrated carport and a swimming pool and related landscaping work. In detail, the proposal includes:

Level 3 FFL 65. 424 AHD

- double carport with 2 degree roof slope RL6773
- driveway
- entry foyer
- stair and lift access

Level 2 FFL 61. 773 AHD

- open plan kitchen, living and dining with adjoining terrace
- powder room
- lift and stair

Level 1 FFL 58. 773 AHD

- master bedroom with ensuite, robe and adjoining terrace
- study
- foyer
- lift and stair

Ground Level FFL 55. 773AHD

- two (2) bed rooms with sliding doors to tiled terrace
- bathroom
- laundry and storage
- lift and stair

Swimming pool

- 9.0m x 4.2m elevated swimming pool
- under pool storage FFL 50183

External / landscaping

- garden stair along the western side
- solar panels on the roof
- sandstone cladding retaining walls
- removal of four (4) trees and new landscape work including the planting of 34 native trees across the site

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 - 7.2 Earthworks
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
Pittwater 21 Development Control Plan - C1.3 View Sharing
Pittwater 21 Development Control Plan - C1.4 Solar Access
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - C1.17 Swimming Pool Safety
Pittwater 21 Development Control Plan - C1.19 Incline Passenger Lifts and Stairways
Pittwater 21 Development Control Plan - D12.5 Front building line
Pittwater 21 Development Control Plan - D12.6 Side and rear building line
Pittwater 21 Development Control Plan - D12.8 Building envelope

SITE DESCRIPTION

Property Description:	Lot 298 DP 16362 , 40 Norma Road PALM BEACH NSW 2108 Lot 120 DP 1033865 , 40 Norma Road PALM BEACH NSW 2108
Detailed Site Description:	The subject site consists of two (2) allotments, namely lot 298-DP16362 and lot 120-DP1033865, located on the northern side of Norma Road, Palm Beach. The site is irregular in shape with a primary frontage of 14.03m along Norma Road and a secondary frontage of 14.09m to Whale Beach Road. The site has a maximum depth of 57.15m and a surveyed area of 740.3m². The site is located within the C4 Environmental Living zone from the PLEP and accommodates a two storey dwelling with a detached single hardstand parking space fronting Norma Road. The site steeply slopes towards Whale Beach Road, with an average slope in excess of 40%, a number of mature trees are present on the site, includes some within the front setback. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by detached one, two and three storey dwellings of varying age and character that are orientated towards the ocean with large terraces. Norma Road is a narrow road with no footpath.

Map:



SITE HISTORY

History of subject DA.

On 14 November 2024, a Request for Further Information (RFI) letter was issue which raised issues with the following:

- height, bulk and scale and an inconsistency with the objectives of the E4 Environmental Living zone, Palm Beach Locality and scenic quality of the area
- inconsistency with the built form controls (height, front building line, side building line and building envelope)
- amenity impacts including potential view loss, privacy and overshadowing
- engineering issues - access and stormwater
- issues raised in submission

On 30 January 2025, the applicant uploaded amended plans to the Planning Portal which included the following changes:

- change to the roof profile and a reduction in height from 9.8m to 8.5m
- increase in the side setbacks
- removal of bin storage area from the front setback
- removal of windows from the side elevations and addition of privacy screens to other windows
- reduction in the size of the primary rear deck
- updated stormwater management plans

The amended plans were re-referred to Council's Development Engineer and re-notified to all those that made a submission to the original DA.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 29 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. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to the driveway access and issues were raised in respect to the height, bulk and scale and the resulting visual impacts on the locality and amenity impacts to neighbouring properties. 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. Clauses 62 and/or 64 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. 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

Section 4.15 Matters for Consideration	Comments
	authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 10/09/2024 to 24/09/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 6 submission/s from:

Name:	Address:
Ms Melinda Jane Pamela Young	38 Norma Road PALM BEACH NSW 2108
Mr John Edward Carter	C/- Weir Phillips Architects Level 19 100 William Street WOOLLOOMOOLOO NSW 2011
Mr Hugh Berchmans Devine	PO Box 6484 NORTH SYDNEY NSW 2059

Name:	Address:
Mr Michael James Field Parshall	6 Garnet Street SOUTH COOGEE NSW 2034
Moncur Nominees Pty Ltd Fiona Martin-Weber	37A Lansell Road TOORAK NSW 3142
Corona Projects Pty Ltd	PO Box 1062 BONDI JUNCTION NSW 1355

A total of six (6) submission were received, two (2) submissions have been received from the same property and in accordance with the CCP are counted as one submission. The total number of unique submissions is therefore five (5). The following issues were raised in the submissions:

- ***Height, bulk and scale***

  The submissions raised concerns that height, bulk and scale of the proposed five (5) level dwelling is out of character with surrounding dwellings / the Locality and results in unreasonable visual impacts on the scenic quality of the area. The proposal exceeds the 8.5m building height, projects forward of the neighbouring dwelling, extends to the site boundaries.

  Comment:

  The proposal has been amended to reduce the height from 9.7m to 8.5m and change the roof profile to ensure full compliance with the height of building development standard. The gym below the swimming pool has also been removed and the size of the pool structure reduced. The side setback of the development has increased to reduce the bulk and scale of the development and reduce the breach in the building envelope. A condition is recommended which requires a further increase in the setback of the living room on level 2 from the south-east boundary to further reduce impacts to the neighbour to the south and which will improve the articulation of the side elevation. Subject to this condition, the proposal as amended ensure that the height, bulk and scale are appropriate within the streetscape and in response to the desired future character of the locality and the scenic quality of the area.

- ***Streetscape / front setback***

  The submissions raised concerns that garage and entrance are bulky they sit above the street level and the height and pitch of the roof will impact on the streetscape. The development breaches the 6.5m front setback and would be better position if it were setback further from the street frontage. It is noted that the garage level is located within the electrical easement.

  Comment:

  The upper floor, carport and entry lobby, has been reduced in bulk and scale with increased setbacks to the front and side boundaries. The roof has also been lowered by 1.3m with a change in the roof profile and the bin store has been completely removed from within the 6.5m frontage. These design changes will ensure that the development presents an appropriate scale and density to the street and allows for view corridors to the ocean from either side of the structure similar to other site to the west. On merit, the minor breach of the front setback will not result in unreasonable visual impacts and meets the outcome of the front setback control, refer to detailed discussion under clause D12.2 of the PDCP below. Finally, there will be no

change to the easements that affect the site.

- ***Non-compliance with Planning controls***

  The submission raise concerns that the proposal breaches the built form controls including: maximum building height, and setbacks and building envelope.

  Comment:

  As above, the development has been amended to ensure full compliance with the maximum 8.5m height of building development standard. With the exception of part of the external stairs the proposal complies with the side setback control. The proposal also fully complies with the landscape open space provisions and ensure that the dwelling sits within a landscape setting consistent with the E4 Environmental Living zone objectives. The proposal minimizes the extent of excavation to respond to the landform and topography and the breach of the envelope is generally a result of the steep slope which exceeds 40%. On merit, the breach of the building envelope is assessed as acceptable, subject to a condition requiring an increase in the side setback of part the level 2, refer to detailed discussion under Cl D12.8 of the PDCP.

- ***View loss***

  The submissions raised concerns that garage and entrance will impact on public views of the ocean from the street. Issues are raised with respect to the height, bulk and scale which may negatively impact on view sharing, from private property, including ocean views from habitable rooms and areas of private open space. Concern is raised in respect to the proposed planting of banksia trees within the frontage which may reach a height of 15m which may bock views and interfere with power lines.

  Comment:

  As above, the height, bulk and scale of the development has been reduced to help minimise impacts on view sharing from private properties. The amended design of the upper level ensures that view corridors looking towards the ocean and headland from the street are retained either side of the carport and entry lobby. A condition requires all proposed tree planting to be positioned in locations to minimise significant impacts on the loss of views from neighbouring and nearby dwellings and from public spaces, refer to detailed discussion under Cl C1.3 of the PDCP.

- ***Visual and acoustic privacy impacts***

  The submissions raised concerns in respect to the height, orientation and and positioning of windows and terraces, the use of the swimming pool and the location of external stairs close to the side boundary which will result in unreasonable visual and acoustic privacy impacts. Insufficient privacy treatment has been included in the design to address these issues. Specifically the following issues are raised from the adjoining properties:

  No 38 Norma Road- - The proposed dwelling will look directly into the two (2) levels of the neighbouring dwelling, the study and level 2 terraces looks into a bedroom and the living room and the large terraces, which project forward, look into the living, dining and kitchen and lower level bedrooms and areas of private open space. External stairs are proposed on the boundary which add to privacy impacts.

  No. 42 - The proposal will overlook living areas, bedrooms and terraces and concern is raised

in respect to acoustic impacts from the large terraces and from the use of the swimming pool and operation of the lift given the proximity to boundaries.

Comment:

Subject to condition requiring the installation of additional privacy screens to the level 2 terrace and to the side of the external stairs which are located close to the terraces of No. 38 the proposal, as amended, will not result in unreasonable visual and acoustic privacy impacts to neighbours, refer to the detailed discussion under Cl C1.5 below.

- ***Overshadowing***

Submissions from No. 38 Norma Road raise a concerns that proposal will overshadow the neighbouring property in the morning. Likewise, concerns are raised in the submissions from the neighbour at No. 42 is respect of unreasonable shadow impacts to areas of private open space and habitable window.

Comment:

Due to the orientation of the site there will be no unreasonable shadow impact between 9.00am and 3.00pm on June 21 to No. 38 which is located to the north-west of the subject site. Despite the increase in shadow falling on No. 42 to the south-east the proposal complies with the solar access provisions, refer to detailed discussion under Cl C1.4 of the PDCP.

- ***Excavation and structural impacts***

The submissions raised concerns that demolition, excavation and construction is proposed close to the boundary on a steeply sloping site, which is mapped as land slip, and will result in potential safety and structural impacts to neighbouring properties. Noise and vibration impacts are also a concern. Dilapidation reports are required and conditions in respect to construction management and excavation. Concern is also raised in respect to the stairs located on the boundary and safety and structural impacts.

Comment:

The extent of excavation is limited and a geotechnical report has been submitted which has been assessed by Council Development Engineer as acceptable. Subject to conditions, including compliance with the recommendations of the geotechnical report and the need for pre and post construction dilapidation reports, the proposed excavation is assessed as acceptable and is unlikely to result in structural impacts to the neighbouring properties.

- ***Demolition and construction and access issues***

The submissions raised concerns that Norma Road is narrow with no footpath and bounded by an immediate and unfenced cliff on one side. Concern is raised in respect of road safety during construction and in respect to vehicular and pedestrian access to private properties and access for emergency services and buses.

Comment:

The constraints with site access are acknowledged and a condition is recommended requiring the approval of a Construction Traffic Management Plan. This plan will be required to take into

consideration access for emergency vehicles and buses.

- ***Cost of work***

  The submissions raised concerns that cost of work is grossly underestimated given the slope of the site.

  Comment:

  The application is supported with a cost summary report from a registered Quantity Surveyor which includes details on site preparation. The QS report is not in dispute.

In accordance with the Community Participation Plan (CCP) the amended plans were re-notified to all those that made a submission to the original application. Three (3) additional submission were received from those that had made submissions to the original application. One submission notes the improvements to the development but raises a general point about vehicles parked on Norma Road and impacts to the embankment to the front of No. 47 Norma Road. This is noted and the CTMP should help address this issue.

The other two (2) submissions in objection reiterated the issue discussed above and the following new issues:

- ***Insufficient information - Geotechnical and shadows***

  The submissions raised concerns that a separate structural report is required for the amened plans to confirm that there are no impacts to No. 42. Additional hourly shadow diagrams in plan and elevation and in colour including an assessment of the south-west elevation. All new information needs to be re-notified to ensure procedural accuracy.

  Comment:

  The shadow analysis is assessed as acceptable and no further information is required, refer to the detailed discussion under cl C1.4. of the PDCP below.

  The amended design does not seek to increase the amount of excavation, as such no further geotechnical information is required and detailed structural plans will be required at the Construction Certificate stage.

- ***Public interest***

  The submissions raised concerns that due to inconsistencies with the relevant planning controls that the proposal is not in the public interest.

  Comment:

  As above, the proposal, as amended generally complies with the relevant planning controls and the inconsistencies with the PDCP control, on merit, are consistent with the outcomes of the respective DCP provisions.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	**Supported, subject to conditions** The application seeks consent for: Demolition works and construction of a dwelling house including swimming pool. The Arborist's Report prepared by Bradshaw Consulting Arborists and Landscape Plans prepared by Walter Barda Design are noted. The Arborist's Report indicates that 5 trees of Low - Moderate Landscape significance are required to be removed to accommodate the proposed works.Two of these trees are exempt species under Pittwater DCP. All other trees on site are to be retained. No objections are raised to the proposed removals. The Landscape Plans indicate that it is intended to keep one of the trees indicated for removal by the Arborist, though based on the levels provided, it seems that retention would be difficult. Recommended conditions include approval to remove of this tree if required during works. The Landscape Plans indicate planting of 34 native trees across the site in addition to numerous other native shrubs and groundcovers. No objections are raised regarding landscape issues subject to conditions.
NECC (Bushland and Biodiversity)	**Supported, subject to conditions** The comments in this referral relate to the following applicable controls and provisions: • Pittwater LEP Clause 7.6 Biodiversity Protection • Pittwater DCP Clause B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land • Pittwater DCP Clause B4.6 Wildlife Corridors The proposal has been submitted with an arboricultural impact assessment that has concluded that the proposal will require the removal of a total of 3 prescribed trees and recommended the removal of an additional 2 exempt trees. No objections are raised in relation to these removals given the inclusion of adequate replacement plantings in the submitted landscape planting schedule. The development is designed, sited and will be managed to avoid any significant adverse environmental impact.
NECC (Coast and Catchments)	**Supported, subject to conditions**

Internal Referral Body	Comments
	This application was assessed in consideration of: • Supplied plans and reports; • Coastal Management Act (2016) • State Environmental Planning Policy (Resilience and Hazards) 2021 (section 2.11 & 2.12); • Relevant LEP and DCP clauses. State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.11 and 2.12 of the CM (R & H) apply for this DA. Comment: On internal assessment, the proposed development outlined within the DA including the Statement of Environmental Effects dated August 2024 by Northern Beaches Planning satisfies requirements under clause 2.11 & 2.12 of the SEPP R&H. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021. Pittwater LEP 2014 and Pittwater 21 DCP - No other coastal related issues identified. As such, it is considered that the application does comply with the requirements of the coastal relevant clauses of the Pittwater LEP 2014 and Pittwater 21 DCP
NECC (Development Engineering)	**Supported, subject to conditions** The proposal is for demolition works and construction of a new dwelling. **<u>Additional Information Provided on 30/1/2025 & 10/2/2025</u>** Amended stormwater plans and architectural plans have been reviewed. No objections to approval subject to conditions as recommended. <u>Original comments</u> Access Insufficient information has been provided with regard to the proposed access driveway. The Applicant shall provide a long-section at both edges of the proposed access driveway to the proposed garage and demonstrate compliance with AS2890.1. The driveway should incorporate Council's standard Maximum Low vehicle crossing profile. Stormwater The site has two frontages and the stormwater plans proposes discharge to a level spreader via an OSD system along the Whale

Internal Referral Body	Comments
	Beach Road frontage. The site discharge is to be piped to the exiting dish drain at the edge of bitumen in Whale Beach Road.

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

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 (Certificate No. 1753296S dated 27 June 2024).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.

- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 3 Coastal environment area
2.10 Development on land within the coastal environment area

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

Comment:

The subject site is sits in an elevated position approximately located 100m to the west of the coastal headland. Given the location of the subject site the proposal will not negatively impact public access to the headland or the coastal environmental

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:

As above, due to the location of the site away from the coastal headland the proposal will not unreasonably impact of the values listed in sub-clause 1 (a-g).

Division 4 Coastal use area
2.11 Development on land within the coastal use area

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

Comment:

Council can be satisfied that the development, as amended, will not unreasonably impact on views from public places to foreshores given the view corridors that are retained either side of the carport and entry lobby. The bulk and scale of the development has been reduced to ensure that there are no unreasonable impacts on the visual amenity and scenic quality of the coast.

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 consent authority is satisfied that the proposed development is not likely to cause increased risk

of coastal hazards on that land or other land.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

Chapter 4 – Remediation of Land

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

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	8.5m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

7.2 Earthworks

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

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

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

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

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

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

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

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

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

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

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

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

(f) the likelihood of disturbing relics

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

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

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

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

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

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

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

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of PLEP 2014, Pittwater 21 DCP and the objectives specified in s.5(a)(i)

and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

7.7 Geotechnical hazards

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

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

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

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

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

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

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

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies

Front building line	6.5m	Level 3 (external wall of carport and entrance) = 4.5m - 6.5m Level 2 (below ground) = Nil - 1.8m to retaining wall to terrace, 2.5 to external wall of pantry Entry stairs - nil to front boundary	Up to 100%	**No**
Rear building line	6.5m	21.1m to the swimming pool m	N/A	Yes
Side building line	2.5m north-west	2.5m to external wall of dwelling Nil to 1.5m to external stairs	100%	Yes **No**
	1.0m south-east	1.0m to the external wall of the dwelling	N/A	Yes
Building envelope	3.5m north-west elevation	Outside envelope (14.5m in length x 6.6m in height)	Refer to detailed discussion	**No**
	3.5m south-east elevation	Outside envelope in three areas: carport 5.8m in length x 1.6m in height, lift 2m in length x 3.7m in height and living room 6.5m in length x 3.0m in height	Refer to detailed discussion	**No**
Landscaped area	60% (444.18m^2)	446m^2 (inclusive of 6% variation = Total LOS 490.41m2 (66.24%)	N/A	Yes

Compliance Assessment

Clause	**Compliance with Requirements**	**Consistency Aims/Objectives**
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B4.6 Wildlife Corridors	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	No	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	No	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	No	Yes
D12.6 Side and rear building line	No	Yes
D12.8 Building envelope	No	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

C1.3 View Sharing

Merit consideration

View loss inspections were offered to those properties that raised view loss in submission. An internal view loss inspection was only carried out to No. 38 Norma Road. A view loss inspection was conducted from Norma Road and from the exterior / curtilage of other properties located on the high side of Norma Road. A search of Council records, including details on contours via survey, and previous approvals to neighbouring properties, and the internet also assisted with the assessment.

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

- *A reasonable sharing of views amongst dwellings.*

Comment:

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

1. Nature of the views affected

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

Comment to Principle 1:

View loss issues are raised from the neighbouring property to the north-west No. 38 Norma Road. In addition, view loss issues were raised from the following properties located on the high side of Norma Road, No. 45, No. 47 and No. 49 Norma Road.

Given the orientation and elevated location of all properties, extensive ocean views and views to Barrenjoey headland and lighthouse ae enjoyed from habitable room and areas of private open space looking to the north.

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

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

Comment to Principle 2:

No. 38 Norma Road

No. 38 Norma Road directly adjoins the subject site to the immediate north-west. A site inspection confirmed that ocean views are enjoyed looking across the side boundary of the subject site looking in a south-easterly direction from a siting and standing positioned. Views are enjoyed from the ground level open plan living, kitchen and dining area and the adjoining terrace. Similar east facing views are enjoyed from the lower level terrace, with more limited ocean view obtained from the adjoining bedrooms. Expansive ocean views are enjoyed looking to the east and to the north towards Palm Beach and Barrenjoey Headland and lighthouse. These views will not be impacted by the development.



Figure 1 - *View from lower level terrace to No. 38 Norma Road looking to the south-east across the boundary of the subject site.*

No. 45 Norma Road

No 45. Norma Road is located diagonally opposite the subject site on the opposite side of Norma Road. The single storey dual aspect dwelling is elevated above street level and enjoys ocean views from the front and rear of the dwelling. A search of Councils files, and the internet, confirms that the primary area of private open space, namely pool deck and garden, are located to the rear of the dwelling which faces south and takes advantage of the extensive views towards Whale Beach and the headland.

Views to the north are currently restricted due to the extent vegetation along the road side within the frontage of the site. Despite the presence of the existing vegetation ocean view are enjoyed looking across the subject site to the north-east from the lounge, a bedroom and adjoining terrace and the front garden area.



Figure 2 - *View from the front garden of No. 45 Norma Road looking to the north-east across the road and subject site.*

No. 47 Norma Road

No. 47 Norma Road is located on the opposite side of Norma Road to the subject site on the high side of the road. The dwelling sits in an elevated position, approximately 4.0m above street level and existing mature vegetation is present along the frontage of the site. The site is currently under construction in respect to consent DA2022/2017 for alteration and additions including a new upper floor addition, a new north facing outdoor area at ground level and swimming pool and deck and terraces to the rear (south).

The principle area of open space is located to the rear of the dual aspect property and extensive primary views to Whale Beach and its headland will be enjoyed from the new swimming pool and deck area. These views are also enjoyed from the south facing windows to the habitable rooms. Once construction has been completed the property will also enjoy ocean views and viewed towards Barrenjoey headland and lighthouse from the open plan living, kitchen and dining room, bedroom 2 and the rumpus room at ground level and the and deck at ground level and the upper floor bedrooms.



Figure 3 -*View from ground level of No. 47 Norma Road looking to the east (source realestate.com)*

No. 49 Norma Road

No. 49 Norma Road is also located on the opposite side of Norma Road and to the east of the to the subject site. This two storey dual aspect property is also positioned in an elevated position above street level. The dwelling enjoys extensive primary views to Whale Beach and its headland looking to the south with the primary area of open space located to the rear including swimming pool and decks. Ocean and headland views of Barrenjoey headland are also enjoyed looking towards the north, east and north-west from the kitchen, living and dining room, decks and front garden. It is noted that mature vegetation located along the frontage of this property and within the vicinity of the area may result in some views being filtered.



Figure 4 - *View from No. 47 Norma Road looking to the north-west (photo supplied by the owner)*

- **3. Extent of impact**

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

Comment to Principle 3:

No. 38 Norma Road

The footprint of the proposed dwelling is in a similar location to the existing dwelling although it is noted that the proposed dwelling projects further to the north-east, beyond the rear building line of the dwelling at No. 38 Norma Road.

The proposal will result in a minor loss of water view looking from the ground and lower ground level terraces and the open plan kitchen, living and dining and lower level bedrooms looking across the side boundary to the north-east. The principle ocean and headland view looking to the north-west will not be impacted.

The view loss is assessed as moderate.

No. 45 Norma Road

Due to the elevated position the proposal of No. 45, the proposal, as amended, has the potential to result in a partial loss of ocean view looking to the north-east from the front garden, front bedroom and lounge room.

The view loss is assessed as minor.

No. 47 Norma Road

The proposed garage has been reduces in width and height by 1.3m, the dwelling has also been reduced from 9.7m to 8.5m. A search of Councils records confirm that the ground level of No. 47 Norma Road is RL71.90 which sits 1.23m higher than the roof level of the proposed garage, as amended.

The view loss is assessed minor

No. 49 Norma Road

As above, the reduction in the height of the garage and dwelling, in addition to the reduction in building envelope to the southern elevation will help ensure that the impacts on views are limited.

The view loss is assessed as minor.

4. Reasonableness of the proposal that is causing the impact

"*The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance*

with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable."

Comment to Principle 4:

The proposal has been amended to reduce the height, bulk and scale of the proposal. The development, as amended, is skillfully designed and sited generally on the footprint of the existing dwelling to minimise impacts to neighbours, including view sharing. The design of the development response to the site constraints including the steepness of the slope and reduces the need to for extensive excavation and changes to the landform and landscaping. While there remain some outstanding non-compliances with the building envelope setback this non-compliance is assessed, on merit, as acceptable and does not contribute to any view loss impacts.

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

Comment:

Submissions raise concern about view loss to the ocean and Barrenjoey headland currently enjoyed from the public domain / Norma Road. As above, the proposal has been amended to reduce the height and size of the top floor and windows are proposed in the north and southern elevations of the carport. Furthermore, the side setbacks of the carport and entry have been increased to 2.5m and 2.3m respectively and the bin enclosure has been removed. These changes will help ensure that view corridors are retained either side of the upper floor structure and ocean views can be enjoyed via the windows in the carport.



Figure 5 - *View from Norma Road looking across the subject site towards the north-east.*

Issues in respect to view loss from the street as a result of the height of new trees at maturity is address by a condition.

- *Canopy trees take priority over views.*

  Comment:

  Canopy trees are retained.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

Note: As a result of the amendments to the proposal and the extent of the view loss it was considered the height poles were unnecessary.

C1.4 Solar Access

The control requires:

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

Response:

The proposal increases the amount of shadow falling on No. 42 to the south between 9.00am and 3.00pm on June 21st. The shadow falls primarily on an area of open space located between the garage and rear of the dwelling. This area of the neighbouring property steps down the site and contains landscape planting, it is not an area of primary open space and has limited recreational use, refer to the photos below.



Figure 6 - *Aerial photo showing the No. 42 in context to the subject site (source NearMaps)*

The main private open space to No. 42 consistent of a large east facing terrace that adjoining the open plan kitchen, living and dining area and bedroom at ground level with a second large deck at the lower ground level. The proposal will not overshadow the deck between 9.00am and 12.00noon and therefore retains 3 hours of sunlight in compliance with the control. In addition, a large area of the private open space to the east of the dwelling is not impacted by shadows between 9.00am and 12.00 noon.

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

Response

The east facing sliding glass doors to the principle open plan kitchen, living and dining area to No. 42 Norma Road will not unreasonably be impacted by the development due to shadows. A secondary window to the dining area is located within the southern elevation. The shadow diagrams confirm that the existing dwelling cast a shadow over a portion of the glass door at 9.00am, more than 50% of the glazed area is cast in shadow at 12.00 noon and the entire window is overshadowed at 3.00pm. By comparison the proposal allows for greater solar access to the glass door at 9.00am.

Concerns have ben raised in submission in respect to insufficient solar access assessment / information, including elevational shadow of the south-western elevations of 42 Norma Road. It is noted that there is a south facing kitchen window with a sun hood in the southern elevation to No. 42. Due to the southern position of this window it is currently cast in shadow in Winter. As above, the north-east glazed sliding doors to the principle living area are not impacted by the proposal. As such,

this request is not reasonable and sufficient information has been submitted to allow a proper assessment of the application.

Concern was also raised in submission in resect to solar access impacts in the morning to No. 38 Norma Road. The control provides for the protection of solar access between 9.00am and 3.00pm on June 21. There is no requirement to protect solar access out side these hours and there will be no unreasonable solar impacts to No. 38 Norma Road.

In summary, the proposal complies with the requirements and outcomes of the control and a reasonable level of solar access is maintained to existing residential properties.

C1.5 Visual Privacy

Detailed description of non-compliance

The control requires:

Private open space areas including swimming pools and living rooms of proposed and any existing adjoining dwellings are to be protected from direct overlooking within 9 metres by building layout, landscaping, screening devices or greater spatial separation (measured from a height of 1.7 metres above floor level).

Elevated decks and pools, verandahs and balconies should incorporate privacy screens where necessary and should be located at the front or rear of the building.

Direct views from an upper level dwelling shall be designed to prevent overlooking of more than 50% of the private open space of a lower level dwelling directly below.

The proposal has been amended to address some of the privacy issues with the deletion of windows, inclusion of privacy screens and reduction in the size of the level 2 terrace. Despite these changes concerns remain about the impact of development of neighbouring amenity by virtue of overlooking. The following components of the development remain to be inconsistent with the control:

Level 2 - The proposed terrace (FFL61773) that wraps around the north-eastern and northern side of the floor remains to be located 2.5m from the side boundary and 3.6m from the balcony to No. 38 Norma Road which sits at the same level. A screen has been added along a 4.5m section of the terrace. To ensure the privacy of No. 38 is maintained a condition requires the screen to extend the entire length of the north-west edge. This in turn with address issues with the potential privacy impacts of the living room window D2.2 which is located 4.2m from the northern boundary, refer to image below.

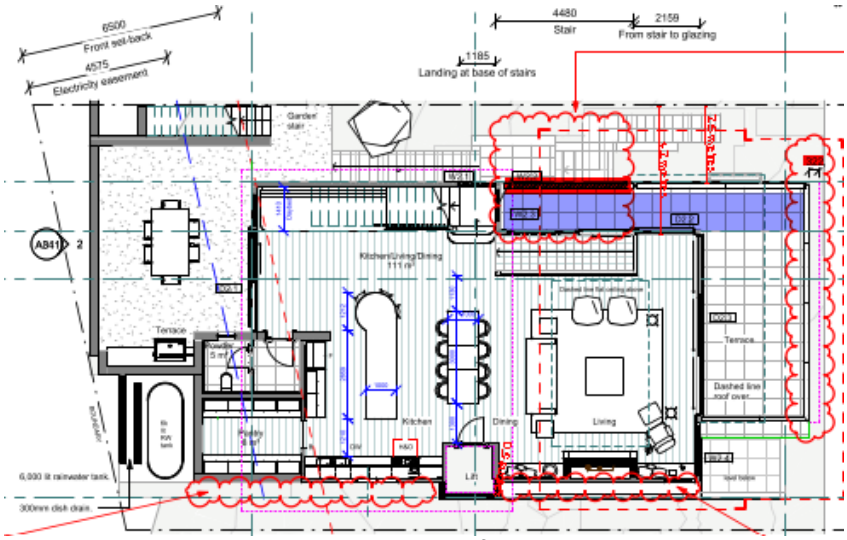


Figure 7 - *Level 2 plan showing the area of the terrace in purple which requires a privacy screen along the northern edge.*

The proposed level 2 terrace is positioned 3.4m from the southern boundary and 5.2m from the terrace to No. 42 Norma Road. The proposed terrace sits 1.8m above the terrace to No. 42 Norma Road and has therefore has the potential to look down to the neighbours lower level terrace. To address the privacy concerns with respect to this part of the proposed terrace a condition requires a 1.8m high angled privacy screen to be installed along the south-east edge of the terrace.

Level 1

Concern is also raised from No. 38 Norma Road in respect to privacy impacts as a result of the window (W1.2) to the study at level 1 which is positioned 2.5m to the northern boundary. The proposal has been amended to include a privacy screen along the majority of the window leaving a 600mm gap at the eastern most edge, refer to image below. This is assessed as reasonable given that the study the location of the unscreened potion of the window and the fact that the small 8m^2 study will be a room which is is less used than the primary habitable spaces.

It is noted that a privacy screen is proposed to the southern side of the terrace which ensures that there are no unreasonable amenity impacts to No. 42 Norma Road.

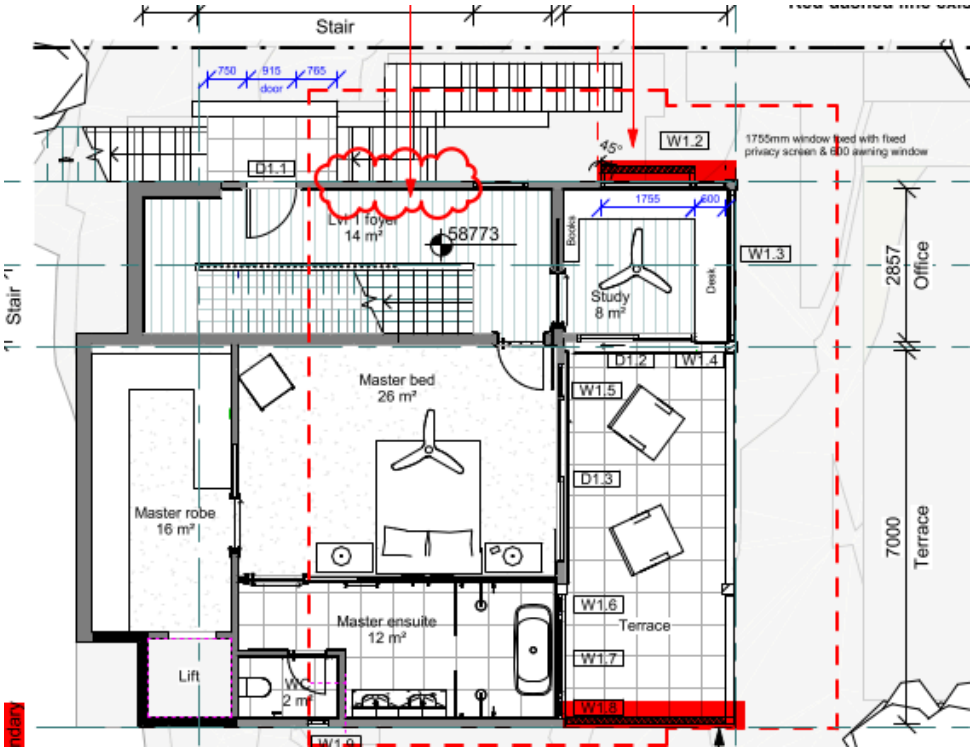


Figure 8 - *Level 1 plan showing the screen to W1.2 in the the study in red*

Swimming pool

The swimming is elevated a maximum 2.3m above natural ground level with a pool storage below the pool. The pool is setback 2.5m to the northern boundary and forward of the dwelling at No. 38 Norma Road. Given the spatial separation of the elevated pool to No. 38 it is unlikely that will be any unreasonable privacy impacts.

The swimming pool is sited 2.0m from the southern boundary and 3.8m from the lower terrace to No. 42 Norma Road. The water level of the swimming pool sits between 1.95m - 1.0m lower than the neighbouring terrace and eight (8) trees are proposed to be planted adjacent to the southern edge of the swimming pool which will reach a mature height of 5-8m to provide adequate screen planting to ensure privacy is protected.

In summary, subject to conditions, the proposal is assessed as acceptable and on merit is consistent with the outcomes of the control.

Merit consideration

- *Habitable rooms and outdoor living areas of dwellings optimise visual privacy through good design. (S)*

  Comment:

  Subject to conditions, the amended proposal ensures that an acceptable level of privacy is

maintained to the neighbouring properties.

- *A sense of territory and safety is provided for residents. (S)*

  Comment:

  The proposal achieves this outcome.

Having regard to the above assessment, it is considered that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

C1.17 Swimming Pool Safety

As above, the swimming is noted to be elevated a maximum 2.3m above natural ground level with a pool storage excavated below the pool. The pool is setback 2.5m to the northern boundary and forward of the dwelling at No. 38 Norma Road to ensure that there will be no adverse amenity impacts due to its use or visual impacts due to it being elevated.

The swimming pool is sited 2.0m from the southern boundary and 3.8m from the decks to No. 42 Norma Road. The water level of the swimming pool sits between 1.95m - 1.0m lower than the neighbouring decks. The proposal includes additional landscaping planting which will reach a mature height of 5-8m adjacent to the southern edge of the swimming pool to supplement the existing boundary planting which will help screen and protect privacy.

C1.19 Incline Passenger Lifts and Stairways

Description of Non-compliance

The existing external stairs have a nil setback to the south-east. The proposal shifts the external stairs to the north-west as detailed below:

Level 3 - The flight of external stairs located closest to the road provide access to the lower garden and pool. The stairs have a nil setback to the north-west boundary and are elevated up to 1.0m above ground level. This flight of stairs does not adjoin the neighbouring dwelling at No 38 which is set back approximately 11m from the Road frontage, as such there will be loss of privacy.

Level 2 - The external stairs are setback 1.5m from the north-west boundary with landscape planting proposed within the setback. Landscape planting is proposed along the portion of the north-west boundary that aligns with position of the dwelling No. 38 to help reduce visual impacts and protect privacy.

Level 1 - The external stairs are setback between 1.5m, 0.3m and 0.1m from the common boundary and connect an external door from the foyer next to the master bedroom. The stairs are positioned as close to ground level as possible. To ensure that the privacy to the adjoining terrace at No. 38 is protected a condition requires a privacy screen along the section of stairs located less than 0.3m from the north-west boundary at level 1 and landscaping planting adjacent to the parts of the stairs / landing that within 1.0m or more of the boundary.

Ground floor and pool level - The external stairs are setback between 0.3m and 0.1m to the north-west

boundary. These stairs sits forward of the dwelling at No. 38 Norma Road and will not impact on the amenity of the neighbour.

Note: With the exception of the top flight of stairs all other stairs are proposed as near as possible to the ground level (existing) of the site.

Merit Consideration

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

- *Incline passenger lifts and stairways that cause minimal visual and acoustic disturbance to the environment and neighbours. (En, S)*

  Comment:

  It is not anticipated that the external stairs will be used frequently and subject to a condition requiring a privacy screen and planting to a section of the stair it is not considered that there will be an unreasonable visual or privacy impacts to the neighbour.

Having regard to the above assessment, it is concluded that the applicable outcomes of the control have been achieved. Therefore, the application is supported on merit.

D12.5 Front building line

Detailed description of development

The following elements of the proposal breach the 6.5m front setback:

Level 3 - Part of the carport which has a setback of between 5.8m and 4.4m and the top flight of external stairs.

Level 2 - The below ground terrace which has a nil to 1.6m setback from the street frontage and a small portion of the powder room and pantry.

The entry stairs from the street.

Note: The proposal has been amended to remove the bin storage enclosure from within the front setback.

Merit consideration

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

- *Achieve the desired future character of the Locality.*

  Comment:

  The proposal has been amended to reduce the height, bulk and scale of level 3 and the portion

of the carport that breaches the front set back will not negatively impact on the desired future character of the Palm Beach Locality.

The elements that breach the front setback at level 2 are located below ground / street level and will not be visible, as such, these elements and the external stair will not negatively impact the desired future character of the Locality.

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

  Comment:

  It is acknowledged that water and headland views are currently enjoyed from Norma Road looking across the site and on approach from the west, despite there being no public footpath. As above, the proposal has been amended to reduce the height, bulk and scale of the development and increase the side setbacks to allow for view corridors to be retained either side of the development.

  In addition, the bin enclosure has been removed from the front setback and windows are proposed in the south-east and north-east elevation of the carport will also allow for the retention of some views currently enjoyed from Norma Road looking to the north-east. A condition is also recommended to ensure that the entry stairs do not encroach into the road reserve.

  In summary, the breaching elements of the front setback will not unreasonable impact on public or private views.

- *The amenity of residential development adjoining a main road is maintained. (S)*

  Comment:

  The proposal will not negatively impact on the amenity of residential development adjoining Norma Road.

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

  Comment:

  The proposal requires the removal of four (4) trees within the street frontage, however, existing canopy trees are retained and supplemented with additional planting to help soften and reduce the visual impact of the built form.

- *Vehicle manoeuvring in a forward direction is facilitated. (S)*

  Comment:

  Council's Development Engineer has raised no issues with access to and from the site.

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

  Comment:

  As above, the proposal retains existing canopy trees and proposes additional landscaping to

ensure that the landscape character of the site is preserved and enhanced.

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

  Comment:

  As above, the height, bulk and scale of the upper level has been reduced to enhance the streetscape and to ensure that the proposal sits below the canopy of mature trees.

- *To encourage attractive street frontages and improve pedestrian amenity.*

  Comment:

  The reduced height, bulk and scale of the carport and entry lobby will ensure that an attractive street frontage is presented. Internal pedestrian access to the subject site is proposed via the entrance lobby with a secondary external pedestrian access to the site via stairs. The removal of the bin enclosure / additional landscaping, increased side setbacks of the development and inclusion of windows to the carport will allow for an improved street presentation.

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

  Comment:

  The proposed development, as amended, responds and reinforces the spatial characteristics of the existing urban environment. It is noted that carports and garage have been constructed at street level to No. 32, 34 and 36 Norma Road to the west.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D12.6 Side and rear building line

Detailed description of non-compliance

The control requires a minimum side setback of 2.5m and 1.0m for built structures including pools and parking structures, other than driveways, fences and retaining walls.

With the exception of some sections of the the external stair, the proposal complies with the side and rear setback control. The external stairs have a setback of 1.5m to nil to the north-west boundary.

A merit assessment of the variation of the stairs control is provided below and a detailed discussion under clause D12.13.

Merit consideration

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

underlying outcomes of the control as follows

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

  Comment:

  The external stairs will not negatively impact on the desired future character of the Locality.

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

  Comment:

  The external stairs do not add unreasonably to the bulk and scale of the development.

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

  Comment:

  The external stairs are generally built as close as possible to natural ground level and will not impact on views from public or private places.

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

  Comment:

  As above, there are no view loss issues with the location of the external stairs.

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

  Comment:

  It is not anticipated that the use of the external stairs will unreasonable impact neighbouring amenity, including privacy and landscaping planting is proposed along parts of the the side boundary adjacent to the stairs to help minimise impacts. CONDITION?

- *Substantial landscaping, a mature tree canopy and an attractive streetscape. (En, S)*

  Comment:

  An attractive streetscape is proposed with landscaping to help soften the built form.

- *Flexibility in the siting of buildings and access. (En, S)*

  Comment:

  The site is constrained by the steep slope and the siting of the development and access to the dwelling responses appropriately to these constraints.

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

Comment:

Additional landscaping is proposed to hep visually reduce the built form and protect neighbouring amenity.

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

Comment:

Not relevant, the site and adjoining sites are zoned E4 Environmental Living.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D12.8 Building envelope

Detailed description of non-compliance

The control prescribes that buildings are to be maintained within a plane projected at 45 degrees from a height of 3.5 metres above existing ground levels along the side boundaries.

The proposal, as amended, breaches the building envelope as detailed below:

North-West elevation

The wall of the entry lobby breaches the envelope for a length of 7.9m and a maximum height of 2.4m, as depicted in the image below.

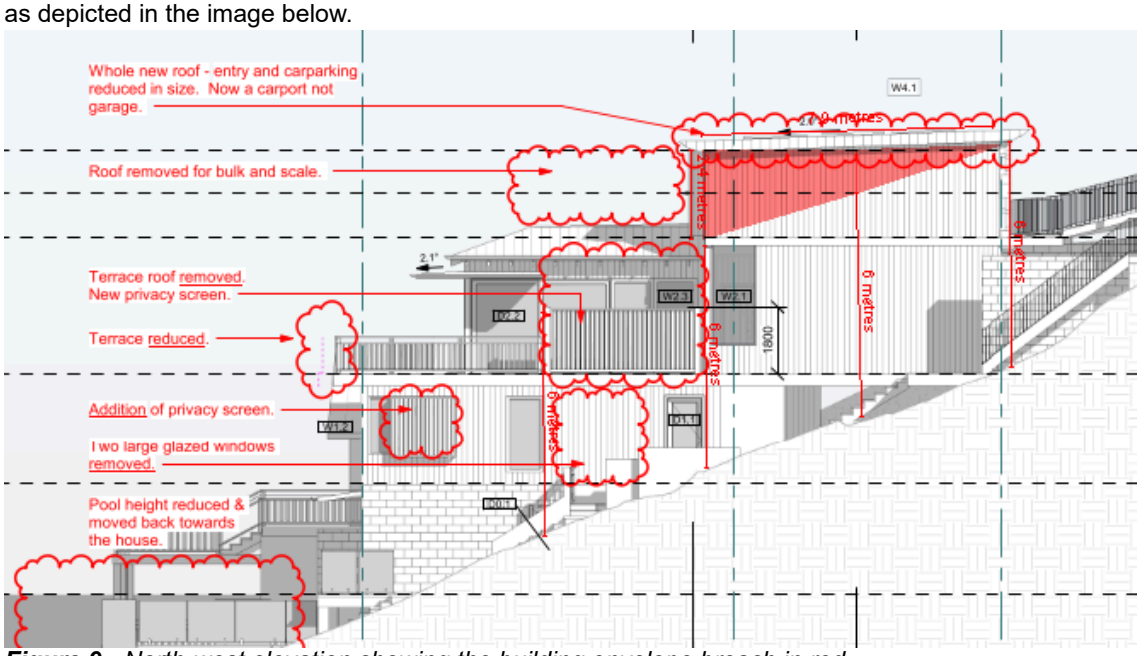


Figure 9 - *North-west elevation showing the building envelope breach in red*

South-east elevation

The windows to the carport breach the envelope for a length of 5.8m and maximum height of 1.0m. The upper level of the lift breaches the envelope for a length of 2.0m and a maximum height of 3.7m. The wall of the level 3 living room breaches the envelope for a length of 6.5m and maximum height of 3.0m and a small corner of the level 2 master bedroom (1.2m in length x 0.9m in height), refer to image below.

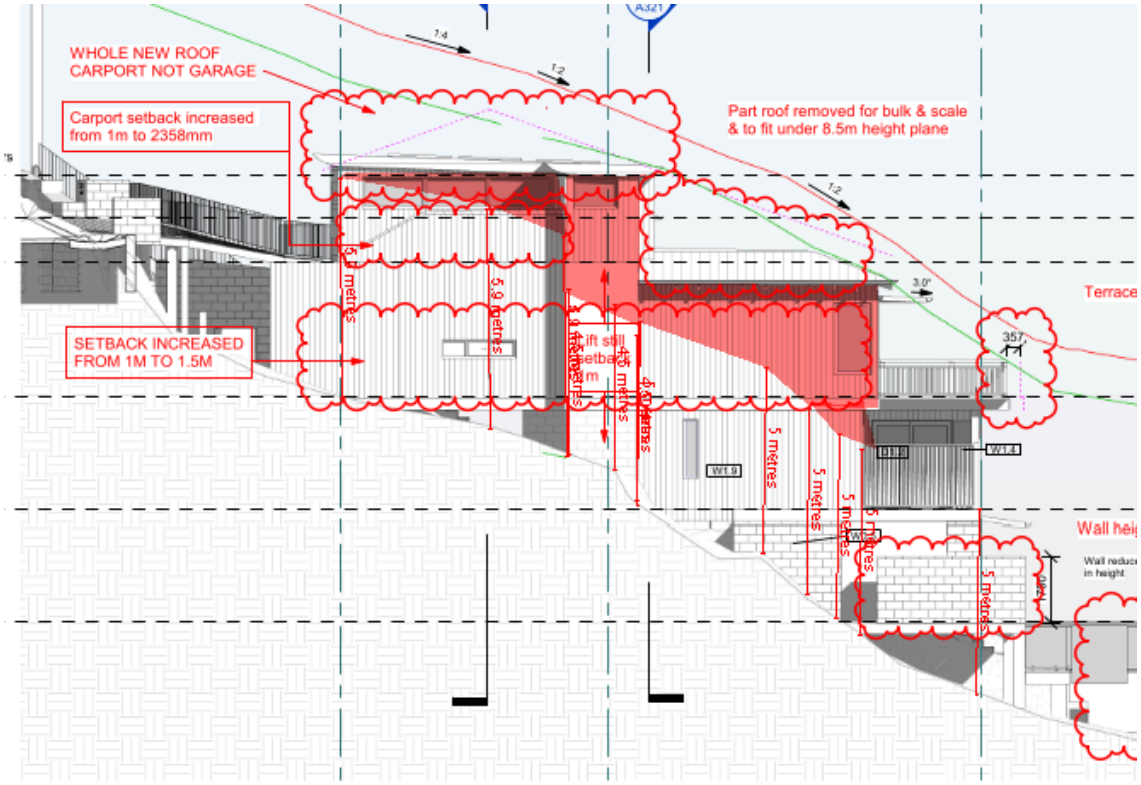


Figure 10 - *South-east elevation showing the envelope breach in red*

Variations

Where the building footprint is situated on a slope over 16.7 degrees (ie; 30%), variation to this control will be considered on a merits basis. The land has a significant fall from Norma Road to the Whale Beach frontage with a slope in excess of 40%.

Merit consideration

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

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

  Comment:

The proposal has been amended to reduce the height from 9.85m to 8.5m and change the roof profile in ensure full compliance with the height of building development standard. The proposal also increases the side setbacks to reduce the bulk and scale of the development. Despite the changes there remains to be a breach of the building envelope which is largely due to the significant slope of the site. The breaching elements sit below street level and will not unreasonable detract from consistency with the desired future character of the locality.

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

  Comment:

  As discussed elsewhere in this report, the height, bulk and scale of level 3 has been reduced to enhance the streetscape and the carport and entry lobby sits below the height of the trees. The element that breaches the building envelope relates to the side of the carport, specifically the side windows. The breaching element will not readily be visible from Norma Road due to the design changes and the landscaping along the street which blocks views on approach to the site from the east.
- *To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.*

  Comment:

  The development is generally sited in the positioned of the existing dwelling to minimise amenity impacts to neighbours (solar access and view sharing) and ensure compliance with the landscape open space control. Furthermore, the proposal limits the amount of excavation and changes to the natural topography. For these reasons, on merit, the massing of the proposal produces a better outcome than a compliant development that steps further down the site / slope towards Whale Beach Road. In summary, the proposal is responsive to the natural topography and the spatial characteristics of the natural environment.

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

  Comment:

  As above, the amended proposal reduces the bulk and scale of the built form and the dwelling is well articulated.

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

  Comment:

  The breaching elements of the building envelope do not unreasonable contribute to any view loss from public or private places.

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

  Comment:

  The breaching elements do not contribute to any unreasonable amenity impacts to neighbours

and conditions are recommended to address privacy issues.

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

  Comment:

  Vegetation is retained and additional planting proposed to help visually reduce the built form.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2024

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

A monetary contribution of $35,174 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $3,517,365.

CONCLUSION

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

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

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

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

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

PLANNING CONCLUSION

This development application seeks consent for demolition works and construction of a dwelling house including swimming pool has been referred to the Development Determination Panel (DDP) due to more than five (5) submissions having been received. Six (6) submissions have been received, as two (2) of the submissions are from the one property they are counted as one, therefore five (5) unique submissions have been received.

The concerns raised in the submission have been addressed with amended plans and conditions to address privacy and visual impacts.

The critical assessment issues related to the height, bulk and scale of the proposal, including the excessive breach of the building envelope control and the unreasonable amenity impacts, including privacy and view loss.

The amended plans reduce the height of the development from 9.85m to 8.5m and changes to the the roof profile to ensure full compliance with the height of building development standard. The side setbacks of the development have increased to reduce the building envelope breach and ensure public view corridors towards the ocean and headland from Norma Road.

Despite the amendments there is still a breach of the building envelope, which on merit and subject to a condition is assessed as acceptable as it relates primarily to the steep slope of the site which is in excess of 40%. In addition, it is noted that development minimises excavation so as to integrate with the the landform and landscape ensuring full compliance with the 60% landscape space requirement consistent. The proposal is consistent with the objectives of the C4 Environmental Living zone and the desired future character of the Palm Beach Locality and will not have unreasonable impacts on the scenic quality of the area, the streetscape or visual amenity of neighbouring properties.

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

REASON FOR DETERMINATION

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2024/1164 for Demolition works and construction of a dwelling house including swimming pool on land at Lot 298 DP 16362, 40 Norma Road, PALM BEACH, Lot 120 DP 1033865, 40 Norma Road, PALM BEACH, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

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

Approved Plans				
Plan Number	**Revision Number**	**Plan Title**	**Drawn By**	**Date of Plan**
A100	C	DA Cover Sheet and schedule of materials	Walter Barda Design	23.02.2025
A110	B	*Site and Waste Management Plan	Walter Barda Design	13.08.2024
A200	I	Plans Ground and Level 1	Walter Barda Design	23.01.2025
A201	K	Plans Level 2 and 3	Walter Barda Design	23.01.2025
A202	G	Roof and Site Plan	Walter Barda Design	23.01.2025
*A205	A	Landscape Plan	Walter Barda Design	13.08.2025
A206	B	Driveway	Walter Barda Design	23.01.2025
E310	J	Elevations	Walter Barda Design	23.01.2025
E311	I	Elevations	Walter Barda Design	23.01.2025
A320	I	Sections	Walter Barda Design	23.01.2025
A321	C	Short Sections	Walter Barda Design	23.01.2025
A322	D	Sections	Walter Barda Design	23.01.2025
A323	B	Sections	Walter Barda Design	23.01.2025
DA01	B	Stormwater Layout Plan	BEC	02.12.2024

*The landscape plan and site plan shall be amended to ensure consistency with the revised architectural plans in terms of new setbacks.

Approved Reports and Documentation			
Document Title	**Version Number**	**Prepared By**	**Date of Document**
Arboricultural Impact Assessment	1	Bradshaw Consulting Arborist	24/07/2024
Conceptual Stormwater Management Plan Report	1	Built Environmental Collective	19/07/2024

NatHERS and BASIX Certificate No. 1753296S dated 27 June 2024	A	Efficient Living	13/08/2024 27/06/2024
Geotechnical Report J5562	-	White Geotechnical Group	15/08/2024

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	08/10/2024

(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 $35,173.65 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of $3,517,365.00.

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 BEC Engineering Design and Management, drawing number 8898-DA01, issue B, dated 2/12/2024. 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.

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

8. **Traffic Management and Control**
The Applicant is to submit an application for Traffic Management Plan to Council for approval prior to issue of the Construction Certificate. The Traffic Management Plan shall be prepared to TfNSW standards by an appropriately certified person.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process.

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by Whites Geotechnical Group dated 15/8/2024 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

10. **Off Street Parking Design**
The Applicant shall submit a design for the parking facility in accordance with the relevant provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical Controls and Section 2.6 Design of Domestic Driveways.

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

Reason: Compliance with this consent.

11. **Amendments to the approved plans**
The following amendments are to be made to the approved plans:

(a) The level 2 living room shall be setback an additional 0.5m from the south-east boundary.
(b) A 1.8m high 45 degree angled privacy screen shall be in stalled along the entire north-western edge of the terrace which adjoins the level 2 living room and the south-eastern edge of the terrace.
(c) A 1.8m high 45 degree angled privacy screen shall be in stalled along the section of external stairs at level 1 and 2 which are located less than 0.3m from the north-west boundary. Landscaping screen planting is required adjacent to the parts of the external stairs / landing that are located 1.0m or more from the boundary.
(d) No part of the entry stairs shall encroach into the road reserve.
(e) No retaining walls are to be located within the road reserve.

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

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

12. **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. **Submission Roads Act Application for Civil Works in the Public Road**
The Applicant is to submit an application for approval for infrastructure works on Council's roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include Civil Engineering plans for the design of the vehicle crossing, retaining walls and associated work in the road reserve which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plans shall be prepared by a qualified Civil Engineer. The design must include the following information:

1. A vehicular crossing 4.5 meters wide to be constructed in accordance with Council's standard drawing Maximum Low.
2. Engineering long-sections at both edges and center line of the proposed access driveway to the proposed garage and demonstrate compliance with AS2890.1.
3. The suspended driveway and and access stairs are to be designed such that there is no load imposed on the existing retaining wall supporting the road.
4. Structural details for the driveway, access stairs and retaining structures.
5. Safety barriers and sight distances are to be in accordance with AS/NZS 2890.1:2004.

6. The application is to include a geotechnical report that is prepared by an appropriately qualified Geotechnical Engineer to assess the impact of the proposed suspended driveway and stairs on the existing batter and retaining wall supporting the road reserve.
7. Geotechnical Form 2 is to be provided.
8. Structural Engineer's certification of the design of all retaining walls, access stair, suspended driveway and safety barriers.
9. A services plan indicating all services in the road reserve. Where any services are to be adjusted as a result of the works, approval from the relevant service authority is to be provided.

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

An approval is to be submitted to the Principal Certifier prior to the issue of the Construction Certificate

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification.

14. **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.

15. **External Finishes to Roof**
The external finish to the roof shall have a Solar Absorptance (SA) greater than 0.43 in accordance with the requirements of the BASIX Certificate to minimise solar reflections to neighbouring properties. Any roof with a reflective finish is not permitted.

Green roofs and areas where solar panels (PV) are installed are excluded from conforming to the SA range.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the construction certificate.

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development.

16. **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.

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.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

18. **Tree Removal Within the Property**
This consent approves the removal of the following trees on the subject site as identified in the Arboricultural Impact Assessment dated 24 July 2024 prepared by Bradshaw Consulting Arborists, :

i) Trees numbered 1, 3, 6, 7 and 8

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

Reason: To enable authorised building works.

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

No. 38 Norma Road, Palm Beach
No. 42 Norma Road, Palm Beach

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.

20. **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

21. **Protection of Rock and Sites of Significance**
All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.

Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office contacted to assess the finds.

Under Section 89a of the NPW Act should the objects be found to be Aboriginal, NSW Biodiversity and Conservation Division, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

Reason: Preservation of significant environmental features.

22. **Tree and Vegetation Protection**

a) Existing trees and vegetation shall be retained and protected, including:
   i) all trees within the site not approved for removal,
   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 24 July 2024 prepared by Bradshaw Consulting Arborists and AS4970-2009 Protection of trees on development sites,

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 complaint to AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

Reason: Tree and vegetation protection.

23. **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.

24. **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.

25. **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.

26. **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.

27. **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.

28. **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.

29. **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.

30. **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.

31. **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.

32. **Traffic Control During Road Works**
Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with TfNSW Traffic Control At Work Sites Manual and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

33. **Stockpiling materials**
During construction, all material associated with works is to be contained at source, covered and must be within the construction area. All material is to be removed off site and disposed of according to local regulations. The property is to be kept clean and any building debris removed as frequently as required to ensure no debris enters receiving waters.

Reason: To ensure pollution control measures are effective to protect the aquatic habitats within receiving waters throughout the construction period.

34. **Geotechnical Issues**
All conditions outlined in 'GEOTECHNICAL INVESTIGATION: New House and Pool at 40 Norma Road, Palm Beach' prepared by White Geotechnical Group dated 15 August 2024 are to be complied with and adhered to throughout development.

Reason: To ensure (insert excavation, foundations, footings, etc.) is undertaken in an appropriate manner and structurally sound.

35. **Implementation of CTMP**
All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained

at all times and all traffic management control must be undertaken by personnel having appropriate TfNSW accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to Council on request.

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

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

36. **Landscape Completion**
Landscape works are to be implemented in accordance with the Landscape Plan Issue A dated 13.8.24 prepared by Walter Barda Design, and inclusive of the following conditions:

a) landscape works are to be contained within the legal property boundaries,

b) all tree planting shall be a minimum pre-ordered planting size as indicated on the Landscape Plan; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and located either within garden bed or within a prepared bed within lawn,

c) tree, shrub and groundcover planting shall be installed as indicated on the approved Landscape Plan,

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

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

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

Reason: Environmental amenity.

37. **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.

38. **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.

39. **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.

40. **Certification of Civil Works and Works as Executed Data in accordance with Road Act Approval**
The Applicant shall submit a certification by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) that the completed works have been constructed in accordance with this consent and the approved Section 138 and/or Construction Certificate plans. Works as Executed data certified by a registered surveyor in relation to boundaries and/or relevant easements, prepared in accordance with Council's 'Guideline for preparing Works as Executed data for Council Assets' in an approved format shall be submitted to the Principal Certifier for approval prior to the issue of the Occupation Certificate.

Reason: To ensure compliance of works with Council's specification for engineering works.

41. **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.

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

accordance with the approved Waste Management Plan.

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

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

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

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

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

44. **Certification of Off Street Parking Works**
The Applicant shall submit a certificate from a suitably qualified person certifiying that the parking facility was constructed in accordance within this development consent and the relevant provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical Controls and Section 2.6 Design of Domestic Driveways.

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

Reason: Compliance with this consent.

45. **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.

46. **Environmental Reports Certification**
Written certification from a suitably qualified person(s) shall submit to the Principal Certifier and Northern Beaches Council, stating that all the works/methods/procedures/control measures/recommendations approved by Council in the following reports have been completed:

(a) Arboricultural Impact Assessment, Revision 1, prepared by Bradshaw Consulting Arborist, dated 24/07/2024

(b) Conceptual Stormwater Management Plan Report, Revision 1, prepared by Built Environmental Collective, dated 19/07/2024
(c) NatHERS and BASIX Assessment, Revision A, prepared by Efficient Living, dated 13/08/2024
(d) Geotechnical Report Ref J5562, prepared by White Geotechnical Group, dated 15/08/2024

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

Reason: To ensure compliance with standards.

47. **House / Building Number**
House/building number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings.

48. **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 Certiifier, 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

49. **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.

50. **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.

51. **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.

52. **Swimming Pool/Spa Motor Noise**
The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

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

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

Signed

Adam Richardson, Manager Development Assessments

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

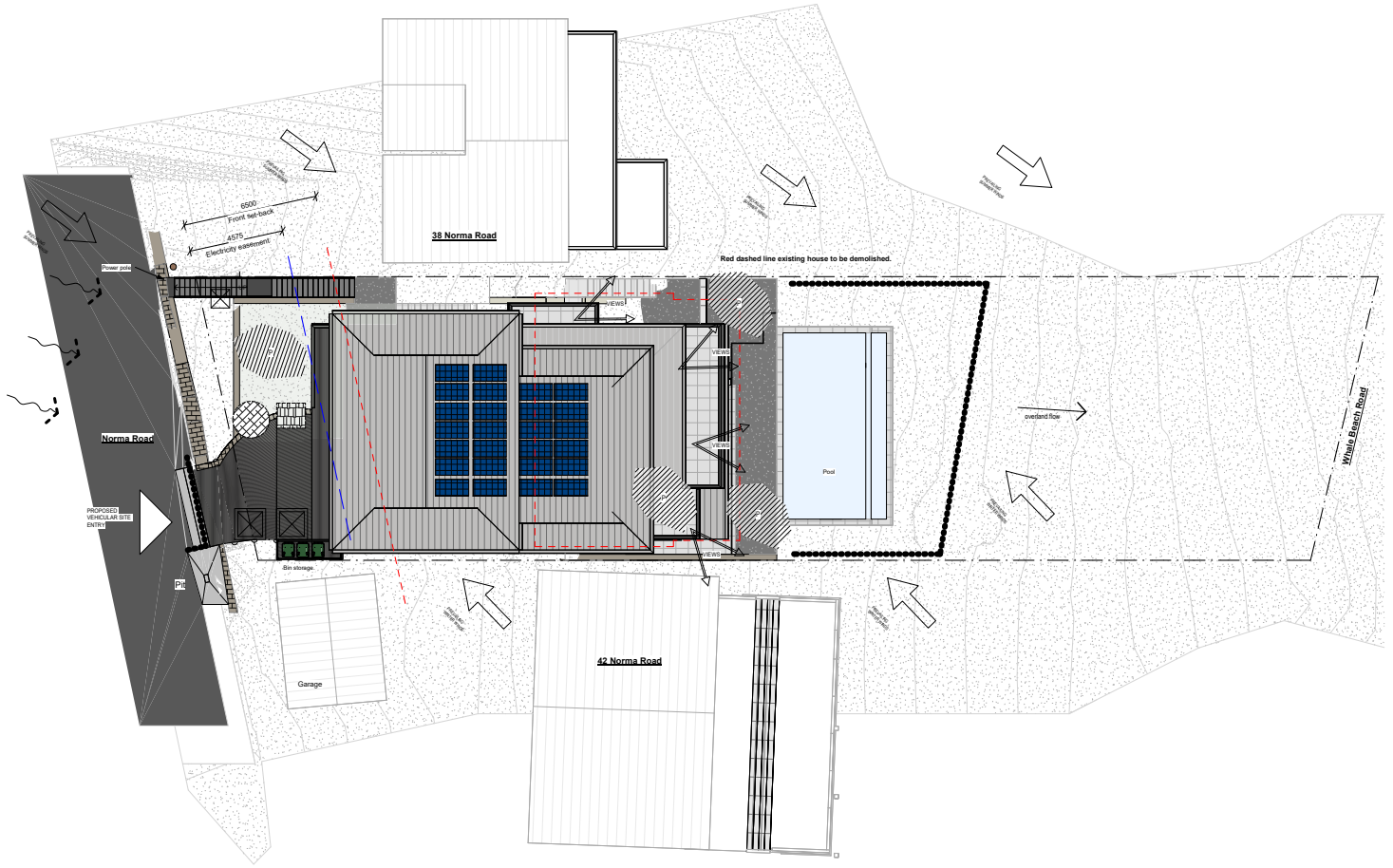
Adam Richardson, Manager Development Assessments

SITE ANALYSIS LEGEND

- EXISTING TREES TO BE REMOVED
- EXISTING TREES TO BE RETAINED
- PROPOSED RESIDENCE.
- EXISTING ADJOINING RESIDENCE.
- EXISTING STRUCTURE TO BE DEMOLISHED.
- PRIVATE OPEN SPACE
- VIEWS
- VEHICULAR SITE ENTRY
- PREVAILING WINDS
- NOISE
- OVERLOOKING

WASTE MANAGEMENT LEGEND

- Material Stockpile area.
- Waste stockpile & material sorting area.
- Storage recycling bins for segregated waste.
- Chemical toilets.
- Fit standard 600 high greensilt fence



1 Site & Waste Management Plan
1 : 100

Walter Barda Design
architecture
landscape
interiors
Nominated Architect: Adrian Ball 7745
2.04 13-15 Wentworth Avenue Sydney NSW 2000
www.walterbardadesign.com ABN: 48 072 136 513
Office: 02 9264 4240

Certificate No. #HR-APC56L-01
Scan QR code or follow website link for rating details.
Assessor name Stefanie Simpson
Accreditation No. HERA 10035
Property Address 40 Norma Road, Palm Beach, NSW, 2108
http://www.hero-software.com.au/pdf/HR-APC56L-01

Revisions		
No.	Description	Date
A	Planner Review	17.08.24
B	Final DA_BASIX Stamp & Lodge to council	13.8.24

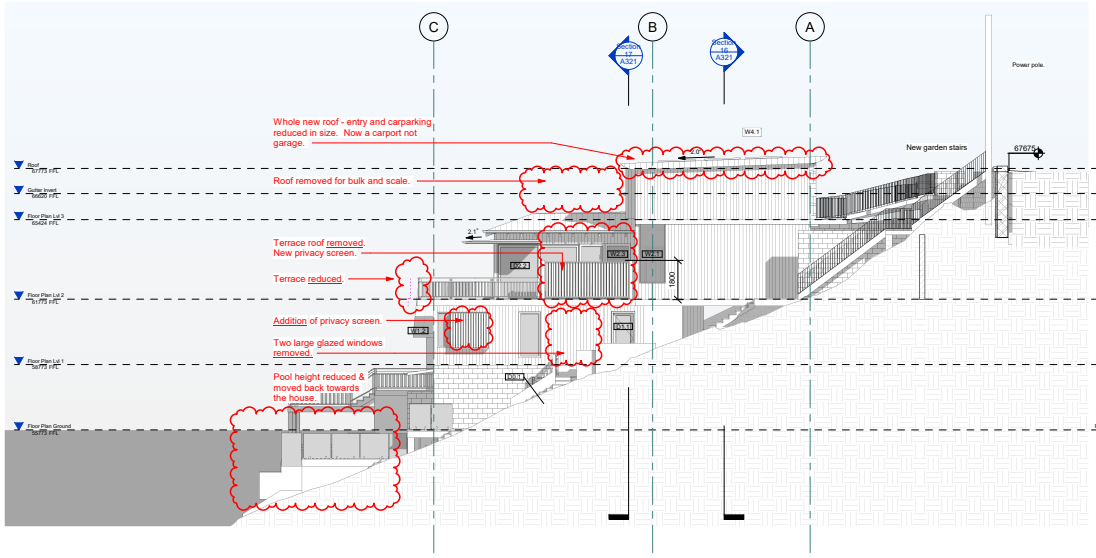
Nolan & Wood Residence

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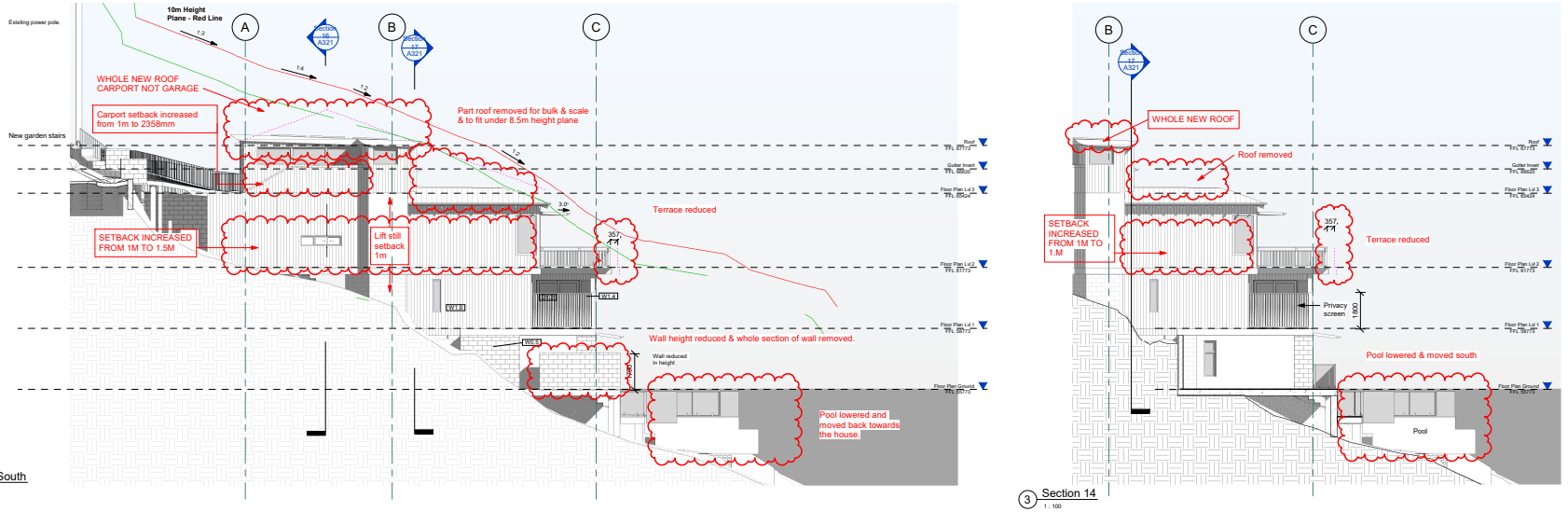
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Project Number 2024_03
40 Norma Road, Palm beach 2108
Project Status Development Application
Sheet Site & Waste Management Plan

Print Date & Time 14/08/2024 2:14:22 PM
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Drawn By RF | Checked By WB | Approved By WBD
Scale @ A1 As indicated
Drawing Number A110 | Issue B



1 North West
1 : 100



2 East South
1 : 100

3 Section 14
1 : 100

Walter Barda Design
architecture
landscape
interiors
Nominated Architect: Adrian Ball 7745
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Certificate No. #HR-APC56L-01
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Assessor name Stefanie Simpson
Accreditation No. HERA 10035
Property Address 40 Norma Road, Palm Beach, NSW, 2108
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Revisions		
No.	Description	Date
B	Client Review	04.03.24
C	Client Review	01.05.24
D	Consultants Fee Proposals	02.05.24
E	BASIX	23.05.24
F	Planner Review	17.06.24
G	Final DA. BASIX Stamp & Lodge to council	13.8.24
H	Council DA Updates	25.11.24
I	Council DA Updates	18.12.24
J	DA Amendments Council Lodged	23.01.25

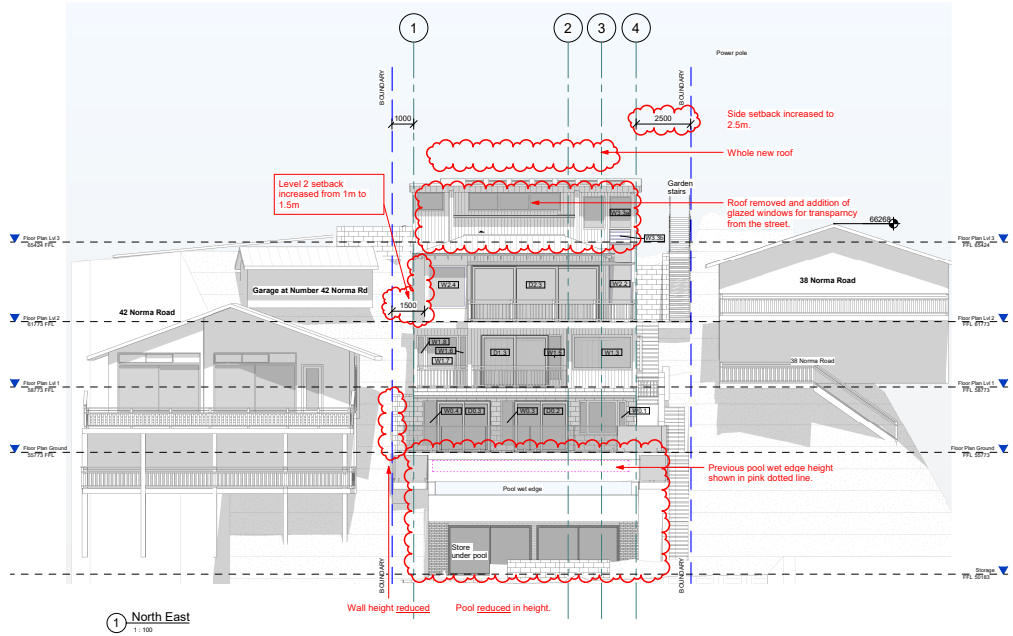
Nolan & Wood Residence

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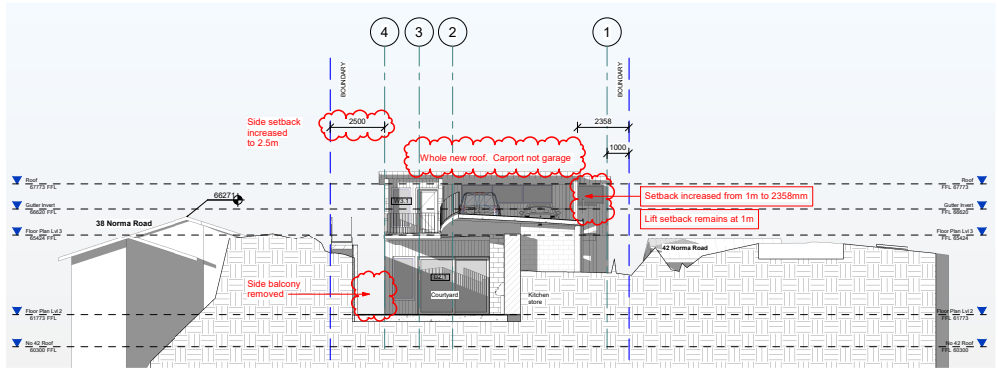
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Project Number 2024_03
40 Norma Road, Palm beach 2108
Project Status Development Application
Sheet Elevations

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Scale @ A1 As indicated
Drawing Number A310 | Issue J



1 North East
1 : 100



2 South West
1 : 100

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Certificate No. #HR-APC56L-01
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Assessor name Stefanie Simpson
Accreditation No. HERA 10035
Property Address 40 Norma Road, Palm Beach, NSW, 2108
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No.	Description	Date
A	Consultant Quote	01.03.24
B	Client Review	04.03.24
C	Consultants Fee Proposals	02.05.24
D	BASIX	23.05.24
E	Planner Review	17.06.24
F	Final DA, BASIX Stamp & Lodge to council	13.8.24
G	Council DA Updates	25.11.24
H	Council DA Updates	18.12.24
I	DA Amendments Council Lodged	23.01.25

Nolan & Wood Residence

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Project Number 2024_03
40 Norma Road, Palm beach 2108
Project Status Development Application
Sheet Elevations

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Checked By WB
Approved By WBD
Scale @ A1 As indicated
Drawing Number A311
Issue I

ITEM 3.5 DA2024/1597 - 50 CASTLE CIRCUIT SEAFORTH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL

PURPOSE

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

RECOMMENDATION

A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 and Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

B. THAT Council as the consent authority **approves** Development Consent to DA2024/1597 for alterations and additions to a dwelling house including a swimming pool on land at Lot 11 DP 200638, 50 Castle Circuit SEAFORTH, subject to the conditions set out in the Assessment Report.

Reporting manager	Rodney Piggott
TRIM file ref	2025/107022
Attachments	⇩1 Assessment Report ⇩2 Site Plan and Elevations ⇩3 Clause 4.6 - FSR ⇩4 Clause 4.6 - HOB

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/1597

Responsible Officer:	Jordan Howard
Land to be developed (Address):	Lot 11 DP 200638, 50 Castle Circuit SEAFORTH NSW 2092
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Benjamin James Fitzsimmons

Application Lodged:	22/11/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	04/12/2024 to 18/12/2024
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	4.3 Height of buildings: 28.2% 4.4 Floor space ratio: 5.3%
Recommendation:	Approval

Estimated Cost of Works:	$ 1,970,025.00

EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to a dwelling house including a swimming pool.

The application is referred to the Development Determination Panel (DDP) due to a variation greater than 10% to the building height development standard of the Manly Local Environment Plan 2013. There is also a proposed variation of the floor space ratio (FSR) development standard of the Manly Local Environment Plan 2013, however this variation is less than 10%.

Concerns raised in the objections predominantly relate to issues with the submitted documents,

potential privacy impacts, potential overshadowing impacts and concerns regarding variations to planning controls.

Critical assessment issues included assessment of the proposed variations to height of building and FSR development standards, assessment of potential solar access and privacy impacts, and assessment of proposed variations to the following Manly Development Control Plan built form controls:

- Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
- Clause 4.1.4 Setbacks (front, side and rear) and Building Separation
- Clause 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
- Clause 4.1.9 Swimming Pools, Spas and Water Features

The 4.6 request for the non-compliance with the building height standard arises from the proposed construction of alterations and additions to the existing dwelling house, which as existing is partially above the 8.5m height standard. Proposed alterations and additions will exhibit a building height of 10.9m, representing a 28.2% variation to the standard. The proposed alterations and additions to the dwelling house will predominantly retain the existing maximum ridge height of RL 54.910m, with only the proposed entry stairwell at the south-eastern corner of the dwelling house protruding 1m above this. The non-compliance with the height limit partially results from existing excavation of the site and steeply sloping typography. Potential impacts on adjoining properties (including privacy and overshadowing) are not considered to be unreasonable within the context of the site and area. This area of Seaforth is characterised by large dwelling houses seeking to obtain harbour views and constrained by typography. The proposed development will not be out of character within this environment.

The 4.6 request for the non-compliance with the FSR standard arises from a 31.5sqm increase in floorspace. The existing building has an existing FSR of 0.38:1 (295sqm), which complies with the FSR development standard of 0.4:1 (310.08sqm). The proposed development would increase this to 0.42:1 (326.5sqm), representing a 5.3% (16.42sqm) variation to the standard. About half of the additional floorspace is created in the proposed garage, which has additional space surplus to the two parking spaces required. This garage will replace an existing carport which is not already counted as floorspace. This new garage and connecting walkway will not have any significant impacts on adjoining neighbours and will seek to rationalise and update parking, parking access and storage. Additional GFA is not considered to impact perceived bulk and scale as compared to the existing dwelling house. Potential impacts on adjoining properties (including privacy and overshadowing) are not considered to be unreasonable within the context of the site and area. This area of Seaforth is characterised by large dwelling houses seeking to obtain harbour views and constrained by typography, many with recently approved FSR variations. The proposed development will not be out of character within this environment.

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

PROPOSED DEVELOPMENT IN DETAIL

This Development Application seeks development consent for alterations and additions to a dwelling house including a swimming pool. Specifically, the following is proposed:

Demolition works to accommodate alterations and additions

Basement - Alterations

- Bath
- Living/Home office
- Library/Read room
- Stair

Ground Floor – Alterations and Additions

- Open kitchen, living and dining room with new east-facing windows and west-facing sliding doors
- Entry with new front door
- Bathroom
- Bedroom
- Internal feature garden
- Stair
- Storage under garage area

First Floor – Alterations and Additions

- Master bedroom with ensuite
- Bedroom with bath
- Walk-in robe servicing master bedroom and additional first floor bedroom
- Office
- Laundry
- Gym/bedroom with bath
- Stair
- Garage
- Suspended access bridge from garage to dwelling house

Proposed External Works

- Basement level balcony
- Ground floor deck
- Living fire pit
- New swimming pool and spa
- New covered pergola with outdoor BBQ
- First floor balcony

Additional information was requested in relation to Manly Local Environmental Plan 2013 Clause 4.3 Height of buildings, Clause 4.4 Floor space ratio & Clause 4.6 Exceptions to development standards, as well as Manly Development Control Plan Clause 3.4.1 Sunlight Access and Overshadowing & Clause 3.4.2 Privacy and Security, and a referral response from Council's Environmental Health (Solid Fuel/Oil Heater) team. Additional and amended plans / information were submitted which satisfied this request and did not require re-notification (in accordance with the Northern Beaches 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

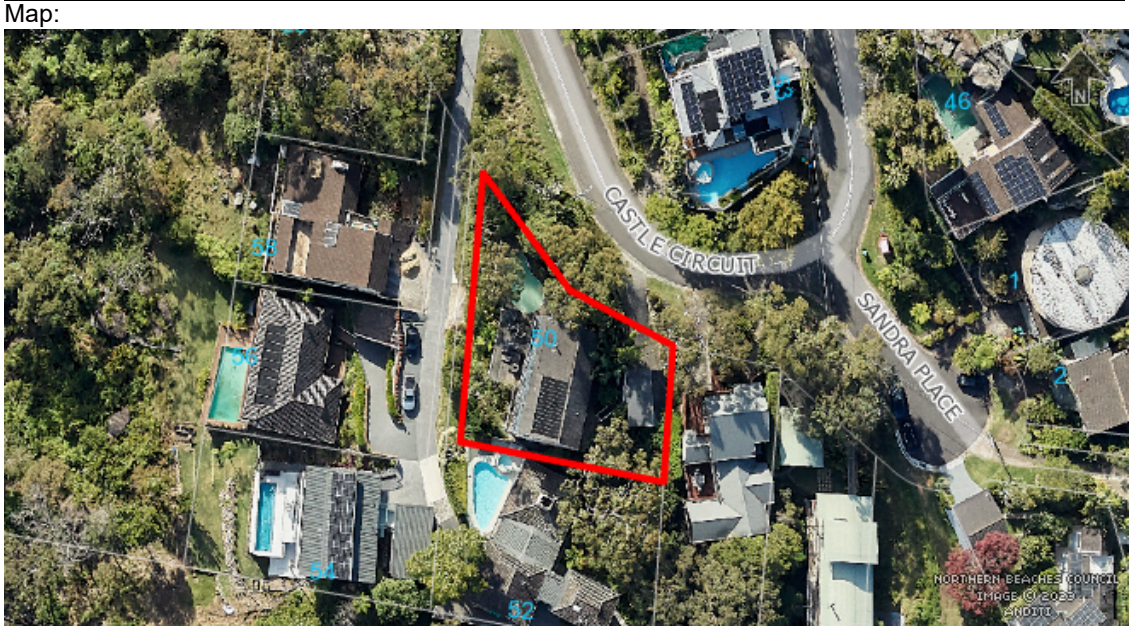
Manly Local Environmental Plan 2013 - Zone R2 Low Density Residential
Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
Manly Development Control Plan - 3.4.2 Privacy and Security
Manly Development Control Plan - 3.4.4 Other Nuisance (Odour, Fumes etc.)
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 - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features

SITE DESCRIPTION

Property Description:	Lot 11 DP 200638 , 50 Castle Circuit SEAFORTH NSW 2092
Detailed Site Description:	The subject site consists of one (1) allotment located on the southern side of Castle Circuit. The site is irregular in shape with a frontage of 38.355m along Castle Circuit and a maximum depth of 38.44m along the western side boundary. The site has a surveyed area of 775.2sqm. The site is located within the R2 Low Density Residential zone and accommodates a dwelling house, swimming pool and detached carport. The site slopes from the north-east (front) down towards the south-west (rear), with a fall across the site of

	approximately 11m. The site contains lawn areas, garden beds, trees and vegetation. There are no details of threatened species at the subject site. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by 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 No. DA2024/1512 for "Alterations and additions to a dwelling house including a swimming pool" was returned at lodgment on 8 November 2024 due to inadequate and/or insufficient information being provided to assess the proposed development.

Development Application No. DA2021/2521 for "Alterations and additions to a carport" was approved on 3 March 2022. The works approved by this application have not been 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)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 29 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. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to Manly Local Environmental Plan 2013 Clause 4.3 Height of buildings, Clause 4.4 Floor space ratio & Clause 4.6 Exceptions to development standards, as well as Manly Development Control Plan Clause 3.4.1 Sunlight Access and Overshadowing & Clause 3.4.2 Privacy and Security, and a referral response from Council's Environmental Health (Solid Fuel/Oil Heater) team. 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. Clauses 62 and/or 64 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. 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

Section 4.15 Matters for Consideration	Comments
	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 Sydney Bushfire Consultants, dated 19 September 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 04/12/2024 to 18/12/2024 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 process council is in receipt of 2 submission/s from:

Name:	Address:
Brian Charles Devery	52 Castle Circuit SEAFORTH NSW 2092
Mr John Khanh Nhon Ngo	54 Castle Circuit SEAFORTH NSW 2092

The following issues were raised in the submissions:

- **Accuracy of architectural plans**

  The submissions raised concerns that the submitted architectural plans did not accurate reflect surrounding properties. The submission contended that the existing and future state adjoining property to the south (52 Castle Circuit), which is currently undergoing development, was not accurately shown. The submission also raised issue with the exclusion of a terrace and pool from shadow diagrams.

  Comment:
  As initially submitted, shadow diagrams were inadequate for the purposes of analysing overshadowing impacts on 52 Castle Circuit in accordance with MDCP Clause 3.4.1 Sunlight Access and Overshadowing. A request for further information letter was issued to the Applicant, requesting hourly top-down and western elevation shadow diagrams between 9am and 3pm, depicting the shadow impact on 52 Castle Circuit. It was noted that 52 Castle Circuit is currently being developed and that these diagrams should considered the end result of this development. These revised / additional shadow diagrams, as well as other submitted plans and information, have been adequate for the purposes of this assessment.

- **Privacy**

  The submissions raised concerns that the proposed development would present an unreasonable privacy impact on the adjoining property to the south (52 Castle Circuit). Particular issue was raised with windows on the proposed stairwell and bridge between the garage and dwelling.

  Comment:
  Refer to the section of this report on MDCP Clause 3.4.2 Privacy and Security for a detailed assessment of potential privacy impacts. In summary, the proposed development, following amendments made in response to a letter from Council, is considered to meet the requirements and objectives of this Clause. The privacy impacts of this proposal are not considered to be unreasonable within a low density residential context.

- **Overshadowing**

  The submissions raised concerns that the proposed development would present an unreasonable overshadowing impact on the adjoining property to the south (52 Castle Circuit).

  Comment:
  Refer to the section of this report on MDCP Clause 3.4.1 Sunlight Access and Overshadowing for a detailed assessment of potential solar access impacts. In summary, the proposed development is considered to meet the requirements and objectives of this Clause. The solar access impacts of this proposal are not considered to be unreasonable within the context of the

site and surrounds.

- **Floor space ratio**

  The submissions raised objection to the proposed floor space ratio non-compliance.

  Comment:
  The proposed development includes a request to vary the FSR development standard established by the MLEP 2013. 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.
  As such, this report concludes with a recommendation that flexibility be applied and that Council vary the development standard.

- **Height of buildings**

  The submissions raised objection to the proposed height of buildings non-compliance.

  Comment:
  The proposed development includes a request to vary the height of buildings development standard established by the MLEP 2013. 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, 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.
  As such, this report concludes with a recommendation that flexibility be applied and that Council vary the development standard.

- **Number of storeys**

  The submissions raised concerns that the proposal was for a three-storey dwelling, non-complaint with a two-storey limit applicable to the site under MDCP Clause 4.1.2.2 Number of Storeys.

  Comment:
  The dwelling house contains a maximum of three (3) storeys despite a (2) storyey limit applying to the site under MDCP Clause 4.1.2.2 Number of Storeys. However, this is an existing feature of the dwelling house and the number of storeys will be unchanged by the proposed development. Refer to the relevant section of this report for assessment for this non-compliance, which finds the proposed development supported on merit.

- **Issues relating to Right of Way to the west of the subject site**

  The submissions raised concerns regarding access to a Right of Way to the west of the subject site. The submissions make claims relating to the level of access the subject site enjoys to this Right of Way. The submissions also request design changes to plans and request conditions of

consent be applied relating to access of this Right of Way.

Comment:
The Applicant has provided evidence that the title of the subject site is benefited by an easement for parking within the area in question. Nonetheless, the use of this area is governed by relevant easements and subdivision plans, which are not proposed to be changed by this Development Application. This dispute is a civil matter unrelated to this Development Application and should be resolved by relevant parties to the matter. It is irrelevant to the assessment of this application.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Solid Fuel/Oil Heater)	***Unsupported*** *(Note: Issues raised have been resolved during the assessment process and revised referral comments have not been sought).* General Comments The proposal seeks approval for two heating devices: 1 x fireplace toward the center of the dwelling house 1 x fire pit The following comments are offered: Given that the proposal to construct the fireplace represents a relocation of what appears to be the existing fire place, to a closer position adjacent to the easterly neighbour, it is considered that this may represent an unreasonable potential for smoke and odour impacts. Additionally, there are no details as to make, model or specifications of a proposed solid fuel heating apparatus intended to be installed or the proposed flue height. Without further detail, Environmental Health does not support the proposal as the term "fire pit" in itself loosely describes a variety of recreational fire applications which are likely to involve the high likelihood of the capability of burning solid fuel with virtually no means of controlling smoke emissions or complying with relevant smoke emissions standards. This would represent an unacceptable risk to human health. Recommendation - REFUSAL **Planner Comments:** In response to the unsupportive Environmental Health referral, the Applicant amended the proposed development to remove the Ground Floor Balcony firepit and to note that the Ground Floor Living Room

Internal Referral Body	Comments
	fireplace would be gas or electric. As amended, no solid fuel heater is proposed. Therefore, revised comments from the Environmental Health team have not been sought as the issue has been resolved. Furthermore, a condition of consent is included in the recommendation of this report specifying that no approval is granted or implied under this Development Consent for a solid fuel heater.
Landscape Officer	***Supported, subject to conditions.*** The proposed development works are as described in reports and as illustrated on plans. There are three native trees within the property as inspected and reported in the Arboricultural Impact Assessment (AIA), with two (T1 and T6) recommended for removal, and on (T3) recommended for retention with tree protection measures to be adopted during any development works to ensure preservation. Existing tree T3 will be subject to major encroachments that require tree sensitive construction to assist with minimising the associated impacts. The proposed swimming pool is shown to be elevated on piers within the TPZ and the SRZ of the tree which is considered to be tree sensitive on the provision that a Project Arborist is engaged to assist in the final location of pier footings for the swimming pool and attendance during excavation, and conditions shall be imposed should the application be approved. All existing trees within adjoining properties shall be protected. The Statement of Environmental Effects and Plans identify that existing landscaped area vegetation upon the property is to be retained, with the exception of the two existing trees identified for removal. One existing native tree is to be retained and under Manly DCP control 4.1.5.2, three native trees are required for a site of this area, and as such conditions shall be imposed for replacement tree planting.
NECC (Bushland and Biodiversity)	***Supported, subject to conditions.*** Council's Biodiversity Referrals team have assessed the Development Application for compliance against the following applicable provisions: • Manly LEP 2013 cl. 6.5 Terrestrial Biodiversity An Arboricultural Impact Assessment (Hugh the Arborist, October 2024) was submitted with the Development Application which assessed 9 trees within proximity to the development. Two trees are proposed for removal including Tree 1 (Angophora costata) which is in severe decline and Tree 6 (Eucalyptus piperita) which has a major encroachment due to the proposed development. No objections to the removal of these trees subject to planting of replacement trees. This will be conditioned accordingly.

Internal Referral Body	Comments
NECC (Coast and Catchments)	***Supported, subject to conditions.*** This application was assessed in consideration of: • Supplied plans and reports; • State Environmental Planning Policy (Resilience and Hazards) 2021 (section 2.10,2.11 & 2.12); • Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity & Conservation) 2021 • Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005. • •Relevant LEP and DCP clauses. **State Environmental Planning Policy (Resilience & Hazards) 2021** The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA. Clauses 2.10 (coastal environment area) and 2.11 (coastal use area) do not apply as the site is also located within the Sydney Harbour catchment area. Hence, only Clause 2.12 of the SEPP R & H apply for this DA. Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Four Town Planning dated November 2024, the DA satisfies requirements under clause 2.12 of the SEPP R&H. As such, it is considered that the application is consistent with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021. **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 Four Town Planning dated November 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.

Internal Referral Body	Comments
	As such, it is considered that the application is 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. No other coastal issues identified
NECC (Development Engineering)	***Supported, subject to conditions.*** The proposed development is in Region 3. It is proposed to connect stormwater from the site to an existing approved system, which is supported. Vehicle crossing construction is not proposed. A geotechnical report has been submitted. Development engineering raises no objections to the proposed development, subject to conditions.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	***Supported, subject to conditions.*** The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	***Supported, subject to conditions.*** Development Application No: DA2024/1597 Description: Alterations and additions to a dwelling house including a swimming pool Address: 50 Castle Circuit SEAFORTH Reference is made to the proposed development at the above area and Aboriginal heritage. No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development. Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No. A1766992, issued 1 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 (Biodiversity and Conservation) 2021

Chapter 6 – Water catchments

The subject property is located within the Sydney Harbour Catchment and Sydney Harbour

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

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

6.6 Water quality and quantity

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

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

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

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

Comment:
The proposal has been reviewed by Council's Coastal Officer, Development Engineer and Bushland & Biodiversity Officer, who have raised no objection to the works and their impacts to the adjoining waterway (subject to conditions).

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 by Council's Coastal Officer, Development Engineer and Bushland & Biodiversity Officer, who have raised no objection to the works and their impacts to the surrounding natural environment (subject to conditions).

6.8 Flooding

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

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

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

Comment:
The site is not located within a flood prone area.

6.9 Recreation and public access

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

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

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

(a) the development will maintain or improve public access to and from natural waterbodies for recreational purposes, including fishing, swimming and boating, without adverse impact on natural waterbodies, watercourses, wetlands or riparian vegetation,
(b) new or existing points of public access between natural waterbodies and the site of the development will be stable and safe,

(c) if land forming part of the foreshore of a natural waterbody will be made available for public access as a result of the development but is not in public ownership—public access to and use of the land will be safeguarded.

Comment:
The proposed development is wholly located on private land and does not impact upon recreation or public access along the foreshore.

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 by Council's Coastal Officer, Development Engineer and Bushland & Biodiversity Officer, who have raised no objection to the works and their impacts to the surrounding natural environment (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.

Division 3 Controls on development in specific areas

6.11 Land within 100m of natural waterbody

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

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

Comment:
The proposed works will meet these requirements.

Part 6.3 Foreshores and Waterways Area

Division 1 Preliminary

6.25 Consent authority

(1) The Minister administering the Ports and Maritime Administration Act 1995 is the consent authority for the following development—
(a) development comprising the subdivision of land owned by TfNSW in or abutting the Foreshores and Waterways Area,
(b) development carried out in the Foreshores and Waterways Area wholly below the mean high water mark,
(c) development carried out in the Foreshores and Waterways Area for one or more of the following purposes, including development carried out wholly or partly inside a local government area—
Above-water boat lifts; Advertisements; Advertising structures; Aids to navigation; Aviation facilities; Boat lifts; Charter and tourism boating facilities; Commercial port facilities; Dredging; Floating boat platforms; Flora and fauna enclosures; Houseboats; Maintenance dredging; Mooring pens; Private landing facilities; Private landing steps; Private marinas; Private swimming enclosures; Public boardwalks; Public water transport facilities; Single moorings; Skids; Slipways

(2) Despite subsection (1), the Minister administering the Environmental Planning and Assessment Act 1979 is the consent authority for the following development carried out in the Foreshores and Waterways Area—
(a) development carried out partly above and partly below the mean high water mark,
(b) development carried out below the mean high water mark for the purposes of one or more of the following—
Boat building and repair facilities; Boat launching ramps; Boat sheds; Marinas; Reclamation works; Swimming pools; Water-based restaurants and entertainment facilities; Waterfront access stairs; Water recreation structures; Wharf or boating facilities that are sea walls
(c) development carried out wholly or partly inside the zoned waterway, including development carried out below the mean high water mark, for the purposes of one or more of the following—
Car parks; Commercial premises; Recreational or club facilities; Residential accommodation; Restaurants or cafes; Retail premises; Tourist facilities
(3) Subsections (1) and (2) do not apply if another environmental planning instrument specifies a different public authority, other than the council, as the consent authority for the development.

Comment:
Clause 6.25(2) provides that the Minister for Planning is the consent authority for development in the Foreshores and Waterways Area, per subclauses (a)-(c) inclusive.

On 21 November 2024, the Department of Planning, Housing and Infrastructure delegated the Minister's consent authority functions back to Council for certain development types and Transport for NSW for other development types. The instrument of delegation specifies that:

- The Minister delegates his consent authority functions to Council for everything under Clause 6.25(2)(a) of the SEPP, except some specified land uses, which are instead to go to Transport for NSW for determination, and
- The Minister delegates his consent authority functions to Council for everything under Clauses 6.25(2)(b) and (c) of the SEPP.

Per the second dot-point above, which refers to Clause 6.25(c), being relevant to this application, Council is the consent authority.

In this instance, Council as the consent authority refers the application to the Northern Beaches Development Determination Panel for determination.

Division 3 Development in Foreshores and Waterways Area

6.28 General

(1) In deciding whether to grant development consent to development in the Foreshores and Waterways Area, the consent authority must consider the following—
(a) whether the development is consistent with the following principles—
(i) Sydney Harbour is a public resource, owned by the public, to be protected for the public good,
(ii) the public good has precedence over the private good,
(iii) the protection of the natural assets of Sydney Harbour has precedence over all other interests,
(b) whether the development will promote the equitable use of the Foreshores and Waterways Area, including use by passive recreation craft,
(c) whether the development will have an adverse impact on the Foreshores and Waterways Area, including on commercial and recreational uses of the Foreshores and Waterways Area,
(d) whether the development promotes water-dependent land uses over other land uses,
(e) whether the development will minimise risk to the development from rising sea levels or changing

flood patterns as a result of climate change,
(f) whether the development will protect or reinstate natural intertidal foreshore areas, natural landforms and native vegetation,
(g) whether the development protects or enhances terrestrial and aquatic species, populations and ecological communities, including by avoiding physical damage to or shading of aquatic vegetation,
(h) whether the development will protect, maintain or rehabilitate watercourses, wetlands, riparian lands, remnant vegetation and ecological connectivity.
(2) Development consent must not be granted to development in the Foreshores and Waterways Area unless the consent authority is satisfied of the following—
(a) having regard to both current and future demand, the character and functions of a working harbour will be retained on foreshore sites,
(b) if the development site adjoins land used for industrial or commercial maritime purposes—the development will be compatible with the use of the adjoining land,
(c) if the development is for or in relation to industrial or commercial maritime purposes—public access that does not interfere with the purposes will be provided and maintained to and along the foreshore,
(d) if the development site is on the foreshore—excessive traffic congestion will be minimised in the zoned waterway and along the foreshore,
(e) the unique visual qualities of the Foreshores and Waterways Area and its islands, foreshores and tributaries will be enhanced, protected or maintained, including views and vistas to and from—
(i) the Foreshores and Waterways Area, and
(ii) public places, landmarks and heritage items.

Comment:
With respect to clause (1), the proposed development is wholly on private land, so is acceptable with respect to the matters above at (a) to (h) inclusive.

With respect to clause (2), the proposed development is wholly on private land, does not impact working elements of the harbour, does not unreasonably impact upon traffic congestion, and is acceptable with respect to the visual quality of the foreshore. The development is satisfactory with respect to the matters above at (a) to (e) inclusive.

6.32 Rocky foreshores and significant seagrasses

(3) Development consent must not be granted to development on land to which this section applies unless the consent authority is satisfied the development—
(a) will preserve and enhance the health and integrity of seagrasses, areas containing seagrasses and ecological communities in rocky foreshore areas, and
(b) will maintain or increase the connectivity of seagrass vegetation and natural landforms, and
(c) will prevent, or will not contribute to, the fragmentation of aquatic ecology, and
(d) will not cause physical damage to aquatic ecology.

Comment:
The proposal has been reviewed by Council's Coastal Officer who raised no objection to the works. The works are satisfactory with respect to the matters above at (a)-(d).

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 2 Coastal Vulnerability Area
2.9 Development on land within the coastal vulnerability area

Development consent must not be granted to development on land that is within the area identified as "coastal vulnerability area" on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and

b) the proposed development:
   i) is not likely to alter coastal processes to the detriment of the natural environment or
   ii) other land, and
   iii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and

c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.

Comment:
There is no currently adopted Coastal Vulnerability Area Map. Nonetheless, the proposed development has been reviewed by Council's Coasts and Catchments team, who have provided support to the proposal, subject to conditions. The proposal is consistent with the relevant requirements.

Division 3 Coastal environment area
2.10 Development on land within the coastal environment area

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

Comment:
The proposed development has been reviewed by Council's Coasts and Catchments team, who have provided support to the proposal, subject to conditions. The proposal is consistent with the relevant

requirements.

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

Comment:
The proposed development has been reviewed by Council's Coasts and Catchments team, who have provided support to the proposal, subject to conditions. The proposal is consistent with the relevant requirements.

Division 4 Coastal use area
2.11 Development on land within the coastal use area

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

Comment:
The proposed development has been reviewed by Council's Coasts and Catchments team, who have provided support to the proposal, subject to conditions. The proposal is consistent with the relevant requirements.

Division 5 General
2.12 Development in coastal zone generally—development not to increase risk of coastal hazards

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

Comment:
The proposed development has been reviewed by Council's Coasts and Catchments team, who have provided support to the proposal, subject to conditions. The proposal is consistent with the relevant requirements.

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 proposed development has been reviewed by Council's Coasts and Catchments team, who have provided support to the proposal, subject to conditions. The proposal is consistent with the relevant requirements.

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:	8.5m	10.9m	28.2%	**No**
Floor Space Ratio	FSR: 0.4:1 (310.08sqm)	FSR: 0.42:1 (326.5sqm)	5.3% (16.42sqm)	**No**

Compliance Assessment

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

Detailed Assessment

Zone R2 Low Density Residential

The underlying objectives of the R2 Low Density Residential zone:

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

  Comment:
  The proposed development is for alterations and additions to an existing dwelling house, which will allow for the alteration / adaptation of existing low density housing stock to serve the changing housing needs of owners / occupiers within the community.

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

  Comment:
  N/A - the proposed development is for residential purposes within this residential area. Nonetheless, the proposed development will not impede on other such land uses.

Overall, the proposed development complies with the underlying objectives of the R2 Low Density Residential zone.

4.6 Exceptions to development standards

MLEP 2013 Clause 4.3 Height of Buildings

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

Development standard: Clause 4.3 Height of Buildings
Requirement: 8.5m
Proposed: 10.9m
Percentage of variation: 28.2%

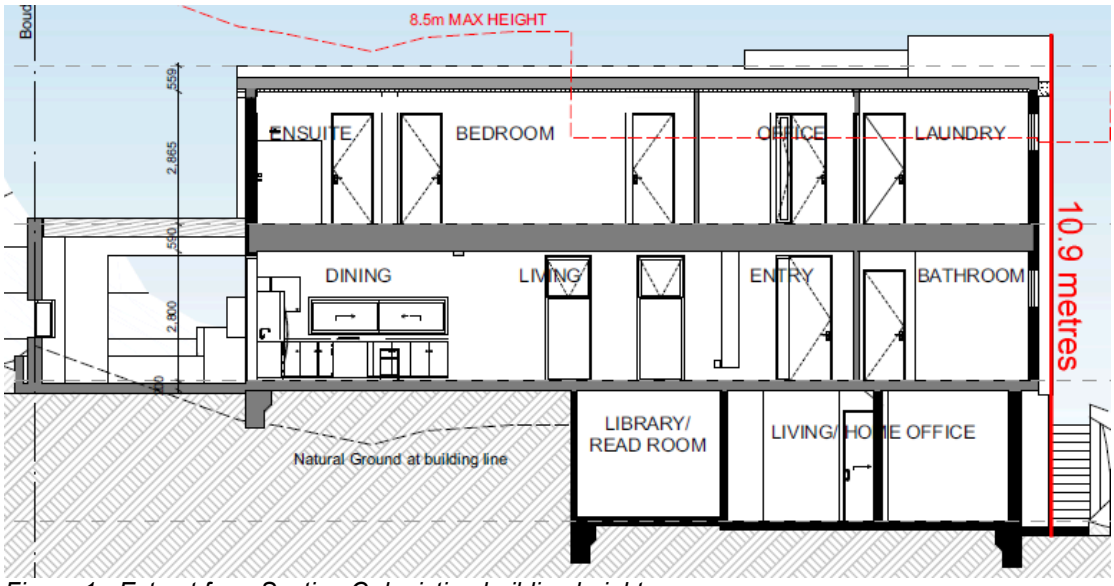


Figure 1 - Extract from Section C depicting building height.

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

Subclause (1) of this clause provides that:

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

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

Subclause (2) of this clause provides that:

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

Comment:
Clause 4.3 Height of Buildings is not expressly excluded from the operation of this clause.

Subclause (3) of this clause provides that:

(3) Development consent must not be granted to development that contravenes a development

standard unless the consent authority is satisfied the applicant has demonstrated that—

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

Comment:
Council is satisfied that the Applicant has demonstrated that compliance with Clause 4.3 Height of Buildings is unreasonable or unnecessary in the circumstances of this application for the following reasons:

The Applicant's written request seeks 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. This is the first of five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council [2007] NSWLEC 827*. The objectives of the development standard are addressed within the 4.6 request as follows:

(a) 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 from the Applicant:
"This objective relates to streetscape character and in this regard the proposed dwelling has been designed to be consistent with the three-storey bulk and scale of Castle Circuit. The height, bulk, scale of the development, as reflected by floor space, are entirely consistent with the built form characteristics established by the enclave of surrounding development in this precinct noting the topography of the southern side of Castle Circuit. It is our considered opinion that the proposal is consistent with the intent and approvals granted in the area, therefore confirming that the proposal is consistent with the prevailing building height, roof forms and the future streetscape of the locality. This is proven with the approval granted at 58 Castle Circuit directly to the west of the site, which was approved with a 27% variation to the building height."

"The variation is due to the existing bulk and scale of the dwelling which is already over the building height as a result of the natural topography and existing man-made changes which hinders the development when assessed with the ground level (existing) definition. If the merits of the 'Bettar' Court Case are utilised, the natural ground level enables a variation with that consistent with other developments. The proposal is consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191, in that I have formed the considered opinion that most observers would not find the proposed development by virtue of its roof form and building height, and in particular the 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 sites visual catchment. The proposal is consistent with this objective notwithstanding the variation to the building height."

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

Response from the Applicant:
"The proposal has been strategically designed to minimise the impact and bulk and scale of the project. The project designers have worked tirelessly to design a modern dwelling through alterations and additions that meet the sites constraints and the existing bulk and scale of the area. The proposal has been designed to be compatible with the existing streetscape (noting the existing three-storey bulk and scale along the southern side of Castle Circuit) while accommodating a bulk and scale that is complementary to the natural environment. The first floor has been designed with varying and large side setbacks which reduces the bulk and scale and accommodates a dwelling that blends in with the

streetscape. As assessed within objective (a) the proposal is consistent with the streetscape of Castle Circuit, which therefore dictates the bulk and scale for the locality."

(c) to minimise disruption to the following:
(i) views to nearby residential development from public spaces (including the harbour and foreshores),

Response from the Applicant:
"Having inspected the site and its surrounds I am of the opinion that the building form and height of the proposed development, in particular that associated with the building height breaching elements, has been appropriately located within the site to minimise disruption of views to nearby residential development and from surrounding public spaces. The proposal is consistent with this objective notwithstanding the proposed variation to the building height.'

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

Response from the Applicant:
"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 as they relate to an assessment of view impacts, I am satisfied that the proposed building height variation will not give rise to any unacceptable public or private view affectation."

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

Response from the Applicant:
"The building form and height has been appropriately distributed across the site such that the proposed variation to the building height will have no impact on views between public spaces. The proposal is consistent with this objective notwithstanding the proposed variation to the building height."

(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 from the Applicant:
"The application is accompanied by revised shadow diagrams drawings DA-506 to DA-514 which depict the impact of shadowing on the neighbouring properties, in particular 52 Castle Circuit. The shadow diagrams demonstrate that the proposed development, particularly the non-compliant building height elements, will not unreasonably overshadow adjoining neighbours living room windows and private open space areas with compliant levels of solar access maintained between 9am and 3pm on 21st June."

"The property at 52 Castle Circuit, is currently under construction through the approval granted under DA2022/1953 (as modified). The assessment of impact has therefore been taken on the approved areas of the site for private open space and living areas. It is our professional opinion, as per the elevation shadow diagrams that the proposal will retain adequate sunlight, as per the requirements of MDCP Clause 3.4.1."

(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 from the Applicant:
"Not applicable – the site is not located within a recreation or environmental protection zone."

The arguments provided by the Applicant in response to the objectives are generally concurred with.

Importantly, it is noted that the breach partially results from existing excavation of the site. Building height is measured in accordance with the principles identified in *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582*, which takes existing excavation as existing ground level. Furthermore, the subject site and surrounding sites are located on significantly sloped typography. Recent Development Applications at adjacent properties, such as DA2023/1441 and DA2022/1953 at 58 and 52 Castle Circuit, have approved variations to the height of buildings development standard of 27% and 18.8% respectively for similar topography related reasons. This area of Seaforth is characterised by large dwelling houses seeking to obtain harbour views and constrained by typography. The proposed development will not be out of character within this environment. It is considered that the objectives of the standard are achieved despite the non-compliance with the standard.

(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 that there are sufficient environmental planning grounds to justify contravening the development standard:

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

The Clause 4.6 Request argues, in part:

- *"The sites topography and existing man-made excavation distorts the height plane for the site. If the natural ground level was taken, the proposal would substantially comply with the building height control."*
- *"The proposed development responds to the existing and desired future character of the locality. Furthermore, the subject proposed dwelling through alterations and additions retains the building footprint and in majority the height existing on the site. It's our opinion that the proposal will integrate into the existing streetscape and pattern of development within Castle Circuit, noting the site is substantially lower than 48 Castle Circuit to the east."*
- *"The development does not result in any unnecessary or undue bulk or visual impacts on adjoining properties and is of a scale that is compatible with the existing and surrounding buildings. The streetscape analysis completed within the Statement of Environmental Effects notes numerous recent approvals with a variation to the building height and the immediate properties are all three storey's in height."*
- *"The amenity impacts to neighbouring residential properties, arising from the non-compliant building height, is negligible. Adjoining properties will continue to receive suitable solar access, privacy impacts are suitably minimised, and views are reasonably maintained."*
- *"The building height breach is minor (when assessed from the natural ground level) and would relate to only a small portion of the proposed development only, which will largely be indiscernible when viewed from Castle Circuit."*
- *"The proposal is consistent with the stance Council has taken on developments along Castle Circuit and surrounding streets noting numerous approvals granted for variations to the building height control. Most notably Council recently approved a variation to the building height for premises 58 Castle Circuit."*

The arguments provided by the Applicant are general concurred with. It is noted that as alterations and additions, the proposal is designed to adapt and add to an existing structure. Flexibility in the application of the development standard will allow for adaptation and reuse of existing built form to suit the changing needs of owners and occupants and promote ecologically sustainable development.

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

- 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.
- Flexibility in the application of the development standard will allow adaptation and reuse of existing built form for the changing needs of owners and occupants. This promotes ecologically sustainable development and the orderly development of land, thereby satisfying objects 1.3(b) and (c) of the EPA Act.

Public Interest:

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

Conclusion:

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

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

MLEP 2013 Clause 4.4 Floor Space Ratio

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

Development standard: Clause 4.4 Floor Space Ratio
Requirement: 0.4:1 (310.08sqm)
Proposed: 0.42:1 (326.5sqm)
Percentage of variation: 5.3% (16.42sqm)

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

Subclause (1) of this clause provides that:

(1) The objectives of this clause are as follows:
(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

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

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

Subclause (2) of this clause provides that:

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

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

Subclause (3) of this clause provides that:

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

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

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

The Applicant's written request seeks 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. This is the first of five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council [2007] NSWLEC 827*. The Applicant has also stated that they are attempting to establish the second and forth ways in *Wehbe*, however, it is not considered that the written request has adequately done so. Nonetheless, only one way must be demonstrated to show that compliance with the development standard is unreasonable or unnecessary. As such, in relation to the first way, the objectives of the development standard are addressed within the 4.6 request as follows:

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

Response from the Applicant:
"The development proposes alterations and additions to create a functional and modern dwelling, including the change from a carport to a garage which is greater than 36sqm, hence requiring some of the area to be included in GFA. The proposal also includes other minor additions to the ground and first floor which when viewed would not be noticeable or impact the streetscape or public domain. The apparent bulk and scale of the dwelling will be negligibly impacted, from the existing approved dwelling and the new refurbishment works will ensure a positive contribution to the streetscape. Therefore, the proposed minor variation is consistent with the intent of the objectives in that the proposal is consistent with the streetscape character and bulk and scale of the area."

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

Response from the Applicant:
"The development will result in a built form and massing that is of a consistent scale to the existing dwelling and surrounding properties. The development will not obscure any important landscape or townscape features and will not result in any view loss impacts. It is therefore considered this objective is met, despite the numerical variation."

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

Response from the Applicant:
"The proposed works are visually appropriate for the locality and propose a built form consistent with the existing dwelling. The landscaped area on the property will remain relatively unchanged, as proposed works are located within the existing building footprint with associated changes to the decking and swimming pool areas. In this regard, the underlying intent of this objective has been satisfied despite the numerical departure."

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

Response from the Applicant:
"The application is accompanied by revised shadow diagrams drawings DA-506 to DA-514 which depict the impact of shadowing on the neighbouring properties, in particular 52 Castle Circuit. The shadow diagrams demonstrate that the proposed development, particularly the non-compliant building height elements, will not unreasonably overshadow adjoining neighbours living room windows and private open space areas with compliant levels of solar access maintained between 9am and 3pm on 21st June."

"The property at 52 Castle Circuit, is currently under construction through the approval granted under DA2022/1953 (as modified). The assessment of impact has therefore been taken on the approved areas of the site for private open space and living areas. It is our professional opinion, as per the elevation shadow diagrams that the proposal will retain adequate sunlight, as per the requirements of MDCP Clause 3.4.1."

"The proposal will have minimal environmental impacts on the use or enjoyment of adjoining land and the public domain, and can therefore be supported, as submitted."

(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 from the Applicant:
"Not applicable – the site is located within a residential zone."

The arguments provided by the Applicant in response to the objectives are generally concurred with. 31.5sqm of additional GFA is proposed. About half is created in the proposed garage, which has additional space surplus to the two parking spaces required. This garage will replace and existing carport which is not already counted as GFA. This new garage and connecting walkway will not have any signiifigagmt impacts on adjoining neighbours and will seek to rationalise and update parking, parking access and storage. Other additional GFA is created at the south-western dwelling house

extension at both ground floor and first floor levels. Provided shadow diagrams have demonstrated that the proposal will comply with the requirenmts of MDCP Clause 3.4.1 Sunlight Access and Overshadowing (refer that section of this report for a detailed assessment). As such, design choices have been made to minimise impacts of additional GFA, whilst achieving the goals of the proposed works. The additional GFA is not considered to impact on the perceived bulk and scale of the dwelling house from the street, or negatively impact the streetscape, as compared to existing. The dwelling is located downhill and below the street level. This area of Seaforth is characterised by large dwelling houses seeking to obtain harbour views and constrained by typography, many with recently approved FSR variations. The proposed development will not be out of character within this environment. It is considered that the objectives of the standard are achieved despite the non-compliance with the standard.

(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 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:

- *"Context - The area surrounding the subject site is characterised by 2 and 3 storey residential dwellings, stepped to accommodate the steeply sloping topography. The proposed dwelling has been designed to remain consistent with the character of the locality, despite the variation to FSR, through design, architectural features and complimentary materials and colour choices.The proposal has been designed as alterations and additions with the main addition relating to the carport being removed for a garage which increases GFA. Variation to the Manly LEP 2013 Cl. 4.4 FSR, control has been the subject of recent precedent for the following developments: DA2023/1441 – 58 Castle Circuit, Seaforth – 0.63:1 – 57% variation. The setting and context with similar FSR variations recently approved, demonstrates that a varied FSR is reasonable and that it is consistent with clause 1.3(c) and (d)."*
- *"Future Development - The proposed alterations and additions will allow for the provision of a modern floor plan, with refurbished and improved internal spaces. The proposal also allows for a secure garage space (currently a carport). This represents an efficient use of an existing developed site, with all services readily available. The built form proposed is relatively consistent with the existing dwelling and other buildings in the locality. The minor increase to the floor area of 15.42m2 is considered reasonable as it is located within the existing building footprint or within balcony/terrace areas and does not result in any unreasonable impacts to neighbouring properties. The proposed works will not hinder any future development of the lot. The alterations proposed demonstrate fulfillment of clause 1.3(a), (b), (c) and (g)."*
- *"Consistent with Zone Objectives - The extent of the variation is considered to be in the public interest, as the proposal remains consistent with the objectives of the zone, allowing for additional residential floor space in a residential zone, with a bulk and scale consistent with the*

existing dwelling and the locality. Compliance with the FSR standard based on this would be unreasonable, with clause 1.3(c) demonstrated as fulfilled."

- *"Natural Environment - The proposed development allows for the current and future housing needs of the residents to be met, without developing a greenfield site, representing an efficient use of existing developed land. The natural environment is unaffected by the departure to the development standard and it would be unreasonable for the development to be refused on this basis with Cl 1.3(b) satisfied."*
- *"Social and Economic Welfare - The variation to the FSR will have a positive social impact, as it will allow the housing needs of the residents to be met in their current local community, including the ability to work from home in the dedicated home offices. It utilises existing services, satisfying Cl1.3(b). Accordingly, refusal of the development based on this reason would be unreasonable."*
- *"Appropriate Environmental Planning Outcome - The development proposed is not an overdevelopment of the site and satisfies the objectives of the zone and the development standard as is detailed earlier in the report."*

The arguments provided by the Applicant are general concurred with. It is noted that as alterations and additions, the proposal is designed to adapt and add to an existing structure. Flexibility in the application of the development standard will allow for adaptation and reuse of existing built form for the changing needs of owners and occupants and promote ecologically sustainable development.

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

- The proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, thereby satisfying objects 1.3(c) and (g) of the EPA Act.
- Flexibility in the application of the development standard will allow adaptation and reuse of existing built form for the changing needs of owners and occupants. This promotes ecologically sustainable development and the orderly development of land, thereby satisfying objects 1.3(b) and (c) of the EPA Act.

Public Interest:

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

Conclusion:

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

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

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 775.2sqm	Requirement	Proposed	% Variation	Complies
4.1.1.1 Residential Density and Dwelling Size	Dwelling Size: 122sqm (4 bedroom, 5 bathroom)	326.5sqm	-	Yes
4.1.2.1 Wall Height	East: 7.3m (based on gradient 1:7.5)	7.3m (dwelling) 5.7m (garage)	- -	Yes Yes
	West: 7.5m (based on gradient 1:6)	9.3m	24%	**No**
4.1.2.2 Number of Storeys	2	3	50%	**No** but existing and unchanged
4.1.2.3 Roof Height	Height: 2.5m	0.8m (dwelling) 0.6m (garage)	- -	Yes Yes
	Parapet Height: 0.6m	0.6m (garage)	-	Yes
	Pitch: maximum 35 degrees	7 degrees (dwelling)	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	3.2m, consistent with prevailing / existing setback	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	East: Garage: 1.9m (based on 5.7m wall height) Dwelling: 2.4m (based on 7.3m wall height)	0.1m 11.7m	94.7% -	**No** Yes
	West: Pool / Deck Area: 1.7m (based on 5.2m wall height) Dwelling: 2.4m (based on 9.3m wall height)	2.4m 6.3m	- -	Yes Yes
	No new windows within 3m of a side boundary	Nil new windows within 3m of a side boundary	-	Yes
4.1.4.4 Rear Setbacks	8m	Dwelling: 1.8m Garage: 6.3m	77.5% 21.3%	**No** but existing and unchanged **No**
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area (465.12sqm)	60.3% (467.3sqm)	-	Yes
	No more than 25% of open space above ground (116.825sqm)	19% (88.8sqm)	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space (186.92sqm)	58.3% (272.6sqm)	-	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	N/A	Yes

4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m (6.2m)	6.8m	9.7%	**No**
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	4.7m	Over 100%	**No**
	1m pool curtilage side/rear setback	West Side: 2.6m South Rear: 14.9m	- -	Yes Yes
	1.5m pool water side/rear setback	West Side: 2.8m South Rear: 15.1m	- -	Yes Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	-	Yes

Compliance Assessment

Clause	**Compliance with Requirements**	**Consistency Aims/Objectives**
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 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)	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.3 Floor Space Ratio (FSR)	N/A	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	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	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

Council has received submissions raising concern over potential overshadowing / solar access. The neighbouring property to the south of the subject site (52 Castle Circuit) is considered in the following assessment, being positioned to receive most shadows cast from the proposed development.

Following a request for further information letter issued by Council, the Applicant has provided appropriate solar access diagrams, including hourly top-town shadow diagrams and hourly elevation shadow diagrams for the western elevation of 52 Castle Circuit, both with the ability to differentiate between existing and proposed shadows.

3.4.1.1 Overshadowing Adjoining Open Space

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

a) New development (including alterations and additions) must not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties from 9am to 3pm at the winter solstice (21 June) ; or
b) Where there is no winter sunlight available to open space of adjacent properties from 9am to 3pm, the calculations for the purposes of sunlight will relate to the equinox in March and September from 9am to 3pm.

The principal private open space of 52 Castle Circuit is considered to be the Ground Floor balconies and pool area, adjacent to the open plan living / dining / kitchen areas of the dwelling house. As winter sunlight is available to this private open space at 52 Castle Circuit, (a) is applicable.

The Ground Floor balcony and pool area of 52 Castle Circuit represents approximately 140sqm of private open space. Hourly top-down shadow diagrams indicate that the proposal will eliminate some existing sunlight. As existing, little to no solar access is attained between 9am and 10am. From 11am to 3pm, the existing situation is that the majority of the private open space attains sunlight, equating to

a time of 4 hours with substantial solar access.

The proposed development maintains little to no solar access between 9am and 10am. Solar access impacts extend up to 11am, eliminating sunlight up to this time. However, by 12pm the majority of the primary open space area will retain sunlight access all the way up to 3pm, equating to a time of 3 hours with substantial solar access.

Therefore, the proposal represents the elimination of 1 hour of substantial solar access out of the previously attained 4 hours, representing a one forth reduction. As such, the proposal complies with the requirement of this Clause, as more than one third of the existing sunlight accessing the private open space of adjacent properties from 9am to 3pm at the winter solstice is not eliminated.

3.4.1.2 Maintaining Solar Access into Living Rooms of Adjacent Properties

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

a) for adjacent buildings with an east-west orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors to living rooms for a period of at least 2 hours from 9am to 3pm on the winter solstice (21 June);
b) for adjacent buildings with a north-south orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors of living rooms for a period of at least 4 hours from 9am to 3pm on the winter solstice (21 June);
c) for all adjacent buildings (with either orientation) no reduction in solar access is permitted to any window where existing windows enjoy less than the minimum number of sunlight hours specified above.

With an east-west window orientation (a) and (c) are applicable to the relevant windows of 52 Castle Circuit. The dwelling house at 52 Castle Circuit has a number of windows / glass doors on the Ground Floor of the western elevation which are associated with a open plan living / dining / kitchen area, considered to be the main living area of the dwelling house. Hourly elevation shadow diagrams indicate that some additional shadowing will be cast onto these windows, however, due to their western elevation, it is a largely existing situation that these windows receive afternoon sunlight rather than morning sunlight.

Diagrams depicting the effect of the proposed development indicate that a substantial area of these Ground Floor windows (i.e. over 50% of the entire window area across the Ground Floor Western elevation) will receive sunlight between the hours of 1pm and 3pm, equating to a time of 2 hours with substantial solar access. Therefore, the proposal complies with the requirement of this Clause, as the level of solar access enjoyed by windows or glazed doors to living rooms is maintained for a period of at least 2 hours from 9am to 3pm on the winter solstice.

Conclusion

The proposed development is considered to meet the requirements of this Clause. The solar access impacts of this proposal are not considered to be unreasonable within the context of the site and surrounds.

For the benefit of a full assessment, the development is considered against the underlying Objectives of the Control as follows:

Objective 1) To provide equitable access to light and sunshine.

Comment:

As outlined above, the proposed development complies with the requirements of this Clause relating to the solar access of adjacent properties in regards to both private open space and living room windows. Therefore, equitable access to light and sunshine is maintained.

Objective 2) To allow adequate sunlight to penetrate:

- *private open spaces within the development site; and*
- *private open spaces and windows to the living spaces/ habitable rooms of both the development and the adjoining properties.*

Comment:
As outlined above, the proposed development complies with the requirements of this Clause relating to the solar access of adjacent properties in regards to both private open space and living room windows. Therefore, adequate sunlight is allowed to penetrate the listed areas.

Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:

- *encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and*
- *maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.*

Comment:
As outlined above, the proposed development complies with the requirements of this Clause relating to the solar access of adjacent properties in regards to both private open space and living room windows. Therefore, penetration of sunlight is maximised through adequate design.

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

3.4.2 Privacy and Security

Submissions on this application have been received which raise privacy concerns. These concerns come from the adjoining property to the south (52 Castle Circuit).

The assessment of potential privacy impacts of a proposal requires consideration of the requirements and objectives of this Clause, as well as Planning Principals established within the NSW Land and Environment Court Case of *Meriton v Sydney City Council [2004] NSWLEC 313*, which hold that when applying judgment to assess privacy impacts, consideration should be given to density, separation, use and design. *Super Studio v Waverley [2004] NSWLEC 91* is also a relevant case which has created Planning Principles concerning the use of landscaping to protect privacy.

This Clause requires the following:

3.4.2.1 Window Design and Orientation

a) Use narrow, translucent or obscured glass windows to maximise privacy where necessary.

b) When building close to boundaries, windows must be off-set from those in the adjacent building to restrict direct viewing and to mitigate impacts on privacy.

3.4.2.2 Balconies and Terraces

a) Architectural or landscape screens must be provided to balconies and terraces to limit overlooking nearby properties. Architectural screens must be fixed in position and suitably angled to protect visual privacy.
b) Recessed design of balconies and terraces can also be used to limit overlooking and maintain privacy.

The proposal is considered as follows:

North, East and West Elevation

Regarding the north, east and west elevation, the factors of distance and viewing angles are considered to fully mitigate potential privacy impacts. Is noted that the only submission raising privacy is concerned with the southern elevation and potential impacts on the southern neighbour.

South Elevation

No balconies are proposed along the southern elevation. The western elevation balcony does have a southern face, however the proposed balcony exhibits a 10m setback from the southern boundary. As such, unreasonable privacy impacts to the south are not considered to arise from this proposed balcony.

Regarding windows, the southern elevation includes seven (7) proposed windows. W107 and W106 on the Ground Floor, as well as W210, W209 and W208 on the First Floor, are all proposed to be high-sill in design, with sill heights of 1.7m above finished floor levels of their respective floors. This is considered to adequality resolve privacy concerns relating to these windows. W207 and W105 are large windows to a proposed main stairwell. Due to their proximity to the southern boundary (1.8m), large floor to ceiling design, and lack of privacy solution within their design, issue was raised with these windows as originally proposed. Following a request for further information letter, the Applicant revised the proposed design to indicate that frosted glass would be installed in these windows. This is considered to adequality resolve privacy concerns relating to these windows. Finally, the southern elevation includes windows on the bridge connecting the garage to the dwelling and on the garage itself. The garage window (W218) is a narrow high-sill window and is associated with a low waking use / dwell time area. The window on the bridge (W219) is entirely covered by a fixed external privacy screen. The context and design features are considered to adequality resolve privacy concerns relating to these windows. Overall, the amended proposal is considered to maintain adequate levels of privacy to the south.

Acoustic Privacy / Noise

Regarding pump / filter noise, a standard condition of consent has been included in the recommendations of this report requiring that the swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary. Subject to recommended conditions of consent, and generic noise protection offered by the *Protection of the Environment Operations Act 1997*, the proposed development is not expected to create an unreasonable acoustic impact on adjoining properties outside that expected within a low density residential environment.

Conclusion

The proposed development is considered to meet the requirements of this Clause. The privacy impacts of this proposal are not considered to be unreasonable within a low density residential context.

For the benefit of a full assessment, 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:
As outlined above, the proposed development adequality minimises 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:
As outlined above, the proposed development adequality minimises loss of privacy to adjacent and nearby development. Therefore, an adequate balance has been met.

Objective 3) To encourage awareness of neighbourhood security.

Comment:
The proposal will not compromise neighbourhood security or casual surveillance of the street frontage.

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

3.4.4 Other Nuisance (Odour, Fumes etc.)

The proposal as originally submitted included a fireplace at the Ground Floor Living Room and a firepit at the Ground Floor Balcony.

Council's Environmental Health team reviewed the proposal and provided an unsupportive referral response, raising issue with the proposed solid fuel heaters. In response, the Applicant amended the proposed development to remove the Ground Floor Balcony firepit and to note that the Ground Floor Living Room fireplace would be gas or electric.

As amended, no solid fuel heater is proposed. Therefore, revised comments from the Environmental Health team were not sought as the issue has been resolved.

Furthermore, a condition of consent is included in the recommendation of this report specifying that no approval is granted or implied under this Development Consent for a solid fuel heater.

It is noted that an application to install a solid fuel heater can be made with a Section 68 Application, sperate to a DA or modification application, should at a future point the Applicant wish to gain such an approval. See the link below for further information:

https://help.northernbeaches.nsw.gov.au/s/article/Approval-to-Install-a-Domestic-Oil-or-Solid-Fuel-Heater-Section-68-Approvals

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

Description of non-compliance

Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height) stipulates that walls are not to exceed the following heights:

- East: 7.3m (based on gradient 1:7.5).
- West: 7.5m (based on gradient 1:6).

The following wall heights are proposed:

- East: 7.3m (dwelling), complies.
- East: 5.7m (garage), complies.
- West: 9.3m, representing a 24% non-compliance.

The control also requires that buildings must not exceed two (2) storeys. The proposed dwelling contains a maximum of three (3) storeys. However, this is an existing feature of the dwelling house and the number of storeys will be unchanged by the proposed development.

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 underlying objectives for the Height of Buildings development standard at Clause 4.3 in the MLEP 2013. The proposal has been assessed against these objectives in the section of this report on MLEP 2013 Clause 4.6. In summary, the proposal is considered to be consistent with the underlying objectives of the Height of Buildings development standard.

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

4.1.3 Floor Space Ratio (FSR)

The subject site is located within Area T on the MLEP 2013 Minimum Lot Size Map, requiring a minimum lot size of 950sm. With an actual lot size of 775.2sqm, this makes the allotment an undersized lot.

However, the provisions of this Clause providing for variation of the FSR development standard for undersized allotments is not applicable in this case. This is because the control only allows for sites within Area T to calculate a variation based on a 750sqm lot size, which is lower than the actual lot size and would not provide any benefit in this instance.

Nonetheless, refer to the section of this report on MLEP 2013 Clause 4.6 Exceptions to Development Standards for a detailed assessment of the proposed FSR variation.

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

Description of non-compliance

Clause 4.1.4.1 Street Front Setbacks stipulates that proposed front setbacks must relate to the front building line of neighboring properties and the prevailing building lines in the immediate vicinity. The proposed alterations and additions maintain the existing front setback. As such, the prevailing building line at the front boundary is maintained and the proposal is compliant with this Clause.

Clause 4.1.4.2 Side Setbacks and Secondary Street Frontages stipulates that the setbacks between any part of a building and the side boundary must not be less than one third of the wall height. All proposed works are compliant with west side boundary setback requirements. At the eastern side boundary, alterations and additions to the dwelling house comply, but the proposed garage does not. The proposed garage exhibits a 0.1m side setback where a 1.9m setback is required (based on 5.7m wall height), representing a 94.7% non-compliance.

Clause 4.1.4.2 Side Setbacks and Secondary Street Frontages also requires that no new windows be located within 3m of side boundaries. No new windows are proposed within 3m of a side boundary and therefore the proposal complies with this control.

Clause 4.1.4.4 Rear Setbacks stipulates that the distance between any part of a building and the rear boundary must not be less than 8m. The proposed alterations and additions maintain the existing rear setback to the dwelling house of 1.8m, which represents an existing and unchanged 77.5% non-compliance. The proposed garage exhibits a 6.3m rear setback, representing a 21.3% non-compliance.

Merit consideration

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

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

Comment:
The front, rear and side setbacks of the alterations and additions to the dwelling house largely maintain established side building lines, with proposed additions respecting these established setbacks. The proposed garage is sited over the footprint of an existing carport to utilise this former parking area. Overall, the proposal presents alterations and additions which are not considered to adversely impact the the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.

Objective 2) To ensure and enhance local amenity by:

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*
- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*

- *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

Comment:
The proposed development is considered to meet the requirements and objectives of relevant clauses of the MDCP relating to amenity. This includes solar access and privacy, which are assessed in detail within the section of this report on MDCP Clause 3.4.1 Sunlight Access and Overshadowing and Clause 3.4.2 Privacy and Security. The development is not considered to create unreasonable overshadowing on pubic or private spaces, or to unreasonably impact views from or to public or private spaces. The proposal is also considered to maintain the existing streetscape characteristics and not detrimentally impact on traffic conditions.

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

Comment:
Flexibility is required in the siting of alterations and additions to existing structures as the proposal must contend with existing non-compliances. By allowing the adaption and alteration of existing structures to suit the changing needs of owners and occupants, sustainability is encouraged. The proposed development is not expected to result in any unreasonable amenity impacts on surrounding properties and it has demonstrated it meets the underlying objectives of controls where non-compliance arise. As such, flexibility is warranted in this instance.

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 is compliant with the landscaped area provisions of the MDCP and maintains adequate landscaping and vegetation.

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

Comment:
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 Sydney Bushfire Consultants, dated 19 September 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.

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

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

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

Description of non-compliance

Clause 4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas stipulates the following:

a) The design and location of all garages, carports or hardstand areas must minimise their visual impact on the streetscape and neighbouring properties and maintain the desired character of the locality.
b) Garage and carport structures forward of the building line must be designed and sited so as not to dominate the street frontage. In particular:
i) garages and carports adjacent to the front property boundary may not be permitted if there is a reasonably alternative onsite location;
ii) carports must be open on both sides and at the front; and
c) the maximum width of any garage, carport or hardstand area is not to exceed a width equal to 50 percent of the frontage, up to a maximum width of 6.2m.

With a frontage to Castle Circuit of 38.355m, the permitted width of a garage at this frontage is 6.2m. The width of the double garage is is 6.8m, representing a 9.7% non-compliance with the control. Nonetheless, the garage is not considered to dominate the street frontage, particularly considering its downhill position from the street.

It is noted that for dwelling houses, this Clause requires the provision of two (2) off-street parking spaces. The proposed development will provide for two (2) off-street parking spaces within the proposed garage, compliant with this control.

Merit consideration

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

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

Comment:
The proposed garage provides accessible and adequate parking on-site for two (2) cars, compliant with the stipulated requirement.

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

Comment:
The proposal provides two (2) off-street parking spaces which meets the requirements of the control.

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 location and design of the garage is considered to be efficient, safe and convenient. The location will take advantage of the existing driveway and crossover and locate the garage where a carport currently stands. The proposal is supported by Council's Development Engineering team, subject to conditions.

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

Comment:
The proposal is supported by Council's Development Engineering team, subject to conditions. Site excavation is appropriately minimised.

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

Comment:
The number of footpath crossings remains unchanged, with the proposed development utilising the existing driveway and crossover.

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

Comment:
The proposal appropriately utilises the existing driveway and crossover. The proposal is compliant with the landscape area provisions of the MDCP and maintains adequate landscaping 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:
The site is located within a residential area and the proposal complies with the required number of parking spaces. The proposal will not restrict the use of active or public transport by residents of the area.

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

4.1.9 Swimming Pools, Spas and Water Features

Description of non-compliance

Clause 4.1.9.1 Height above ground requires that swimming pools and spas must be built on or in the ground and not elevated more than 1m above natural ground level. The proposed swimming pool would have a water line 4.7m above ground level, as it is partially elevated as the site slopes away.

Clause 4.1.9.2 Location and Setbacks requires that the outer edge of any pool/spa curtilage must be setback from the side or rear boundaries by at least 1m, and the water line must be setback at least 1.5m. The proposed swimming pool complies with these requirements.

Merit consideration

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

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

Comment:
Refer to the section of this report on MDCP Clause 3.4.2 Privacy and Security for detailed assessment of potential privacy impacts. No privacy impacts are considered to arise from the proposed swimming pool or associated deck. A condition of consent concerning Swimming Pool/Spa Motor Noise is recommended to ensure the acoustic privacy of adjoining and surrounding dwellings is maintained. The visual and acoustic privacy impacts of the proposal are not considered to be unreasonable within a low density residential context.

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

Comment:
The proposed swimming pool has been sited within the footprint of an existing swimming pool (proposed to be replaced). The swimming pool will be below street level, making it not readily discernable from the street. The proposal is consistent with the established character of the locality and similar swimming pools / spas within the locality, which seek to orient towards harbour views and must accommodate for steeply sloping typography.

Objective 3) To integrate landscaping.

Comment:
The proposal meets landscaped area requirements of the MDCP. As such, the pool is not considered to diminish the quality of the proposed landscaped solution for the site.

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

Comment:
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 Sydney Bushfire Consultants, dated 19 September 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. The swimming pool may also be used as an emergency water resource if necessary.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2024

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

A monetary contribution of $19,700 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $1,970,025.

CONCLUSION

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

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

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

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

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

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

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

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

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

PLANNING CONCLUSION

This proposal, for alterations and additions to a dwelling house including a swimming pool, has been referred to the Development Determination Panel (DDP) due to a variation greater than 10% to the building height development standard of the Manly Local Environment Plan 2013. There is also a proposed variation of the floor space ratio (FSR) development standard of the Manly Local Environment Plan 2013, however this variation is less than 10%.

Concerns raised in the objections have been addressed and do not warrant refusal of the application. Potential impacts on adjoining properties (including privacy and overshadowing) do not breach MDCP provisions relating to amenity and are not considered to be unreasonable within the context of the site and area.

Critical assessment issues included assessment of the proposed variations to height of building and FSR development standards, assessment of potential solar access and privacy impacts, and assessment of proposed variations to the following Manly Development Control Plan built form controls:

- Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
- Clause 4.1.4 Setbacks (front, side and rear) and Building Separation
- Clause 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
- Clause 4.1.9 Swimming Pools, Spas and Water Features

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

REASON FOR DETERMINATION

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

RECOMMENDATION

That Northern Beaches Council, as the consent authority, vary the development standards contained within Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio, pursuant to Clause 4.6 of the Manly Local Environmental Plan 2013, because the Applicant's written requests have adequately addressed the merits required to be demonstrated by subclause (3) of Clause 4.6.

Accordingly Council as the consent authority grant Development Consent to DA2024/1597 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 11 DP 200638, 50 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**
DA - 041	B	Site Plan	Camilla Paz	15 November 2024
DA - 050	A	Existing Basement	Camilla Paz	31 October 2024
DA - 051	B	Existing Ground Floor Plan	Camilla Paz	15 November 2024
DA - 051A	B	Existing Ground Floor Plan	Camilla Paz	15 November 2024
DA - 052	B	Existing First Floor Plan	Camilla Paz	15 November 2024
DA - 053	A	Existing Roof Plan	Camilla Paz	31 October 2024
DA - 100	A	Basement	Camilla Paz	31 October 2024
DA - 101	B	Ground Floor Plan	Camilla Paz	15 November 2024
DA - 101A	B	Ground Floor Plan	Camilla Paz	15 November 2024
DA - 102	B	First Floor Plan	Camilla Paz	15 November 2024
DA - 103	A	Roof Site Plan	Camilla Paz	31 October 2024
DA - 201	B	East Elevation	Camilla Paz	15 November 2024
DA - 202	B	North Elevation	Camilla Paz	15 November 2024

DA - 203	B	West Elevation	Camilla Paz	15 November 2024
DA - 204	D	South Elevation	Camilla Paz	3 February 2025
DA - 205	A	Stair Elevation	Camilla Paz	31 October 2024
DA - 300	B	Section A	Camilla Paz	15 November 2024
DA - 301	B	Section B	Camilla Paz	15 November 2024
DA - 302	B	Section C	Camilla Paz	15 November 2024
DA - 303	B	Section D	Camilla Paz	15 November 2024
DA - 304	B	Section E	Camilla Paz	15 November 2024
DA - 503	B	Swimming Pool Plan	Camilla Paz	15 November 2024
DA - 504	D	Window Schedule	Camilla Paz	3 February 2025
DA - 505	B	Door Schedule	Camilla Paz	15 November 2024

Approved Reports and Documentation			
Document Title	**Version Number**	**Prepared By**	**Date of Document**
BASIX Certificate No. A1766992	-	Efficient Living Pty Ltd	1 October 2024
Bushfire Assessment Report	-	Sydney Bushfire Consultants	19 September 2024
Bushfire Risk Assessment Certificate	-	Sydney Bushfire Consultants	19 September 2024
Arboricultural Impact Assessment	-	Hugh The Arborist	2 October 2024
Geotechnical Assessment	Ref: AG 24220	Ascent Geotechnical Consulting	7 June 2024
Waste Management Plan - 50 Castle Circuit, Seaforth	-	-	-
Stormwater Plans, Job No. SC24095	Rev. A	Hyve Designs	12 July 2024

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

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

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

2. **Compliance with Other Department, Authority or Service Requirements**
The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	Undated

(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.

5. **No Approval for a Solid Fuel Heater**
No approval is granted or implied under this Development Consent for the installation of a solid fuel heater / fireplace. Any proposed fireplace must not utilise solid fuel.

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

6. **No Approval for Secondary Dwelling**
No approval is granted or implied under this Development Consent for the use of any part of the dwelling house for the purpose of a secondary dwelling or separate occupancy. Built in cooking facilities are not permitted to be installed, other than those shown in the designated kitchen area.

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

FEES / CHARGES / CONTRIBUTIONS

7. **Policy Controls**
Northern Beaches Section 7.12 Contributions Plan 2024

A monetary contribution of $19,700.25 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of $1,970,025.00.

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

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

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

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

8. **Security Bond**

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

9. **Footing Design Near Trees to be Retained**
a) Pier footing locations shall be developed in co-ordination with an Arborist with AQF minimum Level 5 qualifications in arboriculture, and a qualified Structural Engineer, following an arboricultural investigation by the Arborist near existing tree 3 (Angophora costata), to locate critical tree roots and recommend footing design and locations for the construction works,
b) the Arborist shall review, comment, recommend design revision as required and approve the footing layout, to ensure the locations of footings will be manageable in terms of tree protection measures,
c) the Arborist shall submit certification to the Certifier, that the locations of the footings are accepted,
d) the agreed footing structural layout plans shall be submitted to the Certifier for approval prior to the issue of a Construction Certificate.

Reason: Tree protection.

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. **Traffic Management and Control**
The Applicant is to submit an application for Traffic Management Plan to Council for approval prior to issue of the Construction Certificate. The Traffic Management Plan shall be prepared to TfNSW standards by an appropriately certified person.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process.

12. **Stormwater Disposal from Low Level Property**
The applicant is to demonstrate how stormwater from the new development within this consent shall be disposed of to an existing approved system or in accordance with Northern Beaches Council's Water Management for Development Policy in particular Section 5.5 Stormwater Drainage from Low Level Properties. Details demonstrating that the existing approved system can accommodate the additional flows or compliance with Northern Beaches Council's policy by an appropriately qualified Civil Engineer are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

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

13. **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.

14. **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.

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. **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

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

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, and in particular: works under section 6, 7, 9, 11, and 12,

near existing tree T3.

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

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

Reason: Tree protection.

18. **Tree Removal Within the Property**
This consent approves the removal of existing prescribed trees on the subject site as identified in the Arboricultural Impact Assessment, approved Plans, or as listed below:
a) T1 and T6,
b) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised development works.

19. **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

20. **Tree and Vegetation Protection**
a) Existing trees and vegetation shall be retained and protected, including:
i) all trees within the site not approved for removal, including trees and vegetation nominated for retention on the approved Plans,

ii) all trees and vegetation located on adjoining properties,
iii) all trees and vegetation within the road reserve.

b) Tree protection shall be undertaken as follows:
i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,
viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,
ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

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

Reason: Tree and vegetation protection.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

26. **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.

27. **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.

28. **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.

29. **Stockpiling materials**
During construction, all material associated with works is to be contained at source, covered and must be within the construction area. All material is to be removed off site and disposed of according to local regulations. The property is to be kept clean and any building debris removed as frequently as required to ensure no debris enters receiving waters.

Reason: To ensure pollution control measures are effective to protect the aquatic habitats within receiving waters throughout the construction period.

30. **Pollution Control**
All stockpiles, materials, waste and slurry associated with works (including excavated material) is to be contained at source within the construction area and enclosed in waterproof covering and/or sediment and erosion control while not in use. All waste/debris is to be removed off site and disposed of as frequently as required in accordance to local regulations.

Reason: To protect the surrounding environment, and ensure that pollutants and building associated waste do not leave the construction site.

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.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

32. **Required Tree Planting**
a) two (2) locally native tree shall be planted within the property in proximity to the removed trees T1 and T6, and in accordance with the following:
i) tree planting shall be a minimum pre-ordered planting size of 75 litres; generally selected

from Manly DCP Schedule 4 - Part B - Native Tree Selection; meet the requirements of Australian Standard AS2303 - Tree Stock for Landscape Use; planted into a prepared planting hole 1m x 1m x 600mm depth generally, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,
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.

33. **Landscape Area**
All existing vegetation within the landscape area shall be retained as indicated on the approved Plans. Any areas where existing vegetation is removed shall be replaced as follows:
a) shrub planting shall be installed at minimum 1metre intervals for shrubs of a minimum 200mm container size at planting, and at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,
b) 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,
c) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone,
d) where the property is certified Bush Fire Prone Land, any new planting may be managed in accordance with Planning for Bushfire Protection 2019.

Reason: Environmental amenity.

34. **Replacement of Canopy Trees**
At least 2 locally native canopy trees are to be planted on the site to replace protected trees approved for removal. Species are to have a minimum mature height of 8.5m and be consistent with the Native Planting Guide available on Council's website.

Tree plantings are to be retained for the life of the development and/or for their safe natural life. Trees that die or are removed must be replaced with another locally native canopy tree.

Replacement plantings are to be certified as being completed in accordance with these conditions of consent by a qualified landscape architect, and details submitted to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To establish appropriate native landscaping.

35. **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.

36. **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.

37. **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.

38. **House / Building Number**
House/building number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings.

39. **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

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

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

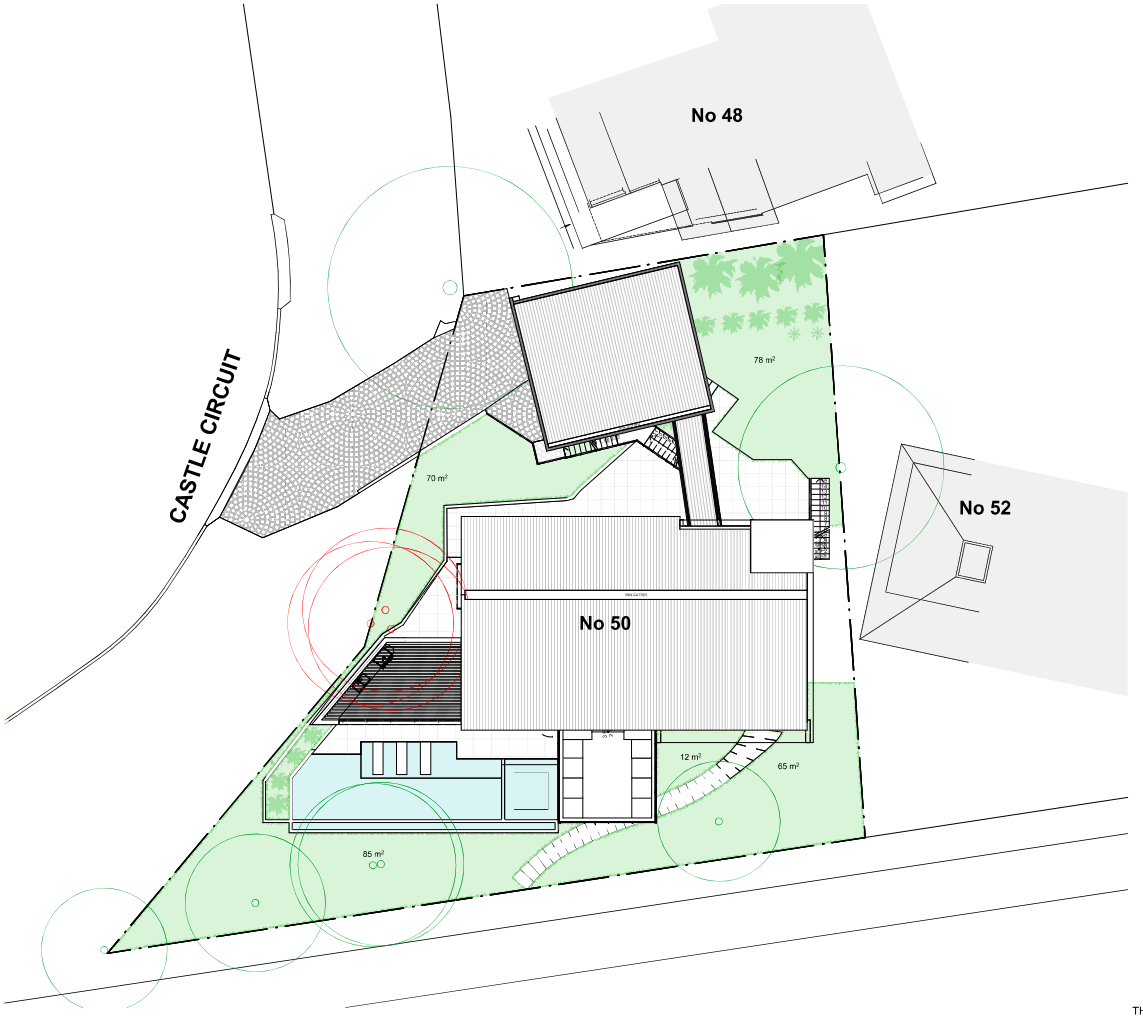
Reason: To maintain local environmental amenity.

41. **Geotechnical Recommendations**
Any ongoing recommendations (if any) 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.

42. **Swimming Pool/Spa Motor Noise**
The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

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



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Rev	By	Note	Date
A	CP	DEVELOPMENT APPLICATION	31/10/24
B	CP	DEVELOPMENT APPLICATION	15/11/24

DESIGN

M: 0416 929 907
E: camilla@camillapaz.com

Project: 50 CASTLE CIRCUIT, SEAFORTH - 2092

Client: BEN & LAURA FITZSIMMONS

Date: 3/02/2025

Project description: ALTERATIONS AND ADDITIONS

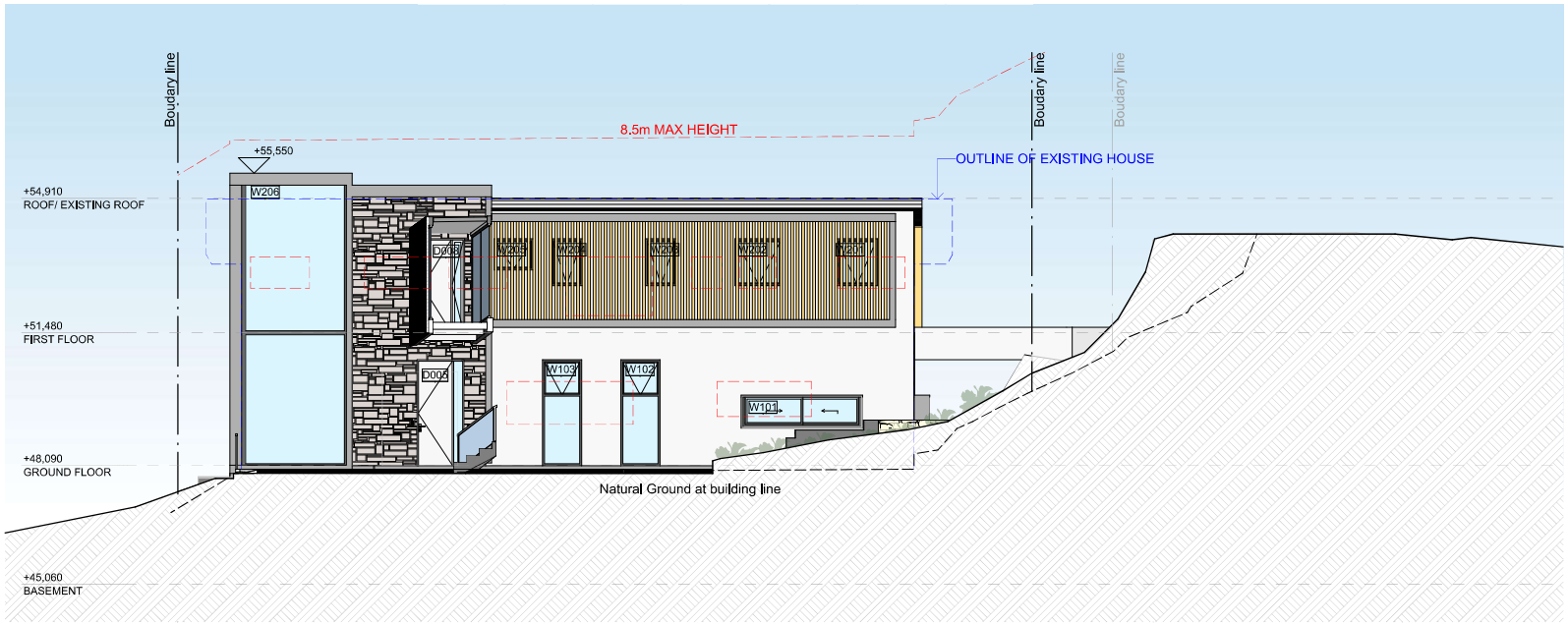
Project No. 202302

Scale 1:200

Drawing Title: SITE PLAN

Drawing Number DA - 041

Rev B



East Elevation 1:100

Existing windows to be demolished

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Rev	By	Note	Date
A	CP	DEVELOPMENT APPLICATION	31/10/24
B	CP	DEVELOPMENT APPLICATION	15/11/24

DESIGN
M: 0416 929 907
E: camilla@camillapaz.com

Project: 50 CASTLE CIRCUIT, SEAFORTH - 2092
Client: BEN & LAURA FITZSIMMONS
Date: 3/02/2025
Project description: ALTERATIONS AND ADDITIONS
Project No.: 202302
Scale: 1:100
Drawing Title: EAST ELEVATION
Drawing Number: DA - 201
Rev: B



North Elevation 1:100

Existing windows to be demolished

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DESIGN
M: 0416 929 907
E: camilla@camillapaz.com

Project: 50 CASTLE CIRCUIT, SEAFORTH - 2092

Client: BEN & LAURA FITZSIMMONS

Date: 3/02/2025

Project description: ALTERATIONS AND ADDITIONS

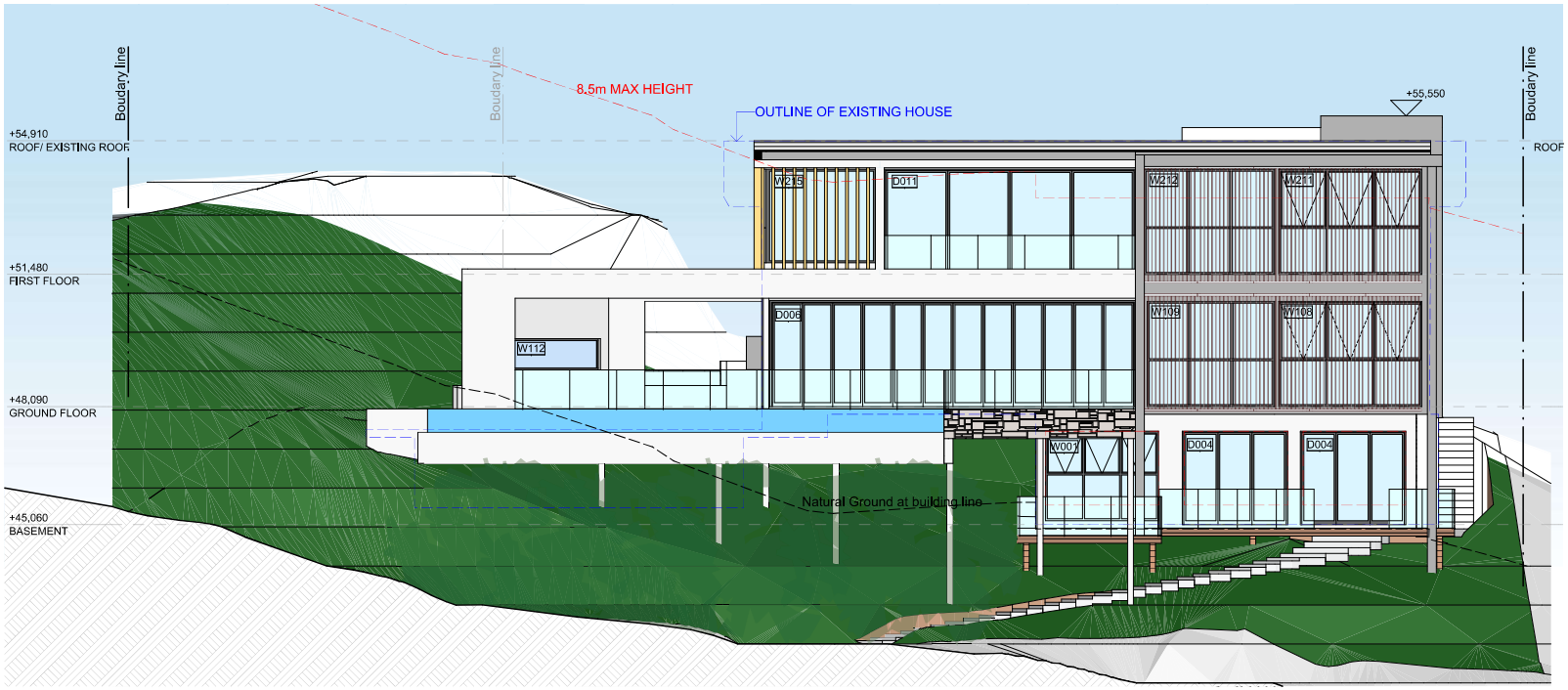
Project No. 202302

Scale 1:100

Drawing Title: NORTH ELEVATION

Drawing Number DA - 202

Rev B



West Elevation 1:100

Existing windows to be demolished

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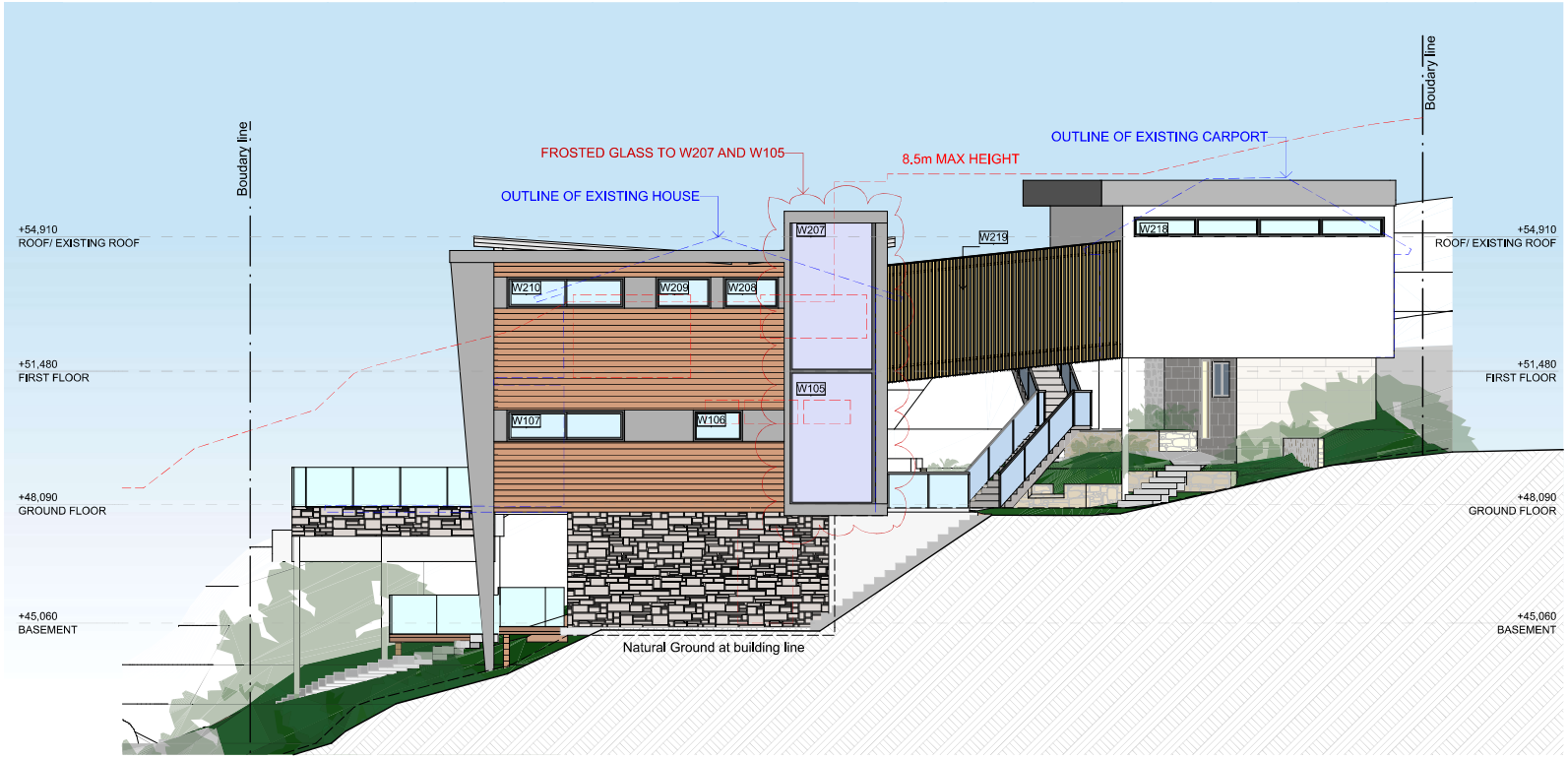
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Rev	By	Note	Date
A	CP	DEVELOPMENT APPLICATION	31/10/24
B	CP	DEVELOPMENT APPLICATION	15/11/24

DESIGN
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Project: 50 CASTLE CIRCUIT, SEAFORTH - 2092	Client: BEN & LAURA FITZSIMMONS	Date: 3/02/2025	
Project description: ALTERATIONS AND ADDITIONS		Project No.: 202302	Scale: 1:100
Drawing Title: WEST ELEVATION		Drawing Number: DA - 203	Rev: B



South Elevation 1:100

Existing windows to be demolished

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Rev	By	Note	Date
A	CP	DEVELOPMENT APPLICATION	31/10/24
D	CP	WINDOW SCHEDULE UPDATE	03/02/25

DESIGN

M: 0416 929 907
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Project: 50 CASTLE CIRCUIT, SEAFORTH - 2092	Client: BEN & LAURA FITZSIMMONS		Date: 3/02/2025
Project description: ALTERATIONS AND ADDITIONS		Project No.: 202302	Scale: 1:100
Drawing Title: SOUTH ELEVATION		Drawing Number: DA - 204	Rev: D

Four Towns Planning

Planning and property consultant

WRITTEN REQUEST PURSUANT TO CLAUSE 4.6 OF MANLY LOCAL ENVIRONMENTAL PLAN 2013

VARIATION OF A DEVELOPMENT STANDARD REGARDING THE MAXIMUM FLOOR SPACE RATIO AS DETAILED IN CLAUSE 4.4 OF MANLY LOCAL ENVIRONMENTAL PLAN 2013

Alterations and Additions to Existing Dwelling House, Swimming Pool and Associated Works

50 Castle Circuit,
Seaforth NSW 2092

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PO Box 361, Balgowlah NSW 2093

This report has been prepared to support a Development Application under the *Environmental Planning and Assessment Act 1979*.

Report prepared by:
Mathew Quattroville
Director – Four Towns Pty Ltd

Report prepared for:
Ben and Laura Fitzsimmons

5 February 2025

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1. Introduction

The nature and extent of the contravention is as follows:

Requirement	0.4:1 310.08sqm
Proposed	0.42:1 325.5sqm
Is the planning control in question a development standard?	Yes
Is the non-compliance with to the clause requirement a numerical/or performance based variation?	Numerical
If numerical enter a % variation to requirement	5%

Manly Local Environmental Plan 2013 ("MLEP")

2.1 Clause 2.2 and the Land Use Table

Clause 2.2 and the Land Zoning Map provide that the subject site is zoned R2 – Low Density Residential (the R2 zone) and the Land Use Table in Part 2 of MLEP 2013 specifies the following objectives for the R2 zone:

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

Comment: The proposed development is for alterations and additions to an existing dwelling which enhances the functionality of the dwelling. The proposal will ensure a high-quality dwelling which contributes to the ongoing provision of housing in the Seaforth area.

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

Comment: Not applicable – the proposal is for a permissible residential land use on the site.

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of MLEP provides:

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

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

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

The latest authority in relation to the operation of clause 4.6 is the decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 ("*Initial Action*"). *Initial Action* involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

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

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

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

Clause 4.6(2) of MLEP provides:

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

Clause 4.4 is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of MLEP.

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

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

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

The proposed development does not comply with the floor space ratio standard pursuant to clause 4.4 of the Manly Local Environmental Plan 2013 which specifies a floor space ratio of 0.4:1, however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

Clause 4.6(4) of MLEP provides:

(4) The consent authority must keep a record of its assessment carried out under subclause (3).

Clause 4.6(5) of MLEP has been repealed and is not applicable.

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.4 of the MLEP2013 from the operation of clause 4.6.

3. Relevant Caselaw

The grounds of objection are based upon the various tests of the recent judgements in the *NSW Land and Environment Court Case Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827, Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61, and RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

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

1. Is clause 4.4 of MLEP2013 a development standard?

2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:

(a) compliance is unreasonable or unnecessary; and

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

4. Request for Variation

4.1 Is clause 4.4 of MLEP2013 a development standard?

(a) The definition of "development standard" in clause 1.4 of the EP&A Act includes:

"(d) the cubic content or floor space of a building"

(b) Clause 4.4 relates to the floor space ratio or floor space of a building. Accordingly, clause 4.4 is a development standard.

4.2 Is compliance with clause 4.4 unreasonable or unnecessary?

(a) This request relies upon the 1st, 2nd and 4th ways identified by Preston CJ in *Wehbe*.

(b) The first way in *Wehbe* is to establish that the objectives of the standard are achieved. The second way in *Wehbe* is to establish that an objective is not relevant to the development. The fourth way in *Wehbe* is to establish that the development standard has been abandoned by Council's own actions in approving development that does not comply with the standard.

(c) Each objective of the standard and reasoning why compliance is unreasonable or unnecessary is set out below. Firstly, an analysis of the objectives is provided:

In determining a merits-based assessment for the floor space ratio of the development due consideration has been given to the above objectives and the planning principles set by the Land and Environment Court of NSW, Planning Principle – floor space ratio (Salanitro-Chafei V Ashfield Council (2005) NSWLEC 366) and Project Venture Developments v Pittwater Council (2005) NSW LEC 91).

It is acknowledged that the purpose of Clause 4.6 is to provide an appropriate degree of flexibility in applying certain development standards. In this regard the FSR of the site should be assessed on a greater numerical figure, noting the sites constraints and the unique nature of the locality in a varying degree of development types. Given the proposed application is in our opinion minor and consistent with similar approvals granted in the area, Council's assessment should be focused on this numerical allowance as opposed to the variation to the specific standard. By providing flexibility in this regard, the subject proposal is capable of achieving a better development and design outcome which adequately caters for the existing mixed-use development.

The proposal is consistent with the objectives of Clause 4.4, as outlined below:

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

The development proposes alterations and additions to create a functional and modern dwelling, including the change from a carport to a garage which is greater than 36sqm, hence requiring some of the area to be included in GFA. The proposal also includes other minor additions to the ground and first floor which when viewed would not be noticeable or impact the streetscape or public domain. The apparent bulk and scale of the dwelling will be negligibly impacted, from the existing approved dwelling and the new refurbishment works will ensure a positive contribution to the streetscape. Therefore, the proposed minor variation is consistent with the intent of the objectives in that the proposal is consistent with the streetscape character and bulk and scale of the area.

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

The development will result in a built form and massing that is of a consistent scale to the existing dwelling and surrounding properties. The development will not obscure any important landscape or townscape features and will not result in any view loss impacts. It is therefore considered this objective is met, despite the numerical variation.

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

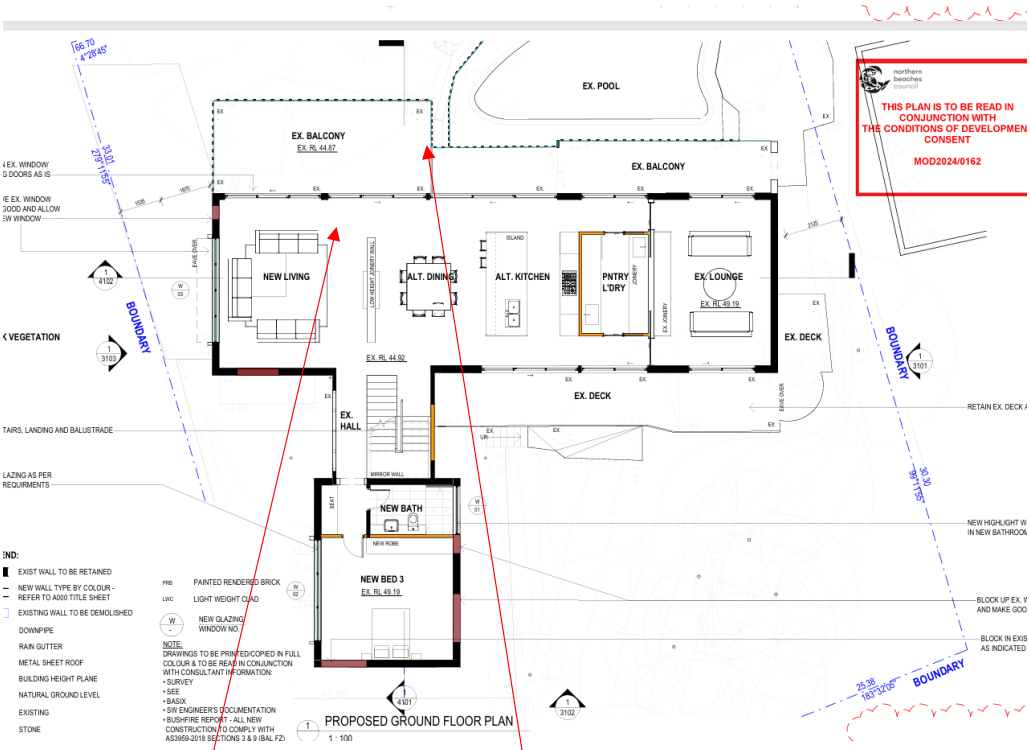
The proposed works are visually appropriate for the locality and propose a built form consistent with the existing dwelling. The landscaped area on the property will remain relatively unchanged, as proposed works are located within the existing building footprint with associated changes to the decking and swimming pool areas. In this regard, the underlying intent of this objective has been satisfied despite the numerical departure

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

The application is accompanied by revised shadow diagrams drawings DA-506 to DA-514 which depict the impact of shadowing on the neighbouring properties, in particular 52 Castle Circuit. The shadow diagrams demonstrate that the proposed development, particularly the non-compliant building height elements, will not unreasonably overshadow adjoining neighbours living room windows and private open space areas with compliant levels of solar access maintained between 9am and 3pm on 21st June.

The property at 52 Castle Circuit, is currently under construction through the approval granted under DA2022/1953 (as modified). The assessment of impact has therefore been taken on the approved areas of the site for private open space and living areas. It is our professional opinion, as per the elevation shadow diagrams that the proposal will retain adequate sunlight, as per the

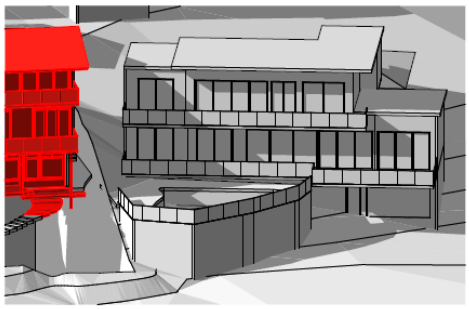
requirements of MDCP Clause 3.4.1. Relevant excerpts are provided below, showing the approved areas for 52 Castle Circuit and the proposed shadow diagrams existing vs proposed:



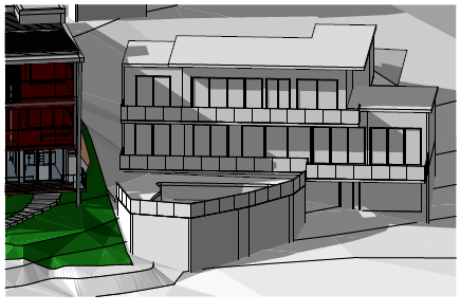
Excerpt of Mod2024/0162 approved 14 June 2024 – 52 Castle Circuit, Seaforth

Proposed living area Existing and proposed outdoor private open space

Excerpts of the shadow diagrams existing vs proposed prepared by Camilla Paz:



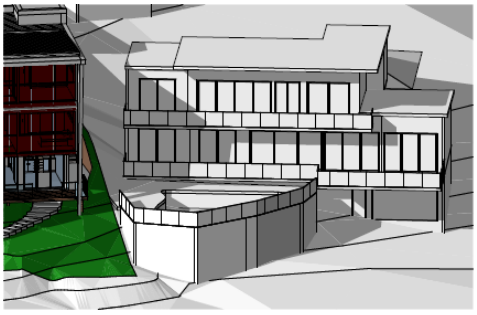
Existing Elevational Shadow - 21June 12pm



Elevational Shadow - 21June 12pm



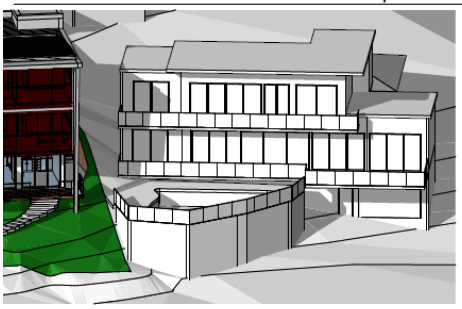
Existing Elevational Shadow - 21June 1pm



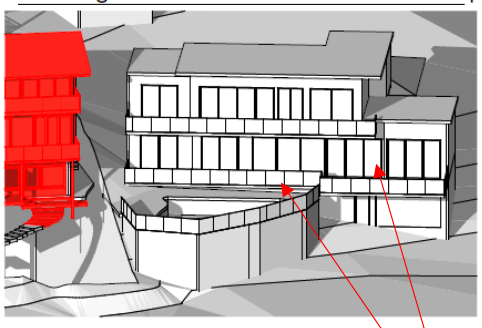
Elevational Shadow - 21June 1pm



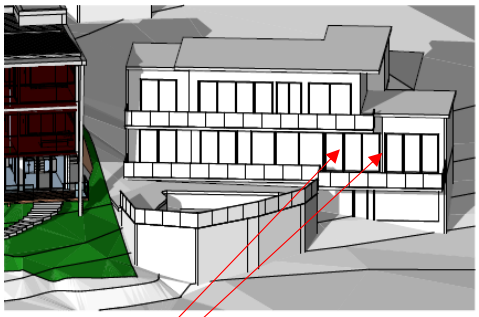
Existing Elevational Shadow - 21June 2pm



Elevational Shadow - 21June 2pm



Existing Elevational Shadow - 21June 3pm



Elevational Shadow - 21June 3pm

Private open space and living area

Based on the additional shadow diagrams provided, it is our assessment that control 3.4.1 Sunlight Access and Overshadowing of MDCP is met, in particular controls 3.4.1.1. and 3.4.1.2 of MDCP are complied with by maintaining adequate sunlight access to private open spaces and living areas of adjacent dwellings therefore warranting a variation to Clause 4.4 Floor Space Ratio under MLEP2013.

The proposal will have minimal environmental impacts on the use or enjoyment of adjoining land and the public domain, and can therefore be supported, as submitted.

(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.

Not applicable – the site is located within a residential zone.

It is our professional opinion that the building by virtue of its height, bulk and scale, is consistent with the locality and desired character of the area. We have formed the considered opinion that the project is a sympathetic design and development with a bulk and scale consistent with the existing and future character of the area. The proposal is not offensive, or unsympathetic in a streetscape context nor the context from Castle Circuit.

As outlined above, the proposed development is consistent with the underlying objectives of the FSR standard, notwithstanding the proposed variation, and therefore compliance with the control is unreasonable and unnecessary and therefore the variation can be supported by Northern Beaches Council.

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

There are sufficient environmental planning grounds to justify contravening the development standard. Whilst there is no requirement that the development comply with the objectives set out in clause 4.6(1) it is relevant to note that objective (b) provides:

*"to achieve better outcomes **for and from** development by allowing flexibility in particular circumstances."*

It should be noted at the outset that in *Initial Action* the Court held that it is incorrect to hold that the lack of adverse impact on adjoining properties is not a sufficient ground justifying the development contravening the development standard when one way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse impacts.

There is an absence of environmental harm arising from the contravention and positive planning benefits arising from the proposed development as outlined in detail above. From a planning perspective, there is sufficient grounds to justify the variation to the FSR development standard for the following reasons:

Context

- The area surrounding the subject site is characterised by 2 and 3 storey residential dwellings, stepped to accommodate the steeply sloping topography.
- The proposed dwelling has been designed to remain consistent with the character of the locality, despite the variation to FSR, through design, architectural features and complimentary materials and colour choices.

- The proposal has been designed as alterations and additions with the main addition relating to the carport being removed for a garage which increases GFA.
- Variation to the Manly LEP 2013 Cl. 4.4 FSR, control has been the subject of recent precedent for the following developments:
  - DA2023/1441 – 58 Castle Circuit, Seaforth – 0.63:1 – 57% variation
- The setting and context with similar FSR variations recently approved, demonstrates that a varied FSR is reasonable and that it is consistent with clause 1.3(c) and (d).

Future Development

- The proposed alterations and additions will allow for the provision of a modern floor plan, with refurbished and improved internal spaces. The proposal also allows for a secure garage space (currently a carport).
- This represents an efficient use of an existing developed site, with all services readily available.
- The built form proposed is relatively consistent with the existing dwelling and other buildings in the locality,
- The minor increase to the floor area of 15.42m2 is considered reasonable as it is located within the existing building footprint or within balcony/terrace areas and does not result in any unreasonable impacts to neighbouring properties.
- The proposed works will not hinder any future development of the lot,
- The alterations proposed demonstrate fulfillment of clause 1.3(a), (b), (c) and (g).

Consistent with Zone Objectives

- The extent of the variation is considered to be in the public interest, as the proposal remains consistent with the objectives of the zone, allowing for additional residential floor space in a residential zone, with a bulk and scale consistent with the existing dwelling and the locality. Compliance with the FSR standard based on this would be unreasonable, with clause 1.3(c) demonstrated as fulfilled.

Natural Environment

- The proposed development allows for the current and future housing needs of the residents to be met, without developing a greenfield site, representing an efficient use of existing developed land,
- The natural environment is unaffected by the departure to the development standard and it would be unreasonable for the development to be refused on this basis with Cl 1.3(b) satisfied.

Social and Economic Welfare

- The variation to the FSR will have a positive social impact, as it will allow the housing needs of the residents to be met in their current local community, including the ability to work from home in the dedicated home offices. It utilises existing services, satisfying Cl1.3(b). Accordingly, refusal of the development based on this reason would be unreasonable

Appropriate Environmental Planning Outcome

- The development proposed is not an overdevelopment of the site and satisfies the objectives of the zone and the development standard as is detailed earlier in the report

Having regard to Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, and further to the proposal's consistency with the above strategic and statutory environmental planning

provisions, the proposal is consistent with the following objectives under Section 1.3 of the Environmental Planning and Assessment Act 1979 (the Act):

- *(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 above environmental planning grounds are not general propositions, they are unique circumstances to the proposed development. These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the floor space ratio.

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

Based on the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed floor space ratio non-compliance in this instance.

Summary

In summary, the proposal satisfies all of the requirements of clause 4.6 of MLEP 2013 and exception to the development standard is reasonable and appropriate in the circumstances of the case.

Four Towns Planning

Planning and property consultant

WRITTEN REQUEST PURSUANT TO CLAUSE 4.6 OF MANLY LOCAL ENVIRONMENTAL PLAN 2013

VARIATION OF A DEVELOPMENT STANDARD REGARDING HEIGHT OF BUILDINGS AS DETAILED IN CLAUSE 4.3 OF MANLY LOCAL ENVIRONMENTAL PLAN 2013

Review of Determination eDA0180/23 - Construction of New Dwelling House, Detached Carport and Associated Works

50 Castle Circuit, Seaforth NSW 2092

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www.fourtowns.com.au
PO Box 361, Balgowlah NSW 2093

This report has been prepared to support a Development Application under the *Environmental Planning and Assessment Act 1979*.

Report prepared by:
Mathew Quattroville
Director – Four Towns Pty Ltd

Report prepared for:
Ben and Laura Fitzsimmons

5 February 2025

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Introduction

This written request under Clause 4.3 of the Manly Local Environmental Plan 2013 (**MLEP 2013)** accompanies a Development Application seeking consent for alterations and additions to the existing dwelling house, swimming pool and associated works at 50 Castle Circuit, Seaforth, being Lot 11 within Deposited Plan 200638.

The written request is made pursuant to Clause 4.6 MLEP 2013 and requests a variation to height of buildings as detailed under Clause 4.3 of Manly Local Environmental Plan 2013.

Clause 4.3 of MLEP 2013 notes:

> *(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

The site has a maximum building height provision of 8.5m. The proposal will result in a maximum height of 10.9m. It is noted that the breach is the result of the sloping nature of the site, the existing building height and building footprint, which results in existing man-made changes.

The proposed works are reasonable within the context of the site and surrounding development and will not result in excessive bulk and scale. It is submitted that there is more than enough justification and precedence within the area to support the breach.

The following assessment of the variation to Clause 4.3 – Building Height development standard, has taken into consideration the recent judgement contained within Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582, 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.

In this regard, it is requested Council support a variation with respect to compliance with the maximum height of buildings as described in Clause 4.3 of the MLEP 2013. The nature and extent of the contravention is as follows:

Requirement	8.5m
Proposed	10.9m
Is the planning control in question a development standard?	Yes
Is the non-compliance with to the clause requirement a numerical/or performance based variation?	Numerical
If numerical enter a % variation to requirement	28.24%

Manly Local Environmental Plan 2013

2.1 Clause 2.2 and the Land Use Table

Clause 2.2 and the Land Zoning Map provide that the subject site is zoned R2 – Low Density Residential (the R2 zone) and the Land Use Table in Part 2 of MLEP 2013 specifies the following objectives for the R2 zone:

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

Comment: The proposed development is for alterations and additions to an existing dwelling which enhances the functionality of the dwelling. The proposal will ensure a high-quality dwelling which contributes to the ongoing provision of housing in the Seaforth area.

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

Comment: Not applicable – the proposal is for a permissible residential land use on the site.

2.3 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) MLEP 2013 provides:

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

The latest authority in relation to the operation of clause 4.6 is the decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 ("*Initial Action*"). *Initial Action* involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

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

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

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

Clause 4.6(2) of MLEP 2013 provides:

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

Clause 4.3 is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of the MLEP 2013.

Clause 4.6(3) Of MLEP provides:

(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.

The proposed development does not comply with the prescribed height of buildings for residential accommodation in the Zone R2, as prescribed under Clause 4.3 of the MLEP 2013, however strict compliance is unreasonable or unnecessary in the circumstances of this case and there are sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

3. Relevant Caselaw

The grounds of objection are based upon the various tests of the recent judgements in the *NSW Land and Environment Court Case Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582, Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827, Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61, and RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

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

1. Is Clause 4.3 of MLEP 2013 a development standard?

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

4. Request for Variation

4.1 Is Clause 4.3 of MLEP 2013 a development standard?

(a) The definition of "development standard" in 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"

(b) Clause 4.3 relates to the height of building. Accordingly, Clause 4.3 is a development standard.

4.2 Is compliance with Clause 4.3 unreasonable or unnecessary?

This request relies upon the First method identified by Preston CJ in *Wehbe*. The first way in *Wehbe* is to establish that the objectives of the standard are achieved.

In determining a merit-based assessment of the landscaped area for the proposed development, due consideration has been given to the above objectives and the planning principles set by the Land and Environment Court of NSW, Planning Principle – floor space ratio (Salanitro-Chafei V Ashfield Council (2005) NSWLEC 366) and Project Venture Developments v Pittwater Council (2005) NSW LEC 91).

It is acknowledged that the purpose of Clause 4.6 is to provide an appropriate degree of flexibility in applying certain development standards. In this regard, site topography should be considered when assessing the proposed height of buildings for the site. Given the proposed application is relatively minor and consistent with the built form character of the area, Council's assessment should be focused on this numerical allowance as opposed to the variation to the specific standard.

By providing flexibility the subject proposal is capable of achieving a better development and design outcome which adequately caters for enhanced housing options for the residential needs within the Northern Beaches LGA, in particular the Fairlight precinct.

The First Method

The proposal is consistent with the objectives of Clause 4.3.

4.3 Height of buildings

(1) The objectives of this clause 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.

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

Comment: It is acknowledged that the proposed development does not comply with clause 4.3 (2) and accordingly there is a requirement to submit a Clause 4.6 Variation. This Clause 4.6 seeks an exemption to the development standard as prescribed under the MLEP2013 and demonstrates that compliance with the provisions of clause 4.3 (2) is both unreasonable and unnecessary and the proposed development meets the required steps that are set out in the relevant NSW Land and Environment Court decisions to justify that the standard can be varied to achieve the subject proposal.

The development standard in Clause 4.3 (2) of the MLEP2013, is amendable to variation. The purpose of this Clause 4.6 is to vary the Height of Building as a building height referrable to the building to give Council the power to grant development consent to the non-compliant purposes. This proposition is reinforced by the following:

Clause 4.3 (2) states:

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

The Height of Building Map sets a maximum Height of Building control of 8.5m. For the purpose of calculating Height of Building, the MLEP2013 provides the following definition:

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

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

The Height of Building in clause 4.3(2) of the MLEP2013 is a development standard in accordance with the definition set out below:

Development standards' is defined in section 1.4 of the EP&A Act 1979 as:

development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which **requirements are specified or standards are fixed** in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:
(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,

Despite the variation to the Height of Building control which occurs as a result of the topography of the land, the proposed development is considered to be in keeping with the desired future character of the locality. The proposal has been strategically designed to minimise the impact and bulk and scale of the project. The project designer has worked tirelessly to design through alterations and additions a modern high-end development that meet the sites constraints and the existing bulk and scale of the area; therefore, the proposal will not result in any unreasonable visual impact on the Castle Circuit streetscape.

The proposed development will not result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing. Therefore, this written submission is considered to be compliant with the Statutory Provisions prescribed both under MLEP2013 and the provisions of Clause 4.6 which permit a variation to a development standard. It is noted it is consistent with the approval granted through the case *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582 is that the distorted height plane creates reasonable environmental planning ground that justifies the contravention of the height standard.

In determining the building heights of the development, it is important to understand the definitions of building height and ground level (existing) and also relevant case law from the NSW Land and Environmental Court.

The court now considers the definition of "ground level (existing)" *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582, which insists that the ground level (existing) is measured from the **excavated** ground level (within the footprint of the existing building) to the highest point of the proposal directly above. It is noted that the Court accepted (at [74]) that there is an 'environmental planning ground' that may justify the contravention of the height standard under 'clause 4.6' when the prior excavation of the site (within the footprint of the existing building) distorts the maximum building height plane. This falls hand in hand with the original leading cases *Bettar v Council of the City of Sydney [2014] NSWLEC 1070* and *Stamford Property Services Pty Ltd v City of Sydney & Anor [2015] NSWLEC 1189*.

It is noted that common-sense should prevail from the new court case "Merman Investments Pty Ltd" with the fact that many height planes are now going to be distorted creating an argument which goes hand in hand with the original court cases relating to the extrapolated levels of a site through 'Bettar'.

As a result of the above, it is determined that the maximum building above ground level (existing) is 10.9m for the proposed development. This results in a 2.4m variation or 28.24%. The Development Application is supported by a Clause 4.6 Variation to Development Standard report. It is noted that the building height flows from 6.9m at the front of the site to the maximum 10.9m which is consistent with the topography of the southern side of Castle Circuit. It is noted that the breach is the result of the sloping nature of the site, several existing man-made level changes which distort the existing ground level and the existing man-made changes. If the natural ground level was applied, the proposed variation would be consistent with other approvals granted in the area. Regardless, the natural topography of the site and the existing building (which is already non-compliant) makes compliance with the building height impractical, and therefore unreasonable for Council to enforce. The bulk and scale and two to three storey appearance of the southern side of Castle Circuit is also retained. The proposal is supported and in our opinion is consistent with the objectives of the Clause, as outlined 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,

This objective relates to streetscape character and in this regard the proposed dwelling has been designed to be consistent with the three-storey bulk and scale of Castle Circuit. The height, bulk, scale of the development, as reflected by floor space, are entirely consistent with the built form characteristics established by the enclave of surrounding development in this precinct noting the topography of the southern side of Castle Circuit. It is our considered opinion that the proposal is consistent with the intent and approvals granted in the area, therefore confirming that the proposal is consistent with the prevailing building height, roof forms and the future streetscape of the locality. This is proven with the approval granted at 58 Castle Circuit directly to the west of the site, which was approved with a 27% variation to the building height.

The variation is due to the existing bulk and scale of the dwelling which is already over the building height as a result of the natural topography and existing man-made changes which hinders the development when assessed with the ground level (existing) definition. If the merits of the 'Bettar' Court Case are utilised, the natural ground level enables a variation with that consistent with other developments. The proposal is consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191, in that I have formed the considered opinion that most observers would not find the proposed development by virtue of its roof form and building height, and in particular the 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 sites visual catchment. The proposal is consistent with this objective notwithstanding the variation to the building height.

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

The proposal has been strategically designed to minimise the impact and bulk and scale of the project. The project designers have worked tirelessly to design a modern dwelling through alterations and additions that meet the sites constraints and the existing bulk and scale of the area. The proposal has been designed to be compatible with the existing streetscape (noting the existing three-storey bulk and scale along the southern side of Castle Circuit) while accommodating a bulk and scale that is complementary to the natural environment. The first floor has been designed with varying and large side setbacks which reduces the bulk and scale and accommodates a dwelling that blends in with the streetscape. As assessed within objective (a) the proposal is consistent with the streetscape of Castle Circuit, which therefore dictates the bulk and scale for the locality.

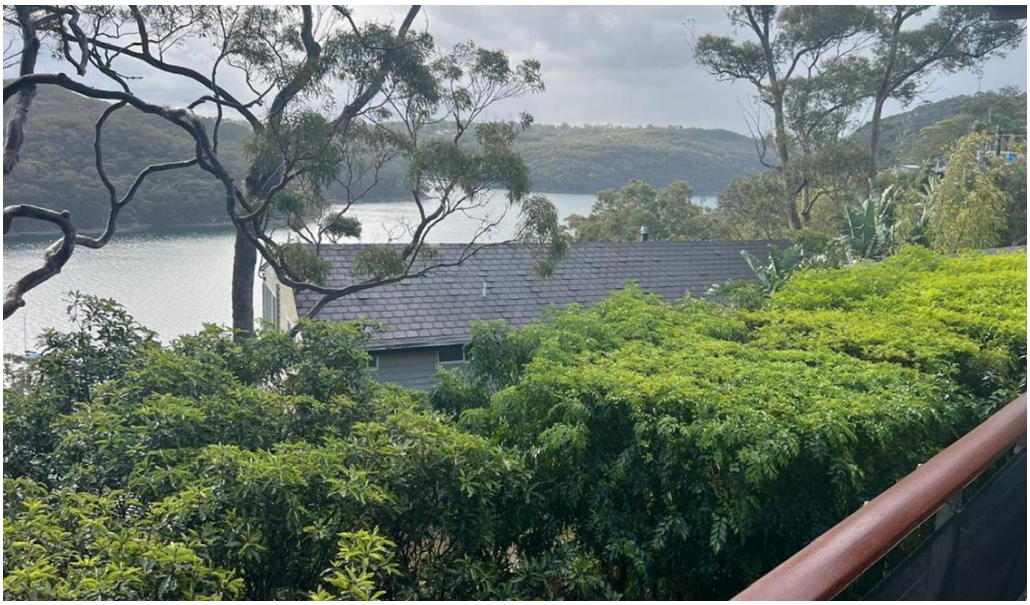
(c) to minimise disruption to the following—

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

Having inspected the site and its surrounds I am of the opinion that the building form and height of the proposed development, in particular that associated with the building height breaching elements, has been appropriately located within the site to minimise disruption of views to nearby residential development and from surrounding public spaces. The proposal is consistent with this objective notwithstanding the proposed variation to the building height.

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

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 as they relate to an assessment of view impacts, I am satisfied that the proposed building height variation will not give rise to any unacceptable public or private view affectation. Whilst the proposal seeks a variation to the building height standard, view impacts have been minimised and a view sharing outcome achieved. This is supported through the view perspectives provided on the following page:



Existing View Perspective from 48 Castle Circuit, Seaforth



Proposed View Perspective from 48 Castle Circuit, Seaforth

The proposal is consistent with this objective notwithstanding the proposed building height variation.

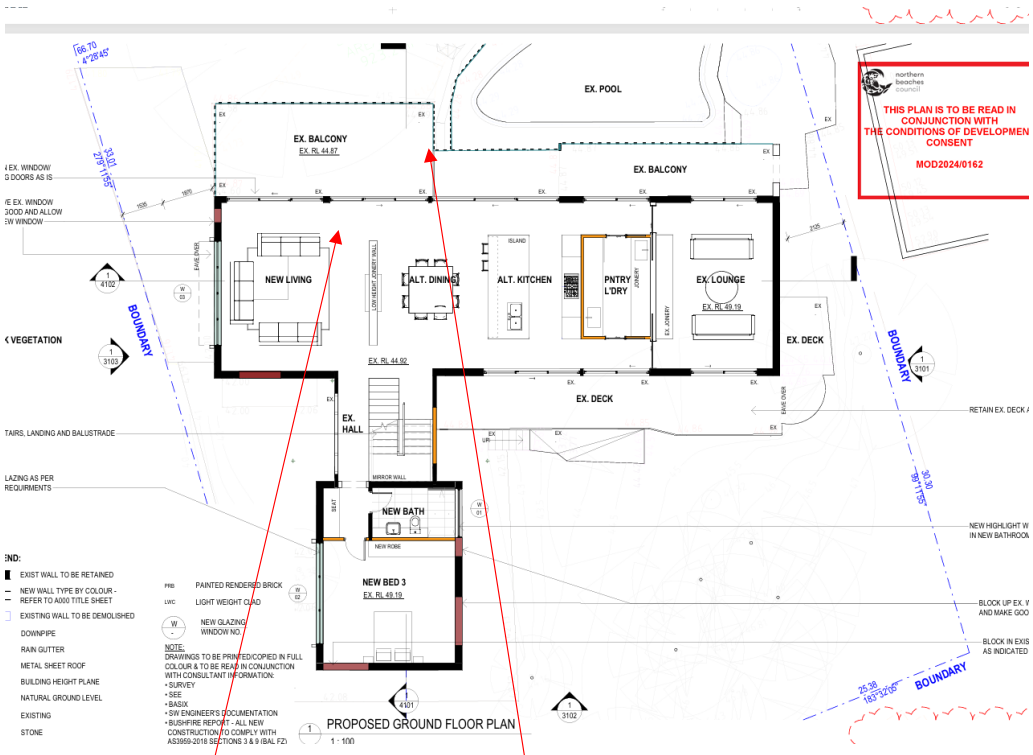
(iii) views between public spaces (including the harbour and foreshores),

The building form and height has been appropriately distributed across the site such that the proposed variation to the building height will have no impact on views between public spaces. The proposal is consistent with this objective notwithstanding the proposed variation to the building height.

(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,

The application is accompanied by revised shadow diagrams drawings DA-506 to DA-514 which depict the impact of shadowing on the neighbouring properties, in particular 52 Castle Circuit. The shadow diagrams demonstrate that the proposed development, particularly the non-compliant building height elements, will not unreasonably overshadow adjoining neighbours living room windows and private open space areas with compliant levels of solar access maintained between 9am and 3pm on 21st June.

The property at 52 Castle Circuit, is currently under construction through the approval granted under DA2022/1953 (as modified). The assessment of impact has therefore been taken on the approved areas of the site for private open space and living areas. It is our professional opinion, as per the elevation shadow diagrams that the proposal will retain adequate sunlight, as per the requirements of MDCP Clause 3.4.1. Relevant excerpts are provided below, showing the approved areas for 52 Castle Circuit and the proposed shadow diagrams existing vs proposed:

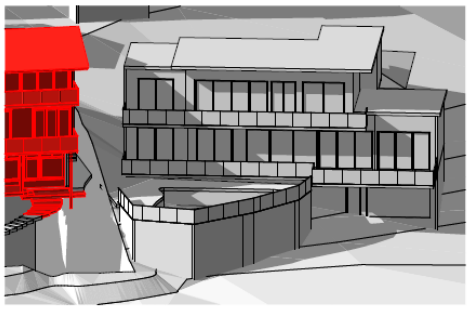


Excerpt of Mod2024/0162 approved 14 June 2024 – 52 Castle Circuit, Seaforth

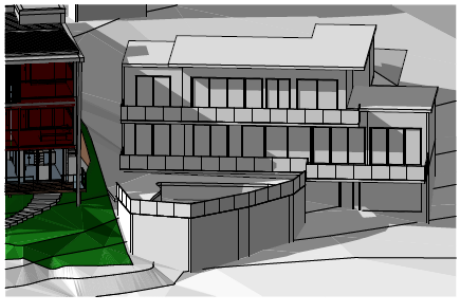
Proposed living area

Existing and proposed outdoor private open space

Excerpts of the shadow diagrams existing vs proposed prepared by Camilla Paz:



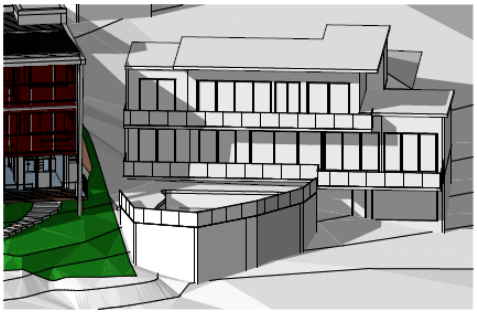
Existing Elevational Shadow - 21June 12pm



Elevational Shadow - 21June 12pm



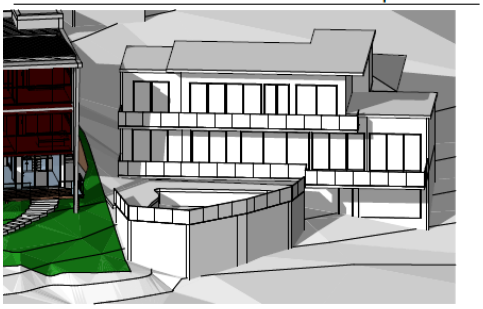
Existing Elevational Shadow - 21June 1pm



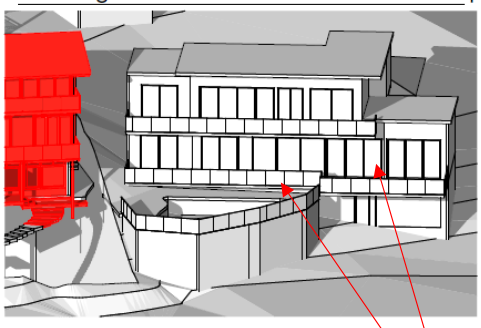
Elevational Shadow - 21June 1pm



Existing Elevational Shadow - 21June 2pm



Elevational Shadow - 21June 2pm



Existing Elevational Shadow - 21June 3pm



Elevational Shadow - 21June 3pm

Private open space and living area

Based on the additional shadow diagrams provided, it is our assessment that control 3.4.1 Sunlight Access and Overshadowing of MDCP is met, in particular controls 3.4.1.1. and 3.4.1.2 of MDCP are complied with by maintaining adequate sunlight access to private open spaces and living areas of adjacent dwellings therefore warranting a variation to Clause 4.3 Height of Building under MLEP2013.

The proposal is consistent with this objective notwithstanding the building height breaching elements proposed.

(e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.
Not applicable – the site is not located within a recreation or environmental protection zone.

It is our professional opinion that the building by virtue of its height, bulk and scale, is consistent with the locality and desired character of the area. We have formed the considered opinion that the project is a sympathetic design and development with a bulk and scale consistent with the existing and future character of the area. It The proposal is not offensive, or unsympathetic in a streetscape context nor the context from Castle Circuit, and therefore the variation can be supported by Northern Beaches Council.

For the reasons outlined within this written request, the proposal will achieve the objectives of Clause 4.3 and accordingly, are of the view that the proposal is consistent with the objectives of the development standard.

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

There are sufficient environmental planning grounds to justify contravening the development standard. Whilst there is no requirement that the development comply with the objectives set out in clause 4.6(1) it is relevant to note that objective (b) provides:

*"to achieve better outcomes **for and from** development by allowing flexibility in particular circumstances."*

It should be noted at the outset that in *Initial Action* the Court held that it is incorrect to hold that the lack of adverse impact on adjoining properties is not a sufficient ground justifying the development contravening the development standard when one way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse impacts.

There is an absence of environmental harm arising from the contravention and positive planning benefits arising from the proposed development as outlined in detail above. From a planning perspective, there is sufficient grounds to justify the variation to the height of buildings development standard for the following reasons:

1. Historical excavation and site disturbance
2. Topography of the site
3. Characterisation of the development
4. Streetscape Appearance
5. Existing Building Height of the Dwelling

- The sites topography and existing man-made excavation distorts the height plane for the site. If the natural ground level was taken, the proposal would substantially comply with the building height control.
- The proposed development responds to the existing and desired future character of the locality. Furthermore, the subject proposed dwelling through alterations and additions retains the building footprint and in majority the height existing on the site. It's our opinion that the proposal will integrate into the existing streetscape and pattern of development within Castle Circuit, noting the site is substantially lower than 48 Castle Circuit to the east.
- The development does not result in any unnecessary or undue bulk or visual impacts on adjoining properties and is of a scale that is compatible with the existing and surrounding buildings. The streetscape analysis completed within the Statement of Environmental Effects notes numerous recent approvals with a variation to the building height and the immediate properties are all three storey's in height.
- The amenity impacts to neighbouring residential properties, arising from the non-compliant building height, is negligible. Adjoining properties will continue to receive suitable solar access, privacy impacts are suitably minimised, and views are reasonably maintained.
- The building height breach is minor (when assessed from the natural ground level) and would relate to only a small portion of the proposed development only, which will largely be indiscernible when viewed from Castle Circuit.
- The proposal is consistent with the stance Council has taken on developments along Castle Circuit and surrounding streets noting numerous approvals granted for variations to the building height control. Most notably Council recently approved a variation to the building height for premises 58 Castle Circuit.

Having regard to Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, and further to the proposal's consistency with the above strategic and statutory environmental planning provisions, the proposal is consistent with the following objectives under Section 1.3 of the Environmental Planning and Assessment Act 1979 (the Act):

> *(c) to promote the orderly and economic use and development of land; and*
> *(g) to promote good design and amenity of the built environment,*

1. In response to (c), the proposal will facilitate the orderly and economic use and development of the land in a manner that is desired by the planning controls because it will facilitate the renovated dwelling consistent with approvals in the immediate area. In considering the contrary (refusal of the DA), retention of the building in its current form would not promote the orderly and economic use and development of land in the manner that council's strategic and statutory planning provisions seek. Retention of the building in its current form makes no advancement towards achieving the goal of creating functional development opportunities.

2. In response to (g) the proposal has been designed to promote good design and amenity of the built environment, with a consistent built form retained for Castle Circuit as per recent approvals.

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

Based on the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed height of buildings non-compliance in this instance.

5 Conclusion

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

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

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

ITEM 3.6 DA2024/1639 - 39 BOWER STREET MANLY - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL

PURPOSE

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

RECOMMENDATION

A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 and Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

B. THAT Council as the consent authority **approves** Development Consent to DA2024/1639 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 55 DP 8075, 39 Bower Street MANLY, subject to the conditions set out in the Assessment Report.

Reporting manager	Rodney Piggott
TRIM file ref	2025/107187
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:	DA2024/1639

Responsible Officer:	Jordan Howard
Land to be developed (Address):	Lot 55 DP 8075, 39 Bower Street MANLY NSW 2095
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	David Rowan Thompson

Application Lodged:	13/12/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	13/01/2025 to 27/01/2025
Advertised:	Not Advertised
Submissions Received:	4
Clause 4.6 Variation:	4.3 Height of buildings: 17.1% 4.4 Floor space ratio: 7.7%
Recommendation:	Approval

Estimated Cost of Works:	$ 396,000.00

EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to a dwelling house including a swimming pool.

The application is referred to the Development Determination Panel (DDP) due to a variation greater than 10% to the building height development standard of the Manly Local Environment Plan 2013. There is also a proposed variation of the floor space ratio (FSR) development standard of the Manly Local Environment Plan 2013, however this variation is less than 10%.

Concerns raised in the objections predominantly relate to acoustic and visual privacy impacts, non-compliance with development standards and perceived bulk and scale.

Critical assessment issues included assessment of the proposed variations to height of building and FSR development standards, as well as variations to the following Manly Development Control Plan built from controls:

- Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
- Clause 4.1.4 Setbacks (front, side and rear) and Building Separation
- Clause 4.1.5 Open Space and Landscaping
- Clause 4.1.9 Swimming Pools, Spas and Water Features

The 4.6 request for the non-compliance with the building height standard arises from the proposed construction of alterations and additions at Level 3 of the existing dwelling house, which as existing is partially above the 8.5m height standard. Proposed additions to this level will exhibit a building height of 9.95m, representing a 17.1% variation to the standard. It is noted that the breach partially results from existing excavation of the site. The proposed development does not increase the overall ridge height or add additional levels to the existing building. This area of Manly is characterised by large three and four storey dwelling houses and the dwelling house will remain of a size and scale that will not be out of character within this environment.

The 4.6 request for the non-compliance with the FSR standard arises from a 18.1sqm increase in floorspace. The existing building has an existing FSR of 0.46 (323.7sqm), which is already in excess of the FSR development standard of 0.45:1 (317.43sqm). The proposed development would increase this to 0.48:1 (341.8sqm), representing a 7.7% (24.37sqm) variation to the standard. The proposed additional floorspace is all located within the footprint of the existing dwelling. Design choices, such as the relocation of the lift shaft further within the building, have attempted to minimise additional GFA, whilst achieving the goals of the proposed works, including providing lift access to the uppermost Level 3. The additional GFA is considered to be minor and will only negligibly impact the perceived overall bulk and scale as compared to the existing dwelling house. It is also noted that this area of Manly is characterised by large three and four storey dwelling houses, many with recently approved FSR variations. The proposed development will not be out of character within this environment.

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

PROPOSED DEVELOPMENT IN DETAIL

This Development Application seeks development consent for alterations and additions to a dwelling house including a swimming pool. Specifically, the following is proposed:

Ground Floor Plan – Alterations and Additions

- Proposed new lift location within building footprint
- Existing lift to be removed with shaft retained as void area

Level 1 Plan – Alterations and Additions

- Proposed new lift location
- Existing wall to be demolished to accommodate new lift
- New bathroom configuration and window to be reduced
- Existing lift shaft to be retained as void area
- Close of existing door to cabana area

- Addition of swimming pool and equipment (as per approved CDC plans – pool was not constructed)

Level 2 Plan – Alterations

- New french doors to replace existing windows to rear bedrooms
- New window to bathroom
- Existing window to be enlarged
- New layout, internal walls to be demolished shown dashed in red
- Proposed new stairs to level 3
- Portion of slab to be removed for a void
- Existing lift shaft to be close off as a void area
- New lift location

Level 3 Plan – Alterations and Additions

- Existing stairs from Level 2 to be removed
- Existing roof to be removed
- Proposed new lift
- Proposed new stairs
- Replace existing windows with doors to access new elevated deck
- New elevated deck with planter – existing roofing to be retained under deck

Roof Plan

- New skylight
- New raised metal roof, finished to match existing height
- New roof to new lift and stair area

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 Development Control Plan - 3.4.2 Privacy and Security
Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
Manly Development Control Plan - 4.1.5 Open Space and Landscaping
Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features

SITE DESCRIPTION

Property Description:	Lot 55 DP 8075 , 39 Bower Street MANLY NSW 2095
Detailed Site Description:	The subject site consists of one (1) allotment located on the western side of Bower Street. The site is irregular in shape with a frontage of 13.710m along Bower Street and a maximum depth along the southern side boundary of 41.505m. The site has a secondary frontage at the rear of 24.375m to a pedestrianised section of Montpelier Place. The site has a surveyed area of 705.4sqm. The site is located within the R2 Low Density Residential zone and accommodates a dwelling house. The site slopes from the secondary frontage (west) down to the primary frontage (east), with a fall across the site of approximately 8m. The site contains lawn areas, garden beds, trees and vegetation. The site is located within declared habitat for the endangered population of Long-nosed Bandicoots at North Head. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by low residential development, primarily 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:

Complying Development Certificate No. 109/2025 for "Demolition Of Existing Dwelling" was issued by Certified Building Specialists on 3 July 2015.

Complying Development Certificate No. 138/2015 for "Construction Of A Two Storey Dwelling With Attached Garage And Pool" was issued by Certified Building Specialists on 7 August 2015.

Complying Development Certificate No. 23/2016 for "Construction Of A Two Storey Dwelling With Attached Garage And Pool" was issued by Certified Building Specialists on 11 January 2016.

Complying Development Certificate No. 51/2016 for "Construction Of A Two Storey Dwelling With Attached Garage And Pool" was issued by Certified Building Specialists on 1 April 2016.

Complying Development Certificate No. 77/2016 for "Construction Of A Two Storey Dwelling With Attached Garage And Pool" was issued by Certified Building Specialists on 3 August 2016.

Development Application No. 186/2016 for "Alterations and additions to the existing dwelling including internal alterations" was approved by Council on 10 August 2016.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration	Comments
environmental planning instrument	
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 29 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. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case. 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. Clauses 62 and/or 64 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. 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

Section 4.15 Matters for Consideration	Comments
	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 Planning Services, dated 14 November 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 13/01/2025 to 27/01/2025 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 4 submission/s from:

Name:	Address:
Mr Christopher John Mitchell	1 / 41 Bower Street MANLY NSW 2095
Mr David Norman Miles	2 / 41 Bower Street MANLY NSW 2095
Mr Michael Richard Burns	26 Montpelier Place MANLY NSW 2095
Ms Ryta Anne Burns	26 Montpelier Place MANLY NSW 2095

The following issues were raised in the submissions:

- **Acoustic Privacy / Noise**

  The submissions raised concerns regarding potential noise impacts of the proposed development. Specifically, concern was raised regarding pool / spa filter noise and noise potentially emanating from the use of the proposed Level 3 deck / terrace.

  Comment:
  Regarding pump / filter noise, a standard condition of consent has been included in the recommendations of this report requiring that the swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

  Regarding concerns relating to the generation of noise from the use of outdoor areas, it is noted that there are general regulations in place relating to residential noise. The *Protection of the Environment Operations Act 1997* provides generic regulatory instruments that can be applied to any context where 'offensive noise' is generated, allowing action to be taken by council or police officers. It is generic regulation such as this that would cover instances such as loud usage of outdoor spaces at late night hours, should this occur.

  Subject to recommended conditions of consent and generic noise protection offered by the *Protection of the Environment Operations Act 1997* the proposed development is not expected to create an unreasonable acoustic impact on adjoining properties outside that expected within a low density residential environment.

- **Visual Privacy**

  The submissions raised concerns regarding potential visual privacy impacts of the proposed development. Specifically, concern was raised about the potential for overlooking from the proposed Level 3 deck / terrace to windows and the rear yard of the adjoining property to the north (41 Bower Street). Concern was also raised about the potential of privacy impacts on 26 Montpelier Place, a property located approximately 50m to the south of the subject site.

  Comment:
  Refer to the section of this report on MDCP Clause 3.4.2 Privacy and Security for detailed assessment of potential privacy impacts. In summary, it has been considered appropriate to recommend a condition of consent which requires amendments to the approved plans for the purposes of a privacy screen along the northern elevation of the proposed Level 3 deck / terrace. Subject to this recommended condition of consent, the visual privacy impacts of this proposal are not considered to be unreasonable within a low density residential context.

- **Notification process**

  The submissions raised concerns regarding the notification process. Specifically, a submission from 26 Montpelier Place raised that notification of the proposed development had not been received.

  Comment:
  The application was notified in accordance with the Northern Beaches Community Participation

Plan (NBCCP). This included sending exhibition
letters to adjoining property owners / occupiers and the placement of a notification sign on the main frontage of the development site, in addition to online display and electronic alerts sent to any person or group that has registered to receive information on the exhibition of development applications. The notification period extended from 13 January 2025 to 27 January 2025, in accordance with the mandatory minimum exhibition timeframe for this type of Development Application as per the NBCPP. Regarding exhibition letters, these are only sent to adjoining properties and properties across a street or road from the subject site. 26 Montpelier Place does not adjoin the subject site and is not opposite any street frontage of the subject site. Overall, the notification was correctly carried out in accordance with the NBCPP.

- **Non-compliance with development standards**

  The submissions raised concerns regarding the proposed exacerbation of non-compliances with building height and floor space ratio development standards.

  Comment:
  The proposed development included a request to vary the height of buildings and floor space ratio development standard established by the MLEP 2013. Council is satisfied that the Applicant's written requests under Clause 4.6 of the Manly Local Environmental Plan 2013, seeking to justify variation of the development standards 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.
  As such, this report concludes with a recommendation that flexibility be applied and that Council vary the development standard. Please refer to the section of this report on MLEP 2013 Clause 4.6 Exceptions to development standards for full assessment of these matters.

- **Bulk and scale**

  The submissions raised concerns regarding perceived bulk and scale of the development.

  Comment:
  Consideration has been given to building bulk and scale throughout this assessment. It is noted that this area of Manly is characterised by large three and four storey dwelling houses. The proposed development will not be out of character within this environment. Furthermore, it is not considered that the proposed alterations and additions will significantly contribute to additional perceived bulk and scale as compared to the existing dwelling house and the existing character of the area.

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	***Supported, subject to conditions.*** The subject site is located within declared habitat for the endangered population of Long-nosed Bandicoots at North Head. As such, a

Internal Referral Body	Comments
	threatened species 'test of significance' is required to be undertaken in accordance with Section 7.3 of NSW Biodiversity Conservation Act 2016. This assessment has been undertaken and concludes that the proposal will not result in a significant impact to the endangered population, given that proposed works are largely within the existing development footprint.
NECC (Coast and Catchments)	***Supported, subject to conditions.*** The application has been assessed in consideration of the - Coastal Management Act 2016 - State Environmental Planning Policy (Resilience & Hazards) 2021 - Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity & Conservation) 2021 - Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005. - Manly LEP and DCP. Proposed works • Ground Floor Plan – Alterations and Additions - Proposed new lift location within building footprint - Existing lift to be removed with shaft retained as void area Level 1 Plan – Alterations and Additions • Proposed new lift location • Existing wall to be demolished to accommodate new lift • New bathroom configuration and window to be reduced • Existing lift shaft to be retained as void area • Close of existing door to cabana area • Addition of swimming pool and equipment (as per approved CDC plans – note pool was not constructed) Level 2 Plan – Alterations • New French doors to replace existing windows to rear bedrooms • New window to bathroom • Existing window to be enlarged • New layout, internal walls to be demolished shown dashed in red • Proposed new stairs to level 3 • Portion of slab to be removed for a void • Existing lift shaft to be close off as a void area • New lift location Level 3 Plan – Alterations and Additions • Existing stairs from Level 2 to be removed • Existing roof to be removed • Proposed new lift • Proposed new stairs • Replace existing windows with doors to access new elevated deck • New elevated deck with planter – existing roofing to be retained under deck Roof Plan

Internal Referral Body	Comments
	- New skylight - New raised metal roof, finished to match existing height - New roof to new lift and stair area SUPPORTED: WITH CONDITIONS The application has been assessed in consideration of the Coastal Management Act 2016 and State Environmental Planning Policy (Resilience & Hazards) 2021. It has also been assessed against requirements of the Manly LEP and DCP. Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore Coastal Management Act 2016 is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the Coastal Management Act 2016. State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.11 and 2.12 of the CM (R & H) apply for this DA. Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Four Towns Planning dated 26 November 2024 satisfies the requirements under clauses 2.11 and 2.12 of the SEPP R&H. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021. Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity & Conservation) 2021 Foreshores & Waterways Area The subject site is located within the Sydney Harbour Catchment, but not the Foreshores and Waterways Area. Hence Part 6.3 of the Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity & Conservation) 2021 does not apply in assessing this DA. Manly LEP 2013 and Manly DCP

Internal Referral Body	Comments
	No coastal related issues identified. As such, it is considered that the application does comply with the requirements of the coastal relevant clauses of the Manly LEP 2013 and Manly DCP.
Strategic and Place Planning (Heritage Officer)	***Supported, without conditions.*** HERITAGE COMMENTS Discussion of reason for referral This proposal has been referred to Heritage as the site is located within the vicinity of two Heritage Items. **SHR 01724 St Patrick's Estate** - 151 Darley Road Manly **I191 2 Moreton Bay Fig Trees (Ficus Macrophylla)** - Bower Street Manly Details of heritage items affected **St Patrick's Estate SHR 01724** Statement of Significance St Patrick's Estate is a place of outstanding heritage significance to NSW and Australia. The College and the Archbishop's Residence have historical significance as important physical manifestations of Cardinal Moran's concepts and plans for the development of Catholicism in Australasia. The buildings have historical significance also for the associated people involved in the development of the College and Australia's priesthood. The St Patrick's Estate has a significant relationship with the natural environment of North Head. Although isolated from the remainder of North Head by the construction of the sandstone boundary walls and the substantial clearing of the indigenous vegetation on the Estate, the St Patrick's Estate still maintains its historical and visual relationship with North Head. Physical Description St. Patrick's Seminary (1885-9) was designed by Sheerin and Hennessy and built by W.H. Jennings between 1885 and 1889. The stone building is four storeys high with a six level central bell tower and a slate roof. A two storeyed colonnade flanks the central entrance. The building is splendidly sited, of high quality construction in the perpendicular Gothic style and impressive in scale. **2 Moreton Bay Fig Trees I191** Statement of Significance Good example of specimen trees. Shade. Listed for its aesthetic importance. Physical Description

<table>
<tr><th>Internal Referral Body</th><th>Comments</th></tr>
<tr><td></td><td>
Two Moreton Bay Fig Trees (Ficus Macrophylla) planted in Reserve.
<table>
<tr><td colspan="3">Other relevant heritage listings</td></tr>
<tr><td>SEPP (Biodiversity and Conservation) 2021</td><td>No</td><td></td></tr>
<tr><td>Australian Heritage Register</td><td>No</td><td></td></tr>
<tr><td>NSW State Heritage Register</td><td>Yes</td><td>St Patrick's Estate SHR #01724</td></tr>
<tr><td>National Trust of Aust (NSW) Register</td><td>No</td><td></td></tr>
<tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td><td></td></tr>
<tr><td>Other</td><td>No</td><td></td></tr>
</table>
Consideration of Application
The proposal seeks consent for alterations and additions to the existing dwelling including the construction of a new swimming pool and associated landscape works. The proposed works are mostly contained to the internal areas of the dwelling and rear of the property and include changes to the internal layout, replacement of existing windows and a proposed new lift. The two Moreton Bay Fig Trees are located to the east of the site and St Patrick's Estate is located to the south of the site. Due to nature of the proposed works, which are mostly contained to the internal areas of the dwelling and to the rear of the property, the proposal is not considered to impact upon the two heritage items within the vicinity nor impact their significance.

Therefore, Heritage raises no objections to the proposal and requires no conditions.

Consider against the provisions of CL5.10 of MLEP.

Is a Conservation Management Plan (CMP) Required?
Has a CMP been provided?
Is a Heritage Impact Statement required?
Has a Heritage Impact Statement been provided?
</td></tr>
</table>

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

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. A1773656, issued 19 November 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 (Biodiversity and Conservation) 2021

Chapter 6 – Water catchments

The subject property is located within the Sydney Harbour Catchment and Sydney Harbour

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

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

6.6 Water quality and quantity

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

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

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

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

Comment:
The proposal has been reviewed by Council's Coastal Officer and Bushland & Biodiversity Officer, who have raised no objection to the works and their impacts to the adjoining waterway (subject to conditions).

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 by Council's Coastal Officer and Bushland & Biodiversity Officer, who have raised no objection to the works and their impacts to the surrounding natural environment (subject to conditions).

6.8 Flooding

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

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

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

Comment:
The site is not located within a flood prone area.

6.9 Recreation and public access

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

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

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

(a) the development will maintain or improve public access to and from natural waterbodies for recreational purposes, including fishing, swimming and boating, without adverse impact on natural waterbodies, watercourses, wetlands or riparian vegetation,
(b) new or existing points of public access between natural waterbodies and the site of the development will be stable and safe,

(c) if land forming part of the foreshore of a natural waterbody will be made available for public access as a result of the development but is not in public ownership—public access to and use of the land will be safeguarded.

Comment:
The proposed development is wholly located on private land and does not impact upon recreation or public access along the foreshore.

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 by Council's Coastal Officer, Bushland & Biodiversity Officer, who have raised no objection to the works and their impacts to the surrounding natural environment (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.

Division 3 Controls on development in specific areas

6.11 Land within 100m of natural waterbody

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

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

Comment:
The proposed works will meet these requirements.

Part 6.3 Foreshores and Waterways Area

Division 1 Preliminary

6.25 Consent authority

(1) The Minister administering the Ports and Maritime Administration Act 1995 is the consent authority for the following development—
(a) development comprising the subdivision of land owned by TfNSW in or abutting the Foreshores and Waterways Area,
(b) development carried out in the Foreshores and Waterways Area wholly below the mean high water mark,
(c) development carried out in the Foreshores and Waterways Area for one or more of the following purposes, including development carried out wholly or partly inside a local government area—
Above-water boat lifts; Advertisements; Advertising structures; Aids to navigation; Aviation facilities; Boat lifts; Charter and tourism boating facilities; Commercial port facilities; Dredging; Floating boat platforms; Flora and fauna enclosures; Houseboats; Maintenance dredging; Mooring pens; Private landing facilities; Private landing steps; Private marinas; Private swimming enclosures; Public boardwalks; Public water transport facilities; Single moorings; Skids; Slipways

(2) Despite subsection (1), the Minister administering the Environmental Planning and Assessment Act 1979 is the consent authority for the following development carried out in the Foreshores and Waterways Area—
(a) development carried out partly above and partly below the mean high water mark,
(b) development carried out below the mean high water mark for the purposes of one or more of the following—
Boat building and repair facilities; Boat launching ramps; Boat sheds; Marinas; Reclamation works; Swimming pools; Water-based restaurants and entertainment facilities; Waterfront access stairs; Water recreation structures; Wharf or boating facilities that are sea walls
(c) development carried out wholly or partly inside the zoned waterway, including development carried out below the mean high water mark, for the purposes of one or more of the following—
Car parks; Commercial premises; Recreational or club facilities; Residential accommodation; Restaurants or cafes; Retail premises; Tourist facilities
(3) Subsections (1) and (2) do not apply if another environmental planning instrument specifies a different public authority, other than the council, as the consent authority for the development.

Comment:
Clause 6.25(2) provides that the Minister for Planning is the consent authority for development in the Foreshores and Waterways Area, per subclauses (a)-(c) inclusive.

On 21 November 2024, the Department of Planning, Housing and Infrastructure delegated the Minister's consent authority functions back to Council for certain development types and Transport for NSW for other development types. The instrument of delegation specifies that:

- The Minister delegates his consent authority functions to Council for everything under Clause 6.25(2)(a) of the SEPP, except some specified land uses, which are instead to go to Transport for NSW for determination, and
- The Minister delegates his consent authority functions to Council for everything under Clauses 6.25(2)(b) and (c) of the SEPP.

Per the second dot-point above, which refers to Clause 6.25(c), being relevant to this application, Council is the consent authority.

In this instance, Council as the consent authority refers the application to the Northern Beaches Development Determination Panel for determination.

Division 3 Development in Foreshores and Waterways Area

6.28 General

(1) In deciding whether to grant development consent to development in the Foreshores and Waterways Area, the consent authority must consider the following—
(a) whether the development is consistent with the following principles—
(i) Sydney Harbour is a public resource, owned by the public, to be protected for the public good,
(ii) the public good has precedence over the private good,
(iii) the protection of the natural assets of Sydney Harbour has precedence over all other interests,
(b) whether the development will promote the equitable use of the Foreshores and Waterways Area, including use by passive recreation craft,
(c) whether the development will have an adverse impact on the Foreshores and Waterways Area, including on commercial and recreational uses of the Foreshores and Waterways Area,
(d) whether the development promotes water-dependent land uses over other land uses,
(e) whether the development will minimise risk to the development from rising sea levels or changing

flood patterns as a result of climate change,
(f) whether the development will protect or reinstate natural intertidal foreshore areas, natural landforms and native vegetation,
(g) whether the development protects or enhances terrestrial and aquatic species, populations and ecological communities, including by avoiding physical damage to or shading of aquatic vegetation,
(h) whether the development will protect, maintain or rehabilitate watercourses, wetlands, riparian lands, remnant vegetation and ecological connectivity.
(2) Development consent must not be granted to development in the Foreshores and Waterways Area unless the consent authority is satisfied of the following—
(a) having regard to both current and future demand, the character and functions of a working harbour will be retained on foreshore sites,
(b) if the development site adjoins land used for industrial or commercial maritime purposes—the development will be compatible with the use of the adjoining land,
(c) if the development is for or in relation to industrial or commercial maritime purposes—public access that does not interfere with the purposes will be provided and maintained to and along the foreshore,
(d) if the development site is on the foreshore—excessive traffic congestion will be minimised in the zoned waterway and along the foreshore,
(e) the unique visual qualities of the Foreshores and Waterways Area and its islands, foreshores and tributaries will be enhanced, protected or maintained, including views and vistas to and from—
(i) the Foreshores and Waterways Area, and
(ii) public places, landmarks and heritage items.

Comment:
With respect to clause (1), the proposed development is wholly on private land, so is acceptable with respect to the matters above at (a) to (h) inclusive.

With respect to clause (2), the proposed development is wholly on private land, does not impact working elements of the harbour, does not unreasonably impact upon traffic congestion, and is acceptable with respect to the visual quality of the foreshore. The development is satisfactory with respect to the matters above at (a) to (e) inclusive.

6.32 Rocky foreshores and significant seagrasses

(3) Development consent must not be granted to development on land to which this section applies unless the consent authority is satisfied the development—
(a) will preserve and enhance the health and integrity of seagrasses, areas containing seagrasses and ecological communities in rocky foreshore areas, and
(b) will maintain or increase the connectivity of seagrass vegetation and natural landforms, and
(c) will prevent, or will not contribute to, the fragmentation of aquatic ecology, and
(d) will not cause physical damage to aquatic ecology.

Comment:
The proposal has been reviewed by Council's Coastal Officer who raised no objection to the works. The works are satisfactory with respect to the matters above at (a)-(d).

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 2 Coastal Vulnerability Area
2.9 Development on land within the coastal vulnerability area

Development consent must not be granted to development on land that is within the area identified as "coastal vulnerability area" on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and

b) the proposed development:
   i) is not likely to alter coastal processes to the detriment of the natural environment or
   ii) other land, and
   iii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and

c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.

Comment:
There is currently no adopted Coastal Vulnerability Area Map. Nonetheless, the proposed development is for alterations and additions within the footprint of an existing dwelling house and is considered to meet the above requirements.

Division 4 Coastal use area
2.11 Development on land within the coastal use area

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

Comment:
The proposed development is for alterations and additions within the footprint of an existing dwelling house and is considered to meet the above requirements.

Division 5 General

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

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

Comment:
The proposed development is for alterations and additions within the footprint of an existing dwelling house and is considered to meet the above requirements.

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 proposed development is for alterations and additions within the footprint of an existing dwelling house and is considered to meet the above requirements.

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:	8.5m	9.95m	17.1%	**No**

Floor Space Ratio	FSR: 0.45:1 (317.43sqm)	FSR: 0.48:1 (341.8sqm)	7.7% (24.37sqm)	**No**

Compliance Assessment

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

Detailed Assessment

Zone R2 Low Density Residential

The underlying objectives of the R2 Low Density Residential zone:

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

  Comment:
  The proposed development is for alterations and additions to an existing dwelling house, which will allow for the alteration / adaptation of existing low density housing stock to serve the changing housing needs of owners / occupiers within the community.

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

  Comment:
  N/A - the proposed development is for residential purposes within this residential area. Nonetheless, the proposed development will not impede on other such land uses.

Overall, the proposed development complies with the underlying objectives of the R2 Low Density Residential zone.

4.6 Exceptions to development standards

MLEP 2013 Clause 4.3 Height of Buildings

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

Development standard: Clause 4.3 Height of Buildings
Requirement: 8.5m
Proposed: 9.95m
Percentage of variation: 17.1%

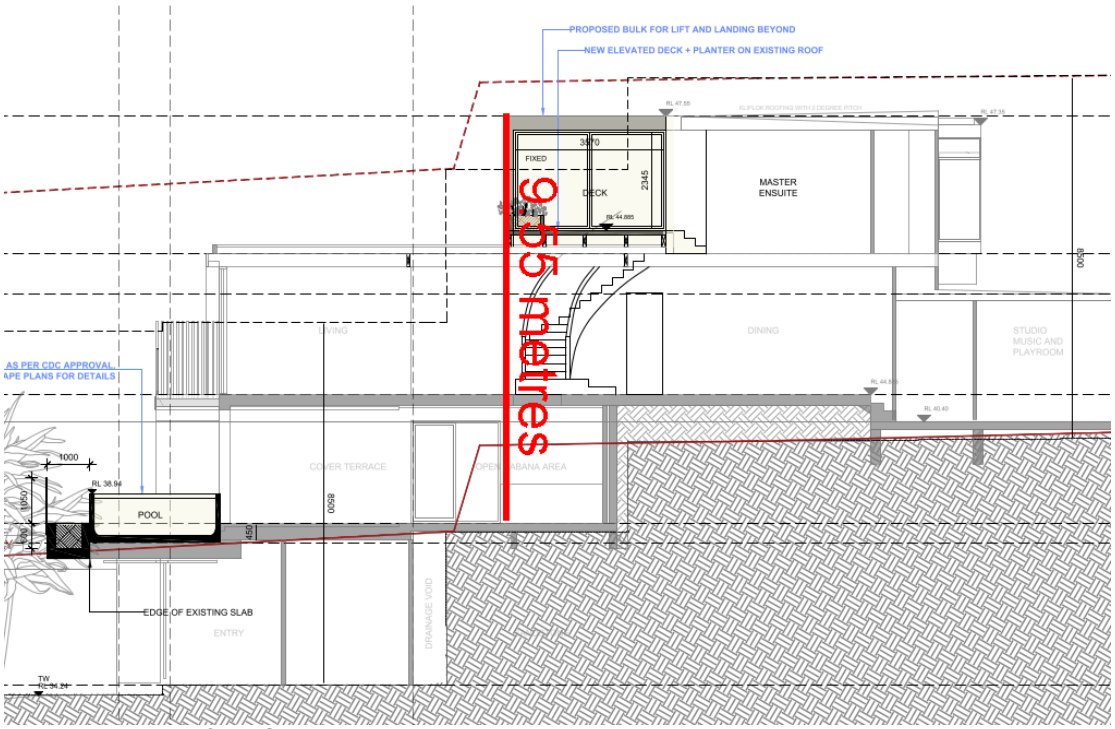


Figure 1 - Extract from Section AA depicting building height.

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

Subclause (1) of this clause provides that:

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

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

Subclause (2) of this clause provides that:

(2) Development consent may, subject to this clause, be granted for development even though the

development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Comment:
Clause 4.3 Height of Buildings is not expressly excluded from the operation of this clause.

Subclause (3) of this clause provides that:

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

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

Comment:
Council is satisfied that the Applicant has demonstrated that compliance with Clause 4.3 Height of Buildings is unreasonable or unnecessary in the circumstances of this application for the following reasons:

The Applicant's written request seeks 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. This is the first of five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council [2007] NSWLEC 827*. The objectives of the development standard are addressed within the 4.6 request as follows:

(a) 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 from the Applicant:
"This objective relates to streetscape character and in this regard the proposed dwelling has been designed to be consistent with the bulk and scale of Bower Street. The height, bulk, scale of the development, as reflected by floor space, are entirely consistent with the built form characteristics established by the enclave of surrounding development in this precinct noting the topography of the area. It is our considered opinion that the proposal is consistent with the intent and approvals granted in the area, therefore confirming that the proposal is consistent with the prevailing building height, roof forms and the future streetscape of the locality."

"The variation is due to the existing bulk and scale of the dwelling which is already over the building height as a result of the natural topography and existing man-made changes which hinders the development when assessed with the ground level (existing) definition. If the merits of the 'Bettar' Court Case are utilised, the natural ground level enables a variation with that consistent with other developments. The proposal is consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191, in that I have formed the considered opinion that most observers would not find the proposed development by virtue of its roof form and building height, and in particular the 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 sites visual catchment. The proposal is consistent with this objective notwithstanding the variation to the building height."

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

Response from the Applicant:
"The proposal has been strategically designed to minimise the impact and bulk and scale of the project. The project architects have worked tirelessly to design an accessible dwelling where all levels are linked through one lift as alterations and additions that meet the sites constraints and the existing bulk and scale of the area. The proposal has been designed to be compatible with the existing streetscape (noting the existing three-four storey bulk and scale along Bower Street) while accommodating a bulk and scale that is complementary to the natural environment. The proposed additions relating to the lift and new practical stairs to level 3 have been designed with varying and large side setbacks which reduces the bulk and scale and accommodates a dwelling that blends in with the streetscape. It is acknowledged that the clients are prepared to spend more money to relocate the lift rather than extending the existing lift, which would have an impact to the bulk and scale of the front of the dwelling due to its location. As assessed within objective (a) the proposal is consistent with the streetscape of Bower Street, which therefore dictates the bulk and scale for the locality."

(c) to minimise disruption to the following:
(i) views to nearby residential development from public spaces (including the harbour and foreshores),

Response from the Applicant:
"Having inspected the site and its surrounds I am of the opinion that the building form and height of the proposed development, in particular that associated with the building height breaching elements, has been appropriately located within the site to minimise disruption of views to nearby residential development and from surrounding public spaces. The proposal is consistent with this objective notwithstanding the proposed variation to the building height."

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

Response from the Applicant:
"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 as they relate to an assessment of view impacts, I am satisfied that the proposed building height variation will not give rise to any unacceptable public or private view affectation. Whilst the proposal seeks a variation to the building height standard, view impacts have been minimised and a view sharing outcome is achieved. The proposal is consistent with this objective notwithstanding the proposed building height variation."

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

Response from the Applicant:
"The building form and height has been appropriately distributed across the site such that the proposed variation to the building height will have no impact on views between public spaces. The proposal is consistent with this objective notwithstanding the proposed variation to the building height."

(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 from the Applicant:
"The application is accompanied by shadow diagrams which depict the impact of shadowing on the neighbouring properties. The shadow diagrams demonstrate that the proposed development, particularly the non-compliant building height elements, will not unreasonably overshadow adjoining neighbours living room windows and private open space areas with compliant levels of solar access maintained between 9am and 3pm on 21st June. The proposal is consistent with this objective notwithstanding the building height breaching elements proposed."

(e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental

protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

Response from the Applicant:
"Not applicable – the site is not located within a recreation or environmental protection zone."

The arguments provided by the Applicant in response to the objectives are generally concurred with. Importantly, it is noted that the breach partially results from existing excavation of the site. Building height is measured in accordance with the principles identified in *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582*, which takes existing excavation as existing ground level. The site has been built upon and excavated for this purpose, so building height is measured to the finished floor level rather than site levels prior to excavation. Furthermore, the proposed development does not increase the overall ridge height or add additional levels to the existing building, with only alterations and additions to the existing Level 3 in breach of the development standard. It is also noted that this area of Manly is characterised by large three and four storey dwelling houses. The proposed development will not be out of character within this environment. It is considered that the objectives of the standard are achieved despite the non-compliance with the standard.

(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 that there are sufficient environmental planning grounds to justify contravening the development standard:

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

The Clause 4.6 Request argues, in part:

- *"The sites topography and existing man-made excavation distorts the height plane for the site. If the natural ground level was taken, the proposal would substantially comply with the building height control."*
- *"The proposed development responds to the existing and desired future character of the locality. Furthermore, the subject proposed dwelling through alterations and additions retains the building footprint and in majority the height existing on the site. It's our opinion that the proposal will integrate into the existing streetscape and pattern of development within Bower Street. It is noted that the proposed works do not protrude higher than that existing with the highest roof line to be maintained."*
- *"The development does not result in any unnecessary or undue bulk or visual impacts on adjoining properties and is of a scale that is compatible with the existing and surrounding buildings. The streetscape analysis completed within the Statement of Environmental Effects notes numerous recent approvals with a variation to the building height and the immediate properties are all three to four storeys in height."*
- *"The amenity impacts to neighbouring residential properties, arising from the non-compliant building height, is negligible. Adjoining properties will continue to receive suitable solar access,*

privacy impacts are suitably minimised, and views are reasonably maintained."

- *"The building height breach is minor (when assessed from the natural ground level) and would relate to only a small portion of the proposed development only, which will largely be indiscernible when viewed from Bower Street."*
- *"The proposal is consistent with the stance Council has taken on developments along Bower Street and surrounding streets noting numerous approvals granted for variations to the building height control."*

The arguments provided by the Applicant are general concurred with. It is noted that as alterations and additions, the proposal is designed to adapt and add to an existing structure. Flexibility in the application of the development standard will allow for adaptation and reuse of existing built form to suit the changing needs of owners and occupants and promote ecologically sustainable development.

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

- 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.
- Flexibility in the application of the development standard will allow adaptation and reuse of existing built form for the changing needs of owners and occupants. This promotes ecologically sustainable development and the orderly development of land, thereby satisfying objects 1.3(b) and (c) of the EPA Act.

Public Interest:

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

Conclusion:

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

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

MLEP 2013 Clause 4.4 Floor Space Ratio

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

Development standard: Clause 4.4 Floor Space Ratio
Requirement: 0.45:1 (317.43sqm)
Proposed: 0.48:1 (341.8sqm)
Percentage of variation: 7.7%

With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is accompanied by a document that sets out the grounds on which the

Applicant seeks to demonstrate the matters set out in Clause 4.6(3)(a) and (b) of the MLEP 2013 (the 'Clause 4.6 Request').

Subclause (1) of this clause provides that:

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

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

Subclause (2) of this clause provides that:

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

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

Subclause (3) of this clause provides that:

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

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

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

The Applicant's written request seeks 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. This is the first of five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council [2007] NSWLEC 827*. The Applicant has also stated that they are attempting to establish the second and forth ways in *Wehbe*, however, it is not considered that the written request has adequately done so. Nonetheless, only one way must be demonstrated to show that compliance with the development standard is unreasonable or unnecessary. As such, in relation to the first way, the objectives of the development standard are addressed within the 4.6 request as follows:

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

Response from the Applicant:

"The development proposes alterations and additions to create a functional dwelling for the new occupants of the dwelling through design changes and the provision for a lift to access all levels. The proposal also includes other minor additions to the ground and Level 1 which when viewed would not be noticeable or impact the streetscape or public domain. The apparent bulk and scale of the dwelling will be negligibly impacted, from the existing approved dwelling and the new refurbishment works will ensure a positive contribution to the streetscape. The surrounding area varies in size, bulk and scale, ranging from two to four storeys in height and varying setbacks. It is our considered opinion that the proposal is consistent with the intent and approvals granted in the area, therefore confirming that the proposal is consistent with the prevailing bulk and scale and the future streetscape of the locality."

"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 Bower Street, to be offensive, jarring or unsympathetic in a streetscape context. This objective is satisfied, notwithstanding the non-compliant FSR proposed, as the bulk and scale of development is consistent with the existing and desired streetscape character."

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

Response from the Applicant:
"The development will result in a built form and massing that is of a consistent scale to the existing dwelling and surrounding properties. The development will not obscure any important landscape or townscape features and will not result in any view loss impacts. It is therefore considered this objective is met, despite the numerical variation."

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

Response from the Applicant:
"The proposed works are visually appropriate for the locality and propose a built form consistent with the existing dwelling. The landscaped area on the property will remain relatively unchanged, as proposed works are located within the existing building footprint. 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 from the Applicant:
"The proposed alterations and additions will not result in any impacts on the use or enjoyment of neighbouring properties or the public areas adjoining the site. It is my professional opinion that the proposal provides a functional building for the new occupants which ensures the amenity and privacy of adjoining properties is maintained."

"Privacy - Given the spatial separation maintained between the balance of surrounding properties, and the primary orientation of living areas for the site, 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 north facing living room and open space area of the adjoining property at 37 Bower Street,

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."

(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 from the Applicant:
Not applicable – the site is located within a residential zone.

The arguments provided by the Applicant in response to the objectives are generally concurred with. Only an additional 18.1sqm of GFA is proposed under this application, all within the footprint of the existing dwelling. Design choices, such as the relocation of the lift shaft further within the building, have attempted to minimise additional GFA, whilst achieving the goals of the proposed works, including providing lift access to the uppermost Level 3. The additional GFA is considered to be minor and will only negligibly impact the perceived overall bulk and scale of the dwelling house as compared to existing. It is also noted that this area of Manly is characterised by large three and four storey dwelling houses, many with recently approved FSR variations. The proposed development will not be out of character within this environment. It is considered that the objectives of the standard are achieved despite the non-compliance with the standard.

(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 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:

- *"Context and Established Precedence - The area surrounding the subject site is characterised by 2 to 4 storey residential dwellings, stepped to accommodate the sloping topography of the area. The proposed dwelling has been designed to remain consistent with the character of the locality, despite the variation to FSR, through design, architectural features and complimentary materials and colour choices. The proposal has been designed as alterations and additions with the main addition relating to the change to the lift location and provision of the lift through one central location to all levels on the site, which increases GFA. The setting and context with similar FSR variations recently approved, demonstrates that a varied FSR is reasonable and that it is consistent with clause 1.3(c) and (d)."*

- *"Future Development - The proposed alterations and additions will allow for the provision of a modern floor plan, with refurbished and improved internal spaces. The proposal also allows for the provision of the lift through one central location to all levels on the site.This represents an efficient use of an existing developed site, with all services readily available. The built form proposed is relatively consistent with the existing dwelling and other buildings in the locality. The proposed works will not hinder any future development of the lot. The alterations proposed demonstrate fulfillment of clause 1.3(a), (b), (c) and (g)."*
- *"Consistent with Zone Objectives - The extent of the variation is considered to be in the public interest, as the proposal remains consistent with the objectives of the zone, allowing for additional residential floor space in a residential zone, with a bulk and scale consistent with the existing dwelling and the locality. Compliance with the FSR standard based on this would be unreasonable, with clause 1.3(c) demonstrated as fulfilled."*
- *"Natural Environment - The proposed development allows for the current and future housing needs of the residents to be met, without developing a greenfield site, representing an efficient use of existing developed land. The natural environment is unaffected by the departure to the development standard as the works relates to alterations and additions within the existing building footprint, therefore it would be unreasonable for the development to be refused on this basis with Cl 1.3(b) satisfied."*
- *"Social and Economic Welfare - The variation to the FSR will have a positive social impact, as it will allow the housing needs of the residents to be met in their current local community, including the ability to work from home in the dedicated home offices. It utilises existing services, satisfying Cl1.3(b)."*
- *"Appropriate Environmental Planning Outcome - The development proposed is not an overdevelopment of the site and satisfies the objectives of the zone and the development standard as is detailed earlier in the report."*

The arguments provided by the Applicant are general concurred with. It is noted that as alterations and additions, the proposal is designed to adapt and add to an existing structure. Flexibility in the application of the development standard will allow for adaptation and reuse of existing built form for the changing needs of owners and occupants and promote ecologically sustainable development.

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

- The proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, thereby satisfying objects 1.3(c) and (g) of the EPA Act.
- Flexibility in the application of the development standard will allow adaptation and reuse of existing built form for the changing needs of owners and occupants. This promotes ecologically sustainable development and the orderly development of land, thereby satisfying objects 1.3(b) and (c) of the EPA Act.

Public Interest:

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

Conclusion:

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

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

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 705.4sqm	**Requirement**	**Proposed**	**% Variation**	**Complies**
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwellings	1	-	Yes
	Dwelling Size: 129sqm (5 bedrooms, 4 bathrooms)	341.8sqm	-	Yes
4.1.2.1 Wall Height	North: 7.3m (based on gradient 1:7.5)	7.6m	4.1%	**No**
	South: 6.9m (based on gradient 1:15)	9.8m	42%	**No**
4.1.2.2 Number of Storeys	2	4	N/A	**No** but existing and unchanged
4.1.2.3 Roof Height	Parapet Height: 0.6m	0.3m	-	Yes
4.1.4.1 Street Front Setbacks	Primary Frontage (Bower Street): Prevailing building line / 6m	Level 3 Forward Extension, 18.4m, behind / consistent with prevailing setback	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	North: GF: N/A - all works internal or to existing walls L1: N/A - all works internal or to existing walls and pool subject to seperate control L2: N/A - all works internal or to existing walls L3: 2.5m (based on 7.6m wall height)	 N/A N/A N/A 5.5m	 N/A N/A N/A -	 N/A N/A N/A Yes
	South: GF: N/A - all works internal or to existing walls L1: N/A - all works internal or to existing walls and pool subject to seperate control L2: N/A - all works internal or to existing walls L3: 3.3m (based on 9.8m wall height)	 N/A N/A N/A 3.7m	 N/A N/A N/A -	 N/A N/A N/A Yes

	No new / altered windows within 3m of a side boundary	2 windows at L2 added / altered on existing wall within 3m of southern side boundary	N/A	**No**
	Secondary Frontage (Montpelier Place): Prevailing setback	No change to existing setbacks, consistent with prevailing setback	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (387.97sqm)	59.1% (416.7sqm)	-	Yes
	No more than 25% of open space above ground (104.175sqm)	27.4% (114.1sqm)	9.5% (9.925sqm)	**No**
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (145.845sqm)	39.1% (162.9sqm)	-	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	-	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	4.7m	370%	**No**
	1m curtilage side/rear setback	North Side: 0.7m	30%	**No**
	1.5m waterline side/rear setback	North Side: 2m	-	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	-	Yes

Compliance Assessment

Clause	**Compliance with Requirements**	**Consistency Aims/Objectives**
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 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

Clause	Compliance with Requirements	Consistency Aims/Objectives
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)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

Submissions on this application have been received which raise privacy concerns. These submissions came from the adjoining property to the north (41 Bower Street, which contains two occupancies / dwellings) and 26 Montpelier Place, a property located approximately 50m to the south of the subject site.

The assessment of potential privacy impacts of a proposal requires consideration of the requirements and objectives of this Clause, as well as Planning Principals established within the NSW Land and Environment Court Case of *Meriton v Sydney City Council [2004] NSWLEC 313*, which hold that when applying judgment to assess privacy impacts, consideration should be given to density, separation, use and design. *Super Studio v Waverley [2004] NSWLEC 91* is also a relevant case which has created Planning Principles concerning the use of landscaping to protect privacy.

This Clause requires the following:

3.4.2.1 Window Design and Orientation

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

3.4.2.2 Balconies and Terraces

a) Architectural or landscape screens must be provided to balconies and terraces to limit overlooking nearby properties. Architectural screens must be fixed in position and suitably angled to protect visual privacy.
b) Recessed design of balconies and terraces can also be used to limit overlooking and maintain privacy.

The proposal is considered as follows:

Proposed Windows

The proposal includes alterations to existing windows, the creation of new windows within existing walls, and the creation of new windows on the proposed Level 3 addition. All windows are either setback from side boundaries, orientated to benefit visual privacy, or incorporate privacy solutions in design (e.g. high-sill design). Concerning the northern elevation, the only window on this side is setback 10.5m from the side boundary and is located behind a proposed deck / terrace (disused below). As such, no privacy issues are raised with this proposed window, or any other proposed windows or window changes.

Specifically addressing the concerns from 26 Montpelier Place, it is noted that this property is located approximately 50m to the south of the subject site. This is a significant distance, enough to consider that separation is sufficient to achieve reasonable privacy within this low density residential area.

Proposed Level 3 Deck / Terrace

The proposed development includes the addition of a Level 3 deck / terrace off a master bedroom. Due to the proposed extension of Level 3, this deck is recessed and shielded by built form to the south and west. To the east is the primary street frontage, where terraces / balconies / decks are best oriented to reduce privacy impacts. To the north is an adjoining property which has raised privacy concerns in submissions.

The northern side of the Level 3 terrace / deck is setback 5.5m from the side boundary. The adjoining property at 41 Bower Street is setback approximately 5.5m from this shared boundary, creating approximately 11m of distance between the Level 3 terrace / deck and the neighbouring building. However, there are areas of private open space at the ground level of 41 Bower Street which may be vulnerable to overviewing from the proposed terrace / deck within this 11m distance. The terrace / deck is located of what is categorised as a low waking use room (a bedroom) and will not be a main area of outdoor open space akin to an entertaining area, as these are provided at lower levels. However, the proposed terrace / deck is sizable and located at the upper most level of a building which also breaches the MLEP 2013 high of buildings development standard. Therefore, the risk of privacy impacts on the adjoining northern neighbour from overlooking are significant.

Trees and vegetation currently exist between the subject site and 41 Bower Street. However, the following Planning Principal from *Super Studio v Waverley [2004] NSWLEC 91* is noted:

"Where proposed landscaping is the main safeguard against overlooking, it should be given minor weight. The effectiveness of landscaping as a privacy screen depends on continued maintenance, good climatic conditions and good luck. While it is theoretically possible for a council to compel an applicant to maintain landscaping to achieve the height and density proposed in an application, in practice this rarely happens."

As such, this landscaping should not be relied upon as the primary safeguard to prevent overlooking from this proposed Level 3 terrace / deck. Given the risk of overlooking, height, distance and orientation of the terrace / deck, and reliance on landscaping to maintain privacy, it is considered appropriate to recommend a condition of consent requiring amendments to the endorsed plans so that a privacy screen is required along the northern elevation of the Level 3 terrace / deck. Subject to this condition, the proposal is considered to meet the requirements of this Clause and to result in reasonable visual privacy outcomes.

Proposed Level 1 Pool / Spa

The proposed Level 1 pool and spa are located on / within an existing outdoor terrace area. The pool will be set within an existing recess, and given people using a pool would be seeing from water level, it is not anticipated that these alterations will create additional significant privacy impacts. As existing, there is physical fencing / screening at Level 1 between the subject site and the adjoining northern neighbour, in addition to vegetation. In this regard, the proposal is considered to meet the requirements of this Clause and to result in reasonable visual privacy outcomes.

Acoustic Privacy / Noise

Regarding pump / filter noise, a standard condition of consent has been included in the recommendations of this report requiring that the swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary. Subject to recommended conditions of consent and generic noise protection offered by the *Protection of the Environment Operations Act 1997* the proposed development is not expected to create an unreasonable acoustic impact on adjoining properties outside that expected within a low density residential environment.

Conclusion

Subject to conditions, the proposed development is considered to meet the requirements of this Clause. The visual and acoustic privacy impacts of this proposal are not considered to be unreasonable within a low density residential context.

For the benefit of a full assessment, 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:
As described above, the proposed development, as conditioned, adequality minimises 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:
As described above, the proposed development, as conditioned, adequality minimises loss of privacy to adjacent and nearby development. Therefore, an adequate balance has been met.

Objective 3) To encourage awareness of neighbourhood security.

Comment:
The proposal will not compromise neighbourhood security or casual surveillance of the street frontage.

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

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

Description of non-compliance

Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height) stipulates that walls are not to exceed the following heights:

- North: 7.3m (based on gradient 1:7.5).
- South: 6.9m (based on gradient 1:15).

The following wall heights are proposed to the Level 3 addition:

- North: 7.6m, representing a 4.1% non-compliance.
- South: 9.8m, representing a 42% non-compliance.

The control also requires that buildings must not exceed two (2) storeys. The proposed dwelling contains a maximum of four (4) storeys. However, it is noted that this is an existing feature of the dwelling house and the number of storeys will be unchanged by the proposed development.

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 underlying objectives for the Height of Buildings development standard at Clause 4.3 in the MLEP 2013. The proposal has been assessed against these objectives in the section of this report on MLEP 2013 Clause 4.6. In summary, the proposal is considered to be consistent with the underlying objectives of the Height of Buildings development standard.

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

4.1.3 Floor Space Ratio (FSR)

The provision of this Clause relating to FSR and undersized allotments is not relevant to this assessment, as the subject site is not an undersized allotment. Refer to the section of this report on MLEP 2013 Clause 4.6 Exceptions to development standards for assessment of the FSR development standard non-compliance.

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

Description of non-compliance

Clause 4.1.4.1 Street Front Setbacks stipulates that proposed front setbacks must relate to the front building line of neighboring properties and the prevailing building lines in the immediate vicinity. The proposed alterations and additions do not extend the building footprint any closer to the front boundary, with all works proposed with the existing building footprint. Therefore, the proposed development does not reduce the existing front setback. Furthermore, the existing setback to the secondary / rear frontage is maintained for the same reason. As such, prevailing building lines at both the primary front and secondary rear frontages are maintained and the proposal is compliant with this Clause.

Clause 4.1.4.2 Side Setbacks and Secondary Street Frontages stipulates that the setbacks between any part of a building and the side boundary must not be less than one third of the wall height. All proposed works on the ground Floor, Level 1, and Level 2 are internal or to existing walls, meaning they do not change the existing setback of those walls. The Level 3 addition will exhibit side setbacks in compliance with this control. As such, the proposal is compliant with this Clause where applicable.

Clause 4.1.4.2 Side Setbacks and Secondary Street Frontages also requires that no new windows be located within 3m of side boundaries. The proposed development includes two (2) new or altered windows within 3m of a side boundary, both on the southern elevation at Level 2. It should be noted that these windows are not considered to create any unreasonable privacy impacts, considering their design and location off two low-use rooms (a bedroom and bathroom, both rooms where less waking time is spent). Nonetheless, these windows represent the only proposed technical non-compliance with this Clause.

Merit consideration

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

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

Comment:
The side setbacks of the alterations and additions maintain established side building lines, with proposed additions respecting these established setbacks. Additions to Level 3 are complaint with all setback controls. Non-compliances only relate to the proximity of new / altered windows to the southern side boundary, which will not adversely impact the the existing streetscape, including the desired spatial proportions of the street, the street edge and the landscape character of the street.

Objective 2) To ensure and enhance local amenity by:

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*

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

Comment:
The proposed development is considered to meet the requirements of relevant clauses of the MDCP relating to amenity. This includes privacy, which is assessed in detail within the section of this report on MDCP Clause 3.4.2 Privacy and Security. The development is not considered to create unreasonable overshadowing on pubic or private spaces, or to unreasonably impact views from or to public or private spaces. The proposal is also considered to maintain the existing streetscape characteristic and not detrimentally impact on traffic conditions.

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

Comment:
Flexibility is required in the siting of alterations and additions to existing structures as the proposal must contend with existing non-compliances. By allowing the adaption and alteration of existing structures to suit the changing needs of owners and occupants, sustainability is encouraged. The proposed development is not expected to result in any unreasonable amenity impacts on surrounding properties and it has demonstrated it meets the underlying objectives of controls where non-compliance arise. As such, flexibility is warranted in this instance.

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 is compliant with the landscaped area provisions of the MDCP and maintains adequate landscaping and vegetation.

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

Comment:
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 Planning Services, dated 14 November 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.

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

4.1.5 Open Space and Landscaping

Description of non-compliance

The subject site is located within Residential Open Space Area OS3, which requires at least 55% (387.97sqm) of the site to be open space. In addition, at least 35% (145.845sqm) of the proposed total open space is to be landscaped area and no more than 25% (104.175sqm) of total open space can be provided above ground level.

The proposal has a compliant level of total open space of 59.1% (416.7sqm). The proposal also achieves compliance with landscaped area, exhibiting a total of 39.1% (162.9sqm).

However, the subject site exhibits 27.4% (114.1sqm) of total open space above ground level, representing a 9.5% (9.925sqm) variation to the 25% limit.

This Clause also requires sites with a site area of between 500sqm and 800sqm to have 3 native tree of a prescribed type and height. As existing, the site does contain examples of trees and vegetation of a sufficient height, however, may not contain trees of the prescribed species. However, it is noted that the proposal does not greatly effect landscaped / outdoor areas of the subject site, instead proposing additions within the building footprint. This leaves little scope for the inclusion of such trees within the context of this application

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 proposed alterations and additions are located entirely within the footprint of the existing building. The proposal will only increase total open space and landscaped area through the addition of a Level 3 deck / terrace with planter box. Whilst total open space above ground level is non-compliant, this does not impact landscaped features or vegetation.

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 maintains landscaped area with dimensions capable of accommodating for any future plantings. The non-compliance with the open space above ground level control is created by an additional terrace located over an existing roof. As such, it will not impact on soft landscaped areas or vegetation.

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

Comment:
The proposed development is considered to meet the requirements of relevant clauses of the MDCP relating to amenity. This includes privacy, which is assessed in detail within the section of this report on MDCP Clause 3.4.2 Privacy and Security. The development is not considered to create unreasonable overshadowing on pubic or private spaces, or to unreasonably impact views from or to public or private spaces. The proposal is also considered to maintain the existing streetscape characteristics.

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

Comment:
An acceptable amount of soft landscaping is provided on site to minimise stormwater runoff and maximise water infiltration. The proposal complies with landscaped area.

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

Comment:
The proposed development is not likely to increase the spread of any weeds, or degradation of private or public open space.

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

Comment:
The proposed works are not expected to significantly affect wildlife habitat. Council's Bushland and Biodiversity team has assessed the proposed development and concluded that the proposal will not result in a significant impact to the endangered population, given that proposed works are largely within the existing development footprint. This team has supported the proposal, subject to conditions.

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

4.1.9 Swimming Pools, Spas and Water Features

Description of non-compliance

Clause 4.1.9.1 Height above ground requires that swimming pools and spas must be built on or in the ground and not elevated more than 1m above natural ground level. The proposed swimming pool and spa would have a water line 4.7m above ground level, as they are proposed within an existing elevated balcony.

Clause 4.1.9.2 Location and Setbacks requires that the outer edge of any pool/spa curtilage must be setback from the side or rear boundaries by at least 1m, and the water line must be setback at least 1.5m from the boundaries. The proposed swimming pool exhibits a 0.7m curtilage setback to the northern side boundary (a 70% variation to the control) and a 2m waterline setback to the east side boundary (compliant).

Merit consideration

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

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

Comment:
Refer to the section of this report on MDCP Clause 3.4.2 Privacy and Security for detailed assessment of potential privacy impacts. In this section, it is noted that the proposed Level 1 pool and spa are located on / within an existing outdoor terrace / balcony area. The pool will be set within an existing recess, and given people using a pool would be seeing from water level, it is not anticipated that these alterations will create additional significant privacy impacts. As existing, there is physical fencing / screening at Level 1 between the subject site and the adjoining northern neighbour, in addition to vegetation. Furthermore, a condition of consent concerning Swimming Pool/Spa Motor Noise is recommended to ensure the acoustic privacy of adjoining and surrounding dwellings is maintained. Considering the existing nature of the deck, existing screening to the northern neighbour, and recommended condition of consent concerning pump noise, the visual and acoustic privacy impacts of this proposal are not considered to be unreasonable within a low density residential context.

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

Comment:
The proposed swimming pool has been sited within a portion of the front deck that has a recess that was originally intended for a swimming pool. The pool was not built as part of the original dwelling house Complying Development Certificate. From the lower street angle and with a front setback of at minimum 8m, the pool will not significantly stand out any differently from the existing deck and dwelling house, with the additional impact on streetscape considered to be negligible. The proposal is consistent with the established character of the locality and similar swimming pools / spas within the locality.

Objective 3) To integrate landscaping.

Comment:
The proposal meets landscaped area requirements of the MDCP. As such, the pool is not considered to diminish the quality of the proposed landscaped solution for the site.

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

Comment:
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 Planning Services, dated 14 November 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. The pool may also be used as an emergency water resource if necessary.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2024

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

A monetary contribution of $3,960 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $396,000.

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 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.

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

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

PLANNING CONCLUSION

This proposal, for alterations and additions to a dwelling house including a swimming pool, has been referred to the Development Determination Panel (DDP) due to a variation greater than 10% to the building height development standard of the Manly Local Environment Plan 2013. There is also a proposed variation of the floor space ratio (FSR) development standard of the Manly Local Environment Plan 2013, however this variation is less than 10%.

The concerns raised in the objections have been sufficiently addressed, including through the imposition of conditions of consent relating to privacy screening and pool filter noise.

Critical assessment issues included assessment of the proposed variations to height of building and FSR development standards, as well as variations to the following Manly Development Control Plan built from controls:

- Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
- Clause 4.1.4 Setbacks (front, side and rear) and Building Separation
- Clause 4.1.5 Open Space and Landscaping
- Clause 4.1.9 Swimming Pools, Spas and Water Features

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

REASON FOR DETERMINATION

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

RECOMMENDATION

That Northern Beaches Council, as the consent authority, vary the development standards contained within Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio, pursuant to Clause 4.6 of the Manly Local Environmental Plan 2013, because the Applicant's written requests have adequately

addressed the merits required to be demonstrated by subclause (3) of Clause 4.6.

Accordingly Council as the consent authority grant Development Consent to DA2024/1639 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 55 DP 8075, 39 Bower Street, MANLY, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

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

Approved Plans				
Plan Number	**Revision Number**	**Plan Title**	**Drawn By**	**Date of Plan**
A1000	A	Ground Floor Plan	Platform Architects	20 November 2024
A1001	A	Level 1 Plan	Platform Architects	20 November 2024
A1002	A	Level 2 Plan	Platform Architects	20 November 2024
A1003	A	Level 3 Plan	Platform Architects	20 November 2024
A1004	A	Roof Plan	Platform Architects	20 November 2024
A2001	A	Elevation North	Platform Architects	20 November 2024
A2002	A	Elevation South	Platform Architects	20 November 2024
A2003	A	Elevation East	Platform Architects	20 November 2024
A2004	A	Elevation West	Platform Architects	20 November 2024
A3000	A	Section A-A	Platform Architects	20 November 2024
A3001	A	Section B-B	Platform Architects	20 November 2024

Approved Reports and Documentation			
Document Title	**Version Number**	**Prepared By**	**Date of Document**
BASIX Certificate No. A1773656	-	ECO CERTIFICATES PTY LTD	19 November 2024
Bushfire Risk Assessment	-	Bushfire Planning Services	14 November 2024
Preliminary Geotechnical Assessment	Ref: AG 24365	Ascent Geotechnical Consulting	11 September 2024
Waste Management Plan - 39 Bower Street, Manly	-	-	-

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

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

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

2. **Compliance with Other Department, Authority or Service Requirements**
The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Referral - Ausgrid	Undated

(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 $3,960.00 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 $396,000.00.

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

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

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

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

6. **Security Bond**

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

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

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

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

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

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

Reason: To ensure satisfactory management of stormwater.

8. **Amendments to the approved plans**
The following amendments are to be made to the approved plans:

- A 1.65 metre high privacy screen (measured from finished floor level of the Level 3 Deck) is to be erected for the length of the outermost northern edge of the deck located off the Level 3 Master Bedroom as shown on the approved plans. The screen must extend along this northern deck edge from the dwelling wall to the start of the planner box, a length of 2.9m. The privacy screen shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.

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

Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development and to ensure visual privacy between properties is maintained.

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

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

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

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

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

12. **Sediment and Erosion Controls**
<u>For developments that include more than 2500sqm of disturbance</u>:

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.

<u>For sites larger than 250sqm and less than 2500sqm of disturbance</u>:

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.

<u>For sites smaller than 250sqm or where the disturbance is less than 50sqm</u>:

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

13. **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.

14. **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.

15. **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.

16. **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.

17. **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.

18. **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.

19. **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.

20. **Stockpiling materials**
During construction, all material associated with works is to be contained at source, covered and must be within the construction area. All material is to be removed off site and disposed of according to local regulations. The property is to be kept clean and any building debris removed as frequently as required to ensure no debris enters receiving waters.

Reason: To ensure pollution control measures are effective to protect the aquatic habitats within receiving waters throughout the construction period.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

21. **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.

22. **House / Building Number**
House/building number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings.

23. **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.

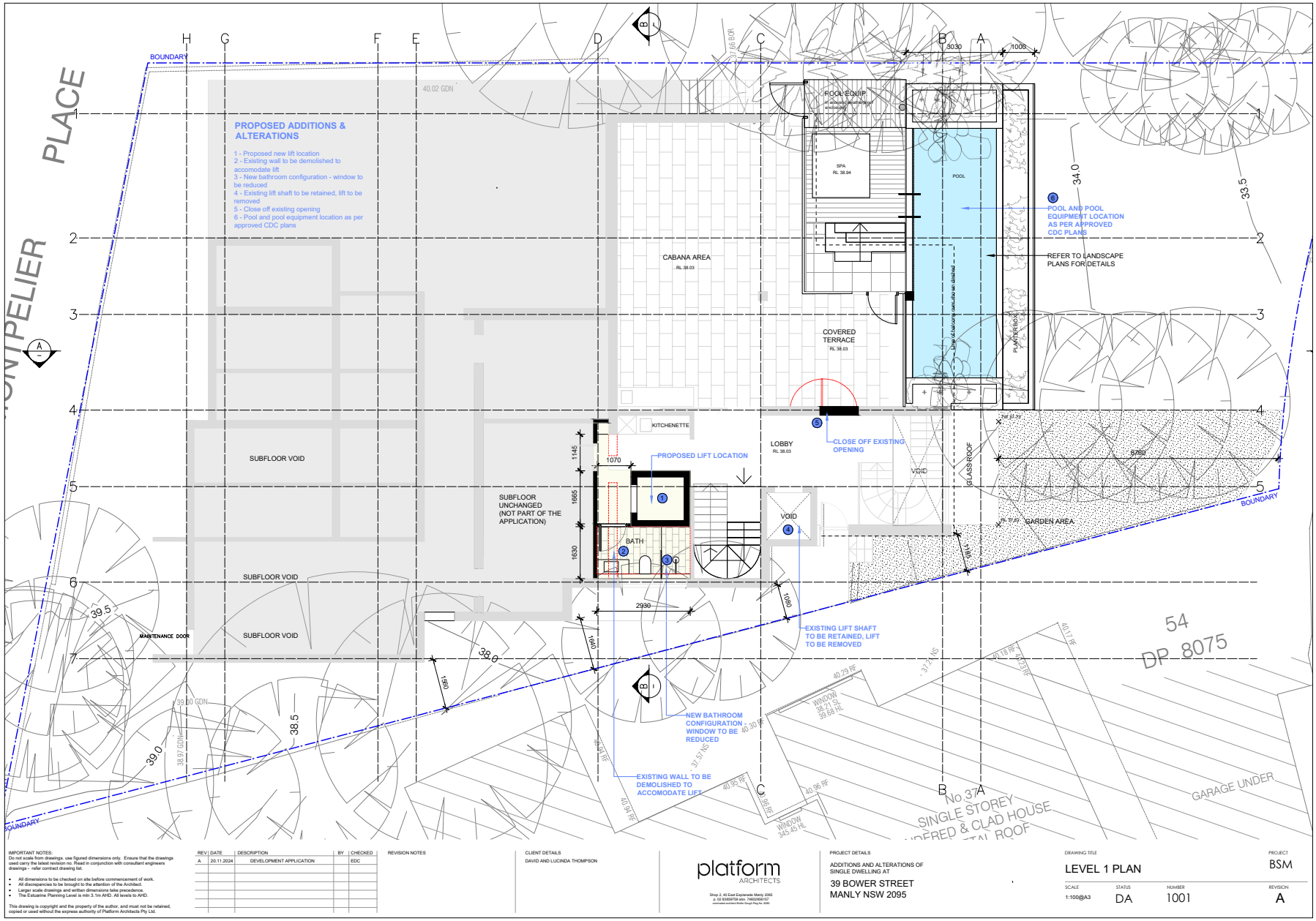
ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

24. **Geotechnical Recommendations**
Any ongoing recommendations (if any) 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.

25. **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.



IMPORTANT NOTES:
Do not scale from drawings. use figured dimensions only. Ensure that the drawings used carry the latest revision no. Read in conjunction with consultant engineers drawings - refer contract drawing list.

- All dimensions to be checked on site before commencement of work.
- All discrepancies to be brought to the attention of the Architect.
- Larger scale drawings and written dimensions take precedence.
- The Estuarine Planning Level is min 3.1m AHD. All levels to AHD.

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REV	DATE	DESCRIPTION	BY	CHECKED
A	20.11.2024	DEVELOPMENT APPLICATION		EDC

REVISION NOTES

CLIENT DETAILS
DAVID AND LUCINDA THOMPSON

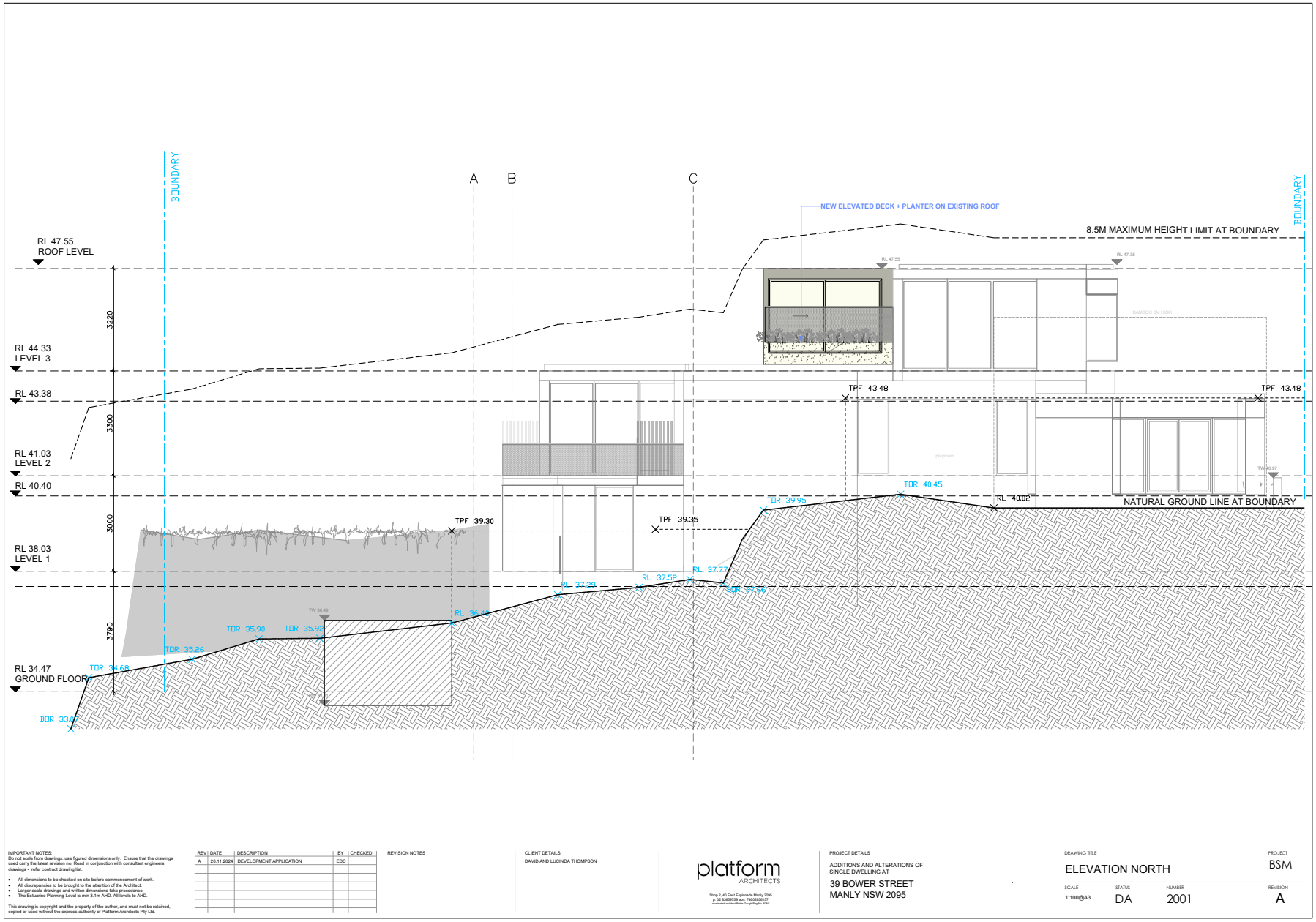
platform ARCHITECTS
Shop 2, 40 East Esplanade Manly 2095
p. 02 83959759 abn. 74602956157
nominated architect Bindo Gough Reg No. 8360

PROJECT DETAILS
ADDITIONS AND ALTERATIONS OF SINGLE DWELLING AT
39 BOWER STREET
MANLY NSW 2095

DRAWING TITLE
LEVEL 1 PLAN

PROJECT
BSM

SCALE	STATUS	NUMBER	REVISION
1:100@A3	DA	1001	A



IMPORTANT NOTES:
Do not scale from drawings. use figured dimensions only. Ensure that the drawings used carry the latest revision no. Read in conjunction with consultant engineers drawings - refer contract drawing list.

- All dimensions to be checked on site before commencement of work.
- All discrepancies to be brought to the attention of the Architect.
- Larger scale drawings and written dimensions take precedence.
- The Estuarine Planning Level is min 3.1m AHD. All levels to AHD.

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REV	DATE	DESCRIPTION	BY	CHECKED
A	20.11.2024	DEVELOPMENT APPLICATION	EDC	

REVISION NOTES

CLIENT DETAILS
DAVID AND LUCINDA THOMPSON

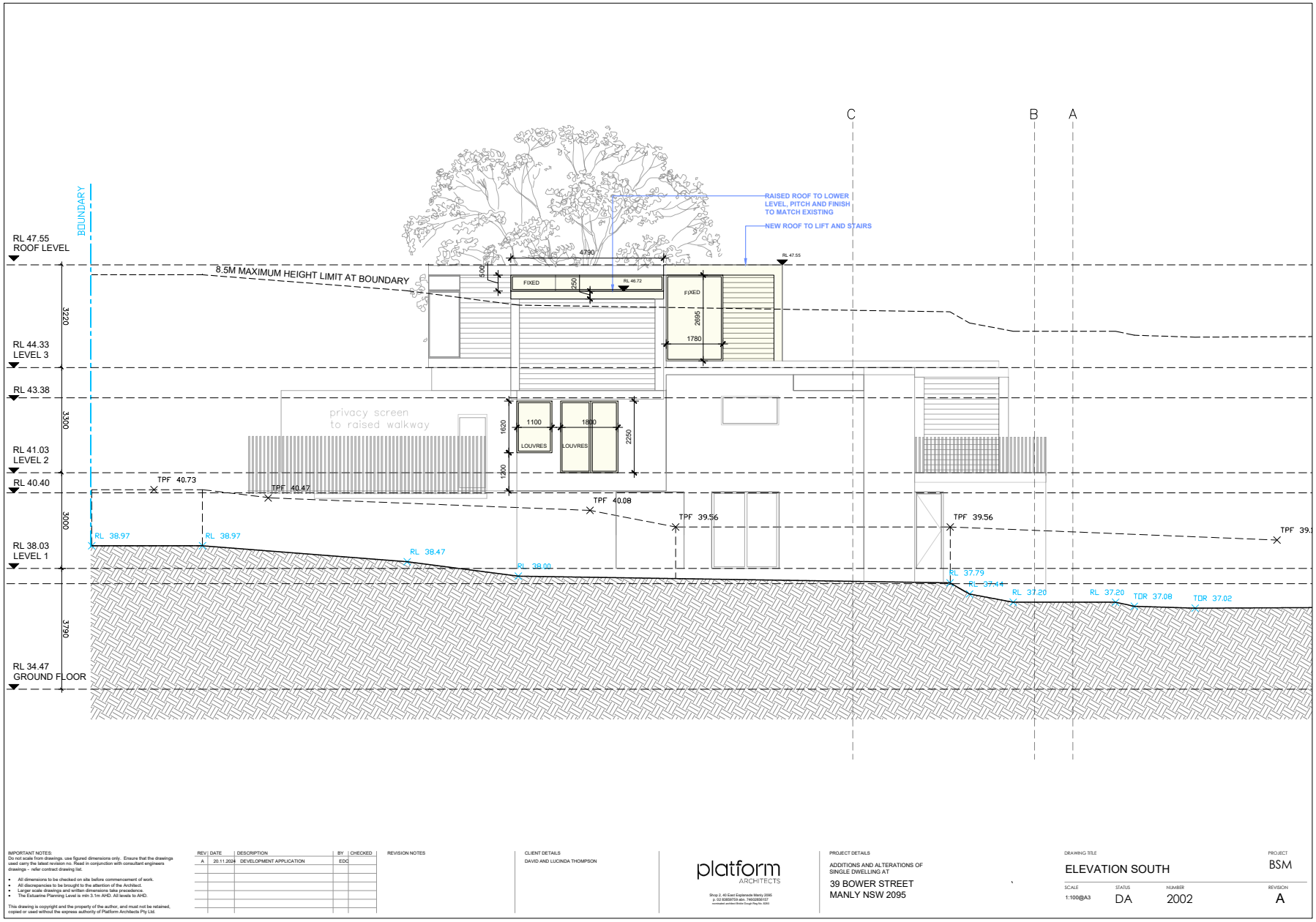
platform ARCHITECTS
Shop 2, 40 East Esplanade Manly 2095
p. 02 83859709 abn. 74602856157
nominated architect Emma Gough Reg No. 9365

PROJECT DETAILS
ADDITIONS AND ALTERATIONS OF SINGLE DWELLING AT
39 BOWER STREET
MANLY NSW 2095

DRAWING TITLE
ELEVATION NORTH

PROJECT
BSM

SCALE	STATUS	NUMBER	REVISION
1:100@A3	DA	2001	A



IMPORTANT NOTES:
Do not scale from drawings, use figured dimensions only. Ensure that the drawings used carry the latest revision no. Read in conjunction with consultant engineers drawings - refer contract drawing list.

- All dimensions to be checked on site before commencement of work.
- All discrepancies to be brought to the attention of the Architect.
- Larger scale drawings and written dimensions take precedence.
- The Estuarine Planning Level is min 3.1m AHD. All levels to AHD.

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REV	DATE	DESCRIPTION	BY	CHECKED
A	20.11.2024	DEVELOPMENT APPLICATION	EDC	

REVISION NOTES

CLIENT DETAILS
DAVID AND LUCINDA THOMPSON

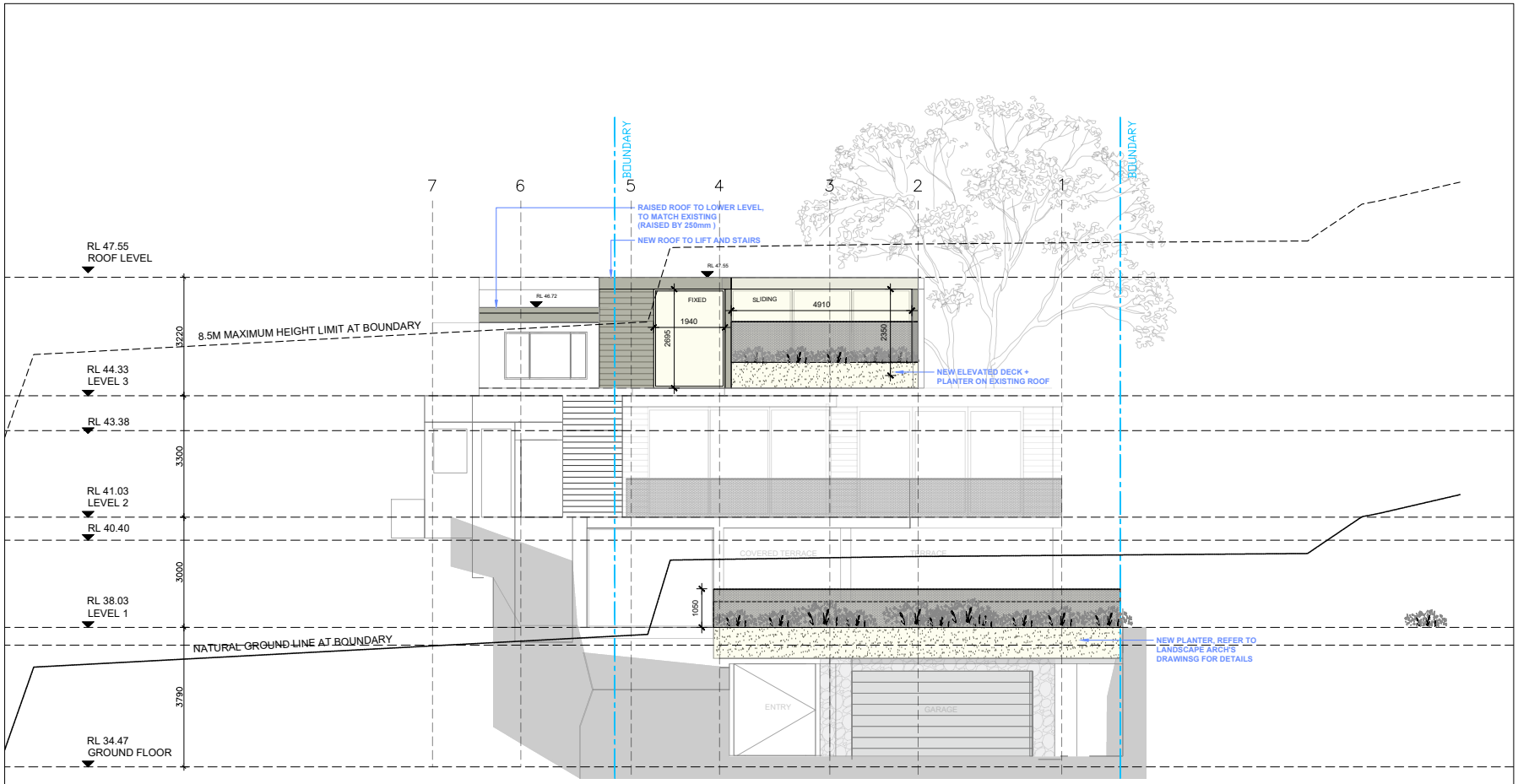
platform ARCHITECTS
Shop 2, 40 East Esplanade Manly 2095
p. 02 83859709 abn. 74602856157
nominated architect Emma Gough Reg No. 5065

PROJECT DETAILS
ADDITIONS AND ALTERATIONS OF SINGLE DWELLING AT
39 BOWER STREET
MANLY NSW 2095

DRAWING TITLE
ELEVATION SOUTH

PROJECT
BSM

SCALE	STATUS	NUMBER	REVISION
1:100@A3	DA	2002	A



IMPORTANT NOTES:
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REVISION NOTES

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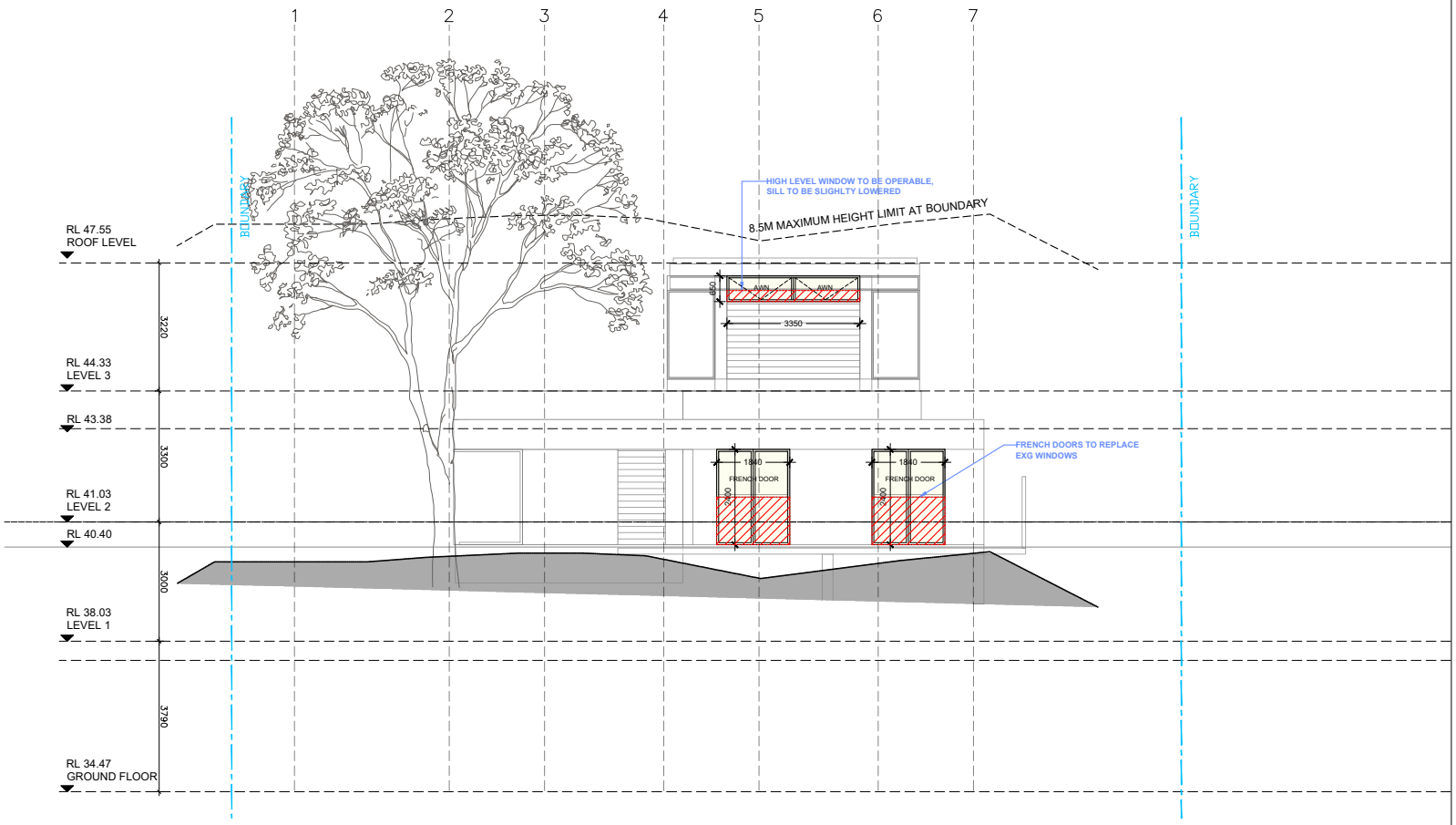
platform ARCHITECTS
Shop 2, 40 East Esplanade Manly 2095
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nominated architect Emma Gough Reg No. 5065

PROJECT DETAILS
ADDITIONS AND ALTERATIONS OF SINGLE DWELLING AT
39 BOWER STREET
MANLY NSW 2095

DRAWING TITLE
ELEVATION EAST

PROJECT
BSM

SCALE	STATUS	NUMBER	REVISION
1:100@A3	DA	2003	A



IMPORTANT NOTES:
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REVISION NOTES

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PROJECT DETAILS
ADDITIONS AND ALTERATIONS OF SINGLE DWELLING AT
39 BOWER STREET
MANLY NSW 2095

DRAWING TITLE
ELEVATION WEST

PROJECT
BSM

SCALE	STATUS	NUMBER	REVISION
1:100@A3	DA	2004	A

Four Towns Planning

Planning and property consultant

WRITTEN REQUEST PURSUANT TO CLAUSE 4.6 OF MANLY LOCAL ENVIRONMENTAL PLAN 2013

VARIATION OF A DEVELOPMENT STANDARD REGARDING HEIGHT OF BUILDINGS AS DETAILED IN CLAUSE 4.3 OF THE MANLY ENVIRONMENTAL PLAN 2013

Alterations and Additions to Existing Dwelling House including a Swimming Pool and Associated Works

39 Bower Street, Manly NSW 2095

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PO Box 361, Balgowlah NSW 2093

This report has been prepared to support a Development Application under the *Environmental Planning and Assessment Act 1979*.

Report prepared by:
Mathew Quattroville
Director – Four Towns Pty Ltd

Report prepared for:
David and Lucinda Thompson

26 November 2024

Disclaimer
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Introduction

This written request under Clause 4.3 of the Manly Local Environmental Plan 2013 (**MLEP 2013)** accompanies a Development Application seeking consent for alterations and additions to the existing dwelling house, swimming pool and associated works at 39 Bower Street, Manly, being Lot 55 within Deposited Plan 8075.

The written request is made pursuant to Clause 4.6 MLEP 2013 and requests a variation to height of buildings as detailed under Clause 4.3 of Manly Local Environmental Plan 2013.

Clause 4.3 of MLEP 2013 notes:

> *(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

The site has a maximum building height provision of 8.5m. The proposal will result in a maximum height of 9.95m. It is noted that the breach is the result of the sloping nature of the site, the existing building height and building footprint, which results in existing man-made changes which distort the height plane.

The proposed works are reasonable within the context of the site and surrounding development and will not result in excessive bulk and scale. It is submitted that there is more than enough justification and precedence within the area to support the breach.

The following assessment of the variation to Clause 4.3 – Building Height development standard, has taken into consideration the recent judgement contained within Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582, 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.

In this regard, it is requested Council support a variation with respect to compliance with the maximum height of buildings as described in Clause 4.3 of the MLEP 2013. The nature and extent of the contravention is as follows:

Requirement	8.5m
Proposed	9.95m
Is the planning control in question a development standard?	Yes
Is the non-compliance with to the clause requirement a numerical/or performance based variation?	Numerical
If numerical enter a % variation to requirement	17%

Manly Local Environmental Plan 2013

2.1 Clause 2.2 and the Land Use Table

Clause 2.2 and the Land Zoning Map provide that the subject site is zoned R2 – Low Density Residential (the R2 zone) and the Land Use Table in Part 2 of MLEP 2013 specifies the following objectives for the R2 zone:

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

Comment: The proposed development is for alterations and additions to an existing dwelling which enhances the functionality of the dwelling and provides accessibility to all levels through one central lift. The proposal will ensure a high-quality dwelling which contributes to the ongoing provision of housing in the Manly area.

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

Comment: Not applicable – the proposal is for a permissible residential land use on the site.

2.3 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) MLEP 2013 provides:

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

The latest authority in relation to the operation of clause 4.6 is the decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 ("*Initial Action*"). *Initial Action* involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

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

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

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

Clause 4.6(2) of MLEP 2013 provides:

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

Clause 4.3 is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of the MLEP 2013.

Clause 4.6(3) Of MLEP provides:

(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.

The proposed development does not comply with the prescribed height of buildings for residential accommodation in the Zone R2, as prescribed under Clause 4.3 of the MLEP 2013, however strict compliance is unreasonable or unnecessary in the circumstances of this case and there are sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

3. Relevant Caselaw

The grounds of objection are based upon the various tests of the recent judgements in the *NSW Land and Environment Court Case Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582, Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827, Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61, and RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

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

1. Is Clause 4.3 of MLEP 2013 a development standard?

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

4. Request for Variation

4.1 Is Clause 4.3 of MLEP 2013 a development standard?

(a) The definition of "development standard" in 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"

(b) Clause 4.3 relates to the height of building. Accordingly, Clause 4.3 is a development standard.

4.2 Is compliance with Clause 4.3 unreasonable or unnecessary?

This request relies upon the First method identified by Preston CJ in *Wehbe*. The first way in *Wehbe* is to establish that the objectives of the standard are achieved.

In determining a merit-based assessment of the landscaped area for the proposed development, due consideration has been given to the above objectives and the planning principles set by the Land and Environment Court of NSW, Planning Principle – floor space ratio (Salanitro-Chafei V Ashfield Council (2005) NSWLEC 366) and Project Venture Developments v Pittwater Council (2005) NSW LEC 91).

It is acknowledged that the purpose of Clause 4.6 is to provide an appropriate degree of flexibility in applying certain development standards. In this regard, site topography should be considered when assessing the proposed height of buildings for the site. Given the proposed application is relatively minor and consistent with the built form character of the area, Council's assessment should be focused on this numerical allowance as opposed to the variation to the specific standard.

By providing flexibility the subject proposal is capable of achieving a better development and design outcome which adequately caters for enhanced housing options for the residential needs within the Northern Beaches LGA, in particular the Manly precinct.

The First Method

The proposal is consistent with the objectives of Clause 4.3.

4.3 Height of buildings

(1) The objectives of this clause 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.

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

Comment: It is acknowledged that the proposed development does not comply with clause 4.3 (2) and accordingly there is a requirement to submit a Clause 4.6 Variation. This Clause 4.6 seeks an exemption to the development standard as prescribed under the MLEP2013 and demonstrates that compliance with the provisions of clause 4.3 (2) is both unreasonable and unnecessary and the proposed development meets the required steps that are set out in the relevant NSW Land and Environment Court decisions to justify that the standard can be varied to achieve the subject proposal.

The development standard in Clause 4.3 (2) of the MLEP2013, is amendable to variation. The purpose of this Clause 4.6 is to vary the Height of Building as a building height referrable to the building to give Council the power to grant development consent to the non-compliant purposes. This proposition is reinforced by the following:

Clause 4.3 (2) states:

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

The Height of Building Map sets a maximum Height of Building control of 8.5m. For the purpose of calculating Height of Building, the MLEP2013 provides the following definition:

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

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

The Height of Building in clause 4.3(2) of the MLEP2013 is a development standard in accordance with the definition set out below:

Development standards' is defined in section 1.4 of the EP&A Act 1979 as:

development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which **requirements are specified or standards are fixed** in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:
(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,

Despite the variation to the Height of Building control which occurs as a result of the topography of the land, the proposed development is considered to be in keeping with the desired future character of the locality. The proposal has been strategically designed to minimise the impact and bulk and scale of the project. The project architects have worked tirelessly to design through alterations and additions a modern high-end development that meet the sites constraints and the existing bulk and scale of the area; therefore, the proposal will not result in any unreasonable visual impact on the Bower Street streetscape.

The proposed development will not result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing. Therefore, this written submission is considered to be compliant with the Statutory Provisions prescribed both under MLEP2013 and the provisions of Clause 4.6 which permit a variation to a development standard. It is noted it is consistent with the approval granted through the case *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582 is that the distorted height plane creates reasonable environmental planning ground that justifies the contravention of the height standard.

In determining the building heights of the development, it is important to understand the definitions of building height and ground level (existing) and also relevant case law from the NSW Land and Environmental Court.

The court now considers the definition of "ground level (existing)" *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582, which insists that the ground level (existing) is measured from the **excavated** ground level (within the footprint of the existing building) to the highest point of the proposal directly above. It is noted that the Court accepted (at [74]) that there is an 'environmental planning ground' that may justify the contravention of the height standard under 'clause 4.6' when the prior excavation of the site (within the footprint of the existing building) distorts the maximum building height plane. This falls hand in hand with the original leading cases *Bettar v Council of the City of Sydney [2014] NSWLEC 1070* and *Stamford Property Services Pty Ltd v City of Sydney & Anor [2015] NSWLEC 1189*.

It is noted that common-sense should prevail from the new court case "Merman Investments Pty Ltd" with the fact that many height planes are now going to be distorted creating an argument which goes hand in hand with the original court cases relating to the extrapolated levels of a site through 'Bettar'.

As a result of the above, it is determined that the maximum building above ground level (existing) is 9.95m for the proposed development. This results in a 1.45m variation or 17%. The Development Application is supported by a Clause 4.6 Variation to Development Standard report. It is noted that the building height flows from the rear to the front of the site which is consistent with the topography of the immediate area within Bower Street. It is noted that the breach is the result of the sloping nature of the site, several existing man-made level changes which distort the existing ground level and the existing man-made changes. If the natural ground level was applied, the proposed variation would be consistent with other approvals granted in the area. Regardless, the natural topography of the site and the existing building (which is already non-compliant) makes compliance with the building height impractical, and therefore unreasonable for Council to enforce. The bulk and scale and two to four storey appearance of the western/southern side of Bower Street is also retained. The proposal is supported and in our opinion is consistent with the objectives of the Clause, as outlined 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,

This objective relates to streetscape character and in this regard the proposed dwelling has been designed to be consistent with the bulk and scale of Bower Street. The height, bulk, scale of the development, as reflected by floor space, are entirely consistent with the built form characteristics established by the enclave of surrounding development in this precinct noting the topography of the area. It is our considered opinion that the proposal is consistent with the intent and approvals granted in the area, therefore confirming that the proposal is consistent with the prevailing building height, roof forms and the future streetscape of the locality. This is proven with the approvals granted with variations, including the following:

- 88 Bower St Manly - variation to building height – 13.7%
- 32 Bower St Manly – variation to building height 28.1%
- 38 Bower St Manly - variation to building height 16.07
- 55 Bower St Manly – variation to building height – 9.1%
- 19 Bower St Manly – variation to building height 9.9%
- 17 Bower St Manly – variation to building height 7.5%
- 7 Bower St Manly - variation to building height 4.2%
- 1 Bower St Manly – variation to building height 10%

**Note the list above is a quick review of recent approvals in the immediate area and does not include sites where applications are not available online. It provides relevant justification that the control is unreasonable and unnecessary within the immediate area of the subject site and sufficient environmental planning grounds apply.*

The variation is due to the existing bulk and scale of the dwelling which is already over the building height as a result of the natural topography and existing man-made changes which hinders the development when assessed with the ground level (existing) definition. If the merits of the 'Bettar' Court Case are utilised, the natural ground level enables a variation with that consistent with other developments. The proposal is consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191, in that I have formed the considered opinion that most observers would not find the proposed development by virtue of its roof form and building height, and in particular the 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 sites visual catchment. The proposal is consistent with this objective notwithstanding the variation to the building height.

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

The proposal has been strategically designed to minimise the impact and bulk and scale of the project. The project architects have worked tirelessly to design an accessible dwelling where all levels are linked through one lift as alterations and additions that meet the sites constraints and the existing bulk and scale of the area. The proposal has been designed to be compatible with the existing streetscape (noting the existing three-four storey bulk and scale along Bower Street) while accommodating a bulk and scale that is complementary to the natural environment. The proposed additions relating to the lift and new practical stairs to level 3 have been designed with varying and large side setbacks which reduces the bulk and scale and accommodates a dwelling that blends in with the streetscape. It is acknowledged that the clients are prepared to spend more money to relocate the lift rather than extending the existing lift, which would have an impact to the bulk and scale of the front of the dwelling due to its location. As assessed within objective (a) the proposal is consistent with the streetscape of Bower Street, which therefore dictates the bulk and scale for the locality.

(c) to minimise disruption to the following—

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

Having inspected the site and its surrounds I am of the opinion that the building form and height of the proposed development, in particular that associated with the building height breaching elements, has been appropriately located within the site to minimise disruption of views to nearby residential development and from surrounding public spaces. The proposal is consistent with this objective notwithstanding the proposed variation to the building height.

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

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 as they relate to an assessment of view impacts, I am satisfied that the proposed building height variation will not give rise to any unacceptable public or private view affectation. Whilst the proposal seeks a variation to the building height standard, view impacts have been minimised and a view sharing outcome is achieved. The proposal is consistent with this objective notwithstanding the proposed building height variation.

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

The building form and height has been appropriately distributed across the site such that the proposed variation to the building height will have no impact on views between public spaces. The proposal is consistent with this objective notwithstanding the proposed variation to the building height.

(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,

The application is accompanied by shadow diagrams which depict the impact of shadowing on the neighbouring properties. The shadow diagrams demonstrate that the proposed development, particularly the non-compliant building height elements, will not unreasonably overshadow adjoining neighbours living room windows and private open space areas with compliant levels of solar access maintained between 9am and 3pm on 21st June. The proposal is consistent with this objective notwithstanding the building height breaching elements proposed.

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

Not applicable – the site is not located within a recreation or environmental protection zone.

It is our professional opinion that the building by virtue of its height, bulk and scale, is consistent with the locality and desired character of the area. We have formed the considered opinion that the project is a sympathetic design and development with a bulk and scale consistent with the existing and future character of the area. It The proposal is not offensive, or unsympathetic in a streetscape context nor the context from Bower Street, and therefore the variation can be supported by Northern Beaches Council.

For the reasons outlined within this written request, the proposal will achieve the objectives of Clause 4.3 and accordingly, are of the view that the proposal is consistent with the objectives of the development standard.

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

There are sufficient environmental planning grounds to justify contravening the development standard. Whilst there is no requirement that the development comply with the objectives set out in clause 4.6(1) it is relevant to note that objective (b) provides:

*"to achieve better outcomes **for and from** development by allowing flexibility in particular circumstances."*

It should be noted at the outset that in *Initial Action* the Court held that it is incorrect to hold that the lack of adverse impact on adjoining properties is not a sufficient ground justifying the development contravening the development standard when one way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse impacts.

There is an absence of environmental harm arising from the contravention and positive planning benefits arising from the proposed development as outlined in detail above. From a planning perspective, there is sufficient grounds to justify the variation to the height of buildings development standard for the following reasons:

1. Historical excavation and site disturbance
2. Topography of the site
3. Characterisation of the development
4. Streetscape Appearance

- The sites topography and existing man-made excavation distorts the height plane for the site. If the natural ground level was taken, the proposal would substantially comply with the building height control.
- The proposed development responds to the existing and desired future character of the locality. Furthermore, the subject proposed dwelling through alterations and additions retains the building footprint and in majority the height existing on the site. It's our opinion that the proposal will integrate into the existing streetscape and pattern of development within Bower Street. It is noted that the proposed works do not protrude higher than that existing with the highest roof line to be maintained.
- The development does not result in any unnecessary or undue bulk or visual impacts on adjoining properties and is of a scale that is compatible with the existing and surrounding buildings. The streetscape analysis completed within the Statement of Environmental Effects notes numerous recent approvals with a variation to the building height and the immediate properties are all three to four storeys in height.
- The amenity impacts to neighbouring residential properties, arising from the non-compliant building height, is negligible. Adjoining properties will continue to receive suitable solar access, privacy impacts are suitably minimised, and views are reasonably maintained.
- The building height breach is minor (when assessed from the natural ground level) and would relate to only a small portion of the proposed development only, which will largely be indiscernible when viewed from Bower Street.
- The proposal is consistent with the stance Council has taken on developments along Bower Street and surrounding streets noting numerous approvals granted for variations to the building height control, as listed below:
    - 88 Bower St Manly - variation to building height – 13.7%
    - 32 Bower St Manly – variation to building height 28.1%
    - 38 Bower St Manly - variation to building height 16.07
    - 55 Bower St Manly – variation to building height – 9.1%
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    - 17 Bower St Manly – variation to building height 7.5%
    - 7 Bower St Manly - variation to building height 4.2%
    - 1 Bower St Manly – variation to building height 10%

Having regard to Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, and further to the proposal's consistency with the above strategic and statutory environmental planning provisions, the proposal is consistent with the following objectives under Section 1.3 of the Environmental Planning and Assessment Act 1979 (the Act):

> *(c) to promote the orderly and economic use and development of land; and*
> *(g) to promote good design and amenity of the built environment,*

1. In response to (c), the proposal will facilitate the orderly and economic use and development of the land in a manner that is desired by the planning controls because it will facilitate the renovated dwelling consistent with approvals in the immediate area. In considering the contrary (refusal of the DA), retention of the building in its current form would not promote the orderly and economic use and development of land in the manner that council's strategic and statutory planning provisions seek. Retention of the building in its current form makes no advancement towards achieving the goal of creating functional development opportunities, including an accessible dwelling with step free access to all levels on the site.

2. In response to (g) the proposal has been designed to promote good design and amenity of the built environment, with a consistent built form retained for Bower Street as per recent approvals.

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

Based on the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed height of buildings non-compliance in this instance.

5 Conclusion

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

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

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

Four Towns Planning

Planning and property consultant

WRITTEN REQUEST PURSUANT TO CLAUSE 4.6 OF MANLY LOCAL ENVIRONMENTAL PLAN 2013

VARIATION OF A DEVELOPMENT STANDARD REGARDING THE MAXIMUM FLOOR SPACE RATIO AS DETAILED IN CLAUSE 4.4 OF MANLY LOCAL ENVIRONMENTAL PLAN 2013

Alterations and Additions to Existing Dwelling House including a Swimming Pool and Associated Works

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This report has been prepared to support a Development Application under the *Environmental Planning and Assessment Act 1979*.

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26 November 2024

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1. Introduction

The nature and extent of the contravention is as follows:

Requirement	0.45:1 317.43sqm
Existing	0.459:1 323.7sqm
Proposed	0.482:1 339.85sqm
Is the planning control in question a development standard?	Yes
Is the non-compliance with to the clause requirement a numerical/or performance based variation?	Numerical
If numerical enter a % variation to requirement	7.06%

Manly Local Environmental Plan 2013 ("MLEP")

2.1 Clause 2.2 and the Land Use Table

Clause 2.2 and the Land Zoning Map provide that the subject site is zoned R2 – Low Density Residential (the R2 zone) and the Land Use Table in Part 2 of MLEP 2013 specifies the following objectives for the R2 zone:

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

Comment: The proposed development is for alterations and additions to an existing dwelling which enhances the functionality of the dwelling. The proposal will ensure a high-quality dwelling which contributes to the ongoing provision of housing in the Manly area.

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

Comment: Not applicable – the proposal is for a permissible residential land use on the site.

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of MLEP provides:

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

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

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

The latest authority in relation to the operation of clause 4.6 is the decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 ("*Initial Action*"). *Initial Action* involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

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

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

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

Clause 4.6(2) of MLEP provides:

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

Clause 4.4 is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of MLEP.

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

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

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

The proposed development does not comply with the floor space ratio standard pursuant to clause 4.4 of the Manly Local Environmental Plan 2013 which specifies a floor space ratio of 0.45:1, however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

Clause 4.6(4) of MLEP provides:

(4) The consent authority must keep a record of its assessment carried out under subclause (3).

Clause 4.6(5) of MLEP has been repealed and is not applicable.

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.4 of the MLEP2013 from the operation of clause 4.6.

3. Relevant Caselaw

The grounds of objection are based upon the various tests of the recent judgements in the *NSW Land and Environment Court Case Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827, Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61, and RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

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

1. Is clause 4.4 of MLEP2013 a development standard?

2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:

(a) compliance is unreasonable or unnecessary; and

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

4. Request for Variation

4.1 Is clause 4.4 of MLEP2013 a development standard?

(a) The definition of "development standard" in clause 1.4 of the EP&A Act includes:

"(d) the cubic content or floor space of a building"

(b) Clause 4.4 relates to the floor space ratio or floor space of a building. Accordingly, clause 4.4 is a development standard.

4.2 Is compliance with clause 4.4 unreasonable or unnecessary?

(a) This request relies upon the 1st, 2nd and 4th ways identified by Preston CJ in *Wehbe*.

(b) The first way in *Wehbe* is to establish that the objectives of the standard are achieved. The second way in *Wehbe* is to establish that an objective is not relevant to the development. The fourth way in *Wehbe* is to establish that the development standard has been abandoned by Council's own actions in approving development that does not comply with the standard.

(c) Each objective of the standard and reasoning why compliance is unreasonable or unnecessary is set out below. Firstly, an analysis of the objectives is provided:

In determining a merits-based assessment for the floor space ratio of the development due consideration has been given to the above objectives and the planning principles set by the Land and Environment Court of NSW, Planning Principle – floor space ratio (Salanitro-Chafei V Ashfield Council (2005) NSWLEC 366) and Project Venture Developments v Pittwater Council (2005) NSW LEC 91).

It is acknowledged that the purpose of Clause 4.6 is to provide an appropriate degree of flexibility in applying certain development standards. In this regard the FSR of the site should be assessed on a greater numerical figure, noting the sites constraints and the unique nature of the locality in a varying degree of development types. Given the proposed application is in our opinion minor and consistent with similar approvals granted in the area, Council's assessment should be focused on this numerical allowance as opposed to the variation to the specific standard. By providing flexibility in this regard, the subject proposal is capable of achieving a better development and design outcome which adequately caters for the existing mixed-use development.

The proposal is consistent with the objectives of Clause 4.4, as outlined below:

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

The development proposes alterations and additions to create a functional dwelling for the new occupants of the dwelling through design changes and the provision for a lift to access all levels. The proposal also includes other minor additions to the ground and Level 1 which when viewed would not be noticeable or impact the streetscape or public domain. The apparent bulk and scale of the dwelling will be negligibly impacted, from the existing approved dwelling and the new refurbishment works will ensure a positive contribution to the streetscape.

The surrounding area varies in size, bulk and scale, ranging from two to four storeys in height and varying setbacks. It is our considered opinion that the proposal is consistent with the intent and approvals granted in the area, therefore confirming that the proposal is consistent with the prevailing bulk and scale and the future streetscape of the locality. This is proven with the approvals granted with variations, including the following:

- 88 Bower St Manly - variation FSR 20%
- 65 Bower St Manly – variation to FSR 2% (new build)
- 55 Bower St Manly – variation FSR 6.2% (new build)
- 19 Bower St Manly – variation to FSR 6.7%
- 17 Bower St Manly – variation to FSR 6.5%

**Note the list above is a quick review of recent approvals in the immediate area and does not include sites where applications are not available online. It provides relevant justification that the control is unreasonable and unnecessary within the immediate area of the subject site and sufficient environmental planning grounds apply.*

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 Bower Street, to be offensive, jarring or unsympathetic in a streetscape context. This objective is satisfied, notwithstanding the non-compliant FSR proposed, as the bulk and scale of development is consistent with the existing and desired streetscape character.

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

The development will result in a built form and massing that is of a consistent scale to the existing dwelling and surrounding properties. The development will not obscure any important landscape or townscape features and will not result in any view loss impacts. It is therefore considered this objective is met, despite the numerical variation.

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

The proposed works are visually appropriate for the locality and propose a built form consistent with the existing dwelling. The landscaped area on the property will remain relatively unchanged, as proposed works are located within the existing building footprint. 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,

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.

The proposed alterations and additions will not result in any impacts on the use or enjoyment of neighbouring properties or the public areas adjoining the site. It is my professional opinion that the proposal provides a functional building for the new occupants which ensures the amenity and privacy of adjoining properties is maintained.

Privacy

Given the spatial separation maintained between the balance of surrounding properties, and the primary orientation of living areas for the site, 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 north facing living room and open space area of the adjoining property at 37 Bower Street, 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.

It is my 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.

Not applicable – the site is located within a residential zone.

It is our professional opinion that the building by virtue of its height, bulk and scale, is consistent with the locality and desired character of the area. We have formed the considered opinion that the project is a sympathetic design and development with a bulk and scale consistent with the existing and future character of the area. The proposal is not offensive, or unsympathetic in a streetscape context nor the context from Bower Street, and therefore the variation can be supported by Northern Beaches Council.

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. This is consistent with the approvals granted with variation and reference under objective (a), which included variations to two new builds. 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.

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

There are sufficient environmental planning grounds to justify contravening the development standard. Whilst there is no requirement that the development comply with the objectives set out in clause 4.6(1) it is relevant to note that objective (b) provides:

*"to achieve better outcomes **for and from** development by allowing flexibility in particular circumstances."*

It should be noted at the outset that in *Initial Action* the Court held that it is incorrect to hold that the lack of adverse impact on adjoining properties is not a sufficient ground justifying the development contravening the development standard when one way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse impacts.

There is an absence of environmental harm arising from the contravention and positive planning benefits arising from the proposed development as outlined in detail above. From a planning perspective, there is sufficient grounds to justify the variation to the FSR development standard for the following reasons:

Context and Established Precedence

- The area surrounding the subject site is characterised by 2 to 4 storey residential dwellings, stepped to accommodate the sloping topography of the area.
- The proposed dwelling has been designed to remain consistent with the character of the locality, despite the variation to FSR, through design, architectural features and complimentary materials and colour choices.
- The proposal has been designed as alterations and additions with the main addition relating to the change to the lift location and provision of the lift through one central location to all levels on the site, which increases GFA.
- Variation to the Manly LEP 2013 Cl. 4.4 FSR, control has been the subject of recent precedent for the following developments:
    - 88 Bower St Manly - variation FSR 20%
    - 65 Bower St Manly – variation to FSR 2% (new build)
    - 55 Bower St Manly – variation FSR 6.2% (new build)
    - 19 Bower St Manly – variation to FSR 6.7%
    - 17 Bower St Manly – variation to FSR 6.5%
- The setting and context with similar FSR variations recently approved, demonstrates that a varied FSR is reasonable and that it is consistent with clause 1.3(c) and (d).

Future Development

- The proposed alterations and additions will allow for the provision of a modern floor plan, with refurbished and improved internal spaces. The proposal also allows for the provision of the lift through one central location to all levels on the site.

- This represents an efficient use of an existing developed site, with all services readily available.
- The built form proposed is relatively consistent with the existing dwelling and other buildings in the locality,
- The minor increase to the floor area of 16.15sqm is considered reasonable as it is located within the existing building footprint and does not result in any unreasonable impacts to neighbouring properties.
- The proposed works will not hinder any future development of the lot,
- The alterations proposed demonstrate fulfillment of clause 1.3(a), (b), (c) and (g).

Consistent with Zone Objectives

- The extent of the variation is considered to be in the public interest, as the proposal remains consistent with the objectives of the zone, allowing for additional residential floor space in a residential zone, with a bulk and scale consistent with the existing dwelling and the locality. Compliance with the FSR standard based on this would be unreasonable, with clause 1.3(c) demonstrated as fulfilled.

Natural Environment

- The proposed development allows for the current and future housing needs of the residents to be met, without developing a greenfield site, representing an efficient use of existing developed land,
- The natural environment is unaffected by the departure to the development standard as the works relates to alterations and additions within the existing building footprint, therefore it would be unreasonable for the development to be refused on this basis with Cl 1.3(b) satisfied.

Social and Economic Welfare

- The variation to the FSR will have a positive social impact, as it will allow the housing needs of the residents to be met in their current local community, including the ability to work from home in the dedicated home offices. It utilises existing services, satisfying Cl1.3(b). Accordingly, refusal of the development based on this reason would be unreasonable

Appropriate Environmental Planning Outcome

- The development proposed is not an overdevelopment of the site and satisfies the objectives of the zone and the development standard as is detailed earlier in the report

Having regard to Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, and further to the proposal's consistency with the above strategic and statutory environmental planning provisions, the proposal is consistent with the following objectives under Section 1.3 of the Environmental Planning and Assessment Act 1979 (the Act):

(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 above environmental planning grounds are not general propositions, they are unique circumstances to the proposed development. These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the floor space ratio.

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

Based on the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed floor space ratio non-compliance in this instance.

Summary

In summary, the proposal satisfies all of the requirements of clause 4.6 of MLEP 2013 and exception to the development standard is reasonable and appropriate in the circumstances of the case.

ITEM 3.7 MOD2024/0568 - 32 BOWER STREET MANLY - MODIFICATION OF DEVELOPMENT CONSENT DA2019/0916 GRANTED FOR DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE INCLUDING SWIMMING POOLS

PURPOSE

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

RECOMMENDATION

A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of 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 Mod2024/0568 for Modification of Development Consent DA2019/0916 granted for Demolition works and construction of a dwelling house including swimming pools on land at Lot 28 DP 8075, 32 Bower Street MANLY, subject to the conditions set out in the Assessment Report.

Reporting manager	Rodney Piggott
TRIM file ref	2025/021580
Attachments	⇩1 Assessment Report ⇩2 Site Plan and Elevations

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2024/0568

Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 28 DP 8075, 32 Bower Street MANLY NSW 2095
Proposed Development:	Modification of Development Consent DA2019/0916 granted for Demolition works and construction of a dwelling house including swimming pools
Zoning:	Manly LEP2013 - Land zoned C3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Mark Andrew Kenneth Davies

Application Lodged:	17/10/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	26/11/2024 to 10/12/2024
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: Max. 26.82%
Recommendation:	Approval

EXECUTIVE SUMMARY

This modification application seeks consent for modification of Development Consent DA2019/0916, which was granted for demolition works and construction of a dwelling house including swimming pools. The application involves minor internal and external modifications to, and reconfiguration of, approved elements of the development.

The application is referred to the Development Determination Panel (DDP) given the proposed modifications involve works above the height of building development standard of 8.5 metres, but do not result in additional height or increased non-compliance. The maximum non-compliant height of 10.78 metres is retained, being a 26.82% variation to the height of buildings development standard set out in Clause 4.3 Height of Buildings of the Manly Local Environmental Plan 2013.

No submissions were received in relation to this application.

Detailed consideration is given in this report to the retained non-compliant building height, and the proposed alteration to the southern pool area (which is set partially above ground).

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

PROPOSED DEVELOPMENT IN DETAIL

This application seeks to modify Development Consent DA2019/0916 (as modfied by Mod2023/0211), as follows:

Dwelling:

- Level 1:
  - Slab to plantroom to house rainwater tanks and other plant.
  - Stairs to upper level.
- Level 2:
  - Stairs to upper level.
- Level 3 (North):
  - Relocation of approved stairs and insertion of new lift core.
  - Relocation of living room glazing and minor adjustments to internal walls.
  - Operable batten privacy screens to glazing.
  - Adjustment to southern glazing position.
  - Minor change to eastern window surrounds.

- Level 3 (South):
  - Minor increase in width of the courtyard swimming pool and reduction in depth for enlarged shallow end (small children's wading area). No closer to boundary.
  - Relocating of front door (southwards) and new porch.
  - Relocation of approved stairs and lift core.
  - Internal walls relocated.
- Level 4 (South):
  - Reconfigure Master Bedroom Level within Southern Pavilion.
  - Internal reconfiguration to wall layout, including the removal of a bedroom suite from this Level 4 and minor adjustment of external windows to relate to new layout.
  - Approved lift position adjusted within internal footprint.
  - Modification to entry space including new glazing with privacy screen and fixed plate metal awning, and reconfigured stair.
- Roofs:
  - Reduce extent of cantilevered roof over Living Level terrace on the northern pavilion. Structural reasons have driven minor changes to the main living area with the relocation of a structural member and the reduction of a cantilevered awning over the terrace by more than 1.1 metres.
  - Skylight/opening in balcony awning roof reshaped and repositioned (northern end).
  - New upturn to northern balcony awning roof inboard by 665/840 from edge.
  - Northern balcony awning roof reduced by 1120mm.
  - Adjusted position of structural roof upturn over Level 4 North.
  - Reduction of green roof over living room.
  - Relocate approved solar panels to Gym/Guest Pavilion, and on southern pavilion roof over Master Bedroom suite installed level with roof, not angled.
  - Modified and repositioned skylights with one less skylight now proposed over Master Bedroom.

Studio:

- Level 3 (Guest Bedroom):
  - New wall to allow Bedroom 3 (former plant room)
- Level 4 (Gym):
  - Northern window added to bathroom.
  - Northern glazing relocated.
- Roof
  - New extended location of Photo Voltaic array.
  - New flat plate fixed metal awning to match those on east and west windows, level with ceiling, projecting 460mm.

External Works:

-
  - Revised landscape forms to suit the revised entry porch, (excluding the driveway turning area and stairs), adjustment to courtyard pool, extension of pedestrian path to gate in front setback, landscaping in the northern garden and to the new front boundary wall at the southern end of the site.
  - Relocate driveway wall on eastern side to feature existing exposed rock face.

Following a preliminary assessment of the application, Council raised concerns regarding landscaping works in the two frontages. In response, the Applicant submitted an amended landscape plan satisfying the concerns on 11 December 2024.

A site visit to the subject site on 10 January 2025 revealed that some of the works proposed under this modification application had been carried out. In accordance with recent caselaw via the NSW Land and Environment Court *(Kuring-gai v Buyozo Pty Ltd [2021] NSWCA177)*, a modification application cannot be used to provide retrospective approval for works. Accordingly, the Applicant submitted an amended set of plans on 3 February 2025 identifying all works that had been constructed and are therefore not part of this application, and all works that are not yet constructed and are therefore proposed under this application. The above list of works is in accordance with the latest set of plans.

In accordance with the Community Participation Plan, re-notification of the application was not required in either instance of amended plans, as Council was satisfied that there was no increased environmental impact.

ASSESSMENT INTRODUCTION

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

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

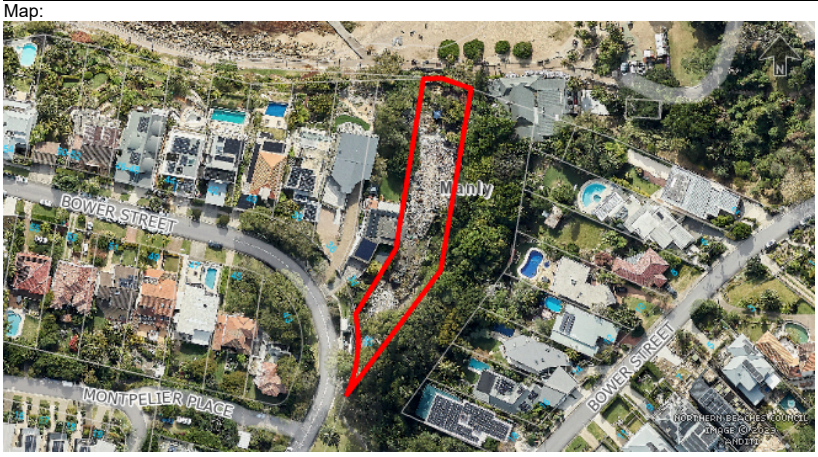
SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - Zone C3 Environmental Management
Manly Local Environmental Plan 2013 - 4.3 Height of buildings
Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Local Environmental Plan 2013 - 5.21 Flood planning
Manly Local Environmental Plan 2013 - 6.2 Earthworks
Manly Local Environmental Plan 2013 - 6.4 Stormwater management
Manly Local Environmental Plan 2013 - 6.5 Terrestrial biodiversity
Manly Local Environmental Plan 2013 - 6.8 Landslide risk
Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
Manly Local Environmental Plan 2013 - 6.12 Essential services
Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features

SITE DESCRIPTION

Property Description:	Lot 28 DP 8075 , 32 Bower Street MANLY NSW 2095
Detailed Site Description:	The subject site consists of one allotment located on the northern (low) side of Bower Street. The site is dogleg in shape with a curved frontage of 30.645 metres along Bower Street, a rear boundary of 18.58 metres facing Shelley Beach and a surveyed area of 1,859m². The site has an approximate width of between 17 and 18 metres at the locations of the proposed buildings. The site is located within the C3 Environmental Management zone pursuant to the Manly Local Environmental Plan 2013 and has been predominantly cleared for the purpose of the works approved under DA2019/0916 (the consent proposed to be amended by this application), as modified by Mod2023/0211. The site slopes downward from the front boundary (south) to the rear boundary(north) by approximately of 22.5 metres. The site also has a crossfall which slopes downward from the western boundary to the eastern boundary by approximately 4.5 metres. The site is underlain by Hawkesbury Sandstone bedrock below variable soil. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by dwellings of varying age and style with a predominant two and three storey scale. Bower Reserve abuts the site to the east and extends down from Bower Street to Marine Parade. Marine Parade is situated immediately to the north of the site and extends to the east and west to form a pedestrian promenade. The Boathouse Shelley Beach cafe is located to the north-east of the site.

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:

- DA0146/2016 for demolition of existing structures, three (3) lot Torrens Title Subdivision, construction of a dwelling house on each lot, swimming pools, and landscaping works. The application was approved by the former Northern Beaches Independent Assessment panel (NBIAP) on 16 March 2017.
- Pre-lodgement meeting PLM2018/0299 was held on 13 December 2018 to discuss construction of a dwelling house.
- DA2019/0916 for demolition works and construction of a dwelling house including swimming pools was approved by the Development Determination Panel on 26 February 2020. This is the parent application for the current modification application.
- Mod2024/0211 for modification of Development Consent DA2019/0916 was approved by the Development Determination Panel on 31 October 2023.

Demolition and construction for the purpose of DA2019/0916 (as modified by Mod2023/0211) has commenced. A site visit to the subject site on 10 January 2025 revealed that some of the works proposed under this modification application had been carried out. In accordance with recent caselaw via the NSW Land and Environment Court (*Kuring-gai v Buyozo Pty Ltd [2021] NSWCA177*), a modification application cannot be used to provide retrospective approval for works. Accordingly, the Applicant submitted an amended set of plans on 3 February 2025 identifying all works that had been constructed and are therefore not part of this application, and all works that are not yet constructed and are therefore proposed under this application.

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 DA2019/0916 (as modified by Mod2023/0211), in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) - 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 proposed modification is of minimal environmental impact, and	**Yes** The modification, as proposed in this application, is considered to be of minimal environmental impact, as the modifications amount to reconfiguration of approved elements.
(b) 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 DA2019/0916 (as modified by Mod2023/0211), given the works are modification of approved elements, and the resultant development retains similar compliance and the approved use as a dwelling house.
(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 of a development consent, and	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.
(d) it has considered any submissions made concerning	No submissions were received in relation to this application.

Section 4.55(1A) - Other Modifications	Comments
the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	

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 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 29 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. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to landscaping. Sufficient information was received on 11 December 2024. Clause 61 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. Clauses 62 and/or 64 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. 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 consideredsuitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	No submissions were received in relation to this application.

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application (prepared by Bushfire Hazard Solutions, dated 22 August 2024) stating that the modifications 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 26/11/2024 to 10/12/2024 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	***Supported, subject to conditions*** The application is for modification to development consent DA2019/0916. An additional pedestrian entry to Bower Street is shown on the Landscape Plan which encroaches into the road reserve. Encroachment into the road reserve includes retaining walls, planting, a gate, fencing and a path connection (it is noted this pedestrian entrance was annotated on the plans in MOD2023/0211, however, no physical works were shown to service this entrance). While concerns are not raised with these works, landscape referral will only assess the proposed works within the legal property boundaries thus the aforementioned encroachments in the road reserve shall be applied for under the correct pathway (minor encroachment application and/or S138 application etc.). Any future application must ensure the retaining wall that is proposed adjacent to tree 2 is located atop the existing approved concrete footing under application S138A2022/0041 (approximately 1.8m from the trunk) and as annotated on drawing Landscape Plan - Masterplan dated 06/12/24 revision C. Condition 41 Landscape works will be amended as part of this modification application. All other conditions remain.
NECC (Bushland and Biodiversity)	***Supported, subject to conditions*** The comments in this referral relate to the following applicable controls and provisions: • Biodiversity Conservation Act 2016 • Biosecurity Act 2015 • SEPP (Resilience and Hazards) 2021 - Coastal environment area • Manly LEP - Clause 6.5 Terrestrial Biodiversity • Manly DCP - Clause 5.4.2 Threatened Species and Critical Habitat Lands The proposed modifications would take place within the previously approved footprint. The subject site is known habitat for the endangered population of Long-nosed Bandicoots and therefore, an updated Terrestrial Biodiversity Report has been submitted with the application and concluded that the proposed modifications will not represent a significant impact to the endangered population of Long-nosed bandicoots of North Head. However, a range of measures to Avoid and Minimise impacts to the natural environment have been recommended and are supported. These measures were conditioned as part of the original consent and the reviewed recommendations will need to be adhered to. Furthermore, an updated Landscape planting schedule has been provided and is found to be compliant with applicable DCP controls and includes a range of species suitable for bandicoot habitat as well as tree species to provide habitat for other fauna present in the area.

Internal Referral Body	Comments
	The development will be managed to avoid any significant adverse environmental impact. Assessing Officer Comment: Some of the conditions in this referral have not been added in this instance, as they have already been applied under DA2019/0916 or Mod2023/0211.
NECC (Coast and Catchments)	***Supported without additional conditions*** The proposal seeks for Modification of Development Consent DA2019/0916 granted for demolition works and construction of a dwelling house and swimming pools. The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy Resilience & Hazards) 2021 and has also been assessed against requirements of the Manly LEP 2013 and Manly DCP. **Coastal Management Act 2016** The subject site has been identified as being within the coastal zone and therefore Coastal Management Act 2016 is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the Coastal Management Act 2016. **State Environmental Planning Policy (Resilience & Hazards) 2021** The subject land has been included on the 'Coastal Use Area' map under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.11 and 2.12 of the CM (R & H) apply for this DA modification. **Manly LEP 2013 and Manly DCP** Manly Land Zoning The subject site is shown to be within the C3 Environmental Management Zone in the Manly LEP. The objectives of the zone specified in the Land Use Table of the Manly LEP therefore apply to proposed DA modification at this site. 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. **Conclusion** The proposed modification remains consistent with the design intent of the original proposal. As such, it is considered that the application remains generally consistent with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021 and with the requirements of the coastal relevant clauses of the Manly LEP 2013 and Manly DCP. The proposed modifications of Development Consent DA 2019/0916 are recommended for approval with no additional conditions.
NECC (Development Engineering)	***Supported without additional conditions*** The Statement of Modification and associated documents have been reviewed. Development engineering raises no objections to the proposed modification, subject to the retention of the existing engineering conditions of consent imposed under consent DA2019/0916 and MOD2023/0211.
Parks, reserves, beaches, foreshore	***Supported without additional conditions*** The application proposes modification to development consent DA2019/0916. Parks, Reserves and Foreshores raise no concerns. All conditions imposed in DA2019/0916 remain.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	***Supported, subject to conditions*** The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	***Supported, subject to conditions*** No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.

External Referral Body	Comments
	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)

Housing and Productivity Contribution

The Housing and Productivity Contribution is not payable for this development.

SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No. 999238S_06 dated 26 July 2024). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Transport and Infrastructure) 2021

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

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

Comment:
The proposal was referred to Ausgrid who 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 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 6.3 Foreshores and Waterways Area

Division 1 Preliminary

6.25 Consent authority

(1) The Minister administering the Ports and Maritime Administration Act 1995 is the consent authority for the following development—
(a) development comprising the subdivision of land owned by TfNSW in or abutting the Foreshores and Waterways Area,
(b) development carried out in the Foreshores and Waterways Area wholly below the mean high water mark,
(c) development carried out in the Foreshores and Waterways Area for one or more of the following purposes, including development carried out wholly or partly inside a local government area—
Above-water boat lifts; Advertisements; Advertising structures; Aids to navigation; Aviation facilities; Boat lifts; Charter and tourism boating facilities; Commercial port facilities; Dredging; Floating boat platforms; Flora and fauna enclosures; Houseboats; Maintenance dredging; Mooring pens; Private landing facilities; Private landing steps; Private marinas; Private swimming enclosures; Public boardwalks; Public water transport facilities; Single moorings; Skids; Slipways

(2) Despite subsection (1), the Minister administering the Environmental Planning and Assessment Act 1979 is the consent authority for the following development carried out in the Foreshores and Waterways Area—
(a) development carried out partly above and partly below the mean high water mark,
(b) development carried out below the mean high water mark for the purposes of one or more of the following—
Boat building and repair facilities; Boat launching ramps; Boat sheds; Marinas; Reclamation works; Swimming pools; Water-based restaurants and entertainment facilities; Waterfront access stairs; Water recreation structures; Wharf or boating facilities that are sea walls
(c) development carried out wholly or partly inside the zoned waterway, including development carried out below the mean high water mark, for the purposes of one or more of the following—
Car parks; Commercial premises; Recreational or club facilities; Residential accommodation; Restaurants or cafes; Retail premises; Tourist facilities
(3) Subsections (1) and (2) do not apply if another environmental planning instrument specifies a different public authority, other than the council, as the consent authority for the development.

Comment:
Clause 6.25(2) provides that the Minister for Planning is the consent authority for development in the Foreshores and Waterways Area, per subclauses (a)-(c) inclusive.

Clause 6.25(2)(a) refers to development carried out partly above and partly below the mean high water mark (as defined by the SEPP). This subclause is not relevant to this application, as the works wholly above MWHM.

Clause 6.25(2)(b) refers to certain development types carried out below the MHWM. This subclause is not relevant to this application, as the works wholly above MWHM.

Clause 6.25(2)(c) of the SEPP refers to certain development types carried out wholly or partly inside the zoned waterway, including development carried out below the mean high water mark. This subclause does not apply to this application, as it is not located within the zoned waterway.

As such, the application is not the consent authority for this application.

Division 2 Zoning of Foreshores and Waterways Area

(3) This section does not affect the zoning, under another environmental planning instrument, of land in the Foreshores and Waterways Area if the land is not included in a zone under this section.

Comment:
Not applicable. The subject site is zoned C3 Environmental Conservation pursuant to the Manly Local Environmental Plan 2013, and is not within the zoned waterway pursuant to the SEPP.

Division 3 Development in Foreshores and Waterways Area

6.28 General

(1) In deciding whether to grant development consent to development in the Foreshores and Waterways Area, the consent authority must consider the following—
(a) whether the development is consistent with the following principles—
(i) Sydney Harbour is a public resource, owned by the public, to be protected for the public good,
(ii) the public good has precedence over the private good,
(iii) the protection of the natural assets of Sydney Harbour has precedence over all other interests,
(b) whether the development will promote the equitable use of the Foreshores and Waterways Area, including use by passive recreation craft,
(c) whether the development will have an adverse impact on the Foreshores and Waterways Area, including on commercial and recreational uses of the Foreshores and Waterways Area,
(d) whether the development promotes water-dependent land uses over other land uses,
(e) whether the development will minimise risk to the development from rising sea levels or changing flood patterns as a result of climate change,
(f) whether the development will protect or reinstate natural intertidal foreshore areas, natural landforms and native vegetation,
(g) whether the development protects or enhances terrestrial and aquatic species, populations and ecological communities, including by avoiding physical damage to or shading of aquatic vegetation,
(h) whether the development will protect, maintain or rehabilitate watercourses, wetlands, riparian lands, remnant vegetation and ecological connectivity.

(2) Development consent must not be granted to development in the Foreshores and Waterways Area unless the consent authority is satisfied of the following—
(a) having regard to both current and future demand, the character and functions of a working harbour will be retained on foreshore sites,
(b) if the development site adjoins land used for industrial or commercial maritime purposes—the development will be compatible with the use of the adjoining land,
(c) if the development is for or in relation to industrial or commercial maritime purposes—public access that does not interfere with the purposes will be provided and maintained to and along the foreshore,
(d) if the development site is on the foreshore—excessive traffic congestion will be minimised in the zoned waterway and along the foreshore,
(e) the unique visual qualities of the Foreshores and Waterways Area and its islands, foreshores and tributaries will be enhanced, protected or maintained, including views and vistas to and from—
(i) the Foreshores and Waterways Area, and
(ii) public places, landmarks and heritage items.

Comment:

With respect to clause (1), the proposed development is wholly on private land, so is acceptable with respect to the matters above at (a) to (h) inclusive.

With respect to clause (2), the proposed development is wholly on private land, does not impact the working harbour, does not unreasonably impact upon traffic congestion, and is acceptable with respect to the visual quality of the foreshore. The development does not involve commercial maritime purposes. The proposed development retains suitable pedestrian access around the entirety of the site. As such, the development is satisfactory with respect to the matters above at (a) to (e) inclusive.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 3 Coastal environment area
2.10 Development on land within the coastal environment area

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

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

Comment:
The north-western corner of the rear of the site is located within the coastal environment area. No works are proposed in this portion of the site. As such, the proposed modifications to the approved development are not anticipated to result in any unreasonable adverse impact to the matters above.

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

- *a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or*
- *b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
- *c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment:
The proposed modifications to the approved development are designed, sited and will be managed so as to avoid adverse impact.

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,*
  - *ii) including persons with a disability,*
  - *iii) overshadowing, wind funnelling and the loss of views from public places to foreshores,*
  - *iv) the visual amenity and scenic qualities of the coast, including coastal headlands,*
  - *v) Aboriginal cultural heritage, practices and places,*
    cultural and built environment heritage, and
- *b) is satisfied that:*
  - *i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*
  - *ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise*
  - *iii) that impact, or*
    if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- *c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*

Comment:
The proposed modifications to the approved development do not impact on the matters above beyond that of the approved development. As such, the modifications are designed, sited, and will be managed to avoid adverse impact. The proposed bulk and scale of the development has been considered throughout this assessment, as detailed in this assessment report.

Division 5 General
2.12 Development in coastal zone generally—development not to increase risk of coastal hazards
Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:
The approved development been designed to respond to the topography of the site and provide appropriate waste and drainage management systems to avoid any increased risk of coastal hazard. The proposed modifications to the approved development are designed and sited so as not to cause increased risk of coastal hazard on the subject site or adjoining sites.

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	Approved	Proposed	% Variation	Complies
Height of Buildings:	Max. 8.5m	Building 1: Max. 9.7m (RL 29.80)	New works above 8.5m Maximum heights unchanged	14.12%	No
		Buildings 2 & 3 (conjoined): Max. 10.78m (RL 26.68)		26.82%	
		Building 4: Max. 9.4m (RL 23.32)		8.23%	
Floor Space Ratio	0.45:1 (836.55m^2)	0.415:1 (772.2m^2)	0.436:1 (810m^2)	-	Yes

Compliance Assessment

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

Detailed Assessment

Zone C3 Environmental Management

The underlying objectives of the C3 Environmental Management zone are addressed as follows:

To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.
Comment:
The proposed modified development manages the ecological, cultural and aesthetic values of the site through its preservation of the unique topography evident on the site. The retained pavilion configuration enables an effective transition from residential land and the public reserve through the provision of dense landscaping throughout the eastern side of the site.

To provide for a limited range of development that does not have an adverse effect on those values.

Comment:
The proposed modified development will maintain the ecological, scientific, cultural and aesthetic values of the local area.

To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.
Comment:
The proposed modified development is sited to maintain and enhance vegetation. The retained building heights, will not adversely affect the tree canopy nor dominate the natural scenic quality of the Shelley Beach foreshore.

To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.
Comment:
The proposed modified development is supported by a suitable landscape plan detailing adequate planting, and is designed to retain significant vegetation adjacent to Marine Parade and the Shelley Beach Reserve.

To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.
Comment:
The proposed modifications retain compliance with the required total open space and landscaped area controls, thereby allowing for deep soil landscaping and stormwater infiltration throughout the site. The proposal is supported by suitable stormwater management plans.

To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.
Comment:
The retained pavilion forms enable the built form to satisfactorily respond to the existing vegetation, topography and surrounding land uses.

4.3 Height of buildings

With regard to the modified works above the 8.5 metre height limit, the underlying objectives of Clause 4.3 Height of Buildings are addressed as follows:

(a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,
Comment:
The proposed modifications retain the general configuration of the development, being separated pavilions with flat roof forms. In this way, the proposed modifications provide a suitable response to the steep sloping topography of the site. The proposal is consistent with and comparable to existing developments nearby, and is generally consistent with the desired future character of this locality.

(b) to control the bulk and scale of buildings,
Comment:
The proposed modifications retain compliance with the floor space ratio development standard, the intention of which is to control bulk and scale. The proposed modifications retain the general configuration of the development, being separated pavilions with flat roof forms, which breaks up and minimises the bulk and scale of the resultant dwelling.

(c) to minimise disruption to the following—
(i) views to nearby residential development from public spaces (including the harbour and foreshores),
(ii) views from nearby residential development to public spaces (including the harbour and foreshores),
(iii) views between public spaces (including the harbour and foreshores),
Comment:
The proposed modifications retain adequate view sharing, consistent with the requirements of Clause 3.4.3 Maintenance of Views of the MDCP 2013.

(d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,
Comment:
The proposed modified development is designed and sited so as to retain adequate privacy and solar access for the subject site and the adjoining residential site to the west.

(e) to ensure the height and bulk of any proposed building or structure in a recreation or conservation zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.
Comment:
The subject site is not within a recreation zone or conservation zone.

4.6 Exceptions to development standards

Whilst the modification application will retain in a building height that contravenes the maximum permitted by Clause 4.3 of the MLEP 2013, the application does not strictly need to address the requirements of Clause 4.6.

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

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

5.21 Flood planning

Under this clause, development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development:

(a) is compatible with the flood function and behaviour on the land, and
(b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and
(c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and
(d) incorporates appropriate measures to manage risk to life in the event of a flood, and
(e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.
Comment:
The site is partially mapped as low flood risk. The proposed works are designed and sited so as to be compatible with the flood function and behaviour on the land. The works will not adversely affect flood behaviour, the safe occupation and efficient evacuation of people, or exceed the capacity of existing evacuation routes for the surrounding area. The development will allow for suitable measures to manage risk to life in the event of a flood. The development will not adversely affect the environment or cause avoidable erosion, siltation, or destruction of land.

In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters:

(a) the impact of the development on projected changes to flood behaviour as a result of climate change,
(b) the intended design and scale of buildings resulting from the development,
(c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,
(d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.
Comment:
The matters at (a) to (d) have been considered with respect to the development. The development is low-risk and satisfactory in this regard.

6.2 Earthworks

The objectives of Clause 6.2 Earthworks require development:

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

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

(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development
Comment:
The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

(b) the effect of the proposed development on the likely future use or redevelopment of the land
Comment:
The proposal will not unreasonably limit the likely future use or redevelopment of the land.

(c) the quality of the fill or the soil to be excavated, or both
Comment:
The excavated material will be processed according to the Waste Management Plan for the development. A condition was included in the recommendation of the original assessment 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 were included in the recommendation of the original assessment 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 was included in the recommendation of the original report requiring any fill to be of a suitable quality.

(f) the likelihood of disturbing relics
Comment:
The site is not mapped as being a potential location of Aboriginal or other relics.

(g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area
Comment:
The site is not located in the vicinity of any watercourse, drinking water catchment or environmentally sensitive areas.

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

Comment:
Conditions were included in the recommendation of the original report that will minimise the impacts of the development.

6.4 Stormwater management

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

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

(b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and
Comment:
On-site stormwater retention has been incorporated into the development.

(c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.
Comment:
The proposal has been assessed by Council's Development Engineers who have raised no objections to approval, subject to conditions. In this regard, Council is satisfied that the development will minimise any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters.

6.5 Terrestrial biodiversity

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

(a) protecting native fauna and flora, and
(b) protecting the ecological processes necessary for their continued existence, and
(c) encouraging the conservation and recovery of native fauna and flora and their habitats.

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

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

(b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.
Comment:
The application was referred to Council's Bushland & Biodiversity team, who are supportive of the proposed works, subject to recommended conditions of consent. As such, the development will not have adverse impact on the matters above and that appropriate measures have been taken to avoid, minimise and mitigate the impacts of the development.

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

(a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or
(b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or
(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.
Comment:
The application was referred to Council's Bushland & Biodiversity team, who are supportive of the proposed works, subject to recommended conditions of consent. As such, the development is designed, sited and will be managed to avoid any significant adverse environmental impact.

6.8 Landslide risk

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

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

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

(a) site layout, including access,
(b) the development's design and construction methods,
(c) the amount of cut and fill that will be required for the development,

(d) waste water management, stormwater and drainage across the land,
(e) the geotechnical constraints of the site,
(f) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.
Comment:
The development is supported by architectural plans, stormwater plans, and a geotechnical report to demonstrate the proposal is acceptable with respect to the above matters. The application was referred to Council's Development Engineer, who is supportive of the proposal, subject to recommended conditions of consent.

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 impac*t.
Comment:
The application was referred to Council's Development Engineer, who is supportive of the proposal, subject to recommended conditions of consent. As such, the modified 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.

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 adjoins foreshore land. The modified development:

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

6.12 Essential services

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

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

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

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 1,859m^2	**Requirement**		**Approved**	**Proposed**	**Complies**
4.1.1.1 Residential Density and Dwelling Size	Density: 500m^2 per dwelling		1 dwelling on 1,859m^2 site	Unchanged	Yes
	Size: Min. 90m^2		772.2m^2	810m^2	Yes
4.1.2.1 Wall Height (based on gradient)	Building 1	E: Max. 8m	Max. 8.75m	Unchanged	As approved
		W: Max. 7.5m	Max. 6.15m	Unchanged	Yes

	Buildings 2 & 3	E: Max. 7.2m	Max. 10.15m	Unchanged	As approved
		W: Max. 7.1m	Max. 6.75m	Unchanged	Yes
	Building 4	E: Max. 7.4m	Max. 9.2m	Unchanged	As approved
		W: Max. 7.8m	Max. 6.8m	Unchanged	Yes
4.1.2.2 Number of Storeys	Max. 2		Max. 3	Unchanged	As approved
4.1.2.3 Roof Height	Height: Max. 2.5m		Flat	Unchanged	Yes
4.1.4.1 Street Front Setbacks	Min. 6m		Min. 3.99m	Unchanged	As approved
4.1.4.2 Side Setbacks (based on wall height)	Building 1	W: Min. 2.05m	Min. 1.815m	Unchanged	As approved
	Buildings 2 & 3	W: Min. 2.25m	Min. 1.5m	Unchanged	As approved
	Building 4	W: Min. 2.27m	Min. 1.5m	Unchanged	As approved
	Windows: Min. 3m		E: Min. 3.5m	Unchanged	Yes
			W: Min. 1.5m	Unchanged	As approved
4.1.4.4 Rear Setbacks	Min. 8m		Min. 9.5m	Min. 11.1m	Yes
4.1.4.6 Setback to RE1	Building 1	Min. 6m (East)	Min. 6m	Unchanged	Yes
	Buildings 2 & 3		Min. 3.5m		
	Building 4		Min. 3.5m		
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Total Open Space: Min. 55% of site ($1,022.45m^2$)		59.8% ($1,112m^2$)	60.63% ($1,127.2m^2$)	Yes
	Above Ground: Max. 25% of TOS		12.77% ($142m^2$)	7.2% ($81.6m^2$)	Yes
4.1.5.2 Landscaped Area	Landscaped Area: Min. 35% of TOS		48.85% ($543.2m^2$)	47.1% ($531m^2$)	Yes
	3 Native Trees		>3 trees	Unchanged	Yes
4.1.5.3 Private Open Space	Min. $18m^2$ per dwelling		$>18m^2$	$>18m^2$	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Max. 50% of frontage, up to 6.2m		Garage does not present to street	Unchanged	Yes
4.1.9 Swimming Pools, Spas and Water Features	Pool 1 (South)	Max. 1m Above Ground	Max. 1.6m	Max. 2.1m	No
		Setback to Coping: Min. 1m	1.5m	Unchanged	Yes
		Setback to Water: Min. 1.5m	1.6m		
	Pool 2 (North)	Max. 1m Above Ground	Max. 3m	Unchanged	As approved
		Setback to Coping: Min. 1m	E: Min. 1.9m		
			N: Min. 7.2m		
		Setback to Water: Min. 1.5m	E: Min. 2m		
			N: Min. 7.3m		
Schedule 3 Parking and Access	Min. 2 spaces		2 spaces	Unchanged	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

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

Detailed Assessment

4.1.9 Swimming Pools, Spas and Water Features

The modified development alters the approved southern pool to be 2.1 metres above ground, where the maximum allowable under this control is 1 metre. The pool was approved at 1.6 metres above ground under the mot recent modification application before this application. The modified development is considered against the 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 modified pool is designed and sited such that it does not result in any unreasonable impact to the privacy of the subject site or adjoining sites. The modification of the southern-most pool retains its logical central location on the site, being next to dense vegetation on the adjoining residential site to the west, rather than adjacent to the neighbouring dwelling. The location and nuisance of the pool filter is controlled by way of condition of consent.

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 such that it will not be perceived from the street level or the Marine Parade foreshore.

Objective 3) To integrate landscaping; and
Comment:
The proposed modifications retain compliant total open space and landscaped open space on the site. The proposal is supported by a suitable landscape plan, demonstrating acceptable planting, including around the pools.

Objective 4) To become an emergency water resource in bush fire prone areas.
Comment:
The subject site is classified as bush fire prone. The modified pool is able to be used as an emergency water resource.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2024

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

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

PLANNING CONCLUSION

This modification application sought consent for modification of Development Consent DA2019/0916, which was granted for demolition works and construction of a dwelling house including swimming pools. The application consisted of minor internal and external modifications to, and reconfiguration of, approved elements of the development.

The application was referred to the Development Determination Panel (DDP) given the proposed modifications involve works above the height of building development standard of 8.5 metres, but do not result in additional height or increased non-compliance. The maximum non-compliant height of 10.78 metres is retained, being a 26.82% variation to the height of buildings development standard set out in Clause 4.3 Height of Buildings of the Manly Local Environmental Plan 2013.

No submissions were received in relation to this application.

Detailed consideration was given to the retained non-compliant building height, and the proposed alteration to the southern pool area (which is set partially above ground).

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. Mod2024/0568 for Modification of Development Consent DA2019/0916 granted for Demolition works and construction of a dwelling house including swimming pools on land at Lot 28 DP 8075,32 Bower Street, MANLY, 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-476019 Mod2024/0568	The date of this notice of determination	Internal and external alterations and landscaping changes. Additional Conditions: • Condition 1B Modification of Consent - Approved Plans and Supporting Documentation • Condition 1C No Consent for Constructed Works • Condition 2A Compliance with Other Department, Authority or Service Requirements • Condition 20H No Clearing of Vegetation • Condition 40E Aboriginal Heritage • Condition 56 Compliance with Ecologist's Recommendations – Ongoing • Condition 57 Protection of Habitat Features Amended Conditions: • Condition 24 Compliance with Ecologist's Recommendations – During Construction • Condition 41 Landscape Completion • Condition 44 Compliance with Ecologist's Recommendations – Post Construction
PAN-323728 Mod2023/0211	31 October 2023	Reconfiguration of the approved pavilions, driveway, pools, and landscaping. Additional Conditions: • Condition 1A Modification of Consent - Approved Plans and Supporting Documentation Amended Conditions: • Condition 2 Compliance with Other Department, Authority or Service Requirements • Condition 22 Tree Removal Within the Property • Condition 34 Project Arborist • Condition 35 Tree and Vegetation Protection • Condition 41 Landscape Works Deleted Conditions: • Condition 11 Amended Landscape Plan

Modified Conditions

A. Add Condition 1B 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**
A.01.01-B	B	General Arrangement / Site Plan	Eaton Molina Architects	31 January 2025
A.02.01-B	B	General Arrangement / Levels 1 + 2 + 3	Eaton Molina Architects	31 January 2025
A.02.02-B	B	General Arrangement / Level 4 + Roof Plans	Eaton Molina Architects	31 January 2025

A.03.01-B	B	General Arrangement / East + West Elevations	Eaton Molina Architects	31 January 2025
A.03.02-A	A	General Arrangement / North + Elevations	Eaton Molina Architects	22 July 2024
A.03.03-A	A	General Arrangement / Section A-A & Height Blanket Perspective	Eaton Molina Architects	22 July 2024
L-S4.55-04	C	Landscape Plan - Masterplan	360 Degrees Landscape Architects	6 December 2024
L-S4.55-05	C	Landscape Plan - Level 1	360 Degrees Landscape Architects	6 December 2024
SW(S4.55) 1.1	1	General Notes and Specifications	Partridge Hydraulics	August 2024
SW(S4.55) 1.3	1	Erosion & Sediment Control Plan and Details	Partridge Hydraulics	August 2024
SW(S4.55) 1.4	1	Site Plan	Partridge Hydraulics	August 2024
SW(S4.55) 1.5	1	Stormwater Drainage Plan Site & Studio Ground Floor Plan	Partridge Hydraulics	August 2024
SW(S4.55) 1.6	1	Stormwater Drainage Plan Level 1 Building Floor Plan	Partridge Hydraulics	August 2024
SW(S4.55) 1.7	1	Stormwater Drainage Plan Level 2 Building Floor Plan	Partridge Hydraulics	August 2024
SW(S4.55) 1.8	1	Stormwater Drainage Plan Level 3 Building Floor Plan	Partridge Hydraulics	20 August 2024
SW(S4.55) 1.9	1	Stormwater Drainage Plan Level 4 & Roof	Partridge Hydraulics	August 2024
SW(S4.55) 1.10	1	Details Sheet	Partridge Hydraulics	August 2024

Approved Reports and Documentation			
Document Title	**Version Number**	**Prepared By**	**Date of Document**
BASIX Certificate No. 999238S_06	-	Eco Certificates Pty Ltd	26 July 2024
Bushfire Assessment Report Addendum	230316B	Building Code & Bushfire Hazard Solutions	22 August 2024
Geotechnical Assessment	2015-241.1	Crozier Geotechnical Consultants	31 July 2024
NatHERS Certificate HR-MOTBUK-04	-	Eco Certificates Pty Ltd	26 July 2024
Terrestrial Biodiversity Report	2	GIS Environmental Consultants	12 August 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 1C No Consent for Constructed Works, to read as follows:

No consent is granted for the already-constructed works marked on the approved plans as "subject to separate application for B.I.C.".

Reason: To ensure consistency with this consent.

C. Add Condition 2A Compliance with Other Department, Authority or Service Requirements to read as follows:

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

Other Department, Authority or Service	**EDMS Reference**	**Dated**
Ausgrid	Ausgrid Referral Response	12 November 2024

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

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

D. Add Condition 20H No Clearing of Vegetation to read as follows:

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.

E. Modify Condition 24 Compliance with Ecologist's Recommendations – During Construction to read as follows:

All impact mitigation measures specified in the approved Terrestrial Biodiversity Report (GIS Environmental Consultants, August 2024) are to be implemented at the appropriate stage of development.

Compliance with these measures is to be certified by the Project Ecologist in writing to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures.

F. Add Condition 40E Aboriginal Heritage to read as follows:

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.

G. Modify Condition 41 Landscape Completion to read as follows:

a) Landscape works are to be implemented in accordance with the approved amended Landscape Plan(s), and inclusive of the following conditions:
i) Landscape works are to be contained within the legal property boundaries,
ii) Planting shall be installed as indicated on the approved Landscape Plan(s) unless otherwise imposed by any conditions,
iii) At minimum two (2) Glochidion ferdinandi shall be installed within the property boundary, one in the rear setback and one in the front setback; three (3) Livistona australis and one (1) Ficus rubiginosa shall be installed within the property boundaries,
iv) All native tree planting shall be a minimum pre-ordered planting size of 100 litres or as otherwise scheduled if greater in size; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth generally, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings and other trees or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,
v) Mass planting shall be installed in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,
vi) The area in the rear setback (adjacent to Marine Parade) shown as existing garden to be retained shall be mass planted in accordance with Condition 20E Amendment of Landscape Plans,
vii) Where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone,
viii) Where the property is certified Bush Fire Prone Land, any new planting may be managed in accordance with Planning for Bushfire Protection 2019; the trees specified in ii) shall take priority for installation should APZ requirements limit proposed tree planting.

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

Reason: Environmental amenity.

H. Modify Condition 44 Compliance with Ecologist's Recommendations – Post Construction to read as follows:

All impact mitigation measures specified in the approved Terrestrial Biodiversity Report (August 2024) are to be implemented at the appropriate stage of development.

Written and photographic evidence of compliance is to be prepared by the Project Ecologist and provided to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures.

I. Add Condition 56 Compliance with Ecologist's Recommendations – Ongoing to read as follows:

All impact mitigation measures specified in the approved Terrestrial Biodiversity Report (GIS Environmental Consultants, August 2024) are to be implemented at the appropriate stage of development.

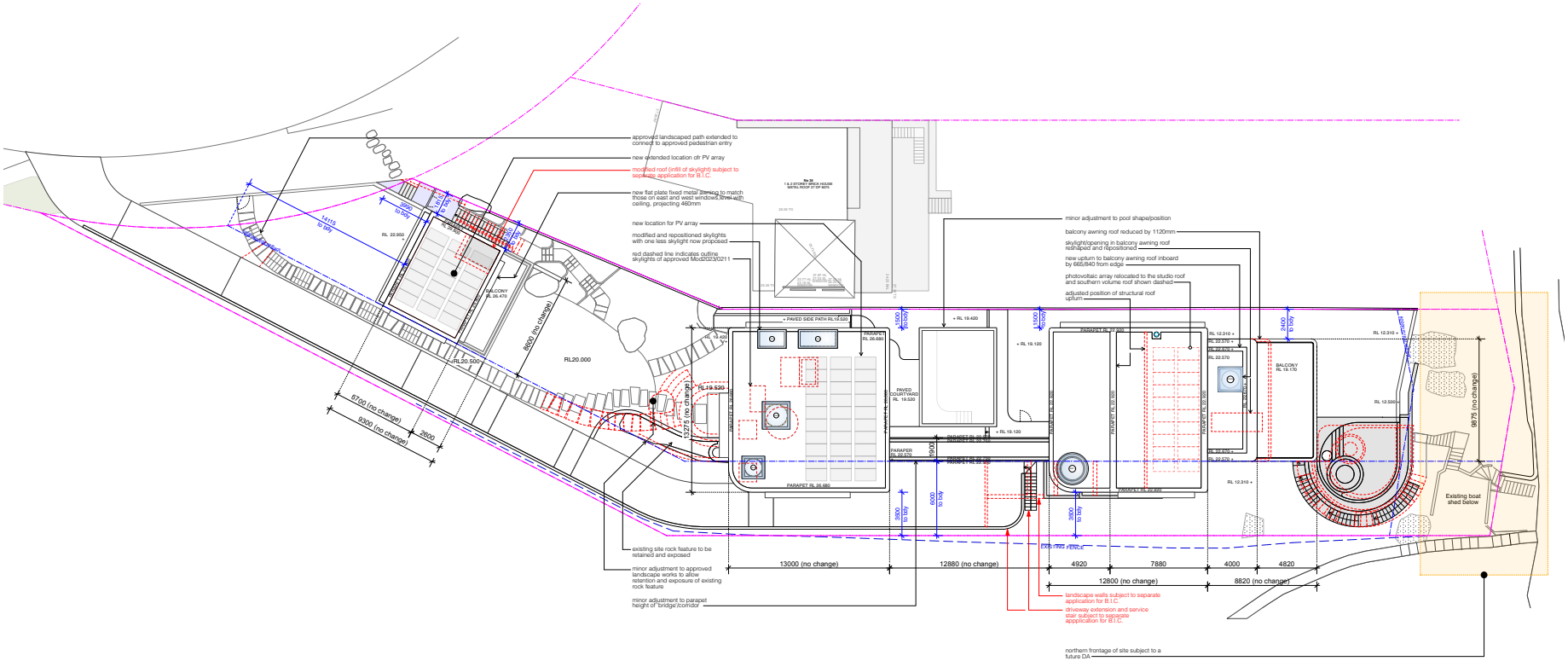
Successful establishment/initiation of ongoing biodiversity measures is to be certified by the Project Ecologist in writing to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures.

J. Add Condition 57 Protection of Habitat Features to read as follows:

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.



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client
BOWER RESIDENCE

address
32 Bower Street Manly

All works to be in accordance with Australian Standards, The Building Code of Australia, other relevant codes, and with Manufacturers' recommendations and instructions. Do not scale from drawings. Verify all dimensions on site prior to construction.

NORTH (MM)

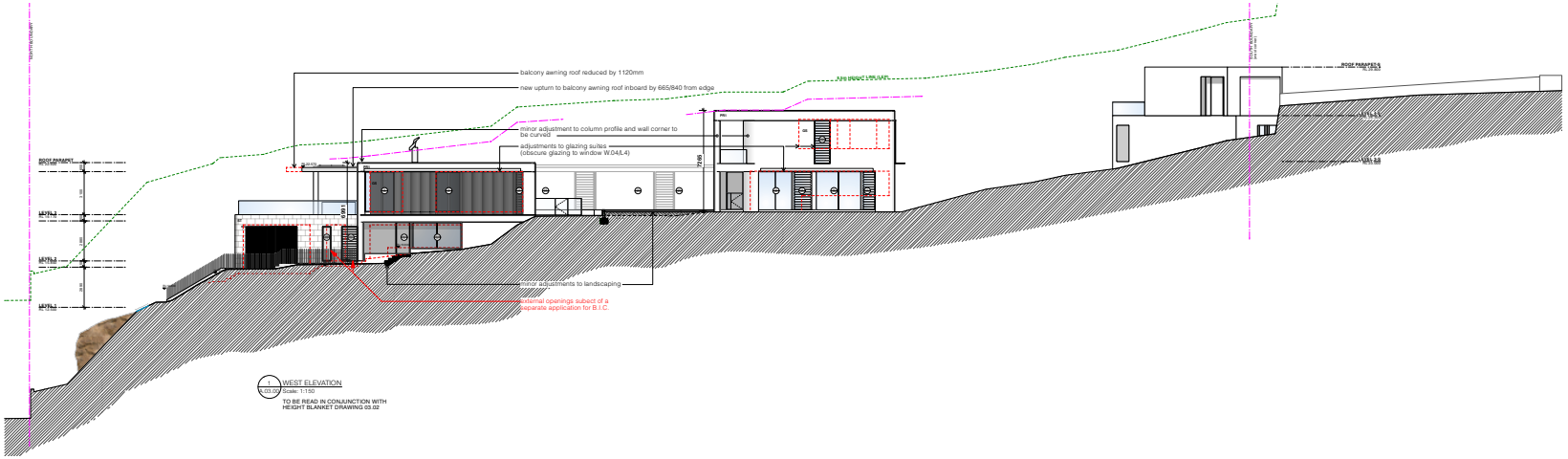
amendment		
B	S4.55 APPLICATION - ADDITIONAL INFO	31.01.2025
A	S4.55 APPLICATION	22.07.2024

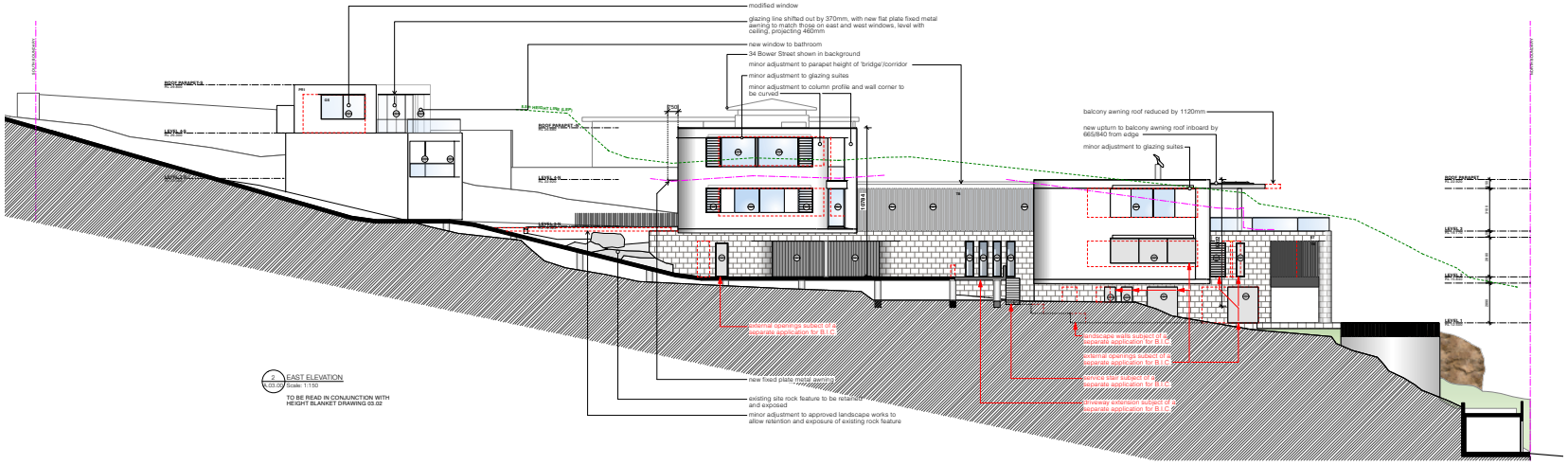
0 1 2 3 4 5 10m

1:100 @ A1, 1:200 @ A3 — scale
project number 0253
JE — drawn by

drawing title
GENERAL ARRANGEMENT SITE PLAN

drawing number
A.01.01-B





EATON MOLINA ARCHITECTS
PO Box 849, Manly NSW 1655
admin@eatonmolina.com

client
BOWER RESIDENCE

address
32 Bower Street Manly

amendment		
B	S4.55 APPLICATION - ADDITIONAL INFO	31.01.2025
A	S4.55 APPLICATION	22.07.2024

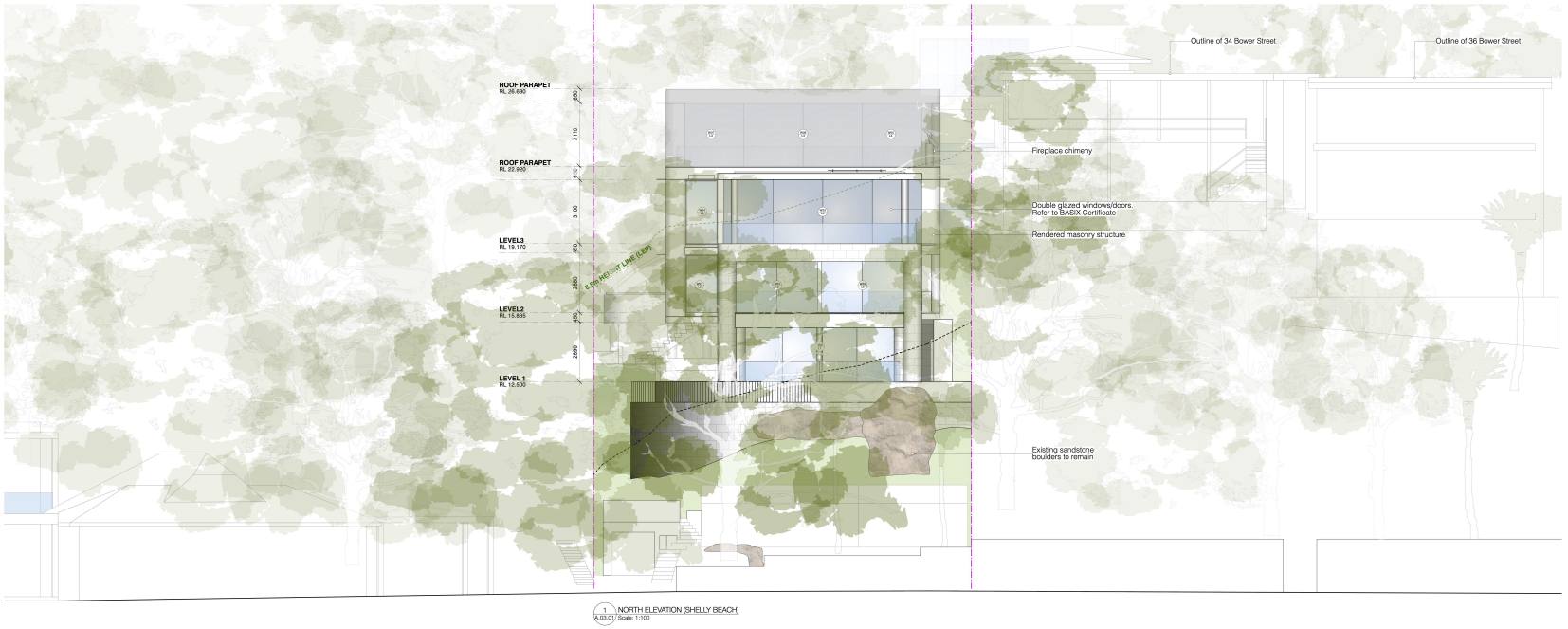
0 1 2 3 4 5 10m

1:100 @ A1, 1:200 @ A3 — scale
project number 0253
JE — drawn by

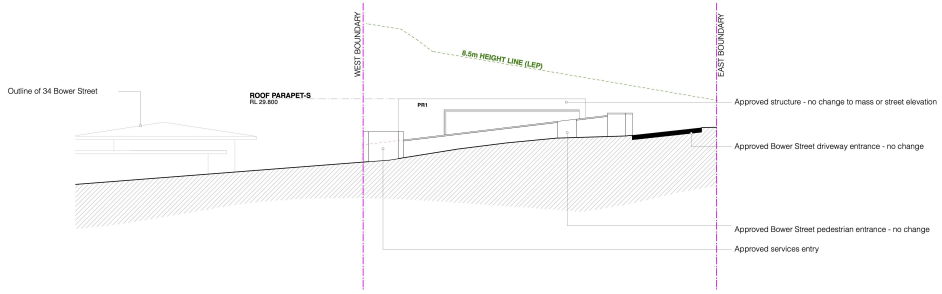
drawing title
GENERAL ARRANGEMENT
EAST + WEST ELEVATIONS

drawing number
A.03.01-B

All works to be in accordance with Australian Standards, The Building Code of Australia, other relevant codes, and with Manufacturers' recommendations and instructions. Do not scale from drawings, Verify all dimensions on site prior to construction.



1 NORTH ELEVATION (SHELLY BEACH)
A.03.01 Scale: 1:100



2 SOUTH ELEVATION (BOWER STREET)
A.03.01 Scale: 1:100

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LEGEND

- approved structure - no change
- proposed modification to approved Mod2023/0211 MASONRY
- proposed modification to approved Mod2023/0211 LIGHTWEIGHT
- proposed modification to approved Mod2023/0211 CONCRETE
- approved structure to be modified
- landscaping - refer to landscape architect's plans
- earth / ground condition unknown
- proposed fill / soil

BASIX 5.1 HOUSE 64.7 Water Energy Thermal Comfort
BASIX® Certificate **IRF24M07BUK-04 26/07/2024**
Assessor Damian Bielski
Accreditation No. DMN/12/1462
Address Main House, 32 Bower Street, Manly, NSW, 2095.
http://www.basix.nsw.gov.au/iframe/certificate.jsp?certificate_number=IRF24M07BUK-04

A **S4.55 APPLICATION** **22.07.2024**
amendment

0 1 2 3 4 5 10m

1:100 @ A1, 1:200 @ A3 scale
project number 0058
JE drawn by

drawing title
GENERAL ARRANGEMENT NORTH + SOUTH ELEVATIONS
drawing number **A.03.02-A**